

ENVIRONMENTAL LAW—Amendments to Statutory Law—Environment—N.J. Stat. Ann. §§ 13:1E-9, 58:10-23.11u, 58:10A-10 (West Supp. 1986).

In an effort to reduce the number of environmental violations in New Jersey, on December 4, 1986 the legislature enacted Assembly Bill No. 1270¹ (the amendatory Act) which amends the following acts: the Solid Waste Management Act of 1970,² the Spill Compensation and Control Act of 1976,³ and the Water Pollution Control Act of 1977.⁴ By essentially doubling the penalties of these prior acts, the legislature intends to reduce the incidence of environmental violations.

The Solid Waste Management Act of 1970 established a statewide statutory framework for the regulation and management of solid waste collection, disposal, and recovery. In addition, the Advisory Council on Solid Waste Management was created as part of the New Jersey Department of Environmental Protection (DEP). The powers, duties, and functions of the DEP were outlined in the Solid Waste Management Act.

The amendatory Act affects section 9 of the Solid Waste Management Act. The rules, regulations, and codes adopted by the DEP have the effect of law throughout the state and will be enforced by the DEP and every county health department or local board of health. The DEP, the county health department, or the local board of health has authority to enter and inspect a solid waste facility to determine whether it complies with the requisite statement and design, and all applicable rules, regulations, and laws. The attorney for the municipality or county in which an alleged violation occurs will act as advocate for the county health department or local board of health.

Any county health department can charge and collect fees for enforcement activities from any sanitary landfill facility within its jurisdiction. Such enforcement activities must conform to the standards adopted according to section 10 of the County Environmental Health Act of 1977.⁵

¹ The bill was sponsored by Assemblyman John O. Bennett (R-Monmouth).

² N.J. STAT. ANN. §§ 13:1E-1 to -48 (West 1979).

³ N.J. STAT. ANN. §§ 58:10-23.11 to -23.11z (West 1982).

⁴ N.J. STAT. ANN. §§ 58:10A-1 to -20 (West 1982).

⁵ N.J. STAT. ANN. § 26:3A2-28 (West 1987).

After the DEP Commissioner (Commissioner) determines that a person has violated the Solid Waste Management Act, he can issue a preliminary order to abate the violation which must cite the provision violated, the action which violated the provision, and notify the offender of his right to a hearing. The offending party has twenty days after receipt of the preliminary order to request a hearing. The request must be made in writing and delivered to the Commissioner. If a hearing is requested, and a determination is made that a violation has occurred, then the Commissioner may issue a final order. If the party does not request a hearing, the preliminary order will become final after the twenty day period has expired. In addition, the preliminary order is not automatically stayed upon the party's request for a hearing.

The Commissioner, county health department, or local board of health may also initiate a civil action in the New Jersey Superior Court for relief, and the court may proceed in a summary manner. Relief may include an injunction, appointment of a receiver, assessment for costs incurred in the investigation and discovery of the violation, litigation costs, assessment for costs incurred by the state in remedying the negative effects on air and water, and finally, assessments to compensate for the loss of wildlife and other actual damages. These assessments must be made payable to the New Jersey Treasurer, county health department, or local board of health. By specific court order, relief may be awarded directly to the aggrieved person. If the civil proceeding is commenced by a county health department or local board of health, notice must be served to the Commissioner as well. Additionally, the DEP has the right to intervene in any such proceeding.

The Commissioner has authority to levy a maximum civil administrative penalty of \$50,000 for each violation. Previously, the maximum civil administrative penalty was \$25,000 for each violation. Each day the violation persists will constitute an additional, individual offense. Also, the commission may not assess a penalty exceeding \$25,000 for a single violation, nor a penalty exceeding \$2,500 for each day the violation continues until the Commissioner has considered factors such as the past operations of the facility where the violation occurred, the gravity of the violation, preventive and mitigating measures taken, and the deter-

ring effect of the penalty.⁶ No assessment can be levied until after the violator has received notification either by certified mail or personal service. The notice must include the statutory or regulatory section violated, the facts which allegedly constitute the violation, the amount of the penalties to be imposed, and a declaration of the party's right to a hearing. The recipient will have twenty days after receiving the notice in which to request a hearing, in writing, which must be delivered to the Commissioner.

The Commissioner can issue a final order after the hearing and upon a determination that a violation has occurred, and after assessing the specified amount of the fine. If the ordered party does not request a hearing, the preliminary order becomes final after the twenty day period has expired. This procedure is similar to that adhered to by the Commissioner when ordering an offending party to abate the violation and notifying such party of his right to a hearing. At the time of the final order, payment of the assessment is due. The assessment of a civil administrative penalty does not preclude the availability of other enforcement provisions in the Solid Waste Management Act. Furthermore, the DEP has authority to alter any such penalty to an amount it deems appropriate.

The Commissioner, county health department, or local board of health can also commence a legal civil action for a maximum penalty of \$50,000 per day. Previously, the maximum civil penalty was \$25,000 per day. Any person who has been issued an administrative order and who fails to pay the penalty is subject to a maximum civil penalty of \$100,000 per day of such violation which is twice the previous penalty. Additionally, any civil penalty may be collected in a summary proceeding. Both the New Jersey Superior Court and the municipal court have jurisdiction to enforce the provisions of the penalty enforcement law.

