

N.J.A.C. 7:14

WATER POLLUTION CONTROL ACT

Statutory authority: N.J.S.A. 13:1B-3 et seq., 13:1D-1 et seq., 13:1E-1 et seq., 58:10-23.11 et seq., 58:10A-1 et seq., 58:11-49 et seq., 58:11A-1 et seq. and 58:12A-1 et seq.

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SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. CONSTRUCTION OF WASTEWATER TREATMENT FACILITIES

7:14-2.1 Construction procedures

The Department shall require and adhere to the procedures identified in this subchapter. Actions or procedures by owners, permittees, consultants, contractors, or other persons affected by this subchapter which are not in accordance with this subchapter shall not be acceptable to the Department. Where applicable, the Department may grant a waiver from any requirement of this subchapter upon presentation of written justification by the owner, permittee, consultant or contractor.

7:14-2.2 Record drawings; collector sewers, interceptor sewers and force mains

(a) The owner shall be responsible for the preparation of all record drawings required for sewer lines. This responsibility may be delegated to the owner's representative with adequate compensation for this service.

(b) This responsibility shall not be delegated or transferred to the contractor. The contractor shall assist the owner/engineer, by providing record information, when requested, during the progress of the work.

7:14-2.3 Permits

(a) Federal, State, county and municipal permits required as a result of the construction activity within the delineated site shall be obtained by the owner and associated fees shall be paid by the owner. In addition, permits required for construction activities on railroad properties shall be obtained by the owner.

(b) Exceptions to this section shall be a permit to use explosives for rock excavation and such other permits which by law are required to be obtained by the contractor.

(c) The owner shall make every reasonable effort to identify permits and fees and costs required as a result of the construction activity in effect 60 days prior to the receipt of construction bids. This responsibility may be delegated to the owner's engineer with adequate compensation for this service. The engineer shall be held harmless from any pen-

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alty or action resulting from the failure to obtain a permit where every reasonable effort has been made by the engineer to obtain such permits. Conditions made a part of any permit shall be imposed upon the contractor as described in the contract or bid documents. Additional costs associated with a permit resulting from the construction activity which is beyond that stipulated in the contract shall be the responsibility of the contractor.

(d) Whenever necessary or appropriate the contractor shall assist the owner in the acquisition of permits.

(e) The Department may intercede and assist in the resolution of any problems resulting from the acquisition of any permits.

7:14-2.4 Easements/rights-of-way

An interruption of construction or an extension of contract time may be a basis for a claim by a contractor for additional cost when such interruption or extension is caused by the owner's inability to obtain an easement/right-of-way. Claims shall include any reasonable cost incurred by the contractor and shall be reviewed and approved by the owner prior to submission to the Department. The Department may approve all, any portion, or deny the cost for eligibility for projects funded under the Grant Program.

7:14-2.5 Field layout (baseline and monuments)

The owner shall be responsible to establish and confirm field controls prior to start of construction. The contractor shall not be liable to check the accuracy of field controls (baseline and monuments) for sewer pipe installation. However, the contractor's layout must be based on a minimum of two field control points. Whenever the contractor detects an error in the field controls during pipe installation, the contractor shall immediately notify the owner and the owner's engineer of such error with sufficient documentation. The contractor shall be held responsible for all corrective measures and associated costs for failure to notify the owner of such error.

7:14-2.6 Engineer design activities: plan scale and plan updating

(a) On occasion, projects do not go to construction within a reasonable time after the bid advertisement. During this period, utilities may be relocated or installed, as well as other changes which can take place that are unknown to the contractor. Because of this, problems can take place during construction and result in numerous change orders and increases in the cost of the project.

(b) The horizontal scale for construction plans for sewerage facilities shall not be less than one inch equals 100 feet. A larger horizontal scale shall be used where appropriate to show sufficient detail to construct the project. The vertical scale for construction plans for sewerage facilities shall be not less than one inch equals 10 feet. Based upon the best information available, the location of underground utilities and support structures for overhead utilities shall be shown on the plans.

(c) Construction plans for sewerage facilities shall be updated whenever the bid advertisement date exceeds one year after approval by the responsible State or Federal regulatory agency. The engineer shall receive adequate compensation for updating plans and specifications. All such revisions shall be noted and dated on the plans prior to bid.

7:14-2.7 Construction, overhead and profit factors for Extra Work compensation

(a) The contractor is entitled to all identifiable direct job costs associated with Extra Work excluding subcontractor's costs. For Extra Work not in excess of \$ 10,000 the contractors may add up to 10 percent overhead factor to their identifiable direct job costs, but excluding the cost of any subcontracting, plus up to a 10 percent profit factor to their identifiable direct costs plus overhead amount.

(b) As general policy, these overhead and profit factors may be accepted by owners as reasonable in lieu of requiring the submission of additional supporting data. However, the owner must reserve its right to review any cost or profit element on a case-by-case basis, where the submission for overhead and profit is in excess of the 10 percent overhead and 10 percent profit indicated above.

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(c) Cost increase in subcontracted work may be similarly handled and a prime contractor may add up to 10 percent to the total cost (including overhead and profit factors) incurred by the subcontractor. In such cases, the same reservations for rights shall apply.

(d) For Extra Work in the amount of \$ 10,000 to \$ 100,000, the above factors may be included initially for equitable adjustments but will be subject to negotiation, cost and pricing data, and owner review requirements. Federally funded projects will be governed by Federal regulations.

7:14-2.8 Payments to contractors

(a) At least 20 days before each monthly progress payment falls due for approval (but not more often than once per month), the contractor will submit to the engineer a partial payment estimate filled out and signed by the contractor covering the work performed during the period covered by the partial payment estimate and supported by such data as the engineer may reasonably require. Where any specific item(s) in the partial payment estimate is in dispute, the engineer may delete those costs from the estimate and approve the acceptable portion of the payment request. Payment requested for stored materials and/or equipment shall be subject to the following conditions being met or satisfied:

1. The materials and/or equipment shall be received in a condition satisfactory for incorporation in the work.
2. The materials and/or equipment shall be stored in such manner that they will not be damaged due to weather, construction operations or any other cause.
3. An invoice from the supplier shall be furnished for each item on which payment is requested.
4. The contractor shall furnish written proof from the supplier of 90 percent payment for the materials and/or equipment no later than 30 days after receipt of payment for same from the owner. The owner shall have the right to deduct from the next payment estimate an amount equal to the payment for said material and/or equipment if reasonable and adequate proof is not submitted.

(b) The contractor warrants and guarantees that title to all work, materials, and equipment covered by an Application for Payment, whether incorporated in the project or not, will pass to the owner upon the receipt of such payment by the contractor free and clear of all lien, claims, security interests or encumbrances (except 10 percent retention which may be withheld from suppliers and subcontractors to guarantee completion and performance). The engineer will after receipt of each partial payment estimate either indicate in writing his approval of payment and present the partial payment estimate to the owner, or return the partial payment estimate to the contractor indicating in writing his reasons for refusing to approve payment. In the latter case, the contractor may make the necessary corrections and resubmit the partial payment estimate. The owner shall review the partial payment estimate at its next regularly scheduled meeting and, if approved, payment shall be made available to the contractor within five days. The owner shall retain not more than two percent of the amount of each payment claimed. In accordance with EPA regulations, prime contractors are also required to make prompt payment to subcontractors and suppliers for eligible construction, material, and equipment costs. Generally, payments of all valid subcontractor and supplier requests for payment should be satisfied prior to the next succeeding request for progress payment by the prime contractor.

(c) When the work is substantially complete (Operational or Beneficial Occupancy), the withheld amount shall be further reduced below two percent but not less than twice the current market value of the work yet to be completed. On completion and acceptance of a part of the work on which the price is stated separately in the Contract Documents, payment shall be made in full including retained percentages, less authorized deductions. The contractor or owner may request assistance and guidance from the Department on disputes regarding retainage.

(d) "Substantial completion" as used in the context of this section shall mean satisfactory completion of major portions of the contract work, including inspection and testing, so that the facility may be turned over to the owner for its intended use or occupancy. The engineer shall certify the date of substantial completion and that date shall establish the beginning date of the warranty/guarantee period unless a prior date has been established.

7:14-2.9 Mobilization: unit price contracts for sewer construction

(a) Mobilization shall consist of the cost of initiating the contract. Payment for mobilization will be made at the lump sum price bid for this item in the proposal, which price shall include the cost of initiating the contract. The provisions for payment for the item mobilization supersede any provisions elsewhere in the specifications for including the costs of

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these initial services and facilities in the prices bid for the various items scheduled in the proposal. The lump sum price bid for mobilization shall be payable to the contractor whenever he shall have completed 10 percent of the work of the contract. For the purposes of this item, 10 percent of the work shall be considered completed when the total of payments earned, exclusive of the amount bid for this item, shown on the monthly certificates of the approximate quantities of work done, shall exceed 10 percent of the total price bid for the contract.

(b) The lump sum price bid for mobilization is limited to the following maximum amounts:

From More Than	To and Including	Original Contract Amount (including Mobilization)	Maximum Amount for Item of Mobilization
\$ 0	\$ 100,000		\$ 3,000
100,000	500,000		15,000
500,000	1,000,000		30,000
1,000,000	2,000,000		60,000
2,000,000	3,000,000		90,000
3,000,000	4,000,000		120,000
4,000,000	5,000,000		125,000
5,000,000	6,000,000		150,000
6,000,000	7,000,000		175,000
7,000,000	10,000,000		200,000
10,000,000	--		2.5% of Amount Bid

7:14-2.10 Bid items for sewer pipe installation

(a) This section establishes bid items which shall be included in unit price contracts for sewer pipe installation where applicable.

Description	Unit of Measure
1. Test Pits	Cubic Yard
2. Stone Foundation (bedding)	Cubic Yard
3. Select Material (below and above pipe grade)	Cubic Yard
4. Rock Excavation (including removal and disposal of boulders)	Cubic Yard
5. Wood Sheeting (install and remove where shown on plans)	Square Feet or 1000 Board Feet
6. Wood Sheeting (left in place where shown on plans)	Square Feet or 1000 Board Feet
7. Steel Sheeting (install and remove where shown on plans)	Square Feet or Tons
8. Steel Sheeting (left in place where shown on plans)	Square Feet or Tons
9. Permanent Pavement Gravel	Square Yard
10. Pavement	
i. Municipal:	
(1) Temporary which shall be removed (where applicable)	Square Yard
(2) Base	Square Yard
(3) Top	Square Yard
ii. County:	
(1) Temporary which shall be removed (where applicable)	Square Yard
(2) Base	Square Yard
(3) Top	Square Yard
iii. State:	
(1) Temporary which shall be removed (where applicable)	Square Yard

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	(2)	Base		Square Yard
	(3)	Top		Square Yard
11.		Testing	Linear Feet	
12.		Concrete Cradle or Encasement (to be identified where applicable)	Cubic Yard	

7:14-2.11 Reasonable minimum unit prices

(a) This section establishes reasonable minimum unit prices for indeterminate items, where applicable, for sewer pipe installation. Indeterminate items are those items which may be anticipated and for which quantities cannot be determined.

(b) The reasonable minimum unit prices are to be established by the owner/engineer for the following items:

1. Stone Foundation;
2. Select Material;
3. Concrete Cradle or Encasement--Nonreinforced;
4. Concrete Cradle or Encasement--Reinforced;
5. Test Pits;
6. Rock Excavation;
7. Wood Sheeting (install and remove)--square feet or 1000 board feet;
8. Wood Sheeting (left in place)--square feet or 1000 board feet;
9. Steel Sheeting (install and remove)--square feet or tons;
10. Steel Sheeting (left in place)--square feet or tons.

7:14-2.12 Payment widths, trench backfill and roadway paving for Federally funded sewer projects

(a) This section establishes eligible payment widths for select fill used for trench backfill and roadway pavement for federally funded sewer projects.

(b) Select trench backfill payment width:

1. Select trench backfill will be eligible for grant funding when the excavated material is totally or partially unacceptable for reuse as trench backfill. When the unacceptable material must be replaced with approved select backfill in a trench with a depth of 10 feet or less from the top of the pipe, the eligible payment width shall be B_d as shown below. For trenches of a greater depth the maximum eligible payment width shall be B_d plus H for the depth of unsuitable material as measured at the time of excavation.

2. When trench width is less than B_d plus H , the actual width shall control the payment.



3. B_d equals Maximum trench width (measured at the top of the pipe) allowed by the engineer for the type and strength class of pipe being installed.

4. The owner/engineer must make every effort to minimize the use of select fill. Marginal backfill material (material which is not acceptable for use in the pipe envelope or as a subbase for roadways) will be limited to the midzone of the trench. The midzone is defined as that portion of the trench beginning two feet above the top of the pipe, after compaction of the pipe envelope, to a point two feet below the final road or easement elevation. The owner/engineer must make all final decisions concerning the above.

(c) Paving:

1. Maximum eligible payment width shall be the disturbed width plus two feet. In no case shall the maximum eligible payment width be greater than Bd plus H ;



2. Maximum Eligible Pay Width equals Bd plus H ;

3. Special considerations:

i. Pavement replacement shall, in all instances, be "like kind" replacement except where the replacement of the original thickness of roadway material will not yield a structurally stable surface over the disturbed trench area, or where the requirements of the responsible governmental jurisdiction specify roadway materials other than the original disturbed pavement. In these instances, the engineer should specify the minimum thickness necessary to obtain a structurally sound surface or to comply with established local, county or State road opening permit requirements. Such requirements shall be contained in the contract documents.

ii. Roadways where the original total pavement thickness is less than two inches and the pavement cannot be boxed and maintained during construction, will be eligible for "like kind" replacement outside of the eligible trench pavement width.

iii. Any deviation from the above should be submitted during the design phase (Step II) for approval if possible. In all instances, approvals must be obtained prior to soliciting bids.

iv. Reducing the pavement thickness specified by the engineer and spreading it across a wider area of the street will not be approved unless extenuating circumstances justify the need to pave a wider area. These situations will be considered on a case by case basis and must be submitted as a Change Order and receive approval prior to implementing such a change.

(d) Application of this section is mandatory for all Federal Grants awarded to projects, pursuant to the provisions of the Federal Clean Water Act (33 U.S.C. §§ 1251 et seq.) as amended, before October 1, 1998. For all Federal Grants awarded after October 1, 1998, the allowable costs shall be determined in accordance with the applicable provisions of the Financial Assistance Programs for Environmental Infrastructure Facilities rules at N.J.A.C. 7:22-5, Determination of Allowable Costs: Fund and Trust.

7:14-2.13 Excavation material unacceptable or conditionally acceptable for reuse as trench backfill

(a) The following trench excavation materials are unacceptable as trench backfill:

1. Any excavation materials that will cause damage to the piping systems;
2. Any excavation material that cannot be compacted or consolidated to yield the desired density as specified in the contract specifications;
3. Trees, stumps and foreign material.

(b) The following excavation materials are conditionally acceptable as trench backfill only if provided for in the contract specifications and the trench is located in a right-of-way, an easement, a roadway or an unimproved area:

1. Clay, organics and silt determined to be suitable in accordance with soil tests required by the owner/engineer.
2. Hard materials, such as blacktop, concrete, stone and rock.
 - i. The hard materials shall only be placed in the midzone of the trench beginning two feet above the top of the pipe, after compaction of the pipe envelope, to a point two feet below the final road or ground surface.
 - ii. Placement of the hard materials shall not create a potential hazard to the pipe or create voids that will cause adverse settlement.
 - iii. The maximum overall size of any piece of hard material shall be 12 inches.

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(c) The Department may require that all trench backfill material not conforming to this subsection and contract specifications be removed and spoiled to a spoil site approved by the Department in accordance with the requirements of N.J.A.C. 7:26-1, for solid or hazardous wastes.

7:14-2.14 Construction equipment costs compensation for extra work

(a) The contractor is entitled to all identifiable direct job equipment costs associated with extra work. The compensable cost for construction equipment shall be based upon the most current costs established in "Rental Rates for Construction Equipment" and "Rental Rates for Older Construction Equipment" (Blue Book), Dataquest Incorporated, A.C. Nielsen Company, San Jose, CA, 1983.

(b) Overhead and profits factors allowed in N.J.A.C. 7:14-2.7, shall only be applied to the rates charged for rental equipment used by the contractor for extra work.

7:14-2.15 Substantial and final completion of pipe projects; contractor's guarantees

(a) The contractor shall notify the owner/engineer in writing when the contract work is substantially complete as defined by N.J.A.C. 7:14-2.8(d). Within a reasonable time, the owner/engineer shall inspect the work.

(b) If the owner/engineer considers the work to be substantially complete, and before the Certificate of Substantial Completion is issued, the contractor shall:

1. Submit a construction schedule for the remaining work to be completed, and

2. Warrant and guarantee, for a period of one year or for a period as otherwise specified, from the date of Substantial Completion, that the completed work is free from defects due to faulty materials, equipment or workmanship. The Performance Bond shall remain in effect through the guarantee period.

(c) If the owner/engineer does not consider the work to be substantially complete, the engineer shall notify the contractor in writing, listing the items to be completed or corrected.

1. The contractor shall correct or complete items identified in writing within a reasonable time as specified in the contract documents, including repairs of any damage resulting from such defects to other work completed under the contract.

2. If the contractor fails to make such corrections within a reasonable time as specified in the contract documents, the owner may do so and charge the costs incurred, including direct and indirect costs, to the contractor.

(e) Before the Contractor has received notification of substantial completion, the owner/engineer may submit a request to the contractor to use a functional portion of the work if:

1. Such use does not significantly interfere with construction on any portion of remaining work to be completed, and

2. The conditions of such use shall be identified in the Certificate of Substantial Completion when issued by the owner/engineer.

(f) Final completion shall be that point at which the contract is completed, defective work corrected and clean up work accomplished. Unless a Certificate of Substantial Completion has been issued, the guarantee period shall begin upon certification of final completion by the engineer.

Subchapters 3 through 7. (RESERVED)

SUBCHAPTER 8. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:14-8.1 Authority and purpose

(a) The purpose of this subchapter is to establish a civil administrative penalty policy governing the uniform assessment of civil administrative penalties. This subchapter shall also govern the Department's assessment of civil administrative penalties for violations of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., including violation on any rule or regulation, water quality standard, effluent limitation, administrative order or permit issued pursuant to the Water Pollution Control Act, and for violations of the Act Concerning Pretreatment of Industrial Wastewater, N.J.S.A. 58:11-64 et seq., and N.J.S.A. 58:10A-21 et seq. (also known as the New Jersey Underground Storage of Hazardous Substances Act). In addition, this subchapter shall govern the Department's administrative assessment of costs pursuant to N.J.S.A. 58:10A-10d(1)(c). This subchapter shall also govern the procedure for requesting an adjudicatory hearing on a notice of civil administrative penalty assessment or an administrative order.

(b) The Department may assess a civil administrative penalty of not more than \$ 50,000 for each violation of each provision of either the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act, or not more than \$ 100,000 for a violation of both statutes.

(c) Each day during which a violation as set forth in (b) above continues shall constitute an additional, separate and distinct violation.

(d) Neither the assessment of a civil administrative penalty nor the payment of any such civil administrative penalty shall affect the availability of any other enforcement provision provided for by N.J.S.A. 58:10A-10, or any other statute, in connection with the violation for which the assessment is levied.

(e) This subchapter, as amended effective May 17, 1999 shall apply to all violations which occur on or after May 17, 1999.

(f) This subchapter also establishes a civil administrative penalty policy governing the uniform assessment of civil administrative penalties by delegated local agencies as authorized pursuant to N.J.S.A. 58:10A-10.5. Nothing in this subchapter shall be construed to authorize a delegated local agency to take any action beyond the scope of its authority under N.J.S.A. 58:10A-10.5 through 10.10. Except as provided in this subsection, in connection with actions taken by a delegated local agency pursuant to N.J.S.A. 58:10A-10.5, all references in this subchapter to the Department shall be deemed to refer to the delegated local agency; the delegated local agency shall comply with all requirements which this subchapter imposes upon the Department, and may take all actions which this subchapter states that the Department may take, except that delegated local agencies shall not be subject to the requirement, at N.J.A.C. 7:14-8.4(a), that an adjudicatory hearing request be submitted to the Department's Office of Legal Affairs with a copy to the Department's enforcement bureau. A person requesting an adjudicatory hearing to contest an administrative order, notice of civil administrative penalty assessment, or notice of civil administrative cost assessment issued by a delegated local agency shall submit the request to the delegated local agency.

