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 Civil administrative penalty determination for indirect dischargers

(a) The Department may assess a civil administrative penalty against any indirect discharger of not more than $50,000, for each violation of each provision of the Water Pollution Control Act and for each violation of any rule, pretreatment standard, effluent limitation, administrative order or permit issued either by the Department pursuant thereto. The Department shall assess a minimum mandatory civil administrative penalty in an amount:

1. Not less than $1,000 for each serious violation as defined under N.J.A.C. 7:14–8.2; and

2. Not less than $5,000 for each violation that causes a violator to be, or continue to be, a significant noncomplier as defined under N.J.A.C. 7:14–8.2.

(b) Each violation of any provision of the Water Pollution Control Act or any rule, pretreatment standard, effluent limitation, administrative order or permit issued by the Department, shall constitute an additional, separate and distinct violation. In addition, the unpermitted discharge of each separate pollutant shall constitute an additional, separate and distinct violation.

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

(d) Unless the Department assesses a civil administrative penalty as set forth in N.J.A.C. 7:14–8.6 through 7:14–8.12, the Department may assess a civil administrative penalty for violations described in this section as described in (e) below.

(e) To assess a civil administrative penalty pursuant to this section, the Department shall:

1. Identify the penalty range within the matrix in (f) below by:

i. Determining the seriousness of the violation pursuant to (g) below; and

ii. Determining the conduct of the violator pursuant to (h) below; and

2. Assess the penalty at the midpoint of the range within the matrix in (f) below, unless adjusted pursuant to (i) below.

(f) The matrix of ranges of penalties is as follows:

		SERIOUSNESS		
		Major	Moderate	Minor
CONDUCT	Major	$40,000–$50,000	$5,000–$25,000	$2,000–13,000
	Moderate	$5,000–$10,000	$2,500–$5,000	$500–$3,000
	Minor	$500–$7,500	$500–$2,500	$500–$1,250

(g) The Department shall determine the seriousness of the violation as major, moderate or minor as set forth in (g)1 through 3 below.

1. Major shall include:

i. Any violation of any effluent limitation that is measured by concentration or mass for any discharge exceeding the effluent limitation as follows:

(1) By more than 50 percent for a hazardous pollutant;

(2) By more than 100 percent for a non-hazardous pollutant; or

(3) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment; or

ii. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by more than 50 percent of the midpoint of the range excluding the excursions specifically excepted by a NJPDES/SIU issued permit with continuous pH monitoring; or

iii. Any other violation not included in (g)1i or ii above which either:

(1) Has caused or has the potential to cause serious harm to human health or the environment; or

(2) Seriously deviates from the requirements of the Water Pollution Control Act or of any rule, pretreatment standards, effluent limitation, administrative order or permit issued pursuant thereto; serious deviation shall include, but not be limited to, those violations that are in complete contravention of the requirement, or if some of the requirement is met, which severely impair or undermine the operation or intent of the requirement.

2. Moderate shall include:

i. Any violation, other than a violation of an effluent limitation identified in (g)2ii or iii below, which has caused or has the potential to cause substantial harm to human health or the environment;

ii. Any violation of an effluent limitation which is measured by concentration or mass of any discharge exceeding the effluent limitation as follows:

(1) By 20 to 50 percent for a hazardous pollutant; or

(2) By 40 to 100 percent for a non-hazardous pollutant;

iii. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by at least 40 percent but no more than 50 percent of the midpoint of the range excluding the excursions specifically excepted by a NJPDES/SIU issued permit with continuous pH monitoring; or

iv. Any violation, other than a violation of an effluent limitation identified in (g)2ii or iii above, which substantially deviates from the requirements of the Water Pollution Control Act or of any rule, pretreatment standards, effluent limitation, administrative order or permit issued pursuant thereto; substantial deviation shall include, but not be limited to, violations that are in substantial contravention of the requirements or which substantially impair or undermine the operation or intent of the requirement.

3. Minor shall include:

i. Any violation, other than a violation of an effluent limitation identified in (g)3ii or iii below, not included in (g)1 or 2 above;

ii. Any violation of an effluent limitation which is measured by concentration or mass for any discharge exceeding the effluent limitation as follows:

(1) By less than 20 percent for a hazardous pollutant; or

(2) By less than 40 percent for a non-hazardous pollutant; or

iii. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by less than 40 percent of the midpoint of the range excluding the excursions specifically excepted by a NJPDES/SIU issued permit with continuous pH monitoring.

