Article - Environment

§1–101.

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

(b) "Contested case hearing" means an adjudicatory hearing in accordance with the contested case procedures of Subtitle 2 of the Maryland Administrative Procedure Act.

(c) "County" means a county of this State and, unless expressly provided otherwise, Baltimore City.

(d) "Department" means the Department of the Environment.

(e) "Health officer" means the Baltimore City Commissioner of Health or the health officer of a county.

(f) "Includes" or "including" means includes or including by way of illustration and not by way of limitation.

(g) "Informational meeting" means a meeting, open to the public, at which the applicant or the Department presents information concerning a permit application. An informational meeting is not a contested case hearing nor an agency hearing under § 10-202(d) of the State Government Article.

(h) "Person" means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity.

(i) "Physician" means an individual who is authorized under the Maryland Medical Practice Act to practice medicine in this State.

(j) "Public hearing" means a meeting, open to the public, at which the Department receives oral and written comments concerning a tentative determination. A public hearing is not a contested case hearing nor an agency hearing under § 10-202(d) of the State Government Article.

(k) "Secretary" means the Secretary of the Environment.

(l) "State" means:

(1) A state, possession, or territory of the United States;

(2) The District of Columbia; or

(3) The Commonwealth of Puerto Rico.

(m) "Substantively" means in a manner substantially affecting the rights,

duties, or obligations of a member of the public.

§1–201.

(a) A requirement in this article that a document be verified means that the document shall be verified by a declaration made under the penalties of perjury that the matters and facts contained in the document are true to the best of the knowledge, information, and belief of the individual making the declaration.

(b) The verification shall be made:

(1) Before an individual authorized to administer oaths; or

(2) By a signed statement of verification that:

(i) Is in the document or attached to and made part of the document; and

(ii) States that the statement is made under the penalties of perjury.

(c) If the procedures provided in subsection (b)(2) of this section are used, the statement of verification subjects the individual making the statement to the penalties of perjury to the same extent as if the statement had been verified under oath before an individual authorized to administer oaths.

§1–202.

Before any license or permit may be issued under this article to an employer to engage in an activity in which the employer may employ a covered employee, as defined in § 9-101 of the Labor and Employment Article, the employer shall file with the issuing authority:

(1) A certificate of compliance with the Maryland Workers' Compensation Act; or

(2) The number of a workers' compensation insurance policy or binder.

§1–203.

(a) When deciding whether to issue a license or permit under this article or to impose a condition on the issuance of a license or permit, the Department may consider whether the applicant has violated any provision of this article or any regulation adopted under this article.

(b) (1) A license or permit is considered renewed for purposes of this subsection if the license or permit is issued by a unit of State government to a person for the period immediately following a period for which the person previously possessed the same or a substantially similar license.

(2) Before any license or permit may be renewed under this article, the issuing authority shall verify through the office of the Comptroller that the applicant has paid all undisputed taxes and unemployment insurance contributions payable to the Comptroller or the Secretary of Labor, Licensing, and Regulation or that the applicant has provided for payment in a manner satisfactory to the unit responsible for collection.

§1–204.

Notwithstanding any other provision to the contrary in this article, service of show cause orders, complaints, corrective orders, notices, or any other instrument issued by the Department under this article for which service is required may be achieved by any method allowed for service of a summons under the Maryland Rules.

§1–301.

(a) The Secretary shall carry out and enforce the provisions of this article and the rules and regulations adopted under this article.

(b) The Secretary may delegate duties, powers, and functions as provided in this article to a health officer for a county or to another county official authorized to administer and enforce environmental laws.

(c) In those counties where a county official other than the health officer is authorized to administer and enforce State environmental laws under this section, the county shall establish minimum qualifications for that county official that include standards of education and experience related to environmental issues.

(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 Maryland Clean Water Fund.

(3) (i) The report shall include the information specified in subparagraphs (ii), (iii), (iv), and (v) of this paragraph for each of the following programs in the Department:

1. Ambient air quality control under Title 2, Subtitle 4 of this article;

2. Oil pollution under Title 4, Subtitle 4 of this article;

3. Nontidal wetlands under Title 5, Subtitle 9 of this article;

4. Asbestos under Title 6, Subtitle 4 of this article;

5. Lead paint under Title 6, Subtitle 8 of this article;

6. Controlled hazardous substances under Title 7, Subtitle 2 of this article;

7. Water supply, sewerage systems, and refuse disposal systems under Title 9, Subtitle 2 of this article;

8. Water discharges under Title 9, Subtitle 3 of this article;

9. Drinking water under Title 9, Subtitle 4 of this article; and

10. Wetlands under Title 16, Subtitle 2 of this article.

(ii) For each of the programs set forth in subparagraph (i) of this paragraph, the Department shall provide the total number or amount of:

1. Final permits or licenses issued to a person or facility, as appropriate, and not surrendered, suspended, or revoked;

2. Inspections, audits, or spot checks performed at facilities permitted;

3. Injunctions obtained;

4. Show cause, remedial, and corrective action orders issued;

5. Stop work orders;

6. Administrative or civil penalties obtained;

7. Criminal actions charged, convictions obtained, imprisonment time ordered, and criminal fines received; and

8. Any other actions taken by the Department to enforce the requirements of the applicable environmental program, including:

A. Notices of the removal or encapsulation of asbestos under § 6–414.1 of this article; and

B. Actions enforcing user charges against industrial users under § 9–341 of this article.

(iii) In addition to the information required in subparagraph (ii) of this paragraph, for the Lead Paint Program under Title 6, Subtitle 8 of this article, the report shall include the total number or amount of:

1. Affected properties registered; and

2. Inspectors or other persons accredited by the Department, for whom accreditation has not been surrendered, suspended, or revoked.

(iv) In addition to the information required in subparagraph (ii) of this paragraph, for the Controlled Hazardous Substances Program under Title 7, Subtitle 2 of this article, the report shall include the following lists, updated to reflect the most recent information available for the immediately preceding fiscal year:

1. Possible controlled hazardous substance sites compiled in accordance with § 7–223(a) of this article;

2. Proposed sites listed in accordance with § 7–223(c) of this

article at which the Department intends to conduct preliminary site assessments; and

3. Hazardous waste sites in the disposal site registry compiled in accordance with § 7–223(f) of this article.

(v) In addition to the information required in subparagraph (ii) of this paragraph, for the Drinking Water Program, the report shall include the total number of:

1. Actions to prevent public water system contamination or to respond to a Safe Drinking Water Act emergency under §§ 9–405 and 9–406 of this article; and

2. Notices given to the public by public water systems under § 9–410 of this article.

§1–302.

(a) A person who knowingly falsifies, alters, or causes another to falsify or alter any permit, license, or certificate issued or required pursuant to this article to demonstrate compliance with any environmental regulation, permit condition, or other regulatory requirement under this article is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $50,000 for each violation or imprisonment not exceeding 2 years or both.

(b) A person who knowingly possesses, displays, or submits to the Department or any other person any falsified or altered permit, license, or certificate issued or required pursuant to this article to demonstrate compliance with any environmental regulation, permit condition, or other regulatory requirement under this article is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $50,000 for each violation or imprisonment not exceeding 2 years or both.

(c) Any fine imposed in accordance with this section shall be ordered paid into any applicable special fund authorized to receive fines for violations of any section of this article that requires or authorizes the document that is the subject of this violation.

(d) (1) The Attorney General shall take charge of, investigate, prosecute, and defend on behalf of the State every case arising under the provisions of this section, including the recovery of any fines.

(2) The provisions of this section may not limit or affect the power or authority of State's Attorneys under § 15–102 of the Criminal Procedure Article.

§1–303.

(a) A criminal prosecution or a suit for a civil penalty by the Department for violation of any provision of this article or any rule, regulation, order, or permit adopted or issued under this article, shall be instituted within 3 years after the date

the Department knew or reasonably should have known of the violation.

(b) (1) Subject to paragraph (2) of this subsection, an action for an administrative penalty by the Department for violation of any provision of this article or any rule, regulation, order, or permit adopted or issued under this article, shall be instituted within 5 years after the date the Department knew or reasonably should have known of the violation.

(2) The statute of limitations for an action for an administrative penalty for an ongoing violation shall be tolled until the action that caused the ongoing violation has ceased.

(c) A suit for a civil penalty by a political subdivision for violation of any provision of this article or any rule, regulation, order, or permit adopted or issued under this article, or for a violation under any regulatory program the political subdivision is required to adopt and enforce under the provisions of this article, shall be instituted within 3 years after the date the political subdivision knew or reasonably should have known of the violation.

§1–304.

(a) (1) Except as provided in paragraph (2) of this subsection, the following persons shall reimburse a county for the reasonable costs incurred by the county in conducting environmental health monitoring or testing, including the cost of collecting and analyzing soil samples, surface water samples, or groundwater samples for the purpose of assessing the effect on public health and the environment of the person's release of a hazardous substance, discharge of oil, or discharge of a pollutant in the waters of the State:

(i) A responsible person as defined under Title 7, Subtitle 2 of this article;

(ii) A person responsible for the discharge as defined under Title 4, Subtitle 4 of this article; or

(iii) A person responsible for the discharge of a pollutant into the waters of the State in violation of § 9–322 or § 9–323 of this article.

(2) A person may not be required to reimburse a county for costs under paragraph (1) of this subsection if the person has entered into a consent order with the Department.

(b) Costs incurred by a county for environmental health monitoring or testing under activities that are duplicative of State activities, or are not reasonably necessary to protect human health or the environment, are not eligible for reimbursement under subsection (a) of this section.

(c) A county may recover costs that are reimbursable under subsection (a) of

this section in a civil action.

(d) If a county determines that it would be more efficient to combine the county's claim for reimbursement under subsection (a) of this section with a pending claim by the Department, the Department shall, on request by the county, seek to recover reimbursable costs on behalf of the county.

(e) The Department may adopt regulations to carry out the provisions of this section.

§1–401.

There is a Department of the Environment, established as a principal department of the State government.

§1–402.

(a) The head of the Department is the Secretary of the Environment, who shall be appointed by the Governor with the advice and consent of the Senate.

(b) (1) The Secretary serves at the pleasure of the Governor and is responsible directly to the Governor. The Secretary shall advise the Governor on all matters assigned to the Department and is responsible for carrying out the Governor's policies on these matters.

(2) The Secretary is responsible for the operation of the Department and shall establish guidelines and procedures to promote the orderly and efficient administration of the Department. The Secretary may establish, reorganize, or abolish areas of responsibility in the Department as necessary to fulfill the duties assigned to the Secretary.

(3) The Secretary shall establish the general policy for and adopt standards to promote and guide the development of the environmental services of the State.

(4) The Secretary is responsible for the environmental interests of the people of the State and shall supervise generally the administration of the environmental laws of the State.

(c) The Secretary is entitled to the salary provided in the State budget.

§1–403.

(a) (1) With the approval of the Governor, the Secretary shall appoint a deputy secretary.

(2) The deputy secretary serves at the pleasure of the Secretary.

(3) The deputy secretary is entitled to the salary provided in the State budget.

(4) The deputy secretary has the duties provided by law or delegated by the Secretary.

(b) (1) The Secretary may employ a staff in accordance with the State budget.

(2) Each assistant secretary, staff assistant to the Secretary, and professional consultant is appointed by and serves at the pleasure of the Secretary.

(3) Unless otherwise provided by law, the Secretary shall appoint and remove all other staff in accordance with the provisions of the State Personnel and Pensions Article.

(4) The appointment or removal of staff of any unit in the Department is subject to the approval of the Secretary. As to any unit in the Department, the Secretary may delegate this authority to the head of that unit.

§1–404.

(a) The Secretary is responsible for the budget of the office of the Secretary and for the budget of each unit in the Department.

(b) (1) The Secretary may adopt rules and regulations to carry out the provisions of law that are within the jurisdiction of the Secretary.

(2) The Secretary shall review and may revise the rules and regulations of:

(i) Each unit in the Department that is authorized by law to adopt rules and regulations; and

(ii) The Department.

(c) The Secretary may create an advisory board for the Department. The Secretary shall determine the size of the advisory board. The members shall be representative of the different professional areas or fields of endeavor with which the Department is concerned.

(d) The Secretary may create any advisory council that the Secretary considers necessary and assign appropriate functions to it.

(e) (1) The Secretary is responsible for the coordination and direction of all planning that the office of the Secretary initiates.

(2) The Secretary shall keep fully apprised of plans, proposals, and projects of each unit in the Department and, except as expressly provided otherwise,

may approve, disapprove, or modify any of them.

(f) Each unit in the Department shall report to the Secretary as provided in the rules, regulations, or written directives that the Secretary adopts.

(g) Except as expressly provided otherwise, the Secretary may transfer, by rule, regulation, or written directive, any function, staff, or funds from any unit in the Department to the office of the Secretary or another unit in the Department. Any staff transferred to the office of the Secretary shall be provided space, equipment, and services by the unit from which it was transferred, unless the Secretary orders removal to another location for the proper and efficient functioning of that office.

(h) The Secretary may apply for, receive, and spend grants-in-aid by the federal government or any of its agencies or any other federal funds made available to the Department for use in carrying out the powers and duties of the Secretary or the Department.

(i) Except as otherwise provided by law, the Secretary shall pay all money collected by the Department under this article into the General Fund of this State.

(j) (1) The Secretary or a designee of the Secretary may subpoena any person or evidence, administer oaths, and take depositions and other testimony.

(2) If a person fails to comply with a lawful order or subpoena issued under this subsection, on petition of the Secretary or designee, a court of competent jurisdiction may compel obedience to the order or subpoena or compel testimony or the production of evidence.

(3) A witness who is subpoenaed at the request of the Secretary or designee is entitled to receive the same fees and mileage provided for by law in civil cases. However, a witness who is subpoenaed at the request of any other party is not entitled to fees or mileage, unless the Secretary or designee certifies that the testimony was material to the matter investigated. The fee and mileage paid under this subsection shall be audited and paid by this State in the same way other expenses are audited and paid and shall be charged to the general appropriation for the Department.

(k) (1) The Secretary or any agent or employee of the Secretary may enter, at any reasonable hour, a place of business or public premises if the entry is necessary to carry out a duty under this article.

(2) A person may not deny or interfere with an entry under this subsection.

(3) A person who violates any provision of this subsection is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $100.

(l) The Secretary shall carry out and enforce the provisions of this article, the rules and regulations of the Department, and any other provisions of law that relate to

the Secretary or the Department.

§1–405.

(a) The Secretary shall investigate:

(1) The influence of locality, employment, habit, and other conditions on health; and

(2) The causes of diseases and mortality to the extent that they may relate to environmental factors.

(b) The Secretary may adopt procedures to obtain information about cancers that are caused by environmental carcinogens and toxic substances and about the incidence of these diseases.

§1–406.

The following units, among other units, are included in the Department:

(1) Air Quality Control Advisory Council;

(2) Hazardous Substances Advisory Council;

(3) Radiation Control Advisory Board;

(4) Science and Health Advisory Group;

(5) Board of Waterworks and Waste System Operators;

(6) Board of Well Drillers; and

(7) Hazardous Waste Facilities Siting Board.

§1–407.

(a) The Attorney General is legal adviser to the Department.

(b) The Attorney General shall assign to the Department the number of assistant Attorneys General authorized by law to be assigned to the Department and any additional ones necessary to give effective legal advice and counsel. The Attorney General also shall designate an assistant Attorney General as counsel to the Department.

(c) The counsel to the Department may have no duty other than to give the legal aid, advice, and counsel required by the Secretary and any other official of the Department, to supervise the other assistant Attorneys General assigned to the Department, and to perform for the Department the duties that the Attorney General assigns. The counsel shall perform these duties subject to the control and supervision

of the Attorney General. After the Attorney General designates the counsel to the Department, the Attorney General may not reassign the counsel without consulting the Secretary.

§1–501.

In this subtitle, "confidential record" means any record, report, statement, note, or other information that:

(1) Is assembled or obtained for research or study by the Secretary; and

(2) Names or otherwise identifies any person.

§1–502.

(a) (1) Each confidential record shall remain in the custody and control of the Secretary or an agent or employee of the Secretary, if the Secretary assembled or obtained the confidential record.

(2) The confidential record may be used only for the research and study for which it was assembled or obtained.

(3) A person may not disclose any confidential record to any person who is not engaged in the research or study project.

(b) This section does not apply to or restrict the use or publication of any statistics, information, or other material that summarizes or refers to confidential records in the aggregate, without disclosing the identity of any person who is the subject of the confidential record.

§1–503.

A person who violates any provision of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $1,000.

§1–601.

(a) Permits issued by the Department under the following sections shall be issued in accordance with this subtitle:

(1) Air quality control permits to construct subject to § 2–404 of this article;

(2) Permits to install, materially alter, or materially extend landfill systems, incinerators for public use, or rubble landfills subject to § 9–209 of this article;

(3) Permits to discharge pollutants to waters of the State issued pursuant to § 9–323 of this article;

(4) Permits to install, materially alter, or materially extend a structure used for storage or distribution of any type of sewage sludge issued, renewed, or amended pursuant to § 9–234.1 or § 9–238 of this article;

(5) Permits to own, operate, establish, or maintain a controlled hazardous substance facility issued pursuant to § 7–232 of this article;

(6) Permits to own, operate, or maintain a hazardous material facility issued pursuant to § 7–103 of this article; and

(7) Permits to own, operate, establish, or maintain a low–level nuclear waste facility issued pursuant to § 7–233 of this article.

(b) For permits listed under subsection (a) of this section, a contested case hearing may not occur.

(c) A final determination by the Department on the issuance, denial, renewal, or revision of any permit listed under subsection (a) of this section is subject to judicial review at the request of any person that:

(1) Meets the threshold standing requirements under federal law; and

(2) (i) Is the applicant; or

(ii) Participated in a public participation process through the submission of written or oral comments, unless an opportunity for public participation was not provided.

(d) (1) Judicial review shall be on the administrative record before the Department and limited to objections raised during the public comment period, unless the petitioner demonstrates that:

(i) The objections were not reasonably ascertainable during the comment period; or

(ii) Grounds for the objections arose after the comment period.

(2) The court shall remand the matter to the Department for consideration of objections under paragraph (1) of this subsection.

(e) (1) Unless otherwise required by statute, a petition for judicial review by a person that meets the requirements of subsection (c) of this section shall be filed with the circuit court for the county where the application for the permit states that the proposed activity will occur.

(2) The decision of the circuit court may be appealed to the Court of Special Appeals.

(f) (1) When this article requires more than one public informational meeting or public hearing, the Department may consolidate some or all of the meetings or hearings for the proposed facility with similar meetings or hearings.

(2) The Department shall hold public informational meetings and public hearings at a location in the political subdivision and in close proximity to the location where the individual permit applies.

§1–602.

(a) Wherever this subtitle requires the Department to publish notice:

(1) Notice shall be published at least once a week for 2 consecutive weeks in a daily or weekly newspaper of general circulation in the geographical area in which the proposed facility is located;

(2) The Department may require notice of an informational meeting or a public hearing by mail to each person requesting the meeting or hearing or to their authorized representatives;

(3) The Department may provide additional notice by requiring the notice to be posted at the proposed facility or at public facilities in the geographical area of the proposed facility; and

(4) The applicant shall bear all costs incurred by the Department in providing notice.

(b) (1) In addition to the requirements set forth in subsection (a) of this section and notwithstanding any other requirements in this article, wherever this subtitle requires the Department to publish notice of an application for a permit, the Department shall:

(i) Electronically post the notice of an application for a permit on the Department's Web site; and

(ii) Provide a method for interested persons to electronically request any additional notices related to an application for a permit.

(2) The notice required under paragraph (1) of this subsection shall include:

(i) The name and address of the applicant;

(ii) A description of the location and the nature of the activity for which the permit has been sought;

(iii) A reference to the applicable statutes or regulations governing the application process;

(iv) The time and place of any scheduled informational meeting or public hearing, or a description of where this information can be found;

(v) A description of where further information about the permit application can be found; and

(vi) Any other information that the Department determines is necessary.

(c) The Department may require the applicant to publish and send the notices required in subsection (a) of this section.

§1–603.

(a) The Department shall cause to be published notice of applications for permits.

(b) The Department shall assure that applications for permits shall be available to the public for inspection and copying.

(c) (1) Upon written request made within 10 working days after publication of a notice of application, or in its own discretion, the Department shall provide an opportunity for an informational meeting with respect to the application.

(2) The informational meeting may be canceled if all persons who made timely written requests withdraw the requests prior to the meeting.

(3) Unless the notice of application contained a notice of the informational meeting, the Department shall publish notice of the informational meeting.

(d) (1) The Department may require the applicant to attend an informational meeting or public hearing and present information concerning the application.

(2) If the applicant fails to appear and present information after a request from the Department, the application may be denied.

§1–604.

(a) (1) After the Department receives the permit application, the Department shall prepare a tentative determination, which shall include the following information:

(i) A proposal to issue or to not issue a permit;

(ii) Any proposed permit limitations and conditions;

(iii) A brief explanation of the Department's tentative determination; and

(iv) Any proposed schedule of compliance.

(2) If the tentative determination is to issue a permit, the tentative determination shall include a draft permit, which shall be available to the public for inspection and copying.

(3) The Department shall publish a notice of the tentative determination. This publication shall allow 30 calendar days for public comment before the issuance of the final determination.

(4) (i) The Department shall schedule a public hearing on the tentative determination when a written request for a public hearing is made within 20 days of publication of a notice of the tentative determination.

(ii) The public hearing may be canceled if all persons who made timely written requests withdraw the requests prior to the meeting. In addition, the Department may schedule a public hearing on a tentative determination at its discretion.

(b) (1) The Department shall prepare a final determination if:

(i) Written comments adverse to the tentative determination were received by the Department within 30 days after the publication of the notice of tentative determination pursuant to this section;

(ii) Comments adverse to the tentative determination were received in writing at, or within 5 days after, the public hearing conducted pursuant to this section;

(iii) Comments adverse to the tentative determination were received orally at the public hearing conducted pursuant to this section and the Department prepared a transcript of the comments made at the hearing; or

(iv) The final determination is substantively different from the tentative determination and all persons aggrieved by the final determination have not waived, in writing, their right to request a contested case hearing.

(2) If the Department is required to prepare a final determination under this section, the Department shall publish a notice of the final determination.

(3) If the Department is not required to prepare a final determination under this section, the tentative determination is a final decision by the Department when the permit is issued or denied.

§1–605.

(a) A person petitioning for judicial review in accordance with § 1–601 of this subtitle or § 5–204 or § 16–204 of this article shall file the petition in accordance with the Maryland Rules.

(b) A party submitting a petition for judicial review shall file the petition within 30 days after publication of a notice of final determination.

(c) An action for judicial review brought in accordance with § 1–601 of this subtitle or § 5–204 or § 16–204 of this article shall be conducted in accordance with the Maryland Rules.

(d) A party to the judicial review action may not challenge a facility's compliance with zoning and land use requirements or conformity with a county plan issued under Title 9, Subtitle 5 of this article. However, nothing in this subtitle shall prevent a party from challenging whether the Department has complied with §§ 2–404(b)(1)(ii) and 9–210(a)(3) of this article, when applicable, nor does this subtitle prevent a party from contesting the compliance of the facility with zoning and land use or county plan requirements in any proceeding brought in accordance with and under any applicable local laws.

§1–606.

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

(2) "Board" means the Board of Public Works.

(3) "License" means a license under § 16–202 of this article.

(b) This section applies to:

(1) A permit listed under § 1–601(a) of this subtitle;

(2) A permit listed under § 5–204(f) of this article; or

(3) A license issued under § 16–202 of this article.

(c) Any judicial review of a determination provided for in accordance with § 1–601 of this subtitle or § 5–204 or § 16–204 of this article shall be limited to a record compiled by the Department or Board, consisting of:

(1) Any permit or license application and any data submitted to the Department or Board in support of the application;

(2) Any draft permit or license issued by the Department or Board;

(3) Any notice of intent from the Department or Board to deny the application or to terminate the permit or license;

(4) A statement or fact sheet explaining the basis for the determination by the Department or Board;

(5) All documents referenced in the statement or fact sheet explaining the basis for the determination by the Department or Board;

(6) All documents, except documents for which disclosure is precluded by law or that are subject to privilege, contained in the supporting file for any draft permit or license;

(7) All comments submitted to the Department or Board during the public comment period, including comments made on the draft application;

(8) Any tape or transcript of any public hearings held on the application; and

(9) Any response to any comments submitted to the Department or Board.

(d) (1) When a draft permit or license or tentative determination is issued, the Department or Board shall:

(i) Make available for inspection and copying no later than the date the permit, draft license, or tentative determination is issued:

1. All permit or license applications;

2. Documents submitted with a permit or license application;

3. All documents relied on in making the tentative determination; and

4. A privilege log that identifies all documents not produced for inspection in accordance with subsection (c)(6) of this section and states the reasons for withholding each document; and

(ii) Extend the public comment period by 60 days on request by a person.

(2) A request submitted to the Department or Board under paragraph (1)(ii) of this subsection shall be:

(i) Submitted in writing; and

(ii) Made before the expiration of the original comment period.

(3) A public comment period may not be extended more than once under paragraph (1)(ii) of this subsection.

§1–607.

(a) (1) This subsection applies to applications for all licenses and permits issued, or required to be reissued, by the Department.

(2) On or before January 1, 1998, and each year thereafter, in consultation with interested parties, the Department shall publish expected review times for each

licensing and permitting program.

(3) On or before January 1, 1998, for each licensing and permitting program, the Department shall offer assistance and information to persons which may include:

(i) Written lists of information and materials required with applications;

(ii) Written lists of common application questions and mistakes;

(iii) Preapplication meetings with prospective applicants to address technical issues;

(iv) Written receipts to the applicant upon submission of an application; and

(v) The status of active applications.

(b) (1) This subsection applies to permits which are:

(i) Identified in § 1–601(a) of this subtitle; or

(ii) Issued under Title 5, Subtitle 9 of this article.

(2) The Department shall provide to the applicant:

(i) A notice of completed application; or

(ii) If the Department determines that the application is incomplete, the reasons, in writing, that the application was determined to be incomplete.

(3) (i) For permits identified in § 1–601(a) of this subtitle, the notice of completed application shall include an estimated time for issuance of the tentative determination if requested by the applicant.

(ii) For permits issued under Title 5, Subtitle 9 of this article, the notice of completed application shall include an estimate of the date by which the Department will grant, deny, or condition the permit.

(4) A permit applicant may apply to the Department for a refund of all or a portion of the application fee if:

(i) 1. For permits identified in § 1–601(a) of this subtitle, the Department fails to issue a tentative determination regarding the application within the estimated time provided in the notice of completed application; or

2. For permits issued under Title 5, Subtitle 9 of this article, the Department fails to grant, deny, or condition a permit within the time periods

provided under § 5–906 of this article;

(ii) The applicant demonstrates that the delay was caused solely by the Department and was not the result of procedures or requirements outside the control of the Department, including:

1. Reviews by federal, local, or other State government agencies;

2. Procedures for public participation; or

3. The failure of the applicant to submit information to the Department in a timely manner; and

(iii) 1. For permits identified in § 1–601(a) of this subtitle, the applicant applies to the Department within 60 days after the estimated time for issuance of a tentative determination; or

2. For permits issued under Title 5, Subtitle 9 of this article, the applicant applies to the Department within 60 days after the date by which the Department was to have granted, denied, or conditioned a permit under the time periods provided under § 5–906 of this article.

(5) The Secretary, or the Secretary's designee, shall review the refund request and determine if a refund of any amount is appropriate.

(6) If the Secretary denies the refund request, the Department shall provide the applicant a written explanation of the denial and of the procedures and requirements outside the control of the Department on which the denial was based within 60 days.

§1–701.

(a) In this section, "environmental justice" means equal protection from environmental and public health hazards for all people regardless of race, income, culture, and social status.

(b) There is a Commission on Environmental Justice and Sustainable Communities.

(c) (1) The Commission consists of the following 20 members:

(i) One member of the Senate of Maryland, appointed by the President of the Senate;

(ii) One member of the House of Delegates, appointed by the Speaker of the House;

(iii) The Secretary, or the Secretary's designee;

(iv) The Secretary of Health and Mental Hygiene, or the Secretary's designee;

(v) The Secretary of Planning, or the Secretary's designee;

(vi) The Secretary of Business and Economic Development, or the Secretary's designee;

(vii) The Secretary of Housing and Community Development, or the Secretary's designee;

(viii) The Secretary of Transportation, or the Secretary's designee; and

(ix) Twelve members appointed by the Governor who represent the following interests:

1. Affected communities concerned with environmental justice;

2. Business organizations;

3. Environmental organizations;

4. Health experts on environmental justice;

5. Local government; and

6. The general public with interest or expertise in environmental justice.

(2) Of the twelve members appointed by the Governor under paragraph (1)(ix) of this subsection, at least two members shall represent affected communities concerned with environmental justice.

(d) (1) The term of a member appointed by the Governor is 3 years.

(2) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(3) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(4) A member may not be appointed to more than two consecutive terms.

(e) The Governor shall designate the chairman of the Commission.

(f) The Department shall provide staff for the Commission.

(g) (1) The Commission shall meet at the times and places that the chairman determines.

(2) A majority of members of the Commission shall constitute a quorum for the transaction of business.

(3) A member of the Commission:

(i) May not receive compensation as a member of the Commission; but

(ii) Is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(h) The Commission shall:

(1) Advise State government agencies on environmental justice and related community issues;

(2) Review and analyze the impact of current State laws and policies on the issue of environmental justice and sustainable communities;

(3) Assess the adequacy of State and local government laws to address the issue of environmental justice and sustainable communities;

(4) Coordinate with the Children's Environmental Health and Protection Advisory Council on recommendations related to environmental justice and sustainable communities;

(5) Develop criteria to assess whether communities in the State may be experiencing environmental justice issues; and

(6) Recommend options to the Governor for addressing issues, concerns, or problems related to environmental justice that surface after reviewing State laws and policies, including prioritizing areas of the State that need immediate attention.

(i) On or before October 1 of each year, the Commission shall report its findings and recommendations to the Governor and, subject to § 2–1246 of the State Government Article, the General Assembly.

§1–801.

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

(b) "Activity and use limitation" means a restriction or obligation created under this subtitle with respect to real property.

(c) "Agency" means the Department or any other state or federal agency that determines or approves the environmental response project pursuant to which an

environmental covenant is created.

(d) "Common interest community" means a condominium, cooperative, or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums, or for maintenance, or improvement of other real property described in a recorded covenant that creates the common interest community.

(e) "Environmental covenant" means a servitude arising under an environmental response project that imposes activity and use limitations.

(f) "Environmental response project" means a plan or work performed for environmental remediation of real property that is conducted:

(1) Under a federal or state program governing environmental remediation of real property, including Title 7, Subtitle 5 of this article; or

(2) Incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of an agency.

(g) "Holder" means the grantee of an environmental covenant.

(h) "Person" means an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(i) "Record", when used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(j) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

§1–802.

(a) An environmental covenant shall:

(1) State that the instrument is an environmental covenant executed pursuant to this subtitle;

(2) Contain a legally sufficient description of the real property subject to the covenant;

(3) Describe the activity and use limitations on the real property;

(4) Identify every holder;

(5) Be signed by the Agency and every holder;

(6) Unless excepted by the Agency, be signed by every owner of the fee simple of the real property subject to the covenant; and

(7) Identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant.

(b) In addition to the information required under subsection (a) of this section, an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed it, including any:

(1) Requirements for notice following transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits or proposals for any site work affecting the contamination on the property subject to the covenant;

(2) Requirements for periodic reporting describing compliance with the covenant;

(3) Rights of access to the property granted in connection with implementation or enforcement of the covenant;

(4) Brief narrative descriptions of the contamination and remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination;

(5) Limitations on amendment or termination of the covenant in addition to those provided under §§ 1-808 and 1-809 of this subtitle; and

(6) Rights of the holder in addition to the holder's right to enforce the covenant under § 1-810 of this subtitle.

(c) In addition to other conditions for the Agency's approval of an environmental covenant, the Agency may require those persons specified by the Agency who have interests in the real property to sign the covenant.

§1–803.

(a) (1) Any person, including a person that owns an interest in the real property, the Agency, or a municipality or other unit of local government, may be a holder of an environmental covenant.

(2) An environmental covenant may identify more than one holder.

(b) (1) The interest of a holder of an environmental covenant is an interest in real property.

(2) A right of an agency under this subtitle or under an environmental

covenant, other than a right as a holder, is not an interest in real property.

(c) (1) An agency is bound by any obligation it assumes in an environmental covenant, but an agency does not assume obligations merely by signing an environmental covenant.

(2) Any person other than an agency that signs an environmental covenant is bound by the obligations the person assumes in the covenant, but signing the covenant does not change obligations, rights, or protections granted or imposed under law other than this subtitle except as provided in the covenant.

(d) (1) The provisions of this subsection apply to interests in real property in existence at the time an environmental covenant is created or amended.

(2) An interest that has priority under other law is not affected by an environmental covenant unless the person that owns the interest subordinates that interest to the covenant.

(3) A person that owns an interest that has priority under other law is not required under this subtitle to subordinate that interest to an environmental covenant or to agree to be bound by the covenant.

(4) (i) A subordination agreement may be contained in an environmental covenant covering real property or in a separate record.

(ii) If the environmental covenant covers commonly owned property in a common interest community, the record may be signed by any person authorized by the governing board of the owners' association.

(5) An agreement by a person to subordinate an interest that has priority under other law to an environmental covenant affects the priority of that person's interest but does not by itself impose any affirmative obligation on the person with respect to the environmental covenant.

§1–804.

(a) An environmental covenant that complies with this subtitle runs with the land.

(b) An environmental covenant that is otherwise effective is valid and enforceable even if:

(1) It is not appurtenant to an interest in real property;

(2) It can be or has been assigned to a person other than the original holder;

(3) It is not of a character that has been recognized traditionally at

common law;

(4) It imposes a negative burden;

(5) It imposes an affirmative obligation on a person having an interest in the real property or on the holder;

(6) The benefit or burden does not touch or concern real property;

(7) There is no privity of estate or contract;

(8) The holder dies, ceases to exist, resigns, or is replaced; or

(9) The owner of an interest subject to the environmental covenant and the holder are the same person.

(c) An instrument that creates restrictions or obligations with respect to real property that would qualify as activity and use limitations except for the fact that the instrument was recorded before October 1, 2005, is not invalid or unenforceable because of any of the limitations on enforcement of interests described in subsection (b) of this section or because it was identified as an easement, servitude, deed restriction, or other interest. This subtitle does not apply in any other respect to such an instrument.

(d) This subtitle does not invalidate or render unenforceable any interest, whether designated as an environmental covenant or other interest, that is otherwise enforceable under state law.

§1–805.

(a) This subtitle does not authorize a use of real property that is otherwise prohibited by zoning, by law other than this subtitle regulating use of real property, or by a recorded instrument that has priority over the environmental covenant.

(b) An environmental covenant may prohibit or restrict uses of real property that are authorized by zoning or by law other than this subtitle.

§1–806.

(a) A copy of an environmental covenant shall be provided by the persons and in the manner required by the agency to:

(1) Each person that signed the covenant;

(2) Each person holding a recorded interest in the real property subject to the covenant;

(3) Each person in possession of the real property subject to the covenant;

(4) Each municipality or other unit of local government in which real

property subject to the covenant is located; and

(5) Any other person the Agency requires.

(b) The validity of a covenant is not affected by failure to provide a copy of the covenant as required under this section.

§1–807.

(a) (1) An environmental covenant and any amendment or termination of the covenant must be recorded in every county in which any portion of the real property subject to the covenant is located.

(2) For purposes of indexing, a holder shall be treated as a grantee.

(b) Except as otherwise provided under § 1-808(c) of this subtitle, an environmental covenant is subject to the laws of the state governing recording and priority of interests in real property.

§1–808.

(a) An environmental covenant is perpetual unless it is:

(1) By its terms, limited to a specific duration or terminated by the occurrence of a specific event;

(2) Terminated by consent as provided under § 1-809 of this subtitle;

(3) Terminated under subsection (b) of this section;

(4) Terminated by foreclosure of an interest that has priority over the environmental covenant; or

(5) Terminated or modified in an eminent domain proceeding, if:

(i) The Agency that signed the covenant is a party to the proceeding;

(ii) Each person identified in § 1-809(a) and (b) of this subtitle is given notice of the pendency of the proceeding; and

(iii) The court determines, after a hearing, that the termination or modification will not adversely affect human health or the environment.

(b) (1) If the Agency that signed an environmental covenant has determined that the intended benefits of the covenant can no longer be realized, a court, under the doctrine of changed circumstances, in an action in which all persons identified in § 1-809(a) and (b) of this subtitle have been given notice, may terminate the covenant or reduce its burden on the real property subject to the covenant.

(2) The Agency's determination or its failure to make a determination upon request is subject to review in accordance with the Administrative Procedure Act.

(c) Except as otherwise provided in subsections (a) and (b) of this section, an environmental covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or a similar doctrine.

§1–809.

(a) An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by:

(1) The Agency;

(2) Unless waived by the Agency, the current owner of the fee simple of the real property subject to the covenant;

(3) Each person that originally signed the covenant, unless:

(i) The person waived in a signed record the right to consent; or

(ii) A court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and

(4) Except as otherwise provided in subsection (d)(2) of this section, the holder.

(b) If an interest in real property is subject to an environmental covenant, the interest is not affected by an amendment of the covenant unless the current owner of the interest consents to the amendment or has waived in a signed record the right to consent to amendments.

(c) Except for an assignment undertaken in accordance with a governmental reorganization, assignment of an environmental covenant to a new holder shall be considered to be an amendment of the covenant.

(d) Except as otherwise provided in an environmental covenant:

(1) A holder may not assign its interest without consent of the other parties; and

(2) A holder may be removed and replaced by agreement of the other parties specified in subsection (a) of this section.

(e) A court of competent jurisdiction may fill a vacancy in the position of holder.

§1–810.

(a) A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by:

(1) A party to the covenant;

(2) The Agency or, if it is not the Agency, the Department;

(3) Any person to whom the covenant expressly grants power to enforce;

(4) A person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the covenant; or

(5) The county or municipal corporation in which the real property subject to the covenant is located.

(b) This subtitle does not limit the regulatory authority of the Agency or the Department under law, other than this subtitle, with respect to an environmental response project.

(c) A person is not responsible for or subject to liability for environmental remediation solely because the person has the right to enforce an environmental covenant.

§1–811.

(a) (1) The Department shall establish and maintain a registry that contains all environmental covenants and any amendment or termination of those covenants.

(2) The registry may contain any other information concerning environmental covenants and the real property subject to them that the Department considers appropriate.

(3) For purposes of the Maryland Public Information Act, the registry is a public record.

(b) (1) After an environmental covenant or an amendment or termination of a covenant is filed in the registry established under subsection (a) of this section, a notice of the covenant, amendment, or termination that meets the requirements of paragraph (2) of this subsection may be recorded in the land records in lieu of recording the entire covenant.

(2) A notice shall contain:

(i) A legally sufficient description and any available street address of the real property subject to the covenant;

(ii) The name and address of the owner of the fee simple interest in

the real property, the Department, and the holder if other than the Department;

(iii) A statement that the covenant, amendment, or termination is available in a registry at the Department, including the method of any electronic access; and

(iv) A statement that the notice is notification of an environmental covenant executed pursuant to this subtitle.

(c) A statement in substantially the following form, executed with the same formalities as a deed in the State, satisfies the requirements of subsection (b) of this section:

"1. This notice is filed in the land records of (political subdivision) of (name of jurisdiction in which the real property is located) pursuant to § 1–811 of the Environment Article.

2. This notice and the covenant, amendment, or termination to which it refers may impose significant obligations with respect to the property described below.

3. A legal description of the property is attached as Exhibit A to this notice. The address of the property that is subject to the environmental covenant is (insert address of property or state that the address is not available).

4. The name and address of the owner of the fee simple interest in the real property on the date of this notice is (name of current owner of the property and the owner's current address as shown on the tax records of the jurisdiction in which the property is located).

5. The environmental covenant, amendment, or termination was signed by (name and address of the signing agency).

6. The environmental covenant, amendment, or termination was filed in the registry on (date of filing).

7. The full text of the covenant, amendment, or termination and any other information required by the Department of the Environment is on file and available for inspection and copying in the registry maintained for that purpose by the Department.".

§1–812.

(a) Except as provided under subsection (b) of this section, this subtitle modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act.

(b) This subtitle does not modify, limit, or supersede § 7001(a) or authorize electronic delivery of any of the notices described in § 7003(b) of the federal Electronic Signatures in Global and National Commerce Act.

§1–813.

This subtitle shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this subtitle among states enacting it.

§1–814.

This subtitle may be cited as the Maryland Uniform Environmental Covenants Act.

§1–815.

If any provision of this subtitle or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this subtitle which can be given effect without the invalid provision or application, and to this end the provisions of this subtitle are severable.

§2–101.

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

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

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

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

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

(d) "Emergency" means:

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

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

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

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

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

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

(h) "Regulated emissions" means the actual rate of emissions, in tons per year, of any registered pollutant emitted by a source, to be calculated using criteria consistent with 40 C.F.R. Part 70 (Operating Permit Program).

(i) "Source" means any person or property that contributes to air pollution.

§2–102.

It is the policy of this State to maintain the degree of purity of the air necessary to protect the health, the general welfare, and property of the people of this State.

§2–103.

(a) In addition to the powers set forth elsewhere in this title, the Department may obtain any federal or other funds that are available to this State for purposes that are within the scope of this title.

(b) In addition to the duties set forth elsewhere in this title, the Department:

(1) Has jurisdiction over emissions into the air and ambient air quality in this State;

(2) Is responsible for monitoring ambient air quality in this State; and

(3) Shall coordinate all State agency programs on ambient air quality control.

(c) The Department may contract for or otherwise arrange for the use of the facilities and services of appropriate agencies of political subdivisions in carrying out the Department's monitoring duties under this title.

§2–103.1.

Subject to § 2-1246 of the State Government Article, the Secretary, in conjunction with the Secretary of Transportation, shall furnish a joint report, within 30 days after the date Congress modifies the provisions of the federal Clean Air Act, to the Legislative Policy Committee, the Senate Judicial Proceedings Committee, and the House Environmental Matters Committee outlining the status of changes in the federal Clean Air Act as of that date and all other related and pertinent information.

§2–103.2.

(a) In this section, "ambient air monitoring data" means measured concentrations of air pollutants, including air pollutants for which there are no established ambient air quality standards or emission standards, obtained from an ambient air monitor established by the Department.

(b) On or before January 1, 2000, and each year thereafter, the Department shall provide public access to all air monitoring data in the State through the Internet.

(c) Ambient air monitoring data provided under this section:

(1) May be in summary form; and

(2) Shall include all validated ambient air monitoring data for the 2 most recent calendar years for which data are available.

§2–104.

(a) (1) Except as provided in this section, this title does not limit the power of a political subdivision to adopt ordinances, rules, or regulations that set emission standards or ambient air quality standards.

(2) A political subdivision may not adopt any ordinance, rule, or regulation that sets an emission standard or ambient air quality standard less stringent than the standards set by the Department under this title.

(b) The governing body of any political subdivision may ask the Department to adopt rules and regulations that set more restrictive emission standards or ambient air quality standards in that political subdivision.

§2–105.

(a) (1) In accordance with the rules and regulations adopted by the Department, the Secretary shall advise the Governor when an air pollution emergency exists or is reasonably certain to occur.

(2) When so advised, the Governor may issue an executive order that:

(i) Proclaims an air pollution emergency; and

(ii) Requires the immediate elimination of specifically identifiable sources of air pollution.

(b) If a person violates an executive order issued under this section, the Attorney General may sue in a court of appropriate jurisdiction to enforce compliance with the order.

§2–106.

(a) A determination by the Department that air pollution exists or that a rule or regulation has been disregarded or violated does not create any presumption of law or finding of fact for the benefit of any person other than this State.

(b) Any proceedings under this title shall be brought by the Department for the benefit of the people of this State.

(c) No person other than this State acquires actionable rights by virtue of this title.

§2–107.

(a) There is a Maryland Clean Air Fund.

(b) Except as provided in § 2–1002(g) of this title, all application fees, permit fees, renewal fees, and funds collected by the Department under this title, Title 6, Subtitle 4 of this article, or received from the Maryland Strategic Energy Investment Fund under § 9–20B–05(g)(3)(iii) of the State Government Article, including any civil or administrative penalty or any fine imposed by a court under these provisions, shall be paid into the Maryland Clean Air Fund.

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

(i) Activities conducted under this title that are related to identifying, monitoring, and regulating air pollution in this State, including program development of these activities as provided in the State budget; and

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

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

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

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

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

(4) When the Fund equals or exceeds a maximum limit of $2,000,000, additional moneys received for the Fund by the Department shall be deposited to the General Fund.

§2–201.

There is an Air Quality Control Advisory Council in the Department.

§2–202.

(a) (1) The Council consists of not more than 15 members appointed by the Secretary.

(2) Of the Council members:

(i) 1 shall be appointed from a list of 3 qualified individuals who are professional engineers licensed in this State, submitted to the Secretary by the Baltimore section of the American Society of Mechanical Engineers;

(ii) 1 shall be appointed from a list of 3 qualified individuals submitted to the Secretary by the Maryland section of the American Institute of Chemical Engineers;

(iii) 2 shall be individuals who are employed in a manufacturing or public utility business in this State, each appointed from a separate list of 3 qualified individuals submitted to the Secretary by the Maryland Chamber of Commerce;

(iv) 1 shall be a physician;

(v) 1 shall be a member of the Regional Planning Council who is recommended to the Secretary by the Regional Planning Council;

(vi) 1 shall be appointed from a list of 3 qualified individuals submitted to the Secretary by the Maryland Association of Counties;

(vii) 4 shall be appointed, 1 from each list, from lists of 3 qualified individuals submitted to the Secretary by:

1. The Chairman of the Board of Directors of the Council of Governments of Metropolitan Washington;

2. The President of the Johns Hopkins University;

3. The President of the Maryland State–D.C. AFL–CIO; and

4. The Chancellor of the University System of Maryland;

(viii) 2 shall be public members who represent the community at large; and

(ix) 1 shall be a member of the Children's Environmental Health and Protection Advisory Council who has expertise in pediatric environmental health.

(3) In making appointments to the Council, the Secretary shall:

(i) Consider giving appropriate representation to the various geographical areas of this State; and

(ii) Appoint at least 1 member who is engaged actively in farming and knowledgeable in farm and rural pollutant problems.

(b) (1) The term of a member is 5 years.

(2) The terms of the members are staggered as required by the terms provided for members of the Council on July 1, 1986.

(3) The member who represents the Regional Planning Council serves only so long as the member remains on the Regional Planning Council.

(4) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(5) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

§2–203.

From among the Council members, the Secretary shall appoint a chairman and a vice chairman.

§2–204.

(a) The Secretary of the Environment shall appoint a secretary of the Council.

(b) The secretary of the Council need not be a member of the Council.

§2–205.

(a) The Council shall meet at the times and places that the Secretary of the Environment or the chairman determines.

(b) Each member of the Council and the secretary of the Council:

(1) May not receive compensation; but

(2) Are entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

§2–206.

(a) Before the Department adopts any rule or regulation under this title, the Department shall submit the proposed rule or regulation to the Council for advice.

(b) Within 30 days after receiving a proposed rule or regulation from the Department, the Council shall give the Department its advice on the proposal by recommending:

(1) Adoption;

(2) Rejection; or

(3) Modification.

§2–301.

(a) The Department:

(1) May adopt rules and regulations for the control of air pollution in this State, including testing, monitoring, record keeping, and reporting requirements; and

(2) Shall adopt rules and regulations that establish standards and procedures to be followed whenever pollution of the air reaches an emergency condition.

(b) In adopting any rule or regulation under this title, the Department shall consider, among other things:

(1) The residential, commercial, or industrial nature of the area affected;

(2) Zoning;

(3) The nature and source of various kinds of air pollution;

(4) The problems of any commercial or industrial establishment that may be affected by the rule or regulation; and

(5) The environmental conditions, population density, and topography of any area that may be affected by the rule or regulation.

(c) Any rule or regulation adopted under this title that relates to grain drying operations shall be adopted with the advice and consent of the State Department of Agriculture.

§2–302.

(a) The Department shall determine and may alter air quality control areas into which this State is divided.

(b) The Department shall adopt rules and regulations that set emission standards and ambient air quality standards for each of the air quality control areas in this State.

(c) (1) Unless a political subdivision requests a more restrictive standard under § 2-104 of this title, the Department shall set ambient air quality standards for pollutants that are identical to the standards for pollutants for which national primary or secondary ambient air quality standards have been set by the federal government.

(2) To protect the public health, the general welfare, and property of the people of this State, the Department may set State ambient air quality standards for substances for which national ambient air quality standards have not been set by the federal government.

(3) If the Secretary finds that transportation through the air is a significant factor in the buildup of a pollutant in a substance other than air and that monitoring the substance facilitates control of the pollutant, a State ambient air quality standard may establish a maximum concentration of the pollutant in that substance.

(d) (1) Except as provided in paragraph (2) of this subsection, if national ambient air quality standards are attained in an air quality control area, the Department shall set emission standards for that area based on the goal of achieving emission levels that are not more restrictive than necessary to attain and maintain the ambient air quality standards in that area.

(2) The limitations of paragraph (1) of this subsection do not apply to the extent that:

(i) A political subdivision requests a more restrictive standard under § 2-104 of this title; or

(ii) New source performance standards, national prevention of significant deterioration requirements, national emission standards for hazardous pollutants, or any other requirements of the federal Clean Air Act apply.

(3) For those emissions for which no national ambient air quality standards have been set, the Secretary may set emission standards and requirements for various classes of sources.

§2–303.

(a) The Department may not adopt any rule or regulation under this title unless the requirements of this section and the Administrative Procedure Act are met.

(b) Before adopting any rule or regulation under this title, the Department shall announce and hold a public hearing on the subject.

(c) (1) Until October 1, 2014, at least 30 days before the public hearing, the Department shall publish notice of the hearing in a newspaper of general circulation in the area concerned.

(2) The notice required under paragraph (1) of this subsection shall state:

(i) The date, time, and place of the hearing;

(ii) The purpose of the hearing;

(iii) That, beginning on October 1, 2014, all future notices required under this title will be posted on the Department's Web site; and

(iv) A phone number or electronic mail address at the Department that a person can contact to arrange for the receipt of future public notices required under this title by first–class mail or electronic mail.

(3) Beginning on October 1, 2014, at least 30 days before the public hearing, the Department shall publish notice of the hearing in a newspaper of general circulation in the area concerned or on the Department's Web site.

(4) The notice required under paragraph (3) of this subsection shall state:

(i) The date, time, and place of the hearing; and

(ii) The purpose of the hearing.

(d) Beginning on October 1, 2014, the Department shall publish annually a notice in a newspaper of general circulation to inform the public of:

(1) The types of public notices required under this title that are available on the Department's Web site; and

(2) A phone number or electronic mail address at the Department that a person can contact to arrange for the receipt of future public notices required under this title by first–class mail or electronic mail.

(e) After the public hearing, the Department may adopt the rule or regulation with or without modification.

§2–303.1.

The Department may not adopt regulations to implement Stage II of the Program for Volatile Organic Emissions Control from gasoline retailing operations unless:

(1) The Department is mandated by the United States Environmental Protection Agency;

(2) The Department is unable to find other control strategies; and

(3) The Environmental Protection Agency publishes notice in the Federal Register that the State of Maryland is not in compliance with the provisions of the Clean Air Act (42 U.S.C. §§ 7401 through 7602).

§2–303.2.

In any program implementing the reduction of vehicle miles traveled as a part of the State's compliance with the federal Clean Air Act the Department shall include provisions to allow, both within Maryland and among Maryland and adjoining states:

(1) The averaging of reductions in vehicle miles traveled between different worksites of the same employer;

(2) The averaging of reductions in vehicle miles traveled between worksites of different employers;

(3) The sale between worksites and employers of credits for reduced vehicle miles traveled; and

(4) The greatest degree of flexibility in implementation, giving full consideration to the geographic differences among affected areas, in order to promote the economic and environmental interests of the areas affected.

§2–303.3.

The Department shall conduct inspections as provided in a memorandum of understanding on behalf of and in coordination with other agencies when administering the inspection of gasoline retailing operations under this subtitle.

§2–304.

Each State agency shall consult with the Department before adopting any rule or regulation that relates to ambient air quality control.

§2–401.

Except as provided in § 2-402 of this subtitle, the Department may adopt regulations that require a permit or registration before a person constructs, modifies, operates, or uses a source that may cause or control emissions into the air.

§2–402.

The Department may not require a permit or registration for:

(1) Any machinery or equipment that normally is used in a mobile manner;

(2) Any boiler used exclusively to operate steam engines for farm and domestic use;

(3) The construction of a generating station constructed by a person that is required to obtain a certificate of public convenience and necessity under §§ 7–207 and 7–208 of the Public Utilities Article and regulations adopted by the Public Service Commission;

(4) Actual construction of buildings, apart from any possible emission producing machinery housed in the buildings;

(5) Any parking garage; or

(6) Any parking lot.

§2–403.

(a) (1) The Department, by regulation, shall require and collect a fee for each permit issued under § 2–401 of this subtitle.

(2) In adopting the regulations under this section, the Department shall consult with industry to determine that the permit fee is reasonable and directly related to the actual cost of the permitting and regulatory activity, and does not exceed a certain dollar amount.

(b) (1) The amount of the fees shall cover:

(i) The reasonable cost of reviewing and acting on the application for the permits;

(ii) The reasonable costs incurred in implementing and enforcing the terms and conditions of the permits, exclusive of any court costs or other costs associated with any enforcement actions; and

(iii) The costs identified in § 502(b)(3) of the Clean Air Act Amendments of 1990.

(2) Fees assessed and collected under this section shall be used exclusively for the development and administration of the permit program under this subtitle.

(c) (1) The fee established under this section may not exceed:

(i) $50 per ton of regulated emissions; and

(ii) $500,000 for any single source in calendar years 2008 and 2009.

(2) For purposes of calculating fees under this section, carbon dioxide emissions shall be excluded.

(3) The fee established under this section may be adjusted to reflect changes in the Consumer Price Index, as authorized by 40 C.F.R. Part 70 (Operating Permit Program).

§2–404.

(a) This section applies to the following activities:

(1) Construction of a new source;

(2) Replacement of components of an existing permitted source, if the fixed capital cost of the replacement components exceeds one–half of the fixed capital cost that would be required to construct a new source comparable in process to the existing

source; and

(3) Modification of an existing permitted source by making a physical or operational change to the source that will result in a significant net increase in emissions of any pollutant from that source.

(b) (1) Before accepting an application for a permit subject to subsection (c) of this section, the Department shall require the applicant to submit documentation:

(i) That demonstrates that the proposal has been approved by the local jurisdiction for all zoning and land use requirements; or

(ii) That the source meets all applicable zoning and land use requirements.

(2) Paragraph (1) of this subsection does not apply to any application for a permit to construct at an existing source unless the existing source is a nonconforming use.

(c) The Department shall comply with the provisions in subsection (d) of this section before issuing a permit for the activities listed in subsection (a) of this section at:

(1) Any source which is required to obtain a permit to operate under regulations adopted under this subtitle;

(2) Any source which is subject to federal standards under 40 C.F.R. Part 61 (National Emission Standards for Hazardous Air Pollutants) or 40 C.F.R. 52.21 (Prevention of Significant Deterioration); or

(3) Any source that will, after control, discharge 25 tons or more per year of a pollutant regulated under this title in the areas of Baltimore City designated by the United States Post Office as zip code numbers 21225, 21226, and 21230.

(d) (1) On receipt of an application for a permit subject to subsection (c) of this section, the Department shall give notice immediately or require the applicant to give notice immediately of the application by certified mail to:

(i) The governing body of each county or municipal corporation in which any portion of the source is located or is proposed to be located;

(ii) The governing body of each county or municipal corporation within one mile of the property line of the source or the proposed location of the source;

(iii) Each member of the General Assembly representing any part of a county in which any portion of the source is located or proposed to be located; and

(iv) Each member of the General Assembly representing any part of

each county within one mile of the property line of the source or the proposed location of the source.

(2) In addition to the requirements under paragraph (1) of this subsection, before issuing a permit subject to subsection (c) of this section, the Department shall:

(i) Comply with the provisions of Title 1, Subtitle 6 of this article; and

(ii) Conduct any public hearing required by Title 1, Subtitle 6 of this article in the county in which the proposed source is located.

(3) In addition to the requirements under paragraphs (1) and (2) of this subsection, before issuing a permit to construct a source described in subsection (c)(3) of this section, the Department shall require at the expense of the applicant the preparation of an ambient air quality impact analysis regarding the proposed construction.

(e) Before issuing a permit for the activities listed in subsection (a) of this section at any source which is subject to federal standards under 40 C.F.R. Part 60 (New Source Performance Standards), the Department shall:

(1) Comply with the provisions of subsection (d) of this section; or

(2) (i) Electronically post a notice of an application for the permit on the Department's Web site in accordance with § 1–602(b)(1) of this article;

(ii) Give notice to the chief executive of any county or municipal corporation in which any portion of the source is located or is proposed to be located; and

(iii) Receive comments from the public on the permit application.

(f) The provisions of this section do not apply to any permit to construct control equipment on an existing source or to any permit to operate.

§2–404.1.

(a) Except for an applicant who elects to proceed under subsection (d) of this section, a final decision by the Department on the issuance, renewal, or revision of an operating permit issued pursuant to Title V of the federal Clean Air Act Amendments of 1990 is subject to judicial review by any person who:

(1) Meets the threshold standing requirements under federal constitutional law; and

(2) Participated in a public participation process through the submission of written or oral comments, unless an opportunity for public participation was not

required by statute or regulation.

(b) Judicial review shall be on the administrative record before the Department and limited to objections raised during the public comment period, unless the petitioner demonstrates:

(1) That the objections were not reasonably ascertainable during the comment period; or

(2) That grounds for the objections arose after the comment period.

(c) Unless otherwise required by statute, a petition for judicial review by a person who meets the requirements of subsection (a) of this section shall be filed with the circuit court for the county in which any party resides or has a principal place of business.

(d) (1) An applicant for an air quality operating permit may seek judicial review in accordance with Title 10, Subtitle 2 of the State Government Article.

(2) Except for an applicant as described in paragraph (1) of this subsection, a person is not entitled to a contested case hearing regarding Title V operating permits.

§2–405.

(a) (1) Whenever the Public Service Commission notifies the Secretary of an application for a certificate of public convenience and necessity under § 7–207 of the Public Utilities Article, the Secretary shall prepare a recommendation in connection with the permit or registration required by this subtitle. The recommendation shall be presented at the hearing required by § 7–207 of the Public Utilities Article.

(2) The recommendation shall identify the requirements of all applicable federal and State environmental laws and standards and shall recommend and evaluate various methods and conditions for compliance.

(3) If a person files an application for an operating permit under this subtitle simultaneously with an application for a certificate, the Department shall consolidate its procedures for the issuance of the operating permit with the Public Service Commission's proceedings for issuance of the certificate and shall issue the operating permit simultaneously with the certificate unless consolidation would be inconsistent with the procedures set forth in the federal Clean Air Act.

(4) The Department shall incorporate into the initial operating permit the conditions of the certificate which relate to air quality control.

(b) Subject to judicial review as provided under Title 3, Subtitle 2 of the Public Utilities Article, the decision of the Public Service Commission in connection with a certificate of public convenience and necessity or a filing under § 7–206 of the Public Utilities Article is binding on the Secretary.

(c) When a person that is required to obtain a certificate of public convenience and necessity applies for an operating permit for a generating station under this subtitle, the person shall send a copy of the application, at the time of filing, to the Public Service Commission.

(d) The Department shall consolidate procedures for the issuance of the operating permit with procedures of the Public Service Commission for the approval of the installation of pollution control equipment or a change in the method of operation unless consolidation would be inconsistent with the procedures set forth in the federal Clean Air Act.

(e) (1) Before issuing an operating permit which requires the installation of pollution control equipment or a change in the method of operation of the generating station or unit to any person required to obtain a certificate of public convenience and necessity, the Secretary shall notify the applicant and the Public Service Commission and request that the Public Service Commission institute a hearing as required by § 7–206 of the Public Utilities Article.

(2) In addition to the notification, the Secretary shall file the record of the operating permit proceeding and the Department's reasons for requiring the installation of pollution control equipment or change in method of operation.

(f) (1) The Commission shall conduct the hearing required by subsection (e) of this section in the manner set forth in §§ 7–205 and 7–207 of the Public Utilities Article.

(2) The Department shall incorporate the Commission's order rendered in accordance with § 7–206 of the Public Utilities Article.

(g) Except as provided in subsection (h) of this section, the Secretary shall consult with the Public Service Commission concerning the impact of any operating permit, order or injunction on the supply and cost of electricity in this State before issuing any operating permit, issuing any order, or seeking any injunction under this subtitle that:

(1) Significantly impacts the supply of electricity from a generating station owned or operated by any person required to obtain a certificate of public convenience and necessity; or

(2) Significantly affects the cost of electricity provided by any person that is required to obtain a certificate of public convenience and necessity.

(h) (1) The Secretary need not consult with the Commission before issuing an order or seeking an injunction if the Secretary concludes that the delay during consultation could harm public health or the environment.

(2) If the Secretary does not consult with the Commission before the issuance of the order or of the seeking of an injunction, the Secretary shall consult

with the Commission as soon thereafter as practicable.

(i) The failure of the Department or the Public Service Commission to comply with this section is not a defense to an action against a person to enforce, to obtain, or to punish for noncompliance with any permit, certificate, order, or injunction.

(j) The Secretary may adopt regulations to carry out the provisions of this section. The Secretary may not require a permit nor require the payment of a permit fee in violation of the federal Clean Air Act.

§2–406.

(a) After July 1, 1990, the owner of an incinerator for the disposal of solid waste as defined in § 7-201 or § 9-101 of this article may not operate or cause the incinerator to be operated unless the owner certifies to the Department that any person operating the incinerator has completed a course of instruction, approved by the Department, in the proper and safe operation of the incinerator.

(b) An operator of an incinerator who meets the requirements of subsection (a) of this section shall be present at all times the incinerator is in operation.

(c) The Department shall adopt regulations to implement the provisions of this section.

(d) The Department shall, at a minimum, conduct quarterly inspections of an incinerator that accepts more than 50 tons per day of special medical waste, as defined in Title 26, Subtitle 13, Chapter 11 of the Code of Maryland Regulations, and may undertake other activities as necessary to determine whether the operation of the incinerator meets the requirements of the air quality permit issued under this title.

(e) The Department shall, at a minimum, require the holder of a permit to incinerate special medical waste that accepts more than 50 tons of special medical waste per day to:

(1) Sample stack emissions under normal operating conditions at least one time per year for dioxin and heavy metals, including barium, cadmium, chromium, lead, nickel, mercury, zinc, arsenic, selenium, and vanadium; and

(2) Provide the test report to the Department.

(f) The holder of the permit shall pay the Department for the cost of the inspection and any other activity conducted under subsection (d) of this section.

§2–501.

On a case-by-case basis, the Department may grant a temporary fuel variance to any person who is unable to obtain the type of fuel required to comply with any rule, regulation, or order adopted or issued under this title.

§2–502.

(a) A petition for a temporary fuel variance shall be filed with the Department in the form the Department requires.

(b) The petition shall contain:

(1) The name, address, and telephone number of the petitioner and any other person who is authorized to receive notices on behalf of the petitioner;

(2) The type and location of the operations for which the temporary fuel variance is sought;

(3) An explanation of why the petitioner is unable to obtain the necessary required fuel; and

(4) A description of:

(i) The process that is causing emissions and the quantity and nature of existing emissions;

(ii) The specific variance sought, including:

1. The starting and ending dates of the requested variance; and

2. The type, sulphur content, and quantity of the fuel that the petitioner proposes to use; and

(iii) The amount and type of:

1. The current fuel inventory of the petitioner; and

2. Any fuel reserves at any facility that is owned or operated by the petitioner.

(c) The petitioner shall verify the information in the petition.

§2–503.

(a) If a petition for a temporary fuel variance is filed in accordance with § 2-502 of this subtitle, the Department shall schedule a public hearing on the petition to be held as soon as possible but no earlier than 10 days after publication of the notice required by this section.

(b) The petitioner shall publish a prominent notice of the hearing in a newspaper of general circulation in the county where the source for which the temporary fuel variance is sought is located.

(c) Except as otherwise provided by the Department, the notice shall contain:

(1) The name and address of the petitioner;

(2) The location and a description of the operations for which the temporary fuel variance is sought;

(3) A reference to the specific rule, regulation, or order from which the temporary fuel variance is sought;

(4) A brief statement explaining why the temporary fuel variance is sought;

(5) A statement that any person may oppose the petition at a public hearing on a specific date and at a specific time and location; and

(6) Any additional information that the Department requires.

(d) (1) The Department may grant an emergency temporary fuel variance before the public hearing if:

(i) The petitioner shows to the Department an immediate need for the temporary fuel variance; and

(ii) The Air Management Administration recommends that the Department grant the temporary fuel variance before the hearing.

(2) If the Department grants an emergency temporary fuel variance before the public hearing:

(i) The notice of the hearing shall state that an emergency temporary fuel variance has been granted and will be reviewed at the hearing; and

(ii) The hearing shall be held by the Department within 30 days after the petition is filed.

(e) After the hearing and if the Air Management Administration so recommends, the Department may:

(1) If a temporary fuel variance has not been previously granted:

(i) Grant a temporary fuel variance, subject to federal requirements, for a period of not more than 120 days; or

(ii) Refuse to grant a temporary fuel variance; and

(2) If an emergency temporary fuel variance has been granted previously:

(i) Terminate the emergency temporary fuel variance; or

(ii) Extend the emergency temporary fuel variance, subject to federal regulations, for a period of not more than 120 days from the date the variance was first granted.

§2–504.

The Department may grant an extension of a temporary fuel variance for an additional period of not more than 60 days, if the petitioner gives the Department additional information that justifies the extension.

§2–505.

Except to the extent necessary to give effect to the temporary fuel variance, a petitioner who is granted a temporary fuel variance shall comply with any applicable law, rule, or regulation, and with any order, permit, or other temporary fuel variance previously issued or granted under this title.

§2–601.

To the maximum extent possible, the Department shall use the facilities and services of appropriate agencies of political subdivisions to enforce the standards set under this title.

§2–602.

(a) The Department may issue a show–cause order or a corrective order under this section if the Department has reasonable grounds to believe that the person to whom the order is directed has violated:

(1) This title;

(2) Any rule or regulation adopted under this title;

(3) Any plan for compliance issued under this title; or

(4) Any permit or registration issued under § 2–401 of this title.

(b) The Department is not required to issue a show–cause order or a corrective order before enforcing this title by injunction or civil penalty under this subtitle.

§2–603.

(a) A show–cause order issued under this subtitle shall:

(1) Specify the provision that allegedly has been violated;

(2) Describe the nature and extent of the alleged violation;

(3) Require the person charged to appear at a hearing and show cause why

an order requiring corrective action should not be issued; and

(4) State the date, time, and place of the hearing.

(b) Each show–cause order issued under this subtitle shall be in writing and shall be served:

(1) Not less than 20 days before the time set for the hearing; and

(2) As a summons is served under the Maryland Rules or by certified mail.

§2–604.

(a) A corrective order issued under this subtitle shall:

(1) Specify the provision that allegedly has been violated;

(2) Describe the nature and extent of the alleged violation;

(3) Require corrective action within a time specified in the order; and

(4) State that the person charged will receive a hearing if the person requests the hearing within 10 days after service.

(b) Each corrective order issued under this subtitle shall be in writing and shall be served:

(1) As a summons is served under the Maryland Rules; or

(2) By certified mail.

(c) Unless the person charged with a corrective order requests a hearing within 10 days after service, the corrective order becomes a final order.

(d) If the person charged with a corrective order makes a timely request for a hearing under subsection (c) of this section, the Secretary shall:

(1) Hold a hearing within 20 days after the request is made; and

(2) Give the person written notice of the date, time, and place of the hearing, at least 10 days before the hearing date.

§2–605.

(a) The Department shall give notice of and hold any hearing held under § 2-603 or § 2-604 of this subtitle in accordance with the Administrative Procedure Act and the requirements of this section.

(b) Before the hearing, the person charged, on request, shall be given an

opportunity to examine all information and reports that relate to the alleged offense.

(c) The person charged may be represented at the hearing by counsel.

(d) A person may withhold information about secret processes or methods of manufacture or production from any public hearing under this subtitle, and the Department and its personnel shall keep confidential any such information that it requires, ascertains, or discovers.

(e) Testimony taken at the hearing shall be under oath and recorded.

(f) Copies of the transcript and of any other record of the hearing shall be provided to the person charged at that person's request and expense.

(g) (1) The Secretary or a designee of the Secretary may issue subpoenas for any person or evidence and administer oaths in connection with any proceeding under this section.

(2) At the request and the expense of the person charged, the Secretary or a designee of the Secretary shall subpoena any person or evidence on behalf of the person charged.

(3) If a person fails to comply with a notice of hearing or a subpoena issued under this section, the circuit court for the county where the person charged resides, on petition of the Secretary, may:

(i) Compel obedience to the notice or subpoena; or

(ii) Compel testimony or the production of evidence.

§2–606.

On the basis of the evidence produced at a hearing, the Secretary or the designated hearing officer may issue a corrective or other final order:

(1) Granting an exception from a rule or regulation adopted under this title on such conditions as the Secretary may determine; or

(2) Directing the person charged to comply, within a specified time, with any rule or regulation that the person is found to be violating.

§2–607.

(a) (1) Any person aggrieved by a final decision of the Secretary or the designated hearing officer in connection with a show–cause order, a corrective order, or any other final order issued under this subtitle may take a direct judicial appeal.

(2) The appeal shall be made as provided for judicial review of final decisions in the Administrative Procedure Act.

(b) An appeal under this section does not stay automatically the order from which the appeal is taken.

§2–608.

(a) Within 1 year after the Department issues a show–cause order or a corrective order, the Department shall take final action and attempt to secure compliance with any final order. If the Department has not secured compliance within this period, the Department shall take immediate steps to seek enforcement under § 2–609 of this subtitle.

(b) Nothing in this section prohibits the Department from bringing an action under § 2–609 of this subtitle within 1 year after the Department issues a show–cause order or a corrective order under this subtitle.

§2–609.

(a) The Department may bring:

(1) An action to enjoin any conduct that violates any provision of this title or any rule, regulation, or order adopted or issued under this title; or

(2) A civil action to collect a civil penalty under § 2-610 of this subtitle.

(b) The right to bring an action under subsection (a) of this section is in addition to and not instead of the right to bring any other action under that subsection.

(c) For good cause shown, the court that hears a proceeding to enforce an order issued under this subtitle may grant, without further penalty to the violator, a reasonable extension of time to abate the violation.

§2–609.1.

(a) In this section, "approval" means approval for prevention of significant deterioration or approval of new sources in nonattainment areas.

(b) (1) (i) A person may not knowingly act or fail to act in violation of a condition or requirement imposed on the person by a permit or approval issued under this title.

(ii) A person may not knowingly fail to obtain a permit or approval that the person knows or should have known is required under this title.

(iii) A person may not violate a duty imposed on the person by a rule, regulation, order, or approved plan for compliance adopted or issued under this title with knowledge that the person's conduct constitutes a violation of the duty.

(2) A person who violates a provision of this subsection is guilty of a

misdemeanor and on conviction is subject to:

(i) For a first offense, a fine not exceeding $25,000 or imprisonment not exceeding 1 year or both; or

(ii) For a violation committed after a first conviction under this section, a fine not exceeding $50,000 or imprisonment not exceeding 2 years or both.

(3) Each day on which violations occur is a separate violation under this subsection.

(4) This subsection does not apply to violations enumerated in subsection (c) of this section.

(c) A person is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $10,000 for each day of violation or imprisonment not exceeding 6 months or both if the person:

(1) Knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this title or any rule, regulation, order, approved plan for compliance, approval, or permit adopted or issued under this title; or

(2) Knowingly falsifies, tampers with, or renders inaccurate any monitoring device or methods required to be maintained under this title or any rule, regulation, order, approved plan for compliance, approval, or permit adopted or issued under this title.

§2–610.

(a) A person who violates any provision of this title or any rule, regulation, or order adopted or issued under this title is liable for a civil penalty not exceeding $25,000, to be collected in a civil action in the circuit court for any county. Each day a violation continues is a separate violation under this section.

(b) If the Attorney General concurs, the Secretary may compromise and settle any claim for a civil penalty under this section.

(c) If, within 36 months after a civil penalty is compromised and settled under subsection (b) of this section, the person against whom the penalty is imposed satisfies the Secretary that the violation has been eliminated or the order has been satisfied, the Secretary, with the concurrence of the Attorney General, may return to the person not more than 75 percent of the amount of the penalty paid.

§2–610.1.

(a) 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 title, Subtitle 4 of Title 6 of this article, or any rule, regulation, order, plan for compliance, registration, or permit adopted or issued under those provisions.

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

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

(i) Up to $2,500 for each violation;

(ii) Not more than $50,000 total for any single administrative hearing; and

(iii) Assessed with consideration given to:

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

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

3. The cost of control;

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 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 emissions that caused 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.

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

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

(4) If any person who is liable to pay a penalty imposed under this section 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.

§2–611.

(a) A person is not subject to action for a violation of this title or any rule or regulation adopted under this title so long as the person acts in accordance with a plan for compliance that:

(1) The person has submitted to the Secretary; and

(2) The Secretary has approved, with or without amendments, on the recommendation of the Air Management Administration.

(b) The Secretary shall act on any plan for compliance within 90 days after the plan for compliance is submitted to the Secretary.

§2–612.

(a) The Secretary may adopt rules and regulations that:

(1) Are patterned after § 120 of the federal Clean Air Act and the federal regulations adopted under § 120 of the federal Clean Air Act; and

(2) Specify:

(i) The circumstances under which a person who violates this title is subject to a noncompliance penalty equal to the economic benefit that accrues to the person because of noncompliance;

(ii) The method of calculating the noncompliance penalty;

(iii) The manner of payment of the noncompliance penalty; and

(iv) The circumstances under which a noncompliance penalty collected under this section is subject to rebate.

(b) (1) If a person fails to pay a noncompliance penalty in a timely manner, the Secretary may require the person to pay an additional nonpayment penalty for each quarter that the noncompliance penalty remains unpaid.

(2) The nonpayment penalty shall equal 20 percent of the total of the person's noncompliance penalties and nonpayment penalties that remain unpaid at the beginning of the quarter.

(c) If a person fails to pay a noncompliance penalty or nonpayment penalty

imposed under this section, the Department may bring an action to collect the penalty in the same manner as a civil penalty is collected under § 2-610 of this subtitle.

(d) An action under this section to collect a noncompliance penalty is in addition to and not instead of:

(1) An action under § 2-609 of this subtitle; or

(2) Any other relief under this subtitle.

§2–613.

A condition that is caused by an act of God, a strike, a riot, a catastrophe, or a cause over which an alleged violator has no control is not a violation of this title or any standard set or rule or regulation adopted under this title.

§2–614.

The Attorney General shall take charge of, prosecute, and defend on behalf of this State every case arising under the provisions of this subtitle, including the recovery of penalties.

§2–901.

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

(2) "Business entity" means:

(i) A person conducting or operating a trade or business in Maryland; or

(ii) An organization operating in Maryland that is exempt from taxation under § 501(c)(3) or (4) of the Internal Revenue Code.

(3) "Cash in lieu of parking program" means an employer-funded program under which an employer offers to provide a cash allowance to an employee in an amount equal to the parking subsidy that the employer would otherwise pay or incur to provide the employee a parking space.

(4) "Guaranteed ride home" means immediate transportation provided by a business entity for an employee who:

(i) Receives any of the commuter benefits described in subsection (b)(1) or (2) of this section or commutes by way of a nonmotorized method of transportation; and

(ii) Is required to leave work early for illness or other verifiable reason.

(5) "Instrument" means a pass, token, fare card, voucher, or similar item.

(6) "Parking subsidy" means:

(i) The difference between the out-of-pocket amount paid by an employer on a regular basis to secure the availability of an employee parking space not owned by the employer and the price charged to the employee for use of that space; or

(ii) For parking owned or leased by the employer as an integral part of a larger facility, the fair market value of a parking space provided by the employer for parking commuter vehicles, as determined:

1. By considering typical costs paid or incurred by users of nearby equivalent paid parking spaces, by evaluating the annual amortized cost of constructing and operating the parking space divided by the number of work days per year the space is ordinarily used; or

2. By other reasonable and justifiable means.

(b) A business entity may claim a tax credit in an amount equal to 50% of the cost of providing the following commuter benefits to the business entity's employees:

(1) If provided for the purpose of travel between the employee's residence and place of employment, any portion of the cost of transportation to or from a location in the State in a vehicle or an instrument that is used to offset any portion of the cost of transportation to or from a location in the State in a vehicle:

(i) With a seating capacity of at least eight adult individuals; and

(ii) At least 80% of the annual mileage of which is incurred:

1. For the purpose of transporting individuals between their residences and their places of employment; and

2. On trips where the number of employees transported together is at least one-half of that vehicle's adult seating capacity;

(2) An instrument that:

(i) Entitles an individual, at no additional cost or at a reduced fare, to transportation to or from a location in the State on a publicly or privately owned mass transit system other than a taxi service; or

(ii) Is redeemable at a transit pass sales outlet for the purpose stated in item (i) of this item; or

(3) For an employee who resides or works in the State:

(i) A cash in lieu of parking program; or

(ii) A guaranteed ride home.

(c) The credit allowed under this section may not exceed $50 per individual employee per month.

(d) (1) The credit allowed under this section may not exceed the total tax otherwise payable by the business entity for that taxable year, determined before the application of the credit under this section but after the application of any other credit.

(2) The unused amount of the credit under this section for any taxable year may not be carried over to any other taxable year.

§2–1001.

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

(b) (1) "Affected facility" means an electricity generating unit in the State that includes a coal fired boiler or indirect heat exchanger that was exempted from the Prevention of Significant Deterioration review under Title 1 of the 1977 federal Clean Air Act.

(2) "Affected facility" includes:

(i) H.A. Wagner, units 2 and 3;

(ii) Subject to § 2-1003(c) of this subtitle, R.P. Smith, units 3 and 4;

(iii) Morgantown Generating Station, units 1 and 2;

(iv) Dickerson, units 1, 2, and 3;

(v) C.P. Crane, units 1 and 2;

(vi) Chalk Point Generating Station, units 1 and 2; and

(vii) Brandon Shores, units 1 and 2.

(3) "Affected facility" does not include any electricity generating unit:

(i) That operates in combination with equipment used to recover useful thermal energy for industrial, commercial, heating, or cooling purposes through sequential use of energy; or

(ii) That supplies in any calendar year less than one-half of the electricity generated by such unit to any utility power distribution system for sale.

(c) "Allowance" means:

(1) One ton of sulfur dioxide that may be bought, sold, traded, or banked

for use under the Acid Rain Program in the U.S. Environmental Protection Agency; or

(2) One ton of oxides of nitrogen that may be bought, sold, traded, or banked for use under the Nitrogen Oxides Budget Trading Program in the U.S. Environmental Protection Agency.

(d) "PJM Region" has the meaning stated under § 7–701 of the Public Utilities Article.

§2–1002.

(a) On or after January 1, 2009, affected facilities collectively may not emit more than 20,216 tons of oxides of nitrogen per year.

(b) (1) On or after January 1, 2010, affected facilities collectively may not emit more than 48,618 tons of sulfur dioxide per year.

(2) The Department may set an interim stage reduction for sulfur dioxide.

(c) On or after January 1, 2012, affected facilities collectively may not emit more than 16,667 tons of oxides of nitrogen per year.

(d) On or after January 1, 2013, affected facilities collectively may not emit more than 37,235 tons of sulfur dioxide per year.

(e) (1) The Department shall set emissions budgets for each affected facility to implement the emissions limitations in subsections (a), (b), (c), and (d) of this section.

(2) (i) This paragraph applies to an affected facility that is owned, leased, operated, or controlled by a person that owns, leases, operates, or controls more than one affected facility.

(ii) An affected facility may emit more than the emissions budget set for the facility under paragraph (1) of this subsection as long as the person owning, leasing, operating, or controlling the affected facility does not exceed the cumulative emissions budget for all of the affected facilities that the person owns, leases, operates, or controls.

(3) If an affected facility permanently ceases operation, the Department:

(i) Shall subtract the emissions budget for that affected facility from the emissions limitations established in subsections (a), (b), (c), and (d) of this section; and

(ii) May not increase existing emissions budgets for all other affected facilities.

(f) (1) On or after January 1, 2010, a person that owns, leases, operates, or

controls an affected facility shall achieve a minimum 80% capture of mercury for each affected facility, calculated as a rolling 12–month average.

(2) On or after January 1, 2013, a person that owns, leases, operates, or controls an affected facility shall achieve a minimum 90% capture of mercury for each affected facility, calculated as a rolling 12–month average.

(3) A person that owns, leases, operates, or controls an affected facility shall demonstrate compliance with this subsection through the direct monitoring of mercury emissions on a continuous basis, according to the requirements of 40 C.F.R. Part 60, Subpart UUUUU.

(4) The Department shall adopt regulations that establish a procedure to be used to determine a baseline amount of mercury at each affected facility for purposes of calculating the capture rate required under this subsection.

(g) (1) In this subsection, "allowance" means one ton of carbon dioxide that may be bought, sold, traded, or banked for use under the Regional Greenhouse Gas Initiative.

(2) Not later than June 30, 2007, the Governor shall include the State as a full participant in the Regional Greenhouse Gas Initiative among Mid–Atlantic and Northeast states.

(3) The State may withdraw from the Initiative, as provided in the December 20, 2005 memorandum of understanding of the Initiative, at any time after January 1, 2009.

(4) If the Regional Greenhouse Gas Initiative expires and there is a successor organization with the same purposes and goals, the Governor is encouraged to join the State in the successor organization.

(5) Notwithstanding § 2–107 of this title, all of the proceeds from the sale of Maryland allowances under the Regional Greenhouse Gas Initiative shall be deposited in the Maryland Strategic Energy Investment Fund under § 9–20B–05 of the State Government Article.

(6) If the State's participation in the Regional Greenhouse Gas Initiative ceases for any reason, the Governor shall report to the General Assembly, in accordance with § 2–1246 of the State Government Article, regarding:

(i) Why participation ceased; and

(ii) A plan to reduce carbon dioxide emissions from power plants in the State that considers the use of Maryland grown, native, warm season grasses as a possible method of reducing carbon emissions.

(h) The provisions of this section may not be construed to affect existing

or future emissions requirements, standards, or limitations imposed on electricity generators by any other existing or future provision of law that would result in emissions reductions in addition to those required under this section.

(i) (1) A person that owns, leases, operates, or controls an affected facility that is subject to the requirements of this section may determine how best to achieve the collective emissions requirements under subsections (a), (b), (c), and (d) of this section.

(2) (i) If a person that owns, leases, operates, or controls an affected facility can demonstrate, with clear and convincing evidence, that the pollution control equipment that is necessary to achieve compliance with the requirements of this section is unattainable, due to a lack of available supply, the Department may reduce or waive any penalty due to the failure to attain compliance until the pollution control equipment becomes attainable.

(ii) If a person that owns, leases, operates, or controls an affected facility can demonstrate, with clear and convincing evidence, that the pollution control equipment that is necessary to achieve compliance with the requirements of this section has significantly increased in cost due to the limited amount of supply and, as a result, may significantly increase electric rates, the Department may reduce or waive any penalty due to the failure to attain compliance until the supply of pollution control equipment becomes available so as to reasonably lower the cost of the pollution control equipment.

(iii) In determining whether to reduce or waive any penalty under this paragraph, the Department shall consult with the Public Service Commission as to the availability and cost of the pollution control equipment.

(3) (i) A decision by the Department to reduce or waive any penalty under paragraph (2) of this subsection shall be subject to judicial review by any person who meets the threshold standing requirements under federal constitutional law.

(ii) Any action to reduce or waive any penalty under paragraph (2) of this subsection shall remain in effect until judicial review is final.

(j) (1) If the U.S. Environmental Protection Agency allocates emission allowances for mercury, sulfur dioxide, or oxides of nitrogen to the State, the allowances shall be treated as provided in this subsection.

(2) The Department:

(i) May not allow the application of allowances to the compliance of any affected facility with the emissions limitations established under subsections (a) through (d) of this section; but

(ii) May allow the allowances to be sold or traded to facilities outside the State in accordance with allowance trading programs of the U.S. Environmental Protection Agency.

§2–1003.

(a) Beginning December 1, 2007, and each year thereafter, a person that owns, leases, operates, or controls an affected facility shall submit to the Department, the Department of Natural Resources, and the Public Service Commission, a report that includes:

(1) Emissions performance results related to compliance with the emissions requirements under § 2-1002 of this subtitle;

(2) The number of pounds of oxides of nitrogen, sulfur dioxide, mercury, and carbon dioxide emitted during the previous calendar year from the affected facility;

(3) A current compliance plan; and

(4) Any other information requested by the Department.

(b) The Department shall review the information submitted under this section to determine whether the actual and proposed modifications and permit and construction schedules are adequate to achieve the emissions requirements under this subtitle and shall make these determinations publicly available on an annual basis.

(c) (1) Notwithstanding any other provision of law and subject to paragraph (2) of this subsection, the Department shall allow the R.P. Smith facility, units 3 and 4, to operate without complying with the emissions requirements under this subtitle if PJM Interconnection, Inc. determines that the termination of operation of the facility will adversely affect the reliability of electrical service in the PJM region.

(2) If the Department allows the R.P. Smith facility, units 3 and 4, to operate without complying with the emissions requirements under this subtitle in accordance with this subsection:

(i) The facility may not operate at emissions levels greater than the highest level measured at the facility during the calendar years 2000 through 2004; and

(ii) The Department shall review the operations of the facility and adopt regulations to establish an alternative emissions requirement for the facility.

§2–1004.

By June 30, 2007, the Department shall adopt regulations to implement the provisions of this subtitle.

§2–1005.

(a) (1) The allowance penalty provisions of this section are in addition to the administrative and civil penalty provisions provided under §§ 2-604, 2-609, 2-610, and

2-610.1 of this title.

(2) Each one-half ounce of mercury and each ton of sulfur dioxide or nitrogen oxides emitted in excess of the limitations set forth or imposed in accordance with § 2-1002 of this subtitle shall be a separate violation under §§ 2-610 and 2-610.1 of this title.

(b) If, in any calendar year during the period from January 1, 2010 through December 31, 2012, a person fails to achieve and maintain full compliance with the emissions limitations established by the Department under § 2-1002(e) of this subtitle, the person shall surrender:

(1) One sulfur dioxide allowance for each ton of sulfur dioxide emitted in excess of the emission rate limitation; and

(2) One oxide of nitrogen allowance for every 2 tons of sulfur dioxide emitted in excess of the emission rate limitation.

(c) If, in any calendar year, during the period from January 1, 2009 through December 31, 2011, a person fails to achieve full compliance with the oxides of nitrogen emission limitations in § 2-1002(e) of this subtitle, the person shall surrender one oxide of nitrogen allowance for each ton of oxides of nitrogen emitted in excess of the required emission rate limitation.

(d) A person that surrenders allowances in accordance with subsection (b) or (c) of this section shall surrender the allowances to the Department's surrender account by March 1 of the year following the year in which the person failed to achieve and maintain compliance with the applicable emission limitation.

§2–1101.

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

(b) "Administration" means the Motor Vehicle Administration.

(c) "Program" means the low emissions vehicle program established under this subtitle.

(d) "Transfer" includes acquire, purchase, sell, and lease.

§2–1102.

(a) In consultation with the Administration and as provided under this subtitle, the Department shall establish by regulation and maintain a low emissions vehicle program that:

(1) Is authorized by § 177 of the federal Clean Air Act; and

(2) Is applicable to vehicles of the 2011 model year and each model year thereafter.

(b) As part of the program, the Department shall establish new motor vehicle emissions standards and compliance requirements for each model year included in the program as authorized by § 177 of the federal Clean Air Act.

(c) As part of the compliance requirements established under this subtitle, the Department may adopt by regulation motor vehicle emissions inspection, recall, and warranty requirements.

(d) The Department or any other State agency may not adopt a regulation under this subtitle or any other provision of law that requires the sale or use of California reformulated gasoline in the State.

§2–1103.

To minimize the administrative impact of the program and to minimize the impact of motor vehicle emissions generated out of state on the air quality of this State, the Department:

(1) May adopt California regulations, procedures, and certification data by reference; and

(2) May work in cooperation with, and enter into contracts or agreements with, California, other states, and the District of Columbia to administer certification, in–use compliance, inspection, recall, and warranty requirements for the program.

§2–1104.

(a) Except as otherwise provided in this subtitle, the Administration may not title or register, under Title 13 of the Transportation Article, a new motor vehicle that is subject to the provisions of this subtitle if the motor vehicle does not comply with the provisions of this subtitle or any regulation adopted under this subtitle.

(b) Except as otherwise provided in this subtitle, a person may not transfer or attempt to transfer a motor vehicle or motor vehicle engine that is subject to the provisions of this subtitle if the vehicle or engine does not comply with the program.

(c) A person may not procure or attempt to procure, through fraud or misrepresentation, the title or registration of a motor vehicle that is subject to the provisions of this subtitle if the vehicle does not comply with the program.

(d) The Department, in consultation with the Administration, may adopt regulations to prohibit the transfer of new motor vehicles or motor vehicle engines that are not in compliance with the provisions of this subtitle.

§2–1105.

(a) The Department shall, in consultation with the Administration, adopt regulations to exempt motor vehicles from the program.

(b) Exemptions established under subsection (a) of this section shall be limited to:

(1) Motor vehicles sold for registration out of the State;

(2) Motor vehicles sold from a licensed dealer to another licensed dealer; and

(3) Motor vehicles that would be exempted from the low emissions vehicle program established under California law.

(c) For any motor vehicle exempted under subsection (a) of this section, the Administration shall note the exemption on the title of the motor vehicle.

§2–1106.

(a) The enforcement and penalty provisions of Subtitle 6 of this title shall apply to a violation of this subtitle.

(b) Each transfer or attempted transfer of a motor vehicle or motor vehicle engine in violation of § 2–1104(b) of this subtitle shall constitute a separate violation of the provisions of this subtitle.

§2–1201.

The General Assembly finds that:

(1) Greenhouse gases are air pollutants that threaten to endanger the public health and welfare of the people of Maryland;

(2) Global warming poses a serious threat to the State's future health, well–being, and prosperity;

(3) With 3,100 miles of tidally influenced shoreline, Maryland is vulnerable to the threat posed by global warming and susceptible to rising sea levels and flooding, which would have detrimental and costly effects;

(4) The State has the ingenuity to reduce the threat of global warming and make greenhouse gas reductions a part of the State's future by achieving a 25% reduction in greenhouse gas emissions from 2006 levels by 2020 and by preparing a plan to meet a longer–term goal of reducing greenhouse gas emissions by up to 90% from 2006 levels by 2050 in a manner that promotes new "green" jobs, and protects existing jobs and the State's economic well–being;

(5) Studies have shown that energy efficiency programs and technological initiatives consistent with the goal of reducing greenhouse gas emissions can result in a net economic benefit to the State;

(6) In addition to achieving the reduction established under this subtitle, it is in the best interest of the State to act early and aggressively to achieve the Maryland Commission on Climate Change's recommended goals of reducing greenhouse gas emissions by 10% from 2006 levels by 2012 and by 15% from 2006 levels by 2015;

(7) While reductions of harmful greenhouse gas emissions are one part of the solution, the State should focus on developing and utilizing clean energies that provide greater energy efficiency and conservation, such as renewable energy from wind, solar, geothermal, and bioenergy sources;

(8) It is necessary to protect the public health, economic well–being, and natural treasures of the State by reducing harmful air pollutants such as greenhouse gas emissions by using practical solutions that are already at the State's disposal;

(9) Cap and trade regulation of greenhouse gas emissions is most effective when implemented on a federal level;

(10) Because of the need to remain competitive with manufacturers located in other states or countries and to preserve existing manufacturing jobs in the State, greenhouse gas emissions from the manufacturing sector are most effectively regulated on a national and international level; and

(11) Because of the need to remain competitive with other states, greenhouse gas emissions from certain other commercial and service sectors, including freight carriers and generators of electricity, are most effectively regulated on a national level.

§2–1202.

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

(b) "Alternative compliance mechanism" means an action authorized by regulations adopted by the Department that achieves the equivalent reduction of greenhouse gas emissions over the same period as a direct emissions reduction.

(c) "Carbon dioxide equivalent" means the measurement of a given weight of a greenhouse gas that has the same global warming potential, measured over a specified period of time, as one metric ton of carbon dioxide.

(d) "Direct emissions reduction" means a reduction of greenhouse gas emissions from a greenhouse gas emissions source.

(e) "Greenhouse gas" includes carbon dioxide, methane, nitrous oxide,

hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(f) "Greenhouse gas emissions source" means a source or category of sources of greenhouse gas emissions that have emissions of greenhouse gases that are subject to reporting requirements or other provisions of this subtitle, as determined by the Department.

(g) "Leakage" means a reduction in greenhouse gas emissions within the State that is offset by a corresponding increase in greenhouse gas emissions from a greenhouse gas emissions source located outside the State that is not subject to a similar state, interstate, or regional greenhouse gas emissions cap or limitation.

(h) (1) "Manufacturing" means the process of substantially transforming, or a substantial step in the process of substantially transforming, tangible personal property into a new and different article of tangible personal property by the use of labor or machinery.

(2) "Manufacturing", when performed by companies primarily engaged in the activities described in paragraph (1) of this subsection, includes:

(i) The operation of saw mills, grain mills, or feed mills;

(ii) The operation of machinery and equipment used to extract and process minerals, metals, or earthen materials or by–products that result from the extracting or processing; and

(iii) Research and development activities.

(3) "Manufacturing" does not include:

(i) Activities that are primarily a service;

(ii) Activities that are intellectual, artistic, or clerical in nature;

(iii) Public utility services, including gas, electric, water, and steam production services; or

(iv) Any other activity that would not commonly be considered as manufacturing.

(i) "Statewide greenhouse gas emissions" means the total annual emissions of greenhouse gases in the State, measured in metric tons of carbon dioxide equivalents, including all emissions of greenhouse gases from the generation of electricity delivered to and consumed in the State, and line losses from the transmission and distribution of electricity, whether the electricity is generated in–State or imported.

§2–1203.

(a) On or before June 1, 2011, the Department shall publish:

(1) An inventory of statewide greenhouse gas emissions for calendar year 2006; and

(2) Based on existing greenhouse gas emissions control measures, a projected "business as usual" inventory for calendar year 2020.

(b) The Department shall review and publish an updated statewide greenhouse gas emissions inventory for calendar year 2011 and for every third calendar year thereafter.

§2–1204. IN EFFECT

// EFFECTIVE UNTIL DECEMBER 31, 2016 PER CHAPTERS 171 AND 172 OF 2009 //

The State shall reduce statewide greenhouse gas emissions by 25% from 2006 levels by 2020.

§2–1205.

(a) The State shall develop a plan, adopt regulations, and implement programs that reduce statewide greenhouse gas emissions in accordance with this subtitle.

(b) On or before December 31, 2011, the Department shall:

(1) Submit a proposed plan to the Governor and General Assembly;

(2) Make the proposed plan available to the public; and

(3) Convene a series of public workshops to provide interested parties with an opportunity to comment on the proposed plan.

(c) (1) The Department shall, on or before December 31, 2012, adopt a final plan that reduces statewide greenhouse gas emissions by 25% from 2006 levels by 2020.

(2) The plan shall be developed as the initial State action in recognition of the finding by the Intergovernmental Panel on Climate Change that developed countries will need to reduce greenhouse gas emissions by between 80% and 95% from 1990 levels by 2050.

(d) The final plan required under subsection (c) of this section shall include:

(1) Adopted regulations that implement all plan measures for which State agencies have existing statutory authority; and

(2) A summary of any new legislative authority needed to fully implement the plan and a timeline for seeking legislative authority.

(e) In developing and adopting a final plan to reduce statewide greenhouse gas emissions, the Department shall consult with State and local agencies as appropriate.

(f) (1) Unless required by federal law or regulations or existing State law, regulations adopted by State agencies to implement the final plan may not:

(i) Require greenhouse gas emissions reductions from the State's manufacturing sector; or

(ii) Cause a significant increase in costs to the State's manufacturing sector.

(2) Paragraph (1) of this subsection may not be construed to exempt greenhouse gas emissions sources in the State's manufacturing sector from the obligation to comply with:

(i) Greenhouse gas emissions monitoring, recordkeeping, and reporting requirements for which the Department had existing authority under § 2–301(a) of this title on or before October 1, 2009; or

(ii) Greenhouse gas emissions reductions required of the manufacturing sector as a result of the State's implementation of the Regional Greenhouse Gas Initiative.

(g) A regulation adopted by a State agency for the purpose of reducing greenhouse gas emissions in accordance with this section may not be construed to result in a significant increase in costs to the State's manufacturing sector unless the source would not incur the cost increase but for the new regulation.

§2–1206.

In developing and implementing the plan required by § 2–1205 of this subtitle, the Department shall:

(1) Analyze the feasibility of measures to comply with the greenhouse gas emissions reductions required by this subtitle;

(2) Consider the impact on rural communities of any transportation related measures proposed in the plan;

(3) Provide that a greenhouse gas emissions source that voluntarily reduces its greenhouse gas emissions before the implementation of this subtitle shall receive appropriate credit for its early voluntary actions;

(4) Provide for the use of offset credits generated by alternative

compliance mechanisms executed within the State, including carbon sequestration projects, to achieve compliance with greenhouse gas emissions reductions required by this subtitle;

(5) Ensure that the plan does not decrease the likelihood of reliable and affordable electrical service and statewide fuel supplies;

(6) Consider whether the measures would result in an increase in electricity costs to consumers in the State;

(7) Consider the impact of the plan on the ability of the State to:

(i) Attract, expand, and retain commercial aviation services; and

(ii) Conserve, protect, and retain agriculture; and

(8) Ensure that the greenhouse gas emissions reduction measures implemented in accordance with the plan:

(i) Are implemented in an efficient and cost–effective manner;

(ii) Do not disproportionately impact rural or low–income, low– to moderate–income, or minority communities or any other particular class of electricity ratepayers;

(iii) Minimize leakage;

(iv) Are quantifiable, verifiable, and enforceable;

(v) Directly cause no loss of existing jobs in the manufacturing sector;

(vi) Produce a net economic benefit to the State's economy and a net increase in jobs in the State; and

(vii) Encourage new employment opportunities in the State related to energy conservation, alternative energy supply, and greenhouse gas emissions reduction technologies.

