

## WATER POLLUTION CONTROL ACT

## CHAPTER 14

## WATER POLLUTION CONTROL ACT

## Authority

N.J.S.A. 13:1D-9, 58:10A-1 et seq., 58:10A-21 et seq., 58:11-49 et seq., 58:11-64 et seq., 58:1A-1 et seq., P.L. 1988, c.56, 57 and 63.

## Source and Effective Date

R.1994 d.256, effective April 27, 1994.  
See: 26 N.J.R. 1038(a), 26 N.J.R. 2459(a).

## Executive Order No. 66(1978) Expiration Date

Chapter 14, Water Pollution Control Act, expires on April 27, 1999.

## Chapter Historical Note

Unless otherwise expressly noted, all provisions of this chapter were adopted pursuant to authority of N.J.S.A. 58:10A-1 and were filed and became effective on July 27, 1977, as R.1977 d.268. See: 9 N.J.R. 259(a), 9 N.J.R. 418(c). Pursuant to Executive Order No. 66(1978), Chapter 14 was readopted as R.1989 d.282, effective April 27, 1989. See: 21 N.J.R. 373(a), 21 N.J.R. 1530(a). Notice of Action on Petition to amend New Jersey Pollution Discharge Elimination System permits. See: 23 N.J.R. 622(b). Public Notice: Opportunity for interested party review for rule amendment. See: 25 N.J.R. 411(a).

Pursuant to Executive Order No. 66(1978), Chapter 14 was readopted as R.1994 d.256. See: Source and Effective Date. See, also, Subchapter Historical Notes and section annotations.

## Law Review and Journal Commentaries

Limitations on state agency authority to adopt environmental standards more stringent than federal standards: Policy considerations and interpretive problems. Jerome M. Organ, 54 Md.L.Rev. 1373 (1995). WESTLAW cite: 54 MDLR 1373.

## RESEARCH NOTE

The Water Quality Regulations of the Interstate Sanitation Commission appear as Appendix A to Title 7.

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SUBCHAPTER 1. (RESERVED)

**Subchapter Historical Note**

Subchapter 1, originally adopted pursuant to authority of N.J.S.A. 58:10A-1, and which was filed and became effective on July 27, 1977 as R.1977 d.268, contained general provisions under the Water Pollution Control Act. See: 9 N.J.R. 259(a), 9 N.J.R. 418(c). This subchapter was repealed by R.1981 d.84, effective March 6, 1981. See: 12 N.J.R. 569(f), 13 N.J.R. 194(c).

SUBCHAPTER 2. CONSTRUCTION OF WASTEWATER TREATMENT FACILITIES

**Subchapter Historical Note**

Subchapter 2 originally contained rules on "Approval of Facilities for Prevention, Collection, Treatment or Discharge of Pollutants", filed on July 27, 1977 as R.1977 d.268. See: 9 N.J.R. 418(c). Amendments were filed on January 29, 1980 as R.1980 d.49 and on February 1, 1980 as R.1980 d.58. See: 12 N.J.R. 112(c), 12 N.J.R. 113(a). On March 6, 1981, R.1981 d.84, recodified this subject matter at N.J.A.C. 7:14A-12. See: 13 N.J.R. 194(c).

Subchapter 2, Construction of Wastewater Treatment Facilities, was adopted as R.1982 d.338, effective October 18, 1982. See: 14 N.J.R. 75(a), 14 N.J.R. 1155(b), 15 N.J.R. 440(b).

**7:14-2.1 Construction procedures**

The Division shall require and adhere to the procedures identified in this section. Actions or procedures by owners, permittees, consultants, contractors, or other persons affected by this chapter which are not in accordance with this subchapter shall not be acceptable to the Division. Where applicable, the Division may grant a waiver from any requirement of this subchapter upon presentation of written justification by the owner, permittee, consultant or contractor.

**7:14-2.2 Record drawings; collector sewers, interceptor sewers and force mains**

(a) The owner shall be responsible for the preparation of all record drawings required for sewer lines. This responsibility may be delegated to the owner's representative with adequate compensation for this service.

(b) This responsibility shall not be delegated or transferred to the contractor. The contractor shall assist the owner/engineer, by providing record information, when requested, during the progress of the work.

**7:14-2.3 Permits**

(a) Federal, State, county and municipal permits required as a result of the construction activity within the delineated site shall be obtained by the owner and associated fees shall be paid by the owner. In addition, permits required for construction activities on railroad properties shall be obtained by the owner.

(b) Exceptions to this section shall be a permit to use explosives for rock excavation and such other permits which by law are required to be obtained by the contractor.

