

HOUSE BILL 295

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2002 Regular Session
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By: **The Speaker (Administration)**
Introduced and read first time: January 23, 2002
Assigned to: Environmental Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 23, 2002

CHAPTER 435

1 AN ACT concerning

2 **~~Administrative Penalties and Cost Recovery~~ – Air Quality and Radiation ;**
3 **Penalties**

4 FOR the purpose of ~~altering the amount of certain penalties that the Department of~~
5 ~~the Environment is authorized to impose for violations of certain provisions of~~
6 ~~law relating to air quality; repealing a certain cap on the amount of penalties~~
7 ~~that may be imposed for any single administrative hearing; authorizing the use~~
8 ~~of the Maryland Clean Air Fund and the State Radiation Control Fund for~~
9 ~~certain costs related to emergency response, environmental monitoring, and~~
10 ~~related activities; authorizing recovery of certain costs and requiring~~
11 ~~reimbursement of the funds for certain expenses; providing for a three year~~
12 ~~statute of limitations for a criminal prosecution or a civil action to collect a civil~~
13 ~~penalty for violations of certain air quality and radiation laws; providing for the~~
14 ~~application of this Act; and generally relating to the recovery of costs in certain~~
15 ~~circumstances and the imposition of penalties for certain environmental~~
16 ~~violations.~~

17 ~~BY repealing and reenacting, with amendments,~~
18 ~~Article – Environment~~
19 ~~Section 2-101, 2-107, 8-101, and 8-306~~

20 BY adding to
21 Article - Environment
22 Section 2-610.2 and 8-509.1
23 Annotated Code of Maryland
24 (1996 Replacement Volume and 2001 Supplement)

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

3 **Article - Environment**

4 ~~2-101.-~~

5 (a) ~~In this title the following words have the meanings indicated.~~

6 (b) ~~"Air pollution" means the presence in the outdoor atmosphere of any
7 substance that is present in such quantities and is of such duration that it:~~

8 (1) ~~May be predicted with reasonable certainty to be injurious to
9 property or to human, plant, or animal life; or~~

10 (2) ~~Unreasonably interferes with the proper enjoyment of the property of
11 others because of the emission of odors, solids, vapors, liquids, or gases.~~

12 (c) ~~"Council" means the Air Quality Control Advisory Council.~~

13 (d) ~~"Emergency" means:~~

14 (1) ~~A condition of such public gravity and urgency that it requires
15 immediate response; or~~

16 (2) ~~A condition that is predicted to a reasonable degree of certainty to
17 require immediate action to carry out the provisions of this title.~~

18 (e) (1) ~~"Emission standard" means a requirement that limits the quantity,
19 quality, rate, or concentration of emissions from a source.~~

20 (2) ~~"Emission standard" includes any requirement that relates to the
21 operation or maintenance of a source to assure continuous emission reduction.~~

22 (f) ~~"Person" includes any public or municipal corporation and any agency,
23 bureau, department, or instrumentality of federal, State, or local government.~~

24 (g) ~~"Political subdivision" means a county or municipal corporation of this
25 State.~~

26 (h) ~~"Regulated emissions" means the actual rate of emissions, in tons per year,
27 of any registered pollutant emitted by a source, to be calculated using criteria
28 consistent with 40 CFR 70 (operating permit program), and subject to a limit of 4,000
29 tons per year of any single pollutant.~~

30 (i) ~~"RESPONSIBLE PARTY" INCLUDES:~~

31 (1) ~~THE OWNER OF THE MATERIALS THAT WERE RELEASED OR
32 POTENTIALLY RELEASED;~~

1 (2) ~~THE OWNER, OPERATOR, OR PERSON IN CHARGE OF THE FACILITY,~~
 2 ~~CONTAINER, VESSEL, OR VEHICLE INVOLVED IN THE RELEASE OR POTENTIAL~~
 3 ~~RELEASE OF THE AIR POLLUTANTS; OR~~

4 (3) ~~ANY OTHER PERSON WHO THROUGH ACT OR OMISSION CAUSED THE~~
 5 ~~RELEASE OR POTENTIAL RELEASE OF THE AIR POLLUTANTS.~~

6 ~~{(i)}~~ ~~(J) "Source" means any person or property that contributes to air~~
 7 ~~pollution.~~

8 ~~2-107.~~

9 (a) ~~There is a Maryland Clean Air Fund.~~

10 (b) ~~All application fees, permit fees, renewal fees, and funds collected by the~~
 11 ~~Department under this title or Title 6, Subtitle 4 of this article, including any civil or~~
 12 ~~administrative penalty or any fine imposed by a court under these provisions, shall be~~
 13 ~~paid into the Maryland Clean Air Fund.~~

