

CHAPTER 14

WATER POLLUTION CONTROL ACT

Authority

N.J.S.A. 13:1B-3 et seq., 13:1D-1 et seq., 13:1E-1 et seq., 26:2C-1 et seq., 58:10-23.11 et seq., 58:10A-1 et seq., 58:11-49 et seq., 58:11A-1 et seq., 58:12A-1 et seq.

Source and Effective Date

R.1999 d.163, effective April 26, 1999.
See: 31 N.J.R. 508(b), 31 N.J.R. 636(a), 31 N.J.R. 1314(b).

Executive Order No. 66(1978) Expiration Date

Chapter 14, Water Pollution Control Act, expires on April 26, 2004.

Chapter Historical Note

Chapter 14, Water Pollution Control Act, was adopted as R.1977 d.268, effective July 27, 1977. See: 9 N.J.R. 259(a), 9 N.J.R. 418(c).

Subchapter 7, Ocean Dumping Alternative Development, was adopted as R.1977 d.458, effective December 2, 1977. See: 9 N.J.R. 460(b), 10 N.J.R. 10(b).

Subchapter 8, Assessment of Civil Administrative Penalties, was adopted as R.1979 d.111, effective March 15, 1979. See: 10 N.J.R. 533(a), 11 N.J.R. 173(c).

Subchapter 4, Sludge Quality Assurance, was adopted as R.1979 d.419, effective October 18, 1979. See: 11 N.J.R. 274(d), 11 N.J.R. 544(e).

Subchapter 5, Statewide Management of Septage Disposal, was adopted as R.1980 d.277, effective June 23, 1980. See: 12 N.J.R. 111(c), 12 N.J.R. 462(a).

Subchapter 1, General Provisions, and Subchapter 3, NJPDES Permits, were repealed, and Subchapter 2, Approval of Facilities for Prevention, Collection, Treatment or Discharge of Pollutants, was recodified as N.J.A.C. 7:14A-12 by R.1981 d.84,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, 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).

Pursuant to Executive Order No. 66(1978), Subchapter 8, Assessment of Civil Administrative Penalties, was readopted as R.1984 d.189, effective May 21, 1984. See: 16 N.J.R. 181(b), 16 N.J.R. 1225(a).

Pursuant to Executive Order No. 66(1978), Subchapter 5, Statewide Management of Septage Disposal, expired on June 23, 1985.

Subchapter 8, Assessment of Civil Administrative Penalties, was repealed and Subchapter 8, Civil Administrative Penalties and Requests for Adjudicatory Hearings, was adopted as new rules by R.1988 d.380, effective August 1, 1988. See: 20 N.J.R. 455(a), 20 N.J.R. 1884(a).

Pursuant to Executive Order No. 66(1978), Chapter 14, Water Pollution Control Act, was readopted as R.1989 d.282, effective April 27, 1989, and Subchapter 7, Ocean Dumping Alternative Development, was repealed by R.1989 d.282, effective June 5, 1989. See: 21 N.J.R. 373(a), 21 N.J.R. 1530(a).

Petition for Rulemaking. See: 23 N.J.R. 622(b) and (c).

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, Water Pollution Control Act, was readopted as R.1994 d.256, effective April 27, 1994. See: 26 N.J.R. 1038(a), 26 N.J.R. 2459(a).

Pursuant to Executive Order No. 66(1978), Subchapter 2, Construction of Wastewater Treatment Facilities, and Subchapter 8, Civil Administrative Penalties and Requests for Adjudicatory Hearings, were readopted as R.1999 d.163, effective April 26, 1999, and Appendix D, Wording of Financial Assurance Documents, was recodified as Appendix A by R.1999 d.163, effective May 17, 1999. See: 31 N.J.R. 508(b), 31 N.J.R. 1314(b). See, also, section annotations.

