

Chapter 469

(House Bill 1425)

AN ACT concerning

Department of the Environment – Consolidation and Administration of Environmental Funds

FOR the purpose of requiring certain penalties recovered by State agencies for violations of sediment control laws to be deposited in the Maryland Clean Water Fund; requiring certain other penalties collected for violations of certain provisions of the sediment control law to be deposited in the Maryland Clean Water Fund; repealing the Sewage Sludge Utilization Fund and requiring certain fees, funds, penalties, and fines to be deposited in the Maryland Clean Water Fund; altering the uses of the Maryland Clean Water Fund; ~~requiring certain costs incurred by the Department of the Environment for responding to certain situations to be reimbursed to the Department and paid into the Maryland Clean Water Fund;~~ requiring certain expenditures for the emergency removal of sewage sludge to be reimbursed to the Department by the sewage sludge utilizer under certain circumstances; authorizing the Attorney General to bring a certain action to recover certain costs and interest under certain circumstances; providing for the transfer of certain funds to the Maryland Clean Water Fund; and generally relating to the administration and consolidation of environmental funds in the Department of the Environment.

BY repealing and reenacting, without amendments,
Article – Environment
Section 1–301(d)(1)
Annotated Code of Maryland
(2007 Replacement Volume and 2009 Supplement)

BY repealing and reenacting, with amendments,
Article – Environment
Section 1–301(d)(2), 4–116, 9–244, 9–269, and 9–320
Annotated Code of Maryland
(2007 Replacement Volume and 2009 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Environment

1–301.

(d) (1) (i) On or before October 1 of each year, the Secretary, in consultation with the Attorney General, shall submit to the Legislative Policy Committee, in accordance with § 2–1246 of the State Government Article, a report on enforcement activities conducted by the Department during the previous fiscal year.

(ii) The report shall:

1. Include the information required under this subsection and any additional information concerning environmental enforcement that the Secretary decides to provide;

2. Be available to the public as soon as it is forwarded to the Legislative Policy Committee;

3. Include information on the total number of permits and licenses issued by or filed with the Department at any time and still in effect as of the last date of the fiscal year immediately preceding the date on which the report is filed;

4. Include information concerning specific enforcement actions taken with respect to the permits and licenses during the immediately preceding fiscal year; and

5. Include information on the type and number of contacts or consultations with businesses concerning compliance with State environmental laws.

(iii) The information required in the report under paragraph (3) of this subsection shall be organized according to each program specified.

(2) The report shall state the total amount of money as a result of enforcement actions, as of the end of the immediately preceding fiscal year:

(i) Deposited in the Maryland Clean Air Fund;

(ii) Deposited in the Maryland Oil Disaster Containment, Clean-Up and Contingency Fund;

(iii) Deposited in the Nontidal Wetland Compensation Fund;

(iv) Deposited in the Maryland Hazardous Substance Control Fund;

(v) Recovered by the Department from responsible parties in accordance with § 7–221 of this article; **AND**

- [(vi) Deposited in the Sewage Sludge Utilization Fund; and
- (vii)] **(VI)** Deposited in the Maryland Clean Water Fund.

4-116.

(a) (1) Any person who violates any provision of this subtitle is guilty of a misdemeanor, and upon conviction in a court of competent jurisdiction is subject to a fine not exceeding \$10,000 or imprisonment not exceeding one year or both for each violation with costs imposed in the discretion of the court.

(2) The court may order the person to restore the area unlawfully disturbed.

(3) Each day upon which the violation occurs constitutes a separate offense.

(b) Any agency whose approval is required under this subtitle or any interested person may seek an injunction against any person who violates or threatens to violate any provision of this subtitle.

(c) (1) In addition to any other sanction under this subtitle, the appropriate State, county, or municipal agency may bring a civil action against a person for a violation of this subtitle.

(2) (i) The action may seek the imposition of a civil penalty up to \$10,000 for each violation.

(ii) In imposing a penalty under this paragraph, the court may consider the cost of restoring the area unlawfully disturbed.

(3) **(I)** A [State,] county[,] or municipal agency that recovers penalties in accordance with this subtitle shall deposit them in a special fund, to be used solely for:

[(i)] **1.** Correcting to the extent possible the failure to implement or maintain erosion and sediment controls; and

[(ii)] **2.** Administration of the sediment control program.

(II) A STATE AGENCY THAT RECOVERS PENALTIES IN ACCORDANCE WITH THIS SUBTITLE SHALL DEPOSIT THEM INTO THE MARYLAND CLEAN WATER FUND ESTABLISHED UNDER § 9-320 OF THIS ARTICLE.

(d) If a county or municipality fails to enforce any provision of this subtitle, the Department may request the Attorney General to take appropriate legal action to correct the violation and to recover penalties or fees under this section.

