

CHAPTER 246

AN ACT concerning the enforcement of the State's environmental laws, and amending parts of the statutory law.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. R.S.12:5-6 is amended to read as follows:

Actions for violations.

12:5-6. a. Any development or improvement enumerated in R.S.12:5-3 and in P.L.1975, c.232 (C.13:1D-29 et al.) or included within any rule or regulation adopted pursuant thereto, which is commenced or executed without first obtaining approval, or contrary to the conditions of approval, as provided in R.S.12:5-3 and in P.L.1975, c.232 (C.13:1D-29 et al.), or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be deemed to be a violation under this section.

b. Whenever, on the basis of available information, the commissioner finds that a person is in violation of any provision of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.), or any rule or regulation adopted, or permit or order issued pursuant thereto, the commissioner may:

- (1) Issue an order requiring any such person to comply in accordance with subsection c. of this section; or
- (2) Bring a civil action in accordance with subsection d. of this section; or
- (3) Levy a civil administrative penalty in accordance with subsection e. of this section; or
- (4) Bring an action for a civil penalty in accordance with subsection f. of this section; or
- (5) Petition the Attorney General to bring a criminal action in accordance with subsection g. of this section.

Recourse to any of the remedies available under this section shall not preclude recourse to any of the other remedies.

c. Whenever, on the basis of available information, the commissioner finds a person in violation of any provision of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.), or any rule or regulation adopted, or permit or order issued pursuant thereto, the commissioner may issue an order: (1) specifying the provision or provisions of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.), or the rule, regulation, permit or order of which the person is in violation; (2) citing the action which constituted the violation; (3) requiring compliance with the provision or provisions violated; (4) requiring the restoration to address any adverse effects resulting from the violation; and (5) providing notice to the person of the right to a hearing on the matters contained in the order.

d. The commissioner is authorized to institute a civil action in Superior Court for appropriate relief from any violation of any provisions of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.), or any rule or regulation adopted, or permit or order issued pursuant thereto. Such relief may include, singly or in combination:

- (1) A temporary or permanent injunction;
- (2) Recovery of reasonable costs of any investigation, inspection, or monitoring survey which led to the discovery of the violation, and for the reasonable costs of preparing and bringing a civil action commenced under this subsection;
- (3) Recovery of reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects resulting from any violation for which a civil action has been commenced and brought under this subsection;
- (4) Recovery of compensatory damages for any loss or destruction of natural resources, including but not limited to, wildlife, fish, aquatic life, habitat, plants, or historic or

archeological resources, and for any other actual damages caused by any violation for which a civil action has been commenced and brought under this subsection. Recovery of damages and costs under this subsection shall be paid to the State Treasurer;

(5) An order requiring the violator restore the site of the violation to the maximum extent practicable and feasible or, in the event that restoration of the site of the violation is not practicable or feasible, provide for off-site restoration alternatives as approved by the department.

e. The commissioner is authorized to assess a civil administrative penalty of not more than \$25,000 for each violation of the provisions of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.), or any rule or regulation adopted, or permit or order issued pursuant thereto, and each day during which each 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, duration and conduct; provided, however, that prior to the adoption of the regulation, the commissioner may, on a case-by-case basis, assess civil administrative penalties up to a maximum of \$25,000 per day for each violation, utilizing the criteria set forth herein. In addition to any administrative penalty assessed under this subsection and notwithstanding the \$25,000 maximum penalty set forth above, the commissioner may assess any economic benefits from the violation gained by the violator. Prior to assessment of a penalty under this subsection, the property owner or person committing the violation shall be notified by certified mail or personal service that the penalty is being assessed. The notice shall identify the section of the statute, regulation, or order or permit condition violated; recite the facts alleged to constitute a violation; state the basis for the amount of the civil penalties to be assessed; and affirm the rights of the alleged violator to a hearing. The ordered party shall have 35 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, the notice shall become a final order after the expiration of the 35-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The authority to levy an administrative order is in addition to all other enforcement provisions in R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.), 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. The department may compromise any civil administrative penalty assessed under this section in an amount and with conditions the department determines appropriate. A civil administrative penalty assessed, including any portion thereof required to be paid pursuant to a payment schedule approved by the department, which is not paid within 90 days of the date that payment of the penalty is due, shall be subject to an interest charge on the amount of the penalty, or portion thereof, which shall accrue as of the date payment is due. If the penalty is contested, no additional interest charge shall accrue on the amount of the penalty until 90 days² after the date on which a final order is issued. Interest charges assessed and collectible pursuant to this subsection shall be based on the rate of interest on judgments provided in the New Jersey Rules of Court.

f. A person who violates any provision of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.), or any rule or regulation adopted, or permit or order issued pursuant thereto, or an administrative order issued pursuant to subsection c. of this section, or a court order issued pursuant to subsection d. of this section, or who fails to pay a civil administrative penalty in full pursuant to subsection e. of this section, or who fails to make a payment pursuant to a

penalty payment schedule entered into with the department, or who knowingly makes any false or misleading statement on any application, record, report, or other document required to be submitted to the department, shall be subject, upon order of a court, to a civil penalty not to exceed \$25,000 per day of the violation, and each day during which the violation continues shall constitute an additional, separate, and distinct offense. Any civil penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any penalties, costs or interest charges, the court may assess against the violator the amount of economic benefit accruing to the violator from the violation.

g. A person who purposely, knowingly or recklessly violates any provision of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.), or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, 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 \$50,000 per day of violation, or by imprisonment, or both. A person who purposely, knowingly or recklessly makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under any provision of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.), or any rule or regulation adopted, or permit or order issued pursuant thereto, or who falsifies, tampers with or purposely, knowingly or recklessly renders inaccurate, any monitoring device or method required to be maintained pursuant to R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et seq.), or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, 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 more than \$50,000 per day of violation, or by imprisonment, or both.

h. Each applicant or permittee shall provide, upon the request of the department, any information the department requires to determine compliance with the provisions of R.S.12:5-3 or P.L.1975, c.232 (C.13:1D-29 et al.), or any rule or regulation adopted, or permit or order issued pursuant thereto.

2. Section 12 of P.L.1970, c.33 (C.13:1D-9) is amended to read as follows:

C.13:1D-9 Powers of department.

12. The department shall formulate comprehensive policies for the conservation of the natural resources of the State, the promotion of environmental protection and the prevention of pollution of the environment of the State. The department shall in addition to the powers and duties vested in it by this act or by any other law have the power to:

a. Conduct and supervise research programs for the purpose of determining the causes, effects and hazards to the environment and its ecology;

b. Conduct and supervise Statewide programs of education, including the preparation and distribution of information relating to conservation, environmental protection and ecology;

c. Require the registration of persons engaged in operations which may result in pollution of the environment and the filing of reports by them containing such information as the department may prescribe to be filed relative to pollution of the environment, all in accordance with applicable codes, rules or regulations established by the department;

d. Enter and inspect any property, facility, building, premises, site or place for the purpose of investigating an actual or suspected source of pollution of the environment and conducting inspections, collecting samples, copying or photocopying documents or records,

and for otherwise ascertaining compliance or noncompliance with any laws, permits, orders, codes, rules and regulations of the department. Any information relating to secret processes concerning methods of manufacture or production, obtained in the course of such inspection, investigation or determination, shall be kept confidential, except this information shall be available to the department for use, when relevant, in any administrative or judicial proceedings undertaken to administer, implement, and enforce State environmental law, but shall remain subject only to those confidentiality protections otherwise afforded by federal law and by the specific State environmental laws and regulations that the department is administering, implementing and enforcing in that particular case or instance. In addition, this information shall be available upon request to the United States Government for use in administering, implementing, and enforcing federal environmental law, but shall remain subject to the confidentiality protection afforded by federal law. If samples are taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person suspected of causing pollution of the environment;

e. Receive or initiate complaints of pollution of the environment, including thermal pollution, hold hearings in connection therewith and institute legal proceedings for the prevention of pollution of the environment and abatement of nuisances in connection therewith and shall have the authority to seek and obtain injunctive relief and the recovery of fines and penalties in a court of competent jurisdiction;

f. Prepare, administer and supervise Statewide, regional and local programs of conservation and environmental protection, giving due regard for the ecology of the varied areas of the State and the relationship thereof to the environment, and in connection therewith prepare and make available to appropriate agencies in the State technical information concerning conservation and environmental protection, cooperate with the Commissioner of Health and Senior Services in the preparation and distribution of environmental protection and health bulletins for the purpose of educating the public, and cooperate with the Commissioner of Health and Senior Services in the preparation of a program of environmental protection;

g. Encourage, direct and aid in coordinating State, regional and local plans and programs concerning conservation and environmental protection in accordance with a unified Statewide plan which shall be formulated, approved and supervised by the department. In reviewing such plans and programs and in determining conditions under which such plans may be approved, the department shall give due consideration to the development of a comprehensive ecological and environmental plan in order to be assured insofar as is practicable that all proposed plans and programs shall conform to reasonably contemplated conservation and environmental protection plans for the State and the varied areas thereof;

h. Administer or supervise programs of conservation and environmental protection, prescribe the minimum qualifications of all persons engaged in official environmental protection work, and encourage and aid in coordinating local environmental protection services;

i. Establish and maintain adequate bacteriological, radiological and chemical laboratories with such expert assistance and such facilities as are necessary for routine examinations and analyses, and for original investigations and research in matters affecting the environment and ecology;

j. Administer or supervise a program of industrial planning for environmental protection; encourage industrial plants in the State to undertake environmental and ecological engineering programs; and cooperate with the State Departments of Health and Senior

