

**58:11-23. Short title**

This act shall be known and may be cited as "The Realty Improvement Sewerage and Facilities Act (1954)."

L.1954, c. 199, p. 746, s. 1.

**58:11-24. Definitions**

As used in this act, unless the context clearly indicates otherwise, the following words shall have the following meanings:

(a) "Approved potable water supply" means water supply which has been approved by the State Department of Environmental Protection pursuant to Title 58 of the Revised Statutes, or any other law.

(b) "Approved sewer system" means a sanitary sewer system which has been approved by the State Department of Environmental Protection pursuant to Title 58 of the Revised Statutes, or any other law.

(c) "Water supply system" means any installation or structure designed to provide domestic or potable water supply.

(d) "Sewerage facilities" means any installation or structure designed to provide for the collection and disposal of sewage.

(e) "Realty improvement" means any proposed new residence or other building the useful occupancy of which shall require the installation or erection of a water supply system or sewerage facilities, other than one which is to be served by an approved water supply and an approved sewerage system. For the purposes of this act, each family unit in a proposed multiple family dwelling shall be construed to be a separate realty improvement.

(f) "Board" or "board of health" means the board of health of any municipality or the boards, bodies or officers in such municipality lawfully exercising any of the powers of a board of health under the laws governing such municipality, and includes any consolidated board of health or county board of health created and established pursuant to law.

(g) "State department" means the State Department of Environmental Protection.

(h) "Professional engineer" means a person licensed to practice professional engineering in this State.

L.1954, c. 199, p. 746, s. 2. Amended by L.1971, c. 386, s. 1, eff. Jan. 7, 1972.

**58:11-25. Proposed system or facility; compliance with standards of construction**

No building permit for the construction of a realty improvement shall be issued by any municipal or other authority in this State nor shall the construction of any realty improvement be begun until the board of health having jurisdiction shall have certified that the proposed water supply system and sewerage facilities for the proposed realty improvements are in compliance with the provisions of this act and the standards for construction of such water supply and sewerage facilities promulgated by the State Department as herein provided and those established by local ordinances, where such local ordinances prescribe higher standards than those promulgated by the State Department.

L.1954, c. 199, p. 747, s. 3.

**58:11-25a. Definitions**

As used in this act:

a. "Acceptable alternative greywater system" means a system for the treatment and disposal of wastewater which normally does not receive human body wastes or industrial waste and is approved for use by a local health department.

b. "Acceptable alternative waste treatment system" means a waste system which has been approved for use by the State department and which is properly operated and maintained so as not to cause a health hazard or nuisance. An acceptable alternative waste treatment system may include an organic waste treatment system or compost toilet which operates on the principle of decomposition of heterogeneous organic materials by aerobic and facultatively anerobic organisms and utilizes an effectively aerobic composting process which produces a stabilized humus. Acceptable alternative waste treatment system does not include a septic tank--drain field system or other system that results in a discharge to the ground or surface water of this State.

c. "Structure" means a building in which toilet, kitchen, laundry, bathing, or other facilities which generate less than 2,000 gallons per day of water-carried sanitary sewage are used or are available for use for household, commercial, industrial, or other purposes.

L.1983, c. 26, s. 1, eff. Jan. 25, 1983.

**58:11-25b. Installation and use of alternative waste treatment systems and greywater systems**

Notwithstanding any other law, rule, regulation or ordinance to the contrary, a person may install and use in a structure an acceptable alternative waste treatment system or an acceptable alternative waste treatment system in combination with an acceptable alternative greywater system. Installation and use of an acceptable alternative waste treatment system or an acceptable alternative waste treatment system in combination with an acceptable alternative greywater system shall be subject to local health department regulation and inspection by the appropriate subcode official in accordance with the State Uniform Construction Code, pursuant to P.L.1975, c. 217 (C. 52:27D-119 et seq.).

L.1983, c. 26, s. 2, eff. Jan. 25, 1983.

**58:11-25c. Special assessments against alternative system users**

A person who installs and uses an acceptable alternative waste treatment system or an acceptable alternative waste treatment system in combination with an acceptable alternative greywater system shall not be exempt from any special assessments levied by a municipality for the purpose of financing the construction of an approved sanitary sewer system and sewerage facilities.

L.1983, c. 26, s. 3, eff. Jan. 25, 1983.

**58:11-25d. Standards regarding installation and use of alternative systems**

Within 180 days of the effective date of this act, the Department of Environmental Protection and the Department of Community Affairs shall jointly establish minimum standards regarding the appropriate installation and use of acceptable alternative waste treatment systems and acceptable alternative waste treatment systems in combination with acceptable alternative greywater systems.

L.1983, c. 26, s. 4, eff. Jan. 25, 1983.

**58:11-25.1. Subdivision approval to cover 50 or more realty improvements; certification of proposed water supply and sewerage facilities**

No subdivision approval shall be granted by any municipal or other authority in the State to cover 50 or more realty improvements, or less than 50 where the subdivision extends into an adjoining municipality or municipalities and will, in the aggregate, cover 50 or more realty improvements, until the State Department of Environmental Protection has certified that the proposed water supply and sewerage facilities for realty improvements comply with applicable State standards.

L.1971, c. 386, s. 2, eff. Jan. 7, 1972. Amended by L.1973, c. 136, s. 1, eff. May 17, 1973.