(e) (1) In addition to any other remedies available at law or in equity and after an opportunity for a hearing which may be waived in writing by the person accused of a violation, the Department may impose a penalty on any person who violates any provision of this subtitle or any regulation or plan adopted, approved, or issued under this subtitle. Any request for a hearing on a penalty issued under this subsection must be made in writing no later than 10 working days after receipt of the notice assessing a penalty.

(2) The penalty imposed on a person under this subsection shall be:

(i) Up to \$1,000 for each violation, but not exceeding \$20,000 total for any action; and

(ii) Assessed with consideration given to:

1. The willfulness of the violation, the extent to which the existence of the violation was known to but uncorrected by the violator, and the extent to which the violator exercised reasonable care;

2. Any actual harm to the environment or to human health, including injury to or impairment of the use of the waters of this State or the natural resources of this State;

3. The cost of cleanup and the cost of restoration of natural resources;

4. The nature and degree of injury to or interference with general welfare, health, and property;

5. The extent to which the location of the violation, including location near waters of this State or areas of human population, creates the potential for harm to the environment or to human health or safety;

6. The available technology and economic reasonableness of controlling, reducing, or eliminating the violation;

7. The degree of hazard posed by the particular pollutant or pollutants involved;

8. The extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator; and

9. Whether or not penalties were assessed or will be assessed under other provisions of this subtitle.

(3) Each day a violation occurs is a separate violation under this subsection.

(4) Any penalty imposed under this subsection is payable to the State and collectible in any manner provided at law for the collection of penalties.

(5) Any penalty collected under this subsection or for a violation of § 4-413 of this title shall be placed in the [special fund] **MARYLAND CLEAN WATER FUND ESTABLISHED** under [paragraph (c)(3) of this section] **§ 9-320 OF THIS ARTICLE.**

9-244.

[(a) There is a Sewage Sludge Utilization Fund.

(b) (1) The Department shall credit all sewage sludge generator's fees, permit application fees, funds that the Department collects under this Part III and §§ 9-269 and 9-270 of this subtitle, and any civil or administrative penalty or fine imposed by a court under the provisions of this subtitle to the [Sewage Sludge Utilization Fund] **MARYLAND CLEAN WATER FUND ESTABLISHED UNDER § 9-320 OF THIS TITLE.**

[(2) The Sewage Sludge Utilization Fund is limited to a maximum of \$400,000.

(3) The Department shall set aside 25% of the Sewage Sludge Utilization Fund for emergency removal of sewage sludge or mitigation of any adverse environmental effect.

(4) Whenever the sum of unallocated funds in the Sewage Sludge Utilization Fund and the projected sewage sludge generator's fees for the next fiscal year exceeds \$400,000, the Department shall adjust the generator's fees for the next fiscal year on a pro rata basis so that the sum of unallocated funds and actual generator's fees does not exceed \$400,000.

(c) The Department shall use the Sewage Sludge Utilization Fund for:

(1) Emergency removal of sewage sludge or mitigation of the effect of any utilization of sewage sludge that the Department finds:

(i) Endangers public health, safety, or welfare; or

(ii) Endangers or damages natural resources;

(2) Activities that are:

(i) Conducted by the Department, by a local health official, or by the local health official's designee under § 9-243(e) of this subtitle; and

(ii) Related to identifying, monitoring, or regulating the utilization of sewage sludge, including program development; and

(3) Providing supplemental inspections and monitoring of sewage sludge utilization sites by:

(i) Contracting with a county upon request of that county to provide supplemental inspections and monitoring; and

(ii) Limiting the value of services provided under the contract to no more than 45 percent of the generator fees for sludge utilized in that county that is generated outside of that county or service area.

(d) An expenditure that the Department makes under subsection (c)(1) of this section shall be reimbursed to the Department by the sewage sludge utilizer whose sewage sludge utilization brought about the expenditure by:

(1) Endangering public health, safety, or welfare; or

(2) Endangering or damaging natural resources.

(e) In addition to any other legal action authorized by this Part III, § 9-269, or § 9-270 of this subtitle, the Attorney General may bring an action against any person who fails to reimburse the Department under subsection (d) of this section to recover any expenditure that the Department makes under subsection (c)(1) of this section.]

9-269.

(a) (1) A person who violates any provision of Part III of this subtitle or any rule, regulation, order, or permit adopted or issued under Part III of this subtitle is liable to the State for civil penalties.

(2) These civil penalties are:

(i) A basic civil penalty not exceeding \$10,000; and

(ii) An additional penalty not exceeding \$10,000 a day for each day that the violation continues, up to a maximum of \$50,000.

(3) The State shall recover the civil penalties under this section in a civil action.

