

2003 ANNUAL REPORT
OF THE
CLEAN WATER ENFORCEMENT ACT
PURSUANT TO N.J.S.A. 58:10A-14.1

Calendar Year 2003



January 2005

New Jersey Department of Environmental Protection

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CLEAN WATER ENFORCEMENT ACT**

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January 2005

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ACTING GOVERNOR**

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Ewing-Lawrence S. A.

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Middlesex County U. A.

Mount Holly M.U.A.

Northwest Bergen County U. A.

Passaic Valley Sewerage Commissioners

Rahway Valley S.A.

Rockaway Valley Regional S. A.

Stony Brook Regional S. A.

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Morris Township

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Pequannock, Lincoln Park
and Fairfield S. A.

Somerset-Raritan Valley S.A.

Trenton, City of

County Prosecutors:

Ocean County

Morris County

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EXECUTIVE SUMMARY

In 1972, Congress enacted the first comprehensive national clean water legislation in response to growing public concern for serious and widespread water pollution. The Clean Water Act (CWA) is the primary federal law that protects our nation's waters, including lakes, rivers, aquifers and coastal areas.

The CWA established the basic structure for regulating discharges of pollutants into the waters of the United States by making it unlawful for any person to discharge any pollutant from a point source unless a permit was obtained under its provisions. The Water Pollution Control Act (WPCA), enacted in 1977, enabled New Jersey to implement the New Jersey Pollutant Discharge Elimination System (NJPDDES) permitting system required under the CWA. This system specifies that a person must obtain a NJPDDES permit in order to discharge a pollutant into surface water or ground water of the State or to release a pollutant into a municipal treatment works.

In 1990, the Legislature enacted substantial amendments to the WPCA, commonly known as the Clean Water Enforcement Act (CWEA), P.L. 1990, c.28, which included the imposition of mandatory minimum penalties for certain violations of the WPCA. The CWEA requires the Department to prepare an annual report on implementation and enforcement actions which the Department and delegated local agencies (DLAs) have taken during the preceding calendar year. The Department has been implementing the major provisions of the CWEA, including the mandatory penalty scheme, since July 1, 1991; therefore, the information contained in this report enables the Department and the Legislature to reflect upon more than twelve years of implementation and enforcement of the CWEA.

Permitting

The Department's Division of Water Quality (DWQ) issues Discharge to Surface Water (DSW), Stormwater, Discharge to Groundwater (DGW), and Land Application of Residuals permits to regulate "discharges" of pollutants to the surface and ground waters of the State. The DWQ also issues Significant Indirect User ("SIU") permits that regulate the discharge of industrial wastewater into sewage treatment plants. The DWQ, at times, issues permits for "discharge types" rather than facilities, therefore a facility with more than one discharge type may have more than one permit.

The number of permitted discharges regulated by the DWQ has been growing steadily over the past several years, mainly due to increased efforts to address backlogged applications in the ground water permits program and the permitting of previously exempt and/or unidentified facilities now requiring a stormwater discharge permit. The DWQ continues to issue permits to new facilities, while other facilities' permits are being terminated or not renewed. Most permit actions are for renewals of existing permits.

The DWQ has increased the practice of providing a predraft of a permit to permittees prior to the formal public notice period. This provides the permittee with an opportunity to correct factual information used in the permit development before issuance of the formal draft permit. General permits contain certain conditions and effluent limitations that are the same for similar types of discharges. Once a general permit is issued, applicants may request authorization to discharge under the final general permit. In such cases, applicants are aware of the permit conditions and effluent limitations before they apply for the permit. Understanding the permit conditions prior to applying for a general permit and providing an opportunity to correct factual information for regular permits

greatly improves acceptance of the permit by the permittee and thereby diminishes the filing of hearing requests. This practice has allowed the DWQ to focus its resources on the issuance of permits.

The Department's DWQ regulated 798 facilities that discharge to the surface waters of the State in 2003, as compared to the 791 facilities regulated in 2002. The Department also regulates facilities discharging to ground water and to POTWs, discharging stormwater only, or that handle, distribute or land apply residuals. The additional types of facilities the Department also regulates are listed in this report as "Other". In 2003, the DWQ regulated 3,707 of these other facilities (either separately or combined with a DSW), as compared to the 3,329 regulated in 2002, an increase of 11 percent. The DWQ regulated a total of 4,264 facilities in 2003, compared with 3,890 facilities in 2002, an increase of 10 percent.

The Department may at times issue permits for "discharge types" rather than facilities, therefore a facility with more than one discharge type may have more than one permit. As of December 31, 2003, the Department permitted 4,722 discharge types for 4,264 facilities.

In 2003, the Department took 1,435 formal permit actions, reflecting a 30 percent decrease in permit actions from 2002. This large decrease is mainly due to the large number of authorizations under the Basic Stormwater General Permit that were issued in 2002. If the 2002 outputs were adjusted to account for this "bubble" of permit actions, the 2003 outputs represent a 210% increase in permit actions. Even if the 2003 outputs are adjusted to account for a second "bubble" of more than 500 T1 Discharge to Groundwater General Permit renewals, the remaining 2003 outputs still represent a 91% increase in permit actions.

The Department issued DSW permit renewals to 28 major facilities in 2003. Over the past few years, DWQ has focused its permitting resources on renewing major DSW permits. The Department also issued 444 new permits and received no hearing requests on these actions. The Department issued 775 permit renewals and received 13 hearing requests on these actions.

For the Stormwater Permitting Program in 2003, 369 new general permit authorizations were issued, 3 were renewed, 2 were modified, and 70 general permit authorizations were terminated. In addition, 1 new individual permits was issued, 20 were renewed, 13 were terminated, and 3 individual permit modifications were completed. The DWQ has also received 9,295 Nonapplicability Forms to date, with 13 received in 2003.

Enforcement

Inspections

The Department is required to inspect permitted facilities and municipal treatment works at least annually. Additional inspections are required when the permittee is identified as a significant noncomplier (SNC). The inspection requirement applies to all facilities except those that discharge only stormwater or non-contact cooling water and to those facilities which a DLA is required to inspect.

In 2003, the Department conducted 1,744 facility inspections. Of the 1,744 facility inspections performed, 1,706 were full inspections and 38 were interim inspections.

Violations

In 2003, the Department assessed penalties against 82 facilities for 665 violations of the WPCA. The 665 violations addressed by the Department's actions was substantially greater than the 373 violations addressed in 2002 but similar to the number seen in 2000 and 2001. The lowest ever recorded was the 291 violations in calendar year 1998. In comparison, in 1992 the Department assessed penalties against 300 facilities for 2,483 violations. A closer look at the data shows that the penalty actions issued in 2003 were similar to those in the past few years in one respect. For penalty actions concerning effluent violations, approximately one-half of the actions (25 of 52) were in response to just a single violation. Twelve actions were in response to facilities with just two effluent violations.

Effluent violations comprised 32.8 percent (218) of the 665 violations for which the Department assessed penalties in 2003. Strikingly, since 1992, there has been an 85 percent decrease in the number of effluent violations for which the Department assessed penalties (1,446 to 218). In 1992, effluent violations accounted for 58.2 percent of all violations. Of the 218 effluent violations in 2003, 36.2 percent (79) concerned discharges of nonhazardous pollutants, such as suspended solids, nutrients and fecal coliform. The other 63.8 percent (139) concerned discharges of hazardous pollutants, such as chlorine residual, metals, pesticides and organics.

As mentioned above, about one-half of the penalty actions (25 of 52) issued for effluent violations were in response to just a single violation. Only 10 of the 52 actions involved five or more effluent violations. Of the 218 effluent violations, 120 violations were from just five permittees.

Reporting violations accounted for 21.0 percent (140) of the violations for which the Department assessed a penalty. It is important to point out that the 140 reporting violations in 2003, while significantly higher than the 66 reported in 2002, are not an indication that numerous permittees are having reporting violations. Only 17 permittees had reporting violations.

Serious Violations

In 2003, the Department identified and issued formal enforcement actions for 182 serious effluent violations (90 were from local permittees and 92 from nonlocals). These violations involved discharges from 48 facilities. Seven of these permittees have appealed their penalty assessments for 90 of the violations. Of the 182 serious violations, 36.3 percent (66) involved violations of limitations for nonhazardous pollutants, and the remaining 63.7 percent (116) involved violations of limitations for hazardous pollutants. Serious violations have decreased from a reported high figure of 847 in 1992.

However, there was clearly a significant increase for the fifth consecutive year in the total number of serious violations for which a penalty action was taken. In particular, serious violations by local agencies increased by three-fold over the numbers reported in each of the past five years. The 182 violations was the most reported since 1997. While this appears to be a disturbing trend, it must be noted that of the 182 serious violations that were addressed by a penalty action in 2003, 72 of the violations actually occurred in calendar years 1993-1999. Various reasons were responsible for the extended delay in these violations being addressed. The 48 facilities having serious effluent violations was similar to the number reported in recent years.

Significant Non-Compliers

In 2003, the Department issued formal enforcement actions to 22 permittees identified as SNCs. Five of the permittees have contested their individual designations as SNCs through the filing of adjudicatory hearing requests on the AONOCAPA's issued to them. Appendix III-A of this report identifies each SNC and sets forth information concerning each SNC's violations. In 1992, 81 permittees were issued penalties for becoming an SNC. Therefore, the number of SNCs has dropped by 73 percent since 1992. In 2003, 14 of the 22 SNC permittees were nonlocal agencies and 8 were local agencies. Nineteen of the permittees violated a DSW permit, two violated a DGW permit and one violated a SIU permit. In 2003, there was one permittee that continued to be an SNC violator from 2002 (Applied Wastewater Management, Inc. - Homestead Treatment Utility - NJ0098663). In comparison, the number of permittees identified in the 1993 report that continued to be or were repeat SNC violators was 18.

Of the 22 permittees identified as SNCs in 2003, 18 percent (4) had only violations of limitations for nonhazardous pollutants; 41 percent (9) involved only violations of limitations for hazardous pollutants; 9 percent (2) had violations of limitations for both nonhazardous and hazardous pollutants; 9 percent (2) had only violations of reporting requirements and 23 percent (5) had both reporting and effluent violations.

As has been the case since 1996, the percentage of permittees in significant noncompliance in 2003 was less than 2.0 percent of the total NJPDES permittees with monitoring and reporting requirements in their permits.

Enforcement Actions

The Department uses both informal and formal enforcement actions to promote compliance with the WPCA. An informal enforcement action notifies a violator that it has violated a statute, regulation or permit requirement, and directs the violator to take corrective actions to comply. The Department typically takes formal administrative enforcement action when it is required by the CWEA to assess a mandatory penalty or when a permittee has failed to remedy a violation in response to an informal enforcement action previously taken by the Department. The Department only takes formal enforcement action when it has verified that a violation has occurred.

Informal Enforcement Actions:

In 2003, the Department initiated 479 informal enforcement actions (NOVs) compared with 1,273 in 1992.

Formal Enforcement Actions:

In 2003, the Department initiated 101 formal enforcement actions compared with 752 in 1992 and a high of 941 in 1993.

The reduction in formal actions since 1992 can be traced for the most part to the decrease in the issuance of administrative actions containing penalty assessments that could be adjudicated. Meanwhile, the number of Settlement Agreements with Penalties, which typically constitute approximately 50 percent of all formal enforcement actions, was down from a high of 126 in 1995

to only 59 in 2003. This indicates a drop in the number of facilities, which had violations that would trigger mandatory penalties under the CWEA (serious and SNC violations), that chose to enter into SA/Ps to avoid litigation costs and resolve violations quickly.

The number of formal actions issued (101) in 2003 was the lowest ever reported. The total number of 580 enforcement actions (informal and formal) in 2003 was at a level similar to that being reported since 1996.

Penalties Assessed and Collected

In 2003, the Department assessed a total of \$2.46 million in civil and civil administrative penalties within 58 distinct enforcement actions. This is essentially unchanged from the \$2.27 million assessed in 2002. Interestingly, while this is the fewest number of total penalty actions taken (58) in a calendar year since keeping records in 1991, it is only the fifth lowest yearly assessment on record.

In 2003, the Department collected \$976,235 in penalties from 83 permittees. This was both the lowest amount collected and the fewest permittees paying since the CWEA was enacted. However, this amount was very similar to the amount collect both in 1998 and 2001 of \$1.3 million. It is in direct contrast to last year's increase which was a reversal of the decreasing or stagnant trend seen over the past 6 years or so. There were no payments made greater than \$100,000. On the other hand, of the 98 payments received by the Department, 53 were for \$5,000 or less.

Delegated Local Agencies

A DLA is a political subdivision of the State, or an agency or instrumentality thereof, which owns or operates a municipal treatment works and implements a Department approved industrial pretreatment program. The 24 DLAs have issued permits to control the discharges from a total of 970 facilities discharging to their sewage treatment plants.

The CWEA requires DLAs to annually inspect each permitted facility discharging into their sewage treatment plant. For Categorical/Significant/Major (CSM) permittees, the CWEA requires the DLA to annually conduct a representative sampling of the permittees' effluent. For Other Regulated (OR) permittees, the DLA is required to perform sampling only once every three years. The DLAs inspected and sampled 923 of the 970 permittees at least once during the calendar year.

The DLAs reported 1,425 permit violations by permitted facilities in 2003, compared with 1,266 violations in 2002. The DLAs reported a total of 53 indirect users who qualified as SNCs under the State definition during 2003. The analysis in the 2002 report indicated that 50 indirect users met the SNC definition. Therefore, there was an increase of 3, or a 6.0 percent increase in the number of facilities in significant noncompliance. The DLAs reported as a whole that by the end of calendar year 2003, 27 (52.0 percent) of the 52 indirect users in significant noncompliance had achieved compliance. During 2003, the DLAs issued 417 enforcement actions as a result of inspections and/or sampling activities.

In calendar year 2003, 16 of the DLAs assessed a total of \$1,398,376 in penalties for 586 violations while collecting \$958,006. In 2002, 14 DLAs assessed \$1,800,413 in penalties for 653 violations while collecting \$1,148,645.

Criminal

In 2003, the Division of Criminal Justice conducted a total of 25 WPCA investigations. The Division also reviewed over 560 Department actions (NOVs, Orders, Penalty Assessments, etc.) for potential criminality. Division State Investigators responded to 15 water pollution emergency response incidents, out of a total of 47 emergency response incidents. The Division filed 6 criminal actions (indictments or accusations) for violations of the WPCA. This included 8 counts in 6 accusations. (The Division filed a total of 20 criminal actions in environmental cases.) Seven of these constituted third degree charges involving a purposeful, knowing or reckless unlawful discharge of a pollutant into the State's waters and one involved a fourth degree charge for negligent discharge of a pollutant into State waters. All of them (six criminal actions) have been resolved either through guilty pleas or in one case through admission into PTI. The Division thus obtained a total of 5 convictions against 5 defendants for violations of the WPCA. In 2003, through the successful prosecution of cases involving water pollution, the Division obtained one year and three months of jail time and \$171,000 in fines and restitution.

In 2003, the Morris County Prosecutor's Office filed 7 criminal actions for violations of the WPCA. This included a total of 7 accusations. Of this total, 5 were third degree charges and 2 were fourth degree charges involving unlawful negligent discharge into the State's waters. Discussed below are the WPCA criminal actions and dispositions secured by the Division and by the Morris County Prosecutor.

Fiscal

A total of \$428,023 in penalty receipts was deposited in the second half of FY2003 and \$803,326 in penalty receipts was deposited during the first half of fiscal year 2004.

In calendar year 2003, the Fund disbursed \$115,000 to the Division of Law for the costs of litigating civil and administrative enforcement cases and other legal services; \$42,103 to the Office of Administrative Law for costs associated with adjudicating WPCA enforcement cases; and \$15,000 to the Office of Information Technology. The CWEF disbursed \$851,415 for expenses incurred by the Department.

Water Quality Assessment

Each year, the Department assesses the status of rivers, streams, lakes and coastal waters through extensive water quality monitoring networks. These results are then compiled and assessed biannually into a formal *Water Quality Inventory Report* (also called the 305b report from Section 305b of the CWA) which is submitted to the EPA. The most recent Inventory Report is the 2004 Report, which forms the basis for the water quality information presented here. Note: the 2004 305(b) Report has been combined with the 2004 303(d) List to form the *2004 New Jersey Integrated Water Quality Monitoring and Assessment Report*.

Nontidal Rivers and Streams

- ◆ A total of 347 stations (representing 2,634 river miles) were assessed for total phosphorus (TP). The assessment results show that over half of the stations now meet TP standards (54% attaining, 35% non attaining).
- ◆ Observations revealed that 31 stations with low pH exceedances were located in areas directly surrounding the Pinelands yet these stations are classified as FW-2 and not PL waters within the SWQS. These areas are characterized as having environmental conditions such as soils, geology, and vegetation very similar to the Pinelands, therefore, there is speculation that the low pH at these sampling sites may be attributable to natural conditions rather than an impairment.
- ◆ Metals were monitored at 12% of nontidal rivers. Of these monitored miles, 72% exceeded a standard for one or more metals. Arsenic, lead, mercury, and copper were responsible for the highest number of impairments of river miles in non-tidal waters. Arsenic and lead were responsible for the highest number of new metal listings based on the most current sampling, 310 and 110 miles respectively. Mercury and copper exceeded their criteria but to a lesser extent, impacting 47 and 50 river miles. Exceedances of the metal criteria occurred throughout the state, in all physiographic regions, and in all land use types.
- ◆ Over 98% of stations assessed fully met the standards for total dissolved solids (TDS).

Tidal Rivers and Coastal Waters

- ◆ A limited amount of new metal data exists in tidal rivers. Twenty-three sites representing 269 miles were assessed for metals with all of the rivers having at least one metal or toxic substance exceeding its criteria. Several sites had metals or other toxic substances placed on sublist 4 (of the Integrated List) because of a TMDL or other pollutant reduction plan. The sites listed on sublist 4 include: the Delaware River Zones 2, 3, and 4 for Tetrachloroethene; 1,2 Dichloroethane; and PCBs; the Tidal Hackensack River for Nickel; and the Hudson River for Mercury. In addition, recent data from the Delaware River Basin Commission has resulted in the Delaware River in Zone 4 being assessed as impaired for copper.
 - ◆ Of the 441 miles of tidal rivers assessed for dissolved oxygen, 378 miles (86%) were assessed to be in full attainment, while 52 miles were in non-attainment (12%) due to periodic drops in DO.
 - ◆ Of the 616 square miles of open estuarine waters assessed from New York Harbor to Delaware Bay, 48% had sufficient dissolved oxygen levels to support a healthy biota. The remaining 52 % were assessed as being in non-attainment due to periodic drops in DO levels to unacceptable levels and are listed on Sublist 5 (sites being in non attainment and on New Jersey's 303(d) List).
- ◆ Of 454 square miles of ocean water assessed (Sandy Hook south to Cape May and 3 nautical miles off the coast) for dissolved oxygen, 100 percent had unacceptably low levels brought about by a benthic low DO cell which forms off the coast during the summer months and breaks up in the fall. As a result all these waters are listed on Sublist 5.

I. INTRODUCTION

In 1972, Congress enacted the first comprehensive national clean water legislation in response to growing public concern for serious and widespread water pollution. The Clean Water Act (CWA) is the primary federal law that protects our nation's waters, including lakes, rivers, aquifers and coastal areas.

The CWA established the basic structure for regulating discharges of pollutants into the waters of the United States by making it unlawful for any person to discharge any pollutant from a point source unless a permit was obtained under its provisions. It also gave the United States Environmental Protection Agency (EPA) the authority to implement pollution control programs such as setting wastewater standards for industry and to delegate the primary responsibility to issue permits for discharges of pollutants and to enforce the permit system to individual states.

