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ENVIRONMENTAL PROTECTION COMPLIANCE AND ENFORCEMENT

Penalty Reductions for Self-Disclosure of Violations

Proposed New Rules: N.J.A.C. 7:33

Authorized by: Bradley M. Campbell, Commissioner
Department of Environmental Protection

Authority: N.J.S.A. 12:5-1, N.J.S.A. 13:1D-1 et seq., N.J.S.A. 13:1D-9, N.J.S.A. 13:1D-130, N.J.S.A. 13:1E-1 et seq., N.J.S.A. 13:1E-48.1 et seq., N.J.S.A. 13:1F-1 et seq., N.J.S.A. 13:1G-1 et seq., N.J.S.A. 13:1K-6 et seq., N.J.S.A. 13:1K-19 et seq., N.J.S.A. 13:9A-1 et seq., N.J.S.A. 13:9B-1 et seq., N.J.S.A. 13:19-1 et seq., N.J.S.A. 23:2A-1 et seq., N.J.S.A. 23:2B-1 et seq., N.J.S.A. 23:3-1 et seq., N.J.S.A. 23:4-1 et seq., N.J.S.A. 26:2C-1 et seq., N.J.S.A. 26:2D-1 et seq., N.J.S.A. 34:5A-1 et seq., N.J.S.A. 48:13A-1 et seq., N.J.S.A. 58:1A-1 et seq., N.J.S.A. 58:4A-4.1, N.J.S.A. 58:10-23.11 et seq., N.J.S.A. 58:10A-1 et seq., N.J.S.A. 58:10A-21 et seq., N.J.S.A. 58:11-9.1, N.J.S.A. 58:11-23 et seq., N.J.S.A. 58:12A-1 et seq., and N.J.S.A. 58:16A-1.

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Calendar Reference: See Summary below for explanation of exception to calendar requirement.

DEP Docket Number: 16-03-07/363

Proposal Number: PRN 2003-

A public hearing concerning this proposal will be held on Monday, September 29, 2003 at 10:00 a.m. at the following location:

Public Hearing Room
Department of Environmental Protection
401 East State Street, 1st Floor
Trenton, New Jersey

Submit written comments by October 16, 2003 to:

Alice Previte
Attn: DEP Docket Number 16-03-07/363
Office of Legal Affairs
Department of Environmental Protection
PO Box 402
Trenton, NJ 08625-0402

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The Department strongly recommends that commenters submit comments on 3 ½ inch diskettes as well as on paper. The Department prefers Microsoft Word 6.0 or above. MacIntosh formats should not be used. In addition, the Department requests that anyone planning to give oral testimony at the public hearing be prepared to give a written transcript of the comments to the stenographer at the hearing.

The proposal can be viewed or downloaded on the Compliance and Enforcement Website at <http://www.state.nj.us/dep/enforcement>.

The agency proposal follows:

SUMMARY

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirements pursuant to N.J.A.C. 1:30-3.3(a)5.

The Department is proposing new rules that establish procedures and standards for the reduction of civil and civil administrative penalties for violations of environmental laws that a regulated entity voluntarily discovers, reports and corrects. In the 1970s, when many of the Department's current regulatory programs were established, the Department's primary enforcement tool to motivate facilities to comply and to recognize

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the importance of environmental regulations was the assessment of penalties. However, due in large part to the Department's targeted and strong efforts, environmental protection laws have become an integral component of the regulatory framework for business and industry. Increasing numbers of companies have recognized that complying with their environmental obligations helps ensure a safe workplace, protect the environment, avoid penalties and litigation, and manage compliance costs. Many companies have stepped up efforts to audit their operations and put management systems in place to address environmental requirements. Recognizing the need to tailor its enforcement program to reflect the compliance behavior of the regulated community and the fact that many companies incorporate environmental issues into managerial decision-making, the Department is proposing these new rules to provide an incentive to companies to comprehensively review their operations, and report and correct violations. The penalty reduction incentive established under these rules will supplement, not replace, the Department's existing enforcement strategies. The goal is to effectuate an increase in the number of regulated entities that take a proactive role in ensuring environmental compliance by auditing and self-disclosing violations.

It is appropriate to reward these companies for such activities, in order to ensure their continuation, and to assure such companies that they will not be treated the same as those facilities who wait for the Department to find violations. By promulgating rules that provide certainty and predictability as to the Department's enforcement response in these circumstances, the Department hopes to further influence corporate decision-making in this regard.

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The proposed rules contain safeguards to ensure that violations that have caused serious harm to the environment or the public or that involved a pattern of inappropriate conduct on the part of corporate officials will not be eligible for penalty reductions under these rules.

In determining the appropriate enforcement response to violations that are voluntarily discovered and reported, the Department has, in the past, applied its enforcement discretion on a case by case basis, consistent with the principles outlined in EPA's policy, entitled "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" issued on December 22, 1995 and revised on May 11, 2000. However the Department has determined that incorporating into rules its enforcement response criteria for violations that are voluntarily discovered and reported will provide more predictability for the regulated community and will ensure consistency in application across regulatory programs. This will address concerns voiced over the years that self-disclosed violations are handled inconsistently by the Department and that regulated entities are therefore reluctant to self-disclose. Also, some companies have expressed concern that the Department's enforcement policies do not adequately encourage companies to review their operations and disclose violations that are uncovered. The regulated community has noted that without rules, companies that routinely search for and disclose environmental violations are potentially at greater risk of being penalized for their responsible behavior than companies that do not self-police for environmental compliance and instead wait for the Department to find the violations.

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As a result, companies may not elect to continue their proactive efforts if they believe the enforcement response will be the same whether they come forward with the violations or the violations are identified by the Department during an inspection. Given that such efforts on the part of the regulated community will advance the objectives of the environmental laws of the State as well as the Department's mission, the Department is proposing rules that will motivate regulated entities to undertake these proactive endeavors.

The Department's Compliance and Enforcement programs typically receive several voluntary disclosures of violations each year. After EPA adopted its self-disclosure policy in 1995, the number of disclosures EPA received increased during each of the four subsequent years, for a total of 670 companies disclosing actual or potential violations at more than 2700 facilities. The trend continued between 1999 and 2002, with an average of 400 companies disclosing violations to EPA each year. The Department anticipates that these new rules, which are intended to reward compliance efforts by proactive, environmentally conscientious facilities, will similarly increase the number of companies that submit voluntary disclosures of violations to the Department.

