

SENATE, No. 2011

STATE OF NEW JERSEY

INTRODUCED APRIL 17, 1997

By Senator SINAGRA

1 AN ACT concerning the pollution prevention program, amending
2 P.L.1983, c. 315, and amending and supplementing P.L.1991,
3 c. 235.

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

7
8 1. Section 3 of P.L.1991, c.235 (C.13:1D-37) is amended to read
9 as follows:

10 3. As used in this act:

11 "Board" means the Pollution Prevention Advisory Board established
12 pursuant to section 5 of this act.

13 "Commissioner" means the Commissioner of the Department of
14 Environmental Protection.

15 "Consume" means to change or alter the molecular structure of a
16 hazardous substance within a production process.

17 "Department" means the Department of Environmental Protection.

18 "Facility" means all buildings, equipment, structures, and other
19 property that are located on a single site or on contiguous or adjacent
20 sites and that are owned or operated by the same person.

21 "Facility-wide permit" means a single permit issued by the
22 department to the owner or operator of a priority industrial facility
23 incorporating the permits, certificates, registrations, or any other
24 relevant department approvals previously issued to the owner or
25 operator of the priority industrial facility pursuant to P.L.1970, c.39
26 (C.13:1E-1 et seq.), P.L.1977, c.74 (C.58:10A-1 et seq.), or P.L.1954,
27 c.212 (C.26:2C-1 et seq.), and the appropriate provisions of the
28 pollution prevention plan prepared by the owner or operator of the
29 priority industrial facility pursuant to section 7 and section 8 of this
30 act.

31 "Hazardous substance" means any substance on the list established
32 by the United States Environmental Protection Agency for reporting
33 pursuant to 42 U.S.C. s.11023, any substance regulated pursuant to
34 the provisions of P.L.1985, c.403 (C.13:1K-19 et seq.), and any other

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 substance which the department, pursuant to the provisions of
2 subsection i. of section 8 of this act, defines as a hazardous substance
3 for the purposes of this act.

4 "Hazardous waste" means any solid waste defined as hazardous
5 waste by the department pursuant to P.L.1970, c.39 (C.13:1E-1 et
6 seq.).

7 "Industrial facility" means any facility having a Standard Industrial
8 Classification, as designated in the Standard Industrial Classification
9 Manual prepared by the federal Office of Management and Budget,
10 within the Major Group Numbers, Group Numbers, or Industry
11 Numbers listed in subsection h. of section 3 of P.L.1983, c.315
12 (C.34:5A-3) and which is subject to the regulatory requirements of
13 P.L.1970, c.39 (C.13:1E-1 et seq.), P.L.1977, c.74 (C.58:10A-1 et
14 seq.), P.L.1985, c.403 (C.13:1K-19 et seq.), or P.L.1954, c.212
15 (C.26:2C-1 et seq.).

16 "Manufacture" means to produce, prepare, import, or compound a
17 hazardous substance.

18 "Multimedia release" means the release of a hazardous substance to
19 any environmental medium, or any combination of media, including the
20 air, water or land, and shall include any release into workplaces.

21 "Nonproduct output" means all hazardous substances or hazardous
22 wastes that are generated prior to storage, recycling, treatment,
23 control, or disposal and that are not intended for use as a product.

24 "Office" means the Office of Pollution Prevention established in the
25 department pursuant to section 4 of this act.

26 "Operator" means any person in control of, or exercising
27 responsibility for, the daily operation of an industrial facility or a
28 priority industrial facility.

29 "Owner" means any person who owns an industrial facility or a
30 priority industrial facility.

31 "Person" means any individual, partnership, company, corporation,
32 society, firm, consortium, joint venture, or any commercial or other
33 legal entity.

34 "Pilot facility" means a facility or designated area of a facility used
35 for pilot-scale development of products or processes.

36 "Pollution prevention" means: changes in production technologies,
37 raw materials or products, that result in the reduction of the demand
38 for hazardous substances per unit of product manufactured and the
39 creation of hazardous products or nonproduct outputs; or changes in
40 the use of raw materials, products, or production technologies that
41 result in the reduction of the input use of hazardous substances and the
42 creation of hazardous by-products or destructive results; or on-site
43 facility changes in production processes, products, or the use of
44 substitute raw materials that result in the reduction of the amount of
45 hazardous waste generated and disposed of on the land or hazardous
46 substances discharged into the air or water per unit of product

1 manufactured prior to treatment, and that reduce or eliminate, without
2 shifting, the risks that the use of hazardous substances at an industrial
3 facility pose to employees, consumers, and the environment and human
4 health. "Pollution prevention" shall include, but need not be limited to,
5 raw material substitution, product reformulation, production process
6 redesign or modification, in-process recycling, and improved operation
7 and maintenance of production process equipment. "Pollution
8 prevention" shall not include any action or change entailing a
9 substitution of one hazardous substance, product or nonproduct
10 output for another that results in the creation of substantial new risk,
11 and shall not include treatment, increased pollution control,
12 out-of-process recycling, or incineration, except as otherwise provided
13 pursuant to subsection f. of section 7 of this act.