The Water Pollution Control Act (WPCA), enacted in 1977, enabled New Jersey to implement the permitting system required under the CWA. The WPCA established the New Jersey Pollutant Discharge Elimination System (NJPDES), whereby a person must obtain a NJPDES permit in order to discharge a pollutant into surface water or ground water of the State or to release a pollutant into a municipal treatment works.

The NJPDES permit is a legally binding agreement between a permittee and the Department, authorizing the permittee to discharge effluent into the State's waters under specified terms and conditions. These conditions include (a) the specific pollutants in the effluent stream, (b) the amount or concentration of those pollutants which the effluent may contain, (c) the type and number of tests of the effluent to be performed and (d) the reporting of test results to determine compliance. The permit normally provides for monthly reporting of these test results to the Department in a Discharge Monitoring Report (DMR).

In 1990, the Legislature enacted substantial amendments to the WPCA, commonly known as the Clean Water Enforcement Act (CWEA), P.L. 1990, c.28. The CWEA added strength to the enforcement of New Jersey's water pollution control program by including the imposition of mandatory minimum penalties for certain violations of the WPCA. The CWEA also requires the Department to prepare a report and submit it to the Governor and the Legislature by March 31 of each year on implementation and enforcement actions which the Department and delegated local agencies (DLAs) have taken during the preceding calendar year. The statute also specifies the items that the report must contain. In accordance with the CWEA, specifically N.J.S.A. 58:10A-14.1-14.2, this report provides information about Permitting, Enforcement Actions, DLAs, Criminal Actions, Fiscal, and Water Quality Assessment.

The Permitting chapter provides information related to permits, including the number of facilities permitted, the number of new permits, permit renewals and permit modifications issued and the number of permit approvals contested.

The Enforcement chapter provides the following:

- A. Information related to inspections, including the number of facilities (including publicly owned treatment works) and the number of discharges inspected at least once by the Department;

- B. Information related to violations and violators including the number of enforcement actions resulting from facility inspections, the number of permit violations, the number of violations of administrative orders and administrative consent orders, the number of violations of milestones in compliance schedules which have continued for more than 90 days, the number of effluent violations which constitute serious violations, the number of permittees qualifying as significant noncompliers, the number of violations for which civil penalties or civil administrative penalties have been assessed, the number of unpermitted discharges, and the number of affirmative defenses granted; and
- C. Information related to enforcement actions and penalties, including the dollar amount of civil penalties and civil administrative penalties assessed, the dollar amount of civil penalties and civil administrative penalties collected, and the dollar amount of enforcement costs recovered in civil actions and civil administrative actions.

The DLA chapter provides enforcement and permitting information relating to local agencies' operations of sewage treatment plants with industrial pretreatment programs approved by the Department.

The Criminal Actions chapter provides information concerning criminal actions filed by the New Jersey State Attorney General and by county prosecutors.

The Fiscal chapter provides financial information, including the purposes for which program monies have been expended.

The Water Quality Assessment chapter provides an overall assessment of surface water quality in New Jersey as reported in the *2004 New Jersey Integrated Water Quality Monitoring and Assessment Report*.

II. PERMITTING

The CWEA requires the Department to report the total number of facilities permitted pursuant to the WPCA, the number of new permits, renewals and modifications issued by the Department and permit actions contested in the preceding calendar year. This information is presented below. Since 2000, the former section on Stormwater Permitting has been incorporated into the Division of Water Quality (DWQ) section.

A. DIVISION OF WATER QUALITY

The Department issues Discharge to Surface Water (DSW), Stormwater, Discharge to Groundwater (DGW), and Land Application of Residuals permits to regulate "discharges" of pollutants to the surface and ground waters of the State. DSW permits include Industrial permits issued to facilities discharging various types of wastewater (such as process water, cooling water, decontaminated groundwater, and commingled stormwater) to surface waters and Municipal permits issued to publicly owned treatment works ("POTWs") and privately owned treatment plants discharging primarily sanitary wastewater. Stormwater permits are required for stormwater discharges associated with industrial activity. Significant Indirect User ("SIU") permits regulate the discharge of industrial wastewater into sewage treatment plants. Facilities that discharge pollutants directly or indirectly to the ground waters of the State are issued DGW permits. Facilities that distribute, handle or land apply residuals are issued a Land Application of Residuals permit.

Section One - Number of Facilities Permitted:

The Department's DWQ regulated 798 facilities that discharge to the surface waters of the State in 2003, as compared to the 791 facilities regulated in 2002. The Department also regulates facilities discharging to ground water and to POTWs, discharging stormwater only, or that handle, distribute or land apply residuals. These types of facilities are listed under "Other" in Table II-1. Some facilities have both a DSW discharge and another type of discharge. In 2003, the DWQ regulated 3,707 of these other facilities (either separately or combined with a DSW), as compared to the 3,329 regulated in 2002, an increase of 11 percent. The DWQ regulated a total of 4,264 facilities in 2003, compared with 3,890 facilities in 2002, an increase of 10 percent.

TABLE II-1

**REGULATED FACILITIES
2001-2003**

FACILITIES REGULATED (including stormwater)	2001	2002	2003	% Growth 2002-2003
Discharge to Surface Water only	586	561	557	-0.7
DSW/Other combined	239	230	241	+4.7
Other only	2962	3099	3466	+11.8
TOTAL	3,787	3,890	4,264	+9.6

The Department may at times issue permits for "discharge types" rather than facilities, therefore a facility with more than one discharge type may have more than one permit. As of December 31, 2003, the Department permitted 4,722 discharge types for 4,264 facilities. Table II-2 below provides information regarding the number of discharge types permitted by the Department between 2000 and 2003.

**TABLE II - 2
REGULATED DISCHARGES BY TYPE
2000-2003**

DISCHARGE ACTIVITY TYPE	2000	2001	2002	2003
INDUSTRIAL DSW	557	547	555	533
MUNICIPAL DSW	275	258	250	266
SIU	75	83	78	78
GROUNDWATER	878	998	1091	1112
RESIDUALS	72	64	66	60
STORMWATER	2251	2204	2172	2673
TOTAL	4,108	4,154	4,212	4,722

The number of permitted discharges regulated by the DWQ has been growing steadily over the past several years. The Department continues to issue permits to new facilities, while other facilities' permits are being terminated or not renewed. Most permit actions are for renewals of existing permits. In 2003, the permitted facility universe increased by 510, mainly due to increased efforts to identify and permit previously exempt and/or unidentified facilities now requiring a stormwater discharge permit.

Section Two - Types of Permits and Permit Actions:

The Department issues several different types of NJPDES permits. Permits are limited to a maximum term of five years. The Department requires submission of renewal applications 180 days prior to expiration of the permit for individual NJPDES permits. However, certain general NJPDES permits do not require submission of formal renewal applications. The Department has classified its NJPDES permit actions based upon the technical complexity of the permit application and the potential environmental or health effects of the discharge, and reports the following permit categories in the Permit Activity Report in accordance with P.L. 1991, c.423:

Requests for Authorization to discharge under a general permit:

General permits reduce permit processing time because a standard set of conditions, specific to a discharge type or activity, are developed (rather than issuing individual permits for each discharge or activity). This permitting approach is well suited for regulating similar facilities or activities that have the same monitoring requirements. The following general permits are currently effective:

**TABLE II - 3
GENERAL PERMITS**

NJPDES No.	Category	Name of General Permit	Discharge Type	Year Issued
NJ0070203	CG	Non-contact Cooling Water	DSW	2000
NJ0102709	B4B	Groundwater Petroleum Product Clean-up	DSW	2003
NJ0128589	B6	Swimming Pool Discharges	DSW	1998
NJ0134511	B7	Construction Dewatering	DSW	1999
NJ0132993	BG	Hydrostatic Test Water	DSW	1999
NJ0105023	CSO	Combined Sewer Overflow	DSW	2000
NJ0105767	EG	Land Application Food Processing Residuals	RES	2003
NJ0132519	ZG	Residuals Transfer Facilities	RES	1999
NJ0132501	4G	Residuals – Reed Beds	RES	2002
NJ0108308	I1	Stormwater Basins/SLF	DGW	2001
NJ0108642	I2	Potable WTP Basins/Drying Beds	DGW	2003
NJ0130281	T1	Sanitary Subsurface Disposal	DGW	2003
NJ0142051	LSI	Lined Surface Impoundment	DGW	2004
NJ0088315	5G2	Basic Industrial Stormwater	DST	2002
NJ0108456	CPM	Concrete Products Manufacturing	DST	2003
NJ0107671	SM	Scrap Metal Processing/Auto Recycling	DST	1999
NJ0134791	R5	Newark Airport Complex	DST	2000
NJ0138631	R8	Concentrated Animal Feeding Operations	DST	2003
NJ0141852	R9	Tier A Municipal Stormwater	DST	2004
NJ0141861	R10	Tier B Municipal Stormwater	DST	2004
NJ0141879	R11	Public Complex Stormwater	DST	2004
NJ0141887	R12	Highway Agency Stormwater	DST	2004

In 2004, the Department anticipates renewing the Residuals Transfer Facilities General Permit, the Swimming Pool Discharges General Permit, the Construction Dewatering General Permit, the Hydrostatic Test Water General Permit, and the Scrap Metal Processing/Auto Recycling General Permit. The Scrap Metal Processing/Auto Recycling general permit is being expanded to regulate

stormwater discharges to groundwater. In addition, the Department will be issuing several new general permits for stormwater discharges from Asphalt Paving Mix Manufacturing Operations and from Mining and Quarrying Activities. A new DSW general permit is also expected authorizing the Beneficial Reuse of Reclaimed Water as well as a new DGW general permit authorizing the discharge of sanitary sewage from facilities utilizing advanced treatment prior to disposal to a subsurface disposal system. Four new general permits implementing the Municipal Stormwater Regulation Program (Phase 2) were also issued in 2003 and finalized in early 2004 prior to publication of this report (see section B - New Developments).

Surface Water Permits:

These are individual permits and renewals issued for the discharge of sanitary, industrial, cooling, decontaminated ground water and stormwater runoff not eligible for coverage under a general permit.

Stormwater Permits:

These are individual permits and renewals issued for the discharge of stormwater runoff not eligible for coverage under a general permit.

Construction Activity Stormwater General Permits:

The Construction Activity General Permit (NJ0088323) is for construction activities disturbing five acres or more and certain mining activities, all of which are considered industrial activities. Last renewed in 2002, this permit is administered by the 17 local Soil Conservation Districts in conjunction with the Soil Erosion and Sediment Control Plan certification. The Department issued 616 construction activity general permit authorizations in 2003. There are a total of 4,197 active authorizations under this general permit.

Ground Water Permits:

These are individual new permits and renewals issued to facilities for wastewater that is discharged directly or indirectly to the ground water of the State. The DWQ issues NJPDES permits for discharges to ground water (including onsite wastewater systems) for facilities that discharge 2000 gallons per day or more.

Significant Indirect Users:

These are individual permits and renewals issued for wastewater discharges to publicly owned treatment works. There are 24 Delegated Local Agencies (DLAs) with the authority to issue SIU permits for significant discharges occurring within their respective service areas. The Department is responsible for permitting SIU discharges for the remainder of the State.

Land Application of Residuals:

These are individual permits and renewals issued to regulate the distribution, handling and land application of residuals originating from sewage treatment plants, industrial treatment plants, water treatment plants and food processing operations.

Permit Modifications:

These are modifications to existing permits and are usually requested by the NJPDES permittee. These modifications range from a transfer of ownership, or reduction in monitoring frequency, to a total re-design of a wastewater treatment plant operation. The Department can issue modifications for all discharge types except Requests for Authorization under a general permit. Permit modifications do not extend the expiration date of the permit.

Permit Terminations (Revocations):

These actions are also often initiated by the permittee when the regulated discharge of pollutants has ceased, usually as a result of regionalization, closure or recycling. Prior to terminating or revoking a permit, the Department ensures that sludge has been removed, outfalls have been sealed, and the treatment plant has been dismantled.

Section Three - Permit Actions:

Table II-4 summarizes formal permit actions by the categories described above. For the purposes of this presentation, "Request for Authorizations" are included as new or renewals, as appropriate, under the applicable discharge type. Since the Construction General Permit (NJ0088323) is administered by the local Soil Conservation Districts, those permit actions are not summarized here. In each permit category, the number of new permits, renewal permits, permit modifications, and terminations (revocations) are listed.

In 2003, the Department took 1,435 formal permit actions, reflecting a 30 percent decrease in permit actions from 2002. This large decrease is mainly due to the large number of authorizations under the Basic Stormwater General Permit that were issued in 2002. If the 2002 outputs were adjusted to account for this "bubble" of permit actions, the 2003 outputs represent a 210% increase in permit actions. Even if the 2003 outputs are adjusted to account for a second "bubble" of more than 500 T1 Discharge to Groundwater General Permit renewals, the remaining 2003 outputs still represent a 91% increase in permit actions. Approximately 31 percent of the final permit actions were new facilities, 54 percent of the actions were permit renewals, 5 percent were for permit modifications, and 10 percent were for permit terminations. New permits and permit renewals may be controversial, particularly when the Department imposes new requirements or more stringent effluent limitations, and have historically been contested. In 2003, the Department received 14 requests for adjudicatory hearings, compared to 10 requests received in 2002. This is a request rate of 1.0 percent as a percent of permit actions. The Department recommends meeting with the applicant prior to issuing a draft permit to ensure that the data submitted in the application is current and to obtain any additional information that might be useful. This has resulted in better permits and a reduced number of requests for adjudicatory hearings.

The Department issued DSW permit renewals to 28 major facilities in 2003. Over the past few years, DWQ has focused its permitting resources on renewing major DSW permits. The Department also issued 444 new permits and received no hearing requests on these actions. The Department issued 775 permit renewals and received 13 hearing requests on these actions. The relatively low number of hearing requests can be attributed to the increased use of general permits and to providing predrafts to permittees. The general permits contain certain conditions and effluent limitations that

are the same for similar types of discharges. Once a general permit is issued, applicants may request authorization to discharge under the final general permit. In such cases, applicants are aware of the permit conditions and effluent limitations before they apply for the permit. In the case of regular permits, the DWQ has increased the practice of providing a predraft of a permit to permittees prior to the formal public notice period. This provides the permittee with an opportunity to correct factual information used in the permit development before issuance of the formal draft permit. Understanding the permit conditions prior to applying for a general permit and providing an opportunity to correct factual information for regular permits greatly improves acceptance of the permit by the permittee and thereby diminishes the filing of hearing requests.

TABLE II - 4
PERMIT ACTIONS TAKEN BY THE DIVISION OF WATER QUALITY
2001 - 2003

TYPE OF PERMIT ACTION	2001	Contested 2001	2002	Contested 2002	2003	Contested 2003
Industrial Surface Water						
- New	14	2	12	0	20	0
- Renewals	49	0	50	0	111	3
- Modifications	12	0	17	0	19	0
- Terminations	59	0	36	0	35	0
Subtotal	134	2	115	0	185	3
Municipal Surface Water						
- New	0	0	0	0	0	0
- Renewals	31	9	24	4	31	10
- Modifications	18	0	23	0	34	1
- Terminations	5	0	0	0	3	0
Subtotal	54	9	47	4	68	11
Significant Indirect User						
- New	10	0	10	0	9	0
- Renewals	8	0	10	0	14	0
- Modifications	0	0	8	1	9	0
- Terminations	2	0	11	0	1	0
Subtotal	20	0	29	1	33	0
Ground Water						
- New	37	2	37	0	43	0
- Renewals	48	2	37	3	576	0
- Modifications	3	0	8	0	7	0
- Terminations	11	0	13	0	17	0
Subtotal	99	4	95	3	643	0
Land Application of Residuals						
- New	1	0	4	0	2	0
- Renewals	7	1	5	0	20	0
- Modifications	0	0	1	0	3	0
- Terminations	2	0	2	0	0	0
Subtotal	10	1	12	0	25	0
Stormwater						
- New	145	0	51	0	370	0
- Renewals	22	0	1621	2	23	0
- Modifications	12	0	3	0	5	0
- Terminations	64	0	79	0	83	0
Subtotal	243	0	1754	2	481	0
TOTALS	560	16	2062	10	1435	14

For the Stormwater Permitting Program in 2003, 369 new general permit authorizations were issued, 3 were renewed, 2 were modified, and 70 general permit authorizations were terminated. In addition, 1 new individual permits was issued, 20 were renewed, 13 were terminated, and 3 individual permit modifications were completed. The DWQ has also received 9,295 Nonapplicability Forms to date, with 13 received in 2003.

Table II-5 reflects the total number of permit actions taken by the DWQ in each of the last four years.

**TABLE II - 5
COMPARISON OF PERMIT ACTIONS
2000 - 2003**

TYPE OF PERMIT ACTION	2000	2001	2002	2003
New	172	207	114	444
Renewal	220	165	1747	775
Modifications	46	45	60	77
Terminations (Revocations)	142	143	141	139
TOTAL ACTIONS	580	560	2062	1435

B. NEW DEVELOPMENTS

Section One - Municipal Stormwater Regulation Program and Underground Injection Control

On January 6, 2003, the Division proposed changes to the NJPDES rules in order to implement the new Municipal Stormwater Regulation Program in response to US Environmental Protection Agency requirements (Phase 2) for municipal stormwater discharge permits. These changes were adopted effective February 2, 2004. This program will regulate all municipalities and counties as well as many state and federal agencies in the State. The program integrates the NJPDES program with other aspects of stormwater management regulated under the Stormwater Management Act. In addition, the amendments address the 1999 changes to the Federal Underground Injection Control (UIC) regulations and revise other UIC requirements relating to the issuance of permits. The rule also expands the NJPDES permit requirements for stormwater discharges associated with construction activity, changing the threshold acreage for requiring a permit from 5 acres of disturbance to 1 acre and adding best management practices to control construction-related pollutants.

The Division issued four draft general permits on January 6, 2003 to implement the Municipal Stormwater Regulation Program. The four permits issued as final on February 2, 2004 are:

- **Tier A Municipal Stormwater General Permit**

The Tier A Permit (NJ0141852) is primarily for 465 municipalities assigned to “Tier A” under the NJPDES rule changes. Tier A municipalities are generally located within the more densely

populated regions of the state or along or near the coast.

- **Tier B Municipal Stormwater General Permit**

The Tier B Permit (NJ0141861) is primarily for 101 municipalities assigned to “Tier B” under the NJPDES rule changes. Tier B municipalities are generally located in more rural areas and in non-coastal regions.

- **Public Complex Stormwater General Permit**

The Public Complex Permit (NJ0141879) is primarily for county, State, interstate, and Federal agencies that operate “public complexes” (e.g., colleges or universities, hospitals, prisons, office complexes, or military bases) as described in the NJPDES rule changes.

- **Highway Agency Stormwater General Permit**

The Highway Permit (NJ0141887) is primarily for county, State, interstate, and Federal agencies that operate “highways and other thoroughfares” as described in the NJPDES rule changes.

Since January 2003, many presentations and seminars were conducted for representatives of governmental entities who will require permit authorization and other interested parties. Three seminars, to which all municipalities were invited, were presented in the north, central and southern areas of the state in May and June of 2003. One seminar each for highway agencies and public complexes was given in August 2003. In addition, four presentations were made through the League of Municipalities.

