

CHAPTER 282

AN ACT concerning medical waste and ocean pollution penalties, amending P.L.1989, c.34, and supplementing P.L.1988, c.61 (C.58:10A-47 et seq.).

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

1. Section 20 of P.L.1989, c.34 (C.13:1E-48.20) is amended to read as follows:

C.13:1E-48.20 Enforcement.

20. a. This act, and any rule or regulation adopted pursuant thereto, shall be enforced by the departments and by every local board of health, or county health department, as the case may be.

The departments and the local board of health, or the county health department, as the case may be, shall have the right to enter the premises of a generator, transporter, or facility at any time in order to determine compliance with this act.

The municipal attorney or an attorney retained by a municipality in which a violation of this act is alleged to have occurred shall act as counsel to a local board of health.

The county counsel or an attorney retained by a county in which a violation of this act is alleged to have occurred shall act as counsel to the county health department.

All enforcement activities undertaken by county health departments pursuant to this subsection shall conform to all applicable performance and administrative standards adopted pursuant to section 10 of the "County Environmental Health Act," P.L.1977, c.443 (C.26:3A2-28).

b. Whenever the Commissioner of Environmental Protection or the Commissioner of Health and Senior Services finds that a person has violated this act, or any rule or regulation adopted pursuant thereto, that commissioner shall:

- (1) issue an order requiring the person found to be in violation to comply in accordance with subsection c. of this section;
- (2) bring a civil action in accordance with subsection d. of this section;
- (3) levy a civil administrative penalty in accordance with subsection e. of this section;
- (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 subsections g. through j. of this section.

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

c. Whenever the Commissioner of Environmental Protection or the Commissioner of Health and Senior Services finds that a person has violated this act, or any rule or regulation adopted pursuant thereto, that commissioner may issue an order specifying the provision or provisions of this act, or the rule or regulation adopted pursuant thereto, of which the person is in violation, citing the action that constituted the violation, ordering abatement of the violation, and giving notice to the person of the person's right to a hearing on the matters contained in the order. The ordered party shall have 20 days from receipt of the order 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. If no hearing is requested, the order shall become final after the expiration of the 20-day period. A request for hearing shall not automatically stay the effect of the order.

d. The Commissioner of Environmental Protection, the Commissioner of Health and Senior Services, a local board of health, or a county health department may institute an action or proceeding in the Superior Court for injunctive and other relief, including the

appointment of a receiver for any violation of this act, or of any rule or regulation adopted pursuant thereto, and the court may proceed in the action in a summary manner. In any such proceeding the court may grant temporary or interlocutory relief.

Such relief may include, singly or in combination:

- (1) a temporary or permanent injunction;
- (2) assessment of the violator for the costs of any investigation, inspection, or monitoring survey that led to the establishment of the violation, and for the reasonable costs of preparing and litigating the case under this subsection;
- (3) assessment of the violator for any cost incurred by the State in removing, correcting, or terminating the adverse effects upon environmental quality or public health resulting from any violation of this act, or any rule or regulation adopted pursuant thereto, for which the action under this subsection may have been brought;
- (4) assessment against the violator of compensatory damages for any loss or destruction of wildlife, fish or aquatic life, and for any other actual damages caused by any violation of this act, or any rule or regulation adopted pursuant thereto, for which the action under this subsection may have been brought; and
- (5) assessment against the violator of the actual amount of any economic benefits accruing to the violator from a violation. Economic benefits may include the amount of any savings realized from avoided capital or noncapital costs resulting from the violation; the return earned or that may be earned on the amount of avoided costs; any benefits accruing to the violator as a result of a competitive market advantage enjoyed by reason of the violation; or any other benefits resulting from the violation.

Assessments under this subsection shall be paid to the State Treasurer, or to the local board of health, or to the county health department, as the case may be, except that compensatory damages may be paid by specific order of the court to any persons who have been aggrieved by the violation.