Section Summary of the Proposed New Rule

Subchapter 1, General Provisions

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Proposed N.J.A.C. 7:33-1.1 and 1.2 identify the scope and purpose of the rules. Proposed N.J.A.C. 7:33-1.2(c) clarifies that any reduction allowed under these rules cannot contravene the mandatory penalty requirements in the Water Pollution Control Act (WPCA). The WPCA at N.J.S.A. 58:10A-10.1 sets forth mandatory minimum penalties that the Department must assess for certain violations and provides, with regard to settling (compromising) penalties, that “the amount compromised shall not be more than 50% of the assessed penalty, and in no instance shall the amount of that compromised penalty be less than the statutory minimum amount.” For example, if a violation triggers a mandatory minimum penalty assessment of \$5000, the Department will not reduce that penalty by 75 or 100 percent as would otherwise be possible under these rules for a self-disclosed violation. The WPCA is the only environmental law that requires mandatory penalty assessments.

Proposed N.J.A.C. 7:33-1.3 sets forth definitions of terms used throughout the chapter. The term “settlement document” is defined since it is the document that will be used to memorialize the settlement of violations that are self-disclosed. The term “environmental law” encompasses all statutes and regulations that contain penalty provisions and that are enforced by the Department. Since N.J.A.C. 7:33-2.2(a) requires that regulated entities list the SIC or NAICS code assigned to the facility, the terms SIC and NAICS are defined. The applicability of the defined terms “Tier 1 violation” and “Tier 2 violation” is further explained in the Section Summary for Subchapter 3 below.

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Subchapter 2, Procedures

Subchapter 2 sets forth the process by which a regulated entity is to report self-discovered violations to the Department.

Proposed N.J.A.C. 7:33-2.1(a) and (b) require that entities that wish to disclose violations must use the Self-Disclosure Report forms that will be available on the DEP website or from the enforcement offices in the Department. Use of the forms will help ensure all of the information necessary for a Self-Disclosure Report to be administratively complete is submitted. The rule requires the forms to be submitted to one central address in Compliance and Enforcement even if violations under different regulatory programs are being disclosed. Maintaining one central repository for self-disclosures will enable the Department to track the submittals and will make the submittal process more efficient for regulated entities. In addition, to enable the Department to quickly distribute Self-Disclosure Reports to the appropriate staff, the Department is requiring that companies submit the Reports electronically as well as on paper.

Under proposed N.J.A.C. 7:33-2.1(c), violations that are self-disclosed will be recorded in the Department's database entitled "New Jersey Environmental Management System." The violations will become part of the Department's enforcement history for the facility, but it will also be noted in the database that the violations were discovered

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and disclosed by the regulated entity, not the Department. The self-disclosed violations will be recorded in the database for several reasons. First, all information regarding a particular facility, from permits to citizen complaints from the DEP Hotline to enforcement actions to identifying information such as block and lot, is stored in this Department-wide comprehensive database. Second, an accurate record of violations that occurred at a facility is necessary to determine whether the violations constitute “repeat” violations for the purposes of these rules or the Fast Track Compliance Law, N.J.S.A. 13:1D-125 et seq. The self-disclosed information will be considered a public record as explained in the Section Summary for Subchapter 4

Proposed N.J.A.C. 7:33-2.1(d) outlines the procedures for the Department’s review of a Self-Disclosure Report. After receiving a Self-Disclosure Report, the main Compliance and Enforcement office will generate an acknowledgment letter and provide a contact name and phone number for each violation or category of violations disclosed. For example, violations of the site remediation regulations will be assigned to a staff person in the Site Remediation program whereas violations of the hazardous waste regulations will be assigned to the Hazardous Waste Enforcement program. Simultaneously, Compliance and Enforcement will distribute the Self-Disclosure Report to the staff contacts listed in the acknowledgment letter. Each staff person assigned will review the Self-Disclosure Report for administrative completeness and will note any deficiencies in a letter to the facility. Once the Self-Disclosure Report is deemed administratively complete, the staff person will render a decision as to the amount of the penalty reduction. If the disclosure meets the requirements of these rules, the regulated

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entity will be eligible for a 75 or 100 percent penalty reduction, and the terms of the settlement will be embodied in a settlement document. The settlement document will be jointly executed by the Department and the regulated entity and will contain a description of the violations, the schedule for achieving compliance, and the basis for the reduced penalty. On the other hand, if the disclosure does not meet the requirements of these rules, the Department may issue an enforcement action. The Department may also close the case and take no further action if it determines that a violation did not occur.

Proposed N.J.A.C. 7:33-2.2(a) lists the sixteen items that the regulated entity must include in a Self-Disclosure Report. To assist the regulated entity in ensuring that its Self-Disclosure Report is administratively complete, the Department's Self-Disclosure Report form will contain space where the regulated entity must insert the listed information. Paragraphs 1 through 4 require identifying information that will help track the types of facilities that are self-disclosing. Paragraph 5 will enable the Department to determine whether the regulated entity meets the definition of "small business" at N.J.A.C. 7:33-1.3 and therefore qualifies for the small business penalty reduction provisions at N.J.A.C. 7:33-3.1(b). Paragraphs 6 through 15 correspond to N.J.A.C. 7:33-3.1(a)1 through 9. In order to qualify for a penalty reduction, the disclosing entity has the burden of proving that it has discovered, disclosed and corrected the violation in accordance with the requirements at N.J.A.C. 7:33-3.1(a)1 through 9 (described below). Some individual program rules require that a company certify any information submitted to the Department. For ease of administration, the certification required in paragraph 16

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of this subsection will supersede any program-specific certifications, which may differ slightly from this one

Subchapter 3, Civil and Civil Administrative Penalty Reduction

Subchapter 3 establishes the criteria that the Department will use to determine if a penalty reduction is appropriate and the amount of such reduction.

Proposed N.J.A.C. 7:33-3.1(a)1 through 9 set forth the conditions that must be met in order for the Department to reduce the applicable penalty under this chapter. Proposed N.J.A.C. 7:33-3.1(a)1 requires that the violation must have been voluntarily discovered by the regulated entity; therefore violations that are discovered through required monitoring or sampling are not eligible for penalty reduction under these rules. For example, facilities that have NJPDES permits because they discharge their effluent to ground water are required by their permits to sample the effluent for various parameters and report the results to the Department every month on Discharge Monitoring Reports. Similarly, in the air program, facilities with Title V Operating Permits are required to periodically audit their operations and submit a compliance certification to the Department indicating whether they are in compliance with each requirement of their permit. Any violation that is detected as a result of these types of required monitoring and auditing is not considered “voluntarily discovered” under N.J.A.C. 7:33-3.1(a)1. However, if, in the case of the facility with the Title V Operating Permit, the regulated entity can demonstrate that the scope of the audit was broader than the permit, rule or

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statute required, then a violation identified as a result of that more comprehensive audit may be eligible for penalty reduction under these rules.