7:14-8.2 Definitions

As used in this subchapter, the following words and terms shall, in addition to those provided in N.J.A.C. 7:14A-1.2, have the following meanings unless the context clearly indicates otherwise.

"Any rules issued pursuant to the Water Pollution Control Act" means, but is not limited to, the following rules:

Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A;

Stormwater Management, N.J.A.C. 7:8;

Water Pollution Control, N.J.A.C. 7:9;

Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A;

Safe Drinking Water Act, N.J.A.C. 7:10;

Flood Hazard Area Control, N.J.A.C. 7:13;

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Water Pollution Control Act, N.J.A.C. 7:14;

Pollution Discharge Elimination System, N.J.A.C. 7:14A;

Statewide Water Quality Management Planning, N.J.A.C. 7:15; and

Regulations Governing the Certification of Laboratories and Environmental Measurements, N.J.A.C. 7:18; and

Sewage Infrastructure Improvement Act Grants, N.J.A.C. 7:22A.

"Bypass" means the anticipated or unanticipated intentional diversion of waste streams from any portion of a treatment works.

"Delegated local agency" means a local agency with an industrial pretreatment program approved by the Department.

"Discharge" means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of a pollutant into the waters of this State, onto land or into wells from which it might flow or drain into such waters, or into waters or onto lands outside the jurisdiction of the State which pollutant enters the waters of this State, and shall include the release of any pollutant into a municipal treatment works. A leak into a secondary containment system which does not involve a release into the waters or lands of this State is not a "discharge" for purposes of applying the rules under this chapter to violations of the Underground Storage of Hazardous Substances Act, N.J.S.A. 58:11-49 et seq., and the rules promulgated pursuant thereto, N.J.A.C. 7:14B.

"Discharge Monitoring Report" or "DMR" means the EPA's uniform national form, as amended, for the reporting of self-monitoring results by permittees, and includes Baseline Reports.

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

"Federal Act" means the Clean Water Act or the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.) including all subsequent supplements and amendments.

"Grace period" means the period of time afforded under N.J.S.A. 13:1D-125 et seq., commonly known as the Grace Period Law, for a person to correct a minor violation in order to avoid imposition of a penalty that would be otherwise applicable for such violation.

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

"Hazardous pollutant" means:

1. Any toxic pollutant;
2. Any hazardous substance as defined pursuant to section 3 of P.L. 1976, c.141 (N.J.S.A. 58:10-23.11b);
3. Any substance regulated as a pesticide under the Federal Insecticide, Fungicide and Rodenticide Act, Pub.L. 92-516 (7 U.S.C. § 136 et seq.);
4. Any substance the use or manufacture of which is prohibited under the Federal Toxic Substances Control Act, Pub.L. 94-469 (15 U.S.C. § 2601 et seq.);
5. Any substance identified as a known carcinogen by the International Agency for Research on Cancer; or
6. Any hazardous waste as designated pursuant to section 3 of P.L. 1981, c.279 (N.J.S.A. 13:1E-51) or the "Resource Conservation and Recovery Act," Pub. L.94-580 (42 U.S.C. § 6901 et seq.).

"Indirect discharge" means any discharge, excluding any discharges by municipal collection systems, into any domestic treatment works.

"Indirect user" means an entity with an indirect discharge.

"Industrial pretreatment program" or "IPP" means a program designed to regulate the introduction of pollutants into a local agency's treatment works from any nondomestic source.

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"Inhibition concentration" means that concentration of effluent which produces the specified inhibition effect in a chronic whole effluent toxicity test. An IC25 is the concentration of effluent which produces an inhibition of 25 percent for the monitored effect as compared to the control.

"Lawful entry" means an entry by the Commissioner into any building, place, or premise pursuant to N.J.S.A. 13:1D, 58:10A and as otherwise provided by law, ordinance, regulation, order, permit or agreement.

"LC50" means the median lethal concentration of a toxic substance, expressed as a statistical estimate of the concentration that kills 50 percent of the test organisms under specified test conditions, based on the results of an acute bioassay.

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

"Major facility" means:

1. For industrial facilities, any facility which scores 80 or more points on the NJPDES permit rating work sheet using the USEPA rating criteria. A facility with less than the required score of 80 may still be classified as a Major facility by the Regional Administrator or the Department. In those situations, the Department shall state the reasons for doing so; and

2. For municipal facilities, any POTW with a design flow of 1.0 million gallons per day or greater.

"Monitoring report form" means the standard Department form, including any subsequent additions, revisions or modifications, for the reporting of data pursuant to certain DGW permits.

"Municipal treatment works" means the treatment works of any municipality, county, or State agency or any agency or subdivision created by one or more municipal, county, or State governments and the treatment works of any public utility as defined in N.J.S.A. 48:2-13.

"No observed adverse effect concentration" or "NOAEC" means the lowest concentration at which the organisms are adversely affected as compared to the control determined using hypothesis testing technique.

"NOEC" or "no observable effect concentration" means the maximum effluent concentration which results in no observable effect for the evaluated end-point. The NOEC is usually determined as the next lower tested concentration than the concentration which results in the lowest observable effect as compared to the controls. For discharge permits where the limitation is expressed as an NOEC, the results shall be reported as the calculated IC25 and shall be considered equivalent to the observed NOEC.

"No measurable acute toxicity" or "NMAT" means a type of water quality based acute whole effluent toxicity limit imposed in accordance with N.J.A.C. 7:9B-4.6(c)5i(2), which requires that no mortality occurs in any acute toxicity test concentration, including 100 percent effluent, above normal background mortality levels for the test organism population. The normal background mortality level is the acceptable level of control mortality for a valid test specific in N.J.A.C. 7:18-6.6(v).

"Permit" means an authorization, license, or equivalent control document issued by the Department or a delegated local agency to implement the requirements of the State Act and the related statutes specified in N.J.A.C. 7:14-8.1 even where any or all the conditions of the permit have been stayed. Permit does not include any permit which has not yet been the subject of final agency action, such as a "draft permit." Permit includes a letter of agreement entered into between a delegated local agency and a user of its municipal treatment works, setting effluent limitations and other conditions on the user of the agency's municipal treatment works. Permit also includes a general permit and a permit-by-rule.

"Permitted groundwater remedial action" means the removal or abatement of one or more pollutants in a groundwater source pursuant to a permit.

"Person" means an individual, corporation, company, partnership, firm, association, owner or operator of a treatment works, political subdivision of this State and any state, Federal or interstate agency or an agent or employee thereof. "Person" shall also include any responsible corporate official for the purpose of enforcement action under Section 10 of the State Act.

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"Pollutant" means any dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, refuse, oil, grease, sewage sludge, munitions, chemical wastes, biological materials, medical wastes, radioactive substance (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. §§ 2011 et seq.)), thermal waste, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, agricultural, and construction waste or runoff, or other residue discharged directly or indirectly to the land, ground waters or surface waters of the State or to a DTW. "Pollutant" includes both hazardous and nonhazardous pollutants.

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

"Serious violation" means an exceedance, at a discharge point source, of an effluent limitation, except color, set forth in a permit, administrative order, or administrative consent agreement, including interim enforcement limits, as follows:

1. For effluent limitations for pollutants that are measured by concentration or mass, except for whole effluent toxicity;

i. Violations of an effluent limitation that is expressed as a monthly average:

(1) By 20 percent or more for a hazardous pollutant; and

(2) By 40 percent or more for a nonhazardous pollutant;

ii. Violations of an effluent limitation that is expressed as a daily maximum or daily minimum without a monthly average:

(1) By 20 percent or more of the average of all of the daily maximum or minimum values for a hazardous pollutant; and

(2) By 40 percent or more of the average of all of the daily maximum or minimum values for a nonhazardous pollutant; and

2. For effluent limitations for whole effluent toxicity as follows:

i. For any violation of an LC50, NOAEC, IC<25> or a NOEC limit when, upon subtracting the toxicity test result from the whole effluent toxicity limit, the difference is as follows:

Whole Effluent Toxicity Limit (% Effluent)	Difference (% Effluent)
greater than or equal to 80 and less than or equal to 100	greater than or equal to 20
greater than or equal to 50 and less than 80	greater than or equal to 15
greater than 10 and less than 50	greater than or equal to 10
less than or equal to 10	greater than or equal to 9

ii. Any violation of a No Measurable Acute Toxicity (NMAT) limit with greater than or equal to 50 percent mortality in any test concentration, including 100% effluent.

3. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by at least 40 percent of the midpoint of the range excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring.

For example: Assuming that a permittee's effluent limitation range for pH is 6.0 to 9.0, the midpoint would be 7.5.

If five separate readings of pH during a given day were 4.3, 5.8, 6.5, 6.0 and 6.5, the reading of 4.3 would be a serious violation as follows:

For example: Using the same information as above.

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Forty percent of 7.5 is 3; therefore, if the greatest violation of a pH effluent range for any calendar day has a pH of 4.5 or less or a pH of 10.5 or greater, the violation would be a "serious violation."

4. Notwithstanding the above, the Department may utilize, on a case-by-case basis, a more stringent factor of exceedance to determine a serious violation if the Department states the specific reasons therefore, which may include the potential for harm to human health or the environment.

"Significant noncomplier" or "SNC" means any person, except a local agency for an exceedance of an effluent limitation for flow, who commits any of the violations described below, unless the Department uses, on a case-by-case basis, a more stringent frequency or factor of exceedance to determine a significant noncomplier and the Department states the specific reasons therefor, which may include the potential for harm to human health or the environment. Violations which cause a person to become or remain an SNC include:

1. A serious violation for the same pollutant, at the same discharge point source, in any two months of any consecutive six month period;

2. Exceedance of an effluent limitation expressed as a monthly average, for the same pollutant, at the same discharge point source, by any amount in any four months of any consecutive six month period;

3. If there is not an effluent limitation for a particular pollutant expressed as a monthly average, exceedance of the monthly average of the daily maximums for the effluent limitation, for the same pollutant, at the same discharge point source, by any amount in any four months of any consecutive six month period;

4. Any exceedance of an effluent limitation for pH by any amount, excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring, at the same discharge point source in any four months of any consecutive six month period; or

5. Failure to submit a completed discharge monitoring report in any two months of any consecutive six month period.

"Sludge Quality Assurance Report" or "SQAR" means the standard Department form, including any subsequent additions, revisions or modifications, for the reporting of sludge quality and quantity.

"State Act" means the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

"Toxic pollutant" or "toxic substances" means any pollutant identified pursuant to the Federal Act or any pollutant or combination of pollutants, including disease causing agents, which after discharge and upon exposure ingestion, inhalation, or assimilation into any organism, either directly or indirectly by ingestion through food chains, may, on the basis of information available to the Department, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformation, in such organisms or their offspring. Toxic pollutants shall include but not be limited to, those pollutants identified pursuant to Section 307 of the Federal Act or Section 4 of the State Act, or in the case of "sludge use or disposal practices," any pollutant identified pursuant to Section 405(d) of the Federal Act.

"Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with an effluent limitation because of an event beyond the reasonable control of the permittee, including fire, riot, sabotage, or a flood, storm event, natural cause, or other act of God, or other similar circumstance, which is the cause of the violation. "Upset" also includes noncompliance consequent to the performance of maintenance operations for which a prior exception has been granted by the Department or a delegated local agency.

"Violator" means any person against whom the Department or delegated local agency asserts a violation of the State Act or any rules issued pursuant to the State Act.

"Whole effluent toxicity" or "WET" means the aggregate toxic effect of an effluent measured by a toxicity test.

7:14-8.3 Procedures for assessment, payment and settlement of civil administrative penalties, and affirmative defenses

(a) To assess a civil administrative penalty or any other costs allowed under the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act, and the Water Supply and Wastewater Operators' Licensing Act, the Department shall notify the violator by certified mail (return receipt requested) or by personal service. This Notice of Civil Administrative Penalty Assessment shall:

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1. Identify the section of the statute, rule, water quality standards, effluent limitation, administrative order or permit violated;
2. Concisely state the facts which constitute the violation;
3. Specify the amount of the civil administrative penalty to be imposed and give notice of other allowable costs to be sought; and
4. Advise the violator of the right to request an adjudicatory hearing pursuant to the procedures in N.J.A.C. 7:14-8.4.

(b) Payment of the civil administrative penalty is due upon receipt by the violator of the Department's Final Order in a contested case, or when a Notice of Civil Administrative Penalty Assessment becomes a Final Order, as follows:

1. If no hearing is requested pursuant to N.J.A.C. 7:14-8.4, a Notice of Civil Administrative Penalty Assessment becomes a Final Order and is deemed received on the 21st day following receipt of the Notice of Civil Administrative Penalty Assessment by the violator;
2. If the Department denies the hearing request, a Notice of Civil Administrative Penalty Assessment becomes a Final Order upon receipt of notice of such denial; or
3. If the Department conducts an adjudicatory hearing, a Notice of Civil Administrative Penalty Assessment becomes a Final Order upon receipt by the violator of a Final Order in a contested case.

(c) In addition to the amount of the civil administrative penalty that is due and owing pursuant to (b) above, the violator shall also pay to the Department the interest on the amount of the penalty, at the rate established by the New Jersey Supreme Court for interest rates on judgments as set forth in the Rules Governing the Courts of the State of New Jersey, as follows:

1. Interest shall accrue on the amount of the civil administrative penalty due and owing beginning on the 30th day after the date on which the penalty was due and owing and continuing until the civil administrative penalty is paid in full with interest if:
 - i. A violator does not pay a civil administrative penalty imposed pursuant to a final order; or
 - ii. A violator fails to make a civil administrative penalty payment pursuant to a payment schedule entered into with the Department; and
2. Interest, at the rate set forth in (c)1 above, shall accrue on the unpaid amount of a civil administrative penalty which is contested as a contested case under N.J.S.A. 52:14B-1 et seq., or appealed to the Appellate Division of the Superior Court, and upheld in full or in part, from the date the violator posted financial assurance under N.J.A.C. 7:14-8.4(a)9 or, in the case of a local agency, from the date the Department receives a local agency's hearing request, until the violator pays in full the civil administrative penalty and all interest accrued thereon.

(d) A civil administrative penalty and any allowable cost imposed pursuant to a final order shall constitute a debt of the violator or discharger. The Department may docket the penalty with the clerk of the Superior Court. The penalty, as docketed, shall have the same standing as any judgment docketed pursuant to N.J.S.A. 2A:16-1, except that:

1. No lien shall attach to the property of a local agency; and
2. No lien shall attach to the real property of a violator if the violator posts a refundable bond or other security with the Commissioner pursuant to an appeal of a final order to the Appellate Division of the Superior Court.

(e) The Department may settle any civil administrative penalty assessed pursuant to this subchapter according to the factors identified in (f) below as follows:

1. In cases where the violator is a local agency which violates an administrative consent order, the Department may settle a civil administrative penalty as follows:
 - i. The Department may reduce the civil administrative penalty up to 50 percent, provided that the penalty as reduced is not less than any applicable minimum amount set forth in N.J.A.C. 7:14-8.5(a) or 8.9(e); and
 - ii. The Department may not reduce the amount of any component of a civil administrative penalty which represents the economic benefit gained by the violator from the violation;

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2. Except as provided in (e)1 above, in the case of a violator who is a local agency which violates something other than an administrative consent order and then enters into an administrative consent order with the Department, which requires the local agency to take prescribed measures to comply with its permit, the Department shall have full discretion to settle the amount of the civil administrative penalty assessed or due for violations occurring during a period up to 24 months preceding the effective date of the administrative consent order, except that the Department shall neither:

- i. Reduce the amount of the civil administrative penalty less than the minimum amount, if applicable, prescribed in N.J.A.C. 7:14-8.5(a) or 8.9(e); nor
- ii. Reduce the amount of any component of a civil administrative penalty which represents the economic benefit gained by the violator from the violation.

3. In the case of all other violators:

- i. The Department may reduce the civil administrative penalty up to 50 percent, provided that the penalty as reduced is not less than any applicable minimum amount set forth in N.J.A.C. 7:14-8.5(a) or 8.9(e); and
- ii. The Department may not reduce the amount of any component of a civil administrative penalty which represents the economic benefit gained by the violator from the violation.

(f) In settling a civil administrative penalty, the Department may consider the following:

1. Mitigating or extenuating circumstances not considered in the notice of civil administrative penalty assessment;
2. The implementation by the violator of pollution prevention and/or abatement measures in addition to those minimally required by applicable statute or rule;
3. The implementation by the violator of measures to clean up, reverse or repair environmental damage previously caused by the violation;
4. The full payment by the violator of a specified part of the civil administrative penalty assessed if made within a time period established by the Department in an administrative order and/or a notice of civil administrative penalty assessment and provided that the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; or
5. Any other terms or conditions acceptable to the Department.

(g) In its discretion, the Department may enter into an agreement with a violator, in which the Department agrees to accept payment of a civil administrative penalty in installments over time. Such an agreement shall be in writing. The Department shall not enter into any such agreement if payment in full is due more than 90 days after execution of the agreement unless:

1. The violator is a local agency; or
2. The violator posts financial assurance with the Department upon execution of the agreement pursuant to one of the financial assurance mechanisms in Appendix A or in another form the Department individually approves in writing for this purpose. The financial assurance shall be in an amount that the Department reasonably determines will tend to ensure good faith compliance with the agreement. In determining the amount, the Department may consider any or all of the following factors:
 - i. The amount of the penalty;
 - ii. The amount and frequency of the installment payments due under the agreement;
 - iii. The duration of the agreement;
 - iv. Other remedies, aside from drawing upon the financial assurance, that the Department may exercise under the agreement if an installment payment is not timely made or if some other requirement of the agreement is not satisfied, and the extent to which such other remedies will tend to ensure compliance with the agreement;
 - v. The violator's history of compliance, including without limitation its history of compliance with other schedules for the payment of penalties assessed by the Department;
 - vi. Expenditures that the violator has made or has agreed to make for purposes of pollution control and/or pollution prevention; and

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vii. Other specific circumstances of the violator relating to the tendency of the financial assurance to ensure compliance with the agreement or indicating the extent to which financial assurance is necessary to ensure compliance with the agreement.

(h) Any violator that is not a local agency which enters into an administrative consent order with the Department that includes a compliance schedule shall post financial assurance in the full amount of the cost of fully complying with all of the terms and conditions imposed by the Department pursuant to one of the financial assurance mechanisms in Appendix A, incorporated herein by reference, or in another form the Department individually approves in writing for this purpose.

(i) Except as provided in (i)1 below, a violator may be entitled to an affirmative defense to liability for a violation of an effluent limitation occurring as a result of an upset, an anticipated or unanticipated bypass, a testing or laboratory error, or a permitted groundwater remedial action, only if, in the determination of the Department, the violator has satisfied the provisions of this section.

1. A violator shall not be entitled to an affirmative defense based on an alleged upset, an anticipated or unanticipated bypass, a testing or laboratory error to the extent that the violation is caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation or maintenance.

2. A violator shall be entitled to an affirmative defense only if, in the determination of the Department, the violator satisfies the following:

i. The violation occurred as a result of an upset, an anticipated or unanticipated bypass, a testing or laboratory error, or a permitted groundwater remedial action;

ii. The violator complied with all of the requirements in N.J.A.C. 7:14A-6.10;

iii. In the case of a permitted groundwater remedial action, the violation is a first violation of that permit limitation and the violation could not reasonably have been anticipated by the permittee. No such affirmative defense shall be granted by the Department if:

(1) The violation was the result of a negligent act or omission of the permittee;

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

(3) The permittee fails to provide timely notice and information as required by law rule or regulation to the Department;

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

(5) The permittee fails to file with the Department a remedial action protocol setting forth the procedure to be followed to prevent a recurrence of the exceedance;

iv. A violator asserting a testing or laboratory error as an affirmative defense shall also have the burden to demonstrate that a violation involving the exceedance of an effluent limitation was the result of unanticipated test interferences, sample contamination, analytical defects, or procedural deficiencies in sampling or other similar circumstances beyond the violator's control;

v. In the case of an upset or unanticipated bypass, the violator complied with any remedial measures required by the Department; and

vi. In the case of an anticipated bypass, the violator obtained prior written approval from the Department and complied with all conditions of the approval, including any remedial measures required by the Department.