14 (c) (1) ~~Subject to the appropriation process in the annual operating budget,~~
 15 ~~the Department shall use the Maryland Clean Air Fund for:~~

16 (i) ~~Activities conducted under this title that are related to~~
 17 ~~identifying, monitoring, and regulating air pollution AND THE RELEASE OR~~
 18 ~~POTENTIAL RELEASE OF AIR POLLUTANTS in this State, including program~~
 19 ~~development of these activities as provided in the State budget; and~~

20 (ii) ~~Providing grants to local governments to supplement funding~~
 21 ~~for programs conducted by local governments that are consistent with this title and~~
 22 ~~the State program.~~

23 (2) ~~Subject to Title 10, Subtitle 1 of the State Government Article~~
 24 ~~(Administrative Procedure Act—Regulations), the Department shall adopt rules and~~
 25 ~~regulations for the management and use of the money in the Fund.~~

26 (3) ~~At the end of the fiscal year, the Department shall prepare an annual~~
 27 ~~report on the Maryland Clean Air Fund that includes an accounting of all financial~~
 28 ~~receipts and expenditures to and from the Fund and shall:~~

29 (i) ~~Provide a copy of the report to the General Assembly, as~~
 30 ~~provided under § 2-1246 of the State Government Article; and~~

31 (ii) ~~Upon request, make the report available to permit holders~~
 32 ~~under this title.~~

33 (4) ~~When the Fund equals or exceeds a maximum limit of \$750,000,~~
 34 ~~additional moneys received for the Fund by the Department shall be deposited to the~~
 35 ~~General Fund.~~

1 (D) ALL EXPENDITURES MADE BY THE DEPARTMENT TO ASSESS AIR QUALITY
 2 IMPACTS OF AN UNAUTHORIZED RELEASE OR POTENTIAL RELEASE OF AIR
 3 POLLUTANTS NOT OTHERWISE RECOVERABLE UNDER ANY STATE OR FEDERAL LAWS
 4 OR REGULATIONS SHALL BE REIMBURSED TO THE DEPARTMENT BY THE
 5 RESPONSIBLE PARTY.

6 (E) RECOVERIES COLLECTED UNDER SUBSECTION (D) OF THIS SECTION
 7 SHALL BE PAID INTO THE FUND.

8 (F) IN ADDITION TO ANY OTHER ACTION AUTHORIZED BY THIS TITLE, THE
 9 ATTORNEY GENERAL MAY BRING AN ACTION TO RECOVER COSTS AND INTEREST
 10 FROM ANY PERSON WHO FAILS TO REIMBURSE THE DEPARTMENT AS REQUIRED
 11 UNDER PARAGRAPH (D) OF THIS SECTION.

12 ~~2-610.1.~~

13 (a) In addition to any other remedies available at law or in equity and after an
 14 opportunity for a hearing which may be waived in writing by the person accused of a
 15 violation, the Department may impose a penalty for violation of any provision of this
 16 title, Subtitle 4 of Title 6, or any rule, regulation, order, plan for compliance,
 17 registration, or permit adopted or issued under those provisions.

18 (b) Before taking any action under this section, the Department shall provide
 19 the alleged violator with written notice of the proposed action and an opportunity for
 20 an informal meeting.

21 (c) (1) The penalty imposed on a person under this section shall be:

22 (i) Up to ~~[\$2,500]~~ \$25,000 for each violation; AND

23 (ii) ~~[Not more than \$50,000 total for any single administrative~~
 24 ~~hearing; and~~

25 ~~(iii) Assessed with consideration given to:~~

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

29 2. Any actual harm to human health or to the environment,
 30 including injury to or impairment of the air quality or the natural resources of this
 31 State;

32 3. The cost of control;

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

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

4 6. The available technology and economic reasonableness of
5 controlling, reducing, or eliminating the emissions that caused the violation; and

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

8 (2) Each day a violation occurs is a separate violation under this section.

9 (3) Any penalty imposed under this section is payable to this State and
10 collectible in any manner provided at law for the collection of debts.

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

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

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

18 ~~8-101.~~

19 (a) In this title the following words have the meanings indicated:

20 (b) "Board" means the Radiation Control Advisory Board.

21 (c) "Emergency" means a sudden and unforeseen condition of such public
22 gravity and urgency that it requires immediate response to protect the public health
23 and welfare.