14 "Pollution prevention plan" means a plan required to be prepared by
15 an industrial facility pursuant to the provisions of section 7 of this act.

16 "Pollution prevention plan progress report" means a report required
17 to be submitted annually to the department by the owner or operator
18 of an industrial facility pursuant to the provisions of section 7 of this
19 act.

20 "Pollution prevention plan summary" means a summary of a
21 pollution prevention plan required to be prepared by an industrial
22 facility and submitted to the department pursuant to the provisions of
23 section 7 of this act.

24 "Priority industrial facility" means any industrial facility required to
25 prepare and submit a toxic chemical release form pursuant to 42
26 U.S.C. s.11023, or any other facility designated a priority industrial
27 facility pursuant to rules and regulations adopted by the department
28 pursuant to the provisions of subsection h. of section 8 of this act.

29 "Process" means the preparation of a hazardous substance, after its
30 manufacture, for sale or use in the same form or physical state, or in
31 a different form or physical state, as that in which it was received at
32 the industrial facility where it is processed, or as part of an article or
33 product containing the hazardous substance.

34 "Product" means a desired result of a production process that is
35 used as a commodity in trade in the channels of commerce by the
36 general public in the same form as it is produced.

37 "Production process" means a process, line, method, activity or
38 technique, or a series or combination of processes, lines, methods or
39 techniques used to produce a product or reach a planned result.

40 "Research and development laboratory" means a facility or a
41 specially designated area of a facility used primarily for research,
42 development, and testing activity, and not primarily involved in the
43 production of goods for commercial sale, in which hazardous
44 substances are used by, or under, the direct supervision of a technically
45 qualified person.

46 "Source" means a point or location in a production process at which

1 a nonproduct output is generated or released, provided, however, that
2 similar, related, or identical kinds of sources may be considered a
3 single source for the purposes of this act.

4 "Targeted production process" means any production process which
5 significantly contributes to the use or release of hazardous substances
6 or the generation of hazardous waste or nonproduct output, as
7 determined by the owner or operator of an industrial facility pursuant
8 to criteria established by the department.

9 "Targeted source" means any source which significantly contributes
10 to the generation of nonproduct output, as determined by the owner
11 or operator of an industrial facility pursuant to criteria established by
12 the department.

13 "Use" means to process or otherwise use a hazardous substance.

14 "Violation of this act" means a violation of any provision of this act,
15 or any rule or regulation, administrative order, or facility-wide permit
16 adopted or issued pursuant thereto.

17 (cf: P.L.1991, c.235, s.3)

18

19 2. Section 6 of P.L.1991, c.235 (C.13:1D-40) is amended to read
20 as follows:

21 6. a. Within 18 months of the effective date of this act, the
22 department shall adopt, pursuant to the "Administrative Procedure
23 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations
24 necessary for the implementation of this act.

25 b. Within 18 months of the effective date of this act the department
26 shall adopt, pursuant to the "Administrative Procedure Act," rules and
27 regulations that outline the substantive requirements of pollution
28 prevention plans, pollution prevention plan summaries, and pollution
29 prevention plan progress reports, and shall make a document setting
30 forth these requirements available to owners and operators of priority
31 industrial facilities. The rules and regulations adopted pursuant to this
32 subsection shall, to the maximum extent practicable and feasible,
33 require that information required for the preparation of a pollution
34 prevention plan, pollution prevention plan summary, and a pollution
35 prevention plan progress report be based on information developed by
36 the owner or operator of an industrial facility for the purposes of
37 compliance with 42 U.S.C. s.11023 and P.L.1983, c.315 (C.34:5A-1
38 et al.). These rules and regulations shall specify which information
39 required in a pollution prevention plan summary and pollution
40 prevention plan progress report may be reported to the department in
41 an environmental survey submitted pursuant to P.L.1983, c.315
42 instead of in a pollution prevention plan summary or a pollution
43 prevention plan progress report. These regulations may require
44 owners or operators of industrial facilities to submit pollution
45 prevention plan summaries or pollution prevention plan progress
46 reports in a form that is compatible with the department's electronic

1 information storage and retrieval system.