3. If the Department determines that a violator is entitled to an affirmative defense for an exceedance of an effluent limitation caused by an upset, an anticipated or unanticipated bypass, a testing or laboratory error or a permitted groundwater remedial action, the Department shall not consider the exceedance a violation and shall not assess a civil administrative penalty.

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4. If the Department determines that a violator is not entitled to an affirmative defense for an exceedance of an effluent limitation caused by an upset, an anticipated or unanticipated bypass, a testing or laboratory error, or a permitted groundwater remedial action, the Department shall consider the exceedance a violation.

7:14-8.3A Public comment on interim enforcement limits

(a) The procedures for soliciting public comment on proposed interim enforcement limits in administrative consent orders are provided in this section.

1. The violator shall provide notice of proposed interim enforcement limits to be established in its administrative consent order and an opportunity for the public, for at least 30 days from the publication of the notice, to comment on the proposal.

2. The violator shall submit to the Department a proposed plan to provide the public notice required in (b) through (d) below.

3. Upon the violator's receipt of the Department's written approval of the violator's plan to provide public notice, the violator shall provide the public notice as approved by the Department.

4. The violator shall provide the public notice in accordance with (b) and (c) below.

(b) The violator shall provide the following public notice of the proposed interim enforcement limits:

1. At least three days prior to publication of the public notice required in (b)2 below, the violator shall mail a copy of the public notice and the draft administrative consent order or other document which includes the proposed interim enforcement limits to:

i. The mayor or chief executive officer and governing body of the municipality and county in which the violations occurred; and

ii. Any other interested persons the Department identifies.

2. The violator shall publish the public notice in a daily or weekly newspaper within the area affected by the facility which is the subject of the interim enforcement limits.

(c) The violator shall include the following in the public notice:

1. The name and address of the violator upon which the Department will impose the interim enforcement limits;

2. The beginning and ending dates of the public comment period;

3. A description of the nature of the violations necessitating the interim enforcement limits;

4. A summary of the terms and conditions of the legal document in which the interim enforcement limits is contained;

5. The name of the contact person within the Department to contact for more information;

6. The requirement that anyone submitting written comments on the proposed interim enforcement limits shall submit copies of the written comments to both the Department and the violator; and

7. The name and address of the person for the Department and the violator to whom members of the public may submit written comments.

(d) If the Department decides to hold a public meeting on the proposed interim enforcement limits:

1. The violator shall also include in the public notice:

i. The date, time and place of the public meeting; and

ii. A brief description of the nature and purpose of the public meeting, including the applicable rules and procedures;

2. The violator shall publish notice of the public meeting not more than 30 days and not less than 15 days prior to the public meeting;

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3. The Department shall hold the public meeting in the municipality in which the violations necessitating the interim enforcement limits occurred;

4. The violator shall attend and participate in the public meeting at the Department's request; and

5. The violator shall, with the prior written approval of the Department, make all necessary arrangements for scheduling and holding the public meeting, including, but not limited to:

i. Scheduling of the meeting room;

ii. Arranging for a court stenographer to record the statements at the public meeting; and

iii. Payment of all costs of the public meeting, including, but not limited to, hearing room costs, security, stenographer, transcript, and the Department's cost associated with the public meeting.

(e) The violator shall submit to the Department proof of publication prior to the Department issuing an administrative order or executing the administrative consent order which includes interim enforcement limits.

(f) After receiving the comments, but before executing an administrative order or an administrative consent order which includes the interim enforcement limits, the Department will:

1. Evaluate each of the comments received;

2. Respond to the comments received; and

3. Notify each person who submitted written comments of the main provisions of the administrative order or administrative consent order and the final interim enforcement limits and a copy of the Department's responses to the comments.

7:14-8.4 Procedures to request an adjudicatory hearing to contest an administrative order, a notice of civil administrative penalty assessment or a notice of civil administrative cost assessment; procedures for conducting adjudicatory hearings

(a) To request an adjudicatory hearing to contest an administrative order, a notice of civil administrative penalty assessment, or a notice of civil administrative cost assessment issued by the Department pursuant to the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act, or the Water Supply and Wastewater Operators' Licensing Act, the violator shall submit the original request in writing to the Department at Office of Legal Affairs, ATTENTION: Adjudicatory Hearing Requests, Department of Environmental Protection, PO Box 402, Trenton, New Jersey 08625-0402 and a copy of the request to the enforcement bureau which issued the enforcement document. Any written request shall include the following information:

1. The name, address, and telephone number of the violator and its authorized representative;

2. The date the violator received the enforcement document being contested;

3. A copy of the enforcement document and a list of all issues being appealed;

4. The violator's defenses to each of the findings of fact stated in short and plain terms;

5. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall so state and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all of the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;

6. Information supporting the request and specific reference to or copies of other written documents relied upon to support the request;

7. An estimate of the time required for the hearing (in days and/or hours);

8. A request, if necessary, for a barrier-free hearing location for physically disabled persons;

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9. Proof of compliance with all of the requirements in N.J.A.C. 7:14A-6.10 if the violator intends to:

i. Raise an affirmative defense to liability for a civil administrative penalty pursuant to N.J.A.C. 7:14-8.5(a) or 8.16(a) for the violation of an effluent limitation on the basis that a violation of an effluent limitation occurred as a result of an upset, an approved anticipated bypass or unanticipated bypass, a testing laboratory error, or a permitted groundwater remedial action; and

ii. To request that the Department determine through an administrative hearing whether or not it agrees with the violator's allegations concerning the matter; and

10. For a notice of civil administrative penalty assessment pursuant to N.J.A.C. 7:14-8.9(e), the following as applicable:

i. Documentation of compliance with the requirements in N.J.A.C. 7:14-8.9(e) that the violator notify the Department in writing, within 30 days after the date the violator was required to submit the information to the Department, of extenuating circumstances that prevented timely submission of a complete discharge monitoring report;

ii. Documentation of the violator's correction of the violation by submitting the omitted information within 10 days after the violator's receipt of the notice of the omission; a violator's failure to comply with the notice requirements in N.J.A.C. 7:14-8.9(e) will be a waiver of the violator's right to correct the violation within the required 10-day period and thus avert liability; or

iii. Documentation that the violator complied with N.J.A.C. 7:14-8.9(e) 3, if the violator intends to contest a civil administrative penalty assessed pursuant to N.J.A.C. 7:14-8.9(e) based on the existence of extenuating circumstances beyond the violator's control; if the violator fails to submit the required information within this 30-day period, the violator shall have waived its right to contest the civil administrative penalty in this manner and be barred from doing so; and

11. A statement as to whether the violator agrees to the Department's holding the request for 90 days prior to referral to the Office of Administrative Law for purposes of allowing time to negotiate a settlement of the dispute as provided by N.J.A.C. 1:1-8.1(b).

(b) The Department shall deny the hearing request if the Department does not receive a complete hearing request pursuant to (a) above within 20 days after receipt by the violator of the Notice of a Civil Administrative Penalty Assessment, the Administrative Order, or Notice of Civil Administrative Cost Assessment being challenged. A violator's failure to notify the Department in writing, within the 30 days allotted under (a)10i above, of the existence of extenuating circumstances which prevented timely submission of a complete discharge monitoring report, shall be grounds for the Department to deny any hearing request on a notice of civil administrative penalty assessment pursuant to N.J.A.C. 7:14-8.9(e).

(c) All adjudicatory hearings held pursuant to this section shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

7:14-8.4A Grace period applicability; procedures

(a) Each violation identified in the tables at N.J.A.C. 7:14-8.18 by an "M" in the Type of Violation column and for which the conditions at (c) below are satisfied, is a minor violation, and is subject to a grace period, the length of which is indicated in the column with the heading Grace Period.

(b) Each violation identified in the tables at N.J.A.C. 7:14-8.18 by an "NM" in the Type of Violation column is a non-minor violation and is not subject to a grace period.

(c) The Department or a local government agency shall provide a grace period for any violation identified as minor under this section, provided the following conditions are met:

1. The violation is not the result of the purposeful, knowing, reckless or criminally negligent conduct of the person responsible for the violation;

2. The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Department or local government agency;

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3. In the case of a violation that involves a permit, the person responsible for the violation has not been identified in a previous enforcement action by the Department or local government agency as responsible for a violation of the same requirement of the same permit within the preceding 12-month period;

4. In the case of a violation that does not involve a permit, the person responsible for the violation has not been notified in a previous enforcement action by the Department or local government agency as responsible for the same or a substantially similar violation at the same facility within the preceding 12-month period; and

5. In the case of any violation, the person responsible for the violation has not been identified by the Department or local government agency as responsible for the same or substantially similar violations at any time that reasonably indicate a pattern of illegal conduct and not isolated incidents on the part of the person responsible;

(d) For a violation determined to be minor under (c) above, the following provisions apply:

1. The Department or local government agency shall issue a notice of violation to the person responsible for the minor violation that:

i. Identifies the condition or activity that constitutes the violation and the specific statutory and regulatory provision or other requirement violated; and

ii. Specifies that a penalty may be imposed unless the minor violation is corrected and compliance is achieved within the specified grace period.

2. If the person responsible for the minor violation corrects that violation and demonstrates, in accordance with (d)3 below, that compliance has been achieved within the specified grace period, the Department or local government agency shall not impose a penalty for the violation.

3. The person responsible for a violation shall submit to the Department or local government agency, before the end of the specified grace period, written information certified to be true and signed by the person responsible for the minor violation, detailing the corrective action taken or compliance achieved.

4. If the person responsible for the minor violation seeks additional time beyond the specified grace period to achieve compliance, the person shall request an extension of the specified grace period. The request shall be made in writing, be certified to be true and signed by the person responsible for the minor violation, and received by the Department or local government agency no later than one week before the end of the specified grace period. The request shall include the anticipated time needed to achieve compliance, the specific cause or causes of the delay, and any measures taken or to be taken to minimize the time needed to achieve compliance. The Department or local government agency may, at its discretion, approve in writing an extension, which shall not exceed 90 days, to accommodate the anticipated delay in achieving compliance. In exercising its discretion to approve a request for an extension, the Department or local government agency may consider the following:

i. Whether the violator has taken reasonable measures to achieve compliance in a timely manner;

ii. Whether the delay has been caused by circumstances beyond the control of the violator;

iii. Whether the delay will pose a risk to the public health, safety and natural resources; and

iv. Whether the delay will materially or substantially undermine or impair the goals of the regulatory program.

5. If the person responsible for the minor violation fails to demonstrate to the Department or local government agency that the violation has been corrected and compliance achieved within the specified grace period or within the approved extension, if any, the Department or local government agency may, in accordance with the provisions of this chapter, impose a penalty that is retroactive to the date the notice of violation under (d)1 above was issued.

6. The person responsible for a minor violation shall not request more than one extension of a grace period specified in a notice of violation.

7:14-8.5 Civil administrative penalty determination

(a) The Department may assess a civil administrative penalty pursuant to this section of not more than \$ 50,000 for each violation of each provision of the Water Pollution Control Act and for violations of any rule, water quality standards, effluent limitation, administrative order or permit issued pursuant thereto. The Department shall assess a minimum mandatory civil administrative penalty for violations which occur after June 30, 1991 in an amount:

1. Not less than \$ 5,000 for each violation that causes a violator to be, or continue to be, a significant noncomplier; or
2. Not less than \$ 1,000 for each serious violation.

(b) Each violation of any provision of the Water Pollution Control Act or any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto, shall constitute an additional, separate and distinct violation. In addition, the unpermitted discharge of each separate pollutant shall constitute an additional, separate and distinct violation. If a violator establishes, to the satisfaction of the Department, that a single operational occurrence has resulted in the simultaneous violation of more than one effluent limit, the Department may consider, for purposes of calculating the mandatory civil administrative penalties to be assessed pursuant to (a) above, the violation of interrelated effluent limits to be a single violation.

(c) Each day during which a violation as set forth in (b) above continues shall constitute an additional, separate and distinct violation.

(d) Unless the Department assesses a civil administrative penalty pursuant to N.J.A.C. 7:14-8.6 through N.J.A.C. 7:14-8.12, the Department shall assess a civil administrative penalty for violations described in this section as described in (e) below, including any applicable grace period in accordance with N.J.A.C. 7:14-8.18.

(e) To assess a civil administrative penalty pursuant to this section, the Department shall:

1. Identify the civil administrative penalty range within the matrix in (f) below by:
 - i. Determining the seriousness of the violation pursuant to (g) below; and
 - ii. Determining the conduct of the violator pursuant to (h) below.
2. The civil administrative penalty shall be at the midpoint of the range within the matrix in (f) below, unless adjusted pursuant to (i) below.

(f) The matrix of ranges of civil administrative penalties is as follows:

		SERIOUSNESS		
		Major	Moderate	Minor
CONDUCT	Major	\$ 40,000- \$ 50,000	\$ 30,000- \$ 40,000	\$ 15,000- \$ 25,000
	Moderate	\$ 30,000- \$ 40,000	\$ 10,000- \$ 20,000	\$ 3,000- \$ 7,000
	Minor	\$ 15,000- \$ 25,000	\$ 3,000-\$ 7,000	\$ 1,000- \$ 2,500

(g) The Department shall determine the seriousness of the violation as major, moderate or minor as set forth in (g)1 through 3 below.

1. Major shall include:

i. Any violation of an effluent limitation which is measured by concentration or mass for any discharge exceeding the effluent limitation as follows:

- (1) By more than 50 percent for a hazardous pollutant; or
- (2) By more than 100 percent for a nonhazardous pollutant;

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ii. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by more than 50% of the midpoint of the range excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring; and

iii. Any other violation not included in (g)1i or ii above which either:

(1) Has caused or has the potential to cause serious harm to human health or the environment; or

(2) Seriously deviates from the requirements of the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act or violates any rule, water quality standards, effluent limitation, administrative order or permit issued pursuant thereto; serious deviation shall include, but not be limited to, those violations which are in complete contravention of the requirement, or if some of the requirement is met, which severely impair or undermine the operation or intent of the requirement.

iv. Any violation which seriously deviates from a requirement of the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act or any violation of any rule, water quality standard, effluent limitation, administrative order or permit now or hereafter issued pursuant thereto; serious deviation shall include, but not be limited to, those violations which are in complete contravention of the requirement, or if some of the requirement is met, which severely impair or undermine the operation or intent of the requirement.

2. Moderate shall include:

i. Any violation, other than a violation of an effluent limitation identified in (g)2ii or iii below, which has caused or has the potential to cause substantial harm to human health or the environment;

ii. Any violation of an effluent limitation which is measured by concentration or mass of any discharge exceeding the effluent limitation as follows:

(1) By 20 to 50 percent for a hazardous pollutant; or

(2) By 40 to 100 percent for a nonhazardous pollutant;

iii. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by at least 40 percent but no more than 50 percent of the midpoint of the range excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring; or

iv. Any violation, other than a violation of an effluent limitation identified in (g)2ii or iii above, which substantially deviates from the requirements of the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act, or any violation of any rule, water quality standard, effluent limitation, administrative order or permit now or hereafter issued pursuant thereto; substantial deviation shall include, but not be limited to, those violations which are in substantial contravention of the requirements or which substantially impair or undermine the operation or intent of the requirement.

3. Minor shall include:

i. Any violation, other than a violation of an effluent limitation identified in (g)3ii or iii below, not included in (g)1 or 2 above; or

ii. Any violation of an effluent limitation which is measured by concentration or mass for any discharge exceeding the effluent limitation as follows:

(1) By less than 20 percent for a hazardous pollutant; or

(2) By less than 40 percent for a nonhazardous pollutant; or

iii. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by less than 40 percent of the midpoint of the range excluding the excursions specifically excepted by a NJPDES permit with continuous pH monitoring.

(h) The Department shall determine the conduct of the violator as major, moderate or minor as follows:

1. Major shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;

2. Moderate shall include any unintentional but foreseeable act or omission by the violator; or

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3. Minor shall include any other conduct not included in (h)1 or 2 above.

(i) The Department may, in its discretion, move from the midpoint of the range to an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1. The compliance history of the violator;
2. The number, frequency and severity of the violation(s);
3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;
4. The deterrent effect of the penalty;
5. The cooperation of the violator in correcting the violation, remedying any environmental damage caused by the violation and ensuring that the violation does not reoccur;
6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation;
7. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation; and
8. Other specific circumstances of the violator or violation.

7:14-8.6 Civil administrative penalty for submitting inaccurate or false information

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who submits inaccurate information or who makes a false statement, representation, or certification in any application, record, or other document required to be submitted or maintained, or who falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained under the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act or any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto.

(b) Each day, from the day of submittal by the violator of the false or inaccurate information to the Department to the day of receipt by the Department of a written correction by the violator shall be an additional, separate and distinct violation.

(c) The Department shall assess a civil administrative penalty for violations described in this section based on the conduct of the violator at the midpoint of the following ranges except as adjusted pursuant to (d) below:

1. For each intentional, deliberate, purposeful knowing or willful act or omission by the violator, the civil administrative penalty shall be in an amount up to \$ 50,000 per act or omission;
2. For each other violation not identified pursuant to (c)1 above for which the violator does not correct the violation within 10 days after becoming aware of the violation, the civil administrative penalty shall be in an amount up to \$ 30,000; and
3. For each other violation not identified pursuant to (c)1 above for which the violator corrects the violation within 10 days after becoming aware of the violation, the civil administrative penalty shall be in an amount up to \$ 1,000.

(d) The Department may, in its discretion, adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1. The compliance history of the violator;
2. The number, frequency and severity of the violations;
3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;
4. The deterrent effect of the penalty;
5. The cooperation of the violator in correcting the violation, remedying any environmental damage caused by the violation and ensuring that the violation does not reoccur;

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6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation;

7. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation; and

8. Other specific circumstances of the violator or violation.

(e) Except as set forth in Table 1 or Table 2 at N.J.A.C. 7:14-8.18, a violation under this section is non-minor and, therefore, not subject to a grace period.

7:14-8.7 Civil administrative penalty for failure to allow lawful entry and inspection

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who refuses, inhibits or prohibits immediate lawful entry and inspection of any premises, building or place by any authorized Department representative.

(b) Each day, from the initial day of failure by the violator to allow immediate lawful entry and inspection to the day of receipt by the Department of written notification from the violator that the violator will not refuse, inhibit or prohibit immediate lawful entry and inspection, shall be an additional, separate and distinct violation.

(c) The Department shall assess a civil administrative penalty for violations described in this section at the midpoint of the following ranges except as adjusted pursuant to (d) below:

1. For refusing, inhibiting or prohibiting immediate lawful entry and inspection of any premises, building or place for which an administrative order or permit exists under the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act, the civil administrative penalty shall be in an amount up to \$ 50,000; and

2. For any other refusal, inhibition or prohibition of immediate lawful entry and inspection, the civil administrative penalty shall be in an amount up to \$ 8,000.

(d) The Department may, in its discretion, adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1. The compliance history of the violator;

2. The number, frequency and severity of the violations;

3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;

4. The deterrent effect of the penalty;

5. The cooperation of the violator in correcting the violation, remedying the damage caused by the violation and ensuring that the violation does not reoccur;

6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation;

7. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation; and

8. Other specific circumstances of the violator or violation.

(e) A violation under this section is non-minor and, therefore, not subject to a grace period.

7:14-8.8 Civil administrative penalty for conducting unapproved activities

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who approves, endorses, allows construction or operation to commence or proceed, builds, modifies, installs, replaces, expands or operates a facility or treatment works, as defined by N.J.A.C. 7:14A, without the proper authorization or in violation of any rule, administrative order, sewer connection ban, or permit issued or imposed pursuant to the Water Pollution Control Act.