Early reporting of information from a required monitoring episode or auditing program is not eligible for a penalty reduction under these rules. For example, performing requisite sampling pursuant to a NJPDES permit or conducting mandatory auditing pursuant to a Title V Operating Permit and submitting the results before the reporting deadline, does not constitute voluntary discovery because the underlying auditing, sampling or monitoring was mandated by permit and/or regulation.

Proposed N.J.A.C. 7:33-3.1(a)1ii provides that if a violation is discovered voluntarily, it may be eligible for penalty reduction under these rules even if the violation was required by statute or regulation to be reported to the Department once it was discovered. The “voluntary” criterion applies only to the discovery of the violation, not to the reporting of the violation. Many program rules require violations to be reported once the facility becomes aware of them. For example, the hazardous waste rules require that any release to the environment must be reported to the DEP Hotline within 24 hours of detection, and the air pollution control rules require that any release of air contaminants that may result in citizen complaints or that poses a potential threat to public health must be immediately reported to the Department. Under the hazardous waste and air rules, a wide range of releases, with varying degrees of severity, may potentially be reported to the DEP Hotline, especially in light of the fact that many facilities generally tend to err on the side of over-reporting. If the release was serious

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enough to cause harm, it will be excluded from consideration under these rules, as stated at N.J.A.C. 7:33-3.1(a)9. However, if the release was not serious enough to cause harm, it is eligible for penalty reduction under these rules, assuming that the discovery was voluntary. The primary goal of these rules is to motivate facilities to take steps to discover violations. If a facility does not believe that an enforcement inspector would otherwise have discovered the release, it may not be motivated to report the release even though the reporting is required. On the other hand, under these proposed rules, which allow penalty reductions for violations that are voluntarily discovered, the Department anticipates, and hopes to encourage, facilities to be proactive in assessing their compliance with environmental requirements.

Proposed N.J.A.C. 7:33-3.1(a)1iii provides that if an entity discovers an unintentional mistake, such as an omitted parameter or incorrect calculation, in a previously submitted report and discloses that mistake to the Department, the violation qualifies for consideration under these rules even though the original monitoring or sampling, which was the subject of the previously submitted report, may have been required. For example, if a facility has a NJPDES permit that requires it to monitor its effluent for four parameters and then report the results to the Department, the company may be eligible for a penalty reduction if it discloses that one of the results was calculated and reported incorrectly.

Proposed N.J.A.C. 7:33-3.1(a)2 requires that a facility disclose a violation to the Department within 21 days of discovering it, unless required by law to report it sooner, in

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order to be eligible for a penalty reduction under these rules. In the case of a facility that is acquired by another entity that is separate and distinct from the original owner, the new owner may be eligible for a penalty reduction even if the new owner discovers a violation that occurred while the facility was under previous ownership. To qualify for the penalty reduction, the new owner must disclose the violation within 21 days of discovering it.

Proposed N.J.A.C. 7:33-3.1(a)3 requires that a company must disclose a violation independent of any regulatory agency or third party complainant. For example, if a local health agency performed an inspection and discovered a violation, a company will not qualify for a penalty reduction under these rules by disclosing that same violation to the Department. Similarly, once the Department or EPA begins an inspection at a facility, or informs the facility that it will be inspected within a given time frame, the facility will not be eligible for a penalty reduction if it discloses violations to the Department during the time the inspection is being conducted or between the time the inspection is announced and conducted. The purpose of this provision is to encourage companies to audit their operations periodically rather than waiting until they learn of an impending inspection.

Proposed N.J.A.C. 7:33-3.1(a)4 requires that the regulated entity must correct all violations within the applicable timeframes in order to be eligible for a penalty reduction. The settlement of self-disclosed violations will be embodied in a settlement document that will contain a schedule for compliance. However, if the parties have not yet executed a settlement document because the Department's review of the self-disclosure to determine if penalty reduction is appropriate is still ongoing, the entity is nonetheless

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responsible for correcting the violation in accordance with the timeframes set forth in N.J.A.C. 7:33-3.1(a)4. The absence of a settlement document with a compliance schedule does not obviate the need for the facility to promptly correct the violations. Small businesses are afforded a longer period of time to correct violations in recognition of the fact that they typically have fewer financial, technical and other resources to enable them to quickly come into full compliance. N.J.A.C. 7:33-3.1(a)4iv and v require the company to respectively notify the Department when the violations have been corrected and, if needed, request an extension of the compliance deadline.

Proposed N.J.A.C. 7:33-3.1(a)5 prohibits facilities with repeat violations from being eligible for a penalty reduction under these rules. A “repeat” violation is defined according to the type of violation that has been committed and the type of entity that has committed the violation. Tier 1 violations are violations that are considered minor pursuant to the Fast Track Compliance Law and the definition of “repeat” is consistent with that in the Fast Track Compliance Law. Proposed N.J.A.C. 7:33-3.1(a)5i applies to facilities that have permits, N.J.A.C. 7:33-3.1(a)5ii applies to facilities that do not have permits, and N.J.A.C. 7:33-3.1(a)5iii applies to violations of land use rules under which the regulated entities are typically developers or contractors who work at multiple sites. For a Tier 1 violation, a prior violation within the preceding twelve months will preclude penalty reduction under these rules. For a Tier 2 violation, which is a more serious violation, a prior violation within the preceding three years will preclude penalty reduction. Proposed N.J.A.C. 7:33-3.1(a)5v provides that if the violation can

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reasonably be inferred to be part of a pattern of illegal conduct, it will be considered a repeat violation and therefore not eligible for penalty reduction under these rules.

Proposed N.J.A.C. 7:33-3.1(a)6 and 7 require that the company agree in the settlement document to take measures to prevent recurrence of the violation and mitigate any harm caused by the violation, in order to qualify for penalty reduction under these rules. N.J.A.C. 7:33-3.1(a)8 states that the violations cannot be one that occurred because the company failed to implement measures to prevent a recurrence.

