

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., 58:10-23.11 et seq., 58:10A-1 et seq., 58:11-49 et seq., 58:11A-1 et seq., and 58:12A-1 et seq.

Source and Effective Date

R.2004 d.405, effective October 5, 2004.
See: 36 N.J.R. 2323(a), 36 N.J.R. 4928(a).

Chapter Expiration Date

Chapter 14, Water Pollution Control Act, expires on October 5, 2009.

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Subchapter 1, General Provisions, and Subchapter 3, NJPDES Permits, were repealed, and Subchapter 2, Approval of Facilities for Prevention, Collection, Treatment or Discharge of Pollutants, was recodified as N.J.A.C. 7:14A-12 by R.1981 d.84,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Subchapter 8, Assessment of Civil Administrative Penalties, was repealed and Subchapter 8, Civil Administrative Penalties and Requests for Adjudicatory Hearings, was adopted as new rules by R.1988 d.380, effective August 1, 1988.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was readopted as R.1989 d.282, effective April 27, 1989, and Subchapter 7, Ocean Dumping Alternative Development, was repealed by R.1989 d.282, effective June 5, 1989.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 by R.1999 d.164, effective May 17, 1999, 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).

Chapter 14, Water Pollution Control Act, was readopted as R.2004 d.405, effective October 5, 2004. See: Source and Effective Date.

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.

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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.

(c) Before the Contractor has received notification of substantial completion, the owner/engineer may submit a request to the contractor to use a functional portion of the work if:

1. Such use does not significantly interfere with construction on any portion of remaining work to be completed, and
2. The conditions of such use shall be identified in the Certificate of Substantial Completion when issued by the owner/engineer.

(f) Final completion shall be that point at which the contract is completed, defective work corrected and clean up work accomplished. Unless a Certificate of Substantial Completion has been issued, the guarantee period shall begin upon certification of final completion by the engineer.

R.1984 d.339, effective August 6, 1984.
Sec: 16 N.J.R. 1147(a), 16 N.J.R. 2102(b).

SUBCHAPTERS 3 THROUGH 7. (RESERVED)

SUBCHAPTER 8. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

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 17, 1999 shall apply to all violations which occur on or after May 17, 1999.

(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-10.5. 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 this subsection, in connection with actions taken by a delegated local agency pursuant to N.J.S.A. 58:10A-10.5, 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 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.

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).

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

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

In (e), substituted "January 19, 1999" for "May 5, 1997" throughout; and rewrote (f).

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

See: 31 N.J.R. 508(b), 31 N.J.R. 1314(b).
In (c), changed effective and application dates.

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-1.2, 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:

Freshwater Wetlands Protection Act Rules, 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;

Pollution Discharge Elimination System, N.J.A.C. 7:14A;

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

Regulations Governing the Certification of Laboratories and Environmental Measurements, 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.

"Delegated local agency" means a local agency with an industrial pretreatment program approved by the Department.

"Discharge" means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a pollutant into the waters of this State, onto land or into wells from which it might flow or drain into such waters, or into waters or onto lands outside the jurisdiction of the State which pollutant enters the waters of this State, and shall include the release of any pollutant into a municipal treatment works. A leak into a secondary containment system which does not involve a release into the waters or lands of this State is not a "discharge" for purposes of applying the rules under this chapter to violations of the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:11-49 et seq., and the rules promulgated pursuant thereto, N.J.A.C. 7:14B.

"Discharge Monitoring Report" or "DMR" means the EPA's uniform national form, as amended, for the reporting of self-monitoring results by permittees, and includes Baseline Reports.

"Effluent limitation" means any restriction on quantities, quality, discharge rates and concentration of chemical, physical, thermal, biological, radiological, and any other constituents of pollutants established by permit, or impose as an interim enforcement limit pursuant to an administrative order, including an administrative consent order.

"Federal Act" means the Clean Water Act or the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.) including all subsequent supplements and amendments.

"Groundwater remedial action" means the removal or abatement of one or more pollutants in a groundwater source.