§2–1207.

(a) (1) An institution of higher education in the State shall conduct an independent study of the economic impact of requiring greenhouse gas emissions reductions from the State's manufacturing sector.

(2) The Governor shall appoint a task force to oversee the independent study required by this section.

(3) The task force shall include representatives of:

(i) Labor unions;

(ii) Affected industries and businesses;

(iii) Environmental organizations; and

(iv) Low–income and minority communities.

(4) To the extent practicable, the members appointed to the task force shall reflect the geographic, racial, and gender diversity of the State.

(b) On or before October 1, 2015, the institution of higher education responsible for the independent study shall complete and submit the study to the Governor and, in accordance with § 2–1246 of the State Government Article, the General Assembly.

§2–1208.

(a) A greenhouse gas emissions source in the State's manufacturing sector that implements a voluntary greenhouse gas emissions reduction plan that is approved by the Department on or before January 1, 2012, may be eligible to receive voluntary early action credits under any future State law requiring greenhouse gas emissions reductions from the manufacturing sector.

(b) A voluntary greenhouse gas emissions reduction plan may include measures to:

(1) Reduce energy use and increase process efficiency; and

(2) Facilitate industry–wide research and development directed toward future measures to reduce greenhouse gas emissions.

§2–1209.

(a) On or before October 1, 2015, the Department shall submit a report to the Governor and, in accordance with § 2–1246 of the State Government Article, the General Assembly that includes:

(1) A summary of the State's progress toward achieving the 2020 emissions reduction required by the plan under § 2–1205 of this subtitle;

(2) An update on emerging technologies to reduce greenhouse gas emissions;

(3) A review of the best available science, including updates by the Intergovernmental Panel on Climate Change, regarding the level and pace of greenhouse gas emissions reductions and sequestration needed to avoid dangerous anthropogenic changes to the Earth's climate system;

(4) Recommendations on the need for science–based adjustments to the

requirement to reduce statewide greenhouse gas emissions by 25% by 2020;

(5) A summary of additional or revised regulations, control programs, or incentives that are necessary to achieve the 25% reduction in statewide greenhouse gas emissions required under this subtitle, or a revised reduction recommended in accordance with item (4) of this subsection;

(6) The status of any federal program to reduce greenhouse gas emissions and any transition by the State from its participation in the Regional Greenhouse Gas Initiative to a comparable federal cap and trade program; and

(7) An analysis of the overall economic costs and benefits to the State's economy, environment, and public health of a continuation or modification of the requirement to achieve a reduction of 25% in statewide greenhouse gas emissions by 2020, including reductions in other air pollutants, diversification of energy sources, the impact on existing jobs, the creation of new jobs, and expansion of the State's low carbon economy.

(b) The report required under subsection (a) of this section shall be subject to a public comment and hearing process conducted by the Department.

§2–1210.

On review of the study required under § 2–1207 of this subtitle, and the report required under § 2–1209 of this subtitle, the General Assembly may act to maintain, revise, or eliminate the 25% greenhouse gas emissions reduction required under this subtitle.

§2–1211.

The Department shall monitor implementation of the plan required under § 2–1205 of this subtitle and shall submit a report, on or before October 1, 2020, and every 5 years thereafter, to the Governor and, in accordance with § 2–1246 of the State Government Article, the General Assembly that describes the State's progress toward achieving:

(1) The reduction in greenhouse gas emissions required under this subtitle, or any revisions conducted in accordance with § 2–1210 of this subtitle; and

(2) The greenhouse gas emissions reductions needed by 2050 in order to avoid dangerous anthropogenic changes to the Earth's climate system, based on the predominant view of the scientific community at the time of the latest report.

§2–1301.

(a) There is a Commission on Climate Change in the Department to advise the Governor and General Assembly on ways to mitigate the causes of, prepare for, and adapt to the consequences of climate change.

(b) The Department and the Department of Natural Resources shall jointly staff the Commission.

§2–1302.

(a) The Commission's membership shall consist of the following members:

(1) One member of the House of Delegates, appointed by the Speaker of the House;

(2) One member of the Senate, appointed by the President of the Senate;

(3) The State Treasurer, or the State Treasurer's designee;

(4) The Secretary of the Environment, or the Secretary's designee;

(5) The Secretary of Agriculture, or the Secretary's designee;

(6) The Secretary of Natural Resources, or the Secretary's designee;

(7) The Secretary of Planning, or the Secretary's designee;

(8) The State Superintendent of Schools, or the State Superintendent's designee;

(9) The Secretary of Transportation, or the Secretary's designee;

(10) The Secretary of General Services, or the Secretary's designee;

(11) The Director of the Maryland Energy Administration, or the Director's designee;

(12) The President of the University of Maryland Center for Environmental Science, or the President's designee;

(13) The Chair of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, or the Chair's designee;

(14) One member appointed by the Farm Bureau representing the agriculture community;

(15) One member appointed by the Maryland Association of Counties and one member appointed by the Maryland Municipal League to represent local governments;

(16) One member appointed by the President of the Senate and one member appointed by the Speaker of the House of Delegates to represent the business community;

(17) One member appointed by the President of the Senate and one member appointed by the Speaker of the House of Delegates to represent environmental nonprofit organizations;

(18) One member appointed by the President of the Senate and one member appointed by the Speaker of the House to represent organized labor, one of whom shall represent the building or construction trades and one of whom shall represent the manufacturing industry;

(19) One member appointed by the President of the Senate and one member appointed by the Speaker of the House to represent philanthropic organizations;

(20) One climate change expert appointed by the Governor representing a university located in Maryland; and

(21) One public health expert appointed by the Governor representing a university located in Maryland.

(b) The Secretary of the Environment or the Secretary's designee shall chair the Commission.

(c) (1) Subject to paragraph (2) of this subsection, the term of an appointed member is 2 years.

(2) The Governor, President of the Senate, and Speaker of the House of Delegates shall stagger the terms of the initial appointed members.

(3) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(4) A member who is appointed after a term has begun serves only for the remainder of that term and until a successor is appointed and qualifies.

(5) The Governor may remove an appointed member for incompetence, misconduct, or failure to perform the duties of the position.

(d) A member of the Commission may not receive compensation, but is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

§2–1303.

(a) The Commission shall establish:

(1) A Scientific and Technical Working Group;

(2) A Greenhouse Gas Mitigation Working Group;

(3) An Adaptation and Response Working Group; and

(4) An Education, Communication, and Outreach Working Group.

(b) The Commission may establish other working groups as needed.

(c) The Chair of the Commission shall appoint working group members who represent both public and private interests in climate change, including representatives of:

(1) Academic institutions;

(2) Renewable and traditional energy providers;

(3) Environmental organizations;

(4) Government agencies;

(5) Labor organizations; and

(6) Business interests, including the insurance and real estate industries.

(d) The Commission shall prioritize working group actions, including:

(1) Strengthening and maintaining existing State climate action plans;

(2) Developing broad public and private partnerships with local, State, and federal agencies;

(3) Communicating with and educating citizens about the urgency of acting to reduce the impacts of climate change;

(4) Maintaining an inventory of Maryland's greenhouse gas emissions sources and carbon sinks;

(5) Addressing any disproportionate impacts of climate change on low–income and vulnerable communities;

(6) Assessing the impacts that climate change may have on the State's economy, revenues, and investment decisions;

(7) Assessing the needs for utilities and other public and private service providers throughout the State to adjust their operating practices and investment strategies to mitigate the impacts of climate change on their customers and the public;

(8) Assessing the impacts that climate change may have on agriculture in the State;

(9) Recommending short– and long–term strategies and initiatives to better mitigate, prepare for, and adapt to the consequences of climate change;

(10) Assisting local governments in supporting community–scale climate vulnerability assessments and the development and integration of specific strategies into local plans and ordinances;

(11) Establishing comprehensive and accountable annual working group work plans that set annual goals and performance benchmarks and prioritize new and existing climate change mitigation and preparedness actions and initiatives;

(12) Maintaining a comprehensive action plan, with 5–year benchmarks, to achieve science–based reductions in Maryland's greenhouse gas emissions;

(13) Convening regular working group and full Commission meetings to ensure that sufficient progress is being made across all sectors and communities in Maryland; and

(14) Considering other related matters as the Commission determines to be necessary.

§2–1304.

On or before November 15 of each year, the Commission shall report to the Governor and General Assembly, in accordance with § 2–1246 of the State Government Article, on the status of the State's efforts to mitigate the causes of, prepare for, and adapt to the consequences of climate change, including future plans and recommendations for legislation, if any, to be considered by the General Assembly.

§2–1305.

(a) (1) Each State agency shall review its planning, regulatory, and fiscal programs to identify and recommend actions to more fully integrate the consideration of Maryland's greenhouse gas reduction goal and the impacts of climate change.

(2) The review shall include the consideration of:

(i) Sea level rise;

(ii) Storm surges and flooding;

(iii) Increased precipitation and temperature; and

(iv) Extreme weather events.

(b) Each State agency shall identify and recommend specific policy, planning, regulatory, and fiscal changes to existing programs that do not currently support the State's greenhouse gas reduction efforts or address climate change.

(c) (1) The following State agencies shall report annually on the status of programs that support the State's greenhouse gas reduction efforts or address

climate change, in accordance with § 2–1246 of the State Government Article, to the Commission and the Governor:

(i) The Department;

(ii) The Department of Agriculture;

(iii) The Department of General Services;

(iv) The Department of Housing and Community Development;

(v) The Department of Natural Resources;

(vi) The Department of Planning;

(vii) The Department of Transportation;

(viii) The Maryland Energy Administration;

(ix) The Maryland Insurance Administration;

(x) The Public Service Commission; and

(xi) The University of Maryland Center for Environmental Science.

(2) The report required in paragraph (1) of this subsection shall include:

(i) Program descriptions and objectives;

(ii) Implementation milestones, whether or not they have been met;

(iii) Enhancement opportunities;

(iv) Funding;

(v) Challenges;

(vi) Estimated greenhouse gas emissions reductions, by program, for the prior calendar year; and

(vii) Any other information that the agency considers relevant.

§2–1306.

(a) The University of Maryland Center for Environmental Science shall establish science–based sea level rise projections for Maryland's coastal areas and update them at least every 5 years.

(b) The science–based sea level rise projections shall include maps that indicate

the areas of the State that may be most affected by storm surges, flooding, and extreme weather events.

(c) The science–based sea level rise projections required under this section shall be made publicly available on the Internet.

§3–101.

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

(b) "Environmental noise standard" means a goal for the limitation of noise, from all sources, that exists in a defined area under specified conditions.

(c) (1) "Noise" means the intensity, frequency, duration, and character of sound.

(2) "Noise" includes sound and vibration of subaudible frequencies.

(d) "Political subdivision" means a county or municipal corporation of this State.

(e) "Sound level limit" means the maximum allowable noise emission from a noise source in a defined area under specified conditions.

(f) "Source" means any person or property from which sound originates.

§3–102.

The General Assembly finds:

(1) That the people of this State have a right to an environment that is free from any noise that:

(i) May jeopardize their health, general welfare, or property; or

(ii) Degrades the quality of their lives; and

(2) That there is a substantial body of knowledge about the adverse effects of excessive noise on the public health, the general welfare, and property, and that this knowledge should be used to develop environmental noise standards that will protect the public health, the general welfare, and property with an adequate margin of safety.

§3–103.

Except as otherwise provided by law, the Department shall revise the State's environmental noise standards and sound level limits as necessary or appropriate.

§3–104.

The Department may obtain any federal or other funds that are available to this

State for purposes that are within the scope of this title.

§3–105.

(a) (1) Except as provided in this section, this title does not limit the power of a political subdivision to adopt noise control ordinances, rules, or regulations.

(2) A political subdivision may not adopt any noise control ordinance, rule, or regulation that is less stringent than the environmental noise standards, sound level limits, and noise control rules and regulations adopted under this title.

(3) (i) A political subdivision may not adopt any noise control ordinance, rule, or regulation, including the environmental noise standards, sound level limits, and noise control rules and regulations adopted under this title, that prohibits trapshooting, skeetshooting, or other target shooting between the hours of 9 a.m. and 10 p.m. by a shooting sports club that is chartered and in operation as of January 1, 2001.

(ii) This paragraph does not apply in Baltimore City or Allegany, Anne Arundel, Calvert, Charles, Garrett, Howard, Montgomery, St. Mary's, and Washington counties.

(4) (i) Except as provided in subparagraph (ii) of this paragraph, Allegany County, Anne Arundel County, Garrett County, Washington County, or a political subdivision of Allegany County, Anne Arundel County, Garrett County, or Washington County may not adopt any noise control ordinance, rule, or regulation, including the environmental noise standards, sound level limits, and noise control rules and regulations adopted under this title, that prohibits trapshooting, skeetshooting, or other target shooting between the hours of 9 a.m. and 10 p.m. by a shooting sports club that is chartered and in operation as of January 1, 2005.

(ii) 1. Subject to the provisions of subsubparagraph 2 of this subparagraph, Allegany County, Anne Arundel County, Garrett County, Washington County, or a political subdivision of Allegany County, Anne Arundel County, Garrett County, or Washington County may adopt any noise control ordinance, rule, or regulation, including the environmental noise standards, sound level limits, and noise control rules and regulations adopted under this title, that prohibits trapshooting, skeetshooting, or other target shooting between the hours of 9 a.m. and 10 p.m. by a shooting sports club that the responsible political subdivision determines is not in compliance as of January 1, 2005 with environmental noise standards, sound level limits, or noise control rules or regulations adopted under this title.

2. A noise control ordinance, rule, or regulation adopted under subsubparagraph 1 of this subparagraph shall allow trapshooting, skeetshooting, and other target shooting between the hours of 9 a.m. and 10 p.m. by a shooting sports club that the responsible political subdivision determines has become compliant with environmental noise standards, sound level limits, and noise control rules and

regulations adopted under this title.

(5) Carroll County or a political subdivision of Carroll County may not enforce any noise control ordinance, rule, or regulation, including the environmental noise standards, sound level limits, and noise control rules and regulations adopted under this title, against a public school in Carroll County that violates the ordinance, rule, or regulation between the hours of 8 a.m. and 9:30 p.m.

(b) Each political subdivision is encouraged to consider:

(1) Compliance with State or local noise standards before acting on any proposed variance requests or changes in zoning classifications; and

(2) Whether the permit or activity will be in compliance with local and State noise control standards, prior to the issuance of a building, activity permit, or similar authorizing document.

§3–401.

(a) Except as otherwise provided by law, the Department shall adopt environmental noise standards, sound level limits, and noise control rules and regulations as necessary to protect the public health, the general welfare, and property.

(b) In adopting environmental noise standards, the Department or a political subdivision that chooses to adopt environmental noise standards shall consider:

(1) Information published by the Administrator of the United States Environmental Protection Agency on the levels of environmental noise that must be attained and maintained in defined areas under various conditions to protect public health and welfare with an adequate margin of safety; and

(2) Scientific information about the volume, frequency, duration, and other characteristics of noise that may harm public health, safety, or general welfare, including:

(i) Temporary or permanent hearing loss;

(ii) Interference with sleep, speech communication, work, or other human activities;

(iii) Adverse physiological responses;

(iv) Psychological distress;

(v) Harm to animal life;

(vi) Devaluation of or damage to property; and

(vii) Unreasonable interference with the enjoyment of life or property.

(c) (1) In adopting sound level limits and noise control rules and regulations, the Department or the political subdivision shall consider, among other things:

(i) The residential, commercial, or industrial nature of the area affected;

(ii) Zoning;

(iii) The nature and source of various kinds of noise;

(iv) The degree of noise reduction that may be attained and maintained using the best available technology;

(v) Accepted scientific and professional methods for measurement of sound levels; and

(vi) The cost of compliance with the sound level limits.

(2) The sound level limits adopted under this subsection shall be consistent with the environmental noise standards adopted by the Department.

(3) The sound level limits and noise control rules and regulations adopted under this subsection may not prohibit trapshooting or other target shooting on any range or other property in Frederick County that the Frederick County Department of Planning and Zoning has approved as a place for those sporting events.

(4) The sound level limits and noise control rules and regulations adopted under this subsection shall be as follows for residential heat pumps and air conditioning units:

(i) Residential heat pumps 75 dba; and

(ii) Residential air conditioning units 70 dba.

(5) (i) The sound level limits and noise control rules and regulations adopted under this subsection may not prohibit trapshooting, skeetshooting, or other target shooting between the hours of 9 a.m. and 10 p.m. on any range or other property of a shooting sports club that is chartered and in operation as of January 1, 2001.

(ii) This paragraph does not apply in Allegany, Anne Arundel, Baltimore City, Calvert, Charles, Garrett, Howard, Montgomery, St. Mary's, and Washington counties.

(6) (i) Except as provided in subparagraph (ii) of this paragraph, the Department may not adopt sound level limits and noise control rules and regulations under this subsection that prohibit trapshooting, skeetshooting, or other target

shooting between the hours of 9 a.m. and 10 p.m. in Allegany County, Anne Arundel County, Garrett County, or Washington County on any range or other property of a shooting sports club that is chartered and in operation as of January 1, 2005.

(ii) 1. Subject to the provisions of subsubparagraph 2 of this subparagraph, the Department may adopt sound level limits and noise control rules and regulations under this subsection that prohibit trapshooting, skeetshooting, or other target shooting between the hours of 9 a.m. and 10 p.m. in Allegany County, Anne Arundel County, Garrett County, or Washington County on any range or other property of a shooting club that the Department determines is not in compliance as of January 1, 2005 with environmental noise standards, sound level limits, or noise control rules and regulations adopted under this title.

2. A sound level limit or noise control rule or regulation adopted under this subsection shall allow trapshooting, skeetshooting, and other target shooting between the hours of 9 a.m. and 10 p.m. by a shooting sports club that the Department determines has become compliant with sound level limits and noise control rules and regulations adopted under this title.

(7) (i) Except as provided in subparagraph (ii) of this paragraph, in Howard County, the sound level limits and noise control rules and regulations adopted under this subsection may not prohibit the electronic amplification of sound at an outdoor concert venue with a capacity of over 15,000 individuals that:

1. Within the area that is included in a 0.25 mile radius of the venue, produces sound that is:

A. 95 dba or lower between 9:00 a.m. and 11:00 p.m.; and

B. 55 dba or lower between 11:00 p.m. and 11:30 p.m.; and

2. Within the area that is outside a 0.25 mile radius of the venue, produces sound that is:

A. 72.5 dba or lower between 9:00 a.m. and 11:00 p.m.; and

B. 55 dba or lower between 11:00 p.m. and 11:30 p.m.

(ii) 1. Except as provided in subsubparagraph 2 of this subparagraph, an outdoor concert venue with a capacity of over 15,000 individuals may not produce any electronic amplification of sound between 11:30 p.m. and 9:00 a.m.

2. The limitations concerning the electronic amplification of sound at an outdoor concert venue under subsubparagraph 1 of this subparagraph do not apply to an activity sponsored or authorized by the Howard County Public School System between 8:00 a.m. and 9:00 a.m.

(iii) Notwithstanding § 3–105(a)(1) and (2) of this title, the noise control ordinances, rules, or regulations adopted by Howard County and in effect on October 1, 2013, do not apply to the electronic amplification of sound at an outdoor concert venue in the county with a capacity of over 15,000 individuals.

(d) (1) This section does not authorize the Department to adopt environmental noise standards, sound level limits, or noise control rules and regulations that apply to noise from:

(i) Construction or repair work on public property;

(ii) Fire or rescue station alerting devices; or

(iii) In Frederick County or Frederick City:

1. A fair listed in the Maryland Agricultural Fairs and Shows Schedule that is maintained by the Maryland Agricultural Fair Board; or

2. Any other event held on the same grounds as a fair under item 1 of this item.

(2) Noise control rules and regulations that apply to Department of Transportation facilities shall be adopted by the Department of Transportation.

§3–403.

(a) A political subdivision may enforce the sound level limits and noise control rules and regulations adopted under this title.

(b) A political subdivision that enforces a noise control standard adopted under this title or an ordinance concerning noise may:

(1) Investigate a complaint concerning noise;

(2) Institute and conduct a survey and testing program concerning noise;

(3) Test or make another determination of the source of a noise; and

(4) Assess the degree of required abatement of the noise.

(c) Each sound level limit shall be applied at the boundary of:

(1) A property; or

(2) A land use category, as determined by the responsible political subdivision.

§3–404.

If a political subdivision determines that there is a violation of this title or any sound level limit or noise control rule or regulation adopted under this title, the political subdivision, after notice to the alleged violator, may issue a corrective order.

§3–405.

(a) A political subdivision may bring an action to enjoin any conduct that is a willful violation of any provision of this title or any rule, regulation, or order adopted or issued under this title.

(b) An action may not be brought under this section unless the person against whom it is brought has been given a reasonable time to comply with the provision that is the basis of the action.

§3–406.

(a) A person who willfully violates any provision of this title or any rule, regulation, or order adopted or issued under this title is liable to a civil penalty not exceeding $10,000, to be collected in a civil action brought by a political subdivision in the circuit court for any county. Each day a violation continues is a separate violation under this section.

(b) The political subdivision may compromise and settle any claim for a civil penalty under this section.

(c) If, within 1 year after a civil penalty is compromised and settled under subsection (b) of this section, the person against whom the penalty is imposed satisfies the political subdivision that the violation has been eliminated or the order has been satisfied, the political subdivision may return to the person not more than 75 percent of the penalty paid.

(d) An action under this section is in addition to and not instead of an action for injunctive relief under § 3–405 of this subtitle.

§3–407.

A person is not subject to action for a violation of a provision of this title or any rule or regulation adopted under this title so long as the person acts in accordance with a plan for compliance that:

(1) The person has submitted to the political subdivision; and

(2) The political subdivision has approved, with or without amendments.

§3–408.

A condition that is caused by an act of God, a strike, a riot, a catastrophe, or a cause over which an alleged violator has no control is not a violation of this title or any rule or regulation adopted under this title.

§3–501.

In this subtitle, "unit" means a unit of the State government or a political subdivision.

§3–502.

To the fullest extent consistent with its authority under a law that it administers, a unit shall carry out programs that the unit administers to further the policy of the State to provide people with an environment free from noise that:

(1) May jeopardize health, general welfare, and property; or

(2) Degrades the quality of life.

§3–503.

A unit shall comply with federal, State, and interstate requirements concerning the control of environmental noise if the unit:

(1) Has jurisdiction over any property or facility; or

(2) Engages in any activity that results, or may result, in the emission of noise.

§4–101.

The General Assembly determines and finds that lands and waters comprising the watersheds of the State are great natural assets and resources. As a result of erosion and sediment deposit on lands and in waters within the watersheds of the State, these waters are being polluted and despoiled to such a degree that fish, marine life, and recreational use of the waters are being affected adversely. To protect the natural resources of the State, the Secretary of the Environment, in consultation with the Secretary of Natural Resources shall adopt criteria and procedures for the counties and the local soil conservation districts to implement soil erosion control programs. These procedures may provide for departmental review and approval of major grading, sediment, and erosion control plans. These procedures shall provide that the Department of the Environment conduct periodic inspections and review of the implementation by the counties and the local soil conservation districts of these control plans.

Because of the great potential for harm to the waters of the State if soil erosion and

sediment control measures are not properly implemented and maintained and because of the cumulative effect on the environment of violations whether the project creating the violations is large or small, it is necessary for the protection of the waters of the State to provide procedures for obtaining immediate compliance with the law, when violations occur.

§4–101.1.

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

(b) "Person" includes the federal government, the State, any county, municipal corporation, or other political subdivision of the State, or any of their units.

(c) "Pollution" means any contamination or other alteration of the physical, chemical, or biological properties of any waters of this State, including a change in temperature, taste, color, turbidity, or odor of the waters or the discharge or deposit of any organic matter, harmful organism, or liquid, gaseous, solid, radioactive, or other substances into any waters of this State, that will render the waters harmful or detrimental to:

(1) Public health, safety, or welfare;

(2) Domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses;

(3) Livestock, wild animals, or birds; or

(4) Fish or other aquatic life.

(d) "Waters of this State" includes:

(1) Both surface and underground waters within the boundaries of this State subject to its jurisdiction, including that part of the Atlantic Ocean within the boundaries of this State, the Chesapeake Bay and its tributaries, and all ponds, lakes, rivers, streams, storm drain systems, public ditches, tax ditches, and public drainage systems within this State, other than those designed and used to collect, convey, or dispose of sanitary sewage; and

(2) The flood plain of free-flowing waters determined by the Department of Natural Resources on the basis of the 100-year flood frequency.

§4–102.

The provisions of this subtitle do not apply to agricultural land management practices, construction of agricultural structures, or, except in Calvert County, to construction of single-family residences or their accessory buildings that disturb an area of less than one-half acre and occur on lots of two acres or more. Regardless of planning, zoning, or subdivision controls, a county or municipality may not issue a

permit for grading or construction of any building, other than those matters exempted by the provisions of this section, unless the grading or construction conforms with plans approved as provided in this subtitle.

§4–103.

(a) (1) A county or municipality may issue grading and building permits as provided by law.

(2) A grading or building permit may not be issued until the developer:

(i) Submits a grading and sediment control plan approved by:

1. The appropriate soil conservation district; or

2. A municipal corporation in Montgomery County that is designated under paragraph (4) of this subsection; and

(ii) Certifies that all land clearing, construction, and development will be done under the plan.

(3) Criteria for sediment control and the procedure for referring an applicant to the appropriate soil conservation district shall be acceptable to the soil conservation district and the Department of the Environment.

(4) A soil conservation district may delegate approval authority of a grading and sediment control plan to a municipal corporation in Montgomery County that:

(i) Has its own sediment control review provisions that are at least as stringent as the provisions of the grading and sediment control plan of the soil conservation district;

(ii) Issues sediment control permits; and

(iii) Meets the necessary performance standards established by written agreement between the district and the municipal corporation.

(b) Each county or municipality shall adopt grading and building ordinances necessary to carry out the provisions of this subtitle, with the assistance of the Department of the Environment and the appropriate soil conservation district.

(c) Each soil conservation district may recommend a fee system to cover the cost of reviewing the grading and sediment control plans. Subject to § 8-311 of the Agriculture Article, any recommended fee shall take effect upon enactment by the local governing body. Any fees collected pursuant to this fee system shall be supplementary to county and State funds and may not (1) be used to reduce county or State funds, and (2) exceed the cost of reviewing the plans.

(d) Each soil conservation district shall require an applicant for grading and sediment control plan approval to submit a sufficient number of copies of the plan to enable the district to forward copies of the plan to appropriate State and local agencies. Where enforcement authority has been retained by the Department of the Environment, each district shall forward 1 copy of each approved plan to the Department of the Environment immediately upon approval.

(e) (1) Notwithstanding any other provision of State law or local ordinance, it shall be the sole responsibility of the Department to enforce compliance with the provisions of this subtitle and of any approved plan, except in those counties and municipalities to which enforcement authority has been delegated in accordance with paragraph (2) of this subsection.

(2) (i) 1. The Secretary of the Environment shall delegate enforcement authority under this subtitle to any county or municipality which is found capable of enforcing compliance with the provisions of this subtitle, or is found to have enforcement capability within that jurisdiction which is comparable to that of the Department in terms of laws and procedures, manpower, equipment, and overall effectiveness.

2. The Secretary may delegate a specific portion of the enforcement authority under this subtitle to a county or municipality.

3. The Secretary may not deny a requested delegation unless opportunity has been afforded to the appropriate officials of the affected local jurisdiction to present arguments before the Secretary.

(ii) A delegation pursuant to this paragraph shall be effective for not more than 2 years, unless renewed by the Secretary.

(iii) Every such delegation shall be subject to suspension by the Secretary, after opportunity is afforded for a hearing, upon a finding that the county or municipal program has fallen below the standard of comparable effectiveness. During a period of suspension, the Department shall enforce compliance in the affected jurisdiction.

(iv) Any county or municipality requesting either delegation of enforcement authority or renewal of delegation under this subtitle shall submit the request to the Secretary on or before October 1 immediately preceding the fiscal year for which delegation or renewal of delegation is sought.

(v) On or before January 1 of the year during which delegation is sought by a county or municipality, the Secretary shall:

1. Grant the request;

2. Deny the request; or

3. Delegate a specific portion of the enforcement authority under this subtitle.

(f) (1) Subject to paragraph (2) of this subsection, the Secretary, by contractual agreement, may authorize a soil conservation district to inspect sites for compliance with approved sediment control plans.

(2) The Secretary may not authorize a soil conservation district to inspect sites over which a county or municipality has been delegated enforcement authority under subsection (e) of this section.

(3) (i) A district authorized to perform inspections under this subsection may establish a fee system providing for the assessment and collection of inspection fees on all sites in the district with approved plans.

(ii) The fees shall be based on the reasonably anticipated cost of inspections to be performed under the contractual agreement.

(iii) The district shall not assess and collect fees in a jurisdiction which has been delegated enforcement authority by the Secretary.

§4–104.

(a) In this section, "responsible personnel" means any foreman, superintendent, or project engineer who is in charge of on-site clearing and grading operations or sediment control associated with a construction project.

(b) After July 1, 1983, any applicant for sediment and erosion control plan approval shall certify to the appropriate jurisdiction that any responsible personnel involved in the construction project will have a certificate of attendance at a Department of the Environment approved training program for the control of sediment and erosion before beginning the project. A certificate shall be valid for a 3-year period. A certificate shall be automatically renewed unless the Department of the Environment notifies the certificate holder that additional training is required.

(c) The appropriate governmental entity authorized to approve grading and sediment control plans may waive the requirement of this section for the responsible personnel on any project involving four or fewer residential units.

(d) Any person may develop and conduct a training program if the program content and instructor are approved by and meet the requirements set by the Department of the Environment.

§4–105.

(a) (1) (i) In this section, "construction" means land clearing, grubbing, topsoil stripping, soil movement, grading, cutting and filling, transporting, or otherwise disturbing land for any purpose.

(ii) "Construction" includes land disturbing activities for the purpose of:

1. Constructing buildings;

2. Mining minerals;

3. Developing golf courses; and

4. Constructing roads and installing utilities.

(2) (i) Before any person begins any construction, the appropriate approval authority shall first receive, review, and approve the proposed earth change and the sediment control plan.

(ii) Except as provided in subsection (b) of this section, the approval authority is:

1. The appropriate soil conservation district;

2. A municipal corporation in Montgomery County that is designated by a soil conservation district under paragraph (6) of this subsection;

3. Any municipality not within a soil conservation district;

4. If a State or federal unit undertakes any construction, the Department or the Department's designee; or

5. For abandoned mine reclamation projects conducted by the Department pursuant to Title 15, Subtitles 5, 6, and 11 of this article, the Department.

(iii) Criteria used by the Department or the Department's designee for review and approvals under subparagraph (ii)4 of this paragraph:

1. Shall meet or exceed current Maryland standards and specifications for soil erosion and sediment control; or

2. If alternative standards are applied, shall be reviewed and approved by the Department.

(3) A person may not begin or perform any construction unless the person:

(i) Obtains an approved sediment control plan;

(ii) Implements the measures contained in the approved sediment control plan;

(iii) Conducts the construction as specified in the sequence of construction contained in the approved sediment control plan;

(iv) Maintains the provisions of the approved sediment control plan; and

(v) Implements any sediment control measures reasonably necessary to control sediment runoff.

(4) In consultation with the person responsible for performing the construction, the Department, jurisdictions delegated enforcement authority under § 4–103(e)(2) of this subtitle, or the appropriate approval agency may require modifications to an approved sediment control plan if the approved plan is not adequate to control sediment or erosion.

(5) A person performing construction that proposes a major change to an approved sediment control plan shall submit the proposed change to the appropriate approval authority for review and approval.

(6) A soil conservation district may delegate approval authority under paragraph (2) of this subsection to a municipal corporation in Montgomery County that:

(i) Has its own sediment control review provisions that are at least as stringent as the provisions of the grading and sediment control plan of the soil conservation district;

(ii) Issues sediment control permits; and

(iii) Meets the necessary performance standards established by written agreement between the district and the municipal corporation.

(b) In Montgomery County, notwithstanding the provisions of subsection (c) of this section and § 4–103(a)(1) of this subtitle, the soil conservation district may delegate the authority to review and approve or reject any sediment control plans for nonagricultural construction to the Montgomery County government by written agreement between the district and the county government department authorized by county law or regulation to perform those functions.

(c) In Prince George's and Montgomery counties, the Washington Suburban Sanitary Commission, after consultation with and advice of the soil conservation districts of the two counties and the Department of the Environment, shall prepare and adopt rules and regulations for erosion and sediment control requirements for utility construction work. The rules and regulations shall be adopted and enforced as are others of the Commission under authority conferred by other laws. These rules and regulations apply to any utility construction work in Prince George's and Montgomery counties. The provisions of this subsection do not apply until the soil conservation district in each county approves erosion and sediment control requirements for utility construction work in that county.

§4–106.

If a State or federal unit undertakes any construction as defined in § 4–105(a)(1) of this subtitle, the Department or the Department's designee shall review and approve this action and enforce the provisions of this subtitle and any plans approved under this subtitle.

§4–107.

The Department of the Environment shall assist soil conservation districts in preparing and implementing a unified sediment control program under this subtitle.

§4–108.

For the purposes of this subtitle, the bureau of public works or a similar municipal unit shall act in place of the appropriate soil conservation district in any municipality not within a soil conservation district.

§4–109.

(a) The Department may issue a written complaint if the Department has reasonable grounds to believe that the person to whom the complaint is directed has violated:

(1) This subtitle;

(2) Any rule or regulation adopted under this subtitle; or

(3) Any sediment control plan approved under this subtitle.

(b) After or concurrently with service of a complaint under this subtitle, the Department may:

(1) Issue an order that requires the person to whom the order is directed to take corrective action within a time set in the order;

(2) Send a written notice that requires the person to whom the notice is directed to file a written report about the alleged violation; or

(3) Send a written notice that requires the person to whom the notice is directed:

(i) To appear at a hearing before the Department at a time and place the Department sets to answer the charges in the complaint; or

(ii) To file a written report and also appear at a hearing before the Department at a time and place the Department sets to answer the charges in the complaint.

(c) Any order issued under this section is effective immediately, according to its terms, when it is served.

§4–110.

(a) If the Department finds that earth moving activity requiring the approval of the appropriate approval authority is being carried on in violation of § 4-105 of this subtitle either because it is being undertaken:

(1) Without any such approval; or

(2) Not substantially in accordance with the approved plan or any written recommendations of the approval authority regarding control of erosion and siltation and elimination of pollution, the Department may issue an order requiring the person conducting the work to stop all work, except that work necessary to implement the recommendations of the approval authority, until such time as approval of the activity has been obtained from the approval authority and the sediment control measures required by the authority have been implemented.

(b) In order to request that a stop work order be lifted, the person to whom the stop work order has been issued shall notify the Department when the required approval has been received and the required sediment control measures have been implemented.

(c) The Department shall act on a request to lift a stop work order and shall notify the requestor of its approval or denial of the request within 2 working days of the receipt of that request. Any denial must be in writing, providing the reasons therefor. Denial of a request to lift a stop work order solely for reasons pertaining to implementation or maintenance of erosion and sediment control measures shall be based upon an inspection of the construction site by the Department. If the initial request is denied, the Department shall act upon each subsequent request within 10 working days of receipt of that subsequent request.

(d) A stop work order is effective immediately whether or not a request for a hearing is filed, and remains in effect until lifted in accordance with this subsection.

§4–111.

(a) Any complaint, order, notice, or other instrument issued by the Department under this subtitle may be served on the person to whom it is directed in accordance with § 1–204 of this article.

(b) If service is made by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, the person who mails the document shall file with the Department verified proof of mailing.

(c) Any notice that requires filing of a report, attendance at a hearing, or both shall be served at least 10 days before the earlier of:

(1) The time set for the hearing, if any; or

(2) The time set for the filing of the report, if any.

§4–112.

(a) The Department shall give notice and hold any hearing under this subtitle in accordance with the Administrative Procedure Act.

(b) (1) Any request for a hearing on an order issued under § 4–109(b)(1) of this subtitle or a stop work order under § 4–110(a) of this subtitle or a notice issued under § 4–109(b)(2) of this subtitle shall be made in writing no later than 10 working days after being served with the order.

(2) If a request for a hearing on a stop work order issued under § 4–110(a) of this subtitle is made under this subsection, the Department shall:

(i) Hold the hearing no later than 10 working days after receiving the request; and

(ii) Render a decision within 10 working days after the hearing.

(c) The Department may make a verbatim record of the proceedings of any hearing held under this subtitle.

(d) (1) In connection with any hearing under this subtitle, the Department may:

(i) Subpoena any person or evidence; and

(ii) Order a witness to give evidence.

(2) A subpoenaed witness shall receive the same fees and mileage reimbursement as if the hearing were part of a civil action.

(3) If a person fails to comply with a subpoena or order issued under this subsection, on petition of the Department, a circuit court, by order, may:

(i) Compel obedience to the Department's order or subpoena; or

(ii) Compel testimony or the production of evidence.

(4) The court may punish as a contempt any failure to obey its order issued under this section.

§4–113.

(a) (1) Unless the person served with an order under § 4-109(b)(1) of this subtitle makes a request for a hearing in accordance with § 4-112(b) of this subtitle,

the order is a final order.

(2) If the person served with an order under § 4-109(b)(1) of this subtitle makes a request for a hearing in accordance with § 4-112(b) of this subtitle, the order becomes a final corrective order in accordance with the Department's decision following the hearing.

(b) (1) If the Department issues a notice under § 4-109(b)(2) or (3) of this subtitle, the Department may not issue an order that requires corrective action by the person to whom the notice is directed until after the later of:

(i) The conclusion of the hearing, if any; and

(ii) The review of the report, if any.

(2) After the time within which the Department may not issue a corrective order has passed, if the Department finds that a violation of this subtitle has occurred, the Department shall issue an order that requires correction of the violation within a time set in the order.

(3) Any order issued under this subsection is a final corrective order and the person to whom the order is directed is not entitled to a hearing before the Department as a result of the order.

(c) The Department shall:

(1) Take action to secure compliance with any final corrective order; and

(2) If the terms of the final corrective order are violated or if a violation is not corrected within the time set in the order, sue to require correction of the violation.

(d) This section does not prevent the Department or the Attorney General from taking action against a violator before the expiration of the time limitation or schedules in the order.

§4–114.

(a) Except as provided in subsection (b) of this section, before the Department exercises its authority under § 4-109 or § 4-110 of this subtitle, the Department shall:

(1) Notify the delegated county or municipality of the violation and the Department's intended action; and

(2) Provide reasonable opportunity for a joint inspection with a representative of the delegated county or municipality.

(b) If the Department determines that there is a substantial threat to the environment, the Department may take appropriate enforcement action without first

providing a reasonable opportunity for a joint inspection under subsection (a)(2) of this section.

§4–115.

(a) Any person aggrieved by a final decision of the Department in connection with an order or permit issued under this subtitle may take a direct judicial appeal.

(b) The appeal shall be made as provided for judicial review of decisions in the Administrative Procedure Act.

§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 county or municipal agency that recovers penalties in accordance with this subtitle shall deposit them in a special fund, to be used solely for:

1. Correcting to the extent possible the failure to implement or maintain erosion and sediment controls; and

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 Maryland Clean Water Fund established under § 9–320 of this article.

§4–201.

The General Assembly finds that the management of stormwater runoff is necessary to reduce stream channel erosion, pollution, siltation and sedimentation, and local flooding, all of which have adverse impacts on the water and land resources of Maryland. The General Assembly intends, by enactment of this subtitle, to reduce as nearly as possible the adverse effects of stormwater runoff and to safeguard life, limb, property, and public welfare.

§4–201.1.

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

(b) "Environmental site design" means using small–scale stormwater management practices, nonstructural techniques, and better site planning to mimic natural hydrologic runoff characteristics and minimize the impact of land development on water resources.

(c) "Environmental site design" includes:

(1) Optimizing conservation of natural features, such as drainage patterns, soils, and vegetation;

(2) Minimizing use of impervious surfaces;

(3) Slowing down runoff to maintain discharge timing and to increase infiltration and evapotranspiration; and

(4) Using other nonstructural practices or innovative stormwater management technologies approved by the Department.

(d) (1) "Impervious surface" means a surface that does not allow stormwater to infiltrate into the ground.

(2) "Impervious surface" includes rooftops, driveways, sidewalks, or

pavement.

§4–202.

By July 1, 1984, each county and municipality shall adopt ordinances necessary to implement a stormwater management program. These stormwater management programs shall be consistent with flood management plans, if any, developed under Title 5, Subtitle 8 of this article for a particular watershed, shall meet the requirements established by the Department under § 4-203 of this subtitle, and shall be consistent with the purposes of this subtitle.

§4–202.1.

(a) (1) Except as provided in paragraphs (2) and (3) of this subsection, this section applies to a county or municipality that is subject to a national pollutant discharge elimination system Phase I municipal separate storm sewer system permit.

(2) This section does not apply to a county or municipality that, on or before July 1, 2012, has enacted and implemented a system of charges under § 4–204 of this subtitle for the purpose of funding a watershed protection and restoration program, or similar program, in a manner consistent with the requirements of this section.

(3) Except as provided in subsection (j) of this section, this section does not apply in Montgomery County.

(b) A county or municipality shall adopt and implement local laws or ordinances necessary to establish a watershed protection and restoration program.

(c) (1) A watershed protection and restoration program established under this section:

(i) May include a stormwater remediation fee; and

(ii) Shall include a local watershed protection and restoration fund.

(2) (i) If a county or municipality established a stormwater remediation fee under this section on or before July 1, 2013, the county or municipality may repeal or reduce the fee before July 1, 2016, if:

1. The county or municipality identifies dedicated revenues, funds, or other sources of funds that will be:

A. Deposited into its local watershed protection and restoration fund; and

B. Utilized by the county or municipality to meet the requirements of its national pollutant discharge elimination system Phase I municipal separate storm sewer system permit;

2. Subject to subparagraph (iii) of this paragraph, the county or municipality has filed with the Department a financial assurance plan in accordance with subsection (j) of this section; and

3. The Department determines the financial assurance plan demonstrates good faith toward achieving sufficient funding in accordance with subsection (j)(4)(ii) of this subsection.

(ii) This paragraph may not be construed as prohibiting a county or municipality from repealing or reducing a fee on or after July 1, 2016.

(d) (1) A county or municipality shall maintain or administer a local watershed protection and restoration fund in accordance with this section.

(2) The purpose of a local watershed protection and restoration fund is to provide financial assistance for the implementation of local stormwater management plans through stormwater management practices and stream and wetland restoration activities.

(e) (1) (i) Except as provided in paragraph (2) of this subsection and subsection (f) of this section, a county or municipality may establish and annually collect a stormwater remediation fee from owners of property located within the county or municipality in accordance with this section.

(ii) Beginning fiscal year 2017, if a county funds the cost of stormwater remediation by using general revenues or through the issuance of bonds, the county shall meet with each municipality within its jurisdiction to mutually agree that the county will:

1. Assume responsibility for the municipality's stormwater remediation obligations;

2. For a municipality that has established a stormwater remediation fee under this section or § 4–204 of this subtitle, adjust the county property tax rate within the municipality to offset the stormwater remediation fee charged by the municipality; or

3. Negotiate a memorandum of understanding with the municipality to mutually agree upon any other action.

(2) (i) Except as provided in subparagraphs (ii) and (iii) of this paragraph, property owned by the State, a unit of State government, a county, a municipality, a veterans' organization that is exempt from taxation under § 501(c)(4) or (19) of the Internal Revenue Code, or a regularly organized volunteer fire department that is used for public purposes may not be charged a stormwater remediation fee under this section.

(ii) 1. Except as provided in subsubparagraph 2 of this

subparagraph, property owned by the State or a unit of State government may be charged a stormwater remediation fee by a county under this section if:

A. The State or a unit of State government and a county agree to the collection of an annual stormwater remediation fee from the State or a unit of State government that is based on the share of stormwater management services related to property of the State or a unit of State government located within the county;

B. The county agrees to appropriate into its own local watershed protection and restoration fund, on an annual basis, an amount of money that is based on the share of stormwater management services related to county property on an annual basis; and

C. The county demonstrates to the satisfaction of the State or a unit of State government that the fees collected under item A of this subparagraph and the money appropriated under item B of this subparagraph were deposited into the county's local watershed protection and restoration fund.

2. A county or municipality may not charge a stormwater remediation fee to property specifically covered by a current national pollutant discharge elimination system municipal separate storm sewer system permit or industrial stormwater permit held by the State or a unit of State government.

(iii) A county or municipality may charge a stormwater remediation fee to property owned by a veterans' organization that is exempt from taxation under § 501(c)(4) or (19) of the Internal Revenue Code or a regularly organized volunteer fire department if:

1. The county or municipality determines that the creation of a nondiscriminatory program for applying the stormwater remediation fee to federal properties under the federal facilities pollution control section of the Clean Water Act is necessary in order for the county or municipality to receive federal funding for stormwater remediation; and

2. A veterans' organization that is exempt from taxation under § 501(c)(4) or (19) of the Internal Revenue Code and a regularly organized volunteer fire department that is used for public purposes are provided with the opportunity to apply for an alternate compliance plan established under subsection (k)(3) of this section instead of paying a stormwater remediation fee charged by a county or municipality under item 1 of this subparagraph.

(3) (i) If a county or municipality establishes a stormwater remediation fee under this section, a county or municipality shall set a stormwater remediation fee for property in an amount that is based on the share of stormwater management services related to the property and provided by the county or municipality.

(ii) A county or municipality may set a stormwater remediation fee under this paragraph based on:

1. A flat rate;

2. An amount that is graduated, based on the amount of impervious surface on each property; or

3. Another method of calculation selected by the county or municipality.

(4) If a county or municipality establishes a stormwater remediation fee under this section, the stormwater remediation fee established under this section is separate from any charges that a county or municipality establishes related to stormwater management for new developments under § 4–204 of this subtitle, including fees for permitting, review of stormwater management plans, inspections, or monitoring.

(f) (1) If a county or municipality establishes a stormwater remediation fee under this section, the county or municipality shall establish policies and procedures, approved by the Department, to reduce any portion of a stormwater remediation fee established under subsection (e) of this section to account for on–site and off–site systems, facilities, services, or activities that reduce the quantity or improve the quality of stormwater discharged from the property.

(2) The policies and procedures established by a county or municipality under paragraph (1) of this subsection shall include:

(i) Guidelines for determining which on–site systems, facilities, services, or activities may be the basis for a fee reduction, including guidelines:

1. Relating to properties with existing advanced stormwater best management practices;

2. Relating to agricultural activities or facilities that are otherwise exempted from stormwater management requirements by the county or municipality; and

3. That account for the costs of, and the level of treatment provided by, stormwater management facilities that are funded and maintained by a property owner;

(ii) The method for calculating the amount of a fee reduction; and

(iii) Procedures for monitoring and verifying the effectiveness of the on–site systems, facilities, services, or activities in reducing the quantity or improving the quality of stormwater discharged from the property.

(3) For the purpose of monitoring and verifying the effectiveness of on–site systems, facilities, services, or activities under paragraph (2)(iii) of this subsection, a county or municipality may:

(i) Conduct on–site inspections;

(ii) Authorize a third party, certified by the Department, to conduct on–site inspections on behalf of the county or municipality; or

(iii) Require a property owner to hire a third party, certified by the Department, to conduct an on–site inspection and provide to the county or municipality the results of the inspection and any other information required by the county or municipality.

(g) (1) A property may not be assessed a stormwater remediation fee by both a county and a municipality.

(2) (i) Before a county may impose a stormwater remediation fee on a property located within a municipality, the county shall:

1. Notify the municipality of the county's intent to impose a stormwater remediation fee on property located within the municipality; and

2. Provide the municipality reasonable time to pass an ordinance authorizing the imposition of a municipal stormwater remediation fee instead of a county stormwater remediation fee.

(ii) If a county currently imposes a stormwater remediation fee on property located within a municipality and the municipality decides to implement its own stormwater remediation fee under this section or § 4–204 of this subtitle, the municipality shall:

1. Notify the county of the municipality's intent to impose its own stormwater remediation fee; and

2. Provide the county reasonable time to discontinue the collection of the county stormwater remediation fee within the municipality before the municipality's stormwater remediation fee becomes effective.

(3) A county or municipality shall establish a procedure for a property owner to appeal a stormwater remediation fee imposed under this section.

(h) (1) (i) If a county or municipality establishes a stormwater remediation fee under this section, the county or municipality shall determine the method, frequency, and enforcement of the collection of the stormwater remediation fee.

(ii) A county or municipality shall include the following statement on a bill or on an insert to a bill to collect a stormwater remediation fee: "This is a local government fee established in response to federal stormwater management requirements. The federal requirements are designed to prevent local sources of pollution from reaching local waterways.".

(2) A county or municipality shall deposit any stormwater remediation fees it collects into its local watershed protection and restoration fund.

(3) There shall be deposited in a local watershed protection and restoration fund:

(i) Any funds received from the stormwater remediation fee;

(ii) Funds received under subsections (c)(2) and (e)(2) of this section;

(iii) Interest or other income earned on the investment of money in the local watershed protection and restoration fund; and

(iv) Any additional money made available from any sources for the purposes for which the local watershed protection and restoration fund has been established.

(4) Subject to paragraph (5) of this subsection, a county or municipality shall use the money in its local watershed protection and restoration fund for the following purposes only:

(i) Capital improvements for stormwater management, including stream and wetland restoration projects;

(ii) Operation and maintenance of stormwater management systems and facilities;

(iii) Public education and outreach relating to stormwater management or stream and wetland restoration;

(iv) Stormwater management planning, including:

1. Mapping and assessment of impervious surfaces; and

2. Monitoring, inspection, and enforcement activities to carry out the purposes of the watershed protection and restoration fund;

(v) To the extent that fees imposed under § 4–204 of this subtitle are deposited into the local watershed protection and restoration fund, review of stormwater management plans and permit applications for new development;

(vi) Grants to nonprofit organizations for up to 100% of a project's costs for watershed restoration and rehabilitation projects relating to:

1. Planning, design, and construction of stormwater management practices;

2. Stream and wetland restoration; and

3. Public education and outreach related to stormwater management or stream and wetland restoration; and

(vii) Reasonable costs necessary to administer the local watershed protection and restoration fund.

(5) A county or municipality may use its local watershed protection and restoration fund as an environmental fund, and may deposit to and expend from the fund additional money made available from other sources and dedicated to environmental uses, provided that the funds received from the stormwater remediation fee, if any, are expended only for the purposes authorized under paragraph (4) of this subsection.

(6) Money in a local watershed protection and restoration fund may not revert or be transferred to the general fund of any county or municipality.

(i) A county or municipality shall report annually, in a manner determined by the Department, on:

(1) The number of properties subject to a stormwater remediation fee, if any;

(2) Any funding structure developed by the county or municipality, including the amount of money collected from each classification of property assessed a fee, if any;

(3) The amount of money deposited into the watershed protection and restoration fund in the previous fiscal year by source;

(4) The percentage and amount of funds in the local watershed protection and restoration fund spent on each of the purposes provided in subsection (h)(4) of this section;

(5) All stormwater management projects implemented in the previous fiscal year; and

(6) Any other information that the Department determines is necessary.

(j) (1) (i) On or before July 1, 2016, and every 2 years thereafter on the anniversary of the date of issuance of its national pollutant discharge elimination system Phase I municipal separate storm sewer system permit, a county, including Montgomery County, or municipality shall file with the Department a financial assurance plan that clearly identifies:

1. Actions that will be required of the county or municipality to meet the requirements of its national pollutant discharge elimination system Phase I municipal separate storm sewer system permit;

2. Projected annual and 5–year costs for the county or municipality to meet the impervious surface restoration plan requirements of its national pollutant discharge elimination system Phase I municipal separate storm sewer system permit;

3. Projected annual and 5–year revenues or other funds that will be used to meet the costs for the county or municipality to meet the impervious surface restoration plan requirements of its national pollutant discharge elimination system Phase I municipal separate storm sewer system permit;

4. Any sources of funds that will be utilized by the county or municipality to meet the requirements of its national pollutant elimination system Phase I municipal separate storm sewer system permit; and

5. Specific actions and expenditures that the county or municipality implemented in the previous fiscal years to meet its impervious surface restoration plan requirements under its national pollutant discharge elimination system Phase I municipal separate storm sewer system permit.

(ii) A county or municipality that files a financial assurance plan under subsection (c)(2) of this section shall file on or before July 1, 2016, a financial assurance plan that meets the requirements of paragraph (4) of this subsection.

(2) A financial assurance plan shall demonstrate that the county or municipality has sufficient funding in the current fiscal year and subsequent fiscal year budgets to meet its estimated costs for the 2–year period immediately following the filing date of the financial assurance plan.

(3) A county or municipality may not file a financial assurance plan under this subsection until the local governing body of the county or municipality:

(i) Holds a public hearing on the financial assurance plan; and

(ii) Approves the financial assurance plan.

(4) (i) Subject to subparagraphs (ii) and (iii) of this paragraph, the Department shall make a decision whether the financial assurance plan demonstrates sufficient funding within 90 days after the county or municipality filed the financial assurance plan with the Department.

(ii) For a financial assurance plan that is filed on or before July 1, 2016, funding in the financial assurance plan is sufficient if the financial assurance plan demonstrates that the county or municipality has dedicated revenues, funds, or sources of funds to meet, for the 2–year period immediately following the filing date of the financial assurance plan, 75% of the projected costs of compliance with the impervious surface restoration plan requirements of the county or municipality under its national pollutant discharge elimination system Phase I municipal separate storm sewer system permit over that 2–year period.

(iii) For the filing of a second and subsequent financial assurance plan, funding in the financial assurance plan is sufficient if the financial assurance plan demonstrates that the county or municipality has dedicated revenues, funds, or sources of funds to meet, for the 2–year period immediately following the filing date of the financial assurance plan, 100% of the projected costs of compliance with the impervious surface restoration plan requirements of the county or municipality under its national pollutant discharge elimination system Phase I municipal separate storm sewer system permit over the 2–year period.

(5) (i) If the Department determines that the funding in the financial assurance plan filed on or before July 1, 2016, is insufficient to meet, for the 2–year period immediately following the filing date of the financial assurance plan, 75% of the projected costs of compliance with the impervious surface restoration plan requirements of the county or municipality under its national pollutant discharge elimination system Phase I municipal separate storm sewer system permit, the Department shall issue a warning to the county or municipality and engage with the county or municipality on the development of a plan for meeting the projected costs of compliance.

(ii) 1. If the Department determines that the funding in the second or subsequent financial assurance plan is insufficient to meet, for the 2–year period immediately following the filing date of the financial assurance plan, 100% of the projected costs of compliance with the impervious surface restoration plan requirements of the county or municipality under its national pollutant discharge elimination system Phase I municipal separate storm sewer system permit, in addition to any other remedy available at law or in equity the Department shall impose an administrative penalty of:

A. For a first offense, up to $5,000 for each day until the funding in the financial assurance plan is determined to be sufficient in accordance with subsection (j)(4)(iii) of this subsection; and

B. For a second and subsequent offense, up to $10,000 for each day until the funding in the financial assurance plan is determined to be sufficient in accordance with subsection (j)(4)(iii) of this subsection.

2. Any penalty collected by the Department from a county or municipality under this subparagraph shall be paid into an escrow account to be used by the county or municipality for stormwater management projects pending a determination by the Department that funding in the financial assurance plan is sufficient.

(6) A financial assurance plan required under this subsection shall be made publicly available on the Department's Web site within 14 days after the county or municipality filed the financial assurance plan with the Department.

(7) Beginning September 1, 2016, and every year thereafter, the

Department shall submit a report evaluating the compliance of counties and municipalities with the requirements of this section to the Governor and, in accordance with § 2–1246 of the State Government Article, the Senate Education, Health, and Environmental Affairs Committee and the House Environment and Transportation Committee.

(k) (1) If a county or municipality establishes a stormwater remediation fee under this section, the county or municipality shall establish a program to exempt from the requirements of this section any property able to demonstrate substantial financial hardship as a result of the stormwater remediation fee.

(2) A county or municipality may establish a separate hardship exemption program or include a hardship exemption as part of a system of offsets established under subsection (f)(1) of this section.

(3) (i) A county or municipality shall authorize a charitable nonprofit group or organization that is exempt from taxation under § 501(c)(3) or (d) of the Internal Revenue Code and can demonstrate substantial financial hardship to implement an alternate compliance plan in lieu of paying a stormwater remediation fee for property owned by the group or organization.

(ii) 1. Subject to subsubparagraph 2 of this subparagraph, the Department may adopt regulations to establish the alternate compliance plan authorized under subparagraph (i) of this paragraph.

2. The regulations adopted by the Department under subsubparagraph 1 of this subparagraph do not apply in a county that has implemented an alternate compliance program before July 1, 2015.

(l) The Department may adopt regulations to implement and enforce this section.

§4–203.

(a) The Department of the Environment shall implement the provisions of this subtitle and shall consult the Department of Natural Resources from time to time, including during the adoption of regulations, concerning the impact of stormwater on waters of the State.

(b) The Department shall adopt rules and regulations which establish criteria and procedures for stormwater management in Maryland. The rules and regulations shall:

(1) Indicate that the primary goal of the State and local programs will be to maintain after development, as nearly as possible, the predevelopment runoff characteristics;

(2) Make allowance for the difference in hydrologic characteristics and

stormwater management needs of different parts of the State;

(3) Specify that watershed–wide analyses may be necessary to prevent undesirable downstream effects of increased stormwater runoff;

(4) Specify the exemptions a county or municipality may grant from the requirements of submitting a stormwater management plan;

(5) (i) Specify the minimum content of the local ordinances or the rules and regulations of the affected county governing body to be adopted which may be done by inclusion of a model ordinance or model rules and regulations; and

(ii) Establish regulations and a model ordinance that require:

1. The implementation of environmental site design to the maximum extent practicable;

2. The review and modification, if necessary, of planning and zoning or public works ordinances to remove impediments to environmental site design implementation; and

3. A developer to demonstrate that:

A. Environmental site design has been implemented to the maximum extent practicable; and

B. Standard best management practices have been used only where absolutely necessary;

(6) Indicate that water quality practices may be required for any redevelopment, even when predevelopment runoff characteristics are maintained;

(7) Specify the minimum requirements for inspection and maintenance of stormwater practices;

(8) Specify that all stormwater management plans shall be designed to:

(i) Prevent soil erosion from any development project;

(ii) Prevent, to the maximum extent practicable, an increase in nonpoint pollution;

(iii) Maintain the integrity of stream channels for their biological function, as well as for drainage;

(iv) Minimize pollutants in stormwater runoff from new development and redevelopment in order to:

1. Restore, enhance, and maintain the chemical, physical, and

biological integrity of the waters of the State;

2. Protect public health;

3. Safeguard fish and aquatic life and scenic and ecological values; and

4. Enhance the domestic, municipal, recreational, industrial, and other uses of water as specified by the Department;

(v) Protect public safety through the proper design and operation of stormwater management facilities;

(vi) Maintain 100% of average annual predevelopment groundwater recharge volume for the site;

(vii) Capture and treat stormwater runoff to remove pollutants and enhance water quality;

(viii) Implement a channel protection strategy to reduce downstream erosion in receiving streams; and

(ix) Implement quantity control strategies to prevent increases in the frequency and magnitude of out–of–bank flooding from large, less frequent storm events; and

(9) (i) Establish a comprehensive process for approving grading and sediment control plans and stormwater management plans; and

(ii) Specify that the comprehensive process established under item (i) of this item takes into account the cumulative impacts of both plans.

(c) Before the regulations required under this subsection are final, the Department shall hold at least one public hearing in the affected immediate geographic areas of the State and shall consult with the affected counties and municipalities.

(d) The Department shall provide technical assistance, training, research, and coordination in stormwater management technology to the local governments consistent with the purposes of this subtitle.

§4–204.

(a) After July 1, 1984, unless exempted, a person may not develop any land for residential, commercial, industrial, or institutional use without submitting a stormwater management plan to the county or municipality that has jurisdiction, and obtaining approval of the plan from the county or municipality. A grading or building permit may not be issued for a property unless a stormwater management plan has

been approved that is consistent with this subtitle.

(b) The developer shall certify that all land clearing, construction, development, and drainage will be done according to the plan.

(c) Each county or municipality may provide by ordinance for the review and approval of stormwater management plans by the local soil conservation district.

(d) (1) Each governing body of a county or municipality may adopt a system of charges to fund the implementation of stormwater management programs, including the following:

(i) Reviewing stormwater management plans;

(ii) Inspection and enforcement activities;

(iii) Watershed planning;

(iv) Planning, design, land acquisition, and construction of stormwater management systems and structures;

(v) Retrofitting developed areas for pollution control;

(vi) Water quality monitoring and water quality programs;

(vii) Operation and maintenance of facilities; and

(viii) Program development of these activities.

(2) The charges shall take effect upon enactment by the local governing body.

(3) The charges may be collected in the same manner as county and municipal property taxes, have the same priority, and bear the same interest and penalties.

(4) The charges shall be assessed in a manner consistent with § 4–202.1(e)(3) and (f) of this subtitle.

(e) (1) This subsection applies to a system of charges established by Montgomery County under subsection (d) of this section.

(2) Except as provided in paragraph (5) of this subsection, the county may not impose the charge established under this section on a veterans' organization that is exempt from taxation under § 501(c)(4) or (19) of the Internal Revenue Code, a regularly organized volunteer fire department that is used for public purposes, or on roads, not including parking areas, that are owned by a homeowners association that is exempt from taxation under § 501(c)(4) of the Internal Revenue Code if the roads qualify for a State or county roadway maintenance reimbursement fund.

(3) Property owned by the State or a unit of State government in the county may be charged under the system of charges adopted by the county under this section if:

(i) The State or a unit of State government and the county agree to the collection of the charge from the State or a unit of State government that is based on the share of stormwater management services related to property of the State or a unit of State government located within the county;

(ii) The county agrees to appropriate into its own local watershed protection and restoration fund, on an annual basis, an amount of money that is based on the share of stormwater management services related to county property on an annual basis; and

(iii) The county demonstrates to the satisfaction of the State or a unit of State government that the charge collected under item (i) of this paragraph and the money appropriated under item (ii) of this paragraph were deposited into the county's local watershed protection and restoration fund.

(4) (i) The county may establish a program to exempt from the system of charges adopted under this section a property whose owner is able to demonstrate substantial financial hardship.

(ii) The county may establish a separate hardship exemption program or include a hardship exemption as part of a system of offsets to account for on–site and off–site systems, facilities, services, or activities that reduce the quantity or improve the quality of storm water discharged from the property.

(5) The county may impose the charge established under this section on property owned by a veterans' organization that is exempt from taxation under § 501(c)(4) or (19) of the Internal Revenue Code or a regularly organized volunteer fire department if:

(i) The county determines that the creation of a nondiscriminatory program for applying the charge to federal properties under the federal facilities pollution control section of the Clean Water Act is necessary in order for the county to receive federal funding for stormwater remediation; and

(ii) A veterans' organization that is exempt from taxation under § 501(c)(4) or (19) of the Internal Revenue Code and a regularly organized volunteer fire department that is used for public purposes are provided with the opportunity to apply for an alternate compliance plan established under § 4–202.1(k)(3) of this subtitle instead of paying a charge imposed by the county under item (i) of this paragraph.

§4–205.

(a) The provisions of § 4–204 of this subtitle do not apply to the construction activities of State or federal agencies.

(b) After July 1, 1984, a State or federal agency may not undertake any land clearing, soil movement, or construction activity involving soil movement unless the agency has submitted and obtained approval of a stormwater management plan from the Department or the Department's designee.

(c) (1) On the request of a county or municipality, the Department or the Department's designee shall require that a State or federal agency submit a stormwater management plan to the requesting jurisdiction for review and comment, which review and comment shall be completed, returned, and received by the State or federal agency within 21 calendar days of receipt of the plan.

(2) The Department or the Department's designee shall require that the State or federal agency include the local jurisdictions' comments that are received within the time period required under paragraph (1) of this subsection as part of its stormwater management plan which is submitted for approval to the Department.

§4–206.

(a) After July 1, 1984, the Department shall periodically, but at least once every 3 years, inspect and review the stormwater management programs of the counties and municipalities and their field implementation.

(b) These periodic reviews shall be conducted under rules and regulations adopted by the Department.

(c) The Department shall publish the results of the periodic review required under this section in 1 document and conduct a public informational meeting concerning the reviews.

(d) If a county or municipality is found to have an unacceptable stormwater management program after the periodic review and inspection, the Department may in addition to other sanctions authorized by law issue an order requiring that necessary corrective action be taken within a reasonably prescribed time.

§4–207.

The provisions of this subtitle do not add to the jurisdiction of the Department of Natural Resources.

§4–208.

The Department shall issue a written complaint if the Department has reasonable grounds to believe that the person to whom the complaint is directed has violated:

(1) This subtitle;

(2) Any rule or regulation adopted under this subtitle; or

(3) Any stormwater management plan approved under this subtitle.

§4–209.

(a) After or concurrently with service of a complaint under this subtitle, the Department may:

(1) Issue an order that requires the person to whom the order is directed to take corrective action within a time set in the order;

(2) Send a written notice that requires the person to whom the notice is directed to file a written report about the alleged violation; or

(3) Send a written notice that requires the person to whom the notice is directed:

(i) To appear at a hearing before the Department at a time and place the Department sets to answer the charges in the complaint; or

(ii) To file a written report and also appear at a hearing before the Department at a time and place the Department sets to answer the charges in the complaint.

(b) Any order issued under this section is effective immediately, according to its terms, when it is served.

§4–210.

(a) Any complaint, order, notice, or other instrument issued by the Department under this subtitle may be served on the person to whom it is directed in accordance with § 1–204 of this article.

(b) If service is made by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, the person who mails the document shall file with the Department verified proof of mailing.

(c) Any notice that requires filing of a report, attendance at a hearing, or both shall be served at least 10 days before the earlier of:

(1) The time set for the hearing, if any; or

(2) The time set for the filing of the report, if any.

§4–211.

(a) The Department shall give notice and hold any hearing under this subtitle in accordance with the Administrative Procedure Act.

(b) Within 10 days after being served with an order under § 4–209(a)(1) of this

subtitle or a notice under § 4–209(a)(2) of this subtitle, the person served may request in writing a hearing before the Department.

(c) The Department may make a verbatim record of the proceedings of any hearing held under this subtitle.

(d) (1) In connection with any hearing under this subtitle, the Department may:

(i) Subpoena any person or evidence; and

(ii) Order a witness to give evidence.

(2) A subpoenaed witness shall receive the same fees and mileage reimbursement as if the hearing were part of a civil action.

(3) If a person fails to comply with a subpoena or order issued under this subsection, on petition of the Department, a circuit court, by order, may:

(i) Compel obedience to the Department's order or subpoena; or

(ii) Compel testimony or the production of evidence.

(4) The court may punish as a contempt any failure to obey its order issued under this section.

§4–212.

(a) (1) Unless the person served with an order under § 4-209(a)(1) of this subtitle makes a request for a hearing in accordance with § 4-211(b) of this subtitle, the order is a final order.

(2) If the person served with an order under § 4-209(a)(1) of this subtitle makes a request for a hearing in accordance with § 4-211(b) of this subtitle, the order becomes a final corrective order in accordance with the Department's decision following the hearing.

(b) (1) If the Department issues a notice under § 4-209(a)(2) or (3) of this subtitle, the Department may not issue an order that requires corrective action by the person to whom the notice is directed until after the later of:

(i) The conclusion of the hearing, if any; and

(ii) The review of the report, if any.

(2) After the time within which the Department may not issue a corrective order has passed, if the Department finds that a violation of this subtitle has occurred, the Department shall issue an order that requires correction of the violation within a time set in the order.

(3) Any order issued under this subsection is a final corrective order and the person to whom the order is directed is not entitled to a hearing before the Department as a result of the order.

(c) The Department shall:

(1) Take action to secure compliance with any final corrective order; and

(2) If the terms of the final corrective order are violated or if a violation is not corrected within the time set in the order, sue to require correction of the violation.

(d) This section does not prevent the Department or the Attorney General from taking action against a violator before the expiration of the time limitation or schedules in the order.

§4–213.

(a) Except as provided in subsection (b) of this section, before the Department exercises its authority under § 4-208 or § 4-209 of this subtitle, the Department shall:

(1) Notify the county or municipality of the violation and the Department's intended action; and

(2) Conduct a joint inspection with a representative of the county or municipality.

(b) If the Department determines that there is a substantial threat to the environment, the Department may take appropriate enforcement action without first conducting a joint inspection under subsection (a)(2) of this section.

§4–214.

(a) Any person aggrieved by a final decision of the Department in connection with an order or permit issued under this subtitle may take a direct judicial appeal.

(b) The appeal shall be made as provided for judicial review decisions in the Administrative Procedure Act.

§4–215.

(a) (1) Any person who violates any provision of this subtitle or any regulation or stormwater management plan adopted or approved under 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 1 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 or any regulation or stormwater management plan adopted or approved under this subtitle.

(c) (1) In addition to any other sanction under this subtitle, the Department or the Department of Natural Resources, as appropriate, or a political subdivision may bring a civil action against any person for any violation of this subtitle or any regulation or stormwater management plan adopted or approved under this subtitle.

(2) The action may seek the imposition of a civil penalty of not more than $10,000 against the person, an injunction to prohibit the person from continuing the violation or both.

(d) For purposes of a civil action brought under subsection (c) of this section, each day during which a violation continues constitutes a separate offense.

(e) (1) In addition to any other remedies available at law 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 regulation or plan adopted or approved under 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 $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 this State and collectible in any manner provided at law for the collection of penalties.

(f) 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 under this section, provided that the county or municipality has been given prior written notification of the violation by the Department and has been afforded a reasonable opportunity to take enforcement action.

§4–301.

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

(b) "Patuxent River Watershed" means the land and water area from which all water drains either directly or indirectly to the Patuxent River.

(c) "Severn River Watershed" means the land and water area from which all water drains either directly or indirectly to the Severn River.

(d) "Watershed" means the Patuxent River Watershed and the Severn River Watershed.

§4–302.

The General Assembly declares that the Patuxent River and the Severn River are a great natural asset and resource to the State and the counties through which they run. As a result of poorly treated effluent discharged from sewage disposal plants and erosion and silt deposited in the rivers from construction and development on land in the Watershed, the Patuxent River and Severn River are being polluted and despoiled

to a degree that fish, marine life, and recreational use of the rivers are being adversely affected and curtailed.

§4–302.1.

(a) On or before January 1, 2012, unless a more advanced upgrade or upgrade schedule is required by a State or federal law or regulation, if funding is available from the Bay Restoration Fund, a nonfederal, publicly owned wastewater treatment plant that discharges wastewater into the Patuxent River or any of its tributaries and has a design capacity of at least 500,000 gallons per day shall upgrade to enhanced nutrient removal, as defined under § 9-1601 of this article.

(b) On or before January 1, 2016, unless a more advanced upgrade or upgrade schedule is required by a State or federal law or regulation, if funding is available from the Bay Restoration Fund, a nonfederal wastewater treatment plant that discharges wastewater into the Patuxent River or any of its tributaries and has a design capacity of at least 50,000 gallons per day shall upgrade to enhanced nutrient removal, as defined under § 9-1601 of this article.

(c) On or before January 1, 2020, unless a more advanced upgrade or upgrade schedule is required by a State or federal law or regulation, if funding is available from the Bay Restoration Fund, a nonfederal wastewater treatment plant that discharges wastewater into the Patuxent River or any of its tributaries and has a design capacity that is less than 50,000 gallons per day shall upgrade to enhanced nutrient removal, as defined under § 9-1601 of this article.

§4–303.

Every person who disposes of or treats sewage in the Watershed shall anticipate the need for advanced waste treatment and removal of nutrients, in providing land and planning construction of sewage treatment plants, so that effluent from sewage treatment plants is sufficiently treated to meet the effluent water quality standard for bacteriological values, dissolved oxygen, pH, and temperature conditions defined by the Secretary of the Environment. Every future sewage treatment plant located within the Watershed shall be constructed to conform with these standards.

§4–304.

(a) Any owner or operator of a sewage disposal plant which does not meet the prescribed water quality standards, within 180 days' notice of failure to meet these standards, shall submit an improved sewage disposal plan to the Department of the Environment for approval. The Department of the Environment, within ten days, shall refer copies of the plan to the appropriate county governing unit of the county in which the plant is located, the Department of Natural Resources and, in Montgomery and Prince George's counties, to the Washington Suburban Sanitary Commission and the Maryland–National Capital Park and Planning Commission, for review and recommendation. They have 30 days to respond to the Department of the

Environment.

(b) The sewage plan shall indicate necessary improvements required to ensure that purity of the effluent meets required standards, and shall include a time schedule to construct necessary improvements within 3 years.

(c) If the applicant or any unit requests, the Department of the Environment shall hold a hearing on the plan after at least ten days' notice to the applicant and units to which the referral was made. The Department of the Environment shall approve the plan within 90 days after the owner or operator submits the plan. The Department of the Environment may make any amendment or modification it determines, in accordance with the prescribed standards.

(d) If the owner or operator of the sewage disposal plant fails to submit a plan or construct necessary improvements in accordance with the approved plan, the appropriate county governing body of the county, or in Montgomery and Prince George's counties, the Washington Suburban Sanitary Commission, upon 30 days' written notice from the Department of the Environment that compliance has not been made with the requirements of this section, shall proceed to complete the necessary plan and work so the sewage disposal plant will conform to the prescribed standards.

§4–305.

The sewage disposal plant owner or operator shall be liable to the county or governmental unit for funds expended for sewage improvements, costs, and attorneys' fees. The sewage improvement expenses, costs and fees constitute a lien against the property if recorded and indexed as provided in this subtitle and are collectable as taxes.

§4–306.

The county health department in each county, on at least a monthly basis, shall take a stream sample at the critical point of every sewage disposal plant's point of discharge within the Watershed in its county. It shall deliver copies of the analyses of each sample to the appropriate operator, the Department of the Environment, and other units stated in § 4–304 of this subtitle.

§4–307.

A person may not discharge raw sewage or any other waste into the Patuxent River, the Severn River, or any of their tributaries. For the purpose of this subtitle, oyster and clam shells, and materials used in the culture of marine life are not considered waste. Also a discharge from a sewage treatment plant operating pursuant to the provisions of § 4–303 of this subtitle is not considered waste for the purposes of this section.

§4–308.

(a) Anne Arundel County or the City of Annapolis may issue a grading or building permit within the Severn River Watershed only after the developer submits a plan of development approved by the soil conservation district. If the development plan contains any septic or private sewer facility, the Department of the Environment shall approve it only if the facility will not contribute in any way to pollution of the Severn River. The developer shall submit a certificate from a professional engineer, a professional land surveyor, or a licensed landscape architect stating that the developer's plan to control silt and erosion is adequate to contain the silt and erosion on the property covered by the plan. Also, the developer shall submit another certificate stating that any construction or development will be done according to the plan. A subdivision developer shall obtain approval of the plan at the time of approving and recording of the subdivision plat. In addition to any other penalty provided in this subtitle, if a developer violates his certificate, then every permit issued pursuant to the certificate is void.

(b) A State, county, or municipal road, building, or structure may not be constructed, relocated, or enlarged within the Severn River Watershed until plans have been submitted to and approved by the soil conservation district.

§4–309.

Notwithstanding present planning, zoning, or subdivision controls, a permit may not be issued for grading or constructing any building, unless the grading or constructing is pursuant to any plan approved as provided in § 4–308 of this subtitle.

§4–310.

When any stripping, grading, excavating, or filling is done, the soil conservation district first shall approve the proposed earth change before a grading permit is issued. Stripping, grading, and constructing shall be done in accordance with the recommendations of the soil conservation district to control erosion and siltation. The Department of the Environment shall cooperate with and assist the soil conservation district to perform its responsibilities. The appropriate department of Anne Arundel County or the City of Annapolis promptly shall file a copy of the inspection reports with the soil conservation district. On completion and compliance with every condition set forth in the grading permit, the soil conservation district shall be notified.

§4–311.

Any person who has the riparian right to use water in the Severn River Watershed for agricultural purposes may not lose this right because the State or local government or any of their units condemns the person's land.

§4–312.

(a) Any lien created in favor of a county or governmental unit pursuant to this

subtitle is effective against the person against whose property the lien exists. However, the lien is not effective against any third party unless written notice of the lien is recorded and indexed in a permanent record maintained in the office of the clerk of the circuit court in each county in which the property subject to the lien or any part of it is located.

(b) The notice shall contain the name and address of the person against whose property the lien exists, the name and address of the county or governmental unit, the amount of the lien, a description or reference to the property subject to the lien, and the date the lien was created.

(c) On presentation of a release of any lien of the county or governmental unit, the clerk of the proper court in which the lien is recorded and indexed shall record and index the release and shall note in the lien docket the date the release is filed and the fact that the lien is released.

(d) The clerk of the proper court shall provide a suitable well-bound book, at the expense of the county or governmental unit, to be called the Watershed treatment plant lien docket, in which the notice of lien shall be recorded and indexed. The clerk may not collect more than $2 for recording and indexing each lien or release of any lien.

§4–313.

Any unit 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.

§4–313.1.

(a) (1) The Department shall impose an administrative civil penalty on a person who owns or operates a sewage treatment plant that is in violation of § 4-302.1(b)(1), (c), or (d) of this subtitle.

(2) The person accused of the violation shall have the right to a hearing but may waive that right in writing.

(3) The penalty imposed under this subsection shall be:

(i) $5 for each pound of phosphorus discharged monthly in violation of § 4-302.1(b)(1) of this subtitle; and

(ii) $2 for each pound of nitrogen discharged monthly in violation of § 4-302.1(c) or (d) of this subtitle.

(b) (1) Except as provided in paragraph (2) of this subsection, a penalty imposed under this section may not be:

(i) Waived;

(ii) Reduced; or

(iii) Used to assist the penalized person in upgrading a sewage treatment plant.

(2) A penalty imposed under this section may be waived if the phosphorus or nitrogen discharged in violation of § 4-302.1 of this subtitle is due to an act of God or, if it could not reasonably have been anticipated by the owner or operator of the sewage treatment plant, a power outage or a massive leakage of any pollutant that contaminates the wastewater being treated.

(c) The Department shall deposit the penalties collected under this section in the Maryland Clean Water Fund created under § 9-320 of this article.

(d) The Department shall collect the penalties required to be imposed under subsection (a) of this section on a monthly basis beginning on:

(1) February 15, 1989 for violations of § 4-302.1(b)(1) of this subtitle; and

(2) November 15, 1991 for violations of § 4-302.1(c) or (d) of this subtitle.

(e) The penalties required to be imposed under this section are in addition to any other penalties provided by law.

§4–314.

Any person who violates any provision of this subtitle is guilty of a misdemeanor and is subject to a fine not exceeding $5,000, or imprisonment not exceeding one year or both for each violation, with costs imposed in the discretion of the court.

§4–401.

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

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

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

(2) In addition, "damages" includes:

(i) The cost of assessing the damages;

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

(iii) Damages for injury to or economic losses resulting from the

destruction of real or personal property that shall be recoverable by a claimant who owns or leases that property;

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

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

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

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

(d) "Discharge" means the addition, introduction, leaking, spilling, or emitting any oil to State waters or the placing of any oil in a location where it is likely to reach State waters.

(e) "Heating oil tank" means an aboveground or underground tank for the storage of heating oil for use as a fuel in heating a residential property.

(f) "Lender" means a person who is:

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

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

(g) (1) "Management" means directing or controlling operations at a site or facility related to the storage or discharge of oil.

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

(h) (1) "Oil" means oil of any kind and in any liquid form including:

(i) Petroleum;

(ii) Petroleum by–products;

(iii) Fuel oil;

(iv) Sludge containing oil or oil residues;

(v) Oil refuse;

(vi) Oil mixed with or added to or otherwise contaminating soil, waste, or any other liquid or solid media;

(vii) Crude oils;

(viii) Aviation fuel;

(ix) Gasoline;

(x) Kerosene;

(xi) Light and heavy fuel oils;

(xii) Diesel motor fuel, including biodiesel fuel, regardless of whether the fuel is petroleum based;

(xiii) Asphalt;

(xiv) Ethanol that is intended to be used as a motor fuel or fuel source; and

(xv) Regardless of specific gravity, every other nonedible, nonsubstituted liquid petroleum fraction unless that fraction is specifically identified as a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq.

(2) "Oil" does not include:

(i) Liquefied propane;

(ii) Liquefied natural gas; or

(iii) Any edible oils.

(i) (1) "Oil storage facility" means any installation, structure or premises, aboveground or underground, in which oil is stored.

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

(j) (1) "Person responsible for the discharge" includes:

(i) The owner of the discharged oil;

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

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

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

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

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

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

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

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

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

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

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

1. The lender provides advance written notice of its actions to the Department or in the event of an emergency in which action is required within 2

hours, provides notice by telephone;

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

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

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

(k) "Removal costs" means the costs of removal that are incurred after a discharge of oil has occurred or, in any case where there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident.

(l) (1) "Underground oil storage tank" means one or more tanks including underground pipes connected to tanks, with a volume of 10 percent or more beneath the surface of the ground.

(2) "Underground oil storage tank" does not include a:

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

(ii) Septic tank;

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

(iv) Intrastate pipeline facility regulated under State laws comparable to the provisions of the law referred to in item (iii) of this paragraph;

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

(vi) Stormwater or wastewater collection system;

(vii) Flow–through process tank;

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

(ix) Pipe connected to any tank described in items (i) through (viii) of this paragraph.

§4–402.

Because the quality of the waters of this State is vital to the public and private interests of its citizens and because pollution constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life, and impairs domestic, agricultural, industrial, recreational, and other legitimate beneficial uses of water, and the problem of water pollution in this State is closely related to the problem of water pollution in adjoining states, it is State public policy to improve, conserve, and manage the quality of the waters of the State and protect, maintain, and improve the quality of water for public supplies, propagation of wildlife, fish and aquatic life, and domestic, agricultural, industrial, recreational, and other legitimate beneficial uses. Also, it is State public policy to provide that no waste is discharged into any waters of this State without first receiving necessary treatment or other corrective action to protect the legitimate beneficial uses of this State's waters, and to provide and promote, through innovative and alternative methods of waste and wastewater treatment, prevention, abatement, and control of new or existing water pollution. The Department shall cooperate with the agencies of other states and the federal government in carrying out these objectives.

§4–403.

This subtitle may not be construed as repealing any State law relating to water pollution or conservation. This subtitle is supplementary to those laws, except to the extent that the provisions are in direct conflict with one another. It is the purpose of this subtitle to provide additional and cumulative remedies to prevent, abate, and control the pollution of the waters of the State. This subtitle may not be construed to abridge or alter rights of action or remedies in equity under existing common law, statutory law, criminal or civil, nor may any provision of this subtitle, or any act done pursuant to it, be construed as estopping any person, as riparian owner or otherwise, in the exercise of his rights in equity, under the common law, or statutory law to suppress nuisances or abate pollution.

§4–405.

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

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

(2) Develop comprehensive programs and plans for prevention, control, and abatement of pollution of the waters of the State by oil or sediment;

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

(4) Accept and administer loans and grants from the federal government

and other sources, public or private, to carry out any of its functions;

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

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

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

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

(9) Exercise every incidental power necessary to carry out the purposes of this subtitle.

(b) (1) The Department shall prescribe by regulation approved methods, facilities, standards, and devices for transfer, storage, separating, removing, treating, transporting, or disposing of oil and other unctuous substances to prevent pollution of waters of the State, that may include rules and regulations:

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

(ii) Requiring:

1. Spill prevention and response training;

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

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

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

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

6. Detection and control of oil spills from oil storage facilities, vessels, and barges; and

7. Notification of vessel and barge movement.

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

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

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

(c) Whenever there occurs in the waters of the State any condition indicative of damage to aquatic resources, including, but not limited to, mortality of fish and other aquatic life, the Department shall investigate the incident, determine the nature and extent of the damage, and establish the cause and source of the occurrence. The Department shall act on these findings and require repair of any damage done and restoration of water resources to a degree necessary to protect the best interest of the people of the State. Any person who is determined to be responsible for the discharge or spillage of any such substance shall be personally and/or severally responsible to immediately clean up and abate the effects of the spillage and restore the natural resources of the State. The Department shall assume control of any discharge or spill situation when it determines that the person responsible for the discharge is not acting promptly in a manner appropriate to remove, mitigate, control, or rectify the spill. If the Department believes instituting suit is advisable, it shall turn over to the Attorney General all pertinent information and data. The Attorney General then shall file suit against the person causing the condition. The person shall be jointly and severally liable for the reasonable cost of rehabilitation and restoration of the resources damaged and the cost of eliminating the condition causing the damage, including the environmental monetary value of such resources as established by regulation.

§4–406.

The Department is responsible for developing a program, including training, to enable the State to respond to an emergency oil spillage in waters of the State. The Department shall coordinate efforts of the various State and local units aiding in the operation and may request the aid of any appropriate federal agency if necessary.

§4–407.

(a) Except as provided in subsection (b) of this section and except for a vessel or barge carrying or receiving 25 barrels or less of oil, any vessel or barge, whether or not self-propelled, in or entering upon the waters of the State to discharge or receive a cargo of any bulk oil in the State shall post a bond of $500 per gross ton of vessel or barge or other security, in an equal amount, determined to be sufficient by the Secretary with the Department of the Environment. The bond or other security shall be in a form approved by the Department and may be obtained individually or jointly by the vessel or barge, its owner or agent, its charterer, or the owner or operator of the terminal at which the vessel or barge discharges or receives the bulk oil. If the Department of the Environment determines oil has been discharged or spilled into the waters of the State

from the vessel or barge, the bond or other security shall be forfeited to the Department, to the extent of the costs incurred to eliminate the residue of oil discharge or spillage, to the extent of damage caused to the natural and recreational resources of the State, and to the extent of any otherwise uncollectible fine levied against the vessel or barge, its owner or agent, its charterer, or the owner or operator of the terminal at which the vessel or barge discharges or receives the bulk oil, or any other person responsible for the discharge or spill. The remedies provided in this section are in addition to every other remedy available. Bond or other security may not be released without certification by the Department of the Environment that the vessel or barge has not been a source of oil discharge or spillage into the waters of the State. If the owner or operator of a vessel or barge presents adequate evidence of financial responsibility to the Department, it shall be exempt from the Department provisions requiring posting, and forfeiture, on certain conditions of a bond or other security.

(b) The Secretary may waive the bond or other security requirements of subsection (a) of this section if the Secretary determines that the bonds or securities required are unavailable.

(c) If the Secretary has not waived the bond or security requirements as provided in subsection (b) of this section, the owner, agent, charterer, and owner or operator of the terminal at which a vessel or barge discharges or receives cargo of bulk oil without being bonded as provided in subsection (a) of this section is guilty of a misdemeanor and upon conviction in a court of competent jurisdiction is subject to a fine not exceeding $25,000 for each offense.

(d) All penalties and bond and security forfeitures collected under this section shall be credited to the Maryland Oil Disaster Containment, Clean-Up and Contingency Fund.

§4–408.

The Department of the Environment shall charge and collect a compensatory fee from the person responsible for any oil spillage. This fee shall cover the costs incurred by any person who responds to an oil spillage with the authorization of the Department and shall cover the cost of labor, equipment operation, and material necessary to eliminate the residue of oil spillage, and the cost of restoring the area damaged by the spillage to its original condition. Any compensatory fees collected by the Department for costs incurred by a person authorized to respond to an oil spillage shall be reimbursed to that person by the Department.

§4–409.

(a) The person responsible for the oil spillage shall be liable to any other person for any damage to his real or personal property directly caused by the spillage.

(b) (1) In this subsection, "owner of an underground oil storage tank" includes any person who:

(i) Causes an underground oil storage tank to be installed; or

(ii) Acquires, other than through a lease or rental, and uses an underground oil storage tank.

(2) The Department shall adopt regulations requiring the owner of an underground oil storage tank to provide evidence of financial responsibility for costs of cleanup, corrective action, and third party liability in the event of a discharge.

(3) Tanks subject to the financial responsibility requirements of this subsection shall be the same as those tanks for which financial assurance is required under Subtitle I of the Resource Conservation and Recovery Act, and limits of coverage shall be the same as those imposed under that act.

§4–410.

(a) Except in case of emergency imperiling life or property, unavoidable accident, collision, or stranding, or as authorized by a permit issued under § 9–323 of this article, it is unlawful for any person to discharge or permit the discharge of oil in any manner into or on waters of this State.

(b) Notwithstanding any provision of this subtitle, any person discharging or permitting the discharge of oil, or who either actively or passively participates in the discharge or spilling of oil either from a land–based installation, including aboveground or underground storage tanks and vehicles in transit, or from any vessel, barge, ship, or boat of any kind, shall report the incident immediately to the Department. The person shall remain available until clearance to leave is given by the appropriate officials designated by the Department.

(c) To administer this section the Department of the Environment may use the organization, equipment, and units, including engineering, clerical, and other personnel, employed in the improvement and preservation of waters and natural resources of the State to enforce the laws for the preservation and protection of the waters and natural resources of the State. Any person authorized by law to make arrests may apply for a warrant, arrest, and take into custody, with or without process, any person who violates any provision of this section. However, a person may not be arrested without process for a violation not committed in the presence of one of the aforesaid officials. If any person is arrested under the provisions of this section, the person arrested immediately shall be brought before a judge or court of the State for examination of the offense alleged against him.

(d) Whenever any person, vessel, barge, ship, or boat is accused of violating any provision of this section, the arresting officer shall notify the Department of the Environment in writing to permit the Department to take any advisable action. The provisions of this subsection are directory only.

(e) This section shall be in addition to the laws existing prior to June 1, 1949, for the preservation and protection of waters of the Chesapeake Bay and its tributaries.

It does not repeal, modify, or in any manner affect the provisions of those laws.

§4–411.

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

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

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

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

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

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

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

1. Before July 1, 2017, a 7.75 cents per barrel fee for oil transferred in the State; and

2. On or after July 1, 2017, a 5 cents per barrel fee for oil transferred in the State; and

(ii) Until July 1, 2017, based on an additional 0.25 cent per barrel fee for oil transferred in the State and credited to the Oil Contaminated Site Environmental Cleanup Fund as described in Subtitle 7 of this title.

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

(3) When the balance in the Maryland Oil Disaster Containment, Clean–Up and Contingency Fund from the monthly license fees paid under paragraph (1)(i) of this subsection into the Fund equals or exceeds a maximum limit of $5,000,000, collection of subsequent monthly license fees under paragraph (1)(i) of this subsection

shall be abated until:

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

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

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

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

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

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

(f) (1) There is a Maryland Oil Disaster Containment, Clean–Up and Contingency Fund for the Department to use to develop equipment, personnel, and plans; for contingency actions to respond to, contain, clean–up, and remove from the land and waters of the State discharges of oil, petroleum products, and their by–products into, upon, or adjacent to the waters of the State; and restore natural resources damaged by discharges. The Fund may also be used by the Department for oil–related activities in water pollution control programs. The cost of containment, clean–up, removal, and restoration, including attorneys' fees and litigation costs, shall be reimbursed to the State by the person responsible for the discharge. The reimbursement shall be credited to the Fund. The Fund shall be limited in accordance with the limits set forth in this section. To this sum shall be credited every license fee, fine, if imposed by the circuit court for any county, and any other charge related to this subtitle. To this Fund shall be charged every expense the Department of the Environment has which relates to this section.

(2) Notwithstanding any other provision of this section, in fiscal years 2015 and 2016 only, the Fund may be used to pay costs associated with the purposes of the Oil Contaminated Site Environmental Cleanup Fund specified in § 4–704 of this title.

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

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

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

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

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

(5) Expenses related to oil–related activities in the Department's water pollution control programs; and

(6) In fiscal years 2015 and 2016 only, paying costs associated with the purposes of the Oil Contaminated Site Environmental Cleanup Fund specified in § 4–704 of this title.

(h) The Department shall provide the standing committees of the Maryland General Assembly with primary jurisdiction over this section with a status report on the Fund on or before January 1 of each year in accordance with § 2–1246 of the State Government Article. The report shall include an accounting of all moneys expended for each of the purposes specified in subsection (g) of this section.

§4–411.1.

(a) On or before July 1, 1990, the owner, operator, or person in charge of an underground oil storage facility shall register the underground oil storage facility with the Department.

(b) Unless an underground oil storage facility is registered with the Department in accordance with the provisions of subsection (a) of this section and is in substantial compliance with State law and regulations relating to oil storage, as defined by

regulation, no oil may be sold to or received by the underground oil storage facility.

(c) For the purposes of this section, if any underground oil storage facility registered with the Department under subsection (a) of this section is removed, or no longer in use, the owner, operator, or person in charge of the underground oil storage facility shall notify the Department not later than 30 days after the removal or discontinuance of use.

(d) The Department shall adopt regulations to:

(1) Implement the provisions of this section; and

(2) Define "underground oil storage facility".

§4–411.2.

(a) Within 14 days of the finding, the Department shall notify the appropriate local health department of a finding that a groundwater monitoring well sample taken from a high–risk groundwater use area, as defined by the Department, contains:

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

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

(3) A combination of benzene, toluene, ethyl benzene, and xylene at or in excess of 100 parts per billion.

(b) (1) Except as provided in paragraph (2) of this subsection, the Department shall notify each owner of property within one–half mile of the site from which the sample was taken.

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

(3) The notification shall:

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

(ii) Be mailed via certified mail; and

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

(c) The person responsible for the release that resulted in the groundwater contamination shall reimburse the Department or the local health department for the costs associated with providing the notice required under subsection (b) of this section.

§4–412.

(a) (1) Whenever the Department believes a violation of any provision of this subtitle or any rule or regulation has occurred, it shall cause a written complaint to be served upon the alleged violator. The complaint shall specify the provision of law or rule or regulation allegedly violated and the alleged fact that constitutes the violation. Subsequent to or concurrent with service of the complaint as provided in subsection (c) of this section, the Department may exercise one of the following options:

(i) Issue an order requiring necessary corrective action be taken within the time prescribed in its order. Any person named in the order may request in writing a hearing before the Department not later than ten days after the date the order is served, in which case a hearing shall be scheduled within ten days from receipt of the request. A decision shall be rendered within ten days from the date of the hearing;

(ii) Require the alleged violator to file a written report regarding the alleged violation;

(iii) Require the alleged violator to appear before the Department at a time and place the Department specifies to answer the charge outlined in the complaint; or

(iv) Require the alleged violator to file a written report regarding the alleged violation and appear before the Department at a time and place the Department specifies to answer the charges outlined in the complaint.

(2) If the Department exercises the option provided by paragraph (1)(ii) of this subsection, the alleged violator may request in writing a hearing before the Department not later than ten days after the date that notice of the requirement of the written report is served. The appearance of the alleged violator before the Department under the options provided by paragraph (1)(iii) or (iv) of this subsection constitutes an administrative hearing, and the party has the right of any party in a contested case provided in §§ 10–205, 10–208, and 10–209 of the State Government Article. If the Department exercises the option provided by paragraph (1)(ii), (iii), or (iv) of this subsection, it may not issue an order requiring corrective action to be taken as a result of the alleged violation before expiration of the time set for filing any report and holding any hearing required under these paragraphs. Thereafter, the Department may issue an order requiring necessary corrective action be taken within the time prescribed in the order. A person is not entitled to a hearing before the Department as a result of this order. Notice of a hearing or of a requirement that a written report be filed shall be served on the alleged violator in accordance with the provisions of subsection (c) of this section not less than ten days before the time set for the hearing or filing of a report. Every order the Department issues under the provisions of this section shall be served on the person affected in accordance with the provisions of subsection (c) of this section. The order shall become effective immediately according to its terms upon service.

(b) A person aggrieved by an order or permit issued may obtain immediate judicial review under the provisions of §§ 10–222 and 10–223 of the State Government Article and the Maryland Rules.

(c) Except as otherwise provided, any notice, order, or other instrument issued by or under authority of the Department may be served in accordance with § 1–204 of this article or by publication on any person affected. If service is made by certified mail, return receipt requested, proof of service may be made by the sworn statement or affidavit of the person who mailed the notice, order, or other instrument. The sworn statement or affidavit shall be filed with the Department.

(d) A verbatim record of the proceedings of hearings may be taken when necessary or advisable by the Department. A subpoenaed witness shall receive the same fees and mileage as in any civil action. If a witness refuses to obey a notice of hearing or subpoena issued under this section, any circuit court, upon the application of the Department, may issue an order requiring the person to appear, testify, or produce evidence as required. The failure to obey a court order may be punished by the court as contempt.

§4–413.

(a) Except as provided in subsection (b) of this section, or except as authorized by a permit issued under § 9-323 of this article, it is unlawful for any person to add, introduce, leak, spill, or otherwise emit soil or sediment into waters of the State or to place soil or sediment in a condition or location where it is likely to be washed into waters of the State by runoff of precipitation or by any other flowing waters.

(b) A person engaged in agricultural land management practices, as defined by the Department for the purposes of Subtitle 1 of this title, may not add, introduce, leak, spill, or otherwise emit soil or sediment into waters of the State unless that person is implementing and maintaining a soil conservation and water quality plan approved by the local soil conservation district. If a person engaging in agricultural land management practices without a district approved soil conservation and water quality plan complies with an order for corrective action issued under § 4-412(a) of this subtitle, that person shall not be subject to penalties as provided under § 4-417 of this subtitle.

(c) With the approval of the Department of Agriculture, the Department of the Environment shall adopt regulations to implement subsection (b) of this section.

§4–414.

The Department of Natural Resources, in cooperation with other appropriate agencies, shall evaluate and monitor the dumping of all dredged spoil and similar type operations in the waters of the State. The frequency of monitoring during actual operations shall be sufficient to promptly identify any irregular or unanticipated occurrence within sufficient time to modify or terminate the operations before

environmental damage occurs. All monitoring data shall be made available promptly to the public.

§4–415.

If a violation of any provision of this subtitle has occurred and the existence of the violation has been finally determined, the Department shall promptly issue an order requiring the correction of each violation found to have occurred, and the Department shall secure compliance with the provisions of the order. If the terms of the order are violated or if the violation has not been corrected within the time specified in the order, the violation shall be referred to the Attorney General, who, in addition to any other action taken or which he elects to take against the violator, shall take appropriate legal action to require correction of the violation. This section does not prevent the Attorney General or the Department from taking action against the violator before the expiration of the time limitations or schedules in the order.

