

SENATE BILL 1097

M3

2lr3384

By: **Senator Reilly**

Constitutional Requirements Complied with for Introduction in the last 35 Days of Session

Introduced and read first time: March 14, 2012

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Water Pollution Control and Abatement – Coal Combustion By-Products and**
3 **Water Pollutants**

4 FOR the purpose of expanding the water pollution control and abatement program to
5 apply to coal combustion by-products and other water pollutants as deemed
6 necessary by the Department of the Environment; authorizing the Department
7 to identify water pollutants to be regulated under this Act; requiring the
8 Department to adopt certain regulations relating to water pollutants;
9 authorizing the Department to adopt certain regulations relating to coal
10 combustion by-products; making a certain person personally responsible,
11 severally responsible, or both, for the cleanup and abatement of certain effects
12 of water pollutants; requiring the person responsible for discharging a water
13 pollutant to provide an uncontaminated water supply to a certain person;
14 requiring a person that has knowledge of a water pollutant discharge to notify
15 the Department of the discharge; requiring the Department to notify a certain
16 health department of certain contaminants found in samples from a private well
17 that is within a certain distance of a certain site within a certain period of time;
18 adding to the list of contaminants that requires notification by the Department;
19 altering the distance that a property is located from a sample site that requires
20 notification from the Department; requiring a person responsible for
21 groundwater contamination to provide certain samples to the Department
22 under certain circumstances; authorizing a certain person to obtain judicial
23 review; requiring that certain money be used for certain coal combustion
24 by-product purposes; requiring the Department to adopt regulations for the use
25 of certain money to be used for coal combustion by-product purposes; stating
26 that the acceleration of coal combustion by-product migration in groundwater
27 due to certain circumstances is not a defense to a certain action; adding to the
28 list of factors that are taken into consideration when assessing certain
29 penalties; defining certain terms; making stylistic changes; and generally

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 relating to the control and abatement of coal combustion by-products and water
2 pollutants.

3 BY repealing and reenacting, without amendments,
4 Article – Environment
5 Section 4–401(a)
6 Annotated Code of Maryland
7 (2007 Replacement Volume and 2011 Supplement)

8 BY repealing and reenacting, with amendments,
9 Article – Environment
10 Section 4–401(b), (c), (d), (g), (j), and (k), 4–402, 4–405, 4–406, 4–408, 4–409(a),
11 4–410(a) and (b), 4–411.2, 4–412(b), 4–415.1, 4–417, and 4–418
12 Annotated Code of Maryland
13 (2007 Replacement Volume and 2011 Supplement)

14 BY adding to
15 Article – Environment
16 Section 4–401(b–1) and (m)
17 Annotated Code of Maryland
18 (2007 Replacement Volume and 2011 Supplement)

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

21 **Article – Environment**

22 4–401.

23 (a) In this subtitle the following words have the meanings indicated.

24 (b) “Cleanup” means abatement, containment, removal, and disposal of [oil]
25 **A WATER POLLUTANT** and the restoration of the environment to its existing state
26 prior to a discharge **OF A WATER POLLUTANT**.

27 **(B–1) (1) “COAL COMBUSTION BY–PRODUCT” HAS THE MEANING**
28 **STATED IN § 9–281 OF THIS ARTICLE.**

29 **(2) “COAL COMBUSTION BY–PRODUCT” INCLUDES COAL MILL**
30 **REJECTS.**

31 (c) (1) “Damages” means any damages for which liability exists under the
32 laws of this State resulting from, arising out of, or related to the discharge or
33 threatened discharge of [oil] **A WATER POLLUTANT**.