If a proceeding is instituted by a local board of health or county health department, notice thereof shall be served upon the commissioners in the same manner as if the commissioners were named parties to the action or proceeding. Either of the departments may intervene as a matter of right in any proceeding brought by a local board of health or county health department.

e. Either of the commissioners, as the case may be, may assess a civil administrative penalty of not more than \$100,000 for each violation. Each day that a violation continues shall constitute an additional, separate, and distinct offense. A commissioner may not assess a civil administrative penalty in excess of \$25,000 for a single violation, or in excess of \$2,500 for each day during which a violation continues, until the departments have respectively adopted, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), regulations requiring the appropriate commissioner, in assessing a civil administrative penalty, to consider the operational history of the violator, the severity of the violation, the measures taken to mitigate or prevent further violations, and whether the penalty will maintain an appropriate deterrent. No assessment may be levied pursuant to this section until after the violator has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, regulation, or order violated, a concise statement of the facts alleged to constitute a violation, a statement of the amount of the civil administrative penalties to be imposed, and a statement of the party's right to a hearing. The ordered party shall have 20 calendar days from receipt of the notice within which to deliver to the appropriate commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, that 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 20-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 a civil administrative penalty is in addition to all other enforcement provisions in this act, and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. Each department may compromise any civil administrative penalty assessed under this section in an amount the department determines appropriate.

f. A person who violates this act, or any rule or regulation adopted pursuant thereto, shall be liable for a penalty of not more than \$100,000 per day for each violation, to be collected in a civil action commenced by the Commissioner of Environmental Protection, the Commissioner of Health and Senior Services, a local board of health, or a county health department.

A person who violates 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 an administrative assessment in full pursuant to subsection e. of this section is subject upon order of a court to a civil penalty not to exceed \$200,000 per day for each violation.

Of the penalty imposed pursuant to this subsection, 10% or \$250, whichever is greater, shall be paid to the appropriate department from the General Fund if the Attorney General determines that a person is entitled to a reward pursuant to section 24 of this act.

Any 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 and the municipal court shall have jurisdiction to enforce the provisions of the "Penalty Enforcement Law of 1999" in connection with this act.

g. A person who purposely or knowingly:

(1) disposes or stores regulated medical waste without authorization from either the Department of Environmental Protection or the Department of Health and Senior Services, as appropriate, or in violation of this act, or any rule or regulation adopted pursuant thereto;

(2) makes any false or misleading statement to any person who prepares any regulated medical waste application, registration, form, label, certification, manifest, record, report, or other document required by this act, or any rule or regulation adopted pursuant thereto;

(3) makes any false or misleading statement on any regulated medical waste application, registration, form, label, certification, manifest, record, report, or other document required by this act, or any rule or regulation adopted pursuant thereto; or

(4) fails to properly treat certain types of regulated medical waste designated by the Department of Health and Senior Services in a prescribed manner; shall, upon conviction, be guilty of a crime of the third degree and, notwithstanding the provisions of N.J.S.2C:43-3, shall be subject to a fine of not more than \$100,000 for the first offense, and not more than \$200,000 for each subsequent offense, and restitution, in addition to any other appropriate disposition authorized by subsection b. of N.J.S.2C:43-2.

h. A person who recklessly or negligently:

(1) disposes or stores regulated medical waste without authorization from either the Department of Environmental Protection or the Department of Health and Senior Services, as appropriate, or in violation of this act, or any rule or regulation adopted pursuant thereto;

(2) makes any false or misleading statement to any person who prepares any regulated medical waste application, registration, form, label, certification, manifest, record, report, or other document required by this act, or any rule or regulation adopted pursuant thereto;

(3) makes any false or misleading statement on any regulated medical waste application, registration, form, label, certification, manifest, record, report, or other document required by this act, or any rule or regulation adopted pursuant thereto; or

(4) fails to properly treat certain types of regulated medical waste designated by the Department of Health and Senior Services in a manner prescribed thereby; shall, upon conviction, be guilty of a crime of the fourth degree.

i. A person who, regardless of intent:

(1) transports any regulated medical waste to a facility or any other place in the State that does not have authorization from the Department of Environmental Protection to accept such waste, or in violation of this act, or any rule or regulation adopted pursuant thereto; or

(2) transports, or receives transported, regulated medical waste without completing and submitting a manifest in accordance with this act, or any rule or regulation adopted pursuant thereto; shall, upon conviction, be guilty of a crime of the fourth degree.

j. A person who purposely, knowingly, or recklessly:

(1) generates and causes or permits to be transported any regulated medical waste to a facility or any other place in the State that does not have authorization from the Department of Environmental Protection to accept such waste, or in violation of this act, or any rule or regulation adopted pursuant thereto; or

(2) violates any other provision of this act, or any rule or regulation adopted pursuant thereto, for which no other criminal penalty has been specifically provided for; shall, upon conviction, be guilty of a crime of the fourth degree.

k. All conveyances used or intended for use in the willful discharge, in violation of this act, or any rule or regulation adopted pursuant thereto, of regulated medical waste are subject to forfeiture to the State pursuant to P.L.1981, c.387 (C.13:1K-1 et seq.).

l. (Deleted by amendment, P.L.1997, c.325.)

m. No prosecution for a violation under this act shall be deemed to preclude a prosecution for the violation of any other applicable statute.