§4–415.1.

(a) At any reasonable time, to carry out duties under this subtitle, a representative of the Department may enter any oil storage facility or vessel or barge in or entering upon the waters of the State to discharge or receive a cargo of any bulk oil:

(1) To inspect the vessel, barge, or oil storage facility;

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

(3) To measure the volume and kinds of substances that are received or stored.

(b) The Department may enter any property and assume control of any oil spill situation when it determines that a responsible party is not:

(1) Acting promptly to remove the spill; or

(2) Undertaking removal or mitigation in a manner appropriate to control or rectify the conditions causing the condition.

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

§4–416.

(a) The Attorney General, on the request of the Department, shall prosecute criminal cases or bring an action for an injunction against any person violating the provisions of this title, or violating any valid order or permit issued by the Department. In any action for an injunction brought pursuant to this section, any finding of the Department after hearing shall be prima facie evidence of each fact found.

(b) Upon a showing by the Attorney General, in behalf of the Department, that any person is violating or is about to violate the provisions of this subtitle or is violating or is about to violate any valid order or permit issued by the Department, an injunction shall be granted without the necessity of showing a lack of adequate remedy at law. In circumstances of emergency creating conditions of imminent danger to the public health, welfare or the environment, the Attorney General, on behalf of the Department, may institute a civil action for an immediate injunction to halt any pollution or other activity causing the danger.

§4–417.

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

(b) Any person who violates any of the provisions of, or who fails to perform any duty imposed by, this subtitle, or any regulation or order issued under it, or the provisions of any permit of the Department made pursuant to this subtitle is guilty of a misdemeanor, and upon conviction, is subject to a fine not exceeding $50,000 or by imprisonment not exceeding one year, or both, and, in addition, may be enjoined from continuing the violation. If the conviction is for a violation committed after a first conviction of the person under this subsection, punishment shall be by a fine of not more than $50,000 per day of violation or by imprisonment not exceeding two years or both, and in addition, the person may be enjoined from continuing the violation. Each day upon which a violation occurs constitutes a separate offense.

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

(d) In addition to any other remedies available at law or in equity, a civil penalty may be assessed for violation of any provisions of this subtitle, or rules, regulations, orders or permits issued pursuant thereto. The penalty may be assessed by the Secretary of the Environment, or a hearing officer designated in writing by the Secretary, after an opportunity for a hearing which may be waived in writing by the person accused of a violation. The civil penalty assessed shall be up to $10,000 for each day of violation, not exceeding a total sum of $100,000; consideration shall be given to the willfulness of the violation; to the damage or injury to the waters of the State or the impairment of its uses; to the cost of clean-up; to the nature and degree of injury to or interference with general welfare, health, and property; to the suitability of the waste source to its geographic location, including priority of location; to the available

technology and economic reasonableness of controlling, reducing, or eliminating the waste; and other relevant factors. It is payable to the State and collectible in any manner provided at law for the collection of debts. If any person liable to pay the penalty neglects or refuses to pay it after demand, the amount, together with interest and any costs that may accrue, shall be a lien in favor of the State upon the property, both real and personal, of the person and shall be recorded in the clerk of court's office for the political subdivision in which the property is located. Except for penalties collected for violations of Section 4-413 of this subtitle, moneys shall be placed in the Maryland Oil Disaster Containment, Clean-Up and Contingency Fund under Section 4-411(f) of this subtitle.

§4–418.

(a) Any person responsible for a discharge of oil in violation of § 4-410(a) or (b) of this subtitle is:

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

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

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

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

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

(d) All penalties collected under this section shall be paid into the Maryland Oil Disaster Containment, Clean-Up and Contingency Fund.

§4–419.

(a) Notwithstanding any other provision of law, a person is not liable for costs of containment, cleanup, and removal of the discharge or damages as a result of acts or omissions taken in the course of rendering care, assistance, or advice consistent with this subtitle and the National Contingency Plan, or as otherwise directed by the federal on–scene coordinator or appropriate State official unless:

(1) The person is a person responsible for the discharge in accordance with § 4–401(j) of this subtitle;

(2) The person is a responsible party as defined by the federal Oil Pollution Act of 1990; or

(3) The person is grossly negligent or engages in willful misconduct.

(b) Nothing in subsection (a) of this section shall be construed to affect or limit any cause of action for personal injury or wrongful death arising from an act or omission of a person responding to a discharge.

(c) A responsible party as defined by the federal Oil Pollution Act of 1990 or a person responsible for the discharge as defined in § 4–401(j) of this subtitle is liable for any containment, cleanup, and removal costs or damages that another person is relieved of under this section.

§4–420.

(a) This section applies to the removal of heating oil tanks from a residential property, when permanently abandoning the use of heating oil as a fuel at the property, whether by converting a heating system from the use of heating oil to another fuel, or otherwise.

(b) Immediately upon abandonment of the use of heating oil as a fuel at the property, the owner of the heating oil tank shall:

(1) Remove all flammable and combustible liquids from the heating oil tank and from all piping and piping connections;

(2) (i) Remove from the property the heating oil tank, if not in serviceable or operable condition, and all piping and piping connections used for supplying heating oil to the heating system; or

(ii) In the case of an underground heating oil tank, fill in the tank with dirt, sand, gravel, or similar material;

(3) Remove any outside filling pipe or secure the pipe against accidental filling; and

(4) Dispose of all flammable and combustible liquids, and the heating oil tank if required, in accordance with the requirements of this article and other applicable State and federal laws.

(c) If the abandonment of the use of heating oil occurs as a result of conversion to another heating fuel, the converted heating system shall be inspected in accordance with applicable law.

§4–501.

(a) Any person who violates any provision of this title is guilty of a

misdemeanor. Upon conviction in a court of competent jurisdiction, unless another penalty is specifically provided elsewhere in this title, the person is subject to a fine not exceeding $500, or imprisonment not exceeding three months, or both, with costs imposed in the discretion of the court. Every fine and cost shall be paid in accordance with § 7–503 of the Courts Article.

(b) Any person found guilty of a second or subsequent violation of any provision of this title in a court of competent jurisdiction, unless another penalty is specifically provided elsewhere in this title, is subject to a fine not exceeding $1,000, or imprisonment not exceeding one year, or both with costs imposed in the discretion of the court. For the purpose of this subsection, a second or subsequent violation is one which has occurred within 2 years of any prior violation of this title.

(c) In addition to any administrative penalty provided in this title, violation of any rule or regulation or restriction promulgated by any unit within the Department of the Environment pursuant to the provisions of this title is a misdemeanor and is punishable as provided in subsections (a) and (b) of this section.

§4–502.

The Attorney General shall take charge of, prosecute, and defend on behalf of the State every case arising under the provisions of this title and regulations adopted thereunder.

§4–601.

(a) There is an Underground Storage Tank Upgrade and Replacement Fund.

(b) The Fund shall be used to provide loans to owners of underground storage tanks to finance eligible costs of upgrading and replacing underground storage tanks.

(c) The provisions of this subtitle do not apply to underground storage tanks:

(1) That are exempt under § 4–409(b)(3) of this title;

(2) That are owned by the State or a county or a municipal government;

(3) That are owned by a local education agency; or

(4) That are owned by a paid or volunteer fire company or rescue squad.

§4–602.

(a) On or before September 1, 1991 and until July 1, 1996, a fee shall be paid annually to the Department for each underground storage tank in the State unless the tank is used exclusively for the production, distribution, or sale of petroleum by the owner of the tank.

(b) The tank fee imposed under this section may not exceed:

(1) $100 for each tank having a maximum capacity of under 1,100 gallons; and

(2) $200 for each tank having a maximum capacity of 1,100 gallons or more.

(c) The tank fee imposed under this section may be waived or reduced provided that:

(1) The owner of the tank has not been billed for the fee for 2 consecutive years; and

(2) By October 1, 1996, the owner of the tank upgrades, replaces, or removes the tank to meet the technical requirements of the underground storage tank regulation adopted under Subtitle 4 of this title.

§4–603.

The Board of Public Works, upon the recommendation of the Secretary, may award a loan to an owner of an underground storage tank to cover the following costs:

(1) Tank upgrade or replacement costs necessary to meet the technical requirements of regulations adopted by the Environmental Protection Agency for underground storage tanks;

(2) Costs of site assessment after the upgrade or replacement is completed to determine eligibility for insurance, not to exceed $3,000; and

(3) Costs of any additional apparatus necessary to bring the underground storage tank system into compliance with other State and federal requirements.

§4–604.

(a) The Department shall adopt regulations to carry out the provisions of this subtitle.

(b) (1) The regulations adopted under this subtitle shall establish application procedures and criteria for the award of a loan under this subtitle.

(2) The criteria shall provide a basis for the priority ranking of projects, and shall include:

(i) The financial capacity and fiscal accountability of the applicant;

(ii) The location of the underground storage tank and the degree to which removal of the tank would impose a geographical hardship on the surrounding community or industries dependent on availability of the petroleum;

(iii) The extent to which the existence of the tank is required for an essential public service;

(iv) Previous efforts expended to correct any existing environmental problem and to maintain compliance with State and federal regulations;

(v) Measures to assure accountability for all funds awarded under this subtitle; and

(vi) Any other criteria that the Secretary considers appropriate.

(c) The regulations adopted under this subtitle shall require the recipient of a loan under this subtitle to provide the Department with documentation that the proceeds of the loan were applied in accordance with § 4-603 of this subtitle and the loan agreement.

§4–605.

(a) (1) A loan agreement under this subtitle shall contain those conditions that the Secretary requires by regulation to achieve the purposes of this subtitle and to protect the interests of the State.

(2) A loan agreement under this subtitle shall contain provisions that authorize the Secretary to recall the loan and require that any amount of financial assistance provided under this subtitle be returned to the State under terms established by the Secretary, if the Secretary determines that:

(i) The recipient of a loan under this subtitle fails to remain in compliance with any law or regulation governing the installation, operation, or use of underground storage tanks; or

(ii) The proceeds of a loan provided under this subtitle have been used for a purpose other than one authorized under this subtitle.

(3) Any funds returned to the State under this subsection shall be credited to the Underground Storage Tank Upgrade and Replacement Fund.

(b) A loan extended under this subtitle:

(1) May not exceed $50,000 for any one upgrade;

(2) Shall bear at least the same rate of interest as the most recent State general obligation bond sale preceding the date of approval by the Board of Public Works; and

(3) Shall be repaid in full in a term not to exceed 15 years in accordance with the provisions of the loan agreement.

(c) The aggregate amount of all loans awarded under this subtitle to a single applicant in any calendar year may not exceed $150,000, unless the Secretary determines that extraordinary circumstances exist.

(d) The proceeds of a loan awarded under this subtitle may be applied to the costs of developing plans and specifications, equipment, construction, and site assessment related to the upgrade and replacement of underground storage tanks.

§4–606.

(a) To be eligible for a loan under this subtitle, an applicant shall:

(1) Be in substantial compliance with all State and federal laws and regulations governing the installation, operation, and use of underground storage tanks; and

(2) Submit a completed loan processing form to the Department on or before June 30, 1998.

(b) A loan under this subtitle may not be provided to upgrade or replace any underground storage tank that was not registered with the Department as provided in § 4-411.1 of this title on or before July 1, 1991, unless the Secretary determines that special circumstances exist.

§4–607.

(a) No fee may be imposed after June 30, 1996 and no loan may be made under the provisions of or for the purposes of this subtitle, or in accordance with regulations adopted under this subtitle, after December 31, 1998.

(b) (1) In fiscal year 1997, the Secretary shall transfer $3 million from the Underground Storage Tank Upgrade and Replacement Fund to the Oil Contaminated Site Environmental Cleanup Fund established under Subtitle 7 of this title.

(2) Except as provided in paragraph (3) of this subsection, in fiscal year 1998, the Secretary shall transfer $3 million from the Underground Storage Tank Upgrade and Replacement Fund to the Oil Contaminated Site Environmental Cleanup Fund established under Subtitle 7 of this title.

(3) If a number of tank owners submit loan processing forms and moneys are not sufficiently available for making the unanticipated loans, the Secretary may only retain an amount of money, up to $3 million, in the Underground Storage Tank Upgrade and Replacement Fund in fiscal year 1998 to cover the liability of the unanticipated loans.

(c) (1) The Secretary may only transfer moneys from the Underground Storage Tank Upgrade and Replacement Fund, first, and then from the Oil Contaminated Site Environmental Cleanup Fund to the Maryland Oil Disaster

Containment, Clean-Up and Contingency Fund established under Subtitle 4 of this title.

(2) The Secretary may only transfer the money, as provided for in paragraph (1) of this subsection, if:

(i) Money in the Maryland Oil Disaster Containment, Clean-Up and Contingency Fund, reserved for the circumstances set forth in subsection (d)(3) of this section, falls below $250,000 because of oil spill incidents, provided that the reserve balance of the Fund may not exceed $1 million after the transfer; or

(ii) There is a major oil spill and sufficient funds are not available in the Maryland Oil Disaster Containment, Clean-Up and Contingency Fund.

(3) The money transferred to the Maryland Oil Disaster Containment, Clean-Up and Contingency Fund, as provided for in paragraph (2)(ii) of this subsection, may not exceed the Department's direct costs to remediate the major oil spill.

(4) If moneys transferred under paragraph (2) of this subsection are recovered, the Department shall return the recovered moneys to the funds in the following order:

(i) To the Maryland Oil Disaster Containment, Clean-Up and Contingency Fund as needed to maintain a reserve balance not to exceed $1 million;

(ii) To the Oil Contaminated Site Environmental Cleanup Fund, in an amount not to exceed the amount transferred to the Maryland Oil Disaster Containment, Clean-Up and Contingency Fund under paragraph (2) of this subsection; and

(iii) To the Underground Storage Tank Upgrade and Replacement Fund, any remaining recovered moneys.

(d) (1) On or after January 1, 1999 but no later than June 30, 1999, any funds remaining in the Underground Storage Tank Upgrade and Replacement Fund shall be credited in the following manner:

(i) 50% to the Maryland Oil Disaster Containment, Clean-Up and Contingency Fund; and

(ii) 50% to the Oil Contaminated Site Environmental Cleanup Fund.

(2) Any future loan repayments made on or after January 1, 1999 shall be credited to the Maryland Oil Disaster Containment, Clean-Up and Contingency Fund.

(3) The funds identified in paragraphs (1)(i) and (2) of this subsection shall only be used by the Department for cases in which a responsible party cannot be located or the responsible party does not have sufficient assets to take adequate remedial action

or refuses to take remedial action for:

(i) The clean-up and removal of an underground storage tank; or

(ii) The clean-up of a petroleum release.

§4–701.

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

(b) "Cleanup" means abatement, containment, removal, and disposal of oil and the restoration of the environment.

(c) "Fund" means the Oil Contaminated Site Environmental Cleanup Fund.

(d) "Oil" has the meaning provided in § 4–401(h) of this title.

(e) (1) "Site rehabilitation" means cleanup actions taken in response to a release from an underground oil storage tank.

(2) "Site rehabilitation" includes investigation, evaluation, planning, design, engineering, construction, or other services undertaken and expenses incurred to investigate or clean up affected soils, groundwater, or surface water.

(f) "Third party claim" means any civil action brought or asserted by any person against any owner or operator of any underground oil storage tank for damages to person or property which damages are the direct result of oil released from tanks covered under this subtitle.

(g) "Underground oil storage tank" has the meaning provided in § 4–401(l) of this title.

§4–702.

(a) The General Assembly finds and declares that:

(1) The storage of oil in underground oil storage tanks is a major cause of groundwater contamination in this State;

(2) Groundwater resources are vital to the population and economy of this State; and

(3) The preservation of the State's groundwater resources is in the public interest.

(b) The General Assembly further finds that where contamination of groundwater has occurred due to leaking underground oil storage tanks, remedial measures have often been delayed for long periods due to high costs of such remedial measures. These delays result in the continuation and intensification of the threat to

the public health, safety, and welfare, in greater damages to the environment, and in significantly higher costs to clean up the contamination and rehabilitate the site.

(c) The General Assembly intends this subtitle to provide adequate financial resources and incentives for the expeditious cleanup and rehabilitation of contaminated sites without delay.

§4–703.

(a) This subtitle may not be construed as altering the rights, responsibilities, or liabilities of a party responsible for the discharge of oil.

(b) This subtitle is not intended to provide evidence of financial responsibility for owners and operators of underground oil storage tanks under Subtitle I of the Resource Conservation and Recovery Act, the Superfund Amendments and Reauthorization Act of 1986, or any other federal law.

§4–704.

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

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

(1) Reimburse an owner or operator of:

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

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

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

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

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

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

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

(1) An underground storage tank that is:

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

(ii) Owned by a local education agency.

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

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

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

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

(ii) May be invested as provided by law.

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

§4–705.

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

(b) Until June 30, 2017, the owner of a heating oil tank eligible under § 4–704(b)(1)(iii) of this subtitle may apply to the Fund for reimbursement no later than 6 months after the completion of rehabilitation for usual, customary, and reasonable costs incurred on or after October 1, 2000 in performing site rehabilitation.

(c) (1) Any reimbursement from the Fund for applications approved on or after July 1, 1996 is subject to:

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

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

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

(iv) For owners or operators of more than 30 tanks, a deductible of $20,000; and

(v) For residential owners of heating oil tanks, a deductible of $500; and

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

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

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

(d) To be eligible for reimbursement from the Fund, an owner or operator shall:

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

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

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

(e) If the owner or operator knowingly submits a false certification under subsection (d) of this section, that owner or operator is not eligible for reimbursement under this subtitle.

(f) Only expenses that are cost–effective, reasonable, and consistent with a corrective action plan approved by the Department may be eligible for reimbursement from the Fund.

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

§4–706.

(a) If the Department has assumed control of an oil spill situation involving an underground oil storage tank or heating oil tank under this title, the Department may obtain from the Fund, for site rehabilitations that meet the same cleanup priority as those site rehabilitations reimbursed under § 4-705 of this subtitle:

(1) Reimbursement for usual, customary, and reasonable costs incurred in performing site rehabilitation;

(2) A guarantee of payment to a qualified contractor for the usual,

customary, and reasonable costs of performing site rehabilitation; or

(3) Matching funds required under § 9003(h) of the Federal Solid Waste Disposal Act for the Federal Leaking Underground Storage Tank Program.

(b) The per occurrence deductible or limitation provided under § 4-705(c) of this subtitle does not apply to the reimbursement or guarantee to a contractor under this section.

(c) In order to encourage that site rehabilitation activities be undertaken by an owner, operator, or other person responsible for a discharge from an underground oil storage tank or heating oil tank, any site rehabilitation costs including attorney's fees and litigation costs incurred by the Department or the Fund under this section shall be recoverable from the responsible party to the Fund.

(d) Recoveries collected under subsection (c) of this section shall be paid into the Fund.

§4–707.

(a) A payment may not be made from the Fund for a third party claim.

(b) A payment may not be made as reimbursement for costs incurred or under a guarantee to a contractor unless the balance in the Fund is sufficient to cover the payment requested and any other imminent obligations or expenses of the Fund.

(c) Requests for payment from the Fund that are denied under subsection (b) of this section shall be paid only as additional funds become available and may not be paid from any other fund of the State.

§4–708.

(a) The Department shall adopt regulations to implement the requirements of this subtitle no later than September 30, 1993 in order to begin making disbursements from the Fund no later than January 1, 1994.

(b) Beginning January 1, 1995, the Department shall annually report to the General Assembly, subject to § 2-1246 of the State Government Article, on the status of the Fund and on the revenues to and expenditures from the Fund.

§5–101.

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

(b) "Administration" means the Water Management Administration.

(c) "Appropriate county governing body" means the county commissioners of any nonchartered county or the county council of any chartered county in which a

portion of the watershed is located.

(d) "County" includes Baltimore City unless otherwise indicated.

(e) "Department" means the Department of the Environment.

(f) "Director" means the Director of the Water Management Administration.

(g) "Person" includes the federal government, the State, any county, municipal corporation, or other political subdivision of the State, or any of their units, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any other entity.

(h) (1) "Pollution" means every contamination or other alteration of the physical, chemical, or biological properties of any waters of the State.

(2) "Pollution" includes change in temperature, taste, color, turbidity, or odor of the waters of the State or the discharge or deposit of any organic matter, harmful organism, or liquid, gaseous, solid, radioactive, or other substance into any waters of the State as will render the waters of the State harmful, detrimental, or injurious to public health, safety, or welfare, domestic, commercial, industrial, agricultural, recreational, other legitimate beneficial uses, or livestock, wild animals, birds or fish or other aquatic life.

(i) "Public water system" has the meaning stated in § 9–401 of this article.

(j) "Secretary" means the Secretary of the Environment.

(k) "Water management strategy area" means an area designated by the Department in which a specific water resource problem has been identified and for which the Department has adopted specific water use restrictions or criteria for permit approval in order to protect the water resource or existing water users.

(l) "Waters of the State" includes:

(1) Both surface and underground waters within the boundaries of the State subject to its jurisdiction;

(2) That portion of the Atlantic Ocean within the boundaries of the State;

(3) The Chesapeake Bay and its tributaries;

(4) All ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within the State, other than those designed and used to collect, convey, or dispose of sanitary sewage; and

(5) The floodplain of free–flowing waters determined by the Department

on the basis of the 100–year flood frequency.

§5–102.

An appropriation or use permit under § 5-502 of this title may not be refused for domestic use of a well on a farm.

§5–201.

(a) There is a Water Management Administration in the Department.

(b) (1) The Administration shall be adequately staffed and organized to carry out the provisions of this title and at salaries provided in the State budget.

(2) Subject to the Secretary's authority as provided in Title 1 of this article, the Administration's staff shall be appointed and removed in accordance with the provisions of the State Personnel and Pensions Article.

(c) The Secretary shall designate the appointing authority for the Administration.

§5–203.

(a) The Department has general supervisory power, regulation, and control over the water resources of the State within the boundaries of the tidal waters as provided in this article.

(b) The Department shall exercise to the fullest extent possible the State's responsibility for its water resources by planning and supervising multiple purpose development and conservation of the waters of the State for the State's best interests and benefit. The Department shall develop a general water resources program which contemplates proper conservation and development of the waters of the State, in a manner compatible with multiple purpose management on a watershed or aquifer basis, or any other appropriate geographical unit. The program shall recognize and be consistent with functions of other State units. The Department shall be guided by the program in the performance of its duties.

(c) The Department may make or cause to be made surveys, maps, investigations, and studies of water resources of the State necessary to provide sufficient information to formulate a program and perform its duties. The Department may contract for research or scientific investigation with the Natural Resources Institute of the University of Maryland, the Chesapeake Bay Institute of The Johns Hopkins University, or other appropriate research organizations.

(d) The Department may operate, sell, buy, lease, exchange, rent, or repair any vehicle, vessel, boat, net, or other equipment necessary for its work. The Department may furnish a vehicle, vessel, or boat which the Department owns or operates with any required arms, ammunition, or equipment. The Department's authority under this

subsection is subject to the provisions of the code relating to budget and procurement.

(e) In addition to powers and duties stated in this title, the Department may exercise authority reasonably necessary to carry out the purposes of this title.

(f) (1) The Department may issue orders for corrective measures to any person who the Department believes to be violating any provision of this title or any regulation adopted under this title.

(2) The person to whom an order is issued may, on request, contest the order in a hearing before the Department. The Department, by regulation, shall adopt procedures by which the hearings are held.

(3) A court action for violation of the terms of an order may not be instituted unless the violator has had opportunity for an administrative hearing. However, regardless of whether an order for corrective measures has been issued, the Department at any time may refer an alleged violation of this title or any regulation adopted under this title directly to the Attorney General for appropriate court action. This subsection does not prevent the Attorney General from taking immediate action against the violator.

§5–203.1.

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

(2) (i) "Commercial activity" means a project or activity undertaken for consideration, regardless of whether a profit is made.

(ii) "Commercial activity" includes:

1. A subdivision;

2. A development; and

3. Constructing or operating a marina.

(3) "Commercial building" means a building that is used primarily for commercial activity.

(4) "Development" means a project for the construction of:

(i) Two or more residential dwelling units;

(ii) A commercial structure; or

(iii) An industrial structure.

(5) "Dwelling unit" means a property that contains:

(i) One or more rooms used as a residence;

(ii) Kitchen facilities; and

(iii) Bathroom facilities.

(6) "Major project" means a project that:

(i) Proposes to permanently impact 5,000 square feet or more of wetlands or waterways, including the 100–year floodplain;

(ii) Is located in an area identified as potentially impacting a nontidal wetland of special State concern by a geographical information system database that:

1. Has been developed and maintained by the Department of Natural Resources; and

2. Is used by the Department to screen incoming applications; or

(iii) Requires the issuance of a public notice by the Department.

(7) "Marina" means a facility for the mooring, docking, or storing of more than 10 vessels on tidal navigable waters, including a commercial, noncommercial, or community facility.

(8) "Minor project" means a project that:

(i) Proposes to permanently impact less than 5,000 square feet of wetlands or waterways, including the 100–year floodplain; and

(ii) Does not meet the definition of a major project.

(9) "Residential activity" means a noncommercial activity that is conducted on residential property.

(10) (i) "Residential property" means improved property that is used primarily as a residence or unimproved property that is zoned for use as a residence.

(ii) "Residential property" includes:

1. Property owned by a homeowners' association; and

2. A condominium.

(iii) "Residential property" does not include:

1. A commercial building;

2. A marina; or

3. A residential apartment complex or building.

(11) (i) "Subdivision" means the division of a lot, tract, or parcel of land into two or more lots, plots, sites, tracts, parcels, or other divisions for the immediate or future purpose of selling or development.

(ii) "Subdivision" includes resubdivision.

(b) (1) Except as provided under paragraphs (2) and (3) of this subsection, all applications for wetlands and waterways authorizations issued by the Department under §§ 5–503 and 5–906 of this title and §§ 16–202, 16–302, and 16–307 of this article or wetlands licenses issued by the Board of Public Works under § 16–202 of this article shall be accompanied by an application fee as follows:

(i) For an application for a minor project or general permit..... $750;

(ii) For an application for a minor modification..... $250;

(iii) For an application for a major project with a proposed permanent impact of:

1. Less than 1/4 acre $1,500;

2. At least 1/4 acre, but less than 1/2 acre..... $3,000;

3. At least 1/2 acre, but less than 3/4 acre..... $4,500;

4. At least 3/4 acre, but less than 1 acre..... $6,000; and

5. 1 acre or more.....the impact area in acres multiplied by $7,500; and

(iv) For an application for a major modification..... $1,500.

(2) The following are exempt from the application fees established under paragraph (1) of this subsection:

(i) Regulated activities conducted by the State, a municipal corporation, county, bicounty or multicounty agency under Division II of the Land Use Article or Division II of the Public Utilities Article, or a unit of the State, a municipal corporation, or a county;

(ii) Performance of agricultural best management practices contained in a soil conservation and water quality plan approved by the appropriate soil conservation district;

(iii) Performance of forestry best management practices contained in an erosion and sediment control plan:

1. Prepared by a registered forester; and

2. Approved by the appropriate soil conservation district;

(iv) Stream restoration, vegetative shoreline stabilization, wetland creation, or other project in which the primary effect is to enhance the State's wetland or water resources; and

(v) Aquacultural activities for which the Department of Natural Resources has issued a permit under Title 4, Subtitle 11A of the Natural Resources Article.

(3) Except as provided in paragraph (4) of this subsection, the following shall be minor projects and subject to the appropriate application fee under paragraph (1)(i) and (ii) of this subsection:

(i) A residential activity issued a permit under §§ 5–503 and 5–906 of this title and §§ 16–202, 16–302, and 16–307 of this article; and

(ii) A mining activity undertaken on affected land as identified in a permit issued under Title 15 of this article.

(4) Subject to paragraph (5) of this subsection, an application for the following minor projects shall be accompanied by the following application fees:

(i) Installation of:

1. One boat lift or hoist, not exceeding four boat lifts or hoists per pier;

2. One personal watercraft lift or hoist, not exceeding six personal watercraft lifts or hoists per pier; or

3. A combination of boat lifts or hoists and personal watercraft lifts or hoists, not exceeding six lifts or hoists per pier, of which not more than four lifts or hoists are boat lifts or hoists $300;

(ii) Installation of a maximum of six mooring pilings..... $300;

(iii) In–kind repair and replacement of structures $300;

(iv) Installation of a fixed or floating platform on an existing pier where the total platform area does not exceed 200 square feet $300;

(v) Construction of a nonhabitable structure that permanently impacts less than 1,000 square feet, such as a driveway, deck, pool, shed, or

fence..... $300;

(vi) Replacement of an existing bulkhead where the replacement bulkhead does not exceed more than 18 inches channelward of the existing structure..... $500; and

(vii) In–kind repair and replacement of existing infrastructure..... $500.

(5) The Department may not require an application fee for:

(i) The installation of a boat lift, hoist, or personal watercraft lift on existing pilings; or

(ii) If the existing structure is functional and there is no increase in the original length, width, height, or channelward encroachment authorized under § 16–202, § 16–302, or § 16–307 of this article, the routine maintenance, repair, or replacement of:

1. A highway structure;

2. A pier;

3. A boathouse;

4. A structure on a pier;

5. A bulkhead;

6. A revetment;

7. A tidal impoundment dike;

8. A water control structure;

9. An aboveground transmission facility;

10. An agricultural drainage ditch; or

11. A highway drainage ditch.

(6) The fees imposed under this subsection may not be modified without legislative enactment.

(7) (i) Subject to paragraph (6) of this subsection, the Department may adjust the fees established under paragraphs (1) and (4) of this subsection to reflect

changes in the consumer price index for all "urban consumers" for the expenditure category "all items not seasonally adjusted", and for all regions.

(ii) The Annual Consumer Price Index for the period ending each December, as published by the Bureau of Labor Statistics of the U.S. Department of Labor, shall be used to adjust the fees established under paragraphs (1) and (4) of this subsection.

(c) (1) There is a Wetlands and Waterways Program Fund.

(2) The Department shall administer the Fund.

(3) The Treasurer shall hold the Fund separately and the Comptroller shall account for the Fund.

(4) The Fund consists of all:

(i) Application fees collected by the Department under this section;

(ii) Monetary compensation paid to the State in conjunction with a wetlands license other than that compensation specified in § 16–205(e)(2) of this article;

(iii) Money appropriated in the State budget to the Fund; and

(iv) Investment earnings, interest, and any other money from any other source accepted for the benefit of the Fund.

(5) In accordance with subsection (e) of this section, the Department shall use the Wetlands and Waterways Program Fund for activities related to:

(i) The issuance of authorizations by the Department under §§ 5–503 and 5–906 of this title and §§ 16–202, 16–302, and 16–307 of this article or the issuance of wetlands licenses by the Board of Public Works under § 16–202 of this article;

(ii) The management, conservation, protection, and preservation of the State's wetlands and waterways resources; and

(iii) Program development associated with this title and Title 16 of this article, as provided by the State budget.

(d) On or before December 31 of each year, in accordance with § 2–1246 of the State Government Article, the Department shall prepare and submit an annual report to the House Environmental Matters Committee, the House Appropriations Committee, the Senate Education, Health, and Environmental Affairs Committee, and the Senate Budget and Taxation Committee on the Wetlands and Waterways Program Fund, including an accounting of financial receipts deposited into the Fund and expenditures from the Fund.

(e) The Department shall:

(1) Prioritize the use of the Wetlands and Waterways Program Fund to improve the level of service to the regulated community; and

(2) Identify and implement measures that will reduce delays and duplication in the administration of the wetlands and waterways permit process, including the processing of applications for wetlands and waterways permits in accordance with § 1–607 of this article.

§5–204.

(a) (1) It is the intent of the General Assembly to establish consolidated procedures and notice and hearing requirements for Subtitles 5 and 9 of this title and Titles 14, 15, and 16 of this article in order to ensure efficient review and consistent decision making.

(2) Notwithstanding any provision of the State Government Article, public notice on pending applications provided in accordance with the provisions of this section shall be the only notice required by law.

(b) (1) Applicants shall ascertain the names and addresses of all current owners of property contiguous to the parcel upon which the proposed activity will occur and personally or by certified mail serve notice upon each owner.

(2) Applicants shall serve personally or by certified mail appropriate local officials.

(3) Applicants shall provide the Department with certification that notice has been served on all contiguous property owners and appropriate local officials.

(4) Upon substantial completion of an application, the Department shall draft a public notice that includes:

(i) The name and address of the applicant;

(ii) A description of the location and nature of the activity for which application has been made;

(iii) The name, address, and telephone number of the office within the Department from which information about the application may be obtained;

(iv) A statement that any further notices about actions on the application will be provided only by mail to those persons on a mailing list of interested persons;

(v) A description of how persons may submit information or comments about the application, request a public informational hearing, or request to

be included on the mailing list of interested persons; and

(vi) A deadline for the close of the public comment period by which information, comments, or requests must be received by the Department.

(5) The Department shall prepare a public notice to be published for at least 1 business day in a newspaper of general circulation in the area where the proposed activity would occur. At its discretion, the Department shall:

(i) Publish the public notice; or

(ii) Direct the applicant to publish the public notice.

(6) The applicant shall bear the cost of the newspaper notice.

(7) The Department shall mail public notices to a general subscription mailing list.

(8) Comments on an application or requests for a public informational hearing must be forwarded in writing to the Department prior to the close of the public comment period specified in the public notice.

(9) The Department shall compile an interested persons list containing the names of all contiguous property owners, appropriate local officials, and individuals that comment on, request hearings, or make inquiries about an application during any phase of the Department's review.

(10) No further notice will be provided except to persons on the interested persons list.

(c) The Department shall hold a public informational hearing if it receives a timely written request in accordance with the following provisions:

(1) The request shall be received prior to the close of the public comment period.

(2) A public informational hearing shall be held within 45 calendar days of the close of the public comment period.

(3) The Department shall specify the date, time, and location of the public hearing.

(4) The Department shall mail notice of the date, time, and location of any public informational hearing on an application to those persons on the interested persons list no later than 14 calendar days prior to the hearing.

(5) The Department may extend the official record of a public informational hearing.

(d) Following the application review and comment period and within 30 calendar days after the close of the public informational hearing record, the Department shall issue, modify, or deny the permit or license unless extenuating circumstances justify an extension of time.

(e) The Department shall mail notice of a decision to issue, modify, or deny a permit or license to the applicant and to those persons on the interested persons list.

(f) (1) A final determination by the Department on the issuance, denial, renewal, or revision of any permit issued under Subtitle 5 or Subtitle 9 of this title or § 14–105, § 14–508, § 15–808, or § 16–307 of this article is subject to judicial review at the request of any person that:

(i) Meets the threshold standing requirements under federal law; and

(ii) 1. Is the applicant; or

2. Participated in a public participation process through the submission of written or oral comments, unless an opportunity for public participation was not provided.

(2) For permits listed under paragraph (1) of this subsection, a contested case hearing may not occur.

(g) A person petitioning for judicial review in accordance with this section shall file the petition in accordance with the Maryland Rules.

(h) (1) Judicial review shall be on the administrative record before the Department and limited to objections raised during the public comment period, unless the petitioner demonstrates that:

(i) The objections were not reasonably ascertainable during the comment period; or

(ii) Grounds for the objections arose after the comment period.

(2) The court shall remand the matter to the Department for consideration of objections under paragraph (1) of this subsection.

(i) (1) Unless otherwise required by statute, a petition for judicial review by a person who meets the requirements of subsection (f) of this section shall be filed with the circuit court for the county where the application for the permit states that the proposed activity will occur.

(2) Judicial review under this section shall be conducted in accordance with Title 1, Subtitle 6 of this article.

§5–301.

Susquehanna River Basin Compact
Preamble

Whereas the signatory parties hereto recognize the water resources of the Susquehanna River Basin as regional assets vested with local, state, and national interest for which they have a joint responsibility; and declare as follows:

1. The conservation, utilization, development, management, and control of the water resources of the Susquehanna River Basin under comprehensive multiple purpose planning will bring the greatest benefits and produce the most efficient service in the public interest; and

2. This comprehensive planning administered by a basin–wide agency will provide flood damage reduction, conservation and development of surface and ground water supply for municipal, industrial, and agricultural uses, development of recreational facilities in relation to reservoirs, lakes and streams, propagation of fish and game, promotion of forest land management, soil conservation, and watershed projects, protection and aid to fisheries, development of hydroelectric power potentialities, improved navigation, control of the movement of salt water, abatement and control of water pollution, and regulation of stream flows toward the attainment of these goals; and

3. The water resources of the basin are presently subject to the duplicating, overlapping, and uncoordinated administration of a large number of governmental agencies which exercise a multiplicity of powers resulting in a splintering of authority and responsibility; and

4. The Interstate Advisory Committee on the Susquehanna River Basin, created by action of the states of New York, Pennsylvania, and Maryland, on the basis of its studies and deliberation has concluded that regional development of the Susquehanna River Basin is feasible, advisable, and urgently needed, and has recommended that an intergovernmental compact with federal participation be consummated to this end; and

5. The Congress of the United States and the executive branch of the federal government have recognized a national interest in the Susquehanna River Basin by authorizing and directing the Corps of Engineers of the Department of the Army, the Department of Agriculture, the Department of Health, Education and Welfare, the Department of Interior, and other federal agencies to cooperate in making comprehensive surveys and reports concerning the water resources of the Susquehanna River Basin in which individually or severally the technical aid and assistance of many federal and state agencies have been enlisted, and which are being or have been coordinated through a Susquehanna River Basin Study Coordinating Committee on which the Corps of Engineers of the Department of the Army, the Department of Agriculture, the Department of Commerce, the Department of Health,

Education and Welfare, the Department of Interior, the Department of Housing and Urban Development and its predecessor Housing and Home Finance Agency, the Federal Power Commission, and the states of New York, Pennsylvania, and Maryland are or were represented; and

6. Some three million people live and work in the Susquehanna River Basin and its environs, and the government, employment, industry, and economic development of the entire region and the health, safety, and general well–being of its population are and will continue to be affected vitally by the conservation, utilization, development, management, and control of the water resources of the basin; and

7. Demands upon the water resources of the basin are expected to mount because of anticipated increases in population and by reason of industrial and economic growth of the basin and its service area; and

8. Water resources planning and development are technical, complex, and expensive, often requiring fifteen to twenty years from the conception to the completion of large or extensive projects; and

9. The public interest requires that facilities must be ready and operative when and where needed, to avoid the damages of unexpected floods or prolonged drought, and for other purposes; and

10. The Interstate Advisory Committee on the Susquehanna River Basin has prepared a draft of an intergovernmental compact for the creation of a basin agency, and the signatory parties desire to effectuate the purposes thereof; now therefore

The states of New York and Maryland and the Commonwealth of Pennsylvania, and the United States of America hereby solemnly covenant and agree with each other, upon the enactment of concurrent legislation by the Congress of the United States and by the respective state legislatures, to the Susquehanna River Basin Compact which consists of this preamble and the articles that follow.

Article 1

Short Title, Definitions, Purposes, and Limitations

1.1. This compact shall be known and may be cited as the Susquehanna River Basin Compact.

1.2. For the purposes of this compact, and of any supplemental or concurring legislation enacted pursuant to it:

1. "Basin" shall mean the area of drainage of the Susquehanna River and its tributaries into Chesapeake Bay to the southern edge of the Pennsylvania railroad bridge between Havre de Grace and Perryville, Maryland.

2. "Commission" shall mean the Susquehanna River Basin Commission

hereby created, and the term "commissioner" shall mean a member of the commission.

3. "Cost" shall mean direct and indirect expenditures, commitment, and net induced adverse effects, whether or not compensated for, used or incurred in connection with the establishment, acquisition, construction, maintenance, and operation of a project.

4. "Diversion" shall mean the transfer of water into or from the basin.

5. "Facility" shall mean any real or personal property, within or without the basin, and improvements thereof or thereon, and any and all rights–of–way, water, water rights, plants, structures, machinery, and equipment acquired, constructed, operated, or maintained for the beneficial use of water resources or related land uses or otherwise including, without limiting the generality of the foregoing, any and all things and appurtenances necessary, useful, or convenient for the control, collection, storage, withdrawal, diversion, release, treatment, transmission, sale, or exchange of water; or for navigation thereon, or the development and use of hydroelectric energy and power, and public recreational facilities; of the propagation of fish and wildlife; or to conserve and protect the water resources of the basin or any existing or future water supply source, or to facilitate any other uses of any of them.

6. "Federal government" shall mean the government of the United States of America, and any appropriate branch, department, bureau, or division thereof, as the case may be.

7. "Project" shall mean any work, service, or activity which is separately planned, financed, or identified by the commission, or any separate facility undertaken or to be undertaken by the commission or otherwise within a specified area, for the conservation, utilization, control, development, or management of water resources which can be established and utilized independently or as an addition to an existing facility and can be considered as a separate entity for purposes of evaluation.

8. "Signatory party" shall mean a state or commonwealth party to this compact, or the federal government.

9. "Waters" shall mean both surface and underground waters which are contained within the drainage area of the Susquehanna River in the states of New York, Pennsylvania, and Maryland.

10. "Water resources" shall include all waters and related natural resources within the basin.

11. "Withdrawal" shall mean a taking or removal of water from any source within the basin for use within the basin.

12. "Person" shall mean an individual, corporation, partnership, unincorporated association, and the like and shall have no gender, and the singular shall include the plural.

1.3. The legislative bodies of the respective signatory parties hereby find and declare:

1. The water resources of the Susquehanna River Basin are affected with a local, state, regional, and national interest, and the planning, conservation, utilization, development, management, and control of these resources, under appropriate arrangements for intergovernmental cooperation, are public purposes of the respective signatory parties.

2. The water resources of the basin are subject to the sovereign rights and responsibilities of the signatory parties, and it is the purpose of this compact to provide for a joint exercise of these powers of sovereignty in the common interest of the people of the region.

3. The water resources of the basin are functionally interrelated, and the uses of these resources are interdependent. A single administrative agency is therefore essential for effective and economical direction, supervision, and coordination of water resources efforts and programs of federal, state, and local governments and of private enterprise.

4. Present and future demands require increasing economies and efficiencies in the use and reuse of water resources, and these can be brought about only by comprehensive planning, programming, and management under the direction of a single administrative agency.

5. In general, the purposes of this compact are to promote interstate comity; to remove causes of possible controversy; to make secure and protect developments within the states; to encourage and provide for the planning, conservation, utilization, development, management, and control of the water resources of the basin; to provide for cooperative and coordinated planning and action by the signatory parties with respect to water resources; and to apply the principle of equal and uniform treatment to all users of water and of water related facilities without regard to political boundaries.

6. It is the express intent of the signatory parties that the commission shall engage in the construction, operation, and maintenance of a project only when the project is necessary to the execution of the comprehensive plan and no other competent agency is in a position to act, or such agency fails to act.

1.4. Nothing in this compact shall be construed to relinquish the functions, powers, or duties of the Congress of the United States with respect to the control of any navigable waters within the basin, nor shall any provisions hereof be construed in derogation of any of the constitutional powers of the Congress to regulate commerce among the states and with foreign nations. The power and right of the Congress to withdraw the federal government as a party to this compact or to revise or modify the terms, conditions, and provisions under which it may remain a party by amendment, repeal, or modification of any federal statute applicable hereto is recognized by the

signatory parties.

1.5. (a) The duration of this compact shall be for an initial period of 100 years from its effective date, and it shall be continued for additional periods of 100 years if not less than 20 years nor more than 25 years prior to the termination of the initial period or any succeeding period none of the signatory states, by authority of an act of its legislature, notifies the commission of intention to terminate the compact at the end of the then current 100–year period.

(b) In the event this compact should be terminated by operation of paragraph (a) above, the commission shall be dissolved, its assets and liabilities transferred in accordance with the equities of the signatory parties therein, and its corporate affairs wound up in accordance with agreement of the signatory parties or, failing agreement, by act of the Congress.

Article 2

Organization and Area

2.1. The Susquehanna River Basin Commission is hereby created as a body politic and corporate, with succession for the duration of this compact, as an agency and instrumentality of the governments of the respective signatory parties.

2.2. The members of the commission shall be the governor or the designee of the governor of each signatory state, to act for him, and one member to be appointed by the President of the United States to serve at the pleasure of the President.

2.3. An alternate from each signatory party shall be appointed by its member of the commission unless otherwise provided by the laws of the signatory party. The alternate, in the absence of the member, shall represent the member and act for him. In the event of a vacancy in the office of alternate, it shall be filled in the same manner as the original appointment.

2.4. Members of the commission and alternates shall serve without compensation from the commission but may be reimbursed for necessary expenses incurred in and incident to the performance of their duties.

2.5. Each member is entitled to one vote. No action of the commission may be taken unless three of the four members vote in favor thereof.

2.6. The commission shall provide for its own organization and procedure, and shall adopt the rules and regulations governing its meetings and transactions. It shall organize annually by the election of a chairman and vice–chairman from among its members. It shall provide by its rules for the appointment by each member in his discretion of an advisor to serve without compensation from the commission, who may attend all meetings of the commission and its committees.

2.7. The commission shall have, exercise, and discharge its functions, powers,

and duties within the limits of the basin. Outside the basin, the commission shall act at its discretion, but only to the extent necessary to implement its responsibilities within the basin, and where necessary subject to the consent of the state wherein it proposes to act.

Article 3

Powers and Duties of the Commission

3.1. The commission shall develop and effectuate plans, policies, and projects relating to the water resources of the basin. It shall adopt and promote uniform and coordinated policies for water resources conservation and management in the basin. It shall encourage and direct the planning, development, operation, and subject to applicable laws the financing of water resources projects according to such plans and policies.

3.2. It is the policy of the signatory parties to preserve and utilize the functions, powers, and duties of the existing offices and agencies of government to the extent consistent with this compact, and the commission is directed to utilize those offices and agencies for the purposes of this compact.

3.3. The commission in accordance with Article 14 of this compact, shall formulate and adopt:

1. A comprehensive plan, after consultation with appropriate water users and interested public bodies for the immediate and long range development and use of the water resources of the basin;

2. A water resources program, based upon the comprehensive plan, which shall include a systematic presentation of the quantity and quality of water resources needs of the area to be served for such reasonably foreseeable period as the commission may determine, balanced by existing and proposed projects required to satisfy such needs, including all public and private projects affecting the basin, together with a separate statement of the projects proposed to be undertaken by the commission during such period; and

3. An annual current expense budget and an annual capital budget consistent with the commission's program, projects, and facilities for the budget period.

3.4. The commission may:

1. Plan, design, acquire, construct, reconstruct, complete, own, improve, extend, develop, operate, and maintain any and all projects, facilities, properties, activities, and services which are determined by the commission to be necessary, convenient, or useful for the purposes of this compact.

2. Establish standards of planning, design, and operation of all projects and facilities in the basin to the extent they affect water resources, including without

limitation thereto water, sewage and other waste treatment plants and facilities, pipelines, transmission lines, stream and lake recreational facilities, trunk mains for water distribution, local flood protection works, watershed management programs, and ground water recharging operations.

3. Conduct and sponsor research on water resources and their planning, use, conservation, management, development, control, and protection, and the capacity, adaptability, and best utility of each facility thereof, and collect, compile, correlate, analyze, report, and interpret data on water resources and uses in the basin, including without limitation thereto the relation of water to other resources, industrial water technology, ground water movement, relation between water price and water demand and other economic factors, and general hydrological conditions.

4. Collect, compile, coordinate, and interpret systematic surface and ground water data, and publicize such information when and as needed for water uses, flood warning, quality maintenance, or other purposes.

5. Conduct ground and surface water investigations, tests, and operations, and compile data relating thereto as may be required to formulate and administer the comprehensive plan.

6. Prepare, publish, and disseminate information and reports concerning the water problems of the basin and for the presentation of the needs and resources of the basin and policies of the commission to executive and legislative branches of the signatory parties.

7. Negotiate loans, grants, gifts, services, or other aids as may be lawfully available from public or private sources to finance or assist in effectuating any of the purposes of this compact, and receive and accept them upon terms and conditions, and subject to provisions, as may be required by federal or state law or as the commission may deem necessary or desirable.

8. Exercise such other and different powers as may be delegated to it by this compact or otherwise pursuant to law, and have and exercise all powers necessary or convenient to carry out its express powers and other powers which reasonably may be implied therefrom.

9. Adopt, amend, and repeal rules and regulations to implement this compact.

3.5. The commission shall:

1. Develop and effectuate plans, policies, and projects relating to water resources, adopt, promote, and coordinate policies and standards for water resources conservation, control, utilization, and management, and promote and implement the planning, development, and financing of water resources projects.

2. Undertake investigations, studies, and surveys, and acquire,

construct, operate, and maintain projects and facilities in regard to the water resources of the basin, whenever it is deemed necessary to do so to activate or effectuate any of the provisions of this compact.

3. Administer, manage, and control water resources in all matters determined by the commission to be interstate in nature or to have a major effect on the water resources and water resources management.

4. Assume jurisdiction in any matter affecting water resources whenever it determines after investigation and public hearing upon due notice given, that the effectuation of the comprehensive plan or the implementation of this compact so requires. If the commission finds upon subsequent hearing requested by an affected signatory party that the party will take the necessary action, the commission may relinquish jurisdiction.

5. Investigate and determine if the requirements of the compact or the rules and regulations of the commission are complied with, and if satisfactory progress has not been made, institute an action or actions in its own name in any state or federal court of competent jurisdiction to compel compliance with any and all of the provisions of this compact or any of the rules and regulations of the commission adopted pursuant thereto. An action shall be instituted in the name of the commission and shall be conducted by its own counsel.

3.6. (a) Each of the signatory parties agrees that it will seek enactment of such additional legislation as will be required to enable its officers, departments, commissions, boards, and agents to accomplish effectively the obligations and duties assumed under the terms of this compact.

(b) Nothing in the compact shall be construed to repeal, modify, or qualify the authority of any signatory party to enact any legislation or enforce any additional conditions and restrictions within its jurisdiction.

3.7. The commission shall promote and aid the coordination of the activities and programs of federal, state, municipal, and private agencies concerned with water resources administration in the basin. To this end, but without limitation thereto, the commission may:

1. Advise, consult, contract, financially assist, or otherwise cooperate with any and all such agencies;

2. Employ any other agency or instrumentality of any of the signatory parties or of any political subdivision thereof, in the design, construction, operation, and maintenance of structures, and the installation and management of river control systems, or for any other purpose;

3. Develop and adopt plans and specifications for particular water resources projects and facilities which so far as consistent with the comprehensive plan incorporate any separate plans of other public and private organizations

operating in the basin, and permit the decentralized administration thereof;

4. Qualify as a sponsoring agency under any federal legislation heretofore or hereafter enacted to provide financial or other assistance for the planning, conservation, utilization, development, management, or control of water resources.

3.8. (a) The commission shall have power from time to time as the need appears, to allocate the waters of the basin to and among the states signatory to this compact and impose related conditions, obligations, and release requirements.

(b) The commission shall have power from time to time as the need appears to enter into agreements with other river basin commissions or other states with respect to in–basin and out–of–basin allocations, withdrawals, and diversions.

(c) No allocation of waters made pursuant to this section shall constitute a prior appropriation of the waters of the basin or confer any superiority of right in respect to the use of those waters, nor shall any such action be deemed to constitute an apportionment of the waters of the basin among the parties hereto. This subsection shall not be deemed to limit or restrict the power of the commission to enter into covenants with respect to water supply, with a duration not exceeding the life of this compact, as it may deem necessary for the benefit or development of the water resources of the basin.

3.9. The commission, from time to time after public notice and public hearing upon due notice given may fix, alter, and revise rates, rentals, charges, and tolls, and classifications thereof, without regulation or control by any department, office, or agency of any signatory party, for the use of facilities owned or operated by it, and any services or products which it provides.

3.10. No projects affecting the water resources of the basin, except those not requiring review and approval by the commission under paragraph 3 following, shall be undertaken by any person, governmental authority or other entity prior to submission to and approval by the commission or appropriate agencies of the signatory parties for review.

1. All water resources projects for which a permit or other form of permission to proceed with construction or implementation is required by legislative action of a signatory party or by rule or regulation of an office or agency of a signatory party having functions, powers, and duties in the planning, conservation, development, management, or control of water resources shall be submitted as heretofore to the appropriate office or agency of the signatory party for review and approval. To assure that the commission is apprised of all projects within the basin, monthly reports and listings of all permits granted, or similar actions taken, by offices or agencies of the signatory parties shall be submitted to the commission in a manner prescribed by it.

Those projects which also require commission approval pursuant to the

provisions of paragraphs 2(ii) and 2(iii) following shall be submitted to the commission through appropriate offices or agencies of a signatory party, except that, if no agency of a signatory party has jurisdiction, such projects shall be submitted directly to the commission in such manner as the commission shall prescribe.

2. Approval of the commission shall be required for, but not limited to, the following:

(i) All projects on or crossing the boundary between any two signatory states;

(ii) Any project involving the diversion of water;

(iii) Any project within the boundaries of any signatory state found and determined by the commission or by any agency of a signatory party having functions, powers, and duties in the planning, conservation, development, management, or control of water resources to have a significant effect on water resources within another signatory state; and

(iv) Any project which has been included by the commission, after hearing, as provided in Article 14, section 14.1, as a part of the commission's comprehensive plan for the development of the water resources of the basin, or which would have a significant effect upon the plan.

3. Review and approval by the commission shall not be required for:

(i) Projects which fall into an exempt classification or designation established by legislative action of a signatory party or by rule or regulation of an office or agency of a signatory party having functions, powers, and duties in the planning, conservation, development, management, or control of water resources. The sponsors of those projects are not required to obtain a permit or other form of permission to proceed with construction or implementation, unless it is determined by the commission or by the agency of a signatory party that such project or projects may cause an adverse, adverse cumulative, or an interstate effect on water resources of the basin, and the project sponsor has been notified in writing by the commission or by the agency of a signatory party that commission approval is required.

(ii) Projects which are classified by the commission as not requiring its review and approval, for so long as they are so classified.

4. The commission shall approve a project if it determines that the project is not detrimental to the proper conservation, development, management, or control of the water resources of the basin and may modify and approve as modified, or may disapprove the project, if it determines that the project is not in the best interest of the conservation, development, management, or control of the basin's water resources, or is in conflict with the comprehensive plan.

5. The commission, after consultation with the appropriate offices or

agencies of the signatory parties, shall establish the procedure of submission, review, and consideration of projects. Any procedure for review and approval of diversions of water shall include public hearing on due notice given, with opportunity for interested persons, agencies, governmental units, and signatory parties to be heard and to present evidence. A complete transcript of the proceedings at the hearing shall be made and preserved, and it shall be made available under rules for that purpose adopted by the commission.

6. Any determination of the commission pursuant to this article or any article of the compact providing for judicial review shall be subject to such judicial review in any court of competent jurisdiction, provided that an action or proceeding for such review is commenced within 90 days from the effective date of the determination sought to be reviewed; but a determination of the commission concerning a diversion, under section 3.10–2 (ii) with the claimed effect of reducing below a proper minimum the flow of water in that portion of the basin within the area of a signatory party, shall be subject to judicial review under the particular provisions of paragraph 7 below.

7. Any signatory party deeming itself aggrieved by an action of the commission concerning a diversion under section 3.10–2 (ii) with the claimed effect of reducing below a proper minimum the flow of water in that portion of the basin which lies within the area of that signatory party, and notwithstanding the powers provided to the commission by this compact, may have review of commission action approving the diversion in the Supreme Court of the United States; provided that a proceeding for such review is commenced within one year from the date of action sought to be reviewed. Any such review shall be on the record made before the commission. The action of the commission shall be affirmed, unless the court finds that it is not supported by substantial evidence.

3.11. The commission may constitute and empower advisory committees.

Article 4

Water Supply

4.1. The commission shall have power to develop, implement, and effectuate plans and projects for the use of the water of the basin for domestic, municipal, agricultural, and industrial water supply. To this end, without limitation thereto, it may provide for, construct, acquire, operate, and maintain dams, reservoirs, and other facilities for utilization of surface and ground water resources, and all related structures, appurtenances, and equipment on the river and its tributaries and at such off–river sites as it may find appropriate, and may regulate and control the use thereof.

4.2. (a) The commission shall have power to acquire, construct, operate, and control projects and facilities for the storage and release of waters, for the regulation of flows and supplies of surface and ground waters of the basin, for the protection of public health, stream quality control, economic development, improvement of fisheries, recreation, dilution and abatement of pollution, the prevention of undue salinity, and

other purposes.

(b) No signatory party shall permit any augmentation of flow to be diminished by the diversion of any water of the basin during any period in which waters are being released from storage under the direction of the commission for the purpose of augmenting such flow, except in cases where the diversion is authorized by this compact, or by the commission pursuant thereto, or by the judgment, order, or decree of a court of competent jurisdiction.

4.3. The commission may provide water management and regulation in the main stream or any tributary in the basin and, in accordance with the procedures of applicable state laws, may assess on an annual basis or otherwise the cost thereof upon water users or any classification of them specially benefited thereby to a measurable extent, provided that no such assessment shall exceed the actual benefit to any water user. Any such assessment shall follow the procedure prescribed by law for local improvement assessments and shall be subject to review in any court of competent jurisdiction.

4.4. Prior to entering upon the execution of any project authorized by this article, the commission shall review and consider all existing rights, plans, and programs of the signatory parties, their political subdivisions, private parties, and water users which are pertinent to such project, and shall hold a public hearing on each proposed project.

4.5. In connection with any project authorized by this article, the commission shall have power to provide storage, treatment, pumping, and transmission facilities, but nothing herein shall be construed to authorize the commission to engage in the business of distributing water.

Article 5

Water Quality Management and Control

5.1. (a) The commission may undertake or contract for investigations, studies, and surveys pertaining to existing water quality, effects of varied actual or projected operations on water quality, new compounds and materials and probable future water quality in the basin. The commission may receive, expend, and administer funds, federal, state, local, or private as may be available to carry out these functions relating to water quality investigations.

(b) The commission may acquire, construct, operate, and maintain projects and facilities for the management and control of water quality in the basin whenever the commission deems necessary to activate or effectuate any of the provisions of this compact.

5.2. (a) In order to conserve, protect, and utilize the water quality of the basin in accordance with the best interests of the people of the basin and the states, it shall be the policy of the commission to encourage and coordinate the efforts of the signatory

parties to prevent, reduce, control, and eliminate water pollution and to maintain water quality as required by the comprehensive plan.

(b) The legislative intent in enacting this article is to give specific emphasis to the primary role of the states in water quality management and control.

(c) The commission shall recommend to the signatory parties the establishment, modification, or amendment of standards of quality for any waters of the basin in relation to their reasonable and necessary use as the commission shall deem to be in the public interest.

(d) The commission shall encourage cooperation and uniform enforcement programs and policies by the water quality control agencies of the signatory parties in meeting the water quality standards established in the comprehensive plan.

(e) The commission may assume jurisdiction whenever it determines after investigation and public hearing upon due notice given that the effectuation of the comprehensive plan so requires. After such investigation, notice, and hearing, the commission may adopt such rules, regulations, and water quality standards as may be required to preserve, protect, improve, and develop the quality of the waters of the basin in accordance with the comprehensive plan.

5.3. (a) Each of the signatory parties agrees to prohibit and control pollution of the waters of the basin according to the requirements of this compact and to cooperate faithfully in the control of future pollution in and abatement of existing pollution from the waters of the basin.

(b) The commission shall have the authority to investigate and determine if the requirements of the compact or the rules, regulations, and water quality standards of the commission are complied with and if satisfactory progress has not been made, may institute an action or actions in its own name in the proper court or courts of competent jurisdiction to compel compliance with any and all of the provisions of this compact or any of the rules, regulations, and water quality standards of the commission adopted pursuant thereto.

5.4. Nothing in this compact shall be construed to repeal, modify, or qualify the authority of any signatory party to enact any legislation or enforce any additional conditions and restrictions to lessen or prevent the pollution of waters within its jurisdiction.

Article 6

Flood Protection

6.1. The commission may plan, design, construct, and operate and maintain projects and facilities it deems necessary or desirable for flood plain development and flood damage reduction. It shall have power to operate such facilities and to store and release waters of the Susquehanna River and its tributaries and elsewhere within the

basin, in such manner, at such times, and under such regulations as the commission may deem appropriate to meet flood conditions as they may arise.

6.2. (a) The commission may study and determine the nature and extent of the flood plains of the Susquehanna River and its tributaries. Upon the basis of the studies, it may delineate areas subject to flooding, including but not limited to a classification of lands with reference to relative risk of flooding and the establishment of standards for flood plain use which will promote economic development and safeguard the public health, welfare, safety, and property. Prior to the adoption of any standards delineating the area or defining the use, the commission shall hold public hearings with respect to the substance of the standards in the manner provided by Article 15. The proposed standards shall be available from the commission at the time notice is given, and interested persons shall be given an opportunity to be heard thereon at the hearings.

(b) The commission shall have power to promulgate, adopt, amend, and repeal from time to time as necessary, standards relating to the nature and extent of the uses of land in areas subject to flooding.

(c) In taking action pursuant to subsection (b) of this section and as a prerequisite thereto, the commission shall consider the effect of particular uses of the flood plain in question on the health and safety of persons and property in the basin, the economic and technical feasibility of measures available for the development and protection of the flood plain, and the responsibilities, if any, of local, state, and federal governments connected with the use or proposed use of the flood plain in question. The commission shall regulate the use of particular flood plains in the manner and degree it finds necessary for the factors enumerated in this subsection, but only with the consent of the affected signatory state, and shall suspend such regulation when and so long as the signatory party or parties or political subdivision possessing jurisdiction have in force applicable laws which the commission finds give adequate protection for the purposes of this section.

(d) In order to conserve, protect, and utilize the Susquehanna River and its tributaries in accordance with the best interests of the people of the basin and the signatory parties, it shall be the policy of the commission to encourage and coordinate the efforts of the signatory parties to control modification of the river and its tributaries by encroachment.

6.3. The commission shall have power to acquire the fee or any lesser interest in lands and improvements thereon within the area of a flood plain for the purpose of regulating the use or types of construction of such property to minimize the flood hazard, convert the property to uses or types of construction appropriate to flood plain conditions, or prevent constrictions or obstructions that reduce the ability of the river channel and flood plain to carry flood water.

6.4. No rule or regulation issued by the commission pursuant to this shall be construed to require the demolition, removal, or alteration of any structure in place

or under construction prior to the issuance thereof, without the payment of just compensation therefor. However, new construction or any addition to or alteration in any existing structure made or commenced subsequent to the issuance of such rule or regulation, or amendment, shall conform thereto.

6.5. The regulation of use of flood plain lands is within the police powers of the signatory states for the protection of public health and the safety of the people and their property and shall not be deemed a taking of land or lands for which compensation shall be paid to the owners thereof.

6.6. Each of the signatory parties agrees to control flood plain use along and encroachment upon the Susquehanna and its tributaries and to cooperate faithfully in these respects.

6.7. Nothing in this article shall be construed to prevent or in any way to limit the power of any signatory party, or any agency or subdivision thereof, to issue or adopt and enforce any requirement or requirements with respect to flood plain use or construction thereon more stringent than the rules, regulations, or encroachment lines in force pursuant to this article. The commission may appear in any court of competent jurisdiction to bring actions or proceedings in law or equity to enforce the provisions of this article.

6.8. The signatory states agree that dumping or littering upon or in the waters of the Susquehanna River or its tributaries or upon the frozen surfaces thereof of any rubbish, trash, litter, debris, abandoned properties, waste material, or offensive matter, is prohibited and that the law enforcement officials of each state shall enforce this prohibition.

Article 7

Watershed Management

7.1. The commission shall promote sound practices of watershed management in the basin, including projects and facilities to retard runoff and waterflow and prevent soil erosion.

7.2. The commission, subject to the limitations in section 7.4 (b), may acquire, sponsor, or operate facilities and projects to encourage soil conservation, prevent and control erosion, and promote land reclamation and sound land and forest management.

7.3. The commission, subject to the limitations in section 7.4 (b), may acquire, sponsor, or operate projects and facilities for the maintenance and improvement of fish and wildlife habitat related to the water resources of the basin.

7.4. (a) The commission shall cooperate with the appropriate agencies of the signatory parties and with other public and private agencies in the planning and effectuation of a coordinated program of facilities and projects authorized by this article.

(b) The commission shall not acquire or operate any such project or facility unless it has first found and determined that no other suitable unit or agency of government is in a position to acquire or operate the same upon reasonable conditions, or such unit or agency fails to do so.

Article 8

Recreation

8.1. The commission may provide for the development of water related public sports and recreational facilities. The commission on its own account or in cooperation with a signatory party, political subdivision or any agency thereof, may provide for the construction, maintenance, and administration of such facilities, subject to the provisions of section 8.2 hereof.

8.2. (a) The commission shall cooperate with the appropriate agencies of the signatory parties and with other public and private agencies in the planning and effectuation of a coordinated program or facilities and projects authorized by this article.

(b) The commission shall not operate any such project or facility unless it has first found and determined that no other suitable unit or agency of government is available to operate the same upon reasonable conditions.

8.3. The commission, within limits prescribed by this article, shall:

1. Encourage activities of other public agencies having water related recreational interests and assist in the coordination thereof;

2. Recommend standards for the development and administration of water related recreational facilities;

3. Provide for the administration, operation, and maintenance of recreation facilities owned or controlled by the commission and for the letting and supervision of private concessions in accordance with this article.

8.4. The commission, after public hearing on due notice given, shall provide by regulation a procedure for the award of contracts for private concessions in connection with its recreational facilities, including any renewal or extension thereof, under terms and conditions determined by the commission.

Article 9

Other Public Values

9.1. The signatory parties agree that it is a purpose of this compact in effectuating the conservation and management of water resources to preserve and promote the economic and other values inherent in the historic and the scenic and other

natural amenities of the Susquehanna River Basin for the enjoyment and enrichment of future generations, for the promotion and protection of tourist attractions in the basin, and for the maintenance of the economic health of allied enterprises and occupations so as to effect orderly, balanced, and considered development in the basin.

9.2. To this end, the signatory parties agree that in the consideration, authorization, construction, maintenance, and operation of all water resources projects in the Susquehanna Basin, their agencies and subdivisions, and the Susquehanna River Basin Commission will consider the compatibility of such projects with these other public values.

9.3. The commission may recommend to governmental units with jurisdiction within areas considered for scenic or historic designation minimum standards of regulation of land and water use and such other protective measures as the commission may deem desirable.

9.4. The commission may draft and recommend for adoption ordinances and regulations which would assist, promote, develop, and protect those areas and the character of their communities. Local governments may consider parts of their area which have been designated scenic or historic areas under the provisions of this article separately from the municipality as a whole, and pursuant to the laws of the state governing the adoption of those regulations generally may enact regulations limited to the designated area. In making recommendations to a local government which is partly in and partly out of such a scenic or historic area the commission may make recommendations for the entire municipality.

Article 10

Hydroelectric Power

10.1. The waters of the Susquehanna River and its tributaries may be impounded and used by or under authority of the commission for the generation of hydroelectric power and hydroelectric energy in accordance with the comprehensive plan.

10.2. The commission may develop and operate, or authorize to be developed and operated, dams and related facilities and appurtenances for the purpose of generating electric power and hydroelectric energy.

10.3. The commission may provide facilities for the transmission of hydroelectric power and hydroelectric energy produced by it where such facilities are not otherwise available upon reasonable terms, for the purpose of wholesale marketing of power and nothing herein shall be construed to authorize the commission to engage in the business of direct sale to consumers.

10.4. The commission, after public hearing on due notice given, may enter into contracts on reasonable terms, consideration, and duration under which public utilities or public agencies may develop hydroelectric power and hydroelectric energy through

the use of dams, related facilities, and appurtenances.

10.5. Rates and charges fixed by the commission for power which is produced by its facilities shall be reasonable, nondiscriminatory, and just.

Article 11

Regulation of Withdrawal and Diversions; Protected Areas and Emergencies

11.1. The commission may regulate and control withdrawals and diversions from surface waters and ground waters of the basin, as provided by this article. The commission may enter into agreements with the signatory parties relating to the exercise of such power or regulation or control and may delegate to any of them such powers of the commission as it may deem necessary or desirable.

11.2. The commission, from time to time after public hearing upon due notice given, may determine and delineate such areas within the basin wherein the demands upon supply made by water users have developed or threaten to develop to such a degree as to create a water shortage or impair or conflict with the requirements or effectuation of the comprehensive plan, and any such area may be designated as a protected area, with the consent of the member or members from the affected state or states. The commission, whenever it determines that such shortage no longer exists, shall terminate the protected status of such area and shall give public notice of such termination.

11.3. In any protected areas so determined and delineated, no person shall divert or withdraw water for domestic, municipal, agricultural, or industrial uses in excess of such quantities as the commission may prescribe by general regulations, except (1) pursuant to a permit granted under this article, or (2) pursuant to a permit or approval heretofore granted under the laws of any of the signatory states.

11.4. (a) In the event of a drought which may cause an actual and immediate shortage of available water supply within the basin, or within any part thereof, the commission after public hearing upon due notice given, may determine and delineate the area of the shortage and by unanimous vote declare a drought emergency therein. For the duration of the drought emergency as determined by the commission, it thereupon may direct increases or decreases in any allocations, diversions, or releases previously granted or required, for a limited time to meet the emergency condition.

(b) In the event of a disaster or catastrophe other than drought, natural or manmade, which causes or may cause an actual and immediate shortage of available and usable water, the commission by unanimous consent may impose direct controls on the use of water and shall take such action as is necessary to coordinate the effort of federal, state, and local agencies and other persons and entities affected.

11.5. Permits shall be granted, modified, or denied, as the case may be, to avoid such depletion of the natural stream flows and ground waters in the protected area

or in an emergency area as will adversely affect the comprehensive plan or the just and equitable interests and rights of other lawful users of the same source, giving due regard to the need to balance and reconcile alternative and conflicting uses in the event of an actual or threatened shortage of water of the quality required.

11.6. The determinations and delineations of the commission pursuant to section 11.2 and the granting, modification or denial of permits pursuant to sections 11.3, 11.4, and 11.5 shall be subject to judicial review in any court of competent jurisdiction.

11.7. Each signatory party shall provide for the maintenance and preservation of such records of authorized diversions and withdrawals and the annual volume thereof as the commission shall prescribe. Such records and supplementary reports shall be furnished to the commission at its request.

11.8. Whenever the commission finds it necessary or desirable to exercise the powers conferred with respect to emergencies by this article, any diversion or withdrawal permits authorized or issued under the laws of any of the signatory states shall be superseded to the extent of any conflict with the control and regulation exercised by the commission.

Article 12

Intergovernmental Relations

12.1. For the purposes of avoiding conflicts of jurisdiction and of giving full effect to the commission as a regional agency of the signatory parties, the following rules shall govern federal projects affecting the water resources of the basin, subject in each case to the provisions of section 1.4 of this compact:

1. The planning of all projects related to powers delegated to the commission by this compact shall be undertaken in consultation with the commission.

2. No expenditure or commitment shall be made for or on account of the construction, acquisition, or operation of any project or facility nor shall it be deemed authorized, unless it shall have first been included by the commission in the comprehensive plan.

3. Each federal agency otherwise authorized by law to plan, design, construct, operate or maintain any project or facility in or for the basin shall continue to have, exercise, and discharge such authority except as specifically provided by this section.

12.2. For the purposes of avoiding conflicts of jurisdiction and of giving full effect to the commission as a regional agency of the signatory parties, the following rules shall govern projects of the signatory states, their political subdivisions and public corporations affecting water resources of the basin:

1. The planning of all projects related to powers delegated to the

commission by this compact shall be undertaken in consultation with the commission;

2. No expenditure or commitment shall be made for or on account of the construction, acquisition, or operation of any project or facility unless it first has been included by the commission in the comprehensive plan;

3. Each state and local agency otherwise authorized by law to plan, design, construct, operate, or maintain any project or facility in or for the basin shall continue to have, exercise, and discharge such authority, except as specifically provided by this section.

12.3. Each of the signatory parties reserves the right to levy, assess, and collect fees, charges, and taxes on or measured by the withdrawal or diversion of waters of the basin for use within the jurisdiction of the respective signatory parties.

12.4. The commission shall establish uniform standards and procedures for the evaluation, determination of benefits, and cost allocations of projects affecting the basin, and for the determination of project priorities, pursuant to the requirements of the comprehensive plan and its water resources program. The commission shall develop equitable cost sharing and reimbursement formulas for the signatory parties including:

1. Uniform and consistent procedures for the allocation of project costs among purposes included in multiple–purpose programs;

2. Contracts and arrangements for sharing financial responsibility among and with signatory parties, public bodies, groups, and private enterprise, and for the supervision of their performance;

3. Establishment and supervision of a system of accounts for reimbursement purposes and directing the payments and charges to be made from such accounts;

4. Determining the basis and apportioning amounts (i) of reimbursable revenues to be paid signatory parties or their political subdivisions, and (ii) of payments in lieu of taxes to any of them.

12.5. The commission shall furnish technical services, advice, and consultation to authorized agencies of the signatory parties with respect to the water resources of the basin, and each of the signatory parties pledges itself to provide technical and administrative service to the commission upon request, within the limits of available appropriations, and to cooperate generally with the commission for the purposes of this compact, and the cost of such service may be reimbursable whenever the parties deem appropriate.

Article 13

Capital Financing

13.1. The commission may borrow money for any of the purposes of this compact and may issue its negotiable bonds and other evidences of indebtedness in respect thereto.

All such bonds and evidences of indebtedness shall be payable solely out of the properties and revenues of the commission without recourse to taxation. The bonds and other obligations of the commission, except as may be otherwise provided in the indenture under which they were issued, shall be direct and general obligations of the commission, and the full faith and credit of the commission are hereby pledged for the prompt payment of the debt service thereon and for the fulfillment of all other undertakings of the commission assumed by it to or for the benefit of the holders thereof.

13.2. The purposes of this compact shall include without limitation thereto all costs of any project or facility or any part thereof, including interest during a period of construction and a reasonable time thereafter and any incidental expenses (legal, engineering, fiscal, financial consultant, and other expenses) connected with issuing and disposing of the bonds; all amounts required for the creation of an operating fund, construction fund, reserve fund, sinking fund, or other special fund; all other expenses connected with the planning, design, acquisition, construction, completion, improvement, or reconstruction of any facility or any part thereof, and reimbursement of advances by the commission or by others for such purposes and for working capital.

13.3. The commission shall have no power to pledge the credit of any signatory party or of any county or municipality, or to impose any obligation for payment of the bonds upon any signatory party or any county or municipality. Neither the commissioners nor any person executing the bonds shall be liable personally on the bonds of the commission or be subject to any personal liability or accountability by reason of the issuance thereof.

13.4. Whenever the commission deems it expedient, it may fund and refund its bonds and other obligations, whether or not such bonds and obligations have matured. It may provide for the issuance, sale, or exchange of refunding bonds for the purpose of redeeming or retiring any bonds (including payment of any premium, duplicate interest, or cash adjustment required in connection therewith) issued by the commission or issued by any other issuing body, the proceeds of the sale of which have been applied to any facility acquired by the commission or which are payable out of the revenues of any facility acquired by the commission. Bonds may be issued partly to refund bonds and other obligations then outstanding, and partly for any other purpose of the commission. All provisions of this compact applicable to the issuance of bonds are applicable to refunding bonds and to the issuance, sale, or exchange thereof.

13.5. Bonds and other indebtedness of the commission shall be authorized by resolution of the commission. The validity of the authorization and issuance of any bonds by the commission shall not be dependent upon or affected in any way by: (1) the disposition of bond proceeds by the commission or by contract, commitment or action taken with respect to such proceeds; or (2) the failure to complete any part of the project for which bonds are authorized to be issued. The commission may issue

bonds in one or more series and may provide for one or more consolidated bond issues, in such principal amounts and with such terms and provisions as the commission may deem necessary. The bonds may be secured by a pledge of all or any part of the property, revenues, and franchises under its control. Bonds may be issued by the commission in such amount, with such maturities and in such denominations and form or forms, whether coupon or registered, as to both principal and interest, as may be determined by the commission. The commission may provide for redemption of bonds prior to maturity on such notice and at such time or times and with such redemption provisions, including premiums, as the commission may determine.

13.6. The commission may determine and enter into indentures providing for the principal amount, date or dates, maturities, interest rate, denominations, form, registration, transfer, interchange, and other provisions of the bonds and coupons and the terms and conditions upon which the same shall be executed, issued, secured, sold, paid, redeemed, funded, and refunded. The resolution of the commission authorizing any bond or any indenture so authorized under which the bonds are issued may include all such covenants and other provisions other than any restriction on the regulatory powers vested in the commission by this compact as the commission may deem necessary or desirable for the issue, payment, security, protection, or marketing of the bonds, including without limitation covenants and other provisions as to the rates or amounts of fees, rents, and other charges to be charged or made for use of the facilities; the use, pledge, custody, securing, application, and disposition of such revenues, of the proceeds of the bonds, and of any other moneys of the commission; the operation, maintenance, repair, and reconstruction of the facilities and the amounts which may be expended therefor; the sale, lease, or other disposition of the facilities; the insuring of the facilities and of the revenues derived therefrom; the construction or other acquisition of other facilities; the issuance of additional bonds or other indebtedness; the rights of the bondholders and of any trustee for the bondholders upon default by the commission or otherwise; and the modification of the provisions of the indenture and of the bonds. Reference on the face of the bonds to such resolution or indenture by its date of adoption or the apparent date on the face thereof is sufficient to incorporate all of the provisions thereof and of this compact into the body of the bonds and their appurtenant coupons. Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or detached from the bonds, has recourse to all of the provisions of the indenture and of this compact and is bound thereby.

13.7. No bond or its terms shall mature in more than fifty years from its own date, or on any date subsequent to the duration of this compact, and in the event any authorized issue is divided into two or more series or divisions, the maximum maturity date herein authorized shall be calculated from the date on the face of each bond separately, irrespective of the fact that different dates may be prescribed for the bonds of each separate series or division of any authorized issue.

13.8. All bonds issued by the commission under the provisions of this compact and the interest thereon shall at all times be free and exempt from all taxation by or under authority of any of the signatory parties, except for transfer, inheritance, and estate taxes.

13.9. Bonds shall bear interest at such rate as the commission determines payable annually or semiannually.

13.10. The commission may provide for the payment of the principal and interest of bonds at any place or places within or without the signatory states, and in any specified lawful coin or currency of the United States of America.

13.11. The commission may provide for the execution and authentication of bonds by the manual, lithographed, or printed facsimile signature of officers of the commission, and by additional authentication by a trustee or fiscal agent appointed by the commission. If any of the officers whose signatures or countersignatures appear upon the bonds or coupons ceases to be an officer before the delivery of the bonds or coupons, his signature or countersignature is nevertheless valid and of the same force and effect as if the officer had remained in office until the delivery of the bonds and coupons.

13.12. The commission shall have power out of any funds available therefor to purchase its bonds and may hold, cancel, or resell such bonds.

13.13. The commission may fix terms and conditions for the sale or other disposition of any authorized issue of bonds and may sell its bonds at less than their par or face value. All bonds issued and sold for cash pursuant to this compact shall be sold on sealed proposals to the highest bidder. Prior to such sale, the commission shall advertise for bids by publication of a notice of sale not less than ten days prior to the date of sale, at least once in a newspaper of general circulation printed and published in New York City carrying municipal bonds notices and devoted primarily to financial news. The commission may reject any and all bids submitted and may thereafter sell the bonds so advertised for sale at private sale to any financially responsible bidder under such terms and conditions as it deems most advantageous to the public interest, but the bonds shall not be sold at a net interest cost calculated upon the entire issue so advertised, greater than the lowest bid which was rejected. In the event the commission desires to issue its bonds in exchange for an existing facility or portion thereof, or in exchange for bonds secured by the revenues of an existing facility, it may exchange such bonds for the existing facility or portion thereof or for the bonds so secured, plus an additional amount of cash, without advertising such bonds for sale.

13.14. All bonds issued under the provisions of this compact are negotiable instruments, except when registered in the name of a registered owner.

13.15. Bonds of the commission shall be legal investments for savings banks, fiduciaries and public funds in each of the signatory states.

13.16. Prior to the issuance of any bonds, the commission may institute a special proceeding to determine the legality of proceedings to issue the bonds and their validity under the laws of any of the signatory parties. Such proceedings shall be instituted and prosecuted in rem, and the judgment rendered therein shall be conclusive against all persons whomsoever and against each of the signatory parties.

13.17. No indenture need be recorded or filed in any public office, other than the office of the commission. The pledge of revenues provided in any indenture shall take effect forthwith as provided therein and irrespective of the date of receipts of such revenues by the commission or the indenture trustee. Such pledge shall be effective as provided in the indenture without physical delivery of the revenues to the commission or the indenture trustee.

13.18. Bond redemption and interest payments, to the extent provided in the resolution or indenture, shall constitute a first, direct and exclusive charge and lien on all such rates, rents, tolls, fees, and charges and other revenues and interest thereon received from the use and operation of the facility, and on any sinking or other funds created therefrom. All such rates, rents, tolls, fees, charges and other revenues, together with interest thereon, shall constitute a trust fund for the security and payment of such bonds, and except as and to the extent provided in the indenture with respect to the payment therefrom of expenses for other purposes including administration, operation, maintenance, improvements, or extensions of the facilities or other purposes shall not be used or pledged for any other purpose so long as such bonds, or any of them, are outstanding, and unpaid.

13.19. The holder of any bond may for the equal benefit and protection of all holders of bonds similarly situated; (1) by mandamus or other appropriate proceedings require and compel the performance of any of the duties imposed upon the commission or assumed by it, its officers, agents, or employees under the provisions of any indenture, in connection with the acquisition, construction, operation, maintenance, repair, reconstruction, or insurance of the facilities, or in connection with the collection, deposit, investment, application, and disbursement of the rates, rents, tolls, fees, charges, and other revenues derived from the operation and use of the facilities, or in connection with the deposit, investment, and disbursement of the proceeds received from the sale of bonds; or (2) by action or suit in a court of competent jurisdiction of any signatory party require the commission to account as if it were the trustee of an express trust, or enjoin any acts or things which may be unlawful or in violation of the rights of the holders of the bonds. The enumeration of such rights and remedies, however, does not exclude the exercise or prosecution of any other rights or remedies available to the holders of bonds.

13.20. (a) The signatory parties shall provide such capital funds required for projects of the commission as may be authorized by their respective statutes in accordance with a cost–sharing plan prepared pursuant to Article 12 of this compact; but nothing in this section shall be deemed to impose any mandatory obligation on any of the signatory parties other than such obligations as may be assumed by a signatory party in connection with a specific project or facility.

(b) Bonds of the commission, notwithstanding any other provision of this compact, may be executed and delivered to any duly authorized agency of any of the signatory parties without public offering and may be sold and resold with or without the guaranty of such signatory party, subject to and in accordance with the constitutions of the respective signatory parties.

(c) The commission may receive and accept, and the signatory parties may make, loans, grants, appropriations, advances, and payments of reimbursable or nonreimbursable funds or property in any form for the capital or operating purposes of the commission.

Article 14

Plan, Program and Budgets

14.1. The commission shall develop and adopt, and may from time to time review and revise, a comprehensive plan for the immediate and long range development and use of the water resources of the basin. The plan shall include all public and private projects and facilities which are required, in the judgment of the commission, for the optimum planning, development, conservation, utilization, management, and control of the water resources of the basin to meet present and future needs. The commission may adopt a comprehensive plan or any revision thereof in such part or parts as it may deem appropriate, provided that before the adoption of the plan or any part or revision thereof the commission shall consult with water users and interested public bodies and public utilities and shall consider and give due regard to the findings and recommendations of the various agencies of the signatory parties, their political subdivisions, and interested groups. The commission shall conduct public hearings upon due notice given with respect to the comprehensive plan prior to the adoption of the plan or any part of the revision thereof, except that public and private projects and facilities which, in the judgment of the commission, are not required for the optimum planning, development, conservation, utilization, management, and control of the water resources of the basin and which, in the judgment of the commission, will not significantly affect the water resources of the basin, may be added directly to the comprehensive plan at any time at the discretion of the commission without public hearing thereon. The comprehensive plan shall take into consideration the effect of the plan or any part thereof upon the receiving waters of Chesapeake Bay.

14.2. The commission shall annually adopt a water resources program, based upon the comprehensive plan, consisting of the projects and facilities which the commission proposes to be undertaken by the commission and by other authorized governmental and private agencies, organizations, and persons during the ensuing six years or such other reasonably foreseeable period as the commission may determine. The water resources program shall include a systematic presentation of:

1. The quantity and quality of water resources needs for such period;

2. The existing and proposed projects and facilities required to satisfy such needs, including all public and private projects to be anticipated; and

3. A separate statement of the projects proposed to be undertaken by the commission during such period.

14.3. (a) The commission shall annually adopt a capital budget including

all capital projects it proposes to undertake or continue during the budget period containing a statement of the estimated cost of each project and the method of financing thereof.

(b) The commission shall annually adopt a current expense budget for each fiscal year. Such budget shall include the commission's estimated expenses for administration, operation, maintenance, and repairs, including a separate statement thereof for each project, together with its cost allocation. The total of such expenses shall be balanced by the commission's estimated revenues from all sources, including the cost allocations undertaken by any of the signatory parties in connection with any project. Following the adoption of the annual current expense budget by the commission, the executive director of the commission shall:

1. Certify to the respective signatory parties the amounts due in accordance with existing cost sharing established for each project; and

2. Transmit certified copies of such budget to the principal budget officer of the respective signatory parties at such time and in such manner as may be required under their respective budgetary procedures. The amount required to balance the current expense budget in addition to the aggregate amount of item 1 above and all other revenues available to the commission shall be apportioned equitably among the signatory parties by unanimous vote of the commission, and the amount of such apportionment to each signatory party shall be certified together with the budget.

(c) The respective signatory parties covenant and agree to include the amounts so apportioned for the support of the current expense budget in their respective budgets next to be adopted, subject to such review and approval as may be required by their respective budgetary processes. Such amounts shall be due and payable to the commission in quarterly installments during its fiscal year, provided that the commission may draw upon its working capital to finance its current expense budget pending remittance by the signatory parties.

Article 15

General Provisions

15.1. (a) The commission, for the purposes of this compact, may:

1. Adopt and use a corporate seal, enter into contracts, and sue and be sued in any court of competent jurisdiction;

2. Receive and accept such payments, appropriations, grants, gifts, loans, advances, and other funds, properties, and services as may be transferred or made available to it by any signatory party or by any other public or private corporation or individual, and enter into agreements to make reimbursement for all or part thereof;

3. Provide for, acquire, and adopt detailed engineering, administrative, financial, and operating plans and specifications to effectuate,

maintain, or develop any facility or project;

4. Control and regulate the use of facilities owned or operated by the commission;

5. Acquire, own, operate, maintain, control, sell and convey real and personal property and any interest therein by contract, purchase, lease, license, mortgage, or otherwise as it may deem necessary for any project or facility, including any and all appurtenances thereto necessary, useful, or convenient for such ownership, operation, control, maintenance, or conveyance;

6. Have and exercise all corporate powers essential to the declared objects and purposes of the commission.

(b) The commissioners, subject to the provisions of this compact, shall:

1. Serve as the governing body of the commission, and exercise and discharge its powers and duties, except as otherwise provided by or pursuant to this compact;

2. Determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid subject to any provisions of law specifically applicable to agencies or instrumentalities created by this compact;

3. Provide for the internal organization and administration of the commission;

4. Appoint the principal officers of the commission and delegate to and allocate among them administrative functions, powers and duties;

5. Create and abolish offices, employments, and positions as it deems necessary for the purposes of the commission, and subject to the provisions of this article, fix and provide for the qualification, appointments, removal, term, tenure, compensation, pension, and retirement rights of its officers and employees;

6. Let and execute contracts to carry out the powers of the commission.

15.2. The commission may:

1. Make and enforce rules and regulations for the effectuation, application, and enforcement of this compact; and it may adopt and enforce practices and schedules for or in connection with the use, maintenance, and administration of projects and facilities it may own or operate and any product or service rendered thereby; provided that any rule or regulation, other than one which deals solely with the internal management of the commission, shall not be effective unless and until filed in accordance with the law of the respective signatory parties applicable to

administrative rules and regulations generally; and

2. Designate any officer, agent, or employee of the commission to be an investigator or watchman and such person shall be vested with the powers of a peace officer of the state in which he is duly assigned to perform his duties.

15.3. The commission, its property, functions, and activities shall be exempt from taxation by or under the authority of any of the signatory parties or any political subdivision thereof; provided that in lieu of property taxes the commission, as to its specific projects, shall make payments to local taxing districts in annual amounts which shall equal the taxes lawfully assessed upon property for the tax year next prior to its acquisition by the commission for a period of ten years. The nature and amount of such payments shall be reviewed by the commission at the end of ten years, and from time to time thereafter, upon reasonable notice and opportunity to be heard to the affected taxing district, and the payments may be thereupon terminated or continued in such reasonable amount as may be necessary or desirable to take into account hardships incurred and benefits received by the taxing jurisdiction which are attributable to the project.

15.4. (a) All meetings of the commission shall be open to the public.

(b) The commission shall conduct at least one public hearing in each state prior to the adoption of the initial comprehensive plan. In all other cases wherein this compact requires a public hearing, such hearing shall be held upon not less than twenty days' public notice given by posting at the offices of the commission, and published at least once in a newspaper or newspapers of general circulation in the area or areas affected. The commission shall also provide forthwith for distribution of such notice to the press and by the mailing of a copy thereof to any person who shall request such notices.

(c) The minutes of the commission shall be a public record open to inspection at its offices during regular business hours.

15.5. (a) The officers of the commission shall consist of an executive director and such additional officers, deputies, and assistants as the commission may determine. The executive director shall be appointed and may be removed by the affirmative vote of a majority of the full membership of the commission. All other officers and employees shall be appointed or dismissed by the executive director under such rules of procedure as the commission may establish.

(b) In the appointment and promotion of officers and employees for the commission, no political, racial, religious, or residence test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be solely on the basis of merit and fitness. Any officer or employee of the commission who is found by the commission to be guilty of a violation of this section shall be immediately dismissed.

15.6. An oath of office in such form as the commission shall prescribe shall be taken, subscribed, and filed with the commission by the executive director and by each officer appointed by him not later than fifteen days after the appointment.

15.7. Each officer shall give such bond and in such form and amount as the commission may require, for which the commission shall pay the premium.

15.8. (a) No commissioner, officer or employee shall:

1. Be financially interested, either directly or indirectly, in any contract, sale, purchase, lease, or transfer of real or personal property to which the commission is a party;

2. Solicit or accept money or any other thing of value in addition to the compensation or expense paid him by the commission for services performed within the scope of his official duties;

3. Offer money or any thing of value for or in consideration of obtaining an appointment, promotion, or privilege in his employment with the commission.

(b) Any officer or employee who willfully violates any of the provisions of this section shall forfeit his office or employment.

(c) Any contract or agreement knowingly made in contravention of this section is void.

(d) Officers and employees of the commission shall be subject, in addition to the provisions of this section, to such criminal and civil sanctions for misconduct in office as may be imposed by federal law and the law of the signatory state in which such misconduct occurs.

15.9. Contracts for the construction, reconstruction or improvement of any facility when the expenditure required exceeds ten thousand dollars, and contracts for the purchase of services, supplies, equipment, and materials when the expenditure required exceeds five thousand dollars shall be advertised and let upon sealed bids to the lowest responsible bidder. Notice requesting such bids shall be published in a manner reasonably likely to attract prospective bidders, which publication shall be made at least thirty days before bids are received and in at least two newspapers of general circulation in the basin. The commission may reject any and all bids and readvertise in its discretion. If after rejecting bids the commission determines and resolves that in its opinion the supplies, equipment, and materials may be purchased at a lower price in the open market, the commission may give each responsible bidder an opportunity to negotiate a price and may proceed to purchase the supplies, equipment, and materials in the open market at a negotiated price which is lower than the lowest rejected bid of a responsible bidder, without further observance of the provisions requiring bids or notice. The commission shall adopt rules and regulations to provide for purchasing from the lowest responsible bidder when sealed bids, notice,

and publication are not required by this section. The commission may suspend and waive the provisions of this section requiring competitive bids whenever:

1. The purchase is to be made from or the contract to be made with the federal or any state government or any agency or political subdivision thereof or pursuant to any open and bulk purchase contract of any of them;

2. The public exigency requires the immediate delivery of the articles or performance of the service;

3. Only one source of supply is available;

4. The equipment to be purchased is of a technical nature and the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts in the public interest; or

5. Services are to be provided of a specialized or professional nature.

15.10. The commission may self–insure or purchase insurance and pay the premiums therefor against loss or damage to any of its properties; against liability for injury to persons or property; and against loss of revenue from any cause whatsoever. Such insurance coverage shall be in such form and amount as the commission may determine, subject to the requirements of any agreement arising out of the issuance of bonds by the commission.

15.11. (a) As soon as practical after the closing of the fiscal year an audit shall be made of the financial accounts of the commission. The audit shall be made by qualified certified public accountants selected by the commission, who have no personal interest direct or indirect in the financial affairs of the commission or any of its officers or employees. The report of audit shall be prepared in accordance with accepted accounting practices and shall be filed with the chairman and such other officers as the commission shall direct. Copies of the report shall be distributed to each commissioner and shall be made available for public distribution.

(b) Each signatory party by its duly authorized officers shall be entitled to examine and audit at any time all of the books, documents, records, files, and accounts and all other papers, things, or property of the commission. The representatives of the signatory parties shall have access to all books, documents, records, accounts, reports, files, and all other papers, things, or property belonging to or in use by the commission and necessary to facilitate the audit and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians.

(c) The financial transactions of the commission shall be subject to audit by the General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where the accounts of the commission are kept.

(d) Any officer or employee who shall refuse to give all required assistance and information to the accountants selected by the commission or to the authorized officers of any signatory party or who shall refuse to submit to them for examination such books, documents, records, files, accounts, papers, things, or property as may be requested shall forfeit his office.

15.12. The commission shall make and publish an annual report to the legislative bodies of the signatory parties and to the public reporting on its programs, operations, and finances. It may also prepare, publish, and distribute such other public reports and informational materials as it may deem necessary or desirable.

15.13. (a) Any or all of the signatory parties or any political subdivision thereof may:

1. Appropriate to the commission such funds as may be necessary to pay preliminary expenses such as the expenses incurred in the making of borings, and other studies of subsurface conditions, in the preparation of contracts for the sale of water and in the preparation of detailed plans and estimates required for the financing of a project;

2. Advance to the commission, either as grants or loans, such funds as may be necessary or convenient to finance the operation and management of or construction by the commission of any facility or project;

3. Make payments to the commission for benefits received or to be received from the operation of any of the projects or facilities of the commission.

(b) Any funds which may be loaned to the commission either by a signatory party or a political subdivision thereof shall be repaid by the commission through the issuance of bonds or out of other income of the commission, such repayment to be made within such period and upon such terms as may be agreed upon between the commission and the signatory party or political subdivision making the loan.

15.14. (a) The commission shall have the power to acquire by condemnation the fee or any lesser interest in lands, lands lying under water, development rights in land, riparian rights, water rights, waters and other real or personal property within the basin for any project or facility authorized pursuant to this compact. This grant of power of eminent domain includes but is not limited to the power to condemn for the purposes of this compact any property already devoted to a public use, by whomsoever owned or held, other than property of a signatory party. Any condemnation of any property or franchises owned or used by a municipal or privately owned public utility, unless the affected public utility facility is to be relocated or replaced, shall be subject to the authority of such state board, commission, or other body as may have regulatory jurisdiction over such public utility.

(b) The power of condemnation referred to in subsection (a) shall be exercised in accordance with the provisions of the state condemnation law in force

in the signatory state in which the property is located. If there is no applicable state condemnation law, the power of condemnation shall be exercised in accordance with the provisions of federal condemnation law.

(c) Any award or compensation for the taking of property pursuant to this article shall be paid by the commission, and none of the signatory parties nor any other agency, instrumentality or political subdivision thereof shall be liable for such award or compensation.

15.15. (a) The respective officers, agencies, departments, commissions, or bodies having jurisdiction and control over real and personal property owned by the signatory parties are authorized and empowered to transfer and convey in accordance with the laws of the respective parties to the commission any such property as may be necessary or convenient to the effectuation of the authorized purposes of the commission.

(b) Each political subdivision of each of the signatory parties, notwithstanding any contrary provisions of law, is authorized and empowered to grant and convey to the commission, upon the commission's request, any real property or any interest therein owned by such political subdivision including lands lying under water and lands already devoted to public use which may be necessary or convenient to the effectuation of the authorized purposes of the commission.

(c) Any highway, public utility, or other public facility which will be dislocated by reason of a project deemed necessary by the commission to effectuate the authorized purposes of this compact shall be relocated and the cost thereof shall be paid in accordance with the law of the state in which the facility is located; provided that the cost of such relocation payable by the commission shall not in any event exceed the expenditure required to serve the public convenience and necessity.

15.16. Permission is hereby granted to the commission to locate, construct, and maintain any aqueducts, lines, pipes, conduits, and auxiliary facilities authorized to be acquired, constructed, owned, operated, or maintained by the commission in, over, under, or across any streets and highways now or hereafter owned, opened, or dedicated to or for public use, subject to such reasonable conditions as the highway department of the signatory party may require.

15.17. Any person, association, or corporation who violates or attempts or conspires to violate any provisions of this compact or any rule, regulation, or order of the commission duly made, promulgated, or issued pursuant to the compact in addition to any other remedy, penalty, or consequence provided by law shall be punishable as may be provided by statute of any of the signatory parties within which the violation is committed; provided that in the absence of such provision any such person, association, or corporation shall be liable to a penalty of not less than $50 nor more than $1,000 for each such violation to be fixed by the court which the commission may recover in its own name in any court of competent jurisdiction, and in a summary proceeding where available under the practice and procedure of such court. For the purposes of this section in the event of a continuing offense each day of such violation,

attempt or conspiracy shall constitute a separate offense.

15.18. The commission shall be responsible for claims arising out of the negligent acts or omissions of its officers, agents, and employees only to the extent and subject to the procedures prescribed by law generally with respect to officers, agents, and employees of the government of the United States.

15.19. Nothing contained in this compact shall be construed as affecting or intending to affect or in any way to interfere with the law of the respective signatory parties relating to riparian rights.

15.20. Amendments and supplements to this compact to implement the purposes thereof may be adopted by legislative action of any of the signatory parties concurred in by all of the others.