Under proposed N.J.A.C. 7:33-3.1(a)9, violations that cause serious actual harm, that pose an imminent and substantial danger to human health or the environment, or that result from purposeful, knowing, reckless or criminally negligent conduct on the part of responsible corporate officials will not be considered for penalty reduction under these rules. However, penalty reductions may be available in situations where an employee may have purposefully and knowingly committed the violations but his or her actions could not reasonably have been known to corporate officials or facility management. For example, if the parent corporation or corporate management did not have direct involvement, knowledge or responsibility for a violation committed by an employee at a subsidiary company or at one of the various facility locations, but corporate officials can demonstrate that they acted in good faith and took identifiable, proactive steps to discover, disclose and correct that violation, a penalty reduction may be available under these rules. The Department would, however, retain the discretion to recommend prosecution for the criminal conduct of any culpable individual as appropriate.

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Proposed N.J.A.C. 7:33-3.1(b) outlines the amounts of penalty reduction available for different categories of self-disclosed violations. This is the portion of the rule that represents the largest deviation from EPA's policy. EPA's policy offers a 100% penalty waiver if the company can establish that the violation was discovered as part of a systematic, documented and periodic auditing program or a 75% reduction if the company cannot prove that they have such an auditing program in place. The Department believes that these rules will inherently encourage companies to perform environmental audits, but the amount of the penalty reduction should be based on the type of violation rather than the presence or absence of a formal auditing program. Under EPA's Policy, violations defined as Tier 2 by these proposed rules would be eligible for a 100% penalty reduction if they were discovered as part of a formal auditing program. These proposed rules are designed to be more environmentally protective because self-disclosed Tier 2 violations are only eligible for a 75% penalty reduction. This will serve as an incentive for companies to be more proactive in implementing measures to prevent recurrence of similar violations.

Tier 1 violations are those that fit the definition of "minor" in the Fast Track Compliance Law and under these rules, the penalty for those violations would be reduced 100 percent, which is consistent with the Fast Track Compliance Law and the Department's current enforcement response to minor violations that it discovers. A Tier 2 violation does not cause serious harm but is more acute than a Tier 1 violation and under these rules, the penalty would be reduced by 75 percent. This means that a subset

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of the violations classified as non-minor under the Fast Track Compliance Law would be eligible for penalty reduction under these rules because they are self-disclosed, even though they would not qualify for a reduction under the Fast Track Compliance Law. In addition, the penalty for a Tier 1 or Tier 2 violation self-disclosed by a small business would be reduced by 100 percent, which is consistent with EPA's "Small Business Compliance Policy" and the Department's current enforcement response to violations discovered as part of the Department's on-site voluntary compliance assistance program called "greenstart."

Proposed N.J.A.C. 7:33-3.1(c) references the Department's ability to assess and recover economic benefit for violations that are self-disclosed, which is consistent with EPA's policy. Economic benefit represents the financial gain that a violator obtains by not complying on time, which gives the violator an advantage over competitors. Reserving the right to recoup economic benefit ensures that the Department can preserve a level playing field among companies. N.J.A.C. 7:33-3.1(d) states that the Department reserves the right to take any actions that are necessary to protect public health and the environment if such actions are warranted due to the seriousness of a self-disclosed violation. For example, if the self-disclosed violation has caused serious actual harm to the environment, it will be ineligible for penalty reduction under these rules and the Department may pursue legal action to ensure that the situation is remedied and the violator is appropriately penalized.

Subchapter 4, Information

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Subchapter 4 pertains to public access to information regarding self-disclosed violations and the Department's ability to request additional information from a regulated entity as part of its review of a Self-Disclosure Report.

Under proposed N.J.A.C. 7:33-4.1, the Department will consider the Self-Disclosure Reports submitted under these rules, and any associated information, to be public information. Under the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq., which was enacted in 2001, the Legislature declared it to be the public policy of the State that government records should be readily accessible for inspection, copying, or examination by the citizens of New Jersey. Among other things, this new law broadened the scope of information that was previously considered to be a public record. Therefore, Self-Disclosure Reports and any associated information submitted to the Department are considered government records and will be subject to public access.

Proposed N.J.A.C. 7:33-4.2 is intended to address one of the main concerns expressed by the regulated community with regard to self-disclosure programs, which is that the department will use the self-disclosed information as the basis for a full-fledged enforcement investigation. This concern has prompted companies to reduce the scope of their environmental compliance audits or to instruct the consulting firm or in-house environmental manager conducting the audit to be non-specific when providing a written summary of the findings.

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To address this issue, other states have enacted laws that allow environmental compliance audit reports to be considered privileged information and therefore not available to the public or to environmental enforcement agencies. However, as explained above, New Jersey does not have such a “privilege” law and in fact, as a result of OPRA, the Department does not have authority to limit public access to information submitted to it.

However, to focus the scope of information that the Department may seek from a regulated entity as part of its review of a Self-Disclosure Report, proposed N.J.A.C. 7:33-4.2(a) lists the circumstances under which the Department would request additional information. Specifically, the Department would generally ask additional questions or request further information only if it were necessary to determine whether the self-disclosed violations met the criteria of these rules. Reassuring facilities about the extent of information the Department would typically request may provide an additional incentive for them to participate and ease their reluctance to do a comprehensive audit for fear that it will be used against them. It is important to note that if a regulated entity does conduct a comprehensive compliance audit, the entire audit report need not be submitted to the Department as part of the Self-Disclosure Report. To be eligible for a penalty reduction, the regulated entity that is self-disclosing violations only needs to submit information sufficient to make the proofs required by N.J.A.C. 7:33-3.1.

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SOCIAL IMPACT

The proposed new rules will have a positive social impact because they will encourage regulated entities that are subject to any of the environmental laws administered by the Department to initiate voluntary efforts to review their compliance status and promptly identify and correct violations when they occur. Such proactive efforts to improve compliance will help make the State a cleaner, healthier and safer place to live and work.

ECONOMIC IMPACT

The Department anticipates that these rules will have a positive economic impact on the regulated community because they will allow regulated entities that discover violations to avoid penalties altogether or receive a reduced penalty assessment, if they meet the requirements of these rules. In addition, encouraging facilities to self-audit and self-disclose will enable the Department to focus its enforcement resources and efforts on recalcitrant and serious violators.

Some facilities may choose to hire an environmental consultant to perform a review of the facility to identify any violations and/or to assist the facility in developing procedures to bolster existing auditing program in order to take full advantage of these rules. The economic impact on the facility will depend on the existing level of

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environmental auditing at the facility and the extent of services needed, if any, from a consultant.