"Hazardous pollutant" means:

1. Any toxic pollutant;
2. Any hazardous substance as defined pursuant to section 3 of P.L. 1976, c.141 (N.J.S.A. 58:10-23.11b);
3. Any substance regulated as a pesticide under the Federal Insecticide, Fungicide and Rodenticide Act, Pub.L. 92-516 (7 U.S.C. § 136 et seq.);
4. Any substance the use or manufacture of which is prohibited under the Federal Toxic Substances Control Act, Pub.L. 94-469 (15 U.S.C. § 2601 et seq.);
5. Any substance identified as a known carcinogen by the International Agency for Research on Cancer; or
6. Any hazardous waste as designated pursuant to section 3 of P.L. 1981, c.279 (N.J.S.A. 13:1E-51) or the "Resource Conservation and Recovery Act," Pub. L. 94-580 (42 U.S.C. § 6901 et seq.).

"Indirect discharge" means any discharge, excluding any discharges by municipal collection systems, into any domestic treatment works.

"Indirect user" means an entity with an indirect discharge.

"Industrial pretreatment program" or "IPP" means a program designed to regulate the introduction of pollutants into a local agency's treatment works from any nondomestic source.

"Inhibition concentration" means that concentration of effluent which produces the specified inhibition effect in a chronic whole effluent toxicity test. An IC25 is the concentration of effluent which produces an inhibition of 25 percent for the monitored effect as compared to the control.

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

"Violator" means any person against whom the Department or delegated local agency asserts a violation of the State Act or any rules issued pursuant to the State Act.

"Whole effluent toxicity" or "WET" means the aggregate toxic effect of an effluent measured by a toxicity test.

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

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

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

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

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

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

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

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

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

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

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

Rewrote the section.

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

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

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

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

1. If no hearing is requested pursuant to N.J.A.C. 7:14-8.4, a Notice of Civil Administrative Penalty Assessment becomes a Final Order and is deemed received on the 21st day following receipt of the Notice of Civil Administrative Penalty Assessment by the violator;

2. If the Department denies the hearing request, a Notice of Civil Administrative Penalty Assessment becomes a Final Order upon receipt of notice of such denial; or

3. If the Department conducts an adjudicatory hearing, a Notice of Civil Administrative Penalty Assessment becomes a Final Order upon receipt by the violator of a Final Order in a contested case.

(c) In addition to the amount of the civil administrative penalty that is due and owing pursuant to (b) above, the violator shall also pay to the Department the interest on the amount of the penalty, at the rate established by the New Jersey Supreme Court for interest rates on judgments as set forth in the Rules Governing the Courts of the State of New Jersey, as follows:

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

- i. A violator does not pay a civil administrative penalty imposed pursuant to a final order; or
- ii. A violator fails to make a civil administrative penalty payment pursuant to a payment schedule entered into with the Department; and

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

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

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

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

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

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

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

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

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

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

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

3. In the case of all other violators:

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

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

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

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

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

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

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

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

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

1. The violator is a local agency; or

2. The violator posts financial assurance with the Department upon execution of the agreement pursuant to one of the financial assurance mechanisms in Appendix A or in another form the Department individually approves in writing for this purpose. The financial assurance shall be in an amount that the Department reasonably determines will tend to ensure good faith compliance with the agreement. In determining the amount, the Department may consider any or all of the following factors:

i. The amount of the penalty;

ii. The amount and frequency of the installment payments due under the agreement;

iii. The duration of the agreement;

iv. Other remedies, aside from drawing upon the financial assurance, that the Department may exercise under the agreement if an installment payment is not timely made or if some other requirement of the agreement is not satisfied, and the extent to which such other remedies will tend to ensure compliance with the agreement;

v. The violator's history of compliance, including without limitation its history of compliance with other schedules for the payment of penalties assessed by the Department;

vi. Expenditures that the violator has made or has agreed to make for purposes of pollution control and/or pollution prevention; and

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)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).

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 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 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.