(b) (1) In addition to any other remedies available at law or in equity and after an opportunity for a hearing which may be waived in writing by the person accused of a violation, the Department may impose a penalty for violation of any provision of Part III of this subtitle or any regulation, order, or permit adopted or issued under Part III of this subtitle.

(2) The penalty imposed on a person under this subsection shall be:

(i) Up to \$1,000 for each violation, but not exceeding \$50,000 total; and

(ii) Assessed with consideration given to:

1. The willfulness of the violation, the extent to which the existence of the violation was known to but uncorrected by the violator, and the extent to which the violator exercised reasonable care;

2. Any actual harm to the environment or to human health, including injury to or impairment of the use of the waters of the State or the natural resources of the State;

3. The cost of cleanup and the cost of restoration of natural resources;

4. The nature and degree of injury to or interference with general welfare, health, and property;

5. The extent to which the location of the violation, including location near waters of the State or areas of human population, creates the potential for harm to the environment or to human health or safety;

6. The available technology and economic reasonableness of controlling, reducing, or eliminating the violation; and

7. The extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator.

(3) Each day a violation occurs is a separate violation under this subsection.

(4) Any penalty imposed under this subsection is payable to the State and collectible in any manner provided by law for the collection of debts.

(5) If any person who is liable to pay a penalty imposed under this subsection fails to pay it after demand, the amount, together with interest and any costs that may accrue, shall be:

(i) A lien in favor of the State on any property, real or personal, of the person; and

(ii) Recorded in the office of the clerk of court for the county in which the property is located.

(6) Any penalty collected under this subsection shall be placed in the [Sewage Sludge Utilization] **MARYLAND CLEAN WATER** Fund under [§ 9–244 of this subtitle] **§ 9–320 OF THIS TITLE**.

(c) (1) Except as provided in paragraph (3) of this subsection, in addition to any other penalties set forth in this section, if any sewage sludge utilizer violates the terms of the permit by any action or inaction of the utilizer that results in the return of the sewage sludge to the generator, the utilizer is liable to the State for civil penalties.

(2) The civil penalty imposed under this subsection may not exceed \$100 for each wet ton of sewage sludge returned to the generator.

(3) The provisions of this subsection do not apply if the violation is not caused by any action or inaction of the utilizer.

9–320.

(a) There is a Maryland Clean Water Fund.

(b) The following payments shall be made into the Maryland Clean Water Fund:

(1) All application fees, permit fees, renewal fees, and funds collected by the Department under this subtitle, including any civil or administrative penalty or any fine imposed by a court under the provisions of this subtitle; ~~and~~

(2) Any civil penalty or any fine imposed by a court under the provisions of Title 5, Subtitle 5 of this article relating to water appropriation and use;

(3) ANY CIVIL OR ADMINISTRATIVE PENALTY OR ANY FINE IMPOSED BY A COURT UNDER THE PROVISIONS OF TITLE 4, SUBTITLE 1 OF THIS ARTICLE; AND

(4) ANY FEES OR FUNDS THAT THE DEPARTMENT COLLECTS UNDER SUBTITLE 2, PART III OF THIS TITLE AND §§ 9-269 AND 9-270 OF THIS TITLE AND ANY CIVIL OR ADMINISTRATIVE PENALTY OR FINE IMPOSED BY A COURT UNDER THE PROVISIONS OF SUBTITLE 2 OF THIS TITLE.

(c) The Department shall use the Maryland Clean Water Fund for activities that are related to ~~THE CONSERVATION, MANAGEMENT, AND RESTORATION OF THE WETLANDS AND WATERS OF THE STATE, INCLUDING:~~

(1) The identification, monitoring, and regulation of the proper discharge of effluent into the waters of the State including program development of these activities as provided by the State budget; [and]

(2) The management, conservation, protection, and preservation of the State's groundwater and surface water including program development of these activities as provided by the State budget;

~~(3) RESPONDING TO THE POLLUTION OR DESTRUCTION OF WETLANDS AND WATERS OF THE STATE AT OR FROM A PARTICULAR SITE, INCLUDING THE RESTORATION OF NATURAL RESOURCES WHERE FEASIBLE, AND SITE MAINTENANCE AND MONITORING;~~

~~(4)~~ **(3) CORRECTING TO THE EXTENT POSSIBLE THE FAILURE TO IMPLEMENT OR MAINTAIN EROSION AND SEDIMENT CONTROLS;**

~~(5)~~ **(4) ADMINISTRATION OF THE SEDIMENT CONTROL PROGRAM;**

~~(6)~~ **(5) EMERGENCY REMOVAL OF SEWAGE SLUDGE OR MITIGATION OF THE EFFECT OF ANY UTILIZATION OF SEWAGE SLUDGE THAT THE DEPARTMENT FINDS:**