34 (2) In addition, “damages” includes:

- 1 (i) The cost of assessing the damages;
- 2 (ii) Damages for injury to, destruction of, loss of, or loss of use of
3 natural resources, including the reasonable costs of assessing the damage;
- 4 (iii) Damages for injury to or economic losses resulting from the
5 destruction of real or personal property that shall be recoverable by a claimant who
6 owns or leases that property;
- 7 (iv) Damages for loss of subsistence use of natural resources,
8 that shall be recoverable by any claimant who so uses natural resources that have
9 been injured, destroyed, or lost, without regard to the ownership or management of
10 the resources;
- 11 (v) Damages equal to the net loss of taxes, royalties, rents, fees,
12 or net profit shares due to the injury, destruction, or loss of real property, personal
13 property, or natural resources, that shall be recoverable by the State or a political
14 subdivision of the State;
- 15 (vi) Damages equal to the loss of profits or impairment of
16 earning capacity due to the injury, destruction, or loss of real property, personal
17 property, or natural resources, that shall be recoverable by any claimant; and
- 18 (vii) Damages for net costs of providing increased or additional
19 public services during or after removal activities, including protection from fire, safety,
20 or health hazards caused by a discharge of oil, that shall be recoverable by the State or
21 a political subdivision of the State.
- 22 (d) “Discharge” means the addition, introduction, leaking, **LEACHING**,
23 spilling, or emitting **OF** any [oil] **WATER POLLUTANT** to State waters or the placing of
24 any [oil] **WATER POLLUTANT** in a location where it is likely to reach State waters.
- 25 (g) (1) “Management” means directing or controlling operations at a site
26 or facility related to the **PLACEMENT**, storage, or discharge of [oil] **A WATER**
27 **POLLUTANT**.
- 28 (2) “Management” does not include rendering advice on financial
29 matters, rendering financial assistance, or actions taken to protect or secure a site or
30 facility or property located on the site or at the facility, if the advice, assistance, or
31 actions do not involve the **PLACEMENT**, storage, disposal, or remediation of **A**
32 discharged [oil] **WATER POLLUTANT**.
- 33 (j) (1) “Person responsible for the discharge” includes:

1 (i) The owner of the discharged oil, **THE GENERATOR OF THE**
2 **DISCHARGED COAL COMBUSTION BY-PRODUCT, OR THE OWNER OR GENERATOR**
3 **OF OTHER WATER POLLUTANTS;**

4 (ii) The owner, operator, or person in charge of:

5 1. [the] **THE** oil storage facility, vessel, barge, or vehicle
6 involved in the discharge at the time of or immediately before the discharge; [and] **OR**

7 2. **THE SITE OR FACILITY THAT DISCHARGES COAL**
8 **COMBUSTION BY-PRODUCTS OR OTHER WATER POLLUTANTS; AND**

9 (iii) Any other person who through act or omission causes the
10 discharge.

11 (2) "Person responsible for the discharge" does not include:

12 (i) A person who, without participating in the management of
13 an underground oil storage tank, and who otherwise is not engaged in petroleum
14 production, refining, or marketing, holds indicia of ownership in an underground oil
15 storage tank primarily to protect its security interest in that underground oil storage
16 tank if that person:

17 1. Has not foreclosed on its security interest in the
18 underground oil storage tank; or

19 2. Abandoned that underground oil storage tank under
20 regulations of the Department within 180 days of acquiring the tank through
21 foreclosure or other means;

22 (ii) A holder of a mortgage or deed of trust who acquires title to
23 a property that is subject to a corrective action plan approved by the Department
24 under this subtitle provided that the holder complies with the requirements,
25 prohibitions, and conditions of the plan;

26 (iii) Subject to paragraph (3) of this subsection, a lender who
27 extends credit for the performance of removal or remedial actions conducted in
28 accordance with requirements imposed under this title who:

29 1. Has not caused or contributed to a discharge of [oil] **A**
30 **WATER POLLUTANT;** and

31 2. Previous to extending that credit, is not a person
32 responsible for the discharge at the site; or

1 (iv) Subject to paragraph (3) of this subsection, a lender who
2 takes action to protect or preserve a mortgage or deed of trust on a site or a security
3 interest in property located on a site at which a discharge of [oil] **A WATER**
4 **POLLUTANT** has occurred, by stabilizing, containing, removing, or preventing the
5 discharge of [oil] **A WATER POLLUTANT** in a manner that does not cause or contribute
6 to a discharge of [oil] **A WATER POLLUTANT** if:

7 1. The lender provides advance written notice of its
8 actions to the Department or in the event of an emergency in which action is required
9 within 2 hours, provides notice by telephone;

10 2. The lender, previous to taking the action, is not a
11 person responsible for the discharge at the site; and

12 3. The action does not violate a provision of this article.