Section Two - Five General Permits Renewed

The Division issued renewals for the NJPDES Sanitary Subsurface Disposal Ground Water General Permit in April 2003, the NJPDES Potable Water Treatment Plant Filter Backwash Water Discharge to Ground Water General Permit in August 2003, the general permit for stormwater discharges from Concrete Products Manufacturing facilities in September 2003, the Groundwater Petroleum Products Clean-up General Permit in October 2003, and the NJPDES general permit for facilities involved in the land application of food processing by-products in December 2003. General permits reduce permit processing time because a standard set of conditions, specific to a discharge type or activity, are developed (rather than issuing individual permits for each discharge or activity). This permitting approach is well suited for regulating similar facilities or activities that have the same monitoring requirements. In addition, it makes permit requirements consistent across the regulated community.

The following is a brief description of the renewed general permits:

- **Sanitary Subsurface Disposal Ground Water General Permit**

The Sanitary Subsurface Disposal Ground Water General Permit (category T1) (NJ0130281) was renewed by the Division to authorize discharges of sanitary wastewater to ground water from facilities using subsurface sewage disposal systems (septic systems) whose aggregate design flow is in excess of 2,000 gallons per day per single property. Within 90 days of authorization, the permit requires the development of an inspection schedule, including a monthly visual inspection; a phone list and priority actions to be taken in case of an emergency; and personnel training. Any failures or problems found must be dealt with immediately. Locations of all septic tanks and disposal fields must be detailed on a site plan prepared within one year of authorization. The permit requires that the tank(s) be pumped once every five years. Under the renewed general permit, 505 facilities

statewide received renewal authorizations.

- **Potable Water Treatment Plant Filter Backwash Water Ground Water General Permit**

The Division renewed the Potable Water Treatment Plant Filter Backwash Water Discharge to Ground Water General Permit (category I2) (NJ0108642) for water treatment plants (WTP) which discharge filter backwash/clarifier water to ground water via basins. The permit requires monitoring to determine the quantity and quality of the filter backwash water and to assess its potential impact on ground water quality. Two monitoring programs are included, one each for lined and unlined basins. All permittees are required to report according to the Sludge Quality Assurance Regulations.

Within 120 days of authorization all permitted facilities are required to submit a site plan showing the location of all basins and areas of residual storage. Within 180 days of authorization, permittees are required to prepare a Maintenance, Inspection and Emergency Operations Manual. This manual must include: a list of pollutants generated and discharged; a schedule of maintenance and inspections; a schedule for periodic removal of residuals; an emergency plan; employee training; and all records of maintenance and inspections. Thirty-two WTP facilities are authorized under this general permit.

- **Concrete Products Manufacturing Industry Stormwater General Permit**

The Division reissued the Concrete Products Manufacturing Industry General Permit (category CPM) (NJ0108456) to authorize new and existing stormwater discharges to surface and/or ground waters from facilities engaged in the manufacture of concrete brick or block, other concrete products, or ready mixed concrete. The permit specifically regulates the discharge of stormwater and discharges of concrete washout wastewater and/or concrete washout wastewater comingled with stormwater. Washout wastewater discharge to groundwater is not authorized. The Department has included in this general permit industry standards for controlling pollutants and preventing them from entering surface or ground waters. These industry standards include: the development of a Drainage Control Plan which includes diverting non-industrial stormwater from mixing with industrial stormwater, insuring that all regulated industrial stormwater discharges through permitted outfalls, and paving all areas where industrial activity is occurring to minimize discharges of pollutants to groundwater (6 months to implement); development of a recycling program including all waste materials generated during concrete production (6 months to prepare, 24 months to implement); and, the preparation and implementation of a Stormwater Pollution Prevention Plan which includes best management activities and monitoring options (6 months to prepare, 24 months to implement). Seventy nine facilities have had their permit authorizations renewed and approximately 35 previously unpermitted facilities are in the process of being authorized.

- **Groundwater Petroleum Product Clean-up General Permit**

The Division renewed the Groundwater Petroleum Product Clean-up Master General Permit (category B4B) (NJ0102709) on October 30, 2003. This permit covers groundwater clean-ups at contaminated sites, primarily at gas stations and other areas subject to petroleum product contamination. In addition to re-issuing the Master General Permit, the Division subsequently renewed all individual authorizations – approximately 80 permit actions. These actions were accomplished prior to the expiration date of the original Master General Permit.

- **Residuals- Land Application of Food Processing By-products General Permit**

The general permit for the Land Application of Food Processing By-products (category EG) (NJ0105767) was renewed on December 18, 2003. This general permit is for the management of residuals which are generated from the treatment of wastewater at food processing operations. The

12 existing individual authorizations under this general permit were automatically renewed as part of this process. The general permit provides a mechanism for the land application of food processing residuals and vegetative wastes whose application to lands would benefit crop growth and soil productivity. Besides residuals generated as a result of food processing wastewater treatment, this general permit also covers such materials as tomato skins and seeds, pepper cores, potato peels, cabbage, onion skins, celery pieces, cranberry hulls, cranberry tailings, rice hulls, carrot stems, and coffee grounds.

Section Three - Municipal and Industrial Surface Water Permitting

The Division has continued in its goals of reducing backlogs for major permits, both industrial and municipal. The backlog for majors has continued in its steady downward trend, beginning with a high of 35% in January 2002 to most recently reaching the 20% goal. The Division will maintain focus on renewal of major permits and anticipates the backlog to be less than 15% for the next fiscal year. As part of the above actions, the Division has successfully renewed a number of older permits, which have been expired in excess of 10 years.

Section Four - NJPDES Program for Submission of Electronic Monitoring Report Forms

Electronic Data Interchange (EDI) was initiated by the Division of Water Quality beginning in July 2003. Following a series of meetings and work sessions with stakeholders that began in March 2001, a design was developed. The electronic Monitoring Report Form (MRF) is designed to utilize a Microsoft Excel '97 based template. The Division pilot tested the New Jersey Pollutant Discharge Elimination System (NJPDES) EDI application in the Fall of 2002 and permittees are now able to submit all of their MRFs electronically via the Internet. The NJPDES EDI application is available through the NJDEP On-Line web portal at: <https://www.njdeponline.com>. Once the Division receives an EDI application form and approves it, permittees have the ability to access and download their MRFs on-line. Currently 111 permittees are signed up to use EDI to submit their monitoring data. Approximately 279 forms are submitted in a typical month. This accounts for 10% of the data submitted and has been growing as new participants sign up for the convenience, accuracy and savings offered by EDI.

Section Five - Information Available on DWQ Web Site

The Division of Water Quality continues to maintain a number of helpful documents on it's website which were previously distributed to permittees with their Monitoring Report Forms (MRF). These may be accessed at: www.nj.gov/dep/dwq/bpm.htm.

Additionally, various NJPDES permit forms and checklists may be accessed at: www.nj.gov/dep/dwq/forms.htm.

Other permitting and technical information may be viewed and/or downloaded at: www.nj.gov/dep/dwq/permitng.htm. Recently added to the web site is a link to download data on sewage sludge production for 2002. This information lists the modes of sewage sludge management used by domestic treatment plants and is organized by municipality and county.

The Division receives many public requests for information from the NJPDES database. Some of the more popular and most requested information has been posted on the web site for download and

updates and expanded information is made available on a periodic basis. The direct link for accessing this information is www.nj.gov/dep/dwq/database.htm. The Division web site also includes a crosslink to a series of reports that are available through the Department's Open Public Records Act web site. These semi-custom reports are generated through a link to the NJEMS database system. In addition to lists of permits selectable by a variety of categories, this interactive link allows for the retrieval and download of NJPDES DMR and WCR data. The DMR and WCR data is available for user selected periods beginning in July 2000. The report displays the raw data as reported by the permittees to the Department.

III. ENFORCEMENT

The CWEA requires the Department to report information annually concerning the number of inspections conducted, the number and types of violations identified, the number of enforcement actions initiated and the dollar amount of penalties assessed and collected. The provisions of the CWEA relevant to this Chapter are as follows:

Inspections:

The CWEA requires the Department to inspect permitted facilities and municipal treatment works at least annually. Additional inspections are required when the permittee is identified as a significant noncomplier (discussed below). The inspection requirement applies to all facilities except those that discharge only stormwater or non-contact cooling water and to those facilities which DLA is required to inspect. A DLA must inspect facilities discharging into its municipal treatment works, again excluding those facilities that discharge only stormwater or non-contact cooling water. Neither the Department nor a DLA is, however, required to inspect permitted facilities that discharge stormwater runoff which has come into contact with a Superfund site, listed on EPA's National Priorities List, or municipal treatment works receiving such stormwater runoff.

Mandatory minimum penalties:

Mandatory minimum penalties under the CWEA apply to violations of the WPCA that are considered serious violations and to violations by permittees designated as significant noncompliers (SNCs). A serious violation is an exceedance of an effluent limitation in a NJPDES permit by 20 percent or more for a hazardous pollutant or by 40 percent or more for a nonhazardous pollutant. An SNC is a permittee which:

1. Commits a serious violation for the same pollutant at the same discharge point source in any two months of any six-month period;
2. Exceeds the monthly average in any four months of any six-month period; or
3. Fails to submit a completed DMR in any two months of any six-month period.

For serious violations, the CWEA requires mandatory minimum penalties of \$1,000 per violation. SNCs are subject to mandatory minimum penalties of \$5,000 per violation.

The CWEA also requires the Department to impose a mandatory penalty when a permittee omits from a DMR required information relevant to an effluent limitation. The penalty is \$100 per day per effluent parameter omitted.

Effective January 19, 1999, the DLAs were required to assess mandatory minimum penalties against any indirect user that commits either a serious violation, a violation that causes a user to become or remain in significant noncompliance or an omission violation as noted in the preceding paragraph.

Affirmative defenses:

The CWEA establishes the following basis for affirmative defenses to mandatory minimum penalties: upsets, bypasses and testing or laboratory errors.

An upset is an exceptional incident (such as a flood or storm event) beyond the permittee's

reasonable control that causes unintentional and temporary noncompliance with an effluent limitation. As part of the affirmative defense, the permittee must identify the cause of the upset whenever possible and establish that the permitted facility was being operated properly at the time of the upset and that all remedial measures required by the Department or the DLA were taken.

A bypass is an intentional diversion of waste streams from any portion of a treatment works. Whether or not the permittee anticipated the need for the bypass, a permittee may raise the affirmative defense only if the bypass was unavoidable to prevent loss of life, personal injury or severe property damage and there was no feasible alternative to the bypass. If the bypass was anticipated, the permittee should have provided the Department with prior notice in order to be eligible for the affirmative defense. If the bypass was unanticipated, the permittee should demonstrate that it was properly operating its facility and that it promptly notified the Department or the DLA as well as took remedial measures required by the Department or the DLA.

To establish an affirmative defense for testing or laboratory error, the permittee must establish that an exceedance of an effluent limitation resulted from unanticipated test interferences, sample contamination, analytical defects, procedural deficiencies in sampling or other similar circumstances beyond the permittee's control.

Compliance schedules:

Under the CWEA, the Department may establish a compliance schedule for a permittee to complete remedial measures necessary for compliance. However, the permittee must provide financial assurance for completion of those remedial measures in the form of a bond or other security approved by the Commissioner.

A. INSPECTIONS

Each fiscal year the Department performs one full inspection of every regulated facility and an additional interim inspection, as needed, to determine compliance. In a full inspection, the Department reviews all DMRs and evaluates the entire water pollution control process for each discharge, including operation and maintenance practices, as well as monitoring and sampling procedures. As part of an interim inspection, the Department reviews the facility's DMRs and focuses upon specific compliance issues.

In 2003, the Department conducted 1,744 facility inspections. Of the 1,744 facility inspections performed, 1,706 were full inspections and 38 were interim inspections.

The data presented below concerning the number of facilities and discharges inspected are organized into two categories of facilities: local and nonlocal. A local facility is a POTW or other facility, such as a school, landfill or wastewater treatment plant, that is operated by a local agency (a political subdivision of the State, or an agency or instrumentality thereof). A nonlocal facility is any facility that is not operated by a local agency. The CWEA distinguishes between these two types of facilities in a number of ways. For instance, for local agencies, the CWEA establishes different criteria for financial assurance requirements as well as different settlement criteria.

The data presented below also distinguishes between the three different types of NJPDES permits: DSW, DGW, and discharges into a municipal treatment works by an SIU.

Table III-1 sets forth the number of inspections the Department performed from 1992 through 2003, by type of discharge and by type of facility. The Department eliminated routine interim inspections

after July 1, 1994, which has significantly decreased the total number of inspections. Additionally, between 1992 and March of 1998, the number of permitted facilities had been steadily decreasing, with the largest decrease occurring in calendar years 1993 and 1994. In March of 1998, approximately 350 general permit authorizations were issued to facilities discharging sanitary wastewater to septic systems (T1 permits). The Department immediately commenced annual inspections of these T1 permit systems, which explains the sudden increase in the number of DGW inspections performed beginning in 1998. In fact, it was not until 1999 that all these facilities were inspected, and the number of DGW inspections in 1999 once again increased. Both the numbers of DSW and SIU inspections have leveled off and have been within fairly consistent ranges for the past eight years. It is important to note that this table presents the number of inspections performed - not the number of discharges or facilities - in the listed categories.

**TABLE III - 1
SUMMARY OF NJPDES INSPECTIONS PERFORMED**

NUMBER OF INSPECTIONS												
BY DISCHARGE TYPE												
Discharge Type	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
DSW	2,550	2,380	1,773	1,267	1,098	1,160	1,164	1,168	1,015	1,166	1,035	814
DGW	705	763	640	515	499	498	761	969	874	1,010	915	857
SIU	185	162	120	80	83	85	75	87	65	82	78	73
TOTALS	3,440	3,305	2,533	1,862	1,680	1,743	2,000	2,224	1,954	2,258	2,028	1,744
BY FACILITY TYPE												
Facility Type	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Local	716	695	660	454	456	505	493	590	527	558	515	451
Nonlocal	2,203	2,562	1,816	1,360	1,202	1,205	1,491	1,634	1,427	1,700	1,513	1,293
TOTALS	2,919	3,257	2,476	1,814	1,658	1,710	1,984	2,224	1,954	2,258	2,028	1,744

B. VIOLATIONS

Section One - Results of Facility Inspections:

The Department is required to report the number of enforcement actions resulting from facility inspections. Whenever one or more serious or an SNC violation is discovered during an inspection, the Department issues a Notice of Violation (NOV) to the facility. NOV's are not typically issued for minor violations.

NOV's identify violations and direct the facility operator to correct the activity or condition constituting the violation within a specified period of time. As further discussed in Section C. Enforcement Actions, these documents are considered informal enforcement actions. The Department initiates a formal enforcement action, which may include the assessment of a civil administrative penalty, if a permittee fails to remedy a violation identified in a NOV. The Department will also initiate a formal enforcement action whenever it is required by the CWEA to assess a mandatory minimum penalty.

Section Two - Total Number of Permit Violations:

The Department is required to report the number of actual permit violations that occurred in the preceding calendar year. There are two types of permit violations, effluent violations and reporting violations. Effluent violations occur when a discharge exceeds the limits established within the NJPDES permit or the interim limits established in a consent order. Reporting violations occur when a permittee fails to submit a DMR or submits a DMR that does not provide all of the required information. It is important to note that enforcement actions are taken only on verified violations. The number of effluent violations that were addressed by the issuance of a formal enforcement action in 2003 is reported in Section Six below.

Section Three - Violations of Administrative Orders and Consent Orders:

The CWEA requires the Department to report the number of violations of administrative orders (AOs), administrative consent orders (ACOs) and compliance schedule milestones (dates set forth in an ACO for starting and/or completing construction, or for attaining full compliance). The Department must also report the number of permittees that are out of compliance by more than 90 days from the date established in a compliance schedule for starting and/or completing construction, or for attaining full compliance. Although not expressly required by the CWEA, the Department also includes in this section of the report, the number of violations of judicial orders (JOs) and judicial consent orders (JCOs). Information concerning violations is presented below.

Violations of Interim Effluent Limitations:

In 2003, for the fourth consecutive year, the Department did not identify any violations of an interim effluent limitation established in an AO or ACO. In contrast, in 1992, the Department identified 191 violations of interim effluent limitations established in 29 ACOs. Of those 191 violations, 95 percent (181) involved nonhazardous pollutants and 5 percent (10) involved hazardous pollutants.

Violations of Compliance Schedules:

In 2003, the Department did not take any formal actions against any permittee that was more than 90 days out of compliance with the schedule established in its ACO.

Section Four - Unpermitted Discharges:

An unpermitted discharge is the release of pollutants into surface water, ground water or a municipal treatment works when the discharger does not hold a valid NJPDES permit or when the discharge is not authorized under the discharger's permit.

In 2003, the Department issued twenty-three (23) formal enforcement actions against facilities responsible for unpermitted discharges. Of the 23 unpermitted discharge formal enforcement actions, 6 involved discharges to ground water and 17 involved discharges to surface water. None involved a discharge into a municipal treatment works by an SIU. A few actions addressed both an unpermitted discharge to ground water and to surface water.

Section Five - Affirmative Defenses:

The CWEA requires the Department to report the number of affirmative defenses granted that involved serious violations. The CWEA specifically provides affirmative defenses to penalty liability for serious violations and violations by significant noncompliers. It also indicates that the Department may allow these defenses for any effluent violation for which NJPDES regulations also provide defenses. The CWEA requires the permittee to assert the affirmative defense promptly after the violation occurs, enabling the Department to evaluate the asserted defense before assessing a penalty. Therefore, this report includes information on all affirmative defenses asserted, as well as affirmative defenses granted, for serious violations.

This year, in addition to the information on affirmative defenses for effluent violations, the Department is once again providing data on extenuating circumstance-type defenses, as provided for pursuant to N.J.S.A. 58:10A-10.1.d and N.J.A.C. 7:14-8.9(e), for DMR omissions or DMR nonsubmittal.

In 2003, the Department granted 13 affirmative defenses asserted by 6 facilities for 59 effluent violations or parameter omissions. Eleven of the affirmative defenses granted concerned upsets, 0 concerned defenses granted for extenuating circumstances, 1 concerned laboratory error and one of the defenses was attributed to a bypass. In the 13 defenses granted, all 59 violations concerned a discharge to surface water. Therefore, 0 involved discharges to ground water and 0 related to SIU discharges. Three of the defenses granted involved discharges by local agencies, whereas 10 involved nonlocal agency permittees.

In 2003, the Department rejected 2 affirmative defenses asserted by 2 facilities for 9 effluent violations. One of the affirmative defenses denied concerned an upset, 0 concerned laboratory error, 0 were attributed to extenuating circumstances, and 1 of the defenses was attributed to a bypass. In the 2 defenses denied, all 9 violations concerned a discharge to surface water. Therefore, 0 involved discharges to ground water and 0 were related to SIU discharges. One of the defenses denied involved discharges by a local agency and 1 involved a nonlocal agency permittee.

Section Six - Violations for Which the Department Assessed a Penalty:

In 2003, the Department assessed penalties against 82 facilities for 665 violations of the WPCA. The 665 violations addressed by the Department's actions was substantially greater than the 373 violations addressed in 2002 but similar to the number seen in 2000 and 2001. The lowest ever recorded was the 291 violations in calendar year 1998. In comparison, in 1992 the Department assessed penalties against 300 facilities for 2,483 violations. A closer look at the data shows that the penalty actions issued in 2003 were similar to those in the past few years in one respect. For penalty actions concerning effluent violations, approximately one-half of the actions (25 of 52) were in response to just a single violation. Twelve actions were in response to facilities with just two effluent violations.