**58:11-26. Certification of compliance**

Any board of health which has in its employ a licensed health officer or sanitary inspector of the first grade licensed by the State Department or a professional engineer shall issue certifications as provided in

section 3 of this act if such health officer, sanitary inspector or professional engineer certifies to the board that the application and accompanying engineering data are in compliance with this act and the standards for construction hereinbefore referred to.

A board of health not having personnel as described above may issue such certification, if an applicant for certification files with the board a certificate made by a professional engineer stating that the proposed water supply system and sewerage facilities are in compliance with this act and said standards for construction.

L.1954, c. 199, p. 747, s. 4.

**58:11-27. Application for certification**

Application for certification shall be in writing and shall be made on a formal application blank when such blanks are provided by the board, and each application shall include such engineering data as shall be prescribed by said standards for construction.

Copies of all applications and the accompanying engineering data for certifications to cover 50 or more realty improvements shall be filed with or mailed to the State Department on the date on which application is made to the board.

Copies of all certifications by boards of health covering 50 or more realty improvements shall be mailed to the State Department by the board issuing the same on the date of issue.

L.1954, c. 199, p. 748, s. 5.

**58:11-28. Issuance or denial of certification; time; statement of reasons for denial**

The board of health shall issue or deny certification within 15 days after receiving an application for certification except that, in case the board finds the data submitted by an applicant incomplete, the time for acting thereon shall be extended by 15 days beyond the date of submission of adequate supplementary or amendatory data. Denial of certification shall be supported by a statement of the reasons for such action.

L.1954, c. 199, p. 748, s. 6.

**58:11-29. Revocation of certification by state department in certain cases; time; statement of reasons**

The State Department may revoke any certification covering 50 or more realty improvements; provided, that such action is taken within 15 days of the date of certification by the board of health; and provided, that such action is supported by a statement of the reasons therefor. If after revocation of any certification by the State Department, or denial of certification by the board, in any such case, such application is amended or supplemented, a copy thereof shall be filed with or mailed to the department on the date of its submission.

L.1954, c. 199, p. 748, s. 7.

**58:11-30. Change in condition of land affecting operations covered by certification**

If any change in the physical conditions of any lands of a realty improvement, which will materially affect the operation of the water supply system or sewerage facilities covered by any certification issued under this act, shall be made after certification, the certification shall become null and void and a new certification shall be obtained before construction shall proceed. If 50 or more realty improvements are covered by such a voided certificate a copy of the application for a new certificate shall be mailed to the State Department on the date upon which it is submitted to the board.

L.1954, c. 199, p. 749, s. 8.

**58:11-31. Revocation or denial of certification; hearing**

In case any certification is denied by the board of health or is denied or revoked by the State department,

a hearing shall be held thereon before the board or the State department, as the case may be, within 15 days after request therefor is made by the applicant and upon such hearing the board of health or the State department, as the case may be, shall affirm, alter or rescind its previous determination and take action accordingly within 15 days after the date of such hearing.

L.1954, c. 199, p. 749, s. 9. Amended by L.1971, c. 386, s. 3, eff. Jan. 7, 1972.

**58:11-32. Inspection and tests; right of entry**

A board of health or the State department shall have power to make, or cause to be made, such inspections and tests as may be necessary to carry out the purposes of this act and its authorized representatives shall at all times have the right to enter upon lands of realty improvements for said purposes.

L.1954, c. 199, p. 749, s. 10. Amended by L.1971, c. 386, s. 4, eff. Jan. 7, 1972.

**58:11-33. Covering sewerage facilities; permission**

No septic tank, tile field, seepage pit or system or structure designed to provide sewerage facilities to any realty improvement shall be covered from view until the same has been inspected by an authorized representative of the board of health and permission to cover the same has been given by the board or its authorized representative.

L.1954, c. 199, p. 749, s. 11.

**58:11-34. Filing ordinances establishing similar requirements and minimum standards for construction**

Copies of any ordinances, which have been or shall be adopted by any municipality, establishing requirements equivalent to those required by this act and minimum standards for construction equivalent to those promulgated or to be promulgated by the State Commissioner of Health under this act, shall be filed with the State Department within 10 days after the effective date of this act or within 10 days after the adoption thereof, whichever shall be later.

L.1954, c. 199, p. 749, s. 12.

**58:11-35. Advisory committee; duties; personnel**

There shall be appointed biennially an advisory committee to draft and recommend standards for the construction of water supply systems and sewerage facilities for realty improvements in order to insure their safety, adequacy and propriety for the purposes for which they are to be installed. One member of such committee shall be appointed by the Commissioner of Conservation and Economic Development from his department, 1 member shall be appointed by the State Commissioner of Health from his department and 1 member shall be appointed by the State Commissioner of Health from each list of 3 persons submitted by each of the following associations, namely:

New Jersey Association of Real Estate Boards,

New Jersey Health Officers Association,

New Jersey Society of Professional Engineers,

New Jersey State League of Municipalities,

New Jersey Home Builders Association,

New Jersey Institute of Municipal Attorneys, and

New Jersey Title Insurance Association.

In event that any of said associations shall fail to submit a list of such names within 10 days after written request to it by the State Commissioner of Health, the State Commissioner of Health may make the appointment according to his own discretion.

L.1954, c. 199, p. 750, s. 13.