13 (3) A lender taking action to protect or preserve a mortgage or deed of
14 trust or security interest in property located on a site, who causes or contributes to a
15 discharge of [oil] **A WATER POLLUTANT** shall be liable solely for costs incurred in
16 response to the discharge which the lender caused or to which the lender contributed
17 unless the lender was a person responsible for the discharge before acquiring a
18 mortgage, deed of trust, or security interest in the site or property located on the site.

19 (k) “Removal costs” means the costs of:

20 (1) [removal] **REMOVAL** that are incurred after a discharge of oil has
21 occurred;

22 (2) **CONTAINMENT, CAPTURE, OR TREATMENT THAT ARE**
23 **INCURRED AFTER A DISCHARGE OF COAL COMBUSTION BY-PRODUCTS HAS**
24 **OCCURRED; or[,]**

25 (3) **PREVENTING, MINIMIZING, OR MITIGATING WATER**
26 **POLLUTION** in any case where there is a substantial threat of a discharge of [oil, the
27 costs to prevent, minimize, or mitigate oil pollution] **A WATER POLLUTANT** from such
28 an incident.

29 (m) “**WATER POLLUTANT**” MEANS:

30 (1) **OIL;**

31 (2) **COAL COMBUSTION BY-PRODUCTS; OR**

32 (3) **ANY OTHER SUBSTANCE DETERMINED BY THE DEPARTMENT**
33 **TO BE A WATER POLLUTANT.**

1 4-402.

2 (A) Because the quality of the waters of this State is vital to the public and
3 private interests of its citizens and because pollution constitutes a menace to public
4 health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic
5 life, and impairs domestic, agricultural, industrial, recreational, and other legitimate
6 beneficial uses of water, and the problem of water pollution in this State is closely
7 related to the problem of water pollution in adjoining states, it is State public policy to
8 improve, conserve, and manage the quality of the waters of the State and protect,
9 maintain, and improve the quality of water for public supplies, propagation of wildlife,
10 fish and aquatic life, and domestic, agricultural, industrial, recreational, and other
11 legitimate beneficial uses.

12 (B) [Also, it] **IT** is State public policy to:

13 (1) [provide] **PROVIDE** that no waste **OR WATER POLLUTANT** is
14 discharged into any waters of this State without first receiving necessary treatment or
15 other corrective action to protect the legitimate beneficial uses of this State's
16 waters[.]; and

17 (2) [to provide] **PROVIDE** and promote[, through innovative and
18 alternative methods of waste and wastewater treatment,] prevention, abatement, and
19 control of new or existing water pollution **THROUGH INNOVATIVE AND
20 ALTERNATIVE METHODS OF TREATMENT, INCLUDING WASTE AND WASTEWATER
21 TREATMENT.**

22 (C) The Department shall cooperate with the agencies of other states and the
23 federal government in carrying out these objectives.

24 4-405.

25 (a) For the purposes of this subtitle, the Department of the Environment
26 shall have and may exercise the following powers and duties:

27 (1) General supervision over the administration and enforcement of
28 this subtitle and all rules, regulations, and orders promulgated pursuant to it;

29 (2) Develop comprehensive programs and plans for prevention,
30 control, and abatement of pollution of the waters of the State by oil, **COAL
31 COMBUSTION BY-PRODUCTS, OTHER WATER POLLUTANTS, OR** sediment;

32 (3) Advise, consult, and cooperate with other units of the State, the
33 federal government, other state and interstate agencies, affected groups, political
34 subdivisions, and industries to further the purposes of this subtitle;