(c) The owner shall make every reasonable effort to identify permits and fees and costs required as a result of the construction activity in effect 60 days prior to the receipt of construction bids. This responsibility may be delegated to the owner's engineer with adequate compensation for this service. The engineer shall be held harmless from any penalty or action resulting from the failure to obtain a permit where every reasonable effort has been made by the engineer to obtain such permits. Conditions made a part of any permit shall be imposed upon the contractor as described in the contract or bid documents. Additional costs associated with a permit resulting from the construction activity which is beyond that stipulated in the contract shall be the responsibility of the contractor.

(d) Whenever necessary or appropriate the contractor shall assist the owner in the acquisition of permits.

(e) The Department may intercede and assist in the resolution of any problems resulting from the acquisition of any permits.

iii. The Department will review all requests and may grant a reduction, or may require additional analytical testing for any or all of the pollutants required to be reported in N.J.A.C. 7:14-4.7. The Department may also require that the applicant for a reduction demonstrate that the use of best management practices justifies the request;

iv. Any industrial treatment works granted a reduction shall submit to the Department, on an annual basis, an affidavit affirming that there have been no changes to the nature of the process wastewater, in a manner such that the sludge generated by the industrial treatment works may also change. The affidavit shall be submitted by May 1, of each calendar year; and

v. If the nature of the process wastewater or sludge produced by an industrial treatment works on a reduced reporting schedule should change at any time due to an increase or change in process wastewater contributions, a change in treatment processes at the industrial treatment works or a change in its process, handling, manufacturing, packaging, storage or disposal practices, the owner or operator shall, within 30 days, notify the Department of the nature of the change. Based upon this information, the Department may require analyses to be performed and require that the industrial treatment works return to the reporting schedule required by N.J.A.C. 7:14-4.7.

(c) All treatment works shall continue to submit reports as required in N.J.A.C. 7:14-4.7 until written Department approval has been provided which exempts or reduces reporting requirements.

Repeal and New Rule, R.1989 d.282, effective June 5, 1989.  
See: 21 N.J.R. 373(a), 21 N.J.R. 1530(a).

The rule formerly at this cite was entitled "Reports to be published by the Department".

#### 7:14-4.12 Severability

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications, and to this end, the provisions of the subchapter are declared to be severable.

#### 7:14-4.13 (Reserved)

Repealed by R.1989 d.282, effective June 5, 1989.  
See: 21 N.J.R. 373(a), 21 N.J.R. 1530(a).

Former rule entitled "Reporting categories for domestic treatment works".

#### 7:14-4.14 (Reserved)

Repealed by R.1989 d.282, effective June 5, 1989.  
See: 21 N.J.R. 373(a), 21 N.J.R. 1530(a).

Former rule entitled "Sludge Report".

#### 7:14-4.15 (Reserved)

Repealed by R.1989 d.282, effective June 5, 1989.

See: 21 N.J.R. 373(a), 21 N.J.R. 1530(a).

Rule formerly entitled "Heavy Metals and Selected Chemical Parameters Report".

#### 7:14-4.16 (Reserved)

Repealed by R.1989 d.282, effective June 5, 1989.  
See: 21 N.J.R. 373(a), 21 N.J.R. 1530(a).

Rule formerly entitled "Toxic Organic Compounds Report".

#### 7:14-4.17 (Reserved)

Repealed by R.1989 d.282, effective June 5, 1989.  
See: 21 N.J.R. 373(a), 21 N.J.R. 1530(a).

Rule formerly entitled "Loss of reduction in reporting requirement".

#### 7:14-4.18 (Reserved)

Repealed by R.1989 d.282, effective June 5, 1989.  
See: 21 N.J.R. 373(a), 21 N.J.R. 1530(a).

Rule formerly entitled "Exemption from Heavy Metals and Toxic Organic Compounds reporting cycles".

#### 7:14-4.19 (Reserved)

Repealed by R.1989 d.282, effective June 5, 1989.  
See: 21 N.J.R. 373(a), 21 N.J.R. 1530(a).

Rule formerly entitled "Sampling procedure; Sludge Report".

#### 7:14-4.20 (Reserved)

Repealed by R.1989 d.282, effective June 5, 1989.  
See: 21 N.J.R. 373(a), 21 N.J.R. 1530(a).

Rule formerly entitled "Reporting requirements for industrial treatment works and SIU pretreatment works".

#### 7:14-4.21 (Reserved)

Repealed by R.1989 d.282, effective June 5, 1989.  
See: 21 N.J.R. 373(a), 21 N.J.R. 1530(a).

Rule formerly entitled "Sampling procedures; composite sample".

### SUBCHAPTER 5. (RESERVED)

#### Subchapter Historical Note

Subchapter 5, formerly Statewide Management of Septage Disposal, was adopted pursuant to the authority of N.J.S.A. 58:10A-1 et seq., 58:11A-1 et seq., 13:1E-1 et seq., 13:1B-5 and 13:1D-1 et seq. and became effective June 23, 1980 as R.1980 d.277. See: 12 N.J.R. 111(c), 12 N.J.R. 462(a). Pursuant to Executive Order No. 66(1978), Subchapter 5 expired on June 23, 1985.