Pursuant to Executive Order No. 66(1978), Subchapter 4, Sludge Quality Assurance, was readopted as R.1999 d.164, effective April 26, 1999, and Subchapter 4, Sludge Quality Assurance, was recodified as N.J.A.C. 7:14C and Appendix A, DEP Laboratory Methods, Appendix B, Domestic Wastewater Sludge Report, Appendix C, Priority Pollutants, Appendix A-1, Sludge Report, Appendix A-2, Heavy Metals and Selected Chemical Parameters, Appendix A-3, Toxic Organic Compounds, Appendix A-4, Industrial Process Wastewater Sludge Report, Appendix A-5, Pretreatment Facilities Fact Profile, Appendix B-1, Heavy Metals and Toxic Organic Compounds, Appendix B-2, Toxic Pollutants, and Appendix C, Separation of Liquid and Solid Phases for Analysis of Inorganic and Organic Components, were repealed by R.1999 d.164, effective May 17, 1999. See: 31 N.J.R. 200(a), 31 N.J.R. 1320(a).

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 Environmental Commission appear as Appendix A to Title 7.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. CONSTRUCTION OF WASTEWATER TREATMENT FACILITIES

7:14-2.1	Construction procedures
7:14-2.2	Record drawings; collector sewers, interceptor sewers and force mains
7:14-2.3	Permits
7:14-2.4	Easements/rights-of-way
7:14-2.5	Field layout (baseline and monuments)
7:14-2.6	Engineer design activities: plan scale and plan updating
7:14-2.7	Construction, overhead and profit factors for Extra Work compensation
7:14-2.8	Payments to contractors
7:14-2.9	Mobilization: unit price contracts for sewer construction
7:14-2.10	Bid items for sewer pipe installation
7:14-2.11	Reasonable minimum unit prices
7:14-2.12	Payment widths, trench backfill and roadway paving for Federally funded sewer projects
7:14-2.13	Excavation material unacceptable or conditionally acceptable for reuse as trench backfill
7:14-2.14	Construction equipment costs compensation for extra work
7:14-2.15	Substantial and final completion of pipe projects; contractor's guarantees

SUBCHAPTERS 3 THROUGH 7. (RESERVED)
 SUBCHAPTER 8. CIVIL ADMINISTRATIVE PENALTIES
 AND REQUESTS FOR ADJUDICATORY
 HEARINGS

- 7:14-8.1 Authority and purpose
- 7:14-8.2 Definitions
- 7:14-8.3 Procedures for assessment, payment and settlement of civil administrative penalties, and affirmative defenses
- 7:14-8.3A Public comment on interim enforcement limits
- 7:14-8.4 Procedures to request an adjudicatory hearing to contest an administrative order, a notice of civil administrative penalty assessment or a notice of civil administrative cost assessment; procedures for conducting adjudicatory hearings
- 7:14-8.5 Civil administrative penalty determination
- 7:14-8.6 Civil administrative penalty for submitting inaccurate or false information
- 7:14-8.7 Civil administrative penalty for failure to allow lawful entry and inspection
- 7:14-8.8 Civil administrative penalty for conducting unapproved activities
- 7:14-8.9 Civil administrative penalty for failure to properly conduct monitoring or sampling under the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act
- 7:14-8.10 Civil administrative penalty for failure to pay a fee
- 7:14-8.11 (Reserved)
- 7:14-8.12 Civil administrative penalty for violation of whole effluent toxicity limitations
- 7:14-8.13 Civil administrative penalty for economic benefit
- 7:14-8.14 Civil administrative penalty for failing to comply with an information request or administrative subpoena, and the destruction of records
- 7:14-8.15 (Reserved)
- 7:14-8.16 Civil administrative penalty determination for indirect dischargers
- 7:14-8.17 Enforcement actions for failure to implement an approved industrial pretreatment program
- 7:14-8.18 Severability

APPENDIX A. WORDING OF FINANCIAL ASSURANCE DOCUMENTS

APPENDIX B THROUGH B-2. (RESERVED)

APPENDIX B-3. POLLUTANTS THAT ARE INHIBITORY TO BIOLOGICAL TREATMENT PROCESSES

APPENDIX C THROUGH D. (RESERVED)

SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. CONSTRUCTION OF WASTEWATER TREATMENT FACILITIES

7:14-2.1 Construction procedures

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

Amended by R.1999 d.163, effective May 17, 1999.
 See: 31 N.J.R. 508(b), 31 N.J.R. 1314(b).

Substituted references to the Department for references to the Division and substituted references to this subchapter for references to this chapter throughout.

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.

