

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 This subchapter was repealed by R.1981 d.84, effective March 6, 1981.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 May 5, 1997, shall apply to all violations which occur on or after May 5, 1997.

(f) This subchapter also establishes a civil administrative penalty policy governing the uniform assessment of civil administrative penalties by delegated local agencies as authorized pursuant to N.J.S.A. 58:10A-5. Nothing in this subchapter shall be construed to authorize a delegated local agency to take any action beyond the scope of its authority under N.J.S.A. 58:10A-10.5 through 10.10. Except as provided in (f)1 through 5 below, in connection with actions taken by a delegated local agency pursuant to N.J.S.A. 58:10A-5, all references in this subchapter to the Department shall be deemed to refer to the delegated local agency; the delegated local agency shall comply with all requirements which this subchapter imposes upon the Department, and may take all actions which this subchapter states that the Department may take, except that delegated local agencies shall not be subject to:

1. The civil administrative penalty settlement restrictions, at N.J.A.C. 7:14-8.3(e), concerning minimum penalty amounts or 24 month violation period;

2. The requirement, at N.J.A.C. 7:14-8.3(h), that a violator, other than a local agency, must post financial assurance where said violator enters into an administrative consent order with the delegated local agency, and the settlement includes a compliance schedule;

3. The requirement, at N.J.A.C. 7:14-8.4(a), that an adjudicatory hearing request be submitted to the Department's Office of Legal Affairs with a copy to the Department's enforcement bureau. A person requesting an adjudicatory hearing to contest an administrative order, notice of civil administrative penalty assessment, or notice of civil administrative cost assessment issued by a delegated local agency shall submit the request to the delegated local agency;

4. The requirement that minimum mandatory penalties be assessed in amounts as set forth in N.J.A.C. 7:14-8.9(e) for any failure to submit a complete discharge monitoring report; or

5. The requirement, at N.J.A.C. 7:14-8.16(a), that mandatory civil administrative penalty amounts be assessed for serious violations as defined pursuant to this subchapter or violations that cause a violator to be, or continue to be, a significant noncomplier.

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).

Amended 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).

In (e), amended effective dates; and added (f).

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.

(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).

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 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 following information in writing to the Department at Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, CN 402, Trenton, New Jersey 08625-0402:

1. The name, address, and telephone number of the violator and its authorized representative;
2. The violator's defenses to each of the findings of fact stated in short and plain terms;
3. 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;
4. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;
5. An estimate of the time required for the hearing (in days and/or hours);

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

7. Proof of compliance with all of the requirements in N.J.A.C. 7:14A-3.10 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 8.9(e) 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, or a testing or laboratory error; 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;

8. 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. 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, documentation that the violator complied with N.J.A.C. 7:14-8.9(e)3; 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

9. If the violator is not a local agency, financial assurance in the full amount of the civil administrative penalty in the notice of civil administrative penalty assessment as follows:

i. Financial assurance, in the form of a surety bond guaranteeing payment, an irrevocable letter of credit or a fully funded trust, worded identically to the wording specified in N.J.A.C. 7:14-8 Appendix D or in another form the Department individually approves in writing for this purpose; and

ii. Unless the financial assurance is in the form of a letter of credit, a certification of acknowledgement worded identically to the wording specified in N.J.A.C. 7:14-8 Appendix D.

(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)8i 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).

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.

(e) The Department shall assess a civil administrative penalty for violations of whole effluent toxicity limitations expressed as No Measurable Acute Toxicity (NMAT) based on the extent of the violator's exceedance of the whole effluent toxicity limitation at the midpoint of the following ranges except as adjusted pursuant to (f) below:

1. For any violation of a NMAT limit with greater than or equal to 50% mortality in any test concentration, including 100 percent effluent, the civil administrative penalty shall be in an amount up to \$50,000;
2. For any other violation of a NMAT limit the civil administrative penalty shall be in an amount up to \$40,000.

(f) The Department may, in its discretion, adjust the amount determined pursuant to (d) or (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 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.

