

ASSEMBLY, No. 1532

STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Assemblyman JOHN J. BURZICHELLI
District 3 (Cumberland, Gloucester and Salem)

Co-Sponsored by:

Assemblyman Prieto

SYNOPSIS

Requires assessment of administrative penalty amount by administrative law judge for environmental violations.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 6/26/2012)

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2

1 AN ACT concerning assessment of administrative penalties for
2 environmental violations, amending various parts of the statutory
3 law, and supplementing P.L.1968, c.410 (C.52:14B-1 et seq.) and
4 Title 13 of the Revised Statutes.

5

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

8

9 1. R.S.12:5-6 is amended to read as follows:

10 12:5-6. a. Any development or improvement enumerated in
11 R.S.12:5-3 and in P.L.1975, c.232 (C.13:1D-29 et al.) or included
12 within any rule or regulation adopted pursuant thereto, which is
13 commenced or executed without first obtaining approval, or
14 contrary to the conditions of approval, as provided in R.S.12:5-3
15 and in P.L.1975, c.232 (C.13:1D-29 et al.), or any rule or regulation
16 adopted, or permit or order issued pursuant thereto, shall be deemed
17 to be a violation under this section.

18 b. Whenever, on the basis of available information, the
19 commissioner finds that a person is in violation of any provision of
20 R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.), or any rule or
21 regulation adopted, or permit or order issued pursuant thereto, the
22 commissioner may:

23 (1) Issue an order requiring any such person to comply in
24 accordance with subsection c. of this section; or

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

27 (3) **Levy** Recommend the assessment of a civil administrative
28 penalty in accordance with subsection e. of this section; or

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

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

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

35 c. Whenever, on the basis of available information, the
36 commissioner finds a person in violation of any provision of
37 R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.), or any rule or
38 regulation adopted, or permit or order issued pursuant thereto, the
39 commissioner may issue an order: (1) specifying the provision or
40 provisions of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.), or
41 the rule, regulation, permit or order of which the person is in
42 violation; (2) citing the action which constituted the violation; (3)
43 requiring compliance with the provision or provisions violated; (4)
44 requiring the restoration to address any adverse effects resulting

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 from the violation; and (5) providing notice to the person of the
2 right to a hearing on the matters contained in the order.

3 d. The commissioner is authorized to institute a civil action in
4 Superior Court for appropriate relief from any violation of any
5 provisions of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.), or
6 any rule or regulation adopted, or permit or order issued pursuant
7 thereto. Such relief may include, singly or in combination:

8 (1) A temporary or permanent injunction;

9 (2) Recovery of reasonable costs of any investigation,
10 inspection, or monitoring survey which led to the discovery of the
11 violation, and for the reasonable costs of preparing and bringing a
12 civil action commenced under this subsection;

13 (3) Recovery of reasonable costs incurred by the State in
14 removing, correcting, or terminating the adverse effects resulting
15 from any violation for which a civil action has been commenced
16 and brought under this subsection;

17 (4) Recovery of compensatory damages for any loss or
18 destruction of natural resources, including but not limited to,
19 wildlife, fish, aquatic life, habitat, plants, or historic or
20 archeological resources, and for any other actual damages caused by
21 any violation for which a civil action has been commenced and
22 brought under this subsection. Recovery of damages and costs
23 under this subsection shall be paid to the State Treasurer;

24 (5) An order requiring the violator restore the site of the
25 violation to the maximum extent practicable and feasible or, in the
26 event that restoration of the site of the violation is not practicable or
27 feasible, provide for off-site restoration alternatives as approved by
28 the department.

29 e. The commissioner is authorized to **[assess]** recommend to
30 an administrative law judge the assessment of a civil administrative
31 penalty of not more than \$25,000 for each violation of the
32 provisions of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.), or
33 any rule or regulation adopted, or permit or order issued pursuant
34 thereto, and each day during which each violation continues shall
35 constitute an additional, separate, and distinct offense. Any amount
36 assessed under this subsection shall fall within a range established
37 by regulation by the commissioner for violations of similar type,
38 seriousness, duration and conduct; provided, however, that prior to
39 the adoption of the regulation, the commissioner may, on a case-by-
40 case basis, **[assess]** recommend for assessment civil administrative
41 penalties up to a maximum of \$25,000 per day for each violation,
42 utilizing the criteria set forth herein. In addition to any
43 administrative penalty assessed under this subsection and
44 notwithstanding the \$25,000 maximum penalty set forth above, the
45 commissioner may **[assess]** recommend for assessment any
46 economic benefits from the violation gained by the violator. Prior
47 to assessment of a penalty under this subsection, the property owner

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1 or person committing the violation shall be notified by certified
2 mail or personal service that the penalty is being **[assessed]**
3 recommended for assessment. The notice shall identify the section
4 of the statute, regulation, or order or permit condition violated;
5 recite the facts alleged to constitute a violation; state the basis for
6 the amount of the civil penalties **[to be assessed]** recommended for
7 assessment; and affirm the rights of the alleged violator to a
8 hearing. The ordered party shall have 35 days from receipt of the
9 notice within which to deliver to the commissioner a written request
10 for a hearing. After the hearing and upon finding that a violation
11 has occurred, the **[commissioner]** administrative law judge may
12 issue a final order after assessing the amount of the fine **[specified**
13 **in the notice]**. If the ordered party does not request a hearing, an
14 administrative law judge shall issue an order assessing a penalty.
15 Strict adherence to the commissioner's recommended penalty
16 assessment is not required. If no hearing is requested, the notice
17 and order of assessment shall become a final order after the
18 expiration of **[the]** a 35-day period after issuance of the order of
19 assessment. Payment of the assessment is due when a final order is
20 issued or the notice becomes a final order. The authority to levy an
21 administrative order is in addition to all other enforcement
22 provisions in R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.), and
23 the payment of any assessment shall not be deemed to affect the
24 availability of any other enforcement provisions in connection with
25 the violation for which the assessment is levied. The department
26 may compromise any civil administrative penalty **[assessed]**
27 recommended for assessment or assessed by an administrative law
28 judge under this section in an amount and with conditions the
29 department determines appropriate. A civil administrative penalty
30 assessed, including any portion thereof required to be paid pursuant
31 to a payment schedule approved by the department, which is not
32 paid within 90 days of the date that payment of the penalty is due,
33 shall be subject to an interest charge on the amount of the penalty,
34 or portion thereof, which shall accrue as of the date payment is due.
35 If the penalty is contested, no additional interest charge shall accrue
36 on the amount of the penalty until 90 days after the date on which a
37 final order is issued. Interest charges assessed and collectible
38 pursuant to this subsection shall be based on the rate of interest on
39 judgments provided in the New Jersey Rules of Court.

40 f. A person who violates any provision of R.S.12:5-3 or
41 P.L.1975, c.232 (C.13:1D-29 et al.), or any rule or regulation
42 adopted, or permit or order issued pursuant thereto, or an
43 administrative order issued pursuant to subsection c. of this section,
44 or a court order issued pursuant to subsection d. of this section, or
45 who fails to pay a civil administrative penalty in full pursuant to
46 subsection e. of this section, or who fails to make a payment
47 pursuant to a penalty payment schedule entered into with the

1 department, or who knowingly makes any false or misleading
2 statement on any application, record, report, or other document
3 required to be submitted to the department, shall be subject, upon
4 order of a court, to a civil penalty not to exceed \$25,000 per day of
5 the violation, and each day during which the violation continues
6 shall constitute an additional, separate, and distinct offense. Any
7 civil penalty imposed pursuant to this subsection may be collected
8 with costs in a summary proceeding pursuant to the "Penalty
9 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
10 In addition to any penalties, costs or interest charges, the court may
11 assess against the violator the amount of economic benefit accruing
12 to the violator from the violation.

13 g. A person who purposely, knowingly or recklessly violates
14 any provision of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.),
15 or any rule or regulation adopted, or permit or order issued pursuant
16 thereto, shall be guilty, upon conviction, of a crime of the third
17 degree and shall, notwithstanding the provisions of subsection b. of
18 N.J.S.2C:43-3, be subject to a fine of not less than \$5,000 nor more
19 than \$50,000 per day of violation, or by imprisonment, or both. A
20 person who purposely, knowingly or recklessly makes a false
21 statement, representation, or certification in any application, record,
22 or other document filed or required to be maintained under any
23 provision of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.), or
24 any rule or regulation adopted, or permit or order issued pursuant
25 thereto, or who falsifies, tampers with or purposely, knowingly or
26 recklessly renders inaccurate, any monitoring device or method
27 required to be maintained pursuant to R.S.12:5-3 or P.L.1975, c.232
28 (C.13:1D-29 et al.), or any rule or regulation adopted, or permit or
29 order issued pursuant thereto, shall be guilty, upon conviction, of a
30 crime of the third degree and shall, notwithstanding the provisions
31 of subsection b. of N.J.S.2C:43-3, be subject to a fine of not more
32 than \$50,000 per day of violation, or by imprisonment, or both.

33 h. Each applicant or permittee shall provide, upon the request
34 of the department, any information the department requires to
35 determine compliance with the provisions of R.S.12:5-3 or
36 P.L.1975, c.232 (C.13:1D-29 et al.), or any rule or regulation
37 adopted, or permit or order issued pursuant thereto.

38 (cf: P.L.2007, c.246, s.1)

39

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

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

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

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

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

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

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

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

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

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

37 (3) **[Levy]** Recommend for assessment a civil administrative
38 penalty in accordance with subsection e. of this section;

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

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

43 c. Whenever the commissioner finds that a person has violated
44 any provision of P.L.1970, c.39, or any rule or regulation adopted,
45 permit issued, or district solid waste management plan adopted
46 pursuant to P.L.1970, c.39, he may issue an order specifying the
47 provision or provisions of P.L.1970, c.39, or the rule, regulation,

1 permit or district solid waste management plan of which the person
2 is in violation, citing the action which constituted the violation,
3 ordering abatement of the violation, and giving notice to the person
4 of his right to a hearing on the matters contained in the order. The
5 ordered party shall have 20 calendar days from receipt of the order
6 within which to deliver to the commissioner a written request for a
7 hearing. Such order shall be effective upon receipt and any person
8 to whom such order is directed shall comply with the order
9 immediately. A request for hearing shall not automatically stay the
10 effect of the order.

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

20 Such relief may include, singly or in combination:

21 (1) A temporary or permanent injunction;

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

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

31 (4) Assessment against the violator of compensatory damages
32 for any loss or destruction of wildlife, fish or aquatic life, and for
33 any other actual damages caused by any violation of this act or any
34 rule, regulation or condition of approval established pursuant to this
35 act for which the action under this subsection may have been
36 brought. Assessments under this subsection shall be paid to the
37 State Treasurer, or to the local board of health, or to the county
38 health department, as the case may be, except that compensatory
39 damages may be paid by specific order of the court to any persons
40 who have been aggrieved by the violation.

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

1 e. The commissioner is authorized to **[assess]** recommend to
2 an administrative law judge for assessment a civil administrative
3 penalty of not more than \$50,000.00 for each violation provided
4 that each day during which the violation continues shall constitute
5 an additional, separate and distinct offense. The **[commission]**
6 **commissioner** shall not **[assess]** recommend for assessment a civil
7 administrative penalty in excess of \$25,000.00 for a single
8 violation, or in excess of \$2,500.00 for each day during which a
9 violation continues, until the department has adopted, pursuant to
10 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
11 seq.), regulations requiring the commissioner, in **[assessing]**
12 recommending for assessment a civil administrative penalty, **[to**
13 **consider]** the consideration of the operational history of the solid
14 waste facility at which the violation occurred, the severity of the
15 violation, the measures taken to mitigate or prevent further
16 violations, and whether the penalty will maintain an appropriate
17 deterrent. No assessment shall be levied pursuant to this section
18 until after the violator has been notified by certified mail or
19 personal service. The notice shall include a reference to the section
20 of the statute, rule, regulation, order, permit condition or district
21 solid waste management plan violated, a concise statement of the
22 facts alleged to constitute a violation, a statement of the amount of
23 the civil administrative penalties to be **[imposed]** recommended for
24 assessment, and a statement of the party's right to a hearing. The
25 ordered party shall have 20 calendar days from receipt of the notice
26 within which to deliver to the commissioner a written request for a
27 hearing. After the hearing and upon finding that a violation has
28 occurred, the **[commissioner]** administrative law judge may issue a
29 final order after assessing the amount of the fine **[specified in the**
30 **notice]**. If the ordered party does not request a hearing, an
31 administrative law judge shall issue an order assessing a penalty.
32 Strict adherence to the commissioner's recommended penalty
33 assessment is not required . If no hearing is requested, the **[notice]**
34 administrative law judge's order assessing the penalty shall become
35 a final order after the expiration of **[the]** a 20-day period after
36 issuance of the order assessing the penalty. Payment of the
37 assessment is due when a final order is issued or the notice and
38 order of assessment becomes a final order. The authority to levy a
39 civil administrative penalty is in addition to all other enforcement
40 provisions in P.L.1970, c.39, and the payment of any assessment
41 shall not be deemed to affect the availability of any other
42 enforcement provisions in connection with the violation for which
43 the assessment is levied. The department may compromise any
44 civil administrative penalty assessed under this section in an
45 amount the department determines appropriate.

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

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

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

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

23 g. Any person who knowingly:

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

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

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

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

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

45 h. Any person who recklessly:

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- 1 (1) Transports any hazardous waste to a facility or any other
2 place which does not have authorization from the department to
3 accept such waste;
- 4 (2) Generates and causes or permits to be transported any
5 hazardous waste to a facility or any other place which does not have
6 authorization from the department to accept such waste;
- 7 (3) Disposes, treats, stores or transports hazardous waste
8 without authorization from the department;
- 9 (4) Makes any false or misleading statement to any person who
10 prepares any hazardous waste application, label, manifest, record,
11 report, design or other document required to be submitted to the
12 department; or
- 13 (5) Makes any false or misleading statement on any hazardous
14 waste application, label, manifest, record, report, design or other
15 document required to be submitted to the department, shall, upon
16 conviction, be guilty of a crime of the fourth degree.
- 17 i. Any person who, regardless of intent, generates and causes
18 or permits any hazardous waste to be transported, transports, or
19 receives transported hazardous waste without completing and
20 submitting to the department a hazardous waste manifest in
21 accordance with the provisions of this act or any rule or regulation
22 adopted pursuant hereto shall, upon conviction, be guilty of a crime
23 of the fourth degree.
- 24 j. All conveyances used or intended for use in the willful
25 discharge, in violation of the provisions of P.L.1970, c.39 (C.13:1E-
26 1 et seq.), of any solid waste, or hazardous waste as defined in
27 P.L.1976, c.99 (C.13:1E-38 et seq.) are subject to forfeiture to the
28 State pursuant to the provisions of P.L.1981, c.387 (C.13:1K-1 et
29 seq.).
- 30 k. (Deleted by amendment, P.L.1997, c.325.)
- 31 l. Pursuit of any remedy specified in this section shall not
32 preclude the pursuit of any other remedy provided by any other law.
33 Administrative and judicial remedies provided in this section may
34 be pursued simultaneously.
35 (cf: P.L.1997, c.325, s.3)
- 36
- 37 3. Section 20 of P.L.1989, c.34 (C.13:1E-48.20) is amended to
38 read as follows:
- 39 20. a. This act, and any rule or regulation adopted pursuant
40 thereto, shall be enforced by the departments and by every local
41 board of health, or county health department, as the case may be.
- 42 The departments and the local board of health, or the county
43 health department, as the case may be, shall have the right to enter
44 the premises of a generator, transporter, or facility at any time in
45 order to determine compliance with this act.

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

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

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

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

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

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

20 (3) **[levy]** recommend the assessment of a civil administrative
21 penalty in accordance with subsection e. of this section;

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

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

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

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

44 d. The Commissioner of Environmental Protection, the
45 Commissioner of Health and Senior Services, a local board of
46 health, or a county health department may institute an action or
47 proceeding in the Superior Court for injunctive and other relief,

1 including the appointment of a receiver for any violation of this act,
2 or of any rule or regulation adopted pursuant thereto, and the court
3 may proceed in the action in a summary manner. In any such
4 proceeding the court may grant temporary or interlocutory relief.

5 Such relief may include, singly or in combination:

6 (1) a temporary or permanent injunction;
7 (2) assessment of the violator for the costs of any investigation,
8 inspection, or monitoring survey that led to the establishment of the
9 violation, and for the reasonable costs of preparing and litigating
10 the case under this subsection;

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

16 (4) assessment against the violator of compensatory damages for
17 any loss or destruction of wildlife, fish or aquatic life, and for any
18 other actual damages caused by any violation of this act, or any rule
19 or regulation adopted pursuant thereto, for which the action under
20 this subsection may have been brought; and

21 (5) assessment against the violator of the actual amount of any
22 economic benefits accruing to the violator from a violation.
23 Economic benefits may include the amount of any savings realized
24 from avoided capital or noncapital costs resulting from the
25 violation; the return earned or that may be earned on the amount of
26 avoided costs; any benefits accruing to the violator as a result of a
27 competitive market advantage enjoyed by reason of the violation; or
28 any other benefits resulting from the violation.