2 c. [Within 18 months of the effective date of this act the
3 department shall adopt, pursuant to the "Administrative Procedure
4 Act," rules and regulations establishing criteria pursuant to which the
5 department shall be authorized to issue a directive requiring an
6 industrial facility which is not a priority industrial facility to prepare a
7 pollution prevention plan, pollution prevention plan summary, and a
8 pollution prevention plan progress report. These criteria shall include
9 the toxicity and volume of the hazardous substances or hazardous
10 waste used, generated or released at the industrial facility, and the
11 history of unpermitted releases at the industrial facility. These criteria
12 shall also include a requirement that the department, prior to issuing
13 a directive pursuant to this subsection, make a written finding that,
14 based on the past performance of the industrial facility and the
15 compliance of the industrial facility with the terms of any permit,
16 certificate, registration, or any other relevant department approval
17 issued to the owner or operator of the industrial facility pursuant to
18 P.L.1970, c.33 (C.13:1D-1 et seq.), P.L.1970, c.39 (C.13:1E-1 et
19 seq.), P.L.1977, c.74 (C.58:10A-1 et seq.), or P.L.1954, c.212
20 (C.26:2C-1 et seq.), and the extent to which the industrial facility
21 contributes to the total amount of hazardous substances used,
22 generated, or released in the State or a region of the State, the
23 preparation of a pollution prevention plan, pollution prevention plan
24 summary, and pollution prevention plan progress report for the
25 industrial facility could result in a reduction in the use or release of
26 hazardous substances or the generation of hazardous waste or
27 nonproduct output at the industrial facility and a reduction in the
28 threat posed to the environment or public health by the use or release
29 of hazardous substances or the generation of hazardous waste or
30 nonproduct output at the industrial facility] (Deleted by amendment,
31 P.L. , c.).

32 d. The department, pursuant to rules and regulations adopted
33 pursuant to the "Administrative Procedure Act," may establish for any
34 hazardous substance used or manufactured at an industrial facility a
35 facility-wide threshold quantity of up to 10,000 pounds below which
36 the hazardous substance need not be included in the pollution
37 prevention plan, pollution prevention plan summary or pollution
38 prevention plan progress report, or a 10-employee threshold below
39 which an industrial facility would not be required to prepare a
40 pollution prevention plan or submit a pollution prevention plan
41 summary and a pollution prevention plan progress report.

42 e. An owner or operator of an industrial facility may include in a
43 pollution prevention plan, pollution prevention plan summary, and
44 pollution prevention plan progress report an input-use exemption list
45 of any hazardous substances used in a specific production process at
46 the industrial facility, the input-use of which he has determined

1 through pollution prevention planning cannot be reduced below the
2 current level. For each hazardous substance included on the input-use
3 exemption list, the owner or operator shall be required to demonstrate,
4 in writing, that there is no reasonably available and economically viable
5 alternative to the current level of input-use of the hazardous
6 substances in the specified production process. An owner or operator
7 shall not be required to include in a pollution prevention plan,
8 pollution prevention plan summary, or pollution prevention plan
9 progress report a reduction in use for any hazardous substance
10 included on an input-use exemption list, but shall be required to
11 provide all other information concerning such a hazardous substance
12 required in a pollution prevention plan, pollution prevention plan
13 summary, and pollution prevention plan progress report.
14 Notwithstanding the inclusion of a hazardous substance on an
15 input-use exemption list, the owner or operator of an industrial facility
16 shall be required to consider pollution prevention techniques other
17 than use reduction with regard to each hazardous substance on the
18 input-use exemption list.

19 f. An owner or operator of an industrial facility shall not be
20 required to include in a pollution prevention plan, pollution prevention
21 plan summary or pollution prevention plan progress report information
22 pertaining to improvements in pollution prevention for a production
23 process established after January 1, 1992 until the first five-year
24 revision of the pollution prevention plan and pollution prevention plan
25 summary prepared for the industrial facility at which the production
26 process is carried out after the establishment of the production
27 process, or until five years after the establishment of the production
28 process, whichever occurs later. Within 18 months of the effective
29 date of this act, the department shall adopt, pursuant to the
30 "Administrative Procedure Act," rules and regulations establishing
31 criteria for the identification of production processes subject to the
32 provisions of this subsection.

33 (cf: P.L.1991, c.235, s.6)

34

35 3. Section 10 of P.L.1991, c.235 (C.13:1D-44) is amended to read
36 as follows:

37 10. a. The department[, pursuant to the criteria established in rules
38 and regulations adopted pursuant to subsection c. of section 6 of this
39 act, may] shall direct the owner or operator of an industrial facility
40 which is not designated a priority industrial facility pursuant to section
41 3 of P.L.1991, c.235 (C.13:1D-37) or subsection h. of section 8 of
42 [this act] P.L.1991, c.235 (C.13:1D-42), and which has been issued a
43 permit, certificate, registration, or any other relevant approval by the
44 department pursuant to P.L.1970, c.33 (C.13:1D-1 et seq.), P.L.1970,
45 c.39 (C.13:1E-1 et seq.), P.L.1977, c.74 (C.58:10A-1 et seq.),
46 P.L.1954, c.212 (C.26:2C-1 et seq.), or P.L.1985, c.403 (C.13:1K-19