**58:11-36. Standards for construction; minimum requirements; promulgation**

Such draft of recommended standards shall be submitted to the State Commissioner of Health who, having given due consideration to the same, shall promulgate standards for the construction of water supply systems and sewerage facilities for realty improvements in order to insure their safety, adequacy and propriety for the purposes for which they are to be installed, which standards shall constitute the minimum requirements to be met by applicants for certifications under this act. The standards shall specify the engineering data required to be submitted with applications for certification which shall include a plan of the land to be used for the realty improvement, elevations of existing and proposed physical features, reasonable details on surface and subsurface soil conditions, and, details of the type of construction and the physical features of the proposed water and sewerage facilities, and shall specify minimum requirements for the construction or erection of proposed water supply systems and sewerage facilities. Amendments of standards for construction shall be made in the manner prescribed for the establishment of the original standards and the advisory committee shall be consulted on all proposed amendments.

L.1954, c. 199, p. 750, s. 14.

**58:11-37. Appeal by advisory committee**

In case the State Commissioner of Health shall not concur in any of the advisory committee's recommendations as to the standards for construction or any amendments thereof or supplements thereto, and shall promulgate standards not in accord with the committee's recommendations, the committee may appeal to the State Public Health Council thereon and shall be entitled to a hearing before the Council. After such hearing the Council shall make appropriate recommendations to the State Commissioner of Health who shall in turn make such changes, if any, in the standards for construction promulgated by him, as he deems in the interest of the public health.

L.1954, c. 199, p. 751, s. 15.

**58:11-38. Violations**

No person or corporation shall construct or install any water supply system or sewerage facilities for a realty improvement, which are not in accordance with the provisions of the application or any amendment thereof or supplement thereto, made for any certification on which a certification shall be issued as herein provided, and any person or corporation violating any provisions of this section shall be subject to the penalties and remedies hereinafter provided for, which may be recovered and enforced by the board of health having jurisdiction in the municipality in which such violation shall occur.

L.1954, c. 199, p. 751, s. 16.

**58:11-39. Penalties**

Any person or corporation violating any provision of this act shall be liable to a penalty of \$200.00 for each offense and an additional penalty of \$25.00 for each day of continuance of violation after notice of the violation shall have been given to such person or corporation by the State department or the board of health having jurisdiction in the municipality in which such violation occurs, to be collected and enforced by summary proceedings for the collection of penalties pursuant to the "Penalty Enforcement Law."

L.1954, c. 199, p. 752, s. 17. Amended by L.1966, c. 143, s. 7, eff. June 18, 1966.

**58:11-40. Right of board to order work stoppage; service of copy of order; violations; penalties**

The board of health having jurisdiction on the municipality in which any violation of any provision of this act occurs shall have the right to order all further work in and about any water supply system or sewerage facilities, which is being erected or installed in violation of this act, to be stopped forthwith,

except such work as shall be necessary to remedy such violation, and, thereafter, to continue such work without any violation of any of the provisions of this act, and after the issuance of any such order and the service of a copy thereof upon any person connected with or working in and about the erection or installation of any such water supply system or sewerage facilities, or any part thereof, no further work shall be done thereon except as aforesaid and any person or corporation who, after having been served with a copy of such an order, shall do any work or cause or permit any work to be done in or about the same, except such as is hereinbefore provided, shall be liable to a penalty of \$200.00 to be collected and enforced by summary proceedings for the collection of penalties pursuant to the "Penalty Enforcement Law."

L.1954, c. 199, p. 752, s. 18.

**58:11-41. Injunction**

In case any water supply system or sewerage facilities or any part thereof is about to be, or is, or has been, erected or installed after the effective date of this act in violation of any of the provisions of this act as aforesaid, such erection or installation is hereby declared to be a nuisance and the State department or the board having jurisdiction in the municipality in which the realty improvement is situate, may institute a civil action for an injunction to prohibit the further violations of this act in any court of competent jurisdiction, which court shall have power to order an abatement of such nuisance, and to prevent its further maintenance, and any further violation of this act, by injunction or otherwise according to the practice of said court, and the court may proceed in a summary manner.

L.1954, c. 199, p. 752, s. 19. Amended by L.1966, c. 143, s. 8, eff. June 18, 1966; L.1971, c. 386, s. 5, eff. Jan. 7, 1972.

**58:11-42. Effective date**

This act shall take effect September 1, 1954.

L.1954, c. 199, p. 753, s. 20.

**58:11-43. Study to determine restriction as to types of sewerage facilities**

The State department shall study the various geographical areas of the State, from time to time, to determine whether any such areas should be restricted as to the types of sewerage facilities which may be thereafter constructed in such areas. In conducting such a study, the State department shall give consideration to factors such as soil conditions, ground-water table levels, population densities and projected growth trends and such other factors which could affect the safe and proper operation of sewerage facilities in the area under study.

L.1966, c. 143, s. 1, eff. June 18, 1966.

**58:11-44. Designation of critical areas by regulation**

If the State department shall determine that it is essential to the public health and well-being of the inhabitants residing in the area to restrict or regulate the type or types of sewerage facilities which may thereafter be constructed in such area, it shall by appropriate regulation designate the area as a critical area for sewerage purpose.

L.1966, c. 143, s. 2.

**58:11-45. Contents of regulation**

A regulation designating an area as a critical area for sewerage purposes shall specify the specific geographical area contained within such critical area and the type or types of sewerage facilities which may thereafter be constructed in the critical area.

L.1966, c. 143, s. 3.

