

(H) ANY PERSON REQUIRED TO PAY A PENALTY UNDER THIS SECTION SHALL HAVE THE RIGHT TO A HEARING BUT MAY WAIVE THAT RIGHT IN WRITING.

(I) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PENALTY IMPOSED UNDER THIS SECTION MAY NOT BE:

(I) WAIVED;

(II) REDUCED; OR

(III) USED TO ASSIST THE PENALIZED PERSON IN UPGRADING A SEWAGE TREATMENT PLANT.

(2) A PENALTY IMPOSED UNDER THIS SECTION MAY BE WAIVED BY THE DEPARTMENT:

(I) IF THE DISCHARGE WAS DUE TO:

1. AN ACT OF GOD; OR

2. A POWER OUTAGE OR A MASSIVE DISCHARGE OF ANY POLLUTANT THAT COULD NOT REASONABLY HAVE BEEN ANTICIPATED BY THE OWNER OR OPERATOR OF THE PLANT; OR

(II) AS LONG AS THE SEWAGE TREATMENT PLANT:

1. A. IS IN COMPLIANCE WITH A COMPLIANCE SCHEDULE CONTAINED IN AN ORDER ISSUED BY THE DEPARTMENT; AND

B. MEETS ALL INTERIM EFFLUENT LIMITATIONS ESTABLISHED BY THE DEPARTMENT; OR

2. A. HAS RECENTLY UPGRADED TO MEET MORE STRINGENT STANDARDS AND IS OPERATING UNDER A START-UP PROGRAM AND SCHEDULE APPROVED BY THE DEPARTMENT;

B. IS IMPLEMENTING OPERATIONAL MODIFICATIONS TO ACCOMPLISH BIOLOGICAL NUTRIENT REMOVAL UNDER A PROGRAM AND SCHEDULE APPROVED BY THE DEPARTMENT; OR

C. IS ACCOMPLISHING MAJOR MAINTENANCE OR FACILITY REPAIR UNDER A PROGRAM AND SCHEDULE APPROVED BY THE DEPARTMENT; OR

(III) IF COMPLIANCE WITH THE EFFLUENT LIMITATIONS SET FORTH IN THIS SECTION IS PREVENTED BY A JUDICIAL OR ADMINISTRATIVE ACTION INITIATED BY A PERSON OTHER THAN AN AGENCY RESPONSIBLE FOR REGULATING THE SEWAGE TREATMENT PLANT OR THE OWNER OR OPERATOR OF THE SEWAGE TREATMENT PLANT.