Table III-2 below groups violations into the following categories: effluent violations, violations of compliance schedules, DMR reporting violations and other violations.

TABLE III - 2
SUMMARY OF VIOLATIONS FOR WHICH A PENALTY WAS ASSESSED
Calendar Year 2003

VIOLATION CATEGORY	Number	Percentage
Effluent	218	32.8
- Nonhazardous	79	36.2
- Hazardous	139	63.8
Compliance Schedule	0	0.0
Reporting	140	21.0
- Nonsubmittal	31	22.1
- Omissions	109	77.9
Other	307	46.2
TOTALS	665	100.0

Effluent violations comprised 32.8 percent (218) of the 665 violations for which the Department assessed penalties in 2003. Strikingly, since 1992, there has been an 85 percent decrease in the number of effluent violations for which the Department assessed penalties (1,446 to 218). In 1992, effluent violations accounted for 58.2 percent of all violations. Of the 218 effluent violations in 2003, 36.2 percent (79) concerned discharges of nonhazardous pollutants, such as suspended solids, nutrients and fecal coliform. The other 63.8 percent (139) concerned discharges of hazardous pollutants, such as chlorine residual, metals, pesticides and organics.

As mentioned above, about one-half of the penalty actions (25 of 52) issued for effluent violations were in response to just a single violation. Only 10 of the 52 actions involved five or more effluent violations. Of the 218 effluent violations, 120 violations were from just five permittees. They were: North Bergen Township MUA's Woodcliff STP -NJ0029084 - (44 violations), Colts Neck Inn - NJ0031771 - (34 violations), Oxford Textile, Inc. - NJ0004901 - (18 violations), Thermoplastic Processes, Inc. - NJ0134856 - (13 violations) and Fieldsboro WWTP - NJ0031810 - (11 violations).

Reporting violations accounted for 21.0 percent (140) of the violations for which the Department assessed a penalty. It is important to point out that the 140 reporting violations in 2003, while significantly higher than the 66 reported in 2002, are not an indication that numerous permittees are having reporting violations. Only 17 permittees had such violations - five of which were responsible for 81 percent or 113 of the 140 reporting violations: Colts Neck Inn - NJ0031771 - (67 violations),

Johanna Foods, Inc. - NJ00904411 - (13 violations), Port Colden Mall - NJ0067610 - (13 violations), Thermoplastic Processes, Inc. - NJ0134856 - (10 violations) and Washington Township Shopping Center - NJ0059897 - (10 violations). Overall, the decrease in the number of reporting violations throughout the years can be attributed to the Department's continual outreach efforts to explain the reporting requirements. The familiarity and comfort with the reporting procedures by the regulated community is a direct result of the Department's increased emphasis since 1988 on both issuance of enforcement actions and providing comprehensive compliance assistance.

The "Other" Violations category includes Combined Sewer Overflows (CSO) permit requirements, unpermitted discharges, improper sampling, and sewer connection/extension violations. Of the 307 Other Violations addressed in formal enforcement actions, 229 (74.6%) were committed by just 2 entities. Deficient sampling accounted for 162 of the violations in a SA/P executed with Two Rivers Water Reclamation Authority - NJ0026735 and 67 violations were in a SA/P executed with Branchburg Township - Neshanic Station STP - NJ0020354 for illegal discharges of sludge to Somerset Raritan Valley Sewerage Authority (SRVSA).

Local agencies accounted for 340 of the violations for which the Department assessed penalties, nonlocal agencies accounted for the remaining 325 violations.

Table III-3 below lists the number and percentage of effluent, compliance schedule and reporting violations by calendar year for local and nonlocal agencies.

Table III-4 contains only the data from **nonlocal** agencies. Noteworthy on this table is the fact that the total number of effluent violations was the fourth lowest ever reported.

Table III-5 illustrates the violation data just for **local** agencies. Noteworthy on this table are 2 items: (1) The number of hazardous effluent violations was by far the highest ever reported (80), and (2) The total number of "Other" violations for which the Department issued a penalty action (248) was the second highest ever reported behind the (556) in 1994.

**TABLE III - 3
SUMMARY OF VIOLATIONS BY CATEGORY ~ LOCAL AND NONLOCAL**

		Violation Category								
Year	Number / Percentage	Effluent			Compliance Schedule	Discharge Monitoring Report			Other	Totals (columns 5,6,9,10)
		Non-hazardous	Hazardous	Subtotal		Non-submittal	Omissions	Subtotal		
1992	Number	1,192	254	1,446	73	38	370	408	556	2,483
	Percentage	82.4%	17.6%	58.2%	2.9%	9.3%	90.7%	16.4%	22.4%	100.0%
1993	Number	1,167	253	1,420	2	35	213	248	384	2,054
	Percentage	82.2%	17.8%	69.1%	0.1%	14.1%	85.9%	12.1%	18.7%	100.0%
1994	Number	758	146	904	7	3	139	142	691	1,744
	Percentage	83.8%	16.2%	51.8%	0.4%	2.1%	97.9%	8.1%	39.6%	100.0%
1995	Number	578	99	677	0	7	107	114	72	863
	Percentage	85.4%	14.6%	78.4%	0.0%	6.1%	93.9%	13.2%	8.3%	100.0%
1996	Number	221	85	306	94	0	88	88	39	527
	Percentage	72.2%	27.8%	58.1%	17.8%	0.0%	100.0%	16.7%	7.4%	100.0%
1997¹	Number	426	64	490	8	8	246	254	71	823
	Percentage	86.9%	13.1%	59.5%	1.0%	3.1%	96.9%	30.9%	8.6%	100.0%
1998	Number	103	18	121	1	1	84	85	84	291
	Percentage	85.1%	14.9%	41.6%	0.3%	1.2%	98.8%	29.2%	28.9%	100.0%
1999²	Number	72	41	113	5	20	199	219	622	959
	Percentage	63.7%	36.3%	11.8%	0.5%	9.1%	90.9%	22.8%	64.9%	100.0%
2000	Number	165	19	184	1	27	179	206	193	584
	Percentage	89.7%	10.3%	31.5%	0.2%	13.1%	86.9%	35.3%	33.0%	100.0%
2001	Number	156	49	205	2	41	194	235	154	596
	Percentage	76.1%	23.9%	34.4%	0.3%	17.4%	82.6%	39.4%	25.8%	100.0%
2002	Number	145	34	179	0	4	62	66	128	373
	Percentage	81.0%	19.0%	48.0%	0.0%	6.1%	93.9%	17.7%	34.3%	100.0%

¹Of the 490 Effluent violations for 1997, 70 are attributable to the Ringwood Board of Education - Robert Erskine School STP; 63 to the Lighthouse Bar and Restaurant; 59 to the New Jersey Turnpike Authority; 57 to the RVSA; and 37 to the Burlington County Solid Waste Facility. Of the 254 Discharge Monitoring Report violations for 1997, 197 are attributable to the Lighthouse Bar and Restaurant.

²Five facilities were responsible for 168 of the 219 Discharge Monitoring Reports violations Kearfott Guidance & Navigation Corporation, Plant #1 (65 omission violations); Kearfott Guidance & Navigation Corporation, Plant #3 (55 omission violations); Phillips Electronics North America Corporation (22 omission violations); Anadigics, Inc. (16 omission violations); and John T. Handy, Inc. (10 DMR nonsubmittal violations). Of the 622 Other violations, 480 violations were noted at one facility - Harmony Dale Farms.

TABLE III - 3 (continued)
SUMMARY OF VIOLATIONS BY CATEGORY ~ LOCAL AND NONLOCAL

		Violation Category								
Year	Number / Percentage	Effluent			Compliance Schedule	Discharge Monitoring Report			Other	Totals <small>(columns 5,6,9,10)</small>
		Non-hazardous	Hazardous	Subtotal		Non-submittal	Omissions	Subtotal		
2003	Number	79	139	218	0	31	109	140	307	665
	Percentage	36.2	63.8	32.8	0.0	22.1	77.9	21.0	46.2	100.0

**TABLE III - 4
SUMMARY OF VIOLATIONS BY CATEGORY ~ NONLOCAL AGENCIES**

		Violation Category								
Year	Number / Percentage	Effluent			Compliance Schedule	Discharge Monitoring Report			Other	Grand Total (columns 5,6,9,10)
		Non-hazardous	Hazardous	Total		Non-submittal	Omissions	Total		
1992	Number	782	209	991	2	38	336	374	538	1,905
	Percentage	78.9%	21.1%	52.0%	0.1%	10.2%	89.8%	19.6%	28.2%	100.0%
1993	Number	672	223	895	0	24	181	205	346	1,446
	Percentage	75.1%	24.9%	61.9%	0.0%	11.7%	88.3%	14.2%	23.9%	100.0%
1994	Number	595	118	713	0	2	119	121	135	969
	Percentage	83.5%	16.5%	73.6%	0.0%	1.7%	98.3%	12.5%	13.9%	100.0%
1995	Number	348	68	416	0	7	103	110	40	566
	Percentage	83.7%	16.3%	73.5%	0.0%	6.4%	93.6%	19.4%	7.1%	100.0%
1996	Number	156	55	211	0	0	86	86	26	323
	Percentage	73.9%	26.1%	65.3%	0.0%	0.0%	100.0%	26.6%	8.0%	100.0%
1997	Number	187	24	211	1	6	234	240	52	504
	Percentage	88.6%	11.4%	41.9%	0.2%	2.5%	97.5%	47.6%	10.3%	100.0%
1998	Number	76	9	85	1	1	78	79	42	207
	Percentage	89.4%	10.6%	41.1%	0.5%	1.3%	98.7%	38.2%	20.3%	100.0%
1999	Number	54	28	82	0	18	183	201	558	841
	Percentage	65.9%	34.1%	9.8%	0.0%	9.0%	91.0%	23.9%	66.3%	100.0%
2000	Number	97	11	108	0	27	160	187	181	476
	Percentage	89.8%	10.2%	22.7%	0.0%	14.4%	85.6%	39.3%	38.0%	100.0%
2001	Number	105	35	140	0	41	184	225	25	390
	Percentage	75.0%	25.0%	35.9%	0.0%	18.2%	81.8%	57.7%	6.4%	100.0%
2002	Number	119	22	141	0	4	56	60	114	315
	Percentage	84.4%	15.6%	44.8%	0.0%	6.7%	93.3%	19.0%	36.2%	100.0%

TABLE III - 4 (continued)
SUMMARY OF VIOLATIONS BY CATEGORY ~ NONLOCAL AGENCIES

		Violation Category								
Year	Number / Percentage	Effluent			Compliance Schedule	Discharge Monitoring Report			Other	Grand Total <small>(columns 5,6,9,10)</small>
		Non-hazardous	Hazardous	Total		Non-submittal	Omissions	Total		
2003	Number	68	59	127	0	31	108	139	59	325
	Percentage	53.5	46.5	39.1	0.0	22.3	77.7	42.8	18.2	100.0

**TABLE III - 5
SUMMARY OF VIOLATIONS BY CATEGORY ~ LOCAL AGENCIES**

		Violation Category								
Year	Number / Percentage	Effluent			Compliance Schedule	Discharge Monitoring Report			Other	Grand Total <small>(columns 5,6,9,10)</small>
		Non-hazardous	Hazardous	Total		Non-submittal	Omissions	Total		
1992	Number	410	45	455	71	0	34	34	18	578
	Percentage	90.1%	9.9%	78.7%	12.3%	0.0%	100.0%	5.9%	3.1%	100.0%
1993	Number	495	30	525	2	11	32	43	38	608
	Percentage	94.3%	5.7%	86.3%	0.3%	25.6%	74.4%	7.1%	6.3%	100.0%
1994	Number	163	28	191	7	0	20	20	556	774
	Percentage	85.3%	14.7%	24.7%	0.9%	0.0%	100.0%	2.6%	71.8%	100.0%
1995	Number	230	31	261	0	0	4	4	32	297
	Percentage	88.1%	11.9%	87.9%	0.0%	0.0%	100.0%	1.3%	10.8%	100.0%
1996	Number	65	30	95	94	0	2	2	13	204
	Percentage	68.4%	31.6%	46.6%	46.1%	0.0%	100.0%	1.0%	6.4%	100.0%
1997	Number	239	40	279	7	2	12	14	19	319
	Percentage	85.7%	14.3%	87.5%	2.2%	14.3%	85.7%	4.4%	6.0%	100.0%
1998	Number	27	9	36	0	0	6	6	42	84
	Percentage	75.0%	25.0%	42.9%	0.0%	0.0%	100.0%	7.1%	50.0%	100.0%
1999	Number	18	13	31	5	2	16	18	64	118
	Percentage	58.1%	41.9%	26.3%	4.2%	11.1%	88.9%	15.3%	54.2%	100.0%
2000	Number	68	8	76	1	0	19	19	12	108
	Percentage	89.5%	10.5%	70.4%	0.9%	0.0%	100.0%	17.6%	11.1%	100.0%
2001	Number	51	14	65	2	0	10	10	129	206
	Percentage	78.5%	21.5%	31.6%	1.0%	0.0%	100.0%	4.9%	62.6%	100.0%
2002	Number	26	12	38	0	0	6	6	14	58
	Percentage	68.4%	31.6%	65.5%	0.0%	0.0%	100.0%	10.3%	24.2%	100.0%

TABLE III - 5 (continued)
SUMMARY OF VIOLATIONS BY CATEGORY ~ LOCAL AGENCIES

		Violation Category								
Year	Number / Percentage	Effluent			Compliance Schedule	Discharge Monitoring Report			Other	Grand Total <small>(columns 5,6,9,10)</small>
		Non-hazardous	Hazardous	Total		Non-submittal	Omissions	Total		
2003	Number	11	80	91	0	0	1	1	248	340
	Percentage	12.1	87.9	26.8	0.0	0.0	100.0	0.3	72.9	100.0

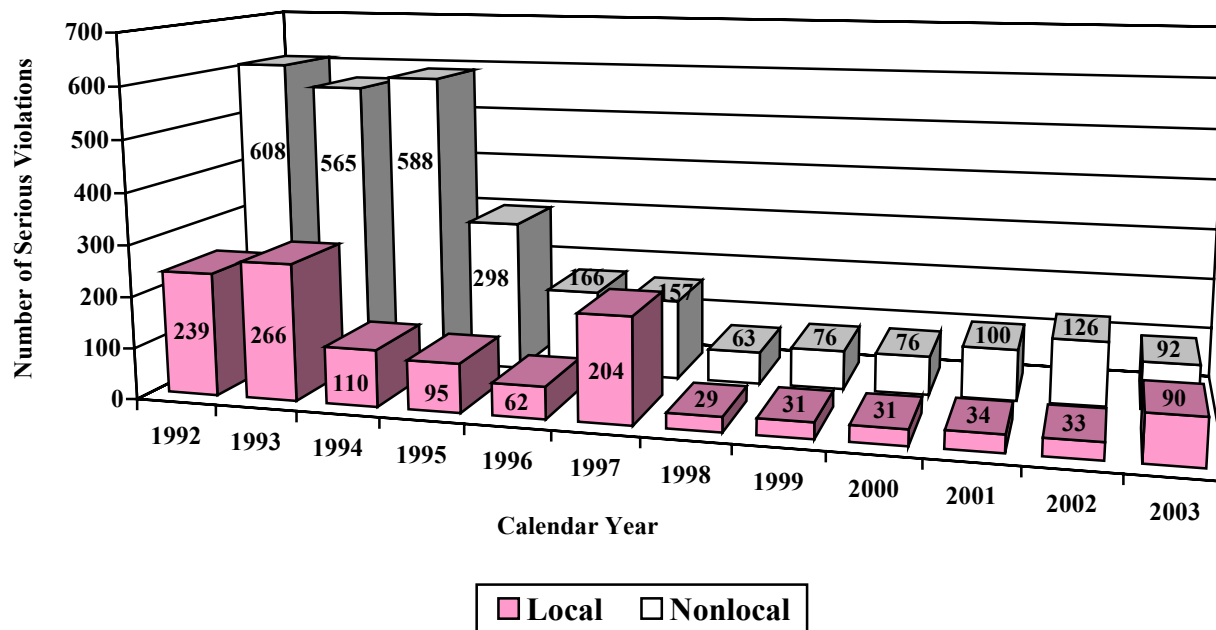
Section Seven - Serious Violations:

The CWEA requires the Department to report the number of actual effluent violations constituting serious violations, including those violations that are being contested by the permittee. The CWEA defines a serious violation as an exceedance of a valid effluent limitation by 20 percent or more for hazardous pollutants and by 40 percent or more for nonhazardous pollutants. The CWEA establishes mandatory minimum penalties for serious violations and requires the Department to assess a penalty for a serious violation within six months of the violation.

In 2003, the Department identified and issued formal enforcement actions for 182 serious effluent violations (90 were from local permittees and 92 from nonlocals). These violations involved discharges from 48 facilities. Seven of these permittees have appealed their penalty assessments for 90 of the violations. Of the 182 serious violations, 36.3 percent (66) involved violations of limitations for nonhazardous pollutants, and the remaining 63.7 percent (116) involved violations of limitations for hazardous pollutants. In Chart III-1 below, the serious violations are separated into those from either local or nonlocal permittees. Serious violations have decreased from a reported high figure of 847 in 1992. This staggering decrease from ten years ago is a very positive trend indicating the regulated community, as a whole, is paying close attention to monitoring their discharges and taking the appropriate corrective action to prevent their facilities from having serious violations.

However, there was clearly a significant increase for the fifth consecutive year in the total number of serious violations. In particular, serious violations by local agencies increased by three-fold over the numbers reported in each of the past five years. The 182 violations was the most reported since 1997. While this appears to be a disturbing trend, it must be noted that of the 182 serious violations that were addressed by a penalty action in 2003, 72 of the violations actually occurred in calendar years 1993-1999. Various reasons were responsible for the extended delay in these violations being addressed. The 48 facilities having serious effluent violations was similar to the number reported in recent years.

