§ 1230-g. Special enforcement powers with respect to wastewater facilities. 1. In addition to any other enforcement powers provided by this title or any other provision of law, with respect to the jurisdiction, control, supervision, possession, operation and use of the wastewater system and its facilities and for the administration and enforcement of this title with respect to such waste water system, the water board shall have the enforcement powers provided in this section. The provisions of this section shall be liberally construed so as to effect the purpose of this section to permit the water board to qualify as a publicly-owned treatment works (POTW) under applicable federal and state environmental laws.

2. As used or referred to in this section, unless a different meaning clearly appears from the context:

(a) "Discharge" means any introduction of waste into the wastewater or storm water facilities from any effluent source.

(b) "Domestic sewage" means a combination of wastes from the non-commercial preparation, cooking, and handling of food; human bodily wastes and similar matter from sanitary conveniences in dwellings, commercial buildings, industrial buildings and institutions; or any other wastes from non-commercial, non-industrial or non-institutional activities.

(c) "Effluent source" means a source of introduction of any waste into the wastewater or storm water facilities.

(d) "Hazardous substance" means any substance that:

(i) is identified or listed as a hazardous waste or acute hazardous waste in regulations promulgated pursuant to section 27-0903 of the environmental conservation law and all amendments thereto, regardless of whether at the time of release the substance was actually a waste; or

(ii) appears on the list of substances hazardous or acutely hazardous to public health, safety or the environment in regulation promulgated pursuant to paragraphs (a) and (b) of subdivision one of section 37-0103 of the environmental conservation law and all amendments thereto; and any substance on the list established by the United States environmental protection agency for reporting pursuant to 42 U.S.C. § 11023, as amended.

(d) "Industrial user" means any person or effluent source that

discharges industrial waste.

(e) "Industrial waste" means any liquid, solid, or gaseous substance, or combination thereof, resulting from any process of industrial, commercial, governmental and institutional concerns, manufacturing, business, trade, or research, including the development, recovery, or processing of natural resources, or from sources other than those described as domestic sewage. Groundwater and surface runoff may be considered to be industrial waste if contaminated with industrial process chemical constituents.

(f) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water.

(g) "Sewage" or "wastewater" means any combination of wastes from residences, business buildings, institutions and industrial establishments, together with such ground, surface and storm waters as may be present.

3. (a) The water board shall adopt a schedule of administrative or civil penalties not to exceed ten thousand dollars per violation per day to be assessed against any person who has been finally determined to violate any rules, regulations, permits or orders of the water board made pursuant to this title. In determining the amount of an administrative or civil penalty, the water board or the court shall consider the seriousness of the violation or violations, any history of such violations, any good faith efforts to comply with applicable requirements and such other matters as justice may require. The penalties provided for in this subdivision shall be imposed by action of the water board after a hearing meeting the requirements of due process pursuant to the rules and regulations of the water board.

(b) The water board may bring suit for collection or recovery of any such penalty in any court of competent jurisdiction. Any sanction, penalty, action or cause of action for the recovery of a penalty, under this title, may be settled or compromised by the water board, before or after proceedings are brought to recover such penalties and prior to the entry of judgment thereof. All penalties received by the water board

shall be deposited with the treasurer and applied by the board to the benefit of the water board users and authority bondholders.

(c) In addition to the penalties provided in this subdivision, in the event of a violation or threatened violation of any of the water board's rules, regulations, permits, or orders, the water board is authorized to:

(i) obtain a warrant upon application to any court of competent jurisdiction, based upon reasonable cause and reliable information that such violation is threatened or has occurred, for entry onto a user's premises or effluent source where entry has been denied or obstructed; or

(ii) suspend or revoke any user's discharge permit; or

(iii) discontinue, disconnect or block the person or user's access to the system; or

(iv) obtain an injunction or other judicial relief upon application to a court of competent jurisdiction, to enjoin any person or user from continuing such violation or from carrying out the threat of such violation. In any such suit the court shall have jurisdiction to grant the water board, without bond or undertaking, such prohibitory or mandatory injunctions as the facts may warrant, including prevention or abatement of pollutant discharges, temporary restraining orders or preliminary injunctions; or

(v) recover costs or expenses incurred by the water board for any investigation, sampling, monitoring (enhanced or otherwise), removal and remediation costs or other actual expenses, fees or costs, including attorneys' fees and costs.

The imposition of any sanction or penalty or application for judicial relief, shall not be a bar against, or prerequisite for taking any other action against any person.