7:14-2.4 Easements/rights-of-way

An interruption of construction or an extension of contract time may be a basis for a claim by a contractor for additional cost when such interruption or extension is caused by the owner's inability to obtain an easement/right-of-way. Claims shall include any reasonable cost incurred by the contractor and shall be reviewed and approved by the owner prior to submission to the Department. The Department may approve all, any portion, or deny the cost for eligibility for projects funded under the Grant Program.

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 interim enforcement limits.

(f) After receiving the comments, but before executing an administrative order or an administrative consent order which includes the interim enforcement limits, the Department will:

1. Evaluate each of the comments received;
2. Respond to the comments received; and
3. Notify each person who submitted written comments of the main provisions of the administrative order or administrative consent order and the final interim enforcement limits and a copy of the Department's responses to the comments.

New Rule, R.1991 d.378, effective August 5, 1991.

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

Amended by R.1999 d.163, effective May 17, 1999.

See: 31 N.J.R. 508(b), 31 N.J.R. 1314(b).

In (a), rewrote 1, and added 4.

7:14-8.4 Procedures to request an adjudicatory hearing to contest an administrative order, a notice of civil administrative penalty assessment or a notice of civil administrative cost assessment; procedures for conducting adjudicatory hearings

(a) To request an adjudicatory hearing to contest an administrative order, a notice of civil administrative penalty assessment, or a notice of civil administrative cost assessment issued by the Department pursuant to the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act, or the Water Supply and Wastewater Operators' Licensing Act, the violator shall submit the original request in writing to the Department at Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, PO Box 402, Trenton, New Jersey 08625-0402 and a copy of the request to the enforcement bureau which issued the enforcement document. Any written request shall include the following information:

1. The name, address, and telephone number of the violator and its authorized representative;
2. The date the violator received the enforcement document being contested;
3. A copy of the enforcement document and a list of all issues being appealed;
4. The violator's defenses to each of the findings of fact stated in short and plain terms;

5. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;

6. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;

7. An estimate of the time required for the hearing (in days and/or hours);

8. A request, if necessary, for a barrier-free hearing location for physically disabled persons;

9. Proof of compliance with all of the requirements in N.J.A.C. 7:14A-6.10 if the violator intends to:

i. Raise an affirmative defense to liability for a civil administrative penalty pursuant to N.J.A.C. 7:14-8.5(a) or 8.16(a) for the violation of an effluent limitation on the basis that a violation of an effluent limitation occurred as a result of an upset, an approved anticipated bypass or unanticipated bypass, a testing laboratory error, or a permitted groundwater remedial action; and

ii. To request that the Department determine through an administrative hearing whether or not it agrees with the violator's allegations concerning the matter; and

10. For a notice of civil administrative penalty assessment pursuant to N.J.A.C. 7:14-8.9(e), the following as applicable:

i. Documentation of compliance with the requirements in N.J.A.C. 7:14-8.9(e) that the violator notify the Department in writing, within 30 days after the date the violator was required to submit the information to the Department, of extenuating circumstances that prevented timely submission of a complete discharge monitoring report;

ii. Documentation of the violator's correction of the violation by submitting the omitted information within 10 days after the violator's receipt of the notice of the omission; a violator's failure to comply with the notice requirements in N.J.A.C. 7:14-8.9(e) will be a waiver of the violator's right to correct the violation within the required 10-day period and thus avert liability; or

iii. Documentation that the violator complied with N.J.A.C. 7:14-8.9(e)3, if the violator intends to contest a civil administrative penalty assessed pursuant to

N.J.A.C. 7:14-8.9(e) based on the existence of extenuating circumstances beyond the violator's control; if the violator fails to submit the required information within this 30-day period, the violator shall have waived its right to contest the civil administrative penalty in this manner and be barred from doing so; and

11. A statement as to whether the violator agrees to the Department's holding the request for 90 days prior to referral to the Office of Administrative Law for purposes of allowing time to negotiate a settlement of the dispute as provided by N.J.A.C. 1:1-8.1(b).

(b) The Department shall deny the hearing request if the Department does not receive a complete hearing request pursuant to (a) above within 20 days after receipt by the violator of the Notice of a Civil Administrative Penalty Assessment, the Administrative Order, or Notice of Civil Administrative Cost Assessment being challenged. A violator's failure to notify the Department in writing, within the 30 days allotted under (a) above, of the existence of extenuating circumstances which prevented timely submission of a complete discharge monitoring report, shall be grounds for the Department to deny any hearing request on a notice of civil administrative penalty assessment pursuant to N.J.A.C. 7:14-8.9(e).

