

SENATE BILL 875

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3lr2726

By: **Senator Conway**

Introduced and read first time: February 7, 2013

Assigned to: Rules

Re-referred to: Education, Health, and Environmental Affairs, February 14, 2013

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 16, 2013

CHAPTER _____

1 AN ACT concerning

2 **Maryland Oil Disaster Containment, Clean-Up and Contingency Fund and**
3 **Oil Contaminated Site Environmental Cleanup Fund**

4 FOR the purpose of altering the basis for calculating a certain license fee credited to
5 the Maryland Oil Disaster Containment, Clean-Up and Contingency Fund;
6 altering the date by which the Department of the Environment is required to
7 report annually to certain subcommittees of the General Assembly; authorizing
8 the Oil Contaminated Site Environmental Cleanup Fund to be used to
9 reimburse an owner of a certain heating oil tank for certain costs; extending the
10 deadline by which the owner of a certain eligible heating oil tank may apply for
11 reimbursement of certain costs from the Oil Contaminated Site Environmental
12 Cleanup Fund; authorizing the owner of a certain heating oil tank to apply for
13 the reimbursement of certain costs from the Oil Contaminated Site
14 Environmental Cleanup Fund within a certain period of time; establishing a
15 certain deductible for the owner of a certain heating oil tank; authorizing, in a
16 certain fiscal year, the Secretary of the Environment to transfer up to a certain
17 amount of money from the Oil Contaminated Site Environmental Cleanup Fund
18 to the Maryland Oil Disaster Containment, Clean-Up and Contingency Fund;
19 requiring the Secretary to convene a certain workgroup for a certain purpose;
20 requiring, by a certain date, the Department to report to certain committees of
21 the General Assembly; making stylistic changes; repealing a certain definition;
22 defining certain terms; and generally relating to the Maryland Oil Disaster
23 Containment, Clean-Up and Contingency Fund and the Oil Contaminated Site
24 Environmental Cleanup Fund.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, with amendments,
2 Article – Environment
3 Section 4–401, 4–411, 4–704, and 4–705
4 Annotated Code of Maryland
5 (2007 Replacement Volume and 2012 Supplement)

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

8 **Article – Environment**

9 4–401.

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

11 (b) “Cleanup” means abatement, containment, removal, and disposal of oil
12 and the restoration of the environment to its existing state prior to a discharge.

13 (c) (1) “Damages” means any damages for which liability exists under the
14 laws of this State resulting from, arising out of, or related to the discharge or
15 threatened discharge of oil.

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

17 (i) The cost of assessing the damages;

18 (ii) Damages for injury to, destruction of, loss of, or loss of use of
19 natural resources, including the reasonable costs of assessing the damage;

20 (iii) Damages for injury to or economic losses resulting from the
21 destruction of real or personal property that shall be recoverable by a claimant who
22 owns or leases that property;

23 (iv) Damages for loss of subsistence use of natural resources,
24 that shall be recoverable by any claimant who so uses natural resources that have
25 been injured, destroyed, or lost, without regard to the ownership or management of
26 the resources;

27 (v) Damages equal to the net loss of taxes, royalties, rents, fees,
28 or net profit shares due to the injury, destruction, or loss of real property, personal
29 property, or natural resources, that shall be recoverable by the State or a political
30 subdivision of the State;

31 (vi) Damages equal to the loss of profits or impairment of
32 earning capacity due to the injury, destruction, or loss of real property, personal
33 property, or natural resources, that shall be recoverable by any claimant; and

1 (vii) Damages for net costs of providing increased or additional
2 public services during or after removal activities, including protection from fire, safety,
3 or health hazards caused by a discharge of oil, that shall be recoverable by the State or
4 a political subdivision of the State.