### SUBCHAPTER 6. (RESERVED)

### SUBCHAPTER 7. (RESERVED)

#### Subchapter Historical Note

Subchapter 7, formerly Ocean Dumping Alternative Development, was adopted pursuant to authority of N.J.S.A. 58:10A-1 et seq. and were filed and became effective on December 2, 1977, as R.1977 d.458.

See: 9 N.J.R. 460(b), 10 N.J.R. 10(b). Subchapter 7 was repealed by R.1989 d.282, effective June 5, 1989. See: 21 N.J.R. 373(a), 21 N.J.R. 1530(a).

## SUBCHAPTER 8. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

### Subchapter Historical Note

Subchapter 8, Assessment of Civil Administrative Penalties, was originally filed and became effective March 15, 1979 as R.1979 d.111. See: 10 N.J.R. 533(a), 11 N.J.R. 173(c). The subchapter was readopted with amendments effective May 21, 1984 as R.1984 d.189. See: 16 N.J.R. 181(b), 16 N.J.R. 1225(a). Subchapter 8 was repealed and a new Subchapter 8, Civil Administrative Penalties and Requests for Adjudicatory Hearings (which raised the maximum civil administrative penalty from \$5,000 to \$50,000 for each violation and modified the Water Pollution Control Act), became effective August 1, 1988 as R.1988 d.380. See: 20 N.J.R. 455(a), 20 N.J.R. 1884(a).

### 7:14-8.1 Authority and purpose

(a) The purpose of this subchapter is to establish a civil administrative penalty policy governing the uniform assessment of civil administrative penalties. This subchapter shall also govern the Department's assessment of civil administrative penalties for violations of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., including violation on any rule or regulation, water quality standard, effluent limitation, administrative order or permit issued pursuant to the Water Pollution Control Act, violation of the rules governing laboratory certification and standards of performance, N.J.A.C. 7:18, and for violations of the Act Concerning Pretreatment of Industrial Wastewater, N.J.S.A. 58:11-64 et seq., the Water Supply and Wastewater Operators' Licensing Act, N.J.S.A. 58:11-64 et seq., and N.J.S.A. 58:10A-21 et seq. (also known as the New Jersey Underground Storage of Hazardous Substances Act). In addition, this subchapter shall govern the Department's administrative assessment of costs pursuant to N.J.S.A. 58:10A-10d(1)(c). This subchapter shall also govern the procedure for requesting an adjudicatory hearing on a notice of civil administrative penalty assessment or an administrative order.

(b) The Department may assess a civil administrative penalty of not more than \$50,000 for each violation of each provision of either the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act, or not more than \$100,000 for a violation of both statutes.

(c) Each day during which a violation as set forth in (b) above continues shall constitute an additional, separate and distinct violation.

(d) Neither the assessment of a civil administrative penalty nor the payment of any such civil administrative penalty shall affect the availability of any other enforcement provision provided for by N.J.S.A. 58:10A-10, or any other statute, in connection with the violation for which the assessment is levied.

(e) This subchapter, as amended effective August 5, 1991, shall apply to all violations which occur on or after July 1, 1991.

Amended by R.1989 d.282, effective June 5, 1989.

See: 21 N.J.R. 373(a), 21 N.J.R. 1530(a).

Last sentence in (b) recodified as new (c), (c) recodified to (d) with no change in text.

Amended by R.1991 d.307, effective June 17, 1991.

See: 22 N.J.R. 2870(a), 23 N.J.R. 1926(a).

Deleted "violation of the rules governing laboratory certification and standard of performance, N.J.A.C. 7:18," in (a).

Amended by R.1991 d.378, effective August 5, 1991.

See: 23 N.J.R. 1089(a), 23 N.J.R. 2366(a).

In (a), added first sentence; added "or regulation"; added references to N.J.S.A. 58:11-49 et seq. and N.J.S.A. 58:10A-10d(1)(c).

Added (e).

Amended by R.1995 d.162, effective March 20, 1995.

See: 26 N.J.R. 4912(a), 27 N.J.R. 1265(a).

### Case Notes

Discharge monitoring ordered as part of penalty found proper exercise of Commissioner's authority. Dept. of Environmental Protection v. Kearney Industries, 3 N.J.A.R. 339 (1981).

### 7:14-8.2 Definitions

As used in this subchapter, the following words and terms shall, in addition to those provided in N.J.A.C. 7:14A-1.9, have the following meanings unless the context clearly indicates otherwise.