(h) The Department shall determine the conduct of the violator as major, moderate or minor as follows:

1. Major shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;

2. Moderate shall include any unintentional but foreseeable act or omission by the violator; or

3. Minor shall include any other conduct not included in (h)1 or 2 above.

(i) The Department may move from the midpoint of the range, to an amount not greater than the maximum amount nor less than the minimum amount in the range, on the basis of the following factors:

1. The compliance history of the violator;

i. No violations of t3he same effluent limitation and discharge point at all in the two years immediately preceding the pending violation shall result in a reduction equal to 25 percent of the midpoint.

ii. No serious or fewer than four lesser violations of the same effluent limitation and discharge point in the two years immediately preceding the pending violation shall result in a reduction equal to 10 percent reduction of the midpoint.

iii. One isolated serious violation or four or more lesser violations of the same effluent limitation and discharge point in the two years immediately preceding the date of the pending violation shall result in an increase equal to 10 percent of the midpoint.

iv. Any violation(s) which caused a person to become or remain in significant noncompliance or two or more isolated serious violations where such violations are of the same effluent limitation and discharge point in the two years immediately preceding the date of the pending violation shall result in a 25 percent increase from the midpoint;

2. Where the nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed results in compliance within 30 days of receipt of the notice of violation from the Department;

3. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation;

4. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation; and

5. Other specific circumstances of the violator or violation.

New Rule, R.1997 d.106, effective May 5, 1997.
See: 28 N.J.R. 720(a), 28 N.J.R. 2779(a), 28 N.J.R. 3040(a), 28 N.J.R. 3494(a), 28 N.J.R. 4697(a), 29 N.J.R. 1691(c).
Former section recodified to N.J.A.C. 7:14–8.18.

7:14–8.17 Civil administrative penalty for failure to implement an approved industrial pretreatment program

(a) The Department may assess a civil administrative penalty against any delegated local agency pursuant to this section for each violator who fails to implement its approved industrial pretreatment program as required by the Federal Act, the State Act, or the Water Pollution Control Act, and for violations of any rule, administrative order, or permit issued pursuant thereto.

(b) Each violation of any provision of the Federal Act, the State Act, the Water Pollution Control Act, or any rule, administrative order, or permit issued pursuant thereto, shall constitute an additional, separate and distinct violation.

(c) The Department may assess a civil administrative penalty for violations described in this section at the midpoint of the following ranges except as adjusted pursuant to (e) below:

1. For failure to implement any of the following pretreatment program requirements, the civil administrative penalty shall be in an amount up to $10,000:

i. Give public notice to indirect users which meet or have met the significant non-compliance criteria as defined by 40 CFR Part 403.8(f)(2)(vii);

ii. Ensure public participation and notification;

iii. Perform RCRA notification pursuant to 40 C.F.R. Part 403; or

iv. Submit required major program modifications.

2. For failure to implement any of the following pretreatment program requirements, the civil administrative penalty shall be in an amount up to $20,000:

i. Identify and locate indirect users;

ii. Perform data management and recordkeeping;

iii. Sample the treatment works as required by the conditions of the IPP; or

iv. Submit a "40 CFR Part 403" annual report, and/or the "CWEA" annual report pursuant to N.J.S.A. 53:10A–14.2.

3. For failure to implement any of the following pretreatment program requirements, the civil administrative penalty shall be in an amount up to $50,000:

i. Inspect indirect users;

ii. Issue a permit to those facilities required to receive such a document;

iii. Sample indirect users;

iv. Initiate enforcement actions in accordance with an approved enforcement response plan and/or the pretreatment program as approved, including any subsequent amendments thereto;

v. Develop and enforce local discharge limitations;

vi. Review reports and identify violations; or

vii. Secure and maintain program resources.

(d) The Department may assess a civil administrative penalty in accordance with (c) above at any time. The assessment shall be based on the Department's evaluation of the delegated local agency's pretreatment program requirements. Furthermore, the Department may require a delegated local agency to adequately respond to findings based on an inspection conducted by the Department, the Department's review of the delegated local agency's 40 CFR Part 403 annual report, or the IPP on-site audit conducted by the Department.

(e) The Department may adjust the amount determined pursuant to (c) above to assess a civil administrative penalty from the midpoint of the range to an amount not greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1. The compliance history of the violator;

2. The nature, timing and effectiveness of any measures taken by the violator to prevent future similar violations;

3. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and/or

4. Other specific circumstances of the violator or violation.

(f) When the Department determines that the violator has gained an economic benefit from a violation, the Department may, in addition to any other civil administrative penalty assessed pursuant to this subchapter, include as part of a civil administrative penalty, under (c) above, the eco-

nomic benefit (in dollars) which the violator has realized as a result of not complying, or by delaying compliance.

New Rule, R.1997 d.106, effective May 5, 1997.
See: 28 N.J.R. 720(a), 28 N.J.R. 2779(a), 28 N.J.R. 3040(a), 28 N.J.R. 3494(a), 28 N.J.R. 4697(a), 29 N.J.R. 1691(c).

7:14–8.18 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.
Recodified from 7:14–8.16 by R.1997 d.106, effective May 5, 1997.
See: 28 N.J.R. 720(a), 28 N.J.R. 2779(a), 28 N.J.R. 3040(a), 28 N.J.R. 3494(a), 28 N.J.R. 4697(a), 29 N.J.R. 1691(c).

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 ± 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 venders. 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 600–79–020, 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.