**CHART III - 1
SERIOUS VIOLATIONS**



Section Eight - Significant Noncompliers:

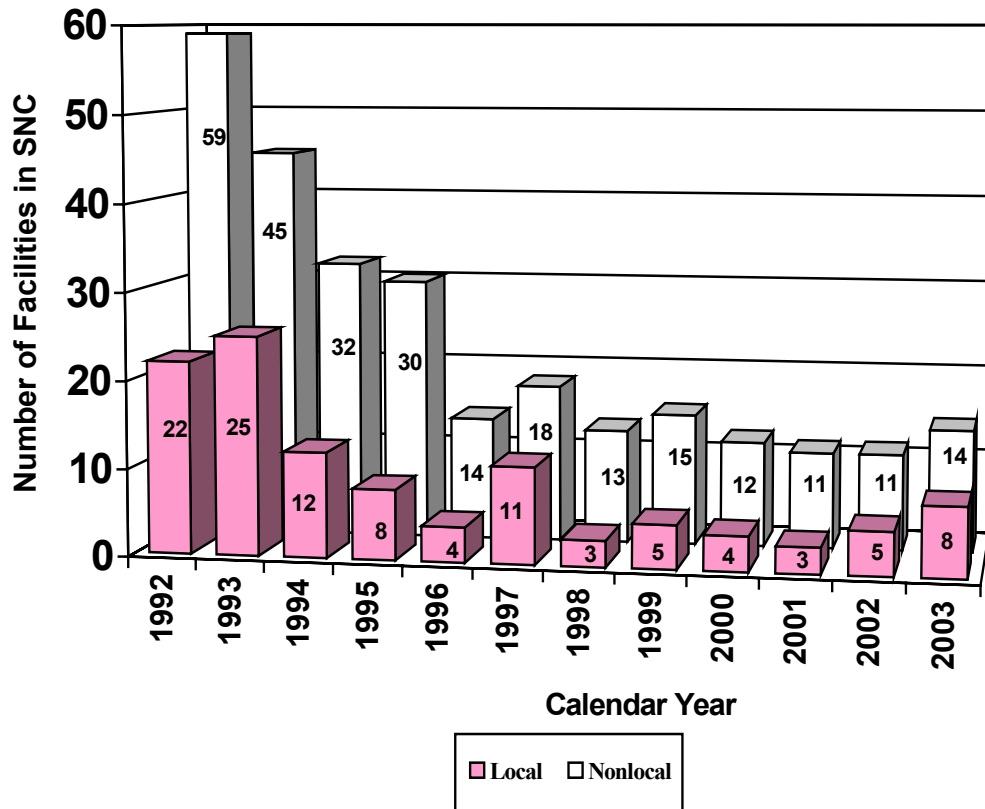
The CWEA requires the Department to report the number of permittees qualifying as SNCs, including permittees contesting such designation and to provide certain information pertaining to each permittee designated as an SNC. An SNC is a permittee which: (1) commits a serious violation for the same pollutant at the same discharge point source in any two months of any six-month period; (2) exceeds the monthly average in any four months of any six-month period or (3) fails to submit a completed DMR in any two months of any six-month period (N.J.S.A. 58:10A-3w). The Department reviews each violation to determine whether the violation has caused the permittee to become an SNC or continue to be an SNC. If the permittee is or has become an SNC, the Department initiates formal enforcement action, assessing a civil administrative penalty in an amount at least equal to the statutory minimum, and directing the SNC to attain compliance.

In 2003, the Department issued formal enforcement actions to 22 permittees identified as SNCs. Five of the permittees have contested their individual designations as SNCs through the filing of adjudicatory hearing requests on the AONOCAPA's issued to them. Appendix III-A of this report identifies each SNC and sets forth information concerning each SNC's violations. In 1992, 81 permittees were issued penalties for becoming an SNC. Therefore, the number of SNCs has dropped by 73 percent since 1992. In 2003, 14 of the 22 SNC permittees were nonlocal agencies and 8 were local agencies. Nineteen of the permittees violated a DSW permit, two violated a DGW permit and one violated a SIU permit. In 2003, there was one permittee that continued to be an SNC violator from 2002 (Applied Wastewater Management, Inc. - Homestead Treatment Utility - NJ0098663). In comparison, the number of permittees identified in the 1993 report that continued to be or were repeat SNC violators was 18.

Of the 22 permittees identified as SNCs in 2003, 18 percent (4) had only violations of limitations for nonhazardous pollutants; 41 percent (9) involved only violations of limitations for hazardous pollutants; 9 percent (2) had violations of limitations for both nonhazardous and hazardous pollutants; 9 percent (2) had only violations of reporting requirements and 23 percent (5) had both reporting and effluent violations.

As has been the case since 1996, the percentage of permittees in significant noncompliance in 2003 was less than 2.0 percent of the total NJPDES permittees with monitoring and reporting requirements in their permits. Chart III-2 below shows the number of local and nonlocal facilities which the Water Compliance and Enforcement Element has taken formal enforcement action against because they had reporting or discharge violations of their permit effluent limitations that caused them to be, or continue to be, in significant noncompliance as defined by the 1990 amendments to the WPCA (N.J.S.A. 58:10A-1 et seq.).

CHART III - 2 SIGNIFICANT NONCOMPLIERS



In most calendar years there are approximately two times more nonlocal facilities in SNC than locals. However, the rate was slightly less in 2003. Previously, calendar year 1997 was the only exception to this trend. Additionally, the significant noncompliance rates between nonlocals and local entities have been essentially the same because there are almost three times as many nonlocal dischargers than local (approximately 1,100 to 400 respectively as of 2000). Since calendar year 1996, the percentage of NJPDES permitted facilities in significant noncompliance has remained below two percent.

The 22 permittees identified as SNCs was an increase over last year and the highest number of SNCs since 1997. Chart III-2 shows a significant decreasing trend, which has flattened out over the past eight years of the overall twelve year period, in the total number of chronic violators having serious discharge violations or failing to submit discharge monitoring reports which places them in significant noncompliance. A return to a steep decrease in the number of facilities in significant noncompliance as occurred previously from 1992 to 1993 and again from 1995 to 1996 is not likely or expected. Given the large total number of permitted discharges with reporting requirements and effluent limitations compared to the limited number of facilities in significant noncompliance during the past eight years, only slight variation in the numbers is expected from year to year as we have seen again this year. Any new and more restrictive discharge limitations imposed in NJPDES permits in the future could actually result in nominal increases in the number of SNCs. However, the regulated community is more educated and prepared to address any such limitations and take the steps necessary to achieve and maintain compliance and therefore, avoid SNC designation.

The Department believes its multifaceted compliance assistance program has played a major role in the significant reduction in SNCs and violations overall. The DMR manual, which was initially published in 1991 with a second edition in 1993 and updates in 2000 (through guidance on the new reporting forms), has been invaluable in providing guidance to permittees in proper discharge monitoring and completion of their DMRs. Seminars and training courses conducted with various organizations have assisted permittees and licensed operators in achieving a better understanding of the WPCA requirements. This has also resulted in numerous wastewater treatment system improvements at both local and nonlocal facilities.

However, the largest portion of the assistance program over the years has been performed by department personnel both during permit pre-application meetings, as part of the DWQ's technical assistance program, and in particular, while conducting compliance evaluation inspections. During these activities, detailed assistance and guidance has been given to the permittee on virtually every aspect of the NJPDES program. This education and outreach effort undoubtedly has played a significant role in the tremendous increase in compliance by the regulated community.

Section Nine - Violations for which the Department Did Not Assess a Penalty:

The Department assesses a penalty only after conducting an inspection or confirming the violation by some other contact with the permittee. Accordingly, serious violations and violations which cause a permittee to become an SNC, which were reported on DMRs but not confirmed before the end of the 2003 calendar year, will be the subject of penalty assessments once the Department confirms that the violations occurred. If the Department establishes that a report of an exceedance was in error (for example, if the reported exceedance is attributable to a mistake in the reporting or processing of discharge data), the Department does not take an enforcement action for the reported exceedance.

C. ENFORCEMENT ACTIONS

Section One - Types of Enforcement Actions:

Informal Enforcement Actions:

The Department uses both formal and informal enforcement actions to promote compliance with the WPCA. An informal enforcement action notifies a violator that it has violated a statute, regulation or permit requirement, and directs the violator to take corrective actions to comply. Typically, informal actions are a first step in the enforcement process and are taken at the time the Department identifies a violation. The Department does not assess penalties in informal enforcement actions, which are preliminary in nature and do not provide an opportunity to contest the action in an adjudicatory hearing. However, the Department is always willing and available to discuss the violation with a permittee.

The Department takes an informal enforcement action by issuing an NOV at the time a violation is identified during a field inspection. An NOV not only identifies a violation but also requires the violator to advise the Department of the action taken to remedy the violation.

Until July of 1994, the Department counted inspection letters that gave an Unacceptable rating to a facility as Directive Letters (DRLs) since corrective action was directed to be performed.

Inspection reports no longer contain ratings and they are no longer counted as a type of informal enforcement action. The Department decided to modify its tracking and reporting protocol of DRLs

for various administrative reasons back in 1995. In addition, the Department believes it is more appropriate to place emphasis on the NOV's (rather than DRLs) which are typically issued to facilities at the time of inspections if violations are noted.

As noted earlier, the Department has eliminated routine interim inspections. If a review of discharge data indicates an individual serious violation, the Department will contact the permittee to confirm the violation(s) prior to assessing a penalty.

Formal Enforcement Actions:

The Department typically takes formal administrative enforcement action when it is required by the CWEA to assess a mandatory penalty or when a permittee has failed to remedy a violation in response to an informal enforcement action previously taken by the Department. The Department only takes formal enforcement action when it has verified that a violation has occurred. The Department usually initiates formal administrative enforcement action through the issuance of an (AO) or Settlement Agreement with Penalty (SA/P). The Department has utilized several types of AOs.

An AO is a unilateral enforcement action taken by the Department ordering a violator to take corrective action. The Department usually issues an AO to require a permittee to comply with its permit and may prescribe specific measures to be taken by the violator.

An Administrative Order/Notice of Civil Administrative Penalty Assessment (AO/NOCAPA) identifies a violation, assesses a civil administrative penalty, and also orders a violator to take specific, detailed compliance measures.

A Notice of Civil Administrative Penalty Assessment (NOCAPA) is an action that identifies a violation and assesses a civil administrative penalty. Compliance has already been achieved in most cases.

An Attorney General Referral (AGR) is made by the Department to the New Jersey State Attorney General to initiate a civil enforcement action against a violator to compel compliance, collect a penalty, or an activity or condition poses an immediate and substantial threat to public health and the environment. An AGR is also made when a permittee has failed to work cooperatively with the Department toward attaining compliance despite formal administrative enforcement actions. The State Attorney General, on behalf of the Department, will then file civil enforcement actions in the New Jersey State Superior Court against the violator. When the Court finds that a defendant has violated the WPCA, it will typically issue a JO directing the defendant to comply within a specified period of time and may also require the defendant to pay a civil penalty (JO/P).

The Department issues Stipulated Penalty Demand Letters (SPDLs) to permittees demanding payment of penalties stipulated under an ACO or JCO for the permittee's failure to comply with terms of the order.

At one time, the Department issued Enforcement Directives (EDs) to grant or deny the assertion of an affirmative defense or a Force Majeure claim. While the Department continues to respond to such claims, in July of 1999 it ceased labeling and counting these actions as EDs, which explains the abrupt decrease in the number issued.

Section Two - Types of Settlement Agreements:

The Department resolves administrative and judicial enforcement actions through the execution of several types of Settlement Agreements (SAs).

An SA resolves an administrative enforcement action, including a penalty previously assessed by the Department. The SA does not typically impose requirements for corrective action. An SA/P usually resolves an outstanding confirmed violation or an administrative enforcement action and provides for payment of penalties not previously assessed.

An ACO requires a permittee to take specific measures to attain compliance through a binding agreement between the Department and the violator. It may resolve a previously issued civil administrative enforcement action. A consent order may provide interim effluent limitations, relaxing limits contained in a permit until specified improvements are made in accordance with a compliance schedule. Compliance schedules usually establish milestones for starting and completing construction of required facility improvements, or implementing other measures to achieve compliance. Consent orders also normally provide for stipulated penalties - to be paid by the violator if it fails to comply with the compliance schedule or exceeds interim effluent limitations.

A JCO resolves a judicial enforcement action and is therefore subject to the Court's approval and its ongoing jurisdiction.

An ACO/P or JCO/P assesses a new penalty in addition to requiring a permittee to take specific measures to attain compliance.

Section Three - Enforcement Actions Initiated in 2003:

Informal Enforcement Actions:

In 2003, the Department initiated 479 informal enforcement actions (NOVs) compared with 1,273 in 1992. Table III-6 summarizes the enforcement actions taken from 1992 through 2003.

Formal Enforcement Actions:

In 2003, the Department initiated 101 formal enforcement actions compared with 752 in 1992 and a high of 941 in 1993. While a large portion of the decrease is due to the elimination of the ED category as previously explained, both Orders (28 in 2003 vs. 274 in 1992) and Settlements (73 in 2003 vs. 152 in 1992) of all types has decreased over the past ten years. Since these are the documents in which the Department assesses penalties and, since the Department typically initiates penalty actions only against a permittee committing a serious violation or violations which causes it to become an SNC, this is consistent with the general overall improved compliance trend noted previously.

The reduction in formal actions since 1992 can be traced for the most part to the decrease in the issuance of administrative actions containing penalty assessments that could be adjudicated. Meanwhile, the number of SA/Ps, which typically constitute approximately 50 percent of all formal enforcement actions, was down from a high of 126 in 1995 to only 59 in 2003. This indicates a drop in the number of facilities, which had violations that would trigger mandatory penalties under the CWEA (serious and SNC violations), that chose to enter into SA/Ps to avoid litigation costs and resolve violations quickly.

The number of formal actions issued (101) in 2003 was the lowest ever reported. The total number of 580 enforcement actions (informal and formal) in 2003 was at a level similar to that being reported since 1995 when 961 actions were taken.

Interestingly, in 2003, as the year before, more than 80% of the total number of enforcement actions taken were NOVs (informal actions). This percentage has continued to trend higher over the past ten years.

In 2003, the Department executed one ACO/P with Waste Management Recycling of New Jersey, Inc. which established interim enforcement effluent limitations that modified permit limitations. In 1992, the Department executed 18 agreements that established interim enforcement effluent limitations.

**TABLE III - 6
SUMMARY OF ENFORCEMENT ACTIONS**

TYPE OF ENFORCEMENT ACTION	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
INFORMAL ACTIONS	1273	1,055	561	323	226	247	314	340	336	540	559	479
- DRL	505	337	74	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
- NOV	768	718	487	323	226	247	314	340	336	540	559	479
FORMAL ACTIONS	752	941	913	638	449	383	236	165	127	114	137	101
- ENFORCEMENT DIRECTIVES	317	480	522	371	304	233	117	N/A	N/A	N/A	N/A	N/A
- ORDERS	274	198	147	71	47	50	45	69	37	23	37	28
AO	0	6	0	1	2	0	0	0	0	0	4	0
AO/NOCAPA	8	3	9	1	0	18	23	44	28	15	19	26
NOCAPA	7	8	6	8	9	4	8	12	5	3	5	1
IRO/P ¹	222	129	77	29	11	10	N/A	N/A	N/A	N/A	N/A	N/A
SPDL	34	45	32	20	17	11	6	7	2	1	1	1
JO	1	5	5	1	3	2	4	1	0	2	1	0
JO/P	2	2	4	4	0	0	2	1	1	1	0	0
AGR	-	6	14	7	5	5	2	4	1	1	7	0
- SETTLEMENTS	152	260	244	196	98	100	74	96	90	91	100	73
ACO	32	26	21	14	6	4	1	2	5	2	4	2
ACO/P	17	30	15	8	8	7	5	3	1	4	3	2
SA	56	121	80	45	10	11	9	11	16	12	25	10
SA/P	32	77	121	126	74	75	57	77	65	72	63	59
JCO	4	4	3	2	0	2	2	1	0	0	4	0
JCO/P	2	2	4	1	0	1	0	2	3	1	1	0
- AUTO PAYMENTS	9	3	0	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
TOTALS	2,025	1,996	1,474	961	675	630	550	505	463	654	696	580

¹ An Immediate Response Order with Penalty (IRO/P) was an administrative order that usually ordered a permittee to comply with its permit and also assessed a civil administrative penalty. In July of 1998, the Department modified its tracking and reporting protocol of IRO/Ps. This type of enforcement action was eliminated since it was essentially the same as AO/NOCAPA.

Section Four - Laboratory Certification Program:

On July 1, 1995, the Water Compliance and Enforcement Element received enforcement jurisdiction over the Laboratory Certification program for violations under the WPCA as well as other statutes. The Air and Environmental Quality Element within the Department previously performed this function.

Formal enforcement actions are taken based upon violations discovered by the Department's Office of Quality Assurance during its audits of certified laboratories or as a result of a laboratory's failure to comply with the proficiency testing program. While the actions shown below in Table III-7 were taken pursuant to the WPCA, they are being reported here separately from the other sections of this report since inclusion of these actions would alter any trend analysis contained herein. Additionally, some of the enforcement actions involve the issuance of a Notice of Certification Suspension that is unique to only this program. The statistics for calendar year 2003 and earlier listed in Table III-7 are not included in Table III-6 or Table III-9.

**TABLE III - 7
LABORATORY CERTIFICATION ACTIVITIES**

TYPE OF ACTIVITY	1995	1996	1997	1998	1999	2000	2001	2002	2003
- ENFORCEMENT ACTIONS									
AO/NOCAPA	9	4	1	4	10	4	1	1	2
AO/S	81	3	72	33	1	0	0	0	60
AO/P/S	1	1	0	0	0	0	0	0	0
IRO/P	0	2	0	0	0	0	0	N/A	N/A
ACO/P	0	0	1	0	0	0	0	0	0
SA	0	2	2	1	0	3	3	2	1
SA/P	0	0	0	0	1	0	0	0	0
PENALTIES ASSESSED	\$6,900	\$3,000	\$13,725	\$84,000	\$157,500	\$48,000	\$53,250	\$25,000	\$14,250
PENALTIES COLLECTED	\$1,500	\$7,500	\$1,350	\$4,004	\$27,560	\$11,473	\$40,877	\$48,500	\$6,750

Notes: AO/S - Administrative Order and Notice of Certification Suspension

AO/P/S - Administrative Order, Notice of Civil Administrative Penalty Assessment and Notice of Certification Suspension

The issuance of AO/Ss ceased after 1998 because of the temporary suspension of the EPA laboratory proficiency study program in June of 1998. As part of this program in New Jersey, a laboratory's repeated failure to analyze proficiency samples and submit the results or failure to obtain results within the determined acceptable range of values would be cause for an AO/S to be issued. A new proficiency study program was established in late 2002 and Certification Suspensions resumed in 2003.

The \$157,500 in civil administrative penalties assessed in 1999 was much higher than in past years due to the increased number of referrals received from the Office of Quality Assurance based upon audits they performed of certified laboratories.

D. STORMWATER ENFORCEMENT

The information provided in this section pertains exclusively to facilities that received authorization to discharge under a general stormwater permit. Any data related to facilities which discharge stormwater under an individual permit is included elsewhere in this report under the appropriate section. The statistics for calendar year 2003 and earlier listed in Table III-8 are not included in Table III-6 or Table III-9.

**TABLE III - 8
STORMWATER INSPECTION AND ENFORCEMENT ACTIVITIES**

TYPE OF ENFORCEMENT ACTIVITY	1995	1996	1997	1998	1999	2000	2001	2002	2003
FULL COMPLIANCE INSPECTIONS	51	900	531	701	660	511	847	762	968
DISCHARGE INVESTIGATIONS	N/A	52	164	50	60	45	76	48	2
INFORMAL ACTIONS - NOV	2	196	90	78	49	89	124	231	165
FORMAL ACTIONS									
- ENFORCEMENT DIRECTIVES	1	48	30	12	N/A	N/A	N/A	N/A	N/A
-ORDERS									
AO/NOCAPA	2	1	3	5	11	3	2	5	8
APA	1	0	0	0	0	0	0	0	0
IRO/P	1	2	1	N/A	N/A	N/A	N/A	N/A	N/A
AGR	0	0	0	1	0	2	0	2	0
- SETTLEMENTS									
ACO	0	0	0	0	1	1	0	0	1
ACO/P	0	0	1	0	0	0	0	0	0
SA	4	0	0	1	0	0	2	0	7
SA/P	0	2	1	0	1	0	1	2	0
PENALTIES ASSESSED	-	\$11,250	\$14,135	\$31,750	\$44,850	\$25,000	\$42,500	\$127,767	\$415,020
PENALTIES COLLECTED	-	\$4,500	\$3,500	\$7,510	\$19,063	\$6,284	\$30,875	\$13,750	\$147,070

Since 1996, the Department's compliance and enforcement efforts have been shifted from inspecting those facilities identified by EPA rules as requiring a stormwater permit and those facilities which the Department determined may have responded erroneously that they did not have a stormwater DSW. Now, the focus is on conducting compliance evaluation inspections of facilities authorized to discharge.