1 (4) Accept and administer loans and grants from the federal
2 government and other sources, public or private, to carry out any of its functions;

3 (5) Encourage, participate in, finance, or conduct studies,
4 investigations, research, and demonstrations relating to water pollution and its
5 causes, prevention, control, and abatement;

6 (6) Collect and disseminate information relating to water pollution
7 and its prevention, control, and abatement;

8 (7) Adopt, modify, repeal, and promulgate, after due notice and
9 hearing, and enforce rules and regulations implementing or effectuating its powers
10 and duties;

11 (8) Hold hearings, issue notices of hearing and subpoenas requiring
12 the attendance of witnesses and production of evidence, administer oaths, and take
13 necessary testimony; any of these powers may be exercised by the designee of the
14 Secretary; [and]

15 (9) Exercise every incidental power necessary to carry out the
16 purposes of this subtitle; AND

17 (10) IDENTIFY OTHER WATER POLLUTANTS THAT SHOULD BE
18 REGULATED UNDER THIS SUBTITLE.

19 (b) (1) The Department shall prescribe by regulation approved methods,
20 facilities, standards, and devices for transfer, **PLACEMENT**, storage, separating,
21 removing, treating, transporting, or disposing of [oil] **WATER POLLUTANTS** and other
22 unctuous substances to prevent pollution of waters of the State, that may include rules
23 and regulations:

24 (i) Outlining procedures for addressing water pollution
25 episodes or emergencies which constitute an acute danger to health or the
26 environment; and

27 (ii) Requiring:

28 1. Spill **AND DISCHARGE** prevention and response
29 training;

30 2. Spill contingency plans for oil storage facilities,
31 vessels, and barges;

32 3. Spill prevention and containment equipment at oil
33 storage facilities and on vessels and barges or at other locations necessary to control
34 oil spills from vessels or barges;

1 4. Inspection of oil storage facilities, vessels, and barges;

2 5. Escorts for vessels and barges or any other measure
3 in lieu of an escort necessary to detect and control oil spills from tank vessels;

4 6. Detection and control of oil spills from oil storage
5 facilities, vessels, and barges; [and]

6 7. Notification of vessel and barge movement;

7 **8. ADEQUATE PHYSICAL BARRIERS AND OTHER**
8 **MEASURES TO CONTAIN AND PREVENT THE DISCHARGE OF COAL COMBUSTION**
9 **BY-PRODUCTS;**

10 **9. INSPECTION OF SITES ON WHICH COAL**
11 **COMBUSTION BY-PRODUCTS ARE PLACED OR STORED;**

12 **10. DETECTION OF LEACHING AND MIGRATION OF**
13 **COAL COMBUSTION BY-PRODUCTS; AND**

14 **11. ONGOING MONITORING OF THE ACTUAL OR**
15 **THREATENED DISCHARGE OF COAL COMBUSTION BY-PRODUCTS.**

16 (2) A person other than a vessel or barge may not engage in any
17 commercial or industrial operation involving these activities unless the person has:

18 (i) Submitted to the Department satisfactory evidence that the
19 operation meets all applicable county zoning and land use requirements; and

20 (ii) Obtained a permit from the Department indicating that the
21 activities are in conformity with the prescribed rules and regulations.

22 (c) **(1)** Whenever there occurs in the waters of the State any condition
23 indicative of damage to aquatic resources, including, but not limited to, mortality of
24 fish and other aquatic life, the Department shall investigate the incident, determine
25 the nature and extent of the damage, and establish the cause and source of the
26 occurrence.

27 **(2)** The Department shall act on these findings and require repair of
28 any damage done and restoration of water resources to a degree necessary to protect
29 the best interest of the people of the State.

30 **(3)** Any person who is determined to be responsible for the discharge,
31 **LEACHING, or spillage of any [such substance] WATER POLLUTANT** shall be

1 personally [and/or] **RESPONSIBLE**, severally responsible, **OR BOTH** [to immediately]
2 **FOR THE IMMEDIATE** clean up and [abate] **ABATEMENT OF** the effects of the
3 **DISCHARGE, LEACHING, OR** spillage and restore the natural resources of the State.