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(b) The Department shall determine the amount of the civil administrative penalty for violations described in this section based on the seriousness of the violation and conduct of the violator based on the following:

1. For any unauthorized approval, endorsement or allowance to commence or proceed to build, modify, install, replace, expand or operate a facility or treatment works, the civil administrative penalty shall be in an amount determined as follows: civil administrative penalty = (seriousness) x (conduct) x (\$ 1.00)

i. The seriousness factor shall be equal to one-half of the design flow (in gallons per day) indicated in the permit application for that facility or project, or if there is no permit application, then from the Projected Flow table in N.J.A.C. 7:14A-23.3; and

ii. The conduct factor is either:

(1) 1.00 if the conduct is intentional, deliberate, purposeful, knowing or willful; or

(2) 0.75 for any other conduct.

iii. Each approval, endorsement or allowance to commence or proceed shall be considered an additional, separate and distinct violation;

2. For building, installation, modification, replacement or expansion of a facility or treatment works without the required Department approval, the civil administrative penalty shall be in an amount determined as follows: civil administrative penalty = (seriousness) x (conduct) x (\$ 1.00)

i. The seriousness factor shall be equal to one-half of the design flow (in gallons per day) as determined from the permit application for that facility or project, or if there is no permit application or if the design flow is not indicated on the permit application, then from the Projected Flow table in N.J.A.C. 7:14A-23.3.

ii. The conduct factor is either:

(1) 1.00 if the conduct is intentional, deliberate, purposeful, knowing or willful; or

(2) 0.75 for any other conduct.

iii. Each day or part thereof that the construction of the facility or treatment works continues without the required Department approval shall be considered an additional, separate and distinct violation.

3. For the operation of any facility or treatment works, the civil administrative penalty shall be in an amount equal to, at the sole discretion of the Department, either:

i. Twice the total penalty for the illegal building, installation, modification, replacement or expansion of a facility of treatment works calculated pursuant to (b)2 above; or

ii. Equal to the product of the following equation: civil administrative penalty = (seriousness) x (conduct) x (\$ 1.00)

(1) The seriousness factor shall be equal to the total design flow (in gallons per day) as determined from the permit application for that facility or project, or if there is no permit application or if the design flow is not indicated on the permit application, then from the Projected Flow table in N.J.A.C. 7:14A-23.3.

(2) The conduct factor shall be either:

(A) 1.00 if the conduct is intentional, deliberate, purposeful, knowing or willful; or

(B) 0.75 for any other conduct.

(3) Each day or part thereof that the operation of the facility or treatment works continues without the required Department approval shall be considered an additional, separate and distinct violation.

(c) A violation under this section is non-minor and, therefore, not subject to a grace period.

7:14-8.9 Civil administrative penalty for failure to properly conduct monitoring or sampling under the Water Pollution Control Act

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who fails to carry out monitoring or sampling activities or to submit discharge monitoring reports, baseline monitoring reports,

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monitoring report forms or sludge quality assurance reports required by the Water Pollution Control Act or any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto.

(b) Each violation, including each parameter that is required to be monitored, sampled and reported and that is not monitored, sampled and reported, is an additional, separate and distinct violation. Each day during which a violation continues shall constitute an additional, separate and distinct violation.

(c) Except as provided in (e) below, the Department shall assess a civil administrative penalty for violations described in this section based on the conduct of the violator at the midpoint of the following ranges except as adjusted pursuant to (d) below:

1. For any intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty shall be in an amount up to \$ 50,000;

2. For any unintentional but foreseeable act or omission by the violator, the civil administrative penalty shall be in amount up to \$ 40,000; or

3. For any other violations the civil administrative penalty shall be in an amount up to \$ 20,000.

(d) The Department may, in its discretion, adjust the amount determined pursuant to (c) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1. The compliance history of the violator;

2. The number, frequency and severity of the violation(s);

3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;

4. The deterrent effect of the penalty;

5. The cooperation of the violator in correcting the violation remedying the damage caused by the violation and ensuring that the violation does not reoccur;

6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation;

7. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation; and

8. Other specific circumstances of the violator or violation.

(e) For any person's failure to submit a complete discharge monitoring report, the Department shall assess a minimum mandatory civil administrative penalty of not less than \$ 100.00 for each effluent parameter omitted on a discharge monitoring report, nor greater than \$ 50,000 per month for any one discharge monitoring report, for any discharge monitoring report required to be submitted after June 30, 1991.

1. The civil administrative penalty assessed pursuant to (e) above shall begin to accrue on the fifth day after the date on which the discharge monitoring report was due and shall continue to accrue at least for 30 days if the violation is not corrected.

2. The Department may continue to assess civil administrative penalties for the failure to submit a complete discharge monitoring report beyond the 30-day period referenced in (e)1 above until the violation is corrected.

3. To contest a civil administrative penalty assessed pursuant to this section, a violator shall submit evidence of extenuating circumstances beyond the control of the permittee, including circumstances that prevented timely submission of a complete discharge monitoring report, or portion thereof, within 30 days after the date on which the effluent parameter information was required to be submitted to the Department. If the violator fails to submit the required information within this 30-day period, the violator shall have waived its right to contest the civil administrative penalty in this manner and be barred from doing so.

4. A violator will not be subject to a civil administrative penalty for the inadvertent omission of one or more effluent parameters in a discharge monitoring report if both of the following conditions are met:

i. The violator submits the omitted information to the Department within 10 days after receipt by the violator of notice of the omission; and

ii. The violator demonstrates to the satisfaction of the Department that the violation for which the Department assessed the civil administrative penalty was due to an inadvertent omission by the violator of one or more effluent parameters.

(f) A violation under this section is non-minor and, therefore, not subject to a grace period.

7:14-8.10 Civil administrative penalty for failure to pay a fee

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who fails to pay a fee when due pursuant to the Water Pollution Control Act or the New Jersey Underground Storage of Hazardous Substances Act.

(b) Each day a fee is not paid after it is due shall constitute an additional, separate and distinct violation.

(c) The Department shall determine the amount of the civil administrative penalty for violations described in this section based on an amount equal to the unpaid fee, up to a maximum of \$ 50,000 per violation.

(d) A violation under this section is non-minor and, therefore, not subject to a grace period.

7:14-8.11 (Reserved)

7:14-8.12 Civil administrative penalty for violation of whole effluent toxicity limitations

(a) The Department may assess a civil administrative penalty for violations of whole effluent toxicity limitations expressed as median Lethal Concentration (LC50), a No Observed Adverse Effect Concentration (NOAEC), a No Observable Effect Concentration (NOEC), an Inhibition Concentration (IC25) or No Measurable Acute Toxicity (NMAT) pursuant to this section.

(b) Each violation of a whole effluent toxicity limitation shall constitute an additional, separate and distinct violation.

(c) To assess a civil administrative penalty pursuant to this section the Department shall identify the civil administrative penalty range pursuant to (d) or (e) below.

(d) The Department shall determine the range for the civil administrative penalty for violations of whole effluent toxicity limitations expressed as median Lethal Concentration (LC50), a No Observed Adverse Effect Concentration (NOAEC), a No Observable Effect Concentration (NOEC), or an Inhibition Concentration (IC25) described in this section as follows, except as adjusted pursuant to (f) below:

1. For any violation of an LC50, a NOEC or an IC25 limit included in the following table, the civil administrative penalty shall be in an amount up to \$ 50,000, when upon subtracting the toxicity test result from the whole effluent toxicity limit, the difference is as follows:

Whole Effluent Toxicity Limit (% Effluent)	Difference (% Effluent)
greater than or equal to 80 and less than or equal to 100	greater than or equal to 20
greater than or equal to 50 and less than 80	greater than or equal to 15
greater than 10 and less than 50	greater than or equal to 10
less than or equal to 10	greater than or equal to 9

2. For any other violation of an LC50, a NOEC or IC25 limit the civil administrative penalty shall be in an amount up to \$ 40,000.

(e) The Department shall assess a civil administrative penalty for violations of whole effluent toxicity limitations expressed as No Measurable Acute Toxicity (NMAT) or No Observed Adverse Effect Concentration (NOAEC) based

on the extent of the violator's exceedance of the whole effluent toxicity limitation at the midpoint of the following ranges except as adjusted pursuant to (f) below:

1. For any violation of a NMAT or NOAEC limit with greater than or equal to 50 percent mortality in any test concentration, including 100 percent effluent, the civil administrative penalty shall be in an amount up to \$ 50,000;
2. For any other violation of a NMAT or NOAEC limit the civil administrative penalty shall be in an amount up to \$ 40,000.

(f) The Department may, in its discretion, adjust the amount determined pursuant to (d) or (e) above to assess a civil administrative penalty in an amount no greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1. The compliance history of the violator;
2. The number, frequency and severity of the violation(s);
3. The measures taken by the violator to mitigate the effects of the current violation or to prevent future violations;
4. The deterrent effect of the penalty;
5. The cooperation of the violator in correcting the violation, remedying the damage caused by the violation and ensuring that the violation does not reoccur;
6. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation;
7. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation; and
8. Other specific circumstances of the violator or violation.

(g) A violation under this section is non-minor and, therefore, not subject to a grace period.

7:14-8.13 Civil administrative penalty for economic benefit

(a) When the Department determines that the violator has gained an economic benefit from a violation, the Department shall, in addition to any other civil administrative penalty assessed pursuant to this subchapter, include as part of a civil administrative penalty the economic benefit (in dollars) which the violator has realized as a result of not complying, or by delaying compliance, with the requirements of the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act or any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant thereto.

(b) Economic benefit shall include:

1. The amount of savings realized from avoided capital or noncapital costs resulting from the violation;
2. The return earned or that may be earned on the amount of the avoided costs;
3. Any benefits accruing to the violator as a result of a competitive market advantage enjoyed by reason of the violation; and
4. Any other benefits resulting from the violation.

(c) The Department shall consider the following factors in determining economic benefit:

1. The amount of capital investments required, and whether they are one-time or recurring;
2. The amount of one-time nondepreciable expenditures;
3. The amount of annual expenses;
4. The useful life of capital;
5. Applicable tax, inflation and discount rates;
6. The amount of low interest financing, the low interest rate, and the corporate debt rate; and

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7. Any other factors relevant to economic benefit.

(d) If the total economic benefit was derived from more than one violation, the total economic benefit amount may be apportioned among the violations from which it was derived so as to increase each civil administrative penalty assessment to an amount no greater than \$ 50,000 per violation.

7:14-8.14 Civil administrative penalty for failing to comply with an information request or administrative subpoena, and the destruction of records

(a) The Department may assess a civil administrative penalty pursuant to this section against each violator who fails to completely respond to an information request or administrative subpoena, or destroys records relating to a discharge to surface water within five years of the discharge, or to a discharge to ground water at any time without the prior written permission of the Department.

(b) Each day that the violator does not fully respond to any item in an information request or administrative subpoena and each item in an information request or administrative subpoena that is not fully responded to shall be an additional, separate and distinct violation.

(c) The Department shall assess a civil administrative penalty for each failure to completely respond to an information request or administrative subpoena in an amount up to \$ 50,000 based on the following factors:

1. The substantive responsiveness of the violator's response to the information request or administrative subpoena;
2. Number of items in the information request or administrative subpoena which the violator attempted to respond to;
3. Number of items in the information request or administrative subpoena which the violator did not respond to;
4. The timeliness of the violator's response; and
5. Any other relevant factors.

(d) The Department shall assess a civil administrative penalty for the destruction of records in violation of P.L. 1990, c. 28, section 15, based on the conduct of the violator at the midpoint of the following ranges:

1. For each intentional, deliberate, purposeful, knowing or willful act or omission by the violator, the civil administrative penalty shall be in an amount up to \$ 50,000; and
2. For each other violation not identified pursuant to (d)1 above the civil administrative penalty shall be in the amount up to \$ 30,000.

(e) Except as set forth in Table 1 or Table 2 at N.J.A.C. 7:14-8.18, a violation under this section is non-minor and, therefore, not subject to a grace period.

7:14-8.15 (Reserved)

7:14-8.16 Civil administrative penalty determination for indirect dischargers

(a) The Department may assess a civil administrative penalty against any indirect discharger of not more than \$ 50,000, for each violation of each provision of the Water Pollution Control Act and for each violation of any rule, pretreatment standard, effluent limitation, administrative order or permit issued pursuant thereto. The Department shall assess a minimum mandatory civil administrative penalty in an amount:

1. Not less than \$ 1,000 for each serious violation as defined under N.J.A.C. 7:14-8.2; and
2. Not less than \$ 5,000 for each violation that causes a violator to be, or continue to be, a significant noncomplier as defined under N.J.A.C. 7:14-8.2.

(b) Each violation of any provision of the Water Pollution Control Act or any rule, pretreatment standard, effluent limitation, administrative order or permit issued by the Department, shall constitute an additional, separate and distinct violation. In addition, the unpermitted discharge of each separate pollutant shall constitute an additional, separate and distinct violation.

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(c) Each day during which a violation as set forth in (b) above continues shall constitute an additional, separate and distinct violation.

(d) Unless the Department assesses a civil administrative penalty as set forth in N.J.A.C. 7:14-8.6 through 7:14-8.12, the Department may assess a civil administrative penalty for violations described in this section as described in (e) below, including any applicable grace period in accordance with N.J.A.C. 7:14-8.18.

(e) To assess a civil administrative penalty pursuant to this section, the Department shall:

1. Identify the penalty range within the matrix in (f) below by:

i. Determining the seriousness of the violation pursuant to (g) below; and

ii. Determining the conduct of the violator pursuant to (h) below; and

2. Assess the penalty at the midpoint of the range within the matrix in (f) below, unless adjusted pursuant to (i) below.

(f) The matrix of ranges of penalties is as follows:

		SERIOUSNESS		
		Major	Moderate	Minor
CONDUCT	Major	\$ 10,000- \$ 50,000	\$ 5,000- \$ 25,000	\$ 2,000- \$ 13,000
	Moderate	\$ 5,000- \$ 10,000	\$ 2,500- \$ 5,000	\$ 500- \$ 3,000
	Minor	\$ 500- \$ 7,500	\$ 500- \$ 2,500	\$ 250- \$ 1,250

(g) The Department shall determine the seriousness of the violation as major, moderate or minor as set forth in (g)1 through 3 below.

1. Major shall include:

i. Any violation of any effluent limitation that is measured by concentration or mass for any discharge exceeding the effluent limitation as follows:

(1) By more than 50 percent for a hazardous pollutant;

(2) By more than 100 percent for a non-hazardous pollutant; or

(3) Any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment; or

ii. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by more than 50 percent of the midpoint of the range excluding the excursions specifically excepted by a NJPDES/SIU issued permit with continuous pH monitoring; or

iii. Any other violation not included in (g)1i or ii above which either:

(1) Has caused or has the potential to cause serious harm to human health or the environment; or

(2) Seriously deviates from the requirements of the Water Pollution Control Act or of any rule, pretreatment standards, effluent limitation, administrative order or permit issued pursuant thereto; serious deviation shall include, but not be limited to, those violations that are in complete contravention of the requirement, or if some of the requirement is met, which severely impair or undermine the operation or intent of the requirement.

2. Moderate shall include:

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i. Any violation, other than a violation of an effluent limitation identified in (g)2ii or iii below, which has caused or has the potential to cause substantial harm to human health or the environment;

ii. Any violation of an effluent limitation which is measured by concentration or mass of any discharge exceeding the effluent limitation as follows:

(1) By 20 to 50 percent for a hazardous pollutant; or

(2) By 40 to 100 percent for a non-hazardous pollutant;

iii. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by at least 40 percent but no more than 50 percent of the midpoint of the range excluding the excursions specifically excepted by a NJPDES/SIU issued permit with continuous pH monitoring; or

iv. Any violation, other than a violation of an effluent limitation identified in (g)2ii or iii above, which substantially deviates from the requirements of the Water Pollution Control Act or of any rule, pretreatment standards, effluent limitation, administrative order or permit issued pursuant thereto; substantial deviation shall include, but not be limited to, violations that are in substantial contravention of the requirements or which substantially impair or undermine the operation or intent of the requirement.

3. Minor shall include:

i. Any violation, other than a violation of an effluent limitation identified in (g)3ii or iii below, not included in (g)1 or 2 above;

ii. Any violation of an effluent limitation which is measured by concentration or mass for any discharge exceeding the effluent limitation as follows:

(1) By less than 20 percent for a hazardous pollutant; or

(2) By less than 40 percent for a non-hazardous pollutant; or

iii. The greatest violation of a pH effluent range in any one calendar day which violation deviates from the midpoint of the range by less than 40 percent of the midpoint of the range excluding the excursions specifically excepted by a NJPDES/SIU issued permit with continuous pH monitoring.

(h) The Department shall determine the conduct of the violator as major, moderate or minor as follows:

1. Major shall include any intentional, deliberate, purposeful, knowing or willful act or omission by the violator;

2. Moderate shall include any unintentional but foreseeable act or omission by the violator; or

3. Minor shall include any other conduct not included in (h)1 or 2 above.

(i) The Department may move from the midpoint of the range, to an amount not greater than the maximum amount nor less than the minimum amount in the range, on the basis of the following factors:

1. The compliance history of the violator;

i. No violations of the same effluent limitation and discharge point at all in the two years immediately preceding the pending violation shall result in a reduction equal to 25 percent of the midpoint.

ii. No serious or fewer than four lesser violations of the same effluent limitation and discharge point in the two years immediately preceding the pending violation shall result in a reduction equal to 10 percent reduction of the midpoint.

iii. One isolated serious violation or four or more lesser violations of the same effluent limitation and discharge point in the two years immediately preceding the date of the pending violation shall result in an increase equal to 10 percent of the midpoint.

iv. Any violation(s) which caused a person to become or remain in significant noncompliance or two or more isolated serious violations where such violations are of the same effluent limitation and discharge point in the two years immediately preceding the date of the pending violation shall result in a 25 percent increase from the midpoint;

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2. Where the nature, timing and effectiveness of any measures taken by the violator to mitigate the effects of the violation for which the penalty is being assessed results in compliance within 30 days of receipt of the notice of violation from the Department;

3. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation;

4. Any impacts on the receiving water, including stress upon the aquatic biota, or impairment of receiving water uses, such as for recreational or drinking water supply, resulting from the violation; and

5. Other specific circumstances of the violator or violation.

7:14-8.17 Enforcement actions for failure to implement an approved industrial pretreatment program

(a) The Department may assess a civil administrative penalty against any delegated local agency pursuant to this section for each violator who fails to implement its approved industrial pretreatment program as required by the Federal Act, the State Act, or the Water Pollution Control Act, and for violations of any rule, administrative order, or permit issued pursuant thereto.

(b) Each violation of any provision of the Federal Act, the State Act, the Water Pollution Control Act, or any rule, administrative order, or permit issued pursuant thereto, shall constitute an additional, separate and distinct violation.

(c) The Department may assess a civil administrative penalty for violations described in this section at the midpoint of the following ranges except as adjusted pursuant to (e) below:

1. For failure to implement any of the following pretreatment program requirements, the civil administrative penalty shall be in an amount up to \$ 10,000:

i. Give public notice to indirect users which meet or have met the significant non-compliance criteria as defined by 40 CFR Part 403.8(f)(2)(vii);

ii. Ensure public participation and notification;

iii. Perform RCRA notification pursuant to 40 CFR Part 403; or

iv. Submit required major program modifications.

2. For failure to implement any of the following pretreatment program requirements, the civil administrative penalty shall be in an amount up to \$ 20,000:

i. Identify and locate indirect users;

ii. Perform data management and recordkeeping;

iii. Sample the treatment works as required by the conditions of the IPP; or

iv. Submit a "40 CFR Part 403" annual report, and/or the "CWEA" annual report pursuant to N.J.S.A. 58:10A-14.2 and/or the grace period annual report pursuant to N.J.A.C. 7:14A-19.6(g) and (h).

