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State NPDES Authority Statutes:

New Jersey

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State NPDES Authority Statutes: New Jersey

NJ ST T. 58, Ch. 10A

Current through the 2022 legislative session.

§ 58:10A-1. Short Title; Water Pollution Control Act.

This act shall be known and may be cited as the "Water Pollution Control Act."

§ 58:10A-2. Legislative Findings and Declarations.

The Legislature finds and declares that pollution of the ground and surface waters of this State continues to endanger public health; to threaten fish and aquatic life, scenic and ecological values; and to limit the domestic, municipal, recreational, industrial, agricultural and other uses of water, even though a significant pollution abatement effort has been made in recent years. It is the policy of this State to restore, enhance and maintain the chemical, physical, and biological integrity of its waters, to protect public health, to safeguard fish and aquatic life and scenic and ecological values, and to enhance the domestic, municipal, recreational, industrial and other uses of water.

The Legislature further finds and declares that the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500; 33 U.S.C. 1251 et seq.) establishes a permit system to regulate discharges of pollutants and provides that permits for this purpose will be issued by the Federal Government or by states with adequate authority and programs to implement the regulatory provisions of that act. It is in the interest of the people of this State to minimize direct regulation by the Federal Government of wastewater dischargers by enacting legislation which will continue and extend the powers and responsibilities of the Department of Environmental Protection for administering the State's water pollution control program, so that the State may be enabled to implement the permit system required by the Federal Act.

§ 58:10A-3. Definitions.

As used in this act, unless the context clearly requires a different meaning, the following words and terms shall have the following meanings:

a. "Administrator" means the Administrator of the United States Environmental Protection Agency or his authorized representative;

b. "Areawide plan" means any plan prepared pursuant to section 208 of the Federal Act;

c. "Commissioner" means the Commissioner of Environmental Protection or his authorized representative;

d. "Department" means the Department of Environmental Protection;

e. “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 the State, onto land or into wells from which it might flow or drain into said waters or into waters or onto lands outside the jurisdiction of the State, which pollutant enters the waters of the State. “Discharge” includes the release of any pollutant into a municipal treatment works;

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

g. “Federal Act” means the “Federal Water Pollution Control Act Amendments of 1972” (Public Law 92-500; 33 U.S.C. s.1251 et seq.);

h. “Municipal treatment works” means the treatment works of any municipal, county, or State agency or any agency or subdivision created by one or more municipal, county or State governments and the treatment works of any public utility as defined in R.S.48:2-13;

i. “National Pollutant Discharge Elimination System” or “NPDES” means the national system for the issuance of permits under the Federal Act;

j. “New Jersey Pollutant Discharge Elimination System” or “NJPDES” means the New Jersey system for the issuance of permits under this act;

k. “Permit” means a NJPDES permit issued pursuant to section 6 of this act. “Permit” includes a letter of agreement entered into between a delegated local agency and a user of its municipal treatment works, setting effluent limitations and other conditions on the user of the agency's municipal treatment works;

l. “Person” means any individual, corporation, company, partnership, firm, association, owner or operator of a treatment works, political subdivision of this State and any state or interstate agency. “Person” shall also mean any responsible corporate official for the purpose of enforcement action under section 10 of this act;

m. “Point source” means any discernible, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged;

n. “Pollutant” means any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, grease, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, thermal waste, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal or agricultural waste or other residue discharged into the waters of the State. “Pollutant” includes both hazardous and nonhazardous pollutants;

o. “Pretreatment standards” means any restriction on quantities, quality, rates, or concentrations of pollutants discharged into municipal or privately owned treatment works adopted pursuant to P.L.1972, c. 42 (C.58:11-49 et seq.);

p. “Schedule of compliance” means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with water quality standards, an effluent limitation or other limitation, prohibition or standard;

q. “Substantial modification of a permit” means any significant change in any effluent limitation, schedule of compliance, compliance monitoring requirement, or any other provision in any permit which permits, allows, or requires more or less stringent or more or less timely compliance by the permittee;

r. “Toxic pollutant” means any pollutant identified pursuant to the Federal Act, or any pollutant or combination of pollutants, including disease causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly or indirectly by ingestion through food chains, will, on the basis of information available to the commissioner, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformation, in such organisms or their offspring;

s. “Treatment works” means any device or systems, whether public or private, used in the storage, treatment, recycling, or reclamation of municipal or industrial waste of a liquid nature including intercepting sewers, outfall sewers, sewage collection systems, cooling towers and ponds, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any other works including sites for the treatment process or for ultimate disposal of residues resulting from such treatment. “Treatment works” includes any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of pollutants, including storm water runoff, or industrial waste in combined or separate storm water and sanitary sewer systems;

t. “Waters of the State” means the ocean and its estuaries, all springs, streams and bodies of surface or ground water, whether natural or artificial, within the boundaries of this State or subject to its jurisdiction;

u. “Hazardous pollutant” means:

(1) Any toxic pollutant;

(2) Any substance regulated as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, Pub.L.92-516 (7 U.S.C. s.136 et seq.);

(3) 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. s.2601 et seq.);

(4) Any substance identified as a known carcinogen by the International Agency for Research on Cancer;

(5) Any hazardous waste as designated pursuant to section 3 of P.L.1981, c. 279 (C.13:1E-51) or the "Resource Conservation and Recovery Act," Pub.L.94-580 (42 U.S.C. s.6901 et seq.); or

(6) Any hazardous substance as defined pursuant to section 3 of P.L.1976, c. 141 (C.58:10-23.11b);

v. "Serious violation" means an exceedance of an effluent limitation for a discharge point source set forth in a permit, administrative order, or administrative consent agreement, including interim enforcement limits, by 20 percent or more for a hazardous pollutant, or by 40 percent or more for a nonhazardous pollutant, calculated on the basis of the monthly average for a pollutant for which the effluent limitation is expressed as a monthly average, or, in the case of an effluent limitation expressed as a daily maximum and without a monthly average, on the basis of the monthly average of all maximum daily test results for that pollutant in any month; in the case of an effluent limitation for a pollutant that is not measured by mass or concentration, the department shall prescribe an equivalent exceedance factor therefor. The department may utilize, on a case-by-case basis, a more stringent factor of exceedance to determine a serious violation if the department states the specific reasons therefor, which may include the potential for harm to human health or the environment. "Serious violation" shall not include a violation of a permit limitation for color;

w. "Significant noncomplier" means any person who commits a serious violation for the same hazardous pollutant or the same nonhazardous pollutant, at the same discharge point source, in any two months of any six-month period, or who exceeds the monthly average or, in a case of a pollutant for which no monthly average has been established, the monthly average of the daily maximums for an effluent limitation for the same pollutant at the same discharge point source by any amount in any four months of any six-month period, or who fails to submit a completed discharge monitoring report in any two months of any six-month period. The department may utilize, on a case-by-case basis, a more stringent frequency or factor of exceedance to determine a significant noncomplier, if the department states the specific reasons therefor, which may include the potential for harm to human health or the environment. A local agency shall not be deemed a "significant noncomplier" due to an exceedance of an effluent limitation established in a permit for flow;

x. "Local agency" means a political subdivision of the State, or an agency or instrumentality thereof, that owns or operates a municipal treatment works;

y. “Delegated local agency” means a local agency with an industrial pretreatment program approved by the department;

z. “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;

aa. “Bypass” means the anticipated or unanticipated intentional diversion of waste streams from any portion of a treatment works;

bb. “Major facility” means any facility or activity classified as such by the Administrator of the United States Environmental Protection Agency, or his representative, in conjunction with the department, and includes industrial facilities and municipal treatment works;

cc. “Significant indirect user” means a discharger of industrial or other pollutants into a municipal treatment works, as defined by the department, including, but not limited to, industrial dischargers, but excluding the collection system of a municipal treatment works;

dd. “Violation of this act” means a violation of any provisions of this act, and shall include a violation of any rule or regulation, water quality standard, effluent limitation or other condition of a permit, or order adopted, issued, or entered into pursuant to this act;

ee. “Aquaculture” means the propagation, rearing, and subsequent harvesting of aquatic organisms in controlled or selected environments, and the subsequent processing, packaging and marketing, and shall include, but need not be limited to, activities to intervene in the rearing process to increase production such as stocking, feeding, transplanting, and providing for protection from predators. “Aquaculture” shall not include the construction of facilities and appurtenant structures that might otherwise be regulated pursuant to any State or federal law or regulation;

ff. “Aquatic organism” means and includes, but need not be limited to, finfish, mollusks, crustaceans, and aquatic plants which are the property of a person engaged in aquaculture.

§ 58:10A-4. Codes, Rules and Regulations.

The commissioner shall have power to prepare, adopt, amend, repeal and enforce, pursuant to the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et seq.), reasonable codes, rules and regulations to prevent, control or abate water pollution and to carry out the intent of this act, either throughout the State or in certain areas of the State affected by a particular water pollution problem. Such codes, rules and regulations may include, but shall not be limited to, provisions concerning:

a. The storage of any liquid or solid pollutant in a manner designed to keep it from entering the waters of the State;

b. The prior submission and approval of plans and specifications for the construction or modification of any treatment work or part thereof;

c. The classification of the surface and ground waters of the State and the determination of water quality standards for each such classification;

d. The limitation of effluents, including toxic effluents as indicated herein;

e. The determination of pretreatment standards;

f. The establishment of user charges and cost recovery requirements in conformance with the Federal Act;

g. The establishment of a civil penalty policy governing the uniform assessment of civil penalties in accordance with section 10 of P.L.1977, c. 74 (C. 58:10A-10).

§ 58:10A-5. Powers of Department.

The department is empowered to:

a. Exercise general supervision of the administration and enforcement of this act and all rules, regulations and orders promulgated hereunder;

b. Assess compliance of a discharger with applicable requirements of State and federal law pertaining to the control of pollutant discharges and the protection of the environment and, also, to issue certification with respect thereto as required by section 401 of the federal act;[1]

c. Assess compliance of a person with applicable requirements of State and federal law pertaining to the control of the discharge of dredged and fill material into the waters of the State and the protection of the environment and, also, to issue, deny, modify, suspend, or revoke permits with respect thereto as required by section 404 of the "Federal Water Pollution Control Act Amendments of 1972," as amended by the "Clean Water Act of 1977," (33 U.S.C.s.1344), and implementing regulations;

d. Advise, consult, and cooperate with other agencies of the State, the federal government, other states and interstate agencies, including the State Soil Conservation Committee, and with affected groups, political subdivisions and industries in furtherance of the purposes of this act;

e. Administer State and federal grants and other forms of financial assistance to municipalities, counties and other political subdivisions, or any recipient approved by the commissioner according to terms and conditions approved by him in order to meet the goals and objectives of this act. The department shall establish, charge and collect reasonable loan origination and annual administrative fees, which shall be based upon, and shall not exceed the estimated cost of processing, monitoring and administering the

financial assistance programs. Said fees shall be deposited in a separate fund, administered by the department, and the funds used for the sole purpose of administering the financial assistance programs authorized and established by State law, including, but not limited to, the costs of administering the "Wastewater Treatment Fund--State Revolving Fund Accounts" established pursuant to P.L.1988, c. 133.