"Any rules issued pursuant to the Water Pollution Control Act" means, but is not limited to, the following rules:

Industrial Survey Project, N.J.A.C. 7:1F;

Freshwater Wetlands, N.J.A.C. 7:7A;

Stormwater Management, N.J.A.C. 7:8;

Water Pollution Control, N.J.A.C. 7:9;

Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A;

Safe Drinking Water Act, N.J.A.C. 7:10;

Flood Hazard Area Control, N.J.A.C. 7:13;

Water Pollution Control Act, N.J.A.C. 7:14;

The New Jersey Water Pollution Control Act, N.J.A.C. 7:14A;

Statewide Water Quality Management Planning, N.J.A.C. 7:15;

Regulations Governing Laboratory Certification and Standards of Performance, N.J.A.C. 7:18; and

Sewage Infrastructure Improvement Act Grants, N.J.A.C. 7:22A.

"Bypass" means the anticipated or unanticipated intentional diversion of waste streams from any portion of a treatment works.

2. Exceedance of an effluent limitation expressed as a monthly average, for the same pollutant, at the same discharge point source, by any amount in any four months of any consecutive six month period;

3. If there is not an effluent limitation for a particular pollutant expressed as a monthly average, exceedance of the monthly average of the daily maximums for the effluent limitation, for the same pollutant, at the same discharge point source, by any amount in any four months of any consecutive six month period;

4. Any exceedance of an effluent limitation for pH by any amount, excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring, at the same discharge point source in any four months of any consecutive six month period; or

5. Failure to submit a completed discharge monitoring report in any two months of any consecutive six month period.

“Sludge Quality Assurance Report” or “SQAR” means the standard Department form, including any subsequent additions, revisions or modifications, for the reporting of sludge quality and quantity.

“State Act” means the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

“Toxic pollutant” means any pollutant identified pursuant to the Federal Act or any pollutant or combination of pollutants, including disease causing agents, which after discharge and upon exposure ingestion, inhalation, or assimilation into any organism, either directly or indirectly by ingestion through food chains, will, on the basis of information available to the Department, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformation, in such organisms or their offspring.

“Upset” means an exceptional incident in which there is unintentional and temporary noncompliance with an effluent limitation because of an event beyond the reasonable control of the permittee, including fire, riot, sabotage, or a flood, storm event, natural cause, or other act of God, or other similar circumstance, which is the cause of the violation. “Upset” also includes noncompliance consequent to the performance of maintenance operations for which a prior exception has been granted by the Department or a delegated local agency.

“Violator” means any person against whom the Department asserts a violation of the State Act or any rules issued pursuant to the Water Pollution Control Act.

“Whole effluent toxicity” means the aggregate toxic effect of an effluent measured directly by a toxicity test.

Amended by R.1991 d.307, effective June 17, 1991.

See: 22 N.J.R. 2870(a), 23 N.J.R. 1926(a).

Added “Any rules issued pursuant to the Water Pollution Control Act” means, but is not limited to, the following rules: . . .”.

Amended by R.1991 d.378, effective August 5, 1991.

See: 23 N.J.R. 1089(a), 23 N.J.R. 2366(a).

Added additional definitions including new definitions of “serious violations” and “significant noncompliers”; substantial revision of definition of “Hazardous pollutant”.

Amended by R.1992 d.145, effective April 6, 1992.

See: 23 N.J.R. 2238(a), 24 N.J.R. 1334(a).

Added “lawful entry”, “No Measurable Acute Toxicity” and revised “discharge”, “discharge monitoring report”, “serious violation” and “significant noncomplier”.

### 7:14-8.3 Procedures for assessment, payment and settlement of civil administrative penalties, and affirmative defenses

(a) To assess a civil administrative penalty under the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act, and the Water Supply and Wastewater Operators’ Licensing Act, the Department shall notify the violator by certified mail (return receipt requested) or by personal service. This Notice of Civil Administrative Penalty Assessment shall:

1. Identify the section of the statute, rule, water quality standards, effluent limitation, administrative order or permit violated;
2. Concisely state the facts which constitute the violation;
3. Specify the amount of the civil administrative penalty to be imposed; and
4. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:14-8.4.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department’s Final Order in a contested case, or when a Notice of Civil Administrative Penalty Assessment becomes a Final Order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:14-8.4, a Notice of Civil Administrative Penalty Assessment becomes a Final Order and is deemed received on the 21st day following receipt of the Notice of Civil Administrative Penalty Assessment by the violator;
2. If the Department denies the hearing request, a Notice of Civil Administrative Penalty Assessment becomes a Final Order upon receipt of notice of such denial; or
3. If the Department conducts an adjudicatory hearing, a Notice of Civil Administrative Penalty Assessment becomes a Final Order upon receipt by the violator of a Final Order in a contested case.