24 (d) "General license" means a license that, under the rules and regulations
25 adopted by the Department under this title, is effective without the filing of an
26 application by the licensee.

27 (e) "Person" includes any public or municipal corporation and any agency,
28 bureau, department, or instrumentality of State or local government and, to the
29 extent authorized by federal law, federal government.

30 (f) "Radiation" means:

31 (1) Ionizing radiation, including gamma rays, X-rays, alpha particles,
32 beta particles, neutrons, high speed electrons, high speed protons, and any other
33 atomic or nuclear particles or rays;

34 (2) Any electromagnetic radiation that can be generated during the
35 operation of a manufactured device that has an electronic circuit; or

1 (3) Any sonic, ultrasonic, or infrasonic waves that are emitted as a result
2 of the operation, in a manufactured device, of an electronic circuit that can generate a
3 physical field of radiation.

4 (G) "RESPONSIBLE PARTY" INCLUDES:

5 (1) THE OWNER OF THE MATERIALS THAT WERE RELEASED OR
6 POTENTIALLY RELEASED;

7 (2) THE OWNER, OPERATOR, OR PERSON IN CHARGE OF THE FACILITY,
8 CONTAINER, VESSEL, OR VEHICLE INVOLVED IN THE RELEASE OR POTENTIAL
9 RELEASE OF THE RADIATION; OR

10 (3) ANY OTHER PERSON WHO THROUGH ACT OR OMISSION CAUSED THE
11 RELEASE OR POTENTIAL RELEASE OF THE RADIATION.

12 ~~((g))~~ (H) "Specific license" means a license that, under the rules and
13 regulations adopted by the Department under this title, is effective only after the
14 applicant files an application and the Department approves the application.

15 8-306.

16 (a) There is a State Radiation Control Fund.

17 (b) All general license fees, specific license fees, registration fees, radiation
18 machine certification fees, and all funds collected by the Department under this title,
19 including any civil penalties, settlements, or fines, shall be paid into the State
20 Radiation Control Fund.

21 (c) The Department shall use the State Radiation Control Fund for activities
22 that are related to identifying, monitoring, and controlling sources of radiation, AND
23 THE RELEASE OR POTENTIAL RELEASE OF RADIATION, including radiation machines,
24 and for program development of these activities.

25 (D) ALL EXPENDITURES MADE BY THE DEPARTMENT TO PROTECT THE
26 PUBLIC FROM THE IMPACTS OF AN UNAUTHORIZED RELEASE OR POTENTIAL
27 RELEASE OF RADIATION NOT OTHERWISE RECOVERABLE UNDER ANY STATE OR
28 FEDERAL LAWS OR REGULATIONS SHALL BE REIMBURSED TO THE DEPARTMENT BY
29 THE RESPONSIBLE PARTY.

30 (E) RECOVERIES COLLECTED UNDER SUBSECTION (D) OF THIS SECTION
31 SHALL BE PAID INTO THE FUND.

32 (F) IN ADDITION TO ANY OTHER ACTION AUTHORIZED BY THIS TITLE, THE
33 ATTORNEY GENERAL MAY BRING AN ACTION TO RECOVER COSTS AND INTEREST
34 FROM ANY PERSON WHO FAILS TO REIMBURSE THE DEPARTMENT AS REQUIRED
35 UNDER PARAGRAPH (D) OF THIS SECTION.

36 ~~((d))~~ (G) The Department shall adopt regulations for the management and use
37 of the money in the Fund.

1 2-610.2.

2 A CRIMINAL PROSECUTION FOR A VIOLATION BROUGHT UNDER § 2-609.1 OF
3 THIS SUBTITLE, OR A CIVIL ACTION TO COLLECT A CIVIL PENALTY FOR A VIOLATION
4 BROUGHT UNDER § 2-610 OF THIS SUBTITLE, SHALL BE INSTITUTED WITHIN 3 YEARS
5 AFTER THE VIOLATION WAS COMMITTED.

6 8-509.1.

7 A CRIMINAL PROSECUTION OR A CIVIL ACTION TO COLLECT A CIVIL PENALTY
8 FOR A VIOLATION BROUGHT UNDER § 8-509 OF THIS SUBTITLE SHALL BE INSTITUTED
9 WITHIN 3 YEARS AFTER THE VIOLATION WAS COMMITTED.

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
11 construed only prospectively and may not be applied or interpreted to have any effect
12 on or application to a violation of air quality or radiation laws subject to this Act
13 committed before the effective date of this Act.

14 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 July 1, 2002.