§ 58:10A-6. Regulation of Discharges of Pollutants; Permits; Exceptions; Right of Entry; Regulation by Local Agency; Inspections; Priority Pollutant Analysis; Public Access to Records.

a. It shall be unlawful for any person to discharge any pollutant, except as provided pursuant to subsections d. and p. of this section, or when the discharge conforms with a valid New Jersey Pollutant Discharge Elimination System permit that has been issued by the commissioner pursuant to P.L.1977, c. 74 (C.58:10A-1 et seq.) or a valid National Pollutant Discharge Elimination System permit issued by the administrator pursuant to the Federal Act,1 as the case may be.

b. It shall be unlawful for any person to build, install, modify or operate any facility for the collection, treatment or discharge of any pollutant, except after approval by the department pursuant to regulations adopted by the commissioner.

c. The commissioner is hereby authorized to grant, deny, modify, suspend, revoke, and reissue NJPDES permits in accordance with P.L.1977, c. 74, and with regulations to be adopted by him. The commissioner may reissue, with or without modifications, an NPDES permit duly issued by the federal government as the NJPDES permit required by P.L.1977, c. 74.

d. The commissioner may, by regulation, exempt the following categories of discharge, in whole or in part, from the requirement of obtaining a permit under P.L.1977, c. 74; provided, however, that an exemption afforded under this section shall not limit the civil or criminal liability of any discharger nor exempt any discharger from approval or permit requirements under any other provision of State or federal law:

(1) Additions of sewage, industrial wastes or other materials into a publicly owned sewage treatment works which is regulated by pretreatment standards;

(2) Discharges of any pollutant from a marine vessel or other discharges incidental to the normal operation of marine vessels;

(3) Discharges from septic tanks, or other individual waste disposal systems, sanitary landfills, and other means of land disposal of wastes;

(4) Discharges of dredged or fill materials into waters for which the State could not be authorized to administer the section 404 program under section 404(g) of the "Federal Water Pollution Control Act Amendments of 1972," as amended by the "Clean Water Act of 1977" (33 U.S.C. s.1344) and implementing regulations;

(5) Nonpoint source discharges;

(6) Uncontrolled nonpoint source discharges composed entirely of storm water runoff when these discharges are uncontaminated by any industrial or commercial activity unless these particular storm water runoff discharges have been identified by the administrator or the department as a significant contributor of pollution;

(7) Discharges conforming to a national contingency plan for removal of oil and hazardous substances, published pursuant to section 311(c)(2) of the Federal Act;

(8) Discharges resulting from agriculture, including aquaculture, activities.

e. The commissioner shall not issue any permit for:

(1) The discharge of any radiological, chemical or biological warfare agent or high-level radioactive waste into the waters of this State;

(2) Any discharge which the United States Secretary of the Army, acting through the Chief of Engineers, finds would substantially impair anchorage or navigation;

(3) Any discharge to which the administrator has objected in writing pursuant to the Federal Act;

(4) Any discharge which conflicts with an areawide plan adopted pursuant to law.

f. A permit issued by the department or a delegated local agency pursuant to P.L.1977, c. 74 shall require the permittee:

(1) To achieve effluent limitations based upon guidelines or standards established pursuant to the Federal Act or to P.L.1977, c. 74, together with such further discharge restrictions and safeguards against unauthorized discharge as may be necessary to meet water quality standards, areawide plans adopted pursuant to law, or other legally applicable requirements;

(2) Where appropriate, to meet schedules for compliance with the terms of the permit and interim deadlines for progress or reports of progress towards compliance;

(3) To insure that all discharges are consistent at all times with the terms and conditions of the permit and that no pollutant will be discharged more frequently than authorized or at a level in excess of that which is authorized by the permit;

(4) To submit application for a new permit in the event of any contemplated facility expansion or process modification that would result in new or increased discharges or, if these would not violate effluent limitations or other restrictions specified in the permit, to notify the commissioner, or delegated local agency, of such new or increased discharges;

(5) To install, use and maintain such monitoring equipment and methods, to sample in accordance with such methods, to maintain and retain such records of information from monitoring activities, and to submit to the commissioner, or to the delegated local agency, reports of monitoring results for surface waters, as may be stipulated in the permit, or required by the commissioner or delegated local agency pursuant to paragraph (9) of this subsection, or as the commissioner or the delegated local agency may prescribe for ground water. Significant indirect users, major industrial dischargers, and local agencies, other than those discharging only stormwater or noncontact cooling water, shall, however, report their monitoring results for discharges to surface waters monthly to the commissioner, or the delegated local agency. Discharge monitoring reports for discharges to surface waters shall be signed by the highest-ranking official having day-to-day managerial and operational responsibilities for the discharging facility, who may, in his absence, authorize another responsible high ranking official to sign a monthly monitoring report if a report is required to be filed during that period of time. The highest-ranking official shall, however, be liable in all instances for the accuracy of all the information provided in the monitoring report; provided, however, that the highest-ranking official may file, within seven days of his return, amendments to the monitoring report to which he was not a signatory. The highest-ranking official having day-to-day managerial and operational responsibilities for the discharging facility of a local agency shall be the highest-ranking licensed operator of the municipal treatment works in those instances where a licensed operator is required by law to operate the facility. In those instances where a local agency has contracted with another entity to operate a municipal treatment works, the highest-ranking official who signs the discharge monitoring report shall be an employee of the contract operator and not of the local agency. Notwithstanding that an employee of a contract operator is the official who signs the discharge monitoring report, the local agency, as the permittee, shall remain liable for compliance with all permit conditions. In those instances where the highest-ranking official having day-to-day managerial and operational responsibilities for a discharging facility of a local agency does not have the responsibility to authorize capital expenditures and hire personnel, a person having that responsibility, or a person designated by that person, shall submit to the department, along with the discharge monitoring report, a certification that that person has received and reviewed the discharge monitoring report. The person submitting the certification to the department shall not be liable for the accuracy of the information on the discharge monitoring report due to the submittal of the certification. Whenever a local agency has contracted with another entity to operate the municipal treatment works, the person submitting the certification shall be an employee of the permittee and not of the contract operator. The filing of amendments to a monitoring report in accordance with this paragraph shall not be considered a late filing of a report for

purposes of subsection d. of section 6 of P.L.1990, c. 28 (C.58:10A-10.1), or for purposes of determining a significant noncomplier;

(6) At all times, to maintain in good working order and operate as effectively as possible, any facilities or systems of control installed to achieve compliance with the terms and conditions of the permit;

(7) To limit concentrations of heavy metal, pesticides, organic chemicals and other contaminants in the sludge in conformance with the land-based sludge management criteria established by the department in the Statewide Sludge Management Plan adopted pursuant to the "Solid Waste Management Act," P.L.1970, c. 39 (C.13:1E-1 et seq.) or established pursuant to the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. s.1251 et seq.), or any regulations adopted pursuant thereto;

(8) To report to the department or delegated local agency, as appropriate, any exceedance of an effluent limitation that causes injury to persons, or damage to the environment, or poses a threat to human health or the environment, within two hours of its occurrence, or of the permittee becoming aware of the occurrence. Within 24 hours thereof, or of an exceedance, or of becoming aware of an exceedance, of an effluent limitation for a toxic pollutant, a permittee shall provide the department or delegated local agency with such additional information on the discharge as may be required by the department or delegated local agency, including an estimate of the danger posed by the discharge to the environment, whether the discharge is continuing, and the measures taken, or being taken, to remediate the problem and any damage to the environment, and to avoid a repetition of the problem;

(9) Notwithstanding the reporting requirements stipulated in a permit for discharges to surface waters, a permittee shall be required to file monthly reports with the commissioner or delegated local agency if the permittee:

(a) in any month commits a serious violation or fails to submit a completed discharge monitoring report and does not contest, or unsuccessfully contests, the assessment of a civil administrative penalty therefor; or

(b) exceeds an effluent limitation for the same pollutant at the same discharge point source by any amount for four out of six consecutive months.

The commissioner or delegated local agency may restore the reporting requirements stipulated in the permit if the permittee has not committed any of the violations identified in this paragraph for six consecutive months;

(10) To report to the department or delegated local agency, as appropriate, any serious violation within 30 days of the violation, together with a statement

indicating that the permittee understands the civil administrative penalties required to be assessed for serious violations and explaining the nature of the serious violation and the measures taken to remedy the cause or prevent a recurrence of the serious violation.

g. The commissioner and a local agency shall have a right of entry to all premises in which a discharge source is or might be located or in which monitoring equipment or records required by a permit are kept, for purposes of inspection, sampling, copying or photographing.

h. In addition, any permit issued for a discharge from a municipal treatment works shall require the permittee:

(1) To notify the commissioner or local agency in advance of the quality and quantity of all new introductions of pollutants into a facility and of any substantial change in the pollutants introduced into a facility by an existing user of the facility, except for such introductions of nonindustrial pollutants as the commissioner or local agency may exempt from this notification requirement when ample capacity remains in the facility to accommodate new inflows. The notification shall estimate the effects of the changes on the effluents to be discharged into the facility.

(2) To establish an effective regulatory program, alone or in conjunction with the operators of sewage collection systems, that will assure compliance and monitor progress toward compliance by industrial users of the facilities with user charge and cost recovery requirements of the Federal Act or State law and toxicity standards adopted pursuant to P.L.1977, c. 74 and pretreatment standards.

(3) As actual flows to the facility approach design flow or design loading limits, to submit to the commissioner or local agency for approval, a program which the permittee and the persons responsible for building and maintaining the contributory collection system shall pursue in order to prevent overload of the facilities.

i.

(1) All local agencies shall prescribe terms and conditions, consistent with applicable State and federal law, or requirements adopted pursuant thereto by the department, upon which pollutants may be introduced into treatment works, and shall have the authority to exercise the same right of entry, inspection, sampling, and copying, and to impose the same remedies, fines and penalties, and to recover costs and compensatory damages as authorized pursuant to subsection a. of section 10 of P.L.1977, c. 74 (C.58:10A-10) and section 6 of P.L.1990, c. 28 (C.58:10A-10.1), with respect to users of such works, as are vested in the commissioner by P.L.1977, c. 74, or by any other provision of State law, except that a local agency, except as provided in P.L.1991, c. 8 (C.58:10A-

10.4 et seq.), may not impose civil administrative penalties, and shall petition the county prosecutor or the Attorney General for a criminal prosecution under that section. Terms and conditions shall include limits for heavy metals, pesticides, organic chemicals and other contaminants in industrial wastewater discharges based upon the attainment of land-based sludge management criteria established by the department in the Statewide Sludge Management Plan adopted pursuant to the "Solid Waste Management Act," P.L.1970, c. 39 (C.13:1E-1 et seq.) or established pursuant to the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. s.1251 et seq.), or any regulations adopted pursuant thereto.

(2) Of the amount of any penalty assessed and collected pursuant to an action brought by a local agency in accordance with section 10 of P.L.1977, c. 74 or section 6 of P.L.1990, c. 28 (C.58:10A-10.1), 10% shall be deposited in the "Wastewater Treatment Operators' Training Account," established in accordance with section 13 of P.L.1990, c. 28 (C.58:10A-14.5), and used to finance the cost of training operators of municipal treatment works. The remainder shall be used by the local agency solely for enforcement purposes, and for upgrading municipal treatment works.

j. In reviewing permits submitted in compliance with P.L.1977, c. 74 and in determining conditions under which such permits may be approved, the commissioner shall encourage the development of comprehensive regional sewerage planning or facilities, which serve the needs of the regional community, conform to the adopted area-wide water quality management plan for that region, and protect the needs of the regional community for water quality, aquifer storage, aquifer recharge, and dry weather based stream flows.

k. No permit may be issued, renewed, or modified by the department or a delegated local agency so as to relax any water quality standard or effluent limitation until the applicant, or permit holder, as the case may be, has paid all fees, penalties or fines due and owing pursuant to P.L.1977, c. 74, or has entered into an agreement with the department establishing a payment schedule therefor; except that if a penalty or fine is contested, the applicant or permit holder shall satisfy the provisions of this section by posting financial security as required pursuant to paragraph (5) of subsection d. of section 10 of P.L.1977, c. 74 (C.58:10A-10). The provisions of this subsection with respect to penalties or fines shall not apply to a local agency contesting a penalty or fine.

l. Each permitted facility or municipal treatment works, other than one discharging only stormwater or non-contact cooling water, shall be inspected by the department at least once a year; except that each permitted facility discharging into the municipal treatment works of a delegated local agency, other than a facility discharging only stormwater or non-contact cooling water, shall be inspected by the delegated local agency at least once a year. Except as hereinafter provided, an inspection required under this subsection shall be conducted within six months following a permittee's submission of an

application for a permit, permit renewal, or, in the case of a new facility or municipal treatment works, issuance of a permit therefor, except that if for any reason, a scheduled inspection cannot be made the inspection shall be rescheduled to be performed within 30 days of the originally scheduled inspection or, in the case of a temporary shutdown, of resumed operation. Exemption of stormwater facilities from the provisions of this subsection shall not apply to any permitted facility or municipal treatment works discharging or receiving stormwater runoff having come into contact with a hazardous discharge site on the federal National Priorities List adopted by the United States Environmental Protection Agency pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act," Pub.L.96-510 (42 U.S.C. s.9601 et seq.), or any other hazardous discharge site included by the department on the master list for hazardous discharge site cleanups adopted pursuant to section 2 of P.L.1982, c. 202 (C.58:10-23.16). Inspections shall include:

(1) A representative sampling of the effluent for each permitted facility or municipal treatment works, except that in the case of facilities or works that are not major facilities or significant indirect users, sampling pursuant to this paragraph shall be conducted at least once every three years;

(2) An analysis of all collected samples by a State owned and operated laboratory, or a certified laboratory other than one that has been or is being used by the permittee, or that is directly or indirectly owned, operated or managed by the permittee;

(3) An evaluation of the maintenance record of the permittee's treatment equipment;

(4) An evaluation of the permittee's sampling techniques;

(5) A random check of written summaries of test results, prepared by the certified laboratory providing the test results, for the immediately preceding 12-month period, signed by a responsible official of the certified laboratory, certifying the accuracy of the test results; and

(6) An inspection of the permittee's sample storage facilities and techniques if the sampling is normally performed by the permittee.