1 et seq.) , to prepare a pollution prevention plan for the industrial
2 facility and to submit a pollution prevention plan summary and
3 pollution prevention plan progress report to the department. An owner
4 or operator of an industrial facility directed to prepare a pollution
5 prevention plan, pollution prevention plan summary, and pollution
6 prevention plan progress report pursuant to this subsection shall
7 prepare the pollution prevention plan, submit the pollution prevention
8 plan summary to the department within 18 months of receipt of the
9 department's directive, and shall annually submit to the department a
10 pollution prevention plan progress report. The provisions of this
11 subsection shall apply to not less than 300 industrial facilities or the
12 number of industrial facilities necessary to provide verifiable and
13 enforceable use or emissions reductions necessary to attain the goals
14 and timetables established in the 1997 National Environmental
15 Performance Partnership Agreement between the department and the
16 United States Environmental Protection Agency.

17 b. The department shall have the authority to approve a pollution
18 prevention plan, pollution prevention plan summary, or pollution
19 prevention plan progress report prepared pursuant to this section, and
20 to require the owner or operator of an industrial facility to make any
21 revisions or modifications in a pollution prevention plan or pollution
22 prevention plan summary necessary for compliance with the provisions
23 of [this act] P.L.1991, c.235 (C.13:1D-35 et seq.), as determined by
24 the department pursuant to rules and regulations adopted pursuant to
25 section 6 of [this act] P.L.1991, c.235 (C.13:1D-40). In reviewing a
26 pollution prevention plan, pollution prevention plan summary, or
27 pollution prevention plan progress report, the department shall have
28 the authority to require an owner or operator of an industrial facility
29 to provide such information as the department deems necessary to
30 support the owner or operator's identification of a targeted production
31 process or targeted source. If the department requires the owner or
32 operator of an industrial facility to make revisions or modify a
33 pollution prevention plan, pollution prevention plan summary, or
34 pollution prevention plan progress report, the department shall
35 consider the financial impact on the owner or operator of the industrial
36 facility of the changes or modifications.

37 c. At the time of an initial application for, or an application for the
38 renewal of, any permit, certificate, registration, or any other relevant
39 approval issued by the department pursuant to P.L.1970, c.33
40 (C.13:1D-1 et seq.), P.L.1970, c.39 (C.13:1E-1 et seq.), P.L.1977,
41 c.74 (C.58:10A-1 et seq.), P.L.1985, c.403 (C.13:1K-19 et seq.), or
42 P.L.1954, c.212 (C.26:2C-1 et seq.) to the owner or operator of an
43 industrial facility that has been directed by the department to prepare
44 a pollution prevention plan and pollution prevention plan summary
45 pursuant to subsection a. of this section, the department may require
46 that the permit, certificate, registration, or approval include the

1 pollution prevention strategies set forth in the pollution prevention
2 plan or pollution prevention plan summary prepared for the industrial
3 facility.

4 d. The department may revoke, issue, reissue, or modify any
5 permit, certificate, registration, or any other relevant approval issued
6 by the department pursuant to P.L.1970, c.33 (C.13:1D-1 et seq.),
7 P.L.1970, c.39 (C.13:1E-1 et seq.), P.L.1977, c.74 (C.58:10A-1 et
8 seq.), P.L.1985, c.403 (C.13:1K-19 et seq.), or P.L.1954, c.212
9 (C.26:2C-1 et seq.) to the owner or operator of an industrial facility
10 that has been directed by the department to prepare a pollution
11 prevention plan and pollution prevention plan summary pursuant to
12 subsection a. of this section for the purpose of including the pollution
13 prevention strategies set forth in the pollution prevention plan or
14 pollution prevention plan summary prepared for the industrial facility.
15 Any action taken by the department pursuant to this subsection to
16 revoke, issue, reissue, or modify any permit certificate, registration,
17 or other department approval may be appealed pursuant to the
18 provisions of P.L.1970, c.33 (C.13:1D-1 et seq.), P.L.1970, c.39
19 (C.13:1E-1 et seq.), P.L.1977, c.74 (C.58:10A-1 et seq.), P.L.1985,
20 c.403 (C.13:1K-19 et seq.), or P.L.1954, c.212 (C.26:2C-1 et seq.),
21 as appropriate.

22 (cf: P.L.1991, c. 235, s.10)

23

24 4. Section 14 of P.L.1991, c.235 (C.13:1D-48) is amended to read
25 as follows:

26 14. a. Within 18 months of adoption of the rules and regulations
27 required pursuant to section 6 of this act, the department shall
28 designate no fewer than 10 but not more than 15 individual priority
29 industrial facilities to each receive a facility-wide permit on the basis
30 of criteria adopted by the department. These criteria shall include, but
31 need not be limited to:

32 (1) The potential for a priority industrial facility to serve as a
33 State-wide model for multimedia pollution prevention programs;

34 (2) The potential for a priority industrial facility that does not meet
35 industry-wide pollution prevention goals to meet these goals through
36 a facility-wide permit; and

37 (3) The potential for a priority industrial facility that has not met
38 the pollution prevention goals set forth in its pollution prevention plan
39 to meet these goals through a facility-wide permit.