3. For failure to implement any of the following pretreatment program requirements, the civil administrative penalty shall be in an amount up to \$ 50,000:

i. Inspect indirect users;

ii. Issue a permit to those facilities required to receive such a document;

iii. Sample indirect users;

iv. Initiate, prosecute or settle enforcement actions in accordance with this subchapter and an approved enforcement response plan and the pretreatment program as approved, including any subsequent amendments thereto;

v. Develop and enforce local discharge limitations;

vi. Review reports and identify violations; or

vii. Secure and maintain program resources.

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(d) The Department may assess a civil administrative penalty in accordance with (c) above at any time. The assessment shall be based on the Department's evaluation of the delegated local agency's pretreatment program requirements. Furthermore, the Department may require a delegated local agency to adequately respond to findings based on an inspection conducted by the Department, the Department's review of the delegated local agency's 40 CFR Part 403 annual report, or the IPP on-site audit conducted by the Department.

(e) The Department may adjust the amount determined pursuant to (c) above to assess a civil administrative penalty from the midpoint of the range to an amount not greater than the maximum amount nor less than the minimum amount in the range on the basis of the following factors:

1. The compliance history of the violator;
2. The nature, timing and effectiveness of any measures taken by the violator to prevent future similar violations;
3. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and/or
4. Other specific circumstances of the violator or violation.

(f) When the Department determines that the violator has gained an economic benefit from a violation, the Department may, in addition to any other civil administrative penalty assessed pursuant to this subchapter, include as part of a civil administrative penalty, under (c) above, the economic benefit (in dollars) which the violator has realized as a result of not complying, or by delaying compliance.

(g) If the Department determines that a delegated local agency has failed to assess mandatory minimum penalties in accordance with this subchapter or the Water Pollution Control Act, it shall take enforcement action against the delegated local agency, including, but not limited to, issuance of a notice of violation, issuance of an order, assessment of penalties and injunctive relief to compel compliance.

7:14-8.18 Tables of minor and non-minor violations; grace periods

(a) Tables 1 and 2 below identify particular violations of the Pollutant Discharge Elimination System rules, N.J.A.C. 7:14A, and the Underground Storage Tanks rules, N.J.A.C. 7:14B, as minor or non-minor for purposes of a grace period, and identify the duration of the grace period for minor violations. The descriptions of the violations set forth in the tables in this section are provided for informational purposes only. In the event that there is a conflict between a violation description in the tables and the rule to which the violation description corresponds, the rule shall govern.

(b) The Department may assess a civil administrative penalty for a violation of the Water Pollution Control Act, the Act Concerning Pretreatment of Industrial Wastewater, the New Jersey Underground Storage of Hazardous Substances Act, and/or for a violation of any rule, consent agreement or administrative order adopted or issued pursuant thereto, that is not listed in Tables 1 and 2, or in N.J.A.C. 7:14-8.6 through 8.10, 8.12, 8.14, or 8.17, according to the following:

1. The Department shall determine whether the violation is a minor violation and subject to a grace period or whether the violation is non-minor and not subject to a grace period as follows:

i. If, pursuant to (c) below, the violation is comparable to a violation listed in Tables 1 and 2 and the comparable violation in Tables 1 and 2 is minor, then the violation under this section is also minor, provided the criteria at N.J.A.C. 7:14-8.4A(c) are also met. The minor violation shall be subject to the grace period set forth in Tables 1 and 2 for the comparable violation, and the penalty shall be assessed in accordance with N.J.A.C. 7:14-8.5 or 8.16;

ii. If the violation is not comparable to a violation listed in Tables 1 and 2, or in N.J.A.C. 7:14-8.6 through 8.10, 8.12, 8.14, or 8.17 and the violation meets all of the criteria at (b)1ii(1) through (3) below as well as the criteria at N.J.A.C. 7:14-8.4A(c), then the violation under this section is minor. The minor violation shall be subject to a grace period of 30 days, and the penalty shall be assessed in accordance with N.J.A.C. 7:14-8.5 or 8.16.

(1) The violation poses minimal risk to the public health, safety and natural resources;

(2) The violation does not materially and substantially undermine or impair the goals of the regulatory program; and

(3) The activity or condition constituting the violation is capable of being corrected and compliance achieved within the time prescribed by the Department;

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iii. If, pursuant to (c) below, the violation is comparable to a violation listed in Tables 1 and 2, or in N.J.A.C. 7:14-8.6 through 8.10, 8.12, 8.14, or 8.17, and the comparable violation in Tables 1 and 2, or in N.J.A.C. 7:14-8.6 through 8.10, 8.12, 8.14, or 8.17 is non-minor, then the violation under this section is also non-minor and the penalty shall be assessed in accordance with N.J.A.C. 7:14-8.5 through 8.10, 8.12, 8.14, 8.16, or 8.17.

iv. If the violation is not comparable to a violation listed in Tables 1 and 2, or in N.J.A.C. 7:14-8.6 through 8.10, 8.12, 8.14, or 8.17 and the violation does not meet the requirements of N.J.A.C. 7:14-8.4A(c), and does not meet the criteria of (b)1ii(1) through (3) above, the violation is non-minor and the penalty shall be assessed in accordance with N.J.A.C. 7:14-8.5 or 8.16.

(c) Comparability of a violation under (b) above with a violation listed in Tables 1 and 2, or in N.J.A.C. 7:14-8.6 through 8.10, 8.12, 8.14, or 8.17 is based upon the nature of the violation (for example, a violation of recordkeeping, permit limitation, or monitoring).

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
7:14A-2.1(d)	Discharging any pollutant except in conformity with a valid NJPDES permit issued by the Department, unless specifically exempted by N.J.A.C. 7:14A.	NM	
7:14A-2.1(e)	Building, installing, modifying, or operating any facility for the collection, treatment, or discharge of any pollutant, except in conformance with the TWA requirements contained in N.J.A.C. 7:14A-22 and 23.	NM	
7:14A-2.11(a)	Failure of a person, upon receipt of written notice from the Department, to provide information regarding a discharge or potential discharge when the Department has reason to believe that a person has, or ay have, information relevant to a discharge or potential discharge of a pollutant.	NM	
7:14A-2.11(c)	Failure to provide information requested in the form and manner prescribed by the Department.	M	30 days
7:14A-2.11(d)	Failure of person receiving a request for information made pursuant to 7:14A-2.11(a) to comply with the requirements of 7:14A-2.11(d) 1, 2 and 3.	NM	
7:14A-2.11(d)	Failure of person receiving a subpoena issued pursuant to N.J.A.C. 7:14A-2.10 to comply with the requirements of N.J.A.C. 7:14A-2.11(d)1, 2 and 3.	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
7:14A-2.11(e)1	Failure to allow an authorized representative of the Department to enter upon a person's premises for the purposes of inspection, sampling, copying or photographing.	NM	
7:14A-2.11(e)2	Failure to allow an authorized representative of the Department to have access to and copy any records that must be kept under the conditions of a NJPDES permit.	NM	
7:14A-2.11(e)3	Failure to allow an authorized representative of the Department to inspect any facilities, equipment, practices or operations regulated or required under a NJPDES permit.	NM	
7:14A-2.11(e)4	Failure to allow an authorized representative of the Department to sample or monitor any substance or parameter at any location.	NM	
7:14A-2.11(f)	Failure of permittee to submit relevant facts previously omitted in a permit application, or request for authorization or submit corrected information for a permit application, request for authorization or any report within 10 days of becoming aware of the correct information.	M	30 days
7:14A-2.13(a)	Failure to obtain a permit for any discharge from an animal feeding operation that meets the criteria for a concentrated animal feeding operation or is required to obtain a permit under N.J.A.C. 7:14A-2.13(d).	NM	
7:14A-2.14(a)	Failure to obtain a permit for any discharge from an animal production facility that meets the criteria for an animal production facility or is required to obtain a permit under N.J.A.C. 7:14A-2.14(d).	NM	
7:14A-3.1(a)3	Failure of NJPDES permittee/applicant to submit payment within 30 days of assessment	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation of the permit fee.	Type of Violation	Grace Period
7:14A-3.1(j)	Failure to submit to the soil conservation district the applicable fee with each request for authorization submitted under NJPDES Permit No. NJ0088323 (referred to as the category 5G3 "construction activity" stormwater general permit), except as provided in N.J.A.C. 7:14A-3.1(j)1.	NM	
7:14A-3.1(j)1	Failure to submit to the Department the applicable fee for any project that the New Jersey Department of Transportation (NJDOT) is constructing or proposes to construct for which a stormwater discharge is regulated under NJPDES Permit No. NJ0088323.	NM	
7:14A-4.2(c)	Failure of an operating entity to obtain a NJPDES permit when a facility or activity is owned by one or more persons.	NM	
7:14A-4.2(e)3	Failure of person to file an application for renewal or a request for authorization under a general permit at least 180 calendar days prior to the expiration of the existing permit.	NM	
7:14A-4.5(b)	Failure of an applicant with an individual NJPDES permit for an existing discharge or activity to submit a complete renewal application in accordance with N.J.A.C. 7:14A-2.7, and when the Department determines additional water quality information is necessary, to submit water quality studies as provided in N.J.A.C. 7:14A-2.12(a).	NM	
7:14A-4.8(a)	Failure of existing concentrated animal feeding operation to provide in its application the information required under N.J.A.C. 7:14A-4.8(a)1 through 3.	M	30 days
7:14A-4.8(b)	Failure of existing concentrated aquatic animal production facility to provide in its application the information required under N.J.A.C. 7:14A-4.8(b)1 through 5.	M	30 days

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
7:14A-4.9(a)	Failure to have permit application, request for authorization, reports other than DMRs, and other requested information signed by a person described in N.J.A.C. 7:14A-4.9(a)1 through 4.	M	30 days
7:14A-4.9(c)	Failure to submit a new authorization satisfying the requirements of N.J.A.C. 7:14A-4.9(b) prior to or together with any reports, information or applications signed by an authorized representative.	M	30 days
7:14A-4.9(d)	Failure of person signing a report required by permits, other than DMRs, and other information requested by the Department, to make the certification in N.J.A.C. 7:14A-4.9(d).	M	30 days
7:14A-6.2(a)	Failure to comply with any general conditions applicable to all NJPDES permits specified in N.J.A.C. 7:14A-6.2(a) excluding N.J.A.C. 7:14-6.2(a)6, 7, 8, 9 and 10.	NM	
7:14A-6.2(a)9	Failure of a permittee with discharges that flow through an outfall pipe, unless such outfall pipe is completely and continuously submerged, or is not assigned a Discharge Serial Number (DSN), to notify the Department that a tag to mark the location of the pipe has been or will be installed on the pipe by the effective date of the permit, or by May 5, 1998, whichever is sooner.	M	30 days
7:14A-6.2(a)9	Failure of a permittee with discharges that flow through an outfall pipe, unless such outfall pipe is completely and continuously submerged, to provide an outfall tag which meets the requirements specified in N.J.A.C. 7:14A-6.2(a)9i and ii.	M	30 days
7:14A-6.2(a)14	Failure of a permittee to furnish to the Department, within a reasonable timeframe specified by the Department, any information that the Department may request to determine whether cause exists	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
	for issuing, modifying, revoking and reissuing, or revoking a discharge permit, or to determine compliance with a NJPDES permit; or to provide copies of records required to be kept by the permit.		
7:14A-6.4	Failure to comply with a schedule of compliance in a permit, including interim deadlines for progress or reports of progress towards compliance with the State and Federal Acts and all other applicable authority for N.J.A.C. 7:14A.	NM	
7:14A-6.5(a)1	Failure to take samples and measurements representative of the monitored activity.	NM	
7:14A-6.5(a)2	Failure of permittee to perform all analyses in accordance with the analytical test procedures specified in 40 CFR 136, 40 CFR 503 or other test procedures specified in the permit.	NM	
7:14A-6.5(a)2	Failure of a permittee to indicate a suitable analytical procedure and provide the Department with literature references or a detailed description of the procedure when no approved test procedure is available.	M	30 days
7:14A-6.5(b)1	Failure to properly install, use, and maintain monitoring equipment and use proper monitoring methods.	NM	
7:14A-6.5(b)2	Failure to properly monitor a discharge in accordance with the monitoring type, interval and frequency as specified in the permit.	NM	
7:14A-6.5(b)4	Failure to monitor in accordance with the edition of the Department's "Field Sampling Procedures Manual" applicable at the time of sampling, or an alternate method approved by the Department.	NM	
7:14A-6.5(d)1	Failure of a permittee to automatically adjust its effluent monitoring and reporting frequency to monthly when required by N.J.A.C. 7:14A-6.5(d)1i or ii.	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
7:14A-6.5(d)3	Failure of a permittee to continue this monthly schedule until the permittee has submitted six consecutive monthly Discharge Monitoring Reports that show compliance with the particular serious violation parameter at the particular discharge point.	NM	
7:14A-6.6	Failure to comply with record keeping requirements.	NM	
7:14A-6.7(a)	Failure to comply with written notice requirements for planned physical alterations or additions to a permitted facility that meet the criteria in N.J.A.C. 7:14A-6.7(b).	NM	
7:14A-6.8(a)	Failure of permittee to report monitoring results on the DMR and/or the Baseline Reports (BR) or other monitoring report forms required by the permit or the Department at the intervals specified in the permit.	NM	
7:14A-6.8(b)	Failure of permittee with effluent limits expressed as daily maxima or minima without a monthly average for a particular parameter to report the average of all daily maxima or minima values obtained during the reporting month.	NM	
7:14A-6.8(c)	Failure of permittee to automatically adjust its reporting frequency to monthly.	NM	
7:14A-6.8(e)	Failure of permittee to include in any calculation and report on the form specified by the Department if a permittee monitors any pollutant more frequently than required by the permit in accordance with the permit requirements for sample type, location, and analysis.	NM	
7:14A-6.8(f)	Failure to utilize an arithmetic mean for calculations for all limitations that require averaging of measurements, unless otherwise specified in the permit by the Department.	M	30 days
7:14A-6.8(g)	Failure of the permittee to submit with	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
	the report the level of production that actually occurred during the reporting month and the limitations, standards, or prohibitions applicable to that level of production when subject to limitations based on a measure of production.		
7:14A-6.8(h)	Failure of the permittee to report all instances of noncompliance not reported under N.J.A.C. 7:14A-6.10 at the time DMRs are submitted.	NM	
7:14A-6.8(h)	Failure of the permittee to submit reports that contain the information required in the written submission listed in N.J.A.C. 7:14A-6.10(e), if not already submitted to the Department.	NM	
7:14A-6.8(i)	Failure of SIUs, DSW major industrial facilities, DGWs, and DSW local agencies, other than those discharging only stormwater or non-contact cooling water, required to submit DMRs to the Department to submit the required reporting forms to the Department on a monthly basis when sampling is required on a monthly basis for one or more parameters.	NM	
7:14A-6.9	Failure to comply with DMR and BR signature and certification requirements.	NM	
7:14A-6.10(c)	Failure of permittee to submit noncompliance report information within two hours of commencement of a discharge, or of the permittee becoming aware of a discharge for the situations listed in N.J.A.C. 7:14A-6.10(a)1i through iv, 2 and 3.	NM	
7:14A-6.10(d)	Failure of permittee to submit noncompliance report information within 24 hours of commencement of a discharge, or of the permittee becoming aware of a discharge for the situations listed in N.J.A.C. 7:14A-6.10(a)1v and 3.	NM	
7:14A-6.10(e) and 7:14A-6.10(f)	Failure to comply with written submission requirements for noncompliance reporting.	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
7:14A-6.10(i)	Failure to comply with written report requirements for serious violations.	NM	
7:14A-6.10(j)	Failure of permittee to comply with reporting requirements on instances of noncompliance not reported under N.J.A.C. 7:14A-6.10 at the time DMRs are regularly submitted.	NM	
7:14A-6.12(a)	Failure of permittee to, at all times, maintain in good working order and operate the treatment works and facilities which are installed or used by the permittee to achieve compliance with the terms and conditions of the discharge permit.	NM	
7:14A-6.12(b)	Failure of a permittee who operates a treatment works to satisfy the licensing requirements of the "Water Supply and Wastewater Operators Licensing Act."	M	60 days
7:14A-6.12(c)	Failure to comply with operation and maintenance manual requirements for treatment works, including related appurtenances and collection system.	NM	
7:14A-6.12(d)	Failure to comply with emergency plan requirements.	NM	
7:14A-6.12(e)	Failure of a municipality or sewerage authority to properly operate and maintain a treatment works when that entity is not a permittee, but owns and operates a treatment works used only for the collection or transportation of domestic sewage.	NM	
7:14A-6.15(a)	Failure of a permittee to comply with land-based sludge management criteria and conform with the requirements for the management of residuals and grit and screenings pursuant to the requirements in N.J.A.C. 7:14A-6.15(a)1 through 5.	NM	
7:14A-7.2(b)	Failure to obtain a discharge to ground water permit prior to discharge except as otherwise provided in N.J.A.C. 7:14A-7.4 and 7.5.	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
7:14A-7.3(a)	Failure to comply with all requirements of N.J.A.C. 7:14A-7, except those persons listed in N.J.A.C. 7:14A-7.3(c), (d), and (e), and 7:14A-7.4.	NM	
7:14A-7.3(b)	Failure of persons responsible for the activities, pollution sources, or regulated units listed at N.J.A.C. 7:14A-7.3(b)1 through 7 to comply with the requirements of N.J.A.C. 7:14A-7.	NM	
7:14A-7.6	Failure to comply with the Ground Water Protection Plan requirements.	NM	
7:14A-7.7	Failure to comply with the Ground Water Sampling Procedures and Statistical Analysis requirements.	NM	
7:14A-7.8	Failure to comply with any measures specified in a NJPDES permit to address any contravention of the ground water quality standards.	NM	
7:14A-8.3	Failure to obtain a permit-by-rule or individual UIC permit prior to construction of any well or any underground injection required to have a permit (including, where applicable, a well permit) under N.J.A.C. 7:14A-8.	NM	
7:14A-8.4	Failure to comply with any Department prescribed requirement necessary to control or prevent the movement of fluids into underground sources of drinking water.	NM	
7:14A-8.5(a), (b) and (c)	Failure to submit required inventory information within 90 days of Department notice for a permit-by-rule.	M	30 days
7:14A-8.5(h)	Failure to cease injection pursuant to this N.J.A.C. 7:14A-8.5.	NM	
7:14A-8.7(a)	Operation of a Class IV injection well and/or injection of hazardous or radioactive wastes via Class I injection wells without Department authorization.	NM	
7:14A-8.7(c)	Failure to abandon and close any injection	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
	well that is injecting, or has ever injected, hazardous wastes (including Class IV and Class I injection wells) in compliance with all applicable Department regulations for remediation of contaminated sites, including the Procedures for Department Oversight of the Remediation of Contaminated Sites (N.J.A.C. 7:26C).		
7:14A-8.9(a)1, 2, and 6	Failure to comply with any Additional Condition Applicable to Class I, II, III and V UIC Permits incorporated in an UIC permit.	M	30 days
7:14A-8.9(a)3, 4 and 5	Failure to report any condition that may endanger or cause fluid to migrate to a potable supply well or underground source of drinking water in accordance with the prescribed time frames.	NM	
7:14A-8.11	Failure to comply with any of the requirements for corrective or preventative action.	NM	
7:14A-8.12	Failure to comply with the Specific Operating Criteria and Construction Standards.	NM	
7:14A-8.13	Failure to comply with the Specific Operating Criteria and Construction Standards Applicable to Class I Wells.	NM	
7:14A-8.14	Failure to comply with the Specific Operating Criteria and Construction Standards Applicable to Class II Wells.	NM	
7:14A-8.15	Failure to comply with the Specific Operating Criteria and Construction Standards Applicable to Class III Wells.	NM	
7:14A-8.16	Failure to comply with the Specific Operating Criteria and Construction Standards Applicable to Class V Wells.	NM	
7:14A-8.17	Failure to submit information required by Additional Requirements for Application for Individual UIC Permits.	M	30 days
7:14A-8.18	Failure to comply with the Specific	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
	Operating Criteria and Construction Standards applicable to permit-by-rule authorization for underground injection and seepage pits.		
7:14A-9.2	Failure to apply for a NJPDES permit to conduct ground water monitoring.	NM	
7:14A-9.3	Failure to meet the ground water monitoring system performance standards.	NM	
7:14A-9.4	Failure to meet the General Ground Water Monitoring Well requirements except for N.J.A.C. 7:14A-9.4(a)5.	NM	
7:14A-9.4(a)5	Failure to permanently mark both the elevation of the top of the well casing or the number assigned or approved by the Department on the well casing.	M	30 days
7:14A-9.5	Failure to comply with the Ground Water Monitoring Program requirements for Sanitary Landfills.	NM	
7:14A-9.7	Failure to comply with the Leak Detection Monitoring Program requirements.	NM	
7:14A-9.8	Failure to comply with the Assessment Monitoring Program requirements.	NM	
7:14A-9.9	Failure to comply with the Assessment of Corrective Measures requirements.	NM	
7:14A-9.10	Failure to comply with the Selection of Remedy requirements.	NM	
7:14A-9.11	Failure to comply with the Implement and Corrective Action Program requirements.	NM	
7:14A-11.3	Failure of existing manufacturing, commercial, mining, and silviculture dischargers and research facilities that discharge to surface water to comply with additional reporting notification requirements.	NM	
7:14A-12.2(a)	Failure of a direct discharges to surface water from publicly or privately owned domestic treatment works to comply with	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation the effluent quality standards set forth in N.J.A.C. 7:14A-12.2(b) through (f).	Type of Violation	Grace Period
7:14A-12.4(a)	Failure of a direct discharge to surface water for which (BOD5 or CBOD5) water quality based effluent limitations based upon water quality studies acceptable to the Department have not been developed, but are required under N.J.A.C. 7:9B-1.5 or 1.6, to comply with the minimum treatment requirements for BOD5 specified in N.J.A.C. 7:14A-12.4(b).	NM	
7:14A-12.5(a)	Failure to comply with continuous year round disinfection standards set forth in N.J.A.C. 7:14A-12.5(b) prior to discharge into surface waters a wastewater that could contain pathogenic organisms such as fecal coliform and/or enterococci organisms.	NM	
7:14A-12.8(a)	Failure of an indirect user to comply with any local agency standards for non-petroleum based oil and grease.	NM	
7:14A-12.8(c)	Failure of a direct discharger to surface waters to limit the oil and grease effluent content as specified in N.J.A.C. 7:14A-12.8.	NM	
7:14A-12.8(d)	Failure of an indirect user discharging petroleum based oil and grease to meet the petroleum hydrocarbon effluent standards set forth in N.J.A.C. 7:14A-12.8.	NM	
7:14A-12.11(d)	Failure to comply with the chemical specific toxic pollutant effluent standards set forth in N.J.A.C. 7:14A-12 Appendix B for a discharge to surface water from a site remediation project.	NM	
7:14A-12.11(e)	Failure to comply with the chemical specific toxic pollutant effluent standards set forth in N.J.A.C. 7:14A-12 Appendix C for a new source, new discharge or expanded direct discharge to surface water.	NM	
7:14A-16.2(a)	Failure of a permittee to provide due notice to the Department in accordance with N.J.A.C. 7:14-16.2(b) or (d) when	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
	transferring a NJPDES permit to any person.		
7:14A-19.2(c)	Failure of a local agency, or combination of treatment works operated by the same local agency, required to establish an IPP pursuant to N.J.A.C. 7:14A-19.2(a) or (b) to develop and submit an IPP in accordance with the requirements of 40 CFR Part 403 and the requirements of N.J.A.C. 7:14A-19.	NM	
7:14A-19.3(b)1	Failure of a local agency, including those not required by N.J.A.C. 7:14A-19.2(a) and (b), to submit a copy of the local sewer use ordinance to the Department.	M	30 days
7:14A-19.3(b)2i	Failure of a delegated local agency to update its inventory of indirect users.	NM	
7:14A-19.3(b)2ii	Failure of a non-delegated local agency to submit a report annually listing all indirect users that meet the indirect user definition.	M	30 days
7:14A-19.3(b)3	Failure of a local agency to develop local limits or demonstrate that such limits are not necessary in accordance with N.J.A.C. 7:14A-19.7.	NM	
7:14A-19.3(b)4	Failure of a local agency to deposit 10 percent of the amount of penalties collected into the Wastewater Treatment Operators' Training Account.	M	60 days
7:14A-19.3(c)1	Failure of delegated local agency to notify indirect users of the responsibilities required in the DLA's rules and regulations or sewer use ordinance.	M	30 days
7:14A-19.3(c)2	Failure of delegated local agency to issue an IPP permit to its indirect users.	NM	
7:14A-19.3(c)3	Failure of delegated local agency to perform compliance monitoring and inspections of indirect users.	M	30 days
7:14A-19.3(c)4	Failure of delegated local agency to review and respond to violations of an IPP permit or the sewer use ordinance/rules and	M	30 days