Even if the facility does not choose to hire a consultant to perform an environmental review of its operations, the facility may choose to retain a consultant to assist in submitting the Self-Disclosure Report required by proposed N.J.A.C. 7:33-2.1 and 2.2. The Self-Disclosure Report must include, among other things, an explanation of the violation, the method by which it was discovered, and the steps that will be taken to correct the violation. Some facilities may have staff on-site with sufficient knowledge and qualifications to submit the Self-Disclosure Reports themselves. In other cases, the facility may opt to hire a consultant to perform the work. Again, the cost will vary depending on the extent of services needed and the qualifications of the consultant.

These proposed rules apply to violations that the Department may not otherwise have discovered; therefore, there would be some increased penalties collected, at least for Tier 2 (moderate) violations.

ENVIRONMENTAL IMPACT

These rules are designed to promote voluntary efforts by the regulated community to promptly identify and correct violations and encourage them to implement comprehensive, permanent, and effective environmental compliance auditing programs. The Department anticipates that, because of these rules, violations will be discovered

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more frequently and more promptly than if the Department relies exclusively on its inspection program. Early discovery and correction will reduce the potential risks to human health and safety and to natural resources posed by noncompliance. Thus, these rules will have a positive environmental impact.

FEDERAL STANDARDS STATEMENT

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c. 65) require State agencies that adopt, readopt or amend State regulations that exceed any federal standards or requirements to include in the rulemaking document a comparison with federal law. The Federal policy for self-disclosure of environmental violations that EPA has developed for its own enforcement program is discussed in the summary above. However, N.J.A.C. 7:33 is not promulgated under the authority of or in order to implement, comply with, or participate in, any program established under federal law, or under a State statute that incorporates or refers to federal law, federal standards, or federal requirements. Therefore, no further analysis is required.

JOBS IMPACT

These rules may generate additional jobs, since the goal of these rules is to encourage more companies to undertake environmental compliance audits. These rules may serve as an impetus for companies to either hire an environmental manager at their

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facility with responsibility for periodically assessing compliance at the facility or contract with a consultant to perform environmental compliance audits at the facility. In either case, additional jobs may be created.

AGRICULTURAL INDUSTRY STATEMENT

Pursuant to N.J.S.A. 52:14B-4, the Department has evaluated this rulemaking to determine the nature and extent of the proposed new rules' impact on the agricultural industry. The Department anticipates that these rules will have a positive economic impact on any agricultural operations that are regulated by the Department because the rules will allow regulated entities that discover violations to avoid penalties altogether or receive a reduced penalty assessment, if they meet the requirements of these rules. In addition, encouraging facilities to self-audit and self-disclose will enable the Department to focus its enforcement resources and efforts on recalcitrant and serious violators.

REGULATORY FLEXIBILITY ANALYSIS

In accordance with the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed new rules would not impose any reporting, recordkeeping or compliance requirements on small businesses as defined under the Act. Rather, these rules provide opportunities for regulated entities, including small

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businesses, to avoid or reduce penalties. Additionally, proposed N.J.A.C. 7:33-3.1(a)4ii and 3.1(b)3 are more lenient for small businesses compared to larger businesses. Specifically, small businesses are allowed up to 180 days to correct a self-disclosed violation, compared to 60 days for larger business, and small businesses receive a 100 percent penalty reduction for self-disclosed Tier 2 violations compared to larger businesses, which only receive a 75 percent reduction.

Small businesses may incur costs as explained in the Economic Impact statement above. These costs may be greater for small businesses, since they tend to have more limited resources and thus are more likely to choose to hire a consultant to assist in meeting the requirements of these proposed rules.

SMART GROWTH IMPACT

Executive Order No. 4 (2002) requires State agencies which adopt, amend or repeal any rule adopted pursuant to Section 4(a) of the Administrative Procedure Act, to describe the impact of the proposed rule on the achievement of smart growth and implementation of the New Jersey State Development and Redevelopment Plan (State Plan). The Department has evaluated this rulemaking to determine the nature and extent of the proposed rules' impact on smart growth and the implementation of the State Plan. The proposed rules do not involve land use policies or infrastructure development and therefore do not impact the achievement of smart growth or the implementation of the State Plan.

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Full text of the proposed new rule follows:

Chapter 33 Penalty Reductions for Self-Disclosure of Violations

Subchapter 1. General Provisions

7:33-1.1 Purpose

The purpose of these rules is to enhance protection of human health and the environment by encouraging regulated entities to voluntarily discover, disclose and correct violations of the environmental laws of the State of New Jersey. These rules establish the standards and process by which the Department may reduce the civil and civil administrative penalties that it would otherwise seek or assess for violations that a regulated entity voluntarily discovers, reports, and corrects.

7:33-1.2 Scope

(a) These rules apply to violations of the environmental laws administered by the Department or by any certified local health agency pursuant to the County

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Environmental Health Act, N.J.S.A. 26:3A2-21 et seq. However, these rules do not apply to violations of the terms of any administrative or judicial consent order or agreement.

(b) These rules set forth the conditions that a regulated entity shall meet and the factors the Department shall consider in determining whether to reduce the amount of a civil or civil administrative penalty that the Department would otherwise seek or assess for violations that are voluntarily disclosed to the Department.

(c) To the extent that these rules are inconsistent with any other rule pertaining to the assessment of civil administrative penalties or the seeking of civil penalties for a violation of an environmental law, these rules shall govern, except that these rules do not in any way modify or affect the mandatory penalty assessment provisions or settlement restrictions contained in the Water Pollution Control Act at N.J.S.A. 58:10A-10 and 10.1.

7:33-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

“Certified local health agency” means a county department, or regional or municipal health agency that is responsible, pursuant to law, for the conduct, within its area of jurisdiction, of a public health program administered by a full-time health officer

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and that satisfies the performance and administrative standards in the County Environmental Health Act at N.J.S.A. 26:3A2-33 and the rules adopted pursuant thereto.

“Department” means the New Jersey Department of Environmental Protection.