15.21. The provisions of this compact and of agreements thereunder shall be severable and if any phrase, clause, sentence, or provision of the Susquehanna River Basin Compact or such agreement is declared to be unconstitutional or the applicability thereof to any signatory party, agency, or person is held invalid, the constitutionality of the remainder of such compact or such agreement and the applicability thereof to any other signatory party, agency, person, or circumstance shall not be affected thereby. It is the legislative intent that the provisions of such compact be reasonably and liberally construed.

15.22. This compact shall become binding and effective thirty days after the enactment of concurring legislation by the federal government, the states of Maryland and New York, and the Commonwealth of Pennsylvania. The compact shall be signed and sealed in five identical original copies by the respective chief executives of the signatory parties. One such copy shall be filed with the secretary of state of each of the signatory parties or in accordance with the laws of the state in which the filing is made, and one copy shall be filed and retained in the archives of the commission upon its organization.

§5–303.

(a) There is a commission consisting of 3 members to act jointly with commissions appointed for like purposes by the state of West Virginia, the commonwealths of Pennsylvania and Virginia, the District of Columbia, and an additional 3 members to be appointed by the President of the United States and which, together with the other commissions appointed as mentioned, shall constitute and be known as the Interstate Commission on the Potomac River Basin. The Commission for the State of Maryland shall consist of the Governor of the State and 2 members to be named by the Governor, who shall be actual residents in the Potomac River Drainage Basin. The terms of the members appointed by the Governor shall be 2 years, the first of the appointments of 2 members to be made on June 1, 1939, and they shall serve without compensation, but shall be paid their actual expenses incurred in and incident to the performance of their duties as set forth. This State shall contribute

to the Interstate Commission on the Potomac River Basin its pro rata share of the expenses of the Commission, which shall be the sums as may be appropriate for the purpose in the State budget.

(b) The Governor of the State is authorized and directed to execute a compact on behalf of the State of Maryland with the other states and the District referred to, who may by their legislative bodies so authorize a compact in form substantially as follows:

A COMPACT

WHEREAS, It is recognized that abatement of existing pollution and the control of future pollution of interstate streams can best be promoted through a joint agency representing the several states located wholly or in part within the area drained by any such interstate stream; and

WHEREAS, The Congress of the United States has given its consent to the states of Maryland and West Virginia, the commonwealths of Pennsylvania and Virginia, and the District of Columbia to enter into a compact providing for the creation of a conservancy district to consist of the drainage basin of the Potomac River and the main and tributary streams therein, for "the purpose of regulating, controlling, preventing, or otherwise rendering unobjectionable and harmless the pollution of the waters of said Potomac drainage area by sewage and industrial and other wastes"; and

WHEREAS, The regulation, control and prevention of pollution is directly affected by the quantities of water in said streams and the uses to which such water may be put, thereby requiring integration and co-ordination of the planning for the development and use of the water and associated land resources through co-operation with, and support and co-ordination of, the activities of federal, state, local and private agencies, groups, and interests concerned with the development, utilization and conservation of the water and associated land resources of the said conservancy district;

NOW THEREFORE, the states of Maryland and West Virginia, the commonwealths of Pennsylvania and Virginia, and the District of Columbia, hereinafter designated signatory bodies, do hereby create the Potomac Valley Conservancy District, hereinafter designated the Conservancy District, comprising all of the area drained by the Potomac River and its tributaries; and also, do hereby create, as an agency of each signatory body, the Interstate Commission on the Potomac River Basin, hereinafter designated the Commission, under the articles of organization as set forth below.

Article I.

The Interstate Commission on the Potomac River Basin shall consist of three members from each signatory body and three members appointed by the President of the United States. Said Commissioners, other than those appointed by the President, shall be chosen in a manner and for the terms provided by law of the signatory body from which they are appointed and shall serve without compensation from the Commission but shall be paid by the Commission their actual expenses incurred and incident to the

performance of their duties.

(a) The Commission shall meet and organize within thirty days after the effective date of this compact, shall elect from its number a chairman and vice-chairman, shall adopt suitable bylaws, shall make, adopt and promulgate such rules and regulations as are necessary for its management and control, and shall adopt a seal.

(b) The Commission shall appoint and, at its pleasure, remove or discharge such officers and legal, engineering, clerical, expert and other assistants as may be required to carry the provisions of this compact into effect, and shall determine their qualifications and fix their duties and compensation. Such personnel as may be employed shall be employed without regard to any civil service or other similar requirements for employees of any of the signatory bodies. The Commission may maintain one or more offices for the transaction of its business and may meet at any time or place within the area of the signatory bodies.

(c) The Commission shall keep accurate accounts of all receipts and disbursements and shall make an annual report thereof and shall in such report set forth in detail the operations and transactions conducted by it pursuant to this compact. The Commission, however, shall not incur any obligations for administrative or other expenses prior to the making of appropriations adequate to meet the same nor shall it in any way pledge the credit of any of the signatory bodies. Each of the signatory bodies reserves the right to make at any time an examination and audit of the accounts of the Commission.

(d) A quorum of the Commission shall, for the transaction of business, the exercise of any powers, or the performance of any duties, consist of at least six members of the Commission who shall represent at least a majority of the signatory bodies; provided, however, that no action of the Commission relating to policy or stream classification or standards shall be binding on any one of the signatory bodies unless at least two of the Commissioners from such signatory body shall vote in favor thereof.

Article II.

The Commission shall have the power:

(a) To collect, analyze, interpret, co-ordinate, tabulate, summarize and distribute, technical and other data relative to, and to conduct studies, sponsor research and prepare reports on, pollution and other water problems of the Conservancy District.

(b) To co-operate with the legislative and administrative agencies of the signatory bodies, or the equivalent thereof, and with other commissions and federal, local governmental and nongovernmental agencies, organizations, groups and persons for the purpose of promoting uniform laws, rules or regulations for the abatement and control of pollution of streams and the utilization, conservation and development of the water and associated land resources in the said Conservancy District.

(c) To disseminate to the public information in relation to stream pollution problems and the utilization, conservation and development of the water and associated land resources of the Conservancy District and on the aims, views, purposes, and recommendations of the Commission in relation thereto.

(d) To co-operate with, assist, and provide liaison for and among, public and nonpublic agencies and organizations concerned with pollution and other water problems in the formulation and co-ordination of plans, programs and other activities relating to stream pollution or to the utilization, conservation or development of water or associated land resources, and to sponsor co-operative action in connection with the foregoing.

(e) In its discretion and at any time during or after the formulation thereof, to review and to comment upon any plan or program of any public or private agency or organization relating to stream pollution or the utilization, conservation or development of water or associated land resources.

(f) (1) To make and, if needful from time to time, revise and to recommend to the signatory bodies, reasonable minimum standards for the treatment of sewage and industrial or other wastes now discharged or to be discharged in the future to the streams of the Conservancy District, and also for cleanliness of the various streams in the Conservancy District.

(2) To establish reasonable physical, chemical and bacteriological standards of water quality satisfactory for various classifications of use. It is agreed that each of the signatory bodies through appropriate agencies will prepare a classification of its interstate waters in the District in entirety or by portions according to present and proposed highest use, and for this purpose technical experts employed by appropriate state water-pollution control agencies are authorized to confer on questions relating to classification of interstate waters affecting two or more states. Each signatory body agrees to submit its classification of its interstate waters to the Commission with its recommendations thereon.

The Commission shall review such classification and recommendations and accept or return the same with its comments. In the event of return, the signatory body will consider the comments of the Commission and resubmit the classification proposal, with or without amendment, with any additional comments for further action by the Commission.

It is agreed that after acceptance of such classification, the signatory body through its appropriate state water-pollution control agencies will work to establish programs of treatment of sewage and industrial wastes which will meet or exceed standards established by the Commission for classified waters. The Commission may from time to time make such changes in definitions of classifications and in standards as may be required by changed conditions or as may be necessary for uniformity and in a manner similar to that in which these standards and classifications were originally established.

It is recognized, owing to such variable factors as location, size, character and flow and the many varied uses of the waters subject to the terms of this compact, that no single standard of sewage and waste treatment and no single standard of quality of receiving waters is practical and that the degree of treatment of sewage and industrial wastes should take into account the classification of the receiving waters according to present and proposed highest use, such as for drinking water supply, bathing and other recreational purposes, maintenance and propagation of fish life, industrial and agricultural uses, navigation and disposal of wastes.

Article III.

For the purpose of dealing with the problems of pollution and of water and associated land resources in specific areas which directly affect two or more, but not all, signatory bodies, the Commission may establish sections of the Commission consisting of the Commissioners from such affected signatory bodies, provided, however, that no signatory body may be excluded from any section in which it wishes to participate. The Commissioners appointed by the President of the United States may participate in any section. The Commission shall designate, and from time to time may change, the geographical area with respect to which each section shall function. Each section shall, to such extent as the Commission may from time to time authorize, have authority to exercise and perform with respect to its designated geographical area any power or function vested in the Commission, and in addition may exercise such other powers and perform such functions as may be vested in such section by the laws of any signatory body or by the laws of the United States. The exercise or performance by a section of any power or function vested in the Commission may be financed by the Commission, but the exercise or performance of powers or functions vested solely in a section shall be financed through funds provided in advance by the bodies, including the United States, participating in such section.

Article IV.

The moneys necessary to finance the Commission in the administration of its business in the Conservancy District shall be provided through appropriations from the signatory bodies and the United States, in the manner prescribed by the laws of the several signatory bodies and of the United States, and in amounts as follows:

The pro rata contribution shall be based on such factors as population, the amount of industrial and domestic pollution; and a flat service charge, as shall be determined from time to time by the Commission, subject, however, to the approval, ratification and appropriation of such contribution by the several signatory bodies.

Article V.

Pursuant to the aims and purposes of this compact, the signatory bodies mutually agree:

1. Faithful co-operation in the abatement of existing pollution and the prevention of future pollution in the streams of the Conservancy District and in the planning for the utilization, conservation and development of the water and associated land resources thereof.

2. The enactment of adequate and, insofar as is practicable, uniform legislation for the abatement and control of pollution and control and use of such streams.

3. The appropriation of biennial sums on the proportionate basis as set forth in Article IV.

Article VI.

This compact shall become effective immediately after it shall have been ratified by the majority of the legislatures of the states of Maryland and West Virginia, the commonwealths of Pennsylvania and Virginia, and by the Commissioners of the District of Columbia, and approved by the Congress of the United States; provided, however, that this compact shall not be effective as to any signatory body until ratified thereby.

Article VII.

Any signatory body may by legislative act, after one year's notice to the Commission, withdraw from this compact.

§5–304.

The Governor of the State shall appoint an alternate member for each of the 3 members of the Commission for the State of Maryland created by § 5-303 of this subtitle. Each alternate shall have power to act in the absence of the person for whom he is alternate. The term of each alternate runs concurrently with the term of the member for whom he is an alternate.

§5–401.

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

(b) "Authority" means Maryland Potomac Water Authority.

(c) "Federal government" means:

(1) The United States of America; or

(2) Any governmental agency of the United States of America.

(d) "Initial cost" means the portion of water supply costs of the project which nonfederal entities must contract to repay prior to construction of the project. Actual payment of initial cost may be extended over a 50-year period beginning when augmented flow first is available from the project.

(e) "Non-Maryland user" means a user not assessable by a represented county.

(f) "Potomac River" means the main stem and North Branch of the Potomac River and its tributaries in those reaches below the augmented average flow surface level of the main stem and North Branch.

(g) "Project" means a federally constructed dam, reservoir, and appurtenances on the North Branch of the Potomac River, commonly referred to as the Bloomington Dam project.

(h) "Represented county" means any county enumerated in this subtitle as being within the district.

(i) "The district", unless otherwise indicated in the text to mean the District of Columbia, means the area of jurisdiction of the Authority, which includes the following counties: Allegany, Frederick, Garrett, Montgomery, Prince George's, and Washington.

(j) "User" means any person who uses water from the Potomac River for any purpose without regard to whether or not the water is consumed, altered, or replaced.

§5–402.

There is a Maryland Potomac Water Authority, established as a governmental unit and body politic and corporate, vested with the authority granted under the Constitution and laws of the State. The Maryland Potomac Water Authority has and shall exercise authority to conserve, control, and use for beneficial service storm and floodwaters of the rivers and streams of the Potomac River watershed in the district. The Authority may adopt and use a corporate seal, contract, sue and be sued, and perform any other corporate act to carry out this subtitle.

§5–403.

(a) (1) The Authority consists of 10 members.

(2) The Secretary, the Director of Planning, and the General Manager of the Washington Suburban Sanitary District are ex officio, nonvoting members. These ex officio members may designate alternates from among the senior employees to represent them at meetings of the Authority when they are unable to attend.

(3) The governing body of each represented county shall appoint 1 of its members to serve as a member and 1 to serve as an alternate on the Authority at the pleasure of the governing body. Each member is a voting member except the member of the governing body of Garrett County, who is a nonvoting member until that county is assessed for payments to the Authority under the provisions of § 5-408 of this subtitle.

(4) The Governor shall appoint 1 voting member to serve at the Governor's pleasure and be chairman of the Authority.

(b) A member serves without compensation but shall be reimbursed for necessary travel expenses and disbursements incurred performing the member's official duties.

§5–404.

The unanimous vote of the voting members is required to approve any action of the Authority.

§5–405.

The Authority may appoint subcommittees and use the services of existing State and local units.

§5–406.

The Authority may contract with the federal government to acquire storage in the Bloomington Dam project to regulate the streamflow of the Potomac River for water supply subject to the provisions of the Constitution or laws of the State and the following restrictions:

(1) Reservoir regulation to increase or decrease downstream flows for water supply purposes shall conform to a schedule agreed on in writing between the Authority and the federal government;

(2) Any contract, revision, or change of any part of the agreement, prior to becoming effective, shall be reviewed by the Department and, as to legality, by the Attorney General;

(3) No hold harmless or indemnity provision made a part of any contract the Authority enters into may bind the State or any of its political subdivisions;

(4) The contract may not restrict access as provided by the Act of August 1, 1953 (67 Stat. 359); and

(5) The terms of a contract between the Authority and the federal government may be renegotiated upon their mutual agreement.

§5–407.

Except as provided in § 5-408(c) of this subtitle, the Authority may not pledge the faith and credit of the State, nor create any debt or obligation of the State. If any pledge, debt, or obligation is created, it is invalid. The members of the Authority are not liable as individuals for any contract made on behalf of the Authority.

§5–408.

(a) The Authority shall assess and collect charges for payment of the State's share of the initial cost of the project. Each represented county is assessed at a rate calculated from a cost-sharing formula based on a withdrawal ratio calculated as the sum of the average daily withdrawals from the Potomac River by all represented counties and non-Maryland users during the month of maximum withdrawal in the

preceding calendar year divided into the average daily withdrawals for the county from the Potomac River during the same month.

(b) The Authority shall assess non-Maryland users subject to appropriation requirements in § 5-502 of this title based on a rate calculated by the same means used for assessment of represented counties. The Authority shall collect assessed charges from non-Maryland users in a manner the Authority prescribes.

(c) The Authority may enter into any contract or agreement with the government of the District of Columbia for the District of Columbia to pay the Authority its equitable share of initial cost of the project. The contract shall contain provisions to which the Authority and the government of the District of Columbia agree and may include provisions to ascertain the District of Columbia's equitable share of costs, periodic revision of the amount of that share, and other cost payments by the District of Columbia. Any executed contract or agreement has full force and effect as a contract between the District of Columbia and the State.

(d) An assessment of charges shall be:

(1) Determined when the first payment is due, based on the preceding calendar year's daily withdrawal information; and

(2) Updated annually.

§5–409.

Any permit for the appropriation of water from the Potomac River the Department issues to any non-Maryland user shall include a provision for payment for the use based on the provisions of § 5-408 of this subtitle. The Department shall transfer the payment to the Authority for credit as the assessment of that non-Maryland user.

§5–410.

The Authority may issue rules and regulations to carry out its duties under this subtitle. The Authority is subject to the Administrative Procedure Act.

§5–411.

To satisfy any assessment established under § 5-408 of this subtitle, each represented county, after public hearing, may impose reasonable assessment charges on users located in the county or employ any other means of assessment and collection authorized by law for collection of taxes or assessments, including imposing liens on real or personal property.

§5–412.

The Authority may receive from the State, its political subdivisions, the federal government, or any other source funds to apply to its obligations and duties under this

subtitle. The Authority may borrow from the State and any represented county, and the State and any represented county may lend to the Authority funds the Authority requires to meet obligations under its contract with the federal government.

§5–413.

The Department shall make available to the Authority its expertise and consulting services, subject to any budgetary limitation.

§5–414.

The Authority shall prepare a budget to support its continued operation. One-half of the Authority's budget shall be requested by the Department from the General Assembly and the represented counties shall provide the other half. The Authority shall adopt a formula to determine each county's share of the budget.

§5–501.

(a) In order to conserve, protect, and use water resources of the State in accordance with the best interests of the people of Maryland, it is the policy of the State to control, so far as feasible, appropriation or use of surface waters and groundwaters of the State. Also, it is State policy to promote public safety and welfare and control and supervise, so far as is feasible, construction, reconstruction, and repair of dams, reservoirs, and other waterworks in any waters of the State.

(b) (1) In accordance with the policy declared in this section, and provided that it will not jeopardize the State's natural resources, when appropriating groundwater of the State in Carroll, Frederick, or Washington counties, the Department may give priority to a public water system that provides water to:

(i) A municipal corporation, not including those areas annexed after January 1, 2000; or

(ii) A priority funding area established on or before January 1, 2000, under § 5–7B–02(6) of the State Finance and Procurement Article.

(2) The Department may adopt regulations to implement this subsection.

(c) This subtitle is in addition to and not in substitution for any existing laws of the State.

§5–502.

(a) Every person is required to obtain a permit from the Department to appropriate or use or begin to construct any plant, building, or structure which may appropriate or use any waters of the State, whether surface water or groundwater. The permit is obtained upon written application to the Department. The applicant shall provide the Department with satisfactory proof that the proposed withdrawal of

water will not jeopardize the State's natural resources.

(b) This section does not apply to:

(1) Use of water for domestic purposes other than for heating and cooling;

(2) Use of water for agricultural purposes, if the average annual water use is less than 10,000 gallons per day, except as provided in subsection (c)(2) of this section; or

(3) Use of groundwater at an average annual water use of 5,000 gallons of water per day or less, provided that:

(i) 1. The use is not for a public water system that:

A. Serves at least 15 service connections used by year–round residents of the area served by the system; or

B. Regularly serves at least 25 year–round residents; or

2. The use will not occur within a water management strategy area established by the Department; and

(ii) The user files a notice of exemption with the Department at least 30 days before the use is proposed to begin.

(c) (1) The Department shall issue a permit to a person using water prior to July 1, 1988 for agricultural purposes upon written application to the Department.

(2) A person using less than an annual average of 10,000 gallons of water per day for agricultural purposes may apply for a permit to appropriate or use waters of the State.

(d) When the Department determines that a water supply emergency exists and available water supplies are inadequate in an area to meet the needs of all persons who have permits under this subtitle, the following uses shall have priority for appropriation or use of water in the order listed:

(1) Domestic and municipal uses for sanitation, drinking water, and public health and safety;

(2) Agricultural uses, including the processing of agricultural products; and

(3) All other uses.

(e) Notwithstanding any other provision of this subtitle, an application for a certificate of public convenience and necessity associated with power plant construction which involves use or diversion of waters of the State made to the Public

Service Commission under the Public Utilities Article constitutes an application for the permit required by this section, and the provisions of § 3–306 of the Natural Resources Article apply. If an application is made to the Public Service Commission, the hearing provided for by this subtitle is not required. All evidence relevant to the purposes of this subtitle shall be presented at the hearing held by the Public Service Commission, as required by § 7–207 of the Public Utilities Article. The permit required by this subtitle is included in the certificate of public convenience and necessity issued by the Public Service Commission.

§5–503.

(a) (1) A person shall obtain a permit from the Department to construct, reconstruct, or repair any reservoir, dam, or waterway obstruction, to make, construct, or permit to be made or constructed any change or addition to any reservoir, dam, or waterway obstruction, to make or permit to be made any change in, addition to, or repair of any existing waterway obstruction, or in any manner to change in whole or part the course, current, or cross section of any stream or body of water within the State, except tidal waters. The permit is obtained upon written application to the Department.

(2) (i) If by March 1, 1982 a flood management plan for Jones Falls is not prepared and approved and implementation begun under § 5-803 of this title, the Department shall adopt regulations limiting construction, reconstruction, or changes in the course, current, or cross section of the channel and floodplain of the Jones Falls in the Patapsco River watershed until such time as a flood management plan for Jones Falls is prepared, approved, and implemented under Subtitle 8 of this title.

(ii) Regulations adopted pursuant to this paragraph may not apply:

1. To floodproofing of any existing structure; or

2. If use of the Pennington Avenue sanitary landfill site in Baltimore City as a sanitary landfill is terminated by the end of May 1, 1981, to any construction, reconstruction, development, or use of those properties in Baltimore City comprising and known as the Woodberry Quarry sanitary landfill site.

(3) Due to variances in floodplain measurements, a new residential permit for construction in the Jones Falls floodplain within 25 feet adjacent to the floodplain may not be approved or issued until the flood management plan for the Jones Falls is prepared, approved, and implemented under Subtitle 8 of this title.

(4) Regulations adopted by the Department as required under paragraph (2) of this subsection shall be null and void if the Department determines that a flood management plan for the Jones Falls in the Patapsco River has been adopted and implemented.

(b) (1) A person is exempt from the requirement of obtaining a permit from the Department if:

(i) The plans and specifications are approved by the appropriate soil conservation district;

(ii) The pond is not located within drainage of the Gwynns Falls, Jones Falls, or Herring Run streams situated in or adjacent to Baltimore City;

(iii) The pond meets minimum standards for safety set forth in Department rules and regulations;

(iv) The contributory drainage area is less than 1 square mile (640 acres);

(v) The dam is not greater than 20 feet in height measured vertically from the lowest point on the top of the dam to the lowest point on the upstream toe of the dam;

(vi) The pond is a low hazard structure the failure of which is unlikely to cause loss of life or property damage; and

(vii) The pond is not a wastewater stabilization pond.

(2) The soil conservation district shall notify the Department of any pond approved under this subsection. Nothing in this subsection is a limitation on the Department's authority under this subtitle.

(c) The Department, by regulation, may designate interjurisdictional watersheds in which any impoundment proposal is subject to review and approval by the Department for standards relating to safety and flood control. Gwynns Falls, Jones Falls, and Herring Run, situated in or adjacent to Baltimore City are designated interjurisdictional watersheds.

(d) The provisions of this section do not restrict or limit the Department's jurisdiction over waste treatment structures, including but not limited to dams, impoundments, ponds, and lagoons or limit the applicability of any other laws administered by the Department.

(e) Agricultural drainage systems, for the purpose of lowering the level of water in the soil, with a total drainage area of 2,500 acres or less are exempt from the requirement of obtaining a permit from the Department, except that drainage systems financed or managed by a public drainage association are exempt from this requirement only if plans for construction, operation, and maintenance have been approved by the Secretary of Agriculture under § 8-603 of the Agriculture Article.

(f) The periodic maintenance of agricultural drainage systems constructed under the auspices of a public drainage or watershed association is exempt from the requirement of obtaining a permit from the Department if:

(1) The maintenance is performed in accordance with a permit from the

Department for the original construction or reconstruction of the drainage system; or

(2) The maintenance is performed in accordance with an operation and maintenance plan approved by the local soil conservation district and the Secretary of Agriculture under § 8-603 of the Agriculture Article.

(g) The removal or demolition of residential structures is exempt from any permit requirement of this section.

§5–504.

A person shall obtain a permit from the Department to construct, reconstruct, change, or make an addition to any conduit, pipeline, wire cable, trestle, or other device, structure, or apparatus in, under, through, or over the bed or waters of the Potomac River. The permit is obtained upon written application to the Department. Obtaining, using, and holding this permit is subject severally to the provisions concerning permits found elsewhere in this subtitle.

§5–505.

Each application for a permit required by this subtitle shall be accompanied by maps, drawings, and specifications of proposed use or waterway obstruction, changes, additions, or repairs proposed to be made, and other data and information the Department requires.

§5–506.

(a) Upon application for a permit under this subtitle, and except as otherwise provided in this section, the procedures in § 5–204 of this title shall apply.

(b) Under the following conditions, the Department may waive the notice requirements and the holding of a public informational hearing on a permit application:

(1) If there is an emergency or a request to make minor repairs, the Department, upon written or oral application, may grant an application to repair any reservoir, dam, or waterway obstruction without notice or hearing. Repair necessary to save life or property may be made without an application, but notice shall be given promptly to the Department;

(2) If plans of other projects which conform to water resources development plans accepted and adopted by the Department were subject to public hearing, and the Department's review finds no changed conditions in them since the last public review and comment to justify another hearing;

(3) If temporary structures constructed to provide access across streams during construction operations or to trap sediment or achieve another similar purpose meet minimum design standards the Department establishes, and are removed completely, in a manner acceptable to the Department, within 6 months after need for

the structure is terminated;

(4) If the requested waterway construction permit is for temporary excavation, filling, or grading for the installation of utilities which meet minimum design standards acceptable to the Department and preconstruction contours which are to be reestablished upon installation of the utility;

(5) If the requested waterway construction permit is for clearing and grading activities disturbing less than 5,000 square feet of land area and disturbing less than 100 cubic yards of earth; or

(6) If the requested waterway construction permit is for livestock crossing of a stream.

(c) If contiguous property owners and interested persons who receive periodic reports are notified under § 5–204 of this title, the Department may waive the notice requirements of this section and the holding of a public informational hearing on a permit application for roads, bridges, or culverts if they meet minimum design standards acceptable to the Department and construction does not adversely affect known water resources projects.

(d) The Department shall waive notice requirements and the holding of a public hearing if the requested appropriation or use of waters of the State is for an agricultural use in effect prior to July 1, 1993.

(e) Notwithstanding any other requirement of this section:

(1) The Department may waive the notice and hearing requirements of this section if the appropriation requested is for:

(i) An average annual water use of 10,000 gallons per day or less; or

(ii) A construction dewatering project; and

(2) The Department may waive the holding of a public informational hearing if the requested appropriation or use of waters of the State is greater than an average annual water use of 10,000 gallons per day but less than an average annual water use of 50,000 gallons per day.

§5–507.

(a) Before acting on any permit application, the Department shall weigh all respective public advantages and disadvantages and make all appropriate investigations. If the Department believes from the evidence before the Department and based upon State water resources policy declared in this subtitle that the applicant's plans provide greatest feasible utilization of the waters of the State, adequately preserve public safety, and promote the general public welfare, the Department shall grant the permit to appropriate or use the waters, construct,

reconstruct, or repair the proposed reservoir, dam, or waterway obstruction, or accomplish any combination of these objectives. If the Department believes from the evidence before the Department that the proposed appropriation or use of State waters or proposed construction is inadequate, wasteful, dangerous, impracticable or detrimental to the best public interest, the Department may reject the application or suggest modifications to the proposed plans to protect the public welfare and safety.

(b) (1) In granting any permit to appropriate or use water or construct any reservoir, dam or waterway obstruction, the Department may include any condition, term, or reservation concerning the character, amount, means, and manner of the appropriation or use or method of construction necessary to preserve proper control in the State and insure the safety and welfare of the people of the State. The Department may determine and specify what provisions to make, if any, in each permit granted to construct a dam or other waterwork for passage of fish.

(2) Any measuring and reporting of water use required of a permittee by the Department shall be effective and reasonable under the circumstances.

(3) Any regulations concerning measuring and reporting of agricultural water use or determination of aquifer or stream flow characteristics prior to issuance of a water appropriation permit for an agricultural water use shall be adopted by the Department with the advice and consent of the Secretary of Agriculture.

§5–508.

(a) Appropriation or use of any waters of the State, construction or beginning construction, making or beginning any change, addition, reconstruction, or repair of any reservoir, dam or waterway obstruction, only shall be in conformity with any term, condition, regulation, or restriction of the Department's permit or with any regulation the Department prescribes concerning any construction, change, addition, or repair.

(b) (1) Any term, condition, regulation, or restriction imposed on an appropriation or use of waters of the State or on a reservoir, dam, waterway obstruction, or change in the course, current, or cross section of any stream, through a permit issued pursuant to this subtitle, shall be binding on the owner of the permitted land or facility at the time the permit is issued and on any heirs, successors, or assigns of the owner's interest in the land or facility.

(2) As a condition of permit issuance or renewal under this subtitle to construct, reconstruct, change, add to, or repair any dam or reservoir, the Department shall require the owner of the permitted land or facility to record, in accordance with §§ 3-102 and 3-103 of the Real Property Article, a memorandum prepared by the Department of the terms, conditions, regulations, or restrictions applicable to that land or facility. The recording shall be at the expense of the landowner.

§5–509.

(a) On complaint or the Department's own initiative, the Department may

investigate or examine any reservoir, dam, or similar waterway construction. If the Department determines that the reservoir, dam, or similar waterway construction is unsafe, needs repair, or should be removed because the reservoir, dam, or similar waterway construction is unsafe and not repairable, the Department shall notify the owner in writing to repair or remove the object, as the situation warrants. The repair or removal work shall be completed within a reasonable time, which time shall be prescribed in the Department's notice.

(b) If the work is not completed in the time prescribed in the notice, the Department may have the work completed at the expense of the owner. The Department shall charge the owner for this expense, and if the repayment is not made within 30 days after written demand, the Department may bring an action in the proper court to recover this expense.

(c) This section does not apply to farm ponds used for agricultural purposes.

§5–510.

(a) Except for permits issued for the appropriation or use of water for agricultural purposes, the Department shall prescribe a time limit not exceeding 2 years from the grant of a permit, during which construction, reconstruction, or repair shall begin or appropriation or use of water shall be completed.

(b) The Department shall prescribe a time limit, not more than 5 years from the grant of any permit, during which construction, reconstruction, or repair of reservoirs, dams, or waterway obstruction shall be completed.

(c) The Department may extend a permit-time limit for good cause shown.

§5–511.

The Department shall review triennially every appropriation and use of water for which a required permit is granted, to ascertain if the appropriation and use of water is being made according to quantity limitations and other conditions established by permit. Unless a permit is for the periodic appropriation or use of water for agricultural purposes, the Department shall correct a permit where the total quantity of water permitted to be appropriated and used is not used or needed.

§5–512.

(a) The provisions of this subtitle do not amend or repeal:

(1) Any law relating to the Public Service Commission or to water and water structures; or

(2) Any act or parts of acts consistent with the provisions of this subtitle.

(b) The provisions of this subtitle do not impair any riparian or other vested

right, nor amend, repeal, limit, impair, or alter any right, power, or privilege granted by the General Assembly to the Mayor and City Council of Baltimore to appropriate or use any river, stream, or water in the State to augment and improve the municipal water supply of Baltimore City.

§5–513.

On application of the Department, verified by oath or affirmation, the circuit court for any county, sitting in equity, may enforce by injunction, compliance with, or restraint from violating or attempting to violate any provisions of this subtitle or any Department order, notice, or regulation made under this subtitle.

§5–514.

(a) (1) In addition to being subject to an injunctive action under this subtitle, a person who violates any provision of this subtitle relating to water appropriation and use or any rule, regulation, order, or permit adopted or issued under any such provision is liable for a civil penalty not exceeding $5,000 per violation to be collected in a civil action brought by the Department.

(2) Each day a violation occurs or continues is a separate violation under this subsection.

(3) (i) Before bringing a civil action against a local government under this subsection, the Department shall meet and consult with the local government to seek an alternative resolution to the contested issue.

(ii) Prior consultation by the Department with the local government shall constitute compliance with this subsection.

(b) A person who violates a provision of this subtitle or a regulation adopted under this subtitle is subject to the penalties provided in § 9–343 of this article.

(c) All funds collected by the Department under this section, including any civil penalty or any fine imposed by a court under the provisions of this section, shall be paid into the Maryland Clean Water Fund.

§5–515.

(a) After or concurrently with the service of a complaint under this subtitle relating to water appropriation and use, the Department may:

(1) Issue an order that requires the person to whom the order is directed to take corrective action within a time set in the order;

(2) Send a written notice that requires the person to whom the notice is directed to file a written report about the alleged violation; or

(3) Send a written notice that requires the person to whom the notice is directed:

(i) To appear at a hearing before the Department at a time and place the Department sets to answer the charges in the complaint; or

(ii) To file a written report and also to appear at a hearing before the Department at a time and place the Department sets to answer the charges in the complaint.

(b) Any order issued under this section is effective immediately, according to its terms, when it is served.

§5–516.

(a) The Department shall give notice and hold any hearing related to orders imposed under the water appropriation and use provisions of this subtitle in accordance with the Administrative Procedure Act.

(b) (1) Within 10 days after being served with an order under § 5–515(a)(1) of this subtitle, the person served may request in writing a hearing before the Department.

(2) (i) Subject to subparagraph (ii) of this paragraph, if a request for a hearing on an order is made under this subsection, the Department shall:

1. Hold the hearing promptly after receiving the request; and

2. Render a decision promptly after the hearing.

(ii) If a request for a hearing on an order is made under this subsection and the Department alleges in the order that there is an imminent threat or danger to the public health or safety or to the environment, the Department shall:

1. Hold the hearing within 10 days after receiving the request; and

2. Render a decision within 10 days after the hearing.

(c) Within 10 days after being served with a notice under § 5–515(a)(2) of this subtitle, the person served may request in writing a hearing before the Department.

(d) The Department may make a verbatim record of the proceedings of any hearing held under this subtitle.

(e) (1) In connection with any hearing under this subtitle, the Department may:

(i) Subpoena any person or evidence; and

(ii) Order a witness to give evidence.

(2) A subpoenaed witness shall receive the same fees and mileage reimbursement as if the hearing were part of a civil action.

(3) If a person fails to comply with a subpoena or order issued under this subsection, on petition of the Department, a circuit court, by order, may:

(i) Compel obedience to the Department's order or subpoena; or

(ii) Compel testimony or the production of evidence.

(4) The court may punish as contempt any failure to obey its order issued under this section.

§5–5B–01.

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

(b) "Expanded water appropriation permit" means a revised permit granting a significant increase in the withdrawal of water authorized under the existing water appropriation permit.

(c) "Public water system" has the meaning stated in § 9–401 of this article and is a water system located in the State.

(d) "Water conservation" means the use of practices, techniques, and technologies that:

(1) Reduce the consumption, loss, or waste of water;

(2) Improve efficiency in the use of water; or

(3) Make more efficient use of water treatment infrastructure.

§5–5B–02.

This subtitle applies to public water systems serving at least 10,000 individuals that:

(1) Apply for a new or expanded water appropriation permit; or

(2) Apply for State financial assistance including the Maryland Water Quality Revolving Loan Fund as provided in § 9-1605 of this article and any other State funding source.

§5–5B–03.

It is the policy of the State of Maryland to:

(1) Encourage investment in cost-effective measures that improve the efficiency with which water is used, treated, stored, and transmitted in the State;

(2) Reduce costs associated with treating, storing, and transmitting water; and

(3) Protect the State's natural resources, including the fish and wildlife of the Potomac River, the Chesapeake Bay, and all other waters and waterways of the State.

§5–5B–04.

(a) When applying for a new or expanded water appropriation permit or State financial assistance, public water systems shall include a description of best management practices currently in use, or to be implemented, for improving water conservation and the efficiency with which water is used, treated, stored, and transmitted. The application shall also include a schedule for the implementation of best management practices.

(b) Best management practices may include the following:

(1) Practices designed to measure the amount of water conveyed through the system's infrastructure to water users, such as universal metering;

(2) Audits of large-volume users;

(3) Reuse and recycling of water for nonpotable, nonresidential applications;

(4) Management of system pressure to reduce usage;

(5) Retrofit programs;

(6) Efficiency in landscape design and irrigation techniques;

(7) Wastewater reclamation and recycling programs;

(8) Fixture replacement programs;

(9) Water and wastewater pricing structures that encourage improved efficiency;

(10) Rebates and other financial incentives;

(11) An education program for users designed to promote increased efficiency and conservation; and

(12) Promotion or adoption of local water-use ordinances that encourage water conservation.

§5–5B–05.

(a) In reviewing requests for new or expanded water appropriation permits by public water systems, as defined by this subtitle, the Department shall consider existing local initiatives and voluntary efforts and best management practices set forth for implementation within a permit application.

(b) In reviewing and prioritizing requests by public water systems, as defined by this subtitle, for State financial assistance through the Maryland Water Quality Revolving Loan Fund under § 9-1605 of this article and other State funding sources, the Department shall consider local initiatives and voluntary efforts, and the best management practices set forth for implementation within a financial assistance application.

(c) On or before October 1, 2003, the Department shall issue guidelines to public water systems on best management practices for improving water conservation and efficiency in water use, treatment, storage, and transmission, including:

(1) Costs and cost-savings associated with implementing examples of specific best management practices;

(2) Water conservation associated with implementing specific best management practices; and

(3) Priority eligibility for funding through State financial resources for drinking water and wastewater treatment improvements including the Maryland Water Quality Revolving Loan Fund under § 9-1605 of this article and other State or federal financial assistance when best management practices are implemented.

(d) The Department may adopt regulations to establish the minimum increase in the amount of water to be withdrawn under an expanded water appropriation permit that requires compliance with this subtitle.

§5–601.

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

(b) "Construction" means any clearing, grading, excavation, building, or the commencement of any of these activities.

(c) "Department" means the Department of the Environment.

(d) "Exploratory activities" means any activity involving the drilling of test wells for geothermal resources.

(e) (1) "Geothermal resources" means the natural heat of the earth higher than 120 degrees Fahrenheit or 49 degrees centigrade, or the energy, in whatever form, below the surface of the earth present in, resulting from, or created by, or which may

be extracted from, this natural heat, the natural or artificial medium containing that heat, and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases, and steam, in whatever form, found below the surface of the earth.

(2) "Geothermal resources" do not include oil, hydrocarbon gas, and other hydrocarbon substances.

(f) "Person" includes corporations, companies, associations, firms, partnerships, joint stock companies, individuals, and government agencies.

(g) "Well" means any excavation or other alteration of the earth's surface or crust by means of which geothermal resources may be obtained.

§5–602.

(a) Geothermal resources are a natural resource in the State which possess great potential value for the State and the nation as a whole.

(b) In exploring and developing geothermal resources, maximum possible consideration shall be afforded to:

(1) Avoiding waste and unreasonable use of natural resources;

(2) Protecting the environment; and

(3) Optimizing the productive use of the resource.

§5–603.

(a) The Department shall be responsible for the management and regulation of the geothermal resources in the State.

(b) The Department may contract for research and scientific investigation in order to determine the potential of the geothermal resources in the State.

(c) The Department may conduct and participate in development projects designed to demonstrate the feasibility of utilizing the State's geothermal resources.

(d) The Department may use any funds made available for the purpose of exploring, analyzing, developing, and using geothermal resources.

(e) The Department may establish reasonable fees to cover the cost of processing permit applications.

(f) The Department shall adopt regulations necessary to assure safe and efficient undertaking of any operation to bore, core, dig, or construct a well. These regulations may allow for reinjection if there is adequate determination that the reinjection would maintain the integrity of the supply.

(g) The Department may adopt regulations necessary to implement this subtitle.

§5–604.

(a) Every person is required to obtain a permit from the Department before conducting any geothermal resource exploratory activities. The applicant for this permit must have the legal right to use the surface. The permit is obtained upon written application to the Department.

(b) The application shall state the intended location of exploration, give assurance of the applicant's right to use the surface for exploration, provide an exploratory work program, and provide any information requested by the Department.

(c) The Department may approve an application if the Department determines that:

(1) The applicant is qualified to conduct exploratory work;

(2) The applicant will comply with all applicable laws; and

(3) The applicant's work program provides adequate protection for the natural resources of the State.

(d) The permit required by this section shall be in lieu of any permit required by Subtitle 5 of this title or Title 9, Subtitle 13 of this article.

§5–605.

(a) A person shall obtain a permit from the Department to appropriate or use or to construct any well, plant, building, or structure which may appropriate or use geothermal resources of the State. The permit is obtained upon written application to the Department. The applicant for the permit must have the legal right to use the surface and give assurance of this right.

(b) The application shall be accompanied by the following information and any other information as required by the Department:

(1) A project description specifying:

(i) What is planned to be constructed, its purpose, use, location, estimated cost, and size; and

(ii) The methods of construction, construction schedule, and operation procedure;

(2) A list of licenses, permits, or other approvals required by any government unit;

(3) Detailed information as to the need for the use and facts concerning alternate site locations as may be requested by the Department; and

(4) Information providing proof of the discovery of a geothermal resource and an evaluation of the resource.

(c) After public notice and opportunity for public hearing, the Department may issue a permit for the appropriation or use of geothermal resources if the Department finds that the applicant has demonstrated that the use:

(1) Conforms with and meets all applicable air, water, and noise laws of the State;

(2) Conforms with all applicable State and local plans;

(3) Would have no material adverse effect upon the natural environment of the area, its scenic or natural beauty, rare or irreplaceable resources, or unique historic site;

(4) Would not be so located, constructed, or operated as to have a material adverse effect upon the public health, safety, or welfare;

(5) Would not be a potential or immediate undue burden on the water supply of the site or region; and

(6) Would not cause an unreasonable rate of resource exhaustion.

(d) The permit required by this section shall be in lieu of any permit required by Subtitle 5 of this title or Title 9, Subtitle 13 of this article.

§5–606.

After receiving notification from the Department that an application for an exploratory or appropriation permit has been approved, but prior to commencing any construction, the applicant shall file a bond with the Department. The amount of the bond shall be determined by the Department. The bond shall be conditioned that the applicant will faithfully perform every requirement of this subtitle and regulations issued pursuant to this subtitle. The bond shall be executed by the applicant and a corporate surety licensed to do business in the State. The provisions of this section do not apply to the State, political subdivisions, or municipalities.

§5–607.

A request for judicial review of the Secretary's action on any application shall be made within 30 days after the decision has been rendered. Proceedings shall be filed in the circuit court having jurisdiction in which the facility or any part of the facility is to be situated.

§5–608.

(a) Any person who violates any provision of this subtitle may be enjoined by a court of competent jurisdiction upon application of the Department acting through the Attorney General.

(b) Any person who violates any provision of this subtitle or any permit or order issued under this subtitle is liable to a penalty not exceeding $10,000, as well as being subject to being enjoined as provided in subsection (a) of this section. The monetary penalty provided may be recovered in a civil action by the Department through the Attorney General.

§5–609.

(a) This subtitle shall be liberally construed to effectuate its intents and purposes.

(b) This subtitle may not be construed to be in derogation of any powers or State laws, but shall be regarded as supplemental and in addition to powers conferred by other laws.

§5–701.

(a) The Department is responsible for developing and carrying out a long range program for controlling flood waters in the State. In addition, the Department shall cooperate with the federal and local governments to control State flood waters and serve in a liaison capacity to these governments in any flood control matter.

(b) The Department shall provide technical assistance to local governments and other State units to interpret flood information and draft local land use and other regulations pertaining to areas subject to flooding. It shall review plans for local public works and exercise regulatory control over them in or on waters of the State as provided in Subtitle 5 of this title. The Department shall administer financial assistance for flood control as funds for this purpose are made available.

§5–702.

(a) When need arises in the State for water-supply storage or storage for streamflow regulation for quality control, either or both of which can be provided by a federally constructed reservoir, and cost of storage is nonreimbursable when used for streamflow regulation, or is to be repaid by nonfederal interest when used for water supply, the Department, after consulting with concerned units and jurisdictions, shall estimate:

(1) The amount of water-supply storage required to meet both initial and future needs in the potential service area within the State; and

(2) The need for and benefits of storage for regulation of streamflow for

quality control.

(b) The Department shall contract with appropriate federal authorities to obtain reimbursement of costs for initial water supply and furnish reasonable assurance that costs allocated to future water supply for use in the State will be repaid. When future water supply is required, the Department shall contract with federal authorities for reimbursement.

§5–703.

In carrying out its responsibility for water resources planning, development, and management, the Department shall cooperate with federal, State, and local agencies in any water resources project or program affecting waters of the State. The Department shall administer available financial assistance for these projects or programs. In furtherance of the Department's responsibility under this section, when local entities agree to pay all other nonfederal costs and operate and maintain structures installed using federal assistance authorized under the Watershed Protection and Flood Prevention Act, the Department shall consider the following:

(1) A contribution by the State of up to 50% of the nonfederal share of approved projects under PL 566;

(2) Using funds in programs or projects for flood control, recreation, fish and wildlife, water supply, and flow augmentation; and

(3) Limiting State participation to land acquisition for dams and impounded areas and construction of dams. Additional land beyond the flood pool level, access roads, and recreational facilities may not be part of the program or project.

§5–704.

When the General Assembly determines that it is necessary to acquire interests or rights in real property for sound and proper land and watershed management or for any other purpose in the public interest, the State may acquire these interests or rights by purchase, gift, grant, or lease of any property interest. To achieve these purposes the Department may receive, expend, and otherwise administer any contribution, donation, or appropriation which is made available by the United States, the State, any political subdivision, or any person.

§5–801.

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

(b) "Area of nontidal inundation" means an area within the State which is subject to inundation caused predominately by accumulated surface runoff or excess rainfall runoff, or both.

(c) "Area of tidal inundation" means an area within the State which is subject

to inundation caused predominately by tides or wind-driven waters, or both.

(d) "Department" means the Department of the Environment.

(e) "Federal flood insurance program" means the program established by the National Flood Insurance Act of 1968, as amended.

(f) "Flood hazard area" means an area of tidal or nontidal inundation resulting from a 100-year flood event and established pursuant to the provisions of § 5-803 of this subtitle.

(g) "100-year flood event" or "100-year flood" means a flood that has a 1% chance of being equalled or exceeded in any given year.

(h) "Secretary" means the Secretary of the Environment.

(i) "Subdivision" means:

(1) Any county, including Baltimore City; and

(2) Any incorporated municipality which has the authority to adopt and enforce land use and control measures for the areas within its jurisdiction.

§5–802.

(a) The General Assembly finds and declares that:

(1) Recurrent flooding of a portion of the State's land resources causes loss of life, damage to property, disruption of commerce and governmental services, and unsanitary conditions, all of which are detrimental to the health, safety, welfare, and property of the occupants of flood hazard areas of the State;

(2) Considerable public costs are incurred through the emergency preparedness program and by replacing public utilities and other public capital investments destroyed or damaged by floods;

(3) Flood waters disregard jurisdictional boundaries; and

(4) The public interest necessitates management of waters and flood hazard areas for the objectives of preventing and alleviating flood threats to life and health, reducing private and public economic losses, and to the extent possible, preserving the biological values associated with these land and water resources.

(b) The policy and purposes of this subtitle are:

(1) To assist in the guidance of development to minimize the impacts of flooding;

(2) To provide State guidelines and technical assistance to local

governments in management of flood hazard areas;

(3) To provide for comprehensive watershed management;

(4) To facilitate implementation of projects for flood control;

(5) To encourage and provide for local governmental units to manage flood-prone lands in a comprehensive manner;

(6) To provide for the biological and environmental quality of the watersheds of the State; and

(7) To establish a grant program to assist local jurisdictions with implementation of those capital projects included within the comprehensive flood management plans which are adopted and approved in accordance with this subtitle.

§5–803.

(a) By January 1, 1982 the Department, after consultation with and consideration of recommendations submitted by subdivisions and the Department of Agriculture and the Department of Planning, shall designate a priority list of watersheds for the purpose of flood control planning and management and establish a schedule for completion of studies of these watersheds.

(b) (1) The Department, in cooperation with the subdivisions and the Department of Agriculture and the Department of Planning, shall conduct studies of the watersheds designated pursuant to subsection (a) of this section which shall define at least:

(i) The existing magnitude and frequency of flood events;

(ii) The magnitude and frequency of flood events based on planned development; and

(iii) Alternative management techniques according to their effectiveness in controlling floods and minimizing flood damage.

(2) The studies shall address at least the 100-year flood event.

(3) By mutual agreement, the Department may delegate the responsibility for carrying out all or part of the studies of priority watersheds to the appropriate subdivisions.

(c) As a part of the study undertaken under subsection (b) of this section, the Department shall delineate the flood hazard areas on maps showing areas of tidal and nontidal inundation.

(d) (1) By July 1, 1990 each subdivision, in cooperation with the Departments

of the Environment and Agriculture, the Department of Planning, and other appropriate State agencies, shall prepare a flood management plan based upon an evaluation of the alternative management techniques and other findings included in studies conducted under subsection (b) of this section. Each flood management plan shall be consistent with the purposes and provisions of this subtitle.

(2) Management techniques may include:

(i) Flood control dams;

(ii) Levees and dikes;

(iii) Stormwater detention or retention structures;

(iv) Public acquisition;

(v) Flood proofing;

(vi) Storm drain and stream maintenance;

(vii) Tax adjustment policies;

(viii) Subdivision, zoning, and related ordinances; and

(ix) Other practical methods.

(3) Management techniques shall include flood warning systems.

(e) In any interjurisdictional watershed, those portions of the flood management plans of the subdivisions relating to the watershed shall be subject to review and approval by the Department as one plan. Any comprehensive flood management plan which includes a project for which grant funds are requested under this section is subject to review and approval by the Department. If a plan is disapproved, the Secretary shall set forth in writing the reason for disapproval. Disapproval of a plan shall be based only on flood management considerations.

(f) The Department and the subdivisions shall coordinate activities under this section with all related programs, including the national flood insurance program, the sediment control program, and the State water pollution control and abatement programs.

(g) (1) Each subdivision shall implement the flood management plan for its watershed. If a subdivision so elects, the Department, in consultation with the subdivision, shall prepare the regulations to implement the flood management plan. The subdivision shall adopt these regulations. If a municipality elects and the county agrees, the county, in consultation with the municipality, shall prepare the regulations. If the county does not agree, the Department, in consultation with the municipality, shall prepare, if requested, the regulations. The municipality shall

adopt the regulations prepared for the municipality. Implementation of the flood management plans shall begin within 1 year after they are completed.

(2) (i) Baltimore City and Baltimore County shall include in the flood management plan for the Jones Falls watershed and adopt regulations prohibiting any person from erecting any new residential structure or any substantial residential structural changes which would constitute any amount of encroachment into the 100-year floodplain of the nontidal Jones Falls, and requiring all new nonresidential structures or improvements, except flood control projects, to be elevated above the 100-year flood elevation. However, these restrictions may be construed not to apply to any public works project of Baltimore City, Baltimore County, or the State.

(ii) In issuing any manner of permit or approval to any person to modify or renovate any existing structure or to modify the use of any open land area in the 100-year floodplain of the nontidal Jones Falls, Baltimore City or Baltimore County shall impose conditions to require that risk of injury to persons or property shall be minimized to the greatest extent practicable.

(h) (1) There is a comprehensive flood management grant program within the Department.

(2) Subject to the approval of the Board of Public Works, the Department may use proceeds from the State debt created to fund the comprehensive flood management grant program to pay the entire cost of watershed studies pursuant to subsection (b) of this section. The Department may provide grants to subdivisions to pay the entire cost of watershed studies when the Department delegates that responsibility pursuant to subsection (b) of this section.

(3) Subject to the approval of the Board of Public Works, the Department may provide grants to subdivisions for flood control and watershed management capital projects, and for the capital costs related to design, purchase, and installation of automated flood warning projects, provided that the projects are consistent with the plans and implementation prepared and adopted in accordance with this subtitle, and provided further that each project:

(i) Is undertaken as part of a comprehensive flood management plan prepared and adopted by the subdivision; and

(ii) Is not inconsistent with any State or interjurisdictional flood management plan.

(4) Grants for automated flood warnings projects shall be conditioned to require all affected local governing bodies:

(i) To adopt a specific and compatible response plan which has been coordinated with local emergency management authorities and reviewed and approved by the Department and the Maryland Emergency Management Agency; and

(ii) To provide for financial and other commitments to properly operate and maintain the project.

(5) (i) Subject to the approval of the Board of Public Works, the Department may provide grants to subdivisions immediately after a flood for acquisition of any flood damaged owner-occupied dwelling.

(ii) Total expenditures for grants made under this paragraph may not exceed 50% of the total authorized budgeted funds in a fiscal year for grants under this subsection.

(6) (i) The amount of any grant made by the Department for a flood control and watershed management capital project which involves only nonfederal funds and meets the criteria of this subtitle shall be matched by a minimum amount of 25% of project costs in local government or private funds.

(ii) For a flood control and watershed management capital project which involves federal funding and meets the criteria of this subtitle:

1. The Department may provide up to 50% of the nonfederal share of the project funding; and

2. Local government or private funds shall provide not less than 50% of the nonfederal share of the project funding.

(7) To receive a grant, the subdivision must participate in the national flood insurance program.

(8) Before making a grant, the Department, in cooperation with the Department of Planning, shall review the flood control and watershed management operations of the applicant subdivision to assure that the flood control and watershed management operations are in compliance with this subtitle.

(9) The Department, in consultation with the Department of Planning, shall adopt regulations necessary for the administration of the grant program. These regulations may include:

(i) A determination of statewide and interjurisdictional needs and priorities;

(ii) Standards of eligibility for applicants and projects;

(iii) Criteria for recognition of tidal and nontidal areas;

(iv) Engineering and economic standards and alternatives; and

(v) Procedures for filing and processing contents of applications.

(10) Each project application shall be submitted to and reviewed by the State clearinghouse of the Department of Planning in accordance with established clearinghouse procedures.

§5–804.

(a) The Department shall assure that State construction projects and State-assisted construction projects meet the requirements of this subtitle.

(b) The Department shall evaluate the effects of changes in the character of the watersheds. In order to assist the Department, the subdivisions shall provide the Department with information on local development, changes in land use, and other physical changes. The Department is the depository for all flood-related data and activities with regard to the provisions of § 5-803 of this subtitle.

(c) The Department periodically shall review the maps of flood hazard areas and local activities undertaken pursuant to this subtitle to determine whether its provisions are being adhered to.

§5–805.

(a) Each subdivision shall take measures to enforce the provisions of this subtitle within its jurisdiction, including the enactment of a local law prescribing a civil penalty in the form of a fine not exceeding $500 for each day of violation of any local law the subdivision enacts to implement this subtitle. The local law shall provide that each day upon which a violation occurs or continues constitutes a separate offense. The local law shall provide that the total civil penalty may not exceed $10,000.

(b) If a subdivision fails to enforce any provision of this subtitle, including any ordinance or local law the subdivision enacts pursuant to this subtitle, or if the subdivision does not possess the authority to correct a violation of this subtitle, the Department may request the Attorney General to take appropriate legal action to correct the violation.

(c) A court exercising equity jurisdiction in the county where the land or any part of the land or water covered by this subtitle is located may restrain any violation of this subtitle, or order the abatement of a condition resulting from any violation and order the restoration of lands and waters to the condition existing prior to the violation, in an action brought by a subdivision affected by the violation, by the Department, by any authorized unit or officer of the Department, or by the Attorney General.

§5–806.

By mutual agreement, the Department may delegate all or part of the Department's responsibilities under this subtitle to a subdivision if the Department determines that the subdivision has the technical and financial resources to fulfill the responsibilities to be delegated.

§5–807.

The provisions of this subtitle concerning the authorities of the Department and the subdivisions of the State with respect to flood hazard management are in addition to any other provision of law.

§5–808.

Engineering, technical, and administrative services required to implement the provisions of this subtitle shall be funded as provided in the State budget.

§5–809.

This subtitle may be cited as the Flood Hazard Management Act of 1976.

§5–901.

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

(b) (1) "Agricultural activity" means aquaculture and farming activities.

(2) "Agricultural activity" includes:

(i) Plowing, tillage, cropping, seeding, cultivating, and harvesting for the production of food and fiber products; and

(ii) The grazing of livestock.

(c) "Best management practices" means conservation practices or systems of practices and management measures that:

(1) Control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxics, and sediment; and

(2) Minimize adverse impacts to the surface water and groundwater flow and circulation patterns, and to the chemical, physical, and biological characteristics of a nontidal wetland.

(d) "Compensation ratio" means the ratio of the area of wetland restored, created, or enhanced to the area of wetland for which mitigation is required.

(e) "Department" means the Department of the Environment.

(f) "Forestry activity" means planting, cultivating, thinning, harvesting, or any other activity undertaken to use forest resources or to improve their quality or productivity.

(g) "Isolated nontidal wetland" means a nontidal wetland that is not hydrologically connected, through surface or subsurface flow, to streams, tidal or

nontidal wetlands, or tidal waters.

(h) "Mitigation banking" means wetland restoration, creation, or enhancement undertaken expressly for the purpose of providing compensation credits for wetland losses from future activities.

(i) (1) "Nontidal wetland" means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.

(2) The determination of whether an area is a nontidal wetland shall be made in accordance with the publication known as the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands", published in 1989 and as may be amended.

(3) "Nontidal wetlands" do not include tidal wetlands regulated under Title 16 of this article.

(j) (1) "Regulated activity" means any of the following activities in a nontidal wetland or within a 25 foot buffer of the nontidal wetland:

(i) The removal, excavation, or dredging of soil, sand, gravel, minerals, organic matter, or materials of any kind;

(ii) The changing of existing drainage characteristics, sedimentation patterns, flow patterns, or flood retention characteristics;

(iii) The disturbance of the water level or water table by drainage, impoundment, or other means;

(iv) The dumping, discharging of material, or filling with material, including the driving of piles and placing of obstructions;

(v) The grading or removal of material that would alter existing topography; and

(vi) The destruction or removal of plant life that would alter the character of a nontidal wetland.

(2) "Regulated activity" does not include an agricultural activity or forestry activity as defined in this section.

(k) "Soil conservation and water quality plan" means a land use plan for a farm that shows a farmer how to make best possible use of soil and water resources while protecting and conserving those resources for the future.

§5–902.

(a) The General Assembly finds that nontidal wetlands play important roles in the preservation and protection of the Chesapeake Bay and other waters of the State. Nontidal wetlands serve important roles through the reduction of pollutant loadings, including excess nutrients, sediment, and toxics, the attenuation of floodwaters and stormwaters, shoreline stabilization and erosion control, waterfowl breeding and habitat for many species of fish, game and nongame birds, and mammals, including rare and endangered species, food chain support, and timber production. Many nontidal wetlands have already been lost or degraded due to the combined effects of population growth and land use. Further degradation and losses of nontidal wetlands will contribute to the decline of the Chesapeake Bay and other waters of the State.

(b) It is the intent of the General Assembly to protect the waters of the State through a comprehensive, statewide nontidal wetland program in cooperation with federal agencies, other states, and local government. The goal of the program shall be to attain no net overall loss in nontidal wetland acreage and function and to strive for a net resource gain in nontidal wetlands over present conditions.

(c) It is the intent of the General Assembly that:

(1) Waters of the State be protected;

(2) Further degradation and losses of nontidal wetlands due to human activity be prevented wherever possible; and

(3) Where unavoidable losses or degradations occur as a result of permitted human activity, these losses or degradations be offset wherever practicable and feasible through the deliberate restoration or creation of nontidal wetlands.

§5–903.

(a) There is a statewide program within the Department for the conservation, regulation, enhancement, creation, monitoring, and wise use of nontidal wetlands.

(b) The Department shall:

(1) Coordinate with other State agencies, federal agencies, other states, local governments, and interested persons in the regulation of nontidal wetlands;

(2) Assist local governments in undertaking nontidal wetland management planning, including mapping, technical assistance, and expediting the permit process;

(3) Develop certification programs to ensure uniform and professional standards for the identification, delineation, functional assessment, and mitigation of nontidal wetlands;

(4) Evaluate proposed activities on nontidal wetlands and grant or deny permits or other approvals of proposed activities;

(5) Conduct watershed studies and educational programs and disseminate information concerning the nontidal wetlands program;

(6) Prepare, adopt, and periodically revise guidance maps of nontidal wetlands;

(7) Adopt standards for planning, regulating, restoring, creating, and enhancing nontidal wetlands;

(8) Purchase, restore, and create nontidal wetlands; and

(9) Conduct periodic monitoring, cumulative impact assessment, and evaluation of activities authorized under this subtitle.

(c) By December 31, 1989 the Department shall adopt final regulations necessary to administer this subtitle, in accordance with § 10-111(a) of the State Government Article.

§5–904.

(a) (1) The Department may delegate all or part of its authority under this subtitle to any county that enacts a nontidal wetland protection program by December 31, 1994 that meets at least the minimum standards adopted by the Department.

(2) (i) After December 31, 1994, the Department may delegate all or part of its authority under this subtitle to a county that applies to the Department to initiate a nontidal wetland protection program and meets at least the minimum standards adopted by the Department.

(ii) The Department shall establish a schedule for acceptance of applications from counties to initiate programs under this paragraph that provides a limited period of time once every 2 years for counties to submit their applications to the Department.

(3) A delegation in accordance with this subsection:

(i) May not be effective for more than 2 years; and

(ii) May be renewed by the Department for additional 2-year periods.

(4) After an opportunity for a hearing and upon a finding that the county program is not being administered in a manner consistent with the standards adopted by the Department, the Department may withdraw program delegation.

(b) Any regulated activity undertaken by a unit of State government shall

comply with the provisions of this subtitle, including the provisions of this subtitle requiring the issuance of a nontidal wetland permit by the Department. The unit is not required to have local government approval.

§5–905.

(a) The following agricultural and forestry activities are exempt from the approval and mitigation requirements of this section:

(1) Agricultural activities undertaken in accordance with public drainage regulations;

(2) Agricultural and forestry activities, including the repair and maintenance of farm ponds, drainage ditches, channels, subsurface drains, causeways, bridges, or water control structures, provided that they do not drain, dredge, fill, or convert nontidal wetlands on which agricultural and forestry activities are not presently conducted;

(3) Agricultural and forestry activities on areas that have laid fallow as part of a conventional rotational cycle or due to a civil action involving ownership of the property;

(4) Agricultural and forestry activities on areas that had been set aside or taken out of production under a formal State or federal program;

(5) Forestry activities not requiring an erosion and sediment control plan;

(6) Construction or maintenance of forest roads and skid trails in accordance with best management practices; and

(7) Other activities exempted by the Department by regulation to maintain consistency with federal law.

(b) (1) After December 31, 1990 agricultural activities conducted in nontidal wetlands that are not exempted under subsection (a) of this section require the soil conservation district to approve a soil conservation and water quality plan that contains best management practices to protect nontidal wetlands in compliance with regulations adopted by the Department in consultation with the Department of Agriculture.

(2) After December 31, 1990 forestry activities required to have an erosion and sediment control plan that are not exempted under subsection (a) of this section shall incorporate nontidal wetlands best management practices in compliance with regulations under this subtitle.

(c) After December 31, 1990 if an agricultural activity that is not exempted under subsection (a) of this section results in a loss of nontidal wetlands, the Department shall require that a soil conservation and water quality plan include mitigation for the loss within 3 years. Mitigation may include creation or restoration of

nontidal wetlands or monetary compensation. In determining the extent of mitigation, the Department shall consider the benefits provided by best management practices. If the State Department of Agriculture determines in writing that mitigation will create an economic hardship that would jeopardize the continued operation of the farm, mitigation may be deferred until:

(1) The economic hardship no longer exists;

(2) The current owner or operator transfers the farm to a new owner or operator, however, the current owner or operator is responsible for mitigation; or

(3) Agricultural activities no longer take place on the nontidal wetland.

(d) The soil conservation district shall be responsible for delineating the extent of nontidal wetlands affected by agricultural or forestry activities.

§5–906.

(a) The following types of activities shall be exempt from the permit requirements of this section if notice is given to the Department and best management practices are implemented:

(1) Activities which normally occur in nontidal wetlands with minimal impact on nontidal wetlands, including the repair and maintenance of existing structures, utilities, including underground utilities, rights-of-way, and railroad beds; or

(2) Activities in isolated nontidal wetlands of less than 1 acre and having no significant plant or wildlife value.

(b) (1) After December 31, 1990 a person may not conduct a regulated activity without first obtaining a permit from the Department.

(2) In addition to obtaining a permit, a person shall comply with all other pollution control, flood hazard reduction, sediment control, stormwater management, local zoning, and other applicable federal, State, and local regulations.

(c) To apply for a permit, the applicant shall submit a delineation of the affected nontidal wetlands and all other information as required by the Department.

(d) Within 45 days from receipt of the application, the Department shall notify the applicant whether the application is complete and the delineation is correct. If the Department fails to notify the applicant about the application or delineation within 45 days, the delineation shall be treated by the Department as correct and the application shall be treated as complete. The Department may request further information or provide for an extension of this deadline when extenuating circumstances prevent consideration of the application.

(e) After receipt of a complete application, under the procedures of § 5-204(b) through (e) of this title the Department shall issue public notice of an opportunity to submit written comments or to request a hearing. A hearing shall be held within 45 days if requested, unless extenuating circumstances justify an extension of time. The hearing is not a contested case under the State Government Article.

(f) In granting a permit, the Department may impose conditions or limitations required to carry out the provisions of this subtitle.

(g) The Department may require a bond or other instrument to secure compliance with the conditions in the permit.

(h) The Department may issue a temporary emergency permit for a regulated activity if:

(1) An unacceptable threat to life or severe loss of property will occur if an emergency permit is not granted; and

(2) The anticipated threat or loss may occur before a permit can be issued or modified as provided under this subtitle.

(i) (1) By December 31, 1989 the Department shall designate by regulation nontidal wetlands for which the buffer is to be expanded beyond 25 feet, but the total buffer may not exceed 100 feet, to assure adequate protections from adjacent activities or conditions which may adversely affect the nontidal wetland and associated aquatic ecosystem.

(2) Activities or conditions where the buffer may be expanded beyond 25 feet include the presence of slopes, highly erodible soils or other soils with development constraints, or the presence of nontidal wetlands of special State concern.

(j) The Department shall grant, deny, or condition a permit within 45 days of a public hearing or within 60 days of the receipt of a completed application if no hearing is held. After notifying the applicant, the Department may extend its action beyond these time periods for an additional 30 days for extenuating circumstances.

§5–907.

(a) The Department may not issue a nontidal wetland permit for a regulated activity unless the Department finds that the applicant has demonstrated that the regulated activity:

(1) (i) Is water dependent and requires access to the nontidal wetland as a central element of its basic function; or

(ii) Is not water dependent and has no practicable alternative;

(2) Will minimize alteration or impairment of the nontidal wetland,

including existing topography, vegetation, fish and wildlife resources, and hydrological conditions;

(3) Will not cause or contribute to a degradation of groundwaters or surface waters; and

(4) Is consistent with any comprehensive management plan that may be developed in accordance with § 5–908 of this subtitle.

(b) The applicant shall demonstrate to the satisfaction of the Department that practicable alternatives have been analyzed and that the regulated activity has no practicable alternative. In evaluating whether the proposed regulated activity has a practicable alternative, the Department shall consider:

(1) Whether the basic project purpose cannot be reasonably accomplished utilizing one or more other sites in the same general area that would avoid or result in less adverse impact on nontidal wetlands;

(2) Whether a reduction in the size, scope, configuration, or density of the project as proposed and all alternative designs that would result in less adverse impact on the nontidal wetland would not accomplish the basic purpose of the project;

(3) In cases where the applicant has rejected alternatives to the project as proposed due to constraints such as inadequate zoning, infrastructure, or parcel size, whether the applicant has made reasonable attempts to remove or accommodate these constraints; and

(4) The economic value of the proposed regulated activity in meeting a demonstrated public need in the area and the ecological and economic value associated with the nontidal wetland.

§5–908.

In cooperation with other State, local, and federal agencies, the Department may prepare comprehensive watershed management plans which address nontidal wetland protection, creation, and restoration, cumulative impacts, flood protection, and water supply concerns. Completed watershed management plans will be used as the basis for consistent permitting decisions and creating and restoring nontidal wetlands.

§5–909.

(a) An applicant shall take all necessary steps to first avoid significant impairment and then minimize losses of nontidal wetlands. If the applicant demonstrates to the Department's satisfaction that all necessary steps were taken and losses or significant impairment of nontidal wetlands are unavoidable, the Department shall require the applicant to adopt mitigation practices.

(b) (1) By December 31, 1989 the Department, consistent with the goals

established in § 5-902 of this subtitle, shall adopt by regulation standards and procedures for the mitigation of nontidal wetlands losses, including practices for nontidal wetland creation, restoration, enhancement, or monetary compensation.

(2) The Department may accept monetary compensation only if it is determined that creation, restoration, or enhancement of nontidal wetlands are not feasible alternatives. Monetary compensation may not be a substitute for the requirement to avoid and minimize nontidal wetland losses.

(c) (1) There is a Nontidal Wetland Compensation Fund in the Department.

(2) The following money shall be deposited in the Fund:

(i) Any monetary compensation paid by an applicant instead of engaging in the creation, restoration, or enhancement of a nontidal wetland; and

(ii) Any civil or criminal penalty imposed by a court in accordance with § 5-911 of this subtitle.

(3) Funds in the Nontidal Wetland Compensation Fund may be used only for the creation, restoration, or enhancement of nontidal wetlands, including:

(i) Acquisition of land;

(ii) Acquisition of easements;

(iii) Maintenance of mitigation sites;

(iv) Purchase of credits in mitigation banks; and

(v) Contractual services necessary to accomplish the intent of this paragraph.

(4) Funds credited and any interest accrued to the Fund:

(i) Shall remain available until expended; and

(ii) May not be reverted to the General Fund under any other provision of law.

(5) At the end of the fiscal year, the Department shall prepare an annual report on the Nontidal Wetland Compensation Fund that includes an accounting of all financial receipts and expenditures to and from the Fund and shall provide a copy of the report to the General Assembly, as provided under § 2-1246 of the State Government Article.

§5–910.

(a) The General Assembly declares that:

(1) In the application review process, one of the primary mitigation issues is locating the most beneficial area to conduct wetland restoration, creation, or enhancement;

(2) Where unavoidable losses or degradations occur as a result of permitted human activity, there exists a sequential process for mitigation site location which includes consideration of on-site alternatives;

(3) Mitigation banking, which allows a person to restore, enhance, or create a functional wetland ecosystem, may offer a sound mitigation alternative and may provide an opportunity to contribute to the goal of no net loss in wetlands acreage and function; and

(4) Mitigation banking may not alter the regulatory requirements of § 5-907 of this subtitle.

(b) The Department shall develop standards and adopt regulations for the creation of wetland mitigation banks, including:

(1) The types and locations of wetlands to be restored, created, or enhanced and the types and locations of wetlands to be filled for which a person may obtain credit through a mitigation bank;

(2) The types and number of credits available through the bank to offset losses by acreage and by function of a wetland to be filled;

(3) The method of wetland construction, supervision, and maintenance to be required of a bank owner seeking to obtain credit for use of the bank;

(4) Maintenance requirements;

(5) Monitoring requirements;

(6) Bonding requirements, to include assurance of wetland function;

(7) Reporting requirements to the Department;

(8) Consistency with developed watershed plans, forest conservation, local growth management policies, and local comprehensive plans;

(9) Requirements for the protection in perpetuity of mitigation banks, through methods that include easements, covenants, or similar mechanisms, that shall be in place at the time credits are withdrawn;

(10) Compensation ratios for mitigation through mitigation banks that shall equal or exceed 1.5 to 1; and

(11) Public notice and comment requirements, including opportunity for

public review and comment on any specific wetland bank that is greater than 5 acres in size.

(c) The standards and regulations adopted by the Department under this section shall ensure that:

(1) The provisions of § 5-907 of this subtitle, including the avoidance, alternative analysis, and minimization of disturbance of nontidal wetlands, are fully adhered to;

(2) The goals of § 5-902 of this subtitle to attain no net overall loss in nontidal wetland acreage and function and to strive for a net resource gain are achieved;

(3) On-site mitigation is examined before conducting mitigation off site; and

(4) Mitigation through wetland banking should be accomplished in and with preference to the same watershed and county as the wetland for which mitigation is required.

(d) (1) This section may not be construed to require the Department to:

(i) Establish or fund State mitigation banks;

(ii) Fund the establishment of mitigation banking by the private sector; or

(iii) Use State lands for mitigation banking.

(2) The Department may establish mitigation banking through and with the cooperation of the private sector and may use State lands for mitigation banking sites.

§5–911.

(a) (1) The enforcement provisions in this section are in addition to any other applicable provisions in this title.

(2) In addition to the enforcement authority granted the Department, the enforcement provisions of this section may be exercised by any county that has program delegation authority.

(b) The Department may revoke a permit for cause, including violation of permit conditions, obtaining a permit by misrepresentation, failing to disclose a relevant or material fact, or change in conditions. The Department shall notify the violator in writing and provide an opportunity for a hearing.

(c) The Department may issue a stop work order against any person who

violates any provision of this subtitle or any regulation, order, or permit under this subtitle related to a regulated activity.

(d) (1) A person who violates any provision of this subtitle or any regulation, order, or permit under this subtitle is liable for a penalty not exceeding $10,000, which may be recovered in a civil action brought by the Department. Each day a violation continues is a separate violation under this subsection.

(2) The court may issue an injunction requiring the person to cease the violation and restore the area unlawfully disturbed.

(e) (1) A person who violates any provision of or fails to perform any duty imposed by this subtitle or by a regulation, order, or permit under this subtitle is guilty of a misdemeanor and on conviction is subject to:

(i) For a first offense, a fine not exceeding $10,000; or

(ii) For a second or subsequent offense, a fine not exceeding $25,000.

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

§5–1001.

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

(2) "Recycle" means to prepare used oil for reuse as a petroleum product or petroleum product substitute by refining, re–refining, reclaiming, reprocessing, or other means or to use used oil in a manner that substitutes for a petroleum product or petroleum product substitute made from new oil, provided that the preparation or use is operationally safe, environmentally sound, and complies with all laws and regulations.

(3) "Used oil" means a petroleum–based or synthetic oil as an engine lubricant, engine oil, motor oil, or lubricating oil for use in an internal combustion engine, or a lubricant for motor vehicle transmissions, gears, or axles which through use, storage, or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

(b) This section shall be known and may be cited as the Maryland Used Oil Recycling Act.

(c) The legislature finds that a substantial number of gallons of used oil is generated each year in the State. Used oil is a valuable petroleum resource which can be recycled. In spite of the potential for recycling, significant quantities of used oil are wastefully disposed of or improperly used by means which pollute the water, land, and air and endanger public health and welfare. Used oil should be collected and recycled to the maximum extent possible, by means which are economically feasible and environmentally sound, in order to conserve irreplaceable petroleum resources,

preserve and enhance the quality of natural and human environments, and protect public health and welfare.

(d) The Department shall conduct a public education program to inform the public of the needs for and the benefits of collecting and recycling used oil in order to conserve resources and preserve the environment. As part of this program, the Department shall:

(1) Require persons regularly engaged in the business of selling lubricating or other oil in containers for use off the premises to post and maintain at or near the point of display or sale durable and legible signs, which the Department shall pay for and provide to the person, informing the public of:

(i) The importance of proper collection and disposal of used oil; and

(ii) The locations and hours of operation of government operated used oil collection facilities in the surrounding area;

(2) Advertise and inform the public of the law that prohibits a person from discharging, dumping, or depositing used oil into sewers, drainage systems, surface or ground waters, and any other waters of the State or by incineration or as refuse or onto any public or private land that is not a designated collection facility, as provided under subsection (f) of this section;

(3) Establish, maintain, and publicize a used oil information center that will explain local, State, and federal laws and regulations governing used oil and will inform holders of quantities of used oil on how and where and in what manner used oil may be properly disposed of;

(4) Encourage the establishment of used oil collection and recycling programs and provide technical assistance to persons organizing these programs; and

(5) Encourage the use of labeling for oil containers to inform the user of the importance of proper collection and disposal of used oil.

(e) The Department may designate Maryland State inspection facilities and may designate any other facilities the Department deems appropriate which are safe and conveniently located and which agree to serve as collection facilities for the deposit of used oil. There is no cost to a person making the deposit. Each designated facility shall post and maintain a durable and legible sign readily visible in an appropriate place which indicates the facility is designated as a used oil disposal location. The designated facility shall install and maintain on the premises used oil collection containers, properly sheltered and protected to prevent spillage, seepage, or discharge of the used oil into the water of the State, and of sufficient size to handle returns of used oil and used oil containers. Each designated facility regularly shall remove and dispose or have removed and disposed by used oil collectors the accumulated oil in a manner as required by law.

(f) (1) Except as provided under Title 7, Subtitle 2 of this article or any other provisions of law, after January 1, 1979 a person may not dispose of or cause to be disposed of any used oil by discharge, dump, or deposit into sewers, drainage systems, surface or ground waters, any waters in this State, or by incineration or as refuse, or onto any public or private land unless the land is designated by the State or by any of its agencies or political subdivisions as a collection facility for the disposal, dumping, or deposit and the used oil is placed in a receptacle or container installed or located on the property.

(2) Before the deposit of any used oil for recycling, a person may not knowingly or willfully contaminate the oil by adding any liquid substance or solid material to the contents of the oil that makes the oil unacceptable for recycling.

(3) The provisions of this subsection do not include:

(i) The application of used oil to roads for maintenance purposes as authorized by law;

(ii) The use of used oil as a fuel; or

(iii) The use of used or recycled oil for maintenance or lubrication of agricultural equipment.

(g) Subject to § 2–1246 of the State Government Article, the Department shall prepare and submit an annual report to the General Assembly that:

(1) Summarizes information on used oil collection and recycling;

(2) Analyzes the effectiveness of this subtitle's provisions and their implementation; and

(3) Makes recommendations for any necessary changes in the provisions or their administration.

(h) (1) A person may represent any product made in whole or in part from used oil to be substantially equivalent to a product made from new oil for a particular end use if the product conforms fully with the specifications applicable to that product made from new oil or if substantial equivalency has been determined in accordance with rules prescribed by the Federal Trade Commission under § 383(d)(1)(a) of the Energy Policy and Conservation Act, P.L. 94–163. Otherwise, the product must be represented as made from previously used oil.

(2) All officials of the State and any of its agencies or of any political subdivisions and persons holding contracts with the State or any of its political subdivisions shall encourage and to the extent possible require the procurement and purchase of recycled oil products represented as substantially equivalent to products made from new oil in accordance with this section whenever the products are available at prices competitive with those of new oil produced for the same purpose.

(i) (1) Any person who violates any provision of this section or any regulation issued pursuant to this section, in addition to any other penalties specifically provided by law, shall be subject to a civil penalty not exceeding $250 for each violation.

(2) Any person who commits a second or subsequent violation of any provision of this section or any regulation issued pursuant to this section, in addition to any other penalties specifically provided by law, is guilty of a misdemeanor and upon conviction in a court of competent jurisdiction, is subject to a fine not exceeding $1,000 or imprisonment not exceeding 2 months, or both, with cost imposed in the discretion of the court.

§5–10A–01.

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

(b) "Automobile graveyard" has the meaning stated in § 8-801 of the Transportation Article.

(c) "Automotive dismantler and recycler facility" has the meaning stated in § 8-801 of the Transportation Article.

(d) "Junkyard" has the meaning stated in § 8-801 of the Transportation Article.

(e) "Scrap metal processing facility" has the meaning stated in § 8-801 of the Transportation Article.

§5–10A–02.

(a) A person who owns, maintains, or causes to be maintained a junkyard, automotive dismantler and recycler facility, scrap metal processing facility, or automobile graveyard that lawfully existed on January 1, 1972 and that adjoins a river, stream, or other body of water shall:

(1) Store and maintain trash, junk, automobiles, or automobile parts to prevent the dumping, depositing, or transporting of this matter into the waters of the State;

(2) Inform the Department and the Administration of provisions planned or made to prevent the dumping, depositing, or transporting of this matter into the waters of the State; and

(3) Comply with the standards and specifications of the Administration relating to:

(i) The erection of retaining walls; or

(ii) The use of devices or procedures to restrain the dumping, depositing, or transporting of this matter into the waters of the State.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 90 days or a fine not exceeding $500 or both.

§5–10A–03.

If the owner or operator of a junkyard, automotive dismantler and recycler facility, scrap metal processing facility, or automobile graveyard that produces, collects, retains, dumps, or deposits trash, junk, or other refuse has not erected retaining walls or other restraining devices or procedures approved by the Administration, the presence of trash, junk, automobiles, or automobile parts in waters of the State, or on embankments or other sites where it may readily fall into or be transported into the waters of the State, is prima facie evidence of a violation of § 5-10A-02 of this subtitle.

§5–1101.

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

(1) "Baltimore County tributary dredged material" means earth, rock, soil, waste matter, muck, or other materials excavated or dredged from an approved dredging project in any of the Baltimore County tributaries of the Chesapeake Bay.

(2) "Baltimore Harbor" means the waterway which consists of the tidal portions of Patapsco River and its tributaries lying westward of a line extending from Rock Point in Anne Arundel County to North Point in Baltimore County.

(3) "Beneficial use of dredged material" means any of the following uses of dredged material from the Chesapeake Bay and its tributary waters placed into waters or onto bottomland of the Chesapeake Bay or its tidal tributaries, including Baltimore Harbor:

(i) The restoration of underwater grasses;

(ii) The restoration of islands;

(iii) The stabilization of eroding shorelines;

(iv) The creation or restoration of wetlands; and

(v) The creation, restoration, or enhancement of fish or shellfish habitats.

(4) "Deep trough" means any region that:

(i) Is south of the Chesapeake Bay Bridge and north of a line extending westerly from Bloody Point; and

(ii) Has a depth that exceeds 60 feet.

(5) "Dredged material" means earth, sand, silt, sediment, shell, rock, soil, waste matter, or other material excavated or dredged from the Chesapeake Bay and its tributary waters.

(6) "Innovative reuse" includes the use of dredged material in the development or manufacturing of commercial, industrial, horticultural, agricultural, or other products.

(7) "Redeposit" means to dump, scatter, pour, or otherwise deposit dredged material.

(8) (i) "Sewage sludge" means the accumulated semiliquid suspension of settled solids, or dried residue of these solids, that is deposited from sewage in wastewater treatment plant tanks or basins.

(ii) "Sewage sludge" includes raw untreated sewage disposed from the Back River Sewage Treatment Plant.

(b) The General Assembly declares that the Chesapeake Bay and the tidewater portions of its tributaries are a great natural asset and resource to the State and its counties. Portions of these areas are threatened with inundation by the unconfined dumping of vast quantities of spoil from dredging operations within Baltimore Harbor and certain dumpings of sewage sludge. This inundation and unconfined dumping will pollute and despoil valuable portions of the bottomland in the Chesapeake Bay and its tidewater tributaries and be grossly harmful to fish and marine life in these and adjacent waters, to use for recreation, and to the economic and social life of the people of this State.

§5–1102.

(a) A person may not redeposit in an unconfined manner dredged material from Baltimore Harbor into or onto any portion of the water or bottomland of the Chesapeake Bay or of the tidewater portions of any of the Chesapeake Bay's tributaries outside of Baltimore Harbor. However, the dredged material may be redeposited in contained areas approved by the Department.

(b) A person may not redeposit in an unconfined manner Baltimore County tributary dredged material into or onto any portion of the water or bottomland of the Chesapeake Bay or of the tidewater portions of any of the Chesapeake Bay's tributaries within 5 miles of the Hart–Miller–Pleasure Island chain in Baltimore County.

(c) Except as provided in subsection (d) of this section, a person may not redeposit in an unconfined manner dredged material into or onto any portion of the water or bottomland of the Chesapeake Bay or of the tidewater portion of any of the Chesapeake Bay's tributaries except when used for a beneficial use project undertaken in accordance with State and federal laws. However, the dredged material may be redeposited in contained areas approved by the Department.

(d) (1) Beginning October 1, 2001, subject to paragraph (2) of this subsection, and in accordance with State and federal law, a person may redeposit up to 7.4 million cubic yards of dredged material into or onto any portion of the water, bottomland, or the tidewater portions of the Chesapeake Bay collectively known as Pooles Island, including G–West and Site 92.

(2) The redeposit of dredged material authorized under this subsection may not occur after the sooner of:

(i) December 31, 2010; or

(ii) The initiation of the placement of dredged material in any site or sites approved pursuant to the process established in § 5–1104.2(d)(1) of this subtitle if the total capacity of the approved site or sites, when combined with the approved capacity of existing placement sites identified in the October 1, 2000 report to the Maryland General Assembly regarding the Governor's Strategic Plan for Dredged Material Management, provide 20 years of placement capacity for dredged material.

(e) A person may not dump, deposit, scatter, or release sewage sludge by any means, including discharge from a sewer or pipe, into or onto any portion of the water or bottomland of the Chesapeake Bay or of the tidewater portions of any of the Chesapeake Bay's tributaries within 5 miles of the Hart–Miller–Pleasure Island chain in Baltimore County.

(f) A person may not redeposit dredged material or other material excavated or dredged from the Chesapeake Bay or its tidal tributaries into or onto the area of the bottomlands or waters of the Chesapeake Bay known as the deep trough.

§5–1102.1.

(a) (1) The Governor shall appoint a Cox Creek Citizens Oversight Committee.

(2) The terms of the members of the Oversight Committee shall be determined by the Governor.

(b) The Oversight Committee shall be composed of the following members:

(1) 2 members of the North County Land Trust;

(2) 1 delegate to the Greater Pasadena Council who represents a waterfront community;

(3) 1 member of the Pasadena Sport Fishermen's Group;

(4) 1 member of the Anne Arundel County Watermen's Association;

(5) 1 member of the Maryland Saltwater Sport Fishermen's Association;

(6) 1 individual who represents the pleasure boating industry in Anne Arundel County;

(7) 1 member of the Pasadena Business Association;

(8) 1 member of the Restore Rock Creek organization;

(9) 1 member of the South Baltimore Business Alliance;

(10) 1 resident of legislative district 31; and

(11) 1 resident of legislative district 46.

(c) The Oversight Committee shall:

(1) Monitor the redeposit of Anne Arundel County dredged material and other dredged material in the Cox Creek area;

(2) Hear and dispose of complaints lodged by individuals affected by the redeposit of Anne Arundel County dredged material and other dredged material in the Cox Creek area; and

(3) Appoint a member from the Committee to serve as a liaison to the Innovative Use Advisory Council.

§5–1103.

(a) (1) Except for dredge spoil from local dredging projects initiated by Baltimore County in the waters of Baltimore County, the Department may not approve any contained area for the redeposit of spoil within 5 miles of the Hart-Miller-Pleasure Island chain in Baltimore County.

(2) A contained area described in paragraph (1) of this subsection may not exceed the approximately 1,100 acre size provided in the projects U.S. Army Corps of Engineers permit dated November 22, 1976.

(3) (i) Subject to subparagraph (ii) of this paragraph, dredge spoil may not be deposited in the Hart-Miller Island Dredged Material Containment Facility after the first of the following to occur:

1. The maximum height of dredge spoil deposited in the Hart-Miller Island Dredged Material Containment Facility reaches:

A. 44 feet above the mean low water mark in the north cell; and

B. 28 feet above the mean low water mark in the south cell; or

2. January 1, 2010.

(ii) New dredge spoil dredged from a channel may not be deposited in the south cell.

(b) (1) Except as provided in paragraph (2) of this subsection, only spoil from the excavation or dredging of Baltimore Harbor, its approach channels, and Baltimore County tributary spoil from an approved dredging project in any of the Baltimore County tributaries of the Chesapeake Bay may be redeposited in a contained area described in subsection (a) of this section.

(2) Only dredge spoil from local dredging projects initiated by Baltimore County in the waters of Baltimore County may be redeposited in any additional contained area for the redeposit of spoil authorized under subsection (a)(1) of this section.

§5–1104.

(a) (1) With the advice and consent of the Senate, the Governor shall appoint a Hart-Miller-Pleasure Island Citizens Oversight Committee.

(2) The terms and qualifications of members of the Oversight Committee shall be determined by the Governor.

(b) The Oversight Committee shall be composed of the following members:

(1) 2 trustees from the grantee in interest, as defined in § 5-1202.2(a)(1) of the Natural Resources Article;

(2) 1 individual from the North Point Peninsula Community Coordinating Council;

(3) 1 individual from the Essex Middle River Civic Council, Inc.;

(4) 2 interested citizens, 1 of whom shall reside in the sixth legislative district, and 1 of whom shall reside in the seventh legislative district;

(5) 1 individual from the Baltimore County Waterman's Association;

(6) 1 individual who represents the pleasure boating industry in Baltimore County;

(7) 1 individual who represents the sport fishing or crabbing industry in Baltimore County;

(8) 1 individual from the Greater Dundalk Community Council; and

(9) 1 individual from the Hart and Miller Island Area Environmental Group, Inc.

(c) The Oversight Committee shall:

(1) Monitor and provide oversight regarding:

(i) The future development, use, and maintenance of the Hart–Miller–Pleasure Island chain; and

(ii) The water quality immediately surrounding the islands; and

(2) Hear and dispose of complaints lodged by individuals affected by the future development and the water quality immediately surrounding the Hart–Miller–Pleasure Island chain.

§5–1104.1.

(a) (1) Subject to the approval of the members of the General Assembly of the 36th legislative district, the Governor shall appoint a Kent Island Citizens Oversight Committee.

(2) The Governor shall determine the terms and qualifications of members of the Oversight Committee.

(b) The Oversight Committee shall be composed of the following members:

(1) The Secretary of the State Department of Natural Resources or the Secretary's designee;

(2) Two representatives of the Kent Island Civic Confederation;

(3) Two citizens from the 4th election district;

(4) One representative of the Maryland Watermen's Association;

(5) One representative of the Queen Anne's County Watermen's Association;

(6) One representative of the pleasure boating industry;

(7) One representative of the sport boating industry;

(8) One representative from the Maryland Port Administration;

(9) One member of the Board of County Commissioners of Queen Anne's County or the Board's designee; and

(10) One member of the Queen Anne's County Delegation or the Delegation's designee.

(c) The Oversight Committee shall:

(1) Consult with the Maryland Port Administration regarding the

redeposit of dredge spoils off the shores of Kent Island, Queen Anne's County;

(2) Monitor the redeposit of dredge spoils off the shores of Kent Island; and

(3) Hear and respond to complaints lodged by any person affected by the redeposit of dredge spoils in the waters off Kent Island.

§5–1104.2.

(a) There is an Executive Committee created to provide oversight in the development of the State of Maryland's plans for dredged material management.

(b) (1) The Executive Committee shall consist of:

(i) The Secretary of Transportation, or the Secretary's designee;

(ii) The Secretary of Natural Resources, or the Secretary's designee;

(iii) The Secretary of the Environment, or the Secretary's designee;

(iv) A representative of the Chesapeake Bay Foundation, designated by the Chesapeake Bay Foundation;

(v) A representative of the Management Committee of the Dredged Material Placement Program; and

(vi) A citizen representative, appointed by the Governor.

(2) The Governor shall invite the following people to serve as members of the Executive Committee:

(i) A representative of the Army Corps of Engineers, Philadelphia District; and

(ii) A representative of the Army Corps of Engineers, Baltimore District.

(c) The Executive Committee shall meet as needed, but not less than semiannually.

(d) The Executive Committee shall:

(1) Review and recommend to the Governor dredged material placement options, including, but not limited to, the placement sites identified in the October 1, 2000 Report to the Maryland General Assembly regarding the Governor's Strategic Plan for Dredged Material Management, to fill short–term capacity needs as specified in § 5–1102(d)(2)(ii) of this subtitle;

(2) Review and recommend to the Governor elements, as part of a continuous and long–term strategic plan for dredged material management, including changes to the plan; and

(3) Review and recommend to the Governor dredged material disposal sites for long–term dredged material placement capacity based on the following hierarchy:

(i) Beneficial use and innovative reuse of dredged material;

(ii) Upland sites and other environmentally sound confined capacity;

(iii) Expansion of existing dredged material disposal capacity other than the Hart–Miller Island Dredged Material Containment Facility and areas collectively known as Pooles Island, including G–West and Site 92; and

(iv) Other dredged material placement options to meet long–term placement needs, except for redepositing dredged material in an unconfined manner.

§5–1105.

The Attorney General of Maryland or the State's Attorney of any county of the State that borders on a portion of the Chesapeake Bay or on a tidewater portion of any of the Chesapeake Bay's tributaries may seek an injunction against any person violating or threatening to violate any provision of this subtitle.

§5–1106.

The Attorney General of Maryland or the State's Attorney of any county of the State that borders on a portion of the Chesapeake Bay or on a tidewater portion of any of the Chesapeake Bay's tributaries may enforce this subtitle and may seek criminal penalties against any person who violates or is alleged to be violating § 5-1102 of this subtitle anywhere in the area of the Chesapeake Bay and the tidewater portions of the Chesapeake Bay's tributaries.

§5–1107.

Any person who violates any provision of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $5,000, or imprisonment not exceeding 1 year, or both, for each violation.

§5–1201.

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

(b) "Commission" means the Herring Run Public Watershed Association Commission.

(c) (1) "Herring Run Watershed" means the land and water area from which all water drains, directly or indirectly, to and from the Herring Run.

(2) "Herring Run Watershed" includes Herring Run, West Herring Run, Chinquapin Run, Moores Run, and Armistead Creek.

(d) "Watershed" means the Herring Run Watershed.

§5–1202.

(a) There is a Herring Run Public Watershed Association.

(b) The Association is composed of:

(1) The State;

(2) Baltimore City; and

(3) Baltimore County.

§5–1203.

(a) There is a Herring Run Public Watershed Association Commission.

(b) The Commission is composed of:

(1) The Secretary of Natural Resources or the Secretary's designee;

(2) The Secretary of the Environment or the Secretary's designee;

(3) The Director of Planning or the Director's designee;

(4) 2 members from Baltimore City selected by the Mayor of Baltimore City;

(5) 2 members from Baltimore County selected by the County Executive of Baltimore County; and

(6) 2 members selected by the Baltimore Regional Planning Council.

(c) Of the 6 county and city members, there shall be at least:

(1) 1 member of the county or city legislative body; and

(2) 1 member of the General Assembly of Maryland.

(d) The Commission shall appoint an advisory committee composed of interested citizens and determine the number, terms, and qualifications of the Commission's members.

§5–1204.

(a) The chairman of the Commission shall be selected from the members of the county and city by a majority vote of the entire Commission.

(b) (1) The members shall meet at the chairman's request at least annually or any time at the request of a quorum of members of the county or city.

(2) A quorum consists of 5 members.

(3) A majority vote of the full Commission is necessary to approve any action.

§5–1205.

(a) With respect to water quality, the Commission shall advise and make recommendations in accordance with the Baltimore metropolitan water quality management plan, as prepared and adopted in accordance with 33 U.S.C. § 1288 (Section 2 of the federal Water Pollution Control Act amendments of 1972).

(b) With respect to flood hazard areas and watershed management as defined in the Maryland Flood Hazard Management Act of 1976, the Commission shall proceed in accordance with that act. The Commission shall cooperate with State, regional, and local agencies and their respective programs, plans, and procedures with respect to:

(1) Flood damage reduction;

(2) Water quality improvements;

(3) Municipal and industrial water supplies;

(4) Recreation, fish, wildlife, and esthetic improvement; and

(5) Soil conservation and watershed and forested land management.

(c) With respect to all other recommendations and plans, including those relating to esthetics, conservation, erosion control, recreation and other improvements, the Commission shall proceed in accordance with the procedures and policies of the governments whose support or cooperation is required or requested.

§5–1206.

Funding and staffing of the Commission may be apportioned among the county, city, and State agencies as recommended by the Commission and as provided in their respective budgets.

§5–1301.

(a) Any person who violates any provision of this title is guilty of a

misdemeanor. Upon conviction in a court of competent jurisdiction, unless another penalty is specifically provided elsewhere in this title, the person is subject to a fine not exceeding $500, with costs imposed in the discretion of the court. Every fine and cost shall be paid in accordance with § 7-503 of the Courts Article.

(b) Any person found guilty of a second or subsequent violation of any provision of this title in a court of competent jurisdiction, unless another penalty is specifically provided elsewhere in this title, is subject to a fine not exceeding $1,000 or imprisonment not exceeding 1 year or both with costs imposed in the discretion of the court. For the purpose of this subsection, a second or subsequent violation is a violation which has occurred within 2 years of any prior violation of this title.

(c) In addition to any administrative penalty provided in this title, a violation of any regulation or restriction adopted by any unit within the Department of the Environment pursuant to the provisions of this title is a misdemeanor and is punishable as provided in subsections (a) and (b) of this section.

§5–1302.

The Attorney General shall take charge of, prosecute, and defend on behalf of the State every case arising under the provisions of this title, including the recovery of penalties.

§6–301.

A person may not use lead-based paint:

(1) On any interior surface;

(2) On any exterior surface to which children commonly may be exposed;

(3) On any porch of any dwelling; or

(4) Except for a lead-based industrial paint that is applied to a household appliance, on any article that is intended for household use.

§6–302.

(a) A person who violates any provision of § 6-301 of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $1,000 or imprisonment not exceeding 30 days or both.

(b) (1) A person who violates § 6-303 of this subtitle or any regulation adopted under § 6-303 of this subtitle is subject to an administrative penalty of up to $250 per violation, not exceeding $10,000.

(2) The administrative penalty under this subsection shall be assessed with consideration given to:

(i) The willfulness of the violation and the extent to which the violation was known to the violator but uncorrected by the violator;

(ii) The extent to which the violation resulted in actual harm to human health;

(iii) The nature and degree of injury to or interference with general welfare and health; and

(iv) 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.

(c) Each day a violation continues constitutes a separate offense under this section.

§6–303.

(a) (1) A medical laboratory, office, or other facility that draws blood from any child 18 years and under for analysis of blood lead levels shall obtain all information required by the Department, including the address, date of birth, sex, and race of the child.

(2) The medical laboratory, office, or facility drawing blood for analysis under paragraph (1) of this subsection shall forward the information required under paragraph (1) of this subsection with the blood to the medical laboratory that performs blood lead level testing.

(3) A medical laboratory that performs blood lead level testing shall report to the Department the results of blood lead level tests and the information required under paragraph (1) of this subsection in accordance with the time frames established by the Department.

(4) (i) In addition to the requirements of paragraph (3) of this subsection, for a child who resides in Baltimore City, a medical laboratory shall report the results of tests and the information required under paragraph (1) of this subsection to the Commissioner of the Baltimore City Health Department.

(ii) The Commissioner of the Baltimore City Health Department may report the information received under subparagraph (i) of this paragraph to the Baltimore Immunization Registry Program.

(5) (i) If a medical laboratory that performs blood lead level testing receives a blood sample without the information required under paragraph (1) of this subsection, the medical laboratory shall make a written request to the medical laboratory, office, or facility in which the blood was initially drawn for the information required under paragraph (1) of this subsection.

(ii) If the medical laboratory, office, or facility does not provide the

information requested under subparagraph (i) of this paragraph, the medical laboratory that performs blood lead level testing shall inform the Department of the failure of the medical laboratory, office, or facility to provide the information required under paragraph (1) of this subsection.