5 **(D) “DIRECT CONSUMPTIVE HEATING OIL TANK” MEANS AN**
6 **ABOVEGROUND OR UNDERGROUND TANK FOR THE STORAGE OF HEATING OIL**
7 **FOR USE AS A FUEL IN HEATING A PROPERTY OWNED BY A NONPROFIT**
8 **ORGANIZATION THAT IS EXEMPT FROM TAXATION UNDER § 501(C)(3) OF THE**
9 **INTERNAL REVENUE CODE.**

10 **[(d)] (E)** “Discharge” means the addition, introduction, leaking, spilling, or
11 emitting any oil to State waters or the placing of any oil in a location where it is likely
12 to reach State waters.

13 **[(e)] (F)** “Heating oil tank” [means an aboveground or underground tank
14 for the storage of heating oil for use as a fuel in heating a residential property]
15 **INCLUDES A DIRECT CONSUMPTIVE HEATING OIL TANK AND A RESIDENTIAL**
16 **HEATING OIL TANK.**

17 **[(f)] (G)** “Lender” means a person who is:

18 (1) A holder of a mortgage or deed of trust on a site or a security
19 interest in property located on a site; or

20 (2) A holder of a mortgage or deed of trust who acquires title through
21 foreclosure or deed in lieu of foreclosure.

22 **[(g)] (H)** (1) “Management” means directing or controlling operations at
23 a site or facility related to the storage or discharge of oil.

24 (2) “Management” does not include rendering advice on financial
25 matters, rendering financial assistance, or actions taken to protect or secure a site or
26 facility or property located on the site or at the facility, if the advice, assistance, or
27 actions do not involve the storage, disposal, or remediation of discharged oil.

28 **[(h)] (I)** (1) “Oil” means oil of any kind and in any liquid form including:

29 (i) Petroleum;

30 (ii) Petroleum by-products;

31 (iii) Fuel oil;

32 (iv) Sludge containing oil or oil residues;

- 1 (v) Oil refuse;
- 2 (vi) Oil mixed with or added to or otherwise contaminating soil,
3 waste, or any other liquid or solid media;
- 4 (vii) Crude oils;
- 5 (viii) Aviation fuel;
- 6 (ix) Gasoline;
- 7 (x) Kerosene;
- 8 (xi) Light and heavy fuel oils;
- 9 (xii) Diesel motor fuel, including biodiesel fuel, regardless of
10 whether the fuel is petroleum based;
- 11 (xiii) Asphalt;
- 12 (xiv) Ethanol that is intended to be used as a motor fuel or fuel
13 source; and
- 14 (xv) Regardless of specific gravity, every other nonedible,
15 nonsubstituted liquid petroleum fraction unless that fraction is specifically identified
16 as a hazardous substance under the Comprehensive Environmental Response,
17 Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq.
- 18 (2) “Oil” does not include:
- 19 (i) Liquefied propane;
- 20 (ii) Liquefied natural gas; or
- 21 (iii) Any edible oils.

22 **[(i)] (J)** (1) “Oil storage facility” means any installation, structure or
23 premises, aboveground or underground, in which oil is stored.

24 (2) “Oil storage facility” does not include any tank on a farm or private
25 residence with a capacity to store 1,100 gallons or less of motor fuel or heating oil for
26 noncommercial or personal use or any vessel.

27 **[(j)] (K)** (1) “Person responsible for the discharge” includes:

28 (i) The owner of the discharged oil;

1 (ii) The owner, operator, or person in charge of the oil storage
2 facility, vessel, barge, or vehicle involved in the discharge at the time of or
3 immediately before the discharge; and

4 (iii) Any other person who through act or omission causes the
5 discharge.