One item which deserves attention is the amount of penalties assessed in 2003 (\$415,020). This figure is significantly higher than any previous years' assessment. In similar fashion, the amount of penalties collected in 2003 (\$147,070) was easily the highest amount to-date.

E. COMBINED SEWER SYSTEM ENFORCEMENT

The Department issued a general NJPDES - DSW Permit (permit) for Combined Sewer Systems (CSS) and Combined Sewer Overflows (CSO) in order to comply with the New Jersey Sewage Infrastructure Improvement Act. The effective date of the permit was March 1, 1995. The permit required that, within one month of the effective date of the permit, each individual CSS owner and CSO discharger request authorization to discharge. The permit also required that authorized CSO dischargers develop Combined Sewer Overflow Interim and Long-term Solids/Floatables Control Plans on or before March 1, 1996. These requirements are the first steps in the control of pollutants from these types of systems. The CSO General Permit (NJ0105023) requires a comprehensive discharge-point-by-discharge-point evaluation of the control methods to be used. The general permit requires that the permittee capture and remove solids and floatables that can not pass through a bar screen having a 0.5-inch opening. The permit does not specify the technology to be used. If solids/floatables removal can not meet the 0.5-inch standard, the permittee must demonstrate the most appropriate alternative control measures for each CSO point that can not meet this standard. The alternatives chosen would be based on an incremental cost/performance analysis. The general permit requires that these solids/floatables control plans be implemented according to a compliance schedule. The overall process of addressing these CSO discharges is expected to take a number of years and cost an estimated \$3.4 billion.

This general permit was renewed by the division in February 2000. Any person who currently owns and/or operates any part of a combined sewer system must apply for this NJPDES General Permit. Water Compliance & Enforcement (WC&E) has been coordinating a major effort with the DWQ to ensure that all CSO owners are appropriately committed to both the interim and long-term solids and floatables control measures required by these general NJPDES permits. When WC&E identifies situations where permittees are not in compliance with the planning, design or construction milestones in their NJPDES permits, it issues appropriate formal enforcement actions which establish an alternative compliance schedule and assesses penalties for the noncompliance. The penalties are comprised of both a punitive component and an economic benefit component (the economic benefit realized by the violator in delaying expenditures necessary for attaining compliance).

The following is a summary of some of the major CSO enforcement actions in 2003:

City of Paterson - A revised construction schedule and Force Majeure requests were submitted on April 2 and 3, 2003 citing delays due to easement difficulties, obtaining PVSC endorsements and NJDEP's issuance of pre-award approval. An additional revised construction schedule submitted October 1, 2003.

City of Camden - An ACO was executed with Gloucester City on December 17, 2003. The ACO provides a schedule for the cities to work with CCMUA as the lead agency for the design and construction of the approved solids/floatables plan.

City of Elizabeth - All solids/floatables facilities were operational by December 31, 2003.

F. PENALTIES ASSESSED AND COLLECTED

The CWEA requires the Department to report the dollar amount of all civil and civil administrative penalties assessed and collected.

Section One - Penalties Assessed:

In 2003, the Department assessed a total of \$2.46 million in civil and civil administrative penalties within 58 distinct enforcement actions. This is essentially unchanged from the \$2.27 million assessed in 2002. Interestingly, while this is the fewest number of total penalty actions taken (58) in a calendar year since keeping records in 1991, it is only the fifth lowest yearly assessment on record.

TABLE III - 9
LOCAL (LOC) AND NONLOCAL (NL) PENALTIES ASSESSED

PENALTY RANGES	1993			1994			1995		
	\$ AMOUNT ASSESSED IN RANGE	TOTAL # OF ACTIONS	LOC/NL PENALTY ASSESSED	\$ AMOUNT ASSESSED IN RANGE	TOTAL # OF ACTIONS	LOC/NL PENALTY ASSESSED	\$ AMOUNT ASSESSED IN RANGE	TOTAL # OF ACTIONS	LOC/NL PENALTY ASSESSED
>\$500,000	\$13,033,000	3	00/03	\$17,829,680	4	01/03	\$942,000	1	00/01
250,001 - \$500,000	2,000,987	6	03/03	0	0	00/00	723,750	2	02/00
100,001 - 250,000	2,549,141	17	04/13	1,332,999	9	02/07	1,138,746	8	01/07
25,000 - 100,000	2,556,330	57	22/35	1,433,252	33	11/22	1,128,432	25	06/19
1 - 25,000	1,909,697	214	49/165	1,621,187	212	59/153	776,803	161	27/134
TOTALS	\$22,049,155	297	78/219	\$22,217,118	258	73/185	\$4,709,731	197	36/161

PENALTY RANGES	1996			1997			1998		
	\$ AMOUNT ASSESSED IN RANGE	TOTAL # OF ACTIONS	LOC/NL PENALTY ASSESSED	\$ AMOUNT ASSESSED IN RANGE	TOTAL # OF ACTIONS	LOC/NL PENALTY ASSESSED	\$ AMOUNT ASSESSED IN RANGE	TOTAL # OF ACTIONS	LOC/NL PENALTY ASSESSED
>\$500,000	\$0	0	00/00	\$659,000	1	00/01	0	0	00/00
250,001 - \$500,000	0	0	00/00	259,000	1	01/00	0	0	00/00
100,001 - 250,000	515,081	3	00/03	624,440	4	03/01	117,398	1	00/01
25,000 - 100,000	855,699	17	06/11	920,520	20	09/11	731,334	15	06/09
1 - 25,000	484,660	101	31/70	656,313	99	32/67	447,569	84	27/57
TOTALS	\$1,855,440	121	37/84	\$3,119,273	125	45/80	1,296,301	100	33/67

**TABLE III - 9
LOCAL (LOC) AND NONLOCAL (NL) PENALTIES ASSESSED (continued)**

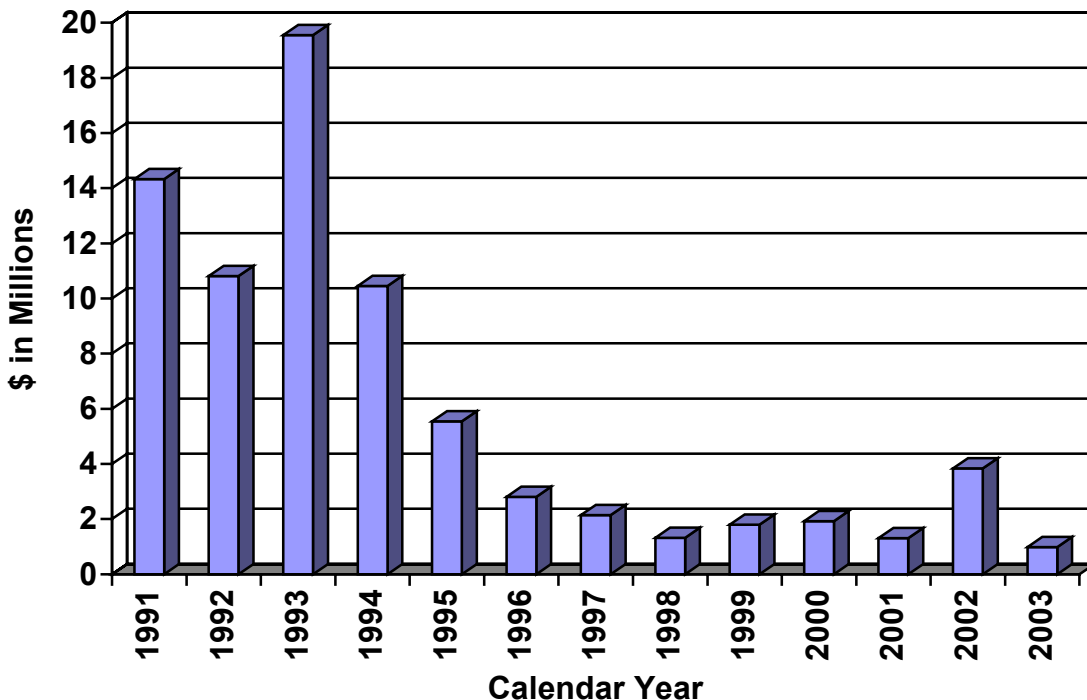
PENALTY RANGES	1999			2000			2001		
	\$ AMOUNT ASSESSED IN RANGE	TOTAL # OF ACTIONS	LOC/NL PENALTY ASSESSED	\$ AMOUNT ASSESSED IN RANGE	TOTAL # OF ACTIONS	LOC/NL PENALTY ASSESSED	\$ AMOUNT ASSESSED IN RANGE	TOTAL # OF ACTIONS	LOC/NL PENALTY ASSESSED
>\$500,000	\$659,000	1	00/01	\$0	0	00/00	\$671,375	1	01/00
250,001 - \$500,000	259,000	1	01/00	\$267,900	1	00/01	\$720,127	2	00/02
100,001 - 250,000	624,440	4	03/01	\$939,553	6	01/05	\$514,536	3	01/02
25,000 - 100,000	920,520	20	09/11	\$667,580	14	06/08	\$556,681	13	03/10
1 - 25,000	656,313	99	32/67	\$502,200	84	21/63	\$346,098	79	29/50
TOTALS	\$3,119,273	125	45/80	\$2,377,233	105	28/77	\$2,808,817	98	34/64

PENALTY RANGES	2002			2003		
	\$ AMOUNT ASSESSED IN RANGE	TOTAL # OF ACTIONS	LOC/NL PENALTY ASSESSED	\$ AMOUNT ASSESSED IN RANGE	TOTAL # OF ACTIONS	LOC/NL PENALTY ASSESSED
>\$500,000	\$917,669	2	01/01	\$604,110	1	00/01
250,001 - \$500,000	\$0	0	00/00	\$677,182	2	01/01
100,001 - 250,000	\$314,000	2	00/02	\$467,600	3	01/02
25,000 - 100,000	\$588,237	13	02/11	\$419,877	8	02/06
1 - 25,000	\$452,169	77	25/52	\$295,030	44	25/19
TOTALS	\$2,272,075	95	28/67	\$2,463,799	58	29/29

Section Two - Penalties Collected:

In 2003, the Department collected \$976,235 in penalties from 83 permittees. This was both the lowest amount collected and the fewest permittees paying since the CWEA was enacted. However, this amount was very similar to the amount collect both in 1998 and 2001 of \$1.3 million. It is in direct contrast to last year's increase which was a reversal of the decreasing or stagnant trend seen over the past 6 years or so. There were no payments made greater than \$100,000. The highest 3 payments received were \$88,029 from Deepwater Generating Station, \$92,000 from Unilever Research US Inc. and \$99,120 from 3M Industrial Mineral Products. On the other hand, of the 98 payments received by the Department, 53 were for \$5,000 or less. The total amount includes partial payments that the Department has received pursuant to payment schedules and collections from previous years' penalty assessments. As shown in Chart III-3 below, penalty collections have ranged from a high of \$19.6 million in 1993 to a low of \$0.98 million in 2003. The decreasing trend seen is consistent with the decrease in assessments over the past few years compared to earlier years. It is anticipated that the amount of penalties collected each year will remain in the neighborhood of \$2.0 million or drop slightly lower. Of course, one large payment of an outstanding assessment could temporarily reverse this trend.

**CHART III - 3
PENALTIES COLLECTED 1991-2003**



IV. DELEGATED LOCAL AGENCIES

A. INTRODUCTION

A DLA is a political subdivision of the State, or an agency or instrumentality thereof, which owns or operates a municipal treatment works and implements a department approved industrial pretreatment program. The Department approves pretreatment programs pursuant to the General Pretreatment Regulations for Existing and New Sources of Pollution, 40 CFR Part 403, as adopted in the NJPDES regulations, N.J.A.C. 7:14A-1 et seq. Under these Federal regulations, the Department may approve a pretreatment program only if the DLA has specified types of legal authority and implements specified procedures including the following:

1. Control indirect discharges through permit, order or similar means to ensure compliance with applicable pretreatment standards;
2. Randomly sample and analyze the effluent from indirect users and conduct surveillance activities in order to identify, independent of information supplied by indirect users, occasional and continuing noncompliance with pretreatment standards;
3. Inspect and sample the effluent from each significant indirect user at least once a year;
4. Investigate and respond to instances of noncompliance through appropriate enforcement action.

An indirect discharge is an introduction of pollutants into a POTW from any non-domestic source regulated under section 307(b), (c), or (d) of the Federal CWA. The DLA classifies an indirect discharger as an SIU if the user is subject to the Federal Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N, or based upon factors such as the quantity of its discharge, the percentage of the POTW's capacity which it contributes, its potential to affect the POTW's operation adversely, or its potential to violate a pretreatment standard or requirement.

Twenty-four DLAs currently have obtained the Department's approval for their industrial pretreatment programs, which they implement with oversight by the Department. A listing of the DLAs is provided at the end of this chapter. The Department's oversight includes: (i) conducting periodic audits of the DLA's pretreatment program; (ii) reviewing the annual report required by 40 CFR Part 403; and (iii) providing technical assistance the DLA requests. The audit includes a review of industry files maintained by the DLA to determine whether the DLA has met its permitting, sampling, inspection, and enforcement obligations. The annual report required by 40 CFR Part 403 is a detailed discussion of the implementation of the approved pretreatment program and includes elements that allow the Department to gauge the program's success.

In addition to the Federal reporting requirements, the CWEA requires each DLA to file information with the Department annually, for inclusion in the Department's annual CWEA report. The information discussed in this chapter represents cumulative totals from these 24 DLA submissions received by the February 1, 2004 statutory deadline as well as any addenda received as of March 3, 2004. Appendix IV-A summarizes the information submitted by the DLAs. The original documents are available for review upon request.

B. PERMITS

The 24 DLAs have issued permits to control the discharges from a total of 970 facilities discharging to their sewage treatment plants. In its report, each DLA groups these dischargers into two categories based on the flow and character of the discharge.

Categorical/Significant/Major (CSM) includes: (i) dischargers in categories of industries for which EPA has established national pretreatment standards pursuant to 40 CFR 403.6; (ii) dischargers defined as significant by either Federal, State or local definition; and (iii) dischargers which are considered major under the applicable local definition.

Other Regulated (OR) includes any permitted discharger that does not fall within CSM.

In 2002, the DLAs issued a total of 51 new permits, 322 renewals, and 149 permit modifications with zero permits contested by an interested parties. Of the DLA regulated total of 1,007 dischargers, 597 were classified as CSM and 410 were classified as OR. In 2003, the DLAs issued 40 new permits, 315 renewals, and 139 permit modifications with four permits contested by interested parties. As of December 31, 2003, the DLAs had issued permits to 573 CSM facilities and 397 OR facilities for a total of 970 permits. Table IV-1 Details the permit actions mentioned above and identifies the CSM and OR categories.

As noted in Table IV-1 below, five (5) permittees had their permit limits relaxed through an administrative order (AO) or an administrative consent order (ACO) issued by a DLA. In four (4) of these cases, the limits were relaxed for conventional pollutants (BOD, TSS, oil and grease, etc.), and in one case, an OR facility was given an interim limit for zinc. In 2002, the DLAs issued thirteen (13) AOs or ACOs that relaxed the local limits.

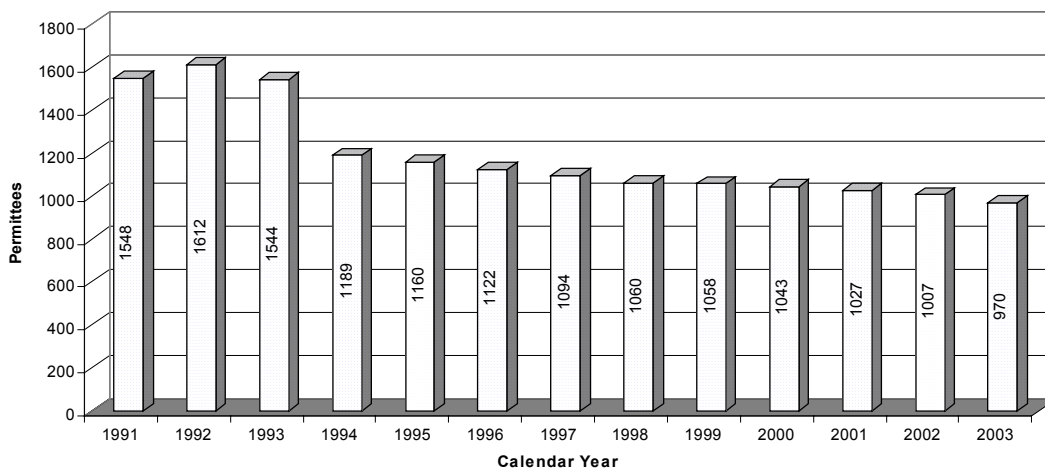
**TABLE IV - 1
PERMIT ACTIVITY SUMMARY
January 1 - December 31, 2003**

PERMIT ACTIONS	CSM	OR	TOTAL
New Permits	19	21	40
Permit Renewals	151	164	315
Permit Modifications	99	40	139
Permits contested by interested parties	4	0	4
AO/ACO compliance schedules relaxing local limits	1	4	5

The number of permittees regulated by DLAs has been steadily decreasing since 1992, the first full year of reporting under the CWEA. As noted in Chart IV-1, the permitted universe peaked in 1992, with 1,612 permittees under the regulation of DLAs. DLAs reported 970 permittees under their regulation at the end

of calendar year 2003, representing a decrease of 39.8% (or 642 permittees) since 1992. A significant decrease (319) in the number permittees is noted between 1993 and 1994. A majority of this decrease in permittees (249 of 319 permittees, or 78.1%) can be attributed to the Township of Wayne "delisting" facilities regulated only for oil and grease.

**CHART IV-1
TOTAL NUMBER OF PERMITTEES REGULATED BY DLAs**



C. INSPECTIONS AND SAMPLINGS

The CWEA requires DLAs to annually inspect each permitted facility discharging into their sewage treatment plant. For CSM permittees, the CWEA requires the DLA to annually conduct a representative sampling of the permittees' effluent. For OR permittees, the DLA is required to perform sampling only once every three years.

The DLAs inspected and sampled 923 of the 970 permittees at least once during the calendar year. The DLAs inspected and sampled 534 (93.2 percent) of the 573 CSM permittees and 389 (98.0 percent) of the 397 OR facilities. In 2002, the DLAs inspected and sampled 943 of the permittees at least once. The DLAs inspected and sampled 564 (94.5 percent) of the 597 CSM permittees and 379 (92.4 percent) of the 410 OR permittees. In 2003, there was a shortfall of approximately 7 percent in the number of CSM facilities both inspected and sampled, slightly above the 5 percent shortfall from last year. A significant number of the facilities that were not sampled/inspected during the calendar year were either not currently discharging, had not begun discharging, or were new permittees thus causing the shortfall. In assessing compliance with pretreatment program requirements, EPA guidance indicates that a 20 percent shortfall would place the DLA in reportable noncompliance. There was no sampling/inspection shortfall in the OR category as the CWEA only requires one third of these facilities to be both sampled and inspected annually. The DLAs inspected and sampled 389 of the 397 OR facilities (or 98.0 percent of the universe)

in calendar year 2003, as compared to the statutory requirement of 33 percent.

D. VIOLATIONS

Section One - Violations by Permitted Facilities:

The DLAs reported 1,425 permit violations by permitted facilities in 2003, compared with 1,266 violations in 2002. Violations fall into the following categories: (i) effluent violations where the discharge exceeds the limits established within the permit; and (ii) reporting violations where self-monitoring data has not been submitted or has been submitted in an incomplete manner.