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

In (a) and (b), deleted references to the New Jersey Underground Storage of Hazardous Substances Act following references to the Water Pollution Control Act.

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 of 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

(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 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).

Amended by R.2003 d.198, effective May 19, 2003.

See: 34 N.J.R. 3703(a), 35 N.J.R. 2319(a).

In (a), deleted "or the New Jersey Underground Storage of Hazardous Substances Act" following "the Water Pollution Control Act".

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.

(d) The Department shall determine the range for the 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), or an Inhibition Concentration (IC25) described in this section as follows, except as adjusted pursuant to (f) below:

1. For any violation of an LC50, a NOEC or an IC25 limit included in the following table, the civil administrative penalty shall be in an amount up to \$50,000, when upon subtracting the toxicity test result from the whole effluent toxicity limit, the difference is as follows:

| Whole Effluent Toxicity Limit (% Effluent) | Difference (% Effluent) |
|--|-----------------------------|
| greater than or equal to 80 and less than or equal to 100 | greater than or equal to 20 |
| greater than or equal to 50 and less than 80 | greater than or equal to 15 |
| greater than 10 and less than 50 | greater than or equal to 10 |
| less than or equal to 10 | greater than or equal to 9 |

2. For any other violation of an LC50, a NOEC or IC25 limit the civil administrative penalty shall be in an amount up to \$40,000.

(e) The Department shall assess a civil administrative penalty for violations of whole effluent toxicity limitations expressed as No Measurable Acute Toxicity (NMAT) or No Observed Adverse Effect Concentration (NOAEC) 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 or NOAEC limit with greater than or equal to 50 percent 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 or NOAEC 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.

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) and (d), inserted references to No Observed Adverse Effect Concentration and to Inhibition Concentration throughout; and in (e), inserted references to No Observed Adverse Effect Concentration throughout.

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 Department 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.

Law Review and Journal Commentaries

Economic Benefit Penalties Can Still Bite. Lewis Goldshore and Marsha Wolff, 154 N.J.L.J. 254 (1998).

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 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:

| | | <u>SERIOUSNESS</u> | | |
|---------|----------|-----------------------|----------------------|----------------------|
| | | <u>Major</u> | <u>Moderate</u> | <u>Minor</u> |
| 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.

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 "either by the Department" preceding "pursuant thereto" at the end of the introductory paragraph.

7:14-8.17 Enforcement actions for failure to implement an approved industrial pretreatment program

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

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

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

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

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

ii. Ensure public participation and notification;

iii. Perform RCRA notification pursuant to 40 CFR Part 403; or

iv. Submit required major program modifications.

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

i. Identify and locate indirect users;

ii. Perform data management and recordkeeping;

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

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

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

i. Inspect indirect users;

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

iii. Sample indirect users;

iv. Initiate, prosecute or settle enforcement actions in accordance with this subchapter and an approved enforcement response plan and 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.

(c) 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.

(g) If the Department determines that a delegated local agency has failed to assess mandatory minimum penalties in accordance with this subchapter or the Water Pollution Control Act, it shall take enforcement action against the delegated local agency, including, but not limited to, issuance of a notice of violation, issuance of an order, assessment of penalties and injunctive relief to compel 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).
Amended by R.1999 d.32, effective January 19, 1999.
See: 30 N.J.R. 1356(a), 31 N.J.R. 157(a).
In (c)3, rewrote iv; and added (g).

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

WORDING OF FINANCIAL ASSURANCE DOCUMENTS

LETTER OF CREDIT

A letter of credit required by N.J.A.C. 7:14-8.4(a) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Irrevocable Letter of Credit

New Jersey Department of Environmental Protection
PO Box 029
Trenton, New Jersey 08625-0029
ATTN: Assistant Director, Enforcement
Division of Water Resources

RE: [Name of Violator]
Adjudicatory Hearing Request

Dear Sir or Madam:

We hereby establish our irrevocable standby Letter of Credit No. _____ in the favor of the New Jersey Department of Environmental Protection, at the request and for the account of [violator's name and address of facility at which violation occurred] up to the aggregate amount of [in words] U.S. dollars _____, available upon presentation by the New Jersey Department of Environmental Protection of (1) a sight draft, bearing reference to this irrevocable standby Letter of Credit No. _____, and (2) a signed statement reading as follows:

"I certify that the amount of the draft is payable pursuant to the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

This Letter of Credit is effective as of [insert month, day, and year] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for a period of at least one (1) year on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both NJDEP's Assistant Director for Enforcement, Division of Water Resources, PO Box 029, Trenton, New Jersey, 08625-0029, and [name and address of violator] by certified mail that we have decided not to extend this

Letter of Credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both NJDEP and [name and address of violator], as shown on the signed return receipts.

Whenever this Letter of Credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [name of violator] or in accordance with your instructions.

We certify that the wording of this Letter of Credit is identical to the wording specified in N.J.A.C. 7:14-8 Appendix A, as such regulations were constituted on [the date shown immediately below].

[Name of issuing institution] shall not cancel this Letter of Credit on the basis of a request from [name violator] until [name of issuing institution] has received written authorization from NJDEP.

This irrevocable standby Letter of Credit is subject to [insert either "the most recent edition of the 'Uniform Customs and Practice for Documentary Credits,' published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

This letter of credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any other document, instrument or agreement referred to herein, except for the sight draft and your signed statement referred to herein. Any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except for such sight draft and signed statement.

Very truly yours,
[Name of Issuing Institution]
[Signature and Title of Official]
[Printed Name of Official]
[Date]"

SURETY BOND

A surety bond guaranteeing payment into a trust fund required by N.J.A.C. 7:14-8.4(a) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Financial Guarantee Bond

RE: ADJUDICATORY HEARING REQUEST
NAME OF VIOLATOR _____
ADDRESS OF FACILITY AT WHICH VIOLATION
OCCURRED _____

Date bond executed: _____

Effective date: _____

Principal: [Legal name and business address of violator]

Type of organization [insert "individual", "joint venture", "partnership", or "corporation"]

State of incorporation: _____

[Insert name of violator, location of facility at which the violation occurred, including street address, lot and block number, municipality and county, and the financial assurance guaranteed by this bond]

Total penal sum of bond: _____

Surety bond number: _____

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the New Jersey Department of Environmental Protection, hereinafter NJDEP, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, the Principal is required to provide financial assurance in an amount equal to the amount of the civil administrative penalty in the Notice of Civil Administrative Penalty Assessment dated [date] as a precondition to requesting an adjudicatory hearing on the Notice of Civil Administrative Penalty Assessment pursuant to N.J.A.C. 7:14-8.4(a), and

WHEREAS, the Principal shall establish a standby trust fund as is required by N.J.A.C. 7:14-8(a)9. when a surety bond is used to provide a mechanism for access by NJDEP to assure payment of the civil administrative penalty in the Notice of Civil Administrative Penalty Assessment dated [date];

NOW, THEREFORE, the conditions of this obligation are such that if the Principal pays the full amount of the civil administrative penalty that is due and owing pursuant to the Notice of Civil Administrative Penalty Assessment, then this obligation shall be null and void, otherwise, it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to pay the civil administrative penalty when due and owing. Upon notification by the NJDEP that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the violator into the standby trust fund as directed by the NJDEP.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of the penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the NJDEP Assistant Director for Enforcement, Division of Water Resources, CN-029, Trenton, N.J., 08625; provided, however, the cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the NJDEP, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies); provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the NJDEP.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth below.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording required in N.J.A.C. 7:14-8 Appendix A as constituted on the date the bond was established.

