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**CHAPTER 14**

**WATER POLLUTION CONTROL ACT**

**Authority**

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

**Source and Effective Date**

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

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

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

**Chapter Historical Note**

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

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

**Law Review and Journal Commentaries**

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

**RESEARCH NOTE**

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

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## SUBCHAPTER 1. (RESERVED)

## Subchapter Historical Note

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 This subchapter was repealed by R.1981 d.84, effective March 6, 1981.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

## SUBCHAPTER 2. CONSTRUCTION OF WASTEWATER TREATMENT FACILITIES

## Subchapter Historical Note

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

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

## 7:14-2.1 Construction procedures

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

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

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

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

## 7:14-2.3 Permits

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

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

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

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

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

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

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

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

1. The compliance history of the violator;
2. The number, frequency and severity of the violation(s);
3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;
4. The deterrent effect of the penalty;
5. The cooperation of the violator in correcting the violation, remedying the damage caused by the violation and ensuring that the violation does not reoccur;
6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation;
7. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation; and
8. Other specific circumstances of the violator or violation.

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

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

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

#### Case Notes

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

#### 7:14-8.13 Civil administrative penalty for economic benefit

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

partment shall, in addition to any other civil administrative penalty assessed pursuant to this subchapter, include as part of a civil administrative penalty the economic benefit (in dollars) which the violator has realized as a result of not complying, or by delaying compliance, with the requirements of the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act or any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto.

(b) Economic benefit shall include:

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

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

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

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

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

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

Section recodified from 8.12.

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

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

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

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

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

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

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

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

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

1. For each intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty shall be in an amount up to \$50,000; and
2. For each other violation not identified pursuant to (d)1 above the civil administrative penalty shall be in the amount up to \$30,000.

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

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

Old section 8.14 Severability, recodified to 8.16.

#### Case Notes

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

#### 7:14-8.15 Water Supply and Wastewater Operators' Licensing Act civil administrative penalties

(a) The Department may assess a civil administrative penalty of not more than \$5,000 per day for each violation of each provision of the Water Supply and Wastewater Operators' Licensing Act including, but not limited to, a violation of any rule, license, or administrative order issued pursuant thereto.

(b) The Department shall consider each violation of each provision of the Water Supply and Wastewater Operators' Licensing Act, or any rule, license or administrative order adopted or issued pursuant thereto, as a separate and distinct violation. Each day during which a violation continues shall constitute an additional, separate and distinct offense subjecting the violator to the penalty schedule set forth in (c) below.

(c) The Department shall assess a civil administrative penalty for each violation of each provision of the Water Supply and Wastewater Operators' Licensing Act and each violation of each provision of any rule, administrative order, permit or license as follows:

1. For the first violation of a provision, not more than \$1,000;
2. For the second violation of the same provision, not more than \$2,500; and
3. For the third and subsequent violations of the same provision, not more than \$5,000.

(d) The Department shall assess a civil administrative penalty of \$5,000 for refusing, inhibiting or prohibiting immediate lawful entry and inspection of any premises, building or place by any authorized Department personnel. 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 constitute an additional, separate and distinct violation.

(e) The Department shall assess a civil administrative penalty 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 under the Water Supply and Wastewater Operators' Licensing Act, or who fails to submit or maintain any application, record, or other document required to be submitted or maintained under the Water Supply and Wastewater Operators' Licensing Act, or who falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained by the Water Supply and Wastewater Operators' Licensing Act, or the Water Supply Management Act. Each day, from the day of submittal of the false or inaccurate information to the Department to the day of receipt by the Department of a written correction of the inaccurate information or falsified statement, shall constitute an additional, separate and distinct violation. The Department shall determine the amount of the civil administrative penalty based on the conduct of the violator as follows:

1. For any intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty shall be in an amount of not more than \$5,000 nor less than \$4,000;

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

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

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

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

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

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

(d) and (e) deleted, (f) and (g) recodified as (d) and (e).

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

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

Section recodified from 8.13.

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

Added (f).

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

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

#### Case Notes

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

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

#### 7:14-8.16 Civil administrative penalty determination for indirect dischargers

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

thereto. The Department shall assess a minimum mandatory civil administrative penalty in an amount:

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

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

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

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

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

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

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

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

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

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

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

		<u>SERIOUSNESS</u>		
CONDUCT	Major	<u>Major</u>	<u>Moderate</u>	<u>Minor</u>
		\$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

(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;