4 (4) The Department shall assume control of any discharge,
5 **LEACHING**, or spill situation when it determines that the person responsible for the
6 discharge, **LEACHING, OR SPILL** is not acting promptly in a manner appropriate to
7 remove, mitigate, control, or rectify the [spill] **CONDITION**.

8 (5) If the Department believes instituting suit is advisable, it shall
9 turn over to the Attorney General all pertinent information and data.

10 (6) The Attorney General then shall file suit against the person
11 causing the condition.

12 (7) The person shall be jointly and severally liable for the reasonable
13 cost of rehabilitation and restoration of the resources damaged and the cost of
14 eliminating the condition causing the damage, including the environmental monetary
15 value of such resources as established by regulation.

16 4-406.

17 (A) The Department is responsible for developing a program, including
18 training, to enable the State to respond to an emergency oil spillage **OR PRESENCE**
19 **OF A WATER POLLUTANT** in waters of the State.

20 (B) The Department shall coordinate efforts of the various State and local
21 units aiding in the operation and may request the aid of any appropriate federal
22 agency if necessary.

23 4-408.

24 (A) The Department of the Environment shall charge and collect a
25 compensatory fee from the person responsible for any oil spillage **OR FOR THE**
26 **PRESENCE OF A WATER POLLUTANT IN WATERS OF THE STATE**.

27 (B) [This] **THE** fee **ESTABLISHED UNDER SUBSECTION (A) OF THIS**
28 **SECTION** shall cover the costs incurred by any person who responds to an oil spillage
29 **OR THE DISCHARGE, LEACHING, OR SPILLAGE OF OTHER WATER POLLUTANTS**
30 with the authorization of the Department and shall cover the cost of labor, equipment
31 operation, and material necessary to eliminate the residue of oil spillage **OR THE**
32 **PRESENCE OF OTHER WATER POLLUTANTS**, and the cost of restoring the area
33 damaged by the spillage **OR THE WATER POLLUTANT** to its original condition.

1 **(C)** Any compensatory fees collected by the Department for costs incurred by
2 a person authorized to respond to an oil spillage **OR THE DISCHARGE, LEACHING, OR**
3 **SPILLAGE OF OTHER WATER POLLUTANTS** shall be reimbursed to that person by
4 the Department.

5 4-409.

6 (a) The person responsible for the **PRESENCE OF A WATER POLLUTANT IN**
7 **THE WATERS OF THE STATE, INCLUDING AN** oil spillage **OR THE DISCHARGE OF**
8 **OTHER WATER POLLUTANTS**, shall:

9 **(1)** [be] **BE** liable to any other person for any damage to [his] **THE**
10 **PERSON'S** real or personal property directly caused by the **DISCHARGE, LEACHING,**
11 **OR** spillage; **AND**

12 **(2)** **PROVIDE AN UNCONTAMINATED WATER SUPPLY TO A PERSON**
13 **WHOSE WATER SUPPLY HAS BEEN CONTAMINATED WITH THE WATER**
14 **POLLUTANT DISCHARGED, LEACHED, OR SPILLED BY THE PERSON**
15 **RESPONSIBLE.**

16 4-410.

17 (a) Except in case of emergency imperiling life or property, unavoidable
18 accident, collision, or stranding, or as authorized by a permit issued under § 9-323 of
19 this article, it is unlawful for any person to discharge or permit the discharge of [oil] **A**
20 **WATER POLLUTANT** in any manner into or on waters of this State.