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

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

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

14 2. Abandoned that underground oil storage tank under
15 regulations of the Department within 180 days of acquiring the tank through
16 foreclosure or other means;

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

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

24 1. Has not caused or contributed to a discharge of oil;
25 and

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

28 (iv) Subject to paragraph (3) of this subsection, a lender who
29 takes action to protect or preserve a mortgage or deed of trust on a site or a security
30 interest in property located on a site at which a discharge of oil has occurred, by
31 stabilizing, containing, removing, or preventing the discharge of oil in a manner that
32 does not cause or contribute to a discharge of oil if:

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

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

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

4 (3) A lender taking action to protect or preserve a mortgage or deed of
5 trust or security interest in property located on a site, who causes or contributes to a
6 discharge of oil shall be liable solely for costs incurred in response to the discharge
7 which the lender caused or to which the lender contributed unless the lender was a
8 person responsible for the discharge before acquiring a mortgage, deed of trust, or
9 security interest in the site or property located on the site.

10 [(k)] (L) “Removal costs” means the costs of removal that are incurred after
11 a discharge of oil has occurred or, in any case where there is a substantial threat of a
12 discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an
13 incident.

14 (M) “RESIDENTIAL HEATING OIL TANK” MEANS AN ABOVEGROUND OR
15 UNDERGROUND TANK FOR THE STORAGE OF HEATING OIL FOR USE AS A FUEL IN
16 HEATING A RESIDENTIAL PROPERTY.

17 [(l)] (N) (1) “Underground oil storage tank” means one or more tanks
18 including underground pipes connected to tanks, with a volume of 10 percent or more
19 beneath the surface of the ground.

20 (2) “Underground oil storage tank” does not include a:

21 (i) Tank on a farm or private residence with a capacity to store
22 1,100 gallons or less of motor fuel or heating oil for noncommercial or personal use;

23 (ii) Septic tank;

24 (iii) Pipeline facility, including gathering lines, regulated under
25 49 U.S.C. 60101, et seq.;

26 (iv) Intrastate pipeline facility regulated under State laws
27 comparable to the provisions of the law referred to in [subparagraph] ITEM (iii) of this
28 paragraph;

29 (v) Surface impoundment, pit, pond, or lagoon;

30 (vi) Stormwater or wastewater collection system;

31 (vii) Flow-through process tank;

1 (viii) Storage tank situated in an underground area, such as a
2 basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated
3 upon or above the surface of the floor; or

4 (ix) Pipe connected to any tank described in [subparagraphs]
5 ITEMS (i) through (viii) of this paragraph.

6 4-411.

7 (a) (1) In this section the following words have the meanings indicated.

8 (2) "Barrel" means any measure of petroleum products or its
9 by-products which consists of 42.0 U.S. gallons of liquid measure.

10 (3) "Fund" means the Maryland Oil Disaster Containment, Clean-Up
11 and Contingency Fund.

12 (4) "Transfer" means the offloading or unloading of oil in the State
13 from or to any commercial vessel, barge, tank truck, tank car, pipeline, or any other
14 means used for transporting oil.

15 (b) A person other than a vessel or barge may not transfer oil in the State
16 without a license.

17 (c) (1) A license required under this section shall be secured from the
18 Department of the Environment subject to the terms and conditions set forth in this
19 section. The fee on any barrel shall be imposed only once, at the point of first transfer
20 in the State. The license fee shall be:

21 (i) Credited to the Maryland Oil Disaster Containment,
22 Clean-Up and Contingency Fund and based on:

23 1. Before [July 1, 2013, a 5.75 cents] **JULY 1, 2016, AN**
24 **8 CENTS** per barrel fee for oil transferred in the State; and

25 2. On or after [July 1, 2013] **JULY 1, 2016**, a 3 cents per
26 barrel fee for oil transferred in the State; and

27 (ii) Until July 1, 2010, based on an additional 1.75 cents per
28 barrel fee for oil transferred in the State and credited to the Oil Contaminated Site
29 Environmental Cleanup Fund as described in Subtitle 7 of this title.

30 (2) The license fee shall be paid quarterly to the Department and on
31 receipt by the Comptroller, credited to the proper fund. The licensee shall certify to the
32 Department, on forms as may be prescribed by the Department, the number of barrels
33 of oil transferred by the licensee during the fee quarter no later than the last day of

1 the month following the fee quarter. These records shall be kept confidential by the
2 Department.