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

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

Old section 8.12 Civil administrative penalty for economic benefit recodified to 8.13.

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.

7:14-8.13 Civil administrative penalty for economic benefit

(a) When the Department determines that the violator has gained an economic benefit from a violation, the De-

partment shall, in addition to any other civil administrative penalty assessed pursuant to this subchapter, include as part of a civil administrative penalty the economic benefit (in dollars) which the violator has realized as a result of not complying, or by delaying compliance, with the requirements of the Water Pollution Control Act, 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) Economic benefit shall include:

1. The amount of savings realized from avoided capital or noncapital costs resulting from the violation;
2. The return earned or that may be earned on the amount of the avoided costs;
3. Any benefits accruing to the violator as a result of a competitive market advantage enjoyed by reason of the violation; and
4. Any other benefits resulting from the violation.

(c) The Department shall consider the following factors in determining economic benefit:

1. The amount of capital investments required, and whether they are one-time or recurring;
2. The amount of one-time nondepreciable expenditures;
3. The amount of annual expenses;
4. The useful life of capital;
5. Applicable tax, inflation and discount rates;
6. The amount of low interest financing, the low interest rate, and the corporate debt rate; and
7. Any other factors relevant to economic benefit.

(d) If the total economic benefit was derived from more than one violation, the total economic benefit amount may be apportioned among the violations from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than \$50,000 per violation.

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 8.12.

In (a), added "When the Department . . . , the Department shall"; deleted "If the total economic benefit . . . per violation".

Added (b), (c), and (d).

7:14-8.14 Civil administrative penalty for failing to comply with an information request or administrative subpoena, and the destruction of records

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who fails to completely respond to an information request or

administrative subpoena, or destroys records relating to a discharge to surface water within five years of the discharge, or to a discharge to ground water at any time without the prior written permission of the Department.

(b) Each day that the violator does not fully respond to any item in an information request or administrative subpoena and each item in an information request or administrative subpoena that is not fully responded to shall be an additional, separate and distinct violation.

(c) The Department shall assess a civil administrative penalty for each failure to completely respond to an information request or administrative subpoena in an amount up to \$50,000 based on the following factors:

1. The substantive responsiveness of the violator's response to the information request or administrative subpoena;
2. Number of items in the information request or administrative subpoena which the violator attempted to respond to;
3. Number of items in the information request or administrative subpoena which the violator did not respond to;
4. The timeliness of the violator's response; and
5. Any other relevant factors.

(d) The Department shall assess a civil administrative penalty for the destruction of records in violation of P.L. 1990, c. 28, section 15, based on the conduct of the violator at the midpoint of the following ranges:

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; and
2. For each other violation not identified pursuant to (d)1 above the civil administrative penalty shall be in the amount up to \$30,000.

New Rule, R.1991 d.378, effective August 5, 1991.
See: 23 N.J.R. 1089(a), 23 N.J.R. 2366(a).
Old section 8.14 Severability, recodified to 8.16.

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).

7:14-8.15 (Reserved)

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).
Repealed by R.1997 d.48, effective February 3, 1997.
See: 28 N.J.R. 4300(a), 29 N.J.R. 480(c).

Section was "Water Supply and Wastewater Operators' Licensing Act civil administrative penalties".

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	\$10,000- \$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	\$250- \$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 the 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.

Administrative correction.

See: 29 N.J.R. 2664(a).

In (f), changed range for Major/ Major from \$40,000 - \$50,000 to \$10,000 - \$50,000 and changed range for Minor/Minor from \$500 - \$1,250 to \$250 - \$1,250.

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 pre-treatment 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 pre-treatment 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 pre-treatment 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 economic 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 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.

2.0 Summary of the Method

2.1 A representative portion of the sample is weighed and dried to constant weight in an oven at $104 \pm 1^\circ\text{C}$. The remaining solids are weighed and calculated as % W/W total residue of the original sample.

3.0 Sample Handling and Preservation