Services, Labor and Workforce Development, and the New Jersey Commerce Commission in formulating rules and regulations concerning industrial sanitary conditions;

k. Supervise sanitary engineering facilities and projects within the State, authority for which is now or may hereafter be vested by law in the department, and shall, in the exercise of such supervision, make and enforce rules and regulations concerning plans and specifications, or either, for the construction, improvement, alteration or operation of all public water supplies, all public bathing places, landfill operations and of sewerage systems and disposal plants for treatment of sewage, wastes and other deleterious matter, liquid, solid or gaseous, require all such plans or specifications, or either, to be first approved by it before any work thereunder shall be commenced, inspect all such projects during the progress thereof and enforce compliance with such approved plans and specifications;

l. Undertake programs of research and development for the purpose of determining the most efficient, sanitary and economical ways of collecting, disposing, recycling or utilizing of solid waste;

m. Construct and operate, on an experimental basis, incinerators or other facilities for the disposal of solid waste, provide the various municipalities and counties of this State, and the Division of Local Government Services in the Department of Community Affairs with statistical data on costs and methods of solid waste collection, disposal and utilization;

n. Enforce the State air pollution, water pollution, conservation, environmental protection, solid and hazardous waste management laws, rules and regulations, including the making and signing of a complaint and summons for their violation by serving the summons upon the violator and thereafter filing the complaint promptly with a court having jurisdiction;

o. Acquire by purchase, grant, contract or condemnation, title to real property, for the purpose of demonstrating new methods and techniques for the collection or disposal of solid waste;

p. Purchase, operate and maintain, pursuant to the provisions of this act, any facility, site, laboratory, equipment or machinery necessary to the performance of its duties pursuant to this act;

q. Contract with any other public agency or corporation incorporated under the laws of this or any other state for the performance of any function under this act;

r. With the approval of the Governor, cooperate with, apply for, receive and expend funds from, the federal government, the State Government, or any county or municipal government or from any public or private sources for any of the objects of this act;

s. Make annual and such other reports as it may deem proper to the Governor and the Legislature, evaluating the demonstrations conducted during each calendar year;

t. Keep complete and accurate minutes of all hearings held before the commissioner or any member of the department pursuant to the provisions of this act. All such minutes shall be retained in a permanent record, and shall be available for public inspection at all times during the office hours of the department;

u. Require any person subject to a lawful order of the department, which provides for a period of time during which such person subject to the order is permitted to correct a violation, to post a performance bond or other security with the department in such form and amount as shall be determined by the department. Such bond need not be for the full amount of the estimated cost to correct the violation but may be in such amount as will tend to insure good faith compliance with said order. The department shall not require such a bond or security from any public body, agency or authority. In the event of a failure to meet the schedule prescribed by the department, the sum named in the bond or other security shall be

forfeited unless the department shall find that the failure is excusable in whole or in part for good cause shown, in which case the department shall determine what amount of said bond or security, if any, is a reasonable forfeiture under the circumstances. Any amount so forfeited shall be utilized by the department for the correction of the violation or violations, or for any other action required to insure compliance with the order; and

v. Encourage and aid in coordinating State, regional and local plans, efforts and programs concerning the remediation and reuse of former industrial or commercial properties that are currently underutilized or abandoned and at which there has been, or is perceived to have been, a discharge, or threat of a discharge, of a contaminant. For the purposes of this subsection, "underutilized property" shall not include properties undergoing a reasonably timely remediation or redevelopment process.

3. Section 10 of P.L.1971, c.176 (C.13:1F-10) is amended to read as follows:

C.13:1F-10 Violations, enforcement, remedies.

10. a. Whenever, on the basis of available information, the commissioner finds that a person is in violation of the provisions of P.L.1971, c.176 (C.13:1F-1 et seq.), or any rule or regulation adopted, or permit or order issued pursuant thereto, the commissioner may:

(1) Issue an administrative enforcement order in accordance with subsection b. of this section requiring the person to comply;

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

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

(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.

The exercise of any of the remedies provided in this section shall not preclude recourse to any other remedy so provided.

b. Whenever, on the basis of available information, the commissioner finds that a person is in violation of any provision of P.L.1971, c.176, or any rule or regulation adopted, or permit or order issued pursuant thereto, the commissioner may issue an administrative enforcement order: (1) specifying the provision or provisions of P.L.1971, c.176, or of the rule, regulation, permit or order of which the person is in violation; (2) citing the action that constituted the violation; (3) requiring compliance with the provision or provisions violated; and (4) giving notice to the person of a 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 from a violation of the provisions of P.L.1971, c.176, or any rule or regulation adopted, or permit or order issued pursuant thereto. This relief may include, singly or in combination:

(1) A temporary or permanent injunction;

(2) Recovery of reasonable costs of any investigation, inspection, sampling or monitoring survey that led to the discovery of the violation, and for the reasonable costs of preparing and bringing a civil action commenced under this subsection;

(3) Recovery of reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects resulting from any violation of P.L.1971, c.176, or any rule or regulation adopted, or permit or order issued pursuant thereto, for which legal action under this subsection may have been brought;

(4) An order requiring the violator restore the site of the violation to the maximum extent practicable and feasible or, in the event that restoration of the site of the violation is not practicable or feasible, provide for off-site restoration alternatives as approved by the department.

(5) Recovery of compensatory damages for any loss or destruction of natural resources, including but not limited to, wildlife, fish, aquatic life, habitat, plants, or historic or archeological resources, and for any other actual damages caused by any violation for which a civil action has been commenced and brought under this subsection. Recovery of damages and costs under this subsection shall be paid to the State Treasurer.

d. The commissioner is authorized to assess a civil administrative penalty of not more than \$25,000 for each violation of the provisions of P.L.1971, c.176, or any rule or regulation adopted, or permit or order issued pursuant thereto, and each day during which each 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, duration and conduct; provided, however, that prior to the adoption of the regulation, the commissioner may, on a case-by-case basis, assess civil administrative penalties up to a maximum of \$25,000 per day for each violation, utilizing the criteria set forth herein. In addition to any administrative penalty assessed under this subsection and notwithstanding the \$25,000 maximum penalty set forth above, the commissioner may assess any economic benefits from the violation gained by the violator. Prior to assessment of a penalty under this subsection, the property owner or person committing the violation shall be notified by certified mail or personal service that the penalty is being assessed. The notice shall include: a reference to the section of the statute, regulation, or order or permit condition violated; recite the facts alleged to constitute a violation; state the basis for the amount of the civil penalties to be assessed; and affirm the rights of the alleged violator to a hearing. The ordered party shall have 35 calendar 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, the notice shall become a final order after the expiration of the 35-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The authority to levy an administrative order is in addition to all other enforcement provisions in P.L.1971, c.176, or of any rule or regulation adopted, or permit or order issued pursuant thereto, 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. The department may compromise any civil administrative penalty assessed under this section in an amount and with conditions the department determines appropriate. A civil administrative penalty assessed, including a portion thereof required to be paid pursuant to a payment schedule approved by the department, which is not paid within 90 days of the date that payment of the penalty is due, shall be subject to an interest charge on the amount of the penalty, or portion thereof, which shall accrue as of the date payment is due. If the penalty is contested, no additional interest charge shall accrue on the amount of the penalty until 90 days after the date on which a final order is issued. Interest charges assessed and collectible pursuant to this subsection shall be based on the rate of interest on judgments provided in the New Jersey Rules of Court.

e. Any person who violates the provisions of P.L.1971, c.176, or any rule or regulation adopted, or permit or order issued pursuant thereto, or violates an administrative enforcement order issued pursuant to subsection b. of this section, or a court order issued pursuant to

subsection c. of this section, or who fails to pay in full a civil administrative penalty levied pursuant to subsection d. of this section, or who fails to make a payment pursuant to a penalty payment schedule entered into with the department, or who knowingly makes any false or misleading statement on any application, record, report, or other document required to be submitted to the department, shall be subject, upon order of a court, to a civil penalty not to exceed \$25,000 for each day during which the violation continues. Any civil penalty imposed pursuant to this subsection may be collected, and any costs incurred in connection therewith may be recovered, in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A: 58-10 et seq.). In addition to any penalties, costs or interest charges, the court may assess against the violator the amount of economic benefit accruing to the violator from the violation. The Superior Court shall have jurisdiction to enforce the "Penalty Enforcement Law of 1999."

f. A person who purposely, knowingly or recklessly violates any provision of P.L.1971, c.176, or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, 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 \$50,000 per day of violation, or by imprisonment, or both. A person who purposely, knowingly or recklessly makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under any provision of P.L.1971, c.176, or any rule or regulation adopted, or permit or order issued pursuant thereto, or who falsifies, tampers with or purposely, knowingly or recklessly renders inaccurate, any monitoring device or method required to be maintained pursuant to P.L.1971, c.176, or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, 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 more than \$50,000 per day of violation, or by imprisonment, or both.

g. Each applicant, permittee or licensee shall provide, upon the request of the department, any information the department requires to determine compliance with the provisions of P.L.1971, c.176.