The department may inspect a facility required to be inspected by a delegated local agency pursuant to this subsection. Nothing in this subsection shall require the department to conduct more than one inspection per year.

m. The facility or municipal treatment works of a permittee identified as a significant noncomplier shall be subject to an inspection by the department, or the delegated local agency, as the case may be, which inspection shall be in addition to the requirements of subsection l. of this section. The inspection shall be conducted within 60 days of receipt of the discharge monitoring report that initially results in the permittee being identified as a significant noncomplier. The inspection shall include a random check of written

summaries of test results, prepared by the certified laboratory providing the test results, for the immediately preceding 12-month period, signed by a responsible official of the certified laboratory, certifying the accuracy of the test results. A copy of each summary shall be maintained by the permittee. The inspection shall be for the purpose of determining compliance. The department or delegated local agency is required to conduct only one inspection per year pursuant to this subsection, and is not required to make an inspection hereunder if an inspection has been made pursuant to subsection l. of this section within six months of the period within which an inspection is required to be conducted under this subsection.

n. To assist the commissioner in assessing a municipal treatment works' NJPDES permit in accordance with paragraph (3) of subsection b. of section 7 of P.L.1977, c. 74 (C.58:10A-7), a delegated local agency shall perform a complete analysis that includes a complete priority pollutant analysis of the discharge from, and inflow to, the municipal treatment works. The analysis shall be performed by a delegated local agency as often as the priority pollutant scan is required under the permit, but not less than once a year, and shall be based upon data acquired in the priority pollutant scan and from applicable sludge quality analysis reports. The results of the analysis shall be included in a report to be attached to the annual report required to be submitted to the commissioner by the delegated local agency.

o. Except as otherwise provided in section 3 of P.L.1963, c. 73 (C.47:1A-3), any records, reports or other information obtained by the commissioner or a local agency pursuant to thereto, shall be available to the public; however, upon a showing satisfactory to the commissioner by any person that the making public of any record, report or information, or a part thereof, other than effluent data, would divulge methods or processes entitled to protection as trade secrets, the commissioner or local agency shall consider such record, report, or information, or part thereof, to be confidential, and access thereto shall be limited to authorized officers or employees of the department, the local agency, and the federal government.

p. The provisions of this section shall not apply to a discharge of petroleum to the surface waters of the State that occurs as a result of the process of recovering, containing, cleaning up or removing a discharge of petroleum in the surface waters of the State and that is undertaken in compliance with the instructions of a federal on-scene coordinator or of the commissioner or the commissioner's designee.

q. The commissioner shall, in consultation with the Department of Agriculture and the Aquaculture Advisory Council, provide for the issuance of general permits for the discharge of pollutants from concentrated aquatic animal production facilities and aquacultural projects. In establishing general permits the commissioner shall take into consideration the source and receiving water quality and the type of aquaculture activity being conducted. The general permits issued pursuant to this subsection shall give priority to meeting best management practices rather than attaining numeric pollutant discharge parameter levels. If the commissioner determines that a permittee cannot

perform the best management practices in order to obtain a general permit or that the performance of best management practices will not be protective of water quality as required by P.L.1977, c. 74, the commissioner may require the permittee to obtain an individual permit which may contain numeric pollutant parameter discharge limits.

§ 58:10A-6.1. Schedule of Compliance; Proposed Administrative Consent Order; Public Notice and Hearings.

a. Every schedule of compliance shall require the permittee to demonstrate to the commissioner the financial assurance, including the posting of a bond or other security approved by the commissioner, necessary to carry out the remedial measures required by the schedule of compliance; except that a local agency shall not be required to post financial security as a condition of a schedule of compliance.

b. The department or a delegated local agency shall afford an opportunity to the public to comment on a proposed administrative consent order prior to final adoption if the administrative consent order would establish interim enforcement limits that would relax effluent limitations established in a permit or a prior administrative order. The department or a delegated local agency shall provide public notice of the proposed administrative consent order, and announce the length of the comment period, which shall be not less than 30 days, commencing from the date of publication of the notice. A notice shall also include a summary statement describing the nature of the violation necessitating the administrative consent order and its terms or conditions; shall specify how additional information on the administrative consent order may be obtained; and shall identify to whom written comments are to be submitted. At least three days prior to publication of the notice, a written notice, containing the same information to be provided in the published notice, shall be mailed to the mayor or chief executive officer and governing body of the municipality and county in which the violation occurred, and to any other interested persons, including any other governmental agencies. The department or delegated local agency shall consider the written comments received during the comment period prior to final adoption of the administrative consent order. Not later than the date that final action is taken on the proposed order, the department or delegated agency shall notify each person or group having submitted written comments of the main provisions of the approved administrative consent order and respond to the comments received therefrom.

c. The commissioner or delegated local agency, on his or its own initiative or at the request of any person submitting written comments pursuant to subsection b. of this section, may hold a public hearing on a proposed administrative order or administrative consent order, prior to final adoption if the order would establish interim enforcement limits that would relax for more than 24 months effluent limitations established in a permit or a prior administrative order or administrative consent order. Public notice for the public hearing to be held pursuant to this subsection shall be published not more than 30 and not less than 15 days prior to the holding of the hearing. The hearing shall be held in the municipality in which the violation, necessitating the order, occurred. The

department may recover all reasonable costs directly incurred in scheduling and holding the public hearing from the person requesting or requiring the interim enforcement limits.

§ 58:10A-6.2. Legislative Findings and Declarations.

The Legislature finds and declares that to enhance and improve the quality of the environment and to protect and foster the public health of the citizens of New Jersey it is altogether fitting and proper to allow private entities who, pursuant to law, have applied for a permit for the purpose of building, installing, maintaining or operating any facility for the collection, treatment or discharge of any pollutant or for the purpose of implementing pollution prevention process modifications to commence with that building, installation, maintenance or operation or to implement those modifications while the Department of Environmental Protection is reviewing the permit application; and that authorizing such pre-approval actions would lead to the environmental benefits that would result from the timely building, installation, maintenance and operation of facilities and the prompt implementation of pollution prevention process modifications.

The Legislature therefore determines that it is within the public interest to allow private entities who have applied for permits to build, install, maintain or operate any facility for the collection, treatment or discharge of any pollutant or for permits to implement pollution prevention process modifications to undertake such building, installation, maintenance or operation or to implement such process modifications while the department is reviewing their permit application, but with the clear and full understanding that they assume all risks for their actions.

§ 58:10A-6.3. Construction or Operation of Water Pollution Control Devices Allowed During Pendency of Permit Application Review Process.

Except where specifically prohibited under the “Federal Water Pollution Control Act Amendments of 1972” (33 U.S.C. s.1251 et seq.) or any other such federal requirement, any private entity who has submitted to the Department of Environmental Protection, pursuant to the “Water Pollution Control Act,” P.L.1977, c. 74 (C. 58:10A-1 et seq.), an application for a permit to build, install, maintain or operate any facility for the collection, treatment or discharge of any pollutant or to implement pollution prevention process modifications may build, install, maintain and operate such facilities or implement such pollution prevention process modifications during the pendency of the permit application review process. A private entity intending to take action authorized pursuant to this section during the pendency of the permit application review process shall notify the department of the intent to undertake the action seven days prior to the commencement of the action. The prior notification may be made by certified mail or in a manner acceptable to the department.

Nothing in this section shall be construed to limit the department's discretion in establishing building, installation, maintenance and operating standards for such facilities, or in otherwise reviewing the permit application, nor shall the costs incurred by the applicant for the building, installation, maintenance or operation of such facilities or the implementation of pollution prevention process modifications during the pendency of the permit application review process be used by an applicant as grounds for an appeal of the department's decision on the permit

application. If the department determines that any facilities or pollution prevention process modifications built, installed, maintained or implemented during the pendency of the permit application review process are not consistent with applicable federal and State laws, rules, or regulations, the department and the applicant shall enter into an agreement containing a schedule setting forth a date certain on which the applicant shall modify, replace or cease the operation of the facilities or implementation of the pollution prevention process modifications. If the department and the applicant shall fail to enter into an agreement, the department may issue a schedule setting forth a date certain on which the applicant shall comply.

Failure of the applicant to comply with the schedule setting forth a date for compliance shall constitute a violation of P.L.1977, c. 74 (C. 58:10A-1 et seq.), and shall subject the applicant to penalties as prescribed in that act. A person who builds, installs, maintains, or operates any facility for the collection, treatment, or discharge of pollutants or who implements pollution prevention process modifications in a manner which the department determines is not consistent with applicable federal or State laws, rules, or regulations, shall not be subject to civil or criminal penalties for that inconsistent action as long as the person's actions did not result in (1) the discharge of a pollutant which was not authorized to be discharged by the person's permit or (2) an exceedance of any applicable discharge parameter in the permit.

Nothing in this section shall be construed to authorize a person to discharge a pollutant not otherwise authorized to be discharged by a permit held by that person or to discharge a pollutant at a level in excess of the discharge parameters contained in the permit.

The provisions of this section shall not be construed to authorize or permit any building, installation, maintenance, or operation which would result in any new source of discharge but shall only apply to facilities for existing permitted sources of discharges.

As used in this section:

(1) “private entity” means any private individual, corporation, company, partnership, firm, association, owner or operator but shall not include, and the provisions of this section shall not apply to, any municipal, county, or State agency or authority or to any agency, authority or subdivision created by one or more municipal, county or State governments;

(2) “pollution prevention process modifications” means any physical or operational change to a process which reduces water pollution discharges to the environment.

§ 58:10A-6.4. Definitions.

As used in P.L.2003, c. 196 (C.58:10A-6.4 et seq.):

“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 the State, onto land or into wells from which it might flow or drain into said waters or into waters or onto lands outside the jurisdiction of the State, which pollutant enters the waters of the State. “Discharge” includes the release of any pollutant into a municipal treatment works;

“Municipal treatment works” means the treatment works of any municipal, county, or State agency or any agency or subdivision created by one or more municipal, county or State governments and the treatment works of any public utility as defined in R.S.48:2-13;

“Treatment works” means any device or systems, whether public or private, used in the storage, treatment, recycling, or reclamation of municipal or industrial waste of a liquid nature including intercepting sewers, outfall sewers, sewage collection systems, cooling towers and ponds, pumping, power and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any other works including sites for the treatment process or for ultimate disposal of residues resulting from such treatment. “Treatment works” includes any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of pollutants, including storm water runoff, or industrial waste in combined or separate storm water and sanitary sewer systems; and

“Waters of the State” means the ocean and its estuaries, all springs, streams and bodies of surface or ground water, whether natural or artificial, within the boundaries of this State or subject to its jurisdiction.

§ 58:10A-6.5. Hazardous Discharge Sites, Publicly Owned Municipal Treatment Works, Utility Sewer Line, Storm Drain Line; Operator Requirements.

a. The operator of a hazardous discharge site in the State that is:

(1) situated within a municipality of the second class which is located within a county of the second class with a population density of 2,289.4 persons per square mile, according to the latest federal decennial census;

(2)a former landfill; and

(3) that is included on the National Priorities List of hazardous discharge sites adopted by the United States Environmental Protection Agency pursuant to the “Comprehensive Environmental Response, Compensation, and Liability Act of 1980,” Pub.L.96-510 (42 U.S.C. s.9601 et seq.) shall not discharge any untreated or pre-treated wastewater into a publicly owned municipal treatment works for treatment and subsequent release into the waters of the State or into any municipal utility sewer line or storm drain line for subsequent release into the waters of the State.

b. The owner or operator of a publicly owned municipal treatment works or municipal utility sewer line or storm drain line shall not accept any untreated or pre-treated wastewater discharged from a former landfill in the State that is situated within a municipality of the second class which is located within a county of the second class with a population density of 2,289.4 persons per square mile, according to the latest federal decennial census and that is a hazardous discharge site included on the National Priorities List of hazardous discharge sites adopted by the United States Environmental

Protection Agency pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act of 1980," Pub.L.96-510 (42 U.S.C. s.9601 et seq.).