40 At the time of the designation of priority industrial facilities
41 pursuant to this subsection, the department shall prepare and submit
42 to the Legislature a report summarizing the designation process and
43 progress made to date in establishing a facility-wide permitting
44 program.

45 b. Within 30 months of the adoption of the rules and regulations
46 required pursuant to section 6 of this act, the department shall issue

1 facility-wide permits to the priority industrial facilities designated
2 pursuant to subsection a. of this section.

3 c. Within 36 months of the adoption of the rules and regulations
4 required pursuant to section 6 of this act, the department shall prepare
5 and submit to the Governor and the Legislature a report analyzing the
6 facility-wide permit program, evaluating the successes or shortcomings
7 of the facility-wide permit program, evaluating the ability of the
8 department to conduct and expand the facility-wide permit program,
9 and proposing, if warranted, a schedule to expand the applicability of
10 the facility-wide permit program. [The department shall not expand
11 the facility-wide permitting program beyond the number of priority
12 industrial facilities designated pursuant to subsection a. of this section
13 without authorization by law].

14 (cf: P.L.1991, c. 235, s. 14)

15

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

18 15. a. Whenever, on the basis of information available to the
19 commissioner, the commissioner finds that a person is in violation of
20 this act, the commissioner shall:

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

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

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

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

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

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

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

46 d. (1) The commissioner is authorized to impose a civil

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

34 (2) On the first day of the seventh month following enactment of
35 P.L. , c. (C.)(now before the Legislature as this bill), the
36 commissioner shall impose civil administrative penalties in the
37 following amounts for the following violations:

38 (a) Not less than \$5,000 for the failure of the owner of operator of
39 a priority industrial facility to submit a pollution prevention plan
40 summary to the department or prepare a pollution prevention plan
41 pursuant to the requirements of section 8 of P.L.1991, c.235
42 (C.13:1D-42);

43 (b) Not less than \$3,000 for the failure of the owner or operator of
44 a priority industrial facility to submit a pollution prevention plan
45 summary to the department or prepare a pollution prevention plan that
46 establishes a nonproduct output use reduction of zero; and

1 (c) Not less than \$3,000 for the failure of the owner or operator of
2 a priority industrial facility to comply with the conditions of a facility-
3 wide permit issued pursuant to P.L. 1991, c.235 (C.13:1D-35 et seq.);
4 the penalty provided pursuant to this subparagraph shall in no way
5 diminish the responsibility of an owner or operator of a priority
6 industrial facility to meet the requirements of any other permit held by
7 that owner or operator, and shall in no way diminish the amount of any
8 penalties assessed for violations of the conditions and requirements of
9 those other permits.

10 Each day during which a violation enumerated in subparagraphs (a)
11 through (c) of this paragraph is identified shall constitute an additional,
12 separate, and distinct offense.

13 (3) The owner or operator of a priority industrial facility who fails
14 to make good faith efforts to implement a pollution prevention plan
15 submitted pursuant to the requirements of section 8 of P.L. 1991,
16 c.235 (C.13:1D-42) shall be subject to inspection on an annual basis.

17 (4) In addition to the assessment of a civil administrative penalty,
18 the commissioner may, by administrative order and upon an
19 appropriate finding, assess a violator for the reasonable costs of any
20 investigation, inspection, or monitoring survey which led to the
21 establishment of the violation.

22 e. Any person who violates this act, an order issued pursuant to
23 subsection b. of this section, or a court order issued pursuant to
24 subsection c. of this section, or who fails to pay in full a civil
25 administrative penalty levied pursuant to subsection d. of this section,
26 shall be subject, upon order of a court, to a civil penalty not to exceed
27 \$15,000 for each day during which the violation continues. Any
28 penalty imposed pursuant to this subsection may be collected, and any
29 costs incurred in connection therewith may be recovered, in a summary
30 proceeding pursuant to "the penalty enforcement law" (N.J.S.2A:58-1
31 et seq.). The Superior Court and the municipal court shall have
32 jurisdiction to enforce "the penalty enforcement law."

33 f. Any violation of a pollution prevention condition of a
34 facility-wide permit issued pursuant to this act shall be considered a
35 violation of P.L.1970, c.33 (C.13:1D-1 et seq.), P.L.1970, c.39
36 (C.13:1E-1 et seq.), P.L.1977, c.74 (C.58:10A-1 et seq.), P.L.1985,
37 c.403 (C.13:1K-19 et seq.), or P.L.1954, c.212 (C.26:2C-1 et seq.),
38 as the department deems appropriate.