**58:11-46. Notice and hearing**

Prior to promulgation of such regulation, the State department shall hold a public hearing thereon within

such area. The State department shall cause to be published at least once not less than 15 days prior to such hearing in each of the municipalities within the critical area proposed to be designated as such by the department, in a newspaper published in each of said municipalities, or if no newspaper be published in any such municipalities, then in a newspaper circulated in such municipalities, a notice of such hearing specifying the time when and place where such hearing will be held, together with a description of the area proposed to be designated as a critical area and a brief summary of the type or types of sewerage facilities which may thereafter be constructed therein.

L.1966, c. 143, s. 4.

**58:11-47. Adoption of regulations; publication**

Following such hearing and after consultation with the Department of Conservation and Economic Development, the State department shall adopt such regulations designating a critical area and specify the geographical area contained within such critical area, as well as the type or types of sewerage facilities which may thereafter be constructed therein, as may be reasonable and necessary to protect public health. No such regulations shall be promulgated until at least 60 days after the State department has conducted its public hearing. Such rules and regulations shall be published and distributed to local governing bodies and local boards of health in all designated critical areas.

L.1966, c. 143, s. 5.

**58:11-48. Violation; penalties**

Any person who violates any of the provisions of this act or the rules and regulations adopted hereunder shall be liable to the penalties set forth in section 17 of the act of which this act is a supplement.

L.1966, c. 143, s. 6.

**58:11-49. Legislative findings**

The Legislature finds, determines and declares that sewage treatment plants are unable to adequately treat certain sewage discharged into the systems because of the characteristics and composition of the waste, that certain potent discharges have interfered with and damaged the sewage treatment plant processes, and that these occurrences should be prevented by the adoption and enforcement of rules and regulations requiring the treatment of certain wastes prior to their discharge into sewerage systems.

L.1972, c. 42, s. 1, eff. June 1, 1972.

**58:11-50. Definitions**

As used in this act, unless otherwise clearly indicated or required by the context:

- a. "Department" means the State Department of Environmental Protection.
- b. "Commissioner" means the State Commissioner of Environmental Protection.
- c. "Public sewage treatment plant" means any structure or structures by means of which domestic or industrial wastes are subjected to any artificial process in order to remove or so alter constituents as to render the wastes less offensive or dangerous to the public health, comfort or property of any of the inhabitants of this State before the discharge of the plant effluent into any of the waters of this State.
- d. "Sewage" means any domestic or industrial waste which is or is intended, required or proposed to be subjected to treatment in a public sewage treatment plant. It shall include but not be limited to substances which are (a) nondegradable (b) highly toxic and (c) radioactive.
- e. "Pretreatment standards" means those standards as to physical, chemical or biological characteristics to which sewage must conform before it may lawfully be discharged into a public sewage treatment plant under the provisions of this act.

f. "Person" means and shall include corporations, companies, associations, societies, firms, partnerships, and joint stock companies as well as individuals, and shall also include all political subdivisions of this State or any agencies or instrumentalities thereof.

L.1972, c. 42, s. 2, eff. June 1, 1972.

**58:11-51. Rules and regulations; establishment, alteration or abolition**

The commissioner shall have the power to establish and from time to time alter or abolish rules and regulations establishing pretreatment standards to which sewage must conform before it may lawfully be discharged into the collection system of a public sewage treatment plant in this State. In establishing, altering or abolishing such rules and regulations, the commissioner shall give due consideration to: (1) the treatment capabilities and operating efficiency of the plant or plants to which they apply and (2) the standards required of the effluent of such plant or plants in conformity with established policy of the State and existing rules of the department concerning the prevention and abatement of water pollution.

L.1972, c. 42, s. 3, eff. June 1, 1972.

**58:11-51.1. Findings, declarations**

The Legislature finds and declares that only the most contaminated sludges are ocean disposed; that these sludges are generated by sewage treatment plants, which receive large quantities of contaminated industrial wastewater; that land-based disposal of sludge requires the removal of these contaminants from the waste stream; that even if ocean dumping of sludge continues, it is prudent to minimize the presence of contaminants in the sludge; that the removal of contaminants from industrial wastewater requires additional standards, which the Department of Environmental Protection is singularly qualified to develop; and that to develop these stricter standards, the department requires additional resources.

P.L. 1988, c. 63, s. 1.

**58:11-51.2. Pretreatment of industrial discharges**

The Department of Environmental Protection shall accelerate the industrial wastewater pretreatment program, hire additional personnel, develop stricter standards for industrial discharges, and increase enforcement and monitoring of pretreatment permittees.

P.L. 1988, c. 63, s. 2.

**58:11-52. Effective date of standards; persons subject to standards**

After the effective date of any pretreatment standards established as provided in this act, no person, firm or corporation, public or private, or any public agency or instrumentality shall discharge into the collection system of a public sewage treatment plant under the operation or control of any county or municipality, or of any public agency or instrumentality established by or pursuant to any law of this State and having as its purpose or one of its purposes the operation of a public sewage treatment plant, or permit to be discharged into the collection system of any such treatment plant under its operation or control, any sewage which does not comply with the aforesaid pretreatment standards. In setting a date for the conformance to pretreatment standards by public sewage treatment plants and their users the commissioner shall provide a reasonable amount of time to remedy the existing situation and to comply with the pretreatment standards.

L.1972, c. 42, s. 4, eff. June 1, 1972.