21 (b) **(1)** Notwithstanding any provision of this subtitle, [any person
22 discharging or permitting] **A PERSON SHALL REPORT AN INCIDENT IMMEDIATELY**
23 **TO THE DEPARTMENT IF THE PERSON:**

24 **(I)** **DISCHARGES, PERMITS** the discharge [of oil,], **OR HAS**
25 **KNOWLEDGE OF THE DISCHARGE OF A WATER POLLUTANT;** or

26 **(II)** [who either] **EITHER** actively or passively participates in
27 the discharge or spilling of [oil] **A WATER POLLUTANT** either from a land-based
28 installation **OR PLACEMENT**, including aboveground or underground storage tanks,
29 **PITS**, and vehicles in transit, or from any vessel, barge, ship, or boat of any kind, shall
30 report the incident immediately to the Department.

31 **(2)** The person shall remain available until clearance to leave is given
32 by the appropriate officials designated by the Department.

33 4-411.2.

1 (a) Within 14 days of the finding, the Department shall notify the
2 appropriate local health department of a finding that a groundwater monitoring well
3 sample taken from a high-risk groundwater use area, as defined by the Department,
4 **OR FROM A PRIVATE WELL LOCATED WITHIN 1 MILE OF A SITE WHERE A WATER**
5 **POLLUTANT IS STORED, PLACED, OR DISCHARGED**, contains:

6 (1) Methyl tertiary butyl ether at or in excess of 20 parts per billion;

7 (2) Benzene at or in excess of 5 parts per billion; [or]

8 (3) A combination of benzene, toluene, ethyl benzene, and xylene at or
9 in excess of 100 parts per billion; **OR**

10 (4) (I) **SULFATE IN EXCESS OF BACKGROUND LEVELS OR IN**
11 **EXCESS OF A CONCENTRATION AMOUNT TO BE DETERMINED BY THE**
12 **DEPARTMENT; AND**

13 (II) **AT LEAST TWO OF THE FOLLOWING COAL COMBUSTION**
14 **BY-PRODUCT INDICATORS IN EXCESS OF BACKGROUND LEVELS OR IN EXCESS**
15 **OF A CONCENTRATION AMOUNT TO BE DETERMINED BY THE DEPARTMENT:**

16 1. **ALUMINUM;**

17 2. **ANTIMONY;**

18 3. **ARSENIC;**

19 4. **BERYLLIUM;**

20 5. **BORON;**

21 6. **CADMIUM;**

22 7. **CHROMIUM;**

23 8. **COBALT;**

24 9. **COPPER;**

25 10. **LEAD;**

26 11. **MANGANESE;**

27 12. **MERCURY;**

- 1 **13. NICKEL;**
2 **14. SELENIUM;**
3 **15. THALLIUM;**
4 **16. VANADIUM; OR**
5 **17. ZINC.**

6 (b) (1) Except as provided in paragraph (2) of this subsection, the
7 Department shall notify each owner of property within [~~one-half mile~~] **3,500 FEET** of
8 the site from which the sample was taken.

9 (2) If the Department and the local health department agree, the local
10 health department shall give the notice required under this section.

11 (3) The notification shall:

12 (i) Be mailed within 14 days of the receipt of a notice from the
13 Department under subsection (a) of this section;

14 (ii) Be mailed via certified mail; and

15 (iii) Provide the property owner with information regarding the
16 amount of contamination at the site.

17 (c) The person responsible for the release that resulted in the groundwater
18 contamination shall:

19 **(1) [reimburse] REIMBURSE** the Department or the local health
20 department for the costs associated with providing the notice required under
21 subsection (b) of this section; **AND**

22 **(2) WITHIN 14 DAYS OF RECEIPT OF A REQUEST BY THE**
23 **DEPARTMENT OR A LOCAL HEALTH DEPARTMENT, PROVIDE TO THE**
24 **DEPARTMENT SITE SAMPLES OF WATER, SOIL, OIL, COAL COMBUSTION**
25 **BY-PRODUCTS, OR OTHER SUBSTANCES REQUESTED BY THE DEPARTMENT.**

26 4-412.