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
	regulations, within 60 days of receipt of the compliance information generated by indirect users or the DLA.		
7:14A-19.3(c)5	Failure of delegated local agency to take enforcement actions based upon indirect users' noncompliance.	M	30 days
7:14A-19.3(c)6	Failure of delegated local agency to develop and maintain a data management system which includes an indirect user inventory, characterization of the nature of indirect user discharges, compliance status, permit status, and enforcement actions.	M	90 days
7:14A-19.3(c)7	Failure of delegated local agency to sample its treatment works and sludges.	NM	
7:14A-19.3(c)9	Failure of delegated local agency to notify its significant indirect users (SIUs) in writing, in accordance with 40 CFR 403.8(f)(2)(iii), of the SIUs' obligation to comply with applicable requirements under Subtitles C and D of the Resource Conservation and Recovery Act (RCRA).	M	30 days
7:14A-19.3(c)10	Failure of delegated local agency to secure and maintain sufficient resources and qualified personnel, in accordance with 40 CFR 403.8(f)(3), to carry out the program implementation procedures.	NM	
7:14A-19.3(d)	Failure of a local agency to comply with the requirements of the Grace Period Law by establishing type or category of minor violation and time period to correct the violation as noted in its rules and regulations or sewer use ordinance.	NM	
7:14A-19.4(a)	Failure of a delegated local agency to develop and implement an enforcement response plan in accordance with N.J.A.C. 7:14A-19.4.	NM	
7:14A-19.4(c)	Failure of a delegated local agency to include an enforcement response plan within the rules and regulations or sewer use	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation ordinance of a delegated local agency.	Type of Violation	Grace Period
7:14A-19.4(d)	Failure of a delegated local agency to include or incorporate by reference in its enforcement response plan all mandatory penalties, settlement restrictions, uniform penalty policies, grace period provisions and other requirements applicable to the Department in accordance with N.J.A.C. 7:14-8.1(f), including, without limitation, the civil administrative penalty determination procedure specified in N.J.A.C. 7:14-8.16.	NM	
7:14A-19.5	Failure of a delegated local agency to include in its sewer use ordinance or rules and regulations the enforcement and penalty provisions and procedural and substantive requirements set forth in N.J.A.C. 7:14A-19.5.	M	90 days
7:14A-19.6(a)	Failure of a delegated local agency to comply with the additional requirements for delegated local agencies as set forth in N.J.A.C. 7:14A-19.6.	M	60 days
7:14A-19.6(b)	Failure of a delegated local agency to inspect any permittee that meets the significant noncomplier definition within 60 days of receipt of the discharge monitoring report or self-monitoring report that initially results in the permittee's being identified as a significant noncomplier.	NM	
7:14A-19.6(c)	Failure of a delegated local agency to submit a Clean Water Enforcement Act annual report to the Department by February 1.	NM	
7:14A-19.6(d)	Failure of a delegated local agency to submit additional information outlined in N.J.A.C. 7:14A-19.6.	NM	
7:14A-19.6(e)	Failure of a delegated local agency to submit the information required in N.J.A.C. 7:14A-19.6(c) and (d) on forms provided by the Department.	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
7:14A-19.6(f)	Failure of a delegated local agency to submit a 40 CFR Part 403 annual report that describes its pretreatment program activities.	M	30 days
7:14A-19.6(g)	Failure of a delegated local agency to submit a grace period annual report to the Department by March 1.	M	30 days
7:14A-19.6(h)	Failure of a delegated local agency to submit the information required in N.J.A.C. 7:14A-19.6(g) on forms provided by the Department.	NM	
7:14A-19.7(a)	Failure of a local agency to perform a headworks analysis in order to develop local limits or demonstrate that local limits are not necessary.	NM	
7:14A-19.7(b)	Failure of a delegated local agencies to submit a work plan to include the parameters to be sampled, the sampling locations within the treatment plant and the collection system, and a schematic diagram of the treatment plant showing sampling locations.	M	60 days
7:14A-19.7(c)	Failure of a delegated local agency, when proposing and adopting local limits, to comply with the public notice and hearing requirements.	M	90 days
7:14A-19.7(d)	Failure of a delegated local agency to submit a written technical evaluation to revise local limits.	NM	
7:14A-19.7(e)	Failure of a delegated local agency to submit an acceptable written technical evaluation that includes all the information outlined in N.J.A.C. 7:14A-19.7.	M	60 days
7:14A-19.8(a)	Failure of a delegated local agency to issue an IPP permit.	NM	
7:14A-19.8(b)	Failure of a delegated local agency to include the requirements outlined in N.J.A.C. 7:14A-19.8 in each IPP permit.	NM	
7:14A-19.8(c)	Failure of a delegated local agency to	M	90 days

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
	comply with public notice and hearing requirements.		
7:14A-19.8(d)	Failure of a delegated local agency to include in its sewer use ordinance or rules and regulations outlined in N.J.A.C. 7:14A-19.8.	NM	
7:14A-19.9(a)	Failure of a delegated local agency to provide written notice to the Department regarding each substantial and non-substantial IPP modification, as defined under 40 CFR 403.18.	NM	
7:14A-19.9(b)	Failure of a delegated local agency to provide a statement of the basis for the modification, and a copy of the elements of the IPP to be modified for a non-substantial modifications request.	M	30 days
7:14A-19.9(c)	Failure of a delegated local agency to provide the items outlined in N.J.A.C. 7:14A-19.9(c)1 through 4 for a substantial IPP modification request.	M	60 days
7:14A-19.10(a)	Failure of delegated local agency to comply with public notice and public hearing requirements for a request for substantial modification of an industrial pretreatment program.	M	90 days
7:14A-19.10(b)	Failure of delegated local agency to provide public notice identifying those indirect users that meet the significant noncompliance criteria under 40 CFR 403.8(f)(2)(vii).	M	30 days
7:14A-19.10(c)	Failure of delegated local agency to allow the public to comment on a proposed administrative consent order prior to final adoption, if the administrative consent order would establish interim enforcement limits that would relax effluent limitations established in a permit or a prior administrative order.	M	90 days
7:14A-19.10(d)	Failure of delegated local agency to hold a public hearing on the proposed administrative order or administrative	M	90 days

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
	consent order prior to final adoption.		
7:14A-19.10(e)	Failure of delegated local agency to provide public notice and a public hearing for any proposed new indirect user IPP permit, proposed renewed indirect user IPP permit, proposed revocation of an indirect user IPP permit, or proposed major modification to any existing indirect user IPP permit.	M	90 days
7:14A-20.7(b)	Failure to comply with any general requirement and management practice for the land application of residuals.	NM	
7:14A-20.7(c)	Failure to meet the applicable requirements and pollutant limits in 40 CFR 503.13(a) and (b).	NM	
7:14A-20.7(d)	Failure to meet the operational standards for pathogen and vector attraction reduction pursuant to 40 CFR 503.15(a) and (c).	NM	
7:14A-20.7(e)	Failure to remove foreign material from the residual prior to application.	NM	
7:14A-20.7(f)1	Failure to meet Class B pathogen reduction requirements pursuant to 40 CFR 503.32(b) and one of the vector attraction reduction requirements in 40 CFR 503.33(b)(1) through (b)(10) for land application of domestic septage.	NM	
7:14A-20.7(f)2	Failure to land apply domestic septage at a whole residual application rate that is equal or less than the agronomic rate in accordance with N.J.A.C. 7:14A-20.7(g).	NM	
7:14A-20.7(f)3	Failure to screen domestic septage through a number 4 mesh screen to remove foreign material.	NM	
7:14A-20.7(f)4	Failure to certify domestic septage as being from domestic sources only, having been analyzed pursuant to N.J.A.C. 7:14A-20.7(a)1, and satisfying the pollutant limits in 40 CFR 503.13(a) and (b).	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
7:14A-20.7(f)5	Failure to land apply domestic septage in accordance with one of the land application programs described at N.J.A.C. 7:14A-20.7(h).	NM	
7:14A-20.7(g)	Failure to comply with whole residual application rate requirements.	NM	
7:14A-20.7(h)	Failure to conform to one of the allowable programs based on the level of quality, pathogen reduction and vector attraction reduction achieved for residuals applied to the land.	NM	
7:14A-20.7(i)	Failure to comply with the frequency of pollutant monitoring, pathogen density requirements and vector attraction reduction requirements in accordance with the frequency specified in 40 CFR 503.16(a) or N.J.A.C. 7:14A-20.7, as applicable.	NM	
7:14A-20.7(j)	Failure to comply with record keeping requirements of 40 CFR 503.17(9a) and N.J.A.C. 7:14A-20.7.	NM	
7:14A-20.7(k)	Failure to comply with the reporting requirements of N.J.A.C. 7:14A-20.7.	NM	
7:14A-20.7(l)	Failure of an out-of-State generator that transports residual into the State to be land applied to comply with all applicable requirements for the land application of residuals pursuant to N.J.A.C. 7:14A and the notice requirements in N.J.A.C. 7:14A-20.7.	NM	
7:14A-20.8(a)	Storage of sewage sludge for more than six months on the land.	NM	
7:14A-20.8(b)	Failure of an owner and/or operator of a sewage sludge surface disposal site to submit a surface disposal site closure plan in accordance with the requirements of N.J.A.C. 7:14A-20.8(d).	M	60 days
7:14A-20.8(c)	Failure of the operating entity for a closed surface disposal site to comply with required management practices.	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
7:14A-20.11(a)	Failure of the person who prepares residual to ensure that all residual accepted for processing is compatible with the applicable residual quality limitations.	NM	
7:14A-20.11(b)	Failure to comply with provisions for accepting residual that does not meet the residual quality limitations, when the residual is to be blended with other residual and the final residual applied to the land.	NM	
7:14A-21.2(a)1	Discharging by an indirect user into a local agency's treatment works waste that is prohibited under 40 CFR Part 403.5.	NM	
7:14A-21.2(a)2	Discharging by an indirect user into a local agency's treatment works waste above the State pretreatment standards for petroleum hydrocarbons.	NM	
7:14A-21.2(a)3	Discharging by an indirect user into a local agency's treatment works waste above a local limit developed by the local agency.	NM	
7:14A-21.3(b)	Failure of an indirect user subject to a categorical pretreatment standard to submit to the control authority a baseline report.	NM	
7:14A-21.3(c)	Failure of an indirect user to comply with a categorical pretreatment standard.	NM	
7:14A-21.3(d)	Failure of an indirect user to comply with a compliance schedule for meeting categorical pretreatment standard.	NM	
7:14A-21.3(e)	Failure of an indirect user to submit to the control authority within 90 days a compliance report.	NM	
7:14A-21.3(f)	Failure of an indirect user to submit to the control authority periodic compliance reports.	NM	
7:14A-21.3(g)1	Failure of an indirect user or control	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
	authority to submit an acceptable compliance report including the information outlined in N.J.A.C. 7:14A-21.3.		
7:14A-21.3(g)2	Failure of an indirect user to notify the control authority within 24 hours of becoming aware of the violation of pretreatment standard.	NM	
7:14A-21.3(g)3	Failure of an indirect user or control authority to conduct acceptable sampling and analysis required for compliance reporting.	NM	
7:14A-21.3(g)4	Failure of an indirect user or control authority to conduct analysis in accordance with procedures contained in 40 CFR Part 136, as amended, or with any other test procedures approved by the Department.	NM	
7:14A-21.3(g)5	Failure of an indirect user to include in its compliance report the results of monitoring that was performed more frequently than required by the control authority.	NM	
7:14A-21.3(i)	Failure of indirect user to notify the local agency, the USEPA Regional Waste Management Division Director, and the Department's Division of Solid and Hazardous Waste in writing of any discharge into the local agency's treatment works of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261.	NM	
7:14A-21.3(j)	Failure of indirect user to notify the local agency in advance of any substantial change in the volume or character of pollutants in its discharge.	NM	
7:14A-21.4(a)6	Failure of indirect user to notify the control authority that production level will significantly change within the next calendar month.	NM	
7:14A-21.4(b)	Dilution of a discharge, by an indirect user without authorization, as a partial	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation or complete substitute for adequate treatment to achieve compliance with a pretreatment standard or requirement.	Type of Violation	Grace Period
7:14A-21.4(c)	Failure of an indirect user to comply with the alternative categorical daily maximum and monthly average or consecutive sampling day limits fixed by the control authority, in the indirect user's permit.	NM	
7:14A-21.6(a)	Failure to prohibit a bypass that caused pretreatment standards to be violated, and was not essential maintenance to ensure efficient operation.	NM	
7:14A-21.6(b)	Failure of an indirect user to give prior notice of a bypass to the control authority.	NM	
7:14A-21.6(c)	Bypass by an indirect user, which bypass did not meet the conditions of N.J.A.C. 7:14A-21.6.	NM	
7:14A-21.7	Failure of indirect user to obtain an IPP permit from that delegated local agency.	NM	
7:14A-21.8	Failure of an indirect user to obtain an individual NJPDES-SIU permit from the Department.	NM	
7:14A-22.2(i)	Permitting, approving or otherwise allowing the installation, modification or operation of any facility or activity that violates the terms, conditions and requirements of this subchapter.	NM	
7:14A-22.3(a)1	Building, installing, modifying, or operating any treatment works including, but not limited to, sewer extensions, sewer interceptors, domestic and industrial wastewater treatment systems, holding tanks, equalization tanks and wastewater treatment and recycling systems, except in conformance with a valid treatment works approval from the Department.	NM	
7:14A-22.3(a)2	Building, installing, modifying or	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
	operating any sewer line, pumping station or force main that serves more than two buildings or will convey 8,000 gallons per day or more of flow to a treatment works, except in conformance with a valid treatment works approval from the Department.		
7:14A-22.3(a)3	Building, installing, operating or modifying any residuals treatment units, including, but not limited to, facilities for composting, heat drying, thickening, digestion, air drying, thermal reduction, dewatering and storage of sludge except in conformance with a valid treatment works approval from the Department.	NM	
7:14A-22.3(a)4	Building, installing, operating or modifying any domestic or industrial treatment works that discharges directly to the surface water or ground water of the State, with the exception of individual subsurface disposal systems exempted pursuant to N.J.A.C. 7:14A-22.4(a)3 except in conformance with a valid treatment works approval from the Department.	NM	
7:14A-22.3(a)5	Building, installing, operating or modifying any industrial treatment works located in any area of the State where the Department is the control authority (non-delegated area) for an industrial pre-treatment program pursuant to 40 CFR 403 and N.J.A.C. 7:14A-19, except in conformance with a valid treatment works approval from the Department.	NM	
7:14A-22.5(b)	Construction, installation, modification or operation of a treatment works in a manner inconsistent with the terms and conditions of the Department's approval.	NM	
7:14A-22.5(f)	Failure of an applicant and any owner or operator of a treatment works to provide notice of the terms and conditions of any existing treatment works approval to a prospective purchaser of the treatment works.	M	30 days