**58:11-53. Enforcement by agencies; application by users; rules and regulations; inspection**

For the purpose of enforcing the provisions of this act and the rules and regulations adopted pursuant thereto, the municipalities, authorities, commissions, or any public bodies or agencies, owning, operating or controlling, separately or jointly, any public sewage treatment plant shall:

- a. Require that any person, corporation, or municipality desiring to make any sewage connection or



discharge or continue to discharge sewage which includes or consists of industrial wastes into such public sewage treatment plant make application therefor in writing on forms provided by said municipality, authority, commission, or other public body or agency;

b. Adopt rules and regulations setting forth the information required to be stated in the application aforesaid, in order to provide full information as to the quantity, character and composition of any sewage which may be discharged into the public sewage treatment plant, and establishing requirements and procedures for prompt amendment of said application in the event of significant changes in the quantity, character or composition of such sewage.

c. Make or cause to be made inspection of the discharging facilities of any person, corporation, or municipality who may be discharging sewage or permitting sewage to be discharged into sewerage systems under its jurisdiction, in order to determine compliance with the pretreatment standards set by the department.

L.1972, c. 42, s. 5, eff. June 1, 1972.

#### **58:11-54. Violations; injunction**

If any person, corporation or municipality violates any of the provisions of this act or rules and regulations promulgated thereunder, the department or any county, municipality, authority, commission, or any other public body or agency owning, operating or controlling, separately or jointly, the sewage treatment works wherein the said violation occurs may institute a civil action in the Superior Court for injunctive relief to prohibit and prevent such violation and the said court may proceed in the action in a summary manner.

L.1972, c. 42, s. 6, eff. June 1, 1972.

#### **58:11-55. Enforcement**

a. Any person, corporation, or municipality who shall violate any of the provisions of this act or any rules or regulations promulgated thereunder shall be subject to the applicable provisions of section 10 of P.L.1977, c.74 (C.58:10A-10) and section 6 of P.L.1990, c.28 (C.58:10A-10.1), to be collected in a civil action by a summary proceeding under "the penalty enforcement law" (N.J.S.2A:58-1 et seq.), or in any case before a court of competent jurisdiction wherein injunctive relief has been requested. The Superior Court shall have jurisdiction to enforce "the penalty enforcement law".

b. A public entity operating and controlling a public sewage treatment plant shall, in accordance with subsection a. of this section, enforce any applicable pretreatment standard adopted by the public entity pursuant to section 9 of P.L.1972, c.42 (C.58:11-57), or shall obtain injunctive relief against a violation or threatened violation of a pretreatment standard. A public entity operating and controlling a public sewage treatment plant with pretreatment standards adopted by the commissioner pursuant to section 3 of P.L.1972, c.42 (C.58:11-51), may enforce applicable pretreatment standards in accordance with subsection a. of this section, or obtain injunctive relief as provided in this subsection. The action shall be brought in the name of the local public entity. Of the amount of any penalty assessed and collected pursuant to subsection a. of this section, 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 public sewage treatment plants. The remainder shall be used by the local agency solely for enforcement purposes, and for upgrading treatment works.

L.1972,c.42,s.7; amended 1988,c.170; 1990,c.28,s.18.

#### **58:11-56. Violations; closing off of use of sewerage connections**

If any county, municipality, authority, commission, or other public body or agency owning, operating or controlling, separately or jointly, a public sewage treatment plant or the department finds that any person, corporation or municipality is discharging sewage into a public sewage treatment plant in violation of the provisions of this act or regulations promulgated thereunder, the said county, municipality, authority, commission, or other public body or agency, and the department, may in addition to any remedies provided

under sections 6 and 7 of this act, take such steps as may be necessary to seal or close off such sewerage connections from the public sewage treatment plant until it is satisfied that adequate measures have been taken to prevent the recurrence of such violation.

L.1972, c. 42, s. 8, eff. June 1, 1972.

**58:11-57. Necessity for issuance of permit for use if capacity of plant exceeded; additional pretreatment standards**

Nothing in this act shall be construed as requiring any public sewage treatment plant to grant a connection or permit the discharge into its treatment facilities of any sewage which, in the judgment of the official body responsible for the management and control of said plant, exceeds the capabilities of the plant to treat adequately. Such official body may, in addition to any pretreatment standards imposed under this act, require of any user or prospective user of its facilities such other pretreatment of industrial wastes as it deems necessary to make possible the adequate treatment of such wastes.

L.1972, c. 42, s. 9, eff. June 1, 1972.

**58:11-58. Severability**

If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

L.1972, c. 42, s. 10, eff. June 1, 1972.

**58:11-59 Failure to comply by small water, sewer companies.**

1. a. Whenever a small water company or a small sewer company, or both, are found to have failed to comply with any unstayed order of the Department of Environmental Protection concerning the availability of water, the potability of water, or the provision of water at adequate volume and pressure, or any unstayed order finding a small water company or a small sewer company or both a significant noncomplier or requiring the abatement of a serious violation, as those terms are defined pursuant to section 3 of P.L.1977, c.74 (C.58:10A-3), which the department is authorized to enforce pursuant to Title 58 of the Revised Statutes, the department and the Board of Public Utilities may, after 30 days' notice to capable proximate public or private water or sewer companies, municipal utilities authorities established pursuant to P.L.1957, c.183 (C.40:14B-1 et seq.), municipalities or any other suitable public or private entities wherein the small water company, small sewer company, or both, provide service, conduct a joint public hearing to announce: the actions that may be taken and the expenditures that may be required, including acquisition costs, to make all improvements necessary to assure the availability of water, the potability of water and the provision thereof at adequate volume and pressure, and the compliance with all applicable federal and State water pollution control requirements for a small sewer company, including, but not necessarily limited to, the acquisition of the small water company or small sewer company, or both, by the most suitable public or private entity.