(c) In addition to the amount of the civil administrative penalty that is due and owing pursuant to (b) above, the violator shall also pay to the Department the interest on the

amount of the penalty, at the rate established by the New Jersey Supreme Court for interest rates on judgments as set forth in the Rules Governing the Courts of the State of New Jersey, as follows:

1. Interest shall accrue on the amount of the civil administrative penalty due and owing beginning on the 30th day after the date on which the penalty was due and owing and continuing until the civil administrative penalty is paid in full with interest if:

i. A violator does not pay a civil administrative penalty imposed pursuant to a final order; or

ii. A violator fails to make a civil administrative penalty payment pursuant to a payment schedule entered into with the Department; and

2. Interest, at the rate set forth in (c)1 above, shall accrue on the unpaid amount of a civil administrative penalty which is contested as a contested case under N.J.S.A. 52:14B-1 et seq., or appealed to the Appellate Division of the Superior Court, and upheld in full or in part, from the date the violator posted financial assurance under N.J.A.C. 7:14-8.4(a)9 or, in the case of a local agency, from the date the Department receives a local agency's hearing request, until the violator pays in full the civil administrative penalty and all interest accrued thereon.

(d) A civil administrative penalty imposed pursuant to a final order shall constitute a debt of the violator or discharger. The Department may docket the penalty with the clerk of the Superior Court. The penalty, as docketed, shall have the same standing as any judgment docketed pursuant to N.J.S.A. 2A:16-1, except that:

1. No lien shall attach to the property of a local agency; and

2. No lien shall attach to the real property of a violator if the violator posts a refundable bond or other security with the Commissioner pursuant to an appeal of a final order to the Appellate Division of the Superior Court.

(e) The Department may settle any civil administrative penalty assessed pursuant to this subchapter according to the factors identified in (f) below as follows:

1. In cases where the violator is a local agency which violates an administrative consent order, the Department may settle a civil administrative penalty as follows:

i. The Department may reduce the civil administrative penalty up to 50 percent, provided that the penalty as reduced is not less than any applicable minimum amount set forth in N.J.A.C. 7:14-8.5(a) or 8.9(e); and

ii. The Department may not reduce the amount of any component of a civil administrative penalty which represents the economic benefit gained by the violator from the violation;

2. Except as provided in (e)1 above, in the case of a violator who is a local agency which violates something other than an administrative consent order and then enters into an administrative consent order with the Department, which requires the local agency to take prescribed measures to comply with its permit, the Department shall have full discretion to settle the amount of the civil administrative penalty assessed or due for violations occurring during a period up to 24 months preceding the effective date of the administrative consent order, except that the Department shall neither:

i. Reduce the amount of the civil administrative penalty less than the minimum amount, if applicable, prescribed in N.J.A.C. 7:14-8.5(a) or 8.9(e); nor

ii. Reduce the amount of any component of a civil administrative penalty which represents the economic benefit gained by the violator from the violation.

3. In the case of all other violators:

i. The Department may reduce the civil administrative penalty up to 50 percent, provided that the penalty as reduced is not less than any applicable minimum amount set forth in N.J.A.C. 7:14-8.5(a) or 8.9(e); and

ii. The Department may not reduce the amount of any component of a civil administrative penalty which represents the economic benefit gained by the violator from the violation.

(f) In settling a civil administrative penalty, the Department may consider the following:

1. Mitigating or extenuating circumstances not considered in the notice of civil administrative penalty assessment;

2. The implementation by the violator of pollution prevention and/or abatement measures in addition to those minimally required by applicable statute or rule;

3. The implementation by the violator of measures to clean up, reverse or repair environmental damage previously caused by the violation;

4. The full payment by the violator of a specified part of the civil administrative penalty assessed if made within a time period established by the Department in an administrative order and/or a notice of civil administrative penalty assessment and provided that the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; or

5. Any other terms or conditions acceptable to the Department.

(g) In its discretion the Department may enter into an agreement with a violator, in which the Department agrees to accept payment of a civil administrative penalty in installments over time. Such an agreement shall be in writing. The Department shall not enter into any such agreement if payment in full is due more than 90 days after execution of the agreement unless:

1. The violator is a local agency; or
2. The violator posts financial assurance with the Department upon execution of the agreement pursuant to one of the financial assurance mechanisms in Appendix D or in another form the Department individually approves in writing for this purpose. The financial assurance shall be in an amount that the Department reasonably determines will tend to ensure good faith compliance with the agreement. In determining the amount, the Department may consider any or all of the following factors:
  - i. The amount of the penalty;
  - ii. The amount and frequency of the installment payments due under the agreement;
  - iii. The duration of the agreement;
  - iv. Other remedies, aside from drawing upon the financial assurance, that the Department may exercise under the agreement if an installment payment is not timely made or if some other requirement of the agreement is not satisfied, and the extent to which such other remedies will tend to ensure compliance with the agreement;
  - v. The violator's history of compliance, including without limitation its history of compliance with other schedules for the payment of penalties assessed by the Department;
  - vi. Expenditures that the violator has made or has agreed to make for purposes of pollution control and/or pollution prevention; and
  - vii. Other specific circumstances of the violator relating to the tendency of the financial assurance to ensure compliance with the agreement or indicating the extent to which financial assurance is necessary to ensure compliance with the agreement.