(iii) A medical laboratory that performs blood lead level testing shall provide medical laboratories, offices, or facilities that draw blood with referral forms that request the information required by the Department, including the address, date of birth, sex, and race of the child.

(b) The Department may report the results of blood tests for lead poisoning to an immunization registry subsequently developed by the Department of Health and Mental Hygiene.

(c) The Department shall report the results of blood tests for lead poisoning indicating an elevated blood lead level, as defined by regulation, to:

(1) The local health department in the jurisdiction where the child resides; and

(2) The Department of Health and Mental Hygiene.

(d) The Department shall adopt regulations to:

(1) Govern the reporting requirements of laboratories to the Department under subsection (a) of this section; and

(2) Provide for the reporting of information by the Department to local health departments and the Department of Health and Mental Hygiene.

§6–304.

(a) The Secretary shall assist local governments, if necessary, to provide case management of children with elevated blood lead levels greater than or equal to 15 micrograms per deciliter (g/dl).

(b) A local health department that receives the results of a blood test for lead poisoning indicating that a child under 6 years of age has an elevated blood lead level greater than or equal to 15 g/dl and less than 20 g/dl shall notify:

(1) The child's parents; and

(2) In the case of a child who lives in a rental dwelling unit, the owner of the rental dwelling unit where the child resides.

§6–401.

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

(b) "Asbestos material" means any material or product which contains more than 1 percent asbestos.

(c) (1) "Asbestos occupation" means any job as an inspector, project designer, management planner, asbestos abatement contractor, asbestos supervisor, or asbestos abatement worker involving:

(i) A project in a public and commercial building or in a school building that involves the location, identification, physical and hazard assessment, enclosure, removal, repair, renovation, or demolition of asbestos material in a public and commercial building or in a school building;

(ii) The inspection, planning, or design of any project in a school building as enumerated in item (i) of this paragraph; or

(iii) The inspection or design of any project in a public and commercial building as enumerated in item (i) of this paragraph.

(2) "Asbestos occupation" does not include work on any small–scale, short–duration operations, maintenance, and repair activities as defined in 40 C.F.R. 763, Appendix C to Subpart E, Asbestos Model Accreditation Plan.

(d) "Business entity" means a partnership, firm, association, corporation, sole proprietorship, or other business concern.

(e) "Interior space" includes:

(1) Exterior hallways connecting buildings;

(2) Porticoes; and

(3) Mechanical systems used to condition interior space.

(f) "License" means a license issued by the Department under this subtitle to remove and encapsulate asbestos.

(g) (1) "Public and commercial building" means the interior space of any building that is not a school building.

(2) "Public and commercial building" includes:

(i) Industrial and office buildings;

(ii) Residential apartment buildings of 10 or more dwelling units;

(iii) Condominiums of 10 or more dwelling units;

(iv) Government–owned buildings;

(v) Colleges;

(vi) Museums;

(vii) Airports;

(viii) Hospitals;

(ix) Churches;

(x) Stores;

(xi) Warehouses; and

(xii) Factories.

(3) "Public and commercial building" does not include any residential apartment building of fewer than 10 dwelling units, any condominium of fewer than 10 dwelling units, or any detached single–family home.

(h) "Public unit" includes:

(1) Any agency, bureau, department, or instrumentality of State government that is not subject to Executive Order 01.01.1987.22;

(2) Any agency, bureau, department, or instrumentality of federal or local government;

(3) Educational institutions that are not subject to Executive Order 01.01.1987.22; and

(4) Any public, quasi–public, or municipal corporation.

(i) "School" means any elementary or secondary school as defined in the Elementary and Secondary Education Act of 1965, at 20 U.S.C. § 7801.

§6–402.

The General Assembly finds:

(1) That exposure to asbestos, a known carcinogenic agent, creates a significant hazard to the health of the people of this State;

(2) That projects to remove asbestos expose increasing numbers of asbestos removers to this hazard;

(3) That it is in the public interest to protect asbestos removers from this hazard by requiring adherence to strict safety standards on asbestos removal projects; and

(4) That stricter penalties and independent testing are needed to safeguard the health of asbestos removers in the State.

§6–405.

In an emergency that results from a sudden, unexpected event that is not a planned renovation or demolition, the Department may waive the requirement for a license.

§6–406.

The Department:

(1) Shall adopt the rules and regulations necessary to carry out the provisions of this subtitle; and

(2) At least once a year, during an actual removal or encapsulation project, shall conduct an on-site inspection of each licensee's procedures for removing and encapsulating asbestos.

§6–409.

Except as otherwise provided in this subtitle, a business entity or public unit shall be licensed by the Department before the business entity or public unit removes or encapsulates any asbestos in this State.

§6–410.

(a) To qualify for a license, a business entity or public unit shall meet the requirements of this section.

(b) Each employee or agent of the business entity or public unit who will come in contact with asbestos or who will be responsible for removal or encapsulation of asbestos shall:

(1) Be familiar with federal standards for asbestos removal and encapsulation; and

(2) Have completed a course of instruction on asbestos removal and encapsulation approved by the Department.

(c) The business entity or public unit shall demonstrate to the satisfaction of the Department that the business entity or public unit:

(1) Is capable of complying with all applicable standards of the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, and the Commissioner of Labor and Industry acting under the Maryland Occupational Safety and Health Act; and

(2) Has access to at least 1 approved asbestos disposal site for deposit of all asbestos waste that the business entity or public unit will generate during the term of the license.

(d) The business entity or public unit shall meet any other standards that the Department sets.

§6–411.

(a) To apply for a license, a business entity or public unit shall:

(1) Submit an application to the Department on the form that the Department requires; and

(2) Pay to the Department the application fee set by the Department.

(b) The application form shall include:

(1) The name and address of the business entity or public unit;

(2) A description of the protective clothing and respirators that the business entity or public unit will use;

(3) The name and address of each asbestos disposal site that the business entity or public unit will use;

(4) A description of the site decontamination procedures that the business entity or public unit will use;

(5) A description of the removal and encapsulation methods that the business entity or public unit will use;

(6) A description of the procedures that the business entity or public unit will use for handling waste containing asbestos;

(7) A description of the air monitoring procedures that the business entity or public unit will use;

(8) A description of the final clean-up procedures that the business entity or public unit will use;

(9) The signature of the chief executive officer of the business entity or the chief executive officer's designee, or the signature of a representative of the public unit; and

(10) Any other information that the Department requires.

§6–412.

A license authorizes the licensee to remove or encapsulate asbestos while the license is effective.

§6–413.

(a) A license expires on the first anniversary of its effective date, unless the license is renewed for a 1–year term as provided in this section.

(b) At least 1 month before the license expires, the Department shall send to the licensee, by first–class mail to the last known address of the licensee, a renewal notice that states:

(1) The date on which the current license expires;

(2) The date by which the renewal application must be received by the Department for the renewal to be issued and mailed before the license expires; and

(3) The amount of the renewal fee.

(c) Before the license expires, the licensee periodically may renew it for an additional 1–year term, if the business entity or public unit:

(1) Otherwise is entitled to be licensed;

(2) Pays to the Department the renewal fee that the Department sets; and

(3) Submits to the Department a renewal application on the form that the Department requires.

§6–414.

(a) Each licensee shall:

(1) Keep a record of each asbestos removal or encapsulation project that it performs; and

(2) Make that record available to the Department at any reasonable time.

(b) The records required by this section shall be kept for at least 6 years.

(c) The records required by this section shall include:

(1) The name and address of the individual who supervised the asbestos removal;

(2) The location of and a description of the project and the amount of asbestos material that was removed;

(3) The starting and completion dates of each instance of removal;

(4) A summary of the procedures that were used to comply with all applicable standards;

(5) The name and address of each asbestos disposal site where the waste containing asbestos was deposited; and

(6) Any other information that the Department requires.

§6–414.1.

(a) Except in emergency situations, before any business entity or public unit licensed under this subtitle removes or encapsulates any asbestos, the business entity or public unit shall notify the Department of:

(1) The location of the removal or encapsulation work; and

(2) The approximate amount of asbestos or asbestos-containing materials to be removed or encapsulated.

(b) Except in emergency situations and except as provided in subsection (c) of this section, at least 3 days before a business entity or public unit removes or encapsulates asbestos at a work site or asbestos project that is a National Emission Standards for Hazardous Air Pollutants (NESHAP) project, the business entity or public unit shall:

(1) Post the number of signs that the Department requires to inform the public in the immediate vicinity that asbestos abatement is being performed; and

(2) Keep the sign posted until the Department receives written notice that the results of air monitoring in the area meet the requirements established in the regulations adopted under this section.

(c) For any asbestos project conducted at an electric generating station or at any other utility-controlled facility which is not routinely accessible by the public, a utility company shall be exempt from the requirements of subsection (b) of this section but shall be required to comply with any federal requirements regarding the posting of signs.

(d) The Department shall adopt regulations concerning the size, type, placement, and numbers of signs that a business entity or public unit shall post at a work site or asbestos project that is a NESHAP project.

§6–415.

Subject to the hearing provisions of this subtitle, the Department may reprimand any licensee, or suspend or revoke any license, if the licensee:

(1) Fraudulently or deceptively obtains or attempts to obtain a license;

(2) Fails at any time to meet:

(i) The qualifications for a license; or

(ii) Any rule or regulation that the Department adopts under this subtitle; or

(3) Fails to meet any applicable federal or State standard for removal or encapsulation of asbestos.

§6–416.

(a) Except as otherwise provided in the Administrative Procedure Act, before the Department takes any action under § 6-415 of this subtitle, it shall give the licensee against whom the action is contemplated an opportunity for a hearing.

(b) The Department shall give notice and hold the hearing in accordance with the Administrative Procedure Act.

§6–417.

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

(2) "Business entity" includes any person designated to manage or supervise the removal or encapsulation of asbestos.

(3) "Independent testing organization" means an entity that:

(i) Is not in any way affiliated with a business entity that employs an individual to remove or encapsulate asbestos in the State; and

(ii) Does not provide a training program.

(b) (1) Unless the individual is accredited by the Department, an individual may not engage in an asbestos occupation.

(2) The Department shall accredit an individual only upon verifying that the individual:

(i) Is at least 18 years old;

(ii) Has either:

1. Successfully completed a training program and any required refresher program approved by the Department or the United States Environmental Protection Agency; or

2. Acquired and maintained current accreditation from an EPA–approved state accreditation plan of another state; and

(iii) Has passed an applicable asbestos occupation examination provided and administered by the Department or by an independent testing organization acting on behalf of the Department.

(3) The Department may accept as proof of accreditation a certificate showing successful completion of any approved training program and examination, and any required refresher program.

(4) (i) A business entity may provide a training program.

(ii) A business entity that provides a training program may not administer an asbestos occupation examination.

(c) (1) The Department shall adopt regulations establishing standards and procedures that are consistent with federal law for the accreditation of asbestos occupations.

(2) The regulations shall include standards for:

(i) Training course approval and review;

(ii) Examinations for accreditation of applicants;

(iii) Annual refresher courses and renewal of accreditation;

(iv) Denial, suspension, and revocation of accreditation; and

(v) Procedures for implementing this accreditation plan.

(d) The Department shall set reasonable fees sufficient to cover the Department's direct and indirect costs in administering the examination, approving training programs, including the cost of applications, issuance and renewal of training course approvals and reviews, on–site audits, record keeping, and other related activities.

§6–419.

Except as otherwise provided in this subtitle, a business entity or public unit may not remove or encapsulate asbestos in this State without a license.

§6–420.

(a) The Department shall issue a written complaint if the Department has reasonable grounds to believe that the person to whom the complaint is directed has violated:

(1) This subtitle;

(2) Any rule or regulation adopted under this subtitle; or

(3) Any order, permit, or certificate issued by the Department under this subtitle.

(b) A complaint issued under this section shall:

(1) Specify the provision that allegedly has been violated; and

(2) State the alleged facts that constitute the violation.

(c) After or concurrently with service of a complaint under this subtitle, the Department may:

(1) Issue an order that requires the person to whom it is directed to take corrective action within a time set in the order;

(2) Send a written notice that requires the person to whom it is directed to file a written report about the alleged violation; or

(3) Send a written notice that requires the person to whom the notice is directed:

(i) To appear at a hearing held in accordance with the Administrative Procedure Act before the Department at a time and place the Department sets to answer the allegations of a complaint; or

(ii) To file a written report and also appear at a hearing held in accordance with the Administrative Procedure Act before the Department at a time and place the Department sets to answer the charges in the complaint.

(d) Any order issued under this section is effective immediately, according to its terms, when it is served.

§6–421.

(a) Any complaint, corrective order, notice, or other instrument issued by the Department under this subtitle may be served on the person to whom it is directed in accordance with § 1–204 of this article.

(b) If service is made by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, the person who mails the document shall file with the Department verified proof of mailing.

(c) Any notice that requires filing of a report, attendance at a hearing, or both, shall be served at least 10 days before the earlier of:

(1) The time set for the hearing, if any; or

(2) The time set for the filing of the report, if any.

§6–422.

(a) (1) A person who violates any provision of this subtitle or any rule or regulation adopted under this subtitle is liable for a civil penalty not exceeding $25,000 to be collected in a civil action.

(2) Each day a violation continues is a separate violation under this subsection.

(3) If the Attorney General concurs, the Secretary may compromise and settle any claim for a civil penalty under this subtitle.

(b) A person who knowingly and willfully violates any provision of this subtitle or any rule or regulation adopted under this subtitle is guilty of a misdemeanor and, on conviction, is subject:

(1) For a first offense, to a fine not exceeding $20,000; or

(2) For a second or subsequent offense, to a fine not exceeding $25,000, or imprisonment not exceeding 2 years or both.

(c) Any penalties and fines collected under this subtitle shall be paid into the Asbestos Worker Protection Fund, established under § 6–425 of this subtitle, and used only for asbestos worker protection and enforcement activities under this subtitle.

§6–425.

(a) In this section, "Fund" means the Asbestos Worker Protection Fund.

(b) There is an Asbestos Worker Protection Fund.

(c) The Department shall administer the Fund.

(d) (1) The Fund is a special, nonlapsing fund that is not subject to § 7–302 of the State Finance and Procurement Article.

(2) The State Treasurer shall hold the Fund separately, and the Comptroller shall account for the Fund.

(e) The Fund consists of:

(1) All penalties and fines collected under § 6–422 of this subtitle;

(2) Money appropriated in the State budget to the Fund;

(3) Investment earnings of the Fund; and

(4) Any other money from any other source accepted for the benefit of the Fund.

(f) In accordance with the State budget, the Fund shall be used only for asbestos worker protection and enforcement activities under this subtitle.

(g) (1) The State Treasurer shall invest the money in the Fund in the same manner as other State money may be invested.

(2) Any investment earnings of the Fund shall be paid into the Fund.

(h) Money expended from the Fund for enforcement activities is supplemental to, and is not intended to take the place of, funding that otherwise would be appropriated for asbestos worker protection and enforcement activities.

§6–701.

(a) The Secretary shall:

(1) Accept from physicians reports on occupational diseases; and

(2) Study occupational diseases and means to prevent and control the diseases.

(b) (1) After notice and a public hearing before the Secretary, the Secretary may adopt rules and regulations necessary to prevent and control occupational diseases.

(2) The Secretary shall enforce the rules and regulations adopted under this section.

(c) The Secretary shall:

(1) Investigate each industrial condition that is suspected of causing an occupational disease; and

(2) Recommend means to control the condition.

(d) In Baltimore City, the Baltimore City Commissioner of Health also has the duties imposed and the powers conferred on the Secretary by this section. However, this section does not limit the authority of the Secretary in Baltimore City or any charter power of the Mayor and City Council of Baltimore City.

(e) A person who, after written notice of a rule or regulation adopted under this section, continues to violate the rule or regulation is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $100 for each day that the violation continues.

§6–702.

(a) A physician who believes that a patient under the physician's care has an occupational disease shall submit a report to the Secretary and the Secretary of Health and Mental Hygiene.

(b) The report shall:

(1) State the name, address, occupation, and place of employment of the patient;

(2) Identify the suspected disease; and

(3) Contain any other information that the Secretary requires.

(c) The Secretary shall give the information received under this section to the Commissioner of Labor and Industry.

§6–801.

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

(b) (1) "Affected property" means:

(i) A property constructed before 1950 that contains at least one rental dwelling unit;

(ii) On and after January 1, 2015, a property constructed before 1978 that contains at least one rental unit; or

(iii) Any residential rental property for which the owner makes an election under § 6–803(a)(2) of this subtitle.

(2) "Affected property" includes an individual rental dwelling unit within a multifamily rental dwelling.

(3) "Affected property" does not include property exempted under § 6–803(b) of this subtitle.

(c) "Change in occupancy" means a change of tenant in an affected property in which the property is vacated and possession is either surrendered to the owner or abandoned.

(d) "Child" means an individual under the age of 6 years.

(e) "Commission" means the Lead Poisoning Prevention Commission.

(f) (1) "Elevated blood lead" or "EBL" means a quantity of lead in blood, expressed in micrograms per deciliter (g/dl), that exceeds the threshold level specified

in this subtitle and is determined in accordance with the following protocols:

(i) A venous blood test; or

(ii) Two capillary blood tests taken in accordance with paragraph (2) of this subsection.

(2) If the capillary blood test method is used, an individual shall:

(i) Have a first sample of capillary blood drawn and tested; and

(ii) Have a second sample of capillary blood drawn and tested within 84 days after the first sample is drawn.

(3) If the result of one capillary blood test would require action under this subtitle and the other result would not, an individual's elevated blood lead level shall be confirmed by a venous blood test.

(g) "Exterior surfaces" means:

(1) All fences and porches that are part of an affected property;

(2) All outside surfaces of an affected property that are accessible to a child and that are:

(i) Attached to the outside of an affected property; or

(ii) Other buildings and structures, including play equipment, benches, and laundry line poles, that are part of the affected property, except buildings or structures that are not owned or controlled by the owner of the affected property; and

(3) All painted surfaces in stairways, hallways, entrance areas, recreation areas, laundry areas, and garages within a multifamily rental dwelling unit that are common to individual dwelling units and are accessible to a child.

(h) "Fund" means the Lead Poisoning Prevention Fund.

(i) (1) "High efficiency particle air vacuum" or "HEPA–vacuum" means a device capable of filtering out particles of 0.3 microns or greater from a body of air at an efficiency of 99.97% or greater.

(2) "HEPA–vacuum" includes use of a HEPA–vacuum.

(j) "Lead–based paint" means paint or other surface coatings that contain lead in excess of the maximum lead content level allowed by the Department by regulation.

(k) "Lead–contaminated dust" means dust in affected properties that contains an area or mass concentration of lead in excess of the lead content level determined by

the Department by regulation.

(l) "Lead–free" means at or below a lead content level deemed to be lead–free in accordance with criteria established by the Department by regulation.

(m) "Lead–safe housing" means a rental dwelling unit that:

(1) Is certified to be lead–free in accordance with § 6–804 of this subtitle;

(2) Was constructed after 1978;

(3) Is deemed to be lead–safe by the Department in accordance with criteria established by the Department by regulation; or

(4) Is certified to be in compliance with § 6–815(a) of this subtitle and:

(i) In which all windows are either lead–free or have been treated so that all friction surfaces are lead–free;

(ii) In which lead–contaminated dust levels are determined to be within abatement clearance levels established by the Department by regulation, within a time frame established by the Department by regulation; and

(iii) Which is subject to ongoing maintenance and testing as specified by the Department by regulation.

(n) "Multifamily rental dwelling" means a property which contains more than one rental dwelling unit.

(o) (1) "Owner" means a person, firm, corporation, guardian, conservator, receiver, trustee, executor, or legal representative who, alone or jointly or severally with others, owns, holds, or controls the whole or any part of the freehold or leasehold interest to any property, with or without actual possession.

(2) "Owner" includes:

(i) Any vendee in possession of the property; and

(ii) Any authorized agent of the owner, including a property manager or leasing agent.

(3) "Owner" does not include:

(i) A trustee or a beneficiary under a deed of trust or a mortgagee; or

(ii) The owner of a reversionary interest under a ground rent lease.

(p) "Person at risk" means a child or a pregnant woman who resides or regularly

spends at least 24 hours per week in an affected property.

(q) "Related party" means any:

(1) Person related to an owner by blood or marriage;

(2) Employee of the owner; or

(3) Entity in which an owner, or any person referred to in paragraph (1) or (2) of this subsection, has an interest.

(r) "Relocation expenses" means all expenses necessitated by the relocation of a tenant's household to lead–safe housing, including moving and hauling expenses, the HEPA–vacuuming of all upholstered furniture, payment of a security deposit for the lead–safe housing, and installation and connection of utilities and appliances.

(s) "Rent subsidy" means the difference between the rent paid by a tenant for housing at the time a qualified offer is made under Part V of this subtitle and the rent due for the lead–safe housing to which the tenant is relocated.

(t) (1) "Rental dwelling unit" means a room or group of rooms that form a single independent habitable rental unit for permanent occupation by one or more individuals that has living facilities with permanent provisions for living, sleeping, eating, cooking, and sanitation.

(2) "Rental dwelling unit" does not include:

(i) An area not used for living, sleeping, eating, cooking, or sanitation, such as an unfinished basement;

(ii) A unit within a hotel, motel, or similar seasonal or transient facility;

(iii) An area which is secured and inaccessible to occupants; or

(iv) A unit which is not offered for rent.

(u) "Risk reduction standard" means a risk reduction standard established under § 6–815 or § 6–819 of this subtitle.

§6–802.

The purpose of this subtitle is to reduce the incidence of childhood lead poisoning, while maintaining the stock of available affordable rental housing.

§6–803.

(a) This subtitle applies to:

(1) Affected property; and

(2) Notwithstanding subsection (b) of this section, any residential rental property, the owner of which elects to comply with this subtitle.

(b) This subtitle does not apply to:

(1) Property not expressly covered in subsection (a) of this section;

(2) Affected property owned or operated by a unit of federal, State, or local government, or any public, quasi-public, or municipal corporation, if the affected property is subject to lead standards that are equal to, or more stringent than, the risk reduction standard established under § 6-815 of this subtitle; or

(3) Affected property which is certified to be lead-free pursuant to § 6-804 of this subtitle.

§6–804.

(a) Affected property is exempt from the provisions of Part IV of this subtitle if the owner submits to the Department an inspection report that:

(1) Indicates that the affected property has been tested for the presence of lead-based paint in accordance with standards and procedures established by the Department by regulation;

(2) States that:

(i) All interior and exterior surfaces of the affected property are lead-free; or

(ii) 1. All interior surfaces of the affected property are lead-free and all exterior painted surfaces of the affected property that were chipping, peeling, or flaking have been restored with nonlead-based paint; and

2. No exterior painted surfaces of the affected property are chipping, peeling, or flaking; and

(3) Is verified by the Department accredited inspector who performed the test.

(b) In order to maintain exemption from the provisions of Part IV of this subtitle under subsection (a)(2)(ii) of this section, the owner shall submit to the Department every 2 years a certification, by a Department accredited inspector, stating that no exterior painted surface of the affected property is chipping, peeling, or flaking.

(c) Outside surfaces of an affected property, including windows, doors, trim, fences, porches, and other buildings or structures that are part of the affected property,

are exempt from the risk reduction standards under §§ 6-815 and 6-819 of this subtitle if all exterior surfaces of an affected property are lead-free and the owner submits to the Department an inspection report that:

(1) Indicates that the outside surfaces have been tested for the presence of lead-based paint in accordance with standards and procedures established by the Department by regulation;

(2) States that all outside surfaces of the affected property are lead-free; and

(3) Is verified by the Department accredited inspector who performed the test.

§6–807.

(a) There is a Lead Poisoning Prevention Commission in the Department.

(b) (1) The Commission consists of 19 members.

(2) Of the 19 members:

(i) One shall be a member of the Senate of Maryland, appointed by the President of the Senate;

(ii) One shall be a member of the Maryland House of Delegates, appointed by the Speaker of the House; and

(iii) 17 shall be appointed by the Governor as follows:

1. The Secretary or the Secretary's designee;

2. The Secretary of Health and Mental Hygiene or the Secretary's designee;

3. The Secretary of Housing and Community Development or the Secretary's designee;

4. The Maryland Insurance Commissioner or the Commissioner's designee;

5. The Director of the Early Childhood Development Division, State Department of Education, or the Director's designee;

6. A representative of local government;

7. A representative from an insurer that offers premises liability coverage in the State;

8. A representative of a financial institution that makes loans secured by rental property;

9. A representative of owners of rental property located in Baltimore City built before 1950;

10. A representative of owners of rental property located outside Baltimore City built before 1950;

11. A representative of owners of rental property built after 1949;

12. A representative of a child health or youth advocacy group;

13. A health care provider;

14. A child advocate;

15. A parent of a lead poisoned child;

16. A lead hazard identification professional; and

17. A representative of child care providers.

(3) In appointing members to the Commission, the Governor shall give due consideration to appointing members representing geographically diverse jurisdictions across the State.

(c) (1) (i) The term of a member appointed by the Governor is 4 years.

(ii) A member appointed by the President and Speaker serves at the pleasure of the appointing officer.

(2) The terms of members are staggered as required by the terms provided for the members of the Commission on October 1, 1994.

(3) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(4) A member who is appointed after a term has begun serves only for the remainder of the term and until a successor is appointed and qualifies.

§6–808.

(a) The Commission shall meet at least quarterly at the times and places it determines.

(b) From among the members, the Governor shall appoint the Chairman of the Commission.

(c) (1) A majority of the members then serving on the Commission constitutes a quorum.

(2) The Commission may act upon a majority vote of the quorum.

(d) A member of the Commission:

(1) May not receive compensation; but

(2) Is entitled to reimbursement from the Fund for reasonable travel expenses related to attending meetings and other Commission events in accordance with the Standard State Travel Regulations.

§6–809.

(a) In consultation with the Secretary of Housing and Community Development, the Commission shall develop recommendations for establishing a program that would provide financial incentives or assistance to owners of affected property to replace windows.

(b) In developing recommendations for a window replacement program, the Commission shall consider the feasibility and desirability of merging a window replacement program into existing housing programs.

(c) The Commission shall include in its first annual report under § 6-810 of this subtitle its recommendations for establishing a window replacement program.

§6–810.

(a) The Commission shall study and collect information on the:

(1) Effectiveness of this subtitle in:

(i) Protecting children from lead poisoning; and

(ii) Lessening risks to responsible owners;

(2) Effectiveness of the treatments specified in §§ 6–815 and 6–819 of this subtitle, including recommendations for changes to those treatments;

(3) Availability of third–party bodily injury liability insurance and premises liability insurance for affected property, including waivers of lead hazard exclusion and coverage for qualified offers made under Part V of this subtitle;

(4) Ability of State and local officials to respond to lead poisoning cases;

(5) Availability of affordable housing;

(6) Adequacy of the qualified offer caps; and

(7) Need to expand the scope of this subtitle to other property serving persons at risk, including child care centers, family child care homes, and preschool facilities.

(b) The Commission may appoint a subcommittee or subcommittees to study the following subjects relating to lead and lead poisoning:

(1) Medical referral;

(2) Regulation and compliance;

(3) Worker education;

(4) Social services;

(5) Educational services;

(6) Legal aspects;

(7) Employer services;

(8) Abatement of lead sources;

(9) Financial subsidies and other encouragement and support for the abatement of the causes of lead poisoning;

(10) Laboratory services; and

(11) Other subjects that the Commission considers necessary.

(c) The Commission shall review the implementation and operation of this subtitle and, on or before January 1 of each year, starting in 1996, submit a report to the Governor and, subject to the provisions of § 2–1246 of the State Government Article, the General Assembly on the results of the review, and the Commission's recommendations concerning this subtitle, other lead poisoning issues, and the need for further action that the Commission determines to be necessary.

(d) The Department shall consult with the Commission on establishing the optional lead–contaminated dust testing standards under § 6–816 of this subtitle and in developing regulations to implement this subtitle.

§6–811.

(a) (1) On or before December 31, 1995, the owner of an affected property shall register the affected property with the Department.

(2) Notwithstanding paragraph (1) of this subsection, an owner of affected property for which an election is made under § 6-803(a)(2) of this subtitle shall register at the time of the election.

(b) The owner shall register each affected property using forms prepared by the Department, including the following information:

(1) The name and address of the owner;

(2) The address of the affected property;

(3) If applicable, the name and address of each property manager employed by the owner to manage the affected property;

(4) The name and address of each insurance company providing property insurance or lead hazard coverage for the affected property, together with the policy numbers of that insurance or coverage;

(5) The name and address of a resident agent, other agent of the owner, or contact person in the State with respect to the affected property;

(6) Whether the affected property was built before 1950 or after 1949;

(7) The date of the latest change in occupancy of the affected property;

(8) The dates and nature of treatments performed to attain or maintain a risk reduction standard under § 6-815 or § 6-819 of this subtitle; and

(9) The latest date, if any, on which the affected property has been certified to be in compliance with the provisions of § 6-815 of this subtitle.

(c) (1) Subject to the provisions of paragraph (2) of this subsection, the information provided by an owner under subsection (b) of this section shall be open to the public.

(2) (i) Except as provided in subparagraph (ii) of this paragraph, the Department may not disclose an inventory or list of properties owned by an owner.

(ii) The Department shall, upon request, disclose whether the owner has met the percentage of inventory requirements under § 6-817 of this subtitle.

§6–812.

(a) An owner who has registered an affected property under § 6–811 of this subtitle shall:

(1) Renew the registration of the affected property on or before December 31 of each year or according to a schedule established by the Department by regulation; and

(2) Update the information contained in the owner's registration required by § 6–811(b)(1) through (5) of this subtitle within 30 days after any change in the information required in the registration.

(b) An owner who first acquires affected property after December 1, 1995 shall register the affected property under § 6–811 of this subtitle within 30 days after the acquisition.

§6–813.

(a) An owner who fails to register an affected property under § 6-811 of this subtitle, or who fails to renew the registration of an affected property under § 6-812 of this subtitle, is not in compliance with respect to that affected property with the provisions of this subtitle for purposes of § 6-836 of this subtitle.

(b) A person who willfully and knowingly falsifies information filed in a registration or renewal under this part is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $2,000.

§6–815.

(a) No later than the first change in occupancy in an affected property that occurs on or after February 24, 1996, before the next tenant occupies the property, an owner of an affected property shall initially satisfy the risk reduction standard established under this subtitle by passing the test for lead–contaminated dust under § 6–816 of this subtitle provided that any chipping, peeling, or flaking paint has been removed or repainted on:

(1) The exterior painted surfaces of the residential building in which the rental dwelling unit is located; and

(2) The interior painted surfaces of the rental dwelling unit.

(b) At each change in occupancy thereafter, before the next tenant occupies the property, the owner of an affected property shall satisfy the risk reduction standard established under this subtitle by passing the test for lead–contaminated dust under § 6–816 of this subtitle in accordance with subsection (a) of this section.

(c) At each change in occupancy, an owner of an affected property shall have the property inspected to verify that the risk reduction standard specified in this section has been satisfied.

(d) (1) Exterior work required to satisfy the risk reduction standard may be delayed, pursuant to a waiver approved by the appropriate person under paragraph (2) of this subsection, during any time period in which exterior work is not required to be performed under an applicable local housing code or, if no such time period is specified, during the period from November 1 through April 1, inclusive.

(2) A waiver under paragraph (1) of this subsection may be approved by the code official for enforcement of the housing code or minimum livability code of the local jurisdiction, or, if there is no such official, the Department of Housing and Community Development.

(3) Notwithstanding the terms of the waiver, all work delayed in accordance with paragraph (1) of this subsection shall be completed within 30 days after the end of the applicable time period.

(4) Any delay allowed under paragraph (1) of this subsection may not affect the obligation of the owner to complete all other components of the risk reduction standard and to have those components inspected and verified.

(5) If the owner has complied with the requirements of paragraph (4) of this subsection, the owner may rent the affected property during any period of delay allowed under paragraph (1) of this subsection.

(e) On request of a local jurisdiction, the Secretary may designate the code official for enforcement of the housing code or minimum livability code for the local jurisdiction, or an appropriate employee of the local jurisdiction, to conduct inspections under this subtitle.

§6–816.

The Department shall establish procedures and standards for the lead–contaminated dust testing by regulation.

§6–817.

(a) (1) Except for properties constructed between January 1, 1950, and December 31, 1977, both inclusive, on and after February 24, 2001, an owner of affected properties shall ensure that at least 50% of the owner's affected properties have satisfied the risk reduction standard specified in § 6–815(a) of this subtitle, without regard to the number of affected properties in which there has been a change in occupancy.

(2) (i) Notwithstanding any other remedy that may be available, an owner who fails to meet the requirements of subsections (a)(1) and (c) of this section shall lose the liability protection under § 6–836 of this subtitle for any alleged injury or loss caused by the ingestion of lead by a person at risk that is first documented by a test for EBL of 20 g/dl or more performed between February 24, 2001 and February 23, 2006, inclusive, or 15 g/dl or more performed on or after February 24, 2006, in any of the owner's units that have not satisfied the risk reduction standard specified in § 6–815(a) of this subtitle and the inspection requirement of subsection (c) of this section.

(ii) On or after the date that the owner meets the requirements of subsections (a)(1) and (c) of this section, the liability protection under § 6–836 of this subtitle shall be reinstated for any alleged injury or loss caused by the ingestion of lead by a person at risk that is first documented by a test for EBL of 20 g/dl or more performed between February 24, 2001 and February 23, 2006, inclusive, or 15 g/dl or more performed on or after February 24, 2006.

(b) (1) Except for properties constructed between January 1, 1950, and December 31, 1977, both inclusive, on and after February 24, 2006, an owner of affected properties shall ensure that 100% of the owner's affected properties in which a person at risk resides, and of whom the owner has been notified in writing, have satisfied the risk reduction standard specified in § 6–815(a) of this subtitle.

(2) (i) Notwithstanding any other remedy that may be available, an owner who fails to meet the requirements of subsections (b)(1) and (c) of this section, or of § 6–819(f) of this subtitle shall lose the liability protection under § 6–836 of this subtitle for any alleged injury or loss caused by the ingestion of lead by a person at risk that is first documented by a test for EBL of 15 g/dl or more on or after February 24, 2006 in any of the owner's units that have not satisfied the risk reduction standard specified in § 6–815(a) of this subtitle, the inspection requirement of subsection (c) of this section, or the modified risk reduction standard specified in § 6–819(a) of this subtitle, as applicable.

(ii) The liability protection under § 6–836 of this subtitle shall be reinstated for any alleged injury or loss caused by the ingestion of lead that is first documented by a test for EBL of 15 g/dl or more after the date that the owner meets the requirements of subsections (b)(1) and (c) of this section and the requirements of § 6–819(f) of this subtitle.

(iii) The provisions of this paragraph do not apply if the owner proves that the noncompliance results from:

1. A tenant's lack of cooperation with the owner's compliance efforts; or

2. Legal action affecting access to the unit.

(3) Notice given under subsection (b)(1) of this section shall be sent by:

(i) Certified mail, return receipt requested; or

(ii) A verifiable method approved by the Department.

(c) On each occasion that an affected property which has not undergone a change in occupancy is treated to satisfy the requirements of this section, the owner of the affected property shall have the property inspected to verify that the risk reduction standard specified in § 6–815(a) of this subtitle has been satisfied.

(d) The owner of an affected property shall be responsible for the cost of any temporary relocation of the tenants of the affected property that is necessary to fulfill the requirements of this section.

§6–818.

(a) (1) Any person performing lead-contaminated dust testing or conducting

inspections required by this subtitle:

(i) Shall be accredited by the Department;

(ii) May not be a related party to the owner; and

(iii) Shall submit a verified report of the result of the lead-contaminated dust testing or visual inspection to the Department, the owner, and the tenant, if any, of the affected property.

(2) An owner may not employ or engage a related party to the owner to perform lead-contaminated dust testing or conduct inspections required by this subtitle.

(b) A report submitted to the Department under subsection (a) of this section that certifies compliance for an affected property with the risk reduction standard shall be conclusive proof that the owner is in compliance with the risk reduction standard for the affected property during the period for which the certification is effective, unless there is:

(1) Proof of actual fraud as to that affected property;

(2) Proof that the work performed in the affected property was not performed by or under the supervision of personnel accredited under § 6-1002 of this title; or

(3) Proof that the owner failed to respond to a complaint regarding the affected property as required by § 6-819 of this subtitle.

§6–819.

(a) The modified risk reduction standard shall consist of performing the following:

(1) Passing the test for lead–contaminated dust under § 6–816 of this subtitle; and

(2) Performing the following lead hazard reduction treatments:

(i) A visual review of all exterior and interior painted surfaces;

(ii) The removal and repainting of chipping, peeling, or flaking paint on exterior and interior painted surfaces;

(iii) The repair of any structural defect that is causing the paint to chip, peel, or flake, that the owner of the affected property has knowledge of or, with the exercise of reasonable care, should have knowledge of;

(iv) Repainting, replacing, or encapsulating all interior lead–based

paint or untested painted windowsills with vinyl, metal, or any other material in a manner and under conditions approved by the Department;

(v) Ensuring that caps of vinyl, aluminum, or any other material in a manner and under conditions approved by the Department, are installed in all window wells where lead–based paint or untested paint exists in order to make the window wells smooth and cleanable;

(vi) Except for a treated or replacement window that is free of lead–based paint on its friction surfaces, fixing the top sash, subject to federal, State, or local fire code standards, of all windows in place in order to eliminate the friction caused by the movement of the top sash;

(vii) Rehanging all doors in order to prevent the rubbing together of a lead–painted surface with another surface;

(viii) Ensuring that all kitchen and bathroom floors are overlaid with a smooth, water–resistant covering; and

(ix) HEPA–vacuuming and washing with high phosphate detergent or its equivalent, as determined by the Department, any area of the affected property where repairs were made.

(b) (1) A tenant of an affected property may notify the owner of the affected property of a defect in the affected property under this section in accordance with this subsection.

(2) Notice of a defect under this section shall consist of:

(i) If the modified risk reduction standard has not been satisfied for the affected property, the presence of chipping, peeling, or flaking paint on the interior or exterior surfaces of the affected property or of a structural defect causing chipping, peeling, or flaking paint in the affected property; or

(ii) If the modified risk reduction standard has been satisfied for the affected property, a defect relating to the modified risk reduction standard.

(c) (1) After February 23, 1996, an owner of an affected property shall satisfy the modified risk reduction standard:

(i) Within 30 days after receipt of written notice that a person at risk who resides in the property has an elevated blood lead level documented by a test for EBL greater than or equal to 15 g/dl before February 24, 2006 or greater than or equal to 10 g/dl on or after February 24, 2006; or

(ii) Within 30 days after receipt of written notice from the tenant, or from any other source, of:

1. A defect; and

2. The existence of a person at risk in the affected property.

(2) (i) An owner who receives multiple notices of an elevated blood level under this subsection or multiple notices of defect under subsection (d) of this section may satisfy all such notices by subsequent compliance with the risk reduction measures specified in subsection (a) of this section, as documented by satisfaction of subsection (f) or (g) of this section, if the owner complies with the risk reduction measures specified in subsection (a) of this section after the date of the test documenting the elevated blood level or after the date the notices of defect were issued.

(ii) Subparagraph (i) of this paragraph does not affect an owner's obligation to perform the risk reduction measures specified in subsection (a) of this section for a triggering event that occurs after the owner satisfies the provisions of subparagraph (i) of this paragraph.

(d) After May 23, 1997, an owner of an affected property shall satisfy the modified risk reduction standard within 30 days after receipt of written notice from the tenant, or from any other source, of a defect.

(e) An owner of an affected property is in compliance with subsection (c) or (d) of this section if, as applicable:

(1) The owner satisfies the modified risk reduction within 30 days after receiving a notice of elevated blood lead level or a notice of defect in accordance with this section; or

(2) The owner provides for the temporary relocation of tenants to a lead–free dwelling unit or another dwelling unit that has satisfied the risk reduction standard in accordance with § 6–815 of this subtitle within 30 days after the receipt of a notice of elevated blood lead level or a notice of defect.

(f) Except as provided in § 6–817(b) of this subtitle and except for properties constructed between January 1, 1950, and December 31, 1977, both inclusive, on and after February 24, 2006, an owner of affected properties shall ensure that 100% of the owner's affected properties in which a person at risk does not reside have satisfied the modified risk reduction standard.

(g) An owner of an affected property shall verify satisfaction of the modified risk reduction standard by submitting a report from an accredited inspector to the Department.

(h) Notice given under this section shall be written, and shall be sent by:

(1) Certified mail, return receipt requested; or

(2) A verifiable method approved by the Department.

(i) The Department may, by regulation, eliminate any treatment from the modified risk reduction standard if the Department finds that performing the treatment in an occupied property is harmful to public health.

(j) (1) Exterior work required to satisfy the modified risk reduction standard may be delayed, pursuant to a waiver approved by the appropriate person under paragraph (2) of this subsection, during any time period in which exterior work is not required to be performed under an applicable local housing code or, if no such time period is specified, during the period from November 1 through April 1, inclusive.

(2) A waiver under paragraph (1) of this subsection may be approved by the code official for enforcement of the housing code or minimum livability code of the local jurisdiction, or, if there is no such official, the Department of Housing and Community Development.

(3) Notwithstanding the terms of the waiver, all work delayed in accordance with paragraph (1) of this subsection shall be completed within 30 days after the end of the applicable time period.

(4) Any delay allowed under paragraph (1) of this subsection may not affect the obligation of the owner to complete all other components of the risk reduction standard and to have those components inspected and verified.

(k) The report of the inspector verifying compliance with this subtitle shall create a rebuttable presumption, that may be overcome by clear and convincing evidence, that the owner is in compliance with the modified risk reduction standard for the affected property unless there is:

(1) Proof of actual fraud as to that affected property; or

(2) Proof that the work performed on the affected property was not performed by or under the supervision of personnel accredited under § 6–1002 of this title.

§6–820.

(a) Except as provided in subsection (b) of this section, an owner of an affected property shall give to the tenant of the affected property a notice, prepared by the Department, of the tenant's rights under §§ 6–817 and 6–819 of this subtitle, according to the following schedule:

(1) At least 25% of the owner's affected properties by May 25, 1996;

(2) At least 50% of the owner's affected properties by August 25, 1996;

(3) At least 75% of the owner's affected properties by November 25, 1996; and

(4) 100% of the owner's affected properties by February 25, 1997.

(b) On or after February 24, 1996, an owner of an affected property shall give to the tenant of the affected property a notice, prepared by the Department, of the tenant's rights under §§ 6–817 and 6–819 of this subtitle upon the execution of a lease or the inception of a tenancy.

(c) An owner of an affected property shall give to the tenant of the affected property a notice, prepared by the Department, of the tenant's rights under §§ 6–817 and 6–819 of this subtitle at least every 2 years after last giving the notice to the tenant.

(d) The owner shall include, with the notice of the tenant's rights that is provided to a tenant under this section upon the execution of a lease or the inception of a tenancy, a copy of the current verified inspection certificate for the affected property prepared under § 6–818 of this subtitle.

(e) (1) Notice given under this section shall be written, and shall be sent by:

(i) Certified mail, return receipt requested; or

(ii) A verifiable method approved by the Department.

(2) When giving notice to a tenant under this section, the owner shall provide documentation of the notice to the Department in a manner acceptable to the Department.

(3) A notice required to be given to a tenant under this section shall be sent to a party or parties identified as the lessee in a written lease in effect for an affected property or, if there is no written lease, the party or parties to whom the property was rented.

(f) A person who has acquired, or will acquire, an affected property shall give the notice required under this section to the tenant of the affected property:

(1) Before transfer of legal title; or

(2) Within 15 days following transfer of legal title.

§6–821.

(a) (1) Whenever an owner of an affected property intends to make repairs or perform maintenance work that will disturb the paint on interior surfaces of an affected property, the owner shall make reasonable efforts to ensure that all persons who are not persons at risk are not present in the area where work is performed and that all persons at risk are removed from the affected property when the work is performed.

(2) A tenant shall allow access to an affected property, at reasonable times, to the owner to perform any work required under this subtitle.

(3) If a tenant must vacate an affected property for a period of 24 hours or more in order to allow an owner to perform work that will disturb the paint on interior surfaces, the owner shall pay the reasonable expenses that the tenant incurs directly related to the required relocation.

(b) (1) If an owner has made all reasonable efforts to cause the tenant to temporarily vacate an affected property in order to perform work that will disturb the paint on interior surfaces, and the tenant refuses to vacate the affected property, the owner may not be liable for any damages arising from the tenant's refusal to vacate.

(2) If an owner has made all reasonable efforts to gain access to an affected property in order to perform any work required under this subtitle, and the tenant refuses to allow access, even after receiving reasonable advance notice of the need for access, the owner may not be liable for any damages arising from the tenant's refusal to allow access.

(c) All hazard reduction treatments required to be performed under this subtitle shall be performed by or under the supervision of personnel accredited under § 6-1002 of this title.

§6–822.

(a) The provisions of this subtitle do not affect:

(1) The duties and obligations of an owner of an affected property to repair or maintain the affected property as required under any applicable State or local law or regulation; or

(2) The authority of a State or local agency to enforce applicable housing or livability codes or to order lead abatements in accordance with any applicable State or local law or regulation.

(b) (1) Notwithstanding § 6–803 of this subtitle, following an environmental investigation in response to a report of a lead poisoned person at risk, the Department or a local jurisdiction, including the local health department, may order an abatement, as defined in § 6–1001 of this title, in any residential property, child care center, family child care home, or preschool facility.

(2) No provision of this Act may be construed to limit the treatments which may be encompassed by an order to abate lead hazards.

(c) (1) Whenever there is a conflict between the requirements of an abatement order issued by a State or local agency to an owner of an affected property and the provisions of this subtitle, the more stringent provisions of this subtitle and of the abatement order shall be controlling in determining the owner's obligations regarding the necessary lead hazard reduction treatments that shall be performed in the affected property that is subject to the abatement order.

(2) The Department may enforce the terms of an abatement ordered by a local jurisdiction or local health department in a civil or an administrative action.

§6–823.

(a) By May 23, 1996, an owner of an affected property shall give to the tenant of each of the owner's affected properties a lead poisoning information packet prepared or designated by the Department.

(b) On or after February 24, 1996, upon the execution of a lease or the inception of a tenancy for an affected property, the owner of the affected property shall give to the tenant a lead poisoning information packet prepared or designated by the Department.

(c) An owner of an affected property shall give to the tenant of the affected property another copy of the lead poisoning information packet prepared or designated by the Department at least every 2 years after last giving the information packet to the tenant.

(d) A packet given to a tenant under this section shall be sent by:

(1) Certified mail, return receipt requested; or

(2) A verifiable method approved by the Department.

(e) The packet required to be given to a tenant under this section shall be sent to a party or parties identified as the lessee in a written lease in effect for an affected property or, if there is no written lease, the party or parties to whom the property was rented.

(f) A person who has acquired, or will acquire, an affected property shall give the packet required under this section to the tenant of the affected property:

(1) Before transfer of legal title; or

(2) Within 15 days following transfer of legal title.

§6–824.

An owner shall disclose an obligation to perform either the modified or full risk reduction treatment to an affected property under this subtitle to any prospective purchaser of an affected property at or prior to the time a contract of sale is executed, if:

(1) An event has occurred that requires performance of either the modified or full risk reduction treatment to the affected property under this subtitle; and

(2) The owner will not perform the required treatment prior to the transfer of ownership.

§6–825.

(a) A person who intends to acquire, through an arm's length transaction, inheritance, tax sale, foreclosure, or judicially approved transfer, an occupied affected property that is in violation of § 6–815, § 6–817, or § 6–819 of this subtitle may submit to the Department an application for a compliance plan.

(b) (1) The application for a compliance plan shall:

(i) Be submitted and received by the Department at least 30 days before transfer of legal title to the occupied affected property; and

(ii) Be on a form provided by the Department that includes, for each occupied affected property, the following information:

1. The transferee's name, address, and telephone number;

2. The transferor's name and address;

3. A statement certifying that neither the transferee nor any officer or director of the transferee has a current interest, either individually or jointly, in the occupied affected property;

4. The type and scheduled date of transfer;

5. The address of the occupied affected property including, for a multifamily–occupied affected property, each unit in the property; and

6. Whether a person at risk resides in the occupied affected property.

(2) The Department may require any additional information that it considers appropriate.

(3) An application fee of $200 for each occupied affected property and each occupied unit in a multifamily affected property, not to exceed $10,000, shall be submitted to the Department with the application.

(c) (1) Within 20 days of receipt of the application for a compliance plan, the Department shall:

(i) Approve the compliance plan, in whole or in part;

(ii) Deny the compliance plan, in whole or in part; or

(iii) Request additional information.

(2) The Department may deny an application for a compliance plan for an occupied affected property based on the following factors:

(i) Failure to submit or timely submit a complete application;

(ii) Failure to submit or timely submit information requested by the Department;

(iii) The existence of prior violations by the transferee of the provisions of this subtitle or applicable regulations;

(iv) Prior extension of the compliance deadline under subsection (d) of this section for an affected property;

(v) Potential or actual harm to the environment or to human health or safety; and

(vi) Any other factor the Department considers appropriate.

(d) (1) This subsection applies to an occupied affected property in which a person at risk does not reside.

(2) Subject to subsection (e) of this section, if an application for a compliance plan is approved, the transferee shall file with the Department an inspection report as proof that the risk reduction standard specified in § 6–815 of this subtitle has been satisfied, or an inspection report in accordance with § 6–804 of this subtitle, for each occupied affected property that has not satisfied the requirements of § 6–815, § 6–817, or § 6–819 of this subtitle within the following time frames:

(i) Within 30 days after transfer of legal title for a transferee acquiring 1 occupied affected property;

(ii) Within 90 days after the transfer of legal title for a transferee acquiring 2 to 5 occupied affected properties;

(iii) Within 135 days after the transfer of legal title for a transferee acquiring 6 to 10 occupied affected properties; or

(iv) Within 180 days after the transfer of legal title for a transferee acquiring more than 10 occupied affected properties.

(e) (1) This subsection applies to an occupied affected property in which a person at risk resides.

(2) Notwithstanding the status of an application for a compliance plan, the transferee shall file with the Department an inspection report as proof that the risk reduction standard specified in § 6–815 of this subtitle has been satisfied, or an inspection report in accordance with § 6–804 of this subtitle, for each occupied affected property that has not satisfied the requirements of § 6–815, § 6–817, or § 6–819 of this subtitle within 30 days after transfer of legal title.

(f) A compliance plan for an occupied affected property under this section is void unless within 15 days following transfer of the occupied affected property subject to the compliance plan, the transferee files with the Department:

(1) Documentation satisfactory to the Department of the transfer of legal title;

(2) A statement certifying that, prior to or within 15 days of transfer of legal title, the transferee provided the tenants of the occupied properties with the notice of tenant's rights and lead poisoning information packet required by §§ 6–820 and 6–823 of this subtitle; and

(3) A statement certifying that within 15 days of transfer of legal title, the transferee registered the occupied affected properties with the Department in accordance with §§ 6–811 and 6–812 of this subtitle.

(g) If the Department determines that any information provided in an application for a compliance plan or required in subsection (f) of this section was erroneous or incomplete, the Department may declare the compliance plan void in whole or in part.

(h) This section does not affect an owner's obligation to comply with §§ 6–815 and 6–819(c) and (d) of this subtitle that arises after legal title to the affected property is transferred.

(i) Subject to subsections (h) and (j) of this section, if the Department approves a compliance plan, an affected property subject to the compliance plan shall be considered in compliance with §§ 6–815, 6–817, and 6–819 of this subtitle as of the day of the date of transfer.

(j) If the person who acquired an occupied affected property that does not satisfy the requirements of § 6–815, § 6–817, or § 6–819 of this subtitle fails to comply with the terms of an approved compliance plan, the affected property shall be considered to be noncompliant with § 6–815 of this subtitle from the date legal title to the affected property was transferred to the person.

(k) The Department may adopt regulations to carry out this section.

§6–826.

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

(b) "Action" includes a complaint, counterclaim, cross-claim, or third-party complaint.

(c) "Co-offer" means a qualified offer which is made by or on behalf of more than one person as provided under this part.

(d) "Offeror" means a person including an insurer or other agent who makes a qualified offer under this part.

§6–827.

This part applies to all potential bases of liability for alleged injury or loss to a person caused by the ingestion of lead by a person at risk in an affected property.

§6–828.

(a) This section applies to an owner of an affected property who has, with respect to the affected property, complied with the applicable requirements of §§ 6–811, 6–812, 6–815, 6–817, and 6–819 of this subtitle, and has sent to the tenant the notices required by §§ 6–820 and 6–823 of this subtitle.

(b) A person may not bring an action against an owner of an affected property for damages arising from alleged injury or loss to a person at risk caused by the ingestion of lead by a person at risk that is first documented by a test for EBL of 25 g/dl or more performed between February 24, 1996 and February 23, 2001, inclusive, or 20 g/dl or more performed between February 24, 2001 and February 23, 2006, inclusive, or 15 g/dl or more performed on or after February 24, 2006, unless the owner has been given:

(1) Written notice from any person that the elevated blood level of a person at risk is:

(i) Greater than or equal to 25 g/dl as first documented by a test for EBL performed between February 24, 1996 and February 23, 2001, inclusive;

(ii) Between February 24, 2001 and February 23, 2006, inclusive, an EBL greater than or equal to 20 g/dl as first documented by a test for EBL performed between February 24, 2001 and February 23, 2006, inclusive; or

(iii) On or after February 24, 2006, an EBL greater than or equal to 15 g/dl as first documented by a test for EBL performed on or after February 24, 2006; and

(2) An opportunity to make a qualified offer under § 6–831 of this subtitle.

§6–829.

(a) A person who receives notice under § 6-828(b)(1) of this subtitle is entitled to the results of any available prior blood lead tests of the person at risk for the purpose of determining whether to make a qualified offer under this subtitle and whether the qualified offer should be designated as a co-offer.

(b) In the event a local health department notifies an owner of an affected property in accordance with § 6-828(b)(1) of this subtitle, the local health department shall also provide the owner with any blood lead test results and history of residence

for the person at risk which the local health department has on record.

§6–830.

(a) If, between February 24, 1996 and February 23, 2001, inclusive, the concentration of lead in a whole venous blood sample of a person at risk tested within 30 days after the person at risk begins residence or to regularly spend at least 24 hours per week in an affected property that is certified as being in compliance with the provisions of § 6–815 of this subtitle is greater than or equal to 25 g/dl, or, between February 24, 2001 and February 23, 2006, inclusive, greater than or equal to 20 g/dl, or, on or after February 24, 2006, greater than or equal to 15 g/dl, it shall be presumed that the ingestion of lead occurred before a person at risk began residing or regularly spending at least 24 hours per week in the affected property.

(b) On or after July 1, 2006, the EBL concentration of lead in a blood sample shall be determined in accordance with § 6–801(f) of this subtitle.

§6–831.

(a) A qualified offer may be made to a person at risk under this part by:

(1) The owner of the affected property in which the person at risk resides or regularly spends at least 24 hours a week;

(2) An insurer of the owner; or

(3) An agent of the owner.

(b) Upon notice to a third party, an offeror may designate the third party as a co-offeror.

(c) If a qualified offer is made under subsection (a) of this section, the qualified offer shall:

(1) Be made within 30 days after the offeror receives notice under § 6-828 of this subtitle;

(2) Include the provisions specified in § 6-839 of this subtitle; and

(3) Satisfy the requirements of § 6-832(a) of this subtitle.

§6–832.

(a) An offeror under § 6-831 of this subtitle shall send notice of the qualified offer to the person at risk, or in the case of a minor, the parent or legal guardian of the minor in the form and manner specified by the Department.

(b) (1) An offeror under § 6-831 of this subtitle shall send a copy of the qualified offer to the local health department in the jurisdiction where the person at

risk resides.

(2) Within 5 business days after receiving the copy of the qualified offer under paragraph (1) of this subsection, the local health department shall personally notify the person at risk, or in the case of a minor, the parent or legal guardian of the minor of State and local resources available for lead poisoning prevention and treatment.

(3) The local health department shall maintain a copy of the qualified offer in the case management file of the person at risk.

§6–833.

(a) For purposes of this section, a parent or legal guardian of a person at risk who is a minor is unavailable if, following reasonable efforts, the offeror is unable to locate or communicate with the parent or guardian of the minor.

(b) (1) If a parent or legal guardian of the minor is unavailable, the offeror may:

(i) Petition a court in accordance with the provisions of Title 13, Subtitle 7 of the Estates and Trusts Article to appoint a person to respond to the offer on behalf of the minor; and

(ii) File the qualified offer with the court.

(2) The court shall appoint a person to act on behalf of the minor within 15 days after the date of filing of the petition.

(3) A person appointed to act on behalf of the minor shall file a response with the court either rejecting or accepting the qualified offer within 30 days after appointment by the court.

(4) The response of the person appointed to respond to the offer on behalf of the minor is subject to approval by the court.

(c) Within 15 days after a response to a qualified offer is filed with a court under subsection (b)(3) of this section, the court:

(1) May hold a hearing; and

(2) Shall approve or disapprove the response to the qualified offer.

(d) If a court disapproves the response to the qualified offer filed by the person acting on behalf of the minor, the court may order:

(1) That an additional response be filed on behalf of the minor; or

(2) Any action the court considers necessary and appropriate to protect

the interests of the minor.

(e) If the court approves a response accepting a qualified offer on behalf of the minor, the order of the court shall designate one or more persons who shall be responsible for and authorized to make all decisions on behalf of the minor necessary to implement the qualified offer.

§6–834.

(a) A person at risk, or a parent or legal guardian of a minor who is a person at risk, may accept or reject a qualified offer made under this part as provided in this section.

(b) Subject to the provisions of § 6-833 of this subtitle, a person at risk, or a parent or legal guardian of a minor who is a person at risk, may accept a qualified offer within 30 days after receipt of the qualified offer unless the parties agree otherwise.

(c) Subject to the provisions of § 6-833 of this subtitle and unless the parties agree otherwise, an offer which is not accepted within 30 days following receipt shall be deemed to have been rejected.

§6–835.

Acceptance of a qualified offer by a person at risk, or by a parent, legal guardian, or other person authorized under § 6-833 of this subtitle to respond on behalf of a person discharges and releases all potential liability of the offeror, the offeror's insured or principal, and any participating co-offeror to the person at risk and to the parent or legal guardian of the person at risk for alleged injury or loss caused by the ingestion of lead by the person at risk in the affected property.

§6–836.

An owner of an affected property is not liable, for alleged injury or loss caused by ingestion of lead by a person at risk in the affected property, to a person at risk or a parent, legal guardian, or other person authorized under § 6-833 of this subtitle to respond on behalf of a person at risk who rejects a qualified offer made by the owner or the owner's insurer or agent if, during the period of the alleged ingestion of lead by the person at risk, and with respect to the affected property in which the exposure allegedly occurred, the owner:

(1) Has given to the tenant the notices required by §§ 6-820 and 6-823 of this subtitle; and

(2) Was in compliance with:

(i) The registration provisions of Part III of this subtitle; and

(ii) The applicable risk reduction standard and response standard

under § 6-815 or § 6-819 of this subtitle, and the risk reduction schedule under § 6-817 of this subtitle.

§6–836.1.

In an action in which the owner's immunity from liability under § 6-835 or § 6-836 of this subtitle is challenged, upon motion by any party and prior to authorizing further proceedings in the action, the court shall:

(1) Allow discovery limited solely to the issue of the owner's immunity under § 6-835 or § 6-836 of this subtitle;

(2) Determine if there are any disputes of material fact as to whether the owner is entitled to immunity under § 6-835 or § 6-836 of this subtitle;

(3) Hold an evidentiary hearing on issues of material fact as to the immunity, if any, which shall, upon request of any party, be before a jury; and

(4) Determine as a matter of law whether the owner is entitled to immunity from liability under § 6-835 or § 6-836 of this subtitle.

§6–837.

A qualified offer shall be treated as an offer of compromise for purposes of admissibility in evidence, notwithstanding that the amount is not in controversy.

§6–838.

(a) (1) In an action seeking damages for alleged injury or loss caused by the ingestion of lead by a person at risk in an affected property, evidence that the owner of the affected property was in compliance with the provisions of Part IV of this subtitle during the period of residency of the person at risk is admissible as evidence that the owner exercised reasonable care with respect to lead hazards during that period.

(2) In an action seeking damages for alleged injury or loss caused by the ingestion of lead by a person at risk in an affected property, evidence that the owner of the affected property was not in compliance with the provisions of Part IV of this subtitle during the period of residency of the person at risk is admissible as evidence that the owner failed to exercise reasonable care with respect to lead hazards during that period.

(b) If a party to an action for damages arising from ingestion of lead by a person at risk in an affected property alleges or denies the time and place of residence of, or visitation by, the person at risk without a good faith basis for the allegation or denial, the court shall require the offending party, the party's attorney, or both to pay the reasonable costs, including attorney's fees, incurred by the adverse party in opposing the allegation or denial.

§6–839.

(a) Whenever a qualified offer is made under this part, the qualified offer shall include payment for reasonable expenses and costs up to the amount specified in § 6-840 of this subtitle for:

(1) The relocation of the household of the person at risk to lead-safe housing of comparable size and quality that may provide:

(i) The permanent relocation of the household of the affected person at risk to lead-safe housing, including relocation expenses, a rent subsidy, and incidental expenses; or

(ii) The temporary relocation of the household of the affected person at risk to lead-safe housing while necessary lead hazard reduction treatments are being performed in the affected property to make that affected property lead-safe; and

(2) Medically necessary treatment for the affected person at risk as determined by the treating physician or other health care provider or case manager of the person at risk that is necessary to mitigate the effects of lead poisoning, as defined by the Department by regulation, and, in the case of a child, until the child reaches the age of 18 years.

(b) An offeror is required to pay reasonable expenses for the medically necessary treatments under subsection (a)(2) of this section if coverage for these treatments is not otherwise provided by the Maryland Medical Assistance Program under Title 15, Subtitle 1 of the Health - General Article or by a third-party health insurance plan under which the person at risk has coverage or in which the person at risk is enrolled.

(c) A qualified offer shall include a certification by the owner of the affected property, under the penalties of perjury, that the owner has complied with the applicable provisions of Parts III and IV of this subtitle in a manner that qualifies the owner to make a qualified offer under this part.

(d) The Department may adopt regulations that are necessary to carry out the provisions of this section.

§6–840.

(a) The amounts payable under a qualified offer made under this part are subject to the following aggregate maximum caps:

(1) $7,500 for all medically necessary treatments as provided and limited in § 6-839(a) and (b) of this subtitle; and

(2) $9,500 for relocation benefits which shall include:

(i) Relocation expenses;

(ii) A rent subsidy, up to 150% of the existing rent each month, for the period until the person at risk reaches the age of 6 years, or in the case of a pregnant woman, until the child born as a result of that pregnancy reaches the age of 6 years; and

(iii) Incidental expenses which may be incurred by the household, such as transportation and child care expenses.

(b) All payments under a qualified offer specified in subsection (a) of this section shall be paid to the provider of the service, except that payment of incidental expenses as provided by subsection (a)(2)(iii) of this section may be paid directly to the person at risk, or in the case of a child, to the parent or legal guardian of the person at risk.

(c) The payments under a qualified offer may not be considered income or an asset of the person at risk, the parent of a person at risk who is a child, the legal guardian, or a person who accepts the offer on behalf of a person at risk who is a child under § 6-833 of this subtitle for the purposes of determining eligibility for any State entitlement program.

§6–841.

(a) Payments under a qualified offer for temporary relocation shall include:

(1) Transportation expenses;

(2) The rent or per diem cost of temporary lead-safe housing;

(3) Meal expenses, if the temporary lead-safe housing does not contain meal preparation facilities; and

(4) The cost of moving, hauling, or storing furniture or other personal belongings.

(b) The household of the person at risk may not reoccupy the affected property until the property has been certified as lead-safe.

§6–842.

(a) An offeror who fails to comply with the terms of a qualified offer, or who falsely certifies compliance under § 6-839(c) of this subtitle, shall be deemed to be out of compliance with the provisions of Part IV of this subtitle with respect to the person who is the subject of the qualified offer for purposes of § 6-836 of this subtitle.

(b) The statute of limitations shall be tolled until the failure to comply under subsection (a) of this section is discovered.

§6–843.

(a) (1) Except as provided in this subsection and subsection (b) of this section, and in cooperation with the Department of Housing and Community Development, the State Department of Assessments and Taxation, and other appropriate governmental units, the Department shall provide for the collection of an annual fee for every rental dwelling unit in the State.

(2) The annual fee for an affected property is $30.

(3) (i) Subject to the provisions of subparagraphs (ii) and (iii) of this paragraph, on or before December 31, 2000, the annual fee for a rental dwelling unit built after 1949 that is not an affected property is $5. After December 31, 2000, there is no annual fee for a rental dwelling unit built after 1949 that is not an affected property.

(ii) The owner of a rental dwelling unit built after 1949 that is not an affected property may not be required to pay the fee provided under this paragraph if the owner certifies to the Department that the rental dwelling unit is lead free pursuant to § 6–804 of this subtitle.

(iii) An owner of a rental dwelling unit who submits a report to the Department that the rental dwelling unit is lead free pursuant to § 6–804 of this subtitle shall include a $10 processing fee with the report.

(b) The fees imposed under this section do not apply to any rental dwelling unit:

(1) Built after 1978; or

(2) Owned and operated by a unit of federal, State, or local government, or any public, quasi–public, or municipal corporation.

(c) The fee imposed under this section shall be paid on or before December 31, 1995, or the date of registration of the affected property under Part III of this subtitle and on or before December 31 of each year thereafter or according to a schedule established by the Department by regulation.

(d) An owner who fails to pay the fee imposed under this section is liable for a civil penalty of up to triple the amount of each registration fee unpaid that, together with all costs of collection, including reasonable attorney's fees, shall be collected in a civil action in any court of competent jurisdiction.

§6–844.

(a) There is a Lead Poisoning Prevention Fund in the Department.

(b) The Fund consists of:

(1) All fees collected and penalties imposed under this subtitle; and

(2) Moneys received by grant, donation, appropriation, or from any other source.

(c) The Department shall use the Fund to cover the costs of fulfilling the duties and responsibilities of the Department and the Commission under this subtitle, and for program development of these activities.

(d) (1) The Fund is a continuing, nonlapsing special fund, and is not subject to § 7-302 of the State Finance and Procurement Article.

(2) The State Treasurer shall hold and the State Comptroller shall account for the Fund.

(3) The Fund shall be invested and reinvested and any investment earnings shall be paid into the Fund.

(e) For each fiscal year, at least $750,000 of the moneys in the Fund shall be used only for any of the following purposes:

(1) Community outreach and education programs under § 6-848 of this subtitle; and

(2) Enforcement efforts under this subtitle.

§6–845.

(a) The Department shall establish and maintain a statewide data base which tracks the status of affected property.

(b) (1) Except as provided in paragraph (2) of this subsection, the Department may, by regulation, require owners of affected property to provide information that the Department considers necessary for the data base.

(2) The Department may not require the owner to provide:

(i) Information more frequently than annually;

(ii) The identities of persons or entities having an ownership interest in an owner of an affected property who are not otherwise owners of the affected property; and

(iii) Any financial information regarding an affected property or the owner of an affected property, other than data on any costs that an owner has incurred with respect to an affected property in order to comply with Part IV of this subtitle.

(c) The data base shall be used to implement the provisions of this subtitle.

(d) (1) An owner who uses a standard lease form may only be required to submit one copy of that form and any alterations to, or variations from, that form.

(2) The Department may, by regulation, designate or define minor alterations and variations to standard lease forms that do not require separate submittal.

(e) (1) Subject to the provisions of paragraph (2) of this subsection, the information provided by the owner under this section shall be open to the public.

(2) (i) Except as provided in subparagraph (ii) of this paragraph, the Department may not disclose:

1. An inventory or list of properties owned by an owner; or

2. The costs that an owner has incurred with respect to an affected property in order to comply with Part IV of this subtitle, if the information is identified to:

A. A specific owner; or

B. A specific affected property or group of affected properties owned by the same owner.

(ii) The Department shall, upon request, disclose whether the owner has met the percentage of inventory requirements under § 6-817 of this subtitle.

§6–846.

(a) A local health department that receives the results of a blood lead test under § 6–303 of this title indicating that a person at risk has an EBL greater than or equal to 15 g/dl before February 24, 2006, or greater than or equal to 10 g/dl on or after February 24, 2006, shall notify:

(1) The person at risk, or in the case of a minor, the parent of the person at risk, of the results of the test; and

(2) The owner of the affected property in which the person at risk resides or regularly spends at least 24 hours per week of the results of the test.

(b) The notices to be provided to the parent or owner under subsection (a) of this section shall be on the forms prepared by the Department, and shall contain any information required by the Department.

§6–847.

(a) (1) An owner who receives the blood lead test results of a person at risk under this subtitle may not disclose those results to another person except:

(i) The insurer of the owner;

(ii) A medical doctor or other health professional with whom the

owner consults; or

(iii) An attorney of the owner or any person specified in item (i) or (ii) of this paragraph.

(2) A person who receives blood lead test results from an owner under paragraph (1) of this subsection may not disclose those results to any person not specified in paragraph (1) of this subsection.

(b) A person who in good faith discloses or does not disclose the results of a blood lead test to an owner under this part is not liable under any cause of action arising from the disclosure or nondisclosure of the test results.

(c) A person who violates the provisions of this section is subject to the penalties provided in § 4–309 of the Health – General Article.

§6–848.

The Department shall:

(1) Develop and establish community outreach programs to high lead risk areas, which may be implemented by the Department, local governments, or community groups; and

(2) Assist local governments to provide case management services if necessary to persons at risk with elevated blood lead.

§6–848.1.

(a) In this section, "retailer" means any person who sells paint or paint supplies to a consumer.

(b) A retailer shall display a poster developed and provided by the Department under subsection (c) of this section:

(1) Within an area in which paint or paint supplies are sold or displayed; or

(2) At each register or check-out aisle.

(c) The Department shall develop and provide a poster to retailers that includes the following information:

(1) The dangers and hazards of lead poisoning; and

(2) A phone number that consumers can call for assistance in lead risk reduction and safe renovation practices.

§6–848.2.

A local government agency shall report to the Department any known noncompliance of an affected property with this subtitle.

§6–849.

(a) (1) The Department shall impose an administrative penalty on an owner who fails to register an affected property by December 31, 1995 or within the time period specified in § 6-811(a)(2) or § 6-812(b) of this subtitle or fails to renew or update a registration as provided under § 6-812(a) of this subtitle. The administrative penalty imposed shall be up to $20 per day, calculated from the date compliance is required, for each affected property which is not registered or for which registration is not renewed or updated.

(2) The Department shall impose an administrative penalty, not to exceed $50,000, on any person who violates § 6-818(a)(1)(ii) or (2) of this subtitle.

(3) The penalty shall be assessed with consideration given to:

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

(ii) The extent to which the violation resulted in actual harm to the environment or to human health or safety;

(iii) The nature and degree of injury to or interference with general welfare, health, and property;

(iv) 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

(v) The extent to which the violation creates the potential for harm to the environment or to human health or safety.

(4) On or before March 31, 2002, the Department may waive an administrative penalty under this subsection upon a showing of hardship or provided that:

(i) The affected property is registered, the registration is renewed, or the registration is updated;

(ii) The Department has not initiated an enforcement action for violation of this subtitle before the date upon which the property is registered or the registration is renewed or updated; and

(iii) All of the owner's affected properties have been brought into

compliance with this subtitle and 65% of the owner's affected properties have been certified in compliance with the full risk reduction standards in accordance with §§ 6-815 and 6-817(b) of this subtitle.

(b) An owner who fails to renew or update a registration as required under § 6-812 of this subtitle within 90 days after the date specified shall be deemed to be out of compliance with the provisions of this subtitle, with respect to each affected property to which that renewal or update relates, for purposes of § 6-836 of this subtitle on the 91st day after the date the renewal or update was required.

§6–850.

(a) Except as provided in § 6–849 of this subtitle, in addition to any other remedies provided in this subtitle, the provisions and procedures of §§ 7–256 through 7–264 and 7–266 of this article shall be used and shall apply to enforce violations of this subtitle, provided that the penalty imposed under § 7–266(b)(2)(i) of this article may not exceed $500 per day for any violation of this subtitle.

(b) If an accredited supervisor falsely verifies that work was performed on an affected property pursuant to § 6–819(g) of this subtitle, the owner of the affected property who employs the supervisor and who has actual knowledge of the false verification shall be subject to a civil penalty not to exceed $30,000.

§6–851.

(a) The Department may audit, through a spot check or other investigation, the verification of work performed pursuant to § 6–819(g) of this subtitle.

(b) If the Department, through audits conducted within 30 days of receipt of verification of work performed pursuant to § 6–819(g) of this subtitle, finds that the condition of the affected property does not comport with the work that was verified by the same contractor or supervisor, an owner of a property for which work was verified by that contractor or supervisor within the previous year shall be required to have that property inspected and treated as necessary to satisfy the modified risk reduction standard under § 6–819 of this subtitle.

§6–852.

(a) The Department may, at any time, spot check affected properties that have been reported as satisfying the risk reduction standard or verified as satisfying the modified risk reduction standard.

(b) If a spot check pursuant to subsection (a) of this section reveals that an affected property that has been reported as satisfying the risk reduction standard under § 6-815 of this subtitle does not satisfy that standard, the Department may order that the owner of the property satisfy the risk reduction standard, as verified by an inspection conducted within 30 days of receipt of the order.

(c) If a spot check pursuant to subsection (a) of this section reveals that an affected property that has been verified as satisfying the modified risk reduction standard under § 6-819 of this subtitle, but has not been reported as satisfying the risk reduction standard under § 6-815 of this subtitle, does not satisfy the modified risk reduction standard, the Department may order the owner of the property to satisfy the modified risk reduction standard, as verified by an inspection conducted within 30 days of receipt of the order.

§6–901.

(a) On or after July 1, 1994, a person may not dispose of a mercuric oxide battery except in a manner that the Department approves under regulations adopted by the Department.

(b) Any 2 or more manufacturers may develop a joint plan for recycling or disposal of any specified mercuric oxide battery that they manufacture.

(c) (1) A manufacturer shall be responsible for the environmentally sound collection, transportation, and recycling or proper disposal, including the cost of these activities, of every used mercuric oxide battery produced by the manufacturer and sold or offered for promotional purposes in the State.

(2) Notwithstanding paragraph (1) of this subsection, a retailer or seller may provide for the collection, recycling, or proper disposal of used mercuric oxide batteries through the sale to a refiner or a refiner's agent if the retailer or seller complies with any requirement established by the Department to implement this section.

(d) Manufacturers may establish or utilize a trade association or a consortium comprised of members of the dry cell battery industry in order to facilitate compliance with the requirements of this section.

(e) A manufacturer shall consult with the Office of Recycling in developing its plan.

(f) Each battery management plan submitted by a manufacturer shall include:

(1) The designation of the collector, transporter, processor, or collection system to be utilized by the manufacturer, or by the county or municipal corporation, institutional generator, retailer or small quantity generator on behalf of the manufacturer, for the collection, transportation, and recycling or proper disposal of used mercuric oxide batteries in each county;

(2) The designation of the funding source or mechanism to be used by the manufacturer to defray the costs of implementing the battery management plan; and

(3) A strategy for informing consumers, on any store display promoting the sale or use of the batteries the manufacturer manufactures, that these types of

used dry cell batteries may not enter the solid waste stream, and that a convenient mechanism for the collection, transportation, and recycling or proper disposal of these types of used batteries is available to the consumer.

§6–902.

A person may not sell, distribute, or offer for sale in this State a mercuric oxide battery unless:

(1) The person is a party to a plan approved by the Department under § 6-901 of this subtitle; or

(2) A retailer or seller has provided for the collection, recycling, or proper disposal of used mercuric oxide batteries through the sale to a refiner or a refiner's agent and the retailer or seller has complied with any requirement established by the Department to implement § 6-901 of this subtitle.

§6–903.

A person who violates any provision of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $100 for each violation.

§6–904. IN EFFECT

The General Assembly finds that:

(1) Mercury is a persistent and toxic pollutant that bioaccumulates in the environment;

(2) Consumption of mercury–contaminated fish poses a significant health threat;

(3) Combustion of municipal and other solid waste is a source of mercury pollution;

(4) Manufacture of new steel from mercury–containing scrap steel is a significant source of mercury pollution;

(5) Both industry and government are working to reduce the content of mercury in products and to control the release of mercury into the environment;

(6) Accidental mercury spills, breakages, and releases have occurred at schools in the United States, exposing students, teachers, and administrators to mercury emissions;

(7) Removal of mercury and mercury–containing products from the waste stream prior to combustion or disposal is an effective way to reduce mercury pollution; and

(8) The voluntary National Vehicle Mercury Switch Recovery Program has not removed a sufficient percentage of mercury–containing switches in the State to protect the environment.

6–904. // EFFECTIVE DECEMBER 31, 2017 PER CHAPTER 713 OF 2009 //

The General Assembly finds that:

(1) Mercury is a persistent and toxic pollutant that bioaccumulates in the environment;

(2) Consumption of mercury–contaminated fish poses a significant health threat;

(3) Combustion of municipal and other solid waste is a source of mercury pollution;

(4) Both industry and government are working to reduce the content of mercury in products and to control the release of mercury into the environment;

(5) Accidental mercury spills, breakages, and releases have occurred at schools in the United States, exposing students, teachers, and administrators to mercury emissions; and

(6) Removal of mercury and mercury–containing products from the waste stream prior to combustion or disposal is an effective way to reduce mercury pollution.

§6–905. IN EFFECT

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

(b) "Capture rate" means the annual removal, collection, and recovery of mercury switches as a percentage of total number of mercury switches available from end–of–life vehicles for that year.

(c) "End–of–life vehicle" means a motor vehicle that is sold, given, or otherwise conveyed to a vehicle recycler or scrap processing facility for the purpose of resale of its parts or recycling.

(d) "Manufacturer" means a person that:

(1) Produces a product;

(2) For a multicomponent product, produces or assembles the final product; or

(3) Serves as an importer or domestic distributor of a product produced outside of the United States.

(e) "Marketer" means a person that manufactures, assembles, sells, distributes, affixes a brand name or private label to, or licenses the use of a brand name on:

(1) A fever thermometer containing mercury; or

(2) A thermostat containing mercury.

(f) "Mercury–added product" means any of the following products if containing elemental mercury or a mercury compound that has been added to the product for any reason:

(1) Dyes or pigments;

(2) Electric switches; and

(3) Fluorescent lamps.

(g) "Mercury minimization plan" means a plan for removing, collecting, and recovering mercury switches from an end–of–life vehicle.

(h) "Mercury switch" means any light switch or antilock braking system switch that contains mercury and that is installed by a manufacturer in a motor vehicle.

(i) "Mercury switch assembly" means a light switch assembly or an antilock braking system switch assembly that contains a mercury switch.

(j) "Motor vehicle" has the meaning stated in § 11–135 of the Transportation Article.

(k) "Reclamation facility" means a site:

(1) Where equipment is used to recapture mercury from mercury–added fluorescent lamps for the purpose of recycling or reusing the mercury; or

(2) That collects mercury–containing components from mercury–added fluorescent lamps for the eventual recapture and recycling or reuse of the mercury.

(l) "Scrap processing facility" means a facility:

(1) That processes iron, steel, and nonferrous scrap metal; and

(2) The principal product of which is scrap iron, scrap steel, and nonferrous scrap for sale and remelting purposes.

(m) "Thermostat" means a device that regulates temperature in an enclosed area by controlling heating, cooling, or ventilation equipment.

(n) "Vehicle manufacturer" means a person that:

(1) Is the last person in the production or assembly process of a new motor vehicle that uses mercury switches; or

(2) Serves as an importer or domestic distributor of a motor vehicle that uses mercury switches produced outside of the United States.

(o) (1) "Vehicle recycler" means a person engaged in the business of:

(i) Dismantling, destroying, or scrapping any vehicle for the purpose of reselling any of its usable parts; or

(ii) Otherwise acquiring vehicles for the benefit of their parts or the materials in them.

(2) Notwithstanding any provision to the contrary, any reference to a wrecker in any statute, rule, or regulation shall apply to a vehicle recycler.

6–905. // EFFECTIVE DECEMBER 31, 2017 PER CHAPTER 713 OF 2009 //

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

(b) "Manufacturer" means a person that:

(1) Produces a product;

(2) For a multicomponent product, produces or assembles the final product; or

(3) Serves as an importer or domestic distributor of a product produced outside of the United States.

(c) "Marketer" means a person that manufactures, assembles, sells, distributes, affixes a brand name or private label to, or licenses the use of a brand name on:

(1) A fever thermometer containing mercury; or

(2) A thermostat containing mercury.

(d) "Mercury–added product" means any of the following products if containing elemental mercury or a mercury compound that has been added to the product for any reason:

(1) Dyes or pigments;

(2) Electric switches; and

(3) Fluorescent lamps.

(e) "Motor vehicle" has the meaning stated in § 11–135 of the Transportation

Article.

(f) "Reclamation facility" means a site:

(1) Where equipment is used to recapture mercury from mercury–added fluorescent lamps for the purpose of recycling or reusing the mercury; or

(2) That collects mercury–containing components from mercury–added fluorescent lamps for the eventual recapture and recycling or reuse of the mercury.

(g) "Thermostat" means a device that regulates temperature in an enclosed area by controlling heating, cooling, or ventilation equipment.

§6–905.1.

(a) Except as provided in subsection (b) of this section, a marketer may not sell or provide a fever thermometer containing mercury to a consumer except by prescription.

(b) This section does not apply to:

(1) A fever thermometer sold or provided to be used in hospitals or other places where medical services are provided by medical service professionals; or

(2) A digital thermometer using mercury-added button cell batteries.

§6–905.2.

A marketer may not sell or provide a thermostat containing mercury to a consumer.

§6–905.3.

(a) This section does not apply to:

(1) Prescription drugs;

(2) Any substance regulated by the Federal Food, Drug, and Cosmetic Act;

(3) Biological products regulated by the federal Food and Drug Administration under the federal Public Health Service Act;

(4) Medical equipment not intended for use by nonmedical personnel; or

(5) Products that contain mercury–added products that are labeled in accordance with this section.

(b) (1) On or after April 1, 2006, unless the product is labeled in accordance with subsection (c) of this section and the regulations adopted by the Department under

this section, a manufacturer or wholesaler may not sell a mercury–added product:

(i) At retail in the State; or

(ii) To a retailer in the State.

(2) On or after April 1, 2006, unless the product is labeled in accordance with subsection (c) of this section and the regulations adopted by the Department under this section, a retailer may not knowingly sell a new mercury–added product in the State.

(c) (1) Except as provided in paragraph (2) of this subsection, the label of a mercury–added product shall clearly inform the purchaser or consumer that:

(i) Mercury is present in the product; and

(ii) The product shall be managed in accordance with federal and State environmental laws to minimize the release of mercury into the environment.

(2) A label that conforms to another state's label requirements for mercury–added products satisfies the requirements of this subsection.

(d) (1) The manufacturer of a mercury–added product is responsible for affixing the label required by this section on mercury–added products manufactured on or after January 1, 2006.

(2) (i) 1. A manufacturer of a motor vehicle may meet the labeling requirements of this section by placing the label on the doorpost of a new vehicle.

2. If the servicing of a vehicle includes the addition of a mercury–added product, the label on the doorpost of the vehicle shall be appropriately updated.

(ii) A manufacturer that labels a mercury–added product in compliance with another state's labeling requirements for the same or a similar mercury–added product satisfies the requirements of this subsection.

(e) (1) In this subsection, "mercury–added fluorescent lamp" means a fluorescent lamp that exhibits the toxicity characteristic for mercury under Title 26, Subtitle 13, Chapter 2 of the Code of Maryland Regulations.

(2) Except as provided in paragraph (3) of this subsection, on or after October 1, 2006, a person who, during a calendar year, discards at least the minimum weight or minimum number of mercury–added fluorescent lamps, as established in regulations adopted under subsection (f) of this section, shall arrange for the final reclamation or destination of the lamps at a:

(i) Reclamation facility; or

(ii) Destination facility, as defined by the Department in regulation.

(3) The Department may delay the requirements of paragraph (2) of this subsection if it determines that it will not be feasible for a person to arrange for the final reclamation or destination of lamps at reclamation facilities on the date provided in paragraph (2) of this subsection.

(4) Unless otherwise provided under federal or State law:

(i) An owner or operator of an industrial or commercial property may assign the responsibility for ensuring compliance with this subsection to a tenant who is otherwise responsible for maintaining the property; and

(ii) If a tenant is responsible for ensuring compliance and fails to comply with this subsection, the owner or operator of the property is not liable for the failure to comply.

(f) By October 1, 2005, the Department shall adopt regulations necessary for the implementation of this section, including the establishment of:

(1) Standards for the size, location, and typeface of the label required by this section;

(2) Criteria under which a person subject to this section may be exempted from the labeling and reclamation or destination requirements and limitations of this section; and

(3) During the course of a calendar year, the minimum weight and the minimum number, as applicable, of mercury–added fluorescent lamps that shall be required for a person to deliver the lamps or arrange for their delivery to a:

(i) Reclamation facility; or

(ii) Destination facility, as defined by the Department in regulation.

(g) Before adopting a regulation under this section, the Department shall consult with persons that have an interest in or are directly impacted by the proposed regulation.

§6–905.4. IN EFFECT

// EFFECTIVE UNTIL DECEMBER 31, 2017 PER CHAPTER 713 OF 2009 //

(a) This section applies to vehicle manufacturers that sold motor vehicles within the State that contained mercury switches.

(b) (1) On or before September 30, 2009, vehicle manufacturers, individually or as a group, shall develop a mercury minimization plan and submit it to the

Department for review and approval.

(2) A vehicle manufacturer in the State that already has processes and procedures in place that meet or exceed the requirements of this section may propose the use of those processes and procedures in its mercury minimization plan.

(c) The plan shall contain:

(1) Information identifying the make, model, and year of vehicles that may contain a mercury switch, including:

(i) The location of the switch;

(ii) The location of a mercury switch assembly; and

(iii) Information regarding the safe and environmentally sound method for removing the switch from end–of–life vehicles;

(2) Educational material and training materials to assist a vehicle recycler or a scrap processing facility undertaking a safe method for removal of mercury switches and assemblies, including information on the hazards and proper handling of mercury;

(3) A proposal for the method of storage or disposal of mercury switches and assemblies, including the method of packaging and shipping;

(4) A proposal for the storage of mercury switches and mercury switch assemblies collected and recovered in the event that appropriate management technologies are not available;

(5) A plan for implementing and financing the removal, collection, and recovery system, in accordance with item (6) of this subsection; and

(6) Information that establishes the financing of the removal, collection, and recovery system for the proper management of mercury switches, including:

(i) Payment by a vehicle manufacturer for the costs associated with the removal, collection, and recovery for the proper management of mercury switches;

(ii) Establishment by a vehicle manufacturer of a method to ensure the prompt payment to a vehicle recycler, a scrap processing facility, and the Department;

(iii) Payment by a manufacturer of the following costs:

1. A minimum of $4 for each mercury light switch or light switch assembly and $6 for each antilock braking system switch assembly removed by a vehicle recycler in accordance with § 6–905.5 of this subtitle as partial compensation

for the labor and other costs incurred by a vehicle recycler in the removal of the mercury switch or mercury switch assembly;

2. A minimum of $4 for each mercury light switch or light switch assembly and $6 for each antilock braking system switch assembly removed by a scrap processing facility in accordance with § 6–905.5 of this subtitle as partial compensation for the labor and other costs incurred by a scrap processing facility in the removal of the mercury switch or mercury switch assembly; and

3. $1 for each mercury switch or mercury switch assembly removed by a vehicle recycler or by a scrap processing facility in accordance with § 6–905.5 of this subtitle to the State Recycling Trust Fund as partial compensation for the Department for costs incurred in administering and enforcing the provisions of this subtitle;

(iv) Packaging for transporting mercury switches and mercury switch assemblies to recycling, storage, or disposal facilities;

(v) Shipping of mercury switches and mercury switch assemblies to recycling, storage, or disposal facilities;

(vi) Recycling, storage, or disposal of the mercury switch assemblies to recycling, storage, or disposal facilities;

(vii) Preparation and distribution to vehicle recyclers and scrap processing facilities of the educational materials required in accordance with paragraph (2) of this subsection; and

(viii) Maintenance of all appropriate record keeping systems.

(d) (1) Within 90 days after receiving a mercury minimization plan, the Department may approve, disapprove, or conditionally approve the entire mercury minimization plan.

(2) The Department may receive input from a representative of a vehicle recycler, scrap processing facility, or any other stakeholder as the Department determines necessary.

(3) The vehicle manufacturer shall begin implementation of the mercury minimization plan within 30 days after submittal, unless otherwise directed by the Department.

(4) (i) If the entire mercury minimization plan is disapproved, the Department shall inform the vehicle manufacturer of the reasons for the disapproval.

(ii) The manufacturer has 30 days after receiving notice of the disapproved plan to submit a new mercury minimization plan.

(5) (i) The Department may disapprove those parts of a mercury minimization plan that do not meet the requirements of subsection (c) of this section.

(ii) A manufacturer shall:

1. Implement the approved parts of a plan not disapproved within 30 days after submittal or as otherwise directed by the Department; and

2. Submit a revised mercury minimization plan for the disapproved parts within 30 days after receiving notification of the disapproval from the Department.

(iii) The Department may review and approve, conditionally approve, or disapprove a revised mercury minimization plan within 30 days after receiving the plan.

(e) The Department may complete, on behalf of a vehicle manufacturer, any portion of a mercury minimization plan that has not been approved by January 1, 2010.

(f) The Department may review a mercury minimization plan submitted in accordance with this section and recommend modifications it considers necessary at any time if the Department determines that the approved mercury minimization plan is deficient or not meeting the goals of this Act.

(g) The Department may adopt regulations to administer the provisions of this section.

§6–905.5. IN EFFECT

// EFFECTIVE UNTIL DECEMBER 31, 2017 PER CHAPTER 713 OF 2009 //

(a) This section applies to any person that has any part of the implementation of a mercury minimization plan in accordance with § 6–905.4 of this subtitle.

(b) (1) Unless a mercury switch or mercury switch assembly is inaccessible due to significant damage to the vehicle in the area surrounding the location of the mercury switch, on and after December 1, 2009, a vehicle recycler that sells, gives, or otherwise conveys ownership of an end–of–life vehicle to a scrap processing facility for processing shall remove all mercury switches or mercury switch assemblies identified in the approved mercury minimization plan:

(i) From the end–of–life vehicle before delivery to a scrap processing facility;

(ii) From the end–of–life vehicle at the time the vehicle is processed, but not later than 180 days after the receipt of an end–of–life vehicle; and

(iii) On or before December 31, 2010, for recycling, from the vehicle

recycler's inventory in existence as of September 30, 2009.

(2) If the motor vehicle is damaged, the damage shall be noted on the normal business records of the vehicle recycler that delivered the end–of–life vehicle to the scrap processing facility.

(3) If the mercury switch assembly is corroded, damaged, or molded in a way as to make removal of the mercury pellet from the mercury switch assembly impractical or pose a danger of damage to the pellet, the entire mercury switch assembly shall be removed.

(c) (1) Notwithstanding subsection (b) of this section, a scrap processing facility may agree to accept an end–of–life vehicle containing mercury switches that has not been intentionally flattened, crushed, or baled.

(2) A scrap processing facility shall be responsible for removing the mercury switches or mercury switch assemblies identified in the mercury minimization plan approved in accordance with § 6–905.4 of this subtitle before the end–of–life vehicle is intentionally flattened, crushed, baled, or shredded.

(d) (1) A vehicle recycler or scrap processing facility that removes a mercury switch or mercury switch assembly in accordance with this section shall maintain electronic records documenting the number of mercury switches and mercury switch assemblies collected, the number of end–of–life vehicles containing mercury switches, and the number of end–of–life vehicles processed for recycling.

(2) The records required by paragraph (1) of this subsection shall be kept for 3 years and made available for review by the Department on the request of the Department.

(e) A person may not falsely represent that mercury switches or mercury switch assemblies have been removed from an end–of–life vehicle being sold, given, or otherwise conveyed for recycling if that person has not removed the mercury switches or mercury switch assemblies, or arranged with another person to remove the mercury switches or mercury switch assemblies.

(f) On removal, mercury switches and mercury switch assemblies shall be collected, stored, transported, recycled, and otherwise handled as required by the mercury minimization plan approved in accordance with § 6–905.4 of this subtitle and with any provisions or regulations concerning waste in accordance with Title 9 of this article.

(g) (1) On or before January 31 of each year, a manufacturer shall report to the Department concerning the implementation of the mercury minimization plan.

(2) The report shall include:

(i) A detailed description and documentation of the capture rate

achieved, in accordance with subsection (b) of this section;

(ii) A description of additional or alternative actions that may be implemented to improve the mercury minimization plan and its implementation in the event that a mercury switch or mercury switch assembly capture rate of at least 90% for the previous calendar year is not achieved;

(iii) The numbers of mercury switches and mercury switch assemblies collected, end–of–life vehicles containing mercury switches, and mercury switches and mercury switch assemblies processed for recycling;

(iv) A description of how the mercury switches and mercury switch assemblies were managed; and

(v) A description of the amounts paid to cover the costs of implementing the mercury minimization plan.

(h) The Department may discontinue the requirement for the annual report if it determines that mercury switches in end–of–life vehicles will, by the end of December 2020, no longer pose a significant threat to the environment or to public health.

(i) After December 1, 2011, if the Department determines that an insufficient number of mercury switches have been recycled, the Department may propose new strategies to increase switch removal and recycling, including additional funding sources.

(j) (1) On or before October 1 each year, the Department of the Environment shall report to the General Assembly, in accordance with § 2–1246 of the State Government Article, on:

(i) The number of mercury switches and mercury switch assemblies recovered from vehicles;

(ii) The capture rate of switch recovery achieved;

(iii) The number of switches projected to be recovered;

(iv) The amount and use of funds paid into the State Recycling Trust Fund for the administration of this Act; and

(v) Any recommendations to improve the provisions of this Act or to increase the capture rate of mercury switches from vehicles.

(2) The Department shall also inform the General Assembly if the Department determines that mercury switches in end–of–life vehicles no longer pose a significant risk to the environment or to public health.

(k) The Department may adopt regulations to administer the provisions of this

section.

§6–905.6. IN EFFECT

// EFFECTIVE UNTIL DECEMBER 31, 2017 PER CHAPTER 713 OF 2009 //

(a) A person that violates any provision of § 6–905.4 or § 6–905.5 of this subtitle, or any regulation adopted to implement the provisions of § 6–905.4 or § 6–905.5 of this subtitle, is guilty of a misdemeanor and on conviction is subject to:

(1) For a first offense, a fine not exceeding $1,000;

(2) For a second offense, a fine not exceeding $2,500; and

(3) For a third or subsequent offense, a fine not exceeding $5,000.

(b) A person that violates any provision of § 6–905.4 or § 6–905.5 of this subtitle, or any regulation adopted to implement the provisions of § 6–905.4 or § 6–905.5 of this subtitle, is liable for a civil penalty to be collected in a civil action in the circuit court for any county in the State not exceeding:

(1) $1,000 for a first offense;

(2) $2,500 for a second offense; or

(3) $5,000 for a third or subsequent offense.

(c) (1) In addition to any other remedies available at law or in equity, after an opportunity for a hearing, the Department may impose a fine for each violation of § 6–905.4 or § 6–905.5 of this subtitle, or of any regulation adopted under § 6–905.4 or § 6–905.5 of this subtitle, not exceeding:

(i) $1,000 for a first offense;

(ii) $2,500 for a second offense; or

(iii) $5,000 for a third or subsequent offense.

(2) The Department shall consider the following in assessing the fine in paragraph (1) of this subsection:

(i) The willfulness of the violation;

(ii) The extent to which the violation was known, but uncorrected, by the violator;

(iii) The extent to which the violation resulted in actual harm to human health or the environment;

(iv) The nature and degree of injury to, or interference with, general welfare and health; and

(v) The extent to which the current violation is part of a pattern of the same or similar type of violation by the violator.

(d) Each day a violation continues is a separate offense under this section.

(e) Fines and penalties collected under this section shall be deposited in the State Recycling Trust Fund.

§6–906.

(a) Beginning October 1, 2003, no primary or secondary school, except for a school engaged in vocational training, may use or purchase for use elemental or chemical mercury in a primary or secondary classroom.

(b) The Department shall provide outreach assistance to schools relating to the proper management, recycling, and disposal of mercury and mercury-added products.

§6–907.

(a) The Department shall implement a public education, outreach, and assistance program relating to:

(1) The hazards of mercury;

(2) The requirements of this subtitle; and

(3) Voluntary efforts that individuals, institutions, and businesses can undertake to help further reduce mercury in the environment.

(b) The Department shall cooperate with neighboring states and regional organizations in the mid-Atlantic and northeastern United States on developing outreach, assistance, and education programs, where appropriate.

§6–1001.

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

(b) "Abatement" means a set of measures that eliminate or reduce lead–based paint hazards in residential, public, or commercial buildings, bridges, or other structures or superstructures in accordance with standards established by the Department which may include:

(1) The removal of lead–based paint and lead–contaminated dust, the containment or encapsulation of lead–based paint, the replacement or demolition of lead–painted surfaces or fixtures, and the removal or covering of lead–contaminated soil;

(2) All preparation, cleanup, disposal, and postabatement clearance testing activities associated with these measures; and

(3) The renovation, repair, and painting of a lead–containing substance in a residential, public, or commercial building built before 1978.

(c) "Lead containing substance" means:

(1) Any paint, plaster, or surface encapsulation material containing more than 0.50 percent lead by weight calculated as lead metal in the dried solid or more than 0.7 milligrams lead per square centimeter as measured by an X-ray fluorescence analyzer; or

(2) Such other standards consistent with an applicable federal definition as the Department may set by regulation.

(d) "Person" includes any public or municipal corporation, or any agency, bureau, department, or instrumentality of federal, State, or local government.

(e) "Provide lead paint abatement services" means to engage in the risk assessment, inspection, or abatement of lead-containing substances.

§6–1002.

(a) Except as provided in subsection (c) of this section, unless the person is accredited by the Department under this subtitle, a person may not:

(1) Act as a contractor or supervisor for the purpose of providing lead paint abatement services;

(2) Provide training to others who provide lead paint abatement services; or

(3) Engage in the inspection of lead-based paint hazards.