“Environmental law” and “environmental law of the State” means any of the following statutes and the rules adopted thereunder: the Waterfront Development law, N.J.S.A. 12:5-1; the Pollution Prevention Act, N.J.S.A. 13:1D-1 et seq.; the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.; the Comprehensive Regulated Medical Waste Management Act, N.J.S.A. 13:1E-48.1 et seq.; the Pesticide Control Act, N.J.S.A. 13:1F-1 et seq.; the Noise Control Act, N.J.S.A. 13:1G-1 et seq.; the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq.; the Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq.; the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.; the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq.; the Coastal Area Facilities Review Act, N.J.S.A. 13:19-1 et seq.; the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq.; the Marine Fisheries Management and Commercial Fisheries Act, N.J.S.A. 23:2B-1 et seq.; an act concerning Fish and Game, Wild Birds and Animals, N.J.S.A. 23:3-1 et seq. and N.J.S.A. 23:4-1 et seq.; the Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq.; the Radiation Protection Act, N.J.S.A. 26:2D-1 et seq.; the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq.; the Solid Waste Utility Control Act N.J.S.A. 48:13A-1 et seq.; the Water Supply Management Act N.J.S.A. 58:1A-1 et seq.; an act concerning diversion of subsurface and percolating waters of the State, N.J.S.A. 58:4A-4.1; the Spill Compensation and Control Act,

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N.J.S.A. 58:10-23.11 et seq.; the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.; the Underground Storage of Hazardous Substances law, N.J.S.A. 58:10A-21 et seq.; an act to protect the purity of the public supplies of potable waters in this State, N.J.S.A. 58:11-9.1; the Realty Improvement Sewerage and Facilities Act, N.J.S.A. 58:11-23 et seq.; the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq.; and the Flood Hazard Area Control Act, N.J.S.A. 58:16A-1 et seq.

“Fast Track Compliance Law” means N.J.S.A. 13:1D-125 et seq. Among other things, the law requires that the Department afford a person responsible for a “minor” violation of an environmental law a period of time to correct the violation before a penalty is assessed. If the person achieves compliance within this “grace” period, a penalty will not be imposed.

“Local government agency” means a political subdivision of the State or any instrumentality thereof, including but not limited to a municipality, county, local board of health, county board of health, regional health commission, improvement authority, utility authority or sewerage authority.

“NAICS code” means the six-digit North American Industrial Classification System code that classifies an establishment according to the process it uses to produce goods or services and that is assigned to New Jersey establishments by the New Jersey Department of Labor pursuant to the NAICS manual published by the Federal Office of Management and Budget.

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“Regulated entity” means any entity, including a Federal, State, or local government facility, regulated under any environmental law of the State.

“Self-Disclosure Report” means the information submitted to the Department by a regulated entity on the forms specified at N.J.A.C. 7:33-2.1(a), which describes the violation(s) of any environmental law that was voluntarily discovered and is being voluntarily reported to the Department pursuant to these rules. At a minimum, the report shall include the information listed at N.J.A.C. 7:33-2.2.

“Settlement document” means a written settlement agreement that is jointly negotiated and executed between a violator and the Department and that contains a penalty settlement amount and may also contain a compliance schedule. A settlement document may take the form of an Administrative Consent Order, a Judicial Consent Order, or a Settlement Agreement.

“SIC code” means the four-digit Standard Industrial Classification code that classifies an establishment according to the type of business in which it is engaged and that is assigned to New Jersey establishments by the New Jersey Department of Labor pursuant to the SIC manual published by the Federal Office of Management and Budget.

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“Small business” means any business which is resident in New Jersey, independently owned and operated and not dominant in its field, and which employs fewer than 100 full-time employees or a local government agency that provides one or more services to a population of 50,000 persons or less.

“Tier 1 violation” means a violation that meets the definition of “minor” pursuant to the Fast Track Compliance Law, N.J.S.A. 13:1D-129(b), or that has been designated as “minor” in any rule that the Department has promulgated to implement the provisions of the Fast Track Compliance Law. In general, minor violations are those that pose minimal risk to human health or the environment and that do not materially and substantially undermine or impair the goals of the regulatory program.

“Tier 2 violation” means a violation that does not result in serious actual harm, and does not present an imminent and substantial danger to human health or the environment, but that is more acute than a Tier 1 violation and therefore does not meet the definition of a Tier 1 violation. In general, Tier 2 violations are those that pose moderate risk to human health or the environment.

“Voluntary” means not required by statute, regulation, permit, order, or agreement.

Subchapter 2 Procedures

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7:33-2.1 Submitting a Self-Disclosure Report

- (a) Upon discovery of a violation of an environmental law, a regulated entity seeking a penalty reduction under these rules shall submit a Self-Disclosure Report on a self-disclosure form, which can be downloaded from the Department's website at www.state.nj.us/dep/enforcement. The regulated entity may also obtain this form by calling the Department's Compliance and Enforcement program at (609) 984-3285 or the applicable Department enforcement office.

- (b) The regulated entity shall send a paper copy of the completed Self-Disclosure Report to the Department at the address below, regardless of the number or type of violations that are being self-disclosed. The regulated entity shall also submit the Self-Disclosure Report electronically to selfdisclosure@dep.state.nj.us. The regulated entity shall submit subsequent correspondence to the Department staff contact identified under (d)1 below.

New Jersey Department of Environmental Protection
Compliance and Enforcement
PO Box 422
401 East State Street, 4th floor
Trenton, NJ 08625-0422

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Attn: Self-Disclosures

- (c) The Department shall record self-disclosed violations in its computer information database entitled the New Jersey Environmental Management System (NJEMS).

- (d) The procedures for the Department's review of a Self-Disclosure Report are as follows:
 - 1. Within 10 business days of receipt of an electronic copy of a Self-Disclosure Report, the Department shall send written notice to the regulated entity acknowledging receipt of the Self-Disclosure Report and listing a Department staff contact name and phone number for each violation or category of violations contained in the Self-Disclosure Report.
 - 2. The Department shall send written notice to the regulated entity informing the entity as to whether the Self-Disclosure Report is administratively complete pursuant to N.J.A.C. 7:33-2.2. If the Self-Disclosure Report is not administratively complete, the Department shall specify in the written notice the information necessary to make the Self-Disclosure Report complete and a date by which the necessary information must be submitted to the Department.

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3. After receipt of an administratively complete Self-Disclosure Report, the Department shall take one of the following actions:
 - i. If the Department determines that any self-disclosed violation is eligible for penalty reduction pursuant to these rules, the Department and the regulated entity shall jointly execute a settlement document that: outlines the violation(s) contained in the Self-Disclosure Report; establishes the timeframe for correcting the violation(s) if compliance has not already been achieved; and sets forth the calculation of, and justification for, the reduced penalty.
 - ii. If the Department determines that any self-disclosed violation(s) is not eligible for penalty reduction, the Department may issue an enforcement action or pursue any other enforcement remedy it deems appropriate.
 - iii. If the Department determines that any self-disclosed violation(s) is not actually a violation, it will consider the case closed and will send written notice to the regulated entity informing them of such decision.