3 (3) When the balance in the Maryland Oil Disaster Containment,
4 Clean-Up and Contingency Fund from the monthly license fees paid under paragraph
5 (1)(i) of this subsection into the Fund equals or exceeds a maximum limit of
6 \$5,000,000, collection of subsequent monthly license fees under paragraph (1)(i) of this
7 subsection shall be abated until:

8 (i) The balance in the Fund from the license fees becomes less
9 than or equal to \$4,000,000; or

10 (ii) There is evidence that the balance in the Fund could be
11 significantly reduced by the recent occurrence of a major discharge or series of
12 discharges.

13 (4) If a licensee fails to remit the fee and accompanying certification
14 required by this section, the amount of the license fee due shall be determined by the
15 Department from information as may be available. Notice of this determination shall
16 be given to the licensee liable for payment of the license fee. The determination shall
17 finally and irrevocably fix the fee unless the licensee against whom it is assessed,
18 within 30 days after receiving notice of the determination, shall apply to the
19 Department for a hearing or unless the Department, on its own, shall redetermine the
20 fee.

21 (5) The Department shall promulgate rules and regulations, establish
22 audit procedures for the audit of licensees, and prescribe and publish forms as may be
23 necessary to effectuate the purposes of this section.

24 (d) As a condition precedent to the issuance or renewal of a license, the
25 Department shall require satisfactory evidence that the applicant has implemented or
26 is in the process of implementing State and federal plans and regulations to control
27 pollution related to oil, petroleum products, and their by-products and the abatement
28 thereof when a discharge occurs.

29 (e) Any person who violates subsection (b) or subsection (c) of this section is
30 guilty of a misdemeanor and upon conviction in a court of competent jurisdiction is
31 subject to a fine not exceeding \$10,000 plus any accrued but unpaid license fees.

32 (f) There is a Maryland Oil Disaster Containment, Clean-Up and
33 Contingency Fund for the Department to use to develop equipment, personnel, and
34 plans; for contingency actions to respond to, contain, clean-up, and remove from the
35 land and waters of the State discharges of oil, petroleum products, and their
36 by-products into, upon, or adjacent to the waters of the State; and restore natural
37 resources damaged by discharges. The Fund may also be used by the Department for
38 oil-related activities in water pollution control programs. The cost of containment,
39 clean-up, removal, and restoration, including attorneys' fees and litigation costs, shall

1 be reimbursed to the State by the person responsible for the discharge. The
2 reimbursement shall be credited to the Fund. The Fund shall be limited in accordance
3 with the limits set forth in this section. To this sum shall be credited every license fee,
4 fine, if imposed by the circuit court for any county, and any other charge related to this
5 subtitle. To this Fund shall be charged every expense the Department of the
6 Environment has which relates to this section.

7 (g) Money in the Fund not needed currently to meet the Department of the
8 Environment's obligations in the exercise of its responsibility under this section shall
9 be deposited with the State Treasurer to the credit of the Fund, and may be invested
10 as provided by law. Interest received on the investment shall be credited to the Fund.
11 The Secretary of the Environment shall determine the proper allocation of the moneys
12 credited to the Fund only for the following purposes:

13 (1) Administrative expenses, personnel expenses, and equipment costs
14 of the Department related to the purposes of this section;

15 (2) Prevention, control, containment, clean-up, and removal of
16 discharges into, upon, or adjacent to waters of the State of discharges of oil, petroleum
17 products and their by-products, and the restoration of natural resources damaged by
18 such discharges;

19 (3) Development of containment and clean-up equipment, plans, and
20 procedures in accordance with the purposes of this section;

21 (4) Paying insurance costs by the State to extend or implement the
22 benefits of the Fund; and

23 (5) Expenses related to oil-related activities in the Department's
24 water pollution control programs.