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

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

40 e. Either of the commissioners, as the case may be, may
41 **[assess]** recommend to an administrative law judge the assessment
42 of a civil administrative penalty of not more than \$100,000 for each
43 violation. Each day that a violation continues shall constitute an
44 additional, separate, and distinct offense. A commissioner may not
45 **[assess]** recommend the assessment of a civil administrative
46 penalty in excess of \$25,000 for a single violation, or in excess of
47 \$2,500 for each day during which a violation continues, until the

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

36 f. A person who violates this act, or any rule or regulation
37 adopted pursuant thereto, shall be liable for a penalty of not more
38 than \$100,000 per day for each violation, to be collected in a civil
39 action commenced by the Commissioner of Environmental
40 Protection, the Commissioner of Health and Senior Services, a local
41 board of health, or a county health department.

42 A person who violates an administrative order issued pursuant to
43 subsection c. of this section, or a court order issued pursuant to
44 subsection d. of this section, or who fails to pay an administrative
45 assessment in full pursuant to subsection e. of this section is subject
46 upon order of a court to a civil penalty not to exceed \$200,000 per
47 day for each violation.

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

5 Any penalty imposed pursuant to this subsection may be
6 collected, with costs, in a summary proceeding pursuant to the
7 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
8 et seq.). The Superior Court and the municipal court shall have
9 jurisdiction to enforce the provisions of the "Penalty Enforcement
10 Law of 1999" in connection with this act.

11 g. A person who purposely or knowingly:

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

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

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

26 (4) fails to properly treat certain types of regulated medical
27 waste designated by the Department of Health and Senior Services
28 in a prescribed manner; shall, upon conviction, be guilty of a crime
29 of the third degree and, notwithstanding the provisions of
30 N.J.S.2C:43-3, shall be subject to a fine of not more than \$100,000
31 for the first offense, and not more than \$200,000 for each
32 subsequent offense, and restitution, in addition to any other
33 appropriate disposition authorized by subsection b. of N.J.S.2C:43-
34 2.

35 h. A person who recklessly or negligently:

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

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

46 (3) makes any false or misleading statement on any regulated
47 medical waste application, registration, form, label, certification,

1 manifest, record, report, or other document required by this act, or
2 any rule or regulation adopted pursuant thereto; or

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

7 i. A person who, regardless of intent:

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

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

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

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

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

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

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

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

35 (cf: P.L.2009, c.282, s.1)

36

37 4. Section 8 of P.L.2005, c.54 (C.13:1E-99.89) is amended to
38 read as follows:

39 8. a. Whenever the commissioner finds that a person has
40 violated any provision of this act, or any rule or regulation adopted
41 pursuant thereto, the commissioner may:

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

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

46 (3) **[levy]** recommend the assessment of a civil administrative
47 penalty in accordance with subsection d. of this section;

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

3 (5) petition the Attorney General to bring a criminal action in
4 accordance with subsection f. of this section.

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

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

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

27 Such relief may include, singly or in combination:

- 28 (1) a temporary or permanent injunction;
29 (2) assessment of the violator for the reasonable costs of any
30 inspection that led to the establishment of the violation, and for the
31 reasonable costs of preparing and litigating the case under this
32 subsection.

33 d. The commissioner may **[assess]** recommend to an
34 administrative law judge the assessment of a civil administrative
35 penalty of not more than \$7,500 for a first offense, not more than
36 \$10,000 for a second offense and not more than \$25,000 for a third
37 and every subsequent offense. Each day that a violation continues
38 shall constitute an additional, separate, and distinct offense.

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

1 notice within which to deliver to the commissioner a written request
2 for a hearing.

3 After the hearing and upon finding that a violation has occurred,
4 the [commissioner] administrative law judge may issue a final
5 order after assessing the amount of the fine [specified in the
6 notice]. If the ordered party does not request a hearing, an
7 administrative law judge shall issue an order assessing a penalty.
8 Strict adherence to the commissioner's recommended penalty
9 assessment is not required . If no hearing is requested, the notice
10 shall become a final order after the expiration of [the] a 20-day
11 period after issuance of the order of assessment. Payment of the
12 assessment is due when a final order is issued or the notice and
13 order of assessment becomes a final order. The authority to levy a
14 civil administrative penalty is in addition to all other enforcement
15 provisions in this act, and the payment of any assessment shall not
16 be deemed to affect the availability of any other enforcement
17 provisions in connection with the violation for which the
18 assessment is levied. The commissioner may compromise any civil
19 administrative penalty assessed under this section in an amount the
20 commissioner determines appropriate.

21 e. A person who violates this act, or any rule or regulation
22 adopted pursuant thereto, shall be liable for a penalty of not more
23 than \$7,500 per day, to be collected in a civil action commenced by
24 the commissioner.

25 A person who violates an administrative order issued pursuant to
26 subsection b. of this section, or a court order issued pursuant to
27 subsection c. of this section, or who fails to pay an administrative
28 assessment in full pursuant to subsection d. of this section is subject
29 upon order of a court to a civil penalty not to exceed \$50,000 per
30 day of each violation.

31 Any penalty imposed pursuant to this subsection may be
32 collected, with costs, in a summary proceeding pursuant to the
33 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
34 et seq.). The Superior Court and the municipal court shall have
35 jurisdiction to enforce the provisions of the "Penalty Enforcement
36 Law of 1999" in connection with this act.

37 f. A person who willfully or negligently violates this act shall
38 be guilty, upon conviction, of a crime of the fourth degree and shall
39 be subject to a fine of not less than \$2,500 nor more than \$25,000
40 per day of violation. A second offense under this subsection shall
41 subject the violator to a fine of not less than \$5,000 nor more than
42 \$50,000 per day of violation. A person who knowingly makes a
43 false statement, representation, or certification in any application,
44 record, or other document filed or required to be maintained under
45 this act, or who falsifies, tampers with or knowingly renders
46 inaccurate, any monitoring device or method required to be

1 maintained pursuant to this act, shall, upon conviction, be subject to
2 a fine of not more than \$10,000.

3 (cf: P.L.2005, c.54, s.8)

4

5 5. Section 10 of P.L.1971, c.176 (C.13:1F-10) is amended to
6 read as follows:

7 10. a. Whenever, on the basis of available information, the
8 commissioner finds that a person is in violation of the provisions of
9 P.L.1971, c.176 (C.13:1F-1 et seq.), or any rule or regulation
10 adopted, or permit or order issued pursuant thereto, the
11 commissioner may:

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

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

16 (3) **[Levy]** Recommend the assessment of a civil administrative
17 penalty in accordance with subsection d. of this section;

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

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

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

24 b. Whenever, on the basis of available information, the
25 commissioner finds that a person is in violation of any provision of
26 P.L.1971, c.176, or any rule or regulation adopted, or permit or
27 order issued pursuant thereto, the commissioner may issue an
28 administrative enforcement order: (1) specifying the provision or
29 provisions of P.L.1971, c.176, or of the rule, regulation, permit or
30 order of which the person is in violation; (2) citing the action that
31 constituted the violation; (3) requiring compliance with the
32 provision or provisions violated; and (4) giving notice to the person
33 of a right to a hearing on the matters contained in the order.

34 c. The commissioner is authorized to commence a civil action
35 in Superior Court for appropriate relief from a violation of the
36 provisions of P.L.1971, c.176, or any rule or regulation adopted, or
37 permit or order issued pursuant thereto. This relief may include,
38 singly or in combination:

39 (1) A temporary or permanent injunction;

40 (2) Recovery of reasonable costs of any investigation,
41 inspection, sampling or monitoring survey that led to the discovery
42 of the violation, and for the reasonable costs of preparing and
43 bringing a civil action commenced under this subsection;

44 (3) Recovery of reasonable costs incurred by the State in
45 removing, correcting, or terminating the adverse effects resulting
46 from any violation of P.L.1971, c.176, or any rule or regulation

1 adopted, or permit or order issued pursuant thereto, for which legal
2 action under this subsection may have been brought;

3 (4) An order requiring the violator restore the site of the
4 violation to the maximum extent practicable and feasible or, in the
5 event that restoration of the site of the violation is not practicable or
6 feasible, provide for off-site restoration alternatives as approved by
7 the department.

8 (5) Recovery of compensatory damages for any loss or
9 destruction of natural resources, including but not limited to,
10 wildlife, fish, aquatic life, habitat, plants, or historic or
11 archeological resources, and for any other actual damages caused by
12 any violation for which a civil action has been commenced and
13 brought under this subsection. Recovery of damages and costs
14 under this subsection shall be paid to the State Treasurer.

15 d. The commissioner is authorized to **[assess]** recommend to
16 an administrative law judge the assessment of a civil administrative
17 penalty of not more than \$25,000 for each violation of the
18 provisions of P.L.1971, c.176, or any rule or regulation adopted, or
19 permit or order issued pursuant thereto, and each day during which
20 each violation continues shall constitute an additional, separate, and
21 distinct offense. Any amount assessed under this subsection shall
22 fall within a range established by regulation by the commissioner
23 for violations of similar type, seriousness, duration and conduct;
24 provided, however, that prior to the adoption of the regulation, the
25 commissioner may, on a case-by-case basis, **[assess]** recommend
26 for assessment civil administrative penalties up to a maximum of
27 \$25,000 per day for each violation, utilizing the criteria set forth
28 herein. In addition to any administrative penalty assessed under
29 this subsection and notwithstanding the \$25,000 maximum penalty
30 set forth above, the commissioner may **[assess]** recommend for
31 assessment any economic benefits from the violation gained by the
32 violator. Prior to assessment of a penalty under this subsection, the
33 property owner or person committing the violation shall be notified
34 by certified mail or personal service that the penalty is being
35 **[assessed]** recommended for assessment. The notice shall include:
36 a reference to the section of the statute, regulation, or order or
37 permit condition violated; recite the facts alleged to constitute a
38 violation; state the basis for the amount of the civil penalties **[to be**
39 **assessed]** recommended for assessment; and affirm the rights of the
40 alleged violator to a hearing. The ordered party shall have 35
41 calendar days from receipt of the notice within which to deliver to
42 the commissioner a written request for a hearing. After the hearing
43 and upon finding that a violation has occurred, the **[commissioner]**
44 administrative law judge may issue a final order after assessing the
45 amount of the fine **[specified in the notice]**. If the ordered party
46 does not request a hearing, an administrative law judge shall issue
47 an order assessing a penalty. Strict adherence to the

1 commissioner's recommended penalty assessment is not required .
2 If no hearing is requested, the notice and order of assessment shall
3 become a final order after the expiration of **[the]** a 35-day period
4 after issuance of the order of assessment. Payment of the
5 assessment is due when a final order is issued or the notice and
6 order of assessment becomes a final order. The authority to levy an
7 administrative order is in addition to all other enforcement
8 provisions in P.L.1971, c.176, or of any rule or regulation adopted,
9 or permit or order issued pursuant thereto, and the payment of any
10 assessment shall not be deemed to affect the availability of any
11 other enforcement provisions in connection with the violation for
12 which the assessment is levied. The department may compromise
13 any civil administrative penalty assessed under this section in an
14 amount and with conditions the department determines appropriate.
15 A civil administrative penalty assessed, including a portion thereof
16 required to be paid pursuant to a payment schedule approved by the
17 department, which is not paid within 90 days of the date that
18 payment of the penalty is due, shall be subject to an interest charge
19 on the amount of the penalty, or portion thereof, which shall accrue
20 as of the date payment is due. If the penalty is contested, no
21 additional interest charge shall accrue on the amount of the penalty
22 until 90 days after the date on which a final order is issued. Interest
23 charges assessed and collectible pursuant to this subsection shall be
24 based on the rate of interest on judgments provided in the New
25 Jersey Rules of Court.

26 e. Any person who violates the provisions of P.L.1971, c.176,
27 or any rule or regulation adopted, or permit or order issued pursuant
28 thereto, or violates an administrative enforcement order issued
29 pursuant to subsection b. of this section, or a court order issued
30 pursuant to subsection c. of this section, or who fails to pay in full a
31 civil administrative penalty levied pursuant to subsection d. of this
32 section, or who fails to make a payment pursuant to a penalty
33 payment schedule entered into with the department, or who
34 knowingly makes any false or misleading statement on any
35 application, record, report, or other document required to be
36 submitted to the department, shall be subject, upon order of a court,
37 to a civil penalty not to exceed \$25,000 for each day during which
38 the violation continues. Any civil penalty imposed pursuant to this
39 subsection may be collected, and any costs incurred in connection
40 therewith may be recovered, in a summary proceeding pursuant to
41 the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-
42 10 et seq.). In addition to any penalties, costs or interest charges,
43 the court may assess against the violator the amount of economic
44 benefit accruing to the violator from the violation. The Superior
45 Court shall have jurisdiction to enforce the "Penalty Enforcement
46 Law of 1999."

1 f. A person who purposely, knowingly or recklessly violates
2 any provision of P.L.1971, c.176, or any rule or regulation adopted,
3 or permit or order issued pursuant thereto, shall be guilty, upon
4 conviction, of a crime of the third degree and shall, notwithstanding
5 the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine
6 of not less than \$5,000 nor more than \$50,000 per day of violation,
7 or by imprisonment, or both. A person who purposely, knowingly
8 or recklessly makes a false statement, representation, or
9 certification in any application, record, or other document filed or
10 required to be maintained under any provision of P.L.1971, c.176,
11 or any rule or regulation adopted, or permit or order issued pursuant
12 thereto, or who falsifies, tampers with or purposely, knowingly or
13 recklessly renders inaccurate, any monitoring device or method
14 required to be maintained pursuant to P.L.1971, c.176, or any rule
15 or regulation adopted, or permit or order issued pursuant thereto,
16 shall be guilty, upon conviction, of a crime of the third degree and
17 shall, notwithstanding the provisions of subsection b. of
18 N.J.S.2C:43-3, be subject to a fine of not more than \$50,000 per day
19 of violation, or by imprisonment, or both.

20 g. Each applicant, permittee or licensee shall provide, upon the
21 request of the department, any information the department requires
22 to determine compliance with the provisions of P.L.1971, c.176.
23 (cf: P.L.2007, c.246, s.3)

24
25 6. Section 9 of P.L.1970, c.272 (C.13:9A-9) is amended to read
26 as follows:

27 9. a. Whenever, on the basis of available information, the
28 commissioner finds that a person is in violation of any provision of
29 P.L.1970, c.272, or any rule or regulation adopted, or permit or
30 order issued pursuant thereto, the commissioner may:

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

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

36 (3) **【Levy】** Recommend the assessment of a civil administrative
37 penalty in accordance with subsection d. of this section; or

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

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

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

44 b. Whenever, on the basis of available information, the
45 commissioner finds a person in violation of any provision of
46 P.L.1970, c.272, or any rule or regulation adopted, or permit or
47 order issued pursuant thereto, the commissioner may issue an

1 administrative enforcement order: (1) specifying the provision or
2 provisions of P.L.1970, c.272, or the rule, regulation, permit or
3 order of which the person is in violation; (2) citing the action which
4 constituted the violation; (3) requiring compliance with the
5 provision or provisions violated; (4) requiring the restoration to
6 address any adverse effects upon a coastal wetland resulting from
7 the violation; and (5) providing notice to the person of the right to a
8 hearing on the matters contained in the administrative enforcement
9 order.

10 c. The commissioner is authorized to institute a civil action in
11 Superior Court for appropriate relief from any violation of any
12 provision of P.L.1970, c.272, or any rule or regulation adopted, or
13 permit or order issued pursuant thereto. Such relief may include,
14 singly or in combination:

15 (1) A temporary or permanent injunction;

16 (2) Recovery of reasonable costs of any investigation,
17 inspection, or monitoring survey which led to the discovery of the
18 violation, and for the reasonable costs of preparing and bringing a
19 civil action commenced under this subsection;

20 (3) Recovery of reasonable costs incurred by the State in
21 removing, correcting, or terminating the adverse effects upon a
22 coastal wetland resulting from any violation for which a civil action
23 has been commenced and brought under this subsection;

24 (4) Recovery of compensatory damages for any loss or
25 destruction of natural resources, including but not limited to,
26 wildlife, fish, aquatic life, habitat, plants, or historic or
27 archeological resources, and for any other actual damages caused by
28 any violation for which a civil action has been commenced and
29 brought under this subsection. Recovery of damages and costs
30 ordered under this subsection shall be paid to the State Treasurer;

31 (5) An order requiring the violator restore the site of the
32 violation to the maximum extent practicable and feasible or, in the
33 event that restoration of the site of the violation is not practicable or
34 feasible, provide for off-site restoration alternatives as approved by
35 the department.