At the hearing the department and the board shall state the costs that are expected to be borne by the current users of the small water company, small sewer company, or both. The department shall propose an administrative consent order setting forth an agreed upon time schedule by which the acquiring entity would be required to make improvements required to resolve existing violations of federal and State safe drinking water and water pollution control statutes and regulations. The administrative consent order shall stipulate that the acquiring entity shall not be liable for any fines or penalties for continuing violations arising from the deficiencies, obsolescence or disrepair of the facilities at the time of the acquisition, provided that:

(1) the stipulation shall be conditioned upon compliance by the acquiring entity with the timeframes established for improving the facilities and eliminating the existing violations; and

(2) the stipulation shall not include any violation to the extent caused by operational error, lack

of preventive maintenance or careless or improper operation by the acquiring entity.

Under no circumstances shall the acquiring entity be liable for violations occurring prior to the acquisition.

At the conclusion of a hearing conducted pursuant to this section the record of the hearing shall be kept open for 30 days to allow for the submission of additional comments.

b. As used in sections 1 through 4 of P.L.1981, c.347 (C.58:11-59 through 58:11-62):

"Small water company" means any company, purveyor or entity, other than a governmental agency, that provides water for human consumption and which regularly serves less than 1,000 customer connections ; and

"Small sewer company" means any company, business, or entity, other than a governmental agency, which is a public utility as defined pursuant to R.S.48:2-13, that collects, stores, conveys, or treats primarily domestic wastewater, and that regularly serves less than 1,000 customer connections.

L.1981,c.347,s.1; amended 1994, c.58, s.57; 1999, c.296, s.2.

**58:11-60 Compensation for acquisition of small water, sewer company.**

2. a. Compensation for the acquisition of a small water company, small sewer company, or both, shall be determined:

(1) By agreement between the parties, subject to the approval of the Board of Public Utilities, in consultation with the Department of Environmental Protection, and after the holding of a joint public hearing by the board and the department; or

(2) Through use of the power of eminent domain by the appropriate agencies or, the provisions of section 34 of P.L.1957, c.183 (C.40:14B-34) to the contrary notwithstanding, the designated acquiring public or private entity.

b. Compensation shall be the commercially reasonable value as determined by agreement between the small water company, small sewer company, or both, and the designated acquiring public or private entity, as approved by the board and the department, or the appraised value as established through eminent domain proceedings. Upon remittance of the compensation as set forth herein, the designated acquiring public or private entity shall obtain title to the assets of the small water company, small sewer company, or both, free and clear of all liens, claims and encumbrances, judgments, security interests, fines, penalties, and outstanding taxes incurred by the small water company, small sewer company, or both. The acquiring public or private entity shall place in escrow or deposit in court so much of the compensation amount as necessary to satisfy any liens, claims and encumbrances, judgments, security interests, fines, penalties, and outstanding taxes which are of record or of which the designated acquiring public or private entity has actual knowledge.

Nothing contained herein shall waive, or impair the right of any creditor, including a secured creditor, to obtain payment directly from the owner or operator of the small water company or small sewer company from the proceeds of any acquisition concluded pursuant to the provisions of P.L.1981, c.347 (C.58:11-59 et seq.), section 1 of P.L.1981, c.389 (C.58:11-63) and P.L.1999, c.296 (C.58:11-63.1 et al.).

No fines or penalties incurred by the owner or operator of a small water company or small sewer company shall be a liability of the owner or operator of the designated acquiring public or private entity, of the service users of the acquired small water company or small sewer company or any service user of the water supply or sewer system of the designated acquiring public or private entity. Any such incurred penalties shall remain the sole liability of the owner or operator who incurred the penalties.

c. If a small water company and a small sewer company serve a common residential development, were established by the developer to service that development, and are under common control and ownership, and if the small water company or the small sewer company, or both, have failed to comply with an order of the Department of Environmental Protection and are subject to the provisions of section 1 of P.L.1981, c.347 (C.58:11-59), they may be treated as one company for the purposes of sections 1 through 4 of P.L.1981, c.347 (C.58:11-59 through 58:11-62), section 1 of P.L.1981, c.389 (C.58:11-63) and P.L.1999, c.296 (C.58:11-63.1 et al.), provided that the proceeds of the acquisition shall be segregated and distributed based on the commercially reasonable or appraised value of each company.

L.1981,c.347,s.2; amended 1999, c.296, s.3.