4. Section 9 of P.L.1970, c.272 (C.13:9A-9) is amended to read as follows:

C.13:9A-9 Violations; penalties.

9. a. Whenever, on the basis of available information, the commissioner finds that a person is in violation of any provision of P.L.1970, c.272, or any rule or regulation adopted, or permit or order issued pursuant thereto, the commissioner may:

(1) Issue an administrative enforcement 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.

Recourse to any of the remedies available under this section shall not preclude recourse to any of the other remedies.

b. Whenever, on the basis of available information, the commissioner finds a person in violation of any provision of P.L.1970, c.272, or any rule or regulation adopted, or permit or order issued pursuant thereto, the commissioner may issue an administrative enforcement

order: (1) specifying the provision or provisions of P.L.1970, c.272, or the rule, regulation, permit or order of which the person is in violation; (2) citing the action which constituted the violation; (3) requiring compliance with the provision or provisions violated; (4) requiring the restoration to address any adverse effects upon a coastal wetland resulting from the violation; and (5) providing notice to the person of the right to a hearing on the matters contained in the administrative enforcement order.

c. The commissioner is authorized to institute a civil action in Superior Court for appropriate relief from any violation of any provision of P.L.1970, c.272, or any rule or regulation adopted, or permit or order issued pursuant thereto. Such relief may include, singly or in combination:

(1) A temporary or permanent injunction;

(2) Recovery of reasonable costs of any investigation, inspection, or monitoring survey which led to the discovery of the violation, and for the reasonable costs of preparing and bringing a civil action commenced under this subsection;

(3) Recovery of reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects upon a coastal wetland resulting from any violation for which a civil action has been commenced and brought under this subsection;

(4) Recovery of compensatory damages for any loss or destruction of natural resources, including but not limited to, wildlife, fish, aquatic life, habitat, plants, or historic or archeological resources, and for any other actual damages caused by any violation for which a civil action has been commenced and brought under this subsection. Recovery of damages and costs ordered under this subsection shall be paid to the State Treasurer;

(5) An order requiring the violator restore the site of the violation to the maximum extent practicable and feasible or, in the event that restoration of the site of the violation is not practicable or feasible, provide for off-site restoration alternatives as approved by the department.

d. The commissioner is authorized to assess a civil administrative penalty of not more than \$25,000 for each violation of the provisions of P.L.1970, c.272, or any rule or regulation adopted, or permit or order issued pursuant thereto, and each day during which each 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, duration and conduct; provided, however, that prior to the adoption of the regulation, the commissioner may, on a case-by-case basis, assess civil administrative penalties up to a maximum of \$25,000 per day for each violation, utilizing the criteria set forth herein. In addition to any administrative penalty assessed under this subsection and notwithstanding the \$25,000 maximum penalty set forth above, the commissioner may assess any economic benefits from the violation gained by the violator. Prior to assessment of a penalty under this subsection, the property owner or person committing the violation shall be notified by certified mail or personal service that the penalty is being assessed. The notice shall include a reference to the section of the statute, regulation, order or permit condition violated; recite the facts alleged to constitute a violation; state the basis for the amount of the civil penalties to be assessed; and affirm the rights of the alleged violator to a hearing. The ordered party shall have 35 calendar 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 administrative enforcement order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final administrative enforcement order after the expiration of the 35-day period. Payment of the

assessment is due when a final administrative enforcement order is issued or the notice becomes a final administrative enforcement order. The authority to levy a civil administrative order is in addition to all other enforcement provisions in P.L.1970, c.272, 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. The department may compromise any civil administrative penalty assessed under this section in an amount and with conditions the department determines appropriate. A civil administrative penalty assessed, including a portion thereof required to be paid pursuant to a payment schedule approved by the department, which is not paid within 90 days of the date that payment of the penalty is due, shall be subject to an interest charge on the amount of the penalty, or portion thereof, which shall accrue as of the date payment is due. If the penalty is contested, no additional interest charge shall accrue on the amount of the penalty until 90 days after the date on which a final order is issued. Interest charges assessed and collectible pursuant to this subsection shall be based on the rate of interest on judgments provided in the New Jersey Rules of Court.

e. A person who violates any provision of P.L.1970, c.272, or any rule or regulation adopted, or permit or order issued pursuant thereto, or an administrative order issued pursuant to subsection b. of this section, or a court order issued pursuant to subsection c. of this section, who fails to pay a civil administrative penalty in full pursuant to subsection d. of this section, or who fails to make a payment pursuant to a penalty payment schedule entered into with the department, or who knowingly makes any false or misleading statement on any application, record, report, or other document required to be submitted to the department, shall be subject, upon order of a court, to a civil penalty not to exceed \$25,000 per day of the violation, and each day during which the violation continues shall constitute an additional, separate, and distinct offense. Any civil penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any penalties, costs or interest charges, the court may assess against the violator the amount of economic benefit accruing to the violator from the violation. The Superior Court shall have jurisdiction to enforce the "Penalty Enforcement Law of 1999."

f. A person who purposely, knowingly or recklessly violates any provision of P.L.1970, c.272, or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, 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 \$50,000 per day of violation, or by imprisonment, or both. A person who purposely, knowingly or recklessly makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under any provision of P.L.1970, c.272, or any rule or regulation adopted, or permit or order issued pursuant thereto, or who falsifies, tampers with or purposely, knowingly or recklessly renders inaccurate, any monitoring device or method required to be maintained pursuant to P.L.1970, c.272, or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, 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 more than \$50,000 per day of violation, or by imprisonment, or both.

g. Each applicant or permittee shall provide, upon the request of the department, any information the department requires to determine compliance with the provisions of P.L.1970, c.272, or any rule or regulation adopted, or permit or order issued pursuant thereto.

5. Section 21 of P.L.1987, c.156 (C.13:9B-21) is amended to read as follows:

C.13:9B-21 Remedies for violations.

21. a. Whenever, on the basis of available information, the commissioner finds that a person is in violation of any provision of P.L.1987, c.156, or any rule or regulation adopted, or permit or order issued pursuant thereto, the commissioner may:

(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.

Recourse to any of the remedies available under this section shall not preclude recourse to any of the other remedies.

b. Whenever, on the basis of available information, the commissioner finds a person in violation of any provision of P.L.1987, c.156, or any rule or regulation adopted, or permit or order issued pursuant thereto, the commissioner may issue an order: (1) specifying the provision or provisions of P.L.1987, c.156, or the rule, regulation, permit or order of which the person is in violation; (2) citing the action which constituted the violation; (3) requiring compliance with the provision or provisions violated; (4) requiring the restoration to address any adverse effects upon the freshwater wetland or transition area resulting from any violation; and (5) providing notice to the person of the right to a hearing on the matters contained in the order.

c. The commissioner is authorized to institute a civil action in Superior Court for appropriate relief from any violation of any provisions of P.L.1987, c.156, or any rule or regulation adopted, or permit or order issued pursuant thereto. Such relief may include, singly or in combination:

(1) A temporary or permanent injunction;

(2) Recovery of reasonable costs of any investigation, inspection, or monitoring survey which led to the discovery of the violation, and for the reasonable costs of preparing and bringing a civil action commenced under this subsection;

(3) Recovery of reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects upon the freshwater wetland or transition area resulting from any violation for which a civil action has been commenced and brought under this subsection;

(4) Recovery of compensatory damages for any loss or destruction of natural resources, including but not limited to, wildlife, fish, aquatic life, habitat, plants, or historic or archeological resources, and for any other actual damages caused by any violation for which a civil action has been commenced and brought under this subsection. Recovery of damages and costs under this subsection shall be paid to the State Treasurer;

(5) An order requiring the violator restore the site of the violation to the maximum extent practicable and feasible or, in the event that restoration of the site of the violation is not practicable or feasible, provide for off-site restoration alternatives as approved by the department.