(c) All adjudicatory hearings held pursuant to this section shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

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

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

Added "or a notice of civil administrative cost assessment" to heading and in (a) and (b).

Added (a)7, 8, 9.

In (b), added "A violator's failure ... pursuant to N.J.A.C. 7:14-8.9(e)".

Deleted (c).

Recodified existing (d) as (c).

Administrative Change in (a).

See: 23 N.J.R. 3325(b).

Administrative Correction to N.J.A.C. 7:14-8.4(a)9i and ii.

See: 23 N.J.R. 3754(a).

Administrative Correction to N.J.A.C. 7:14-8.4(a)9ii.

See: 25 N.J.R. 2862(b).

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

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

Amended by R.1999 d.32, effective January 19, 1999.

See: 30 N.J.R. 1356(a), 31 N.J.R. 157(a).

In (a), deleted "and Energy" following "Environmental Protection" and updated the address in the introductory paragraph and deleted a former 9.

Amended by R.1999 d.163, effective May 17, 1999.

See: 31 N.J.R. 508(b), 31 N.J.R. 1314(b).

Rewrote (a).

Law Review and Journal Commentaries

Environmental Law—Administrative Law. Steven P. Bann, No. 2, 138 N.J.L.J. 54 (1994).

Case Notes

State administrative action brought against polluter by New Jersey Department of Environmental Protection was not "comparable" to an action brought under Clean Water Act, and, thus, state administrative action did not bar citizens' suit under Act where there had been no previous provision for public comment or hearing. 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.

Posting of financial assurance for potential penalty as condition to obtaining hearing violated due process. and Energy, 275 N.J.Super. 342, 646 A.2d 447 (A.D.1994).

Statutory 20-day time limit for requesting adjudicatory hearing on notice of administrative penalty for violation of pollutant discharge permit was mandatory and jurisdictional. Schaible Oil Co., Inc. v. New Jersey Dept. of Environmental Protection, 246 N.J.Super. 29, 586 A.2d 853 (A.D.1991), certification denied 126 N.J. 387, 599 A.2d 163.

7:14-8.5 Civil administrative penalty determination

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than \$50,000 for each violation of each provision of the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act and for violations of any rule, water quality standards, effluent limitation, administrative order or permit issued pursuant thereto. The Department shall assess a minimum mandatory civil administrative penalty for violations which occur after June 30, 1991 in an amount:

1. Not less than \$5,000 for each violation that causes a violator to be, or continue to be, a significant noncomplier; or
2. Not less than \$1,000 for each serious violation.

(b) Each violation of any provision of the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act, or any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto, 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. If a violator establishes, to the satisfaction of the Department, that a single operational occurrence has resulted in the simultaneous violation of more than one effluent limit, the Department may consider, for purposes of calculating the mandatory civil administrative penalties to be assessed pursuant to (a) above, the violation of interrelated effluent limits to be a single 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 pursuant to N.J.A.C. 7:14-8.6 through N.J.A.C. 7:14-8.12, the Department shall 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 civil administrative 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.
2. The civil administrative penalty shall be at the midpoint of the range within the matrix in (f) below, unless adjusted pursuant to (i) below.

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

		SERIOUSNESS		
		Major	Moderate	Minor
CONDUCT	Major	\$40,000-\$50,000	\$30,000-\$40,000	\$15,000-\$25,000
	Moderate	\$30,000-\$40,000	\$10,000-\$20,000	\$ 3,000-\$ 7,000
	Minor	\$15,000-\$25,000	\$ 3,000-\$ 7,000	\$ 1,000-\$ 2,500

(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 an effluent limitation which 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; or
 - (2) By more than 100 percent for a nonhazardous pollutant;
 - 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% of the midpoint of the range excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring; and
 - 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 the New Jersey Underground Storage of Hazardous Substances Act or violates any rule, water quality standards, effluent limitation, administrative order or permit issued pursuant thereto; serious deviation shall include, but not

be limited to, those violations which 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.