(b) The Department shall, by regulation, create exceptions to the accreditation requirement for instances where the disturbance of lead-containing substance is incidental.

(c) An individual who acts only as a worker or project designer need not be accredited, but must be trained.

§6–1003.

(a) The Department shall adopt regulations to carry out the provisions of this subtitle.

(b) Regulations adopted under this subtitle may include:

(1) Initial and continuing standards and procedures for accreditation, including education, training, examination, and job performance standards;

(2) Standards and procedures for renewal of accreditation;

(3) Standards and procedures for modification, suspension, or revocation of accreditation;

(4) Different standards and procedures for different lead paint abatement services;

(5) Standards and procedures for abatement involving the renovation, repair, and painting of lead–containing substances, including a requirement for lead–dust testing;

(6) Recognition of accreditation or similar approvals of persons by other governmental entities; and

(7) Such other provisions as may be necessary to effectuate the purposes of this subtitle.

(c) The Department shall review and revise its certification and other regulations under this subtitle as necessary to ensure continued eligibility for federal funding of lead–hazard activities in the State.

(d) The Department shall set reasonable fees for the accreditation of persons who provide lead paint abatement services sufficient to cover the Department's direct and indirect costs of administering this subtitle.

§6–1004.

(a) There is a Lead Accreditation Fund.

(b) (1) All fees collected under § 6-1003(d) and fines and penalties imposed under § 6-1005 of this subtitle shall be deposited in the Lead Accreditation Fund.

(2) The Department may apply for and accept any funds or grants from any federal, State, local, or private source for credit to the Fund that might assist with development, establishment, administration, and education and enforcement activities of the lead paint abatement services accreditation program under this subtitle.

(c) The Department shall use the Lead Accreditation Fund for activities by the Department that are related to processing, monitoring and regulating the accreditation of lead paint abatement services, and for program development of these activities.

(d) (1) The Lead Accreditation Fund shall be a continuing, nonlapsing special fund, and is not subject to § 7-302 of the State Finance and Procurement Article.

(2) The State Treasurer shall hold and the State Comptroller shall account for the Accreditation Fund.

(3) The Accreditation Fund shall be invested and reinvested. Any investment earnings shall be paid into the Accreditation Fund.

§6–1005.

Except as otherwise provided, the provisions and procedures of §§ 6–420 through 6–422 of this title and § 7–266(b) of this article shall be used and shall apply to enforce violations of:

(1) This subtitle;

(2) Any regulations adopted under this subtitle; and

(3) Any condition of accreditation issued under this subtitle.

§6–1101.

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

(b) "Cell" means a galvanic or voltaic device weighing 25 pounds or less consisting of an enclosed or sealed container which contains a positive and a negative electrode consisting primarily of cadmium or lead, and which contains a gel or liquid starved electrolyte.

(c) "Cell manufacturer" means a person who:

(1) Manufactures cells in the United States; or

(2) Imports into the United States cells or units for which no unit management program has been put into effect by the actual manufacturer of the cell or unit.

(d) "Easily removed", with respect to a rechargeable battery which powers a rechargeable product, means removable by hand or by using common household tools.

(e) "Institutional user" means a person conducting medical, commercial, industrial, governmental, or similar operations.

(f) (1) "Marketer" means a person who manufactures, assembles, sells, distributes, affixes a brand name or private label to, or licenses the use of a brand name on a unit or product with an easily removable rechargeable battery.

(2) Except for a person who affixes a brand name or private label to a unit or to a product with an easily removable rechargeable battery, "marketer" does not include a person engaged in the retail sale of a unit or of a rechargeable product.

(g) "Nonremovable", with respect to a rechargeable battery which powers a rechargeable product, means not easily removed.

(h) (1) "Rechargeable battery" means any type of enclosed device or sealed container which consists of one or more cells and which weighs 25 pounds or less.

(2) "Rechargeable battery" does not include a battery used as a power source for starting a motor vehicle.

(i) "Rechargeable product" means a device for which the primary power source is a nonremovable rechargeable battery.

(j) "Responsible entity" means a person designated in a unit management program, or in the absence of a unit management program, the marketer whose name appears on a unit.

(k) "Sell" means to sell, offer for sale, or offer for promotional purposes a unit or a product with an easily removable rechargeable battery.

(l) "Unit" means a cell, a rechargeable battery, or a rechargeable product.

(m) "Unit management program" means a program or system for the collection, recycling, or disposal of units put in place by a marketer under § 6-1107 of this subtitle.

§6–1102.

After December 31, 1994, each unit sold by a marketer to an end user in this State shall be covered by one or more unit management programs.

§6–1103.

(a) Unless granted an exemption by the Department, rechargeable batteries contained in products designed for use by consumers and manufactured after December 31, 1993 shall be easily removed.

(b) Upon application, the Department may exempt from the requirements of this section a rechargeable battery contained in a product designed for use by consumers upon a finding that:

(1) For reasons such as health or safety cannot be redesigned; and

(2) The product is covered by a unit management program.

§6–1104.

(a) Each unit manufactured after December 31, 1993 and sold to an end user in this State after December 31, 1994 shall bear the following information on the unit, the package, the product containing the unit, or in associated instructional material:

(1) A statement that the unit must be disposed of properly;

(2) The "three chasing arrows" recycling symbol;

(3) A description of the battery electrode chemistry; and

(4) Sufficient information to enable the user properly to dispose of spent units.

(b) A local government or agency of local government in this State may not enact additional labeling requirements for a unit, package, product containing a unit, or associated instructional material.

(c) Nothing in this section may be interpreted to prohibit the display of any other symbol or information designed to promote recycling.

§6–1105.

(a) Marketers shall develop and provide or cause to be provided a generic notice placard to each retailer of a unit or product with an easily removable rechargeable battery.

(b) The notice placard shall contain substantially the following information:

(1) After December 31, 1994, disposal of rechargeable batteries or products powered by nonremovable rechargeable batteries may only be in accordance with a State-approved collection system;

(2) Under State law, marketers of rechargeable batteries and products powered by nonremovable rechargeable batteries shall provide a special collection system for these items by January 1, 1995; and

(3) Rechargeable batteries and rechargeable products shall contain specific information on proper methods of collection and disposal.

(c) (1) After December 31, 1994, a retailer who sells a unit or a product with an easily removable rechargeable battery shall display the generic notice placard provided by a marketer at or near the sales display of the unit or product.

(2) A single generic notice placard may be utilized to provide notice for more than one marketer of a unit or product with an easily removable rechargeable battery.

(3) A single generic notice placard may be displayed in one or more areas where units or products with easily removable rechargeable batteries are sold.

§6–1106.

After December 31, 1994 a person may not dispose of a unit except in accordance

with a unit management program approved by the Department or in another manner approved under regulations adopted by the Department.

§6–1107.

(a) Except as provided in subsection (d) of this section, by January 1, 1995 each unit, and each easily removable rechargeable battery contained in a product, sold in the State shall be covered by a unit management program approved by the Department. A unit management program may be submitted by or on behalf of any person having responsibilities under this subtitle.

(b) A unit management program shall:

(1) Provide the name, address and telephone number of each responsible entity;

(2) Describe the units and products which each responsible entity shall ensure will be collected and transported under the program; and

(3) Generally describe the unit management program including methods of unit collection, transportation, and recycling or proper disposal.

(c) A unit management program shall be submitted to the Department prior to the sale of any unit, or of any product with an easily removable rechargeable battery, by a marketer in this State which takes place after December 31, 1994. Any change in a responsible entity, address or telephone number, covered units or products, or disposition of units under a unit management program shall be reported to the Department within 90 days after the change takes place.

(d) Notwithstanding subsection (a) of this section, nothing in this subtitle may be construed to prohibit the sale to an original equipment manufacturer by a cell manufacturer of a cell not covered under a unit management program.

§6–1108.

(a) Each marketer shall ensure that its direct customers have a convenient mechanism for returning units to the marketer or to the responsible entity or to a destination specified in the unit management program covering those units.

(b) Except for direct sales to private consumers, each marketer shall provide written notice to its direct customers that each unit sold by the marketer is covered by a unit management program.

(c) Each marketer is responsible for units sold by it.

(d) The retailer location where units are collected under a unit management program may not constitute a facility as defined in § 7-101 of this article.

§6–1109.

(a) In addition to any requirement which a cell manufacturer may have as a marketer under this subtitle, each cell manufacturer shall accept cells and rechargeable batteries collected in the State, including cells collected by the State, local governments, and their agencies.

(b) (1) Except as provided in paragraph (2) of this subsection, a cell manufacturer shall accept cells and rechargeable batteries returned to it of the same general type which it manufactures, including cells of other brands.

(2) A cell manufacturer may not be required to accept other brands in more than a reasonable amount as determined by the Department.

(c) Each cell manufacturer has the sole responsibility for recycling or disposal of cells and rechargeable batteries returned to it.

(d) A cell manufacturer that does not produce rechargeable products may not be required to accept a rechargeable product.

§6–1110.

(a) Each institutional user shall collect and return spent units used in its operations to the appropriate responsible entity in accordance with the unit management program, or, at its discretion, to a facility permitted to store or process hazardous waste.

(b) A rechargeable product designed for use by an institutional user shall bear a notice that when no longer usable, the product shall be recycled or disposed of properly.

§6–1111.

Each responsible entity shall ensure that its unit management program is carried out and that units collected under the submitted unit management program are returned to the cell manufacturer or, at the discretion of the responsible entity, to proper disposal or recycling facilities. Duties of the responsible entity end with delivery of collected units to the cell manufacturer, or to proper disposal or recycling facilities.

§6–1112.

(a) Any person bearing responsibility under this subtitle may contract with a private or public entity or may form an association for preparation and maintenance of a unit management program or for performance of its responsibilities required under a unit management program, including appointment of an agent, allocation of costs, and indemnification.

(b) Nothing in this section may be interpreted to relieve or to protect any person bearing responsibility under this subtitle from liability for violation of this subtitle due

to nonperformance by a responsible entity or agent.

§6–1113.

Any person cooperating in a unit management program in compliance with this subtitle is immune from liability under State law relating to antitrust and restraint of trade for any cooperative activities arising out of the collection and management of units.

§6–1114.

(a) A person who knowingly and willfully violates any provision of this subtitle is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding $100 for each violation.

(b) Each day on which a violation occurs is a separate violation of this subtitle.

§6–1201.

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

(b) "DecaBDE" means decabrominated diphenyl ether.

(c) "OctaBDE" means octabrominated diphenyl ether.

(d) "PentaBDE" means pentabrominated diphenyl ether.

§6–1202.

(a) This section does not apply to the processing of recyclables containing pentaBDE or octaBDE that is conducted in compliance with all applicable federal, State, and local laws.

(b) This section does not apply to original equipment manufacturer replacement service parts or other products manufactured prior to October 1, 2008, if the parts or products were manufactured in compliance with applicable federal, State, and local laws.

(c) On or after October 1, 2008, a person may not manufacture, process, sell, or distribute in the State a new product or flame-retardant part of a new product that contains more than one-tenth of 1% of pentaBDE or octaBDE by mass.

§6–1202.1.

(a) (1) In this section, "transportation equipment", "military equipment", and "components of transportation or military equipment" do not include shipping pallets used to transport unpackaged fruits and vegetables.

(2) This section does not apply to:

(i) Original equipment manufacturer replacement service parts or other products manufactured before January 1, 2011, if the part or products were manufactured in compliance with applicable federal, State, and local laws; and

(ii) 1. A vehicle, as defined in § 11–176 of the Transportation Article;

2. An aircraft, as defined in § 5–101 of the Transportation Article; or

3. A product, part, or replacement part for use in a vehicle or aircraft.

(b) (1) Beginning on December 31, 2010, a person may not manufacture, lease, sell, or distribute for sale or lease in the State any of the following products that contain more than one–tenth of 1% of decaBDE by mass:

(i) Mattresses;

(ii) Upholstered furniture designed for residential use; and

(iii) Electrical or electronic equipment.

(2) Except as provided in paragraph (3) of this subsection, beginning on December 31, 2012, a person may not manufacture, lease, sell, or distribute for sale or lease in the State any product that contains more than one–tenth of 1% of decaBDE by mass.

(3) Paragraph (2) of this subsection does not apply to:

(i) Transportation equipment;

(ii) Military equipment; or

(iii) Components of transportation or military equipment.

(c) On or after December 31, 2013, a person may not manufacture, lease, sell, or distribute for sale or lease in the State the following products that contain more than one–tenth of 1% of decaBDE by mass:

(1) Transportation equipment;

(2) Military equipment; or

(3) Components of transportation or military equipment.

(d) This section does not prohibit:

(1) A retailer that is in possession of a product prohibited for manufacture,

lease, sale, or distribution for sale or lease under subsections (b) and (c) of this section from selling, recycling, or otherwise disposing of a product that is in the retailer's or lessor's inventory on or after the date that the prohibition takes effect;

(2) A person from recycling a product that contains decaBDE;

(3) A person from selling, leasing, recycling, or otherwise disposing of a product that contains recycled decaBDE;

(4) Any activity involving a product that contains decaBDE that occurs subsequent to first sale at retail; or

(5) A person from transporting or storing a product prohibited under subsections (b) and (c) of this section for later distribution outside the State.

§6–1203.

(a) To enforce the provisions of this subtitle, the Department may:

(1) Notify a person that there are grounds for suspecting that the person may be in violation of this subtitle; and

(2) Request that the person certify that the product or flame-retardant part of the product that the person manufactured, processed, sold, or distributed is in compliance with this subtitle.

(b) If the person fails to certify that the product or flame-retardant part of the product is in compliance, the Department may seek an injunction under § 6-1204 of this subtitle.

§6–1204.

(a) (1) Any person who violates any provision of this subtitle or any regulation adopted under this subtitle, including making a false statement in a certificate of compliance, shall be liable to the State for a civil penalty of up to $1,000 for each violation, but not exceeding a total of $10,000 for any action.

(2) Each product or flame-retardant part of a product in violation constitutes a separate violation.

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

(b) Any person who previously has been assessed a civil penalty under this section and who willfully violates any provision of this subtitle or any regulation adopted under this subtitle, including making a false statement in a certificate of compliance, is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $20,000.

(c) The Department may seek an injunction against any person who violates or threatens to violate any provision of this subtitle or any regulation adopted under this subtitle.

§6–1205.

The Department may adopt regulations necessary for the implementation of this subtitle.

§6–1301.

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

(b) "Child" means an individual who is under the age of 13 years.

(c) (1) "Children's product" means a product designed or intended primarily for a child as specified in federal law.

(2) "Children's product" does not include:

(i) Food as defined in § 21–101 of the Health – General Article; or

(ii) Any component part of a children's product that is not accessible to a child through normal and reasonably foreseeable use and abuse of the product as specified in federal law.

(d) "Federal law" means the Consumer Product Safety Act of 2008 and regulations adopted under the Act.

(e) "Lead–containing product" means a product in which any part, component, or coating of the product contains lead or lead compounds greater than the lesser of:

(1) 0.06% by weight of the total weight of the part, component, or coating; or

(2) The standard established under federal law regarding the permissible level of lead in children's products.

(f) "Manufacturer" means a person that is the brand owner of a product.

(g) "Product" includes:

(1) Accessories and jewelry;

(2) Clothing;

(3) Decorative objects;

(4) Furniture;

(5) Lunch boxes and eating utensils;

(6) Toys; and

(7) Any other item specified by the Department in regulation.

§6–1302.

This subtitle does not apply to:

(1) An electronic device that is in compliance with federal law;

(2) Any distribution operation or activity performed in a factory, warehouse, or establishment, or, in the course of surface transportation, at a port facility as defined in § 6–101 of the Transportation Article;

(3) A vehicle as defined in § 11–176 of the Transportation Article, a product or part for use in a vehicle, or transportation equipment; and

(4) A product or material excluded by federal law.

§6–1303.

A person may not:

(1) Manufacture a children's product that is a lead–containing product; or

(2) Sell, offer for sale, import, or distribute, by any means, including through a sales outlet, a catalog, or the Internet, a children's product that is a lead–containing product.

§6–1304.

(a) A United States manufacturer, or if the manufacturer is not a United States manufacturer, the importer of record, of a children's product for which a children's product certification is required under federal law shall:

(1) Test whether the children's product is a lead–containing product by using a testing entity qualified or certified under federal law; and

(2) If the children's product tested under item (1) of this subsection is not a lead–containing product, issue a certificate that certifies that the children's product is not a lead–containing product.

(b) A person shall ensure that the certificate issued in accordance with subsection (a) of this section is transmitted with the children's product to any distributor or retailer who receives the children's product.

(c) A manufacturer shall:

(1) Maintain a copy of any documents related to lead testing and any certificate issued in accordance with subsection (a) of this section; and

(2) Provide a copy to the Department or any person on request.

(d) A retailer shall:

(1) Maintain a copy of any certificate issued in accordance with subsection (a) of this section; and

(2) Provide a copy to the Department or any person on request.

(e) (1) Except as provided in paragraph (2) of this subsection, a person may not sell or offer for sale in the State, by any means, including transactions conducted through a sales outlet, a catalog, or the Internet, a children's product for which there is no certificate issued in accordance with subsection (a) of this section.

(2) Notwithstanding any other provision of this subtitle, a certificate is not required for the sale of a used children's product at a thrift store, consignment store, yard sale, or any other secondhand point of sale.

(f) A certificate issued in accordance with subsection (a) of this section shall be:

(1) Based on a test of each children's product or on a testing protocol that is established or recognized by the Department; and

(2) On a form created or approved by the Department.

§6–1305.

(a) If the Department determines that a person has violated § 6–1303 of this subtitle, the Department shall give written notice to the person determined to have violated § 6–1303 of this subtitle that identifies the children's product that is a lead–containing product.

(b) Within 15 days after receiving the written notice required under subsection (a) of this section, the person shall send to the Department the following information:

(1) A list of all children's products of the same style produced by the same manufacturer;

(2) The name of the manufacturer or seller from whom the person obtained the children's product that is a lead–containing product; and

(3) The name of each distributor or retailer to whom the person transferred the children's product that is a lead–containing product of the same style produced by the same manufacturer.

§6–1306.

Within 24 hours after a person determines that the person has manufactured, sold, offered for sale, imported, or distributed a children's product in violation of § 6–1303 of this subtitle, the person shall submit a report to the Department in a form required by the Department.

§6–1307.

(a) (1) A person who violates this subtitle is subject to a civil penalty not exceeding $1,000 per day for each violation.

(2) The civil penalty under paragraph (1) of this subsection may be assessed and recovered in any court of competent jurisdiction.

(b) A person who willfully violates any provision of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $10,000 for each violation or imprisonment not exceeding 1 year or both.

§6–1308.

(a) In addition to any other penalty provided by law, the Comptroller may assess against a person who violates § 6–1304(e) of this subtitle a fine not exceeding $1,000 for each violation, up to a maximum of $50,000.

(b) A fine assessed under subsection (a) of this section may not be assessed until the person who committed the violation has been issued three warnings regarding the violation.

(c) Each day on which a violation occurs or continues is a separate violation under this section.

(d) At the end of each quarter, the Comptroller shall distribute all fines assessed under this section to the Lead Poisoning Prevention Fund in a manner determined by the Department and the Comptroller.

§6–1309.

In addition to any other penalty provided by law, a violation of this subtitle is:

(1) An unfair or deceptive trade practice within the meaning of Title 13 of the Commercial Law Article; and

(2) Subject to the enforcement and penalty provisions contained in Title 13 of the Commercial Law Article.

§6–1310.

The Secretary may adopt regulations to carry out the provisions of this subtitle.

§6–1311.

The provisions of this subtitle do not affect the authority of a local agency to enforce a local law governing the amount of lead contained in a product if the local law is at least as restrictive as the provisions of this subtitle.

§6–1401.

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

(b) "Cadmium" means elemental cadmium and any compound or alloy that contains cadmium.

(c) "Children's jewelry" means any jewelry, including a charm, bracelet, pendant, necklace, earring, or ring, and any component of jewelry, designed or intended to be worn or used by a child under the age of 13 years.

§6–1402.

On or after July 1, 2012, a person may not manufacture, sell, offer for sale, or distribute in the State any children's jewelry that contains cadmium at more than 0.0075% by weight.

§6–1403.

The Department of the Environment may adopt regulations to implement this subtitle.

§6–1404.

This subtitle does not apply to any toy regulated for cadmium exposure under the federal Consumer Product Safety Improvement Act of 2008.

§7–101.

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

(b) "Facility" means a location for use in connection with the transfer of a hazardous material beyond the threshold specified in § 7-103 of this subtitle from one mode of transportation to another.

(c) "Hazardous material" means any substance regulated as a hazardous material under Title 49 of the Code of Federal Regulations.

(d) "Transfer" means the loading or unloading of a product or substance between one mode of transportation and another.

§7–102.

Except for pesticides regulated by the Department of Agriculture, a person may not transfer a hazardous material at a facility in this State except in accordance with this title.

§7–103.

(a) A person shall hold a facility permit before the person may own, establish, operate, or maintain a facility in the State that transfers quantities of a single hazardous material that meets or exceeds 100,000 pounds in weight at any time during a calendar year.

(b) Any hazardous material or storage tank regulated under Title 4 of this article is exempt from the requirements of this subtitle.

(c) A separate facility permit is required for each facility that a person owns, establishes, maintains, or operates.

§7–104.

The Secretary may adopt regulations to specify permitting procedures, set permitting fees, establish containment specifications, establish enforcement procedures, and establish any other procedures necessary to carry out the requirements of this subtitle.

§7–105.

To apply for a facility permit, an applicant shall:

(1) Submit an application to the Department on the form that the Department requires; and

(2) Pay to the Department an application fee set by the Department in an amount designed to cover the cost of the permit procedure.

§7–106.

As a prerequisite to the issuance of a facility permit, the Department shall require an applicant:

(1) To provide evidence of financial ability to properly establish, operate, and maintain a facility;

(2) To file with the Department acceptable evidence of a bond or other security that the Department requires under § 7-111 of this subtitle;

(3) To agree to permit access to the facility for the purposes of any inspection permitted or required under this subtitle; and

(4) To pay the permit fee assessed under § 7-107 of this subtitle.

§7–107.

The Department shall set each facility permit fee on the basis of:

(1) The potential threat to the environment posed by the particular materials to be transferred at the facility;

(2) The anticipated cost of monitoring and regulating the facility;

(3) The anticipated cost of removing and properly disposing of any hazardous material that may escape from the facility; and

(4) The anticipated needs for program development activities that relate to management of hazardous materials.

§7–108.

(a) Unless it is renewed for another term, a facility permit expires on the expiration date the Department specifies at the time of issuance or renewal.

(b) Subject to § 7-110 of this subtitle, the Department may deny renewal of a facility permit if the permit holder:

(1) Has violated any appropriate law, regulation, order, or permit condition;

(2) Has failed to pay to the Department the renewal fee set by the Department; or

(3) Has failed to submit to the Department a renewal application on the form the Department requires.

§7–109.

Before the Department issues a facility permit, the Department shall give public notice of the application and provide opportunity for a public informational meeting.

§7–110.

The Department may deny an application for a facility permit or for a renewal of a facility permit if the Department finds that:

(1) The facility cannot handle or transfer a particular hazardous material without posing an undue risk to the environment; or

(2) The owner of the land or of the facility, or any person making application, has violated:

(i) Any law of the federal government, of this or any other state, or of a local jurisdiction, concerning any hazardous material; or

(ii) Any regulation, order, or permit condition of the federal government, of this or any other state, or of any local jurisdiction, concerning any hazardous material.

§7–111.

As a requirement for keeping the facility permit, each facility permit holder shall:

(1) Maintain a bond or other security that the Department considers sufficient to cover any cost for:

(i) Guaranteeing fulfillment of all requirements related to the facility permit;

(ii) Monitoring, maintaining, or closing the facility; and

(iii) Assuring the security of the facility after closing;

(2) Design, construct, and operate the facility in the manner approved by the Department;

(3) Establish emergency procedures and safeguards to prevent accidents and reasonably foreseeable harm to human beings or the environment;

(4) Report periodically on the hazardous material that is received and transferred by the facility, including, as applicable, volume, and chemical, physical, biological, and radioactive nature; and

(5) To the extent reasonably practicable, restore the facility site to its original condition if use as a facility is terminated.

§7–112.

(a) The Secretary may enforce the provisions of this subtitle in the same manner as the provisions of Subtitle 2 of this title.

(b) For a violation of this subtitle a person shall be subject to the penalties listed in Subtitle 2 of this title.

§7–113.

All fees and penalties collected by the Department under this subtitle shall be deposited in the State Hazardous Substance Control Fund established under § 7-218 of this title.

§7–114.

A person may not knowingly or recklessly submit false information to the Department under this subtitle.

§7–201.

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

(b) "Controlled hazardous substance" means:

(1) Any hazardous substance that the Department identifies as a controlled hazardous substance under this subtitle; or

(2) Low–level nuclear waste.

(c) (1) "Controlled hazardous substance facility" means a disposal structure, system, or geographic area, designated by the Department for treatment, storage related to treatment or disposal, or disposal of controlled hazardous substances.

(2) "Controlled hazardous substance facility" includes:

(i) A low–level nuclear waste facility; and

(ii) An operating landfill that, under § 7–232(b) of this subtitle, has a permit equivalent to a facility permit.

(d) "Controlled hazardous substance hauler" means a person who has a hauler certificate issued by the Department to transport controlled hazardous substances.

(e) "Controlled hazardous substance vehicle" means a vehicle that the Department has certified as suitable for use to transport controlled hazardous substances.

(f) "Controlled hazardous substance vehicle driver" means a person who operates a controlled hazardous substance vehicle.

(g) "Council" means the Controlled Hazardous Substances Advisory Council.

(h) "Discharge" means:

(1) The addition, introduction, leaking, spilling, or emitting of a pollutant into the waters of this State; or

(2) The placing of a pollutant in a location where the pollutant is likely to pollute.

(i) "Facility permit" means a permit issued by the Department to establish, operate, or maintain a controlled hazardous substance facility.

(j) "Federal act" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended through January 1, 2003.

(k) "Hauler certificate" means a certificate issued by the Department that permits a person to be a controlled hazardous substance hauler.

(l) "Hazardous substance" means any substance:

(1) Defined as a hazardous substance under § 101(14) of the federal act; or

(2) Identified as a controlled hazardous substance by the Department in the Code of Maryland Regulations.

(m) "Incineration" means thermal treatment or decomposition of a waste heat.

(n) "Lender" means a person who is:

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

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

(o) "Low–level nuclear waste" means a substance that:

(1) Contains or is contaminated with radioactive material emitting primarily beta or gamma radiation; and

(2) Is neither transuranic waste nor high–level nuclear waste.

(p) "Low–level nuclear waste facility" means a controlled hazardous substance facility for low–level nuclear waste.

(q) "Low–level nuclear waste facility permit" means a facility permit issued by the Department for a low–level nuclear waste facility.

(r) "Person" includes the federal government, this State, any county, municipal corporation, or other political subdivision of this State, and any of their units.

(s) "Release" means the addition, introduction, leaking, spilling, emitting, discharging, escaping, or leaching of any hazardous substance into the environment.

(t) (1) "Responsible person" means any person who:

(i) Is the owner or operator of a vehicle or a site containing a hazardous substance;

(ii) At the time of disposal of any hazardous substance, was the owner or operator of any site at which the hazardous substance was disposed;

(iii) By contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or possessed by such person, by any other party or entity, at any site owned or operated by another party or entity and containing such hazardous substances; or

(iv) Accepts or accepted any hazardous substance for transport to a disposal or treatment facility or any sites selected by the person.

(2) "Responsible person" does not include:

(i) A person who can establish by a preponderance of the evidence that at the time the person acquired an interest in a site containing a hazardous substance the person did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the site; however, any person claiming an exemption from liability under this subparagraph must establish that the person had no reason to know, in accordance with § 101(35)(B) of the federal act, and that the person satisfied the requirements of § 107(b)(3)(a) of the federal act;

(ii) A person who acquired a property containing a hazardous substance by inheritance or bequest at the death of the transferor;

(iii) A person who, without participating in the day–to–day management of a site containing a hazardous substance, holds indicia of ownership in the site or in property located on the site primarily to protect a valid and enforceable lien unless that person directly causes the discharge of a hazardous substance on or from the site;

(iv) A holder of a mortgage or deed of trust on a site containing a hazardous substance or a holder of a security interest in property located on the site who does not participate in the day–to–day management of the site unless that holder directly causes the discharge of a hazardous substance on or from the site;

(v) A fiduciary who has legal title to a site containing a hazardous substance or to property located on the site containing a hazardous substance for purpose of administering an estate or trust of which the site or property located on the site is a part unless the fiduciary:

1. Participates in the day–to–day management of the site or property; or

2. Directly causes the discharge of a hazardous substance on or from the site;

(vi) A holder of a mortgage or deed of trust who acquires title to a site containing a hazardous substance through foreclosure or deed in lieu of foreclosure who:

1. Does not participate in the day–to–day management of the site; and

2. Does not directly cause the discharge of a hazardous substance on or from the site;

(vii) Except in the case of gross negligence or willful misconduct, an owner or operator who is:

1. A state, county, or municipal government;

2. Any other political subdivision of the State; or

3. Any unit of a state, county, or municipal government or any other political subdivision;

(viii) A holder of a mortgage or deed of trust who acquires title to an eligible property as defined in Subtitle 5 of this title subject to a written agreement in accordance with Subtitle 5 of this title provided that the holder complies with the requirements, prohibitions, and conditions of the agreement;

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

1. Has not caused or contributed to a release of hazardous substances; and

2. Previous to extending that credit, is not a responsible person at the site;

(x) Subject to paragraph (3) of this subsection, a lender who takes action to protect or preserve a mortgage or deed of trust on a site or a security interest in property located on a site at which a release or threatened release of a hazardous substance has occurred, by stabilizing, containing, removing, or preventing the release of a hazardous substance in a manner that does not cause or contribute to a release or significantly increase the threat of release of a hazardous substance at the site if:

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

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

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

(xi) A person who receives a response action plan approval letter as an inculpable person or the person's successor in title who is also an inculpable person under Subtitle 5 of this title and who does not cause or contribute to new contamination or exacerbate existing contamination as provided in §§ 7–505 and 7–514 of this title.

(3) A lender taking action to protect or preserve a mortgage or deed of trust or security interest in a property located on a site, who causes or contributes to a release of a hazardous substance shall be liable solely for costs incurred as a result of the release which the lender caused or to which the lender contributed unless the lender was a responsible person prior to taking the action.

(4) (i) Paragraph (2)(i) of this subsection does not affect the liability of a previous owner or previous operator of a site containing a hazardous substance if the previous owner or previous operator is a responsible person under paragraph (1)(ii) of this subsection.

(ii) Notwithstanding paragraph (2)(i) of this subsection, a person shall be treated as a responsible person if the person:

1. Obtained actual knowledge of the release or threatened release of a hazardous substance at a site when the person owned the real property; and

2. Transferred ownership of the property after June 30, 1991 without disclosing this knowledge to the transferee.

(iii) Nothing in paragraph (2)(i) of this subsection shall affect the liability under this subtitle of a person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance at a site which is the subject of the action relating to the site if at the time of the act or omission the person knew or had reason to know that the act or omission would cause or contribute to the release or threatened release of a hazardous substance.

(5) Notwithstanding paragraph (2)(ii) of this subsection, a person shall be treated as a responsible person if the person:

(i) Knew or had reason to know of the release or threatened release of a hazardous substance at the site; and

(ii) Transferred ownership of the property after June 30, 1991 without disclosing this knowledge to the transferee.

(6) (i) For purposes of paragraph (2)(iii), (iv), (v), and (vi) of this subsection, "management" means directing or controlling operations, production or treatment of a hazardous substance, storage or disposal of a hazardous substance, or remediation of a hazardous substance release.

(ii) "Management" does not include rendering advice on financial

matters, rendering financial assistance, or actions taken to protect or secure the site or property located on the site if the advice, assistance, or actions do not involve the treatment, storage, or disposal of a hazardous substance or remediation of a hazardous substance release.

(7) A person who owns real property is not considered an owner or operator of a vehicle or site containing a hazardous substance under paragraph (1)(i) of this subsection solely by reason of contamination from a contiguous or otherwise similarly situated real property if:

(i) The person does not own the contiguous or otherwise similarly situated real property;

(ii) The person's real property is or may be contaminated by a release or threatened release of a hazardous substance from the contiguous to or otherwise similarly situated real property; and

(iii) The person meets the requirements of Section 107(q) of the federal act and any regulations adopted by the Department implementing or interpreting the requirements of that section.

(u) (1) "Solid waste" means any:

(i) Abandoned material or substance which is disposed of, burned, or incinerated or accumulated, stored, or treated before or in lieu of being disposed of, burned, or incinerated;

(ii) Material or substance which is recycled or accumulated, stored, or treated before recycling; or

(iii) Material or substance which is considered inherently waste–like.

(2) "Solid waste" does not include:

(i) Domestic sewage that passes through a sewer system to a publicly owned treatment work for treatment;

(ii) Industrial wastewater discharges that are point source discharges permitted under §§ 9–324 through 9–332 of this article;

(iii) Irrigation return flows;

(iv) Materials subjected to in–situ mining techniques which are not removed from the ground as part of the extraction process; or

(v) Material that is excluded by any rule or regulation adopted under this subtitle.

(v) "Transuranic waste" means waste material that is measured or assumed to contain at least 10 nanocuries or more of transuranic activity per gram of waste.

(w) "Treatment" means any method, technique, or process, including neutralization, that is designed to change the physical, chemical, or biological character or composition of any controlled hazardous substance so as to neutralize or render the waste nonhazardous, safer for transport, or reduced in volume.

(x) "Vehicle certificate" means a certificate issued by the Department for a vehicle to be a controlled hazardous substance vehicle.

§7–202.

This subtitle does not preempt any other authority conferred by statute on the Department of the Environment or any other department or agency of this State.

§7–203.

The purpose of this subtitle is to provide additional and cumulative remedies to prevent, abate, and control pollution of the waters of this State, as "waters of this State" is defined in Title 9, Subtitle 1 of this article.

§7–204.

This subtitle does not take away the right of any person, as riparian owner or otherwise, in equity, at common law, or under statutory law to suppress a nuisance or abate pollution.

§7–205.

(a) This section does not apply to Hawkins Point Controlled Hazardous Substance Landfill until July 1, 1985.

(b) A generator may not dispose of a controlled hazardous substance unless the generator demonstrates to the satisfaction of the Department that:

(1) Recovery possibilities have been considered; and

(2) The controlled hazardous substance cannot be reasonably treated further to reduce the volume of or the hazard that the controlled hazardous substance poses to the environment.

§7–206.

(a) The Secretary shall have supervision and control of hazardous substances governed by this subtitle.

(b) In exercising responsibilities under this subtitle, the Secretary shall consider low-level nuclear waste separately.

§7–207.

(a) In addition to the powers set forth elsewhere in this article, the Department may:

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

(2) Issue, modify, or revoke orders and permits that prohibit the discharge of pollutants into the waters of this State or that require construction, modification, extension, or alteration of new or existing disposal systems or treatment works or parts of them;

(3) Through the Secretary or a hearing officer designated in writing by the Secretary, hold hearings, issue hearing notices and subpoenas that require the attendance of witnesses and production of evidence, administer oaths, and take necessary testimony;

(4) Require prior submission of plans, specifications, and other information that is relative to, and inspect construction of, disposal systems or treatment works or any part of them in connection with issuing permits or approvals required by this subtitle;

(5) Issue, modify, or revoke orders and permits to install, modify, or operate disposal systems or any parts of them;

(6) Require proper maintenance and operation of disposal systems; or

(7) Exercise every incidental power necessary to carry out the purposes of this subtitle.

(b) In addition to the duties set forth elsewhere in this article, the Department shall:

(1) Administer and enforce this subtitle and the rules, regulations, and orders adopted or issued under this subtitle; and

(2) Advise, consult, and cooperate with other units of this State, the federal government, other State and interstate agencies, affected groups, political subdivisions, and industries to carry out the provisions of this subtitle.

§7–208.

(a) With the advice of the Council, the Department shall adopt rules and regulations to carry out the provisions of this subtitle.

(b) Before adopting any rule or regulation that relates to substances governed by the Federal Insecticide, Fungicide, and Rodenticide Act, the Department shall

submit the rule or regulation to the State Secretary of Agriculture for review and approval.

(c) In adopting any rule or regulation, the Department shall consider among other things:

(1) Existing physical conditions;

(2) The character of an affected specific area;

(3) Zoning;

(4) The nature of any existing receiving body of water; and

(5) The technical feasibility and economic reasonableness of measuring or reducing a particular type of water pollution.

(d) A rule or regulation under this subtitle may:

(1) Apply to pollutant and hazardous substance sources located outside this State that cause, contribute to, or threaten environmental damage in this State;

(2) Make special provisions for alert and abatement standards and procedures for occurrences or emergencies of pollution or on other short term conditions that are an acute danger to public health or to the environment;

(3) Specify different provisions as circumstances require for different:

(i) Pollutant, solid waste, and hazardous substance sources; and

(ii) Geographical areas; or

(4) If an exemption is consistent with federal law or federal regulation, exempt persons from any requirements of this subtitle.

(e) The Department by rule or regulation, shall:

(1) Identify all hazardous substances that are controlled hazardous substances governed by this subtitle;

(2) Set standards and describe tests to identify lethal, toxic, and other injurious effects of controlled hazardous substances;

(3) Set minimum design standards for controlled hazardous substance facilities;

(4) Establish types and quantities of controlled hazardous substances that may be disposed of;

(5) Establish procedures for monitoring the generation, transportation, treatment, storage, or disposal of controlled hazardous substances;

(6) Set minimum requirements for the operation, maintenance, monitoring, reporting, and supervision of any controlled hazardous substance facility;

(7) Set requirements for receiving and applying for facility permits;

(8) Set standards for determining bond values and fees under this subtitle;

(9) Set health and safety standards that relate specifically to the site of a controlled hazardous substance facility after consideration of, among other things, the following:

(i) Geology;

(ii) Seismology;

(iii) Hydrology;

(iv) Demography; and

(v) Climatology; and

(10) By June 30, 1991, adopt by regulation a revised State Hazardous Substance Response Plan that establishes standards and procedures for actions taken under §§ 7-220 and 7-222 of this subtitle.

(f) The revised State Hazardous Substance Response Plan shall at a minimum include:

(1) Methods for discovering and investigating sites at which hazardous substances have been disposed of or otherwise come to be located;

(2) Methods for evaluating any releases or threats of releases which pose substantial danger to the public health or the environment;

(3) Factors to be considered in determining the type of response action which will be implemented, including the cost of implementing, maintaining, and operating the remedy; and

(4) Methods and criteria for determining the appropriate extent of removal, remedy, and other measures authorized by this title.

(g) In addition to the other provisions of this section, in its rules and regulations that govern low-level nuclear waste, the Department shall:

(1) Provide for the classification of low-level nuclear wastes by radionuclide content and level of radioactivity for different storage or disposal

procedures;

(2) Provide for consultation with any affected political subdivision; and

(3) Set standards and procedures, including notice and hearing requirements, for revocation or suspension of a facility permit, a hauler certificate, or a vehicle certificate.

§7–209.

(a) (1) By July 1, 1985, any generator generating greater than 100 kilograms of controlled hazardous substances during 1 calendar month shall notify the Secretary of:

(i) The identity of the controlled hazardous substance;

(ii) The location of generation; and

(iii) The method of treatment and disposal of controlled hazardous substances.

(2) Generators that have previously provided the United States Environmental Protection Agency (EPA) or the State with the information under this subsection are not required to file this notification.

(b) (1) On or after July 1, 1985, any controlled hazardous substance that is part of a total quantity generated by a generator producing greater than 100 kilograms during 1 calendar month and that is shipped off the premises on which the controlled hazardous substance is generated shall be accompanied by a copy of a controlled hazardous substance manifest form signed by the generator.

(2) This form shall contain the following information:

(i) A manifest document number;

(ii) The generator's name, mailing address, telephone number, and EPA identification number;

(iii) The name and EPA identification number of each transporter;

(iv) The name, address, and EPA identification number of the facility designated to receive the waste;

(v) The United States Department of Transportation description of the waste, as required by 49 C.F.R. 172.201, 172.202 and 172.203;

(vi) The quantity of waste being transported;

(vii) The number and type of containers; and

(viii) Any other information considered necessary by the Department.

(c) Any generator generating greater than 100 kilograms of controlled hazardous substances during 1 calendar month is subject to all applicable rules and regulations adopted under § 7-208(e) of this subtitle with the exceptions that the Secretary considers necessary.

§7–211.

(a) There is a Controlled Hazardous Substance Advisory Council in the Department.

(b) The Controlled Hazardous Substance Advisory Council shall meet only at the request of the Secretary.

§7–212.

(a) (1) The Council consists of 13 members.

(2) Of the 13 members, 10 shall be appointed by the Governor with the advice of the Secretary as follows:

(i) 1 shall be the pesticides coordinator or the pesticides coordinator's designee for the Cooperative Extension Service of the University of Maryland;

(ii) 1 shall be from the State Department of Agriculture;

(iii) 1 shall be from the Department of Labor, Licensing, and Regulation, Division of Labor and Industry;

(iv) 1 shall be from the Department of Natural Resources;

(v) 1 shall be the State Fire Marshal or the State Fire Marshal's designee;

(vi) 1 shall be from an industry that generates hazardous substances;

(vii) 1 shall be from the hazardous substance disposal and management industry;

(viii) 1 shall be from an industry that generates low–level nuclear waste;

(ix) 1 shall be from the low–level nuclear waste management industry; and

(x) 1 shall be an individual who is engaged in the business of resource recovery.

(3) Of the 13 members, 3 shall be public members appointed by the Governor with the advice and consent of the Senate.

(b) A public member may not be an individual who otherwise qualifies for membership under subsection (a)(2) of this section.

(c) (1) The term of a member is 10 years.

(2) Except for an ex officio member, the terms of members are staggered as required by the terms provided for members of the Council on July 1, 1982.

(3) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

§7–213.

From among the public members, the Council shall elect a chairperson.

§7–214.

A member of the Council:

(1) May not receive compensation as a member of the Council; but

(2) Is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

§7–215.

The Council shall advise and assist the Department in:

(1) Identifying any hazardous substance as a controlled hazardous substance;

(2) Developing rules and regulations for the management and disposal of controlled hazardous substances; and

(3) Developing separate rules and regulations that relate to management and disposal of low-level nuclear wastes.

§7–218.

There is a State Hazardous Substance Control Fund.

§7–219.

All application and permit fees, renewal fees, transporting vehicle certification fees, and all other 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, shall be paid into the State Hazardous Substance Control Fund.

§7–220.

(a) The Department shall use the State Hazardous Substance Control Fund for activities by the Department and by any local or State agency, with the approval of the Department that are related to identifying, monitoring, and controlling the proper disposal, storage, transportation, or treatment of hazardous substances, including program development for these activities.

(b) There shall be a separate account within the State Hazardous Substance Control Fund of moneys made available under loan authorizations or by funds appropriated in the State budget for:

(1) All costs incurred by the State for removal, restoration, or remedial action, including the restoration of natural resources where feasible, and site maintenance and monitoring in response to a release or threatened release of any hazardous substance, to the extent the costs are not reimbursable under the federal act;

(2) All cost incurred by the State in monitoring and assessing the effect on public health and natural resources of any site at which a hazardous substance is or may be present, including the costs of any subsurface borings and any analysis of samples taken, the costs of investigations conducted for the purpose of defining necessary remedial action, and the costs of litigation expenses incurred in obtaining reimbursement for expenditures;

(3) The State share mandated under § 104(c)(3) of the federal act;

(4) All cost incurred in providing public information concerning a site that does or may contain a hazardous substance; and

(5) Costs resulting from releases or threatened releases of hazardous substances whether or not the hazardous substance was placed at the site, released, or threatened to be released before July 1, 1985.

§7–221.

(a) All expenditures from the State Hazardous Substance Control Fund made by the Department under § 7-220(b) of this subtitle in response to a release or a threatened release of a hazardous substance at a particular site shall be reimbursed to the Department for the State Hazardous Substance Control Fund by the responsible person for the release or the threatened release.

(b) (1) 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 responsible person who fails to make a reimbursement as required under subsection (a) of this section.

(2) (i) In an action under paragraph (1) of this subsection to recover costs, the State shall make a good faith effort to identify and seek recovery against all responsible persons.

(ii) The State shall seek recovery on an apportionment basis in accordance with a person's contribution to the situation or problem, when there is a reasonable basis for determining the contribution of a responsible person.

(iii) Reimbursement in any other case shall not be apportioned.

(c) The Department may recover costs for the Fund resulting from releases or threatened releases of hazardous substances whether or not the hazardous substance was placed at the site, released, or threatened to be released before July 1, 1985.

(d) Except as otherwise provided in subsection (b) of this section, a person who is liable for a release or threatened release of a hazardous substance under this subtitle is subject to the Uniform Contribution Among Tort-Feasors Act under Title 3, Subtitle 14 of the Courts Article, including a right of contribution, as if that person had caused an injury in tort.

(e) A responsible person against whom a legal action is brought under subsection (b) of this section for a release or threatened release of a hazardous substance may move to join any other responsible person under the Maryland Rules.

(f) Upon request by the Department, and after reasonable notice, a person shall provide to the Department any existing information or documents relating to:

(1) The identification, nature, and quantity of any hazardous substance which is or has been generated, treated, stored, or disposed of at a site or facility, or transported to a site or facility; and

(2) The nature or extent of a release of a hazardous substance at or from a site or facility.

§7–222.

(a) If any hazardous substance is released or there is a substantial threat of a release into the environment, unless the Secretary determines that a removal and remedial action will be done properly and in a timely manner by the owner or operator of the facility from which the release or threat of release emanates, or by any other responsible party, the Secretary may:

(1) Enter any site or facility to carry out the provisions of this section; and

(2) (i) Act consistent with the State Hazardous Substance Response Plan to remove or arrange for the removal of and provide for remedial action relating to the hazardous substance at any time, including its removal from any contaminated natural resources;

(ii) When the Secretary determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment, take any other response measure consistent with the State Hazardous Substance Response Plan necessary to protect the public health or welfare or the environment; or

(iii) In addition to any other action authorized under this subtitle, when the Secretary determines that there may be an imminent and substantial endangerment to the public health or welfare or to the environment, issue orders to or seek injunctive relief against responsible persons as may be necessary to protect the public health and welfare or the environment.

(b) The Department in any removal or remedial action under this subtitle may not duplicate removal or remedial actions taken under the federal act.

(c) If entry to enable the Secretary to carry out the provisions of this section is denied, the Secretary may:

(1) Obtain a search warrant pursuant to § 7–256.1 of this subtitle; or

(2) Obtain an injunction to enter.

(d) (1) On or after October 1, 2009, a responsible person that possesses a sample result or other environmental assessment that indicates the release of a hazardous substance into the environment, at or above a threshold established in accordance with paragraph (2) of this subsection, shall report the finding immediately to the Department.

(2) In determining a reportable threshold of a release of a hazardous substance, the Department shall consider:

(i) The quantity of a hazardous substance;

(ii) The associated risk factors of a hazardous substance; and

(iii) Any other factor determined necessary by the Department.

(3) On or before June 30, 2009, the Department shall adopt regulations to implement the provisions of this subsection.

§7–223.

(a) By July 1, 1984, the Department shall publish a master list of all sites at which the Department has reason to believe or has been notified that controlled

hazardous substances may be present.

(b) The master list shall be updated periodically.

(c) (1) By July 1, 1984, and each 6 months thereafter, the Department shall publish a list of proposed sites from the master list at which the Department intends to conduct preliminary site assessments.

(2) The list of proposed sites shall contain at least:

(i) A general description of the site, including its geographical location;

(ii) The basis for its listing, including the identity and quantity of controlled hazardous substances thought to be present, if known; and

(iii) The status or findings of the preliminary site assessment.

(3) The Department shall conduct a preliminary site assessment of sites within 6 months of their initial listing. The preliminary site assessment shall provide the basis for listing a site on the disposal site registry.

(d) (1) By January 1, 1985, the Department shall publish a State Hazardous Substance Response Plan that shall set forth procedures and standards for responding to releases of hazardous substances.

(2) The State Hazardous Substance Response Plan to the greatest extent practicable shall be consistent with the National Contingency Plan established under § 105 of the federal act.

(e) (1) The State Hazardous Substance Response Plan shall set forth the criteria for the final listing of sites and for ranking sites that require site investigation, restoration, and remedial action under this article.

(2) The criteria shall take into account factors relating to public health and the environment, including:

(i) Potential hazards to public health and the environment;

(ii) The risk of fire or explosion;

(iii) Toxic hazards; and

(iv) The criteria established under § 105(8) of the federal act.

(f) (1) By January 1, 1986, the Secretary shall publish and revise at least annually a listing of hazardous waste sites, to be known as the disposal site registry.

(2) The disposal site registry shall rank sites in priority for State remedial

action, and include the following information with regard to each site:

(i) A general description of the site, including its location, acreage, adjacent waterways, and estimates of the identity and the quantity of any controlled hazardous substance present;

(ii) An assessment by the Department of any threat to public health or natural resources posed by the site;

(iii) The status of any removal, restoration, or other remedial actions in progress or recommended by the Department;

(iv) An assessment of the relative priority of the need for removal, restoration, or other remedial action at each site; and

(v) A proposed time frame for site investigation and any necessary remedial action.

§7–224.

(a) Except as otherwise permitted in Title 9, Subtitle 3 of this article, a person may not store, discharge, treat, or dispose of a controlled hazardous substance in this State except:

(1) In a controlled hazardous substance facility; and

(2) In accordance with this subtitle.

(b) A person may not treat or discharge low-level nuclear waste or establish or operate a facility for the storage or disposal of low-level nuclear waste except in accordance with this subtitle.

§7–225.

(a) In this section, "high-level nuclear waste" means:

(1) Spent nuclear reactor fuel;

(2) Liquid waste that results from the operation, in a facility for reprocessing spent nuclear fuel, of a first cycle solvent extraction system or an equivalent system;

(3) Concentrated waste from the operation, in a facility for reprocessing spent nuclear reactor fuel, of a subsequent cycle solvent extraction system or an equivalent system; or

(4) Any solid into which any waste that is described in item (2) or (3) of this subsection has been converted.

(b) This section does not apply to the federal government, this State, any county, municipal corporation, or other political subdivision of this State, or any of their units.

(c) Except as expressly otherwise required by federal law, a person may not establish or operate a high-level nuclear waste facility for the treatment, permanent storage, or disposal of any high-level nuclear waste or transuranic waste.

§7–226.

(a) This section does not apply to any controlled hazardous substance that is:

(1) Used for residential purposes; or

(2) Regulated by the State Department of Agriculture.

(b) Any person who generates, uses, treats, stores, or disposes of a controlled hazardous substance at any time after 6 months from the date the Department issues a rule or regulation that identifies the hazardous substance to be a controlled hazardous substance shall file a report with the Department.

(c) The report required by this section:

(1) Shall be filed within a time set by the Department;

(2) Shall be on the form provided by the Department; and

(3) Shall include the following information about the controlled hazardous substance, if applicable:

(i) Name of the hazardous substance.

(ii) Volume.

(iii) Quantity.

(iv) Level and kind of radioactivity.

(v) Half-life.

(vi) Manner of management.

(vii) Manner of disposal.

§7–227.

(a) On behalf of this State, the Governor may negotiate an interstate compact for the storage or disposal of low-level nuclear wastes on a regional basis.

(b) Unless federal law provides otherwise, any interstate compact negotiated

under this section shall include provisions that limit the storage or disposal of any low-level nuclear waste under the interstate compact to low-level nuclear wastes produced in states that are members of the interstate compact.

§7–228.

(a) On behalf of this State and in accordance with the Real Property Article, the Department may acquire, by condemnation, any interest in land or facility if the Department determines that:

(1) The condemnation is necessary to perform the duties imposed by this subtitle or for any other purpose authorized under this subtitle;

(2) The land or facility poses a substantial threat to the public health; or

(3) Any future disturbance of the land would pose a substantial threat to the natural resources of this State.

(b) On behalf of this State, the Department may recover the cost of acquiring any land or facility which is acquired through condemnation under this section from any responsible person.

(c) (1) If an interest in land that was acquired under this section is not needed to carry out the provisions of this subtitle, the Department shall dispose of the land as soon as practicable.

(2) The Department first shall offer the interest in land to the prior owner who shall have the right to purchase the land from the Department by paying the same amount paid by the Department to that owner at the time of condemnation.

(3) If the prior owner does not exercise the rights conferred by this subsection, the Department shall dispose of the interest in land through public sale, taking into account the following factors:

(i) The full recovery of any expenditures from the State Hazardous Substance Control Fund;

(ii) To the extent practicable, the sale of the interest in land shall be at the fair market value;

(iii) The effect of the sale on surrounding land values or uses; and

(iv) The potential for public use of the interest in land by another public agency.

(4) If the State recovers the cost of acquisition from any person under subsection (b) of this section, the State shall reimburse that person out of the proceeds of the sale of the interest in land.

§7–229.

A person who is called on for assistance in an emergency has the immunity from civil liability or penalty described under § 5-617 of the Courts and Judicial Proceedings Article as a result of assistance or advice rendered in:

(1) Mitigating the effects of an actual or threatened discharge of a hazardous substance or material;

(2) Preventing a discharge of a hazardous substance or material;

(3) Cleaning up a discharge of a hazardous substance or material; or

(4) Attempting any of the acts in this subsection.

§7–232.

(a) A person shall hold a facility permit before the person may own, establish, operate, or maintain a controlled hazardous substance facility in this State.

(b) Subject to § 7-233 of this subtitle, if the Department determines that a permit issued under Title 9, Subtitle 2 of this article is sufficient to carry out the purposes of this subtitle, that permit shall be considered a facility permit for purposes of this subtitle, subject to the fee and other provisions of this subtitle.

(c) A separate facility permit is required for each controlled hazardous substance facility that a person owns, establishes, maintains, or operates.

§7–233.

The Department may not issue a low-level nuclear waste facility permit to a person unless:

(1) The person meets the requirements of this subtitle for a low-level nuclear waste facility permit; and

(2) (i) The low-level nuclear waste facility permit conforms to any interstate low-level nuclear waste disposal compact of which this State is a member;

(ii) The Governor issues an executive order under § 7-234 of this subtitle; or

(iii) The Department determines under standards set by its rules or regulations that:

1. The half-life or specific activity of the low-level nuclear waste is such that within a period of not more than 6 months, the low-level nuclear waste will not require special handling, special subsurface disposal, or special storage; and

2. The low-level nuclear waste can be disposed of in the same manner as other hazardous substances or handled as conventional waste.

§7–234.

(a) The Governor may issue an executive order that allows the Department to issue a low-level nuclear waste facility permit if the Governor finds that there is a substantial likelihood that the absence of a low-level nuclear waste facility, inside or outside this State, will:

(1) Cause a cessation in this State of power generation, medical treatments, medical diagnosis, scientific research, or other activity that relies on nuclear sources; or

(2) Otherwise present a serious threat to public safety or health.

(b) The Governor shall submit each executive order issued under this section to the General Assembly at a regular or special session.

(c) Unless an executive order issued under this section is disapproved specifically by a resolution in which a majority of the members of each house concur, an executive order issued under this section is effective 30 days after the date the executive order is submitted to the General Assembly.

§7–235.

To apply for a facility permit, an applicant shall:

(1) Submit an application to the Department on the form that the Department requires; and

(2) Pay to the Department an application fee set by the Department in an amount designed to cover the cost of the permit procedure.

§7–236.

(a) As a prerequisite to the issuance of a facility permit, the Department shall require an applicant:

(1) To provide evidence of financial ability to properly establish, operate, and maintain a controlled hazardous substance facility;

(2) To file with the Department acceptable evidence of a bond or other security that the Department requires under § 7–242 of this subtitle;

(3) To agree to permit access to the controlled hazardous substance facility for the purposes of any inspection permitted or required under this subtitle; and

(4) To pay the permit fee assessed under § 7–237 of this subtitle.

(b) In addition to the requirements of subsection (a) of this section, the Department shall require an applicant for a permit for a low–level nuclear waste facility to report to the Department the extent and nature of its training program for the safe handling of low–level nuclear waste.

§7–237.

The Department shall set each facility permit fee on the basis of:

(1) The threat to the environment posed by the particular controlled hazardous substance that is to be treated, stored, or disposed of in the controlled hazardous substance facility;

(2) The anticipated cost of monitoring and regulating the controlled hazardous substance facility;

(3) The anticipated cost of removing and properly disposing of any controlled hazardous substance that may escape from the controlled hazardous substance facility; and

(4) The anticipated needs for program development activities that relate to management of controlled hazardous substances.

§7–238.

(a) (1) Unless it is renewed for another term, a facility permit expires on the expiration date the Department specifies at issuance or renewal.

(2) Unless the controlled hazardous substance facility is a low-level nuclear waste facility, the Department may not issue a facility permit for a term longer than 10 years. The Department may issue a low-level nuclear waste facility permit for a term not longer than 5 years.

(b) The Department may renew a facility permit if the permit holder:

(1) Has complied with all appropriate rules and regulations;

(2) Pays to the Department the renewal fee set by the Department; and

(3) Submits to the Department a renewal application on the form the Department requires.

§7–239.

(a) Before the Department issues a controlled hazardous substance facility permit, the Department shall comply with Title 1, Subtitle 6 of this article.

(b) Before the Department issues a low-level nuclear waste facility permit, the Department shall:

(1) Comply with Title 1, Subtitle 6 of this article; and

(2) Conduct any public hearing required by § 1-604 of this article in the county where the proposed facility is to be located.

§7–239.1.

(a) In §§ 7–239.1 through 7–239.4 of this subtitle the following words have the meanings indicated.

(b) (1) "Chemical warfare material" means any of the following:

(i) Adamsite (phenarsazine chloride);

(ii) GA (Ethyl–N, N–dimethyl phosphoramidocyanidate);

(iii) GB (Isopropyl methyl phosphonofluoridate);

(iv) GD (Pinacolyl methylphosphonofluoridate);

(v) H, HD (Bis(2–chloroethyl) sulfide);

(vi) HT (60 percent HD and 40 percent T (Bis[2(2–chloroethyl–thio)ethyl]ester));

(vii) L (Dichloro(2–chlorovinyl)arsine);

(viii) T (2–2' Di (3–chloroethylthio)–diethyl ether); or

(ix) VX (O–ethyl–S–(2–diisopropylaminoethyl) methyl phosphonothiolate).

(2) "Chemical warfare material" includes any substance that has chemical warfare material as an active or principal ingredient or ingredients, and degradation products of chemical warfare material.

(c) (1) "Monitoring data" means data from actual stack emissions under all operating conditions at a controlled hazardous substance facility.

(2) "Monitoring data" does not include trial burn data or data derived from incineration of agent simulants.

§7–239.2.

(a) The State of Maryland finds that the chemical warfare materials specified under § 7-239.1 of this subtitle were designed for warfare, specifically the destruction of human beings, and for no legitimate civilian industrial use.

(b) The State recognizes the need to dispose of these chemical warfare materials

as safely as possible, ensuring the health and safety of State residents by the regulation of their release into the environment.

(c) Since these chemical warfare materials are highly toxic or carcinogenic, in addition to any other applicable requirements at law, the State shall require without exemption or waiver that an applicant for the treatment by incineration of chemical warfare materials shall comply with all the requirements of this subtitle and all regulations adopted under this subtitle.

§7–239.3.

(a) A chemical warfare material that is a solid waste is a controlled hazardous substance.

(b) In addition to any other applicable requirements, the Department may not issue a permit for the construction, material alteration, or operation of a controlled hazardous substance facility to be used for the treatment by incineration of a chemical warfare material unless:

(1) The permit applicant demonstrates to the satisfaction of the Department prior to issuance of a controlled hazardous substance facility permit:

(i) That the proposed incinerator technology has consistently met all applicable federal and State performance standards in an operational facility comparable to the proposed facility for a period of time and under conditions acceptable to the Department;

(ii) That emissions and monitoring data from a comparable facility demonstrate compliance with State toxic air pollutant standards established under Title 2 of this article;

(iii) That a destruction and removal efficiency of 99.9999 percent is achievable for each chemical warfare material to be incinerated at the facility;

(iv) That the applicant has made adequate provision to support and fund the development of a plan that demonstrates the capability of removing, sheltering, and protecting persons from the largest area at risk from a worst-case release, as defined by the Department;

(v) That an emergency preparedness plan has been developed with adequate public participation that provides training, coordination, and equipment necessary for State and local emergency response personnel and community members to respond to a release of a chemical warfare material from the proposed facility; and

(vi) That the emergency preparedness plan has been presented at public meetings in each county potentially impacted by a worst-case release;

(2) The Department finds that the applicant has fully evaluated all

reasonable alternative methods for treatment or disposal including transport to a less populated disposal site in order to create less risk of release or harm to the general public or the environment; and

(3) The local governing body of each county and municipal corporation included in the worst-case release has a reasonable opportunity to review and provide comment on the facility permit application and the emergency preparedness plan under paragraph (1)(v) of this subsection.

§7–239.4.

(a) The Department shall require as conditions of operation of a controlled hazardous substance facility to be used for the treatment by incineration of a chemical warfare material that:

(1) Treatment by incineration be monitored on a continuous basis;

(2) Monitoring data be regularly reviewed by a qualified independent third party selected by the Department; and

(3) Monitoring data and reviews be reported to the Department in the manner and frequency determined appropriate by the Department.

(b) Any permit issued under this section shall be for a quantity that is specifically identified and:

(1) May be renewed for good cause as to the length of time for completion of the incineration authorized under the permit; but

(2) May not be modified as to the amount of controlled hazardous substance to be destroyed.

(c) After destruction of the specific quantity of the controlled hazardous substance allowed by the terms of the permit issued under this section, the incinerator shall be disassembled and disposed of in accordance with all applicable federal and State performance standards and in a time period established by the permit.

(d) In addition to the facility permit fee required under § 7-237 of this subtitle, the applicant shall pay the compensation of an independent third party with whom the Department may contract for the review of application materials and monitoring data.

§7–240.

The Department may deny an application for a facility permit if the Department finds that:

(1) The controlled hazardous substance facility cannot handle, treat, store, or dispose of a particular controlled hazardous substance without imposing an undue

risk to the environment; or

(2) The owner of the land or any person making application has violated:

(i) Any law of this or any other state concerning controlled hazardous substances; or

(ii) Any rule or regulation or permit condition of this or any other state concerning controlled hazardous substances.

§7–241.

A low-level nuclear waste facility permit is not transferable.

§7–242.

(a) As a requirement for keeping the facility permit, each facility permit holder shall:

(1) Maintain a bond or other security that the Department considers sufficient to cover any cost for:

(i) Guaranteeing fulfillment of all requirements related to the facility permit;

(ii) Monitoring, maintaining, or closing the controlled hazardous substance facility; and

(iii) Assuring the security of the controlled hazardous substance facility after closing;

(2) Design, construct, and operate the controlled hazardous substance facility in the manner approved by the Department;

(3) Establish emergency procedures and safeguards to prevent accidents and reasonably foreseeable harm to human beings or the environment;

(4) Report periodically on the controlled hazardous substance that is received and discharged by the controlled hazardous substance facility, including, as applicable, volume, and chemical, physical, biological, and radioactive nature;

(5) In appropriate circumstances, assist in any transfer of the ownership and operation of a controlled hazardous substance facility to a qualified agency of this State or any political subdivision of this State; and

(6) To the extent reasonably practicable, restore the controlled hazardous substance facility site to its original condition if use as a controlled hazardous substance facility is terminated.

(b) In addition to the requirements for keeping a facility permit under subsection (a) of this section, each low-level nuclear waste facility permit holder shall:

(1) Ensure that any low-level nuclear waste being shipped to the low-level nuclear waste facility is labeled and transported in accordance with this subtitle;

(2) Refuse to accept for disposal any low-level nuclear waste that has not been labeled or transported in accordance with this subtitle; and

(3) Comply with any other requirements the Department sets.

§7–243.

If any radiation escapes from a low-level nuclear facility into the environment, the low-level nuclear waste facility permit holder shall:

(1) Notify the Department promptly of:

(i) The name of the radioactive substance involved;

(ii) The quantity of the radioactive substance released;

(iii) The intensity of the radiation released; and

(iv) The composition of all radionuclides of the radioactive substance in terms of constituent weights; and

(2) Provide any additional information that the Department requests.

§7–244.

(a) If a report related to low-level nuclear waste is filed by an applicant for or a holder of a low-level nuclear waste facility permit, the Department shall inform the applicant or permit holder, in writing, whether the information contained in the report is acceptable.

(b) From the reports filed with the Department that relate to low-level nuclear waste, the Department shall compile information and once each year publish low-level nuclear waste reports that:

(1) Index the type and quantity of low-level nuclear waste generated, stored, or disposed of in each political subdivision;

(2) Detail the activities at each low-level nuclear waste facility; and

(3) Analyze, in detail, the status and quantity of low-level nuclear waste in this State.

§7–245.

(a) The Department shall establish a schedule for the inspection of each controlled hazardous substance facility based on:

(1) The size of the facility;

(2) The amount of hazardous waste handled by the facility;

(3) The nature of the waste handled by the facility; and

(4) The record of compliance by the facility with this subtitle and the regulations adopted under this subtitle.

(b) (1) The Department shall keep records of the date and findings of each inspection under this section and these records are public records.

(2) The Department periodically shall publish and make available to the public a list of the dates each controlled hazardous substance facility is inspected under this section.

(c) The Secretary may delegate to the health officer of any county where a controlled hazardous substance facility is located the authority to make inspections under this section.

§7–246.

(a) The health officer for any county may inspect and investigate a controlled hazardous substance facility.

(b) If the health officer for a county receives a complaint of an alleged violation of this subtitle at a controlled hazardous substance facility, the health officer shall inspect the controlled hazardous substance facility immediately.

(c) (1) Before making an inspection under subsection (b) of this section, the health officer shall notify the Department of the planned inspection and complaint.

(2) On the next business day after the inspection, the health officer shall report, in writing, to the Department:

(i) The time and source of the complaint;

(ii) The name of the Department official who was notified before the inspection;

(iii) The time and place of the inspection;

(iv) A summary and findings of the inspection; and

(v) Enforcement and other recommendations.

§7–249.

(a) A person may not transport any controlled hazardous substance from any source in this State or to any controlled hazardous substance facility in this State unless:

(1) The person holds a hauler certificate; and

(2) A vehicle certificate has been issued for the transporting vehicle.

(b) This section does not apply to the transportation of any controlled hazardous substance that is:

(1) Used for residential purposes; or

(2) Regulated by the State Department of Agriculture.

§7–250.

The Department may not issue a hauler certificate to transport a low-level nuclear waste unless:

(1) The applicant files with the Department acceptable evidence of a bond or other security as required under § 7-252 of this subtitle;

(2) The applicant agrees not to transport any low-level nuclear waste unless the receiving low-level nuclear waste facility has been notified and has indicated its capability and willingness to take the low-level nuclear waste; and

(3) The Department finds that the applicant is qualified to meet and capable of meeting the requirements of this subtitle.

§7–251.

A hauler certificate authorizes its holder to transport a controlled hazardous substance while the certificate is effective and may require:

(1) Use of specific routes, designated after consultation with the Department of Transportation, to a controlled hazardous substance facility;

(2) Use of certain types of vehicles, equipment, or handling procedures; and

(3) Satisfaction of other conditions which the Department determines to be reasonably necessary to assure, to the extent possible, transportation of controlled hazardous substances in a safe and secure manner.

§7–252.

(a) Each controlled hazardous substance hauler:

(1) Shall maintain a bond or other security that the Department considers sufficient to indemnify this State for abatement of any pollution that may result from the improper transportation of a controlled hazardous substance;

(2) Shall pay an annual vehicle certificate fee set by the Department but not more than $50;

(3) When transporting any controlled hazardous substance, shall carry the manifest and the vehicle certificate in the cab of the controlled hazardous substance vehicle;

(4) May not transport a controlled hazardous substance unless the controlled hazardous substance is labeled properly and in secure containers in accordance with the rules and regulations of the Department that apply to that particular controlled hazardous substance;

(5) On the request of any police officer, shall stop the controlled hazardous substance vehicle and display to the police officer all required documentation and allow inspection and sampling of the controlled hazardous substance to determine if there is a violation of:

(i) The provisions of the vehicle certificate; or

(ii) Any federal or state law;

(6) Except under the supervision of the Department during an emergency, may not remove the controlled hazardous substance from the controlled hazardous substance vehicle, or treat, store for any period of time, or mix any controlled hazardous substance except in a controlled hazardous substance facility; and

(7) Shall report periodically, on a form required by the Department, the following information about shipments of controlled hazardous substances:

(i) The source of the controlled hazardous substance;

(ii) The nature of the controlled hazardous substance; and

(iii) The disposal destination.

(b) Each controlled hazardous substance vehicle driver, when transporting any controlled hazardous substance, shall comply with subsection (a)(3), (4), (5), and (6) of this section and all applicable State rules and regulations.

§7–253.

If a person who generates a controlled hazardous substance desires to have it transported to a controlled hazardous substance facility, the person:

(1) Except as is otherwise required by federal or State law, shall label the controlled hazardous substance as required by the rules and regulations of the Department;

(2) Shall provide for each controlled hazardous substance vehicle a manifest that describes the controlled hazardous substance, including volume and chemical, physical, and biological characteristics;

(3) Shall require evidence of a hauler certificate and a vehicle certificate;

(4) May contract for treatment, storage, or disposal of a controlled hazardous substance only with:

(i) A facility permit holder; or

(ii) A controlled hazardous substance hauler who has a valid contract with a controlled hazardous substance facility for treatment, storage, or disposal of controlled hazardous substances; and

(5) Shall report, from time to time on the form the Department requires, the following information about shipments of controlled hazardous substances:

(i) Source;

(ii) Name of the controlled hazardous substance hauler;

(iii) Destination intended by the controlled hazardous substance hauler at the time of shipment;

(iv) Volume; and

(v) Nature.

§7–256.

(a) At any reasonable time, a representative of the Department or a representative of the health department of the political jurisdiction where the hazardous substance facility is located may enter any hazardous substance facility:

(1) To inspect the hazardous substance facility;

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

(3) To drill test wells; and

(4) To measure the volume and kinds of substances that are received, treated, stored, or disposed of.

(b) If a municipality in which a hazardous substance facility is located does not have a health department, the mayor of the municipality may designate the municipal agency that may enter and inspect a hazardous substance facility under this section.

§7–256.1.

(a) An authorized official or employee of the Department may apply to a judge of the District Court or a circuit court for an administrative search warrant to enter any factory, warehouse, vehicle, building, establishment, or other premises to conduct any inspection required or authorized by law to determine compliance with the provisions of this subtitle relating to controlled hazardous substances.

(b) (1) The application shall be in writing and signed and sworn to by the applicant and shall particularly describe the place, structure, premises, vehicle, or records to be inspected and the nature, scope, and purpose of the inspection to be performed by the applicant.

(2) Before the filing of a search warrant application with a court, it shall be approved by the Attorney General of Maryland as to its legality in both form and substance under the standards and criteria of this section; and a statement to this effect shall be included as part of the application.

(c) A judge of a court referred to in subsection (a) of this section may issue the warrant on finding that:

(1) The applicant has sought access to the property for the purpose of making an inspection; and

(i) After requesting, at a reasonable time, the owner, tenant, or other individual in charge of the property to allow access, has been denied access to the property; or

(ii) After making a reasonable effort, has been unable to locate any of these individuals;

(2) The requirements of subsection (b) of this section are met;

(3) The official or employee of the Department is authorized or required by law to make an inspection of the property for which the warrant is sought; and

(4) Probable cause for the issuance of the warrant has been demonstrated by the applicant by specific evidence of an existing violation of any provision of this subtitle or any rule or regulation adopted under this subtitle or by showing:

(i) That a reasonable administrative inspection program exists

regarding controlled hazardous substances; and

(ii) That the proposed inspection comes within that program.

(d) An administrative search warrant issued under this section shall specify the place, structure, premises, vehicle, or records to be inspected. The inspection conducted may not exceed the limits specified in the warrant.

(e) An administrative search warrant issued under this section authorizes the applicant and other officials or employees of the Department to enter the specified property to perform the inspection, sampling, and other functions authorized by law to determine compliance with the provisions of this subtitle relating to controlled hazardous substances.

(f) An administrative search warrant issued under this section shall be executed and returned to the judge by whom it was issued within:

(1) The time specified in the warrant, not to exceed 30 days; or

(2) If no time period is specified in the warrant, 15 days from the date of its issuance.

(g) Any information obtained pursuant to an administrative search warrant shall be considered as confidential and may not be disclosed except to the extent utilized in an administrative or judicial proceeding.

§7–257.

(a) In accordance with the Administrative Procedure Act and after notice and hearing, the Department may suspend or revoke any facility permit, hauler certificate, or vehicle certificate for violation of any federal or State law, rule, or regulation that relates to controlled hazardous substances.

(b) The Department may revoke any facility permit issued under this subtitle if the Department finds that:

(1) False or inaccurate information was contained in the application;

(2) Conditions or requirements of the facility permit have been or are about to be violated;

(3) Substantial deviation from plans, specifications, or requirements has occurred;

(4) The Department has been refused entry to the premises for the purpose of inspecting to insure compliance with the conditions of the facility permit;

(5) A change in conditions exists that requires temporary or permanent

reduction or elimination of any permitted discharge;

(6) Any State or federal water quality standard or effluent limitation has been or is threatened to be violated; or

(7) Any other good cause exists for revoking the permit.

§7–258.

(a) The Department shall issue a written complaint if the Department has reasonable grounds to believe that the person to whom the complaint is directed has violated:

(1) This subtitle;

(2) Any rule or regulation adopted under this subtitle; or

(3) Any order, permit, or certificate issued by the Department under this subtitle.

(b) A complaint issued under this section shall:

(1) Specify the provision that allegedly has been violated; and

(2) State the alleged facts that constitute the violation.

§7–259.

(a) After or concurrently with service of a complaint under this subtitle, the Department may:

(1) Issue an order that requires the person to whom it is directed to take corrective action within a time set in the order;

(2) Send a written notice that requires the person to whom it is directed to file a written report about the alleged violation; or

(3) Send a written notice that requires the person to whom the notice is directed:

(i) To appear at a hearing before the Department at a time and place the Department sets to answer the allegations of the complaint; or

(ii) To file a written report and also appear at a hearing before the Department at a time and place the Department sets to answer the charges in the complaint.

(b) Any order issued under this section is effective immediately, according to its terms, when it is served.

§7–260.

(a) Any complaint, corrective order, notice, or other instrument issued by the Department under this subtitle may be served on the person to whom it is directed:

(1) In accordance with § 1–204 of this article; or

(2) By publication.

(b) If service is made by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, the person who mails the document shall file with the Department verified proof of mailing.

(c) Any notice that requires filing of a report, attendance at a hearing, or both shall be served at least 10 days before the earlier of:

(1) The time set for the hearing, if any; or

(2) The time set for the filing of the report, if any.

§7–261.

(a) (1) The Department shall give notice and hold any hearing under this subtitle in accordance with the Administrative Procedure Act.

(2) Any hearing related to a complaint shall be held in the manner provided in the Administrative Procedure Act for hearings in contested cases.

(b) (1) Within 10 days after being served with an order under § 7-259(a)(1) of this subtitle, the person served may request, in writing, a hearing before the Department.

(2) (i) If a request for a hearing is made under this subsection, the Department shall hold the hearing promptly after receiving the request and render a decision promptly after the hearing.

(ii) If a request for a hearing is made under this subsection and the Department alleges in the order that there is an imminent threat or danger to the public health or safety or to the environment, the Department shall hold the hearing within 10 days after receiving the request and render a decision within 10 days after the hearing.

(c) Within 10 days after being served with a notice under § 7-259(a)(2) of this subtitle, the person served may request, in writing, a hearing before the Department.

(d) The Department may make a verbatim record of the proceedings of any hearing held under this subtitle.

(e) (1) In connection with any hearing under this subtitle, the Department

may:

(i) Subpoena any person or evidence; and

(ii) Order a witness to give evidence.

(2) A subpoenaed witness shall receive the same fees and mileage reimbursement as if the hearing were part of a civil action.

(3) If a person fails to comply with a subpoena issued under this subsection, on petition of the Department, a circuit court, by order, may:

(i) Compel obedience to the order or subpoena; or

(ii) Compel testimony or the production of evidence.

(4) The court may punish as a contempt any failure to obey its order issued under this section.

§7–262.

(a) (1) Unless the person served with an order under § 7-259(a)(1) of this subtitle makes a timely request for a hearing, the order is a final order.

(2) If the person served with an order under § 7-259(a)(1) of this subtitle makes a timely request for a hearing, the order becomes a final corrective order when the Department renders its decision following the hearing.

(b) (1) If the Department issues a notice under § 7-259(a)(2) or (3) of this subtitle, the Department may not issue an order that requires corrective action by the person to whom the notice is directed until after the later of:

(i) The time set for the hearing, if any; and

(ii) The time set for filing of the report, if any.

(2) After the time within which the Department may not issue a corrective order has passed, if the Department finds that a violation of this subtitle has occurred, the Department shall issue an order that requires correction of the violation within a time set in the order.

(c) The Department shall:

(1) Take action to secure compliance with any final corrective order; and

(2) If the terms of the final corrective order are violated or if a violation is not corrected within the time set in the order, sue to require correction of the violation.

(d) This section does not prevent the Department or the Attorney General

from taking action against a violator before the expiration of the time limitations or schedules in the order.

§7–263.

(a) The Department may bring an action for an injunction against any person who violates any provision of this subtitle or any rule, regulation, order, hauler certificate, vehicle certificate, or facility permit issued by the Department under this subtitle.

(b) In any action for an injunction under this section, any finding of the Department after a hearing is prima facie evidence of each fact the Department determines.

(c) On a showing that any person is violating or is about to violate this subtitle or any rule, regulation, order, hauler certificate, vehicle certificate, or facility permit issued by the Department, the court shall grant an injunction without requiring a showing of a lack of an adequate remedy at law.

(d) If an emergency exists from imminent danger to the public health, to the public welfare, or to the environment, the Department may sue for an immediate injunction to stop the activity that is causing the danger.

§7–264.

(a) Any person aggrieved by a final decision of the Department in connection with an order, hauler certificate, vehicle certificate, or facility permit issued under this subtitle may take a direct judicial appeal.

(b) The appeal shall be made as provided for judicial review of final decisions in the Administrative Procedure Act. However, an order of the Department suspending or revoking a facility permit under § 7-257 of this subtitle may not be stayed pending review.

§7–265.

(a) A person who commits any of the following offenses is guilty of a felony and on conviction is subject to a fine not exceeding $100,000 or imprisonment not exceeding 5 years, or both:

(1) Storing, treating, dumping, discharging, abandoning, or otherwise disposing of a controlled hazardous substance in any place other than a controlled hazardous substance facility for which a current facility permit is in effect;

(2) Transporting for treatment, storage, or disposal a controlled hazardous substance to any place other than a controlled hazardous substance facility for which a current facility permit is in effect;

(3) Falsifying any information required by the Department under this subtitle or any rule, regulation, order, hauler certificate, vehicle certificate, or facility permit issued under this subtitle; or

(4) Authorizing, directing, or permitting any offense listed in this section.

(b) A person who is convicted of violating the following sections of this subtitle or any regulation adopted under the following sections of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $50,000 or imprisonment for not more than 3 years, or both:

(1) § 7-209 of this subtitle;

(2) § 7-249 of this subtitle; or

(3) § 7-252 of this subtitle.

(c) Each day on which a violation occurs constitutes a separate offense under this section.

(d) (1) Any person who knowingly transports, treats, stores, exports, or otherwise disposes of a controlled hazardous substance in a manner that would constitute a violation under subsection (a) of this section and who knows at that time the violation places another person in imminent danger of death or serious bodily injury is guilty of a felony and on conviction is subject to a fine not exceeding $250,000 or imprisonment not exceeding 15 years or both.

(2) For the purposes of this subsection, in determining whether a person's state of mind is knowing and whether a person knew that the violation or conduct placed another person in imminent danger of death or serious bodily injury, the criteria provided under § 3008(f) of the Resource Conservation and Recovery Act (42 U.S.C. § 6928(f)) shall apply.

§7–266.

(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, hauler certificate, vehicle certificate, or facility permit adopted or issued under this subtitle is liable to a civil penalty not exceeding $25,000, to be collected in a civil action. 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, hauler certificate, vehicle certificate, driver certificate, or facility permit adopted or issued under this subtitle.

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

(i) Up to $25,000 for each violation, but not exceeding $100,000 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 waste material or materials 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.

(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.

§7–266.1.

(a) In addition to being subject to penalties under §§ 7-266 and 7-267 of this subtitle and cost recovery under § 7-221 of this subtitle, a responsible person who fails without sufficient cause to comply with a final order issued under this subtitle is subject to punitive damages, not exceeding three times the amount of any costs that are incurred by the State:

(1) After the date of the final decision as provided in subsection (b) of this section; and

(2) As a result of the responsible person's failure to comply with the final order.

(b) (1) Before seeking the punitive damages authorized by subsection (a) of this section, the Department shall issue to the responsible person a determination that the responsible person failed without sufficient cause to comply with a final order issued under this subtitle.

(2) A responsible person subject to a determination issued by the Department under paragraph (1) of this subsection is entitled to a contested case hearing to determine whether the responsible person had sufficient cause for the failure to comply with the final order.

(3) Following a final decision upholding the determination issued by the Department, the State may commence a civil action against the responsible person to recover the punitive damages.

§7–267.

(a) (1) Except as provided in § 7-265 of this subtitle, a person who violates any provision of or fails to perform any duty imposed by this subtitle, or who violates any provision of or fails to perform any duty imposed by a rule, regulation, order, hauler certificate, vehicle certificate, or facility permit adopted or issued under this subtitle, is guilty of a misdemeanor and on conviction is subject to:

(i) For a first offense, a fine not exceeding $25,000 or imprisonment not exceeding 1 year or both; or

(ii) If the conviction is for a violation committed after a first conviction of the person under this subsection, a fine not exceeding $50,000 for each day of violation or imprisonment not exceeding 2 years or both.

(2) In addition to any criminal penalties imposed on a person convicted under this subsection, the person may be enjoined from continuing the violation.

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

(b) A person is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $25,000 or imprisonment not exceeding 2 years or both if the person:

(1) Knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this subtitle or any rule, regulation, order, hauler certificate, vehicle certificate, or facility permit adopted or issued under this subtitle; or

(2) Falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this subtitle or any rule, regulation, order, hauler certificate, vehicle certificate, or facility permit adopted or issued under this subtitle.

§7–268.

The Attorney General shall take charge of, prosecute, and defend on behalf of this State every case arising under the provisions of this subtitle, including the recovery of penalties.

§7–301.

Article I. Definitions

As used in the compact, unless the context clearly indicates otherwise:

a. "Broker" means any intermediate person who handles, treats, processes, stores, packages, ships or otherwise has responsibility for or possesses low-level waste obtained from a generator.

b. "Carrier" means a person who transports low-level waste to a regional facility.

c. "Commission" means the Appalachian States Low-Level Radioactive Waste Commission.

d. "Disposal" means the isolation of low-level waste from the biosphere.

e. "Facility" means any real or personal property, within the region, and improvements thereof or thereon, and any and all plant, structures, machinery and equipment, acquired, constructed, operated or maintained for the management or disposal of low-level waste.

f. "Generate" means to produce low-level waste requiring disposal.

g. "Generator" means a person whose activity results in the production of low-level waste requiring disposal.

h. "Hazardous life" means the time required for radioactive materials to decay to safe levels, as defined by the time period for the concentration of radioactive materials within a given container or package to decay to maximum permissible concentrations as defined by federal law or by standards to be set by a host state, whichever is more restrictive.

i. "Host state" means Pennsylvania or other party state so designated by the Commission in accordance with Article III of this compact.

j. "Institutional control period" means the time of the continued observation, monitoring and care of the regional facility following transfer of control from the operator to the custodial agency.

k. "Low-level waste" means radioactive waste that:

1. Is neither high-level waste or transuranic waste, nor spent nuclear fuel, nor by-product material as defined in Section 11(e)(2) of the Atomic Energy Act of 1954 as amended; and

2. Is classified by the federal government as low-level waste, consistent with existing law; but does not include waste generated as a result of atomic energy defense activities of the federal government, as defined in Public Law 96-573, or federal research and development activities.

l. "Management" means the reduction, collection, consolidation, storage, packaging or treatment of low-level waste.

m. "Operator" means a person who operates a regional facility.

n. "Party state" means any state that has become a party in accordance with Article V of this compact.

o. "Person" means an individual, corporation, partnership or other legal entity, whether public or private.

p. "Region" means the combined geographical area within the boundaries of the party states.

q. "Regional facility" means a facility within any party state which has been approved by the Commission for the disposal of low-level waste.

r. "Shallow land burial" means the disposal of low-level radioactive waste directly in subsurface trenches without additional confinement in engineered

structures or by proper packaging in containers as determined by the law of the host state.

s. "Transuranic waste" means low-level waste containing radionuclides with an atomic number greater than 92 which are excluded from shallow land burial by the federal government.

§7–302.

Article II. The Commission

a. 1. There is hereby created the Appalachian States Low-Level Radioactive Waste Commission. The Commission is hereby created as a body corporate and politic, with succession for the duration of this compact, as an agency and instrumentality of the governments of the respective signatory parties, but separate and distinct from the respective signatory party states. The Commission shall have central offices located in Pennsylvania.

2. The Commission shall consist of two voting members from each party state to be appointed according to the laws of each party state, and two additional voting members from each host state to be appointed according to the laws of each host state. Upon selection of the site of the regional facility, an additional voting member shall be appointed to the Commission who shall be a resident of the county or municipality where the facility is to be located. The appointing authority of each party state shall notify the Commission in writing of the identities of the members and of any alternates. An alternate may vote and act in the member's absence. No member shall have a financial interest in any industry which generates low-level radioactive waste, any low-level radioactive waste regional facility or any related industry for the duration of the member's term. No more than one-half the members and alternates from any party state shall have been employed by or be employed by a low-level waste generator or related industry upon appointment to or during their tenure of office; provided, that no member shall have been employed by or be employed by a regional facility or operator. No member or alternate from any party state shall accept employment from any regional facility operator or brokers for at least three years after leaving office.

3. Members of the Commission and alternates shall serve without compensation from the Commission but may be reimbursed for necessary expenses incurred in and incident to the performance of their duties.

4. Each Commission member is entitled to one vote. Unless otherwise provided in this compact, affirmative votes by a majority of a host state's members are necessary for the Commission to take any action related to the regional facility and the disposal and management of low-level waste within that host state.

5. (a) The Commission shall provide for its own organization and procedures, and shall adopt by-laws not inconsistent with this compact and any rules

and regulations necessary to implement this compact. It shall meet at least once a year in the county selected to host a regional facility and shall elect a chairman and vice chairman from among its members. In the absence of the chairman, the vice chairman shall serve.

(b) All meetings of the Commission shall be open to the public with at least 14 days advance notice, except that the chairman may convene an emergency meeting with less advance notice. Each municipality and county selected to host a regional facility shall be specifically notified in advance of all Commission meetings. All meetings of the Commission shall be conducted in a manner that substantially conforms to the Administrative Procedure Act (5 U.S.C. Ch. 5, Subch. II, and Ch. 7). The Commission may, by a two-thirds vote, including approval of a majority of each host state's Commission members, hold an executive session closed to the public for the purpose of: Considering or discussing legally privileged or proprietary information; to consider dismissal, disciplining of, or hearing complaints or charges brought against an employee or other public agent unless such person requests such public hearing; or to consult with its attorney regarding information or strategy in connection with specific litigation. The reason for the executive session must be announced at least 14 days prior to the executive session, except that the chairman may convene an emergency meeting with less advance notice, in which case the reason for the executive session must be announced at the open meeting immediately subsequent to the executive session. All action taken in violation of this open meeting provision shall be null and void.

(c) Detailed written minutes shall be kept of all meetings of the Commission. All decisions, files, records and data of the Commission, except for information privileged against introduction in judicial proceedings, personnel records and minutes of a properly convened executive session, shall be open to public inspection subject to a procedure that substantially conforms to the Freedom of Information Act (Public Law 89-554, 5 U.S.C. § 552) and applicable Pennsylvania law, and may be copied upon request and payment of fees which shall be no higher than necessary to recover copying costs.

(d) The Commission shall select an appropriate staff, including an Executive Director, to carry out the duties and functions assigned by the Commission. Notwithstanding any other provision of law the Commission may hire and/or retain its own legal counsel.

(e) Any person aggrieved by a final decision of the Commission which adversely affects the legal rights, duties or privileges of such person, may petition a court of competent jurisdiction, within 60 days after the Commission's final decision, to obtain judicial review of said final decisions.

(f) Liabilities of the Commission shall not be deemed liabilities of the party states. Members of the Commission shall not be personally liable for actions taken in their official capacity.

b. The Commission:

(a) Shall conduct research and establish regulations to promote a reasonable reduction of volume and curie content of low-level wastes generated in the region. The regulations shall be reviewed and, if necessary, revised by the Commission at least annually.

(b) Shall ensure, to the extent authorized by federal law, that low-level wastes are safely disposed of within the region except that the Commission shall have no power or authority to license, regulate or otherwise develop a regional facility, such powers and authority being reserved for the host state(s) as permitted under the law.

(c) Shall designate as "host states" any party state which generates 25 percent or more of Pennsylvania's volume or total curie content of low-level waste generated based on a comparison of averages over three successive years, as determined by the Commission. This determination shall be based on volume or total curie content, whichever is greater.

(d) Shall ensure, to the extent authorized by federal law, that low-level waste packages brought into the regional facility for disposal conform to applicable state and federal regulations. Low-level waste brokers or generators who violate these regulations will be subject to a fine or other penalty imposed by the Commission, including restricted access to a regional facility. The Commission may impose such fines and/or penalties in addition to any other penalty levied by the party states pursuant to Article IV d.

(e) Shall establish such advisory committees as it deems necessary for the purpose of advising the Commission on matters pertaining to the management and disposal of low-level waste.

(f) May contract to accomplish its duties and effectuate its powers subject to projected available resources. No contract made by the Commission shall bind a party state.

(g) Shall prepare contingency plans for management and disposal of low-level waste in the event any regional facility should be closed or otherwise unavailable.

(h) Shall examine all records of operators of regional facilities pertaining to operating costs, profits or the assessment or collection of any charge, fee or surcharge, and may make recommendations to the host state(s) which shall review the recommendations in accordance with its (their) own sovereign laws.

(i) Shall have the power to sue and be sued subject to Article II a 5 (e), and may seek to intervene in any administrative or judicial proceeding.

(j) Shall assemble and make available to the party states and to the public, information concerning low-level waste management and disposal needs, technologies and problems.

(k) Shall keep current and annual inventories of all generators by name and quantity of low-level waste generated within the region, based upon information provided by the party states. Inventory information shall include both volume in cubic feet and total curie content of the low-level waste and all available information on chemical composition and toxicity of such wastes.

(l) Shall keep an inventory of all regional facilities and specialized facilities including, but not necessarily restricted to, information on their size, capacity, and location, as well as specific wastes capable of being managed, and the projected useful life of each regional facility.

(m) Shall make and publish an annual report to the governors of the signatory party states and to the public detailing its programs, operations and finances, including copies of the annual budget and the independent audit required by this compact.

(n) Notwithstanding any other provision of this compact to the contrary, may, with the unanimous approval of the Commission members of the host state(s), enter into temporary agreements with non-party states or other regional boards for the emergency disposal of low-level waste at the regional facility, if so authorized by law(s) of the host state(s), or other disposal facilities located in states that are not parties to this agreement.

(o) Shall promulgate regulations, pursuant to host state law, to specifically govern and define exactly what would constitute an emergency situation and exactly what restrictions and limitations would be placed on temporary agreements.

(p) Shall not accept any donations, grants, equipment, supplies, materials or services, conditional or otherwise, from any source, except from any federal agency and from party states which are certified as being legal and proper under the laws of the donating party state.

c. 1. The Commission shall establish a fiscal year which conforms to the fiscal year of the Commonwealth of Pennsylvania.

2. Upon legislative enactment of this compact by two party states and each year until the regional facility becomes available, the Commission shall adopt a current expense budget for its fiscal year. The budget shall include the Commission's estimated expenses for administration. Such expenses shall be allocated to the party states according to the following formula:

Each designated initial host state will be allocated costs equal to twice the costs of the other party states, but such costs will not exceed $200,000.

Each remaining party state will be allocated a cost of one half the cost of the initial host state, but such costs will not exceed $100,000.

The party states will include the amounts allocated above in their respective budgets, subject to such review and approval as may be required by their respective budgetary processes. Such amounts shall be due and payable to the Commission in quarterly installments during the fiscal year.

3. For continued funding of its activities, the Commission shall submit an annual budget request to each party state for funding, based upon the percentage of the region's waste generated in each state in the region, as reported in the latest available annual inventory required under Article II b (k). The percentage of waste shall be based on volume of waste or total curie content as determined by the Commission.

4. The Commission shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the ensuing year.

5. (a) As soon as practicable after the closing of the fiscal year, an audit shall be made of the financial accounts of the Commission. The audit shall be made by qualified certified public accountants selected by the Commission, who have no personal direct or indirect interest in the financial affairs of the Commission or any of its officers or employees. The report of audit shall be prepared in accordance with accepted accounting practices and shall be filed with the chairman and such other officers as the Commission shall direct. Copies of the report shall be distributed to each Commission member and shall be made available for public distribution.

(b) Each signatory party by its duly authorized officers shall be entitled to examine and audit at any time all of the books, documents, records, files, and accounts and all other papers, things, or property of the Commission. The representatives of the signatory parties shall have access to all books, documents, records, accounts, reports, files and all other papers, things, or property belonging to or in use by the Commission and necessary to facilitate the audit; and, they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians.

§7–303.

Article III. Rights, Responsibilities and Obligations of Party States

a. There shall be regional facilities sufficient to dispose of the low-level waste generated within the region. Each regional facility shall be capable of disposing of such low-level waste but in the form(s) required by regulations or license conditions. Specialized facilities for particular types of low-level waste management, reduction or treatment may not be developed in any party state unless they are in accordance with the laws and regulations of such state and applicable federal laws and regulations.

b. Each party state shall have equal access as other party states to regional facilities within the region and accepting low-level waste, provided, however, that the host state may close the regional facility located within its borders when necessary for public health and safety. However, a host state shall send notification to the

Commission in writing within three (3) days of its action, and shall, within thirty (30) working days, provide in writing the reasons for the closing.

c. Pennsylvania and party states which generated 25 percent or more of the volume or curies of low-level waste generated by Pennsylvania based on a comparison of averages over the three years 1982 through 1984 are designated as "initial host states" and are required to develop and host low-level waste sites as regional facilities. The percentage of waste from each state shall be determined by cubic foot volume or total curie content, whichever is greater.

d. Party states which generated less than 25 percent of the volume or curies of low-level waste generated by Pennsylvania based on a comparison of averages over the years 1982 through 1984 shall be exempt from initial host state responsibilities. These states shall continue to be exempt as long as they generate less than the 25 percent threshold over successive 3-year periods. Once a state generates an average of 25 percent or more of the volume or curies generated by Pennsylvania over a successive 3-year period, it shall be designated as a "host state" for a 30-year period by the Commission and shall immediately initiate development of a regional facility to be operational within five years. Such host state shall be prepared to accept at its regional facility low-level waste at least equal to that generated in the state. With Commission approval, any party state may volunteer to host a regional facility. The percentage of waste from each state shall be determined by either a cubic foot volume or total curie content, whichever is greater.

e. Pennsylvania and other host states are obligated to develop regional facilities for the duration of this compact. All regional facilities shall be designed for at least a thirty-year useful life. At the end of the facility's life, normal closure and maintenance procedures shall be initiated in accordance with the applicable requirements of the host state and the federal government. Each host state's obligation for operating regional facilities shall remain as long as the state continues to produce over a 3-year period 25 percent or more of the volume or curies of low-level waste generated by Pennsylvania.

f. Each host state shall:

1. Cause a regional facility to be sited and developed on a timely basis.

2. Ensure by law, consistent with applicable state and federal law, the protection and preservation of public health, safety and environmental quality in the siting, design, development, licensure, or other regulation, operation, closure, decommissioning, long-term care and the institutional control period of the regional facility within the state. To the extent authorized by federal law, a host state may adopt more stringent laws, rules or regulations than required by federal law.

3. Ensure and maintain a manifest system which documents all waste-related activities of generators, brokers, carriers and related activities of generators, brokers, carriers and operators, and establish the chain of custody of waste

from its initial generation to the end of its hazardous life. Copies of all such manifests shall be submitted to the Commission on a timely basis.

4. Ensure that charges for disposal of low-level waste at the regional facility are sufficient to fully fund the safe disposal and perpetual care of the regional facility and that charges are assessed without discrimination as to the party state of origin.

5. Submit an annual report to the Commission on the status of the regional facility which contains projections of the anticipated future capacity.

6. Notify the Commission immediately if any exigency arises requiring the possible temporary or permanent closure of a regional facility within the state at a time earlier than was projected in the state's most recent annual report to the Commission.

7. Require that the institutional control period of any disposal facility be at least as long as the hazardous life, as defined in Article I h, of the radioactive materials that are disposed at that facility.

8. Prohibit the use of any shallow land burial, as defined in Article I r, and develop alternative means for treatment, storage and disposal of low-level waste.

9. Establish by law, to the extent not prohibited by federal law, requirements for financial responsibility, including, but not limited to:

(a) Requirements for the purchase and maintenance of adequate insurance by generators, brokers, carriers and operators of the regional facility;

(b) Requirements for the establishment of a long-term care fund to be funded by a fee placed on generators to pay for preventive or corrective measures of low-level waste to the regional facility; and

(c) Any further financial responsibility requirements that shall be submitted by generators, brokers, carriers and operators as deemed necessary by the host state.

g. Each party state:

1. Shall appropriate its portion of the Commission's initial and annual budgets as set out in Article II c 2 and 3.

2. To the extent authorized by federal law shall develop and enforce procedures requiring low-level waste shipments originating within its borders and destined for a regional facility to conform to volume reduction, packaging, and transportation requirements and regulations as well as any other requirements specified by the regional facility. Such procedures shall include but are not limited to:

(a) Periodic inspections of packaging and shipping practices;

(b) Periodic inspections of low-level waste containers while in custody of carriers; and

(c) Appropriate enforcement actions with respect to violations.