4. Notwithstanding any inconsistent provisions of law, whenever the executive director finds, after investigation, that any person is discharging any pollutant, sewage, industrial waste or other waste which, in his judgment, presents an imminent danger to the system facilities, the environment or the public health, safety or welfare of persons and the executive director determines that it would be harmful

to delay action until an opportunity for a hearing can be provided, the executive director may, without prior hearing, order such person by notice, in writing wherever practicable or in such other form as in the executive director's judgment will reasonably notify such person whose practices are intended to be proscribed, to discontinue, abate or alleviate such discharge, and thereupon such person shall immediately discontinue, abate or alleviate such discharge. In the event of non-compliance with such order, the water board is authorized to discontinue, disconnect or block the user's access to the system. Within ten days after the issuance of such order, the water board shall give written notice to any such person which provides for an opportunity for a hearing.

5. (a) Whenever required to carry out the purposes and objectives of this title, including, but not limited to, developing or assisting in the development of any discharge limitation, or other limitation, prohibition or discharge standard, pretreatment standard, or standard of performance; or determining whether any industrial user is in violation of any such discharge limitation, or other limitation, prohibition, discharge standard, pretreatment standard, or standard of performance or the water board's rules, regulations, permits or orders;

(i) the water board may require industrial users to:

(1) establish and maintain such records;

(2) make such reports;

(3) install, use and maintain such monitoring equipment or methods (including where appropriate, biological monitoring equipment or methods);

(4) sample such discharges, in accordance with such methods, at such intervals, and in such manner as the water board shall prescribe in its rules, regulations, permits or orders; and

(5) provide such other information as the water board may reasonably require; and

(ii) except as otherwise provided by a court warrant or order, the water board or its authorized representative, (including an authorized contractor acting as a representative of the water board) upon presentation of his credentials:

(1) shall have a right of entry, at all reasonable times, to, upon, or

through any premises in which any effluent source of an industrial user is located or in which any records are required to be maintained pursuant to this title or any rules, regulations, orders or permits of the water board;

(2) may, at reasonable times during regular business hours, have access to and copy any records required to be maintained pursuant to this title or any rules, regulations, orders or permits of the water board;

(3) may, during all times of industrial user discharges, inspect any monitoring or other equipment or method which is required pursuant to this title or any rules, regulations, orders or permits of the water board; and

(4) may, during all times of industrial user discharges, have access to and sample any discharges or pollutants, resulting directly or indirectly from activities or operations of the industrial user of the premises in which an effluent source is located.

(b) Any records, reports or information obtained under this section shall, in the case of discharge data, be related to any applicable limitation, toxic pretreatment, or performance standards, and shall be available to the public, except that upon a showing satisfactory to the water board by any person that records, reports, or information, or particular portion thereof (other than discharge data), to which the water board has access under this section, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the water board shall consider such record, report, or information, or particular portion thereof confidential, except that such record, report, or information may be disclosed to officers, employees, or authorized representatives of the United States or the state concerned with carrying out the Clean Water Act 33 U.S.C. § 1251 et seq., and any applicable state law related thereto or when relevant to any proceeding under this title or the Clean Water Act, 33 U.S.C. § 1251 et seq., and any applicable state law related thereto.

6. (a) Whenever the water board determines, after investigation, that there has been a violation of any of the provisions of this title or any rules, regulations, orders or permits issued pursuant thereto, the water board shall give notice in writing, in such form as will reasonably

notify the alleged violator or violators setting forth any thing or act done or omitted to be done or claimed to be in violation of any such provisions, and requiring that the matters complained of be corrected. Such notice shall inform the violator of an opportunity for a hearing, or that the alleged violator appear in person or by attorney before the water board, at a reasonable time and place in said notice specified, and show cause why enforcement action should not be taken.

(b) The water board shall establish in its rules and regulations procedures for the conduct of any hearings.

(c) The executive director may designate an agent of the water board or any other person, independent of the water board, to serve and preside as hearing officer.

(d) In any hearing, a hearing officer may administer oaths, examine witnesses, and issue, in the name of the water board, notices of hearings and subpoenas requiring the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in any hearing conducted by the water board.

(e) In any proceeding before the water board, the burden of proof, with respect to violations of or liability imposed by this title or by rules, regulations, orders or permits issued pursuant thereto shall be upon the user or person cited by notice. In any such proof, the water board or the hearing officer may rely upon the self-monitoring reports submitted by the person being investigated or any other evidence.

(f) After due consideration of the written and oral statements, and testimony and arguments, or on default in appearance, the water board may issue and enter such final order to make such final determination as it deems appropriate under the circumstances, and shall notify such person or persons thereof in writing.

(g) In case of contumacy or refusal to obey a notice of hearing or subpoena issued by the water board, the supreme court shall have jurisdiction, upon application of the water board, to issue an order requiring such person to appear and testify or produce evidence as the case may require.