7:33-2.2 Contents of Self-Disclosure Report

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(a) In order for a Self-Disclosure Report to be considered administratively complete, the regulated entity shall provide the following information to the Department on the form available as provided at N.J.A.C. 7:33-2.1(a):

1. The name, mailing address, e-mail address (if any), phone number and location of the facility for which the regulated entity is submitting a Self-Disclosure Report;
2. The SIC or NAICS code that is assigned to the facility or that best reflects the principal products or services provided by the facility;
3. The name and address of the regulated entity's parent corporation, if any;
4. A list of all active permits, licenses or other certificates issued by the Department to the facility for which the regulated entity is submitting a Self-Disclosure Report;
5. The number of employees at the facility at which the self-disclosed violation(s) occurred and the number of employees at any other facilities in New Jersey that are owned and/or operated by the regulated entity that is submitting the Self-Disclosure Report.
6. A description of the events that led to the regulated entity's discovery of the self-disclosed violations, including information to demonstrate that the violation was voluntarily discovered, pursuant to N.J.A.C. 7:33-3.1(a)1, and was discovered and disclosed

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- independent of a regulatory agency or a third party complainant, in accordance with N.J.A.C. 7:33-3.1(a)3;
7. The scope of the regulated entity's review of its operations that resulted in the violation(s) being discovered;
 8. A full description of the violation(s), including the date the violation was discovered, the date the violation commenced (if known), the requirement(s) that was violated, a description of any actual or potential harm caused by the violation, and any other information necessary to satisfy N.J.A.C. 7:33-3.1(a)2;
 9. The date the violation(s) was, or will be, corrected, in accordance with N.J.A.C. 7:33-3.1(a)4;
 10. A statement as to whether the violation(s) contained in the Self-Disclosure Report is a repeat violation(s) according to the definition at N.J.A.C. 7:33-3.1(a)5;
 11. An explanation of the measures the regulated entity will implement to prevent recurrence of the violation(s), pursuant to N.J.A.C. 7:33-3.1(a)6;
 12. An explanation of the measures the regulated entity will take to mitigate any harm caused by the violation(s), pursuant to N.J.A.C. 7:33-3.1(a)7;
 13. Pursuant to N.J.A.C. 7:33-3.1(a)8, a statement that the violation(s) is not the result of the regulated entity's failure to take reasonable and appropriate preventive measures to avoid a repeat or recurring

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violation(s) following the discovery by the Department or the regulated entity of the same or a related violation(s);

14. Pursuant to N.J.A.C. 7:33-3.1(a)9, a statement that the violation(s) is not one that resulted in serious actual harm, or may have presented an imminent and substantial danger, to human health or the environment or that was the result of purposeful, knowing, reckless or criminally negligent conduct on the part of the regulated entity.
15. A statement that the regulated entity will cooperate with the Department pursuant to N.J.A.C. 7:33-4.2.
16. The following certification signed by the highest-ranking official who has day-to-day managerial responsibility for the regulated entity's facility:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and/or imprisonment.”

Subchapter 3

Penalty Reduction

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7:33-3.1 Civil and Civil Administrative Penalty Reduction

- (a) The Department shall reduce civil and civil administrative penalties, pursuant to (b) below, for any violation of an environmental law discovered by a regulated entity provided that the regulated entity meets the requirements at N.J.A.C. 7:33-2.1 and 2.2 and satisfies all of the conditions at 1 through 9 below:

1. The regulated entity voluntarily discovers the violation.
 - i. The Department shall not consider a discovery to be voluntary if the violation or the underlying information was discovered through a legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, administrative or judicial consent order or agreement. For example, the Department shall not consider the following to be voluntarily discovered: an air emission violation detected through a continuous emission or process monitor required by permit or regulation, or a violation of a NJPDES permit detected through required sampling or monitoring.
 - ii. If the regulated entity meets the criterion in (a)1i above, the Department shall consider a discovery to be voluntary even

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if the findings were required to be reported to the Department. For example, a discharge that is discovered voluntarily but required to be reported immediately pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11(d)10 or N.J.S.A. 58:10-23.11(e), may be considered for a penalty reduction under these rules. On the other hand, an air emission violation recorded by a continuous emission or process monitor and required to be reported to the Department on periodic Excess Emission Reports shall not be considered for a penalty reduction under these rules.

- iii. If the regulated entity discovers an inadvertent error (e.g., omission or incorrect calculation) in a previously submitted required report, the Department shall consider the discovery to be voluntary even though the original monitoring or sampling was required by statute, regulation, permit, administrative or judicial consent order or agreement.
2. The regulated entity fully discloses the violation to the Department on a Self-Disclosure Report in accordance with N.J.A.C. 7:33-2.2 within 21 days of the discovery of the violation.

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- i. Disclosure of a violation shall include all information available to the regulated entity at the time disclosure is made concerning the cause of the violation, and a description of any actual harm, or imminent and/or substantial risk of harm to human health or safety or natural resources caused by the violation.
 - ii. If an environmental law requires the entity to report the violation in fewer than 21 days, disclosure shall be made within the time limit established by that environmental law.
 - iii. The date of discovery of the violation is the date that an officer, director, employee or agent of the regulated entity has an objectively reasonable basis for believing that a violation has, or may have, occurred.
3. The regulated entity discovers and discloses the violations to the Department independent of any regulatory agency or third party complainant.
 - i. The Department shall consider the disclosure to be independent only if it occurs prior to:
 - (1) The discovery of the violation by a state or federal agency, a certified local health agency, or a local government agency;

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(2) The commencement of an inspection, or notification of a scheduled inspection, by the Department, the United States Environmental Protection Agency, a certified local health agency, or a local government agency;

(3) The commencement of a judicial or administrative enforcement action by the Department, the United States Environmental Protection Agency, or a certified local health agency;

(4) The issuance of a notice under the Environmental Rights Act, N.J.S.A. 2A:35A-1 et seq., filed pursuant to the citizens' lawsuit provision of any State or Federal statute or the filing of a complaint by a third party; or

(5) The reporting of the violation to the Department, the United States Environmental Protection Agency, a certified local health agency, or a local government agency by a "whistleblower" employee, rather than by one authorized to speak on behalf of the regulated entity.

ii. If a regulated entity owns or operates multiple facilities, the fact that one of its facilities is the subject of an investigation, inspection, information request or third party complaint does not automatically preclude the entity from receiving consideration for penalty reduction under these rules for disclosures of violations self-discovered at another

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of its facilities, assuming all other conditions of these rules are met.