d. The commissioner is authorized to assess a civil administrative penalty of not more than \$25,000 for each violation of the provisions of P.L.1987, c.156, or any rule or regulation adopted, or permit or order issued pursuant thereto, and each day during which each 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, duration and conduct; provided, however, that prior to the adoption of the regulation, the commissioner may, on a case-by-case basis, assess civil administrative penalties up to a maximum of \$25,000 per day for each violation, utilizing the criteria set forth herein. In addition to any administrative penalty assessed under this subsection and notwithstanding the \$25,000 maximum penalty set forth above, the commissioner may assess any economic benefits from the violation gained by the violator. Prior to the assessment of a penalty under this subsection, the property owner or person committing the violation shall be notified by certified mail or personal service that the penalty is being assessed. The notice shall identify the section of the statute, regulation, or order or permit condition violated; recite the facts alleged to constitute a violation; state the basis for the amount of the civil penalties to be assessed; and affirm the rights of the alleged violator to a hearing. The ordered party shall have 35 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, the notice shall become a final order after the expiration of the 35-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The authority to levy an administrative order is in addition to all other enforcement provisions in P.L.1987, c.156, 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. The department may compromise any civil administrative penalty assessed under this section in an amount and with conditions the department determines appropriate. A civil administrative penalty assessed, including any portion thereof required to be paid pursuant to a payment schedule approved by the department, which is not paid within 90 days of the date that payment of the penalty is due, shall be subject to an interest charge on the amount of the penalty, or portion thereof, which shall accrue as of the date payment is due. If the penalty is contested, interest shall accrue on the amount of the penalty commencing on the date a final order is issued. Interest charges assessed and collectible pursuant to this subsection shall be based on the rate of interest on judgments provided in the New Jersey Rules of Court. For the purposes of this subsection, the date that a penalty is due is the date that written notice of the penalty is received by the person responsible for payment thereof, or a later date as may be specified in the notice.

e. A person who violates any provision of P.L.1987, c.156, or any rule or regulation adopted, or permit or order issued pursuant thereto, or an administrative order issued pursuant to subsection b. of this section, or a court order issued pursuant to subsection c. of this section, or who fails to pay a civil administrative penalty in full pursuant to subsection d. of this section, or who fails to make a payment pursuant to a penalty payment schedule entered into with the department, or who knowingly makes any false or misleading statement on any application, record, report, or other document required to be submitted to the department, shall be subject, upon order of a court, to a civil penalty not to exceed \$25,000 per day of the violation, and each day during which the violation continues shall constitute an additional, separate, and distinct offense. Any civil penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court shall have jurisdiction to enforce the "Penalty Enforcement Law of 1999" in conjunction with this act.

f. A person who purposely, knowingly or recklessly violates any provision of P.L.1987, c.156, or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, 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 \$50,000 per day of violation, or by imprisonment, or both. A person who purposely, knowingly or recklessly makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under any provision of P.L.1987, c.156, or any rule or regulation adopted, or permit or order issued pursuant thereto, or who falsifies, tampers with or purposely, knowingly or recklessly renders inaccurate, any monitoring device or method required to be maintained pursuant to P.L.1987, c.156, shall be guilty, upon conviction, 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 more than \$50,000 per day of violation, or by imprisonment, or both.

g. In addition to the penalties prescribed in this section, the commissioner may record a notice for a violation of any provision of P.L.1987, c.156, or any rule or regulation adopted, or permit or order issued pursuant thereto, which shall be recorded on the deed of the property wherein the violation occurred, on order of the commissioner, by the clerk or register of deeds and mortgages of the county wherein the affected property is located and shall remain attached thereto until such time as the violation has been remedied and the commissioner orders the notice of violation removed. Any fees or other charges that are assessed against the department by either the clerk or register of deeds and mortgages of the county wherein the affected property is located for the recording of the notice of violation on the deed required pursuant to this subsection shall be paid by the owner of the affected property or the person committing the violation. The commissioner shall immediately order the notice removed once the violation is remedied or upon other conditions set forth by the commissioner.

h. If the violation is one in which the department has determined that the restoration of the site to its pre-violation condition would increase the harm to the freshwater wetland or its ecology, the department may issue an "after the fact" permit for the regulated activity that has already occurred; provided that any recovery of costs or damages ordered pursuant to subsection c. of this section has been satisfied, the creation or restoration of freshwater wetlands resources at another site has been required of the violator, an opportunity has been afforded for public hearing and comment, and the reasons for the issuance of the "after the fact" permit are published in the New Jersey Register and in a newspaper of general circulation in the geographical area of the violation. Any person violating an "after the fact" permit issued pursuant to this subsection shall be subject to the provisions of this section.

i. The burden of proof and degree of knowledge or intent required to establish a violation of any provision of P.L.1987, c.156, or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be no greater than the burden of proof or degree of knowledge or intent which the United States Environmental Protection Agency must meet in establishing a violation of the Federal Act or implementing regulations.

j. The department shall establish and implement a program designed to facilitate public participation in the enforcement of the provisions of P.L.1987, c.156, or any rule or regulation adopted, or permit or order issued pursuant thereto, which complies with the requirements of the Federal Act and implementing regulations.

k. The department shall make available without restriction any information obtained or used in the implementation of P.L.1987, c.156 to the United States Environmental Protection Agency upon a request therefor.

l. Each applicant or permittee shall provide, upon the request of the department, any information the department requires to determine compliance with the provisions of P.L.1987, c.156.

m. The department shall have the authority to enter any property, facility, premises or site for the purpose of conducting inspections, sampling of soil or water, copying or photocopying documents or records, and for otherwise determining compliance with the provisions of P.L.1987, c.156.

6. Section 18 of P.L.1973, c.185 (C.13:19-18) is amended to read as follows:

C.13:19-18 Violations, remedies, penalties; “Cooperative Coastal Monitoring, Restoration and Enforcement Fund.”

18. a. Whenever, on the basis of available information, the department finds that a person has violated any provision of P.L.1973, c.185 (C.13:19-1 et seq.), or any rule or regulation adopted, or permit or order issued by the department pursuant thereto, the department may:

(1) Issue an order requiring the person found to be in violation to comply in accordance with subsection b. of this section;

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

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

(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.

Pursuit of any of the remedies specified under this section shall not preclude the seeking of any other remedy specified.

b. Whenever, on the basis of available information, the department finds that a person has violated any provision of P.L.1973, c.185, or any rule or regulation adopted, or permit or order issued by the department pursuant thereto, the department may issue an order: (1) specifying the provision or provisions of the act, regulation, rule, permit, or order of which the person is in violation; (2) citing the action which constituted the violation; (3) requiring compliance with the provision or provisions violated; (4) requiring the restoration to address any adverse effects resulting from the violation; and (5) providing notice to the person of the right to a hearing on the matters contained in the order. The ordered party shall have 35 days from receipt of the order within which to deliver to the department a written request for a hearing. After the hearing and upon finding that a violation has occurred, the department may issue a final order. If no hearing is requested, then the order shall become final after the expiration of the 35-day period. A request for hearing shall not automatically stay the effect of the order.

c. The department may institute a civil action in the Superior Court for appropriate relief, including the appointment of a receiver, from any violation of any provision of P.L.1973, c.185, or any rule or regulation adopted, or permit or order issued by the department pursuant thereto, and the court may proceed in the action in a summary manner.

Such relief may include, singly or in combination:

(1) A temporary or permanent injunction;

(2) Recovery of reasonable costs of any investigation, inspection, or monitoring survey which led to the discovery of the violation, and for the reasonable costs of preparing and bringing a civil action commenced under this subsection;

(3) Recovery of reasonable costs incurred by the department in removing, correcting or terminating the adverse effects upon the land or upon water or air quality resulting from any

violation of any provision of P.L.1973, c.185, or any rule or regulation adopted, or permit or order issued by the department pursuant thereto, for which a civil action has been commenced and brought under this subsection;

(4) Recovery of compensatory damages for any loss or destruction of natural resources, including but not limited to, wildlife, fish, aquatic life, habitat, plants, or historic or archeological resources, and for any other actual damages caused by a violation of the provisions of P.L.1973, c.185 for which a civil action has been commenced and brought under this subsection. Assessments under this subsection shall be paid to the State Treasurer;

(5) An order requiring the violator restore the site of the violation to the maximum extent practicable and feasible or, in the event that restoration of the site of the violation is not practicable or feasible, provide for off-site restoration alternatives as approved by the department.

d. The department is authorized to assess a civil administrative penalty of not more than \$25,000 for each violation of the provisions of P.L.1973, c.185, or any rule or regulation adopted, or permit or order issued pursuant thereto, and each day during which each 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, duration, and conduct; provided, however, that prior to the adoption of the regulation, the commissioner may, on a case-by-case basis, assess civil administrative penalties up to a maximum of \$25,000 per day for each violation, utilizing the criteria set forth herein. In addition to any administrative penalty assessed under this subsection and notwithstanding the \$25,000 maximum penalty set forth above, the commissioner may assess any economic benefits from the violation gained by the violator. Prior to assessment of a penalty under this subsection, the property owner or person committing the violation shall be notified by certified mail or personal service that the penalty is being assessed. The notice shall include a reference to the section or provision of P.L.1973, c.185, the regulation, rule, permit, or order issued by the department pursuant to that act that has been violated, a concise statement of the facts alleged to constitute a violation, a statement of the basis for the amount of the civil administrative penalties to be assessed, including any interest that may accrue thereon if the penalty is not paid when due, and a statement of the party's right to a hearing. The ordered party shall have 35 calendar days from receipt of the notice within which to deliver to the department a written request for a hearing. After the hearing and upon finding that a violation has occurred, the department may issue a final order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final order after the expiration of the 35-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The department may compromise any civil administrative penalty assessed under this section in an amount and with conditions the department determines appropriate. A civil administrative penalty assessed, including a portion thereof required to be paid pursuant to a payment schedule approved by the department, which is not paid within 90 days of the date that payment of the penalty is due, shall be subject to an interest charge on the amount of the penalty, or portion thereof, which shall accrue as of the date payment is due. If the penalty is contested, no additional interest charge shall accrue on the amount of the penalty until after the date on which a final order is issued.