36 d. The commissioner is authorized to **[assess]** recommend to
37 an administrative law judge the assessment of a civil administrative
38 penalty of not more than \$25,000 for each violation of the
39 provisions of P.L.1970, c.272, or any rule or regulation adopted, or
40 permit or order issued pursuant thereto, and each day during which
41 each violation continues shall constitute an additional, separate and
42 distinct offense. Any amount assessed under this subsection shall
43 fall within a range established by regulation by the commissioner
44 for violations of similar type, seriousness, duration and conduct;
45 provided, however, that prior to the adoption of the regulation, the
46 commissioner may, on a case-by-case basis, **[assess]** recommend
47 the assessment of civil administrative penalties up to a maximum of

1 \$25,000 per day for each violation, utilizing the criteria set forth
2 herein. In addition to any administrative penalty assessed under
3 this subsection and notwithstanding the \$25,000 maximum penalty
4 set forth above, the commissioner may **[assess]** recommend the
5 assessment of any economic benefits from the violation gained by
6 the violator. Prior to assessment of a penalty under this subsection,
7 the property owner or person committing the violation shall be
8 notified by certified mail or personal service that the penalty is
9 being assessed. The notice shall include a reference to the section
10 of the statute, regulation, order or permit condition violated; recite
11 the facts alleged to constitute a violation; state the basis for the
12 amount of the civil penalties **[to be assessed]** recommended for
13 assessment; and affirm the rights of the alleged violator to a
14 hearing. The ordered party shall have 35 calendar days from receipt
15 of the notice within which to deliver to the commissioner a written
16 request for a hearing. After the hearing and upon finding that a
17 violation has occurred, the **[commissioner]** administrative law
18 judge may issue a final administrative enforcement order after
19 assessing the **[amount of]** the fine **[specified in the notice]**. If the
20 ordered party does not request a hearing, an administrative law
21 judge shall issue an order assessing a penalty. Strict adherence to
22 the commissioner's recommended penalty assessment is not
23 required. If no hearing is requested, the notice and order of
24 assessment shall become a final administrative enforcement order
25 after the expiration of the 35-day period. Payment of the
26 assessment is due when a final administrative enforcement order is
27 issued or the notice and order of assessment becomes a final
28 administrative enforcement order. The authority to levy a civil
29 administrative order is in addition to all other enforcement
30 provisions in P.L.1970, c.272, and the payment of any assessment
31 shall not be deemed to affect the availability of any other
32 enforcement provisions in connection with the violation for which
33 the assessment is levied. The department may compromise any
34 civil administrative penalty assessed under this section in an
35 amount and with conditions the department determines appropriate.
36 A civil administrative penalty assessed, including a portion thereof
37 required to be paid pursuant to a payment schedule approved by the
38 department, which is not paid within 90 days of the date that
39 payment of the penalty is due, shall be subject to an interest charge
40 on the amount of the penalty, or portion thereof, which shall accrue
41 as of the date payment is due. If the penalty is contested, no
42 additional interest charge shall accrue on the amount of the penalty
43 until 90 days after the date on which a final order is issued. Interest
44 charges assessed and collectible pursuant to this subsection shall be
45 based on the rate of interest on judgments provided in the New
46 Jersey Rules of Court.

1 e. A person who violates any provision of P.L.1970, c.272, or
2 any rule or regulation adopted, or permit or order issued pursuant
3 thereto, or an administrative order issued pursuant to subsection b.
4 of this section, or a court order issued pursuant to subsection c. of
5 this section, who fails to pay a civil administrative penalty in full
6 pursuant to subsection d. of this section, or who fails to make a
7 payment pursuant to a penalty payment schedule entered into with
8 the department, or who knowingly makes any false or misleading
9 statement on any application, record, report, or other document
10 required to be submitted to the department, shall be subject, upon
11 order of a court, to a civil penalty not to exceed \$25,000 per day of
12 the violation, and each day during which the violation continues
13 shall constitute an additional, separate, and distinct offense. Any
14 civil penalty imposed pursuant to this subsection may be collected
15 with costs in a summary proceeding pursuant to the "Penalty
16 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
17 In addition to any penalties, costs or interest charges, the court may
18 assess against the violator the amount of economic benefit accruing
19 to the violator from the violation. The Superior Court shall have
20 jurisdiction to enforce the "Penalty Enforcement Law of 1999."

21 f. A person who purposely, knowingly or recklessly violates
22 any provision of P.L.1970, c.272, or any rule or regulation adopted,
23 or permit or order issued pursuant thereto, shall be guilty, upon
24 conviction, of a crime of the third degree and shall, notwithstanding
25 the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine
26 of not less than \$5,000 nor more than \$50,000 per day of violation,
27 or by imprisonment, or both. A person who purposely, knowingly
28 or recklessly makes a false statement, representation, or
29 certification in any application, record, or other document filed or
30 required to be maintained under any provision of P.L.1970, c.272,
31 or any rule or regulation adopted, or permit or order issued pursuant
32 thereto, or who falsifies, tampers with or purposely, knowingly or
33 recklessly renders inaccurate, any monitoring device or method
34 required to be maintained pursuant to P.L.1970, c.272, or any rule
35 or regulation adopted, or permit or order issued pursuant thereto,
36 shall be guilty, upon conviction, 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 more than \$50,000 per day
39 of violation, or by imprisonment, or both.

40 g. Each applicant or permittee shall provide, upon the request
41 of the department, any information the department requires to
42 determine compliance with the provisions of P.L.1970, c.272, or
43 any rule or regulation adopted, or permit or order issued pursuant
44 thereto.

45 (cf: P.L.2007, c.246, s.4)

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

3 21. a. Whenever, on the basis of available information, the
4 commissioner finds that a person is in violation of any provision of
5 P.L.1987, c.156, or any rule or regulation adopted, or permit or
6 order issued pursuant thereto, the commissioner may:

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

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

11 (3) **【Levy】** Recommend the assessment of a civil administrative
12 penalty in accordance with subsection d. of this section; or

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

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

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

19 b. Whenever, on the basis of available information, the
20 commissioner finds a person in violation of any provision of
21 P.L.1987, c.156, or any rule or regulation adopted, or permit or
22 order issued pursuant thereto, the commissioner may issue an order:

23 (1) specifying the provision or provisions of P.L.1987, c.156, or the
24 rule, regulation, permit or order of which the person is in violation;

25 (2) citing the action which constituted the violation; (3) requiring
26 compliance with the provision or provisions violated; (4) requiring

27 the restoration to address any adverse effects upon the freshwater
28 wetland or transition area resulting from any violation; and (5)

29 providing notice to the person of the right to a hearing on the
30 matters contained in the order.

31 c. The commissioner is authorized to institute a civil action in
32 Superior Court for appropriate relief from any violation of any
33 provisions of P.L.1987, c.156, or any rule or regulation adopted, or
34 permit or order issued pursuant thereto. Such relief may include,
35 singly or in combination:

36 (1) A temporary or permanent injunction;

37 (2) Recovery of reasonable costs of any investigation,
38 inspection, or monitoring survey which led to the discovery of the
39 violation, and for the reasonable costs of preparing and bringing a
40 civil action commenced under this subsection;

41 (3) Recovery of reasonable costs incurred by the State in
42 removing, correcting, or terminating the adverse effects upon the
43 freshwater wetland or transition area resulting from any violation
44 for which a civil action has been commenced and brought under this
45 subsection;

46 (4) Recovery of compensatory damages for any loss or
47 destruction of natural resources, including but not limited to,

1 wildlife, fish, aquatic life, habitat, plants, or historic or
2 archeological resources, and for any other actual damages caused by
3 any violation for which a civil action has been commenced and
4 brought under this subsection. Recovery of damages and costs
5 under this subsection shall be paid to the State Treasurer;

6 (5) An order requiring the violator restore the site of the
7 violation to the maximum extent practicable and feasible or, in the
8 event that restoration of the site of the violation is not practicable or
9 feasible, provide for off-site restoration alternatives as approved by
10 the department.

11 d. The commissioner is authorized to **[assess]** recommend to
12 an administrative law judge the assessment of a civil administrative
13 penalty of not more than \$25,000 for each violation of the
14 provisions of P.L.1987, c.156, or any rule or regulation adopted, or
15 permit or order issued pursuant thereto, and each day during which
16 each violation continues shall constitute an additional, separate, and
17 distinct offense. Any amount assessed under this subsection shall
18 fall within a range established by regulation by the commissioner
19 for violations of similar type, seriousness, duration and conduct;
20 provided, however, that prior to the adoption of the regulation, the
21 commissioner may, on a case-by-case basis, **[assess]** recommend
22 the assessment of civil administrative penalties up to a maximum of
23 \$25,000 per day for each violation, utilizing the criteria set forth
24 herein. In addition to any administrative penalty assessed under
25 this subsection and notwithstanding the \$25,000 maximum penalty
26 set forth above, the commissioner may **[assess]** recommend the
27 assessment of any economic benefits from the violation gained by
28 the violator. Prior to the assessment of a penalty under this
29 subsection, the property owner or person committing the violation
30 shall be notified by certified mail or personal service that the
31 penalty is being assessed. The notice shall identify the section of
32 the statute, regulation, or order or permit condition violated; recite
33 the facts alleged to constitute a violation; state the basis for the
34 amount of the civil penalties **[to be assessed]** recommended for
35 assessment; and affirm the rights of the alleged violator to a
36 hearing. The ordered party shall have 35 days from receipt of the
37 notice within which to deliver to the commissioner a written request
38 for a hearing. After the hearing and upon finding that a violation
39 has occurred, the **[commissioner]** administrative law judge may
40 issue a final order after assessing the amount of the fine **[specified**
41 **in the notice]**. If the ordered party does not request a hearing, an
42 administrative law judge shall issue an order assessing a penalty.
43 Strict adherence to the commissioner's recommended penalty
44 assessment is not required. If no hearing is requested, the notice
45 and the order of assessment shall become a final order after the
46 expiration of **[the]** a 35-day period after issuance of the order of
47 assessment. Payment of the assessment is due when a final order is

1 issued or the notice and order of assessment becomes a final order.
2 The authority to levy an administrative order is in addition to all
3 other enforcement provisions in P.L.1987, c.156, and the payment
4 of any assessment shall not be deemed to affect the availability of
5 any other enforcement provisions in connection with the violation
6 for which the assessment is levied. The department may
7 compromise any civil administrative penalty assessed under this
8 section in an amount and with conditions the department determines
9 appropriate. A civil administrative penalty assessed, including any
10 portion thereof required to be paid pursuant to a payment schedule
11 approved by the department, which is not paid within 90 days of the
12 date that payment of the penalty is due, shall be subject to an
13 interest charge on the amount of the penalty, or portion thereof,
14 which shall accrue as of the date payment is due. If the penalty is
15 contested, interest shall accrue on the amount of the penalty
16 commencing on the date a final order is issued. Interest charges
17 assessed and collectible pursuant to this subsection shall be based
18 on the rate of interest on judgments provided in the New Jersey
19 Rules of Court. For the purposes of this subsection, the date that a
20 penalty is due is the date that written notice of the penalty is
21 received by the person responsible for payment thereof, or a later
22 date as may be specified in the notice.

23 e. A person who violates any provision of P.L.1987, c.156, or
24 any rule or regulation adopted, or permit or order issued pursuant
25 thereto, or an administrative order issued pursuant to subsection b.
26 of this section, or a court order issued pursuant to subsection c. of
27 this section, or who fails to pay a civil administrative penalty in full
28 pursuant to subsection d. of this section, or who fails to make a
29 payment pursuant to a penalty payment schedule entered into with
30 the department, or who knowingly makes any false or misleading
31 statement on any application, record, report, or other document
32 required to be submitted to the department, shall be subject, upon
33 order of a court, to a civil penalty not to exceed \$25,000 per day of
34 the violation, and each day during which the violation continues
35 shall constitute an additional, separate, and distinct offense. Any
36 civil penalty imposed pursuant to this subsection may be collected
37 with costs in a summary proceeding pursuant to the "Penalty
38 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
39 The Superior Court shall have jurisdiction to enforce the "Penalty
40 Enforcement Law of 1999" in conjunction with this act.

41 f. A person who purposely, knowingly or recklessly violates
42 any provision of P.L.1987, c.156, or any rule or regulation adopted,
43 or permit or order issued pursuant thereto, shall be guilty, upon
44 conviction, of a crime of the third degree and shall, notwithstanding
45 the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine
46 of not less than \$5,000 nor more than \$50,000 per day of violation,
47 or by imprisonment, or both. A person who purposely, knowingly

1 or recklessly makes a false statement, representation, or
2 certification in any application, record, or other document filed or
3 required to be maintained under any provision of P.L.1987, c.156,
4 or any rule or regulation adopted, or permit or order issued pursuant
5 thereto, or who falsifies, tampers with or purposely, knowingly or
6 recklessly renders inaccurate, any monitoring device or method
7 required to be maintained pursuant to P.L.1987, c.156, shall be
8 guilty, upon conviction, of a crime of the third degree and shall,
9 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be
10 subject to a fine of not more than \$50,000 per day of violation, or
11 by imprisonment, or both.

12 g. In addition to the penalties prescribed in this section, the
13 commissioner may record a notice for a violation of any provision
14 of P.L.1987, c.156, or any rule or regulation adopted, or permit or
15 order issued pursuant thereto, which shall be recorded on the deed
16 of the property wherein the violation occurred, on order of the
17 commissioner, by the clerk or register of deeds and mortgages of
18 the county wherein the affected property is located and shall remain
19 attached thereto until such time as the violation has been remedied
20 and the commissioner orders the notice of violation removed. Any
21 fees or other charges that are assessed against the department by
22 either the clerk or register of deeds and mortgages of the county
23 wherein the affected property is located for the recording of the
24 notice of violation on the deed required pursuant to this subsection
25 shall be paid by the owner of the affected property or the person
26 committing the violation. The commissioner shall immediately
27 order the notice removed once the violation is remedied or upon
28 other conditions set forth by the commissioner.

29 h. If the violation is one in which the department has
30 determined that the restoration of the site to its pre-violation
31 condition would increase the harm to the freshwater wetland or its
32 ecology, the department may issue an "after the fact" permit for the
33 regulated activity that has already occurred; provided that any
34 recovery of costs or damages ordered pursuant to subsection c. of
35 this section has been satisfied, the creation or restoration of
36 freshwater wetlands resources at another site has been required of
37 the violator, an opportunity has been afforded for public hearing
38 and comment, and the reasons for the issuance of the "after the fact"
39 permit are published in the New Jersey Register and in a newspaper
40 of general circulation in the geographical area of the violation. Any
41 person violating an "after the fact" permit issued pursuant to this
42 subsection shall be subject to the provisions of this section.

43 i. The burden of proof and degree of knowledge or intent
44 required to establish a violation of any provision of P.L.1987,
45 c.156, or any rule or regulation adopted, or permit or order issued
46 pursuant thereto, shall be no greater than the burden of proof or
47 degree of knowledge or intent which the United States

1 Environmental Protection Agency must meet in establishing a
2 violation of the Federal Act or implementing regulations.

3 j. The department shall establish and implement a program
4 designed to facilitate public participation in the enforcement of the
5 provisions of P.L.1987, c.156, or any rule or regulation adopted, or
6 permit or order issued pursuant thereto, which complies with the
7 requirements of the Federal Act and implementing regulations.

8 k. The department shall make available without restriction any
9 information obtained or used in the implementation of P.L.1987,
10 c.156 to the United States Environmental Protection Agency upon a
11 request therefor.

12 l. Each applicant or permittee shall provide, upon the request
13 of the department, any information the department requires to
14 determine compliance with the provisions of P.L.1987, c.156.

15 m. The department shall have the authority to enter any
16 property, facility, premises or site for the purpose of conducting
17 inspections, sampling of soil or water, copying or photocopying
18 documents or records, and for otherwise determining compliance
19 with the provisions of P.L.1987, c.156.

20 (cf: P.L.2007, c.246, s.5)

21

22 8. Section 18 of P.L.1973, c.185 (C.13:19-18) is amended to
23 read as follows:

24 18. a. Whenever, on the basis of available information, the
25 department finds that a person has violated any provision of
26 P.L.1973, c.185 (C.13:19-1 et seq.), or any rule or regulation
27 adopted, or permit or order issued by the department pursuant
28 thereto, the department may:

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

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

33 (3) **【Levy】** Recommend the assessment of a civil administrative
34 penalty in accordance with subsection d. of this section;

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

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

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

41 b. Whenever, on the basis of available information, the
42 department finds that a person has violated any provision of
43 P.L.1973, c.185, or any rule or regulation adopted, or permit or
44 order issued by the department pursuant thereto, the department
45 may issue an order: (1) specifying the provision or provisions of the
46 act, regulation, rule, permit, or order of which the person is in
47 violation; (2) citing the action which constituted the violation; (3)

1 requiring compliance with the provision or provisions violated; (4)
2 requiring the restoration to address any adverse effects resulting
3 from the violation; and (5) providing notice to the person of the
4 right to a hearing on the matters contained in the order. The
5 ordered party shall have 35 days from receipt of the order within
6 which to deliver to the department a written request for a hearing.
7 After the hearing and upon finding that a violation has occurred, the
8 department may issue a final order. If no hearing is requested, then
9 the order shall become final after the expiration of the 35-day
10 period. A request for hearing shall not automatically stay the effect
11 of the order.

