

6.0 ENFORCEMENT PROCEDURES

6.1 HARMFUL CONTRIBUTIONS

The Authority may suspend wastewater treatment service, when necessary, in the opinion of the Executive Director, or his designee, to stop an actual or threatening discharge that presents or may present any imminent and substantial endangerment to the health or welfare of persons or the environment, or cause interference to the POTW.

An industrial user notified of the suspension of wastewater treatment service shall immediately stop or eliminate the contribution of wastewater. If such person fails to comply with the suspension notification, the Authority shall take necessary steps including immediate severance of the sewer connection pursuant to N.J.S.A. 58:11-56, to prevent or minimize damage to treatment works or endangerment to individuals or the environment. The Authority may reinstate wastewater treatment service upon proof of the elimination of the noncompliant discharge. A detailed written statement, submitted by the discharger, describing the cause of the harmful contribution and the measures taken to prevent any future occurrences, shall be submitted to the Authority within fifteen (15) calendar days of the date of occurrence. Any violation of this section of the SUO is considered non-minor.

6.2 TERMINATION OF SERVICES

In addition to termination under Subsection 6.1, any participant violating the following conditions, or applicable state statutes or regulations, may have service terminated in accordance with N.J.S.A. 58:11-56.

1. Failure of the industrial user to accurately report the wastewater constituents and characteristics of their discharge. Any violation of this section of the SUO is considered non-minor.
2. Failure of the industrial user to report significant changes in operations or wastewater constituents and characteristics. Any violation of this section of the SUO is considered non-minor.
3. Refusal of access to the industrial user's premises for the purpose of inspection or monitoring. Any violation of this section of the SUO is considered non-minor.
4. Any failure to comply with any of the provisions of this SUO. Any violation of this section of the SUO is considered non-minor.
5. Failure of the industrial user to pay the Industrial User Fees, Sewer Use Fee, or any past-due penalty assessments. Any violation of this section of the SUO is considered minor. The grace period for this violation is 10 days.

6.3 NOTICE OF VIOLATION AND ENFORCEMENT RESPONSE PLAN

Whenever the Executive Director or his designee finds any participant who has violated or is violating any of the provision of this SUO and/or N.J.S.A. 58:10A-1 et seq., its regulations, and N.J.S.A 58:11-49 et seq., N.J.A.C. 7:14 et seq., the Executive Director or his designee may take any of the following actions as referenced in **TABLE III of the Authority's ENFORCEMENT RESPONSE PLAN (ERP)**:

6.4 LEGAL ACTION

- A. Penalties - A person violating any provision of this SUO, any provision of the Pretreatment Standards for Sewerage, N.J.S.A. 58:11-49 et seq., N.J.A.C. 7:14 et seq., or any regulations promulgated thereunder, shall be liable for a penalty of not more than \$50,000 per day (58:11-49). If the violation is of a continuing nature, each day shall constitute a separate and distinct violation. The Authority shall seek penalties as referenced in **TABLE III of the Authority's ERP**. In accordance with N.J.A.C. 7:14-8.1(f), the Authority shall assess the following Civil Administrative Penalty Assessments:

The Authority shall assess a mandatory minimum penalty of not less than \$1,000.00 for each serious violation as defined in N.J.S.A. 7:14-8.16.

The Authority shall assess a mandatory minimum penalty of not less than \$5,000.00 for each violation that causes a violator to be, or continue to be, a significant non complier as defined in N.J.S.A 7:14-8.16.

The Authority shall assess a civil administrative penalty against each violator who fails to carry out monitoring or sampling activities or to submit discharge monitoring reports, baseline monitoring reports, or any other reports required by the Authority.

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

The Authority shall assess a mandatory minimum penalty of not less than \$100.00 for each effluent parameter omitted on a industrial discharge monitoring report, nor greater than \$50,000.00 per month for any one discharge monitoring report in accordance with N.J.S.A 7:14-8.9(c),(d),(e).

The requirement that the Authority assesses penalties pursuant to the Authority's ERP, shall in no way be construed to limit the ability of the Authority to assess a penalty, bring an action for a penalty for a violation at any time after a violation occurred, or to assess a more stringent penalty against a person pursuant to the

Authority's ERP.

