

ASSEMBLY, No. 3724

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Provides that certain nonprofit organizations would not be assessed civil administrative penalty under “Water Supply Management Act” for exceeding permitted water allocations.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning water allocation permits, and amending
2 P.L.1981, c.262.

3

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

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

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

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

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

17 (3) Levy a civil administrative penalty in accordance with
18 subsection d. of this section;

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

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

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

25 b. Whenever, on the basis of available information, the
26 commissioner finds that a person is in violation of any of the
27 provisions of P.L.1981, c.262, or any rule or regulation adopted, or
28 permit or order issued pursuant thereto, the commissioner may issue
29 an order: (1) specifying the provision or provisions of P.L.1981,
30 c.262, or the rule or regulation adopted, or order or permit issued
31 pursuant thereto, of which the person is in violation; (2) citing the
32 action that constituted the violation; (3) requiring compliance with
33 the provision of P.L.1981, c.262, or the rule or regulation adopted,
34 or order or permit issued pursuant thereto, of which the person is in
35 violation; (4) requiring the restoration to address any adverse
36 effects resulting from the violation; and (5) giving notice to the
37 person of a right to a hearing on the matters contained in the order.

38 c. The commissioner is authorized to commence a civil action
39 in Superior Court for appropriate relief from a 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. This relief may include,
42 singly or in combination:

43 (1) A temporary or permanent injunction;

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

**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 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.1981, c.262 for which a civil action has
6 been commenced and brought under this subsection;

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

10 d. (1) The commissioner is authorized to assess a civil
11 administrative penalty of not more than \$25,000 for each violation
12 of the provisions of P.L.1981, c.262, or any rule or regulation
13 adopted, or permit or order issued pursuant thereto, and each day
14 during which each violation continues shall constitute an additional,
15 separate, and distinct offense. Any amount assessed under this
16 subsection shall fall within a range established by regulation by the
17 commissioner for violations of similar type, seriousness, duration,
18 and conduct; provided, however, that prior to the adoption of the
19 regulation, the commissioner may, on a case-by-case basis, assess
20 civil administrative penalties up to a maximum of \$25,000 per day
21 for each violation, utilizing the criteria set forth herein. In addition
22 to any administrative penalty assessed under this subsection and
23 notwithstanding the \$25,000 maximum penalty set forth above, the
24 commissioner may assess any economic benefits from the violation
25 gained by the violator. Prior to assessment of a penalty under this
26 subsection, the property owner or person committing the violation
27 shall be notified by certified mail or personal service that the
28 penalty is being assessed. The notice shall include a reference to
29 the section of the statute, regulation, or order or permit condition
30 violated; recite the facts alleged to constitute a violation; state the
31 basis for the amount of the civil penalties to be assessed; and affirm
32 the rights of the alleged violator to a hearing. The ordered party
33 shall have 35 calendar days from receipt of the notice within which
34 to deliver to the commissioner a written request for a hearing. After
35 the hearing and upon finding that a violation has occurred, the
36 commissioner may issue a final order after assessing the amount of
37 the fine specified in the notice. If no hearing is requested, the
38 notice shall become a final order after the expiration of the 35-day
39 period. Payment of the assessment is due when a final order is
40 issued or the notice becomes a final order. The authority to levy an
41 administrative order is in addition to all other enforcement
42 provisions in P.L.1981, c.262, and the payment of any assessment
43 shall not be deemed to affect the availability of any other
44 enforcement provisions in connection with the violation for which
45 the assessment is levied. The department may compromise any
46 civil administrative penalty assessed under this section in an
47 amount and with conditions the department determines appropriate.
48 A civil administrative penalty assessed, including a portion thereof

1 required to be paid pursuant to a payment schedule approved by the
2 department, which is not paid within 90 days of the date that
3 payment of the penalty is due, shall be subject to an interest charge
4 on the amount of the penalty, or portion thereof, which shall accrue
5 as of the date payment is due. If the penalty is contested, no
6 additional interest charge shall accrue on the amount of the penalty
7 until after the date on which a final order is issued. Interest charges
8 assessed and collectible pursuant to this subsection shall be based
9 on the rate of interest on judgments provided in the New Jersey
10 Rules of Court.

11 (2) Notwithstanding the provisions of the foregoing paragraph,
12 whenever a permittee, which is a nonprofit corporation, society, or
13 association that receives State funds and serves a public purpose,
14 exceeds the permitted water allocation during any particular time
15 period as determined by the department by rule or regulation, the
16 permittee shall not be assessed a civil administrative penalty under
17 this subsection, provided that the violation was not willful and that
18 corrective measures were undertaken in a timely manner.

19 e. Any person who violates any provision of P.L.1981, c.262,
20 or any rule or regulation adopted, or permit or order issued pursuant
21 thereto, or an order issued pursuant to subsection b. of this section,
22 or a court order issued pursuant to subsection c. of this section, or
23 who fails to pay in full a civil administrative penalty levied
24 pursuant to subsection d. of this section, or who fails to make a
25 payment pursuant to a penalty payment schedule entered into with
26 the department, or who knowingly makes any false or misleading
27 statement on any application, record, report, or other document
28 required to be submitted to the department, shall be subject, upon
29 order of a court, to a civil penalty not to exceed \$25,000 for each
30 day during which the violation continues. Any civil penalty
31 imposed pursuant to this subsection may be collected with costs in a
32 summary proceeding pursuant to the "Penalty Enforcement Law of
33 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any
34 penalties, costs or interest charges, the court may assess against the
35 violator the amount of economic benefit accruing to the violator
36 from the violation. The Superior Court shall have jurisdiction to
37 enforce the provisions of the "Penalty Enforcement Law of 1999" in
38 connection with this act.

39 f. A person who purposely, knowingly or recklessly violates
40 any provision of P.L.1981, c.262, or any rule or regulation adopted,
41 or permit or order issued pursuant thereto, shall be guilty, upon
42 conviction, of a crime of the third degree and shall, notwithstanding
43 the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine
44 of not less than \$5,000 nor more than \$50,000 per day of violation,
45 or by imprisonment, or both. A person who purposely, knowingly,
46 or recklessly makes a false statement, representation, or
47 certification in any application, record, or other document filed or
48 required to be maintained under any provision of P.L.1981, c.262,

1 or any rule or regulation adopted, or permit or order issued pursuant
2 thereto, or who falsifies, tampers with or purposely, knowingly, or
3 recklessly renders inaccurate, any monitoring device or method
4 required to be maintained pursuant to the provisions of P.L.1981,
5 c.262, or any rule or regulation adopted, or permit or order issued
6 pursuant thereto, shall be guilty, upon conviction, of a crime of the
7 third degree and shall, notwithstanding the provisions of subsection
8 b. of N.J.S.2C:43-3, be subject to a fine of not more than \$50,000
9 per day of violation, or by imprisonment, or both.

10 g. Each applicant or permittee shall provide, upon the request
11 of the department, any information the department requires to
12 determine compliance with the provisions of P.L.1981, c.262, or
13 any rule or regulation adopted, or permit or order issued pursuant
14 thereto.

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

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17 2. This act shall take effect immediately.

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STATEMENT

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22 This bill provides that whenever a nonprofit corporation, society,
23 or association that receives State funds and serves a public purpose
24 exceeds its permitted water allocation under the “Water Supply
25 Management Act,” P.L.1981, c.262 (C.58:1A-1 et seq.) during any
26 particular time period as determined by the Department of
27 Environmental Protection by rule or regulation, the nonprofit
28 permittee would not be assessed a civil administrative penalty,
29 provided that the violation was not willful and that corrective
30 measures were undertaken in a timely manner.