12 c. The department may institute a civil action in the Superior
13 Court for appropriate relief, including the appointment of a
14 receiver, from any violation of any provision of P.L.1973, c.185, or
15 any rule or regulation adopted, or permit or order issued by the
16 department pursuant thereto, and the court may proceed in the
17 action in a summary manner.

18 Such relief may include, singly or in combination:

19 (1) A temporary or permanent injunction;

20 (2) Recovery of reasonable costs of any investigation,
21 inspection, or monitoring survey which led to the discovery of the
22 violation, and for the reasonable costs of preparing and bringing a
23 civil action commenced under this subsection;

24 (3) Recovery of reasonable costs incurred by the department in
25 removing, correcting or terminating the adverse effects upon the
26 land or upon water or air quality resulting from any violation of any
27 provision of P.L.1973, c.185, or any rule or regulation adopted, or
28 permit or order issued by the department pursuant thereto, for which
29 a civil action has been commenced and brought under this
30 subsection;

31 (4) Recovery of compensatory damages for any loss or
32 destruction of natural resources, including but not limited to,
33 wildlife, fish, aquatic life, habitat, plants, or historic or
34 archeological resources, and for any other actual damages caused by
35 a violation of the provisions of P.L.1973, c.185 for which a civil
36 action has been commenced and brought under this subsection.
37 Assessments under this subsection shall be paid to the State
38 Treasurer;

39 (5) An order requiring the violator restore the site of the
40 violation to the maximum extent practicable and feasible or, in the
41 event that restoration of the site of the violation is not practicable or
42 feasible, provide for off-site restoration alternatives as approved by
43 the department.

44 d. The department is authorized to **[assess]** recommend to an
45 administrative law judge the assessment of a civil administrative
46 penalty of not more than \$25,000 for each violation of the
47 provisions of P.L.1973, c.185, or any rule or regulation adopted, or

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1 permit or order issued pursuant thereto, and each day during which
2 each violation continues shall constitute an additional, separate and
3 distinct offense. Any amount assessed under this subsection shall
4 fall within a range established by regulation by the commissioner
5 for violations of similar type, seriousness, duration, and conduct;
6 provided, however, that prior to the adoption of the regulation, the
7 commissioner may, on a case-by-case basis, **[assess]** recommend
8 the assessment of civil administrative penalties up to a maximum of
9 \$25,000 per day for each violation, utilizing the criteria set forth
10 herein. In addition to any administrative penalty assessed under this
11 subsection and notwithstanding the \$25,000 maximum penalty set
12 forth above, the commissioner may **[assess]** recommend the
13 assessment of any economic benefits from the violation gained by
14 the violator. Prior to assessment of a penalty under this subsection,
15 the property owner or person committing the violation shall be
16 notified by certified mail or personal service that the penalty is
17 being **[assessed]** recommended for assessment. The notice shall
18 include a reference to the section or provision of P.L.1973, c.185,
19 the regulation, rule, permit, or order issued by the department
20 pursuant to that act that has been violated, a concise statement of
21 the facts alleged to constitute a violation, a statement of the basis
22 for the amount of the civil administrative penalties to be **[assessed]**
23 recommended for assessment, including any interest that may
24 accrue thereon if the penalty is not paid when due, and a statement
25 of the party's right to a hearing. The ordered party shall have 35
26 calendar days from receipt of the notice within which to deliver to
27 the department a written request for a hearing. After the hearing
28 and upon finding that a violation has occurred, the **[department]**
29 administrative law judge may issue a final order after assessing the
30 amount of the fine **[specified in the notice]**. If the ordered party
31 does not request a hearing, an administrative law judge shall
32 issue an order assessing a penalty. Strict adherence to the
33 commissioner's recommended penalty assessment is not required.
34 If no hearing is requested, the notice and order of assessment shall
35 become a final order after the expiration of **[the]** a 35-day period
36 after issuance of the order of assessment. Payment of the
37 assessment is due when a final order is issued or the notice and
38 order of assessment becomes a final order. The department may
39 compromise any civil administrative penalty assessed under this
40 section in an amount and with conditions the department determines
41 appropriate. A civil administrative penalty assessed, including a
42 portion thereof required to be paid pursuant to a payment schedule
43 approved by the department, which is not paid within 90 days of the
44 date that payment of the penalty is due, shall be subject to an
45 interest charge on the amount of the penalty, or portion thereof,
46 which shall accrue as of the date payment is due. If the penalty is

1 contested, no additional interest charge shall accrue on the amount
2 of the penalty until after the date on which a final order is issued.

3 Interest charges assessed and collectible pursuant to this
4 subsection shall be based on the rate of interest on judgments
5 provided in the New Jersey Rules of Court. For the purposes of this
6 subsection, the date that a penalty is due is the date that written
7 notice of the penalty is received by the person responsible for
8 payment thereof, or a later date as may be specified in the notice.

9 e. Any person who violates the provisions of P.L.1973, c.185,
10 or any rule or regulation adopted pursuant thereto, or any permit or
11 order issued by the department pursuant to that act, or an
12 administrative order issued pursuant to subsection b. of this section,
13 or a court order issued pursuant to subsection c. of this section, or
14 who fails to pay a civil administrative penalty in full pursuant to
15 subsection d. of this section, or who fails to make a payment
16 pursuant to a penalty payment schedule entered into with the
17 department, or who knowingly makes any false or misleading
18 statement on any application, record, report, or other document
19 required to be submitted to the department, shall be subject, upon
20 order of a court, to a civil penalty of not more than \$25,000 for each
21 violation, and each day during which a violation continues shall
22 constitute an additional, separate, and distinct offense.

23 Any penalty established pursuant to this subsection may be
24 imposed and collected with costs in a summary proceeding pursuant
25 to the "Penalty Enforcement Law of 1999," P.L.1999, c.274
26 (C.2A:58-10 et seq.). The Superior Court shall have jurisdiction to
27 enforce the "Penalty Enforcement Law of 1999" in conjunction with
28 this act. In addition to any penalties, costs or interest charges, the
29 court may assess against the violator the amount of economic
30 benefit accruing to the violator from the violation.

31 f. A person who purposely, knowingly or recklessly violates
32 any provision of P.L.1973, c.185, or any rule or regulation adopted,
33 or permit or order issued pursuant thereto, shall be guilty, upon
34 conviction, of a crime of the third degree and shall, notwithstanding
35 the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine
36 of not less than \$5,000 nor more than \$50,000 per day of violation,
37 or by imprisonment, or both. A person who purposely, knowingly,
38 or recklessly makes a false statement, representation, or
39 certification in any application, record, or other document filed or
40 required to be maintained under any provision of P.L.1973, c.185,
41 or any rule or regulation adopted pursuant thereto, or who falsifies,
42 tampers with or purposely, knowingly, or recklessly renders
43 inaccurate, any monitoring device or method required to be
44 maintained pursuant to P.L.1973, c.185, or any rule or regulation
45 adopted, or permit or order issued pursuant thereto, shall be guilty,
46 upon conviction, of a crime of the third degree and shall,
47 notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be

1 subject to a fine of not more than \$50,000 per day of violation, or
2 by imprisonment, or both.

3 g. Each applicant or permittee shall provide, upon the request
4 of the department, any information the department requires to
5 determine compliance with the provisions of P.L.1973, c.185, or
6 any rule or regulation adopted, or permit or order issued pursuant
7 thereto.

8 h. There is created in the department a special nonlapsing fund,
9 to be known as the "Cooperative Coastal Monitoring, Restoration
10 and Enforcement Fund." Except as otherwise provided in this
11 section, all monies from penalties, fines, or recoveries of costs
12 collected by the department pursuant to this section on and after the
13 effective date of this section, shall be deposited in the fund. Interest
14 earned on monies deposited in the fund shall be credited to the
15 fund. Unless otherwise specifically provided by law, monies in the
16 fund shall be utilized by the department for the cost of coastal
17 restoration projects and providing aircraft overflights for coastal
18 monitoring, surveillance and enforcement activities conducted by
19 the department and for the cost of administering P.L.1973, c.185
20 (C.13:19-1 et seq.). The department shall submit annually to the
21 Legislature a report which provides an accounting of all monies
22 deposited in the fund and the purposes for which monies in the fund
23 are disbursed.

24 (cf: P.L.2007, c.246, s.6)

25

26 9. Section 35 of P.L.2004, c.120 (C.13:20-35) is amended to
27 read as follows:

28 37. a. Whenever the Commissioner of Environmental Protection
29 finds that a person has violated any provision of section 32 of this
30 act, a Highlands permitting review approval issued pursuant to
31 section 36 of this act, or any rule or regulation adopted pursuant to
32 sections 33 and 34 of this act, the commissioner may:

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]** Recommend the assessment of a civil administrative
38 penalty in accordance with 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.

43 Recourse to any of the remedies available under this section shall
44 not preclude recourse to any of the other remedies prescribed in this
45 section or by any other applicable law.

46 b. Whenever, on the basis of available information, the
47 commissioner finds a person in violation of any provision of section

1 32 of this act, a Highlands permitting review approval issued
2 pursuant to section 36 of this act, or any rule or regulation adopted
3 pursuant to sections 33 and 34 of this act, the commissioner may
4 issue an order: (1) specifying the provision or provisions of the
5 law, rule, regulation, permit, approval, or authorization of which the
6 person is in violation; (2) citing the action which constituted the
7 violation; (3) requiring compliance with the provision or provisions
8 violated; (4) requiring the restoration of the area which is the site of
9 the violation; and (5) providing notice to the person of the right to a
10 hearing on the matters contained in the order.

11 c. The commissioner is authorized to institute a civil action in
12 Superior Court for appropriate relief from any violation of any
13 provision of section 32 of this act, a Highlands permitting review
14 approval issued pursuant to section 36 of this act, or any rule or
15 regulation adopted pursuant to sections 33 and 34 of this act. Such
16 relief may include, singly or in combination:

17 (1) A temporary or permanent injunction;

18 (2) Assessment of the violator for the costs of any investigation,
19 inspection, or monitoring survey which led to the establishment of
20 the violation, and for the reasonable costs of preparing and bringing
21 legal action under this subsection;

22 (3) Assessment of the violator for any costs incurred by the
23 State in removing, correcting, or terminating the adverse effects
24 resulting from any unauthorized regulated activity for which legal
25 action under this subsection may have been brought;

26 (4) Assessment against the violator for compensatory damages
27 for any loss or destruction of wildlife, fish or aquatic life, and for
28 any other actual damages caused by an unauthorized regulated
29 activity;

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

32 d. The commissioner is authorized to **[assess]** recommend to
33 an administrative law judge the assessment of a civil administrative
34 penalty of up to \$25,000 for each violation of any provision of
35 section 32 of this act, a Highlands permitting review approval
36 issued pursuant to section 36 of this act, or any rule or regulation
37 adopted pursuant to sections 33 and 34 of this act, and each day
38 during which each violation continues shall constitute an additional,
39 separate, and distinct offense. Any amount assessed under this
40 subsection shall fall within a range established by regulation by the
41 commissioner for violations of similar type, seriousness, and
42 duration. In adopting rules and regulations establishing the amount
43 of any penalty to be assessed, the commissioner may take into
44 account the economic benefits from the violation gained by the
45 violator. No assessment shall be levied pursuant to this section
46 until after the party has been notified by certified mail or personal
47 service. The notice shall: (1) identify the section of the law, rule,

1 regulation, permit, approval, or authorization violated; (2) recite the
2 facts alleged to constitute a violation; (3) state the amount of the
3 civil penalties to be imposed; and (4) affirm the rights of the alleged
4 violator to a hearing. The ordered party shall have 20 days from
5 receipt of the notice within which to deliver to the commissioner a
6 written request for a hearing. After the hearing and upon finding
7 that a violation has occurred, the commissioner may issue a final
8 order after assessing the amount of the fine [specified in the
9 notice]. If the ordered party does not request a hearing, an
10 administrative law judge shall issue an order assessing a penalty.
11 Strict adherence to the commissioner's recommended penalty
12 assessment is not required. If no hearing is requested, the notice
13 and order of assessment shall become a final order after the
14 expiration of [the] a 20-day period after issuance of the order of
15 assessment. Payment of the assessment is due when a final order is
16 issued or the notice and order of assessment becomes a final order.
17 The authority to levy an administrative penalty is in addition to all
18 other enforcement provisions in this act and in any other applicable
19 law, rule, or regulation, and the payment of any assessment shall
20 not be deemed to affect the availability of any other enforcement
21 provisions in connection with the violation for which the
22 assessment is levied. Any civil administrative penalty assessed
23 under this section may be compromised by the commissioner upon
24 the posting of a performance bond by the violator, or upon such
25 terms and conditions as the commissioner may establish by
26 regulation.

27 e. A person who violates any provision of section 32 of this
28 act, a Highlands permitting review approval issued pursuant to
29 section 36 of this act, or any rule or regulation adopted pursuant to
30 sections 33 and 34 of this act, an administrative order issued
31 pursuant to subsection b. of this section, or a court order issued
32 pursuant to subsection c. of this section, or who fails to pay a civil
33 administrative penalty in full pursuant to subsection d. of this
34 section, shall be subject, upon order of a court, to a civil penalty not
35 to exceed \$10,000 per day of such violation, and each day during
36 which the violation continues shall constitute an additional,
37 separate, and distinct offense. Any civil penalty imposed pursuant
38 to this subsection may be collected with costs in a summary
39 proceeding pursuant to the "Penalty Enforcement Law of 1999,"
40 P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any penalties,
41 costs or interest charges, the court may assess against the violator
42 the amount of actual economic benefit accruing to the violator from
43 the violation. The Superior Court and the municipal court shall
44 have jurisdiction to enforce the provisions of the "Penalty
45 Enforcement Law of 1999" in connection with this act.

46 f. A person who purposely or negligently violates any
47 provision of section 32 of this act, a Highlands permitting review

1 approval issued pursuant to section 36 of this act, or any rule or
2 regulation adopted pursuant to sections 33 and 34 of this act, shall
3 be guilty, upon conviction, of a crime of the fourth degree and,
4 notwithstanding any provision of N.J.S.2C:43-3 to the contrary,
5 shall be subject to a fine of not less than \$2,500 nor more than
6 \$25,000 per day of violation, in addition to any other applicable
7 penalties and provisions under Title 2C of the New Jersey Statutes.
8 A second or subsequent offense under this subsection shall subject
9 the violator to a fine, notwithstanding any provision of N.J.S.2C:43-
10 3 to the contrary, of not less than \$5,000 nor more than \$50,000 per
11 day of violation, in addition to any other applicable penalties and
12 provisions under Title 2C of the New Jersey Statutes. A person
13 who knowingly makes a false statement, representation, or
14 certification in any application, record, or other document filed or
15 required to be maintained under this act shall be guilty, upon
16 conviction, of a crime of the fourth degree and, notwithstanding any
17 provision of N.J.S.2C:43-3 to the contrary, shall be subject to a fine
18 of not more than \$10,000, in addition to any other applicable
19 penalties and provisions under Title 2C of the New Jersey Statutes.

20 g. In addition to the penalties prescribed in this section, a
21 notice of violation of any provision of section 32 of this act, a
22 Highlands permitting review approval issued pursuant to section 36
23 of this act, or any rule or regulation adopted pursuant to sections 33
24 and 34 of this act, shall be recorded on the deed of the property
25 wherein the violation occurred, on order of the commissioner, by
26 the clerk or register of deeds and mortgages of the county wherein
27 the affected property is located and with the clerk of the Superior
28 Court and shall remain attached thereto until such time as the
29 violation has been remedied and the commissioner orders the notice
30 of violation removed.

31 h. The department may require an applicant or permittee to
32 provide any information the department requires to determine
33 compliance with any provision of section 32 of this act, a Highlands
34 permitting review approval issued pursuant to section 36 of this act,
35 or any rule or regulation adopted pursuant to sections 33 and 34 of
36 this act.

37 i. Any person who knowingly, recklessly, or negligently makes
38 a false statement, representation, or certification in any application,
39 record, or other document filed or required to be maintained under
40 this act shall be in violation of this act and shall be subject to the
41 penalties assessed pursuant to subsections d. and e. of this section.

42 j. All penalties collected pursuant to this section shall either be
43 used, as determined by the council, by the department for the
44 acquisition of lands in the preservation area or by any development
45 transfer bank used or established by the council to purchase
46 development potential in the preservation area.

1 k. The department shall have the authority to enter any
2 property, facility, premises, or site for the purpose of conducting
3 inspections or sampling of soil or water, and for otherwise
4 determining compliance with the provisions of sections 32 through
5 36 of this act.