**58:11-61 Order for acquisition of small water, sewer company.**

3. a. The Department of Environmental Protection and the Board of Public Utilities, upon a determination that the costs of improvements to and the acquisition of the small water company, small sewer company, or both, are necessary and reasonable, may order the acquisition of the small water company, small sewer company, or both, by the most suitable public or private entity pursuant to this section. This order shall provide for the immediate inclusion in the rates of the designated acquiring public or private entity the anticipated costs of necessary improvements, or, if the determination of acquisition costs has been deferred, as soon as possible thereafter as may be practicable and feasible. No order may be issued pursuant to this section until at least 30 days following the date of the hearing conducted pursuant to section 1 of P.L.1981, c.347 (C.58:11-59).

b. The Board of Public Utilities shall extend the franchise area of the designated acquiring public or private entity to the extent necessary to cover the service area of the small water company, small sewer company, or both, taken over pursuant to the provisions of P.L.1981, c.347 (C.58:11-59 et seq.), section 1 of P.L.1981, c.389 (C.58:11-63) and P.L.1999, c.296 (C.58:11-63.1 et al.). The governing body of the municipality in which the small water company, small sewer company, or both, are located shall provide the board with the municipal consent that allows the designated acquiring public or private entity to operate within the franchise area. The board shall approve any municipal consent granted pursuant to this subsection necessary to cover the service area of the small water company, small sewer company, or both, acquired pursuant to the provisions of P.L.1981, c.347 (C.58:11-59 et seq.), section 1 of P.L.1981, c.389 (C.58:11-63) and P.L.1999, c.296 (C.58:11-63.1 et al.).

c. An order issued pursuant to this section designating a public or private entity to acquire a small water company, small sewer company, or both, shall authorize the public or private entity to commence eminent domain proceedings in accordance with P.L.1971, c.361 (C.20:3-1 et seq.), without further petition to, or further order by, the board. Prior to commencing eminent domain proceedings, an appropriate officer of the designated acquiring public or private entity shall transmit notice to the board, the department, and all parties affected by the order issued pursuant to this section, including, without limitation, any person or entity having a recorded interest in the land or property which may be subject to eminent domain proceedings pursuant to the provisions of P.L.1981, c.347 (C.58:11-59 et seq.), section 1 of P.L.1981, c.389 (C.58:11-63) and P.L.1999, c.296 (C.58:11-63.1 et al.). Notice provided to such parties pursuant to this section shall satisfy the notice requirements set forth in R.S.48:3-17.

d. An order issued pursuant to this section shall constitute revocation by the board of the franchise of the small water company, small sewer company, or both, to be acquired and shall render the owner or operator of the acquired small water company, small sewer company, or both, unfit to hold any other water or sewer franchise or municipal consent to provide water or sewer service.

L.1981,c.347,s.3; amended 1999, c.296, s.4.

**58:11-62 Acquisition, improvements to assure compliance.**

4. Any water company, sewer company, municipal utilities authority or other suitable public or

private entity which receives an order pursuant to section 3 of P.L.1981, c.347 (C.58:11-61) shall acquire the small water company, small sewer company, or both, and shall make the necessary improvements to assure the availability of water, the potability of the water and the provision of water at adequate volume and pressure and the compliance with all applicable federal and State water pollution control requirements in the case of a small sewer company. The small water company, small sewer company, or both, as the case may be, shall immediately comply with the order and shall facilitate its sale to the water company, sewer company, municipal utilities authority, or other suitable public or private entity ordered to acquire the small water company, the small sewer company, or both, as the case may be.

L.1981,c.347,s.4; amended 1999, c.296, s.5.

### **58:11-63 Collection of differential rate from customers of acquired company.**

1. Whenever the Department of Environmental Protection and the Board of Public Utilities order the acquisition of a small water company, small sewer company, or both, by the most suitable public or private entity pursuant to the provisions of P.L.1981, c.347 (C.58:11-59 et seq.) and P.L.1999, c.296 (C.58:11-63.1 et al.), the board may, in its discretion, allow the designated acquiring public or private entity to charge and collect a differential rate from the customers of the small water company, small sewer company, or both, for the use or service of the acquiring public or private entity's water supply system or facilities, sewage system or facilities, or both.

As used in this section "small water company" and "small sewer company" shall have the same meaning as in section 1 of P.L.1981, c.347 (C.58:11-59).

L.1989,c.389,s.1; 1999, c.296, s.6.

#### **58:11-63.1 Costs of acquisition, improvements eligible for financing.**

7. a. Whenever a public or private entity receives an order pursuant to section 3 of P.L.1981, c.347 (C.58:11-61) to acquire a small sewer company, the cost to the designated acquiring public or private entity of the improvements to the acquired small sewer company necessary to assure the compliance with all applicable federal and State water pollution control requirements for a small sewer company shall be eligible for financing pursuant to the "New Jersey Environmental Infrastructure Trust Act," P.L.1985, c.334 (C.58:11B-1 et seq.), as amended by P.L.1997, c.224. Any loan application made by an acquiring public entity pursuant to this subsection shall be expedited by the New Jersey Environmental Infrastructure Trust and the Department of Environmental Protection, to the maximum extent feasible while still maintaining compliance with all applicable laws, rules and regulations.

b. Whenever a public or private entity receives an order pursuant to section 3 of P.L.1981, c.347 (C.58:11-61) to acquire a small water company, the cost to the designated acquiring public or private entity of the improvements to the acquired small water company necessary to assure the availability of water, the potability of water, and the provision thereof at adequate volume and pressure and compliance with all applicable federal and State safe drinking water requirements for a small water company, shall be eligible for financing pursuant to the "New Jersey Environmental Infrastructure Trust Act," P.L.1985, c.334 (C.58:11B-1 et seq.), as amended by P.L.1997, c.224. Any loan application made by an acquiring public entity pursuant to this subsection shall be expedited by the New Jersey Environmental Infrastructure Trust and the Department of Environmental Protection, to the maximum extent feasible while still maintaining compliance with all applicable laws, rules and regulations.

c. The provisions of any other law or rule or regulation adopted pursuant thereto to the contrary notwithstanding, improvements to an acquired small water company pursuant to the provisions of P.L.1981, c.347 (C.58:11-59 et seq.), section 1 of P.L.1981, c.389 (C.58:11-63) and P.L.1999, c.296 (C.58:11-63.1 et al.) shall constitute a water supply project for the purposes of P.L.1981, c.261, as amended by P.L.1983, c.355 and P.L.1997, c.223.

d. As used in this section "small water company" and "small sewer company" shall have the same meaning as in section 1 of P.L.1981, c.347 (C.58:11-59).