Interest charges assessed and collectible pursuant to this subsection shall be based on the rate of interest on judgments provided in the New Jersey Rules of Court. For the purposes of this subsection, the date that a penalty is due is the date that written notice of the penalty is

received by the person responsible for payment thereof, or a later date as may be specified in the notice.

e. Any person who violates the provisions of P.L.1973, c.185, or any rule or regulation adopted pursuant thereto, or any permit or order issued by the department pursuant to that act, or an administrative order issued pursuant to subsection b. of this section, or a court order issued pursuant to subsection c. of this section, or who fails to pay a civil administrative penalty in full pursuant to subsection d. of this section, or who fails to make a payment pursuant to a penalty payment schedule entered into with the department, or who knowingly makes any false or misleading statement on any application, record, report, or other document required to be submitted to the department, shall be subject, upon order of a court, to a civil penalty of not more than \$25,000 for each violation, and each day during which a violation continues shall constitute an additional, separate, and distinct offense.

Any penalty established pursuant to this subsection may be imposed and collected with costs in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The Superior Court shall have jurisdiction to enforce the "Penalty Enforcement Law of 1999" in conjunction with this act. In addition to any penalties, costs or interest charges, the court may assess against the violator the amount of economic benefit accruing to the violator from the violation.

f. A person who purposely, knowingly or recklessly violates any provision of P.L.1973, c.185, or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, 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 \$50,000 per day of violation, or by imprisonment, or both. A person who purposely, knowingly, or recklessly makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under any provision of P.L.1973, c.185, or any rule or regulation adopted pursuant thereto, or who falsifies, tampers with or purposely, knowingly, or recklessly renders inaccurate, any monitoring device or method required to be maintained pursuant to P.L.1973, c.185, or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, 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 more than \$50,000 per day of violation, or by imprisonment, or both.

g. Each applicant or permittee shall provide, upon the request of the department, any information the department requires to determine compliance with the provisions of P.L.1973, c.185, or any rule or regulation adopted, or permit or order issued pursuant thereto.

h. There is created in the department a special nonlapsing fund, to be known as the "Cooperative Coastal Monitoring, Restoration and Enforcement Fund." Except as otherwise provided in this section, all monies from penalties, fines, or recoveries of costs collected by the department pursuant to this section on and after the effective date of this section, shall be deposited in the fund. Interest earned on monies deposited in the fund shall be credited to the fund. Unless otherwise specifically provided by law, monies in the fund shall be utilized by the department for the cost of coastal restoration projects and providing aircraft overflights for coastal monitoring, surveillance and enforcement activities conducted by the department and for the cost of administering P.L.1973, c.185 (C.13:19-1 et seq.). The department shall submit annually to the Legislature a report which provides an accounting of all monies deposited in the fund and the purposes for which monies in the fund are disbursed.

7. Section 10 of P.L.1973, c.309 (C.23:2A-10) is amended to read as follows:

C.23:2A-10 Violations; penalties; enforcement.

10. a. Whenever, on the basis of available information, the commissioner finds that a person is in violation of the provisions of P.L.1973, c.309, or any rule or regulation adopted, or permit or order issued pursuant thereto, the commissioner may:

- (1) Issue an order in accordance with subsection b. of this section requiring the person to comply;
- (2) Bring a civil action in accordance with subsection c. of this section;
- (3) Levy a civil administrative penalty in accordance with subsection d. of this section;
- (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.

The exercise of any of the remedies provided in this section shall not preclude recourse to any other remedy so provided.

b. Whenever, on the basis of available information, the commissioner finds that a person is in violation of any provision of P.L.1973, c.309, or any rule or regulation adopted, or permit or order issued pursuant thereto, the commissioner may issue an order: (1) specifying the provision or provisions of P.L.1973, c.309, or the rule or regulation, or order or permit issued pursuant thereto, of which the person is in violation; (2) citing the action that constituted the violation; (3) requiring compliance with the provision of P.L.1973, c.309, the rule or regulation, or order or permit issued pursuant thereto, of which the person is in violation; (4) requiring the restoration to address any adverse effects resulting from the violation; and (5) giving notice to the person of a right to a hearing on the matters contained in the order.

c. The commissioner is hereby authorized and empowered to commence a civil action in Superior Court for appropriate relief from a violation of the provisions of P.L.1973, c.309, or any rule or regulation adopted, or any permit or order issued pursuant thereto. This relief may include, singly or in combination:

- (1) A temporary or permanent injunction;
- (2) Recovery of reasonable costs of any investigation, inspection, sampling or monitoring survey that led to the discovery of the violation, and for the reasonable costs of preparing and bringing a civil action commenced under this subsection;
- (3) Recovery of reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects resulting from any violation of P.L.1973, c.309 for which a civil action has been commenced and brought under this subsection;
- (4) Recovery of compensatory damages for any loss or destruction of natural resources, including but not limited to, wildlife, fish, aquatic life, habitat, plants, or historic or archeological resources, and for any other actual damages caused by any violation for which a civil action has been commenced and brought under this subsection. Assessments under this subsection shall be paid to the "Endangered and Nongame Species of Wildlife Conservation Fund," established pursuant to section 1 of P.L.1981, c.170 (C.54A:9-25.2), except that compensatory damages to privately held resources shall be paid by specific order of the court to any persons who have been aggrieved by the unauthorized regulated activity;
- (5) An order requiring the violator restore the site of the violation to the maximum extent practicable and feasible or, in the event that restoration of the site of the violation is not practicable or feasible, provide for off-site restoration alternatives as approved by the department.

d. The commissioner is authorized to assess a civil administrative penalty of not more than \$25,000 for each violation of the provisions of P.L.1973, c.309, and each day during

which each 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, duration, and conduct; provided, however, that prior to the adoption of the regulation, the commissioner may, on a case-by-case basis, assess civil administrative penalties up to a maximum of \$25,000 per day for each violation, utilizing the criteria set forth herein. In addition to any administrative penalty to be assessed under this subsection, and notwithstanding the \$25,000 maximum penalty set forth above, the commissioner may assess any economic benefits from the violation gained by the violator. Prior to assessment of a penalty under this subsection, the property owner or person committing the violation shall be notified by certified mail or personal service that the penalty is being assessed. The notice shall include a reference to the section of the statute, regulation, or order or permit condition violated; recite the facts alleged to constitute a violation; state the basis for the amount of the civil penalties to be assessed; and affirm the rights of the alleged violator to a hearing. The ordered party shall have 35 calendar 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, the notice shall become a final order after the expiration of the 35-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The authority to levy an administrative order is in addition to all other enforcement provisions in P.L.1973, c.309, 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. The department may compromise any civil administrative penalty assessed under this section in an amount and with conditions the department determines appropriate. A civil administrative penalty assessed, including a portion thereof required to be paid pursuant to a payment schedule approved by the department, which is not paid within 90 days of the date that payment of the penalty is due, shall be subject to an interest charge on the amount of the penalty, or portion thereof, which shall accrue as of the date payment is due. If the penalty is contested, no additional interest charge shall accrue on the amount of the penalty until after the date on which a final order is issued. Interest charges assessed and collectible pursuant to this subsection shall be based on the rate of interest on judgments provided in the New Jersey Rules of Court.

e. Any person who violates any provision of P.L.1973, c.309, or any rule or regulation adopted, or permit or order issued pursuant thereto, or an order issued pursuant to subsection b. of this section, or a court order issued pursuant to subsection c. of this section, or who fails to pay in full a civil administrative penalty levied pursuant to subsection d. of this section, or who fails to make a payment pursuant to a penalty payment schedule entered into with the department, or who knowingly makes any false or misleading statement on any application, record, report, or other document required to be submitted to the department, shall be subject, upon order of a court, to a civil penalty not to exceed \$25,000 for each day during which the violation continues. Any civil penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any penalties, costs or interest charges, the court may assess against the violator the amount of economic benefit accruing to the violator from the violation. The Superior Court and municipal courts shall have jurisdiction to enforce the "Penalty Enforcement Law of 1999."

f. A person who purposely, knowingly or recklessly violates any provision of P.L.1973, c.309, or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, 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 \$50,000 per day of violation, or by imprisonment, or both. A person who purposely, knowingly, or recklessly makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under any provision of P.L.1973, c.309, or any rule or regulation adopted, or permit or order issued pursuant thereto, or who falsifies, tampers with or purposely, knowingly, or recklessly renders inaccurate, any monitoring device or method required to be maintained pursuant to P.L.1973, c.309, or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, 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 more than \$50,000 per day of violation, or by imprisonment, or both.

g. All penalties collected pursuant to this section shall be deposited in the "Endangered and Nongame Species of Wildlife Conservation Fund," established pursuant to section 1 of P.L.1981, c.170 (C.54A:9-25.2), and kept separate from other receipts deposited therein, and appropriated to the department for the purposes outlined in that fund.

h. Each applicant or permittee, upon the request of the department, shall provide any information the department or the commissioner requires to determine compliance with any provision of P.L.1973, c.309, or of any rule or regulation adopted, or permit or order issued pursuant thereto.