§ 58:10A-6.6. Radionuclides in or About Waters of Former Landfills; Operator Requirements.

If there are radionuclides in or about the waters at or near a former landfill that is situated within a municipality of the second class which is located within a county of the second class with a population density of 2,289.4 persons per square mile, according to the latest federal decennial census and that is a hazardous discharge site subject to the requirements of section 2 of P.L.2003, c. 196 (C.58:10A-6.5), the operator of the hazardous discharge site shall:

a. Construct an on-site treatment facility designed to remediate the former landfill so that the treated wastewater is environmentally safe for discharge to the groundwater on-site, as part of a comprehensive on-site treatment program which shall also include remedial treatment for the radionuclides in or about the waters at or near the former landfill;

b. Make available to the public free of charge the results of the testing for any pollutants at the site immediately upon their production;

c. In conjunction with appropriate officials of the Department of Environmental Protection and, if applicable, the federal government, hold regular monthly public meetings concerning the remediation so that the public may be apprised of the progress of the remediation plan, the treatment options being proposed and considered, the cost for the various treatment options being considered, the content and concentrations of the various pollutants existing at the site, the time-frame for completion of construction of any treatment facility, and the time-frame for the completion of the remediation; and

d. For the purpose of engendering public trust in the cleanup process, give a public accounting of the funds that have been spent to remediate the site, which shall include providing the costs and expenditures associated with constructing and operating the treatment facility and with designing and operating the facility to also treat radionuclides, as well as any other costs and expenditures associated with the remediation.

§ 58:10A-7. Permits; Duration; Extension; Grant, Denial, Modification, Suspension, or Revocation; Party to Action; Escrow.

a. All permits issued under this act shall be for fixed terms not to exceed five years. Any permittee who wishes to continue discharging after the expiration date of his permit must file for a new permit at least 180 days prior to that date.

b.

(1) The commissioner may modify, suspend, or revoke a permit in whole or in part during its term for cause, including but not limited to the following:

(a) Violation of any term or condition of the permit;

(b) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts.

(2) If a toxic effluent limitation or prohibition, including any schedule of compliance specified in such effluent limitation or prohibition, is established under section 307(a) of the Federal Act for a toxic pollutant which is more stringent than any limitations upon such pollutant in an existing permit, the commissioner shall revise or modify the permit in accordance with the toxic effluent limitation or prohibition and so notify the permittee.

(3) The department shall include in a permit for a delegated local agency effluent limit for all pollutants listed under the United States Environmental Protection Agency's Categorical Pretreatment Standards, adopted pursuant to 33 U.S.C. s.1317, and such other pollutants for which effluent limits have been established for a permittee discharging into the municipal treatment works of the delegated local agency, except those categorical or other pollutants that the delegated local agency demonstrates to the department are not discharged above detectable levels by the municipal treatment works. The department, by permit, may authorize the use by a delegated local agency of surrogate parameters for categorical and other pollutants discharged from a municipal treatment works, except that if a surrogate parameter is exceeded, the department shall require effluent limits for each categorical or other pollutant for which the surrogate parameter was used, for such period of time as may be determined by the department.

c. Notice of every proposed suspension, revocation or renewal, or substantial modification of a permit and opportunity for public hearing thereupon, shall be afforded in the same manner as with respect to original permit applications as provided for in this act. In any event notice of all modifications to a discharge permit shall be published in the DEP Bulletin.

d. A determination to grant, deny, modify, suspend, or revoke a permit shall constitute a contested case under the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et seq.). The permittee, or any other person considered a party to the action pursuant to subsection e. of this section, shall have the opportunity to contest the determination in an administrative hearing.

e. A person, other than the permittee, seeking to be considered a party to the action shall submit a request to be so considered to the commissioner within 30 days of the publication of the notice of the decision to grant, deny, modify, suspend, or revoke a permit. The administrative law judge upon referral, or the commissioner, if the commissioner decides to make the determination, shall find whether a person other than the permittee is a party to the action within 30 days of the submission of the request or the referral to the administrative law judge. A person shall be deemed a party to the action only if:

(1) the person's objections to the action to grant, deny, modify, suspend, or revoke a permit were raised by that person in the hearing held pursuant to section 9 of P.L.1977, c. 74 (C.58:10A-9), or, if no hearing was held, the objections were raised in a written submission;

(2) the person demonstrates the existence of a significant issue of law or fact;

(3) the person shows that the significant issue of law or fact is likely to affect the permit determination;

(4) the person can show an interest, including an environmental, aesthetic, or recreational interest, which is or may be affected by the permit decision and that the interest fairly can be traced to the challenged action and is likely to be redressed by a decision favorable to that person. An organization may contest a permit decision on behalf of one or more of its members if

> (a) the organization's member or members could otherwise be a party to the action in their own right; and
>
> (b) the interests the organization seeks to protect are germane to the organization's purpose; and

(5) the person submits the following information with the request to be considered a party to the action:

> (a) a statement of each legal or factual question alleged to be at issue and its relevance to the permit decision, together with a designation of the specific factual areas to be adjudicated and the hearing time estimated to be necessary for adjudication;
>
> (b) information supporting the request which shall be submitted pursuant to adopted rules;
>
> (c) the name, mailing address, and telephone number of the person making the request;
>
> (d) a clear and concise factual statement of the nature and scope of the interest of the requester;
>
> (e) the names and addresses of all affected persons whom the requester represents;
>
> (f) a statement by the requester that, upon motion of any party granted by the hearing officer, or upon order of the hearing officer sua sponte, the requester shall make available to appear and testify at the administrative hearing, if granted, the following: the requester; all affected persons represented by the requester; and all officers, directors, employees, consultants, and agents of the requester;

(g) specific references to the contested permit conditions, as well as suggested revised or alternative permit conditions, including permit denials, which, in the judgment of the requester, would be required to implement the purposes of P.L.1977, c. 74; and

(h) in the case of application of control or treatment technologies identified in the statement of basis or fact sheet, identification of the basis for the objection, and the alternative technologies or combination of technologies which the requester believes are necessary to meet the requirements of P.L.1977, c. 74.

Whenever a person's request to be considered to be a party to the action is granted, the commissioner or the administrative law judge, as appropriate, shall identify the permit conditions which have been contested by the requester and for which an administrative hearing will be granted. Permit conditions which are not so contested shall not be affected by, or considered at, the administrative hearing. All requests by persons seeking to be considered a party to the action for a particular permit shall be combined in a single administrative hearing.

f. A permittee may contest the determination to grant, deny, modify, suspend, or revoke a permit in an administrative hearing pursuant to subsection d. of this section only upon the placement, in escrow, of money in an amount equal to the permit fee.

§ 58:10A-7.1. Prohibition of Issuance and Expiration of Permits to Discharge any Solid, Semi-Solid, or Liquid Wastes into Ocean Waters After December 31, 1991; Exemptions.

After December 31, 1991, the department may not issue a permit to any private, commercial, or industrial applicant for the discharge of any solid, semi-solid, or liquid wastes into the ocean waters of the State, the provisions of any other law, or rule or regulation to the contrary notwithstanding. Any permit issued by the department for the discharge of any such waste prior to January 1, 1992 shall expire on January 1, 1992, the provisions of any such permit to the contrary notwithstanding. The provisions of P.L.1989, c. 119 shall not apply to permits applied for, or issued to, municipal treatment works, seafood processing facilities, public water supply desalinization plants, or aquaculture activities. As used in this act, “ocean waters” means those waters of the open seas lying seaward of the base line from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 5639).

As used in this section, “aquaculture” means the propagation, rearing, and subsequent harvesting of aquatic organisms in controlled or selected environments, and the subsequent processing, packaging and marketing, and shall include, but need not be limited to, activities such as stocking, intervention in the rearing process to increase production, feeding, transplanting, and providing for protection from predators and shall not include the construction of facilities and appurtenant structures that might otherwise be regulated pursuant to any State or federal law or regulation, and “aquatic organism” means and includes, but need not be limited

to, finfish, mollusks, crustaceans, and aquatic plants which are the property of a person engaged in aquaculture.

§ 58:10A-7.2. Application for Permit for Groundwater to Surface Water Remedial Action; Contents; Request for Consent Forms; Review; General Permits; Rules and Regulations.

a. An application for a permit issued by the Department of Environmental Protection pursuant to P.L.1977, c. 74 (C.58:10A-1 et seq.) for the discharge of groundwater to surface water involving a groundwater remedial action necessitated by a discharge from an underground storage tank containing petroleum products or a groundwater remedial action involving petroleum products, shall contain, in addition to a properly filled application form:

(1) such documentation or other information on the permit application as may be prescribed by the department on a checklist made available to a prospective applicant;

(2) if the discharge from the proposed groundwater remedial action is located within a wastewater service district or area of a local public entity, a certified statement that a request, dated at least 60 days prior to the filing of the permit application, had been made to the local public entity to discharge the groundwater into the wastewater collection or treatment facilities of that entity, and that no reply has been received from that entity, or a written statement by the local public entity, dated not more than 60 days prior to the filing of the permit application with the department, that the entity has approved or rejected a written request by the applicant to discharge the treated groundwater into the wastewater collection or treatment facilities of that entity. Notwithstanding that a local public entity has approved the request to discharge groundwater into its facilities, the department may approve the applicant's permit to discharge the groundwater to surface water upon a finding that it is in the public interest;

(3) a certified statement that a copy of the completed application form along with a consent request, as prescribed in subsection b. of this section, have been filed with the clerk of the municipality in which the site of the proposed groundwater remedial action is located, and setting forth the date of the filing with the host municipality, which filing shall be made prior to, or concurrent with, the filing of the application with the department;

(4) within the pinelands area, documentation from the Pinelands Commission that the application is consistent with the requirements of the “Pinelands Protection Act,” P.L.1979, c. 111 (C.13:18A-1 et seq.) or any regulations promulgated pursuant thereto and section 502 of the “National Parks and Recreation Act of 1978” (Pub.L. 95-625); and

(5) within the Highlands preservation area, documentation from the Highlands Water Protection and Planning Council that the application is consistent with the

requirements of the “Highlands Water Protection and Planning Act,” P.L.2004, c. 120 (C.13:20-1 et al.), and any rules and regulations and the Highlands regional master plan adopted pursuant thereto.

b. The department shall prescribe the form and content of a request for consent filed with a municipality pursuant to paragraph (3) of subsection a. of this section. The municipal consent request shall be limited to an identification of all municipal approvals with which the applicant is required to comply, the status of any applications filed therefor, and whether or not the municipality consents to the application and the specific reasons therefor. The request for consent form shall also advise that documentation and other information relating to the application have been filed and are available for review at the department. A municipality receiving a request for consent form shall have 30 days from the date of receipt of a copy of the application and request for consent form to file with the department the information requested, and its consent of, or objections to, the application. Municipal consent or objection to a groundwater remedial action shall be by resolution of the governing body of the municipality unless the governing body has, by resolution, delegated such authority to a qualified officer or entity thereof, in which case the endorsement shall be signed by the designated officer or official of the entity. Notwithstanding that a municipality objects to a permit application or fails to file a consent or objection to the permit application, the department may approve the applicant's permit application to discharge groundwater to surface water.

c. An application pursuant to subsection a. of this section shall be deemed complete, for the purposes of departmental review, within 30 days of the filing of the application with the department unless the department notifies the applicant, in writing, prior to expiration of the 30 days that the application has failed to satisfy one or more of the items identified in subsection a. of this section. If an application is determined to be complete, the department shall review and take final action on the completed application within 60 days from commencement of the review, or, if the parties mutually agree to a 30-day extension, within 90 days therefrom. The review period for a completed application shall commence immediately upon termination of the 30-day period, or upon determination by the department that the application is complete, whichever occurs first. If the department fails to take final action on a permit application for a general permit in the time frames set forth in this subsection, that general permit shall be deemed to have been approved by the department. The department shall review an application for a permit pursuant to subsection a. of this section and shall take action on that application pursuant to the time frames set forth in this subsection, notwithstanding that all of the municipal approvals have not been obtained, unless such approvals would materially affect the terms and conditions of the permit, except that in such instances the department may condition its approval of the application on the necessary municipal approvals being subject to the terms and conditions of the application.

d. The department may issue a general permit for the discharge of groundwater to surface water pursuant to a groundwater remedial action of discharged petroleum products as provided in subsection a. of this section.

e.