Of the 1,425 permit violations reported in 2003, 1,080 (75.8 percent) were effluent violations, and 345 (24.2 percent) were reporting violations, compared with 924 (73.0 percent) effluent violations and 342 (27.0 percent) reporting violations in 2002. The total number of violations reported increased by 156 (12.6 percent) compared to 2002. This increase is attributed to one DLA (Joint Meeting of Essex and Union Counties, JMEU) that reported a significant increase in the number of effluent violations. JMEU noted 196 effluent violations by CSM facilities, of which 187 were due to one facility that was sampled by the JMEU on a daily basis. This facility (Hi-Speed Plating) was listed as being in SNC by JMEU.

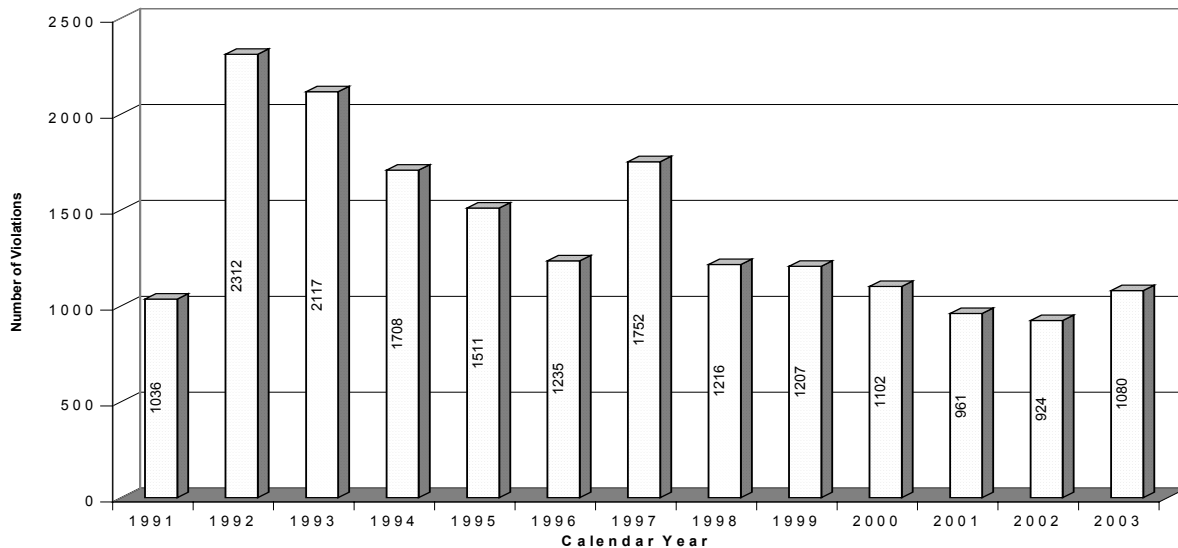
Of the 1,080 effluent violations, 415 (38.4 percent) were for non-hazardous discharges of conventional pollutants, such as suspended solids and nutrients, and 665 (61.6 percent) were for hazardous pollutant discharges, such as metals, organics and other toxic substances. In 2002, 433 effluent violations were for non-hazardous pollutants and 491 effluent violations were for hazardous pollutants. Of the total number of effluent violations in 2003, 325 (30.1 percent) constituted serious violations compared with 377 (40.8 percent) serious violations in 2002. This represents a 13.5 percent decrease in the number of serious violations from 2002. Table IV-2 details the permit violations mentioned above and identifies the CSM and OR categories.

**TABLE IV-2
SUMMARY OF ALL PERMIT VIOLATIONS
January 1 - December 31, 2003**

VIOLATION TYPE	CSM	OR	TOTAL	%
Non-hazardous pollutants	207	208	415	29.1
Hazardous pollutants	484	181	665	46.7
Reporting violations	230	115	345	24.2
TOTALS	921	504	1,425	100.0

Based on a compilation of data from the CWEA annual reports submitted by the delegated local agencies since 1991, the number of effluent violations (for both hazardous and non-hazardous pollutants) has tended to decrease from year to year (see Chart IV-2 below). Compared to the first full reporting year (calendar year 1992), discharge violations by indirect users discharging to delegated local agencies have declined from 2312 in 1992 to 1,080 in 2003, a decrease of 53.3 percent.

**CHART IV-2
EFFLUENT VIOLATIONS**



Section Two - Unpermitted Discharges and Pass Throughs:

An unpermitted discharge is the release of pollutants, into the sanitary sewer, which is not covered under an existing permit. Unpermitted discharges include any newly identified facilities that have recently come within the jurisdiction of a DLA due to service area expansions by regional sewerage facilities and therefore must obtain a permit. In 2003, the DLAs reported eight unpermitted discharges. Although these facilities were considered as "unpermitted" by the delegated local agencies, these facilities, in all cases, were newly identified IUs which the DLAs had determined would require a discharge permit. Six of these facilities are CSMs, two are OR facilities. For one OR facility, a permit has been issued with an effective date of January 1, 2004. The DLAs were the process of either soliciting the permit applications or drafting discharge permits for these facilities. In 2002, the DLAs reported one unpermitted discharge.

The term pass through means a discharge which exits the treatment plant and enters the waters of the State in quantities or concentrations which alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the treatment plant's permit, including an increase in the magnitude or duration of a violation. Two pass through incidents were reported in 2003. Both of these incidents occurred at the Rahway Valley Sewerage Authority (RVSA) treatment plant and resulted in RVSA violating its NJPDES permit for total suspended solids (TSS). RVSA attributed these incidents to industrial discharges that upset the RVSA activated sludge system. The Authority was not able to definitively identify the source of the discharge.

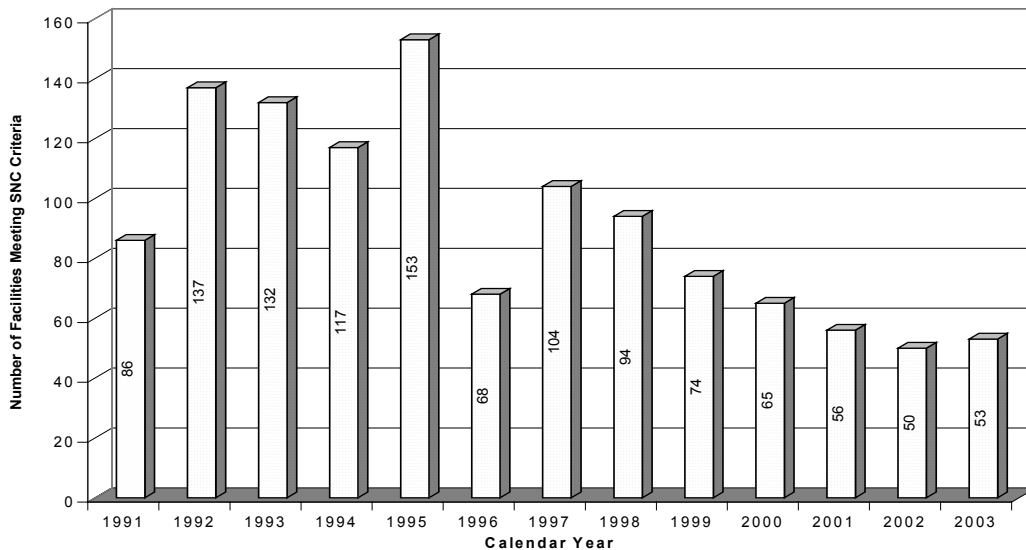
Section Three - Significant Noncompliance:

The CWEA requires that DLAs identify facilities designated as SNCs in accordance with the definition of significant noncompliance as defined by the New Jersey WPCA under N.J.S.A. 58:10A-3.w.

The DLAs reported a total of 53 indirect users who qualified as SNCs under the State definition during 2003. The analysis in the 2002 report indicated that 50 indirect users met the SNC definition. Therefore, there was an increase of 3, or a 6.0 percent rise in the number of facilities in significant noncompliance. The DLAs reported as a whole that by the end of calendar year 2003, 27 (50.9 percent) of the 53 indirect users in significant noncompliance had achieved compliance. Appendix IV-B provides information submitted by each DLA regarding the individual indirect users in significant noncompliance.

For facilities discharging into a delegated local agency, Chart IV-3 shows the trend in the number of indirect users meeting the SNC criteria. For calendar year 1995, the increase or spike can be attributed to implementation of new local limits by the Passaic Valley Sewerage Commissioners (PVSC) and failure by 67 companies in the PVSC service area to submit a local limits baseline monitoring report to PVSC by the prescribed deadline. Over the twelve year period from 1992 (the first full calendar year of reporting) through 2003, the number of facilities meeting SNC criteria shows a decrease of 59.8 percent. The percentage of DLA indirect users meeting the SNC criteria in 2003 was 5.5 percent.

**CHART IV-3
SIGNIFICANT NONCOMPLIERS AS REPORTED BY DLAs**



Section Four - Violations of Administrative Orders and Administrative Consent Orders

One DLA reported that a user had 2 violations of its AO or ACO, including violations of interim limits, compliance schedule milestones for starting or completing construction, or failure to attain full compliance. One indirect user was reported to have violated its compliance schedule by more than 90 days. In 2002, the DLAs reported 28 violations of AOs and ACOs and no exceedances by more than 90 days were reported.

As required by the Act, a DLA must report any permittee who was at least six months behind in the construction phase of a compliance schedule. One permittee was reported to have met this criterion in 2003. Cumberland Dairy in Bridgeton, Cumberland County, was to install pretreatment equipment. Although discharge quality from this user was near the permit levels, no violations had occurred during the year. Pretreatment equipment may still be installed by this facility, but not under a compliance schedule.

Section Five - Affirmative Defenses:

Six DLAs granted 60 affirmative defenses for upsets, bypasses, testing or laboratory errors for serious violations. Twenty-eight (or 46.7 percent) of the 60 affirmative defenses were given due to laboratory error, 16 (or 26.7 percent) for upset or bypass, and 16 (or 26.6 percent) were for matrix interference problems or violations involving net-gross calculations where violations were due to excessive amounts of pollutants in the industries' incoming water supply. In calendar year 2002, 37 affirmative defenses were granted by five DLAs: 13 (35.2%) for laboratory error; 12 (32.4%) for upset or bypass; and 12 (32.4%) for matrix interference or net-gross calculation violations.

E. ENFORCEMENT ACTIONS AND PENALTIES

Section One - Enforcement Actions:

During 2003, the DLAs issued 417 enforcement actions as a result of inspections and/or sampling activities. CSM permittees were the subject of 55.6 percent (232) of these actions, and OR permittees were the subject of the remaining 44.4 percent (185). One DLA, PVSC, is responsible for the majority (244, or 58.5 percent) of these actions and most of these enforcement actions initiated by PVSC were due to pH violations. In 2002, the DLAs issued 400 enforcement actions. CSM permittees were the subject of 211 (52.8 percent) of these actions and OR permittees were subject to 189 (47.2 percent) of these enforcement actions

It is important to note that the Department requires that DLAs respond to all indirect user violations. This section of this report only reflects the 417 enforcement actions taken as a result of DLA inspection and sampling activity as specifically required by statute and not those enforcement actions taken by DLAs based upon indirect user self-monitoring report results. Subsequent sections of this chapter reflect these additional enforcement actions taken by DLAs.

Section Two - Penalty Assessments and Collections:

In calendar year 2003, 16 of the DLAs assessed a total of \$1,398,376 in penalties for 586 violations while collecting \$958,006. In 2002, 14 DLAs assessed \$1,800,413 in penalties for 653 violations while collecting \$1,148,645.

No DLAs reported that they recovered enforcement costs in civil actions and/or civil administrative actions.

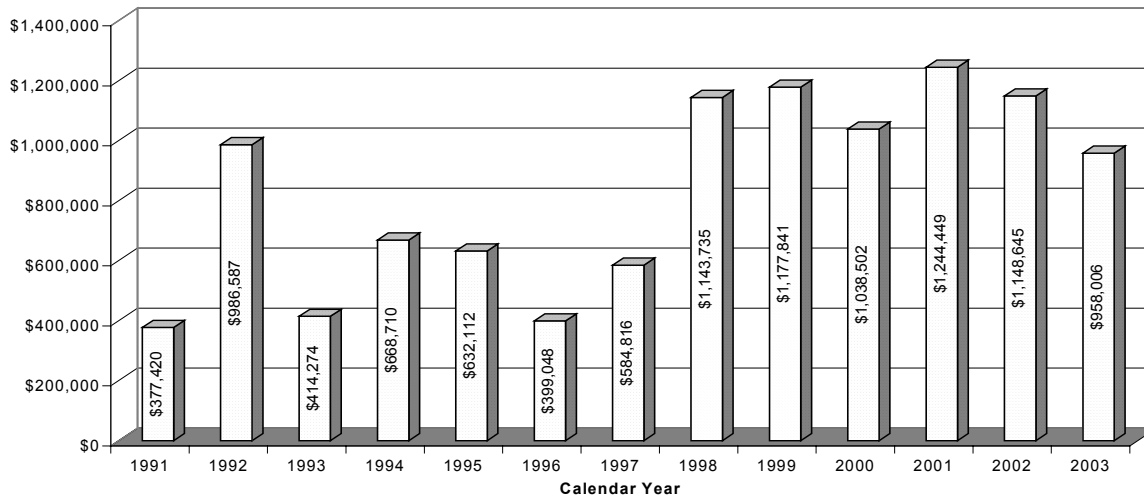
One DLA, PVSC, noted that it had reported one facility to EPA's Criminal Investigation Division (CID) due to an illegal discharge. The permit has been revoked, and the discharge pipe had been cemented by

PVSC. The enforcement actions (both civil and criminal) as a result of this referral are still pending as of December 31, 2003.

The CWEA mandates that 10 percent of all administrative penalties collected by DLAs be deposited in the State Licensed Operator Training Account, but allows DLAs flexibility concerning the expenditure of the remaining balance. The DLAs use the penalty money primarily to offset the cost of the pretreatment program, and do so by depositing the money in their general operating account. Accordingly, penalty receipts collected by DLAs are used to fund salaries, sampling equipment, contract services such as legal and engineering assistance, as well as to purchase computer equipment and fund public education programs. Appendix IV-C lists the specific purposes for which penalty monies were expended.

Chart IV-4 shows the penalty money collected by the DLAs since the implementation of the CWEA in 1991. The Chart shows that since 1998, when DLAs began accessing mandatory minimum penalties, penalties collected have remained relatively constant.

**CHART IV-4
PENALTY MONEY COLLECTED BY DLAs**



F. LIST OF DLAs

Each of the DLAs listed below has filed the required CWEA annual report:

<u>Delegated Local Agency</u>	<u>Facility Mailing Address</u>
Bayshore Regional S.A.	100 Oak Street Union Beach, NJ 07735
Bergen County U.A.	PO Box 122 Little Ferry, NJ 07643
Camden County M.U.A.	1645 Ferry Avenue Camden, NJ 08101
Cumberland County U.A.	333 Water Street Bridgeton, NJ 08302
Ewing-Lawrence S.A.	600 Whitehead Road Lawrenceville, NJ 08648
Gloucester County U.A.	2 Paradise Road West Deptford, NJ 08066
Hamilton Township Dept. of Pollution Control	300 Hobson Ave. Hamilton, NJ 08610
Hanover S.A.	PO Box 250 Whippany, NJ 07981
Joint Meeting of Essex and Union Counties	500 South First Street Elizabeth, NJ 07202
Linden-Roselle S.A.	PO Box 4118 Linden, NJ 07036
Middlesex County U.A.	PO Box 159 Sayreville, NJ 08872
Morris Township	50 Woodland Ave. PO Box 7603 Convent Station, NJ 07961
Mount Holly M.U.A.	37 Washington St. PO Box 486 Mount Holly, NJ 08060
North Bergen M.U.A.	6200 Tonnelle Ave.

	North Bergen, NJ 07047
Northwest Bergen County U.A.	30 Wyckoff Avenue Waldwick, NJ 07463
Ocean County U.A.	PO Box P Bayville, NJ 08721
Passaic Valley Sewerage Commissioners	600 Wilson Avenue Newark, NJ 07105
Pequannock, Lincoln Park and Fairfield S.A.	PO Box 188 Lincoln Park, NJ 07035
Rahway Valley S.A.	1050 E. Hazelwood Ave. Rahway, NJ 07065
Rockaway Valley Regional S.A.	99 Green Bank Rd, RD#1 Boonton, NJ 07005
Somerset-Raritan Valley S.A.	PO Box 6400 Bridgewater, NJ 08807
Stony Brook Regional S.A.	290 River Road Princeton, NJ 08540
Trenton, City of	1502 Lambertson Road Trenton, NJ 08611
Wayne Township	475 Valley Road Municipal Bldg. Wayne, NJ 07470

V. CRIMINAL ACTIONS

In 2003, the Attorney General, through the Division of Criminal Justice Environmental Crimes Bureau and several county prosecutors' offices, continued their commitment to the enforcement of the criminal provisions of the Water Pollution Control Act (WPCA), N.J.S.A. 58:10A-10(f). In 2003, as part of its Urban Initiative, the Division made the detection and prosecution of pollution in vulnerable urban areas a priority.

The Division of Criminal Justice Environmental Crimes Bureau investigates and prosecutes violations of the State's water pollution laws on a statewide basis, as well as violations of air pollution, hazardous waste, solid waste and regulated medical waste laws. It also investigates and prosecutes traditional crimes, such as racketeering, thefts, frauds and official misconduct that have an impact on environmental regulatory programs, including the Department's water pollution program. The Division handles matters brought to its attention by the Department, county health departments, local police and fire departments and citizens. In addition, the Division coordinates the criminal enforcement efforts of the county prosecutors and provides technical and legal training and assistance to those offices.

In 2003, the Division of Criminal Justice conducted a total of 25 WPCA investigations. The Division also reviewed over 560 Department actions (NOVs, Orders, Penalty Assessments, etc.) for potential criminality. Division State Investigators responded to 15 water pollution emergency response incidents, out of a total of 47 emergency response incidents. The Division filed 6 criminal actions (indictments or accusations) for violations of the WPCA. This included 8 counts in 6 accusations. (The Division filed a total of 20 criminal actions in environmental cases.) Seven of these constituted third degree charges involving a purposeful, knowing or reckless unlawful discharge of a pollutant into the State's waters and one involved a fourth degree charge for negligent discharge of a pollutant into State waters. All of them (six criminal actions) have been resolved either through guilty pleas or in one case through admission into PTI. The Division thus obtained a total of 5 convictions against 5 defendants for violations of the WPCA. In 2003, through the successful prosecution of cases involving water pollution, the Division obtained one year and three months of jail time and \$171,000 in fines and restitution.

In addition to its own investigative and prosecutorial activities, the Division worked closely with county prosecutors' offices to assist them in the handling of WPCA investigations. The Division provided regular legal and technical advice to the counties.

In 2003, the Morris County Prosecutor's Office filed 7 criminal actions for violations of the WPCA. This included a total of 7 accusations. Of this total, 5 were third degree charges and 2 were fourth degree charges involving unlawful negligent discharge into the State's waters. Discussed below are the WPCA criminal actions and dispositions secured by the Division and by the Morris County Prosecutor.