(I) ENDANGERS PUBLIC HEALTH, SAFETY, OR WELFARE; OR

(II) ENDANGERS OR DAMAGES NATURAL RESOURCES;

~~(7)~~ **(6) ACTIVITIES THAT ARE:**

(I) CONDUCTED BY THE DEPARTMENT, BY A LOCAL HEALTH OFFICIAL, OR BY THE LOCAL HEALTH OFFICIAL'S DESIGNEE UNDER § 9-243(E) OF THIS TITLE; AND

(II) RELATED TO IDENTIFYING, MONITORING, OR REGULATING THE UTILIZATION OF SEWAGE SLUDGE, INCLUDING PROGRAM DEVELOPMENT; AND

~~(8)~~ (7) PROVIDING SUPPLEMENTAL INSPECTIONS AND MONITORING OF SEWAGE SLUDGE UTILIZATION SITES BY:

(I) CONTRACTING WITH A COUNTY ON REQUEST OF THAT COUNTY TO PROVIDE SUPPLEMENTAL INSPECTIONS AND MONITORING; AND

(II) LIMITING THE VALUE OF SERVICES PROVIDED UNDER THE CONTRACT TO NO MORE THAN 45% OF THE GENERATOR FEES FOR SLUDGE UTILIZED IN THAT COUNTY THAT IS GENERATED OUTSIDE OF THAT COUNTY OR SERVICE AREA.

~~(D) (1) ALL COSTS INCURRED BY THE DEPARTMENT UNDER SUBSECTION (C)(3) OF THIS SECTION NOT OTHERWISE RECOVERED UNDER ANY STATE OR FEDERAL LAWS OR REGULATIONS SHALL BE REIMBURSED TO THE DEPARTMENT BY ANY PERSON WHO CAUSED OR CONTRIBUTED TO POLLUTION OR DESTRUCTION OF WETLAND OR WATERS OF THE STATE.~~

~~(2) RECOVERIES COLLECTED UNDER THIS SUBSECTION SHALL BE PAID INTO THE MARYLAND CLEAN WATER FUND.~~

~~(3) IN ADDITION TO ANY OTHER LEGAL ACTION AUTHORIZED BY THIS SUBTITLE, THE ATTORNEY GENERAL MAY BRING AN ACTION TO RECOVER COSTS AND INTEREST FROM ANY PERSON WHO FAILS TO MAKE REIMBURSEMENT AS REQUIRED UNDER SUBSECTION (H)(1) OF THIS SECTION.~~

~~(E) (D)~~ AN EXPENDITURE THAT THE DEPARTMENT MAKES UNDER SUBSECTION ~~(C)(6)~~ (C)(5) OF THIS SECTION SHALL BE REIMBURSED TO THE DEPARTMENT BY THE SEWAGE SLUDGE UTILIZER WHOSE SEWAGE SLUDGE UTILIZATION BROUGHT ABOUT THE EXPENDITURE BY:

(1) ENDANGERING PUBLIC HEALTH, SAFETY, OR WELFARE; OR

(2) ENDANGERING OR DAMAGING NATURAL RESOURCES.

~~(F) (E)~~ IN ADDITION TO ANY OTHER LEGAL ACTION AUTHORIZED BY THIS SUBTITLE, THE ATTORNEY GENERAL MAY BRING AN ACTION AGAINST ANY PERSON WHO FAILS TO REIMBURSE THE DEPARTMENT UNDER SUBSECTION (D) OF THIS SECTION TO RECOVER ANY EXPENDITURE THAT THE DEPARTMENT MAKES UNDER SUBSECTION ~~(C)(6)~~ (C)(5) OF THIS SECTION.

[(d)] ~~(G)~~ **(F)** In determining the use of the Maryland Clean Water Fund, priority shall be given to activities relating to the water quality of the Chesapeake Bay and its tributaries.

[(e)] ~~(H)~~ **(G)** Notwithstanding any law to the contrary, [unexpended moneys in the Fund shall not revert to the general treasury at the end of a fiscal year] **FUNDS CREDITED AND ANY INTEREST ACCRUED TO THE FUND:**

(1) SHALL REMAIN AVAILABLE UNTIL EXPENDED; AND

(2) MAY NOT BE REVERTED TO THE GENERAL FUND UNDER ANY OTHER PROVISION OF LAW.

SECTION 2. AND BE IT FURTHER ENACTED, That any outstanding balance in the Sewage Sludge Utilization Fund on June 30, 2010, be transferred to the Maryland Clean Water Fund under § 9-320 of the Environment Article, as enacted by Section 1 of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2010.

Approved by the Governor, May 4, 2010.