iv. Any violation which seriously deviates from a requirement of the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act or any violation of any rule, water quality standard, effluent limitation, administrative order or permit now or hereafter issued pursuant thereto; serious deviation shall include, but not be limited to, those violations which 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 nonhazardous 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 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, the New Jersey Underground Storage of Hazardous Substances Act, or any violation of any rule, water quality standard, effluent limitation, administrative order or permit now or hereafter issued pursuant thereto; substantial deviation shall include, but not be limited to, those violations which 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; or
- 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 nonhazardous 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 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, in its discretion, move from the midpoint of the range to an amount no 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 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 or impacts directly or indirectly imposed on the public or the environment as a result of the violation;
7. 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
8. 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)-(f) recodified as (e)-(g), new (c) added regarding each day continuing constituting separation violation.

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

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

Added (e)1iii and (e)2iii.

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 penalty amounts for violations occurring after June 30, 1991.

In (b), added "If a violator establishes . . . to be a single violation".

In (d), substituted old text for new text with retention of chart. Changed the \$6,000 penalty assessments in the chart to \$7,000.

Recodified existing (e) as (g) with substantial additions.

Deleted (g)1i; recodified existing (g)1ii as i.

Added (g)1ii and (g)2iii.

In (g)2i, added ", other than a violation of an effluent limitation identified in (g)2ii below,".

In (g)2ii(1), changed "26" to "20".

In (g)2ii(2), changed "51" to "40".

In (g)3i, added ", other than a violation of an effluent limitation identified in (g)3ii or iii below,".

In (g)3ii(1), changed "up to 25" to "less than 20".

In (g)3ii(2), changed "up to 50" to "less than 40".

Recodified existing (f) and (g) as (h) and (i).

In (i), changed "adjust the amount determined pursuant to (d) above to assess a civil administrative penalty in" to "move from the midpoint of the range to". Substituted (i)5 with new text and added (i)6, 7 and 8. Amended by R.1992 d.145, effective April 6, 1992.

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

pH effluent ranges added.

Amended by R.1999 d.163, effective May 17, 1999.

See: 31 N.J.R. 508(b), 31 N.J.R. 1314(b).

In (g), deleted a former second sentence in the introductory paragraph.

Case Notes

In assessing penalty under federal Clean Water Act, rebuttable presumption of adequacy will be given to state Department of Environmental Protection's penalty assessment for violations of Jersey Water Pollution Act if there has been meaningful degree of citizen participation, individualized determination based on all relevant facts, and resulting remedy sufficient to abate and deter pollution. *Public Interest Research Group of New Jersey, Inc. v. Hercules, Inc.*, 970 F.Supp. 363 (D.N.J.1997.)

Penalty for violation of permit upheld when maximum boron discharge limits exceeded. *Department of Environmental Protection v. Florence Land Recontouring Company, Inc.*, 97 N.J.A.R.2d (EPE) 17.

Penalty assessment for exceedances of effluent limitations were reduced for remedial efforts and "upset" from sewer blockage. *Department of Environmental Protection v. Harding Woods*, 95 N.J.A.R.2d (EPE) 195.

Chemical company failed to show that permit exceedance violations were laboratory error. *Department of Environmental Protection v. CPS Chemical Company, Inc.*, 94 N.J.A.R.2d (EPE) 218.

Penalty assessed against county when county repeatedly exceeded limits established by environmental permit. *DEPE v. Cumberland County Improvement Authority*, 94 N.J.A.R.2d (EPE) 45.

Pipe foundry exceeded effluent limitations set forth in permit. *DEPE v. Griffin Pipe Products Co.*, 93 N.J.A.R.2d (EPE) 251.

Discharges by quarry of crusher waters constituted violations of Water Pollution Control Act; penalty assessed. *Division of Water Resources v. Tilcon New Jersey, Inc.* 93 N.J.A.R.2d (EPE) 245.

Penalty of \$1,750 for violation by car wash of permit condition was appropriate. *Gem Car Wash v. Department of Environmental Protection*. 93 N.J.A.R.2d (EPE) 234.

Former regulation imposed duty on town to cease sewer extension approvals if ban criteria were met; penalty regulation effective when Department discovered violations and assessed penalties governed penalty assessment. *Department of Environmental Protection v. Town of Newton*. 93 N.J.A.R.2d (EPE) 167.