8. Section 16 of P.L.1981, c.262 (C.58:1A-16) is amended to read as follows:

C.58:1A-16 Violations of act; remedies.

16. a. Whenever, on the basis of available information, the commissioner finds that a person is in violation of any of the provisions of P.L.1981, c.262, or any rule or regulation adopted, or permit or order issued pursuant thereto, the commissioner may:

- (1) Issue an order in accordance with subsection b. of this section requiring the person to comply;
- (2) Bring a civil action in accordance with subsection c. of this section;
- (3) Levy a civil administrative penalty in accordance with subsection d. of this section;
- (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.

The exercise of any of the remedies provided in this section shall not preclude recourse to any other remedy so provided.

b. Whenever, on the basis of available information, the commissioner finds that a person is in violation of any of the provisions of P.L.1981, c.262, or any rule or regulation adopted, or permit or order issued pursuant thereto, the commissioner may issue an order: (1) specifying the provision or provisions of P.L.1981, c.262, or the rule or regulation adopted, or order or permit issued pursuant thereto, of which the person is in violation; (2) citing the action that constituted the violation; (3) requiring compliance with the provision of P.L.1981, c.262, or the rule or regulation adopted, or order or permit issued pursuant thereto, of which the person is in violation; (4) requiring the restoration to address any adverse effects resulting from the violation; and (5) giving notice to the person of a 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 from a violation of the provisions of P.L.1981, c.262, or any rule or regulation adopted, or permit or order issued pursuant thereto. This relief may include, singly or in combination:

(1) A temporary or permanent injunction;

(2) Recovery of reasonable costs of any investigation, inspection, sampling or monitoring survey that led to the discovery of the violation, and for the reasonable costs of preparing and bringing a civil action commenced under this subsection;

(3) Recovery of reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects resulting from any violation of P.L.1981, c.262 for which a civil action has been commenced and brought under this subsection;

(4) An order requiring the restoration of any adverse effects resulting from any unauthorized regulated activity for which a civil action is commenced under this subsection.

d. The commissioner is authorized to assess a civil administrative penalty of not more than \$25,000 for each violation of the provisions of P.L.1981, c.262, or any rule or regulation adopted, or permit or order issued pursuant thereto, and each day during which each 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, duration, and conduct; provided, however, that prior to the adoption of the regulation, the commissioner may, on a case-by-case basis, assess civil administrative penalties up to a maximum of \$25,000 per day for each violation, utilizing the criteria set forth herein. In addition to any administrative penalty assessed under this subsection and notwithstanding the \$25,000 maximum penalty set forth above, the commissioner may assess any economic benefits from the violation gained by the violator. Prior to assessment of a penalty under this subsection, the property owner or person committing the violation shall be notified by certified mail or personal service that the penalty is being assessed. The notice shall include a reference to the section of the statute, regulation, or order or permit condition violated; recite the facts alleged to constitute a violation; state the basis for the amount of the civil penalties to be assessed; and affirm the rights of the alleged violator to a hearing. The ordered party shall have 35 calendar 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, the notice shall become a final order after the expiration of the 35-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The authority to levy an administrative order is in addition to all other enforcement provisions in P.L.1981, c.262, 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. The department may compromise any civil administrative penalty assessed under this section in an amount and with conditions the department determines appropriate. A civil administrative penalty assessed, including a portion thereof required to be paid pursuant to a payment schedule approved by the department, which is not paid within 90 days of the date that payment of the penalty is due, shall be subject to an interest charge on the amount of the penalty, or portion thereof, which shall accrue as of the date payment is due. If the penalty is contested, no additional interest charge shall accrue on the amount of the penalty until after the date on which a final order is issued. Interest charges assessed and collectible pursuant to this subsection shall be based on the rate of interest on judgments provided in the New Jersey Rules of Court.

e. Any person who violates any provision of P.L.1981, c.262, or any rule or regulation adopted, or permit or order issued pursuant thereto, or an order issued pursuant to subsection b. of this section, or a court order issued pursuant to subsection c. of this section, or who fails to pay in full a civil administrative penalty levied pursuant to subsection d. of this section, or who fails to make a payment pursuant to a penalty payment schedule entered into with the department, or who knowingly makes any false or misleading statement on any application, record, report, or other document required to be submitted to the department, shall be subject, upon order of a court, to a civil penalty not to exceed \$25,000 for each day during which the violation continues. Any civil penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any penalties, costs or interest charges, the court may assess against the violator the amount of economic benefit accruing to the violator from the violation. The Superior Court shall have jurisdiction to enforce the provisions of the "Penalty Enforcement Law of 1999" in connection with this act.

f. A person who purposely, knowingly or recklessly violates any provision of P.L.1981, c.262, or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, 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 \$50,000 per day of violation, or by imprisonment, or both. A person who purposely, knowingly, or recklessly makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under any provision of P.L.1981, c.262, or any rule or regulation adopted, or permit or order issued pursuant thereto, or who falsifies, tampers with or purposely, knowingly, or recklessly renders inaccurate, any monitoring device or method required to be maintained pursuant to the provisions of P.L.1981, c.262, or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, 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 more than \$50,000 per day of violation, or by imprisonment, or both.

g. Each applicant or permittee shall provide, upon the request of the department, any information the department requires to determine compliance with the provisions of P.L.1981, c.262, or any rule or regulation adopted, or permit or order issued pursuant thereto.

9. R.S.58:4-6 is amended to read as follows:

Enforcement powers of department, civil, criminal; violations, penalties.

58:4-6. a. Whenever, on the basis of available information, the Commissioner of Environmental Protection finds that a person has violated any provision of the "Safe Dam Act," P.L.1981, c.249 (C.58:4-8.1 et al.), or any rule or regulation adopted, or permit or order issued pursuant thereto, the commissioner may:

- (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.

Recourse to any of the remedies available under this section shall not preclude recourse to any of the other remedies prescribed in this section or by any other applicable law.

b. Whenever, on the basis of available information, the commissioner finds a person in violation of any provision of P.L.1981, c.249, or any rule or regulation adopted, or permit or order issued pursuant thereto, the commissioner may issue an administrative order: (1) specifying the provision or provisions of the law, rule, regulation, permit or order, of which the person is in violation; (2) citing the action which constituted the violation; (3) requiring compliance with the provision or provisions violated; (4) requiring the restoration of the area which is the site of the violation; and (5) providing notice to the person of the right to a hearing on the matters contained in the order.

c. The commissioner is authorized to institute a civil action in Superior Court for appropriate relief from any violation of any provision of P.L.1981, c.249, or any rule or regulation adopted, or permit or order issued pursuant thereto. Such relief may include, singly or in combination:

(1) A temporary or permanent injunction, including an order or judgment as will effectually secure the persons interested from danger of loss from the breaking of a dam. The court may proceed in the action in a summary manner or otherwise;

(2) Recovery of the reasonable costs of any investigation, inspection, or monitoring survey which led to the discovery of the violation, and for the reasonable costs of preparing and bringing a civil action commenced under this subsection;

(3) Recovery of reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects resulting from any violation for which a civil action has been commenced and brought under this subsection;

(4) Recovery of compensatory damages for any loss or destruction of natural resources, including but not limited to, wildlife, fish, aquatic life, habitat, plants, or historic or archeological resources, and for any other actual damages caused by a violation for which a civil action has been commenced and brought under this subsection. Assessments under this subsection shall be paid to the "Environmental Services Fund," established pursuant to section 5 of P.L.1975, c.232 (C.13:1D-33), and kept separate from other receipts deposited therein, and appropriated to the department for the removal of dams in the State, except that compensatory damages to privately held resources shall be paid by specific order of the court to any persons who have been aggrieved by the unauthorized regulated activity;

