



General Assembly

Amendment

January Session, 2009

LCO No. 8781

SB0087108781SD0

Offered by:

SEN. MEYER, 12th Dist.

REP. ROY, 119th Dist.

To: Subst. Senate Bill No. 871

File No. 146

Cal. No. 168

**"AN ACT INCREASING THE ENFORCEMENT AUTHORITY OF THE
DEPARTMENT OF ENVIRONMENTAL PROTECTION."**

1 Strike sections 1, 2 and 4 in their entirety and renumber the
2 remaining sections and internal references accordingly

3 After the last section, add the following and renumber sections and
4 internal references accordingly:

5 "Sec. 501. Section 22a-6b of the general statutes is repealed and the
6 following is substituted in lieu thereof (*Effective October 1, 2009*):

7 (a) The Commissioner of Environmental Protection shall adopt
8 regulations, in accordance with the provisions of chapter 54, to
9 establish a schedule setting forth the amounts, or the ranges of
10 amounts, or a method for calculating the amount of the civil penalties
11 which may become due under this section. Such schedule or method
12 may be amended from time to time in the same manner as for
13 adoption provided any such regulations which become effective after

14 July 1, 1993, shall only apply to violations which occur after said date.
15 The civil penalties established for each violation shall be of such
16 amount as to insure immediate and continued compliance with
17 applicable laws, regulations, orders and permits. [Such] Except as
18 provided in subsection (c) of this section, such civil penalties shall not
19 exceed the following amounts:

20 (1) For failure to file any registration, other than a registration for a
21 general permit, for failure to file any plan, report or record, or any
22 application for a permit, for failure to obtain any certification, for
23 failure to display any registration, permit or order, or file any other
24 information required pursuant to any provision of section 14-100b or
25 14-164c, subdivision (3) of subsection (b) of section 15-121, section 15-
26 171, 15-172, 15-175, 22a-5, 22a-6, 22a-7, 22a-32, 22a-39 or 22a-42a, 22a-
27 45a, chapter 441, sections 22a-134 to 22a-134d, inclusive, subsection (b)
28 of section 22a-134p, section 22a-171, 22a-174, 22a-175, 22a-177, 22a-178,
29 22a-181, 22a-183, 22a-184, 22a-208, 22a-208a, 22a-209, 22a-213, 22a-220,
30 22a-231, 22a-245a, 22a-336, 22a-342, 22a-345, 22a-346, 22a-347, 22a-349a,
31 22a-354p, 22a-358, 22a-359, 22a-361, 22a-362, 22a-368, 22a-401 to 22a-
32 405, inclusive, 22a-411, 22a-416, 22a-417, 22a-424 to 22a-433, inclusive,
33 22a-447, 22a-449, 22a-450, 22a-451, 22a-454, 22a-458, 22a-461, 22a-462 or
34 22a-471, or any regulation, order or permit adopted or issued
35 thereunder by the commissioner, and for other violations of similar
36 character as set forth in such schedule or schedules, no more than one
37 thousand dollars for said violation and in addition no more than one
38 hundred dollars for each day during which such violation continues;

39 (2) For deposit, placement, removal, disposal, discharge or emission
40 of any material or substance or electromagnetic radiation or the
41 causing of, engaging in or maintaining of any condition or activity in
42 violation of any provision of section 14-100b or 14-164c, subdivision (3)
43 of subsection (b) of section 15-121, section 15-171, 15-172, 15-175, 22a-5,
44 22a-6, 22a-7, 22a-32, 22a-39 or 22a-42a, 22a-45a, chapter 441, sections
45 22a-134 to 22a-134d, inclusive, section 22a-69 or 22a-74, subsection (b)
46 of section 22a-134p, section 22a-162, 22a-171, 22a-174, 22a-175, 22a-177,
47 22a-178, 22a-181, 22a-183, 22a-184, 22a-190, 22a-208, 22a-208a, 22a-209,

48 22a-213, 22a-220, 22a-336, 22a-342, 22a-345, 22a-346, 22a-347, 22a-349a,
49 22a-354p, 22a-358, 22a-359, 22a-361, 22a-362, 22a-368, 22a-401 to 22a-
50 405, inclusive, 22a-411, 22a-416, 22a-417, 22a-424 to 22a-433, inclusive,
51 22a-447, 22a-449, 22a-450, 22a-451, 22a-454, 22a-458, 22a-461, 22a-462 or
52 22a-471, or any regulation, order or permit adopted thereunder by the
53 commissioner, and for other violations of similar character as set forth
54 in such schedule or schedules, no more than twenty-five thousand
55 dollars for said violation for each day during which such violation
56 continues;