6 (cf: P.L.2004, c.120, s.37)

7
8 10. Section 10 of P.L.1973, c.309 (C.23:2A-10) is amended to
9 read as follows:

10 10. a. Whenever, on the basis of available information, the
11 commissioner finds that a person is in violation of the provisions of
12 P.L.1973, c.309, or any rule or regulation adopted, or permit or
13 order issued pursuant thereto, the commissioner may:

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

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

18 (3) **【Levy】** Recommend the assessment of a civil administrative
19 penalty in accordance with subsection d. of this section;

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

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

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

26 b. Whenever, on the basis of available information, the
27 commissioner finds that a person is in violation of any provision of
28 P.L.1973, c.309, or any rule or regulation adopted, or permit or
29 order issued pursuant thereto, the commissioner may issue an order:

30 (1) specifying the provision or provisions of P.L.1973, c.309, or the
31 rule or regulation, or order or permit issued pursuant thereto, of
32 which the person is in violation; (2) citing the action that
33 constituted the violation; (3) requiring compliance with the
34 provision of P.L.1973, c.309, the rule or regulation, or order or
35 permit issued pursuant thereto, of which the person is in violation;
36 (4) requiring the restoration to address any adverse effects resulting
37 from the violation; and (5) giving notice to the person of a right to a
38 hearing on the matters contained in the order.

39 c. The commissioner is hereby authorized and empowered to
40 commence a civil action in Superior Court for appropriate relief
41 from a violation of the provisions of P.L.1973, c.309, or any rule or
42 regulation adopted, or any permit or order issued pursuant thereto.
43 This relief may include, singly or in combination:

44 (1) A temporary or permanent injunction;

45 (2) Recovery of reasonable costs of any investigation,
46 inspection, sampling or monitoring survey that led to the discovery

1 of the violation, and for the reasonable costs of preparing and
2 bringing a civil action commenced under this subsection;

3 (3) Recovery of reasonable costs incurred by the State in
4 removing, correcting, or terminating the adverse effects resulting
5 from any violation of P.L.1973, c.309 for which a civil action has
6 been commenced and brought under this subsection;

7 (4) Recovery of compensatory damages for any loss or
8 destruction of natural resources, including but not limited to,
9 wildlife, fish, aquatic life, habitat, plants, or historic or
10 archeological resources, and for any other actual damages caused by
11 any violation for which a civil action has been commenced and
12 brought under this subsection. Assessments under this subsection
13 shall be paid to the "Endangered and Nongame Species of Wildlife
14 Conservation Fund," established pursuant to section 1 of P.L.1981,
15 c.170 (C.54A:9-25.2), except that compensatory damages to
16 privately held resources shall be paid by specific order of the court
17 to any persons who have been aggrieved by the unauthorized
18 regulated activity;

19 (5) An order requiring the violator restore the site of the
20 violation to the maximum extent practicable and feasible or, in the
21 event that restoration of the site of the violation is not practicable or
22 feasible, provide for off-site restoration alternatives as approved by
23 the department.

24 d. The commissioner is authorized to **[assess]** recommend to
25 an administrative law judge the assessment of a civil administrative
26 penalty of not more than \$25,000 for each violation of the
27 provisions of P.L.1973, c.309, and each day during which each
28 violation continues shall constitute an additional, separate, and
29 distinct offense. Any amount assessed under this subsection shall
30 fall within a range established by regulation by the commissioner
31 for violations of similar type, seriousness, duration, and conduct;
32 provided, however, that prior to the adoption of the regulation, the
33 commissioner may, on a case-by-case basis, **[assess]** recommend
34 the assessment of civil administrative penalties up to a maximum of
35 \$25,000 per day for each violation, utilizing the criteria set forth
36 herein. In addition to any administrative penalty to be assessed
37 under this subsection, and notwithstanding the \$25,000 maximum
38 penalty set forth above, the commissioner may **[assess]** recommend
39 the assessment of any economic benefits from the violation gained
40 by the violator. Prior to assessment of a penalty under this
41 subsection, the property owner or person committing the violation
42 shall be notified by certified mail or personal service that the
43 penalty is being assessed. The notice shall include a reference to the
44 section of the statute, regulation, or order or permit condition
45 violated; recite the facts alleged to constitute a violation; state the
46 basis for the amount of the civil penalties to be assessed; and affirm
47 the rights of the alleged violator to a hearing. The ordered party

1 shall have 35 calendar days from receipt of the notice within which
2 to deliver to the commissioner a written request for a hearing. After
3 the hearing and upon finding that a violation has occurred, the
4 **[commissioner]** administrative law judge may issue a final order
5 after assessing the amount of the fine **[specified in the notice]** . If
6 the ordered party does not request a hearing, an administrative law
7 judge shall issue an order assessing a penalty. Strict adherence to
8 the commissioner's recommended penalty assessment is not
9 required. If no hearing is requested, the notice and order of
10 assessment shall become a final order after the expiration of **[the]** a
11 35-day period after issuance of the order of assessment. Payment of
12 the assessment is due when a final order is issued or the notice
13 becomes a final order. The authority to levy an administrative order
14 is in addition to all other enforcement provisions in P.L.1973,
15 c.309, and the payment of any assessment shall not be deemed to
16 affect the availability of any other enforcement provisions in
17 connection with the violation for which the assessment is levied.
18 The department may compromise any civil administrative penalty
19 assessed under this section in an amount and with conditions the
20 department determines appropriate. A civil administrative penalty
21 assessed, including a portion thereof required to be paid pursuant to
22 a payment schedule approved by the department, which is not paid
23 within 90 days of the date that payment of the penalty is due, shall
24 be subject to an interest charge on the amount of the penalty, or
25 portion thereof, which shall accrue as of the date payment is due. If
26 the penalty is contested, no additional interest charge shall accrue
27 on the amount of the penalty until after the date on which a final
28 order is issued. Interest charges assessed and collectible pursuant to
29 this subsection shall be based on the rate of interest on judgments
30 provided in the New Jersey Rules of Court.

31 e. Any person who violates any provision of P.L.1973, c.309,
32 or any rule or regulation adopted, or permit or order issued pursuant
33 thereto, or an order issued pursuant to subsection b. of this section,
34 or a court order issued pursuant to subsection c. of this section, or
35 who fails to pay in full a civil administrative penalty levied
36 pursuant to subsection d. of this section, or who fails to make a
37 payment pursuant to a penalty payment schedule entered into with
38 the department, or who knowingly makes any false or misleading
39 statement on any application, record, report, or other document
40 required to be submitted to the department, shall be subject, upon
41 order of a court, to a civil penalty not to exceed \$25,000 for each
42 day during which the violation continues. Any civil penalty
43 imposed pursuant to this subsection may be collected with costs in a
44 summary proceeding pursuant to the "Penalty Enforcement Law of
45 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any
46 penalties, costs or interest charges, the court may assess against the
47 violator the amount of economic benefit accruing to the violator

1 from the violation. The Superior Court and municipal courts shall
2 have jurisdiction to enforce the "Penalty Enforcement Law of
3 1999."

4 f. A person who purposely, knowingly or recklessly violates
5 any provision of P.L.1973, c.309, or any rule or regulation adopted,
6 or permit or order issued pursuant thereto, shall be guilty, upon
7 conviction, of a crime of the third degree and shall, notwithstanding
8 the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine
9 of not less than \$5,000 nor more than \$50,000 per day of violation,
10 or by imprisonment, or both. A person who purposely, knowingly,
11 or recklessly makes a false statement, representation, or
12 certification in any application, record, or other document filed or
13 required to be maintained under any provision of P.L.1973, c.309,
14 or any rule or regulation adopted, or permit or order issued pursuant
15 thereto, or who falsifies, tampers with or purposely, knowingly, or
16 recklessly renders inaccurate, any monitoring device or method
17 required to be maintained pursuant to P.L.1973, c.309, or any rule
18 or regulation adopted, or permit or order issued pursuant thereto,
19 shall be guilty, upon conviction, of a crime of the third degree and
20 shall, notwithstanding the provisions of subsection b. of
21 N.J.S.2C:43-3, be subject to a fine of not more than \$50,000 per day
22 of violation, or by imprisonment, or both.

23 g. All penalties collected pursuant to this section shall be
24 deposited in the "Endangered and Nongame Species of Wildlife
25 Conservation Fund," established pursuant to section 1 of P.L.1981,
26 c.170 (C.54A:9-25.2), and kept separate from other receipts
27 deposited therein, and appropriated to the department for the
28 purposes outlined in that fund.

29 h. Each applicant or permittee, upon the request of the
30 department, shall provide any information the department or the
31 commissioner requires to determine compliance with any provision
32 of P.L.1973, c.309, or of any rule or regulation adopted, or permit
33 or order issued pursuant thereto.
34 (cf: P.L.2007, c.246, s.7)

35
36 11. Section 16 of P.L.1981, c.262 (C.58:1A-16) is amended to
37 read as follows:

38 16. a. Whenever, on the basis of available information, the
39 commissioner finds that a person is in violation of any of the
40 provisions of P.L.1981, c.262, or any rule or regulation adopted, or
41 permit or order issued pursuant thereto, the commissioner may:

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

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

46 (3) **【Levy】** Recommend the assessment of a civil administrative
47 penalty in accordance with subsection d. of this section;

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

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

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

7 b. Whenever, on the basis of available information, the
8 commissioner finds that a person is in violation of any of the
9 provisions of P.L.1981, c.262, or any rule or regulation adopted, or
10 permit or order issued pursuant thereto, the commissioner may issue
11 an order: (1) specifying the provision or provisions of P.L.1981,
12 c.262, or the rule or regulation adopted, or order or permit issued
13 pursuant thereto, of which the person is in violation; (2) citing the
14 action that constituted the violation; (3) requiring compliance with
15 the provision of P.L.1981, c.262, or the rule or regulation adopted,
16 or order or permit issued pursuant thereto, of which the person is in
17 violation; (4) requiring the restoration to address any adverse
18 effects resulting from the violation; and (5) giving notice to the
19 person of a right to a hearing on the matters contained in the order.

20 c. The commissioner is authorized to commence a civil action
21 in Superior Court for appropriate relief from a violation of the
22 provisions of P.L.1981, c.262, or any rule or regulation adopted, or
23 permit or order issued pursuant thereto. This relief may include,
24 singly or in combination:

25 (1) A temporary or permanent injunction;

26 (2) Recovery of reasonable costs of any investigation,
27 inspection, sampling or monitoring survey that led to the discovery
28 of the violation, and for the reasonable costs of preparing and
29 bringing a civil action commenced under this subsection;

30 (3) Recovery of reasonable costs incurred by the State in
31 removing, correcting, or terminating the adverse effects resulting
32 from any violation of P.L.1981, c.262 for which a civil action has
33 been commenced and brought under this subsection;

34 (4) An order requiring the restoration of any adverse effects
35 resulting from any unauthorized regulated activity for which a civil
36 action is commenced under this subsection.

37 d. The commissioner is authorized to **[assess]** recommend to
38 an administrative law judge the assessment of a civil administrative
39 penalty of not more than \$25,000 for each violation of the
40 provisions of P.L.1981, c.262, or any rule or regulation adopted, or
41 permit or order issued pursuant thereto, and each day during which
42 each violation continues shall constitute an additional, separate, and
43 distinct offense. Any amount assessed under this subsection shall
44 fall within a range established by regulation by the commissioner
45 for violations of similar type, seriousness, duration, and conduct;
46 provided, however, that prior to the adoption of the regulation, the
47 commissioner may, on a case-by-case basis, **[assess]** recommend

1 the assessment of civil administrative penalties up to a maximum of
2 \$25,000 per day for each violation, utilizing the criteria set forth
3 herein. In addition to any administrative penalty assessed under
4 this subsection and notwithstanding the \$25,000 maximum penalty
5 set forth above, the commissioner may **[assess]** recommend the
6 assessment of any economic benefits from the violation gained by
7 the violator. Prior to assessment of a penalty under this subsection,
8 the property owner or person committing the violation shall be
9 notified by certified mail or personal service that the penalty is
10 being **[assessed]** recommended for assessment. The notice shall
11 include a reference to the section of the statute, regulation, or order
12 or permit condition violated; recite the facts alleged to constitute a
13 violation; state the basis for the amount of the civil penalties **[to be**
14 **assessed]** recommended for assessment; and affirm the rights of the
15 alleged violator to a hearing. The ordered party shall have 35
16 calendar days from receipt of the notice within which to deliver to
17 the commissioner a written request for a hearing. After the hearing
18 and upon finding that a violation has occurred, the **[commissioner]**
19 administrative law judge may issue a final order after assessing the
20 amount of the fine **[specified in the notice]**. If the ordered party
21 does not request a hearing, an administrative law judge shall
22 issue an order assessing a penalty. Strict adherence to the
23 commissioner's recommended penalty assessment is not required.
24 If no hearing is requested, the notice and order of assessment shall
25 become a final order after the expiration of **[the]** a 35-day period
26 after issuance of the order of assessment. Payment of the
27 assessment is due when a final order is issued or the notice and
28 order of assessment becomes a final order. The authority to levy an
29 administrative order is in addition to all other enforcement
30 provisions in P.L.1981, c.262, and the payment of any assessment
31 shall not be deemed to affect the availability of any other
32 enforcement provisions in connection with the violation for which
33 the assessment is levied. The department may compromise any
34 civil administrative penalty assessed under this section in an
35 amount and with conditions the department determines appropriate.
36 A civil administrative penalty assessed, including a portion thereof
37 required to be paid pursuant to a payment schedule approved by the
38 department, which is not paid within 90 days of the date that
39 payment of the penalty is due, shall be subject to an interest charge
40 on the amount of the penalty, or portion thereof, which shall accrue
41 as of the date payment is due. If the penalty is contested, no
42 additional interest charge shall accrue on the amount of the penalty
43 until after the date on which a final order is issued. Interest charges
44 assessed and collectible pursuant to this subsection shall be based
45 on the rate of interest on judgments provided in the New Jersey
46 Rules of Court.

1 e. Any person who violates any provision of P.L.1981, c.262,
2 or any rule or regulation adopted, or permit or order issued pursuant
3 thereto, or an order issued pursuant to subsection b. of this section,
4 or a court order issued pursuant to subsection c. of this section, or
5 who fails to pay in full a civil administrative penalty levied
6 pursuant to subsection d. of this section, or who fails to make a
7 payment pursuant to a penalty payment schedule entered into with
8 the department, or who knowingly makes any false or misleading
9 statement on any application, record, report, or other document
10 required to be submitted to the department, shall be subject, upon
11 order of a court, to a civil penalty not to exceed \$25,000 for each
12 day during which the violation continues. Any civil penalty
13 imposed pursuant to this subsection may be collected with costs in a
14 summary proceeding pursuant to the "Penalty Enforcement Law of
15 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any
16 penalties, costs or interest charges, the court may assess against the
17 violator the amount of economic benefit accruing to the violator
18 from the violation. The Superior Court shall have jurisdiction to
19 enforce the provisions of the "Penalty Enforcement Law of 1999" in
20 connection with this act.

21 f. A person who purposely, knowingly or recklessly violates
22 any provision of P.L.1981, c.262, or any rule or regulation adopted,
23 or permit or order issued pursuant thereto, shall be guilty, upon
24 conviction, of a crime of the third degree and shall, notwithstanding
25 the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine
26 of not less than \$5,000 nor more than \$50,000 per day of violation,
27 or by imprisonment, or both. A person who purposely, knowingly,
28 or recklessly makes a false statement, representation, or
29 certification in any application, record, or other document filed or
30 required to be maintained under any provision of P.L.1981, c.262,
31 or any rule or regulation adopted, or permit or order issued pursuant
32 thereto, or who falsifies, tampers with or purposely, knowingly, or
33 recklessly renders inaccurate, any monitoring device or method
34 required to be maintained pursuant to the provisions of P.L.1981,
35 c.262, or any rule or regulation adopted, or permit or order issued
36 pursuant thereto, shall be guilty, upon conviction, of a crime of the
37 third degree and shall, notwithstanding the provisions of subsection
38 b. of N.J.S.2C:43-3, be subject to a fine of not more than \$50,000
39 per day of violation, or by imprisonment, or both.

40 g. Each applicant or permittee shall provide, upon the request
41 of the department, any information the department requires to
42 determine compliance with the provisions of P.L.1981, c.262, or
43 any rule or regulation adopted, or permit or order issued pursuant
44 thereto.

45 (cf: P.L.2007, c.246, s.8)

46

47 12. R.S.58:4-6 is amended to read as follows:

1 58:4-6. a. Whenever, on the basis of available information, the
2 Commissioner of Environmental Protection finds that a person has
3 violated any provision of the "Safe Dam Act," P.L.1981, c.249
4 (C.58:4-8.1 et al.), or any rule or regulation adopted, or permit or
5 order issued pursuant thereto, the commissioner may:

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

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

10 (3) **【Levy】** Recommend the assessment of a civil administrative
11 penalty in accordance with subsection d. of this section; or

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

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

16 Recourse to any of the remedies available under this section shall
17 not preclude recourse to any of the other remedies prescribed in this
18 section or by any other applicable law.