In **State v. Donald Kelly, Inc., John Kocis & Shawn Kelly** (Accusation Nos. 1730, 1731 and 1732-05-03), defendant John Kocis pled guilty to third degree water pollution, contrary to N.J.S.A. 58:10A-10f. Defendants, Donald Kelly, Inc. and Shawn Kelly, pled guilty to two third degree water pollution charges. The Honorable Linda Baxter, P.J.S.C., sentenced defendant John Kocis to one year probation conditioned upon serving 364 days in Camden County jail. The Court sentenced Shawn Kelly to a three year probationary term and a \$75,000 fine for two counts of third degree water pollution. The Court sentenced Donald B. Kelly, Inc. to pay a \$25,000 fine, which the company paid at the sentencing, for two counts of third degree water pollution. Defendants Kelly and Kocis, co-owners of Donald Kelly, Inc., were responsible for the discharge of wastewater contaminated with toxic pollutants from Kelly Drum, a drum reconditioner in Camden, into the Camden sewer system from June 1999 to January 2003.

In **State v. Urcioli and Tunnel Barrel & Drum, Inc.** (Accusation Nos. 03-10-01990A and 03-10-01991A), the State filed Accusations against the company and its president for third degree water pollution, contrary to N.J.S.A. 58:10A-10f. Both defendants pled guilty before the Honorable Sebastian Gaeta, Jr., J.S.C., to discharging contaminated rinse water from Tunnel's drum cleaning operation into a tributary of the Hackensack River.

In **State v. Aristedes Perez** (Accusation No. 809-3), the State filed an Accusation against the defendant for a fourth degree violation of the Water Pollution Control Act (N.J.S.A. 58:10A-10f), for discharging oil contaminated water from an underground storage tank at a site he owned into the Union City sewer system. Defendant was admitted into Pretrial Intervention by the Honorable Elaine Davis, P.J.S.C., conditioned upon paying for the cost of the cleanup and paying a \$1,000 fine.

In **State v. James McCann** (Indictment No. 01-08-00061-S), defendant pled guilty to second degree unlawfully discharging toxic pollutants into the Camden sewer system, contrary to N.J.S.A. 2C:17-2, and fourth degree creating the risk of widespread injury, contrary to N.J.S.A. 2C:17-2, by haphazardly storing chemicals in a manner that endangered a Camden neighborhood. The Honorable Stephen W. Thompson, J.S.C., sentenced defendant to an aggregate 3 year probationary sentence conditioned upon serving ninety days in the county jail.

2003 Beach Washup Response

During the Summer of 2003, ECB State Investigators investigated beach washups that occurred in Dover Township and Brick Township. ECB SIs worked closely with State Police, Department of Environmental Protection, and State Health Department officials, and with county and local officials. ECB SIs, using the ECB's undercover vessel, checked potential source locations for the washed up floatable debris. Based upon ECB SIs' review of the material that washed up and their analysis of the potential source locations in New York/New Jersey harbor, they determined that the floatable debris, most of which was not regulated medical waste, did not come from any intentional dumping incident, but rather from combined sewer overflow systems in New York/New Jersey harbor. Heavy rains flushed these materials into the harbor, where it collected and drifted down to Ocean County beaches.

In **State v. Rocco Sostituto**, the Morris County Prosecutor's Office filed an Accusation charging him with fourth degree water pollution (N.J.S.A. 58:10A-10f). In April of 2003, Mr. Sostituto was observed dumping gasoline into a storm drain. Mr. Sostituto was admitted into PTI by the Honorable Catherine M. Langlois, J.S.C., for a period of one year and he was ordered to make a \$5,000 donation to the CWEF.

In **State v. Enver Mansur**, the Morris County Prosecutor's Office filed an Accusation charging him with third degree water pollution (N.J.S.A. 58:10A-10f). In May of 2003, the Boonton Police Department responded to a call about raw sewage being in the road. The investigation revealed that Mr. Mansur was notified by his tenants at 106 Maple Avenue about raw sewage leaking out of the pipes. Mr. Mansur was unable to fix the leak and allowed raw sewage to leak out onto the road and into a storm drain for a few days. Mr. Mansur was admitted into PTI by the Honorable John J. Harper, J.S.C., for a period of one year and ordered to make a \$2,500 donation to the CWEF.

In **State v. Thomas Schlegal**, the Morris County Prosecutor's Office filed an Accusation charging him with fourth degree water pollution (N.J.S.A. 58:10A-10f). In July of 2003, the Randolph Township Police Department responded to a complaint about raw sewage being dumped into the municipal storm drain. The investigation revealed that Mr. Schlegal parked his motor home nearby while working at a carnival. After the carnival ended, Mr. Schlegal dumped the sewage out into the drain before departing the area. Mr. Schlegal was admitted into PTI by the Honorable Catherine M. Langlois, J.S.C., for a period of one year and ordered to make a \$2,500 donation to the CWEF.

In **State v. Antonio Roque**, the Morris County Prosecutor's Office filed an Accusation charging Mr. Roque with third degree water pollution (N.J.S.A. 58:10A-10f). In August of this year, Mr. Roque was hired to remove a fuel oil tank from a residence in Dover. Mr. Roque removed the fuel oil and dumped it into the Rockaway River. Mr. Roque was admitted into PTI by the Honorable Salem Vincent Ahto, J.S.C., for a period of 18 months and ordered to make a \$5,000 donation to the CWEF.

In **State v. Sunny G. Pais**, the Morris County Prosecutor's Office filed an Accusation charging him with third degree water pollution (N.J.S.A. 58:10A-10f). In August of this year, Mr. Pais was observed dumping 2 gallons of paint into a storm drain catch basin in Morris Township. Mr. Roque was admitted into PTI by the Honorable Catherine M. Langlois, J.S.C., for a period of 18 months and ordered to make a \$2,500 donation to the CWEF.

In **State v. Joseph Renderio** and **State v. Lincoln Park Airport**, the Morris County Prosecutor's Office filed Accusations in October of this year charging them each with third degree water pollution (N.J.S.A. 58:10A-10f) among other charges. On May 4, 2002, Maria Coppola of the DEP responded to the Lincoln Park Airport in Lincoln Park, N.J., to investigate allegations of water pollution. Ms. Coppola observed an illegal sump pump submerged into a holding tank in the

leach field. The sump pump was pumping sewage from the malfunctioning leach field into a storm drain. The storm drain ultimately fed into the Passaic River. Last year a search warrant was executed at the Lincoln Park Airport. Both defendants were admitted into PTI for one year by the Honorable Catherine M. Langlois, J.S.C., conditioned upon each defendant paying \$150,000 to the Clean Water Enforcement Fund.

In summary, the Attorney General, through the Division of Criminal Justice, and the Morris County Prosecutor, filed thirteen WPCA criminal actions in 2003, involving twelve (12) third degree charges and three (3) fourth degree charges, and secured thirteen (13) final dispositions for criminal violations of the WPCA.

VI. FISCAL

A. CWEA FUND SCHEDULE AND COST STATEMENT

The CWEA establishes the Clean Water Enforcement Fund and provides that all monies from penalties, fines and recoveries of costs collected by the department shall be deposited into the CWEF. The CWEA further provides, pursuant to N.J.S.A. 58:10A-14.4, that unless otherwise specifically provided by law, monies in the CWEF shall be utilized exclusively by the Department for enforcement and implementation of the WPCA. However, beginning in July 1995 (fiscal year 1996) the department was placed on budget. Accordingly, a General Fund appropriation is provided for the program. In turn, all fine and penalty revenues are deposited in the General Fund.

The CWEA, in accordance with N.J.S.A. 58:10A-14.2a(21), requires the Department to include in this report the specific purposes for which penalty monies collected have been expended, displayed in line format by type of expenditure, and the position numbers and titles funded in whole or in part from the penalty monies deposited into the CWEF and the Program Cost Statement (Table VI-2). Accordingly, the CWEA Fund Schedule (Table VI-1) presents the monies deposited into the Fund and the Program Cost Statement (Table VI-2) presents the specific purposes for which the monies in the CWEF were expended in 2003, based upon cost accounting data.

The CWEF Schedule

A total of \$428,023 in penalty receipts was deposited in the second half of FY2002 and \$803,326 in penalty receipts was deposited during the first half of fiscal year 2003.

TABLE VI – 1
CLEAN WATER ENFORCEMENT FUND SCHEDULE
For the period from January 1, 2003 through December 31, 2003

	January – June 2003	July – December 2003
Total Penalties Recorded	\$428,023	\$803,326

The CWEA Program Cost Statement

The WPCA Program Cost Statement (Table VI-2) represents disbursements from the CWEF in accordance with N.J.S.A. 58:10A-14.4, for the costs associated with the implementation and enforcement of the WPCA. In calendar year 2003, the Fund disbursed \$115,000 to the Division of Law for the costs of litigating civil and administrative enforcement cases and other legal services; \$42,103 to the Office of Administrative Law for costs associated with adjudicating WPCA enforcement cases; and \$15,000 to the Office of Information Technology. The CWEF disbursed \$851,415 for expenses incurred by the Department (see Table VI-2 for additional details).

TABLE VI-2
CLEAN WATER ENFORCEMENT COST STATEMENT

For the period from January 1, 2003 through December 31, 2003

	FY2003 January - June	FY2004 July – December
Division of Law (Dept. of Law & Public Safety)	\$115,000	\$ -0-
Office of Administrative Law	42,103	-0-
Office of Information Technology	-0-	15,000
Department of Environmental Protection		
- Salaries	322,068	2,395
- Materials and Supplies	7,577	9,047
- Services Other than Personal	78,027	84,561
- Maintenance and Fixed Charges	64,509	37,297
- Equipment	243,298	2,636
DEP Subtotal	715,479	135,936
Total Disbursements	\$872,582	\$150,936

VII. WATER QUALITY ASSESSMENT

A. Introduction

This Water Quality Assessment section of the CWEA Report provides an overview of water quality within New Jersey. Direct evaluation of the effects of point source compliance on water quality is challenging because of the difficulty in measuring the effects of permit violations on ambient water quality. Because permit compliance rates remain very high and permit violations are often of very short duration, instream monitoring that corresponds spatially and temporally to permit violations is not feasible. Water quality as reflected in ambient monitoring and summarized here largely reflect loadings resulting from point sources discharging either at or below permitted levels combined with nonpoint sources and groundwater inputs.

B. 2004 Water Quality Inventory Report

Each year, the Department assesses the status of rivers, streams, lakes and coastal waters through extensive water quality monitoring networks. These results are then compiled and assessed biannually into a formal *Water Quality Inventory Report* (also called the 305b report from Section 305b of the CWA) which is submitted to the EPA. The most recent Inventory Report is the 2004 Report, which forms the basis for the water quality information presented here. Note: the 2004 305(b) Report has been combined with the 2004 303(d) List to form the *2004 New Jersey Integrated Water Quality Monitoring and Assessment Report*. Assessments in the Report are based upon a wide range of high quality data including data generated by this Department as well as outside groups such as the New Jersey Pinelands Commission, USGS, Delaware River Basin Commission, Monmouth County Health Department and other sources. Assessment methods used are delineated in the Department's assessment method document (NJ Department of Environmental Protection, 2003b).

Although the Department performs extensive biological monitoring within the State's nontidal fresh waters, the causes of biological impairment can be due to a wide range of factors such as habitat quality, factors that may have little to do with point source impacts. Because of this coupled with the intended scope of this Clean Water Enforcement Act Report, this water quality section will focus on the chemical/physical quality of New Jersey waters, as these parameters can be most directly associated with the impact of point sources.

The surface water quality summary presented here is based upon data collected from 1996 to 2002, principally from networks with as many as 800 sites. The physical/chemical water monitoring network (ASMN) includes over 100 sites. Of this network, 60 locations are fixed sites, sampled quarterly, while a subset of the 800 sites (60 each year) are sampled using a random selection method. Additional data are obtained from supplemental networks designed to assess special issues such as heavy metals. Resulting data are then compared to applicable Surface Water Quality Standards (SWQS) criteria.

Status and Trends in Water Quality:

It is important to note that USEPA requires states to report on the attainment of designated uses within section 305(b) reporting in terms of river miles, lakes acres and square miles of coastal waters. Towards that end the Department employs EPA's Reach File 3 (RF3) stream coverage to meet its reporting requirements. This coverage is designed for national level reporting and as such is calibrated to a 1:100,000 scale. This is far less detailed than the 1:24,000 scale that the Department uses to meet its many other management needs. The result is that the linear miles, square miles and acres reported to EPA within the context of 305(b) will appear somewhat less than would be expected if the 1:24,000 scale were used. Based upon RF3, the sum total of New Jersey's water resources are delineated as follows:

Waterbody Type	Quantity in New Jersey based upon RF3
Freshwater Streams And Rivers (Nontidal)	6,330 linear miles
Tidal Rivers	1,510 linear miles
Lakes/Reservoirs/Ponds (2 acres and larger)	69,825 acres (or 3,268 lakes)
Estuaries/Bays	615 sq. miles
Open Ocean Within The State's Jurisdictional Limit	454 sq. miles

Based upon these total miles, acres and square miles in RF3, the overall results for water quality from the 2004 Report are as follows:

Nontidal Rivers and Streams:

Overall results indicate that dissolved oxygen levels in the state are relatively healthy. The 2004 assessment shows that only 13 of 310 sites (4%) are not attaining dissolved oxygen criteria. This represents only 78 river miles (of 2,653 miles assessed) not attaining standards for dissolved oxygen in the state.

Prior to upgrades and regionalization of sewage treatment plants, ammonia exceedances were common in streams receiving effluent. Since then, the improvement of unionized ammonia concentrations in waters statewide has been dramatic. Of the 300 stations assessed, all except one site are fully attaining the Surface Water Quality Standards (SWQS) criteria (possessing less than 10% of the total samples assessed showing violations of criteria). Seven sites, although in full support, did have occasional violations.

- ◆ A total of 347 stations (representing 2,634 river miles) were assessed for total phosphorus (TP). The assessment results show that over half of the stations now meet TP standards (54% attaining, 35% non attaining).
- ◆ Observations revealed that 31 stations with low pH exceedances were located in areas directly surrounding the Pinelands yet these stations are classified as FW-2 and not PL waters within the SWQS. These areas are characterized as having environmental conditions such as soils, geology, and vegetation very similar to the Pinelands, therefore, there is speculation that the low pH at these sampling sites may be attributable to natural conditions rather than an impairment.
- ◆ Metals were monitored at 12% of nontidal rivers. Of these monitored miles, 72% exceeded a

standard for one or more metals. Arsenic, lead, mercury, and copper were responsible for the highest number of impairments of river miles in non-tidal waters. Arsenic and lead were responsible for the highest number of new metal listings based on the most current sampling, 310 and 110 miles respectively. Mercury and copper exceeded their criteria but to a lesser extent, impacting 47 and 50 river miles. Exceedances of the metal criteria occurred throughout the state, in all physiographic regions, and in all land use types.

- ◆ Over 98% of stations assessed fully met the standards for total dissolved solids (TDS).

Tidal Rivers and Coastal Waters

- ◆ A limited amount of new metal data exists in tidal rivers. Twenty-three sites representing 269 miles were assessed for metals with all of the rivers having at least one metal or toxic substance exceeding its criteria. Several sites had metals or other toxic substances placed on sublist 4 (of the Integrated List) because of a TMDL or other pollutant reduction plan. The sites listed on sublist 4 include: the Delaware River Zones 2, 3, and 4 for Tetrachloroethene; 1,2 Dichloroethane; and PCBs; the Tidal Hackensack River for Nickel; and the Hudson River for Mercury. In addition, recent data from the Delaware River Basin Commission has resulted in the Delaware River in Zone 4 being assessed as impaired for copper.
- ◆ Of the 441 miles of tidal rivers assessed for dissolved oxygen, 378 miles (86%) were assessed to be in full attainment, while 52 miles were in non-attainment (12%) due to periodic drops in DO.
- ◆ Of the 616 square miles of open estuarine waters assessed from New York Harbor to Delaware Bay, 48% had sufficient dissolved oxygen levels to support a healthy biota. The remaining 52 % were assessed as being in non-attainment due to periodic drops in DO levels to unacceptable levels and are listed on Sublist 5 (sites being in non attainment and on New Jersey's 303(d) List).
- ◆ Of 454 square miles of ocean water assessed (Sandy Hook south to Cape May and 3 nautical miles off the coast) for dissolved oxygen, 100 percent had unacceptably low levels brought about by a benthic low DO cell which forms off the coast during the summer months and breaks up in the fall. As a result all these waters are listed on Sublist 5.

Occurrences of low DO in the ocean have been attributed to a combination of natural processes and anthropogenic inputs of nutrients (point and nonpoint sources). Ocean waters naturally stratify as they warm in the summer. In addition, as phytoplankton bloom and die, natural biological activity decomposes the algae which in turn reduces DO levels near the ocean floor. The significance of temporary low DO conditions to aquatic life is unclear at this time. As additional data are compiled, the information will be adjusted to reflect these new data.

C. Evaluation of Point Source Contribution to Water Quality

The Department's TMDL program has completed over 30 TMDLs on New Jersey lakes.

Through these TMDLs, the Department has assessed the relative contributions of point sources to lake nutrient enrichment (eutrophication). These assessments have indicated that runoff from urban, suburban and agricultural nonpoint sources are the principal sources of pollution and causes of impairment in New Jersey lakes. The relative importance of each pollution source varies with the lake assessed. These TMDLs indicate that point sources are either absent or of little consequence within the context of overall pollution loading in the lakes assessed.

D. Surface Water Quality Monitoring

Monitoring data are used to establish baseline conditions, determine water quality trends, identify water pollution solutions or further clarify water quality problems. The Department's primary surface water monitoring unit is the Office of Water Monitoring and Standards. The current chemical stream monitoring network (Ambient Stream Monitoring Network) has been operating since the autumn of 1997 and was discussed in the beginning of this Water Quality section. This network is supplemented by additional monitoring designed to assess specific issues such as heavy metals, baseline water quality, etc. In addition, the Office monitors the State's coastal waters for sanitary and chemical quality in support of shellfish harvesting and assesses the biological status of fin-fish and benthic macroinvertebrate communities in fresh nontidal waters.

E. References and Sources of Additional Information

Additional information regarding water quality in New Jersey may be obtained by visiting the Water Monitoring and Standards website at the following web-address:

<http://www.nj.gov/dep/wmm/> and/or by obtaining the following publications (some of which are available at the before mentioned web-site).

Ayers, M. A., J.G. Kennen and P.E. Stackelberg. *Water Quality in the Long Island-New Jersey Coastal Drainages, 1996-98*. US Geological Survey Circular 1201. West Trenton, New Jersey. <http://www.nj.usgs.gov/nawqa/linj.html>

NJ Department of Environmental Protection. 2001. *Environmental Indicators Technical Report*. Environmental Planning and Science. 219 pp.

NJ Department of Environmental Protection. *2000 New Jersey Water Quality Inventory Report*. Trenton, New Jersey. <http://www.state.nj.us/dep/wmm/sgwqt/wat>

NJ Department of Environmental Protection. 2002. *New Jersey 2002 Integrated Water Quality Monitoring and Assessment Report [305(b) and 303(d)]*. Trenton, New Jersey. <http://www.state.nj.us/dep/wmm/sgwqt/wat>

NJ Department of Environmental Protection. 2003a. *New Jersey 2003 Integrated Water Quality Monitoring and Assessment Report [305(b) and 303(d)]*. Trenton, New Jersey. <http://www.state.nj.us/dep/wmm/sgwqt/wat>

NJ Department of Environmental Protection. 2003b. *Integrated Water Quality Monitoring and Assessment Methods*. November, 2003. Water Monitoring and Standards. Trenton, New Jersey. <http://www.state.nj.us/dep/wmm/sgwqt/wat>

US Environmental Protection Agency. September, 1997. *Guidelines for Preparation of the Comprehensive State Water Quality Assessments (305(b) Reports) and Electronic Updates*. EPA-841-B-97-002A.