Principal _____

[Signature(s)] _____

Date _____

[Name(s)] _____

[Title(s)] _____

[Corporate seal] _____

[Name and address] _____

State of incorporation: _____

Liability limit: _____

[Signature(s)] _____

Date _____

[Name(s) and title(s)] _____

[Corporate seal] _____

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: _____

STANDBY TRUST AGREEMENT

A Standby Trust Agreement required by N.J.A.C. 7:14-8.4(a) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Standby Trust Agreement

RE: ADJUDICATORY HEARING REQUEST
NOTICE OF CIVIL ADMINISTRATIVE PENALTY
ASSESSMENT DATED [date] _____
NAME OF VIOLATOR _____
ADDRESS OF FACILITY AT WHICH VIOLATION
OCCURRED _____

This Standby Trust Agreement, hereinafter "Agreement", entered into as of [date] by and between [name and address of the violator], a New Jersey [insert "corporation", "partnership", "association", or "proprietorship"], hereinafter "Grantor" and [name and address of corporate trustee], [insert "incorporated in the State of" or "a national bank"], hereinafter "Trustee".

WHEREAS, the Grantor is required to provide financial assurance in an amount equal to the amount of the civil administrative penalty in the Notice of Civil Administrative Penalty Assessment dated [date] as a precondition to requesting an adjudicatory hearing on the Notice of Civil Administrative Penalty Assessment pursuant to N.J.A.C. 7:14-8.4(a), and

WHEREAS, The Grantor, acting through its duly authorized officer or management official, has selected the Trustee under this Agreement, and the Trustee is willing to act as Trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follow:

Section 1. Definitions

As used in this Agreement:

(a) The term "Grantor" means the violator who is requesting an adjudicatory hearing on the Notice of Civil Administrative Penalty Assessment referenced above, and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into the Agreement and any successor Trustee.

Section 2. Identification of Site or Facility at which the Violation(s) referenced in the Notice of Civil Administrative Penalty Assessment Occurred and Amount of Financial Assurance

This Agreement pertains to the site or facility at which the violation(s) referenced in the Notice of Civil Administrative Penalty Assessment occurred and the full amount of the civil administrative penalty in the Notice of Civil Administrative Penalty Assessment dated [date] which is included herein as Attachment A.

Section 3. Establishment of Fund

The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund", for the benefit of NJDEP. The Grantor and the Trustee intend that no third party shall have access to the fund except as herein provided. The Fund is established initially as consisting of the total sum of [dollar amount] which is acceptable to the Trustee and NJDEP. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the NJDEP.

Section 4. Payment for The Civil Administrative Penalty in the Notice of Civil Administrative Penalty Assessment dated [date]

The Trustee shall make payment from the Fund as the NJDEP Commissioner, or his designee, shall direct, in writing, to provide for the payment of the civil administrative penalty in the Notice of Civil Administrative Penalty Assessment dated [date]. In addition, the Trustee shall refund to the Grantor such amounts the NJDEP specifies in writing. Upon refund such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management

At such time as the corpus of the Fund is funded with more than one dollar, the Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his duties with respect to the Fund solely in the interest of the NJDEP as the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the site or facility at which the violation(s) occurred or any of their affiliates, as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or state government; and

(iii) The Trustee is authorized to hold cash awaiting investment of distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the Federal Government of the United States or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in respect of the fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor and all other proper charges and disbursements of the Trustee, shall be paid from the Fund.

Section 10. Annual Valuation

The Trustee shall, annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the NJDEP a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the NJDEP shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel

The Trustee may, from time to time, consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation

The Trustee shall be entitled to reasonable compensation, from time to time, for its services, as agreed upon in writing with the Grantor.

Section 13. Successor Trustee

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor Trustee the

funds and properties constituting the Fund. If for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the NJDEP and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Successor Grantor

Sixty days prior to the Grantor ceasing to exist, if dissolution is contemplated, the Grantor must notify and provide NJDEP with the names and addresses of any and all successors and assigns along with a notarized acknowledgement from same stating that the successors and assigns assume responsibilities concerning financial assurance.

Section 15. Instructions to the Trustee

All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in Attachment B or such other designees as the Grantor may designate by amendment to Attachment B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the NJDEP to the Trustee shall be in writing, signed by the NJDEP Commissioner or his/her designee and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or NJDEP hereunder has occurred.