(h) Any violator that is not a local agency which enters into an administrative consent order with the Department that includes a compliance schedule shall post financial assurance in the full amount of the cost of fully complying with all of the terms and conditions imposed by the Department pursuant to one of the financial assurance mechanisms in Appendix A, incorporated herein by reference, or in another form the Department individually approves in writing for this purpose.

(i) Except as provided in (i)1 below, a violator may be entitled to an affirmative defense to liability for a violation of an effluent limitation occurring as a result of an upset, an anticipated or unanticipated bypass, or a testing or laboratory error, only if, in the determination of the Department, the violator has satisfied the provisions of this section.

1. A violator shall not be entitled to an affirmative defense based on an alleged upset, an anticipated or unanticipated bypass, or a testing or laboratory error to the extent that the violation is caused by operational

error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

2. A violator shall be entitled to an affirmative defense only if, in the determination of the Department, the violator satisfies the following:

- i. The violation occurred as a result of an upset, an anticipated or unanticipated bypass, or a testing or laboratory error;
- ii. The violator complied with all of the requirements in N.J.A.C. 7:14A-3.10;
- iii. The violator complied with N.J.A.C. 7:14-8.4(a)7; and
- iv. A violator asserting a testing or laboratory error as an affirmative defense shall also have the burden to demonstrate that a violation involving the exceedance of an effluent limitation was the result of unanticipated test interferences, sample contamination, analytical defects, or procedural deficiencies in sampling or other similar circumstances beyond the violator's control.

3. If the Department determines that an exceedance of an effluent limitation was caused by an upset, an anticipated or unanticipated bypass, or a testing or laboratory error, the Department shall not consider the exceedance a violation and the Department shall not assess a civil administrative penalty.

4. The Department shall consider the exceedance of an effluent limitation a violation if the Department determines that any of the following conditions exist:

- i. The exceedance was not caused by an upset, an anticipated or unanticipated bypass, or a testing or laboratory error;
- ii. The violator has not complied with the reporting requirements in N.J.A.C. 7:14A-3.10; or
- iii. The violator has not complied with N.J.A.C. 7:14A-8.4(a)7..

Amended by R.1989 d.282, effective June 5, 1989.

See: 21 N.J.R. 373(a), 21 N.J.R. 1530(a).

Added (c).

Amended by R.1991 d.378, effective August 5, 1991.

See: 23 N.J.R. 1089(a), 23 N.J.R. 2366(a).

Added “, and affirmative defenses” in heading. In (b)1, added “and is deemed received”. Added (c), (d), (g), (h), (i). Recodified existing (c) as (e) with substantial additions. Reconstructed new (f) from former (c).

Administrative correction to (i)2iii.

See: 24 N.J.R. 2448(a).

Amended by R.1994 d.277, effective June 6, 1994.

See: 25 N.J.R. 5395(a), 26 N.J.R. 2461(a).

Amended by R.1995 d.162, effective March 20, 1995.

See: 26 N.J.R. 4912(a), 27 N.J.R. 1265(a).

#### Case Notes

Citizen suit for violations of federal Water Pollution Control Act permit; prior state enforcement action against violator. Public Interest

Research Group of New Jersey, Inc. v. New Jersey Expressway Authority, D.N.J.1992, 822 F.Supp. 174.

New Jersey Department of Environmental Protection order and notice, was "commencement" of enforcement proceeding by Department for purposes of Clean Water Act. Public Interest Research Group of New Jersey, Inc. v. Elf Atochem North America, Inc., D.N.J.1993, 817 F.Supp. 1164.

Chromium exceedances warranted assessment of \$197,630 in penalties against chemical company. Department of Environmental Protection v. CPS Chemical, 95 N.J.A.R.2d (EPE) 194.

Discharge monitoring ordered as part of penalty found proper exercise of Commissioner's authority. Dept. of Environmental Protection v. Kearney Industries, 3 N.J.A.R. 339 (1981).

### 7:14-8.3A Public comment on interim enforcement limits

(a) The procedures for soliciting public comment on proposed interim enforcement limits in administrative consent orders are provided in this section.

1. The Department will require the violator to provide notice of proposed interim enforcement limits and of an opportunity, for at least 30 days from the publication of the notice, to comment on the proposal.

2. The violator shall submit to the Department a proposed plan to provide the public notice required in (b) through (d) below.

3. Upon the violator's receipt of the Department's written approval of the violator's plan to provide public notice, the violator shall provide the public notice as approved by the Department.