3. To the extent authorized by federal law, shall after receiving notification from a host state or other person that a person in a party state has violated volume reduction, packaging, shipping or transportation requirements or regulations, take appropriate action to ensure that violations do not recur. Appropriate action shall include, but is not limited to, the requirement that a bond be posted by the violator to pay the cost of repackaging at the regional facility and the requirement that future shipments be inspected. Appropriate action may also include suspension of the violator's use of the regional facility. Should such suspension be imposed, the suspension shall remain in effect until such time as the violator has, to the satisfaction of the party state imposing such suspension, complied with the appropriate requirements or regulations upon which the suspension was based and has taken appropriate action to ensure that such violation or violations do not recur.

4. Shall maintain a registry of all generators and quantities generated within the state.

h. In the event of liability arising from the operation of any regional facility and during and after closure of that facility, each party state shall share in that liability in an amount equal to that state's share of the region's low-level waste disposed of at the facility. If such liability arises from negligence, malfeasance or neglect on the part of a host state or any party state, then any other host or party state(s) may make any claim allowable under law for that negligence, malfeasance or neglect. If such liability arises from a particular waste shipment or shipments to, or quantity of waste or condition at, the regional facility, then any host or party state may make any claim allowable under law for such liability. The percentage of waste shall be based on volume of waste or total curie content.

i. A party state which fails to fulfill its obligations, including timely funding of the Commission may have its privileges under the compact suspended or its membership in the compact revoked by the Commission and be subject to any other legal and equitable remedies available to the party states.

§7–304.

Article IV. Prohibited Acts and Penalties

a. It shall be unlawful for any person to dispose of low-level waste within the region except at a regional facility unless authorized by the Commission.

b. After establishment of the regional facility(s), it shall be unlawful for any person to dispose of any low-level waste within the region unless the waste was

generated within the region or unless authorized to do so both by the Commission and by law of the host state in which said disposal takes place. For the purposes of this compact, waste generated within the region excludes radioactive material shipped from outside the party states to a waste management facility within the region. In determining whether to grant such authorization, the factors to be considered by the Commission shall include, but not be limited to, the following:

1. The impact on the health, safety and environmental quality of the citizens of the party states;

2. The impact of importing waste on the available capacity and projected life of the regional facility;

3. The availability of a regional facility appropriate for the safe disposal of the type of low-level waste involved.

c. Any and all low-level waste generated within the region shall be disposed of at a regional facility, except for specific cases agreed upon by the Commission, with the affirmative votes by a majority of the Commission members of the host state(s) affected by the decision.

d. Generators, brokers and carriers of wastes, and owners and operators of sites shall be liable for their acts, omissions, conduct, or relationships in accordance with all laws relating thereto. The party states shall impose a fine for any violation in an amount equal to the present and future costs associated with correcting any harm caused by the violation and shall assess punitive fines or penalties if it is deemed necessary. In addition, the host state shall bar any person who violates host state or federal regulations from using the regional facility until that person demonstrates to the satisfaction of the host state their ability and willingness to comply with the law.

e. 1. No Commissioner, officer or employee shall:

(a) Be financially interested, either directly or indirectly, in a contract, sale, purchase, lease or transfer of real or personal property to which the Commission is a party.

(b) Solicit or accept money or any other thing of value in addition to the expenses paid to him by the Commission for services performed within the scope of his official duties.

(c) Offer money or anything of value for or in consideration of obtaining an appointment, promotion or privilege in his employment with the Commission.

2. Any officer or employee who shall willfully violate any of the provisions of this section shall forfeit his office or employment.

3. Any contract or agreement knowingly made in contravention of this

section is void.

4. Officers and employees of the Commission shall be subject, in addition to the provisions of this section, to such criminal and civil sanctions for misconduct in office as may be imposed by federal law and the law of the signatory state in which such misconduct occurs.

§7–305.

Article V. Eligibility, Entry into Effect, Congressional Consent, Withdrawal

a. Only the states of Pennsylvania, West Virginia, Delaware, and Maryland are eligible to become parties to this compact.

b. An eligible state may become a party state by legislative enactment of this compact or by executive order of the Governor adopting this compact; provided, however, a state becoming a party state by executive order shall cease to be a party state upon adjournment of the first general session of its legislature convened thereafter, unless the legislature shall have enacted this compact before such adjournment.

c. This compact shall take effect when it has been enacted by the legislatures of Pennsylvania and one or more eligible states. However, Article IV b and c shall not take effect until Congress has consented to this compact. Every fifth year after such consent has been given, Congress may withdraw consent.

d. A party state may withdraw from the compact by repealing the enactment of this compact, but no such withdrawal shall become effective until two years after enactment of the repealing legislation. If the withdrawing state is a host state, any regional facility in that state shall remain available to receive low-level waste generated within the region until five years after the effective date of the withdrawal.

§7–306.

Article VI. Construction and Severability

a. The provisions of this compact shall be broadly construed to carry out the purposes of the compact, but the sovereign powers of a party state shall not unnecessarily be infringed.

b. If any part or application of this compact is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

§7–401.

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

(b) "Board" means the Hazardous Waste Facilities Siting Board.

(c) "Certificate" means a certificate of public necessity issued by the Board.

(d) "Facility" means any structure, equipment, machinery, bins, tanks, pipes, pumps, conveyors, wells, trenches, pits, or cells used for treatment, processing, reconditioning, exchange, incidental storage in connection with the preceding activities, long–term storage, or ultimate disposal of hazardous or low–level nuclear waste.

(e) "Hazardous waste" means any waste substance or material designated as a hazardous substance pursuant to § 7–208 of this title.

(f) "Low–level nuclear waste" means any substance or material designated as low–level nuclear waste under § 7–208 of this title.

(g) "Service" means the Maryland Environmental Service.

(h) "Site" means the geographic area to be occupied by a facility, including buffer or security areas and areas used for any appurtenant functions.

(i) "Subdivision" means the 23 counties or Baltimore City and incorporated municipalities.

§7–402.

(a) (1) The purpose of this subtitle is to protect the public health and the environment by ensuring the availability of sites and properly designed facilities to dispose of, reuse, recycle, incinerate, or otherwise render nonhazardous, hazardous waste materials and to eliminate illegal dumping or improper disposal. It is the further purpose of this subtitle to achieve the same goals with respect to low-level nuclear waste.

(2) In carrying out its responsibilities under this subtitle, the Board shall treat hazardous waste and low-level nuclear waste separately.

(b) These facilities shall be located subject to the following considerations:

(1) The availability of suitable facilities outside this State for the disposal of low-level nuclear waste produced in this State;

(2) That there are proper safeguards to the health and safety of the public and the quality of the environment;

(3) That facilities are available at reasonable cost commensurate with adequate protection of public health and safety, and of the environment;

(4) That there is due consideration of social values and of the reasonable and beneficial use of land and natural resources;

(5) That there is due consideration for industry and commerce, the revenues, and development of the State and its political subdivisions, and the employment and welfare of the people;

(6) That there is due consideration of alternatives over burial or other land disposal of hazardous or low-level nuclear waste, such as source reduction, reuse, resource recovery, and incineration;

(7) That there is due consideration for the expeditious ultimate disposal of hazardous waste in order to minimize reliance on interim storage;

(8) That there is due consideration for managing sites following cessation of operations;

(9) That there is due consideration for the equitable geographic distribution of sites, including:

(i) Consideration of the feasibility of siting a facility within the same political subdivision from which the wastes principally originate;

(ii) Consideration of those subdivisions that presently have sites, to avoid to the extent feasible certifying sites disproportionately in any one subdivision;

(10) That there is due consideration for local land use preference, as expressed in local planning and zoning provisions; and

(11) That there is due consideration for the geological stability of a location and for the safety and preservation of public and private water supplies. If the location of a facility site will result in any adverse effects to a public or private water supply, the facility site may not be approved.

§7–403.

(a) There is a Hazardous Waste Facilities Siting Board.

(b) (1) The Board consists of 8 members appointed by the Governor who shall represent the various geographical areas of the State. No more than one member of the Board shall be a resident of the same county or of Baltimore City.

(2) Of the 8 members:

(i) Two shall be members of the scientific community in the State, one of whom shall be a geologist;

(ii) Three shall be members of the general public who have no financial interest in the waste disposal industry, at least one of whom has had a demonstrated involvement in environmental matters;

(iii) One shall be appointed from a list of three or more persons nominated by the Maryland Association of Counties;

(iv) One shall be appointed from a list of three or more persons nominated by the Maryland Chamber of Commerce; and

(v) One shall be appointed from a list of three or more persons nominated by the Maryland Municipal League.

(c) Before taking office, each appointee to the Board shall take the oath required by Article I, § 9 of the Maryland Constitution.

(d) (1) The term of a member is 4 years.

(2) The terms of the initial appointees expire as follows: one member representing the general public and one member representing the scientific community on January 1, 1984, one member representing the general public and one member representing the scientific community on January 1, 1985 and the remaining members on January 1, 1983.

(e) The Governor shall appoint a chairman from among the 8 members.

(f) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(g) A member who is appointed after a term has begun serves only the remainder of that term and until a successor is appointed and qualifies.

(h) A member may be removed by the appointing authority for incompetency or misconduct.

(i) Each member of the Board is entitled to:

(1) Compensation in accordance with the State budget; and

(2) Reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(j) The affirmative vote of a majority of the members of the Board then serving is necessary for any decision of the Board.

§7–404.

In addition to the powers set forth elsewhere in this subtitle, the Board may adopt rules and regulations to carry out the provisions of this subtitle.

§7–405.

(a) (1) Subject to the provisions of this subtitle, the Board shall issue

certificates of public necessity:

(i) For the siting of hazardous waste facilities; and

(ii) For the siting of low-level nuclear waste facilities.

(2) A certificate under this subtitle is not required if a site and facility are otherwise authorized by law.

(3) A certificate is not required for a facility used for receipt, transfer, recovery, or disposal of nonhazardous or nonradioactive residential, commercial, or industrial waste.

(b) In deciding whether to issue a certificate, the Board shall consider but not be limited to the following:

(1) Environmental, social, technical, and economic factors as they apply to a particular proposed site; and

(2) The need for and problems associated with the comprehensive statewide disposal of hazardous and low-level nuclear waste.

(c) The design, construction, and operation of a facility on a site for which a certificate has been issued, and the associated transportation of hazardous or low-level nuclear waste to and from the facility, shall be subject to all environmental, health, and safety restrictions that may be imposed by State regulatory agencies under applicable law and regulation.

(d) (1) The issuance of a certificate of public necessity for a site exempts the site, the design, construction, and operation of the facilities on the site, and the transportation of hazardous or low-level nuclear waste to and from the facilities on the site from any regulation, policy, law, or ordinance, including zoning, of any political subdivision of this State, and from any State law or regulation that requires approval of any political subdivision of this State.

(2) The Board may not issue a certificate of public necessity for the purpose of extending or expanding any hazardous waste landfill in operation on or before July 1, 1980 that was permitted by this State under Subtitle 2 of this title and § 9-204 of this article.

(3) (i) In paragraph (2) of this subsection, the following words have the meanings indicated.

(ii) "Extending" includes any proposed disposal capacity to be established by the lateral development of the landfill facility or site or of any noncontiguous acreage within one-half mile from the perimeter of the landfill site boundary.

(iii) "Expanding" includes any proposed disposal capacity to be established by a material alteration of the landfill facility or site through an increase in the height of any landfill cell or otherwise.

(e) The issuance of a certificate does not require the approval of any county or municipal council, board, authority, or unit. Any plan for management of liquid, solid, hazardous, or low-level nuclear waste adopted by any subdivision of the State shall be consistent with the terms of the certificate.

(f) The certificate shall contain a statement of the purpose for which it is issued and a description of the site and proposed facility, and shall indicate the locations on the site of all facilities, all buffer and security areas, and all areas to be used for appurtenant functions.

(g) A certificate is valid only for the site and facility for which it is issued.

(h) (1) A person may not make any material change that, as to a facility or the use of a site, is contrary to the purpose or conditions for which a certificate was issued, unless:

(i) The person first submits the proposed change to the Board for reconsideration of the certificate; and

(ii) The Board approves the change.

(2) An application for reconsideration shall be made by an applicant and processed by the Board in accordance with the same requirements, procedures, and restrictions that are applicable to an initial application for a certificate under this subtitle.

§7–406.

(a) Each application for a certificate submitted to the Board shall contain a report with information of the type, quality, and detail that will permit adequate consideration of the environmental, social, technical, and economic factors involved in the establishment and operation of the proposed facilities. The applicant shall make the report available to affected subdivisions and to the public.

(b) (1) On receipt of the application for a certificate the Board shall forward a copy of that application to the Department. The Department shall consider the application for a certificate as an application for the facility permit that is required under this article.

(2) On receipt of any application for a facility permit that is required under this article, the Department shall forward a copy of the facility permit application to the Board.

(c) (1) The portion of the applicant's report dealing with environmental and

social assessments shall contain, but not be limited to:

(i) The potential impact of the method and route of transportation of hazardous or low-level nuclear waste to the site and the potential impact of the establishment and operation of the proposed facility on air and water quality, existing land use, transportation, and natural resources in the area affected by proposed facilities;

(ii) A description of the expected effect of the facility; and

(iii) Recommendations for minimizing any adverse impact.

(2) The portion of the applicant's report dealing with technical and economic assessments shall contain, but not be limited to:

(i) Detailed descriptions of the proposed site and facility, including site location and boundaries and facility purpose, type, size, capacity, and location on the site and estimates of the cost and charges to be made for material accepted; and

(ii) Provisions for managing the site following cessation of operation of the facility.

(d) Acceptance by the Board of any application for processing does not preclude the Board from requiring further information from the applicant if the Board considers the additional information necessary for adequate consideration of the application.

(e) (1) The Board shall adopt regulations describing and governing the procedure for obtaining a certificate, including procedures under paragraph (2) of this subsection. The provisions of this section do not exempt the Board from the requirements of Title 10, Subtitles 1 and 2 of the State Government Article.

(2) Procedural regulations adopted under this subsection shall:

(i) Provide for notice to interested persons of any decision to issue or deny a certificate;

(ii) Permit a person to request a hearing under Title 10, Subtitle 2 of the State Government Article (Administrative Procedure Act - Contested Cases), if the person makes factual allegations with sufficient particularity to demonstrate that:

1. The person is aggrieved by the decision; and

2. The decision is:

A. Legally inconsistent with any provision of law applicable to the decision being challenged; or

B. Based upon an incorrect determination of a relevant and

material fact;

(iii) Provide the Board with discretionary authority to stay the effectiveness of its decision pending the outcome of the hearing; and

(iv) Provide that, if a request for a hearing is granted, the Board's final decision on the application shall be based on the record made in the hearing, including the proposed findings of fact and conclusions of law recommended to the Board by the presiding officer.

(f) (1) At least 90 days prior to issuance of a certificate, the Board shall seek the advice and comment of the following:

(i) The Secretaries of Natural Resources, the Environment, Business and Economic Development, and Agriculture;

(ii) The Director of Planning;

(iii) The Controlled Hazardous Substances Advisory Council; and

(iv) The governing body of any subdivision of the State within which all or part of the proposed site is to be located and the governing bodies of adjoining subdivisions.

(2) At least 90 days prior to the issuance of a certificate, the Board shall seek the comments of:

(i) Each landowner of record whose property is within 1,000 feet of the proposed site; and

(ii) Residents who live within 1 mile of the proposed site.

(3) Within 30 days after the Board seeks the advice of a party listed under paragraph (1) of this subsection, the party shall respond to the Board in writing by either:

(i) Setting forth the advice and comments of the party as to the proposed certification; or

(ii) Stating that the party has no comments as to the proposed certification.

(g) (1) Before it may issue a certificate, the Board shall hold an informational meeting in the subdivision in which the proposed site is to be located for the purpose of receiving advice and comments from the public.

(2) The informational meeting shall be held at least 60 days prior to the issuance of a certificate.

(3) If a site is located in more than one subdivision, the informational meeting shall be held at a location reasonably convenient and accessible to the affected jurisdictions.

(4) The informational meeting may not be held until the application is complete.

(h) (1) The Board shall make a decision to issue or deny a certificate within 6 months of receipt of an application and any additional information required under this section, and shall advise the governing body of a subdivision in writing of any rejection of a site that it recommended and of the reasons for the rejection.

(2) With the concurrence of the applicant, the Board may extend this period for no more than an additional 6 months.

(i) The Board shall set by rule and regulation a reasonable schedule of fees necessary to recover the costs of processing applications and issuing certificates under this subtitle.

(j) On issuance of a certificate the Board shall file a copy of that certificate with the Secretary to the Board and the Secretary of State. Copies of the certificate shall be sent by the Secretary to the Board to:

(1) The governing body of any political subdivision of the State within which all or part of the proposed site is to be located and the governing bodies of adjoining subdivisions;

(2) The record owner(s) of the site and the record owners of adjoining property;

(3) The applicant, if different from the record owner;

(4) The Department;

(5) The Department of Natural Resources;

(6) The Department of Agriculture;

(7) The Department of Labor, Licensing, and Regulation; and

(8) The Department of Planning.

(k) The Board shall maintain records of its transactions including the applications and supporting data submitted by those seeking certificates from the Board and any other technical data considered in issuing or denying a certificate. These records are public records for the purposes of Title 4 of the General Provisions Article.

(l) The Board shall consider, review, and approve or deny hazardous or low-level nuclear waste sites applied for by the Maryland Environmental Service in the same manner in which it acts upon applications for issuance of certificates from other parties.

§7–407.

Regardless of whether a site and facility are approved by a subdivision or are certified under this subtitle:

(1) All other requirements for permits by State health or any other State regulatory agency remain applicable; and

(2) All other State environmental, health, and safety restrictions shall apply, as provided in § 7-405(c) of this subtitle.

§7–408.

(a) A certificate automatically shall be null and void if:

(1) Construction or other preparation of the site for its intended use of the facility for which the certificate was issued has not commenced within 2 years following issuance of the certificate; or

(2) The facility has not commenced operation within 4 years following issuance of the certificate.

(b) The Board may extend the time limits imposed under subsection (a) of this section if the certificate holder:

(1) Applies to the Board for an extension; and

(2) Shows good cause for allowing the extension.

§7–409.

(a) The Board shall be a unit of the Department for purposes of executive organization.

(b) The Board has all powers necessary for carrying out the purposes of this subtitle, including but not limited to the powers set forth in this section, and may:

(1) Make any contract or agreement the Board determines to be necessary or incidental to the performance of its duties and to the execution of the purpose of and the powers granted by this subtitle;

(2) Make directly, or through the hiring of staff or consultants, any plans, surveys, investigations, or studies bearing on the characteristics of any site or on the need for and employment of sites and facilities throughout the State; and

(3) Prepare information to further public understanding of matters that the Board is required to consider, such as site suitability, management alternatives and the treatment and disposal needs of the State, and to disseminate such information to environmental and community organizations, schools, libraries, local, State, and federal government agencies, and other members of the general public.

(c) The determination by the Board of statewide need and the plans and surveys prepared by the Board as authorized by this subtitle shall be prepared in form and substance suitable for inclusion in any statewide solid waste management plan.

(d) To assist the Board in carrying out the provisions of this subtitle, the Department shall routinely furnish the Board with copies of relevant information and data filed with the Department under the provisions of this article that are applicable to the generation, transport, and disposal of hazardous waste.

(e) In the event that the statewide plan is no longer required under the Resource Conservation and Recovery Act, as amended, the Board within 1 year after the Act is not in effect shall prepare a 10-year hazardous waste management plan and shall propose procedures for its adoption.

§7–410.

(a) (1) (i) 1. In consultation with the appropriate agencies of State and local government, the Service shall prepare by June 1, 1981, an initial inventory of potential hazardous waste facility sites and a program for utilizing these sites that appear suitable for and capable of meeting disposal demands.

2. In consultation with the appropriate agencies of State and local government, and as needed, the Service shall prepare an initial inventory of potential low–level nuclear waste sites and a program for using those sites which appear suitable for and capable of meeting disposal demands.

3. In consultation with appropriate State and local officials and governing bodies, the Service shall, as needed, update the inventories and programs prepared under subsubparagraphs 1 and 2 of this subparagraph.

4. The Service shall develop guidelines, consistent with the provisions of this subtitle, for evaluating types of sites for placement on the inventory, and shall apply said guidelines uniformly to all sites of a given type considered for placement on the inventory.

(ii) In preparing the inventory, the Service shall solicit and consider recommendations from the governing body of each subdivision who shall prepare a list of sites which are believed to meet or exceed the requirement for facilities of the types under consideration by the Board. If the governing body cannot agree upon specific sites within 6 months of the request, the Service may select the sites for inclusion on the inventory.

(iii) The Service shall consider any recommendation that is submitted under this subsection on or before September 1, 1980, and shall advise the governing body of a subdivision in writing of any rejection of a site that it recommended and of the reasons for the rejection.

(2) (i) The inventory and program shall be maintained and, as needed, updated in consultation with the appropriate State and local agencies and local governing bodies.

(ii) In preparing the inventory updates, the Service shall solicit and consider recommendations from the governing body of each subdivision.

(iii) The Service shall consider any recommendation that is submitted under this subsection and shall advise the governing body of a subdivision in writing of any rejection of a site that it recommended and of the reasons for the rejection.

(b) The Service shall file a copy of its inventories and all updates with the Board.

§7–411.

(a) The Service may apply to the Board for a certificate for one or more sites.

(b) The Board may direct the Service to prepare and submit a proposal for acquisition or utilization or both of any inventoried site. The Board may further direct the Service to perform any act authorized by Subtitle 1 of Title 3 of the Natural Resources Article to implement the proposal if a certificate is issued.

(c) When the Service acts with respect to a site for which a certificate has been issued, §§ 3-102(c) and 3-104(v) of the Natural Resources Article do not apply.

(d) (1) If the Service owns a site or property on a site that is not, because of its ownership, subject to ordinary local taxes, and if a certificate has been issued for the site, the Service shall make payments in lieu of taxes to the subdivision in which the site is located.

(2) The cost of these payments shall be included as a part of project costs in the accounts of the Service and may be recovered by the Service from the users of the facilities on the site.

(3) Payment shall equal the amount of ordinary local taxes that would be due if the property were subject to taxation.

(4) Immediately upon acquisition of an interest in any site or property on a site, the Service shall request the State Department of Assessments and Taxation to certify to the local taxing authority the assessment associated with the property.

§7–412.

(a) Any interested party, including a prospective user of a hazardous or low-level nuclear waste facility site who generates hazardous or low-level nuclear waste in this State, may appeal a decision of the Board directly to the circuit court of the jurisdiction of the proposed site. The decision of the circuit court may be appealed to the Court of Special Appeals of Maryland.

(b) Any issue in an appeal from a decision of the Board has preference over other civil actions and proceedings in both trial and appellate courts.

(c) In any appeal, the decision of the Board is prima facie correct and shall be affirmed unless clearly shown to be:

(1) In violation of constitutional provisions;

(2) Made on unlawful procedure;

(3) Arbitrary and capricious; or

(4) Affected by other error of law.

§7–413.

(a) Except as provided under subsection (b) of this section, a subdivision may not be held liable for any damages to any party that have arisen from the selection or certification of any site or facility under this subtitle or from the regulation, operation, or control of any site or facility certified under this subtitle.

(b) The provisions of subsection (a) of this section shall not apply to any liability imposed on a subdivision:

(1) For any damage if the subdivision, itself, operated the facility; or

(2) For any damage that resulted from the failure of the political subdivision: (i) to carry out properly any responsibility assigned to it under the law for conducting inspections; or (ii) to report in a timely manner to the appropriate authorities the results of any inspection that it conducts.

§7–501.

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

(b) (1) "Active enforcement" means after the Department has issued a notice of violation, order, consent order, or other enforcement action of the Department and until completion of activities required by that action.

(2) For purposes of paragraph (1) of this subsection, "other enforcement action" does not include a site complaint.

(c) "Applicant" means a person who applies to participate in the Voluntary Cleanup Program.

(d) "Background level" means the level of a substance occurring naturally at the site prior to any manmade spill or release.

(e) "Contamination" means a release, discharge, or threatened release of:

(1) A controlled hazardous substance, as defined in § 7–201 of this title; or

(2) Oil, as defined in § 4–401 of this article.

(f) "Eligible applicant" means:

(1) A responsible person who has not knowingly or willfully violated any law or regulation concerning controlled hazardous substances; or

(2) An inculpable person.

(g) (1) "Eligible property" means property that is contaminated or perceived to be contaminated.

(2) "Eligible property" does not include property that is:

(i) On the national priorities list under § 105 of the federal act;

(ii) Except as provided in paragraph (3)(i) of this subsection, under active enforcement; or

(iii) Subject to a controlled hazardous substances permit issued in accordance with this title.

(3) (i) "Eligible property" includes a site under active enforcement if:

1. All applications filed in connection with the property are filed by inculpable persons; and

2. Any response action plan and cleanup criteria approved by the Department under this subtitle is at least as protective of public health and the environment as the requirements of any outstanding active enforcement action.

(ii) "Eligible property" includes sites listed on the Comprehensive Environmental Response, Compensation, and Liability Information System.

(h) "Federal act" has the meaning stated in § 7–201(j) of this title.

(i) "Imminent and substantial endangerment" means a release or threatened release of a hazardous substance that may pose a risk of significant harm to the public health or the environment at some foreseeable time in the future and is not limited to

an emergency situation.

(j) (1) "Inculpable person" means a person who:

(i) Has no prior or current ownership interest in an eligible property at the time of application to participate in the Voluntary Cleanup Program; and

(ii) Has not caused or contributed to contamination at the eligible property at the time of application to participate in the Voluntary Cleanup Program.

(2) "Inculpable person" includes:

(i) A successor in interest in an eligible property acquired from an inculpable person, as defined in paragraph (1) of this subsection, if the successor in interest does not have a prior ownership interest in the eligible property and, other than by virtue of ownership of the eligible property, is not otherwise a responsible person at the eligible property; and

(ii) Notwithstanding paragraph (1)(i) of this subsection, a person who is not considered a responsible person under § 7–201(t)(2) of this title.

(k) "Participant" means an applicant accepted into the Voluntary Cleanup Program.

(l) "Previously undiscovered contamination" means contamination at an eligible property which was not identified or addressed in a notice of no further requirements or response action plan.

(m) "Program" means the Voluntary Cleanup Program established under this subtitle.

(n) "Responsible person" has the meaning stated in § 7–201(t) of this title.

§7–502.

(a) In addition to the powers set forth elsewhere in this article, the Department may:

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

(2) Adopt regulations to implement the provisions of this subtitle.

(b) To implement the requirements of this subtitle, the Department shall develop and use standardized applications, certificates of completion, and other forms.

§7–503.

(a) There is a Voluntary Cleanup Program in the Department.

(b) The purpose of the Voluntary Cleanup Program is to:

(1) Encourage the investigation of eligible properties with known or perceived contamination;

(2) Protect public health and the environment where cleanup projects are being performed or need to be performed;

(3) Accelerate cleanup of eligible properties; and

(4) Provide predictability and finality to the cleanup of eligible properties.

§7–504.

(a) (1) There is a Voluntary Cleanup Fund established as a nonlapsing, revolving special fund.

(2) Moneys credited and any interest accrued to the Fund:

(i) Shall remain available until expended; and

(ii) May not be reverted to the General Fund under any other provision of law.

(b) All application fees and other moneys collected by the Department under this subtitle from applicants in the Program shall be paid to the Voluntary Cleanup Fund.

(c) Moneys appropriated, granted, loaned, or otherwise provided to the Department for the support of the Program shall be paid to the Voluntary Cleanup Fund.

(d) The Department may use:

(1) The application fees in the Voluntary Cleanup Fund for activities related to the review of proposed voluntary cleanup projects and the direct administrative oversight of voluntary cleanup projects, including cost recovery and program development; and

(2) Any moneys, other than application fees, in the Voluntary Cleanup Fund for any activities relating to the Voluntary Cleanup Program.

§7–505.

(a) (1) If the Department approves a person's status as an inculpable person

under this subtitle, the person's status as an inculpable person continues upon acquiring an interest in the eligible property.

(2) If the person meets the requirements of § 7-506(a)(1)(i), (ii), and (iii) of this subtitle, the Department shall approve or disapprove the person's status as an inculpable person within 5 business days of receiving:

(i) A written request from the person for an expedited determination of the person's status as an inculpable person; and

(ii) A fee of $2,000.

(3) Notwithstanding paragraph (1) of this subsection, the Department's approval of a person's status as an inculpable person expires if the application, including any applicable fees, required under this subtitle is not filed within 6 months after the approval of a person's status as an inculpable person.

(b) Except as provided in subsection (c) of this section, an inculpable person is not liable for existing contamination at the eligible property.

(c) An inculpable person shall be liable for:

(1) New contamination that the person causes or contributes to at the eligible property; and

(2) Exacerbation of existing contamination at the eligible property.

§7–506.

(a) To participate in the Program, an applicant shall:

(1) Submit an application, on a form provided by the Department, that includes:

(i) Information demonstrating to the satisfaction of the Department that the contamination did not result from the applicant knowingly or willfully violating any law or regulation concerning controlled hazardous substances;

(ii) Information demonstrating the person's status as a responsible person or an inculpable person;

(iii) Information demonstrating that the property is an eligible property as defined in § 7-501 of this subtitle;

(iv) A detailed report with all available relevant information on environmental conditions including contamination at the eligible property known to the applicant at the time of the application;

(v) An environmental site assessment that includes:

1. Established Phase I site assessment standards and follows principles established by the American Society for Testing and Materials and that demonstrates to the satisfaction of the Department that the assessment has been conducted in accordance with those standards and principles; and

2. A Phase II site assessment unless the Department concludes, after review of the Phase I site assessment, that there is sufficient information to determine that there are no recognized environmental conditions, as defined by the American Society for Testing and Materials; and

(vi) A description, in summary form, of a proposed voluntary cleanup project that includes the proposed cleanup criteria under § 7-508 of this subtitle and the proposed future use of the property, if appropriate; and

(2) Pay to the Department:

(i) An initial application fee of $6,000 which the Department may reduce on a demonstration of financial hardship in accordance with subsection (b) of this section;

(ii) An application fee of $2,000 for each application submitted subsequent to the initial application for the same property; and

(iii) An application fee of $2,000 for each application submitted subsequent to the initial application for contiguous or adjacent properties that are part of the same planned unit development or a similar development plan.

(b) The Department shall adopt regulations to establish criteria for determining whether an applicant has demonstrated financial hardship.

(c) (1) The applicant may delay submitting the Phase II site assessment until after the application and applicable fees are submitted.

(2) If an applicant delays filing a Phase II site assessment, all related deadlines for public notice and action by the Department shall be extended and conform with the date the Phase II site assessment is submitted and the application is complete.

(d) (1) On submission of the application, the Department shall publish a notice of the application on its website and the applicant shall post notice at the property that is the subject of the application.

(2) The notices required under paragraph (1) of this subsection shall include:

(i) The name and address of the applicant and the property;

(ii) The name, address, and telephone number of the office within the Department from which information about the application may be obtained; and

(iii) The time period during which the Department will receive and consider written comments from the public.

(e) (1) (i) The Department shall notify the applicant in writing, within 45 days after receipt of the application, whether:

1. The application, including the applicant's status as a responsible person or an inculpable person, is approved;

2. The application is denied or incomplete; or

3. The Department has no further requirements related to the investigation of controlled hazardous substances at the eligible property as provided in paragraph (3) of this subsection.

(ii) If the Department denies the application or determines that the application is incomplete, the Department shall provide to the applicant the reasons for its decision in writing.

(2) (i) An applicant may resubmit an application within 60 days after receipt of notice of the Department's decision to deny the initial application or determination that the application is incomplete.

(ii) The Department shall approve or deny a resubmitted or revised application within 30 days after receipt.

(3) If the Department notifies the applicant that the Department has no further requirements at the eligible property in accordance with paragraph (1)(i)3 of this subsection, the Department shall include a statement that this notice does not:

(i) Subject to the provisions of § 7-505 of this subtitle, prevent the Department from taking action against any person to prevent or abate an imminent and substantial endangerment to the public health or the environment at the eligible property;

(ii) Remain in effect if the notice of no further requirements is obtained through fraud or a material misrepresentation;

(iii) Affect the authority of the Department to take any action against a responsible person concerning previously undiscovered contamination at an eligible property after a no further requirements notice has been issued by the Department; or

(iv) Affect the authority of the Department to require additional cleanup for future activities at the site that result in contamination by hazardous substances.

(4) The no further requirements notice shall provide the same liability protections as provided in § 7-513(b)(3) and (4) of this subtitle.

(5) The participant and any successors in interest in a property subject to a no further requirements notice shall continue to be protected from liability in the event of any violation of the conditions placed on the use of the property, provided that the participant and any successors in interest did not cause or contribute to the violation.

(f) (1) The Department shall deny an application if:

(i) The applicant is not an eligible applicant;

(ii) The property is not an eligible property; or

(iii) The property was initially contaminated by a release of hazardous substances after October 1, 1997 unless:

1. The property is acquired by an inculpable person; or

2. The contamination was caused by an act of God.

(2) For the purposes of paragraph (1)(iii) of this subsection, any property identified in the Comprehensive Environmental Response, Compensation, and Liability Information System in accordance with the federal act as of October 1, 1997 is presumed to have been initially contaminated on or before October 1, 1997.

(g) (1) Within 30 days after receiving notification of approval of an application, a participant shall inform the Department in writing whether the participant intends to proceed or withdraw from the Program.

(2) If a participant does not notify the Department of the participant's intent to proceed or withdraw in accordance with paragraph (1) of this subsection, the application will be deemed to be withdrawn.

(h) A determination by the Department that it has no further requirements may be transferred to a subsequent purchaser of the property provided that the subsequent purchaser did not cause or contribute to the contamination.

(i) (1) If a determination by the Department that it has no further requirements is conditioned on certain uses of the property or on the maintenance of certain conditions, the participant shall record the determination in the land records of the local jurisdiction within 30 days after receiving the determination.

(2) If the determination by the Department that it has no further requirements is conditioned on certain uses of the property or on the maintenance of certain conditions and the participant fails to record the determination in the land records in accordance with paragraph (1) of this subsection, the determination shall be void.

(3) (i) If a determination by the Department that it has no further requirements at a property is conditioned on certain uses of the property or on

the maintenance of certain conditions, the participant shall send a copy of the determination to a one–call system as defined in § 12–101 of the Public Utilities Article.

(ii) Any obligation for the participant to send the information required under subparagraph (i) of this paragraph does not negate the obligation of an owner as defined in § 12–101(f) of the Public Utilities Article to become a member of the one–call system under Title 12 of the Public Utilities Article.

(j) Subject to the provisions of § 7-516(a) of this subtitle and approval by the Department, if an owner of an eligible property that has limited permissible uses wants to change the use of the eligible property, the owner is responsible for the cost of cleaning up the property to the appropriate standard.

§7–506.1.

(a) If a determination by the Department that it has no further requirements is conditioned on certain uses of the property or on the maintenance of certain conditions, the participant shall pay to the Department a fee of $2,000.

(b) If a certificate of completion is conditioned on the permissible use of the property, the participant shall pay to the Department a fee of $2,000.

(c) On a request by a participant to alter a record of determination in the land records for an eligible property with conditions in accordance with § 7-506(i) or § 7-514(d) of this subtitle, the participant shall pay to the Department a fee of $2,000.

§7–507.

When an applicant submits an application under § 7–506 of this subtitle, the applicant also may submit a request to the Department of Business and Economic Development to determine the applicant's eligibility to qualify for financial incentives for the redevelopment of a brownfields site in accordance with Title 5, Subtitle 3 of the Economic Development Article.

§7–508.

(a) After the Department approves an application in accordance with § 7–506 of this subtitle, the participant shall develop a response action plan that includes:

(1) A plan for all work necessary to perform the proposed response action plan, including long–term monitoring and maintenance of the site, if necessary;

(2) A demonstration to the satisfaction of the Department that the proposed response action plan:

(i) Will achieve the appropriate criteria under subsection (b) of this section; and

(ii) Will protect public health and the environment;

(3) A certified written statement that the property meets all applicable county and municipal zoning requirements; and

(4) Any other information related to the proposed response action plan that the Department may reasonably require to determine that the plan meets the requirements of this subtitle.

(b) A participant shall select one or more of the following criteria that protects public health and the environment, as may be appropriate when proposing a response action plan:

(1) Uniform numeric risk–based standards;

(2) Measurable standards based on site–specific risk assessments;

(3) Background levels;

(4) Federal or State soil standards or water quality standards;

(5) Standards based on federal or State maximum contaminant levels (MCLs); or

(6) Any other federal or State standards.

(c) The response action plan shall:

(1) Enumerate the responsibilities and duties of the Department and the participant;

(2) Include a schedule for the implementation and completion of the response action plan;

(3) Include a written agreement that if the response action plan is approved, the participant agrees, subject to the withdrawal provisions set forth in § 7–512 of this subtitle, to comply with the provisions of the plan; and

(4) Include a proposal for the filing of a performance bond or other security in accordance with the requirements of subsection (d) of this section.

(d) (1) A participant shall file a performance bond or other security with the Department within 10 days after receiving the Department's approval of a response action plan and before the participant may perform any work on the site.

(2) (i) The performance bond required under paragraph (1) of this subsection shall be in an amount determined by the Department to be necessary to secure and stabilize the site if the response action plan is not completed.

(ii) The market value of other security deposited under this section may not be less than the amount specified in subparagraph (i) of this paragraph.

(3) The obligation of the bond filed under this section shall be void upon the issuance of a certificate of completion to the participant or, if the participant withdraws from the Program, 16 months after the date of withdrawal.

(4) The obligation of the participant under the bond or other security shall become due and payable upon notification by the Department that actions must be taken to fulfill the requirements of § 7–512 of this subtitle to the extent the requirements of § 7–512 of this subtitle apply to the participant.

(e) (1) The Department may adopt uniform numeric risk–based standards by regulation based on residential and industrial uses under subsection (b) of this section.

(2) The Department shall review uniform numeric risk–based standards every 4 years and may revise the standards.

(f) This section may not be construed to eliminate or otherwise affect any other provision of law requiring a person to report a release or a threat of a release of a controlled hazardous substance.

§7–509.

(a) Upon submission of a proposed response action plan, the participant:

(1) Shall publish a notice of a proposed response action plan once a week for 2 consecutive weeks in a daily or weekly newspaper of general circulation in the geographical area in which the eligible property is located that shall include:

(i) A summary of the proposed response action plan;

(ii) The name and address of the participant and eligible property;

(iii) The name, address, and telephone number of the office within the Department from which information about the proposed response action plan may be obtained;

(iv) An address to which persons may submit written comments about the proposed response action plan;

(v) A deadline for the close of the public comment period by which written comments must be received by the Department; and

(vi) The date and location of the public informational meeting; and

(2) Shall post at the eligible property a notice of intent to conduct a response action plan at that property.

(b) The Department shall receive written comments from the public for 30 days after publication and posting required under this section or 5 days after the public informational meeting required under this section, whichever is later.

(c) The Department shall hold a public informational meeting on the proposed response action plan at the participant's expense within 40 days after the publication of the notice in accordance with subsection (a)(1) of this section.

§7–510.

(a) The Department shall approve a response action plan if the Department determines that the response action plan protects public health and the environment.

(b) In making a determination as to whether the criteria selected by the participant and remedial actions in a proposed response action plan protect public health and the environment, the Department shall consider whether the eligible property is:

(1) Located in an industrial area and used for industrial purposes;

(2) Located in a residential area and used for industrial purposes; or

(3) Located in a residential area and used for residential purposes or other purposes that require unlimited public access.

(c) The failure of the Department to adopt final regulations under this subtitle may not prevent the Department from approving a response action plan on an individual plan basis.

§7–511.

(a) Within 75 days after the Department has received a proposed response action plan, the Department, after considering any comments the Department has received under § 7-509 of this subtitle, shall notify the participant in writing that:

(1) The response action plan has been approved; or

(2) The response action plan has been rejected and shall state the modifications in the response action plan that are necessary to receive the Department's approval.

(b) (1) (i) If the Department notifies a participant that modifications in a response action plan are necessary to receive the Department's approval, the participant may resubmit the plan within 120 days after receipt of the Department's notification.

(ii) If the participant does not resubmit the plan within 120 days under subparagraph (i) of this paragraph, the participant will be considered to have

withdrawn the participant's application in accordance with § 7-512 of this subtitle.

(2) Within 30 days after receipt of a resubmitted plan under paragraph (1) of this subsection, the Department shall notify the participant whether the plan has been approved.

(c) The response action plan approval letter shall state that, subject to the requirements of § 7-514 of this subtitle:

(1) No further action will be required to accomplish the objectives set forth in the approved response action plan other than those actions described in the approved response action plan; and

(2) The participant will receive a certificate of completion subject to the conditions and requirements of § 7-514(b) of this subtitle if:

(i) The approved response action plan is implemented to the satisfaction of the Department; and

(ii) The response action plan has achieved the cleanup criteria.

(d) A response action plan approval letter, if applicable, shall include a limitation on the permissible uses of the property that is consistent with the response action plan.

§7–512.

(a) Except as provided in subsections (b) and (c) of this section, a participant may withdraw from the Program at the time of a pending application or response action plan, or after receiving a certificate of completion, and may not be obligated to complete an application or a response action plan if the participant:

(1) Provides 10 days' written notice of the anticipated withdrawal to the Department;

(2) Stabilizes and secures the eligible property to the satisfaction of the Department to ensure protection of the public health and the environment; and

(3) Forfeits any application fees.

(b) (1) Except as provided in paragraph (2) of this subsection, an inculpable person who withdraws from the Program may not be required by the Department to clean up the eligible property.

(2) If an inculpable person withdraws from the Program, the inculpable person shall be liable for new contamination or the exacerbation of existing contamination at the eligible property as provided in § 7–505 of this subtitle.

(c) If a responsible person withdraws from the Program, the Department may take any applicable enforcement action authorized under this title.

(d) If a participant fails to meet the schedule for implementation and completion of the response action plan that is set forth in the plan, the Department may:

(1) Reach an agreement with the participant to revise the schedule of completion in the response action plan; or

(2) If an agreement cannot be reached under paragraph (1) of this subsection, withdraw approval of the response action plan.

(e) (1) Except as provided in paragraph (2) of this subsection, if the Department withdraws approval of an inculpable person's response action plan under subsection (d)(2) of this section, the inculpable person may not be required by the Department to complete the response action plan.

(2) If the Department withdraws approval of an inculpable person's response action plan under subsection (d)(2) of this section, the inculpable person:

(i) Shall stabilize and secure the eligible property to ensure protection of the public health and the environment; and

(ii) Shall be liable for new contamination or the exacerbation of existing contamination at the eligible property as provided in § 7–505 of this subtitle.

(3) If the Department withdraws approval of a responsible person's response action plan:

(i) The responsible person shall stabilize and secure the eligible property to ensure protection of the public health and the environment; and

(ii) The Department may take any applicable enforcement action authorized under this title.

(f) If an application, a response action plan, or a certificate of completion is withdrawn under this section:

(1) Any letter or certificate of completion issued to an applicant or a participant under this subtitle shall be void; and

(2) Any bond or other security shall be maintained for a period not to exceed 16 months from the date the response action plan is withdrawn.

§7–513.

(a) (1) Upon completion of the requirements of the response action plan, the participant shall notify the Department in writing that the response action plan has

been completed.

(2) Within 30 days after receipt of the notice of completion under paragraph (1) of this subsection:

(i) The Department shall review the implementation and completion of the response action plan at the eligible property; and

(ii) If the Department determines that the requirements of the response action plan have been completed to the satisfaction of the Department and the response action plan has achieved the cleanup criteria, the Department shall issue a certificate of completion.

(b) The certificate of completion shall state that, subject to the requirements of § 7–514(b) of this subtitle:

(1) The requirements of the response action plan have been completed;

(2) The participant has demonstrated that the implementation of the response action plan at the eligible property has achieved the applicable cleanup criteria under § 7–508(b) of this subtitle;

(3) The Department may not bring an enforcement action against the participant at the eligible property; and

(4) The participant:

(i) Is released from further liability for the remediation of the eligible property under this title for any contamination identified in the environmental site assessment; and

(ii) May not be subject to a contribution action instituted by a responsible person.

(c) Within 10 days after the issuance of a certificate of completion, the Department shall send a copy of the certificate of completion to the Director of the Department of Assessments and Taxation.

(d) A requirement for long–term monitoring and maintenance in the approved response action plan may not delay the issuance of the certificate of completion under subsection (a) of this section.

§7–514.

(a) A response action plan approval letter does not:

(1) Subject to the provisions of § 7-505 of this subtitle, prevent the Department from taking action against any person to prevent or abate an imminent

and substantial endangerment to the public health or the environment at the eligible property;

(2) Remain in effect if the response action plan approval letter is obtained through fraud or a material misrepresentation;

(3) Affect the authority of the Department to take any action against any person concerning new contamination or the exacerbation of existing contamination at an eligible property after a response action plan approval letter has been issued by the Department;

(4) Affect the authority of the Department to take any action against a responsible person concerning previously undiscovered contamination at an eligible property after a response action plan approval letter has been issued by the Department;

(5) Prevent the Department from taking action against any person who is responsible for long-term monitoring and maintenance as provided in the response action plan; or

(6) Prevent the Department from taking action against any person who does not comply with conditions on the permissible use of the eligible property contained in the response action plan approval letter.

(b) A certificate of completion does not:

(1) Subject to the provisions of § 7-505 of this subtitle, prevent the Department from taking action against any person to prevent or abate an imminent and substantial endangerment to the public health or the environment at the eligible property;

(2) Remain in effect if the certificate of completion is obtained through fraud or a material misrepresentation;

(3) Affect the authority of the Department to take any action against any person concerning new contamination or exacerbation of existing contamination at an eligible property after a certificate of completion has been issued by the Department;

(4) Affect the authority of the Department to take any action against a responsible person concerning previously undiscovered contamination at an eligible property after a certificate of completion has been issued by the Department;

(5) Prevent the Department from taking action against any person who is responsible for long-term monitoring and maintenance for failure to comply with the response action plan;

(6) Prevent the Department from taking action against any person who does not comply with conditions on the permissible use of the eligible property contained

in the certificate of completion; or

(7) Subject to the provisions of § 7-512 of this subtitle, prevent the Department from requiring any person to take further action if the eligible property fails to meet the applicable cleanup criteria set forth in the response action plan approved by the Department.

(c) A response action plan approval letter or a certificate of completion may be transferred to any person whose actions did not cause or contribute to the contamination.

(d) (1) If a certificate of completion is conditioned on the permissible use of the property, the participant shall record the certificate of completion in the land records of the local jurisdiction within 30 days after receiving the certificate.

(2) If the certificate of completion has a conditioned use and the participant fails to record the certificate of completion in the land records in accordance with paragraph (1) of this subsection, the certificate of completion shall be void.

(3) (i) If a certificate of completion is conditioned on the permissible use of the property, the participant shall send a copy of the certificate of completion to a one–call system, as defined in § 12–101 of the Public Utilities Article.

(ii) Any obligation for the participant to send the information required under subparagraph (i) of this paragraph does not negate the obligation of an owner as defined under § 12–101(f) of the Public Utilities Article to become a member of the one–call system under Title 12 of the Public Utilities Article.

(e) Subject to the provisions of § 7-516(a) of this subtitle, if an owner of an eligible property that has limited permissible uses wants to change the use of the eligible property, the owner, subject to approval by the Department, is responsible for the cost of cleaning up the eligible property to the appropriate standard.

(f) The participant and any successors in interest in a property subject to a certificate of completion shall continue to be protected from liability in the event of any violation of the conditions placed on the use of the property, provided that the participant and any successors in interest did not cause or contribute to the violation.

§7–515.

(a) The provisions of §§ 7-256 through 7-268 of this title shall be used and shall apply to enforce violations of:

(1) This subtitle; or

(2) Any regulation adopted under this subtitle.

(b) Any action taken by the Department under this subtitle at a site under active enforcement may not:

(1) Negate the terms and conditions of any outstanding active enforcement order, decree, judgment, permit, or other document that addresses environmental contamination at the site; or

(2) Relieve any person who is the subject of an active enforcement action from liability for penalties under the enforcement action.

§7–516.

(a) This subtitle does not affect, and may not be construed as affecting, the planning or zoning authority of a county or municipal corporation.

(b) This subtitle does not affect, and may not be construed as affecting, any tort action against any participant.

§7–601.

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

(b) "Extremely hazardous substance" means a substance that is defined as an extremely hazardous substance under § 329(3) of the federal Act.

(c) "Facility" means a facility that is subject to the federal Act.

(d) "Federal Act" means the federal Emergency Planning and Community Right–to–Know Act of 1986.

(e) "Fund" means the Maryland Community Right–to–Know Fund established under § 7–604 of this subtitle.

(f) "Hazardous chemical" has the meaning stated in 42 U.S.C. § 11021(e).

(g) "Local emergency planning committee", or "LEPC", has the meaning stated in 40 C.F.R. 355.20.

(h) "Responsible person" means an owner or operator of a facility that is required to report under the federal Act.

§7–602.

(a) The Department shall serve as the information repository for the State Emergency Response Commission.

(b) Each owner or operator of a facility that is required by the federal Act, or any regulations adopted under the federal Act, to furnish a report, notice, or any other form of information to the State or any of its officers or instrumentalities, including

the State Emergency Response Commission, the Governor, or the Governor's designee, shall satisfy the requirement by providing the information to the Department.

(c) The Department may adopt regulations to specify forms, fees, set deadlines, and otherwise implement this subtitle.

(d) This section does not relieve any facility from any requirement under the federal Act or under any local ordinance to report to instrumentalities of federal or local government.

§7–603.

A responsible person may not knowingly or recklessly submit false information under this subtitle.

§7–604.

(a) Notwithstanding § 7-219 of this title, there is a Community Right-to-Know Fund.

(b) The Department shall use the Community Right–to–Know Fund for:

(1) The collection, management, and analysis of data received by the Department from an owner or operator of a facility that is required by the federal Act or any regulations adopted under the federal Act to provide information to the State under § 7–602(b) of this subtitle;

(2) Enforcement by the State of this subtitle or the federal Act;

(3) Planning and training functions performed by the State or local instrumentalities as may be required by the federal Act including:

(i) Conducting:

1. Incident response activities;

2. Shelter in place and evacuation planning;

3. Railroad, maritime, and transportation exercises; and

4. Emergency response activities;

(ii) The collection of hazardous material commodity flow information;

(iii) The acquisition and maintenance of chemical reference materials;

(iv) Public outreach activities including case studies, school safety,

and emergency planning for citizens; and

(v) Participation by emergency response personnel in related training conferences on local, State, and federal regulatory and compliance updates, incident command, and crisis control; and

(4) Emergency response activities of the Department.

(c) The Department shall:

(1) Establish an annual fee for facilities required to report to the State or its instrumentalities under the federal Act; and

(2) Base the annual fee on the cost to the Department for processing the information submitted to the Department under § 7-602(b) of this subtitle.

(d) Except as provided in subsection (f) of this section, beginning March 1, 2003 and each year thereafter:

(1) The annual fee shall be paid to the Department no later than June 1 of each year for reports required under § 312 of the federal Act; and

(2) The annual fee shall be paid to the Department no later than October 1 of each year for reports required under § 313 of the federal Act.

(e) Subject to subsection (b) of this section, the annual fee assessed by the Department under this section may not exceed $1,000 in any calendar year for a responsible person who owns or operates one or more facilities in Maryland.

(f) (1) The following persons and entities are exempt from paying any fees under this section:

(i) Governmental agencies;

(ii) Farmers whose principal residence is located on their farm;

(iii) Charitable organizations as defined under § 6-101(d) of the Business Regulation Article;

(iv) Petroleum retail facilities with less than 75,000 gallons of gasoline and less than 100,000 gallons of diesel or similar fuel; and

(v) Entities that are exempt from reporting under the federal Act.

(2) The Secretary may adopt regulations that exempt additional entities from the requirement to pay the fees to the Department required by this section.

(g) Any fee or penalty collected or imposed under this subtitle shall be paid by the Department to the Fund.

(h) The Department may use 50% of the moneys in the Fund to provide grants to local emergency planning committees.

(i) (1) A local emergency planning committee that receives moneys under subsection (h) of this section shall provide an annual report to the Department documenting the manner in which the moneys were expended by the local emergency planning committee.

(2) A local emergency planning committee shall spend the moneys provided under subsection (h) of this section for activities identified under subsection (b) of this section or for any other activity which the Department determines is consistent with the purposes of this subtitle.

(j) Moneys allocated to a local emergency planning committee under subsection (h) of this section that are not utilized by the local emergency planning committee within 1 year after receipt of the allocation shall be remitted to the Department and may be reallocated by the Department.

(k) (1) After providing reasonable notice, the Secretary may require a local emergency planning committee to provide the Department with information or documentation relating to the utilization of moneys allocated under subsection (h) of this section.

(2) The Secretary may require an independent audit of any local emergency planning committee not found to be in compliance with paragraph (1) of this subsection.

(l) (1) The Secretary may recover any inappropriate expenditure made by a local emergency planning committee from the Fund.

(2) Any expenditure made by a local emergency planning committee that is inconsistent with subsection (i) of this section or the purpose of this subtitle shall be:

(i) Reimbursed by the local emergency planning committee to the Department; and

(ii) Remitted to the Fund within 90 days after receipt by the local emergency planning committee of a notice from the Department indicating that the expenditure is inappropriate.

(m) Notwithstanding subsections (b) through (l) of this section, there shall be a separate account within the Community Right–to–Know Fund consisting of all fees collected by the Department under Subtitle 7 of this title or funds appropriated in the State budget for all costs incurred by the Department for the purposes stated under § 7–706 of this title.

§7–605.

(a) Except as otherwise provided, the provisions and procedures of §§ 7–266(a) and 7–268 of this title shall be used and applied to enforce violations of:

(1) This subtitle;

(2) Any regulations adopted under this subtitle; and

(3) Any condition of accreditation issued under this subtitle.

(b) A penalty imposed under this section is payable to the Community Right–to–Know Fund and collectible in any manner provided by law for the collection of debts.

§7–701.

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

(b) (1) "Facility" means a location in the State in which a hazardous material is stored, dispensed, used, or handled.

(2) "Facility" does not include:

(i) A railroad, rail train, or rail car regulated under 49 U.S.C. Subtitle IV, Part A; or

(ii) A retail distributor whose principal business is to sell or offer for sale, at the retail level, commercial fertilizer intended for agricultural use.

(c) (1) "Hazardous material" means a regulated substance as defined in 40 C.F.R. 68.130 in excess of the threshold quantity specified in that regulation.

(2) "Hazardous material" does not include a substance that is exempt or excluded under 40 C.F.R. 68.125 and 40 C.F.R. 68.126.

§7–702.

(a) This subtitle applies to any person who owns, operates, maintains, or causes to operate or maintain a facility in this State.

(b) This subtitle does not apply in a local jurisdiction that adopts hazardous material security standards that are at least as stringent as the standards under § 7-703 of this subtitle.

(c) On or before October 1, 2005, and at least every 5 years thereafter, a person subject to this subtitle shall:

(1) Analyze the security of the facility in accordance with the hazardous

material security standards adopted by the Department under § 7-703 of this subtitle;

(2) Submit to the Department the analysis required under paragraph (1) of this subsection, including potential security threats, vulnerabilities, and consequences to the facility and any changes taken to implement this subtitle at the facility; and

(3) Except as provided in subsection (d) of this section, submit a fee of $2,500 to the Department.

(d) Counties and municipal corporations are exempt from submitting the fee required under subsection (c)(3) of this section.

(e) The fees received under subsection (c)(3) of this section shall be paid into a separate account in the Community Right-To-Know Fund.

(f) (1) The analyses prepared and submissions required under subsection (c) of this section, or documents prepared under § 7–703 of this subtitle to comply with subsection (c) of this section, and their supporting documents are confidential and are not public documents that may be disclosed without prior written permission of the person subject to this subtitle in accordance with Title 4 of the General Provisions Article.

(2) (i) Notwithstanding paragraph (1) of this subsection, the Department of State Police shall disclose information related to any investigation and enforcement action taken against a facility under this subtitle if the Department of State Police determines that disclosure would not result in any additional risk to the public.

(ii) If the Department of State Police makes the determination to disclose information under this paragraph, the Department of State Police shall determine which documents related to the enforcement action and investigation may be disclosed as public documents subject to Title 10, Subtitle 6 of the State Government Article.

§7–703.

On or before January 1, 2005, the Department shall adopt hazardous material security standards that require:

(1) Prioritization and periodic analysis, using accepted methodologies, of potential security threats, vulnerabilities, and consequences;

(2) Development and implementation of security measures commensurate with risks;

(3) Documentation of security management programs, processes, and procedures;

(4) Training, drills, and guidance for employees, contractors, service providers, and others, as appropriate, to enhance awareness and capability;

(5) Communications, dialogue, and exchange of information with employees, communities, and government agencies and officials;

(6) Internal audits to assess security programs and processes and the implementation of corrective measures; and

(7) Third-party verification that owners and operators have implemented the physical security measures that have been identified under the required periodic analysis of potential security threats, vulnerabilities, and consequences.

§7–704.

(a) The Department, in consultation with the Department of State Police, shall audit a facility, through an inspection or other investigation, to verify the analysis submitted in accordance with § 7-702(c)(2) of this subtitle.

(b) If the Department, through an audit, finds that the facility is not in compliance with the hazardous material security standards of this subtitle, the Department shall refer the violation to the Department of State Police for enforcement.

§7–705.

(a) Subject to subsection (b) of this section, on or before January 1, 2005, the Department shall adopt regulations to carry out the provisions of this subtitle.

(b) The Department of State Police, in consultation with the Department, shall adopt a regulation or a part of a regulation to enforce compliance by a facility with the hazardous material security standards adopted under this subtitle.

§7–706.

Funds in the Community Right-to-Know Fund under § 7-604(m) of this title shall be used by the Department for the following purposes:

(1) Processing the information submitted to the Department under this subtitle; and

(2) Regulation of this subtitle, including auditing a facility for compliance with the provisions of this subtitle.

§7–707.

A person may not knowingly submit false information under this subtitle.

§7–708.

(a) A person who violates this subtitle or any regulation adopted under this subtitle is subject to a civil penalty not exceeding $1,000 per violation.

(b) Each day that a violation continues is a separate violation.

§7–709.

This subtitle does not relieve any facility from any requirement under any federal, State, or local law or ordinance to report to units of federal, State, or local government.

§8–101.

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

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

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

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

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

(f) "Radiation" means:

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

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

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

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

§8–102.

(a) The General Assembly finds that radiation:

(1) If used properly, can help to improve the health, welfare, and productivity of the public;

(2) If used carelessly or excessively, may destroy life or health; and

(3) If used improperly, may impair the industrial and agricultural potential of this State.

(b) It is the policy of this State:

(1) To encourage the constructive uses of radiation; and

(2) To control radiation.

§8–103.

This title does not limit:

(1) Lawful exposure of patients to radiation for diagnosis or therapy; or

(2) Medical research.

§8–104.

(a) The Secretary shall:

(1) Administer this title and the rules and regulations adopted under this title;

(2) Develop comprehensive policies and programs to evaluate, determine, and lessen hazards that are associated with the use of radiation;

(3) Advise, consult, and cooperate with:

(i) Experts in the field of radiation control;

(ii) Other agencies of this State;

(iii) The federal government;

(iv) Other states;

(v) Interstate agencies;

(vi) Affected groups;

(vii) Affected political subdivisions; and

(viii) Affected industries;

(4) Accept and administer, according to law, any available loans, grants, and other funds or gifts for carrying out the Secretary's powers and duties under this title;

(5) Collect and publish health education information about protection from radiation hazards;

(6) Review all radiation source plans and specifications that are submitted under the rules and regulations adopted under this title;

(7) Inspect, to determine any possible radiation hazard:

(i) Sources of radiation;

(ii) The shielding and immediate surroundings of radiation sources; and

(iii) Any records that concern the operation of radiation sources; and

(8) Keep in confidence all information about commercial and industrial processes that is obtained in carrying out this title.

(b) The Secretary may:

(1) Authorize the Baltimore City Commissioner of Health to enforce and carry out the provisions of this title in Baltimore City; and

(2) Encourage, participate in, or conduct studies, investigations, training, research, or demonstrations that concern:

(i) The control of radiation hazards;

(ii) The measurement of radiation;

(iii) The effects on health from exposure to radiation; or

(iv) Any other related problems.

§8–105.

(a) Whenever the Secretary finds that an emergency exists, the Secretary may issue an order:

(1) Stating that the emergency exists; and

(2) Requiring any action that the Secretary finds necessary to meet the emergency.

(b) Every order issued under this section is effective immediately.

§8–106.

(a) Except as otherwise provided in this section, the Secretary may adopt rules and regulations for control of sources of radiation.

(b) The Secretary may not adopt any rule or regulation for control of a source of radiation unless the requirements of this section and the Administrative Procedure Act are met.

(c) The Secretary may not adopt any rule or regulation unless the rule or regulation conforms to the relevant standards set by:

(1) The United States Nuclear Regulatory Commission;

(2) The United States Food and Drug Administration; and

(3) The United States Environmental Protection Agency.

§8–107.

(a) A county, municipality, or board of health may not adopt or enforce an ordinance, rule, or regulation that is inconsistent with this title or any rule or regulation adopted under this title.

(b) This title does not limit the power of a county, a municipality, or a board of health to adopt ordinances, rules, or regulations that are consistent with this title and the rules and regulations adopted under this title.

§8–108.

On behalf of this State, the Governor may make agreements with the federal government for the federal government to discontinue certain of its responsibilities with respect to sources of radiation and for this State to assume the discontinued responsibilities.

§8–201.

There is a Radiation Control Advisory Board in the Department.

§8–202.

(a) (1) The Board consists of 12 members appointed by the Secretary.

(2) In making appointments to the Board, the Secretary shall choose

members of the Board so that the Board is fairly representative of the businesses and professions that are interested in the subject of radiation. The general public shall also be represented.

(b) (1) Ten members shall be individuals who are recognized as knowledgeable about the subject of radiation.

(2) Two members shall be public members who represent the community at large.

(c) (1) The term of a member is 4 years and begins on June 1.

(2) The terms of members are staggered as required by the terms provided for members of the Board on July 1, 1986. The terms of those members end as follows:

(i) 3 members in 1987;

(ii) 2 members in 1988;

(iii) 3 members in 1989; and

(iv) 4 members, including 2 public members, in 1990.

(3) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

§8–203.

From among the Board members, the Secretary shall appoint a chairman of the Board.

§8–204.

(a) The Board shall determine the times and places of its meetings.

(b) A member of the Board:

(1) May not receive compensation; but

(2) Is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(c) The Department shall provide the Board with needed staff assistance.

§8–205.

The Board shall:

(1) Review periodically the programs and policies of the Department that relate to radiation; and

(2) Consult with and advise the Secretary on matters that relate to radiation.

§8–301.

(a) (1) Subject to Subtitle 4 of this title, the Secretary shall adopt rules and regulations for general licenses and specific licenses that govern:

(i) Ionizing radiation sources and byproduct material;

(ii) Special nuclear material; and

(iii) Devices that use ionizing radiation sources, byproduct material, or special nuclear material.

(2) The rules and regulations shall provide for:

(i) The issuance, amendment, suspension, or revocation of general licenses and specific licenses;

(ii) The registration of ionizing radiation sources for which a general license or specific license is not required; and

(iii) Based on the kinds and amounts of radioactive material subject to specific licenses, the establishment of financial plans to ensure the decommissioning of facilities operating under those licenses and a timetable for the submission of the plans to the Department.

(3) The amount of funding assurance required under a financial plan established under paragraph (2)(iii) of this subsection may not exceed the amount specified in the comparable federal regulations promulgated by the U.S. Nuclear Regulatory Agency as amended from time to time.

(b) (1) The Secretary may adopt rules and regulations that:

(i) Require registration by persons granted a general license;

(ii) Subject to any registration requirements the Secretary requires, recognize licenses issued by the federal government or any other state; and

(iii) Except as otherwise provided in subsections (c) and (d) of this section, based on the anticipated cost of monitoring and regulating sources of radiation,

establish a fee schedule for general licenses, specific licenses, and the registration of radiation machines or other sources of radiation issued under this section.

(2) If the Secretary finds that allowing the exemptions will not constitute a significant risk to the health and safety of the public, the Secretary may adopt rules and regulations that exempt from the licensing or registration requirements of this section:

(i) Specific sources of ionizing radiation;

(ii) Specific kinds of uses of ionizing radiation; and

(iii) Specific kinds of users of ionizing radiation.

(3) In adopting the regulations under paragraph (1)(iii) of this subsection, the Department shall consult with the regulated profession or industry to determine that the license fee is reasonable and directly related to the actual cost of the licensing and regulatory activity.

(c) (1) For a dental office or dental facility operated by a licensed dentist, a partnership of licensed dentists, a professional association of licensed dentists, or a public health dental facility, the Secretary may adopt regulations that establish a fee to offset the costs of monitoring and regulating sources of radiation within that dental facility.

(2) Except as provided in paragraphs (3) and (4) of this subsection, the fees established under this subsection may not exceed:

(i) For the first 2 years beginning July 1, 2002, $60 per dental radiation machine per year;

(ii) From June 30, 2004, through June 30, 2006, inclusive, $70 per dental radiation machine per year; and

(iii) 1. After June 30, 2006, through at least June 30, 2010, $80 per dental radiation machine per year; and

2. After June 30, 2010, the fee per dental radiation machine shall continue to be $80 per year unless altered by the General Assembly.

(3) The Secretary shall reduce fees proportionately to reflect the balance of any unspent or unencumbered fees collected under this subsection in the previous fiscal year.

(4) If a dental radiation machine is not inspected within any 3–year period and all annual fees were paid during that 3–year period, an additional annual inspection fee is not required to be paid until a dental radiation machine inspection is performed by a State inspector.

(5) (i) Except as provided in subparagraph (ii) of this paragraph, inspection of the dental radiation machines at each dental office or facility may not be performed more than once every 3 years.

(ii) Inspection of the dental radiation machines at a dental office or facility may be performed more than once every 3 years if the Department has grounds to believe that:

1. A violation of this title or any rule, regulation, order, registration, certificate, or license adopted or issued under this title may exist; or

2. A hazard associated with the use of radiation may exist.

(6) (i) If, based on an inspection of a dental radiation machine at a dental office or facility, the State inspector determines that there is a violation of this title and the violation does not present a serious and probable danger to the patients or employees of the dental office or facility, the State inspector shall provide the dental office or facility a written notice:

1. Setting forth the nature of the violation and the required corrective action;

2. Informing the dental office or facility that the dental office or facility has 20 working days to comply with the corrective action; and

3. Informing the dental office or facility of the required procedure to inform the Department that the corrective action has been completed.

(ii) If the corrective action is completed within 20 working days in accordance with subparagraph (i) of this paragraph, the Department may not impose a fine on a dental office or dental facility for a violation of this title.

(d) The provisions of subsections (b) and (c) of this section relating to fees for monitoring and regulating sources of radiation do not apply to a dental school accredited by the Commission on Dental Accreditation of the American Dental Association.

§8–302.

Whenever the Secretary finds that an emergency exists, the Secretary may order the impoundment of any source of ionizing radiation that is in the possession of any person:

(1) Who is not equipped to meet the requirements of this subtitle or the rules and regulations adopted under this subtitle; or

(2) Who violates the provisions of this subtitle or the rules or regulations adopted under this subtitle.

§8–303.

If the Secretary finds, on examination of a source of radiation, that the source of radiation is constructed, operated, or maintained in a manner that violates this subtitle or a rule or regulation adopted under this subtitle, the Secretary shall:

(1) Notify the person who is causing or permitting the violation of the nature of the violation; and

(2) Order that person:

(i) By a time set by the Secretary, to stop causing or permitting the violation; and

(ii) By a time set by the Secretary, to take any action necessary so that the source of radiation is constructed, operated, and maintained in compliance with this subtitle and the rules and regulations adopted under this subtitle.

§8–304.

(a) In this section, "radiation machine" means any device that is capable of producing radiation.

(b) After July 1, 1986, except for dental or veterinary diagnosis or treatment, a person may not use any radiation machine that is a source of radiation that is not certified as complying with this subtitle and all rules and regulations adopted under this subtitle.

(c) The Secretary shall adopt rules and regulations to:

(1) Govern the issuance, suspension, and revocation of licenses for individuals who inspect radiation machines;

(2) Establish inspection procedures and a schedule for the periodic inspection and certification of radiation machines;

(3) Establish a biennial fee schedule in accordance with § 8-301(b)(1)(iii) of this subtitle that is sufficient only to cover the costs to the Department of issuing the certificate and regulating the use of radiation; and

(4) Provide for penalties for the failure to certify radiation machines.

§8–305.

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

(2) "Listed facility" means a radon testing facility that is listed in the report of the latest round of the United States Environmental Protection Agency's National Radon Measurement Proficiency Program.

(3) (i) "Radon testing device" means a device that:

1. Collects radon or radon progeny; and

2. Requires analysis by an independent measuring facility or radon tester.

(ii) "Radon testing device" does not include a self-analyzing device that collects radon or radon progeny.

(b) A person who engages in the business of testing for the presence of indoor radon shall:

(1) After completion of round 6 of the United States Environmental Protection Agency's National Radon Measurement Proficiency Program, have all tests analyzed by a listed facility;

(2) Indicate the name of the facility conducting the analysis on the radon testing device; and

(3) Disclose in writing to the ultimate consumer the results of the radon test and the name and address of the facility that analyzed the test.

(c) The Department:

(1) May adopt regulations to require radon testing facilities to send test results to the Department; and

(2) May not disclose, in response to a request from the public for the name of a radon testing facility, the name of a radon tester that is not a listed facility.

§8–306.

(a) There is a State Radiation Control Fund.

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

(c) The Department shall use the State Radiation Control Fund for activities that are related to identifying, monitoring, and controlling sources of radiation, including radiation machines, and for program development of these activities.

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

§8–401.

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

(b) "High-level nuclear waste" means:

(1) Spent nuclear reactor fuel;

(2) Liquid waste that results from the operation, in a facility for reprocessing spent nuclear reactor fuel, of a first cycle solvent extraction system or an equivalent system;

(3) Concentrated waste from the operation, in a facility for reprocessing spent nuclear reactor fuel, of a subsequent cycle solvent extraction system or an equivalent system; or

(4) Any solid into which any waste that is described in item (2) or (3) of this subsection has been converted.

(c) "Low-level nuclear waste" means waste that:

(1) Contains or is contaminated with radioactive material emitting primarily beta or gamma radiation; and

(2) Is neither high-level nuclear waste nor transuranic waste.

(d) "Transuranic waste" means waste material that is measured or assumed to contain at least 10 nanocuries of transuranic activity per gram of waste.

§8–402.

(a) Except as provided in subsection (b) of this section, the Department may not issue or renew a specific license unless the applicant demonstrates to the Department that there is storage or disposal capacity available inside or outside of this State for any low-level nuclear waste that the applicant may generate.

(b) This section does not apply:

(1) To the extent that the Department is authorized to issue a specific license under:

(i) An interstate compact or executive agreement made under § 7-227 of this article;

(ii) A rule or regulation adopted under § 8-403 of this subtitle; or

(iii) An executive order issued under § 8-406 of this subtitle;

(2) To renewal of any license originally issued before January 1, 1986;

(3) To any facility that generated low-level nuclear waste before January 1, 1986;

(4) To any hospital, medical, or educational facility; or

(5) To any low-level nuclear waste, if, under standards adopted by rule or regulation, the Department finds that:

(i) The half-life or specific activity of the low-level nuclear waste is such that, within a period of not more than 6 months, the low-level nuclear waste will not require special handling, special subsurface disposal, or special storage; and

(ii) The low-level nuclear waste can be disposed of safely in the same manner as other hazardous substances or handled as conventional waste.

§8–403.

(a) The Secretary may adopt a rule or regulation certifying that a demonstrated technology or means for the permanent disposal of low-level nuclear waste:

(1) Has been developed;

(2) Will be in operation and will provide adequate capacity at the time that the activity licensed under this title requires the availability of disposal capacity for low-level nuclear waste; and

(3) Has been approved by:

(i) The appropriate federal agency;

(ii) An authorized agency of a state that is a party to a compact or agreement with this State;

(iii) A regional compact or executive agreement among states to which this State is a party member; or

(iv) The Department.

(b) On petition by any person, the Secretary shall schedule and conduct public hearings and make specific findings as to the conditions described in this section.

(c) (1) The Administrative, Executive, and Legislative Review Committee of the General Assembly shall review at a public hearing each rule or regulation proposed for adoption under subsection (a) of this section.

(2) The Committee promptly shall notify the General Assembly of the text of the proposed rule or regulation and of the date of the Committee's hearing on the proposed rule or regulation.

§8–404.

The following State agencies shall assist the Secretary in evaluating any technology or means for the permanent disposal of low-level nuclear waste:

(1) The State Department of Agriculture.

(2) The Department of Labor, Licensing, and Regulation.

(3) The Department of Natural Resources.

(4) The State Department of Transportation.

(5) The Department of Planning.

§8–406.

(a) The Governor may issue an executive order that suspends the requirements of § 8-402(a) of this subtitle if the Governor finds that the absence of a storage or disposal site for low-level nuclear waste, inside or outside of this State, will:

(1) Cause a cessation in this State of power generation, medical treatment, medical diagnosis, scientific research, or other activity that relies on nuclear sources; or

(2) Otherwise present a serious threat to the public safety or health.

(b) The Governor shall submit each executive order issued under this section to the General Assembly at a regular or special session.

(c) Unless an executive order issued under this section is disapproved specifically by a resolution in which a majority of the members of each house of the General Assembly concurs, an executive order issued under this section is effective 30 days after the date the executive order is submitted to the General Assembly.

§8–501.

(a) In accordance with § 10-226 of the State Government Article and after notice and hearing, the Department may suspend, modify, or revoke any general or specific license issued under § 8-301 of this title or any license issued under § 8-304 of this title for violation of this title or any regulation adopted under this title.

(b) The Department may revoke any license issued under this title if the Department finds that:

(1) False or inaccurate information was willfully, deliberately, or knowingly contained in the application;

(2) Conditions or requirements of the license have been violated;

(3) Substantial deviation from plans, specifications, or requirements has occurred;

(4) The Department has been refused lawful entry to the premises for the purpose of inspecting to ensure compliance with the conditions of the license; or

(5) A change in conditions exists that requires temporary or permanent reduction or elimination of the source or discharge of radiation.

§8–502.

(a) The Department shall issue a written complaint if the Department has reasonable grounds to believe that the person to whom the complaint is directed has violated:

(1) This title;

(2) Any regulation adopted under this title;

(3) Any lawful order issued by the Department under this title; or

(4) Any applicable provision of any general or specific license or x-ray machine inspector license issued by the Department under this title.

(b) A complaint issued under this section shall:

(1) Specify the provision that allegedly has been violated; and

(2) State the alleged facts that constitute the violation.

§8–503.

(a) After or concurrently with service of a complaint under this subtitle, the Department may:

(1) Issue an order that requires the person to whom it is directed to take corrective action within a time set in the order;

(2) Send a written notice that requires the person to whom it is directed to file a written report about the alleged violation in not less than 5 days from service of the order; or

(3) Send a written notice that requires the person to whom the notice is directed:

(i) To appear at a hearing before the Department at a time and place the Department sets to answer the allegations of the complaint; or

(ii) To file a written report and also appear at a hearing before the

Department at a time and place the Department sets to answer the charges in the complaint.

(b) Any order issued under this section is effective immediately, according to its terms, when it is served.

§8–504.

(a) (1) Except as otherwise provided, any notice, order, or other instrument issued by or under authority of the Department under this subtitle may be served in accordance with § 1–204 of this article.

(2) Proof of service may be made by the sworn statement or affidavit of the person who mailed the notice, order, or other instrument.

(3) The sworn statement or affidavit shall be filed with the Department.

(b) Any notice that requires filing of a report, attendance at a hearing, or both shall be served at least 10 days before the earlier of:

(1) The time set for the hearing, if any; or

(2) The time set for the filing of the report, if any.

§8–505.

(a) (1) The Department shall give notice and hold any hearing under this subtitle in accordance with § 10-205 of the State Government Article.

(2) Any hearing related to a complaint shall be held in the manner provided in § 10-205 of the State Government Article for hearings in contested cases.

(b) (1) Within 10 days after being served with an order under § 8-503(a)(1) of this subtitle, the person served may request, in writing, a hearing before the Department.

(2) (i) If a request for a hearing is made under this subsection, the Department shall hold the hearing promptly after receiving the request and render a decision promptly after the hearing.

(ii) If a request for a hearing is made under this subsection and the Department alleges in the order that there is an imminent threat or danger to the public health or safety or to the environment, the Department shall hold the hearing within 10 days after receiving the request and render a decision within 10 days after the hearing.

(c) Within 10 days after being served with notice under § 8-503(a)(2) of this subtitle the person served may request, in writing, a hearing before the Department.

(d) On the request of any party to the hearing, the Department shall take a verbatim record in accordance with Title 10, Subtitle 2 of the State Government Article of the proceedings of any hearing held under this subtitle.

(e) (1) In connection with any hearing under this subtitle, the Department may:

(i) Subpoena any person or evidence; and

(ii) Order a witness to give evidence.

(2) A subpoenaed witness shall receive the same fees and mileage reimbursement as if the hearing were part of a civil action.

(3) If a person fails to comply with a subpoena issued under this subsection, on petition of the Department, a circuit court, by order, may:

(i) Compel obedience to the Department's order or subpoena; or

(ii) Compel testimony or the production of evidence.

(4) The court may punish as a contempt any failure to obey its order issued under this section.

§8–506.

(a) (1) Unless the person served with an order under § 8-503(a)(1) of this subtitle makes a timely request for a hearing, the order is a final order.

(2) If the person served with an order under § 8-503(a)(1) of this subtitle makes a timely request for a hearing, the order becomes a final corrective order when the Department renders its decision following the hearing.

(b) (1) If the Department issues a notice under § 8-503(a)(2) or (3) of this subtitle, the Department may not issue an order that requires corrective action by the person to whom the notice is directed until after the later of:

(i) The time set for the hearing, if any; and

(ii) The time set for filing of the report, if any.

(2) After the time within which the Department may not issue a corrective order has passed, if the Department finds that a violation of this title has occurred, the Department shall issue an order that requires correction of the violation within a time set in the order.

(3) Any order issued under this subsection is a final corrective order and the person to whom the order is directed is not entitled to a hearing before the Department as a result of the order.

(c) The Department shall:

(1) Take action to secure compliance with any final corrective order; and

(2) If the terms of the final corrective order are violated or if a violation is not corrected within the time set in the order, sue to require correction of the violation.

§8–507.

(a) The Department may bring an action for an injunction against any person who violates any provision of this title or any regulation, order, or permit adopted or issued by the Department under this title.

(b) On a showing that any person is violating or is about to violate this title or any regulation, order, or license adopted or issued by the Department, the court shall grant an injunction without requiring a showing of a lack of an adequate remedy at law.

(c) If an emergency arises from imminent danger to the public health, to the public welfare, or to the environment, the Department may sue for an immediate injunction to stop any activity that is causing the danger.

§8–508.

(a) Any person aggrieved by a final decision of the Department in connection with an order or license issued under this title may take a direct judicial appeal.

(b) The appeal shall be made as provided for judicial review of final decisions under Title 10 of the State Government Article.

§8–509.

(a) (1) A person who fails, refuses, or neglects to comply with any provision of this title, or with any regulation adopted under this title, is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $25,000 or imprisonment not exceeding 1 year or both.

(2) Before any prosecution is begun under this subsection, the Secretary shall serve written notice of each alleged violation on a person who is in charge of the place where the violation allegedly exists.

(b) (1) In addition to any criminal penalty imposed under this section, a person who violates any provision of this title, any regulation or order issued under this title, or any term, condition, or limitation of any license or registration certificate issued under this title:

(i) Is liable for a civil penalty not exceeding $10,000, to be collected in a civil action in the circuit court for any county; and

(ii) May be enjoined from continuing the violation.

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

(3) Whether or not a court action has been filed, the Secretary, with the concurrence of the Attorney General, may compromise and settle any claim for a civil penalty under this section.

(c) This section does not apply to an action subject to a penalty provision of Title 7 or Title 9 of this article.

§8–510.

(a) 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 title, or any regulation, order, plan for compliance, registration, certificate, or license adopted or issued under this title.

(b) (1) The penalty imposed on a person under this section 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, to the extent to which the existence of the violation was known to the violator but uncorrected by the violator, and the extent to which the violator exercised reasonable care;

2. Any actual harm to human health or to the environment;

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

4. The cost of control of the source of radiation or any emission of radiation;

5. The extent to which the location of the violation, including location near 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 correcting, controlling, reducing, or eliminating the situation or condition that caused the violation;

7. The degree of hazard posed by the source of radiation or the

emission of radiation; 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.

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

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

(4) If any person who is liable to pay a penalty imposed under this section 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.

§8–511.

The Attorney General shall take charge of, prosecute, and defend on behalf of this State every case arising under the provisions of this title, including the recovery of penalties.

§8–512.

The pursuit of a remedy under this title may not preclude the Department or the Attorney General from pursuing other remedies under this title.

§8–601.

This title may be cited as the "Maryland Radiation Act".

§9–101.

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

(b) "Discharge" means:

(1) The addition, introduction, leaking, spilling, or emitting of a pollutant into the waters of this State; or

(2) The placing of a pollutant in a location where the pollutant is likely to pollute.

(c) (1) "Disposal system" means a system for disposing of wastes by surface, above surface, or underground methods.

(2) "Disposal system" includes a treatment works and a disposal well.

(d) (1) "Effluent limitation" means a restriction or prohibition that:

(i) Is established under federal law or a law of this State; and

(ii) Specifies quantities, rates, or concentrations of chemical, physical, biological, or other constituents that are discharged into the waters of this State.

(2) "Effluent limitation" includes:

(i) Parameters for toxic and nontoxic discharges;

(ii) Standards of performance for new sources; and

(iii) Ocean discharge standards.

(e) "Industrial user" means:

(1) A person who is engaged in manufacturing, fabricating, or assembling goods; or

(2) A member of any class of significant producers of pollutants identified under rules or regulations adopted by:

(i) The Secretary; or

(ii) The administrator of the United States Environmental Protection Agency.

(f) "National pollutant discharge elimination system" means the national system for issuing permits as designated by the Federal Water Pollution Control Act.

(g) "Pollutant" means:

(1) Any waste or wastewater that is discharged from:

(i) A publicly owned treatment works; or

(ii) An industrial source; or

(2) Any other liquid, gaseous, solid, or other substance that will pollute any waters of this State.

(h) "Pollution" means any contamination or other alteration of the physical, chemical, or biological properties of any waters of this State, including a change in temperature, taste, color, turbidity, or odor of the waters or the discharge or deposit of any organic matter, harmful organism, or liquid, gaseous, solid, radioactive, or

other substance into any waters of this State, that will render the waters harmful or detrimental to:

(1) Public health, safety, or welfare;

(2) Domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses;

(3) Livestock, wild animals, or birds; or

(4) Fish or other aquatic life.

(i) "Publicly owned treatment works" means a facility that is:

(1) Owned by this State or a political subdivision, municipal corporation, or other public entity; and

(2) Used for the treatment of pollutants.

(j) (1) "Solid waste" means any garbage, refuse, sludge, or liquid from industrial, commercial, mining, or agricultural operations or from community activities.

(2) "Solid waste" includes:

(i) Scrap tires as defined in § 9–201 of this title; and

(ii) Organic material capable of being composted that is not composted in accordance with regulations adopted under § 9–1725(b) of this title.

(3) "Solid waste" does not include:

(i) Solid or dissolved material in domestic sewage or in irrigation return flows;

(ii) Compost as defined in § 9–1701 of this title; or

(iii) Organic material capable of being composted that is composted in accordance with regulations adopted under § 9–1725(b) of this title.

(k) "Water quality standard" means a water quality standard that is adopted and effective under federal law or a law of this State.

(l) "Waters of this State" includes:

(1) Both surface and underground waters within the boundaries of this State subject to its jurisdiction, including that part of the Atlantic Ocean within the boundaries of this State, the Chesapeake Bay and its tributaries, and all ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within this

State, other than those designed and used to collect, convey, or dispose of sanitary sewage; and

(2) The flood plain of free-flowing waters determined by the Department of Natural Resources on the basis of the 100-year flood frequency.

§9–102.

In addition to the duties set forth elsewhere, the health officer, or in Montgomery County the department designated by the Montgomery County government, shall inspect and report on the sanitary conditions of streams, sources of public water supply, and sewerage facilities in the county.

§9–103.

Every order issued by the Department prohibiting the use of an existing septic tank sanitary facility shall include a description of the actions and procedures under which the prohibition may be lifted.

§9–201.

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

(b) "First sale" means a sale of a new tire that is not a sale to a wholesaler or out-of-state retailer.

(c) "Local health official" means:

(1) A health officer or a designee of the health officer; or

(2) The Director of the Department of Environmental Protection of Montgomery County or a designee of the Director.

(d) "Person" includes the federal government, a state, county, municipal corporation, or other political subdivision.

(e) "Refuse disposal system" includes:

(1) An incinerator;

(2) A transfer station;

(3) A landfill system;

(4) A landfill;

(5) A solid waste processing facility; and

(6) Any other solid waste acceptance facility.

(f) "Scrap tire" means any tire that no longer is suitable for its original intended purpose by virtue of wear, damage, or defect.

(g) "Scrap tire collection facility" means a place where scrap tires are:

(1) Deposited by a consumer or a scrap tire hauler; and

(2) Transferred to another scrap tire collection facility or scrap tire recycler.

(h) "Scrap tire hauler" means a person who as part of a commercial business:

(1) Transports scrap tires; and

(2) Is approved and licensed by the Department to transport scrap tires to a scrap tire recycler or a scrap tire collection facility.

(i) "Scrap tire recycler" means a person who is approved and licensed by the Department to process scrap tires to a form of raw materials or products that may be returned to the marketplace.

(j) "Service" means the Maryland Environmental Service.

(k) "Sewage" means:

(1) Any human or animal excretion or water-carried domestic waste; or

(2) A mixture of industrial waste and any of the things in item (1) of this subsection.

(l) "Sewage sludge" means any thickened liquid, suspension, settled solid, or dried residue that a sewage treatment plant extracts from sewage.

(m) (1) "Sewage sludge generator" means a person who owns or operates a facility that receives and processes sewage in this State or produces sewage sludge to be utilized in this State.

(2) "Sewage sludge generator" includes:

(i) The Washington Suburban Sanitary Commission; and

(ii) The Maryland Environmental Service.

(3) "Sewage sludge generator" does not include the owner or operator of a septic system.

(n) "Sewage sludge utilization permit" means a permit, issued by the Department, to utilize sewage sludge.

(o) (1) "Sewage sludge utilizer" means a person who utilizes sewage sludge in this State.

(2) "Sewage sludge utilizer" includes:

(i) The Washington Suburban Sanitary Commission; and

(ii) The Maryland Environmental Service.

(p) (1) "Sewerage system" means:

(i) The channels used or intended to be used to collect and dispose of sewage; and

(ii) Any structure or appurtenance used or intended to be used to collect or prepare sewage for discharge into the waters of this State.

(2) "Sewerage system" includes any sewer of any size.

(3) "Sewerage system" does not include the plumbing system inside any building served by the sewerage system.

(q) "Store scrap tires" means the accumulation of scrap tires in any form or configuration in excess of 15,000 cubic feet.

(r) "Tire dealer" means a person who sells new tires to:

(1) A seller of tires in the State that is not a tire wholesaler; or

(2) A consumer of a tire on which a recycling fee has not been paid.

(s) "Tire wholesaler" means a person who transfers tires to a person who is not a consumer.

(t) "Utilize sewage sludge" means to collect, handle, burn, store, treat, or transport sewage sludge to or from a sewage sludge generator or utilizer in this State, to apply it to land, or to dispose of it.

(u) (1) "Water supply system" means:

(i) A source and the surrounding area from which water is supplied for drinking or domestic purposes; and

(ii) Any structure, channel, or appurtenance used to prepare water for use or to deliver water to a consumer.

(2) "Water supply system" does not include the plumbing system inside any building that is served by the water supply system.

§9–204.

(a) This section applies to any water supply system, sewerage system, refuse disposal system that is for public use, or any refuse disposal system that is a solid waste acceptance facility as defined in § 9–501(n) of this title if the solid waste acceptance facility is installed, altered, or extended after July 1, 1988.

(b) (1) The Secretary may adopt reasonable and proper regulations for submission of plans. These regulations may include the collection of a fee at the time of application for:

(i) A permit issued under this section for a privately owned water supply or sewerage system; or

(ii) A permit applied for by a local unit of government for a privately financed water supply or sewerage system.

(2) The Secretary shall provide the regulated community an opportunity to participate in the rate setting and regulatory processes.

(c) (1) Before a person draws plans or submits an application under this section for a proposed water supply system, sewerage system, or refuse disposal system, the person may submit to the Secretary a preliminary statement on the proposed system.

(2) At the request of the person, the Secretary shall outline the general requirements that must be met before the Secretary would approve the proposed system.

(d) A person shall have a permit issued by the Secretary under this section before the person installs, materially alters, or materially extends a water supply system, sewerage system, or refuse disposal system.

(e) An applicant for a permit shall:

(1) Submit to the Secretary an application that contains:

(i) The complete plans and specifications for the installation, alteration, or extension of the water supply system, sewerage system, or refuse disposal system;

(ii) For any application related to any solid waste acceptance facility in the areas of Baltimore City designated by the United States Post Office as zip code numbers 21225, 21226, and 21230, a groundwater and surface water impact analysis prepared at the expense of the applicant regarding the proposed installation, alteration, or extension; and

(iii) Any other information that the Secretary requires;

(2) Submit to the Secretary any material change in the plans and specifications, with the reason for the change; and

(3) Pay the permit fee set by the Department.

(f) Results of any groundwater and surface water impact analysis required under subsection (e)(1)(ii) of this section may be a basis for the Secretary's denial of a permit.

(g) (1) When a person applies for a permit and pays the fee under this section, the Secretary shall:

(i) Examine the application without delay; and

(ii) 1. Approve the application and issue the permit;

2. Disapprove the application; or

3. State the conditions under which the Secretary would approve the application.

(2) The Secretary shall act within 30 working days after receiving an application and payment of fee for a permit under this section for a water distribution line or a sewage collection line.

(3) If the Secretary does not act within the time set by paragraph (2) of this subsection:

(i) The application is approved automatically; and

(ii) The Secretary shall issue a permit for the work.

(h) A person may not:

(1) Install, materially alter, or materially extend a water supply system, sewerage system, or refuse disposal system in this State except in accordance with a permit issued to the person by the Secretary under this section; or

(2) Embody any material change in construction until the Secretary has issued a revised permit based on the submission to the Secretary under subsection (e)(2) of this section.

(i) After a person completes work under a permit, the person shall submit to the Secretary for permanent record a certified copy of the plans that shows the work as built.

(j) An owner or operator of an incinerator may not accept more than 150 tons per day of special medical waste, as defined in Title 26, Subtitle 13, Chapter 11 of the Code of Maryland Regulations.

(k) (1) The Secretary may not issue any permit, including a permit under subsection (d) of this section or § 7–232 of this article, to construct or operate a municipal waste incinerator for disposal of a solid waste stream, as defined in § 9–1701 of this title, within 1 mile of a public or private elementary or secondary school.

(2) A person may not construct or operate a municipal waste incinerator for disposal of a solid waste stream, as defined in § 9–1701 of this title, within 1 mile of a public or private elementary or secondary school.

(3) This subsection may not be construed to prohibit:

(i) The operation, construction, reconstruction, replacement, expansion, and material alteration or extension of an incinerator that was operating as a resource recovery facility on January 1, 1997; or

(ii) The issuance of permits necessary for the operation, construction, reconstruction, replacement, expansion, and material alteration or extension of an incinerator that was operating on January 1, 1997.

(l) (1) The Secretary may not issue any permit, including a permit under subsection (d) of this section, to construct or operate a transfer station in Prince George's County for disposal of solid waste within 2 miles of Bowie State University.

(2) A person may not construct or operate a transfer station in Prince George's County for the disposal of solid waste within 2 miles of Bowie State University.

(3) This subsection may not be construed to prohibit:

(i) The operation, construction, reconstruction, replacement, expansion, or material alteration or extension of a transfer station that was operating on January 1, 2000; or

(ii) The issuance of a permit that is necessary for the operation, construction, reconstruction, replacement, expansion, or material alteration or extension of a transfer station that was operating on January 1, 2000.

(m) The Secretary may not issue any permit under this section to construct or operate a landfill within 4 miles of Unicorn Lake in Queen Anne's County, within 1 mile of the Piscataway Creek, a Piscataway Creek tributary, or the Mattawoman Creek, or within 1 mile of any other tributary in Prince George's County that flows directly or indirectly into the Potomac River.

(n) (1) In this subsection, "trade secret" has the meaning provided in § 11–1201 of the Commercial Law Article.

(2) The Department shall prepare an annual report identifying the amount of solid waste by weight or volume, disposed of in the State during the previous year.

(3) The report required under paragraph (2) of this subsection shall identify:

(i) The following solid waste categories:

1. Construction and demolition debris;

2. Incinerator ash;

3. Industrial waste;

4. Land clearing debris;

5. Municipal solid waste; and

6. Any other solid waste identified by the Department;

(ii) The amount of solid waste disposed of in the State that is generated outside of the State;

(iii) The jurisdictions where the solid waste originated;

(iv) The amount of solid waste generated in the State that is transported outside of the State for disposal; and

(v) An estimate of the amount of solid waste managed or disposed of by:

1. Recycling;

2. Composting;

3. Landfilling; and

4. Incineration.

(4) (i) All permitted solid waste acceptance facilities shall at least annually provide to the Department information that is necessary to prepare the report required under paragraph (2) of this subsection.

(ii) Under subparagraph (i) of this paragraph, a facility owner may provide the following information:

1. An accounting of the facility's economic benefits provided to the locality where the facility is located;

2. The value of disposal and recycling facilities provided to the locality at no cost or reduced cost;

3. Direct employment associated with the facility; and

4. Other economic benefits resulting from the facility during the preceding calendar year.

(5) Beginning September 1, 2000, the Department shall annually submit, in accordance with § 2–1246 of the State Government Article, a report of the activities undertaken and the progress made in accordance with this section to:

(i) The House Environmental Matters Committee; and

(ii) The Senate Education, Health, and Environmental Affairs Committee.

(6) A facility owner is not required to provide information under paragraph (4) of this subsection that is a trade secret.

§9–204.1.

The Secretary may not issue a permit to install, materially alter, or materially extend an incinerator for disposal of a solid waste stream, as defined in § 9-1701 of this title, unless the county where the proposed incinerator is to be installed, materially altered, or materially extended has a recycling plan submitted and approved in accordance with § 9-505 of this title.

§9–204.2.

(a) In addition to the requirements of § 9-204 of this subtitle and Title 1, Subtitle 6 of this article, an applicant for a permit to install, materially alter, or materially extend a landfill system shall give notice of the application by certified mail to:

(1) The owners of all real property adjoining the site where the proposed project is located;

(2) The chairman of the legislative body and any elected executive of the county where the proposed project site is located;

(3) The elected executive of any municipal corporation where the proposed project site is located; and

(4) Any other county within 1 mile of where the proposed project site is located.

(b) Any informational meeting required by § 1-603 of this article shall be held in the county where the proposed facility is to be located.

§9–205.

(a) In this section, "authority" means a water, sewerage, or sanitary district

authority.

(b) This section applies only to any water supply system, sewerage system, or refuse disposal system that is for public use in this State.

(c) Any authority or person who owns a water supply system, sewerage system, or refuse disposal system or who supplies or is authorized to supply water, sewerage, or refuse disposal service to the public shall submit to the Secretary:

(1) A certified copy of the complete plans for the water supply system, sewerage system, or refuse disposal system that:

(i) Is correct on the date of submission; and

(ii) Is of the scope and detail that the Secretary requires; and

(2) Any existing specifications of or reports on the water supply system, sewerage system, or refuse disposal system.

(d) If plans do not exist or are of insufficient scope or detail, the authority or person who is required to submit the plans shall:

(1) Prepare and submit to the Secretary new or supplemented plans; and

(2) Make any investigation that is necessary to ensure that the new or supplemented plans are correct.

(e) (1) The Secretary may request any other information about the water supply system, sewerage system, or refuse disposal system, including information or records on maintenance and operation, that the Secretary considers appropriate.

(2) Any authority or person to whom a request is made under paragraph (1) of this subsection shall submit the information or records to the Secretary.

§9–206.

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

(2) "Community sewerage system" means a publicly or privately owned sewerage system that serves at least two lots.

(3) "Growth tiers" means the tiers adopted by a local jurisdiction in accordance with Title 1, Subtitle 5 of the Land Use Article.

(4) "Lot" includes a part of a subdivision that:

(i) Is used or is intended to be used as a building site; and

(ii) Is not intended to be further subdivided.

(5) "Major subdivision" means:

(i) The subdivision of land:

1. Into new lots, plats, building sites, or other divisions of land defined or described as a major subdivision in a local ordinance or regulation:

A. That is in effect on or before January 1, 2012; or

B. Adopted on or before December 31, 2012, if a local jurisdiction chooses to create a definition or description applicable solely to this section or if a local ordinance or regulation does not define or describe a major subdivision under item A of this item; or

2. If a local jurisdiction has not adopted a definition or description of a major subdivision on or before December 31, 2012, under item 1 of this item, into five or more new lots, plats, building sites, or other divisions of land; and

(ii) If the local ordinance or regulation has multiple definitions or descriptions of a major subdivision under item (i) of this paragraph, the definition or description of a major subdivision that is determined by the local jurisdiction to apply for the purposes of this section.

(6) "Minor subdivision" means:

(i) The subdivision of land:

1. Into new lots, plats, building sites, or other divisions of land defined or described as a minor subdivision in a local ordinance or regulation:

A. That is in effect on or before January 1, 2012; or

B. Adopted on or before December 31, 2012, if a local jurisdiction chooses to create a definition or description applicable solely to this section or if a local ordinance or regulation does not define or describe a minor subdivision under item A of this item, provided that a minor subdivision defined or described in the adopted ordinance or regulation does not exceed seven new lots, plats, building sites, or other divisions of land; or

2. If a local jurisdiction has not adopted a definition or description of a minor subdivision on or before December 31, 2012, under item 1 of this item, into fewer than five new lots, plats, building sites, or other divisions of land; and

(ii) If the local ordinance or regulation has multiple definitions or descriptions of a minor subdivision under item (i) of this paragraph, the definition or description of a minor subdivision that is determined by the local jurisdiction to apply for the purposes of this section.