Failure to submit timely and adequate notice of force majeure occurrences; violation of effluent limitations not excused. *Evesham Municipal Utilities Authority v. New Jersey Department of Environmental Protection*, 92 N.J.A.R.2d (EPE) 222.

Operator of pork slaughtering and packaging facility violated wastewater permit; civil administrative penalties. *New Jersey Department of Environmental Protection v. Triolo Brothers, Inc.*, 92 N.J.A.R.2d (EPE) 1.

7:14-8.6 Civil administrative penalty for submitting inaccurate or false information

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who submits inaccurate information or who makes a false statement, representation, or certification in any application, record, or other document required to be submitted or maintained, or who falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained under the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act or any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto.

(b) Each day, from the day of submittal by the violator of the false or inaccurate information to the Department to the day of receipt by the Department of a written correction by the violator shall be an additional, separate and distinct violation.

(c) The Department shall assess a civil administrative penalty for violations described in this section based on the conduct of the violator at the midpoint of the following ranges except as adjusted pursuant to (d) below:

1. For each intentional, deliberate, purposeful knowing or willful act or omission by the violator, the civil administrative penalty shall be in an amount up to \$50,000 per act or omission;
2. For each other violation not identified pursuant to (c)1 above for which the violator does not correct the violation within 10 days after becoming aware of the violation, the civil administrative penalty shall be in an amount up to \$30,000; and
3. For each other violation not identified pursuant to (c)1 above for which the violator corrects the violation within 10 days after becoming aware of the violation, the civil administrative penalty shall be in an amount up to \$1,000.

(d) The Department may, in its discretion, adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no 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 number, frequency and severity of the violations;
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 or impacts directly or indirectly imposed on the public or the environment as a result of the violation;

7. 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

8. 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).

Language added at (c) regarding assessing penalty at mid-point of ranges and new (d) added.

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

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

In (c)1, changed penalty to "up to \$50,000".

Added (c)2.

Recodified existing (c)2 as 3 and added "not identified pursuant to (c)1 above for which the violator corrects the violation within 10 days after becoming aware of the violation".

Deleted (d)5 and substituted new text.

Added (d)6, 7 and 8.

Case Notes

Penalty assessment for exceedances of effluent limitations were reduced for remedial efforts and "upset" from sewer blockage. *Department of Environmental Protection v. Harding Woods*, 95 N.J.A.R.2d (EPE) 195.

7:14-8.7 Civil administrative penalty for failure to allow lawful entry and inspection

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who refuses, inhibits or prohibits immediate lawful entry and inspection of any premises, building or place by any authorized Department representative.

(b) Each day, from the initial day of failure by the violator to allow immediate lawful entry and inspection to the day of receipt by the Department of written notification from the violator that the violator will not refuse, inhibit or prohibit immediate lawful entry and inspection, shall be an additional, separate and distinct violation.

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

1. For refusing, inhibiting or prohibiting immediate lawful entry and inspection of any premises, building or place for which an administrative order or permit exists under the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act, the

civil administrative penalty shall be in an amount up to \$50,000; and

2. For any other refusal, inhibition or prohibition of immediate lawful entry and inspection, the civil administrative penalty shall be in an amount up to \$8,000.

(d) The Department may, in its discretion, adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no 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 number, frequency and severity of the violations;
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 the damage caused by the violation and ensuring that the violation does not reoccur;
6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation;
7. 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
8. 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).

The word "lawful" added before "entry" wherever it appears; language regarding assessing penalty at mid-point of ranges and new (d) added.

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

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

In (c)1, changed penalty amount to "up to \$50,000".

In (c)2, changed penalty amount to "up to \$8,000".

Deleted (d)5 and substituted new text.

Added (d)6, 7 and 8.

7:14-8.8 Civil administrative penalty for conducting unapproved activities

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who approves, endorses, allows construction or operation to commence or proceed, builds, modifies, installs, replaces, expands or operates a facility or treatment works, as defined by N.J.A.C. 7:14A, without the proper authorization or in violation of any rule, administrative order, sewer connection ban, or permit issued or imposed pursuant to the Water Pollution Control Act.