(b) The violator shall provide the following public notice of the proposed interim enforcement limits:

1. At least three days prior to publication of the public notice required in (b)2 below, the violator shall mail a copy of the public notice and the draft administrative consent order or other document which includes the proposed interim enforcement limits to:

i. The mayor or chief executive officer and governing body of the municipality and county in which the violations occurred; and

ii. Any other interested persons the Department identifies.

2. The violator shall publish the public notice in a daily or weekly newspaper within the area affected by the facility which is the subject of the interim enforcement limits.

(c) The violator shall include the following in the public notice:

1. The name and address of the violator upon which the Department will impose the interim enforcement limits;

2. The beginning and ending dates of the public comment period;

3. A description of the nature of the violations necessitating the interim enforcement limits;

4. A summary of the terms and conditions of the legal document in which the interim enforcement limits is contained;

5. The name of the contact person within the Department to contact for more information;

6. The requirement that anyone submitting written comments on the proposed interim enforcement limits shall submit copies of the written comments to both the Department and the violator; and

7. The name and address of the person for the Department and the violator to whom members of the public may submit written comments.

(d) If the Department decides to hold a public meeting on the proposed interim enforcement limits:

1. The violator shall also include in the public notice:

i. The date, time and place of the public meeting; and

ii. A brief description of the nature and purpose of the public meeting, including the applicable rules and procedures;

2. The violator shall publish notice of the public meeting not more than 30 days and not less than 15 days prior to the public meeting;

3. The Department shall hold the public meeting in the municipality in which the violations necessitating the interim enforcement limits occurred;

4. The violator shall attend and participate in the public meeting at the Department's request; and

5. The violator shall, with the prior written approval of the Department, make all necessary arrangements for scheduling and holding the public meeting, including, but not limited to:

i. Scheduling of the meeting room;

ii. Arranging for a court stenographer to record the statements at the public meeting; and

iii. Payment of all costs of the public meeting, including, but not limited to, hearing room costs, security, stenographer, transcript, and the Department's cost associated with the public meeting.

(e) The violator shall submit to the Department proof of publication prior to the Department issuing an administrative order or executing the administrative consent order which includes an interim enforcement limits.

2. For any unintentional but foreseeable act or omission the civil administrative penalty shall be in an amount not more than \$4,000 nor less than \$3,000; or

3. For any other violation the civil administrative penalty shall be in an amount not more than \$2,500 nor less than \$1,500.

(f) The Department may, in its discretion, adjust the amount determined pursuant to (c) through (e) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the ranges on the basis of the following factors:

1. The compliance history of the violator;
2. The number, frequency and severity of the violation(s);
3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;
4. The deterrent effect of the penalty;
5. The cooperation of the violator in correcting the violation, remedying any environmental damage caused by the violation and ensuring that the violation does not reoccur;
6. Any unusual or extraordinary costs directly or indirectly imposed on the public by the violation; and
7. Other specific circumstances of the violator or violation.

Amended by R.1989 d.282, effective June 5, 1989.  
See: 21 N.J.R. 373(a), 21 N.J.R. 1530(a).

(d) and (e) deleted, (f) and (g) recodified as (d) and (e).  
Amended by R.1991 d.378, effective August 5, 1991.  
See: 23 N.J.R. 1089(a), 23 N.J.R. 2366(a).

Section recodified from 8.13.

In (b), added "the Water Supply and Wastewater Operators' Licensing Act and the Water Supply Management Act, or"; added "adopted or issued pursuant thereto,".

Added (f).

Amended by R.1995 d.162, effective March 20, 1995.  
See: 26 N.J.R. 4912(a), 27 N.J.R. 1265(a).

#### Case Notes

State administrative action did not bar citizens' suit. Public Interest Research Group of New Jersey, Inc. v. GAF Corp., D.N.J.1991, 770 F.Supp. 943.

State administrative action was not comparable to action brought under Clean Water Act. Public Interest Research Group of New Jersey, Inc. v. GAF Corp., D.N.J.1991, 770 F.Supp. 943.

#### 7:14-8.16 Severability

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications, and to this end, the provisions of the subchapter are declared to be severable.

New Rule, R.1989 d.282, effective June 5, 1989.

See: 21 N.J.R. 373(a), 21 N.J.R. 1530(a).  
Amended by R.1991 d.378, effective August 5, 1991.  
See: 23 N.J.R. 1089(a), 23 N.J.R. 2366(a).  
Section recodified from 8.14.

#### Case Notes

Penalty found appropriate for failure to provide self-monitoring reports, failure to construct treatment works and continued excessive discharge of pollutants. Lentine Aggregates v. Dept. of Environmental Protection, 4 N.J.A.R. 117 (1981), affirmed per curiam Dkt. No. A-3424-80 (App.Div.1982).

