§ 71-1933. Violations; criminal liability.

1. Any person who, having any of the culpable mental states defined in section 15.05 of the penal law, shall violate any of the provisions of titles 1 through 5, 9 through 11 and 19 of article 17 or the rules, regulations, orders or determinations of the commissioner promulgated thereto, or the terms of any permit issued thereunder, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than three thousand seven hundred fifty dollars nor more than thirty-seven thousand five hundred dollars per day of violation or by imprisonment for a term of not more than one year, or by both such fine and imprisonment. If the conviction is for an offense committed after a first conviction of such person under this subdivision, punishment shall be by a fine of not more than seventy-five thousand dollars per day of violation, or by imprisonment for not more than two years, or by both.

2. No prosecution under this section shall be instituted until after final disposition of an appeal or review, if any, provided by section 17-0909 or its predecessor, section 1244 of the Public Health Law.

3. Any person who with criminal negligence, as defined in section 15.05 of the penal law,

a. violates

i. any provision of title 7 or 8 of article 17 of this chapter, or

ii. the rules or regulations promulgated thereunder, or

iii. any term of any permit issued thereunder, or

iv. any requirement imposed in a pretreatment program approved pursuant to section 402(a)(3) or 402(b)(8) of the Federal Water Pollution Control Act (33 USC § 1342(a)(3) or § 1342(b)(8)) or approved pursuant to title 7 or 8 of article 17 of this chapter, or

v. any final administrative orders issued pursuant to this article where an opportunity for a hearing is provided, or

b. introduces into a sewer system or publicly owned treatment works any pollutant or hazardous substance

i. when such person knew that such introduction was likely to cause personal injury or property damage, except if that introduction was in compliance with all applicable federal, state or local requirements or permits, or

ii. which causes the treatment works to violate any term of any permit issued under title 7 or 8 of article 17 of this chapter or the rules or regulations promulgated thereunder except if that introduction was in compliance with all applicable federal, state or local requirements or permits; shall be guilty of a class A misdemeanor.

4. Any person who knowingly, as defined in section 15.05 of the penal law,

a. violates

i. any provision of title 7 or 8 of article 17 of this chapter, or

ii. the rules or regulations promulgated thereunder, or

iii. any term of any permit issued thereunder, or

iv. any requirement imposed in a pretreatment program approved pursuant to section 402(a)(3) or 402(b)(8) of the Federal Water Pollution Control Act (33 USC § 1342(a)(3) or § 1342(b)(8)) or approved pursuant to title 7 or 8 of article 17 of this chapter, or

v. any final administrative orders issued pursuant to this article where an opportunity for a hearing was provided, or

b. introduces into a sewer system or publicly owned treatment works

any pollutant or hazardous substance

i. when such person knew that such introduction was likely to cause personal injury, except if that introduction was in compliance with all applicable federal, state or local requirements or permits, or

ii. which causes the treatment works to violate any term of any permit issued under title 7 or 8 of article 17 of this chapter or the rules or regulations promulgated thereunder except if that introduction was in compliance with all applicable federal, state or local requirements or permits; shall be guilty of a class E felony.

5. Any person who intentionally, as defined in section 15.05 of the penal law,

a. violates

i. any provision of title 7 or 8 of article 17 of this chapter, or

ii. the rules or regulations promulgated thereunder, or

iii. any term of any permit issued thereunder, or

iv. any final administrative orders issued pursuant to this article where an opportunity for a hearing was provided, and

b. knows at that time that he thereby places another person who is not a participant in the crime in imminent danger of death or serious bodily injury shall be guilty of a class C felony.

c. for the purpose of paragraphs a and b of this subdivision:

in determining whether a defendant who is an individual knew that his conduct placed another person in imminent danger of death or serious bodily injury

(a) the person is responsible only for actual awareness or actual belief that he possessed; and

(b) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant.

6. For purposes of subdivisions three, four and five of this section, a single operational upset which leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

7. Any person who, with intent to deceive, makes any false material statement, representation, or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to title 7 or 8 of article 17 of this chapter or who intentionally falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained pursuant to title 7 or 8 or article 17 of this chapter shall be guilty of a class E felony.

8. a. When a person is convicted of a crime under the provisions of this section, the sentence of the court shall be as follows:

i. A fine, as set forth in paragraph b of this subdivision;

ii. A sentence of imprisonment, as set forth in paragraph c of this subdivision; or

iii. Any combination of such fine or imprisonment.

b. Fines. A sentence to pay a fine shall be a sentence to pay an amount fixed by the court, not exceeding:

i. $750,000 for a class C felony committed by an organization as defined in section 71-1932 of this title;

ii. $375,000 for a class C felony;

iii. $75,000 per day of continuing violation for a class E felony defined under subdivision four of this section but in no event less than

$7,500; and $15,000 for a class E felony defined under subdivision seven of this section;

iv. $37,500 per day of continuing violation for a class A misdemeanor but in no event less than $3,750.

c. Imprisonment. A sentence of imprisonment shall be a sentence of imprisonment authorized by article seventy of the penal law.

9. All prosecutions under this section shall be instituted by the department or the commissioner and shall be conducted by the Attorney General in the name of the people of the state of New York.

10. In the prosecution of any criminal proceeding under this section by the Attorney General and, in any proceeding before a grand jury in connection therewith, the Attorney General shall exercise all the powers and perform all the duties which the District Attorney would otherwise be authorized or required to exercise or perform, and in such a proceeding the District Attorney shall exercise such powers and perform such duties as are requested of him by the Attorney General.