4. The regulated entity promptly corrects all violations disclosed in the Self-Disclosure Report, to the Department's satisfaction.
 - i. The regulated entity shall correct all violations disclosed in the Self-Disclosure Report within the timeframes established in the settlement document or, in the absence of a settlement document, within 60 days of discovery.
 - ii. A regulated entity that is a small business shall correct all violations disclosed in the Self-Disclosure Report within the timeframes established in the settlement document or, in the absence of a settlement document, within 180 days of discovery.
 - iii. The Department may order a regulated entity to correct a violation within a time period shorter than that outlined in (a)4i or ii above if necessary to protect public health and/or the environment or to minimize the extent of potential environmental and/or human harm posed by the violation. If the regulated entity disputes the Department's determination that the violation be corrected within a time period shorter than that outlined in (a)4i or ii above, the

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Department may exercise its discretion and refuse to allow the penalty reductions set forth in N.J.A.C. 7:33-3.1(a).

- iv. The regulated entity shall notify the Department staff contact identified under N.J.A.C. 7:33-2.1(d) in writing when the violations contained in the Self-Disclosure Report have been corrected and shall certify such notification in accordance with N.J.A.C. 7:33-2.2(a)16.
 - v. If the regulated entity needs an additional period of time to correct the violations beyond that established under (a)4i, ii, or iii above or by an executed settlement document, the regulated entity shall submit a written request for extension, including a detailed justification, to the appropriate staff contact person identified in the acknowledgment letter received from the Department under N.J.A.C. 7:33-2.1(d)1.
5. The self-disclosed violations are not repeat violations.
- i. Except as provided at (a)5iii below, a Tier 1 violation is a repeat violation if the regulated entity responsible for the violation has been identified in a previous enforcement action by the Department or certified local health agency as responsible for a violation of the same requirement of the same permit within the preceding 12 month period.

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- ii. Except as provided at (a)5iii below, a Tier 1 violation is a repeat violation if, in the case of a violation that does not involve a permit, the regulated entity responsible for the violation has been identified in a previous enforcement action by the Department or certified local health agency as responsible for the same or a substantially similar violation at the same facility within the preceding 12 month period.
- iii. In the case of a violation of the [Coastal Area Facility Review Act](#) (N.J.S.A. 13:19-1 et seq.); the [Freshwater Wetlands Protection Act](#) (N.J.S.A. 13:9B-1 et seq.); the Wetlands Act of 1970 (N.J.S.A. 13:9A-1 et seq.); the Waterfront Development Law (N.J.S.A. 12:5-1 et seq.); the [Flood Hazard Area Control Act](#) (N.J.S.A. 58:16A-50 et seq.) or any rule or regulation promulgated thereunder, or permit issued pursuant thereto, a Tier 1 violation is a repeat violation if the regulated entity responsible for the violation has been identified in a previous enforcement action by the Department or certified local health agency as responsible for the same or a substantially similar violation at the same site or any other site within the preceding 12 month period.
- iv. A Tier 2 violation is a repeat violation if it meets the criteria of (a)5i, ii or iii above but has occurred within the preceding 36-month period.

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- v. Any violation is a repeat violation if the regulated entity responsible for the violation has been identified by the Department or certified local health agency as responsible for the same or substantially similar violation(s) at any time such that the Department may reasonably infer a pattern of illegal conduct and not isolated incidents on the part of the regulated entity.
6. The regulated entity agrees, in the settlement document, to take appropriate action to prevent a recurrence of the violation.
7. The regulated entity implements measures acceptable to the Department to mitigate any harm caused by the violation.
8. The violation is not the result of the regulated entity's failure to take reasonable and appropriate preventive measures to avoid repeat or recurring violations following the discovery by the Department or the regulated entity of the same or related violations.
9. The violation is not one that caused serious actual harm to human health or the environment, or that posed an imminent and substantial danger to human health or the environment, or that was

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the result of purposeful, knowing, reckless or criminally negligent conduct on the part of corporate officers or managers overseeing the regulated entity.

- (b) Provided that the regulated entity satisfies the requirements of these rules, the Department shall reduce the amount of the civil or civil administrative penalty that it would otherwise seek or assess for violation(s) contained in a Self-Disclosure Report, as follows:
1. 75 percent for any Tier 2 violation of an environmental law that is voluntarily discovered, reported and corrected by a regulated entity.
 2. 100 percent for any Tier 1 violation of an environmental law that is voluntarily discovered, reported and corrected by a regulated entity.
 3. 100 percent for any Tier 1 or Tier 2 violation of environmental law that is voluntarily discovered, reported and corrected by a regulated entity that is a small business.
- (c) The Department retains full discretion to recover any economic benefit gained as a result of any violation, in accordance with the provisions of the applicable environmental laws.

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- (d) Notwithstanding the provisions of this section, the Department retains full discretion to pursue any appropriate legal remedy should it determine that such action is necessary to protect public health or the environment.

Subchapter 4 Information

7:33-4.1 Public Access to Self-Disclosed Information

- (a) Pursuant to the Open Public Records Act at N.J.S.A. 47:1A-3, Self-Disclosure Reports and any associated information are considered government records and therefore subject to public access once submitted to the Department.

7:33-4.2 Requests for Additional Information

- (a) The Department shall not seek to obtain additional information concerning the self-reported violation(s) from a regulated entity beyond that included in the Self-Disclosure Report unless such information is necessary based on the following circumstances:

1. The Department is unable to determine whether:
 - i. The condition or activity constituting the violation has been properly corrected;

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- ii. All applicable provisions of these rules have been satisfied;
or
 - iii. Any harm caused by the violation has been fully remediated; or
2. The Department has reasonable grounds to believe that a violation of an environmental law has been committed other than the violation(s) disclosed in the Self-Disclosure Report.
- (b) If the Department seeks to obtain additional information, the regulated entity shall cooperate with the Department in order to receive consideration for a penalty reduction pursuant to these rules. Cooperation includes answering all questions, providing all requested documents, providing access to employees, and providing assistance in investigating the violation, any noncompliance problems related to the disclosure, and any environmental consequences related to the violation.

Based on consultation with staff, I hereby certify that the above statements, including the Federal Standards Analysis addressing the requirements of Executive Order 27 (1994) permit the public to understand accurately and plainly the purposes and expected consequences of these new rules. I hereby authorize the proposal of these new rules.

DATE: _____

Bradley M. Campbell
Commissioner
Department of Environmental Protection