(1) The department may not require a municipal consent of a treatment works application for a groundwater remedial action for which a permit application is submitted pursuant to subsection a. of this section.

(2) If a completed application for a treatment works approval for a groundwater remedial action is filed with the department at the same time as an application for a general permit therefor, the department shall concurrently review the two applications, except that the review of the application for the treatment works approval for a groundwater remedial action shall not be subject to the time frames set forth in subsection c. of this section.

f. The provisions of this section shall apply to applications filed on or after the effective date of this act, except that the Department of Environmental Protection may implement any of the provisions of this section prior to that date.

g. The department may, in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), adopt rules and regulations to implement the provisions of this act.

h. For purposes of this section:

"General permit" means a permit issued by the department for similar discharges.

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

"Local public entity" means a sewerage authority established pursuant to P.L.1946, c. 138 (C.40:14A-1 et seq.), a municipal authority established pursuant to P.L.1957, c. 183 (C.40:14B-1 et seq.), the Passaic Valley Sewerage Commissioners continued pursuant to R.S.58:14-2, a joint meeting established pursuant to R.S.40:63-68 et seq. or a local unit authorized to operate a sewerage facility pursuant to N.J.S.40A:26A-1 et seq., or any predecessor act.

"Underground storage tank" shall have the same meaning as in section 2 of P.L.1986, c. 102 (C.58:10A-22), except that as used herein underground storage tanks shall include:

(1) farm underground storage tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(2) underground storage tanks used to store heating oil for on-site consumption in a nonresidential building with a capacity of 2,000 gallons or less; and

(3) underground storage tanks used to store heating oil for on-site consumption in a residential building.

§ 58:10A-8. Establishment of More Stringent Effluent Limitations for Point Source or Group of Point Sources.

Whenever the commissioner finds that discharges from a point source or a group of point sources with the application of the effluent limitations authorized in this act, which effluent limitations are as stringent as the best available technology economically achievable as provided for in the Federal Act or State law, would interfere with the attainment and maintenance of applicable water quality standards, the commissioner may establish more stringent effluent limitations for each such point source or group of point sources, which effluent limitations can reasonably be expected to contribute to the attainment and maintenance of the applicable water quality standards. Prior to the establishment of any more stringent effluent limitations under this section, the commissioner shall publish a notice of his intent to establish such limitations and, upon request of a person affected by any such limitations, the commissioner shall hold a public hearing to determine if there is a reasonable relationship between the economic and social costs of achieving such limitations, including any economic or social dislocation in the affected community or communities, and the social and environmental benefits to be obtained, including the objective of restoring and maintaining the water quality of the State, and to determine whether such effluent limitations can be implemented with available technology or with other control strategies. If a person affected by any such limitations demonstrates at the hearing that there is no reasonable relationship between the economic and social costs of compliance and the benefits to be obtained, the commissioner shall modify any such limitations as they may apply to that person.

§ 58:10A-9. Applications for Permits; Fees; Public Notice; Public Inspection; Hearing; Employees to Administer Act.

Applications for permits shall be submitted within such times, on such forms, and with such signatures as may be prescribed by the commissioner and shall contain such information as he may require. The commissioner shall, in accordance with a fee schedule adopted by regulation, establish and charge reasonable annual administrative fees, which fees shall be based upon, and shall not exceed, the estimated cost of processing, monitoring and administering the NJPDES permits. Said fees shall be deposited to the credit of the State and be deemed as part of the General State Fund. The Legislature shall annually appropriate an amount equivalent to the amount anticipated to be collected as fees charged under this section in support of NJPDES program.

b. The commissioner shall give public notice of every complete application for a permit in a manner designed to inform interested and potentially interested persons, affected states and appropriate governmental agencies of his proposed determination to issue or deny a permit. The notice shall announce a period of at least 30 days during which the

interested persons may request additional facts, submit written views, and request a public hearing on the proposed discharge or determination. All written comments so submitted shall be retained and considered by the commissioner in formulating his final determination with respect to the permit application. The commissioner may give combined notice of two or more permit applications and proposed determinations provided that the requirements of this section are observed for each application.

c. All permit applications, documented information concerning actual and proposed discharges, comments received from the public, and draft and issued permits shall be made available to the public for inspection and for duplication. At his discretion, the commissioner may also make available any other records, reports, plans or information pertaining to permit applicants or permittees, but he shall protect from disclosure any information, other than effluent data, upon a showing by any person that such information, if made public, would divulge methods or processes entitled to protection as trade secrets of such person. The commissioner may prescribe reasonable fees to reimburse the department for duplication expenses under this section.

d. The commissioner shall hold a public hearing on a permit application before a final determination, if a significant showing of interest on the part of the public appears in favor of holding such a hearing. At his discretion, the commissioner may also hold such a hearing on his own motion or if requested to so do by any other interested person. Public notices of every public hearing under this subsection, including a concise statement of the issues to be considered therein, shall be given at least 30 days in advance, and shall be circulated at least as widely as was the notice of the permit application. The commissioner may hold a single hearing on two or more applications. To the extent feasible, he shall afford all persons or representatives of all points of view an opportunity to appear but may so allocate hearing time as to exclude repetitious, redundant, or irrelevant matter. All testimony and documentary material submitted at the hearing shall be considered by the commissioner in formulating his final determination.

e. The commissioner may appoint and employ such persons as he deems necessary to enforce and administer the provisions of this act, and determine their qualifications, term of office, duties and compensation, all without regard to the provisions of Title 11, Civil Service, of the Revised Statutes.

§ 58:10A-10. Violations; Remedies, Fines and Penalties; Enforcement; Forfeiture of Conveyances.

a. Whenever the commissioner finds that any person is in violation of any provision of this act, he shall:

(1) Issue an order requiring any such person to comply in accordance with subsection b. of this section; or

(2) Bring a civil action in accordance with subsection c. of this section; or

(3) Levy a civil administrative penalty in accordance with subsection d. of this section; or

(4) Bring an action for a civil penalty in accordance with subsection e. of this section; or

(5) Petition the Attorney General to bring a criminal action in accordance with subsection f. of this section.

Use of any of the remedies specified under this section shall not preclude use of any other remedy specified.

In the case of one or more pollutants for which interim enforcement limits have been established pursuant to an administrative order, including an administrative consent order, by the department or a local agency, the permittee shall be liable for the enforcement limits stipulated therein.

b. Whenever the commissioner finds that any person is in violation of any provision of this act, he may issue an order (1) specifying the provision or provisions of this act, or the rule, regulation, water quality standard, effluent limitation, or permit of which he is in violation, (2) citing the action which caused such violation, (3) requiring compliance with such provision or provisions, and (4) giving notice to the person of his right to a hearing on the matters contained in the order.

c. The commissioner is authorized to commence a civil action in Superior Court for appropriate relief for any violation of this act or of a permit issued hereunder. Such relief may include, singly or in combination:

(1) A temporary or permanent injunction;

(2) Assessment of the violator for the reasonable costs of any investigation, inspection, or monitoring survey which led to the establishment of the violation, and for the reasonable costs of preparing and litigating the case under this subsection;

(3) Assessment of the violator for any reasonable cost incurred by the State in removing, correcting or terminating the adverse effects upon water quality resulting from any unauthorized discharge of pollutants for which the action under this subsection may have been brought;

(4) Assessment against the violator of compensatory damages for any loss or destruction of wildlife, fish or aquatic life, or other natural resources, and for any other actual damages caused by an unauthorized discharge;

(5) Assessment against a violator of the actual amount of any economic benefits accruing to the violator from a violation. Economic benefits may include the amount of any savings realized from avoided capital or noncapital costs resulting from the violation; the return earned or that may be earned on the amount of

avoided costs; any benefits accruing to the violator as a result of a competitive market advantage enjoyed by reason of the violation; or any other benefits resulting from the violation.

Assessments under paragraph (4) of this subsection shall be paid to the State Treasurer, except that compensatory damages shall be paid by specific order of the court to any persons who have been aggrieved by the unauthorized discharge. Assessments pursuant to actions brought by the commissioner under paragraphs (2), (3) and (5) of this subsection shall be paid to the "Clean Water Enforcement Fund," established pursuant to section 12 of P.L.1990, c. 28 (C.58:10A-14.4).

d.

(1)

(a) The commissioner is authorized to assess, in accordance with a uniform policy adopted therefor, a civil administrative penalty of not more than $50,000.00 for each violation and each day during which such violation continues shall constitute an additional, separate, and distinct offense. Any amount assessed under this subsection shall fall within a range established by regulation by the commissioner for violations of similar type, seriousness, and duration. The commissioner shall adopt, by regulation, a uniform assessment of civil penalties policy by January 1, 1992.

(b) In adopting rules for a uniform penalty policy for determining the amount of a penalty to be assessed, the commissioner shall take into account the type, seriousness, including extent, toxicity, and frequency of a violation based upon the harm to public health or the environment resulting from the violation, the economic benefits from the violation gained by the violator, the degree of cooperation or recalcitrance of the violator in remedying the violation, any measures taken by the violator to avoid a repetition of the violation, any unusual or extraordinary costs directly or indirectly imposed on the public by the violation other than costs recoverable pursuant to paragraph (3) or (4) of subsection c. of this section, and any other pertinent factors that the commissioner determines measure the seriousness or frequency of the violation, or conduct of the violator.

(c) In addition to the assessment of a civil administrative penalty, the commissioner may, by administrative order and upon an appropriate finding, assess a violator for costs authorized pursuant to paragraphs (2) and (3) of subsection c. of this section.

(2) No assessment shall be levied pursuant to this subsection until after the discharger has been notified by certified mail or personal service. The notice

shall include a reference to the section of the statute, regulation, order or permit condition violated; a concise statement of the facts alleged to constitute a violation; a statement of the amount of the civil penalties to be imposed; and a statement of the party's right to a hearing. The ordered party shall have 20 days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, the commissioner may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, then the notice shall become a final order after the expiration of the 20-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order.

(3) If a civil administrative penalty imposed pursuant to this subsection is not paid within 30 days of the date that the penalty is due and owing, and the penalty is not contested by the person against whom the penalty has been assessed, or the person fails to make a payment pursuant to a payment schedule entered into with the department, an interest charge shall accrue on the amount of the penalty due and owing from the 30th day after the date on which the penalty was due and owing. The rate of interest shall be that 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.

(4) The authority to levy a civil administrative penalty is in addition to all other enforcement provisions in this act, and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. Any civil administrative penalty assessed under this section may be compromised by the commissioner upon the posting of a performance bond by the violator, or upon such terms and conditions as the commissioner may establish by regulation, except that the amount compromised shall not be more than 50% of the assessed penalty, and in no instance shall the amount of that compromised penalty be less than the statutory minimum amount, if applicable, prescribed in section 6 of P.L.1990, c. 28 (C.58:10A-10.1). In the case of a violator who is a local agency that enters into an administrative consent order, the terms of which require the local agency to take prescribed measures to comply with its permit, the commissioner shall have full discretion to compromise the amount of penalties assessed or due for violations occurring during a period up to 24 months preceding the entering into the administrative consent order; except that the amount of the compromised penalty may not be less than the statutory minimum amount, if applicable, prescribed in section 6 of P.L.1990, c. 28 (C.58:10A-10.1). A civil administrative penalty assessed against a local agency for a violation of an administrative consent order may not be compromised by more than 50% of the assessed penalty. In no instance shall the amount of a compromised penalty assessed against a local agency be less

than the statutory minimum amount, if applicable, prescribed in section 6 of P.L.1990, c. 28 (C.58:10A-10.1). The commissioner shall not compromise the amount of any component of a civil administrative penalty which represents the economic benefit gained by the violator from the violation.

(5) A person, other than a local agency, appealing a penalty assessed against that person in accordance with this subsection, whether contested as a contested case pursuant to P.L.1968, c. 410 (C.52:14B-1 et seq.) or by appeal to a court of competent jurisdiction, shall, as a condition of filing the appeal, post with the commissioner a refundable bond, or other security approved by the commissioner, in the amount of the civil administrative penalty assessed. If the department's assessed penalty is upheld in full or in part, the department shall be entitled to a daily interest charge on the amount of the judgment from the date of the posting of the security with the commissioner and until paid in full. The rate of interest shall be that 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. In addition, if the amount of the penalty assessed by the department is upheld in full in an appeal of the assessment at an administrative hearing or at a court of competent jurisdiction, the person appealing the penalty shall reimburse the department for all reasonable costs incurred by the department in preparing and litigating the imposition of the assessment, except that no litigation costs shall be imposed where the appeal ultimately results in a reduction or elimination of the assessed penalty.

