

## CHAPTER 258

(Senate Bill 408)

AN ACT concerning

### **Environment – Water Pollution Control – ~~Incentives and Penalties~~**

FOR the purpose of ~~requiring the Department of the Environment to adopt regulations providing performance improvement incentives for the owner or operator of certain wastewater systems; requiring the incentives adopted by regulation to be in the form of reductions in certain penalties;~~ increasing certain penalties for certain violations of the water pollution control law; ~~requiring certain regulations to be considered when imposing a certain penalty;~~ and generally relating to water pollution control.

BY repealing and reenacting, with amendments,  
Article – Environment  
Section ~~9-320 and~~ 9-342  
Annotated Code of Maryland  
(2007 Replacement Volume and 2008 Supplement)

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

### **Article – Environment**

~~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.~~~~
- ~~(c) The Department shall use the Maryland Clean Water Fund for activities that are related to:~~

~~(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.~~

~~(d) 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) 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.~~

~~(F) (1) BY DECEMBER 31, 2009, THE DEPARTMENT SHALL ADOPT REGULATIONS PROVIDING PERFORMANCE IMPROVEMENT INCENTIVES FOR THE OWNER OR OPERATOR OF ANY SANITARY SEWER SYSTEM, COMBINED SEWER SYSTEM, OR WASTEWATER TREATMENT PLANT.~~

~~(2) THE INCENTIVES PROVIDED BY REGULATION UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE IN THE FORM OF A REDUCTION IN PENALTIES IMPOSED UNDER § 9-342(B)(2) OF THIS SUBTITLE.~~

9-342.

(a) In addition to being subject to an injunctive action under this subtitle, a person who violates any provision of this subtitle or of any rule, regulation, order, or permit adopted or issued under this subtitle is liable to a civil penalty not exceeding \$10,000, to be collected in a civil action brought by the Department. Each day a violation occurs is a separate violation under this subsection.

(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 this subtitle or any rule, regulation, order, or permit adopted or issued under this subtitle.

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

(i) Up to [\$1,000] ~~\$10,000~~ \$5,000 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 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; ~~and~~

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. REGULATIONS ADOPTED UNDER § 9-320(F)(1) 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 this State and collectible in any manner provided at 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 this 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 a special fund to be used for monitoring and surveillance by the Department to assure and maintain an adequate record of any violations, including discharge of waste material and other pollutants into the waters of this State or into the environment.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2009.

**Approved by the Governor, May 7, 2009.**