## APPENDIX A

### DEP LABORATORY METHODS

Method No. 010: pH (Electrometric)

Method No. 012: Total Residue

Method No. 013: Volatile and Ash Content of Total Residue

Method No. 032: Phenols

Method No. 036: Oil and grease

Method No. 100: Metals

#### pH (ELECTROMETRIC)

#### N.J. SLUDGE METHOD NO. DEP 010

#### 1.0 Scope and Application

1.1 This method is applicable to the determination of pH in municipal and industrial sludges.

#### 2.0 Summary of Method

2.1 A representative sample of sludge is thoroughly mixed and analyzed for pH electrometrically using either a glass electrode in combination with a reference electrode or a combination electrode.

2.2 The calibration of the pH electrode meter system is adjusted and checked with buffer solutions.

#### 3.0 Sample Handling and Preservation

3.1 Upon collection, samples shall be refrigerated or iced at 4°C.

#### 4.0 Limitations

4.1 Sodium error at pH levels greater than 10 can be reduced or eliminated by using a "low sodium error" electrode or applying a correction factor from a table or graph provided by the pH meter manufacturer.

4.2 Coatings of oil material or particulate matter can impair electrode response. These coatings can usually be removed by gentle wiping or detergent washing, followed by

distilled water rinsing. An additional treatment with dilute hydrochloric acid (1 ml concentrated hydrochloric acid diluted to 10 ml with water) may be necessary to remove any remaining film.

NOTE 1: It may be necessary to centrifuge an oily sludge to obtain an aqueous phase for true pH determination.

4.3 Temperature effects on the electrometric measurement of pH arise from two sources. The first is caused by the change in electrode output at various temperatures. This interference can be controlled with instruments having temperature compensation or by calibrating the electrode-instrument system at the temperature of the samples. The second source is the change of pH inherent in the sample at various temperatures. This error is sample dependent and cannot be controlled; it should therefore be noted by reporting both the pH and temperature at the time of analysis.

## 5.0 Safety

5.1 The toxicity or carcinogenicity of each reagent used in this method has not been precisely defined; however, each chemical compound should be treated as a potential health hazard. From this viewpoint, exposure to these chemicals must be reduced to the lowest possible level by whatever means available. The laboratory should maintain a current awareness file of OSHA rules regarding the safe handling of the chemicals specified in this method. A reference file of Material Safety Data Sheets should be made available to all personnel involved in the chemical analysis.

## 6.0 Apparatus

6.1 pH Meter, laboratory or field model, with an accuracy of  $\pm 0.05$  unit. A wide variety of instruments are commercially available with various specifications and optional equipment.

6.2 Glass pH electrode.

6.3 Reference electrode—a fiber junction, calomel, silver-silver chloride or other electrode of constant potential may be used. (Do not use gel filled electrodes).

6.4 Glass combination electrode.

6.5 Magnetic stirrer and TFE coated stirring bar.

6.6 Thermometer with at least one degree calibrations or less.

NOTE 2: Temperature compensator may be used instead of a thermometer.

6.7 Dispersion Device, homogenizer, blender, or other apparatus capable of disintegrating large particles.

## 7.0 Reagents

7.1 Secondary standard buffers may be prepared from NBS salts or purchased as a solution from commercial vendors. Use of these commercially available solutions, that have been validated by comparison to NBS standards, are recommended for routine use.

## 8.0 Calibration

8.1 At a minimum, each instrument must be calibrated at pH 7.0 before each use and after each set of 10 samples. The accuracy of the system must be checked and recorded daily at approximately pH 4 and 9 or 10 with appropriate certified buffers. The three values must agree within 0.05 pH units of the assigned values.

8.1.1 If the values do not agree within 0.05 pH units, correct the problem before proceeding.

## 9.0 Procedure

9.1 Dilute, if required, with distilled water to achieve fluidity and/or to dissolve any inorganic buffer salts that may be present.

9.2 Disperse sample, if necessary, with a homogenizer or blender to disintegrate large particles.

9.3 Calibrate the meter and electrode system as described in Section 8.

9.4 Bring the sample temperature within 2°C of the buffer solution.

9.5 Rinse or gently wipe the electrodes with distilled or deionized water after each sample or buffer and gently blot them with a clean dry tissue. Immerse them into the sample beaker and stir gently at a constant rate to provide homogeneity and suspension of solids. Note and record sample pH to the nearest 0.1 unit and temperature to the nearest degree.

10.0 Precision and Accuracy—No data are available.

## 11.0 References

11.1 Methods for Chemical Analysis of Water and Wastes, U.S. Environmental Protection Agency, EPA 600/4-79-020, March, 1979.

## TOTAL RESIDUE

### N.J. SLUDGE METHOD NO. DEP 012

## 1.0 Scope and Application

1.1 This method is designed to measure the residue content of municipal and industrial sludges over a range of 1-75% W/W.