(6) A civil administrative penalty imposed pursuant to a final order:

(a) may be collected or enforced by summary proceedings in a court of competent jurisdiction in accordance with “the penalty enforcement law,” N.J.S.2A:58-1 et seq.; or

(b) shall constitute a debt of the violator or discharger and the civil administrative penalty may be docketed with the clerk of the Superior Court, and shall have the same standing as any judgment docketed pursuant to N.J.S.2A:16-1; except that no lien shall attach to the real property of a violator pursuant to this subsection 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. No lien shall attach to the property of a local agency.

(7) The commissioner shall refer to the Attorney General and the county prosecutor of the county in which the violations occurred the record of violations of any permittee determined to be a significant noncomplier.

e. Any person who violates this act or an administrative order issued pursuant to subsection b. or a court order issued pursuant to subsection c., or who fails to pay a civil administrative penalty in full pursuant to subsection d., or to make a payment pursuant

to a payment schedule entered into with the department, shall be subject upon order of a court to a civil penalty not to exceed $50,000.00 per day of such violation, and each day's continuance of the violation shall constitute a separate violation. Any penalty incurred under this subsection may be recovered with costs, and, if applicable, interest charges, in a summary proceeding pursuant to “the penalty enforcement law” (N.J.S.2A:58-1 et seq.). In addition to any civil penalties, costs or interest charges, the court, in accordance with paragraph (5) of subsection c. of this section, may assess against a violator the amount of any actual economic benefits accruing to the violator from the violation. The Superior Court shall have jurisdiction to enforce “the penalty enforcement law” in conjunction with this act.

f.

(1)

(a) Any person who purposely, knowingly, or recklessly violates this act, and the violation causes a significant adverse environmental effect, shall, upon conviction, be guilty of a crime of the second degree, and shall, notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, be subject to a fine of not less than $25,000 nor more than $250,000 per day of violation, or by imprisonment, or by both.

(b) As used in this paragraph, a significant adverse environmental effect exists when an action or omission of the defendant causes: serious harm or damage to wildlife, freshwater or saltwater fish, any other aquatic or marine life, water fowl, or to their habitats, or to livestock, or agricultural crops; serious harm, or degradation of, any ground or surface waters used for drinking, agricultural, navigational, recreational, or industrial purposes; or any other serious articulable harm or damage to, or degradation of, the lands or waters of the State, including ocean waters subject to its jurisdiction pursuant to P.L.1988, c. 61 (C.58:10A-47 et seq.).

(2) Any person who purposely, knowingly, or recklessly violates this act, including making a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under this act, or by falsifying, tampering with, or rendering inaccurate any monitoring device or method required to be maintained pursuant to this act, or by failing to submit a monitoring report, or any portion thereof, required pursuant to this act, shall, upon conviction, be guilty of a crime of the third degree, and shall, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine of not less than $5,000 nor more than $75,000 per day of violation, or by imprisonment, or by both.

(3) Any person who negligently violates this act, including making a false statement, representation, or certification in any application, record, or other

document filed or required to be maintained under this act, or by falsifying, tampering with, or rendering inaccurate any monitoring device or method required to be maintained pursuant to this act, or by failing to submit a discharge monitoring report, or any portion thereof, required pursuant to this act, shall, upon conviction, be guilty of a crime of the fourth degree, and shall, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment, or by both.

(4) Any person who purposely or knowingly violates an effluent limitation or other condition of a permit, or who discharges without a permit, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, as defined in subsection b. of N.J.S.2C:11-1, shall, upon conviction, be guilty of a crime of the first degree, and shall, notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, be subject of a fine of not less than $50,000 nor more than $250,000, or, in the case of a corporation, a fine of not less than $200,000 nor more than $1,000,000, or by imprisonment or by both.

(5) As used in this subsection, “purposely,” “knowingly,” “recklessly,” and “negligently” shall have the same meaning as defined in N.J.S.2C:2-2.

g. All conveyances used or intended for use in the purposeful or knowing discharge, in violation of the provisions of P.L.1977, c. 74 (C.58:10A-1 et seq.), of any pollutant or toxic pollutant are subject to forfeiture to the State pursuant to the provisions of P.L.1981, c. 387 (C.13:1K-1 et seq.).

h. The amendatory portions of this section, as set forth in P.L.1990, c. 28 (C.58:10A-10.1 et al.), except for subsection f. of this section, shall not apply to violations occurring prior to July 1, 1991.

§ 58:10A-10.1. Mandatory Civil Administrative Penalties.

a. The provisions of section 10 of P.L.1977, c. 74 (C.58:10A-10), or any rule or regulation adopted pursuant thereto to the contrary notwithstanding, the department shall assess, with no discretion, a mandatory minimum civil administrative penalty for the violations enumerated in subsections b., c., and d. of this section.

b. The department shall assess a minimum mandatory civil administrative penalty of $1,000 against a violator for each serious violation, which assessment shall be made within six months of the serious violation.

c. The department shall assess a minimum mandatory civil administrative penalty of $5,000 against a violator for the violation that causes the violator to be, or to continue to be, a significant noncomplier.

d. The department shall assess a minimum mandatory civil administrative penalty of $100 for each effluent parameter omitted on a discharge monitoring report required to be

submitted to the department, and each day during which the effluent parameter information is overdue shall constitute an additional, separate, and distinct offense, except that in no instance shall the total civil administrative penalty assessed pursuant to this subsection exceed $50,000 per month for any one discharge monitoring report. The civil administrative penalty assessed pursuant to this subsection shall accrue as of the fifth day following the date on which the discharge monitoring report was due and shall continue to accrue for 30 days. The commissioner may continue to assess civil administrative penalties beyond the 30-day period until submission of the overdue discharge monitoring report or overdue information. A permittee may contest the assessment of the civil administrative penalty required to be assessed pursuant to this subsection by notifying the commissioner in writing, within 30 days of the date on which the effluent parameter information was required to be submitted to the department, of the existence of extenuating circumstances beyond the control of the permittee, including circumstances that prevented timely submission of the discharge monitoring report, or portion thereof, or, if the civil administrative penalty is imposed because of an inadvertent omission of one or more effluent parameters, the permittee may submit, without liability for a civil administrative penalty assessed pursuant to this subsection or subsection c. of this section, the omitted information within 10 days of receipt by the permittee of notice of omission of the parameter or parameters.

e. 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 pollutant parameter, the department may consider, for purposes of calculating the mandatory civil administrative penalties to be assessed pursuant to subsections b. and c. of this section, the violation of the interrelated permit parameters to be a single violation.

f. The requirement that the department assess a minimum civil administrative penalty pursuant to this section shall in no way be construed to limit the authority of the department to assess a civil administrative penalty or bring an action for a civil penalty for a violation at any time after a violation occurred or to assess a more stringent civil administrative penalty or civil penalty against a person pursuant to section 10 of P.L.1977, c. 74 (C.58:10A-10).

g. The provisions of this section shall not apply to violations occurring prior to the effective date of this section.

§ 58:10A-10.2. Affirmative Defenses.

a. A person may be entitled to an affirmative defense to liability for a mandatory assessment of a civil administrative penalty pursuant to section 6 of P.L.1990, c. 28 (C.58:10A-10.1) for a violation of an effluent limitation occurring as a result of an upset, an anticipated or unanticipated bypass, or a testing or laboratory error. A person shall be entitled to an affirmative defense only if, in the determination of the department or delegated local agency, the person satisfies the provisions of subsection b., c., e. or f., as applicable, of this section.

b. A person asserting an upset as an affirmative defense pursuant to this section, except in the case of an approved maintenance operation, shall notify the department or the local agency of an upset within 24 hours of the occurrence, or of becoming aware of the occurrence, and, within five days thereof, shall submit written documentation, including properly signed, contemporaneous operating logs, or other relevant evidence, on the circumstances of the violation, and demonstrating, as applicable, that:

(1) the upset occurred, including the cause of the upset and, as necessary, the identity of the person causing the upset, except that, in the case of a treatment works, the local agency may certify that despite a good faith effort it is unable to identify the cause of the upset, or the person causing the upset;

(2) the permitted facility was at the time being properly operated;

(3) the person submitted notice of the upset as required pursuant to this section, or, in the case of an upset resulting from the performance by the permittee of maintenance operations, the permittee provided prior notice and received an approval therefor from the department or the delegated local agency; and

(4) the person complied with any remedial measures required by the department or delegated local agency.

c. A person asserting an unanticipated bypass as an affirmative defense pursuant to this section shall notify the department or the local agency of the unanticipated bypass within 24 hours of its occurrence, and, within five days thereof, shall submit written documentation, including properly signed, contemporaneous operating logs, or other relevant evidence, on the circumstances of the violation, and demonstrating that:

(1) the unanticipated bypass occurred, including the circumstances leading to the bypass;

(2) the permitted facility was at the time being properly operated;

(3) the person submitted notice of the upset as required pursuant to this section; and

(4) the person complied with any remedial measures required by the department or delegated local agency;

(5) the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(6) there was no feasible alternative to the bypass such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of downtime, except that the provisions of this paragraph shall not apply to a bypass occurring during normal periods of equipment downtime or preventive maintenance if, on the basis of the reasonable engineering judgment

of the department or delegated local agency, back-up equipment should have been installed to avoid the need for a bypass.

d. Nothing contained in subsection b. or c. of this section shall be construed to limit the requirement to comply with the provisions of paragraph (8) of subsection f. of section 6 of P.L.1977, c. 74 (C.58:10A-6).

e. A person may assert an anticipated bypass as an affirmative defense pursuant to this section only if the person provided prior notice to the department or delegated local agency, if possible, at least 10 days prior to the date of the bypass, and the department or delegated local agency approved the bypass, and if the person is able to demonstrate that:

(1) the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(2) there was no feasible alternative to the bypass such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of downtime, except that the provisions of this paragraph shall not apply to a bypass occurring during normal periods of equipment downtime or preventive maintenance if, on the basis of the reasonable engineering judgment of the department or delegated local agency, back-up equipment should have been installed to avoid the need for a bypass.

f. A person asserting a testing or laboratory error as an affirmative defense pursuant to this section shall have the burden to demonstrate, to the satisfaction of the department, that a serious violation involving the exceedance of an effluent limitation was the result of unanticipated test interferences, sample contamination, analytical defects, or procedural deficiencies in sampling or other similar circumstances beyond the control of the permittee.

g. A determination by the department on a claim that a violation of an effluent limitation was caused by an upset, a bypass or a testing or laboratory error shall be considered final agency action on the matter for the purposes of the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et seq.), and shall be subject only to review by a court of competent jurisdiction.

h. An assertion of an upset, a bypass or a testing or laboratory error as an affirmative defense pursuant to this section may not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

i. If the department determines, pursuant to the provisions of this section, that a violation of an effluent limitation was caused by an upset, a bypass or a testing or laboratory error, the commissioner shall waive any mandatory civil administrative penalty required to be assessed pursuant to section 6 of P.L.1990, c. 28 (C.58:10A-10.1), and the

violation shall not be considered a serious violation or violation causing a person to be designated a significant noncomplier.

j. The affirmative defense for an upset, a bypass or a testing or laboratory error provided in this section shall only apply to the imposition of mandatory penalties pursuant to section 6 of P.L.1990, c. 28 (C.58:10A-10.1) for serious violations and for determining a significant noncomplier. Nothing in this act shall be construed to limit the authority of the department, or a delegated local agency, to adopt regulations or permit conditions that include or do not include an upset, a bypass or a testing or laboratory error, using different standards, as a defense for any other exceedance of an effluent limitation.

§ 58:10A-10.3. Request for Information Relevant to Discharge of Pollutant; Subpoena; Duties of Person Receiving Request; Destruction of Records.

a. The department may request that any person whom the department has reason to believe has, or may have, information relevant to a discharge or potential discharge of a pollutant, including, but not limited to, any person having generated, treated, transported, stored, or disposed of the pollutant, or any person having arranged for the transportation, storage, treatment or disposal of the pollutant, shall provide, upon receipt of written notice therefor, the following information to the department:

(1) The nature, extent, source, and location of the discharge, or potential discharge;

(2) Identification of the nature, type, quantity, source, and location of the pollutant or pollutants;

(3) The identity of, and other relevant information concerning, the generator or transporter of the pollutant, or any other person subject to liability for the discharge or potential discharge;

(4) The ability of any person liable, or potentially liable, for the discharge, or potential discharge, to pay for, or perform, the cleanup and removal, including the availability of appropriate insurance coverage.