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
7:14A-22.5(j)	Failure to construct a treatment works in a manner consistent with the provisions of the appropriate wastewater management plan.	NM	
7:14A-22.5(k)	Failure to comply with emergency approval requirements.	NM	
7:14A-22.8	Failure to comply with the requirements for construction, installation, or modification of a treatment works- Stage II.	NM	
7:14A-22.9(c)	Failure to file a dry/construct only treatment works approval with the appropriate county clerk or failure to keep it filed with the deed of record until a treatment works approval for operation (Stage III) has been issued.	M	30 days
7:14A-22.10(b)	Operation of a "construct and operate" treatment works approval prior to completion of the project, inspection and approval of the facilities by the licensed professional engineer overseeing the construction, approval by the local municipality or sewerage authority, and submission to the Department of Form WQM005.	NM	
7:14A-22.10(c)	Operation of a stage II (construct only) treatment works prior to issuance of a stage III treatment works approval.	NM	
7:14A-22.15(e)	Failure of the owner of the affected collection system to submit an engineer's report meeting the requirements of N.J.A.C. 7:14A-23.5.	M	60 days
7:14A-22.16(a)	Failure of the participating municipalities and/or sewerage authorities to submit a program containing the items specified in N.J.A.C. 7:14A-22.16(a) to be implemented in order to prevent an overloading of its facility or a violation of its NJPDES permit.	NM	
7:14A-22.16(a)	Failure to implement any requirements of a capacity assurance program.	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
7:14A-22.16(d)	Failure to give public notice of the capacity assurance program in a manner designed to inform local residents, developers, local planning board and other affected persons.	M	90 days
7:14A-22.17(a)	Failure to impose a sewer connection ban in accordance with this N.J.A.C. 7:14A-22, when any one of the events in N.J.A.C. 7:14A-22.17(a)1 through 4 occurs.	NM	
7:14A-22.18	Failure to comply with the procedure for the imposition of a sewer connection ban.	NM	
7:14A-22.19(a)	Failure to adopt exemption criteria at least as stringent as those included in N.J.A.C. 7:14A-22.	NM	
7:14A-22.19(b)	Granting an exemption to any person who subsequently proceeds with a proposed project, without first obtaining all necessary approvals, and thereby increases or creates a self-imposed hardship.	NM	
7:14A-22.21(a)	Failure of a sewerage authority or municipality imposing a sewer connection ban to provide an applicant for an exemption with the documents specified in N.J.A.C. 7:14A-22.21(a).	M	30 days
7:14A-22.22(a)	Granting of a sewer ban exemption for a project that does not meet the required criteria.	NM	
7:14A-22.23	Failure of a sewerage authority or municipality to comply with the delegation requirements for the sewer ban exemption program.	NM	
7:14A-23	Failure to comply with specific criteria and standards set forth in this section for the construction and operation of any treatment works for the collection, conveyance or treatment of domestic or industrial wastes.	NM	
7:14A-24.4(a)	Failure of an operating entity for a stormwater DSW or DGW identified under N.J.A.C. 7:14A-24.4(a)1 through 8 that	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
7:14A-24.7(a)	does not have an effective NJPDES permit authorizing its stormwater discharges to submit a request for authorization for a general NJPDES permit, or an application for an individual NJPDES permit, in accordance with the deadlines in N.J.A.C. 7:14A-24.4(a)1 through 8.	NM	
7:14A-24.7(a)	Failure of an operating entities for stormwater discharges associated with industrial activity or small construction activity (from point or nonpoint sources), and for industrial or commercial stormwater DSW (from point or nonpoint sources) identified under N.J.A.C. 7:14A-24.2(a)1 or 7, to apply for an individual NJPDES DSW permit or request authorization under a final stormwater general NJPDES DSW permit in accordance with the deadlines in N.J.A.C. 7:14A-24.4.	NM	
7:14A-24.7(a)	Failure of an operating entity that is required or seeks to obtain an individual DSW permit to submit an individual permit application in accordance with the requirements of N.J.A.C. 7:14A-4 as modified and supplemented by N.J.A.C. 7:14A-24.7 and N.J.A.C. 7:14A-24.8.	NM	
7:14A-24.7(c)	Failure of an operating entity for stormwater DSW (from point or nonpoint sources) that are identified under N.J.A.C. 7:14A-24.2(a)1 or (a)7, but that are not from industrial or commercial facilities or from small MS4s, to apply for an individual NJPDES DSW permit or request authorization under a final stormwater general NJPDES DSW permit in accordance with the deadlines in N.J.A.C. 7:14A-24.4(a)4.	NM	
7:14A-24.9(a)1	Failure of the permittee of a small municipal separate storm sewer systems subject to N.J.A.C. 7:14A-25.6 or 25.8 to comply with the requirements for evaluation, recordkeeping, and reporting in N.J.A.C. 7:14A-25.6(j) or 25.8(i).	NM	
7:14A-24.9(a)2i	Failure of a permittee for stormwater	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
	discharges associated with industrial activity or small construction activity to conduct an annual inspection of the facility.		
7:14A-24.9(a)2ii	Failure of a permittee to prepare a report summarizing the result of the annual inspection conducted under N.J.A.C. 7:14A-24.9(a)2i.	M	30 days
7:14A-24.9(a)2ii	Failure to submit an annual certification that the facility is in compliance with its stormwater pollution prevention plan and the permit.	M	30 days
7:14A-24.9(a)2ii	Failure to identify any incidents of non-compliance in the certification and identify, in the report, the steps being taken to remedy the non-compliance and to prevent such incidents from recurring.	NM	
7:14A-24.9(a)2ii	Failure of the permittee to maintain the inspection report and certification for a period of at least five years from the date of the report.	NM	
7:14A-24.9(a)2iii	Failure to submit an inspection report and certification signed by a person described in N.J.A.C. 7:14A-4.9.	M	30 days
7:14A-24.9(a)2iv	Failure of a permittee that is not required to submit monitoring reports at least annually pursuant to this subsection to report to the Department at least annually all instances of non-compliance not reported under N.J.A.C. 7:14A-6.7, 6.8 and 6.10.	NM	
7:14A-24.9(b)	Failure of the operating entity for a large or medium municipal separate storm sewer system to include in its annual report a summary of data, including monitoring data, that is accumulated throughout the reporting year, in accordance with N.J.A.C. 7:14A-25.10(b) and 40 C.F.R. 122.42(c).	M	60 days
7:14A-25.2(a)1	Failure of the operator of a small MS4 in a Tier A municipality to obtain a NJPDES	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
	permit for stormwater discharges.		
7:14A-25.2(a)2	Failure of the operating entity of an MS4 in a public complex located entirely or partially in a Tier A municipality, or in a municipality that receives a waiver under N.J.A.C. 7:14A-25.2(d), to obtain a NJPDES permit for stormwater discharges, if the owner or operator is a county, State interstate, or Federal agency.	NM	
7:14A-25.2(a)3	Failure of an operating entity of an MS4 at a highway or other thoroughfare to obtain a NJPDES permit for stormwater discharges, if the owner or operator is a county, State interstate, or Federal agency.	NM	
7:14A-25.2(a)4	Failure of an operating entity of a special designation under N.J.A.C. 7:14A-25.2(a)4 to obtain a NJPDES permit for stormwater discharges.	NM	
7:14A-25.2(b)	Failure of a municipality that is assigned to Tier B under N.J.A.C. 7:14A-25.3(a)2, and that operates a small MS4 that discharges to surface water or groundwater, to apply for the Tier B Municipal Stormwater Permit under N.J.A.C. 7:14A-25.8.	NM	
7:14A-25.4(a)1	Failure to apply for a permit within 180 days after receipt of notice from the Department that a municipality has been reassigned from Tier B to Tier A, or that a special designation has been made under N.J.A.C. 7:14A-25.2(a)4, unless the Department approves a later date.	M	30 days
7:14A-25.4(a)3	Failure of an entity planning to continue discharging from a small MS4 after the expiration date of its NJPDES permit for that discharge to comply with N.J.A.C. 7:14A-4.2(e)3.	NM	
7:14A-25.5(a)	Failure of an operating entity that is required under N.J.A.C. 7:14A-25.2(a) to apply for a NJPDES permit for stormwater discharges from small MS4s to submit a request for authorization (RFA) under a general NJPDES permit in accordance with	NM	

TABLE 1

N.J.A.C. 7:14A POLLUTANT DISCHARGE ELIMINATION SYSTEM RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
	N.J.A.C. 7:14A-25.5(a)1, or an application for an individual NJPDES permit under N.J.A.C. 7:14A-25.9.		

TABLE 2

N.J.A.C. 7:14B UNDERGROUND STORAGE TANKS RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
7:14B-2.1(a)	Failure to register a regulated underground storage tank.	NM	
7:14B-2.1(c)	Using a regulated underground storage tank without a valid Registration Certificate.	NM	
7:14B-2.1(d)	Failure to register regulated underground storage tanks systems 30 days prior to use.	NM	
7:14B-2.1(e)	Failure to register a regulated underground storage tank removed on or after September 3, 1986 for the period between September 3, 1986 and the date of removal.	NM	
7:14B-2.1(f)	Failure to register a regulated underground storage tank system before closure activities are begun.	NM	
7:14B-2.2(a)	Failure to file the required registration and certification information on the New Jersey Underground Storage Tank Facility Certification Questionnaire.	NM	
7:14B-2.2(b)	Failure to complete and submit the required registration and certification forms to the Department.	NM	
7:14B-2.2(c)	Failure to complete the New Jersey Underground Storage Tank Facility Certification Questionnaire prior to expiration of the facility's Registration Certificate.	NM	
7:14B-2.2(d)	Failure to supply the information required	NM	

TABLE 2

N.J.A.C. 7:14B UNDERGROUND STORAGE TANKS RULES

Rule Citation	Description of Violation in N.J.A.C. 7:14B-2.2(d) during initial registration.	Type of Violation	Grace Period
7:14B-2.2(e)	Failure to supply registration information during the Certificate renewal.	NM	
7:14B-2.2(f)	Failure supply information in accordance with N.J.A.C. 7:14B-2.2(f) if any change in status to the underground storage tank system has been made since the initial registration.	NM	
7:14B-2.4(a)	Failure to submit a Facility Certification Questionnaire reflecting changes to a facility or its ownership as per N.J.A.C. 7:14B-2.4(b), within 30 days after a modification.	M	30 days
7:14B-2.4(c)	Failure to submit a Facility Certification Questionnaire within seven calendar days following closure of a tank system.	M	30 days
7:14B-2.6(a)	Failure to display or make available during the inspection the UST Registration Certificate.	NM	
7:14B-2.7(e)	Failure to cease use of a regulated tank system upon receipt of a Notice from the Department denying or revoking a registration.	NM	
7:14B-4.1(a)1	Failure of a tank installed on or after September 4, 1990 to be properly designed and constructed and have corrosion protection.	NM	
7:14B-4.1(a)2	Failure to properly install, construct and/or operate the corrosion protection system for piping.	NM	
7:14B-4.1(a)3i	Failure to have spill prevention equipment when the transfer hose is detached from the fill pipe.	NM	
7:14B-4.1(a)3ii	Failure to have an overfill device on the tank.	NM	
7:14B-4.1(b)	Failure to provide secondary containment to new underground storage tank systems	NM	

TABLE 2

N.J.A.C. 7:14B UNDERGROUND STORAGE TANKS RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
	installed within a wellhead protection area.		
7:14B-4.2(b)	Failure of a steel tank to have corrosion protection.	NM	
7:14B-4.2(c)	Failure of steel piping to have cathodic protection.	NM	
7:14B-4.2(d)	Failure to have spill prevention equipment on the tank system.	NM	
7:14B-4.2(d)	Failure to have an overfill device on the tank.	NM	
7:14B-5.1(a)	Failure to ensure no spillage or overflow occurs or failure to constantly monitor the transfer operation.	NM	
7:14B-5.1(b)	Failure to use the specified transfer procedures.	NM	
7:14B-5.1(c)	Failure of the owner and/or operator to report, investigate and remediate any spills and overfills in accordance with N.J.A.C. 7:14B-8.	NM	
7:14B-5.1(d)	Failure to ensure proper operation of spill containment equipment.	NM	
7:14B-5.2(a)1	Failure to have a cathodic protection system continuously operational.	NM	
7:14B-5.2(a)2	Failure to test the cathodic protection system within six months of installation and/or every three years thereafter.	NM	
7:14B-5.2(a)3	Failure to inspect the impressed current cathodic protection system every 60 days to ensure the system is on and operating properly.	NM	
7:14B-5.2(a)4	Failure to maintain records of the operation of the corrosion protection system, including all required inspections and tests.	NM	
7:14B-5.4	Failure to obtain a permit from the Department and/or make repairs in	NM	

TABLE 2

N.J.A.C. 7:14B UNDERGROUND STORAGE TANKS RULES

Rule Citation	Description of Violation accordance with N.J.A.C. 7:14B-5.4.	Type of Violation	Grace Period
7:14B-5.4(a)5	Failure to test a within six months following the repair of a cathodic protection system.	NM	
7:14B-5.5(a)	Failure to prepare a complete Release Response Plan.	M	30 days
7:14B-5.5(b)	Failure to make the Release Response Plan available for on site inspection.	M	30 days
7:14B-5.6(a) and 5.6(b)	Failure to maintain records of installation (installation checklist), site and remedial investigations, release detection results, tank system repairs, operation of corrosion protection and design of the corrosion protection.	NM	
7:14B-5.7(a)1	Failed to allow the Department to enter upon any property or place of business where an underground storage tank is or might be located or in which monitoring equipment or records required by N.J.A.C. 7:14B are kept, for purposes of inspection, sampling, copying or photographing.	NM	
7:14B-5.8	Failure of owner and/or operator to properly mark the fill ports.	M	30 days
7:14B-5.9(a)	Introduction of a hazardous substance into an underground storage tank that is known or suspected to be leaking or discharging.	NM	
7:14B-5.9(b)	Introduction of a hazardous substance into an underground storage tank that is not properly registered.	NM	
7:14B-6.1(a)	Failure to provide release detection methods that are able to detect a release from any portion of the tank system (tank and piping).	NM	
7:14B-6.2(a)1	Failure to perform appropriate release detection monitoring of the tank.	NM	
7:14B-6.2(a)2	Failure to appropriately monitor the piping.	NM	

TABLE 2

N.J.A.C. 7:14B UNDERGROUND STORAGE TANKS RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
7:14B-6.2(b)1 and 2	Failed to provide release detection for tanks and piping as required pursuant to N.J.A.C. 7:14B-16.2.	NM	
7:14B-6.3(a)	Failure to provide release detection that meets the requirements of N.J.A.C. 7:14B-6.3(a)2 at new or existing non-petroleum hazardous substance tank systems.	NM	
7:14B-6.4	Failure to properly monitor a tank located within a well head protection area. (Existing tanks [installed before 9-4-90] must monitor monthly; new tanks [installed on or after 9-4-90] must be secondarily contained with interstitial monitoring).	NM	
7:14B-6.5(a)1ii	Failure to take and record daily inventory readings to the nearest 1/8th inch.	M	30 days
7:14B-6.5(a)1vi	Failure to conduct measurement of any water level in the bottom of the tank to the nearest 1/8th of an inch at least once per month.	M	30 days
7:14B-6.6(a)1	Failure to annually test line leak detectors.	M	30 days
7:14B-6.7(a)	Failure to maintain written monitoring instructions.	M	30 days
7:14B-6.7(b)	Failure to keep the written monitoring procedure at the underground storage tank facility and make it available for inspection.	M	30 days
7:14B-6.7(c)	Failure to maintain written documentation of the performance claims of the Release Detection Monitoring System.	M	30 days
7:14B-6.7(d)	Failure to maintain records of all calibration, maintenance and repair of all Release Detection equipment.	M	30 days
7:14B-6.7(e)	Failure to maintain a summary of the results of monitoring of the underground storage tank system and maintenance checks	NM	

TABLE 2

N.J.A.C. 7:14B UNDERGROUND STORAGE TANKS RULES

Rule Citation	Description of Violation of the release detection equipment.	Type of Violation	Grace Period
7:14B-6.7(f)	Failure to maintain records of all environmental sampling, tank system testing and monitoring, and monthly inventory reconciliations.	NM	
7:14B-6.7(i)	Failure to maintain on site a certification from a Subsurface Evaluator and/or required documentation from the manufacturer.	M	30 days
7:14B-15.1(b)	Failure to maintain financial assurance for federally regulated underground storage tank systems per 40 CFR Part H.	NM	
7:14B-15.1(c)	Failure to maintain financial assurance, per 40 CFR Part H with the exclusions noted at N.J.A.C. 7:14B-15.3(c), for underground storage tank systems not covered by N.J.A.C. 7:14B-15.1(b), in the amounts listed at N.J.A.C. 7:14B-15.2.	NM	
7:14B-15.1(h)	Failure to identify the financial assurance mechanism used on the Facility Certification Questionnaire; failure to maintain evidence of financial assurance on site and at the owner/operator's place of business; failure to submit evidence of financial assurance to the Department upon request.	M	30 days
7:14B-15.1(i)	Failure of the financial institution to notify the Department in writing within 30 days of the cancellation or expiration of any form of financial assurance.	NM	
7:14B-15.2(a)	Failure to maintain financial responsibility assurance in the required per-occurrence amounts.	NM	
7:14B-15.2(b)	Failure to maintain financial responsibility assurance in the required annual aggregate amounts.	NM	
7:14B-15.2(c)	Failure to maintain financial responsibility assurance in the required annual aggregate or per-occurrence amounts when acquiring or installing additional	NM	

THIS IS A COURTESY COPY OF THIS RULE. ALL OF THE DEPARTMENT'S RULES ARE COMPILED IN TITLE 7 OF THE NEW JERSEY ADMINISTRATIVE CODE.

TABLE 2

N.J.A.C. 7:14B UNDERGROUND STORAGE TANKS RULES

Rule Citation	Description of Violation	Type of Violation	Grace Period
	underground storage tanks.		
7:14B-15.2(d)	Failure to submit an amended Facility Certification Questionnaire to the Department to demonstrate any adjusted amount of financial responsibility assurance due to acquiring or installing additional underground storage tanks.	M	30 days
7:14B-15.3(b)	Failure to maintain financial assurance for federally regulated underground storage tank systems per 40 CFR Part H.	NM	
7:14B-15.3(c)	Failure to maintain financial assurance, per 40 CFR Part H with the exclusions of surety bond, State required mechanisms, State fund or local government guarantee, for State regulated underground storage tank systems not covered by N.J.A.C. 7:14B-15.3(b), in the amounts listed at N.J.A.C. 7:14B-15.2.	NM	

7:14-8.19 Severability

If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications, and to this end, the provisions of the subchapter are declared to be severable.

APPENDIX A

WORDING OF FINANCIAL ASSURANCE DOCUMENTS

LETTER OF CREDIT

A letter of credit required by N.J.A.C. 7:14-8.3(h) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Irrevocable Letter of Credit

New Jersey Department of Environmental Protection
PO Box 422

Trenton, New Jersey 08625-0422

ATTN: Administrator, Water Compliance and Enforcement

RE: [Name of Violator]

Adjudicatory Hearing Request

Dear Sir or Madam:

THIS IS A COURTESY COPY OF THIS RULE. ALL OF THE DEPARTMENT'S RULES ARE COMPILED IN TITLE 7 OF THE NEW JERSEY ADMINISTRATIVE CODE.

We hereby establish our irrevocable standby Letter of Credit No. _____ in the favor of the New Jersey Department of Environmental Protection, at the request and for the account of [violator's name and address of facility at which violation occurred] up to the aggregate amount of [in words] U.S. dollars _____, available upon presentation by the New Jersey Department of Environmental Protection of (1) a sight draft, bearing reference to this irrevocable standby Letter of Credit No. _____, and (2) a signed statement reading as follows:

"I certify that the amount of the draft is payable pursuant to the authority of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

This Letter of Credit is effective as of [insert month, day, and year] and shall expire on [date at least 1 year later], but such expiration date shall be automatically extended for period of at least one (1) year on [date] and on each successive expiration date, unless, at least 120 days before the current expiration date, we notify both NJDEP's Administrator, Water Compliance and Enforcement, PO Box 422, Trenton, New Jersey 08625-0422, and [name and address of violator] by certified mail that we have decided not to extend this Letter of Credit beyond the current expiration date. In the event you are so notified, any unused portion of the credit shall be available upon presentation of your sight draft for 120 days after the date of receipt by both NJDEP and [name and address of violator], as shown on the signed return receipts.