27 (b) A person aggrieved by **THE ISSUANCE, ENFORCEMENT,**
28 **NONENFORCEMENT, OR NONCOMPLIANCE WITH** an order or permit issued may

1 obtain immediate judicial review under the provisions of §§ 10–222 and 10–223 of the
2 State Government Article and the Maryland Rules.

3 4–415.1.

4 (a) At any reasonable time, to carry out duties under this subtitle, a
5 representative of the Department may enter any **PROPERTY, oil OR COAL**
6 **COMBUSTION BY–PRODUCT** storage facility, **COAL COMBUSTION BY–PRODUCT**
7 **PLACEMENT SITE**, or vessel or barge in or entering upon the waters of the State to
8 discharge or receive a cargo of any bulk oil:

9 (1) To inspect the [vessel, barge, or oil] storage facility, **PLACEMENT**
10 **SITE, VESSEL, OR BARGE AND THE STORAGE FACILITY, PLACEMENT SITE,**
11 **VESSEL, OR BARGE’S RECORDS;**

12 (2) To obtain water, air, or soil samples; and

13 (3) To measure the volume and kinds of substances that are received,
14 [or] stored, **OR DISCHARGED.**

15 (b) The Department may enter any property and assume control of any oil
16 spill **OR WATER POLLUTANT DISCHARGE** situation when it determines that a
17 responsible party is not:

18 (1) Acting promptly to remove the spill **OR DISCHARGE;** or

19 (2) Undertaking removal, **CONTAINMENT**, or mitigation in a manner
20 appropriate to control or rectify the conditions causing the condition.

21 (c) If entry is denied under this section, the Secretary may seek an
22 injunction to enter the facility or property.

23 4–417.

24 (a) Any person who violates any provision of this subtitle, or any rule,
25 regulation, order, or permit issued pursuant thereto, shall be liable for a penalty not
26 exceeding \$25,000 for the violation, which may be recovered in a civil action, and the
27 person may be enjoined from continuing the violation, as provided by this subtitle.
28 Each day upon which the violation occurs constitutes a separate offense.

29 (b) Any person who violates any of the provisions of, or who fails to perform
30 any duty imposed by, this subtitle, or any regulation or order issued under it, or the
31 provisions of any permit of the Department made pursuant to this subtitle is guilty of
32 a misdemeanor, and upon conviction, is subject to a fine not exceeding \$50,000 or by
33 imprisonment not exceeding one year, or both, and, in addition, may be enjoined from
34 continuing the violation. If the conviction is for a violation committed after a first

1 conviction of the person under this subsection, punishment shall be by a fine of not
 2 more than \$50,000 per day of violation or by imprisonment not exceeding two years or
 3 both, and in addition, the person may be enjoined from continuing the violation. Each
 4 day upon which a violation occurs constitutes a separate offense.

5 (c) Any person who knowingly makes any false statement, representation, or
 6 certification in any application, record, report, plan, or other document filed or
 7 required to be maintained under this title, or by any permit, rule, regulation or order
 8 issued under this title, or who falsifies, tampers with, or knowingly renders inaccurate
 9 any monitoring device or method required to be maintained under this title or by any
 10 permit, rule, regulation, or order issued under this title, upon conviction, is subject to
 11 a fine not exceeding \$10,000, or by imprisonment not exceeding six months or both.

12 (d) (1) In addition to any other remedies available at law or in equity, a
 13 civil penalty may be assessed for violation of any provisions of this subtitle, or rules,
 14 regulations, orders or permits issued pursuant thereto.

15 (2) The penalty may be assessed by the Secretary of the Environment,
 16 or a hearing officer designated in writing by the Secretary, after an opportunity for a
 17 hearing which may be waived in writing by the person accused of a violation.

18 (3) (I) The civil penalty assessed shall be up to \$10,000 for each
 19 day of violation, not exceeding a total sum of \$100,000[;].