C.58:10A-48.1 Dumping material in ocean prohibited.

2. No person may intentionally dump any material into the ocean waters within the jurisdiction of this State, or into the waters outside the jurisdiction of this State, which material enters the ocean waters within the jurisdiction of this State.

C.58:10A-49.1 Actions by commissioner.

3. a. Whenever the Commissioner of Environmental Protection finds that a person has intentionally dumped material into the ocean waters within the jurisdiction of this State, or into the waters outside the jurisdiction of this State, which material enters the ocean waters within the jurisdiction of this State, the commissioner shall:

(1) bring a civil action in accordance with subsection b. of this section;

(2) levy a civil administrative penalty in accordance with subsection c. of this section;

(3) bring an action for a civil penalty in accordance with subsection d. of this section; or

(4) petition the Attorney General to bring a criminal action in accordance with section 3 of P.L.1988, c.61 (C.58:10A-49).

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

b. The commissioner may institute an action or proceeding in the Superior Court for injunctive and other relief, including the appointment of a receiver for any violation of P.L.1988, c.61 (C.58:10A-47 et seq.), or of any rule or regulation adopted pursuant thereto,

and the court may proceed in the action in a summary manner. In any such proceeding the court may grant temporary or interlocutory relief.

Such relief may include, singly or in combination:

- (1) a temporary or permanent injunction;
- (2) assessment of the violator for the costs of any investigation, inspection, or monitoring survey that led to the establishment of the violation, and for the reasonable costs of preparing and litigating the case under this subsection;
- (3) assessment of the violator for any cost incurred by the State in removing, correcting, or terminating the adverse effects upon environmental quality or public health resulting from any violation of P.L.1988, c.61 (C.58:10A-47 et seq.), or any rule or regulation adopted pursuant thereto, for which the action under this subsection may have been brought;
- (4) assessment against the violator of compensatory damages for any loss or destruction of wildlife, fish or aquatic life, and for any other actual damages caused by any violation of P.L.1988, c.61 (C.58:10A-47 et seq.), or any rule or regulation adopted pursuant thereto, for which the action under this subsection may have been brought; and
- (5) assessment against the violator of the actual amount of any economic benefits accruing to the violator from a violation. Economic benefits may include the amount of any savings realized from avoided capital or noncapital costs resulting from the violation; the return earned or that may be earned on the amount of avoided costs; any benefits accruing to the violator as a result of a competitive market advantage enjoyed by reason of the violation; or any other benefits resulting from the violation.

Assessments under this subsection shall be paid to the State Treasurer, except that compensatory damages may be paid by specific order of the court to any persons who have been aggrieved by the violation.

c. The commissioner may assess a civil administrative penalty of not more than \$100,000 for each violation. Each day that a violation continues shall constitute an additional, separate, and distinct offense. No assessment may be levied pursuant to this section until after the violator has been notified by certified mail or personal service. The notice shall include a reference to the section of the statute, rule, regulation, or order violated, a concise statement of the facts alleged to constitute a violation, a statement of the amount of the civil administrative penalties to be imposed, and a statement of the party's right to a hearing. The ordered party shall have 20 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 20-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 a civil administrative penalty is in addition to all other enforcement provisions in P.L.1988, c.61 (C.58:10A-47 et seq.), 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.

d. A person who violates P.L.1988, c.61 (C.58:10A-47 et seq.), or any rule or regulation adopted pursuant thereto, shall be liable for a penalty of not more than \$100,000 per day for each violation, to be collected in a civil action commenced by the Commissioner of Environmental Protection.

A person who violates a court order issued pursuant to subsection b. of this section or who fails to pay an administrative assessment in full pursuant to subsection c. of this section is

subject upon order of a court to a civil penalty not to exceed \$100,000 per day for each violation.

Any 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 and the municipal court shall have jurisdiction to enforce the provisions of the "Penalty Enforcement Law of 1999" in connection with P.L.1988, c.61 (C.58:10A-47 et seq.).

4. This act shall take effect immediately.

Approved January 17, 2010.