Whenever this Letter of Credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of [name of violator] or in accordance with your instructions.

We certify that the wording of this Letter of Credit is identical to the wording specified in N.J.A.C. 7:14-8 Appendix A, as such regulations were constituted on [the date shown immediately below].

[Name of issuing institution] shall not cancel this Letter of Credit on the basis of a request from [name violator] until [name of issuing institution] has received written authorization from NJDEP.

This irrevocable standby Letter of Credit is subject to [insert either "the most recent edition of the 'Uniform Customs and Practice for Documentary Credits,' published by the International Chamber of Commerce," or "the Uniform Commercial Code"].

This letter of credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any other document, instrument or agreement referred to herein, except for the sight draft and your signed statement referred to herein. Any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except for such sight draft and signed statement.

Very truly yours,
[Name of Issuing Institution]
[Signature and Title of Official]
[Printed Name of Official]
[Date]"

SURETY BOND

A surety bond guaranteeing payment into a trust fund required by N.J.A.C. 7:14-8.3(h) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Financial Guarantee Bond

RE: ADJUDICATORY HEARING REQUEST
NAME OF VIOLATOR _____
ADDRESS OF FACILITY AT WHICH VIOLATION
OCCURRED _____

Date bond executed: _____

Effective date: _____

THIS IS A COURTESY COPY OF THIS RULE. ALL OF THE DEPARTMENT'S RULES ARE COMPILED IN TITLE 7 OF THE NEW JERSEY ADMINISTRATIVE CODE.

Principal: [Legal name and business address of violator]

Type of organization [insert "individual", "joint venture", "partnership", or "corporation"]

State of incorporation: _____

[Insert name of violator, location of facility at which the violation occurred, including street address, lot and block number, municipality and county, and the financial assurance guaranteed by this bond]

Total penal sum of bond: _____

Surety bond number: _____

Know All Persons By These Presents, That we, the Principal and Surety(ies) hereto are firmly bound to the New Jersey Department of Environmental Protection, hereinafter NJDEP, in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally; provided that, where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sum "jointly and severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes, each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

WHEREAS, the Principal is required to provide financial assurance in the full amount of the cost of fully complying with all of the terms and conditions required by the administrative consent order dated [date] pursuant to N.J.A.C. 7:14-8.3(h), and

WHEREAS, the Principal shall establish a standby trust fund as required by N.J.A.C. 7:14-3(h). when a surety bond is used to provide a mechanism for access by NJDEP to assure in the amount of the cost of fully complying with all of the terms and conditions required by the administrative consent order dated [date] pursuant to N.J.A.C. 7:14-8.3(h);

NOW, THEREFORE, the conditions of this obligation are such that if the Principal pays the full amount of the cost of fully complying with all of the terms and conditions required by the administrative consent order dated [date], then this obligation shall be null and void, otherwise, it is to remain in full force and effect.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to pay the civil administrative penalty when due and owing. Upon notification by the NJDEP that the Principal has failed to perform as guaranteed by this bond, the Surety(ies) shall place funds in the amount guaranteed for the violator into the standby trust fund as directed by the NJDEP.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of the penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal and to the NJDEP Administrator, Water Compliance and Enforcement, PO Box 422, Trenton, N.J. 08625; provided, however, the cancellation shall not occur during the 120 days beginning on the date of receipt of the notice of cancellation by both the Principal and the NJDEP, as evidenced by the return receipts.

The Principal may terminate this bond by sending written notice to the Surety(ies); provided, however, that no such notice shall become effective until the Surety(ies) receive(s) written authorization for termination of the bond by the NJDEP.

In Witness Whereof, the Principal and Surety(ies) have executed this Financial Guarantee Bond and have affixed their seals on the date set forth below.

The persons whose signatures appear below hereby certify that they are authorized to execute this surety on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording required in N.J.A.C. 7:14-8 Appendix A as constituted on the date the bond was established.

THIS IS A COURTESY COPY OF THIS RULE. ALL OF THE DEPARTMENT'S RULES ARE COMPILED IN TITLE 7 OF THE NEW JERSEY ADMINISTRATIVE CODE.

Principal _____

[Signature(s)] _____

Date _____

[Name(s)] _____

[Title(s)] _____

[Corporate seal] _____

[Name and address] _____

State of incorporation: _____

Liability limit: _____

[Signature(s)] _____

Date _____

[Name(s) and title(s)] _____

[Corporate seal] _____

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: _____

STANDBY TRUST AGREEMENT

A Standby Trust Agreement required by N.J.A.C. 7:14-8.3(h) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Standby Trust Agreement

RE: ADMINISTRATIVE CONSENT ORDER

NAME OF VIOLATOR _____

ADDRESS OF FACILITY AT WHICH VIOLATION OCCURRED _____

This Standby Trust Agreement, hereinafter "Agreement", entered into as of [date] by and between [name and address of the violator], a New Jersey [insert "corporation", "partnership", "association", or "proprietorship"], hereinafter "Grantor" and [name and address of corporate trustee], [insert "incorporated in the State of" or "a national bank"], hereinafter "Trustee".

WHEREAS, the Grantor is required to provide financial assurance in the full amount of the cost of fully complying with all of the terms and conditions required by the administrative consent order dated [date] pursuant to N.J.A.C. 7:14-8.3(h), and

WHEREAS, The Grantor, acting through its duly authorized officer or management official, has selected the Trustee under this Agreement, and the Trustee is willing to act as Trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follow:

Section 1. Definitions

THIS IS A COURTESY COPY OF THIS RULE. ALL OF THE DEPARTMENT'S RULES ARE COMPILED IN TITLE 7 OF THE NEW JERSEY ADMINISTRATIVE CODE.

As used in this Agreement:

- (a) The term Grantor means the violator who is entering into the administrative consent order with the NJDEP as referenced above, and any successors or assigns of the Grantor.
- (b) The term "Trustee" means the Trustee who enters into the Agreement and any successor Trustee.

Section 2. Identification of Site or Facility at which the Violation(s) referenced in the Administrative Consent Order and Amount of Financial Assurance

This Agreement pertains to the site or facility at which the violation(s) referenced in the Administrative Consent Order and in the full amount of the cost of fully complying with all of the terms and conditions required by the administrative consent order dated [date] which is included herein as Attachment A.

Section 3. Establishment of Fund

The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund", for the benefit of NJDEP. The Grantor and the Trustee intend that no third party shall have access to the fund except as herein provided. The Fund is established initially as consisting of the total sum of [dollar amount] which is acceptable to the Trustee and NJDEP. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the NJDEP.

Section 4. Payment of Any Penalty Administrative Consent Order

The Trustee shall make payment from the Fund as the NJDEP Commissioner, or his designee, shall direct, in writing, to provide for the payment of the cost of fully complying with all of the terms and conditions required by the administrative consent order dated [date]. In addition, the Trustee shall refund the Grantor such amounts the NJDEP specifies in writing. Upon refund such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management

At such time as the corpus of the Fund is funded with more than one dollar, the Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his duties with respect to the Fund solely in the interest of the NJDEP as the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the site or facility at which the violation(s) occurred or any of their affiliates, as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or state government; and

(iii) The Trustee is authorized to hold cash awaiting investment of distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment

THIS IS A COURTESY COPY OF THIS RULE. ALL OF THE DEPARTMENT'S RULES ARE COMPILED IN TITLE 7 OF THE NEW JERSEY ADMINISTRATIVE CODE.

The Trustee is expressly authorized in its discretion:

(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the Federal Government of the United States or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or state government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in respect of the fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor and all other proper charges and disbursements of the Trustee, shall be paid from the Fund.

Section 10. Annual Valuation

The Trustee shall, annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the NJDEP a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the NJDEP shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel

The Trustee may, from time to time, consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

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Section 12. Trustee Compensation

The Trustee shall be entitled to reasonable compensation, from time to time, for its services, as agreed upon in writing with the Grantor.

Section 13. Successor Trustee

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor Trustee the funds and properties constituting the Fund. If for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the NJDEP and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Successor Grantor

Sixty days prior to the Grantor ceasing to exist, if dissolution is contemplated, the Grantor must notify and provide NJDEP with the names and addresses of any and all successors and assigns along with a notarized acknowledgement from same stating that the successors and assigns assume responsibilities concerning financial assurance.

Section 15. Instructions to the Trustee

All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in Attachment B or such other designees as the Grantor may designate by amendment to Attachment B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the NJDEP to the Trustee shall be in writing, signed by the NJDEP Commissioner or his/her designee and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor of NJDEP hereunder has occurred.

The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or NJDEP, except as provided for herein.

Section 16. Amendment of Agreement

This agreement may be amended by an instrument in writing executed jointly by the Grantor or the Grantor's principals, successors, and assigns if Grantor has dissolved, the Trustee and the NJDEP or by the Trustee and the NJDEP if the Grantor ceases to exist and no successors or assigns are named.

Section 17. Irrevocability and Termination

Subject to the right of the parties to amend this Agreement, as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the NJDEP or of the Trustee and the NJDEP, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust or in carrying out any directions by the Grantor or the NJDEP issued in accordance with the Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

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Section 19. Choice of Law

This Agreement shall be administered, construed, and enforced according to the laws of the State of New Jersey.

Section 20. Interpretation

As used in this Agreement, words in the singular include the plural and words in the plural include the singular.

The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof, the parties have caused this Agreement to be executed by their respective officer or management officials, duly authorized, and their corporate seals to be hereunto affixed and attested, as of the date set forth below:

DATE: _____ [NAME OF GRANTOR]
By: _____
TITLE: _____

DATE: _____ [NAME OF TRUSTEE]
BY: _____
TITLE: _____

[Grantor shall attach Attachments A and B.]

FULLY FUNDED TRUST

A fully funded trust required by N.J.A.C. 7:14-8.3(h) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

Trust Agreement

RE: ADMINISTRATIVE CONSENT ORDER
NAME OF VIOLATOR _____
ADDRESS OF FACILITY AT WHICH VIOLATION
OCCURRED _____

This Fully Funded Trust, hereinafter "Agreement", entered into as of [date] by and between [name and address of the violator], a New Jersey [insert "corporation", "partnership", "association", or "proprietorship"], hereinafter "Grantor" and [name and address of corporate trustee], [insert "incorporated in the State of" or "a national bank"], hereinafter "Trustee".

WHEREAS, the Grantor is required to provide financial assurance in the full amount of the cost of fully complying with all of the terms and conditions required by the administrative consent order dated [date] pursuant to N.J.A.C. 7:14-8.3(h), and

WHEREAS, The Grantor, acting through its duly authorized officer or management official, has selected the Trustee under this Agreement, and the Trustee is willing to act as Trustee.

NOW, THEREFORE, the Grantor and the Trustee agree as follow:

Section 1. Definitions

As used in this Agreement:

(a) The term "Grantor" means the violator who is entering into the administrative consent order with the NJDEP as referenced above, and any successors or assigns of the Grantor.

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(b) The term "Trustee" means the Trustee who enters into the Agreement and any successor Trustee.

Section 2. Identification of Site or Facility at which the Violation(s)
referenced in the Administrative Consent Order Occurred and Amount
of Financial Assurance

This Agreement pertains to the site or facility at which the violation(s) referenced in the Administrative Consent Order occurred and in the full amount of the cost of fully complying with all of the terms and conditions required by the administrative consent order dated [date] which is included herein as Attachment A.

Section 3. Establishment of Fund

The Grantor and the Trustee hereby establish a trust fund, hereinafter the "Fund", for the benefit of NJDEP. The Grantor and the Trustee intend that no third party shall have access to the fund except as herein provided. The Fund is established initially as consisting of the total sum of [dollar amount] which is acceptable to the Trustee and NJDEP. Such property and any other property subsequently transferred to the Trustee is referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor, any payments necessary to discharge any liabilities of the Grantor established by the NJDEP.

Section 4. Payment of Any Penalty Administrative Consent Order

The Trustee shall make payment from the Fund as the NJDEP Commissioner, or his designee, shall direct, in writing, to provide for the payment of the cost of fully complying with all of the terms and conditions required by the administrative consent order dated [date]. In addition, the Trustee shall refund the Grantor such amounts the NJDEP specifies in writing. Upon refund such funds shall no longer constitute part of the Fund as defined herein.

Section 5. Payments Comprising the Fund

Payments made to the Trustee for the Fund shall consist of cash or securities acceptable to the Trustee.

Section 6. Trustee Management

At such time as the corpus of the Fund is funded, the Trustee shall invest and reinvest principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this Section. In investing, reinvesting, exchanging, selling and managing the Fund, the Trustee shall discharge his duties with respect to the Fund solely in the interest of the NJDEP as the beneficiary and with the care, skill, prudence and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

(i) Securities or other obligations of the Grantor, or any other owner or operator of the site or facility at which the violation(s) occurred or any of their affiliates, as defined in the Investment Company Act of 1940, as amended, 15 U.S.C. 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the Federal or a state government;

(ii) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the Federal or State government; and

(iii) The Trustee is authorized to hold cash awaiting investment of distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

Section 7. Commingling and Investment

The Trustee is expressly authorized in its discretion:

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(a) To transfer from time to time any or all of the assets of the Fund to any common, commingled or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

(b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq., including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

Section 8. Express Powers of Trustee

Without in any way limiting the powers and discretions conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

(a) To sell, exchange, convey, transfer or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expedience of any such sale or other disposition;

(b) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though, when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person, or to deposit or arrange for the deposit of any securities issued by the Federal Government of the United States or any agency or instrumentality thereof, with a Federal Reserve bank, but the books and records of the Trustee shall at all times show that all securities are part of the Fund;

(d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the Federal or State government; and

(e) To compromise or otherwise adjust all claims in favor of or against the Fund.

Section 9. Taxes and Expenses

All taxes of any kind that may be assessed or levied against or in respect of the fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor and all other proper charges and disbursements of the Trustee, shall be paid from the Fund.

Section 10. Annual Valuation

The Trustee shall, annually, at least 30 days prior to the anniversary date of establishment of the Fund, furnish to the Grantor and to the NJDEP a statement confirming the value of the Trust. Any securities in the Fund shall be valued at market value as of no more than 60 days prior to the anniversary date of establishment of the Fund. The failure of the Grantor to object in writing to the Trustee within 90 days after the statement has been furnished to the Grantor and the NJDEP shall constitute a conclusively binding assent by the Grantor, barring the Grantor from asserting any claim or liability against the Trustee with respect to matters disclosed in the statement.

Section 11. Advice of Counsel

The Trustee may, from time to time, consult with counsel, who may be counsel to the Grantor, with respect to any question arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

Section 12. Trustee Compensation

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The Trustee shall be entitled to reasonable compensation, from time to time, for its services, as agreed upon in writing with the Grantor.

Section 13. Successor Trustee

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer and pay over to the successor Trustee the funds and properties constituting the Fund. If for any reason, the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor, the NJDEP and the present Trustee by certified mail 10 days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this Section shall be paid as provided in Section 9.

Section 14. Successor Grantor

Sixty days prior to the Grantor ceasing to exist, if dissolution is contemplated, the Grantor must notify and provide NJDEP with the names and addresses of any and all successors and assigns along with a notarized acknowledgment from same stating that the successors and assigns assume responsibilities concerning financial assurance.

Section 15. Instructions to the Trustee

All orders, requests and instructions by the Grantor to the Trustee shall be in writing, signed by such persons as are designated in Attachment B or such other designees as the Grantor may designate by amendment to Attachment B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests and instructions. All orders, requests and instructions by the NJDEP to the Trustee shall be in writing, signed by the NJDEP Commissioner or his/her designee and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or NJDEP hereunder has occurred.

The Trustee shall have no duty to act in the absence of such orders, requests and instructions from the Grantor and/or NJDEP, except as provided for herein.

Section 16. Amendment of Agreement

This agreement may be amended by an instrument in writing executed jointly by the Grantor or the Grantor's principals, successors, and assigns if Grantor has dissolved, the Trustee and the NJDEP or by the Trustee and the NJDEP if the Grantor ceases to exist and no successors or assigns are named.

Section 17. Irrevocability and Termination

Subject to the right of the parties to amend this Agreement, as provided in Section 16, this Trust shall be irrevocable and shall continue until terminated at the written agreement of the Grantor, the Trustee and the NJDEP or of the Trustee and the NJDEP, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

Section 18. Immunity and Indemnification

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust or in carrying out any directions by the Grantor or the NJDEP issued in accordance with the Agreement. The Trustee shall be indemnified and saved harmless by the Grantor or from the Trust Fund, or both, from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event that the Grantor fails to provide such defense.

Section 19. Choice of Law

THIS IS A COURTESY COPY OF THIS RULE. ALL OF THE DEPARTMENT'S RULES ARE COMPILED IN TITLE 7 OF THE NEW JERSEY ADMINISTRATIVE CODE.

This Agreement shall be administered, construed and enforced according to the laws of the State of New Jersey.

Section 20. Interpretation

As used in this Agreement, words in the singular include the plural and words in the plural include the singular.

The descriptive headings for each Section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness Whereof, the parties have caused this Agreement to be executed by their respective officer or management officials, duly authorized, and their corporate seals to be hereunto affixed and attested, as of the date set forth below:

DATE: _____ [NAME OF GRANTOR] BY: _____ TITLE: _____

DATE: _____ [NAME OF TRUSTEE] BY: _____ TITLE: _____

[Grantor shall attach Attachments A and B.]

CERTIFICATION OF ACKNOWLEDGMENT

A certification of acknowledgement required by N.J.A.C. 7:14-8.3(h) shall be worded as follows, except that instructions in brackets are to be replaced with the relevant information and the brackets deleted.

CERTIFICATION OF ACKNOWLEDGMENT

(Grantor & Trustee)

ADMINISTRATIVE CONSENT ORDER DATED [date]

NAME OF VIOLATOR _____

ADDRESS OF VIOLATOR _____

ADDRESS OF SITE OR FACILITY AT WHICH VIOLATION OCCURRED

Amount of Financial Guarantee \$ _____

Type of Financial Assurance Posted _____

State of _____

County of _____

On this [date], before me personally came [name of the violator] to me known, who, being by me duly sworn, did depose and say that she/he resides at [address], that she/he is [title] of [corporation], the corporation described in and which executed the above instrument; that she/he knows the seal of the corporation; that the seal affixed to such instru-

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ments is such corporate seal; that is so affixed by order of the Board of Directors of the corporation, and that she/he signed her/his name thereto by like other.

[Signature of Notary Public]

APPENDIX A-1

(RESERVED)

APPENDIX A-2

(RESERVED)

APPENDIX A-3

(RESERVED)

APPENDIX A-4

(RESERVED)

APPENDIX A-5

(RESERVED)

APPENDIX B

(RESERVED)

APPENDIX B-1

(RESERVED)

APPENDIX B-2

(RESERVED)

APPENDIX B-3

POLLUTANTS THAT ARE INHIBITORY TO BIOLOGICAL TREATMENT PROCESSES

CAS No.

**INORGANIC
POLLUTANTS**

14213979	Borate (Boron)
7440473	Chromium
7439965	Manganese
7440622	Vanadium

ORGANIC POLLUTANTS

107186	Allyl alcohol
57067	Allyl isothiocyanate
141435	2-Aminoethanol (mono ethanolamine)
538283	Benzyl thiuronium chloride
4170303	Crotonaldehyde

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97234	Dichlorophen
591355	3,5-dichlorophenol
138896	Dimethylparanitrosoaniline
86566	N,N-dimethyl-1-naphthylamine
593851	Guanidine carbonate
124094	Hexamethylenediamine
148243	8-hydroxyquinoline
556616	Methyl isothiocyanate
867447	Methyl thiuronium sulphate
107197	Propargyl alcohol
83341	Skatole
128041	Sodium dimethyl dithiocarbamate
137428	Sodium methyl dithiocarbamate
137268	Tetramethyl thiuram disulphide
97745	Tetramethyl thiuram monosulphide
79196	Thiosemicarbazide

APPENDIX C

(RESERVED)

APPENDIX D

(RESERVED)