The Executive Director or his designee shall issue a Notice of Violation (NOV). The NOV shall be sent certified mail, return receipt requested to the Permitted Industrial User. The Permitted Industrial User will be directed to show why service should not be terminated or penalties imposed. Notice shall be served on the offending party to show why enforcement action should not be taken.

1) The Authority may enter into a settlement agreement for any civil administrative penalty assessed pursuant to this SUO in accordance with N.J.A.C. 7:14-8.3(e and f) which states the following:

The Authority may settle any civil administrative penalty assessed pursuant to this subchapter according to the factors identified in (2) below as follows:

In cases where the violator is a local agency which violates an administrative consent order, the Authority may settle a civil administrative penalty as follows:

The Authority may reduce the civil administrative penalty up to 50 percent, provided that the penalty as reduced is not less than any applicable minimum amount set forth in N.J.A.C. 7:14-8.5(a) or 8.9(e); and

The Authority may not reduce the amount of any component of a civil administrative penalty which represents the economic benefit gained by the violator from the violation;

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

Reduce the amount of the civil administrative penalty less than the minimum amount, if applicable, prescribed in N.J.A.C. 7:14-8.5(a) or 8.9(e); nor

Reduce the amount of any component of a civil administrative penalty which represents the economic benefit gained by the violator from the violation.

In the case of all other violators:

The Authority may reduce the civil administrative penalty up to 50 percent, provided that the penalty as reduced is not less than any applicable minimum amount set forth in N.J.A.C. 7:14-8.5(a) or 8.9(e); and

The Authority may not reduce the amount of any component of a civil administrative penalty which represents the economic benefit gained by the violator from the violation:

2) In settling a civil administrative penalty, The Authority may consider the following:

Mitigating or extenuating circumstances not considered in the notice of civil administrative penalty assessment;

The implementation by the violator of pollution prevention and/or abatement measures in addition to those minimally required by applicable statute or rule;

The implementation by the violator of measures to clean up, reverse or repair environmental damage previously caused by the violation;

The full payment by the violator of a specified part of the civil administrative penalty assessed if made within a time period established by the Authority in an administrative order and/or a notice of civil administrative penalty assessment and provided that the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; or

Any other terms of conditions acceptable to the Authority.

The Authority may, after consultation with a compliance officer designated by the NJDEP, issue a civil administrative penalty, in accordance with N.J.S.A. 58:10-10.5 through N.J.S.A. 58:10A-10.8 (inclusive) for any violation of the provisions of P.L. 1977, c.74 (C. 58:10A-1 et seq.), N.J.A.C. 7:14 et seq., including a violation of any rule, regulation or pretreatment standard adopted by the Authority.

- B. Administrative Consent Order-The Authority may enter into an Administrative Consent Order (ACO) under N.J.S.A. 58:10A-1 et seq. with a Permitted Industrial User which shall contain a compliance schedule to remedy the noncompliance. The ACO shall contain a finding of facts, an order section, which may contain a compliance schedule and interim discharge limits, and sections detailing the provisions for stipulated penalties and force majeure. The permittee may request an

ACO in writing to the Authority. Minimum requirements for consideration include, but are not limited to the following:

- (1) Written request by the permittee documenting the need for an ACO.
 - (2) Prior to approval from the Authority, the permittee shall submit the following:
 - a. A detailed compliance schedule including completion dates for up to one year. In the case of major construction with considerable engineering design and construction time, a compliance schedule may be submitted or extended for a total of two years.
 - b. A written request for interim limits. For the purpose of calculating interim limits, the Authority may use the average of up to two years worth of effluent data. The Authority will utilize 90 percent of the average value for the interim discharge limits.
 - c. The Authority will then issue a draft ACO to the industrial user. The Authority will also post notice in the largest local paper to the public for a 30 day comment period. In addition the Authority will notify the mayor and freeholder board of the pending ACO. The industrial user and the public will have 30 days to submit written comments regarding the document.
 - d. At the close of the 30 day comment period, the Authority will issue a Final ACO to the industry for final execution of the document.
- C. Administrative Order-The Authority may issue an Administrative Order (AO) pursuant to N.J.S.A 58:10A-10.a.(1) and 10A-10b which states the nature of the violation and provides for a finding of facts and an order section which directs the action of the Permitted Industrial User. An AO may contain penalties to be assessed as referenced in Table III of the Authority's ERP.
- D. Issuance of a Summons-The Authority may seek civil penalties of up to \$5,000 by the issuance of a summons to appear in municipal court in accordance with N.J.S.A. 58:10A-10.4
- E. Civil Action-The Authority may issue a Civil Action pursuant to N.J.S.A 58:10A-10.a(2) and 10A-10c.
- F. Civil Penalty-The Authority may issue a Civil Penalty pursuant to N.J.S.A. 58:10A-10.a(4) and 10A-10.e.
- G. Criminal Action-The Authority may take Criminal Action pursuant to N.J.S.A 58:10A-10.a(5) and 10A-10.f.