57 (3) For violation of the terms of any final order of the commissioner,
58 except final orders under subsection [(d)] (e) of this section and
59 emergency orders and cease and desist orders as set forth in
60 subdivision (4) of this subsection, for violation of the terms of any
61 permit issued by the commissioner, and for other violations of similar
62 character as set forth in such schedule or schedules, no more than
63 twenty-five thousand dollars for said violation for each day during
64 which such violation continues;

65 (4) For violation of any emergency order or cease and desist order of
66 the commissioner, and for other violations of similar character as set
67 forth in such schedule or schedules, no more than twenty-five
68 thousand dollars for said violation for each day during which such
69 violation continues;

70 (5) For failure to make an immediate report required pursuant to
71 subdivision (3) of subsection (a) of section 22a-135, or a report required
72 by the department pursuant to subsection (b) of section 22a-135, no
73 more than twenty-five thousand dollars per violation per day;

74 (6) For violation of any provision of the state's hazardous waste
75 program, no more than twenty-five thousand dollars per violation per
76 day;

77 (7) For wilful violation of any condition imposed pursuant to
78 section 26-313 which leads to the destruction of, or harm to, any rare,
79 threatened or endangered species, no more than ten thousand dollars

80 per violation per day;

81 (8) For violation of any provision of sections 22a-608 to 22a-611,
82 inclusive, no more than the amount established by Section 325 of the
83 Emergency Planning and Community Right-To-Know Act of 1986 (42
84 USC 11001 et seq.) for a violation of Section 302, 304 or 311 to 313,
85 inclusive, of said act.

86 (b) In adopting regulations regarding any schedule or methods
87 prescribed by this section, the commissioner shall consider:

88 (1) The amount or ranges of amounts of assessment necessary to
89 insure immediate and continued compliance;

90 (2) The character and degree of impact of the violation on the
91 natural resources of the state, especially any rare or unique natural
92 phenomena;

93 (3) The conduct of the person incurring the civil penalty in taking all
94 feasible steps or procedures necessary or appropriate to comply or to
95 correct the violation;

96 (4) Any prior violations by such person of statutes, regulations,
97 orders or permits administered, adopted or issued by the
98 commissioner;

99 (5) The economic and financial conditions of such person;

100 (6) The economic benefit which such person derived as a result of
101 the violation;

102 (7) The character and degree of injury to, or interference with, public
103 health, safety or welfare which is caused or threatened to be caused by
104 such violation;

105 (8) The character and degree of injury or impairment to, or
106 interference with, reasonable use of property which is caused or
107 threatened to be caused by such violation;

108 (9) The character and degree of injury or impairment to, or
109 interference with, the public trust in the air, water, land and other
110 natural resources of the state;

111 (10) To the extent consistent with applicable law, any other factors
112 the commissioner deems appropriate, including voluntary measures
113 taken by such person to prevent pollution or enhance or preserve
114 natural resources;

115 (11) In the case of violation of the provisions of subdivision (3) of
116 subsection (a) of section 22a-135, the apparent seriousness of the
117 release, occurrence, incident or other circumstance at the time it first
118 became known to the licensee or any employee of such licensee, the
119 extent of the delay from the time such licensee or employee had or in
120 the exercise of reasonable care should have had knowledge of such
121 release, occurrence, incident or circumstance until its reporting by the
122 licensee in accordance with this subsection, subsection (a) of this
123 section and sections 16-19g and 22a-135, and the conduct of the
124 licensee in taking all necessary steps to prevent future violations of the
125 provisions of said subdivision.

126 (c) From October 1, 2009, to October 1, 2013, inclusive, the
127 commissioner may issue an order to impose a civil penalty not
128 delineated in the regulations adopted pursuant to this section,
129 provided (1) such penalty does not exceed a total of fifty thousand
130 dollars, and (2) the imposition of the penalty in accordance with the
131 per day violation limits set forth in subdivisions (1) to (8), inclusive, of
132 subsection (a) of this section does not total more than fifty thousand
133 dollars. To determine the amount of such penalty, the commissioner
134 shall consider the factors specified in subsection (b) of this section. The
135 commissioner shall issue any such order in accordance with the
136 procedures set forth in this section. Any person receiving an order
137 pursuant to this subsection who requests a hearing in accordance with
138 subsection (e) of this section may also file with the commissioner a
139 written request for mediation. The commissioner shall grant any such
140 request for mediation provided such request is submitted along with a

141 timely request for a hearing. The cost of such mediation shall be
142 assumed by the party requesting mediation. The provisions of this
143 subsection shall not be construed to limit the commissioner's authority
144 to conduct a hearing pursuant to this subsection as the commissioner
145 deems appropriate. For the purposes of this subsection, "mediation"
146 means the process where the parties to a hearing meet with a mutually
147 selected impartial mediator to work toward resolution of the issues
148 that are the subject of the request for a hearing in accordance with
149 generally accepted principles of mediation.