39 (cf: P.L.1991, c. 235, s.15)

40

41 6. Section 16 of P.L.1991, c.235 (C.13:1D-50) is amended to read
42 as follows:

43 16. a. There is established in the department a nonlapsing fund to
44 be known as the "Pollution Prevention Fund," hereinafter referred to
45 as "the fund." The fund shall be credited with all fees imposed and
46 collected [by the Department of Labor pursuant to paragraph (2) of

1 subsection b. of section 26 of P.L.1983, c.315 (C.34:5A-26)] pursuant
2 to subsection b. of this section, [and] with all penalties collected for
3 violations of this act, and with any other monies that may be made
4 available, or appropriated, to the department for the implementation
5 of this act. Monies in the fund shall be used by, and are hereby
6 appropriated to, the department solely for the purpose of implementing
7 the provisions of this act.

8 b. The department shall adopt, pursuant to the "Administrative
9 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and
10 regulations necessary to establish a per pound fee on the use of
11 hazardous substances by priority industrial facilities and the industrial
12 facilities designated pursuant to subsection a. of section 10 of
13 P.L.1991, c.235 (C.13:1D-44), such that the fee generates no less than
14 \$5.4 million annually. Of the \$5 million generated by this fee, not less
15 than \$3 million shall be allocated by the department for the following
16 purposes in the amounts indicated:

17 (1) \$1 million for the purpose of providing technical assistance to
18 industrial facilities and priority industrial facilities in developing
19 pollution plan summaries, and in developing and implementing
20 pollution prevention plans; and to assist non-governmental entities in
21 providing training to employees on pollution prevention techniques;

22 (2) \$1 million for the purpose of providing grants and loans to
23 small businesses to assist in compliance with the provisions of this act,
24 and to provide training to employees on pollution prevention
25 techniques; and

26 (3) \$1 million for the purposes of implementing the provisions of
27 section 8 of P.L. , c. (C.)(now before the Legislature as this
28 bill) and subsection a. of section 10 of P.L.1991, c.235 (C.13:1D-35
29 et seq.).

30 (cf: P.L.1991, c.235, s.16)

31

32 7. Section 26 of P.L.1983, c.315 (C.34:5A-26) is amended to read
33 as follows:

34 26. a. There is established in the Department of the Treasury a
35 nonlapsing, revolving fund to be known as the "Worker and
36 Community Right To Know Fund." The "Worker and Community
37 Right To Know Fund" shall be credited with all fees collected pursuant
38 to paragraph (1) of subsection b. of this section and interest on
39 moneys in the "Worker and Community Right To Know Fund" shall
40 be credited to the "Worker and Community Right To Know Fund" and
41 all moneys in the "Worker and Community Right To Know Fund" are
42 appropriated for the purposes of the "Worker and Community Right
43 To Know Fund," and no moneys shall be expended for those purposes
44 without the specific appropriation thereof by the Legislature. The
45 State Treasurer shall be the administrator of the "Worker and
46 Community Right To Know Fund," and all disbursements from the

1 "Worker and Community Right To Know Fund" shall be made by the
2 State Treasurer upon the warrant of the Director of the Division of
3 Budget and Accounting.

4 b. (1) The Department of Labor shall annually assess each employer
5 a fee of not less than \$50.00 nor more than an amount equal to \$2.00
6 per employee to provide for the implementation of the provisions of
7 this act. All fees collected by the department pursuant to this
8 paragraph shall be deposited in the "Worker and Community Right To
9 Know Fund."

10 (2) [The Department of Labor shall annually assess each employer
11 a fee of \$2.00 per employee for the implementation of P.L.1991, c.235
12 (C.13:1D-35 et seq.). All fees collected by the department pursuant
13 to this paragraph shall be deposited in the "Pollution Prevention Fund"
14 established pursuant to section 16 of P.L.1991, c.235 (C.13:1D-50),
15 and shall be used only for the implementation of P.L.1991, c.235
16 (C.13:1D-35 et seq.)] (~~Deleted by amendment, P.L. , c.~~).

17 c. The moneys in the "Worker and Community Right To Know
18 Fund" shall be disbursed only for the following purposes:

19 (1) Expenses approved by the Director of the Division of Budget
20 and Accounting and incurred by the Department of Health, the
21 Department of Environmental Protection, the Department of Labor,
22 the Department of the Treasury, and the county health departments in
23 implementing the provisions of this act; and

24 (2) Repayment to the General Fund of any moneys appropriated by
25 law in order to implement the provisions of this act.

26 d. The State Treasurer shall annually disburse the moneys in the
27 "Worker and Community Right To Know Fund" for expenditures
28 approved by the Director of the Division of Budget and Accounting
29 pursuant to paragraph (1) of subsection c. of this section, but in no
30 case in an amount to the several departments that is greater than the
31 following percentages of the "Worker and Community Right To Know
32 Fund" available in any one year: the Department of Health, 40%; the
33 Department of Environmental Protection, 20%; the county health
34 departments, 15%; the Department of Labor, 15%; and the
35 Department of the Treasury, 10%.