(b) The Department shall determine the amount of the civil administrative penalty for violations described in this section based on the seriousness of the violation and conduct of the violator based on the following:

1. For any unauthorized approval, endorsement or allowance to commence or proceed to build, modify, install, replace, expand or operate a facility or treatment works, the civil administrative penalty shall be in an amount determined as follows: civil administrative penalty = (seriousness) x (conduct) x (\$1.00)

i. The seriousness factor shall be equal to one-half of the design flow (in gallons per day) indicated in the permit application for that facility or project, or if there is no permit application, then from the Projected Flow table in N.J.A.C. 7:14A-23.3; and

ii. The conduct factor is either:

(1) 1.00 if the conduct is intentional, deliberate, purposeful, knowing or willful; or

(2) 0.75 for any other conduct.

iii. Each approval, endorsement or allowance to commence or proceed shall be considered an additional, separate and distinct violation;

2. For building, installation, modification, replacement or expansion of a facility or treatment works without the required Department approval, the civil administrative penalty shall be in an amount determined as follows: civil administrative penalty = (seriousness) x (conduct) x (\$1.00)

i. The seriousness factor shall be equal to one-half of the design flow (in gallons per day) as determined from the permit application for that facility or project, or if there is no permit application or if the design flow is not indicated on the permit application, then from the Projected Flow table in N.J.A.C. 7:14A-23.3.

ii. The conduct factor is either:

(1) 1.00 if the conduct is intentional, deliberate, purposeful, knowing or willful; or

(2) 0.75 for any other conduct.

iii. Each day or part thereof that the construction of the facility or treatment works continues without the required Department approval shall be considered an additional, separate and distinct violation.

3. For the operation of any facility or treatment works, the civil administrative penalty shall be in an amount equal to, at the sole discretion of the Department, either:

i. Twice the total penalty for the illegal building, installation, modification, replacement or expansion of a facility or treatment works calculated pursuant to (b)2 above; or

ii. Equal to the product of the following equation:
civil administrative penalty = (seriousness) x (conduct)
x (\$1.00)

(1) The seriousness factor shall be equal to the total design flow (in gallons per day) as determined from the permit application for that facility or project, or if there is no permit application or if the design flow is not indicated on the permit application, then from the Projected Flow table in N.J.A.C. 7:14A-23.3.

(2) The conduct factor shall be either:

(A) 1.00 if the conduct is intentional, deliberate, purposeful, knowing or willful; or

(B) 0.75 for any other conduct.

(3) Each day or part thereof that the operation of the facility or treatment works continues without the required Department approval shall be considered an additional, separate and distinct violation.

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

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

Cite to N.J.A.C. added in (b) and language regarding seriousness of violation and conduct of violator.

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 "allows construction or operation to commence or proceed"; "installs, replaces, expands"; "sewer connection ban"; "or imposed"; deleted "-1 et seq." in code citation.

Deleted (a)2.

In (b), deleted "in accordance with N.J.A.C. 7:14-8.5 or".

Substituted old text for new text in (b)1, 2, 3.

Amended by R.1999 d.163, effective May 17, 1999.

See: 31 N.J.R. 508(b), 31 N.J.R. 1314(b).

In (b), substituted references to permit applications for references to CP-1 Permit Applications and substituted references to the Projected Flow table in N.J.A.C. 7:14A-23.3 for references to the Contributory Design Flow table in N.J.A.C. 7:9-1 throughout.

Case Notes

Former regulation imposed duty on town to cease sewer extension approvals if ban criteria were met; penalty regulation effective when Department discovered violations and assessed penalties governed penalty assessment. Department of Environmental Protection v. Town of Newton. 93 N.J.A.R.2d (EPE) 167.

7:14-8.9 Civil administrative penalty for failure to properly conduct monitoring or sampling under the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who fails to carry out monitoring or sampling activities or to submit discharge monitoring reports, baseline monitoring reports, monitoring report forms or sludge quality assurance reports required by the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act or any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto.

(b) Each violation, including each parameter that is required to be monitored, sampled and reported and that is not monitored, sampled and reported, is an additional, separate and distinct violation. Each day during which a violation continues shall constitute an additional, separate and distinct violation.