20 (II) [consideration] IN ASSESSING THE PENALTY,
 21 CONSIDERATION shall be given to the:

- 22 1. [willfulness] **WILLFULNESS** of the violation;
- 23 2. [to the damage] **DAMAGE** or injury to the waters of
 24 the State or the impairment of its uses;
- 25 3. [to the cost] **COST** of [clean-up] **CLEANUP**;
- 26 4. [to the nature] **NATURE** and degree of injury to or
 27 interference with general welfare, health, **ENVIRONMENT**, and property;
- 28 5. [to the suitability] **SUITABILITY** of the waste source
 29 to its geographic location, including priority of location;
- 30 6. [to the available] **AVAILABLE** technology and
 31 economic reasonableness of controlling, reducing, or eliminating the waste; and
- 32 7. [other] **OTHER** relevant factors.

1 **(4)** [It] **THE CIVIL PENALTY** is payable to the State and collectible in
2 any manner provided at law for the collection of debts.

3 **(5)** If any person liable to pay the penalty neglects or refuses to pay it
4 after demand, the amount, together with interest and any costs that may accrue, shall
5 be a lien in favor of the State upon the property, both real and personal, of the person
6 and shall be recorded in the clerk of court's office for the political subdivision in which
7 the property is located.

8 **(6) (I)** Except **AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**
9 **PARAGRAPH AND** for penalties collected for violations of § 4-413 of this subtitle,
10 moneys shall be placed in the Maryland Oil Disaster Containment, Clean-Up and
11 Contingency Fund under § 4-411(f) of this subtitle.

12 **(II) 1. MONEY COLLECTED FOR PENALTIES, FEES, OR**
13 **VIOLATIONS RELATING TO COAL COMBUSTION BY-PRODUCTS SHALL BE USED**
14 **FOR THE CONTAINMENT, CLEANUP, REMOVAL, RESTORATION, AND MITIGATION**
15 **OF COAL COMBUSTION BY-PRODUCTS.**

16 **2. THE DEPARTMENT SHALL ADOPT REGULATIONS**
17 **TO IMPLEMENT THE PROVISIONS OF THIS SUBPARAGRAPH.**

18 4-418.

19 **(a)** Any person responsible for a discharge of [oil] **A WATER POLLUTANT** in
20 violation of § 4-410(a) or (b) of this subtitle is:

21 **(1)** Guilty of a misdemeanor and on conviction is subject to a fine or
22 imprisonment or both for each offense as provided in § 4-417(b) of this subtitle;

23 **(2)** Subject to the civil penalties set forth in § 4-417(a) of this subtitle;
24 and

25 **(3)** Liable for the pecuniary penalty specified in § 4-417(d) of this
26 subtitle.

27 **(b)** In addition to any other civil, criminal, or administrative penalty
28 available, a person responsible for a discharge who violates § 4-410(a) or (b) of this
29 subtitle in connection with a discharge or spill of oil exceeding 25,000 gallons is liable
30 for a penalty, which may be recovered in a civil action, of up to \$100 for each gallon
31 discharged or spilled.

32 **(c)** Clearance of a vessel or barge from a port of the State may be withheld
33 until all penalties assessed under this subtitle and all compensatory fees charged
34 under § 4-408 of this subtitle are paid. The penalties and compensatory fees constitute
35 a lien on the vessel.

1 **(D) IT IS NOT A DEFENSE TO AN ACTION UNDER SUBSECTION (A) OF**
2 **THIS SECTION THAT THE MIGRATION OF A COAL COMBUSTION BY-PRODUCT**
3 **THROUGH GROUNDWATER IS ACCELERATED DUE TO EXISTING GROUNDWATER**
4 **CONDITIONS.**

5 **[(d)] (E) (1) [All] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
6 **SECTION, ALL** penalties collected under this section shall be paid into the Maryland
7 Oil Disaster Containment, Clean-Up and Contingency Fund.

8 **(2) PENALTIES COLLECTED UNDER THIS SECTION THAT RELATE**
9 **TO COAL COMBUSTION BY-PRODUCTS SHALL BE USED IN ACCORDANCE WITH §**
10 **4-417(D)(6)(II) OF THIS SUBTITLE.**

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2012.