- H. Penalty Matrix-The Authority reserves the right to seek higher penalties through either action in superior court, or the issuance of an AO containing penalties developed in Table IV of the Authority's Sewer Use Ordinance.
- I. Injunctive Relief - If a person violates any provisions of this SUO, any provisions of the Pretreatment Standards for Sewage, etc., N.J.S.A. 58:11-49 et seq., N.J.S.A. 58:10A-1 et seq. and N.J.A.C. 7:14 et seq. or any regulations promulgated thereunder, the Authority, the NJDEP or the appropriate Permitted Industrial User may institute a civil action in the Superior Court for injunctive relief.
- J. Constraints for Relaxed Limits - No permit may be issued, renewed, or modified by the Authority so as to relax a water quality standard or effluent limitation until the applicant, or permit holder, as the case may be, has paid all fees, penalties or fines due and owing pursuant to P.L. 1977, c. 74, or has entered into an agreement with the Authority establishing a payment schedule therefore; except that if a penalty or fine is contested.
- K. Legal Options-A delegated local agency may, after consulting with a compliance officer designated by the department, issue a civil administrative penalty for any violation of the provisions of P.L. 1977, c. 74 (C.58:10A-1 et seq.), including a violation of any rule, regulation or pretreatment standard adopted by a delegated local agency, or assess, by civil administrative order, any costs recoverable pursuant to subsection c. of section 10 of that act, including the reasonable costs of investigation and inspection, and preparing and litigating the case before an administrative law judge pursuant to this section, except assessments for compensatory damages and economic benefits. Notice of the penalty or assessment shall be given to the violator in writing by the delegated local agency, and payment of the penalty or assessment shall be due and payable, unless a hearing is requested in writing by the violator, within 20 days of receipt of notice. If a hearing is requested, the penalty or assessment shall be deemed a contested case and shall be submitted to the Office of Administrative Law for an administrative hearing in accordance with section 9 and 10 of P.L. 1968, c.410 (C.52:14B-9 and 52:14B-10).

Upon conclusion of administrative hearing held pursuant to section 2 of P.L. 1991, c.8(C.58:10A-10-5) the administrative law judge shall prepare and transmit a recommended report and decision on the case to the head of the delegated local agency and to each party of record, as prescribed in subsection c. of section 10 P.L. 1968, c.410 (C.52:14B-10). The head of the delegated local agency shall afford each party of the record an opportunity to file exceptions, objections and replies thereto, and to present arguments, either orally or in writing, as required by the delegated local agency. After reviewing the record of the administrative law judge, and any filings received thereon, but not later than 45 days after receipt of the record and decision, the head of the delegated local agency shall adopt, reject, or modify the recommended report and decision. If the head of the delegated local agency fails to modify or reject the report within the 45-day period, the decision of the

administrative law judge shall be deemed adopted as the final decision of the head of the delegated local agency, and the recommended report and decision shall be made a part of the record in the case. For good cause shown, and upon certification by the Director of the Office of Administrative Law and the head of the delegated local agency, the time limits established herein may be extended.

A final decision or order of the head of the delegated local agency shall be in writing or stated in the record. A final decision shall include separately stated findings of fact and conclusions of law, based upon the evidence of record at the hearing of the administrative law judge. Findings of fact shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. A final decision or order may incorporate by reference any or all of the recommendations of the administrative law judge.