(5) An order requiring the violator restore the site of the violation to the maximum extent practicable and feasible or, in the event that restoration of the site of the violation is not practicable or feasible, provide for off-site restoration alternatives as approved by the department.

d. The commissioner is authorized to assess a civil administrative penalty of not more than \$25,000 for each violation of any provision of P.L.1981, c.249, or any rule or regulation adopted, or permit or order issued pursuant thereto, and each day during which each 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, duration, and conduct; provided, however, that prior to adoption of the regulation, the commissioner may, on a case-by-case basis, assess civil administrative penalties up to a maximum of \$25,000 per day for each violation, utilizing the criteria set forth herein. In addition to any administrative penalty to be assessed under this subsection, and notwithstanding the \$25,000 maximum penalty set forth above, the commissioner may assess any economic benefits from the violation gained by the violator. Prior to assessment of a penalty under this subsection, the property owner or person committing the violation shall be notified by certified mail or personal service that the penalty is being assessed. The notice shall: (1) identify the section of the law, rule,

regulation, permit or order violated; (2) recite the facts alleged to constitute a violation; (3) state the basis for the amount of the civil penalties to be assessed; and (4) affirm the rights of the alleged violator to a hearing. The ordered party shall have 35 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 specifying the amount of the fine imposed. If no hearing is requested, the notice shall become final after the expiration of the 35-day period. Payment of the assessment is due when a final order is issued or the notice becomes a final order. The authority to levy an administrative penalty is in addition to all other enforcement provisions in this act and in any other applicable law, rule, or regulation, 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. The department may compromise any civil administrative penalty assessed under this section in an amount and with conditions the department determines appropriate. A civil administrative penalty assessed, including a portion thereof required to be paid pursuant to a payment schedule approved by the department, which is not paid within 90 days of the date that payment of the penalty is due, shall be subject to an interest charge on the amount of the penalty, or portion thereof, which shall accrue as of the date payment is due. If the penalty is contested, no additional interest charge shall accrue on the amount of the penalty until after the date on which a final order is issued. Interest charges assessed and collectible pursuant to this subsection shall be based on the rate of interest on judgments provided in the New Jersey Rules of Court.

e. A person who violates any provision of P.L.1981, c.249 or any rule or regulation adopted, or permit or order issued pursuant thereto, or an administrative order issued pursuant to subsection b. of this section, or a court order issued pursuant to subsection c. of this section, or who fails to pay a civil administrative penalty in full pursuant to subsection d. of this section, or who fails to make a payment pursuant to a penalty payment schedule entered into with the department, or who knowingly makes any false or misleading statement on any application, record, report, or other document required to be submitted to the department, shall be subject, upon order of a court, to a civil penalty not to exceed \$25,000 per day of the violation, and each day during which the violation continues shall constitute an additional, separate, and distinct offense. Any civil penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any penalties, costs or interest charges, the court may assess against the violator the amount of economic benefit accruing to the violator from the violation. The Superior Court and the municipal court shall have jurisdiction to enforce the provisions of the "Penalty Enforcement Law of 1999" in connection with this section.

f. A person who purposely, knowingly or recklessly violates any provision of P.L.1981, c.249, or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, of a crime of the third degree and, notwithstanding any provision of N.J.S.2C:43-3 to the contrary, shall be subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment, or both, in addition to any other applicable penalties and provisions under Title 2C of the New Jersey Statutes. A person who purposely, knowingly, or recklessly makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under the provisions of P.L.1981, c.249, or any rule or regulation adopted, or permit or order issued pursuant thereto, or who falsifies, tampers with or purposely, knowingly, or recklessly renders inaccurate, any monitoring device or method required to be maintained pursuant to the

provisions of P.L.1981, c.249, or of any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, of a crime of the third degree and, notwithstanding any provision of N.J.S.2C:43-3 to the contrary, shall be subject to a fine of not more than \$50,000, or by imprisonment, or both, in addition to any other applicable penalties and provisions under Title 2C of the New Jersey Statutes.

g. In addition to the penalties prescribed in this section, the commissioner may record a notice for a violation of any provision of P.L.1981, c.249, or any rule or regulation adopted, or permit or order issued pursuant thereto, which shall be recorded on the deed of the property wherein the violation occurred, on order of the commissioner, by the clerk or register of deeds and mortgages of the county wherein the affected property is located and shall remain attached thereto until such time as the violation has been remedied and the commissioner orders the notice of violation removed. Any fees or other charges that are assessed by either the clerk or register of deeds and mortgages of the county wherein the affected property is located or the department for the recording of the notice of violation on the deed required pursuant to this subsection shall be paid by the owner of the affected property or the person committing the violation. The commissioner shall immediately order the notice removed once the violation is remedied or upon conditions set by the commissioner.

h. Each owner or person having control of a reservoir or dam shall provide, upon request of the department, any information the department requires to determine compliance with any provision of P.L.1981, c.249, or any rule or regulation adopted, or permit or order issued pursuant thereto.

i. (Deleted by amendment, P.L.2007, c.246).

j. All penalties collected pursuant to this section or sums collected pursuant to R.S.58:4-5 shall be deposited in the "Environmental Services Fund," established pursuant to section 5 of P.L.1975, c.232 (C.13:1D-33), and kept separate from other receipts deposited therein, and appropriated to the department for the removal of dams in the State.

k. The department shall have the authority to enter any property, facility, premises, or site for the purpose of conducting inspections to determine the condition of any dam, or to conduct inspections of ordered repairs or to otherwise determine compliance with the provisions of P.L.1981, c.249.

10. Section 12 of P.L.1972, c.185 (C.58:16A-63) is amended to read as follows:

C.58:16A-63 Violations of act; remedies.

12. a. Whenever, on the basis of available information, the commissioner finds that a person is in violation of any provision of the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation adopted, or permit or order issued pursuant thereto, the commissioner may:

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

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

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

(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.

Recourse to any of the remedies available under this section shall not preclude recourse to any of the other remedies.

b. Whenever, on the basis of available information, the commissioner finds that a person is in violation of any provision of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation adopted, or permit or order issued pursuant thereto, the commissioner may issue an administrative enforcement order: (1) specifying the provision or provisions of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation adopted, or permit or order issued pursuant thereto, of which the person is in violation; (2) citing the action which constituted the violation; (3) requiring compliance with the provision or provisions violated; (4) requiring the restoration of the area which is the site of the violation; and (5) providing notice to the person of the right to a hearing on the matters contained in the administrative enforcement order.

c. The commissioner is authorized to institute a civil action in Superior Court for appropriate relief from any violation of the provisions of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation adopted, or permit or order issued pursuant thereto. Such relief may include, singly or in combination:

(1) A temporary or permanent injunction;

(2) Recovery of reasonable costs of any investigation, inspection, or monitoring survey which led to the discovery of the violation, and for the reasonable costs of preparing and bringing a civil action commenced under this subsection;

(3) Recovery of reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects resulting from any violation of the provisions of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation adopted, or permit or order issued pursuant thereto, for which a civil action has been commenced and brought under this subsection;

(4) Recovery of compensatory damages for any loss or destruction of natural resources, including but not limited to, wildlife, fish, aquatic life, habitat, plants, or historic or archeological resources, and for any other actual damages caused by a violation of the provisions of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation adopted, or permit or order issued pursuant thereto for which a civil action has been commenced and brought under this subsection. Assessments under this subsection shall be paid to the State Treasurer;

(5) An order requiring the violator restore the site of the violation to the maximum extent practicable and feasible or, in the event that restoration of the site of the violation is not practicable or feasible, provide for off-site restoration alternatives as approved by the department.

d. The commissioner is authorized to assess a civil administrative penalty of not more than \$25,000 for each violation of the provisions of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation adopted, or permit or order issued pursuant thereto, and each day during which each 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, duration, and conduct; provided, however, that prior to the adoption of the regulation, the commissioner may, on a case-by-case basis, assess civil administrative penalties up to a maximum of \$25,000 per day for each violation, utilizing the criteria set forth herein. In addition to any administrative penalty assessed under this subsection, and notwithstanding the \$25,000 maximum penalty set forth above, the commissioner may assess any economic benefits from the violation gained by the violator. Prior to assessment of a penalty under this subsection, the property owner or person committing the violation shall be notified by certified mail or personal service that the penalty is being assessed. The notice

shall include a reference to the section of the statute, regulation, order or permit condition violated; recite the facts alleged to constitute a violation; state the basis for the amount of the civil penalties to be assessed; and affirm the rights of the alleged violator to a hearing. The ordered party shall have 35 calendar 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 administrative enforcement order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final administrative enforcement order after the expiration of the 35-day period. Payment of the assessment is due when a final administrative enforcement order is issued or the notice becomes a final administrative enforcement order. The authority to levy a civil administrative order is in addition to all other enforcement provisions in P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation adopted, or permit or order issued pursuant thereto, 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. The department may compromise any civil administrative penalty assessed under this section in an amount and with conditions the department determines appropriate. A civil administrative penalty assessed, including a portion thereof required to be paid pursuant to a payment schedule approved by the department, which is not paid within 90 days of the date that payment of the penalty is due, shall be subject to an interest charge on the amount of the penalty, or portion thereof, which shall accrue as of the date payment is due. If the penalty is contested, no additional interest charge shall accrue on the amount of the penalty until after the date on which a final order is issued. Interest charges assessed and collectible pursuant to this subsection shall be based on the rate of interest on judgments provided in the New Jersey Rules of Court.