36 e. Beginning two years after the effective date of this act, the State
37 Treasurer shall make an annual audit of the "Worker and Community
38 Right To Know Fund" to determine the adequacy of moneys on
39 deposit in the "Worker and Community Right To Know Fund" to
40 support the implementation of the provisions of this act. If the State
41 Treasurer, in consultation with the Department of Health, the
42 Department of Environmental Protection, and the Department of
43 Labor makes a determination that the revenues in the "Worker and
44 Community Right To Know Fund" are sufficient to warrant a
45 reduction in the fees imposed pursuant to paragraph (1) of subsection
46 b. of this section for the ensuing year, he may reduce the amount of

1 the fees imposed during that year by an amount warranted by the
2 balance in the "Worker and Community Right To Know Fund" at the
3 time of the determination.

4 (cf: P.L.1991, c.235, s. 20)

5
6 8. (New section) a. For each of the first two years immediately
7 following the effective date of P.L. , c. (C.)(now before the
8 Legislature as this bill), the department shall designate no fewer than
9 30 individual priority industrial facilities to receive facility-wide
10 permits on the basis of the criteria established pursuant to subsection
11 a. of section 14 of P.L.1991, c.235 (C.13:1D-48). For each priority
12 industrial facility designated pursuant to this subsection, the
13 department shall require that the emission or effluent limits
14 incorporated in any permit, certificate, registration or any other
15 relevant approval issued to the owner or operator by the department
16 pursuant to P.L.1970, c.33 (C.13:1D-1 et seq.), P.L.1970, c.39
17 (C.13:1E-1 et seq.), P.L.1977, c.74 (C.58:10A-1 et seq.), P.L.1985,
18 c.403 (C.13:1K-19 et seq.), or P.L.1954, c.212 (C.26:2C-1 et seq.) be
19 reduced, to the maximum extent practicable, based on pollution
20 prevention strategies contained in the pollution prevention plan
21 prepared by the owner or operator of the priority industrial facility.
22 Such reduced emission or effluent limits shall be included in a facility-
23 wide permit issued pursuant to this subsection. A facility-wide permit
24 issued pursuant to this subsection shall require each of the priority
25 industrial facilities to reduce:

26 (1) the net use of hazardous substances per unit of product;

27 (2) the net emission of hazardous substances per unit of product;

28 and

29 (3) the risk to human health and the environment posed by such use
30 and emissions.

31 The reductions required pursuant to paragraphs (1) through (3) of
32 this subsection shall not result in a cross-media transfer of emissions.
33 Each permit issued pursuant to this subsection shall be effective for
34 five years and shall contain use and emissions reduction goals and
35 timetables.

36 b. The renewal of a facility-wide permit issued pursuant to section
37 14 of P.L.1991, c.235 (C.13:1D-48) shall meet all of the requirements
38 established pursuant to subsection a. of this section.

39 c. The reductions required pursuant to paragraphs (1) through (3)
40 of subsection a. of this section shall not apply to any hazardous
41 substance included on an input-exemption list submitted by an owner
42 or operator of an industrial facility pursuant to the provisions of
43 subsection e. of section 6 of P.L.1991, c.235 (C.13:1D-40). The
44 exemption provided pursuant to this subsection shall not relieve an
45 owner or operator of an industrial facility from the requirement to
46 consider pollution prevention techniques other than use reduction with

1 regard to each hazardous substance on the input-use exemption.

2 d. Within four years of the effective date of P.L. , c.
3 (C.)(now before the Legislature as this bill), the department shall
4 submit to the Legislature a report evaluating the success or failure of
5 the facility-wide permit requirements established pursuant to
6 subsection a. of this section. The report shall consider, but need not
7 be limited to, the following evaluation criteria:

8 (1) overall and individual facility reductions in the use of hazardous
9 substances;

10 (2) overall and individual facility reductions in the emissions of
11 hazardous substances;

12 (3) overall and individual facility reductions in operating or
13 compliance costs;

14 (4) increases or decreases in profitability attributable to a facility-
15 wide permit; and

16 (5) the effects on administrative efficiency attributable to the
17 implementation of facility-wide permits.

18

19 9. (New section) Any emission or effluent limitation, or any risk
20 management plan incorporated at the time of an initial application for,
21 or renewal of, any permit, certificate, registration, or any other
22 relevant department approval issued to the owner or operator of a
23 priority industrial facility pursuant to P.L.1970, c.33 (C.13:1D-1 et
24 seq.), P.L.1970, c.39 (C.13:1E-1 et seq.), P.L.1977, c.74 (C.58:10A-1
25 et seq.), P.L.1985, c.403 (C.13:1K-19 et seq.), or P.L.1954, c.212
26 (C.26:2C-1 et seq.) shall be based upon and shall incorporate, to the
27 maximum extent possible, pollution prevention strategies set forth in
28 the pollution prevention plan submitted by the owner or operator of
29 the priority industrial facility as required pursuant to section 8 of
30 P.L.1991, c.235 (C.13:1D-42).