Parties of record shall be notified either by personal service or by mail of any final decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith by registered or certified mail to each party of record and to a party's attorney of record.

A final decision or order shall be effective on the date of delivery or mailing, whichever is sooner, to the part or parties of record, or shall be effective on any date thereafter, as the delegated local agency may provide in the decision or order. The date of delivery or mailing shall be stamped on the face of the final decision or order. A final decision or order shall be considered a final agency action, and shall be appeal able in the same manner as a final agency action of a State department or agency.

a. If the civil administrative penalty or assessment is upheld in whole or in part, the delegated local agency shall be entitled to a daily interest charge on the amount of the judgment amount from the date of the posting of the security with the commissioner until that amount is paid in full. The rate of interest shall be that established by the New Jersey supreme Court for interest rates on judgments, as set forth in the Rules Governing the Courts of the State of New Jersey.

b. A person who is assessed a civil administrative penalty, or is subject to an assessment levied pursuant to section 2 of P.L. 1991, c.8 (C.58:10A-10.5), and fails to contest or pay the penalty or assessment, or fails to enter into a payment schedule with the delegated local agency within 30 days of the date that the penalty or assessment is due and owing, shall be subject to an interest charge on the amount of the penalty or assessment from the date that the amount was due and owing. The rate of interest shall be that authorized pursuant to subsection a. of this section.

c. Any person who fails to pay a civil administrative penalty or assessment, in whole or in part, when due and owing, or who fails to agree to a payment schedule therefor, shall be subject to the civil penalty provisions of subsection e. of section 10 of P.L.

1977, c.74 (C.58:10A-10).

d. A civil administrative penalty or assessment imposed pursuant to a final order: (1) may be collected or enforced by summary proceedings in a court of competent jurisdiction in accordance with the penalty enforcement law, (N.J.S.2A:58-1 et seq.); or (2) shall constitute a debt of the violator, and the civil administrative penalty may be docketed with the clerk of the Superior Court, and shall have the same standing as any judgment docketed pursuant to N.J.S.2A:16-1.

6.5 WASTEWATER TREATMENT OPERATORS= TRAINING ACCOUNT

Of the amount of any penalty assessed and collected pursuant to an action brought by the Authority, in accordance with section 10 of P.L. 1990, c. 28 (C.58:10A-10.1), 10% shall be deposited in the "Wastewater Treatment Operators' Training Account," established in accordance with section 13 of P.L. 1990, c. 28 (C.58:10A-14.5), and used to finance the cost of training operators of municipal treatment works. The remainder shall be used by the Authority solely for enforcement purposes, and for upgrading municipal treatment works.

6.6 MUNICIPALITY PERCENTAGES

In accordance with N.J.S.A. 58:10A-10.4, the penalty amount collected pursuant to an action brought in a municipal court pursuant to this SUO, 10% shall be paid to the municipality or municipalities in which the court retains jurisdiction for use for court purposes, with the remainder to be retained by the Authority.

6.7 AFFIRMATIVE DEFENSE

The Permitted Industrial User may be entitled to an affirmative defense to liability for an assessment of a penalty pursuant to section 10 of P.L. 1990, c. 28 (C.58:10A-10.1) for a violation of an effluent limitation occurring as a result of an upset, an anticipated or unanticipated bypass, or a testing or laboratory error (Please refer to Section 1.2 "Definitions" of this SUO). A participant shall be entitled to an affirmative defense only if, in the determination of the Authority, the person satisfies the provisions of N.J.A.C. 7:14-8.3(i) and/or 40 CFR Part 403.5(a)2 as applicable.

6.8 FALSIFICATION OF INFORMATION

Any person who knowingly makes a false statement, representation or certification in any application, record, or other document filed or required to be maintained under this SUO, any provision of N.J.S.A 58:10A-1 et seq. , or any regulations promulgated thereunder, or who falsifies, tampers with, dilutes wastestreams, or knowingly renders inaccurate any monitoring device or method required to be maintained pursuant to the State Act, shall be subject to a fine of not less than \$5,000 or more than \$75,000 per day of violation, or by imprisonment, or by both. This violation would be considered non-minor.