25 (h) The Department shall provide the standing committees of the Maryland
26 General Assembly with primary jurisdiction over this section with a status report on
27 the Fund on or before [October 1] **JANUARY 1** of each year **IN ACCORDANCE WITH §**
28 **2-1246 OF THE STATE GOVERNMENT ARTICLE**. The report shall include an
29 accounting of all moneys expended for each of the purposes specified in subsection (g)
30 of this section.

31 4-704.

32 (a) There is an Oil Contaminated Site Environmental Cleanup Fund.

33 (b) Subject to subsection (c) of this section, the Fund shall be used to:

34 (1) Reimburse an owner or operator of:

1 (i) An underground oil storage tank subject to the requirements
2 of § 4–409(b)(3) of this title for site rehabilitation costs incurred on or after October 1,
3 1993 resulting from contamination caused by releases from an underground oil storage
4 tank;

5 (ii) An underground oil storage tank not subject to the
6 requirements of § 4–409(b)(3) of this title for site rehabilitation costs incurred on or
7 after October 1, 2000 resulting from contamination caused by releases from an
8 underground oil storage tank; [or]

9 (iii) A **RESIDENTIAL** heating oil tank for site rehabilitation costs
10 incurred on or after October 1, 2000 resulting from contamination caused by releases
11 from a **RESIDENTIAL** heating oil tank including piping connected to the tank; **OR**

12 **(IV) A DIRECT CONSUMPTIVE HEATING OIL TANK WITH A**
13 **CAPACITY OF 5,000 GALLONS OR LESS FOR SITE REHABILITATION COSTS**
14 **INCURRED ON OR AFTER OCTOBER 1, 2013, RESULTING FROM CONTAMINATION**
15 **CAUSED BY RELEASES FROM A DIRECT CONSUMPTIVE HEATING OIL TANK**
16 **INCLUDING PIPING CONNECTED TO THE TANK;**

17 (2) Provide funds for site rehabilitation activities carried out by the
18 Department or under the Department's direction and control; and

19 (3) To the extent provided in the State budget and in an amount not to
20 exceed 8% of the revenues in the Fund during the fiscal year, provide funds for the
21 Department's administration of this subtitle.

22 (c) Twenty–five percent of the revenues credited to the Fund shall be used
23 for reimbursement of heating oil tank site rehabilitation costs as provided in this
24 subtitle.

25 (d) The provisions of this subtitle do not apply to:

26 (1) An underground storage tank that is:

27 (i) Owned by a State, county, or municipal corporation; or

28 (ii) Owned by a local education agency.

29 (2) An underground storage tank installed pursuant to Subtitle I of
30 the federal Resource Conservation and Recovery Act; or

31 (3) Owners or operators of underground storage tanks that were not in
32 compliance with the requirements of Subtitle I of the federal Resource Conservation
33 and Recovery Act on December 22, 1998.

1 (e) (1) Money in the Fund not required to meet the Department's
2 obligations in the exercise of the Department's responsibility under this section:

3 (i) Shall be deposited with the State Treasurer to the credit of
4 the Fund; and

5 (ii) May be invested as provided by law.

6 (2) Interest received on the investment of the excess funds shall be
7 credited to the Fund for use for the purposes described in this subtitle.

8 4-705.

9 (a) The owner or operator of an underground oil storage tank eligible under §
10 4-704(b)(1)(ii) of this subtitle may apply to the Fund for reimbursement, until
11 December 31, 2007, for usual, customary, and reasonable costs incurred on or after
12 October 1, 2000 in performing site rehabilitation.

13 (b) **[The] UNTIL JUNE 30, 2016, THE** owner of a **RESIDENTIAL** heating oil
14 tank eligible under § 4-704(b)(1)(iii) of this subtitle may apply to the Fund **FOR**
15 **REIMBURSEMENT** no later than 6 months after **THE COMPLETION OF** rehabilitation
16 **[completion for reimbursement, until June 30, 2013,]** for usual, customary, and
17 reasonable costs incurred on or after October 1, 2000 in performing site rehabilitation.