(c) Except as provided in (e) below, the Department shall assess a civil administrative penalty for violations described in this section based on the conduct of the violator at the midpoint of the following ranges except as adjusted pursuant to (d) below:

1. For any intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty shall be in an amount up to \$50,000;

2. For any unintentional but foreseeable act or omission by the violator, the civil administrative penalty shall be in amount up to \$40,000; or

3. For any other violations the civil administrative penalty shall be in an amount up to \$20,000.

(d) The Department may, in its discretion, adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no 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 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 the damage caused by the violation and ensuring that the violation does not reoccur;

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

7. 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

8. Other specific circumstances of the violator or violation.

(e) For any person's failure to submit a complete discharge monitoring report, the Department shall assess a minimum mandatory civil administrative penalty of not less than \$100.00 for each effluent parameter omitted on a discharge monitoring report, nor greater than \$50,000 per month for any one discharge monitoring report, for any

discharge monitoring report required to be submitted after June 30, 1991.

1. The civil administrative penalty assessed pursuant to (e) above shall begin to accrue on the fifth day after the date on which the discharge monitoring report was due and shall continue to accrue at least for 30 days if the violation is not corrected.

2. The Department may continue to assess civil administrative penalties for the failure to submit a complete discharge monitoring report beyond the 30-day period referenced in (e)1 above until the violation is corrected.

3. To contest a civil administrative penalty assessed pursuant to this section, a violator shall submit evidence of extenuating circumstances beyond the control of the permittee, including circumstances that prevented timely submission of a complete discharge monitoring report, or portion thereof, within 30 days after the date on which the effluent parameter information was required to be submitted to the Department. If the violator fails to submit the required information within this 30-day period, the violator shall have waived its right to contest the civil administrative penalty in this manner and be barred from doing so.

4. A violator will not be subject to a civil administrative penalty for the inadvertent omission of one or more effluent parameters in a discharge monitoring report if both of the following conditions are met:

i. The violator submits the omitted information to the Department within 10 days after receipt by the violator of notice of the omission; and

ii. The violator demonstrates to the satisfaction of the Department that the violation for which the Department assessed the civil administrative penalty was due to an inadvertent omission by the violator of one or more effluent parameters.

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

Language added at (b) regarding each day constituting a separate violation and at (d), new 5.

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 "discharge monitoring reports, baseline monitoring reports, monitoring report forms or sludge quality assurance reports".

In (c), added "Except as provided in (e) below".

In (c)1, changed penalty amount to "up to \$50,000".

In (c)2, changed penalty amount to "up to \$40,000".

In (c)3, changed penalty amount to "up to \$20,000".

Substituted old text with new text in (d)5 and added 6, 7, 8.

Added (e).

Case Notes

Failure to properly monitor, sample and report discharge characteristics required civil penalty assessment. Department of Environmental Protection v. East Coast Ice, 95 N.J.A.R.2d (EPE) 154.

Operator of pork slaughtering and packaging facility violated wastewater permit; civil administrative penalties. New Jersey Department of Environmental Protection v. Triolo Brothers, Inc., 92 N.J.A.R.2d (EPE) 1.

7:14-8.10 Civil administrative penalty for failure to pay a fee

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who fails to pay a fee when due pursuant to the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act.

(b) Each day a fee is not paid after it is due shall constitute an additional, separate and distinct violation.

(c) The Department shall determine the amount of the civil administrative penalty for violations described in this section based on an amount equal to the unpaid fee, up to a maximum of \$50,000 per violation.

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

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

Deleted reference to "unpaid civil administrative penalty".

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).

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).

7:14-8.11 (Reserved)

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

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

At (b), reference to each day constituting a separate violation and (d) and (e) deleted.

Repealed by R.1996 d.307, effective July 1, 1996.

See: 27 N.J.R. 4761(a), 28 N.J.R. 3330(c).

Section was "Civil administrative penalty for violation of the rules governing laboratory certification and standards of performance".

7:14-8.12 Civil administrative penalty for violation of whole effluent toxicity limitations

(a) The Department may assess a civil administrative penalty for violations of whole effluent toxicity limitations expressed as median Lethal Concentration (LC50), a No Observed Adverse Effect Concentration (NOAEC), a No Observable Effect Concentration (NOEC), an Inhibition Concentration (IC25) or No Measurable Acute Toxicity (NMAT) pursuant to this section.

(b) Each violation of a whole effluent toxicity limitation shall constitute an additional, separate and distinct violation.

(c) To assess a civil administrative penalty pursuant to this section the Department shall identify the civil administrative penalty range pursuant to (d) or (e) below.