150 [(c)] (d) If the commissioner has reason to believe that a violation
151 has occurred for which a civil penalty is authorized by this section, he
152 may send to the violator, by certified mail, return receipt requested, or
153 personal service, a notice which shall include:

154 (1) A reference to the sections of the statute, regulation, order or
155 permit involved;

156 (2) A short and plain statement of the matters asserted or charged;

157 (3) A statement of the amount of the civil penalty or penalties [or]
158 and the method for calculating the penalty or penalties to be imposed
159 upon finding after hearing that a violation has occurred or upon a
160 default; and

161 (4) A statement of the party's right to a hearing.

162 [(d)] (e) The person to whom the notice is addressed shall have
163 thirty days from the date of receipt of the notice in which to deliver to
164 the commissioner written application for a hearing. If a hearing is
165 requested then, after a hearing and upon a finding that a violation has
166 occurred, the commissioner may issue a final order assessing a civil
167 penalty under this section which is not greater than the penalty stated
168 in the notice. The commissioner may amend a notice of assessment at
169 any time before such notice becomes final, provided the person to
170 whom the notice is addressed shall have thirty days from the date of
171 receipt of such amendment in which to deliver to the commissioner a

172 written application for a hearing on such amendment, and provided
173 further the commissioner may amend a notice of assessment after a
174 hearing has begun only with the permission of the hearing officer. If
175 such a hearing is not so requested, or if such a request is later
176 withdrawn, then the notice shall, on the first day after the expiration of
177 such twenty-day period or on the first day after the withdrawal of such
178 request for hearing, whichever is later, become a final order of the
179 commissioner and the matters asserted or charged in the notice shall
180 be deemed admitted unless modified by consent order, which shall be
181 a final order. Any civil penalty may be mitigated by the commissioner
182 upon such terms and conditions as the commissioner in the
183 commissioner's discretion deems proper or necessary upon
184 consideration of the factors set forth in subsection (b) of this section.

185 ~~[(e)]~~ (f) All hearings under this section shall be conducted pursuant
186 to sections 4-176e to 4-184, inclusive. The final order of the
187 commissioner assessing a civil penalty shall be subject to appeal as set
188 forth in section 4-183, except that any such appeal shall be taken to the
189 superior court for the judicial district of New Britain and shall have
190 precedence in the order of trial as provided in section 52-191. Such
191 final order shall not be subject to appeal under any other provision of
192 the general statutes. No challenge to any notice of assessment or final
193 order of the commissioner assessing a civil penalty shall be allowed as
194 to any issue which could have been raised by an appeal of an earlier
195 order, notice, permit, denial or other final decision by the
196 commissioner. Any civil penalty authorized by this section shall
197 become due and payable (1) at the time of receipt of a final order in the
198 case of a civil penalty assessed in such order after a hearing, (2) on the
199 first day after the expiration of the period in which a hearing may be
200 requested if no hearing is requested, or (3) on the first day after any
201 withdrawal of a request for hearing.

202 ~~[(f)]~~ (g) Any person acting within the terms and conditions of a final
203 order or permit issued to him by the commissioner shall not be subject
204 to a civil penalty, under this section, for such actions.

205 [(g)] (h) A civil penalty assessed in a final order of the commissioner
206 under this section may be enforced in the same manner as a judgment
207 of the Superior Court. Such final order shall be served in person or by
208 certified mail, return receipt requested. Any notice of violation or final
209 order against a private corporation shall be served upon at least one of
210 the individuals enumerated in section 52-57. After entry, a transcript of
211 such final order may be filed by the commissioner, without requiring
212 the payment of costs as a condition precedent to such filing, in the
213 office of the clerk of the superior court in any one or more of the
214 following judicial districts: Any judicial district in which the
215 respondent resides, any judicial district in which the respondent has a
216 place of business, any judicial district in which the respondent owns
217 real property and any judicial district in which any real property
218 which is a subject of the proceedings is located; or, if the respondent is
219 not a resident of the state of Connecticut, in the judicial district of
220 Hartford. Upon such filing, such clerk or clerks shall docket such order
221 in the same manner and with the same effect as a judgment entered in
222 the superior court within the judicial district. Upon such docketing,
223 such order may be enforced as a judgment of such court.