19 b. Whenever, on the basis of available information, the
20 commissioner finds a person in violation of any provision of
21 P.L.1981, c.249, or any rule or regulation adopted, or permit or
22 order issued pursuant thereto, the commissioner may issue an
23 administrative order: (1) specifying the provision or provisions of
24 the law, rule, regulation, permit or order, of which the person is in
25 violation; (2) citing the action which constituted the violation; (3)
26 requiring compliance with the provision or provisions violated; (4)
27 requiring the restoration of the area which is the site of the
28 violation; and (5) providing notice to the person of the right to a
29 hearing on the matters contained in the order.

30 c. The commissioner is authorized to institute a civil action in
31 Superior Court for appropriate relief from any violation of any
32 provision of P.L.1981, c.249, or any rule or regulation adopted, or
33 permit or order issued pursuant thereto. Such relief may include,
34 singly or in combination:

35 (1) A temporary or permanent injunction, including an order or
36 judgment as will effectually secure the persons interested from
37 danger of loss from the breaking of a dam. The court may proceed
38 in the action in a summary manner or otherwise;

39 (2) Recovery of the reasonable costs of any investigation,
40 inspection, or monitoring survey which led to the discovery of the
41 violation, and for the reasonable costs of preparing and bringing a
42 civil action commenced under this subsection;

43 (3) Recovery of reasonable costs incurred by the State in
44 removing, correcting, or terminating the adverse effects resulting
45 from any violation for which a civil action has been commenced
46 and brought under this subsection;

1 (4) Recovery of compensatory damages for any loss or
2 destruction of natural resources, including but not limited to,
3 wildlife, fish, aquatic life, habitat, plants, or historic or
4 archeological resources, and for any other actual damages caused by
5 a violation for which a civil action has been commenced and
6 brought under this subsection. Assessments under this subsection
7 shall be paid to the "Environmental Services Fund," established
8 pursuant to section 5 of P.L.1975, c.232 (C.13:1D-33), and kept
9 separate from other receipts deposited therein, and appropriated to
10 the department for the removal of dams in the State, except that
11 compensatory damages to privately held resources shall be paid by
12 specific order of the court to any persons who have been aggrieved
13 by the unauthorized regulated activity;

14 (5) An order requiring the violator restore the site of the
15 violation to the maximum extent practicable and feasible or, in the
16 event that restoration of the site of the violation is not practicable or
17 feasible, provide for off-site restoration alternatives as approved by
18 the department.

19 d. The commissioner is authorized to **[assess]** recommend to
20 an administrative law judge the assessment of a civil administrative
21 penalty of not more than \$25,000 for each violation of any
22 provision of P.L.1981, c.249, or any rule or regulation adopted, or
23 permit or order issued pursuant thereto, and each day during which
24 each violation continues shall constitute an additional, separate, and
25 distinct offense. Any amount assessed under this subsection shall
26 fall within a range established by regulation by the commissioner
27 for violations of similar type, seriousness, duration, and conduct;
28 provided, however, that prior to adoption of the regulation, the
29 commissioner may, on a case-by-case basis, **[assess]** recommend
30 the assessment of civil administrative penalties up to a maximum of
31 \$25,000 per day for each violation, utilizing the criteria set forth
32 herein. In addition to any administrative penalty to be assessed
33 under this subsection, and notwithstanding the \$25,000 maximum
34 penalty set forth above, the commissioner may **[assess]** recommend
35 the assessment of any economic benefits from the violation gained
36 by the violator. Prior to assessment of a penalty under this
37 subsection, the property owner or person committing the violation
38 shall be notified by certified mail or personal service that the
39 penalty is being **[assessed]** recommended for assessment. The
40 notice shall: (1) identify the section of the law, rule, regulation,
41 permit or order violated; (2) recite the facts alleged to constitute a
42 violation; (3) state the basis for the amount of the civil penalties to
43 be assessed; and (4) affirm the rights of the alleged violator to a
44 hearing. The ordered party shall have 35 days from receipt of the
45 notice within which to deliver to the commissioner a written request
46 for a hearing. After the hearing and upon finding that a violation
47 has occurred, the **[commissioner]** administrative law judge may

1 issue a final order specifying the amount of the fine imposed. If the
2 ordered party does not request a hearing, an administrative law
3 judge shall issue an order assessing a penalty. Strict adherence to
4 the commissioner's recommended penalty assessment is not
5 required. If no hearing is requested, the notice and order of
6 assessment shall become final after the expiration of ~~the~~ a 35-day
7 period after issuance of the order of assessment. Payment of the
8 assessment is due when a final order is issued or the notice and
9 order of assessment becomes a final order. The authority to levy an
10 administrative penalty is in addition to all other enforcement
11 provisions in this act and in any other applicable law, rule, or
12 regulation, and the payment of any assessment shall not be deemed
13 to affect the availability of any other enforcement provisions in
14 connection with the violation for which the assessment is levied.
15 The department may compromise any civil administrative penalty
16 assessed under this section in an amount and with conditions the
17 department determines appropriate. A civil administrative penalty
18 assessed, including a portion thereof required to be paid pursuant to
19 a payment schedule approved by the department, which is not paid
20 within 90 days of the date that payment of the penalty is due, shall
21 be subject to an interest charge on the amount of the penalty, or
22 portion thereof, which shall accrue as of the date payment is due. If
23 the penalty is contested, no additional interest charge shall accrue
24 on the amount of the penalty until after the date on which a final
25 order is issued. Interest charges assessed and collectible pursuant to
26 this subsection shall be based on the rate of interest on judgments
27 provided in the New Jersey Rules of Court.

28 e. A person who violates any provision of P.L.1981, c.249 or
29 any rule or regulation adopted, or permit or order issued pursuant
30 thereto, or an administrative order issued pursuant to subsection b.
31 of this section, or a court order issued pursuant to subsection c. of
32 this section, or who fails to pay a civil administrative penalty in full
33 pursuant to subsection d. of this section, or who fails to make a
34 payment pursuant to a penalty payment schedule entered into with
35 the department, or who knowingly makes any false or misleading
36 statement on any application, record, report, or other document
37 required to be submitted to the department, shall be subject, upon
38 order of a court, to a civil penalty not to exceed \$25,000 per day of
39 the violation, and each day during which the violation continues
40 shall constitute an additional, separate, and distinct offense. Any
41 civil penalty imposed pursuant to this subsection may be collected
42 with costs in a summary proceeding pursuant to the "Penalty
43 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
44 In addition to any penalties, costs or interest charges, the court may
45 assess against the violator the amount of economic benefit accruing
46 to the violator from the violation. The Superior Court and the
47 municipal court shall have jurisdiction to enforce the provisions of

1 the "Penalty Enforcement Law of 1999" in connection with this
2 section.

3 f. A person who purposely, knowingly or recklessly violates
4 any provision of P.L.1981, c.249, or any rule or regulation adopted,
5 or permit or order issued pursuant thereto, shall be guilty, upon
6 conviction, of a crime of the third degree and, notwithstanding any
7 provision of N.J.S.2C:43-3 to the contrary, shall be subject to a fine
8 of not less than \$5,000 nor more than \$50,000 per day of violation,
9 or by imprisonment, or both, in addition to any other applicable
10 penalties and provisions under Title 2C of the New Jersey Statutes.
11 A person who purposely, knowingly, or recklessly makes a false
12 statement, representation, or certification in any application, record,
13 or other document filed or required to be maintained under the
14 provisions of P.L.1981, c.249, or any rule or regulation adopted, or
15 permit or order issued pursuant thereto, or who falsifies, tampers
16 with or purposely, knowingly, or recklessly renders inaccurate, any
17 monitoring device or method required to be maintained pursuant to
18 the provisions of P.L.1981, c.249, or of any rule or regulation
19 adopted, or permit or order issued pursuant thereto, shall be guilty,
20 upon conviction, of a crime of the third degree and, notwithstanding
21 any provision of N.J.S.2C:43-3 to the contrary, shall be subject to a
22 fine of not more than \$50,000, or by imprisonment, or both, in
23 addition to any other applicable penalties and provisions under Title
24 2C of the New Jersey Statutes.

25 g. In addition to the penalties prescribed in this section, the
26 commissioner may record a notice for a violation of any provision
27 of P.L.1981, c.249, or any rule or regulation adopted, or permit or
28 order issued pursuant thereto, which shall be recorded on the deed
29 of the property wherein the violation occurred, on order of the
30 commissioner, by the clerk or register of deeds and mortgages of
31 the county wherein the affected property is located and shall remain
32 attached thereto until such time as the violation has been remedied
33 and the commissioner orders the notice of violation removed. Any
34 fees or other charges that are assessed by either the clerk or register
35 of deeds and mortgages of the county wherein the affected property
36 is located or the department for the recording of the notice of
37 violation on the deed required pursuant to this subsection shall be
38 paid by the owner of the affected property or the person committing
39 the violation. The commissioner shall immediately order the notice
40 removed once the violation is remedied or upon conditions set by
41 the commissioner.

42 h. Each owner or person having control of a reservoir or dam
43 shall provide, upon request of the department, any information the
44 department requires to determine compliance with any provision of
45 P.L.1981, c.249, or any rule or regulation adopted, or permit or
46 order issued pursuant thereto.

47 i. (Deleted by amendment, P.L.2007, c.246).

1 j. All penalties collected pursuant to this section or sums
2 collected pursuant to R.S.58:4-5 shall be deposited in the
3 "Environmental Services Fund," established pursuant to section 5 of
4 P.L.1975, c.232 (C.13:1D-33), and kept separate from other receipts
5 deposited therein, and appropriated to the department for the
6 removal of dams in the State.

7 k. The department shall have the authority to enter any
8 property, facility, premises, or site for the purpose of conducting
9 inspections to determine the condition of any dam, or to conduct
10 inspections of ordered repairs or to otherwise determine compliance
11 with the provisions of P.L.1981, c.249.
12 (cf: P.L.2007, c.246, s.9)

13

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

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

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

25 (b) **[levy]** recommend the assessment of a civil administrative
26 penalty in accordance with subsection c. of this section; or

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

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

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

34 (1) a temporary or permanent injunction;

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

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

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

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

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

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

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

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

12 (c) the amount of the civil administrative penalty **【to be**
13 **imposed】** recommended for assessment;

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

16 (2) (a) A violator shall have 20 calendar days following receipt
17 of notice within which to request a hearing on any matter contained
18 in the notice, and shall comply with all procedures for requesting a
19 hearing. Failure to submit a timely request or to comply with all
20 departmental procedures shall constitute grounds for denial of a
21 hearing request. After a hearing and upon a finding that a violation
22 has occurred, the **【department】** administrative law judge shall issue
23 a final order assessing the amount of the civil administrative penalty
24 **【specified in the notice】**. If the ordered party does not request a
25 hearing, an administrative law judge shall issue an order assessing a
26 penalty. Strict adherence to the commissioner's recommended
27 penalty assessment is not required . If a violator does not request a
28 hearing or fails to satisfy the statutory and administrative
29 requirements for requesting a hearing, the **【notice】** order of
30 assessment of a civil administrative penalty shall become a final
31 order on the 21st calendar day following receipt of the **【notice】**
32 order of assessment by the violator. If the department denies a
33 hearing request, the notice of denial shall become a final order upon
34 receipt of the notice by the violator.

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

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

41 (3) If a civil administrative penalty imposed pursuant to this
42 section is not paid within 30 days of the date that the penalty is due
43 and owing, and the penalty is not contested by the person against
44 whom the penalty has been assessed, or the person fails to make a
45 payment pursuant to a payment schedule entered into with the
46 department, an interest charge shall accrue on the amount of the
47 penalty from the 30th day that amount was due and owing. In the

1 case of an appeal of a civil administrative penalty, if the amount of
2 the penalty is upheld, in whole or in part, the rate of interest shall be
3 calculated on that amount as of the 30th day from the date the
4 amount was due and owing under the administrative order. The rate
5 of interest shall be that established by the New Jersey Supreme
6 Court for interest rates on judgments, as set forth in the Rules
7 Governing the Courts of the State of New Jersey.

8 (4) The department may assess and recover, by civil
9 administrative order, the costs of any investigation, cleanup or
10 removal, and the reasonable costs of preparing and successfully
11 enforcing a civil administrative penalty pursuant to this subsection.
12 The assessment may be recovered at the same time as a civil
13 administrative penalty, and shall be in addition to the penalty
14 assessment.

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

25 e. All conveyances used or intended for use in the willful
26 discharge of any hazardous substance are subject to forfeiture to the
27 State pursuant to the provisions of P.L.1981, c.387 (C.13:1K-1 et
28 seq.).

29 (cf: P.L.1990, c.75, s.1)

30

31 14. Section 10 of P.L.1977, c.74 (C.58:10A-10) is amended to
32 read as follows:

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

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

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

39 (3) **【Levy】** Recommend the assessment of a civil administrative
40 penalty in accordance with subsection d. of this section; or

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

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

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

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

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

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

18 (1) A temporary or permanent injunction;

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

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

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

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

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

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

12 (b) In adopting rules for a uniform penalty policy for
13 determining the amount of a penalty to be assessed, the
14 commissioner shall take into account the type, seriousness,
15 including extent, toxicity, and frequency of a violation based upon
16 the harm to public health or the environment resulting from the
17 violation, the economic benefits from the violation gained by the
18 violator, the degree of cooperation or recalcitrance of the violator in
19 remedying the violation, any measures taken by the violator to
20 avoid a repetition of the violation, any unusual or extraordinary
21 costs directly or indirectly imposed on the public by the violation
22 other than costs recoverable pursuant to paragraph (3) or (4) of
23 subsection c. of this section, and any other pertinent factors that the
24 commissioner determines measure the seriousness or frequency of
25 the violation, or conduct of the violator.

26 (c) In addition to the recommendation of the assessment of a
27 civil administrative penalty, the commissioner may, by
28 administrative order and upon an appropriate finding, **[assess]**
29 recommend the assessment of a violator for costs authorized
30 pursuant to paragraphs (2) and (3) of subsection c. of this section.

31 (2) No assessment shall be levied pursuant to this subsection
32 until after the discharger has been notified by certified mail or
33 personal service. The notice shall include a reference to the section
34 of the statute, regulation, order or permit condition violated; a
35 concise statement of the facts alleged to constitute a violation; a
36 statement of the amount of the civil penalties **[to be imposed]**
37 recommended for assessment; and a statement of the party's right to
38 a hearing. The ordered party shall have 20 days from receipt of the
39 notice within which to deliver to the commissioner a written request
40 for a hearing. After the hearing and upon finding that a violation
41 has occurred, the **[commissioner]** administrative law judge may
42 issue a final order after assessing the amount of the fine **[specified**
43 **in the notice]**. If the ordered party does not request a hearing, an
44 administrative law judge shall issue an order assessing a penalty.
45 Strict adherence to the commissioner's recommended penalty
46 assessment is not required. If no hearing is requested, then the
47 notice and order of assessment shall become a final order after the

1 expiration of ~~the~~ a 20-day period after issuance of the order of
2 assessment. Payment of the assessment is due when a final order is
3 issued or the notice and order of assessment becomes a final order.

4 (3) If a civil administrative penalty imposed pursuant to this
5 subsection is not paid within 30 days of the date that the penalty is
6 due and owing, and the penalty is not contested by the person
7 against whom the penalty has been assessed, or the person fails to
8 make a payment pursuant to a payment schedule entered into with
9 the department, an interest charge shall accrue on the amount of the
10 penalty due and owing from the 30th day after the date on which the
11 penalty was due and owing. The rate of interest shall be that
12 established by the New Jersey Supreme Court for interest rates on
13 judgments, as set forth in the Rules Governing the Courts of the
14 State of New Jersey.

15 (4) The authority to levy a civil administrative penalty is in
16 addition to all other enforcement provisions in this act, and the
17 payment of any assessment shall not be deemed to affect the
18 availability of any other enforcement provisions in connection with
19 the violation for which the assessment is levied. Any civil
20 administrative penalty assessed under this section may be
21 compromised by the commissioner upon the posting of a
22 performance bond by the violator, or upon such terms and
23 conditions as the commissioner may establish by regulation, except
24 that the amount compromised shall not be more than 50% of the
25 assessed penalty, and in no instance shall the amount of that
26 compromised penalty be less than the statutory minimum amount, if
27 applicable, prescribed in section 6 of P.L.1990, c.28 (C.58:10A-
28 10.1). In the case of a violator who is a local agency that enters into
29 an administrative consent order, the terms of which require the local
30 agency to take prescribed measures to comply with its permit, the
31 commissioner shall have full discretion to compromise the amount
32 of penalties assessed or due for violations occurring during a period
33 up to 24 months preceding the entering into the administrative
34 consent order; except that the amount of the compromised penalty
35 may not be less than the statutory minimum amount, if applicable,
36 prescribed in section 6 of P.L.1990, c.28 (C.58:10A-10.1). A civil
37 administrative penalty assessed against a local agency for a
38 violation of an administrative consent order may not be
39 compromised by more than 50% of the assessed penalty. In no
40 instance shall the amount of a compromised penalty assessed
41 against a local agency be less than the statutory minimum amount,
42 if applicable, prescribed in section 6 of P.L.1990, c.28 (C.58:10A-
43 10.1). The commissioner shall not compromise the amount of any
44 component of a civil administrative penalty which represents the
45 economic benefit gained by the violator from the violation.