18 **(C) UNTIL JUNE 30, 2016, THE OWNER OF A DIRECT CONSUMPTIVE**
19 **HEATING OIL TANK ELIGIBLE UNDER § 4-704(B)(1)(IV) OF THIS SUBTITLE MAY**
20 **APPLY TO THE FUND FOR REIMBURSEMENT NO LATER THAN 6 MONTHS AFTER**
21 **THE COMPLETION OF REHABILITATION FOR USUAL, CUSTOMARY, AND**
22 **REASONABLE COSTS INCURRED ON OR AFTER OCTOBER 1, 2013, IN**
23 **PERFORMING SITE REHABILITATION.**

24 **[(c)] (D)** (1) Any reimbursement from the Fund for applications
25 approved on or after July 1, 1996 is subject to:

26 (i) For owners or operators of six tanks or fewer, a deductible of
27 \$7,500;

28 (ii) For owners or operators of more than 6 but not more than 15
29 tanks, a deductible of \$10,000;

30 (iii) For owners or operators of more than 15 but not more than
31 30 tanks, a deductible of \$15,000;

32 (iv) For owners or operators of more than 30 tanks, a deductible
33 of \$20,000; **[and]**

1 (v) For [residential] owners of **RESIDENTIAL** heating oil tanks,
2 a deductible of \$500; and

3 (VI) **FOR OWNERS OF DIRECT CONSUMPTIVE HEATING OIL**
4 **TANKS, A DEDUCTIBLE OF \$500; AND**

5 (2) The maximum amount to be reimbursed from the Fund shall be:

6 (i) \$125,000 for underground oil storage tanks per occurrence;
7 and

8 (ii) \$20,000 for heating oil tanks per occurrence.

9 [(d)] (E) To be eligible for reimbursement from the Fund, an owner or
10 operator shall:

11 (1) Certify that the discharge is not the result of a willful or deliberate
12 act;

13 (2) Submit a corrective action plan, schedule, and cost estimate to the
14 Department that shall include provisions for the environmentally sound treatment or
15 disposal of contaminated soils that meet all federal and State requirements and
16 standards; and

17 (3) Except for heating oil tanks, certify that the discharge is from a
18 tank registered under § 4-411.1 of this title.

19 [(e)] (F) If the owner or operator knowingly submits a false certification
20 under subsection (e) of this section, that owner or operator is not eligible for
21 reimbursement under this subtitle.

22 [(f)] (G) Only expenses that are cost-effective, reasonable, and consistent
23 with a corrective action plan approved by the Department may be eligible for
24 reimbursement from the Fund.

25 [(g)] (H) The cost for replacement or retrofitting of underground oil storage
26 tanks or heating oil tanks and associated piping is not eligible for reimbursement, and
27 the Department may not incur these costs or expend moneys from the Fund for these
28 purposes.

29 SECTION 2. AND BE IT FURTHER ENACTED, That in fiscal 2013, the
30 Secretary of the Environment may transfer up to a maximum of \$2,500,000 from the
31 Oil Contaminated Site Environmental Cleanup Fund, established in § 4-704 of the
32 Environment Article, to the Maryland Oil Disaster Containment, Clean-Up and
33 Contingency Fund, established in § 4-411 of the Environment Article.

1 SECTION 3. AND BE IT FURTHER ENACTED, That:

2 (a) The Secretary of the Environment shall convene a workgroup consisting
3 of representatives of the various sectors of the petroleum marketing industry and
4 representatives from appropriate public and private entities to review and assess the
5 long-term funding needs of the oil pollution programs in the State.

6 (b) On or before December 31, 2015, in accordance with § 2-1246 of the State
7 Government Article, the Department of the Environment shall report the findings and
8 recommendations of the workgroup to the Legislative Policy Committee, the House
9 Environmental Matters Committee, and the Senate Education, Health, and
10 Environmental Affairs Committee.

11 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 June 1, 2013.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.