The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or NJDEP, except as provided for herein.

Section 16. Amendment of Agreement

This agreement may be amended by an instrument in writing executed jointly by the Grantor or the Grantor's principals, successors, and assigns if Grantor has dissolved, the Trustee and the NJDEP or by the Trustee and the NJDEP if the Grantor ceases to exist and no successors or assigns are named.

Section 17. Irrevocability and Termination

Subject to the right of the parties to amend this Agreement, as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the NJDEP or of the Trustee and the NJDEP, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust or in carrying out any directions by the Grantor or the NJDEP issued in accordance with the Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

Section 19. Choice of Law

This Agreement shall be administered, construed, and enforced according to the laws of the State of New Jersey.

Section 20. Interpretation

As used in this Agreement, words in the singular include the plural and words in the plural include the singular.

The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof, the parties have caused this Agreement to be executed by their respective officer or management officials, duly authorized, and their corporate seals to be hereunto affixed and attested, as of the date set forth below:

[NAME OF GRANTOR]

DATE: _____ By: _____
TITLE: _____

[NAME OF TRUSTEE]

DATE: _____ BY: _____
TITLE: _____

[Grantor shall attach Attachments A and B.]

FULLY FUNDED TRUST

A fully funded trust required by N.J.A.C. 7:14-8.4(a) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Trust Agreement

RE: ADJUDICATORY HEARING REQUEST
NOTICE OF CIVIL ADMINISTRATIVE PENALTY
ASSESSMENT DATED [date] _____
NAME OF VIOLATOR _____
ADDRESS OF FACILITY AT WHICH VIOLATION
OCCURRED _____

This Fully Funded Trust, hereinafter "Agreement", entered into as of [date] by and between [name and address of the violator], a New Jersey [insert "corporation", "partnership", "association", or "proprietorship"], hereinafter "Grantor" and [name and address of corporate trustee], [insert "incorporated in the State of " or "a national bank"], hereinafter "Trustee".

WHEREAS, the Grantor is required to provide financial assurance in an amount equal to the amount of the civil administrative penalty in the Notice of Civil Administrative Penalty Assessment dated [date] as a precondition to requesting an adjudicatory hearing on the Notice of Civil Administrative Penalty Assessment pursuant to N.J.A.C. 7:14-8.4(a), and

WHEREAS, The Grantor, acting through its duly authorized officer or management official, has selected the Trustee under this Agreement, and the Trustee is willing to act as Trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follow:

Section 1. Definitions

As used in this Agreement:

(a) The term "Grantor" means the violator who is requesting an adjudicatory hearing on the Notice of Civil Administrative Penalty Assessment referenced above, and any successors or assigns of the Grantor.

(b) The term "Trustee" means the Trustee who enters into the Agreement and any successor Trustee.

Section 2. Identification of Site or Facility at which the Violation(s) referenced in the Notice of Civil Administrative Penalty Assessment Occurred and Amount of Financial Assurance

This Agreement pertains to the site or facility at which the violation(s) referenced in the Notice of Civil Administrative Penalty Assessment occurred and the full amount of the civil administrative penalty in the Notice of Civil Administrative Penalty Assessment dated [date] which is included herein as Attachment A.

Section 3. Establishment of Fund

The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund", for the benefit of NJDEP. The Grantor and the Trustee intend that no third party shall have access to the fund except as herein provided. The Fund is established initially as consisting of the total sum of [dollar amount] which is acceptable to the Trustee and NJDEP. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the NJDEP.

Section 4. Payment for The Civil Administrative Penalty in the Notice of Civil Administrative Penalty Assessment dated [date]

The Trustee shall make payment from the Fund as the NJDEP Commissioner, or his designee, shall direct, in writing, to provide for the payment for the civil administrative penalty in the Notice of Civil Administrative Penalty Assessment dated [date]. In addition, the Trustee shall refund to the Grantor such amounts the NJDEP specifies in writing. Upon refund such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management

At such time as the corpus of the Fund is funded, the Trustee shall invest and reinvest principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his duties with respect to the Fund solely in the interest of the NJDEP as the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the site or facility at which the violation(s) occurred or any of their affiliates, as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment of distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be

commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the Federal Government of the United States or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in respect of the fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection

with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor and all other proper charges and disbursements of the Trustee, shall be paid from the Fund.