e. A person who violates any provision of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation adopted, or permit or order issued pursuant thereto, or an administrative order issued pursuant to subsection b. of this section, or a court order issued pursuant to subsection c. of this section, or who fails to pay a civil administrative penalty in full pursuant to subsection d. of this section, or who fails to make a payment pursuant to a penalty payment schedule entered into with the department, or who knowingly makes any false or misleading statement on any application, record, report, or other document required to be submitted to the department, shall be subject, upon order of a court, to a civil penalty not to exceed \$25,000 per day of the violation, and each day during which the violation continues shall constitute an additional, separate, and distinct offense. Any civil penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any penalties, costs or interest charges, the court may assess against the violator the amount of economic benefit accruing to the violator from the violation. The Superior Court shall have jurisdiction to enforce the provisions of the "Penalty Enforcement Law of 1999" in connection with this act.

f. A person who purposely, knowingly or recklessly violates any provision of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, 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 \$50,000 per day of violation, or by imprisonment, or both. A person who purposely, knowingly, or recklessly makes a false statement, representation, or certification in any application, record, or other document filed

or required to be maintained under any provision of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation adopted, or permit or order issued pursuant thereto, or who falsifies, tampers with or purposely, knowingly, or recklessly renders inaccurate, any monitoring device or method required to be maintained pursuant to P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, 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 more than \$50,000 per day of violation, or by imprisonment, or both.

g. In addition to the penalties prescribed in this section, the commissioner may record a notice for a violation of any provision of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation adopted, or permit or order issued pursuant thereto, which shall be recorded on the deed of the property wherein the violation occurred, on order of the commissioner, by the clerk or register of deeds and mortgages of the county wherein the affected property is located and shall remain attached thereto until such time as the violation has been remedied and the commissioner orders the notice of violation removed. Any fees or other charges that are assessed by either the clerk or register of deeds and mortgages of the county wherein the affected property is located or the department for the recording of the notice of violation on the deed required pursuant to this subsection shall be paid by the owner of the affected property or person committing the violation. The commissioner shall immediately order the notice removed once the violation is remedied or upon conditions set forth by the commissioner.

h. Each applicant or permittee shall provide, upon the request of the department, any information the department requires to determine compliance with the provisions of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation adopted, or permit or order issued pursuant thereto.

11. Section 10 of P.L.1977, c.224 (C.58:12A-10) is amended to read as follows:

C.58:12A-10 Violations; remedies.

10. a. Whenever, on the basis of available information, the commissioner finds that a person is in violation of any provision of the "Safe Drinking Water Act," P.L.1977, c.224 (C.58:12A-1 et al.), or any rule or regulation adopted, or permit or order issued pursuant thereto, the commissioner may:

- (1) Issue an administrative enforcement order requiring any such person to comply in accordance with subsection b. of this section;
- (2) Bring a civil action in accordance with subsection c. of this section;
- (3) Levy a civil administrative penalty in accordance with subsection d. of this section;
- (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.

Recourse to any of the remedies available under this section shall not preclude recourse to any of the other remedies.

b. Whenever, on the basis of available information, the commissioner finds that a person is in violation of any provision of P.L.1977, c.224, or any rule or regulation adopted, or permit or order issued pursuant thereto, the commissioner may issue an administrative enforcement order: (1) specifying the provision or provisions of P.L.1977, c.224, or any rule or regulation adopted, or permit or order issued pursuant thereto, of which the person is in

violation; (2) citing the action which constituted the violation; (3) requiring compliance with the provision or provisions violated; (4) requiring the restoration of the area which is the site of the violation; and (5) providing notice to the person of the right to a hearing on the matters contained in the administrative enforcement order.

c. The commissioner is authorized to institute a civil action in Superior Court for appropriate relief from any violation of the provisions of P.L.1977, c.224, or any rule or regulation adopted, or permit or order issued pursuant thereto. Such relief may include, singly or in combination:

(1) A temporary or permanent injunction;

(2) Recovery of reasonable costs of any investigation, inspection, or monitoring survey which led to the discovery of the violation, and for the reasonable costs of preparing and bringing a civil action commenced under this subsection;

(3) Recovery of reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects resulting from any violation of the provisions of P.L.1977, c.224, or any rule or regulation adopted, or permit or order issued pursuant thereto, for which a civil action has been commenced and brought under this subsection;

(4) An order requiring the violator restore the site of the violation to the maximum extent practicable and feasible or, in the event that restoration of the site of the violation is not practicable or feasible, provide for off-site restoration alternatives as approved by the department.

d. The commissioner is authorized to assess a civil administrative penalty of not more than \$25,000 for each violation of the provisions of P.L.1977, c.224, or any rule or regulation adopted, or permit or order issued pursuant thereto, and each day during which each 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, duration and conduct; provided, however, that prior to the adoption of the regulation, the commissioner may, on a case-by-case basis, assess civil administrative penalties up to a maximum of \$25,000 per day for each violation, utilizing the criteria set forth herein. In addition to any administrative penalty assessed under this subsection, and notwithstanding the \$25,000 maximum penalty set forth above, the commissioner may assess any economic benefits from the violation gained by the violator. Prior to assessment of a penalty under this subsection, the property owner or person committing the violation shall be notified by certified mail or personal service that the penalty is being assessed. The notice shall include a reference to the section of the statute, regulation, order or permit condition violated; recite the facts alleged to constitute a violation; state the basis for the amount of the civil penalties to be assessed; and affirm the rights of the alleged violator to a hearing. The ordered party shall have 35 calendar 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 administrative enforcement order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final administrative enforcement order after the expiration of the 35-day period. Payment of the assessment is due when a final administrative enforcement order is issued or the notice becomes a final administrative enforcement order. The authority to levy a civil administrative order is in addition to all other enforcement provisions in P.L.1977, c.224, or any rule or regulation adopted, or permit or order issued pursuant thereto, 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. The

department may compromise any civil administrative penalty assessed under this section in an amount and with conditions the department determines appropriate. A civil administrative penalty assessed, including a portion thereof required to be paid pursuant to a payment schedule approved by the department, which is not paid within 90 days of the date that payment of the penalty is due, shall be subject to an interest charge on the amount of the penalty, or portion thereof, which shall accrue as of the date payment is due. If the penalty is contested, no additional interest charge shall accrue on the amount of the penalty until after the date on which a final order is issued. Interest charges assessed and collectible pursuant to this subsection shall be based on the rate of interest on judgments provided in the New Jersey Rules of Court.

e. A person who violates any provision of P.L.1977, c.224, or any rule or regulation adopted, or permit or order issued pursuant thereto, or an administrative order issued pursuant to subsection b. of this section, or a court order issued pursuant to subsection c. of this section, or who fails to pay a civil administrative penalty in full pursuant to subsection d. of this section, or who fails to make a payment pursuant to a penalty payment schedule entered into with the department, or who knowingly makes any false or misleading statement on any application, record, report, or other document required to be submitted to the department, shall be subject, upon order of a court, to a civil penalty not to exceed \$25,000 per day of the violation, and each day during which the violation continues shall constitute an additional, separate, and distinct offense. Any civil penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any penalties, costs or interest charges, the court may assess against the violator the amount of economic benefit accruing to the violator from the violation. The Superior Court shall have jurisdiction to enforce the provisions of the "Penalty Enforcement Law of 1999" in connection with this act.

f. A person who purposely, knowingly or recklessly violates any provision of P.L.1977, c.224, or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, 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 \$50,000 per day of violation, or by imprisonment, or both. A person who purposely, knowingly, or recklessly makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under any provision of P.L.1977, c.224, or any rule or regulation adopted, or permit or order issued pursuant thereto, or who falsifies, tampers with or purposely, knowingly, or recklessly renders inaccurate, any monitoring device or method required to be maintained pursuant to P.L.1977, c.224, or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, 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 more than \$50,000 per day of violation, or by imprisonment, or both.

g. Each applicant or permittee shall provide, upon the request of the department, any information the department requires to determine compliance with the provisions of P.L.1977, c.224, or any rule or regulation adopted, or permit or order issued pursuant thereto.

12. This act shall take effect immediately.

Approved January 4, 2008.