224 [(h)] (i) The provisions of this section, sections 22a-2, 22a-6, 22a-6a,
225 22a-7, sections 22a-428, subsection (d) of section 22a-430, sections 22a-
226 431, 22a-432, 22a-433, 22a-437 and subsections (b) and (c) of section
227 22a-459 are in addition to and in no way derogate from any other
228 enforcement provisions contained in any statute administered by the
229 commissioner. The powers, duties and remedies provided in such
230 other statutes, and the existence of or exercise of any powers, duties or
231 remedies hereunder or thereunder shall not prevent the commissioner
232 from exercising any other powers, duties or remedies provided herein,
233 therein, at law or in equity.

234 [(i)] (j) No penalty shall be assessed pursuant to this section which
235 exceeds two hundred thousand dollars or such other amount as may
236 be provided by federal law.

237 Sec. 502. Subsection (b) of section 22a-6e of the general statutes is

238 repealed and the following is substituted in lieu thereof (*Effective*
239 *October 1, 2009*):

240 (b) The commissioner, or [his] a designee, shall render a final
241 decision to assess the administrative civil penalties established
242 pursuant to this section, and shall collect such penalties, in accordance
243 with the procedures specified in subsections (c) to [(g)] (h), inclusive,
244 of section 22a-6b, as amended by this act. The commissioner may
245 amend a notice of assessment at any time before such notice becomes
246 final, provided the person to whom the notice is addressed shall have
247 thirty days from the date of receipt of such amendment in which to
248 deliver to the commissioner a written application for a hearing on such
249 amendment, and provided further the commissioner may amend a
250 notice of assessment after a hearing has begun only with the
251 permission of the hearing officer. No challenge to any notice of civil
252 penalty assessment shall be allowed as to any issue which could have
253 been raised by an appeal of an earlier order, notice permit, denial or
254 other final decision by the commissioner.

255 Sec. 503. Section 22a-75 of the general statutes is repealed and the
256 following is substituted in lieu thereof (*Effective October 1, 2009*):

257 The commissioner may set schedules and assess civil penalties for
258 any violation of this chapter pursuant to sections 22a-6a and 22a-6b, as
259 amended by this act. Notice, hearing and appeal procedures shall be
260 made pursuant to subsections [(c) to (h)] (d) to (i), inclusive, of section
261 22a-6b, as amended by this act.

262 Sec. 504. Section 51-344b of the general statutes is repealed and the
263 following is substituted in lieu thereof (*Effective October 1, 2009*):

264 Whenever the term "judicial district of Hartford" is used or referred
265 to in the following sections of the general statutes, the term "judicial
266 district of New Britain" shall be substituted in lieu thereof: Subsection
267 (b) of section 3-70a, sections 3-71a and 4-164, subsection (c) of section 4-
268 183, subdivision (4) of subsection (g) of section 10-153e, subparagraph
269 (C) of subdivision (4) of subsection (e) of section 10a-109n, sections 12-

270 3a, 12-89, 12-103, 12-208, 12-237, 12-242hh, 12-242ii, 12-242kk, 12-268l,
271 12-307, 12-312, 12-330m, 12-405k, 12-422, 12-448, 12-454, 12-463, 12-489,
272 12-522, 12-554, 12-586g and 12-597, subsection (b) of section 12-638i,
273 sections 12-730, 14-57, 14-66, 14-195, 14-324, 14-331 and 19a-85,
274 subsection (f) of section 19a-332e, subsection (d) of section 19a-653,
275 sections 20-156, 20-247, 20-307, 20-373, 20-583 and 21a-55, subsection
276 (e) of section 22-7, sections 22-320d and 22-386, subsection [(e)] (f) of
277 section 22a-6b, as amended by this act, section 22a-30, subsection (a) of
278 section 22a-34, subsection (b) of section 22a-34, section 22a-182a,
279 subsection (f) of section 22a-225, sections 22a-227, 22a-344, 22a-374,
280 22a-408 and 22a-449g, subsection (f) of section 25-32e, section 29-158,
281 subsection (f) of section 29-161z, sections 36b-30 and 36b-76, subsection
282 (f) of section 38a-41, section 38a-52, subsection (c) of section 38a-150,
283 sections 38a-185, 38a-209 and 38a-225, subdivision (3) of section 38a-
284 226b, sections 38a-241, 38a-337 and 38a-657, subsection (c) of section
285 38a-774, section 38a-776, subsection (c) of section 38a-817 and section
286 38a-994."