46 (5) A person, other than a local agency, appealing a penalty
47 assessed against that person in accordance with this subsection,

1 whether contested as a contested case pursuant to P.L.1968, c.410
2 (C.52:14B-1 et seq.) or by appeal to a court of competent
3 jurisdiction, shall, as a condition of filing the appeal, post with the
4 commissioner a refundable bond, or other security approved by the
5 commissioner, in the amount of the civil administrative penalty
6 assessed. If the [department's] assessed penalty is upheld in full or
7 in part, the department shall be entitled to a daily interest charge on
8 the amount of the judgment from the date of the posting of the
9 security with the commissioner and until paid in full. The rate of
10 interest shall be that established by the New Jersey Supreme Court
11 for interest rates on judgments, as set forth in the Rules Governing
12 the Courts of the State of New Jersey. In addition, if the amount of
13 the penalty [assessed by the department] is upheld in full in an
14 appeal of the assessment at an administrative hearing or at a court
15 of competent jurisdiction, the person appealing the penalty shall
16 reimburse the department for all reasonable costs incurred by the
17 department in preparing and litigating the imposition of the
18 assessment, except that no litigation costs shall be imposed where
19 the appeal ultimately results in a reduction or elimination of the
20 assessed penalty.

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

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

26 (b) shall constitute a debt of the violator or discharger and the
27 civil administrative penalty may be docketed with the clerk of the
28 Superior Court, and shall have the same standing as any judgment
29 docketed pursuant to N.J.S.2A:16-1; except that no lien shall attach
30 to the real property of a violator pursuant to this subsection if the
31 violator posts a refundable bond or other security with the
32 commissioner pursuant to an appeal of a final order to the Appellate
33 Division of the Superior Court. No lien shall attach to the property
34 of a local agency.

35 (7) The commissioner shall refer to the Attorney General and
36 the county prosecutor of the county in which the violations occurred
37 the record of violations of any permittee determined to be a
38 significant noncomplier.

39 e. Any person who violates this act or an administrative order
40 issued pursuant to subsection b. or a court order issued pursuant to
41 subsection c., or who fails to pay a civil administrative penalty in
42 full pursuant to subsection d., or to make a payment pursuant to a
43 payment schedule entered into with the department, shall be subject
44 upon order of a court to a civil penalty not to exceed \$50,000.00 per
45 day of such violation, and each day's continuance of the violation
46 shall constitute a separate violation. Any penalty incurred under
47 this subsection may be recovered with costs, and, if applicable,

1 interest charges, in a summary proceeding pursuant to "the penalty
2 enforcement law" (N.J.S.2A:58-1 et seq.). In addition to any civil
3 penalties, costs or interest charges, the court, in accordance with
4 paragraph (5) of subsection c. of this section, may assess against a
5 violator the amount of any actual economic benefits accruing to the
6 violator from the violation. The Superior Court shall have
7 jurisdiction to enforce "the penalty enforcement law" in conjunction
8 with this act.

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

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

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

38 (3) Any person who negligently violates this act, including
39 making a false statement, representation, or certification in any
40 application, record, or other document filed or required to be
41 maintained under this act, or by falsifying, tampering with, or
42 rendering inaccurate any monitoring device or method required to
43 be maintained pursuant to this act, or by failing to submit a
44 discharge monitoring report, or any portion thereof, required
45 pursuant to this act, shall, upon conviction, be guilty of a crime of
46 the fourth degree, and shall, notwithstanding the provisions of
47 subsection b. of N.J.S.2C:43-3, be subject to a fine of not less than

1 \$5,000 nor more than \$50,000 per day of violation, or by
2 imprisonment, or by both.

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

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

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

21 h. The amendatory portions of this section, as set forth in
22 P.L.1990, c.28 (C.58:10A-10.1 et al.), except for subsection f. of
23 this section, shall not apply to violations occurring prior to July 1,
24 1991.

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

26

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

29 6. a. If a person violates any of the provisions of this act or
30 any rule or regulation adopted, or order issued, thereunder, the
31 department may institute a civil action in a court of competent
32 jurisdiction for injunctive or other appropriate relief to prohibit and
33 prevent the violation, and the court may proceed in the action in a
34 summary manner.

35 b. Any person who violates the provisions of this act, or any
36 rule or regulation adopted, or order issued, hereunder, is liable to a
37 civil administrative penalty of not more than \$5,000 for the first
38 offense, not more than \$10,000 for the second offense, and \$25,000
39 for the third and each subsequent offense. If the violation is of a
40 continuing nature, each day of violation subsequent to receipt of an
41 order to cease the violation constitutes an additional, separate and
42 distinct offense. No civil administrative penalty shall be levied
43 except subsequent to the notification of the violator by certified
44 mail or personal service. The notice shall include a reference to the
45 section of the statute, regulation, order or permit condition violated;
46 a concise statement of the facts alleged to constitute the violation; a
47 statement of the amount of the civil penalty **【to be imposed】**

1 recommended for assessment; and a statement of the violator's right
2 to a hearing. The violator shall have 20 days from receipt of notice
3 within which to deliver to the department a written request for a
4 hearing. Subsequent to the hearing and upon a finding that a
5 violation has occurred, the **[department]** administrative law judge
6 may issue a final order assessing the amount of the penalty. If the
7 ordered party does not request a hearing, an administrative law
8 judge shall issue an order assessing a penalty. Strict adherence to
9 the commissioner's recommended penalty assessment is not
10 required. If no hearing is requested, the notice and order of
11 assessment shall become a final order upon the expiration of **[the]** a
12 20-day period after the issuance of the order of assessment.
13 Payment of the penalty is due when a final order is issued or when
14 the notice and order of assessment becomes a final order.
15 Agreement to, or payment of a civil administrative penalty shall not
16 be deemed to affect the availability of any other enforcement
17 provision in connection with the violation for which the penalty is
18 levied.

19 c. Any person who violates the provisions of this act, is liable
20 to a civil penalty of not more than \$5,000 for the first offense,
21 not more than \$10,000 for the second offense, and \$25,000 for
22 the third and each subsequent offense. Any person violating an
23 administrative order issued pursuant to subsection b. of this section,
24 or a court order issued pursuant to subsection a. of this section, or
25 who fails to pay a civil administrative penalty when due and owing
26 as provided in subsection b. of this section, is subject to a civil
27 penalty not to exceed \$25,000 per day of the violation. Each day's
28 continuance of a violation constitutes a separate and distinct
29 violation. Any penalty imposed under this subsection may be
30 recovered with costs in a summary proceeding pursuant to "the
31 penalty enforcement law" (N.J.S.2A:58-1 et seq.). The Law
32 Division of the Superior Court shall have jurisdiction to enforce
33 "the penalty enforcement law."

34 d. The department may compromise and settle any claim for a
35 penalty under this section in such amount as the department may
36 determine to be appropriate and equitable under all of the
37 circumstances.

38 e. Any person who fails to contest or to pay, in whole or in
39 part, a penalty imposed pursuant to this section, or who fails to
40 agree to a payment schedule therefor, within 30 days of the date
41 that the penalty is due and owing, shall be subject to an interest
42 charge on the amount of the penalty from the date that the amount
43 was due and owing. The rate of interest shall be that established by
44 the New Jersey Supreme Court for interest rates on judgments, as
45 set forth in the Rules Governing the Courts of the State of New
46 Jersey.

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

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

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

12
13 16. Section 3 of P.L.2009, c.282 (C.58:10A-49.1) is amended to
14 read as follows:

15 3. a. Whenever the Commissioner of Environmental Protection
16 finds that a person has intentionally dumped material into the ocean
17 waters within the jurisdiction of this State, or into the waters
18 outside the jurisdiction of this State, which material enters the
19 ocean waters within the jurisdiction of this State, the commissioner
20 shall:

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

23 (2) **[levy]** recommend the assessment of a civil administrative
24 penalty in accordance with subsection c. of this section;

25 (3) bring an action for a civil penalty in accordance with
26 subsection d. of this section; or

27 (4) petition the Attorney General to bring a criminal action in
28 accordance with section 3 of P.L.1988, c.61 (C.58:10A-49).

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

31 b. The commissioner may institute an action or proceeding in
32 the Superior Court for injunctive and other relief, including the
33 appointment of a receiver for any violation of P.L.1988, c.61
34 (C.58:10A-47 et seq.), or of any rule or regulation adopted pursuant
35 thereto, and the court may proceed in the action in a summary
36 manner. In any such proceeding the court may grant temporary or
37 interlocutory relief.

38 Such relief may include, singly or in combination:

39 (1) a temporary or permanent injunction;

40 (2) assessment of the violator for the costs of any investigation,
41 inspection, or monitoring survey that led to the establishment of the
42 violation, and for the reasonable costs of preparing and litigating
43 the case under this subsection;

44 (3) assessment of the violator for any cost incurred by the State
45 in removing, correcting, or terminating the adverse effects upon
46 environmental quality or public health resulting from any violation
47 of P.L.1988, c.61 (C.58:10A-47 et seq.), or any rule or regulation

1 adopted pursuant thereto, for which the action under this subsection
2 may have been brought;

3 (4) assessment against the violator of compensatory damages for
4 any loss or destruction of wildlife, fish or aquatic life, and for any
5 other actual damages caused by any violation of P.L.1988, c.61
6 (C.58:10A-47 et seq.), or any rule or regulation adopted pursuant
7 thereto, for which the action under this subsection may have been
8 brought; and

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

17 Assessments under this subsection shall be paid to the State
18 Treasurer, except that compensatory damages may be paid by
19 specific order of the court to any persons who have been aggrieved
20 by the violation.

21 c. The commissioner may **[assess]** recommend to an
22 administrative law judge the assessment of a civil administrative
23 penalty of not more than \$100,000 for each violation. Each day that
24 a violation continues shall constitute an additional, separate, and
25 distinct offense. No assessment may be levied pursuant to this
26 section until after the violator has been notified by certified mail or
27 personal service. The notice shall include a reference to the section
28 of the statute, rule, regulation, or order violated, a concise statement
29 of the facts alleged to constitute a violation, a statement of the
30 amount of the civil administrative penalties **[to be imposed]**
31 recommended for assessment, and a statement of the party's right to
32 a hearing. The ordered party shall have 20 calendar days from
33 receipt of the notice within which to deliver to the commissioner a
34 written request for a hearing. After the hearing and upon finding
35 that a violation has occurred, the **[commissioner]** administrative
36 law judge may issue a final order after assessing the amount of the
37 fine **[specified in the notice]**. If the ordered party does not request
38 a hearing, an administrative law judge shall issue an order assessing
39 a penalty. Strict adherence to the commissioner's recommended
40 penalty assessment is not required. If no hearing is requested, the
41 notice and order of assessment shall become a final order after the
42 expiration of **[the]** a 20-day period after issuance of the order of
43 assessment. Payment of the assessment is due when a final order is
44 issued or the notice and order of assessment becomes a final order.
45 The authority to levy a civil administrative penalty is in addition to
46 all other enforcement provisions in P.L.1988, c.61 (C.58:10A-47 et
47 seq.), and the payment of any assessment shall not be deemed to

1 affect the availability of any other enforcement provisions in
2 connection with the violation for which the assessment is levied.

3 d. A person who violates P.L.1988, c.61 (C.58:10A-47 et seq.),
4 or any rule or regulation adopted pursuant thereto, shall be liable
5 for a penalty of not more than \$100,000 per day for each violation,
6 to be collected in a civil action commenced by the Commissioner of
7 Environmental Protection.

8 A person who violates a court order issued pursuant to
9 subsection b. of this section or who fails to pay an administrative
10 assessment in full pursuant to subsection c. of this section is subject
11 upon order of a court to a civil penalty not to exceed \$100,000 per
12 day for each violation.

13 Any penalty imposed pursuant to this subsection may be
14 collected, with costs, in a summary proceeding pursuant to the
15 "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10
16 et seq.). The Superior Court and the municipal court shall have
17 jurisdiction to enforce the provisions of the "Penalty Enforcement
18 Law of 1999" in connection with P.L.1988, c.61 (C.58:10A-47 et
19 seq.).

20 (cf: P.L.2009, c.282, s.3)

21

22 17. Section 10 of P.L.1977, c.224 (C.58:12A-10) is amended to
23 read a follows:

24 10. a. Whenever, on the basis of available information, the
25 commissioner finds that a person is in violation of any provision of
26 the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et al.),
27 or any rule or regulation adopted, or permit or order issued pursuant
28 thereto, the commissioner may:

29 (1) Issue an administrative enforcement order requiring any
30 such person to comply in accordance with subsection b. of this
31 section;

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

34 (3) **【Levy】** Recommend the assessment of a civil administrative
35 penalty in accordance with subsection d. of this section;

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

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

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

42 b. Whenever, on the basis of available information, the
43 commissioner finds that a person is in violation of any provision of
44 P.L.1977, c.224, or any rule or regulation adopted, or permit or
45 order issued pursuant thereto, the commissioner may issue an
46 administrative enforcement order: (1) specifying the provision or
47 provisions of P.L.1977, c.224, or any rule or regulation adopted, or

1 permit or order issued pursuant thereto, of which the person is in
2 violation; (2) citing the action which constituted the violation; (3)
3 requiring compliance with the provision or provisions violated; (4)
4 requiring the restoration of the area which is the site of the
5 violation; and (5) providing notice to the person of the right to a
6 hearing on the matters contained in the administrative enforcement
7 order.

8 c. The commissioner is authorized to institute a civil action in
9 Superior Court for appropriate relief from any violation of the
10 provisions of P.L.1977, c.224, or any rule or regulation adopted, or
11 permit or order issued pursuant thereto. Such relief may include,
12 singly or in combination:

13 (1) A temporary or permanent injunction;

14 (2) Recovery of reasonable costs of any investigation,
15 inspection, or monitoring survey which led to the discovery of the
16 violation, and for the reasonable costs of preparing and bringing a
17 civil action commenced under this subsection;

18 (3) Recovery of reasonable costs incurred by the State in
19 removing, correcting, or terminating the adverse effects resulting
20 from any violation of the provisions of P.L.1977, c.224, or any rule
21 or regulation adopted, or permit or order issued pursuant thereto, for
22 which a civil action has been commenced and brought under this
23 subsection;

24 (4) An order requiring the violator restore the site of the
25 violation to the maximum extent practicable and feasible or, in the
26 event that restoration of the site of the violation is not practicable or
27 feasible, provide for off-site restoration alternatives as approved by
28 the department.

29 d. The commissioner is authorized to **[assess]** recommend to
30 an administrative law judge the assessment of a civil administrative
31 penalty of not more than \$25,000 for each violation of the
32 provisions of P.L.1977, c.224, or any rule or regulation adopted, or
33 permit or order issued pursuant thereto, and each day during which
34 each violation continues shall constitute an additional, separate and
35 distinct offense. Any amount assessed under this subsection shall
36 fall within a range established by regulation by the commissioner
37 for violations of similar type, seriousness, duration and conduct;
38 provided, however, that prior to the adoption of the regulation, the
39 commissioner may, on a case-by-case basis, **[assess]** recommend
40 the assessment of civil administrative penalties up to a maximum of
41 \$25,000 per day for each violation, utilizing the criteria set forth
42 herein. In addition to any administrative penalty assessed under
43 this subsection, and notwithstanding the \$25,000 maximum penalty
44 set forth above, the commissioner may **[assess]** recommend the
45 assessment of any economic benefits from the violation gained by
46 the violator. Prior to assessment of a penalty under this subsection,
47 the property owner or person committing the violation shall be

1 notified by certified mail or personal service that the penalty is
2 being assessed. The notice shall include a reference to the section
3 of the statute, regulation, order or permit condition violated; recite
4 the facts alleged to constitute a violation; state the basis for the
5 amount of the civil penalties **[to be assessed]** recommended for
6 assessment; and affirm the rights of the alleged violator to a
7 hearing. The ordered party shall have 35 calendar days from receipt
8 of the notice within which to deliver to the commissioner a written
9 request for a hearing. After the hearing and upon finding that a
10 violation has occurred, the **[commissioner]** administrative law
11 judge may issue a final administrative enforcement order after
12 assessing the amount of the fine **[specified in the notice]**. If the
13 ordered party does not request a hearing, an administrative law
14 judge shall issue an order assessing a penalty. Strict adherence to
15 the commissioner's recommended penalty assessment is not
16 required. If no hearing is requested, the notice and order of
17 assessment shall become a final administrative enforcement order
18 after the expiration of **[the]** a 35-day period after issuance of the
19 order of assessment. Payment of the assessment is due when a final
20 administrative enforcement order is issued or the notice and order
21 of assessment becomes a final administrative enforcement order.
22 The authority to levy a civil administrative order is in addition to all
23 other enforcement provisions in P.L.1977, c.224, or any rule or
24 regulation adopted, or permit or order issued pursuant thereto, and
25 the payment of any assessment shall not be deemed to affect the
26 availability of any other enforcement provisions in connection with
27 the violation for which the assessment is levied. The department
28 may compromise any civil administrative penalty assessed under
29 this section in an amount and with conditions the department
30 determines appropriate. A civil administrative penalty assessed,
31 including a portion thereof required to be paid pursuant to a
32 payment schedule approved by the department, which is not paid
33 within 90 days of the date that payment of the penalty is due, shall
34 be subject to an interest charge on the amount of the penalty, or
35 portion thereof, which shall accrue as of the date payment is due. If
36 the penalty is contested, no additional interest charge shall accrue
37 on the amount of the penalty until after the date on which a final
38 order is issued. Interest charges assessed and collectible pursuant to
39 this subsection shall be based on the rate of interest on judgments
40 provided in the New Jersey Rules of Court.