Section 10. Annual Valuation

The Trustee shall, annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the NJDEP a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the NJDEP shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel

The Trustee may, from time to time, consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation

The Trustee shall be entitled to reasonable compensation, from time to time, for its services, as agreed upon in writing with the Grantor.

Section 13. Successor Trustee

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor Trustee the funds and properties constituting the Fund. If for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the NJDEP and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Successor Grantor

Sixty days prior to the Grantor ceasing to exist, if dissolution is contemplated, the Grantor must notify and provide NJDEP with the names and addresses of any and all successors and assigns along with a notarized acknowledgment from same stating that the successors and assigns assume responsibilities concerning financial assurance.

Section 15. Instructions to the Trustee

All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in Attachment B or such other designees as the Grantor may designate by amendment to Attachment B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the NJDEP to the Trustee shall be in writing, signed by the NJDEP Commissioner or his/her designee and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or NJDEP hereunder has occurred.

The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or NJDEP, except as provided for herein.

Section 16. Amendment of Agreement

This agreement may be amended by an instrument in writing executed jointly by the Grantor or the Grantor's principals, successors, and assigns if Grantor has dissolved, the Trustee and the NJDEP or by the Trustee and the NJDEP if the Grantor ceases to exist and no successors or assigns are named.

Section 17. Irrevocability and Termination

Subject to the right of the parties to amend this Agreement, as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the NJDEP or of the Trustee and the NJDEP, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust or in carrying out any directions by the Grantor or the NJDEP issued in accordance with the Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event that the Grantor fails to provide such defense.

Section 19. Choice of Law

This Agreement shall be administered, construed and enforced according to the laws of the State of New Jersey.

Section 20. Interpretation

As used in this Agreement, words in the singular include the plural and words in the plural include the singular.

The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof, the parties have caused this Agreement to be executed by their respective officer or management officials, duly authorized, and their corporate seals to be hereunto affixed and attested, as of the date set forth below:

[NAME OF GRANTOR]

DATE: _____ BY: _____
TITLE: _____

[NAME OF TRUSTEE]

DATE: _____ BY: _____
TITLE: _____

[Grantor shall attach Attachments A and B.]

CERTIFICATION OF ACKNOWLEDGMENT

A certification of acknowledgment required by N.J.A.C. 7:14-8.4(a) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

CERTIFICATION OF ACKNOWLEDGMENT

(Grantor & Trustee)

ADJUDICATORY HEARING REQUEST

NOTICE OF CIVIL ADMINISTRATIVE ASSESSMENT DATED [date]

NAME OF VIOLATOR _____

ADDRESS OF VIOLATOR _____

ADDRESS OF SITE OR FACILITY AT WHICH VIOLATION OCCURRED _____

Amount of Financial Guarantee \$ _____

Type of Financial Assurance Posted _____

State of _____

County of _____

On this [date], before me personally came [name of the violator] to me known, who, being by me duly sworn, did

depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of the corporation; that the seal affixed to such instruments is such corporate seal; that is so affixed by order of the Board of Directors of the corporation, and that she/he signed her/his name thereto by like other.

[Signature of Notary Public]

New Rule, R.1991 d.378, effective August 5, 1991.
See: 23 N.J.R. 1089(a), 23 N.J.R. 2366(a).
Recodified from N.J.A.C. 7:14 Appendix D by R.1999 d.163, effective May 17, 1999.
See: 31 N.J.R. 508(b), 31 N.J.R. 1314(b).
Former Appendix A, DEP laboratory methods, repealed.