As an alternative to the foregoing remedies, the Commissioner can also request that the Attorney General bring a criminal action for the filing false or misleading documents with the DEP; treating, transporting, or storing hazardous waste without DEP authorization, and causing or allowing transportation of

⁶ Pursuant to the Administrative Procedure Act, N.J. STAT. ANN. § 52:14B-1 to -15 (West 1986).

hazardous waste without DEP authorization. A person who knowingly commits any of the above offenses, upon conviction, will be guilty of a third degree crime. He will be subject to a maximum fine of \$50,000 for the first offense, and a maximum fine of \$100,000 for each subsequent offense. Prior to the amendatory Act, the maximum fine was \$25,000 for the first offense and \$50,000 for each subsequent offense. These fines will be in addition to any other disposition. Also, any person who recklessly commits any of the preceding violations, upon conviction, will be guilty of a fourth degree crime. Finally, any person who acts in relation to the transportation of hazardous waste without submitting a hazardous waste manifest⁷ to the DEP will, regardless of intent, be guilty of a fourth degree crime.

The Spill Compensation and Control Act of 1976 was enacted by the legislature so that New Jersey could regulate the transportation and storage of hazardous materials, and could provide for liability in the event of discharge of any such materials within the state. The 1976 Act mandated prompt remedial measures in the event of such discharge, and established a fund to compensate resort businesses and other parties damaged by the hazardous discharge.

The present Act amends section 22 of the Spill Compensation Act. Under this section, any person who violates any provision of this Act, including falsifying information regarding any costs incurred by or damages coming from the discharge of hazardous materials, is liable for a maximum penalty of \$50,000 for each offense. It had been previously \$25,000 for each offense. This penalty can be collected through an action brought in New Jersey Superior Court where injunctive relief has been requested or a summary proceeding instituted by the DEP. The amendatory Act further states, as did the prior act, that conveyances used or intended to be used in the willful spillage of any hazardous substance may be forfeited to the state.

The Water Pollution Control Act of 1977 provides for the administration of the state's water pollution control program. This act is an attempt to restore and maintain the integrity of the

⁷ A hazardous waste manifest is a tracking document that tracks waste from its point of generation to its ultimate disposal site. It includes the name of the generator, transporter, and disposal facility. Telephone interview with James Duerbig, Manifest Section Chief, DEP (Mar. 24, 1988).

state's waters, including the implementation of the permit system to regulate discharges of pollutants as required by the Federal Water Pollution Control Act Amendments of 1972.⁸ Under the amendatory Act, which amends section 10 of the Water Pollution Control Act, when the Commissioner determines that a person is in violation of the Water Pollution Control Act, he can issue a preliminary order to the offending party and notify such party of his right to a hearing in the same manner as prescribed for parties violating the Solid Waste Management Act of 1970. Furthermore, the Commissioner has the authority to commence a civil action for relief from violations under this amendatory Act. Such relief parallels that available for violations of the Solid Waste Management Act.⁹

The present Act increases the maximum civil penalty which the commissioner may assess from \$20,000 to \$50,000 for each violation. An assessment will not be levied until the discharger has been notified of the violation and of his right to a hearing as stated in the provisions regarding the Solid Waste Management Act. For violations of any administrative order, court order, or failure to pay an administrative assessment issued in order to remedy a violation of the Water Pollution Control Act, violators will be subject to a maximum civil penalty of \$50,000 per day. This is a \$30,000 increase from the previous \$20,000 maximum per day penalty.

In the area of criminal penalties, any person who willfully or negligently violates the provisions of the Water Pollution Control Act will, upon conviction, be guilty of a fourth degree crime, punishable by a fine of from \$5,000 to \$50,000 per day of the violation, or imprisonment for up to one year, or both. Punishment for a second offense will call for a fine of \$10,000 to \$100,000 per day, or imprisonment for up to two years, or both. Any person who knowingly falsifies any document or data required to be maintained under this amendatory Act will, upon

⁸ 33 U.S.C. §§ 1251 to 1376 (1982).

⁹ Upon any violation of the act or a permit issued in compliance therewith, the commissioner may commence a civil action for relief which may include an injunction assessment for costs incurred in the investigation and discovery of the violation, litigation costs, assessment for costs incurred by the State in remedying the negative effects on the water quality, and finally, assessments to compensate for the loss of wildlife, aquatic life, and other actual damages caused by the illegal discharge. N.J. STAT. ANN. § 58:10-23.11u (West 1982).

conviction, be subject to a maximum fine of \$20,000, or imprisonment for not more than six months, or both. In addition, any conveyances used or intended for use in the willful discharge of any pollutants may be forfeited to the state.

The purpose of the present Act is clearly to substantially increase these penalties in order to deter existing and potential violators through some economic hardship.¹⁰ The amount of the fines must be great enough to deter offenders or potential offenders. That is, the level of fines must make it more economical to comply with the three acts and any regulations promulgated than it would be to violate them.¹¹ In the past, offenders have found it more economical to disobey these laws.¹² Hopefully, the increase in penalties will deter violators and, in turn, help restore the quality of the state's water and land for our continued use and enjoyment.

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¹⁰ Telephone interview with New Jersey Assemblyman John O. Bennett (Oct. 27, 1987).

¹¹ *Id.*

¹² *Id.*