31

32 10. This act shall take effect immediately.

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34

35

STATEMENT

36

37 This bill would amend and supplement the "Pollution Prevention
38 Act," P.L.1991, c.235 (C.13:1D-35 et seq.), to: (1) expand the
39 facility-wide permit program by designating at least 30 new priority
40 industrial facilities; (2) require approximately 300 industrial facilities
41 to prepare and submit pollution prevention plans and plan summaries
42 to the Department of Environmental Protection (DEP); and (3) require
43 that future pollution permits of all priority industrial facilities reflect,
44 to the maximum extent practicable, pollution prevention strategies set
45 forth in each facility's pollution prevention plan.

46 Under the bill, the DEP would be required to designate no fewer

1 than 30 new priority industrial facilities to receive facility-wide
2 permits. These new permits would require the designated facilities to
3 reduce their net use and emissions of hazardous substances as well as
4 the risk to human health and the environment posed by such use and
5 emission, all without any cross-media transfer of emissions. The bill
6 requires that any existing facility-wide permit renewal meet the
7 conditions imposed on the new facilities. The bill would also require
8 the DEP to incorporate in the emission or effluent limits contained in
9 an existing permit issued to the owner or operator of each of the 30
10 new priority industrial facilities the pollution prevention strategies
11 contained in a pollution prevention plan submitted by the facility's
12 owner or operator.

13 The DEP would be required, within four years of the effective date
14 of the bill, to submit an evaluation report on the new facility-wide
15 permit requirements imposed by the bill. The report would consider
16 reductions in use, emissions, and operating costs attributable to the
17 new requirements, as well as any effects on profitability or
18 administrative efficiency.

19 The bill would also require the DEP to direct the owners or
20 operators of approximately 300 industrial facilities to prepare pollution
21 prevention plans and to submit plan summaries and progress reports
22 to the DEP. Currently, the law only authorizes the DEP to require
23 industrial facilities to perform these tasks, and then only after the DEP
24 establishes criteria for selecting these facilities. The bill provides that
25 the number of industrial facilities would be not less than 300 facilities
26 or the number of facilities necessary to provide verifiable and
27 enforceable use and emission reductions necessary to attain the goals
28 and timetables set forth in the 1997 National Environmental
29 Performance Partnership Agreement between the DEP and the United
30 States EPA.

31 The bill would require that all future pollution permits issued to a
32 priority industrial facility (there are approximately 600 such facilities)
33 be based on and incorporate, to the maximum extent practicable,
34 pollution prevention strategies outlined in the pollution prevention
35 plan submitted by the owner operator of each facility. While this plan
36 is currently required to be submitted by law, the bill would eliminate
37 DEP's discretionary authority regarding the incorporation of the plan's
38 strategies into a facility's pollution permits and mandate incorporation
39 in future pollution permits.

40 The bill would also provide for the following mandatory minimum
41 penalties for violations by priority industrial facilities:

42 -- not less than \$5,000 for the failure of the owner or operator to
43 submit a pollution prevention plan summary or a pollution prevention
44 plan to the DEP as required under the act;

45 -- not less than \$3,000 for the failure of the owner or operator to
46 submit a pollution prevention plan summary or a pollution prevention

1 plan that establishes a nonproduct output use reduction of zero; and
2 -- not less than \$3,000 for the failure of an owner or operator to
3 comply with the conditions of a facility-wide permit issued pursuant
4 to the act.

5 Owners or operators of priority industrial facilities who do not
6 make good faith efforts to implement a submitted pollution prevention
7 plan would be subject to annual inspections by the DEP.

8 The bill would also eliminate the current method of funding the
9 program through a \$2.00 per employee assessment on businesses
10 regulated pursuant to the "Worker and Community Right To Know
11 Act," P.L.1983, c.315 (C.34:5A-1 et seq.). In its place, the bill would
12 require the DEP to establish a per pound fee on the use of hazardous
13 substances by all priority industrial facilities and the approximately 300
14 industrial facilities covered by this bill, such that the fee generates no
15 less than \$5 million. The bill directs that \$3 million of the revenues
16 generated be dedicated, in \$1 million increments, for technical
17 assistance to covered facilities, grants or loans to small businesses to
18 assist in complying with the act's requirements, and for implementation
19 of the bill's provisions.

20 The bill would also add a reference to the "Toxic Catastrophe
21 Prevention Act," P.L.1985, c.403 (C.13:1K-19 et seq.), to the
22 definitions of "hazardous substance" and "industrial facility" in the act.

23

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26

27 Amends Pollution Prevention Act.