APPENDIX B

(RESERVED)

Repealed by R.1999 d.164, effective May 17, 1999.
See: 31 N.J.R. 200(a), 31 N.J.R. 1320(a).
Appendix was "Domestic wastewater sludge report".

APPENDIX C

(RESERVED)

Repealed by R.1999 d.164, effective May 17, 1999.
See: 31 N.J.R. 200(a), 31 N.J.R. 1320(a).
Appendix was "Priority pollutants".

APPENDIX A-1

(RESERVED)

Repealed by R.1999 d.164, effective May 17, 1999.
See: 31 N.J.R. 200(a), 31 N.J.R. 1320(a).
Appendix was "Sludge report".

APPENDIX A-2

(RESERVED)

Repealed by R.1999 d.164, effective May 17, 1999.
See: 31 N.J.R. 200(a), 31 N.J.R. 1320(a).
Appendix was "Heavy metals and selected chemical parameters".

APPENDIX A-3

(RESERVED)

Repealed by R.1999 d.164, effective May 17, 1999.
See: 31 N.J.R. 200(a), 31 N.J.R. 1320(a).
Appendix was "Toxic organic compounds report".

APPENDIX A-4

(RESERVED)

Repealed by R.1999 d.164, effective May 17, 1999.
See: 31 N.J.R. 200(a), 31 N.J.R. 1320(a).
Appendix was "Industrial process wastewater sludge report".

APPENDIX A-5

(RESERVED)

Repealed by R.1999 d.164, effective May 17, 1999.
See: 31 N.J.R. 200(a), 31 N.J.R. 1320(a).
Appendix was "Pretreatment facilities fact profile".

APPENDIX B-1

(RESERVED)

Repealed by R.1999 d.164, effective May 17, 1999.

See: 31 N.J.R. 200(a), 31 N.J.R. 1320(a).

Appendix was "Heavy metals and toxic organic compounds".

APPENDIX B-2

(RESERVED)

Repealed by R.1999 d.164, effective May 17, 1999.

See: 31 N.J.R. 200(a), 31 N.J.R. 1320(a).

Appendix was "Toxic pollutants".

APPENDIX B-3

POLLUTANTS THAT ARE INHIBITORY TO BIOLOGICAL TREATMENT PROCESSES

CAS No.

INORGANIC POLLUTANTS

| | |
|----------|----------------|
| 14213979 | Borate (Boron) |
| 7440473 | Chromium |
| 7439965 | Manganese |
| 7440622 | Vanadium |

ORGANIC POLLUTANTS

| | |
|---------|------------------------------------|
| 107186 | Allyl alcohol |
| 57067 | Allyl isothiocyanate |
| 141435 | 2-Aminoethanol (mono ethanolamine) |
| 538283 | Benzyl thiuronium chloride |
| 4170303 | Crotonaldehyde |

CAS No.

| | |
|--------|----------------------------------|
| 97234 | Dichlorophen |
| 591355 | 3,5-dichlorophenol |
| 138896 | Dimethylparanitrosoaniline |
| 86566 | N,N-dimethyl-1-naphthylamine |
| 593851 | Guanidine carbonate |
| 124094 | Hexamethylenediamine |
| 148243 | 8-hydroxyquinoline |
| 556616 | Methyl isothiocyanate |
| 867447 | Methyl thiuronium sulphate |
| 107197 | Propargyl alcohol |
| 83341 | Skatole |
| 128041 | Sodium dimethyl dithiocarbamate |
| 137428 | Sodium methyl dithiocarbamate |
| 137268 | Tetramethyl thiuram disulphide |
| 97745 | Tetramethyl thiuram monosulphide |
| 79196 | Thiosemicarbazide |

APPENDIX C

(RESERVED)

Repealed by R.1999 d.164, effective May 17, 1999.

See: 31 N.J.R. 200(a), 31 N.J.R. 1320(a).

Appendix was "Separation of liquid and solid phases for analysis of inorganic and organic components".

APPENDIX D

(RESERVED)

Recodified to N.J.A.C. 7:14 Appendix A by R.1999 d.163, effective May 17, 1999.

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