Information requested by the department shall be provided in the form and manner prescribed by the department, which may include documents or information in whatever form stored or recorded.

b. The commissioner may issue subpoenas requiring attendance and testimony under oath of witnesses before, or the production of documents or information, in whatever form stored or recorded, to him or to a representative designated by the commissioner. Service of a subpoena shall be by certified mail or personal service. Any person who fails to appear, give testimony, or produce documents in response to a subpoena issued pursuant to this subsection, shall be subject to the penalty provisions of section 10 of P.L.1977, c. 74 (C.58:10A-10). Any person who, having been sworn, knowingly gives

false testimony or knowingly gives false documents or information to the department is guilty of perjury and is subject to the penalty provisions of section 10 of P.L.1977, c. 74.

c. A person receiving a request for information made pursuant to subsection a. of this section, or to a subpoena issued pursuant to subsection b. of this section, shall:

(1) be required to conduct a diligent search of all documents in his possession, custody or control, and to make reasonable inquiries of present and past employees who may have knowledge or documents relevant thereto;

(2) have a continuing obligation to supplement the information if additional relevant information is discovered, or if it is determined that the information previously provided was false, inaccurate or misleading; and

(3) grant the department access, at reasonable times, to any vessel, facility, property or location to inspect and copy all relevant documents or, at the department's request, copy and furnish to the department all such documents.

d. No person may destroy any records relating to a discharge or potential discharge to surface water within five years of the discharge, or to a discharge or potential discharge to ground water at any time without the prior written permission of the commissioner.

§ 58:10A-10.4. Summons for Civil Penalty Assessment of $5,000 or Less.

The Department of Environmental Protection or a delegated local agency may issue a summons for a violation of any provision of P.L.1977, c. 74 (C.58:10A-1 et seq.), including, in the case of a delegated local agency, a violation of any rule, regulation or pretreatment standard adopted by a delegated local agency if the amount of the civil penalty assessed is $5,000 or less. The summons shall be enforceable, in accordance with the “penalty enforcement law,” N.J.S.2A:58-1 et seq., in the municipal court of the territorial jurisdiction in which the violation occurred. The summons shall be signed and issued by any person authorized to enforce the provisions of P.L.1977, c. 74 (C.58:10A-1 et seq.). Proceedings before, and appeals from a decision of, a municipal court shall be in accordance with the Rules Governing the Court of the State of New Jersey. Of the penalty amount collected pursuant to an action brought in a municipal court pursuant to this section, 10% shall be paid to the municipality or municipalities in which the court retains jurisdiction for use for court purposes, with the remainder to be retained by the department or the delegated local agency.

§ 58:10A-10.5. Local Agencies Authorized to Issue Civil Administrative Penalties of Assess Costs; Notice to Violator; Request for Hearing.

A delegated local agency may, after consultation with a compliance officer designated by the department, issue a civil administrative penalty for any violation of the provisions of P.L.1977, c. 74 (C.58:10A-1 et seq.), including a violation of any rule, regulation or pretreatment standard adopted by a delegated local agency, or assess, by civil administrative order, any costs recoverable pursuant to subsection c. of section 10 of that act, including the reasonable costs of investigation and inspection, and preparing and litigating the case before an administrative law

judge pursuant to this section, except assessments for compensatory damages and economic benefits. Notice of the penalty or assessment shall be given to the violator in writing by the delegated local agency, and payment of the penalty or assessment shall be due and payable, unless a hearing is requested in writing by the violator, within 20 days of receipt of notice. If a hearing is requested, the penalty or assessment shall be deemed a contested case and shall be submitted to the Office of Administrative Law for an administrative hearing in accordance with sections 9 and 10 of P.L.1968, c. 410 (C.52:14B-9 and 52:14B-10).

§ 58:10A-10.6. Report and Decision of Administrative Law Judge; Review by Head of Delegated Local Agency; Time for Adoption, Rejection or Modification.

Upon conclusion of an administrative hearing held pursuant to section 2 of P.L.1991, c. 8 (C.58:10A-10.5), the administrative law judge shall prepare and transmit a recommended report and decision on the case to the head of the delegated local agency and to each party of record, as prescribed in subsection c. of section 10 of P.L.1968, c. 410 (C.52:14B-10). The head of the delegated local agency shall afford each party of record an opportunity to file exceptions, objections and replies thereto, and to present arguments, either orally or in writing, as required by the delegated local agency. After reviewing the record of the administrative law judge, and any filings received thereon, but not later than 45 days after receipt of the record and decision, the head of the delegated local agency shall adopt, reject, or modify the recommended report and decision. If the head of the delegated local agency fails to modify or reject the report within the 45-day period, the decision of the administrative law judge shall be deemed adopted as the final decision of the head of the delegated local agency, and the recommended report and decision shall be made a part of the record in the case. For good cause shown, and upon certification by the Director of the Office of Administrative Law and the head of the delegated local agency, the time limits established herein may be extended.

§ 58:10A-10.7. Final Decision or Order; Findings; Notification of Parties; Effective Date of Decision.

A final decision or order of the head of the delegated local agency shall be in writing or stated in the record. A final decision shall include separately stated findings of fact and conclusions of law, based upon the evidence of record at the hearing of the administrative law judge. Findings of fact shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. A final decision or order may incorporate by reference any or all of the recommendations of the administrative law judge.

Parties of record shall be notified either by personal service or by mail of any final decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith by registered or certified mail to each party of record and to a party's attorney of record.

A final decision or order shall be effective on the date of delivery or mailing, whichever is sooner, to the party or parties of record, or shall be effective on any date thereafter, as the delegated local agency may provide in the decision or order. The date of delivery or mailing shall be stamped on the face of the final decision or order. A final decision or order shall be

considered a final agency action, and shall be appealable in the same manner as a final agency action of a State department or agency.

§ 58:10A-10.8. Appeals; Posting of Bond or Security; Interest Charged; Collection and Enforcement Proceeding.

a. A person appealing a civil administrative penalty or assessment levied in accordance with section 2 of P.L.1991, c. 8 (C. 58:10A-10.5), whether contested as a contested case pursuant to P.L.1968, c. 410 (C. 52:14B-1 et seq.) or by appeal to a court of competent jurisdiction, shall, as a condition of filing the appeal, post with the delegated local agency a refundable bond, or other security approved by the delegated local agency, in the amount of the civil administrative penalty or assessment levied pursuant to a civil administrative hearing. If the civil administrative penalty or assessment is upheld in whole or in part, the delegated local agency shall be entitled to a daily interest charge on the amount of the judgment from the date of the posting of the security with the commissioner until that amount is paid in full. The rate of interest shall be that 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.

b. A person who is assessed a civil administrative penalty, or is subject to an assessment levied pursuant to section 2 of P.L.1991, c. 8 (C. 58:10A-10.5), and fails to contest or to pay the penalty or assessment, or fails to enter into a payment schedule with the delegated local agency within 30 days of the date that the penalty or assessment is due and owing, shall be subject to an interest charge on the amount of the penalty or assessment from the date that the amount was due and owing. The rate of interest shall be that authorized pursuant to subsection a. of this section.

c. Any person who fails to pay a civil administrative penalty or assessment, in whole or in part, when due and owing, or who fails to agree to a payment schedule therefor, shall be subject to the civil penalty provisions of subsection e. of section 10 of P.L.1977, c. 74 (C. 58:10A-10).

d. A civil administrative penalty or assessment imposed pursuant to a final order:

(1) may be collected or enforced by summary proceeding in a court of competent jurisdiction in accordance with the “penalty enforcement law,” (N.J.S.2A:58-1 et seq.); or

(2) shall constitute a debt of the violator, and the civil administrative penalty may be docketed with the clerk of the Superior Court, and shall have the same standing as any judgment docketed pursuant to N.J.S.2A:16-1.

§ 58:10A-10.9. Reimbursement for Costs of Administrative Hearings.

The Director of the Office of Administrative Law shall establish by regulation adopted pursuant to the “Administrative Procedure Act,” P.L.1968, c. 410 (C.52:14B-1 et seq.), a schedule of reimbursement for the costs to that office of an administrative hearing provided pursuant to

P.L.1991, c. 8 (C.58:10A-10.4 et seq.). Reimbursements shall be paid by the delegated local agency, but shall be recoverable from the violator by that agency, if the prevailing party, along with such other costs as may be recoverable for preparing and litigating the case. An assessment for hearing costs shall be included in the final decision or order issued by the head of the delegated local agency.

§ 58:10A-10.10. Municipal Treatment Works Exceeding Effluent Limitations; Uniform Sampling and Reporting Requirements.

Whenever the commissioner finds that effluent limitations under a discharge permit, issued pursuant to P.L.1977, c. 74 (C. 58:10A-1 et seq.), are being exceeded by a county or municipal utilities authority organized pursuant to P.L.1957, c. 183 (C. 40:14B-1 et seq.), which provides disposal or discharge but not treatment of the effluent of one or more municipal treatment works, and the commissioner further finds that the violation of the effluent limitation is caused by effluents discharged by one or more municipal treatment works into the disposal facilities of the county or municipal utilities authority, the commissioner shall, in accordance with the provisions of subsection a. of section 10 of P.L.1977, c. 74 (C. 58:10A-10), issue an order for compliance to, or take such other action authorized thereunder against, the owner or operator of the municipal treatment works determined to be discharging pollutants into the utilities authority's facilities in violation of the discharge permit limitations of the municipal treatment works. The commissioner shall prescribe uniform sampling and reporting requirements for the county or municipal utilities authority and each of the municipal treatment works discharging effluents into the disposal facilities of the authority for the purpose of determining the source and extent of violation of permit requirements.

§ 58:10A-10.11. Violation of an Effluent Limitation During Permitted Groundwater Remedial Action; Availability of Affirmative Defense Against Liability; Determination by Department.

a. A permittee shall be entitled to an affirmative defense against liability for any penalty assessable pursuant to section 10 of P.L.1977, c. 74 (C.58:10A-10) or section 6 of P.L.1990, c. 28 (C.58:10A-10.1) for a violation of an effluent limitation of a permit issued pursuant to P.L.1977, c. 74 (C.58:10A-1 et seq.), which violation:

(1) occurs in the course of a permitted groundwater remedial action;

(2) is the first violation of that permit limitation; and

(3) involves an exceedance of a permit limitation that could not reasonably have been anticipated by the permittee, unless it is established by a preponderance of the evidence that the violation was the result of a negligent act or omission of the permittee.

Demonstration that an act or omission of a person performing groundwater remedial action accorded with generally accepted remedial action practices and utilized the best technology reasonably available to the permittee for the approved remedial action at the time of the action, shall create a rebuttable presumption that the act or omission was not negligent.

b. An affirmative defense claim filed pursuant to subsection a. of this section shall be denied by the Department of Environmental Protection or a delegated local agency, as defined in section 3 of P.L.1977, c. 74 (C. 58:10A-3), as appropriate, if:

(1) the equipment used in the remedial action had not been properly maintained or was not being properly operated at the time of the violation, and the failure to properly maintain or operate the equipment was the proximate cause of the exceedance;

(2) the permittee fails, as required by law or rule or regulation, to provide in a prompt manner to the department or a delegated local agency:

(a) notification of the violation; and

(b) written information on the nature and extent of the permit exceedance and, if known, the reasons therefor;

(3) the permittee fails to take immediate measures, upon first becoming aware of the violation, to terminate the violation and to abate any adverse consequences therefrom; or

(4) the permittee fails to file with the department or delegated local agency a remedial action protocol, setting forth the procedures to be followed to prevent a recurrence of the exceedance.

c. A determination by the department or delegated local agency on an affirmative defense claim made pursuant to subsection a. of this section shall be considered final agency action on the matter for purposes of the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.) and paragraph (5) of subsection d. of section 10 of P.L.1977, c. 74 (C. 58:10A-10).

d. If the department approves an affirmative defense claim filed pursuant to subsection a. of this section, the permit exceedance shall not be considered a violation for the purposes of designating a person as a significant noncomplier under section 6 of P.L.1990, c. 28 (C. 58:10A-10.1).

e. Nothing in this section shall be construed to limit the authority of the department to adopt regulations or permit conditions for groundwater remedial actions that exempt a violation for which an affirmative defense claim may be filed pursuant to the provisions of this section, or for exceedances of one or more permit parameters occurring during the start-up phase of a remedial action, as defined in a permit.