41 e. A person who violates any provision of P.L.1977, c.224, or
42 any rule or regulation adopted, or permit or order issued pursuant
43 thereto, or an administrative order issued pursuant to subsection b.
44 of this section, or a court order issued pursuant to subsection c. of
45 this section, or who fails to pay a civil administrative penalty in full
46 pursuant to subsection d. of this section, or who fails to make a
47 payment pursuant to a penalty payment schedule entered into with

1 the department, or who knowingly makes any false or misleading
2 statement on any application, record, report, or other document
3 required to be submitted to the department, shall be subject, upon
4 order of a court, to a civil penalty not to exceed \$25,000 per day of
5 the violation, and each day during which the violation continues
6 shall constitute an additional, separate, and distinct offense. Any
7 civil penalty imposed pursuant to this subsection may be collected
8 with costs in a summary proceeding pursuant to the "Penalty
9 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
10 In addition to any penalties, costs or interest charges, the court may
11 assess against the violator the amount of economic benefit accruing
12 to the violator from the violation. The Superior Court shall have
13 jurisdiction to enforce the provisions of the "Penalty Enforcement
14 Law of 1999" in connection with this act.

15 f. A person who purposely, knowingly or recklessly violates
16 any provision of P.L.1977, c.224, or any rule or regulation adopted,
17 or permit or order issued pursuant thereto, shall be guilty, upon
18 conviction, of a crime of the third degree and shall, notwithstanding
19 the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine
20 of not less than \$5,000 nor more than \$50,000 per day of violation,
21 or by imprisonment, or both. A person who purposely, knowingly,
22 or recklessly makes a false statement, representation, or
23 certification in any application, record, or other document filed or
24 required to be maintained under any provision of P.L.1977, c.224,
25 or any rule or regulation adopted, or permit or order issued pursuant
26 thereto, or who falsifies, tampers with or purposely, knowingly, or
27 recklessly renders inaccurate, any monitoring device or method
28 required to be maintained pursuant to P.L.1977, c.224, or any rule
29 or regulation adopted, or permit or order issued pursuant thereto,
30 shall be guilty, upon conviction, of a crime of the third degree and
31 shall, notwithstanding the provisions of subsection b. of
32 N.J.S.2C:43-3, be subject to a fine of not more than \$50,000 per day
33 of violation, or by imprisonment, or both.

34 g. Each applicant or permittee shall provide, upon the request
35 of the department, any information the department requires to
36 determine compliance with the provisions of P.L.1977, c.224, or
37 any rule or regulation adopted, or permit or order issued pursuant
38 thereto.

39 (cf: P.L.2007, c.246, s.11)

40

41 18. Section 12 of P.L.1972, c.185 (C.58:16A-63) is amended to
42 read as follows:

43 12. a. Whenever, on the basis of available information, the
44 commissioner finds that a person is in violation of any provision of
45 the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50
46 et seq.), P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any

1 rule or regulation adopted, or permit or order issued pursuant
2 thereto, the commissioner may:

3 (1) Issue an administrative enforcement order requiring any
4 such person to comply in accordance with subsection b. of this
5 section;

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

8 (3) **[Levy]** Recommend the assessment of a civil administrative
9 penalty in accordance with subsection d. of this section;

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

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

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

16 b. Whenever, on the basis of available information, the
17 commissioner finds that a person is in violation of any provision of
18 P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979,
19 c.359, or any rule or regulation adopted, or permit or order issued
20 pursuant thereto, the commissioner may issue an administrative
21 enforcement order: (1) specifying the provision or provisions of
22 P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979,
23 c.359, or any rule or regulation adopted, or permit or order issued
24 pursuant thereto, of which the person is in violation; (2) citing the
25 action which constituted the violation; (3) requiring compliance
26 with the provision or provisions violated; (4) requiring the
27 restoration of the area which is the site of the violation; and (5)
28 providing notice to the person of the right to a hearing on the
29 matters contained in the administrative enforcement order.

30 c. The commissioner is authorized to institute a civil action in
31 Superior Court for appropriate relief from any violation of the
32 provisions of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or
33 P.L.1979, c.359, or any rule or regulation adopted, or permit or
34 order issued pursuant thereto. Such relief may include, singly or in
35 combination:

36 (1) A temporary or permanent injunction;

37 (2) Recovery of reasonable costs of any investigation,
38 inspection, or monitoring survey which led to the discovery of the
39 violation, and for the reasonable costs of preparing and bringing a
40 civil action commenced under this subsection;

41 (3) Recovery of reasonable costs incurred by the State in
42 removing, correcting, or terminating the adverse effects resulting
43 from any violation of the provisions of P.L.1962, c.19, P.L.1972,
44 c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation
45 adopted, or permit or order issued pursuant thereto, for which a
46 civil action has been commenced and brought under this subsection;

1 (4) Recovery of compensatory damages for any loss or
2 destruction of natural resources, including but not limited to,
3 wildlife, fish, aquatic life, habitat, plants, or historic or
4 archeological resources, and for any other actual damages caused by
5 a violation of the provisions of P.L.1962, c.19, P.L.1972, c.185,
6 P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation
7 adopted, or permit or order issued pursuant thereto for which a civil
8 action has been commenced and brought under this subsection.
9 Assessments under this subsection shall be paid to the State
10 Treasurer;

11 (5) An order requiring the violator restore the site of the
12 violation to the maximum extent practicable and feasible or, in the
13 event that restoration of the site of the violation is not practicable or
14 feasible, provide for off-site restoration alternatives as approved by
15 the department.

16 d. The commissioner is authorized to **[assess]** recommend to
17 an administrative law judge the assessment of a civil administrative
18 penalty of not more than \$25,000 for each violation of the
19 provisions of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or
20 P.L.1979, c.359, or any rule or regulation adopted, or permit or
21 order issued pursuant thereto, and each day during which each
22 violation continues shall constitute an additional, separate and
23 distinct offense. Any amount assessed under this subsection shall
24 fall within a range established by regulation by the commissioner
25 for violations of similar type, seriousness, duration, and conduct;
26 provided, however, that prior to the adoption of the regulation, the
27 commissioner may, on a case-by-case basis, **[assess]** recommend
28 the assessment of civil administrative penalties up to a maximum of
29 \$25,000 per day for each violation, utilizing the criteria set forth
30 herein. In addition to any administrative penalty assessed under
31 this subsection, and notwithstanding the \$25,000 maximum penalty
32 set forth above, the commissioner may **[assess]** recommend the
33 assessment of any economic benefits from the violation gained by
34 the violator. Prior to assessment of a penalty under this subsection,
35 the property owner or person committing the violation shall be
36 notified by certified mail or personal service that the penalty is
37 being **[assessed]** recommended for assessment. The notice shall
38 include a reference to the section of the statute, regulation, order or
39 permit condition violated; recite the facts alleged to constitute a
40 violation; state the basis for the amount of the civil penalties **[to be**
41 **assessed]** recommended for assessment; and affirm the rights of the
42 alleged violator to a hearing. The ordered party shall have 35
43 calendar days from receipt of the notice within which to deliver to
44 the commissioner a written request for a hearing. After the hearing
45 and upon finding that a violation has occurred, the **[commissioner]**
46 administrative law judge may issue a final administrative
47 enforcement order after assessing the amount of the fine **[specified**

1 in the notice]. If the ordered party does not request a hearing, an
2 administrative law judge shall issue an order assessing a penalty.
3 Strict adherence to the commissioner's recommended penalty
4 assessment is not required. If no hearing is requested, the notice
5 and order of assessment shall become a final administrative
6 enforcement order after the expiration of ~~the~~ a 35-day period
7 after issuance of the order of assessment. Payment of the
8 assessment is due when a final administrative enforcement order is
9 issued or the notice and order of assessment becomes a final
10 administrative enforcement order. The authority to levy a civil
11 administrative order is in addition to all other enforcement
12 provisions in P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or
13 P.L.1979, c.359, or any rule or regulation adopted, or permit or
14 order issued pursuant thereto, and the payment of any assessment
15 shall not be deemed to affect the availability of any other
16 enforcement provisions in connection with the violation for which
17 the assessment is levied. The department may compromise any
18 civil administrative penalty assessed under this section in an
19 amount and with conditions the department determines appropriate.
20 A civil administrative penalty assessed, including a portion thereof
21 required to be paid pursuant to a payment schedule approved by the
22 department, which is not paid within 90 days of the date that
23 payment of the penalty is due, shall be subject to an interest charge
24 on the amount of the penalty, or portion thereof, which shall accrue
25 as of the date payment is due. If the penalty is contested, no
26 additional interest charge shall accrue on the amount of the penalty
27 until after the date on which a final order is issued. Interest charges
28 assessed and collectible pursuant to this subsection shall be based
29 on the rate of interest on judgments provided in the New Jersey
30 Rules of Court.

31 e. A person who violates any provision of P.L.1962, c.19,
32 P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or
33 regulation adopted, or permit or order issued pursuant thereto, or an
34 administrative order issued pursuant to subsection b. of this section,
35 or a court order issued pursuant to subsection c. of this section, or
36 who fails to pay a civil administrative penalty in full pursuant to
37 subsection d. of this section, or who fails to make a payment
38 pursuant to a penalty payment schedule entered into with the
39 department, or who knowingly makes any false or misleading
40 statement on any application, record, report, or other document
41 required to be submitted to the department, shall be subject, upon
42 order of a court, to a civil penalty not to exceed \$25,000 per day of
43 the violation, and each day during which the violation continues
44 shall constitute an additional, separate, and distinct offense. Any
45 civil penalty imposed pursuant to this subsection may be collected
46 with costs in a summary proceeding pursuant to the "Penalty
47 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

1 In addition to any penalties, costs or interest charges, the court may
2 assess against the violator the amount of economic benefit accruing
3 to the violator from the violation. The Superior Court shall have
4 jurisdiction to enforce the provisions of the "Penalty Enforcement
5 Law of 1999" in connection with this act.

6 f. A person who purposely, knowingly or recklessly violates
7 any provision of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385
8 or P.L.1979, c.359, or any rule or regulation adopted, or permit or
9 order issued pursuant thereto, shall be guilty, upon conviction, of a
10 crime of the third degree and shall, notwithstanding the provisions
11 of subsection b. of N.J.S.2C:43-3, be subject to a fine of not less
12 than \$5,000 nor more than \$50,000 per day of violation, or by
13 imprisonment, or both. A person who purposely, knowingly, or
14 recklessly makes a false statement, representation, or certification
15 in any application, record, or other document filed or required to be
16 maintained under any provision of P.L.1962, c.19, P.L.1972, c.185,
17 P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation
18 adopted, or permit or order issued pursuant thereto, or who falsifies,
19 tampers with or purposely, knowingly, or recklessly renders
20 inaccurate, any monitoring device or method required to be
21 maintained pursuant to P.L.1962, c.19, P.L.1972, c.185, P.L.1977,
22 c.385 or P.L.1979, c.359, or any rule or regulation adopted, or
23 permit or order issued pursuant thereto, shall be guilty, upon
24 conviction, of a crime of the third degree and shall, notwithstanding
25 the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine
26 of not more than \$50,000 per day of violation, or by imprisonment,
27 or both.

28 g. In addition to the penalties prescribed in this section, the
29 commissioner may record a notice for a violation of any provision
30 of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979,
31 c.359, or any rule or regulation adopted, or permit or order issued
32 pursuant thereto, which shall be recorded on the deed of the
33 property wherein the violation occurred, on order of the
34 commissioner, by the clerk or register of deeds and mortgages of
35 the county wherein the affected property is located and shall remain
36 attached thereto until such time as the violation has been remedied
37 and the commissioner orders the notice of violation removed. Any
38 fees or other charges that are assessed by either the clerk or register
39 of deeds and mortgages of the county wherein the affected property
40 is located or the department for the recording of the notice of
41 violation on the deed required pursuant to this subsection shall be
42 paid by the owner of the affected property or person committing the
43 violation. The commissioner shall immediately order the notice
44 removed once the violation is remedied or upon conditions set forth
45 by the commissioner.

46 h. Each applicant or permittee shall provide, upon the request
47 of the department, any information the department requires to

1 determine compliance with the provisions of P.L.1962, c.19,
2 P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or
3 regulation adopted, or permit or order issued pursuant thereto.
4 (cf: P.L. 2007, c.246, s.10)

5
6 19. (New section) Notwithstanding the provisions of P.L.1968,
7 c.410 (C.52:14B-1 et seq.) to the contrary, the Commissioner of
8 Environmental Protection shall have no authority to reject or
9 modify a civil administrative penalty assessed by an administrative
10 law judge pursuant to the provisions of R.S.12:5-6, section 9 of
11 P.L.1970, c.39 (13:1E-9), section 20 of P.L.1989, c.34 (C.13:1E-
12 48.20), section 8 of P.L.2005, c.54 (C.13:1E-99.89), section 10 of
13 P.L.1971, c.176 (C.13:1F-10), section 9 of P.L.1970, c.272
14 (C.13:9A-9), section 21 of P.L.1987, c.156 (C.13:9B-21), section
15 18 of P.L.1973, c.185 (C.13:19-18), section 35 of P.L.2004, c.120
16 (C.13:20-35), section 10 of P.L.1973, c.309 (C.23:2A-10), section
17 16 of P.L.1981, c.262 (C.58:1A-16), R.S.58:4-6, section 22 of
18 P.L.1976, c.141 (C.58:10-23.11u), section 10 of P.L.1977, c.74
19 (C.58:10A-10), section 6 of P.L.1991, c.123 (C.58:10A-24.6),
20 section 3 of P.L.2009, c.282 (C.58:10A-49.1), section 10 of
21 P.L.1977, c.224 (C.58:12A-10), or section 12 of P.L.1972, c.185
22 (C.58:16A-63).

23
24 20. (New section) Notwithstanding any law, rule, or regulation
25 to the contrary, any civil administrative penalty assessed by an
26 administrative law judge pursuant to the provisions of R.S.12:5-6,
27 section 9 of P.L.1970, c.39 (13:1E-9), section 20 of P.L.1989, c.34
28 (C.13:1E-48.20), section 8 of P.L.2005, c.54 (C.13:1E-99.89),
29 section 10 of P.L.1971, c.176 (C.13:1F-10), section 9 of P.L.1970,
30 c.272 (C.13:9A-9), section 21 of P.L.1987, c.156 (C.13:9B-21),
31 section 18 of P.L.1973, c.185 (C.13:19-18), section 35 of P.L.2004,
32 c.120 (C.13:20-35), section 10 of P.L.1973, c.309 (C.23:2A-10),
33 section 16 of P.L.1981, c.262 (C.58:1A-16), R.S.58:4-6, section 22
34 of P.L.1976, c.141 (C.58:10-23.11u), section 10 of P.L.1977, c.74
35 (C.58:10A-10), section 6 of P.L.1991, c.123 (C.58:10A-24.6),
36 section 3 of P.L.2009, c.282 (C.58:10A-49.1), section 10 of
37 P.L.1977, c.224 (C.58:12A-10), or section 12 of P.L.1972, c.185
38 (C.58:16A-63), shall be deposited into the General Fund.

39
40 21. This act shall take effect on the 90th day after the date of
41 enactment.

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44 STATEMENT

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46 This bill would remove the authority of the Commissioner of
47 Environmental Protection to assess civil administrative penalties

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1 and would require instead that an administrative law judge assess
2 any civil administrative penalty for a violation of an environmental
3 law. In addition, the bill would require that penalties so assessed be
4 deposited into the General Fund. This bill would eliminate the
5 conflict that is created when the assessor of the penalty uses those
6 funds for the operations of the department. The administrative
7 penalties assessed by the department are excessive. This excess is
8 fueled by the incentives created to levy outrageous penalties by
9 returning those monies to the department for its day-to-day
10 operations.