L.1999,c.296,s.7.

**58:11-63.2 Acquiring entity not responsible for prior discharge of hazardous substance; immunity from liability; exceptions.**

8. The provisions of any law, or rule or regulation adopted pursuant thereto to the contrary notwithstanding, whenever a public or private entity receives an order pursuant to section 3 of P.L.1981, c.347 (C.58:11-61) to acquire a small water company, small sewer company, or both, the designated acquiring public or private entity shall not be deemed the discharger or responsible party for a discharge of a hazardous substance that occurred prior to the acquisition and is attributed to the facilities being acquired, and shall not be liable for any required cleanup and removal costs or damages resulting from any such discharge of a hazardous substance. As a condition of, and at the time of the acquisition, the designated acquiring public or private entity shall conduct a preliminary assessment and a site investigation of the facilities to be acquired to ascertain the presence and the levels of any hazardous substance. Neither the designated acquiring public or private entity, the service users of the small water company or small sewer company being acquired, or the users of the designated acquiring public or private entity's services shall have any liability for cleanup and removal costs relating to any hazardous discharge identified by the site investigation conducted pursuant to this section as being a pre-acquisition hazardous discharge, provided that the designated acquiring public or private entity shall exercise reasonable care in addressing any environmental contamination at the facilities upon acquisition.

The exemption from liability granted to an acquiring public or private entity pursuant to this section shall not apply to the designated acquiring public or private entity's liability, pursuant to any law or rule or regulation, for arranging for the off-site disposal or treatment of a hazardous substance or for transporting and disposing of a hazardous substance at an off-site facility selected by the designated acquiring public or private entity.

Nothing in this section shall prohibit or limit the right of the Department of Environmental Protection to undertake a cleanup of the property or to obtain a lien on the property for the cost of a cleanup pursuant to section 7 of P.L.1976, c.141 (C.58:10-23.11f). Any recovery of cleanup and removal costs from an acquiring public or private entity pursuant to a lien obtained by the Department of Environmental Protection shall be limited to the actual financial benefit realized by the designated acquiring public or private entity solely due to a cleanup or removal action. Recovery by the Department of Environmental Protection shall be conditioned upon the department providing a detailed financial analysis to the designated acquiring public or private entity demonstrating that the actual financial gain realized by the designated acquiring public or private entity is due solely to the cleanup or removal action. The acquiring entity shall have 30 days to notify the department, in writing, of any dispute relating to the financial analysis or the department's determination of actual financial gain. The Department of Environmental Protection shall negotiate, for a period not to exceed 30 days, with the designated acquiring public or private entity to resolve any dispute relating to the financial analysis or the department's determination of actual financial gain identified by the designated acquiring public or private entity prior to imposition of a lien. The department may waive any lien or recovery if warranted by the circumstances.

As used in this section "small water company" and "small sewer company" shall have the same meaning as in section 1 of P.L.1981, c.347 (C.58:11-59).

L.1999,c.296,s.8.

**58:11-63.3 Violations, penalties.**

9. Any owner or operator of a small water company, small sewer company, or both, who violates the provisions of P.L.1981, c.347 (C.58:11-59 et seq.), section 1 of P.L.1981, c.389 (C.58:11-63), and

P.L.1999, c.296 (C.58:11-63.1 et al.), or fails to comply with any order issued pursuant to section 3 of P.L.1981, c.347 (C.58:11-61), shall be subject upon order of a court to a civil penalty not to exceed \$50,000 per day of such violation, and each day's continuance of the violation shall constitute a separate violation. Any penalty incurred pursuant to this section may be recovered with costs, and, if applicable, interest charges, in a summary proceeding pursuant to "the penalty enforcement law" (N.J.S.2A:58-1 et seq.). The Board of Public Utilities or the Department of Environmental Protection may also commence a civil action in the Superior Court for any other appropriate relief, including without limitation, a temporary or permanent injunction, and the reasonable costs of preparing and litigating the case. Use of any of the remedies in this section shall not preclude the use of any other remedy available to the Board of Public Utilities or the Department of Environmental Protection under this section or under any other applicable law. As used in this section "small water company" and "small sewer company" shall have the same meaning as in section 1 of P.L.1981, c.347 (C.58:11-59).

L.1999,c.296,s.9.

**58:11-63.4 Construction of act as to BPU enforcement.**

10. Nothing in the provisions of P.L.1981, c.347 (C.58:11-59 et seq.), section 1 of P.L.1981, c.389 (C.58:11-63), or P.L.1999, c.296 (C.58:11-63.1 et al.) shall be construed to prohibit the Board of Public Utilities from determining, after notice and hearing, that a franchise or other authority to operate should be revoked for good cause or that penalties as may otherwise be authorized, should be imposed.

L.1999,c.296,s.10.