As used in this section "groundwater remedial action" means the removal or abatement of one or more pollutants in a groundwater source.

§ 58:10A-10.12. Willful, Illegal or Improper Disposal of Regulated Medical Waste; Penalties.

If a violation of P.L.1977, c. 74 (C.58:10A-1 et seq.) involves the willful, illegal or improper disposal of regulated medical waste, as defined pursuant to section 3 of P.L.1989, c. 34 (C.13:1E-48.3), and the person found guilty or liable for the violation is a health care professional, facility, generator, or transporter, as also defined under P.L.1989, c. 34, the violator shall also be subject to any applicable penalties under P.L.1989, c. 34 (C.13:1E-48.1 et al.), including but not limited to the suspension and revocation provisions of section 23 of P.L.1989, c. 34 (C.13:1E-48.23) and sections 4 and 5 of P.L.2012, c. 65 (C.13:1E-48.23a and C.13:1E-48.23b).

§ 58:10A-11. Person with Delegated Responsibility to Approve Permits; Qualifications.

Notwithstanding any contrary provision of State law, no person to whom the commissioner has delegated responsibility to approve permits or portions thereof may accept this responsibility if such person receives, or has received during the previous two years, a significant portion of his income directly or indirectly from permit holders or applicants for a permit.

§ 58:10A-12. Liberal Construction; Severability.

This act shall be construed liberally. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provisions or applications, and to this end the provisions of this act are declared to be severable.

§ 58:10A-13. Pending Actions or Proceedings, Orders, Regulations and Rules; Effect of Act.

This act shall not affect, impair or invalidate any action or proceeding, civil or criminal, brought by or against the department, pending on the effective date of this act: all such actions or proceedings may and shall be continued to final judgment, decree or decision, as if the foregoing provisions had not taken effect; nor shall this act affect orders, rules and regulations heretofore made, promulgated or issued by the department or other matters or proceedings pending before the department on the effective date of this act. Such orders, rules, regulations, matters or proceedings shall continue in full force and effect until amended or repealed pursuant to law.

§ 58:10A-14. Legislative Oversight Committee.

The Senate Committee on Energy and Environment and the Assembly Committee on Agriculture and Environment are hereby designated as the Legislative Oversight Committees for the Water Pollution Control Act. The Department of Environmental Protection is directed to submit any proposed rules or regulations to the Legislative Oversight Committees, prior to the holding of public hearings on such proposed rules or regulations and to promptly submit to either committee any information concerning the administration of said act which either Legislative Oversight Committee may request. The Legislative Oversight Committees shall

review, evaluate and recommend alterations to any such proposed rules or regulations and shall recommend whatever administrative alterations it may choose in order to effectuate the Legislative intent of this act.

§ 58:10A-14.1. Annual Report on Implementation and Enforcement Actions; Notice to Newspapers.

a. On or before March 15, 1992, and annually thereafter, the department shall prepare a report on implementation and enforcement actions taken during the preceding calendar year by the department and delegated local agencies pursuant to P.L.1977, c. 74. Information in the report shall be compiled so as to distinguish, as applicable: enforcement actions taken by the department from those of delegated local agencies; violations of, and enforcement actions against, publicly owned treatment works from those of, or against, other permitted facilities; violations of effluent limitations from reporting violations--including discharging monitoring reports, compliance schedule progress reports, and pretreatment reports--and other violations; and violations of effluent limitations for hazardous pollutants from those for nonhazardous pollutants. The report shall be transmitted to the Governor, the members of the Legislature, the Assembly Environment Quality Committee and the Senate Energy and Environment Committee, or their successors, and to the Office of Legislative Services not later than March 31 of each year.

b. Within 30 days of publication of the report pursuant to this section, the commissioner shall transmit a written notice to at least one newspaper in each county, with circulation throughout that county which shall:

(1) Identify the owner, trade name and location of all facilities listed as significant noncompliers;

(2) Identify all of the significant noncompliers who have been assessed penalties pursuant to section 6 of P.L.1990, c. 28 (C.58:10A-10.1), the amount of the penalties assessed against, and the amount paid by, each significant noncomplier;

(3) Indicate the availability of the annual reports required under this section, and the address and phone number for securing copies.

§ 58:10A-14.2. Contents of Annual Report.

a. The annual report provided pursuant to section 9 of P.L.1990, c. 28 (C.58:10A-14.1) shall include, but need not be limited to, the following information for the preceding calendar year:

(1) the number of facilities permitted by the department or delegated local agencies pursuant to P.L.1977, c. 74 (C.58:10A-1 et seq.) as of the end of the calendar year, by surface water discharge permits;

(2) the number of new permits or permit renewals issued;

(3) the number of permit approvals contested by a permittee or other party;

(4) the number of permit modifications, other than permit renewals;

(5) the number of schedules of compliance adopted pursuant to administrative orders or administrative consent agreements involving interim enforcement limits that relax permit limitations;

(6) the number of facilities, including publicly owned treatment works, inspected at least once by the department or local agencies;

(7) the number of enforcement actions resulting from facility inspections;

(8) the number of actual permit violations;

(9) the number of actual effluent violations constituting serious violations, including violations that are being contested;

(10) the number of defenses for upsets, bypasses or testing or laboratory errors granted pursuant to section 7 of P.L.1990, c. 28 (C.58:10A-10.2) that involved a serious violation;

(11) the number of permittees qualifying as significant noncompliers, including permittees contesting such designation;

(12) the number of unpermitted discharges;

(13) the number of pass throughs of pollutants;

(14) the number of enforcement orders--administrative and judicial--issued for violations;

(15) the number of violations for which civil penalties or civil administrative penalties have been assessed;

(16) the number of violations of administrative orders or administrative consent orders, including violations of interim enforcement limits, or of schedule of compliance milestones for starting or completing construction, or for failing to attain full compliance;

(17) the number of violations of schedules of compliance milestones for starting or completing construction, or attaining full compliance, that are out of compliance by 90 days or more from the date established in the compliance schedule;

(18) the dollar amount of all assessed civil penalties and civil administrative penalties;

(19) the dollar amount of enforcement costs recovered in a civil action or civil administrative action from a violator;

(20) the dollar amount of civil administrative penalties and civil penalties collected, including penalties for which a penalty schedule has been agreed to by the violator;

(21) The1 specific purposes for which penalty monies collected have been expended, displayed in line-item format by type of expenditure and including, but not limited to, position numbers and titles funded in whole or in part from these penalty monies; and

(22) the number of criminal actions filed by the Attorney General or county prosecutors pursuant to section 10 of P.L.1977, c. 74 (C.58:10A-10).

b. In addition to the information required pursuant to subsection a. of this section, the report shall:

(1) list the trade name of each permittee determined to be a significant noncomplier by the department or delegated local agency, and the address and permit number of the facility at which the violations occurred, and provide a brief description and the date of each violation, and the date that the violation was resolved, as well as the total number of violations committed by the permittee during the year;

(2) list the trade name of each permittee who is at least six months behind in the construction phase of a compliance schedule, as well as the address and permit number of the facility, and provide a brief description of the conditions violated and the cause of delay;

(3) list the trade name, address and permit number, of each permittee who has been convicted of criminal conduct pursuant to subsection f. of section 10 of P.L.1977, c. 74 (C.58:10A-10), or who has had any officer or employee convicted thereunder, and provide a brief description and the date of the violation or violations for which convicted;

(4) list the name and location of any local agency that has failed to file with the department information required by section 11 of P.L.1990, c. 28 (C.58:10A-14.3); and

(5) provide a summary assessment of the water quality of surface and ground waters affected by discharges subject to regulation pursuant to P.L.1977, c. 74 to the extent that such information is not otherwise required to be submitted to the United States Environmental Protection Agency.

c. The department may include in the report any other information it determines would provide a fuller profile of the implementation and enforcement of P.L.1977, c. 74. The

department shall also include in the report any information that may be requested, in writing, not later than November 30 of the preceding year, for inclusion in the annual report, by the Assembly Environmental Quality Committee or the Senate Environmental Quality Committee, or their successors.

§ 58:10A-14.3. Guidelines for Providing Information.

The department shall adopt guidelines to be utilized by delegated local agencies, the Attorney General and county prosecutors in providing information to the department for inclusion in the report to be prepared in accordance with section 10 of this act and prescribing the format in which the information is to be provided. Every delegated local agency, the Attorney General, and each county prosecutor shall file with the department, not later than February 1 of each year, such information and in such form as may be required by the department. In the event that information required to be reported pursuant to this section is also required to be reported to the department within the immediately preceding 12-month period pursuant to another law, rule, regulation, or permit requirement, to the extent that identical information is required to be reported, the local agency shall be required only to resubmit the information that was previously reported to the department.

§ 58:10A-14.4. Clean Water Enforcement Fund.

There is created, in the Department of Environmental Protection, a special nonlapsing fund, to be known as the “Clean Water Enforcement Fund.” Except as otherwise provided in P.L.1989, c. 122, all monies from penalties, fines, or recoveries of costs or improper economic benefits collected by the department pursuant to section 10 of P.L.1977, c. 74 (C.58:10A-10) on and after the effective date of this section, or section 6 of P.L.1990, c. 28 (C.58:10A-10.1) shall be deposited in the fund. Unless otherwise specifically provided by law, monies in the fund shall be utilized exclusively by the department for enforcement and implementation of the “Water Pollution Control Act,” P.L.1977, c. 74 (C.58:10A-1 et seq.) and P.L.1990, c. 28 (C.58:10A-10.1 et al.). Any unobligated monies in the fund at the end of each fiscal year or monies not required for enforcement purposes in the next fiscal year shall be transferred to the “Wastewater Treatment Fund” established pursuant to subsection a. of section 15 of P.L.1985, c. 329, for use in accordance with the provisions of that act.

§ 58:10A-14.5. Wastewater Treatment Operators’ Training Account.

There is created in the Department of Environmental Protection a special nonlapsing account, to be known as the “Wastewater Treatment Operators' Training Account.” Monies deposited in the account shall be used to provide training, including continuing education, courses for wastewater treatment operators. A court shall order to be deposited into the account 10% of the amount of any penalty assessed and collected in an action brought by a local agency pursuant to section 10 of P.L.1977, c. 74 (C.58:10A-10) or section 6 of P.L.1990, c. 28 (C.58:10A-10.1), or by a public entity pursuant to section 7 of P.L.1972, c. 42 (C.58:11-55).

§ Advisory Committee on Water Supply and Wastewater Licensed Operator Training.

There is established in the Department of Environmental Protection an Advisory Committee on Water Supply and Wastewater Licensed Operator Training. Committee members shall be appointed by the commissioner for three-year terms as follows: four members who shall be representatives of the department; two members who shall be representatives selected from a list prepared by the New Jersey Section American Water Works Association; one member who shall be a licensed operator; two members of the Water Pollution Control Association; two members who shall be selected from a list prepared by the Authorities Association of New Jersey, one of whom shall be from a water authority, and one from a wastewater treatment authority; one member who shall be selected from a list prepared by the New Jersey Business and Industry Council; three members who shall be selected from a list prepared by educational institutions in the State conducting courses in water supply or wastewater treatment operations, or which conducted an appropriate course in the immediately preceding academic year, one of whom shall be the Director of the Office of Continuing Professional Education at Cook College, the State University of Rutgers; and two members who shall be selected from environmental groups in the State actively concerned or involved in water quality or wastewater treatment. Vacancies shall be filled in the same manner as the original appointment for the unexpired term.

The advisory committee shall meet at least once a year and shall organize itself in such manner and hold its meetings in such places as it deems most suitable. The department shall provide staff assistance to the advisory committee, to the extent that monies are available therefor.

The advisory committee shall advise the department on the training and licensing of water supply and wastewater treatment operators and on related matters, or on any other matter referred to it by the department. The advisory committee shall review the training programs for, and identify the training needs of, water supply and wastewater treatment operators, and shall approve the annual allocations of monies for wastewater treatment operators' training programs from sums available in the “Wastewater Treatment Operators' Training Account,” established pursuant to section 13 of P.L.1990, c. 28 (C.58:10A-14.5).