(7) "On–site sewage disposal" means the disposal of sewage beneath the soil surface.

(8) (i) "On–site sewage disposal system" means a sewage treatment unit, collection system, disposal area, and related appurtenances.

(ii) "On–site sewage disposal system" includes a shared facility or community sewerage system that disposes of sewage effluent beneath the soil surface.

(9) "Public sewer" means a community, shared, or multiuse sewerage system.

(10) "Shared facility" means a sewerage system that:

(i) Serves more than one:

1. Lot and is owned in common by the users;

2. Condominium unit and is owned in common by the users or by a condominium association;

3. User and is located on individual lots owned by the users; or

4. User on one lot and is owned in common by the users; or

(ii) Is located wholly or partly on any of the common elements of a condominium; or

(iii) Serves a housing or another multiple ownership cooperative.

(11) "State agency" means:

(i) The Maryland Agricultural Land Preservation Foundation;

(ii) The Maryland Environmental Trust;

(iii) The Department of Natural Resources; or

(iv) The Maryland–National Capital Park and Planning Commission.

(12) "Subdivision" means a division of a tract or parcel of land into at least two lots for the immediate or future purpose of sale or building development.

(b) (1) Subsections (f) through (i) and subsection (l) of this section apply to residential subdivisions.

(2) Subsections (f) through (i) do not apply to an application for approval of a residential subdivision under § 9–512(e) of this title if:

(i) 1. By October 1, 2012, a submission for preliminary plan approval is made to a local jurisdiction that includes, at a minimum, the preliminary engineering, density, road network, lot layout, and existing features of the proposed site development;

2. By July 1, 2012, in a local jurisdiction that requires a soil percolation test before a submission for preliminary approval:

A. An application for a soil percolation test approval for all lots that will be included in the submission for preliminary approval is made to the local health department; and

B. Within 18 months after approval of the soil percolation tests for the lots that will be included in the submission for preliminary approval, a submission for preliminary approval is made to a local jurisdiction that includes, at a minimum, the preliminary engineering, density, road network, lot layout, and existing features of the proposed site development; or

3. By July 1, 2012, in a local jurisdiction that requires a soil percolation test before a submission for preliminary approval and the local jurisdiction does not accept applications for soil percolation tests year round:

A. Documentation that a Maryland professional engineer or surveyor has prepared and certified under seal a site plan in anticipation of an application for soil percolation tests;

B. An application for a soil percolation test approval for all lots that will be included in the submission for preliminary approval is made to the local health department at the next available soil percolation test season; and

C. Within 18 months after approval of the soil percolation tests for the lots that will be included in the submission for preliminary approval, a submission for preliminary approval is made to a local jurisdiction that includes, at a minimum, the preliminary engineering, density, road network, lot layout, and existing features of the proposed site development; and

(ii) By October 1, 2016, the preliminary plan is approved.

(c) (1) Subsections (f) through (i) and subsection (l) of this section do not apply to covenants, restrictions, conditions, or conservation easements that were created or entered into at any time under § 2–118 of the Real Property Article for the benefit of, or held by, a State agency or a local jurisdiction for the purpose of conserving natural resources or agricultural land.

(2) Subsections (f) through (i) of this section may not be construed as granting any additional rights in covenants, restrictions, conditions, or conservation easements that were created or entered into at any time under § 2–118 of the Real Property Article for the benefit of, or held by, a State agency or a local jurisdiction for

the purpose of conserving natural resources or agricultural land.

(d) Subsections (f) through (i) and subsection (l) of this section do not:

(1) Affect a local transfer of development rights program authorized under § 10–324 of the Local Government Article or Title 7, Subtitle 2 or § 22–105 of the Land Use Article; or

(2) Diminish the local development rights transferred in these transfer of development rights programs.

(e) Subsections (f) through (i) and subsection (l) of this section may not be construed as prohibiting a local jurisdiction from altering the definition or description of a major or minor subdivision in a local ordinance or regulation for local zoning or development purposes.

(f) On or after December 31, 2012, a local jurisdiction:

(1) May not authorize a residential major subdivision served by on–site sewage disposal systems, community sewerage systems, or shared systems until the local jurisdiction adopts the growth tiers in accordance with § 5–104 of the Land Use Article; or

(2) If the local jurisdiction has not adopted the growth tiers in accordance with § 5–104 of the Land Use Article, may authorize:

(i) A residential minor subdivision served by on–site sewage disposal systems if the residential subdivision otherwise meets the requirements of this title; or

(ii) A major or minor subdivision served by public sewer in a Tier I area.

(g) (1) Except as provided in subsection (f)(2) of this section and subject to subsection (i) of this section, a local jurisdiction may authorize a residential subdivision plat only if:

(i) All lots proposed in an area designated for Tier I growth will be served by public sewer;

(ii) All lots proposed in an area designated for Tier II growth:

1. Will be served by public sewer; or

2. If the subdivision is a minor subdivision, may be served by on–site sewage disposal systems;

(iii) Except as provided in subsection (h) of this section, the

subdivision is a minor subdivision served by individual on–site sewage disposal systems in a Tier III or Tier IV area; or

(iv) The subdivision is a major subdivision served by on–site sewage disposal systems, a community system, or a shared facility located in a Tier III area and has been recommended by the local planning board in accordance with § 5–104 of the Land Use Article.

(2) Any delay in the approval of a residential subdivision plat under this subsection may not be construed as applying to any deadline for approving or disapproving a subdivision plat under Division II or § 5–201 of the Land Use Article or a local ordinance.

(h) (1) The limitation of minor subdivisions in subsection (g)(1)(iii) of this section does not apply to a local jurisdiction, if the subdivision and zoning requirements in their cumulative Tier IV areas result in an actual overall yield of not more than one dwelling unit per 20 acres that has been verified by the Department of Planning.

(2) A local jurisdiction may request, in writing, a verification of the actual overall yield from the Department of Planning.

(3) The Department of Planning shall verify the actual overall yield after consultation with the Maryland Sustainable Growth Commission, established in § 5–702 of the State Finance and Procurement Article.

(i) (1) If two or more local jurisdictions adopt conflicting growth tier designations for the same area, the Department and the Department of Planning shall confer with the local jurisdictions to seek resolution of the conflicting designations.

(2) If a conflict in growth tier designations is not resolved, the Department of Planning shall recommend to the Department and the Department may approve the preferred local jurisdiction designations as recommended by the Department of Planning based on the following best planning practices or factors:

(i) The comprehensive plan, including the municipal growth element, the water resources element, the land use element, and, if applicable, the priority preservation element;

(ii) Growth projections and development capacity; and

(iii) Availability of infrastructure.

(j) With respect to land that is platted for subdivision, a person may not offer any of the land for sale or development or erect a permanent building on the land, unless there have been submitted to the Department:

(1) A plat of the subdivision;

(2) A statement of the methods, consistent with Subtitle 5 of this title, by which the subdivision is to be supplied with water and sewerage service;

(3) Documentation by the local jurisdiction that a major subdivision on–site sewage disposal system, a community sewerage system, or a shared facility is in a:

(i) Tier III area as adopted by the local jurisdiction; or

(ii) Tier IV area in a local jurisdiction that is exempt from the limitation of minor subdivisions as provided in subsection (h) of this section; and

(4) Any other information that the Department requires.

(k) On the basis of information provided under subsection (j) of this section, the Department may order:

(1) Preparation and submission, within any time the Department sets, of any plans and specifications that the Department considers necessary to provide for adequate water supply and sewerage service to the subdivision; and

(2) Installation, within any time the Department sets, of the whole or any part of a water supply system or sewerage system for the subdivision that:

(i) Conforms to the plans submitted to the Department and to any revision of the plans that the Department approves; and

(ii) In the judgment of the Department, is needed for the public health.

(l) (1) This subsection applies to a residential minor subdivision in a Tier II, Tier III, or Tier IV area.

(2) Except as provided in paragraphs (4) and (5) of this subsection, on or after December 31, 2012, if a tract or parcel of land is subdivided into a residential minor subdivision leaving any remainder parcel or tract of land:

(i) The residential minor subdivision may not be resubdivided or further subdivided; and

(ii) The remainder parcel or tract of land may not be subdivided.

(3) Except as provided in paragraphs (4) and (5) of this subsection, on or after December 31, 2012, the subdivision plat of the residential minor subdivision shall state that:

(i) The residential minor subdivision may not be resubdivided or further subdivided;

(ii) The remainder parcel or tract of land may not be subdivided; and

(iii) The subdivision plat is subject to State law and local ordinances and regulations.

(4) On or after December 31, 2012, if a tract or parcel of land is subdivided into a residential minor subdivision, the residential minor subdivision or the remainder parcel or tract of land may be resubdivided or further subdivided if the subdivision or the remainder parcel or tract of land is:

(i) Within a priority funding area as defined in Title 5, Subtitle 7B of the State Finance and Procurement Article; and

(ii) Designated for public sewerage service within 10 years in the approved water and sewer plan.

(5) (i) A tract or parcel of land may be subdivided into a residential minor subdivision in Tier II, Tier III, or Tier IV areas over time if each time a new lot or parcel is created, the subdivision plat states the number of new lots, plats, building sites, or other divisions of land that are left with the number of lots, plats, building sites, or other divisions of land allowed as a subdivision.

(ii) Except as provided in subparagraph (iii) of this paragraph, when the tract or parcel of land that is subdivided over time reaches the total number of lots, plats, building sites, or other divisions of land that are allowed as a residential minor subdivision, the subdivision plat shall state that:

1. The residential minor subdivision may not be resubdivided or further subdivided;

2. The remainder parcel or tract of land may not be subdivided; and

3. The subdivision plat is subject to State law and local ordinances and regulations.

(iii) A remainder parcel or tract of land may be subdivided for nonresidential agricultural purposes, including a farm market, agricultural processing facility, or creamery, and the owner may apply for approval of an on–site sewage disposal system to serve the nonresidential agricultural purposes.

(m) (1) In this subsection, "agricultural activities" includes:

(i) Plowing, tillage, cropping, seeding, cultivating, and harvesting for the production of food and fiber products; and

(ii) The grazing of livestock.

(2) A local jurisdiction may enact a local law or ordinance for the transfer of the right to subdivide, up to 7 lots, by an owner of property used for agricultural activities to the owner of another property used for agricultural activities in accordance with this subsection.

(3) The local law or ordinance shall provide for the recordation of any rights to subdivide that are transferred under this subsection.

(4) A property used for agricultural activities the owner of which receives rights to subdivide under this subsection:

(i) Is limited to a total of 15 lots; and

(ii) Shall cluster the lots on the property.

(5) Rights to subdivide may not be transferred from the owner of property used for agricultural activities in a Tier III area to the owner of property used for agricultural activities in a Tier IV area.

§9–207.

(a) In this section, "basic main facility":

(1) Includes:

(i) A sewage treatment plant;

(ii) An intercepting sewer;

(iii) An outfall sewer;

(iv) A pumping station; and

(v) A force main that is connected with a sewage treatment plant, intercepting sewer, outfall sewer, or pumping station; and

(2) Does not include a lateral or collector pipe that serves individual properties or developments.

(b) The Secretary shall help counties and municipal corporations of this State and the Washington Suburban Sanitary Commission to develop comprehensive master plans for constructing the basic main facilities of sewerage systems for collecting and disposing of sewage or industrial waste from lateral or collector pipes.

(c) If the Secretary considers that regional planning is advisable, the Secretary shall attempt to coordinate on a regional basis:

(1) The development of master plans under subsection (b) of this section; and

(2) Approval of the construction of sanitary facilities under this subtitle.

(d) This section does not take away any power of the Washington Suburban Sanitary Commission.

§9–208.

(a) On request, the Secretary shall consult with and advise the owner, operator, prospective owner, or prospective operator of an existing or planned water supply system, drainage system, sewerage system, or refuse disposal system with respect to the existing and future needs of all persons and communities that may be affected on any of the following aspects of the system:

(1) The most appropriate source of water;

(2) The best method of assuring the purity of the water; and

(3) The best method of disposing of drainage, sewage, or refuse.

(b) On request, the Secretary shall consult with and advise the owner, operator, prospective owner, or prospective operator of any business that produces sewage that may pollute the waters of this State.

(c) The Secretary may conduct any experiment relating to the purification of water or the treatment of sewage or refuse.

(d) A person need not pay for consultation, advice, or experiments that the Secretary provides under this section.

(e) (1) Under this section, the Secretary shall give only preliminary information that outlines the best course to pursue.

(2) Unless the Governor or the General Assembly delegates this authority specifically to the Secretary, and unless adequate special appropriation is provided for this purpose, the Secretary need not prepare plans, specifications, or detailed estimates for any improvement.

§9–209.

(a) The applicant shall give notice of the application, the informational meeting, and hearings:

(1) To the public in compliance with Title 1, Subtitle 6 of this article;

(2) By certified mail to the board of county commissioners or the county council of any county and the chief executive of any county or municipal corporation that the Department determines may be affected by the incinerator for public use or landfill system, including any county or municipal corporation within one mile of the

property line of the proposed incinerator for public use or landfill system;

(3) To the Department of Natural Resources, by certified mail;

(4) By certified mail to each member of the General Assembly representing any part of:

(i) A county in which the landfill system or incinerator for public use is located; or

(ii) A county within 1 mile of the property line of the proposed landfill system or incinerator for public use;

(5) To record owners of real property within 1,000 feet of the property line of the proposed incinerator for public use or landfill system, by certified mail to the addresses of record owners as indicated in the records of the State Department of Assessments and Taxation; and

(6) By posting a notice of the application, the informational meeting, and hearings in a conspicuous space on the site of the proposed incinerator for public use or landfill system.

(b) The local officials notified under subsection (a)(2) of this section shall give notice of the application, the informational meeting, and hearings to all interested agencies of their respective jurisdictions.

(c) To the extent practicable, the Department and other units of the State government shall consolidate the informational meeting and hearings concerning permits for the same landfill system or incinerator for public use.

§9–210.

(a) Subject to the provisions of subsection (b) of this section, the Secretary may not issue a permit to install, materially alter, or materially extend a refuse disposal system regulated under § 9-204(a) of this subtitle until the requirements set forth in this subsection are met in the following sequence:

(1) Except for the opportunity for a public informational meeting, the Department has completed its preliminary phase 1 technical review of the proposed refuse disposal system;

(2) The Department has reported the findings of its preliminary phase 1 technical review, in writing, to the county's chief elected official and planning commission of the county where the proposed refuse disposal system is to be located; and

(3) The county has completed its review of the proposed refuse disposal system, and has provided to the Department a written statement that the refuse

disposal system:

(i) Meets all applicable county zoning and land use requirements; and

(ii) Is in conformity with the county solid waste plan.

(b) Upon completion of the requirements of subsection (a)(1) and (2) of this section, the Department shall cease processing the permit application until the requirements of subsection (a)(3) of this section are met.

(c) (1) The Secretary may not issue a permit for a rubble landfill under § 9-204(a) of this subtitle unless the county in which the rubble landfill is located has specified the types of waste that may be disposed of in that rubble landfill in its county solid waste management plan under Subtitle 5 of this title.

(2) The types of waste that a county may allow to be disposed of in a rubble landfill under this section include:

(i) Trees;

(ii) Land clearing debris that is not a controlled hazardous substance as defined in Title 7, Subtitle 2 of this article;

(iii) Demolition debris that is not a controlled hazardous substance as defined in Title 7, Subtitle 2 of this article; and

(iv) Construction debris that is not a controlled hazardous substance as defined in Title 7, Subtitle 2 of this article.

(3) The following types of waste may be disposed of in a rubble landfill subject to the regulations adopted under this subtitle if the disposal of these wastes is expressly approved by the county in its county solid waste management plan:

(i) Asbestos, if:

1. The asbestos is wet or otherwise in accordance with federal national emission standards for hazardous air pollution when delivered to the landfill; and

2. The owner or operator of the landfill retains a record that clearly delineates where the asbestos has been deposited;

(ii) White goods; and

(iii) Subject to § 9-228(f) of this subtitle, scrap tires.

§9–211.

(a) (1) Except for a sanitary landfill that is subject to § 9–211.1 of this subtitle, and as provided in paragraph (2) of this subsection, before the Secretary issues a permit for a landfill, incinerator, or transfer station to any private person, the applicant for the permit shall:

(i) File with the Department a bond on the form that the Department provides; or

(ii) Deposit with the governing body of the local jurisdiction where the landfill, incinerator, or transfer station will be located cash, negotiable bonds of the federal government or this State, or any other security that the Department approves.

(2) The Secretary may adopt regulations to exempt any legitimate recycling or reclamation facility from the requirements of this section.

(b) (1) The obligation of a bond filed under this section shall be so conditioned as to be void on the closing of the landfill, incinerator, or transfer station in a manner that prevents erosion, health and safety hazards, nuisances, and pollution.

(2) The local governing body that receives a deposit of cash or other security under this section shall hold the security in trust in the name of the local jurisdiction to assure the closing of the landfill, incinerator, or transfer station in a manner that prevents erosion, health and safety hazards, nuisances, and pollution.

(c) A bond filed under this section shall be payable to the governing body of the political subdivision where the landfill, incinerator, or transfer station will be located.

(d) (1) Except as provided in paragraph (3) of this subsection, for a landfill:

(i) Unless otherwise required by federal law or regulation, a bond filed under this section shall be in the amount of $10,000 for each acre of land to which the permit applies, but not less than $250,000;

(ii) Cash deposited under this section shall be not less than the amount specified in item (i) of this paragraph; and

(iii) The market value of other security deposited under this section shall be not less than the amount specified in item (i) of this paragraph.

(2) For an incinerator or transfer station, the Department shall establish the amount of the security required by this section.

(3) (i) This paragraph does not apply to a rubble landfill.

(ii) For sanitary landfills that are restricted to acceptance of land clearing debris specified in regulations of the Department, a bond filed under this

section shall be in the amount of $2,000 for each acre of land to which the permit applies, with a minimum amount of security of $25,000.

(e) Both the applicant for a permit and a corporate surety licensed to do business in this State shall execute any bond filed under this section.

(f) (1) Except as provided in paragraph (2) of this subsection, the term of any bond filed under this section and the time during which cash or other security must remain on deposit under this section is:

(i) The duration of the operation of the landfill, incinerator, or transfer station; and

(ii) An additional 5 years after the closing of the landfill, incinerator, or transfer station.

(2) If the Department has assurances that the landfill, incinerator, or transfer station has been closed in a manner that prevents erosion, health and safety hazards, nuisances, and pollution, the Department may release the security filed or deposited under this section before the end of the 5–year period specified in paragraph (1)(ii) of this subsection.

(g) (1) The obligation of the holder of a permit for a landfill, incinerator, or transfer station and of any corporate surety under the bond shall become due and payable and any cash, securities, or bond proceeds shall be applied to payment of the costs of properly closing a landfill, incinerator, or transfer station only if the Department:

(i) Notifies the permit holder and any corporate surety on the bond that the landfill, incinerator, or transfer station has not been closed in a manner that prevents erosion, health and safety hazards, nuisances, and pollution;

(ii) Specifies in the notice the deficiencies in the closing that must be corrected;

(iii) Gives the permit holder and the corporate surety a reasonable opportunity to correct the deficiencies and to close the landfill, incinerator, or transfer station in accordance with the regulations of the Department; and

(iv) Authorizes the local governing body to close the landfill, incinerator, or transfer station in accordance with the regulations of the Department.

(2) The local governing body shall use bond proceeds, cash, or the proceeds of other security to pay the cost of properly closing the landfill, incinerator, or transfer station.

§9–211.1.

(a) (1) The Department shall adopt regulations governing financial assurance for sanitary landfills that accept municipal solid waste.

(2) For municipal solid waste landfills, the regulations shall be consistent with and may not exceed the requirements of federal regulations governing financial assurance (40 C.F.R. § 258.70 through 258.74).

(3) A regulation adopted under this section which is applicable to municipal solid waste landfills may not take effect until after the effective date of federal regulations governing financial assurance adopted pursuant to 40 C.F.R. § 258.70 through 258.74 and shall cease to be effective whenever those federal regulations are suspended or repealed.

(b) Before the Secretary issues a permit for a sanitary landfill, the applicant for the permit shall provide proof of financial assurance in accordance with the regulations adopted by the Department under this section.

(c) Until the regulations adopted by the Department under subsection (a) of this section are effective, or if those regulations cease to be effective, sanitary landfills that accept municipal solid waste shall comply with the requirements of § 9-211 of this subtitle.

§9–212.

(a) (1) As a condition precedent to the issuance by the Secretary of a permit for a landfill under this subtitle, the county or municipal corporation with jurisdiction over the landfill may require the owner of the site where the landfill is to be located to grant an option for the county or municipal corporation to purchase the site for open space or recreational purposes.

(2) An option required under this subsection expires on the earlier of:

(i) The date specified in the option; or

(ii) The date when the landfill ceases to be actively used.

(b) (1) If the county or municipal corporation with jurisdiction over the landfill does not require an option under subsection (a) of this section, the State may require an option for the State to purchase the site for open space or recreational purposes.

(2) If the county or municipal corporation with jurisdiction over the landfill requires but will not exercise an option under subsection (a) of this section, the State may exercise the option.

(c) Any option granted under this section is binding on any heir, representative,

successor, or assign of the grantor.

§9–212.1.

The Department may deny an application for a permit for a sanitary landfill system to any nongovernmental person if:

(1) The owner of the land, the operator, or the applicant has violated:

(i) Any law of this State or any other state concerning sanitary landfills; or

(ii) Any regulation or permit condition of this State or any other state concerning sanitary landfills; or

(2) The Department finds that operation of the sanitary landfill system would harm public health or the environment.

§9–213.

(a) A permit for a landfill system expires on the 5th anniversary of its date of issue, unless the permit is renewed for a 5-year term as provided in this section.

(b) Before a permit for a landfill system expires, the permit holder may renew it for an additional 5-year term, if the permit holder:

(1) Submits to the Department a renewal application on the form that the Department requires;

(2) Gives notice, by certified mail, of the renewal application to each member of the General Assembly in whose district the landfill system is located; and

(3) Obtains the written approval of the Department.

§9–214.

The Department may refuse to renew a permit for a landfill system if:

(1) The permit holder violates any provision of this subtitle, any regulation adopted under this subtitle, any condition of the permit, or, if operating a landfill in another state, any statute, regulation, or permit of that state concerning landfill systems;

(2) The Department finds that continued operation of the landfill system would be injurious to public health or the environment; or

(3) The Department finds that there is any other good cause.

§9–215.

(a) When landfill operations end, the holder of a permit issued under this subtitle for a landfill system shall close and cover all of the land for which the permit was issued in a manner that prevents:

(1) Erosion;

(2) Health and safety hazards;

(3) Nuisances; and

(4) Pollution.

(b) The Department shall adopt regulations that set standards for the closing and covering of landfill systems.

§9–216.

(a) In the coastal plain physiographic province of this State, a person may use any of the conventional, on-site sewage disposal systems identified in subsection (b) of this section if:

(1) The system is recommended by the Department as being the most appropriate; and

(2) The Secretary does not determine that the installation of the specific proposed system would be prejudicial to public health, safety, and welfare.

(b) Systems that may be used under subsection (a) of this section are:

(1) A septic tank or aerobic treatment system with:

(i) Standard trench or deep trench subsurface irrigation;

(ii) A seepage pit; or

(iii) A sand mound disposal system; and

(2) Any other on-site sewage disposal system that the Department in its regulations states is conventional.

(c) The Department may adopt regulations to carry out this section.

§9–217.

Notwithstanding any provision of this title or any regulation of the Department that prohibits the installation of a specific on-site sewage disposal system, at the request of a person who owns a lot that was legally established on November 17, 1985,

the Department shall test and evaluate the lot for an on-site sewage disposal system as if the person had applied to the Department and the Department had acted on the application on November 17, 1985.

§9–217.1.

(a) After July 1, 1999, every person engaged in the business of inspecting an on-site sewage disposal system for a transfer of property must certify to the Department of the Environment that the person has completed a course of instruction, approved by the Department, in the proper inspection of on-site sewage disposal systems.

(b) Every person engaged in the business of inspecting an on-site sewage disposal system for a transfer of property shall make available to persons contracting for the inspection service evidence of completion of the course of instruction.

(c) The Department shall adopt regulations to implement the provisions of this section.

§9–218.

(a) There is a Sanitary Facilities Fund.

(b) The Department may use the Sanitary Facilities Fund to finance planning for water and sewerage facilities and for solid waste disposal facilities and solid waste acceptance facilities.

(c) (1) The Department also may use funds appropriated in the State budget for general local health services to finance planning under this section.

(2) If the Department uses a general local health services appropriation to finance planning under this section, State, county, and local funds shall be provided in the same proportions as they would be provided to pay for minimum health services.

(d) The Department and any county, or the Department and the Washington Suburban Sanitary Commission, jointly may finance planning under this section.

(e) The Department and any local government may make a joint financing agreement to use any available federal grant for the planning under this section.

(f) Any county or municipal corporation may appropriate its general funds to participate in the planning under this section.

(g) If a special government agency is charged with providing sanitary facilities in a county or municipal corporation, the Department, the county, or the municipal corporation may make general funds available to that agency for the planning under this section.

§9–219.

(a) This section does not apply if the State would lose or be denied any federal assistance or other funds because of its application.

(b) (1) If federal grants, loans, or other funds are available for sewerage systems in the Patuxent River Watershed area, the Department shall use them to upgrade and floodproof existing sewerage systems, collector lines, or facilities in the area to meet standards currently in effect under this subtitle.

(2) If available funds can be used to upgrade and floodproof any existing sewerage systems, collector lines, or facilities in the Patuxent River Watershed area, the Department may not use the funds to construct any new sewerage system, collector line, or facility in the area.

(c) Notwithstanding subsection (b) of this section, the Department may use available funds to construct a new sewerage system, collector line, or facility that does not discharge into a river, including a new sewerage system that incorporates land disposal of treated sewage effluent.

§9–220.

(a) The Secretary shall order the owner or person in charge of a water supply system, sewerage system, or refuse disposal system to correct the following improper conditions, if, after investigation, the Secretary determines that, because of incompetent supervision or inefficient operation, the water supply system, sewerage system, or refuse disposal system:

(1) Is not producing reasonable results from a sanitary viewpoint;

(2) Is a menace to health or comfort; or

(3) Is causing a nuisance.

(b) The order shall require that the water supply system, sewerage system, or refuse disposal system produce specific, reasonable results within a time that the Secretary sets.

(c) (1) If the water supply system, sewerage system, or refuse disposal system does not produce the required results within the time that the Secretary sets, the Secretary may order the owner or person in charge to appoint, within a time that the Secretary sets, a person approved by the Secretary to take charge of and operate the system in a manner that will secure the results demanded by the Secretary.

(2) The person who is served with an order under paragraph (1) of this subsection shall pay the salary of the person who is appointed in compliance with the order.

§9–221.

(a) If, after investigation, the Department determines that any water supply system, sewerage system, or refuse disposal system is a menace to health or comfort or is causing a nuisance, and that conditions cannot be improved sufficiently only by changing the method of operation, the Department may order the owner:

(1) To alter or extend the water supply system, sewerage system, or refuse disposal system; or

(2) To install a new water supply system, sewerage system, or refuse disposal system.

(b) An order under subsection (a) of this section shall state a reasonable date for completion of the work.

(c) The Secretary may authorize a health officer:

(1) To investigate refuse disposal systems; and

(2) To enforce any regulation of the Department concerning refuse disposal systems.

§9–222.

(a) The Secretary may issue an order under subsection (b) of this section, if, after investigation, the Secretary determines that the absence or incompleteness of a public water supply system, public sewerage system, or refuse disposal system in a county, municipal corporation, sanitary district, subdivision, or locality:

(1) Is sufficiently prejudicial to the health or comfort of that or any other county, municipal corporation, sanitary district, subdivision, or locality; or

(2) Causes a condition by which any of the waters of this State are being polluted or could become polluted in a way that is dangerous to health or is a nuisance.

(b) An order under this section may require:

(1) The installation, alteration, extension, utilization, operation, or the completion of a public water supply system, public sewerage system, or refuse disposal system in a county, municipal corporation, sanitary district, subdivision, or locality within a time that the Secretary sets; or

(2) The installation of any device, the establishment of any method, or the enforcement of any measure or regulation that the Secretary considers proper under the circumstances.

§9–223.

(a) If a water supply system that serves the public or a sewerage system that serves the public is directly available to service any property on which there is a spring, well, cesspool, privy, sink drain, or private sewage disposal system that is or could become prejudicial to health or the environment, the Secretary may order that:

(1) The property be connected with the water supply system or sewage disposal system; and

(2) The spring, well, cesspool, privy, sink drain, or private sewage disposal system be abandoned in a condition that will prevent it from being used or harming health.

(b) If the Secretary determines that a proposed well, cesspool, privy, sink drain, or private sewage disposal system would be prejudicial to health, the Secretary may prevent construction of the well, cesspool, privy, sink drain, or private sewage disposal system.

(c) (1) This subsection does not apply to:

(i) The construction of a new dwelling; or

(ii) Any addition to or renovation of an existing dwelling.

(2) The Secretary shall allow the owner of a dwelling unit to install an on-site sewage disposal system for the dwelling unit if:

(i) The dwelling unit is owner-occupied;

(ii) The dwelling unit is legally situated on a property and legally occupied; and

(iii) The Secretary finds that the on-site sewage disposal system would be a reasonable solution to sewage problems on the property and would not be an undue risk to the environment or to public health, safety, or welfare.

(d) (1) A person may not build a privy in this State unless the privy will, in the judgment of the Secretary, prevent:

(i) The soil from coming in contact with any fecal matter; and

(ii) Flies from gaining access to any fecal matter.

(2) If the Secretary finds that a person has built a privy in violation of paragraph (1) of this subsection, the Secretary shall:

(i) Condemn the privy; and

(ii) Order any change sufficient to bring about compliance with paragraph (1) of this subsection.

(3) This section does not authorize the Secretary to prohibit a bona fide religious group from the free exercise of their religious beliefs by constructing a shallow well or a privy, if the well or privy:

(i) Is built in accordance with specified standards; and

(ii) Is not prejudicial to health or to the environment.

§9–223.1.

Any new or replacement piping that is buried or installed for the purpose of connecting a building to a water supply system or a sewerage system shall comply with the requirements of § 12–129 of the Public Utilities Article.

§9–224.

(a) On request of the Secretary, the owner or operator of an industrial establishment shall submit to the Secretary any plan, information, or record concerning the waste disposal methods the industrial establishment uses.

(b) (1) If the Secretary finds that public health or comfort is or may be threatened because the wastes of an industrial establishment have polluted or are polluting the waters of this State or because of the waste disposal methods an industrial establishment uses, the Secretary shall order the owner or operator of the industrial establishment:

(i) To stop polluting the body of water into which the industrial establishment discharges its waste; or

(ii) To alter the waste disposal methods of the industrial establishment in any way that the Secretary considers necessary to protect public health and comfort.

(2) The owner or operator of an industrial establishment shall comply with an order issued under paragraph (1) of this subsection within the time set by the Secretary.

(c) A person who is subject to an order issued under this section shall have a permit issued by the Secretary under § 9-204 of this subtitle before the person may change the waste disposal methods used by an industrial establishment.

§9–225.

Unless a person applied for the permit before October 1, 1981, the Secretary may not issue a permit for a proposed landfill that would be within one-half mile of any

hospital.

§9–226.

If a landfill system for hazardous wastes does not qualify for a certificate of public necessity under § 7-405(d)(2) of this article, the Secretary may not issue a permit for the system.

§9–227.

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

(2) (i) "Infectious waste" means any waste that comes from a hospital, laboratory, or other health care facility as defined in § 19-114 of the Health - General Article and that is known or suspected to be contaminated with organisms capable of producing disease or infection in humans.

(ii) "Infectious waste" includes:

1. Contaminated disposable equipment, instruments, and utensils;

2. Contaminated needles, scalpels, and razor blades;

3. Human tissues and organs that result from surgery, obstetrics, or autopsy;

4. Feces, urine, vomitus, and suctionings;

5. Live vaccines for human use;

6. Blood and blood products; and

7. Laboratory specimens, such as tissues, blood elements, excreta, and secretions.

(b) A hospital, laboratory, or other health care facility as defined in § 19-114 of the Health - General Article may not dispose of infectious waste, or cause infectious waste to be disposed of, in a landfill system in this State.

(c) The Secretary is responsible with law enforcement personnel in this State for monitoring and enforcing subsection (b) of this section.

§9–228.

(a) In this section, "approved facility" means a facility located in or outside of the State for collecting, recycling, or otherwise processing scrap tires that is approved or licensed by the Department in accordance with regulations adopted by the Department.

(b) A person may not store scrap tires in the State unless the person demonstrates to the satisfaction of the Department that, within 90 days of the time that the person stores the scrap tires, the scrap tires will be:

(1) Returned to the marketplace;

(2) Used as fuel in an approved resource recovery incinerator;

(3) Used as a tire derived fuel in an approved facility; or

(4) Transferred, by means of a scrap tire hauler, to any facility within the scrap tire recycling system established under subsection (c) of this section.

(c) (1) The service shall establish a scrap tire recycling system that includes scrap tire collection facilities, scrap tire haulers, and in the following order of priority:

(i) Scrap tire recyclers; and

(ii) 1. An approved resource recovery facility that uses tires as a fuel substitute; or

2. An approved facility that uses tires as a tire derived fuel.

(2) A person may not incinerate tires except in:

(i) An approved resource recovery facility that uses tires as a fuel substitute; or

(ii) An approved facility that uses tires as a tire derived fuel.

(3) A facility that processes scrap tires for use as a fuel in an incinerator, boiler, or resource recovery facility or a facility that burns or incinerates scrap tires may not be approved or licensed under this subtitle, unless:

(i) There is no reasonable and economically available opportunity to process the tires and return them to the marketplace for reuse; and

(ii) The burning or incineration meets all federal and State air quality standards.

(d) Scrap tire collection facilities, haulers, or recyclers may be publicly or privately owned and operated.

(e) (1) After consultation with other State agencies, representatives of the tire industry, and representatives of local government, the service shall place in operation a scrap tire recycling system:

(i) By January 1, 1993 for any county with a population of 150,000 or more according to the most recent projections by the Department of Planning; and

(ii) By January 1, 1994 for any county with a population of less than 150,000 according to the most recent projections by the Department of Planning.

(2) The service may establish a scrap tire recycling system required under paragraph (1) of this subsection on a regional basis.

(3) In establishing the scrap tire recycling system, the service:

(i) Shall give preference to existing private or public scrap tire collection, processing, or recycling programs or facilities that meet the requirements of this subtitle; and

(ii) May include in-State facilities licensed by the Department as well as out-of-state facilities approved by the Department.

(4) Each scrap tire recycling system established under this subsection shall:

(i) Meet all zoning and land use requirements of the county or municipal corporation in which the system is to be located; and

(ii) Be provided for in the county plan required under § 9-503 of this title.

(f) (1) (i) Except as provided in subparagraph (ii) of this paragraph, after January 1, 1994 scrap tires may not be disposed of in a landfill.

(ii) The Secretary may waive the requirements of subparagraph (i) of this paragraph under such terms and conditions and for such periods as the Department considers appropriate if the Department determines that a scrap tire recycling system:

1. Does not exist; or

2. Has insufficient capacity to accommodate the amount of scrap tires generated in the State.

(2) A person may not dispose of scrap tires except through a licensed scrap tire hauler or by delivering the tires to an approved facility.

(g) (1) (i) Beginning on February 1, 1992, a tire recycling fee shall be imposed on the first sale of a new tire in the State by a tire dealer, including new tires sold as part of a new or used vehicle, trailer, farm implement, or other similar machinery.

(ii) A county, municipal corporation, or any agency of a county or municipal corporation may not impose any tax, fee, or other charge on the first sale of a new tire by a tire dealer.

(2) The tire recycling fee:

(i) May not exceed $1.00 per tire; and

(ii) Shall be established by the Board of Public Works.

(3) For a sale made by a tire dealer to a person who resells tires, the tire dealer shall separately state its recycling fees paid by the tire dealer on the invoice or other document of sale.

(4) Each tire dealer shall:

(i) Pay the tire recycling fee; and

(ii) Complete and submit, under oath, a return and remit the fees to the Comptroller of the Treasury on or before the 21st day of the month that follows the month in which the sale was made, and for other periods and on other dates that the Comptroller specifies by regulation, including periods for which no fees were due.

(5) A tire dealer who timely files a tire recycling fee return and pays the tire recycling fees due is allowed, for the expense of administering and paying the fee, a credit equal to 0.6% of the gross amount of tire recycling fees that the tire dealer is to pay to the Comptroller.

(6) If the amount of the tire recycling fee is separately stated in a retail sale, the tire recycling fee is not subject to any tax under Title 11 of the Tax - General Article or Title 13 of the Transportation Article.

(7) At the end of each quarter, the Comptroller shall forward all tire recycling fees to the Used Tire Cleanup and Recycling Fund, less the costs of administration.

(8) Except to the extent they are inconsistent with this subsection, the provisions of Title 13 of the Tax - General Article applicable to the sales and use tax shall govern the administration, collection, and enforcement of the tire recycling fee under this subsection.

(9) The Comptroller:

(i) Shall administer the tire recycling fee; and

(ii) May adopt any regulations that are necessary or appropriate to administer, collect, and enforce the tire recycling fee.

(h) Beginning on July 1, 1992, each scrap tire hauler shall:

(1) Be licensed by the Department to transport scrap tires from scrap tire collection facilities to scrap tire recyclers;

(2) Apply for a scrap tire hauler's license on a form provided by the Department; and

(3) Transport each load of scrap tires to the scrap tire recyclers in accordance with regulations adopted by the Department.

(i) Beginning on July 1, 1992, each scrap tire collection facility shall:

(1) If located in the State, be licensed by the Department to receive tires from a consumer or a scrap tire hauler;

(2) Apply for a license on a form provided by the Department;

(3) Meet all zoning and land use requirements of the county or municipal corporation in which the tire collection facility is to be located;

(4) Manage scrap tires in accordance with regulations adopted by the Department;

(5) By means of a scrap tire hauler, transfer scrap tires to:

(i) A scrap tire recycler; or

(ii) Another scrap tire collection facility; and

(6) In accordance with regulations adopted by the Department and on forms provided by the Department, provide:

(i) The Department with:

1. A record of the destination;

2. The name of the hauler that is registered with the Department; and

3. The quantity of each shipment of scrap tires; and

(ii) Each hauler with:

1. A record of the destination; and

2. The quantity of each shipment of scrap tires.

(j) (1) Beginning on July 1, 1992, a person may not operate as a scrap tire recycler in the State unless the person is licensed by the Department.

(2) To apply for a license an applicant shall submit:

(i) An application to the Department on the form that the

Department requires; and

(ii) Any document or other information required in regulations adopted by the Department.

(k) (1) The Department shall adopt regulations necessary to administer the provisions of this section, including:

(i) Minimum standards for the operation, maintenance, monitoring, reporting, and suspension of each scrap tire recycling system;

(ii) Requisite evidence of financial ability to properly establish, operate, and maintain a scrap tire recycling system, including the posting of bonds and other securities; and

(iii) The forfeiture of bonds and other securities for noncompliance with the requirements of this section or any applicable regulation.

(2) The Department may require the delivery of scrap tires in this State to 1 or more facilities, in the State or outside of the State, designated by the service as part of the tire recycling system.

(3) A scrap tire hauler or scrap tire collection facility may not transport or transfer scrap tires to any place other than a facility designated under paragraph (2) of this subsection.

§9–228.1.

(a) A requirement in this subtitle that a document be under oath means that the document shall be supported by a signed statement made under the penalties of perjury that the contents of the document are true to the best of the knowledge, information, and belief of the individual making the statement.

(b) The oath or affirmation shall be made:

(1) Before an individual authorized to administer oaths, who shall certify in writing to have administered the oath or taken the affirmation; or

(2) By a signed statement that:

(i) Is in the document or attached to and made part of the document; and

(ii) Is expressly made under the penalties for perjury.

(c) If the procedures provided in subsection (b)(2) of this section are used, the affidavit subjects the individual making it to the penalties for perjury to the same extent as an oath or affirmation made before an individual authorized to administer oaths.

(d) A document made under oath shall be signed:

(1) For a corporation, by an officer of the corporation authorized to do so;

(2) For a sole proprietorship, by its owner; or

(3) For a partnership, by a partner authorized to do so.

§9–229.

(a) Unless the Secretary determines that a removal and remedial action will be done properly and in a timely manner by the owner or operator of a site where used tires are stored or disposed of, if used tires are stored or disposed of at a site in a manner that may present a threat to the public health or environment, the Secretary may:

(1) Act to remove or arrange for the removal of the used tires and provide for remedial action necessary to restore any natural resources; or

(2) Take any other response measure that the Secretary considers necessary to protect the public health or welfare or the environment.

(b) Nothing in this section shall prohibit the Secretary from abating a nuisance under the provisions of Title 10 of this article, regardless of the volume of used tires stored.

§9–230.

(a) (1) The Department of the Environment shall adopt regulations to carry out this Part III of this subtitle.

(2) The Department of the Environment may not adopt a regulation or part of a regulation that deals with the land application of sewage sludge without the approval of the Department of Agriculture.

(b) In adopting regulations under this Part III and §§ 9-269 and 9-270 of this subtitle, the Department of the Environment shall consider:

(1) Alternative utilization methods;

(2) Pathogen control;

(3) Advertising requirements for public hearings and public information meetings;

(4) Performance bonds, liability insurance, or other forms of security;

(5) Procedures for notifying units of local government and other interested parties; and

(6) Adequate standards for transporting sewage sludge, including requirements for enclosing or covering sewage sludge during transportation.

(c) In addition to the considerations under subsection (b) of this section, in adopting regulations for the land application of sewage sludge, the Department of the Environment shall consider:

(1) Methods for calculating loading rates that:

(i) Will assure nondegradation of the groundwater supply; and

(ii) For agricultural land, shall be limited by the nutrient requirements of crop or cover vegetation, as recommended by the Department of Agriculture;

(2) The crops that are to be grown on land on which sewage sludge may be applied;

(3) The nature of any nearby surface water or groundwater;

(4) The character of any affected area;

(5) The character of nearby existing or planned land uses and transport routes;

(6) The nearness of the land on which sewage sludge may be applied to sensitive areas, including flood plains, wetlands, and areas of critical concern;

(7) The definitions of:

(i) Sewage sludge that is unsuitable for application to agricultural land;

(ii) Agricultural land;

(iii) Marginal land; and

(iv) Compost;

(8) Acceptable cumulative loading rates, including rates for nitrogen and heavy metals;

(9) Special requirements of land used for producing tobacco; and

(10) Reasonable buffer areas to separate any home or other property from land on which sewage sludge may be applied.

(d) (1) The Department shall adopt regulations to establish a mechanism for determining annual generator's fees.

(2) The regulations shall provide for public input into the development of fee schedules.

(3) The fee schedules shall take into account:

(i) The volume of sewage sludge generated by a sewage sludge generator;

(ii) The method by which the sewage sludge is utilized;

(iii) The anticipated costs of monitoring and regulating sewage sludge utilization sites;

(iv) The anticipated needs of the State's sewage sludge regulation program; and

(v) The potential hazard of the sewage sludge generator's activities to public health, safety, or welfare or to the environment.

§9–231.

(a) A person shall have a sewage sludge utilization permit before the person utilizes sewage sludge in this State.

(b) A person shall have a separate sewage sludge utilization permit for each site where the person utilizes sewage sludge.

§9–232.

(a) An applicant for a sewage sludge utilization permit shall:

(1) Submit an application to the Department on the form that the Department requires;

(2) Certify by signature the truth and accuracy of the completed application;

(3) Pay the application fee set by the Department to cover the cost of processing the application;

(4) Obtain the written consent of the owner of the land where the sewage sludge will be applied, including an agreement that the owner will not violate the permit; and

(5) Agree to permit or secure access to the sewage sludge utilization site for the purpose of any inspection permitted under § 9-243 of this subtitle.

(b) Before a sewage sludge utilization permit is issued, the applicant for the permit shall:

(1) File with the Department acceptable evidence of a bond or other security that the Department requires under § 9-240 of this subtitle; and

(2) Satisfy every other requirement of this Part III of this subtitle.

§9–233.

The Department may not issue a permit to install, materially alter, or materially extend a sewage sludge composting facility or a sewage sludge storage facility until:

(1) The sewage sludge composting facility or sewage sludge storage facility meets all zoning and land use requirements of the county where the sewage sludge composting or storage facility is to be located; and

(2) In the case of a sewage sludge composting facility, the Department has a written statement that the board of county commissioners or the county council of the county where the sewage sludge composting facility is to be located does not oppose the issuance of the permit.

§9–234.

(a) When the Department receives an application for a permit to utilize sewage sludge at a site, the Department immediately shall mail a copy of the permit application:

(1) To the legislative body and any elected executive of a county and to the elected executive of any municipal corporation where the sewage sludge utilization site is to be located; and

(2) To the legislative body and any elected executive of any other county within 1 mile of the sewage sludge utilization site.

(b) For a permit to apply sewage sludge on marginal land or to construct a permanent facility that is designed primarily to utilize sewage sludge, the Department shall:

(1) Publish notice of the application in a local newspaper having a substantial circulation in the county where the sewage sludge is to be applied or the facility is to be constructed;

(2) Mail a copy of the notice to:

(i) The local health official;

(ii) The chairman of the legislative body and any elected executive of the county where the sewage sludge is to be applied or the facility is to be constructed;

(iii) The elected executive of any municipal corporation where the

sewage sludge is to be applied or the facility is to be constructed; and

(iv) Any other county within 1 mile of where the sewage sludge is to be applied or the facility is to be constructed.

(c) (1) Except as otherwise provided in § 9–234.1 of this subtitle, within 15 days after receiving a copy of the permit application, the executive or the legislative body of the county, or the executive or the legislative body of the municipal corporation, where the sewage sludge is to be applied or the facility is to be constructed may request that the Department hold a public hearing.

(2) If the Department receives a request under paragraph (1) of this subsection, the Department shall hold a public hearing in the affected subdivision in accordance with the Administrative Procedure Act.

(3) If the executives or legislative bodies of more than 1 county or municipal corporation request a hearing under this subsection, the Department may hold a consolidated hearing in 1 county.

(d) For a permit to apply sewage sludge on land other than marginal land, the Department shall mail a copy of the permit application to:

(1) The local health official;

(2) The chairman of the legislative body and any elected executive of the county where the sewage sludge is to be applied; and

(3) The elected executive of any municipal corporation where the sewage sludge is to be applied.

(e) (1) Within 10 days after receiving a copy of the permit application, the executive or the legislative body of the county, or the executive or the legislative body of the municipal corporation, where the sewage sludge is to be applied may request that the Department conduct a public information meeting.

(2) If the Department receives a request under paragraph (1) of this subsection, the Department:

(i) Shall conduct a public information meeting in the affected subdivision;

(ii) May consolidate the public information meeting with 1 or more public information meetings for other applications in the same county; and

(iii) Shall notify the applicant for a permit and give the applicant the opportunity to present information at the public information meeting.

(3) If the executives or legislative bodies of more than 1 county or

municipal corporation request a public information meeting under this subsection, the Department may hold a consolidated public information meeting in 1 county.

(f) The Department shall provide each county and municipal corporation that receives a copy of any application under this section with an opportunity to consult with the Department about the decision to issue, deny, or place restrictions on a sewage sludge utilization permit.

§9–234.1.

(a) This section does not apply to the storage or distribution of sewage sludge at a sewage treatment plant.

(b) Before the Secretary issues, amends, or renews a permit to an applicant or permit holder under § 9-232 or § 9-238 of this subtitle to install, materially alter, or materially extend a structure used for storage or distribution of any type of sewage sludge, the Department shall hold a public hearing on the application, amendment, or renewal.

(c) The Department shall hold a public hearing in the affected subdivision in accordance with the Administrative Procedure Act.

(d) If more than 1 county or municipal corporation will be affected by the granting of the sludge storage permit application, the Department may hold a consolidated hearing in any affected subdivision.

§9–235.

The Department shall send to the local health official and the local soil conservation district:

(1) A copy of any sewage sludge utilization permit issued in the county;

(2) Notice of the denial of an application in the county for a sewage sludge utilization permit;

(3) Notice of the suspension, revocation, modification, or termination of a sewage sludge utilization permit issued in the county;

(4) A copy of any notice, complaint, or order that the Department issues in the county under Part III of this subtitle; and

(5) A copy of any report filed with the Department pursuant to a condition of the permit.

§9–236.

The Department shall issue a sewage sludge utilization permit to an applicant

who meets the requirements of this Part III of this subtitle.

§9–237.

(a) A sewage sludge utilization permit authorizes the permit holder to utilize sewage sludge according to the terms of the permit.

(b) Except as provided in subsection (c) of this section, if the utilizer is unable to utilize the sewage sludge as defined in the permit, the utilizer may return the sewage sludge to the generator provided that the utilizer obtains a new comprehensive analysis of the sewage sludge to be returned that indicates that:

(1) The sewage sludge meets all applicable permit requirements; and

(2) The sewage sludge may be utilized in the same manner, without additional treatment, as the sewage sludge that is generated by the generator.

(c) If the utilizer returns the sewage sludge within 96 hours of the departure from the generator, the utilizer may not be required to obtain a new analysis of the sewage sludge.

§9–238.

(a) A sewage sludge utilization permit expires on the date the Department sets at the time of issuance or renewal, unless the permit is renewed for another term as provided in this section.

(b) Except as provided in subsection (c) of this section, the Department may renew a sewage sludge utilization permit if the permit holder:

(1) Is in compliance with the permit and all appropriate regulations of the Department;

(2) Submits to the Department a renewal application on the form that the Department requires; and

(3) Pays the renewal application fee that the Department requires.

(c) The Department may not renew or amend a permit to install, materially alter, or materially extend a structure used for storage or distribution of any type of sewage sludge unless the Department holds a public hearing on the renewal or amendment, as provided in § 9-234.1 of this subtitle.

§9–239.

A sewage sludge utilization permit in effect on July 1, 1984 remains in effect until the expiration date of the permit.

§9–240.

To keep a sewage sludge utilization permit, a person shall:

(1) Maintain a performance bond or other security in the amount that the Department considers sufficient to guarantee the fulfillment of any requirement related to the permit; and

(2) Comply with each other requirement that the Department sets.

§9–241.

To allow the public to identify every permit that the Department issues for a particular tract of land, the Department shall maintain a permanent public record of all sewage sludge utilization permits issued under § 9-236 of this subtitle.

§9–242.

The Department shall require each holder of a sewage sludge utilization permit to:

(1) Keep records, including daily records of the source and amount of sewage sludge for each truckload delivered to the site;

(2) Make reports, including reports of sewage sludge analysis, as often as necessary to assure that the sewage sludge meets permit requirements;

(3) Have a copy of the report of sewage sludge analysis that is required under item (2) of this section available on the vehicle transporting the sewage sludge while the sewage sludge is being transported in the State;

(4) Install, calibrate, use, and maintain monitoring equipment or methods, including biological monitoring methods and well monitoring, if appropriate;

(5) Take samples in accordance with the methods, at the locations, at the intervals, and in the manner that the Department requires; and

(6) Give to a representative of the Department or the local health official any information that the Department reasonably requires.

§9–243.

(a) To enforce this Part III of this subtitle and to ensure compliance with each sewage sludge utilization permit, a representative of the Department, the local health official, or the local health official's designee may enter and inspect, at any reasonable time, any site where sewage sludge is utilized.

(b) A sewage sludge utilizer may not:

(1) Refuse access to a sewage sludge utilization site to any representative of the Department, to a local health official, or to the local health official's designee, who requests access under this section; or

(2) Interfere with any inspection under this subtitle.

(c) A local health official or the local health official's designee may inspect, monitor, and investigate any sewage sludge utilization site in the county where the official is employed.

(d) (1) With the concurrence of the Department, a local health official may:

(i) Issue a stop work order to stop utilizing sewage sludge at a site; and

(ii) Suspend a sewage sludge utilization permit.

(2) If a local health official recommends issuance of a stop work order and the Department does not concur, the Department shall inspect the sewage sludge utilization site within 24 hours after it receives the recommendation.

(3) After inspecting the site and if necessary, the Department shall issue a stop work or other order to obtain compliance with State law, departmental regulations, or the sewage sludge utilization permit.

(4) A county may seek injunctive relief or other appropriate remedies in circuit court if:

(i) A local health official is not satisfied that the enforcement measures of the Department are adequate to protect public health and safety in the county; or

(ii) The Department does not make the inspection required by paragraph (2) of this subsection.

(5) A local health official shall:

(i) Give the Department prompt notice of any inspection made by the local health official; and

(ii) Report promptly in writing to the Department:

1. The time and place of the inspection;

2. A summary and findings of the inspection;

3. Any enforcement action that the local health official takes or recommends; and

4. Any permit modifications or other modifications that the local health official recommends.

(e) (1) The Department:

(i) May delegate to the local health official any inspection, monitoring, or enforcement authority of the Department under this Part III of this subtitle; and

(ii) Shall adopt regulations that establish standards for delegating authority under this subsection.

(2) The regulations adopted under this subsection shall include:

(i) Procedures for submission, review, and approval or disapproval of any application for delegation of authority;

(ii) Provisions requiring that any application for delegation of authority be approved by the county;

(iii) Provisions for oversight by the Department, including program evaluations and financial audits; and

(iv) Provisions for revocation of a delegation, if the local health official fails to comply with the terms of a delegation agreement.

(3) If the Department finds that an application for delegation of authority meets all applicable requirements of this section and the regulations adopted under this section, the Department shall enter into a written delegation agreement.

(4) The Department shall establish performance standards for grants to provide reasonable reimbursement to counties, to the extent funds are available, for costs local health officials incur when they undertake authority delegated under this subsection.

(5) A local health official may act through a designee under this subsection in accordance with an approved delegation agreement.

§9–244.

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 Maryland Clean Water Fund established under § 9–320 of this title.

§9–245.

The Department shall deny an application for a sewage sludge utilization permit if the Department finds that:

(1) The applicant cannot utilize sewage sludge without:

(i) Causing an undue risk to the environment or public health, safety, or welfare; or

(ii) Otherwise violating this Part III, § 9-269, or § 9-270 of this subtitle;

(2) The sewage sludge generator from which the sludge originated has not paid applicable generator's fees; or

(3) The sewage sludge has been generated in a state in which the laws or application of those laws do not result in the land application of sewage sludge in that state.

§9–246.

(a) The Department may suspend, revoke, or modify a sewage sludge utilization permit in accordance with the Administrative Procedure Act if the Department finds that:

(1) The permit application contained false or inaccurate information;

(2) There has been a substantial deviation from:

(i) The plans, specifications, or other documents approved by the Department; or

(ii) Any requirement established by the Department;

(3) A representative of the Department has been refused entry to any area covered by the permit for the purpose of inspecting the area to ensure compliance with the conditions of the permit;

(4) There is or has been a violation of this Part III, § 9-269, or § 9-270 of this subtitle, any regulation adopted under this Part III, § 9-269, or § 9-270 of this subtitle, or any condition of the permit; or

(5) There is any other good cause.

(b) The Department may refuse to renew a sewage sludge utilization permit if:

(1) The permit holder violates this subtitle, any regulation adopted by the Department under this subtitle, or any condition of the permit;

(2) The Department determines that continued operation of any area covered by the permit would be injurious to public health or the environment; or

(3) The Department determines that there is any other good cause.

§9–247.

(a) Any person who owns land that adjoins land for which an application to apply sewage sludge is filed, or for which a permit to apply sewage sludge is issued, has standing:

(1) To sue the State, the applicant, or the permit holder to require compliance with this Part III, § 9-269, or § 9-270 of this subtitle and any permit issued under § 9-236 of this subtitle; and

(2) With respect to the sewage sludge utilization site, to intervene in:

(i) Any civil court proceeding; and

(ii) Any contested administrative case.

(b) Any county or municipal corporation in which there is land for which an application to apply sewage sludge is filed, or for which a permit to apply sewage sludge is issued, has standing:

(1) To sue the applicant or the permit holder to require compliance with this Part III, § 9-269, or § 9-270 of this subtitle and any permit issued under § 9-236 of this subtitle; and

(2) With respect to the sewage sludge utilization site, to intervene in:

(i) Any civil court proceeding; and

(ii) Any contested administrative case.

§9–248.

In addition to any other remedy authorized under this subtitle, the Department may bring an action to enjoin the violation of any law, regulation, or order concerning the utilization of sewage sludge under this Part III, § 9-269, or § 9-270 of this subtitle.

§9–249.

A person may not utilize sewage sludge in this State except in accordance with this Part III, § 9-269, or § 9-270 of this subtitle.

§9–252.

(a) (1) To prevent or correct pollution of the waters of this State, the Secretary

may:

(i) Adopt and enforce regulations; and

(ii) Order works to be executed.

(2) The Secretary may:

(i) Require any public water supply system, public sewerage system, or refuse disposal system to be operated in a manner that will protect public health and comfort; and

(ii) Order the alteration, extension, or replacement of any public water supply system, public sewerage system, or refuse disposal system.

(b) The Secretary:

(1) Has supervision and control over the sanitary and physical condition of the waters of this State to protect public health and comfort;

(2) Shall investigate:

(i) All sources of water and ice; and

(ii) All points of sewage discharge;

(3) Shall examine all public water supply systems, public sewerage systems, and refuse disposal systems; and

(4) Shall approve or disapprove the design and construction of any public water supply system, public sewerage system, or refuse disposal system that is to be built in this State.

(c) The powers and duties of the Secretary under this section are in addition to the powers and duties set forth elsewhere in this subtitle.

§9–253.

(a) For purposes of the Federal Water Pollution Control Act, the Secretary is the State water pollution control agency in this State.

(b) The Secretary has all powers that are necessary to comply with and represent this State under the Federal Water Pollution Control Act.

(c) Another unit of the State government may not exercise any power given to the Secretary under this section.

§9–254.

Within the limits in the State budget, the Secretary may employ and set the compensation of any expert, engineer, clerical assistant, or other assistant that the Secretary considers necessary to carry out this subtitle.

§9–255.

The Department of the Environment and the Department of Natural Resources shall each make any test of water or wastewater that it considers necessary to determine the adequacy of performance of a water supply system, sewerage system, or industrial wastewater treatment plant.

§9–256.

(a) If the Secretary serves an order on the State or any county, municipal corporation, or public water supply, sewerage, or sanitary district, the appropriate official or department of the State, county, municipal corporation, or district shall raise any funds that are necessary to comply on time with the order of the Secretary.

(b) If the Governor and the Attorney General approve, a county, municipal corporation, or public water supply, sewerage, or sanitary district may raise funds under subsection (a) of this section by issuing bonds, stock, or notes without legislative authority other than this section.

(c) The question of whether to issue bonds, stock, or notes under this section need not be put to a referendum of the voters.

(d) The proceeds of any bonds, stock, or notes issued under this section:

(1) Constitute a sanitary fund; and

(2) May be used only to carry out the order of the Secretary.

(e) (1) The total amount of all bonds, stock, and notes being issued at any time under this section, together with all bonds, stock, and notes then outstanding from prior issues under this section or any predecessor of this section, may not exceed 5% of the total value of all property that, at the time of issue, is listed and assessed for taxation in the county, municipal corporation, or district.

(2) The indebtedness authorized by this section is in addition to the total indebtedness otherwise permitted by law.

(3) Bonds, stock, and notes issued under this section are:

(i) Forever exempt from State, county, and municipal taxation;

(ii) A lien on all property in the jurisdiction that issues the bonds,

stock, or notes; and

(iii) Payable in the same manner as bonds issued by municipal authorities under Part II of Subtitle 7 of this title.

(f) Unless the Secretary approves the expenditure, including the amount of the expenditure, neither the State nor any county, municipal corporation, or public water supply, sewerage, or sanitary district may spend any public money for any of the purposes of this subtitle.

§9–257.

(a) Except as provided in subsection (b) of this section:

(1) If the Secretary finds that the water or ice from any source is or is likely to become dangerous to health, the Secretary shall order that the source of water or ice be closed; and

(2) If the Secretary finds that any discharge of sewage or any method of disposal of sewage or refuse is or is likely to become prejudicial to health or comfort, the Secretary shall order that the point of sewage discharge be abandoned or the method of disposal be discontinued.

(b) If the Secretary finds that the conditions found under subsection (a) of this section can be remedied sufficiently and practicably by installing any work or device or by taking any other remedial measure, the Secretary may order that:

(1) The work or device be installed; or

(2) The remedial measure be taken.

(c) If the Secretary condemns a water supply system, sewerage system, or refuse disposal system, the Secretary may order the owner to make arrangements that will prevent the operation of the system.

(d) Any order issued under this section shall set a reasonable time for compliance.

§9–260.

If any lot or parcel of land in Garrett County is used as a site for a trailer park, motel, mobile motel, condominium, apartment house, or other facility with multiple bedrooms, and if any resulting sewage is disposed of underground on the lot or parcel, the lot or parcel shall have:

(1) An area of at least 20,000 square feet for each 6 bedrooms or fraction of 6 bedrooms in the facility; and

(2) A width of at least 100 feet for each 6 bedrooms or fraction of 6 bedrooms in the facility.

§9–261.

(a) The following sanitary districts and persons shall keep any record that the Secretary requires:

(1) Any sanitary district or person who supplies water, ice, sewerage, or refuse disposal service to the public;

(2) Any person who owns an industrial establishment; and

(3) Any person who owns a private water supply system or private sewerage system.

(b) Any sanitary district or person who keeps a record under subsection (a) of this section shall make the record available to the Secretary on request.

(c) (1) To determine compliance with any regulation, permit, or order of the Secretary, a representative of the Secretary may:

(i) Enter any private property;

(ii) Enter any building, structure, or land owned by a sanitary district or person who supplies water, ice, sewerage, or refuse disposal service to the public; and

(iii) Collect samples, records, and information.

(2) To determine compliance with pretreatment requirements of this title, a representative of the Secretary may:

(i) Enter any building, structure, or land of an industrial establishment that is or may be subject to pretreatment requirements; and

(ii) Collect samples, records, and information.

(d) The Secretary may bring an action for an injunction to enforce this section without showing lack of an adequate remedy at law.

§9–262.

(a) This section does not apply to the expiration, revocation, or modification of a sewage sludge utilization permit.

(b) The Secretary may revoke or change any permit issued under this subtitle after the Secretary gives the permit holder notice of the proposed revocation or change.

(c) If the term of a permit issued under this subtitle is stated in the permit, the permit expires at the end of the stated term.

§9–263.

Any county, municipality, legally constituted water, sewerage or sanitary district, institution, or person dissatisfied with any order, rule, or regulation of the Secretary under this subtitle may commence, within 10 days after the service of the order, rule, or regulation, an action in the circuit court for any county to vacate and set aside the order, rule, or regulation on the ground that the order, rule, or regulation is unlawful or unreasonable, or that the order is not necessary for the protection of the public health or comfort, in which action a copy of the complaint shall be served with the summons. The answer of the Secretary shall be filed within 10 days, whereupon the cause shall be at issue, and stand ready for trial upon 15 days' notice to either party. Any action under this section shall have precedence over any civil cause of a different nature, except appeals from an order of the Public Service Commission. The courts shall always be deemed open for trial of an action under this section and any action under this section shall be tried and determined as other civil actions. Either party to an action under this section may appeal to the Court of Special Appeals.

§9–267.

The provisions of §§ 7-256 through 7-268 of this article shall be used and shall apply to enforce violations of § 9-227(b) of this subtitle.

§9–268.

Except for violations of Part III of this subtitle and violations enforced under §§ 9–229(b), 9–267, and 9–268.1 of this subtitle, the provisions of §§ 9–334 through 9–344 of this title shall be used and shall apply to enforce violations of:

(1) This subtitle;

(2) Any regulation adopted under this subtitle; or

(3) Any order or permit issued under this subtitle.

§9–268.1.

(a) In addition to other penalties authorized under this subtitle:

(1) A person who violates § 9-228(f)(2) of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $1,000, or imprisonment not exceeding 30 days or both;

(2) A person who violates § 9-228(f)(2) of this subtitle for monetary or financial gain is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $25,000 or imprisonment not exceeding 5 years or both; and

(3) A person who violates § 9-228(b), (h)(1), (i)(1), or (j)(1) of this subtitle, or a regulation, order, or permit adopted or issued under § 9-228(b), (h)(1), (i)(1), or (j)(1) of this subtitle, is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $10,000.

(b) (1) The Attorney General shall represent the State in every case arising under § 9–228 of this subtitle.

(2) This subsection may not limit or affect the power of State's Attorneys under § 15–102 of the Criminal Procedure Article.

§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 Maryland Clean Water Fund under § 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.

§9–270.

(a) If, by violating any applicable statute, regulation, or permit condition, a sewage treatment plant that has a design capacity of 1,000,000 gallons or more per day creates a nuisance or otherwise may affect adversely public health or the environment, the person who owns or operates the sewage treatment plant is liable to the State for an administrative civil penalty not exceeding $10,000 a day.

(b) The penalty imposed under this section shall be assessed with consideration given to:

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

(2) Any actual or potential harm to human health or to the environment, including injury to or impairment of the natural resources of the State;

(3) The degree of interference with general welfare, health, or property rights of the public;

(4) The extent to which the location of the violation creates the potential for harm to the environment or to human health or safety;

(5) The available technology for controlling, reducing, or eliminating the emissions that caused the violation; and

(6) 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.

(c) Each day a violation continues is a separate violation under this section.

§9–273.

There is a State Used Tire Cleanup and Recycling Fund.

§9–274.

(a) The State Used Tire Cleanup and Recycling Fund shall consist of moneys made available under:

(1) Loan authorizations;

(2) Funds appropriated in the State budget;

(3) Fees collected for the sale of tires by retail dealers under § 9-228(g) of this subtitle; or

(4) Bond and security forfeitures collected under § 9-228(k) of this subtitle.

(b) (1) The Fund is limited to a maximum of $10,000,000.

(2) If the sum of unallocated funds in the Fund and the projected fees for the next fiscal year exceeds $10,000,000, the Board of Public Works shall adjust the fees for the next fiscal year on a pro rata basis so that the sum of unallocated and actual fees does not exceed $10,000,000.

§9–275.

(a) For fiscal year 2010 and each fiscal year thereafter, up to 50% of the revenues received by the State Used Tire Cleanup and Recycling Fund may be used for administrative expenses of the Department.

(b) Subject to the appropriation process in the annual operating budget and subject to subsection (a) of this section, the Department shall use the remainder of the State Used Tire Cleanup and Recycling Fund solely:

(1) For removal, restoration, emergency, or remedial action, including the restoration of natural resources where feasible, site maintenance and monitoring, and fire cessation, if requested by a local government, not to exceed $100,000 for each fire cessation emergency action in that jurisdiction, in response to the disposal or storage of scrap tires in violation of this subtitle, including:

(i) All costs incurred by the State in inspecting and monitoring any site where scrap tires are processed, stored, or disposed of in violation of this subtitle and assessing the threat to the public health and the environment of the site, the costs of investigations conducted for the purpose of defining necessary remedial action, and the costs of litigation expenses incurred in obtaining reimbursement for expenditures; and

(ii) All costs incurred in providing public information concerning a site where scrap tires are processed, stored, or disposed of;

(2) For activities related to scrap tire recycling programs, including research, planning, monitoring, public education, and market development, and for associated administrative costs; and

(3) With the approval of the Board of Public Works, to provide financial assistance:

(i) Through the service for projects approved by the Department to reduce, recover, and recycle scrap tires; and

(ii) To the service for costs related to the implementation of scrap tire recycling systems, including the costs of:

1. Preparation of a scrap tire recycling system under § 9–228(e) of this subtitle;

2. Implementation of any program established by the service as a part of a scrap tire recycling system; and

3. Assisting in funding the establishment of a private or public scrap tire collection, processing, or recycling facility.

(c) Subject to § 2–1246 of the State Government Article, the Department shall provide the standing committees of the Maryland General Assembly with primary jurisdiction over this section with a status report on the Fund on or before November 1 of each year. The report shall include an accounting of all moneys expended for each of the purposes specified in subsection (a) of this section.

§9–276.

(a) Except as provided in subsection (d) of this section, all expenditures from the State Used Tire Cleanup and Recycling Fund made by the Department under § 9–275(b)(1) of this subtitle in response to the storage or disposal of used tires at a particular site shall be reimbursed to the Department for the State Used Tire Cleanup and Recycling Fund by the owner or operator of the site or any other person who caused the tires to be stored or disposed of at the site in violation of this subtitle.

(b) 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 (a) of this section.

(c) Except as provided in subsection (d) of this section, the Department may recover costs incurred by the Department under § 9–275(b)(1) of this subtitle whether or not the discarded tires were disposed of or stored at the site before July 1, 1989.

(d) This section does not apply to expenditures related to removal, restoration, or remedial action in response to the disposal or storage of scrap tires in violation of this subtitle if the owner of a site where scrap tires were stored, disposed, or processed only before July 1, 1989:

(1) Is not engaged in the business of storage, disposal, or processing of scrap tires, hazardous substances, or other waste;

(2) Did not cause or allow scrap tires to be stored, disposed, or processed on the site; and

(3) Obtained the site or an interest in the site by inheritance, bequest, or otherwise at the death of the transferor prior to January 1, 2000.

§9–277.

(a) With the approval of the Board of Public Works, the Secretary shall adopt regulations that establish application procedures and criteria for the award of financial assistance under § 9–275(b)(3) of this subtitle.

(b) The criteria shall provide the basis for project priority rankings and shall include, as appropriate:

(1) The environmental or public health impacts caused by existing circumstances;

(2) Previous efforts expended to correct any existing problem;

(3) Financial capacity of the applicant;

(4) The problem prevention aspects of a proposed project;

(5) Cost effectiveness of a proposed project;

(6) Provisions for monitoring and review;

(7) The contribution of the proposed project toward meeting State and local solid waste plans and goals; and

(8) Measures to assure accountability for all funds awarded under § 9–275(b)(3) of this subtitle.

§9–278.

(a) To the extent not inconsistent with this subtitle, a grant, or loan, or loan guarantee agreement shall contain those conditions that the Secretary requires by regulation and that the Board of Public Works requires on a specific application for financial assistance in order to achieve the goals of this subtitle and to otherwise protect the interests of the State.

(b) A State loan extended under this subtitle:

(1) Shall bear at least the same rate of interest as the most recent State general obligation bond sale preceding the date of approval by the Board of Public Works; and

(2) Shall be repaid within 30 years.

(c) A loan guarantee of the principal of or interest on any commercial loan or obligation to finance the eligible cost of a project under this subtitle may only be made if:

(1) The applicant certifies that the applicant is unable to obtain on reasonable terms sufficient credit to finance its actual needs without the guarantee; and

(2) The Board of Public Works determines that there is a reasonable assurance of repayment of the loan obligation.

(d) The eligible cost of a project for State financial assistance under § 9–275(b)(3) of this subtitle may include only the costs of plans, specifications, equipment, construction, and rehabilitation or improvement as approved by the Department.

(e) State financial assistance under § 9–275(b)(3) of this subtitle may not exceed 50 percent of the eligible costs.

§9–281.

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

(b) (1) "Coal combustion by–products" means the residue generated by, or resulting from, the burning of coal.

(2) "Coal combustion by–products" includes fly ash, bottom ash, boiler slag, pozzolan, and other solid residuals removed by air pollution control devices from the flue gas and combustion chambers of coal–burning furnaces and boilers, including flue gas desulfurization sludge and other solid residuals recovered from flue gas by wet or dry methods.

(c) "Fund" means the State Coal Combustion By–Products Management Fund.

(d) (1) "Generator" means a person whose operations, activities, processes, or actions create coal combustion by–products.

(2) "Generator" does not include a person who only generates coal combustion by–products by burning coal at a private residence.

§9–282.

(a) There is a State Coal Combustion By–Products Management Fund.

(b) The Fund shall consist of:

(1) Fees collected by the Department under § 9–283 of this subtitle;

(2) Funds appropriated by the General Assembly for deposit to the Fund; and

(3) Any additional money made available from any sources, public or private, for the purposes for which the Fund has been established.

(c) (1) The Fund is a special, continuing, nonlapsing fund that is not subject to § 7–302 of the State Finance and Procurement Article.

(2) Notwithstanding any law to the contrary, unused money in the Fund may not revert to the General Fund.

(d) The Fund shall be maintained and administered by the Department in accordance with the provisions of this part and any regulations the Department adopts.

§9–283.

(a) Except as provided in subsection (c) of this section, by regulation, the Department shall establish and collect a fee to be paid by a generator of coal combustion by–products, based on a per ton rate of coal combustion by–products generated by the generator annually.

(b) The Department shall base the fees on the following factors:

(1) The total annual tonnage of coal combustion by–products that the generator generates;

(2) The type and volume of coal combustion by–products generated by the generator;

(3) Whether the generator uses or disposes of the coal combustion by–products;

(4) To the extent that the coal combustion by–products are used rather than disposed of, the types of the uses;

(5) Whether the coal combustion by–products are transported for use or disposal out–of–state; and

(6) Other factors the Department considers appropriate.

(c) The Department may not establish or impose a fee on coal combustion by–products that are:

(1) Beneficially used, as the Department determines; or

(2) Used for coal mine reclamation in accordance with regulations the Department adopts or with regulations of the receiving state.

(d) Fees imposed on coal combustion by–products that are transported for use or disposal out–of–state may not exceed 50% of the fees established for disposal in–State.

(e) The fees collected by the Department under this section shall be deposited into the Fund and used in accordance with § 9–284 of this subtitle.

(f) The fees imposed shall be set at the rate necessary to implement the purposes set forth in § 9–284 of this subtitle.

(g) In any fiscal year, if the fee schedule established by the Department generates revenue that exceeds the amount necessary to operate a regulatory program

to control the management of coal combustion by–products, the Department shall reduce the fees in the following fiscal year.

§9–284.

The Department shall use money in the Fund solely to administer and implement programs to control the disposal, use, beneficial use, recycling, processing, handling, storage, transport, or other requirements related to the management of coal combustion by–products, including all costs incurred by the State to:

(1) Review, inspect, and evaluate monitoring data, applications, licenses, permits, utilization requests, plans, analyses, and reports;

(2) Perform and oversee assessments, investigations, and research and remedial activities; and

(3) Develop, adopt, and implement regulations, programs, or initiatives to address risks to human health and the environment related to the management of coal combustion by–products.

§9–285.

Beginning November 1, 2010, the Department shall report each year to the General Assembly, in accordance with § 2–1246 of the State Government Article, on:

(1) The status of the Fund;

(2) Revenues of and expenditures from the Fund;

(3) The efficiency of the regulatory program under this part;

(4) Compliance rates within the regulatory program under this part; and

(5) Based on the factors listed in items (1) through (4) of this section, the necessity to review and adjust the fee in accordance with § 9–283(g) of this subtitle.

§9–286.

The Department shall adopt regulations to carry out this part.

§9–289.

(a) (1) In this part, "coal combustion by–product" means the residue generated by or resulting from the burning of coal.

(2) "Coal combustion by–product" includes:

(i) Fly ash;

(ii) Bottom ash;

(iii) Boiler slag;

(iv) Pozzolan, as defined in § 15–407 of this article; and

(v) Solid residuals removed by air pollution control devices from the flue gas and combustion chambers of coal–burning furnaces and boilers.

(b) On or before December 31, 2009, the Department shall submit to the Joint Committee on Administrative, Executive, and Legislative Review regulations regarding:

(1) Fugitive air emissions from the transportation of coal combustion by–products in the State; and

(2) The permissible beneficial uses of coal combustion by–products in the State.

§9–290.

The Department may not issue a permit under this title to install a new refuse disposal system that would accept coal combustion by–products for disposal or for new noncoal mine reclamation using coal combustion by–products if the refuse disposal system or noncoal mine reclamation would be located in a critical area, as defined under § 8–1802 of the Natural Resources Article.

§9–301.

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

(b) "Board" means the Water Science Advisory Board.

(c) "Discharge permit" means a permit issued by the Department for the discharge of any pollutant or combination of pollutants into the waters of this State.

(d) "Person" includes the federal government, this State, any county, municipal corporation, or other political subdivision of this State, or any of their units.

(e) "Reclaimed water" means sewage that:

(1) Has been treated to a high quality suitable for various reuses; and

(2) Has a concentration of less than:

(i) 3 fecal coliform colonies per 100 milliliters;

(ii) 10 milligrams per liter of 5-day biological oxygen demand; and

(iii) 10 milligrams per liter of total suspended solids.

(f) "Sewage" means any human or animal excretion, domestic waste, or industrial waste.

(g) (1) "Sewerage system" means:

(i) The channels used or intended to be used to collect and dispose of sewage; and

(ii) Any structure and appurtenance used or intended to be used to collect or prepare sewage for discharge into the waters of this State.

(2) "Sewerage system" includes any sewer of any size.

(3) "Sewerage system" does not include the plumbing system inside any building served by the sewerage system.

§9–302.

(a) The purpose of this subtitle is to establish effective programs and to provide additional and cumulative remedies to prevent, abate, and control pollution of the waters of this State.

(b) Because the quality of the waters of this State is vital to the interests of the citizens of this State, because pollution is a menace to public health and welfare, creates public nuisances, harms wildlife, fish, and aquatic life, and impairs domestic, agricultural, industrial, recreational, and other legitimate beneficial uses of water, and because the problem of water pollution in this State is closely related to the problem of water pollution in adjoining states, it is the policy of this State:

(1) To improve, conserve, and manage the quality of the waters of this State;

(2) To protect, maintain, and improve the quality of water for public supplies, propagation of wildlife, fish, and aquatic life, and domestic, agricultural, industrial, recreational, and other legitimate beneficial uses;

(3) To provide that no waste is discharged into any waters of this State without first receiving necessary treatment or other corrective action to protect the legitimate beneficial uses of the waters of this State;

(4) Through innovative and alternative methods of waste and wastewater treatment, to provide and promote prevention, abatement, and control of new or existing water pollution; and

(5) To promote and encourage the use of reclaimed water in order to conserve water supplies, facilitate the indirect recharge of groundwater, and develop

an alternative to discharging wastewater effluent to surface waters, thus pursuing the goal of the Clean Water Act to end the discharge of pollutants and meet the nutrient reduction goals of the Chesapeake Bay Agreement.

(c) (1) The Department shall cooperate with local governments, agencies of other states, and the federal government in carrying out the objectives of subsection (b) of this section.

(2) The Department may consult with the State Plumbing Board, as appropriate, on matters relating to the objectives of subsection (b)(5) of this section.

§9–303.

This subtitle does not take away the right of any person, as a riparian owner or otherwise, in equity, at common law, or under statutory law to suppress a nuisance or abate pollution.

§9–303.1.

(a) The Department shall encourage the use of reclaimed water as an alternative to discharging wastewater effluent into the surface waters of the State.

(b) Reclaimed water may be used for irrigation of:

(1) Farmland;

(2) Golf courses;

(3) Athletic fields;

(4) Turf;

(5) Landscaping; and

(6) Any other use that the Department considers appropriate.

(c) The Department may establish buffer and setback requirements for the use of reclaimed water under subsection (b) of this section as follows:

(1) From potable wells and surface water intakes, up to 100 feet;

(2) From intermittent and perennial streams and residential structures, up to 25 feet;

(3) From schools and playgrounds, up to 50 feet; and

(4) From public roads and residential property lines, up to 25 feet.

§9–305.

There is a Water Science Advisory Board.

§9–306.

(a) (1) The Board consists of 9 members appointed by the Governor.

(2) Of the Board members:

(i) 1 shall be appointed from a list of at least 3 qualified individuals submitted to the Governor by the Chancellor of the University System of Maryland;

(ii) 1 shall be appointed from a list of at least 3 qualified individuals submitted to the Governor by the President of The Johns Hopkins University; and

(iii) 7 shall be representatives of institutions of higher learning, private industry, or agencies of government or other public bodies that normally are not associated with water pollution control activities.

(b) Each member shall be an individual who has scientific or technical expertise.

(c) (1) The term of a member is 5 years.

(2) The terms of members are staggered as required by the terms provided for members of the Board on July 1, 1982. The terms of those members end as follows:

(i) 2 in 1983;

(ii) 1 in 1984;

(iii) 2 in 1985;

(iv) 2 in 1986; and

(v) 2 in 1987.

(3) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(4) If a member who was appointed from a list required by subsection (a) of this section dies, resigns, or otherwise ceases to be a member, a successor shall be appointed from a list submitted to the Governor in the manner required by subsection (a) of this section.

(5) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(6) A member may be appointed to successive terms.

§9–307.

From among the Board members, the Governor shall appoint a chairman and a vice chairman.

§9–308.

(a) The Governor shall appoint a Board secretary.

(b) The Board secretary may, but need not, be a member of the Board.

(c) The Board secretary:

(1) May not receive compensation; but

(2) Is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

§9–309.

(a) The Board shall meet at the times and places that the Governor or the chairman determines.

(b) A member of the Board:

(1) May not receive compensation; but

(2) Is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

§9–310.

The purpose of the Board is to provide State water pollution control programs with the advice and assistance of the scientific capabilities of institutions of higher learning, private industry, and agencies of government and other public bodies that normally are not associated with water pollution control activities.

§9–313.

(a) The Department may adopt rules and regulations to carry out the provisions of this subtitle.

(b) In adopting any rule or regulation under this subtitle, the Department shall consider:

(1) Existing physical conditions;

(2) The character of the area involved, including surrounding land uses;

(3) Priority ranking of waters as to effluent limits;

(4) Zoning;

(5) The nature of the existing receiving body of water;

(6) The technical feasibility of measuring or reducing the particular type of water pollution;

(7) The economic reasonableness of measuring or reducing the particular type of water pollution; and

(8) The purposes of this subtitle.

(c) Except as this subtitle otherwise provides for a particular type of rule or regulation, a rule or regulation adopted under this subtitle may:

(1) Impose, as circumstances require, different requirements for different pollutant sources and for different geographical areas;

(2) Apply to sources located outside this State that cause, contribute to, or threaten environmental damage in this State; and

(3) Make special provisions for alert and abatement standards and procedures for occurrences or emergencies of pollution or on other short term conditions that are an acute danger to health or to the environment.

§9–314.

(a) The Department may adopt rules and regulations that set, for the waters of this State, water quality standards and effluent standards. These standards shall be designed to protect:

(1) The public health, safety, and welfare;

(2) Present and future use of the waters of this State for public water supply;

(3) The propagation of aquatic life and wildlife;

(4) Recreational use of the waters of this State; and

(5) Agricultural, industrial, and other legitimate uses of the waters of this State.

(b) The rules and regulations adopted under this section shall include at least the following:

(1) Water quality standards that specify the maximum permissible short

term and long term concentrations of pollutants in the water, the minimum permissible concentrations of dissolved oxygen and other desirable matter in the water, and the temperature range for the water.

(2) Effluent standards that specify the maximum loading or concentrations and the physical, thermal, chemical, biological, and radioactive properties of wastes that may be discharged into the waters of this State.

(3) Definition of technique for filling and sealing abandoned water wells and holes, for disposal wells, for deep mines and surface mines, and for landfills to prevent groundwater contamination, seepage, and drainage into the waters of this State.

(4) Requirements for the sale, offer, use, or storage of pesticides and other substances that the Department finds to constitute water pollution hazards.

(5) Procedures for water pollution incidents or emergencies that constitute an acute danger to health or the environment.

(6) Provisions for equipment and procedures for monitoring pollutants, collecting samples, and logging and reporting of monitoring.

(c) Effluent standards set under this section shall be at least as stringent as those specified by the National Pollutant Discharge Elimination System.

§9–315.

Except as provided in § 4-405 of this article, the Department may adopt procedural rules and regulations as necessary to carry out the provisions of this subtitle.

§9–316.

(a) The Department may not adopt any rule or regulation under this subtitle unless the requirements of this section and the Administrative Procedure Act are met.

(b) Before adopting any rule or regulation under this subtitle, the Department shall announce and hold a public hearing on the subject.

(c) (1) Before the public hearing, the Department shall publish notice of the hearing.

(2) The notice shall state:

(i) The date, time, and place of the hearing;

(ii) The general subject of the rules and regulations that are to be considered at the hearing; and

(iii) If appropriate, the specific waters for which standards are sought

to be adopted, amended, or repealed.

(d) At the public hearing, any interested person may submit information or views, orally or in writing.

§9–317.

The Department shall publish annually on its Web site the total amount of:

(1) Sewage overflow, in gallons, from State sewerage systems into the Chesapeake Bay and its tributaries during the previous year; and

(2) Fines collected as a result of sewage overflows into the Chesapeake Bay and its tributaries during the previous year.

§9–318.

(a) The Department may cooperate with any appropriate agency to train personnel needed in the area of water pollution control.

(b) To provide the training authorized by subsection (a) of this section, the Department of the Environment and the Department of Natural Resources may contract with any appropriate institution of higher learning or any appropriate unit:

(1) To develop the needed curricula; and

(2) To support training courses.

§9–319.

(a) In addition to the powers and duties set forth elsewhere in this subtitle, the Department has the following powers and duties:

(1) To administer and enforce this subtitle and the rules and regulations adopted under this subtitle;

(2) To develop comprehensive programs and plans for the prevention, control, and abatement of pollution of the waters of this State;

(3) To advise, consult, and cooperate with other units of this State, the federal government, other State and interstate agencies, affected groups, political subdivisions, and industries to carry out the provisions of this subtitle;

(4) To accept and administer loans and grants from the federal government and other sources, public or private, to carry out any of the Department's functions;

(5) To encourage, participate in, finance, or conduct studies, investigations, research, or demonstrations that relate to water pollution or its causes,

prevention, control, or abatement;

(6) To collect and give out information about water pollution and its prevention, control, and abatement;

(7) To issue, modify, or revoke orders and permits that prohibit discharges of pollutants into the waters of this State or to adopt any other reasonable remedial measures to prevent, control, or abate pollution or undesirable changes in the quality of the waters of this State;

(8) Through the Secretary or a hearing officer who is designated in writing by the Secretary, to hold hearings, to issue hearing notices and subpoenas that require the attendance of witnesses and production of evidence, to administer oaths, and to take necessary testimony;

(9) To apply and enforce against industrial users of publicly owned treatment works toxic effluent standards and pretreatment requirements for the introduction into treatment works of pollutants that interfere with, pass through, or otherwise are incompatible with the treatment works; and

(10) To exercise every incidental power necessary to carry out the provisions of this subtitle.

(b) To carry out the provisions of this subtitle, the Department of the Environment and the Department of Natural Resources may:

(1) Conduct studies, surveys, investigations, research, and analyses; and

(2) Employ consultants.

§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;

(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:

(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;

(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) Correcting to the extent possible the failure to implement or maintain erosion and sediment controls;

(4) Administration of the sediment control program;

(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;

(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

(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) An expenditure that the Department makes under subsection (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.

(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)(5) of this section.

(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.

(g) Notwithstanding any law to the contrary, 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.

(h) On or before January 15 of each year, the Department shall report to the Senate Education, Health, and Environmental Affairs Committee and the House Environmental Matters Committee, in accordance with § 2–1246 of the State Government Article, on the status of the Maryland Clean Water Fund, including a detailed description of all revenues and expenditures of the Fund for the previous year.

§9–321.

The Secretary of the Environment and the Secretary of Natural Resources jointly shall:

(1) Develop and implement a comprehensive program to monitor the quality of the waters and living resources of the Chesapeake Bay;

(2) Cooperate with other states in the Chesapeake Bay region and with the United States Environmental Protection Agency and other state and federal agencies, as appropriate; and

(3) Report every 2 years to the General Assembly on the results of this monitoring program and the status of the resources of the Chesapeake Bay.

§9–321.1.

(a) The definitions in § 5-901 of the Agriculture Article apply in this section.

(b) The Department shall:

(1) Develop by December 1, 1988 a water quality standard for the concentration of tributyltin in the waters of the State that is sufficient for the

protection of aquatic life; and

(2) Regulate point sources of release of tributyltin in accordance with the water quality standard developed under paragraph (1) of this subsection.

§9–322.

Except as provided in this subtitle and Title 4, Subtitle 4 of this article and the rules and regulations adopted under those subtitles, a person may not discharge any pollutant into the waters of this State.

§9–323.

(a) A person shall hold a discharge permit issued by the Department before the person may construct, install, modify, extend, alter, or operate any of the following if its operation could cause or increase the discharge of pollutants into the waters of this State:

(1) An industrial, commercial, or recreational facility or disposal system;

(2) A State–owned treatment facility; or

(3) Any other outlet or establishment.

(b) By rule or regulation, the Department may require a discharge permit for any other activity.

§9–324.

(a) Subject to the provisions of this section, the Department may issue a discharge permit if the Department finds that the discharge meets:

(1) All applicable State and federal water quality standards and effluent limitations; and

(2) All other requirements of this subtitle.

(b) Before issuing a discharge permit, the Department shall comply with the provisions of Title 1, Subtitle 6 of this article.

(c) The information meeting required by Title 1, Subtitle 6 of this article shall be held in the geographical area that will be most directly affected if the discharge permit is issued.

(d) The Department shall give public notice of each application for a discharge permit as required by Title 1, Subtitle 6 of this article, and by making available to the public appropriate documents, permit applications, supporting material, plans, and other relevant information.

§9–325.

(a) The Department may adopt rules and regulations that relate to application for, issuance of, revocation of, or modification of discharge permits. The rules and regulations may require submission of plans, specifications, and other information.

(b) The rules and regulations adopted under this section shall set a reasonable application fee in an amount designed to cover the cost of the permit procedure.

(c) (1) The rules and regulations adopted under this section shall set a reasonable permit fee schedule for industrial users based on:

(i) The anticipated cost of monitoring and regulating the permitted facility;

(ii) The flow of effluent discharge from the permitted facility; and

(iii) The anticipated needs for program development activities that relate to management of the discharge of pollutants into the waters of this State.

(2) In adopting the rules and regulations under this subsection, the Department shall consult with industry and provide that the permit fee not exceed a certain dollar amount.

§9–326.

(a) (1) The Department may make the issuance of a discharge permit contingent on any conditions the Department considers necessary to prevent violation of this subtitle.

(2) In permits for the discharge of pollutants from publicly owned treatment works, the Department:

(i) May impose as conditions appropriate measures to establish and insure compliance by industrial users with any system of user charges required by State or federal law or by any rule, regulation, or guideline adopted under State or federal law; and

(ii) Shall impose as conditions requirements for the permit holder to provide information about new introductions of pollutants or substantial changes in the volume or character of pollutants being introduced into the treatment works.

(b) Issuance of a discharge permit is contingent on the grant by the permit holder to the Department of a right of entry on the permit site at any reasonable time to inspect and investigate for violation or potential violation of any condition of the permit.

§9–327.

The Department may refuse to issue a discharge permit if:

(1) The applicant fails or refuses to allow any representative of the Department to inspect the proposed permit site;

(2) The Department finds that issuance of the permit would violate any State or federal law or any rule or regulation adopted under any State or federal law; or

(3) The applicant fails or refuses to pay the permit fee assessed under § 9–325(c) of this subtitle.

§9–328.

(a) (1) Unless it is renewed for another term, a discharge permit expires on the expiration date the Department sets at issuance or renewal.

(2) The Department may not issue a discharge permit for a term longer than 5 years.

(b) Before a discharge permit expires, the Department may renew the discharge permit for another term:

(1) After administrative review in accordance with the rules and regulations that the Department adopts;

(2) After notice and opportunity for public hearing on the subject;

(3) On the condition that the discharge meets or will meet:

(i) Any applicable State or federal water quality standards or effluent limitations; and

(ii) Any applicable requirement of this subtitle; and

(4) If the permit holder pays all application and permit fees assessed by the Department under this subtitle.

(c) Administrative review proceedings under this section shall be completed at least 60 days before the expiration date of the permit.

§9–329.

(a) Except as otherwise prohibited in subsection (b) of this section, the Department may issue a permit that allows the use of chlorine or chlorine compounds in treatment of wastewaters discharged from any publicly or privately owned sewage treatment plant to any surface waters of this State only if the treatment of the

wastewaters includes dechlorination.

(b) (1) This subsection is not effective unless matching federal funds are available to implement the provisions of paragraph (4) of this subsection.

(2) This subsection does not apply to sewerage treatment facilities that discharge an amount of treated sewage less than 1 percent of the 7-day, 10-year low flow of the receiving stream.

(3) The Department may not issue a permit that allows the use of chlorine or chlorine compounds in the treatment of wastewaters discharged into any waters of this State that are designated by the Department as natural trout waters and their tributaries.

(4) (i) This subsection applies to any local subdivision that owns or operates an existing treatment system that is required to convert from use of chlorination to another system in order to be permitted under this subtitle.

(ii) If the local subdivision applied for assistance from the Environmental Protection Agency on or before September 30, 1981, the conversion costs not funded by the Environmental Protection Agency may be covered with State funds as provided in the State budget.

(iii) If the local subdivision failed to apply for assistance from the Environmental Protection Agency on or before September 30, 1981, conversion costs ordinarily met by the Environmental Protection Agency and this State shall be the responsibility of the local subdivision.

§9–329.1.

(a) This section does not apply to:

(1) A publicly or privately owned sewage treatment plant; or

(2) The discharge of any chlorine or chlorine products that are present due to their occurrence as a natural constituent of saline water.

(b) A person who has a discharge permit may not discharge chlorine or chlorine products into the Chesapeake Bay or its tributaries during April and May of any year at a level that is greater than the chlorine discharge level that is applicable to a publicly or privately owned sewage treatment plant under § 9-329 of this subtitle.

§9–329.2.

(a) Except as provided in this section and notwithstanding any other provision of this article, on or after July 1, 1988 a person may not discharge any chlorine or chlorine products into the Chesapeake Bay or its tributaries in excess of a concentration that the Department of the Environment, in consultation with the

Department of Natural Resources, determines to be the lowest practicably attainable concentration.

(b) To determine the allowable concentrations of chlorine or chlorine products under this section, the Secretary of the Environment, in consultation with the Secretary of Natural Resources, shall adopt regulations that:

(1) Use the best practicable management technologies; and

(2) Set forth approved monitoring technologies.

(c) (1) A person may apply to the Department of the Environment for an exception under subsection (a) of this section.

(2) The Department of the Environment, in consultation with the Department of Natural Resources, may grant an exception under subsection (a) of this section to an applicant if the application sets forth compliance schedules acceptable to the Department.

(d) An owner of a vessel that is equipped with a marine sanitation device that meets the requirements of 33 C.F.R. 159 shall automatically be excepted from the provisions of subsection (a) of this section.

§9–330.

The Department may revoke any discharge permit if the Department finds that:

(1) False or inaccurate information was contained in the application;

(2) Conditions or requirements of the discharge permit have been or are about to be violated;

(3) Substantial deviation from plans, specifications, or requirements has occurred;

(4) The Department has been refused entry to the premises for the purpose of inspecting to insure compliance with the conditions of the discharge permit;

(5) A change in conditions exists that requires temporary or permanent reduction or elimination of the permitted discharge;

(6) Any State or federal water quality stream standard or effluent standard has been or is threatened to be violated; or

(7) Any other good cause exists for revoking the discharge permit.

§9–331.

By rule, regulation, order, permit, or otherwise, the Department may require the

owner or operator of any source of a discharge of pollutants or of any source that is an industrial user of a publicly owned treatment works:

(1) To keep records;

(2) To make reports;

(3) To install, calibrate, use, and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods;

(4) To sample discharges in accordance with the methods, at the locations, at the intervals, and in the manner the Department requires; and

(5) To provide to the Department any information that the Department reasonably requires about:

(i) Discharge of pollutants into the waters of this State; or

(ii) Introduction of pollutants into publicly owned treatment works.

§9–331.1.

(a) (1) The owner or operator of any sanitary sewer system, combined sewer system, or wastewater treatment plant shall report to the Department any sewer overflow or treatment plant bypass that results in the direct or potential discharge of raw or diluted sewage into the surface waters or groundwaters of the State.

(2) The report shall be made by telephone as soon as practicable but no later than 24 hours after the time that the operator or owner became aware of the event.

(3) Within 5 calendar days after the telephone notification of the event, the owner or operator shall provide the Department with a written report regarding the incident that includes any information required by the Department.

(b) The Department, in cooperation with the Department of Health and Mental Hygiene, the local health departments, and local environmental health directors, shall develop procedures for requiring the owner or operator of any sanitary sewer system, combined sewer system, or wastewater treatment plant to provide public notification of a sewage overflow.

(c) (1) The Department of Health and Mental Hygiene and the local health departments shall make all decisions and determinations as to public health issues resulting from sewer overflows or treatment bypasses.

(2) The owner or operator of any sanitary sewer system, combined sewer system, or wastewater treatment plant is not responsible for making public health determinations regarding sewer overflow or treatment plant bypasses.

(d) The Department shall adopt regulations to implement the requirements of this section.

§9–332.

(a) A person may not introduce any pollutant, either directly or indirectly, into a publicly owned treatment works, or into any conveyance leading to a publicly owned treatment works, in violation of any applicable pretreatment requirements including federal pretreatment standards, State requirements, local ordinances, or any pretreatment agreement.

(b) The Secretary may delegate to owners of publicly owned treatment works the authority to apply and enforce State pretreatment requirements against industrial users.

(c) The Secretary may determine which publicly owned treatment works are or may be adversely impacted by industrial users and may require the owners of those publicly owned treatment works to develop and maintain programs which meet State pretreatment requirements.

(d) This section shall not be construed to limit any other provision of law imposing any restriction or prohibition relating to the discharge or disposal of pollutants or controlled hazardous wastes.

§9–333.

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

(2) "Pump-out facility" means a facility that pumps or receives human body wastes out of type III marine sanitation devices (holding tanks) on vessels.

(3) (i) "Waste reception facility" means a facility specifically designed to receive wastes from portable toilets carried on vessels.

(ii) "Waste reception facility" does not include a rest room facility.

(b) This section applies to any public or private marina that is located on the navigable waters of the State.

(c) A person may not construct any additional slips at an existing marina that is capable of berthing vessels 22 feet or larger that would result in a total slip capacity of more than 10 slips or construct a new marina that is capable of berthing vessels 22 feet or larger with more than 10 slips on the navigable waters of the State unless:

(1) The wastewater collection and treatment system at the marina is adequate to handle any existing and increased flow; and

(2) There is a pump-out station on-site at the marina that is adequate to

handle the increased sewage capacity from vessels that use the marina and that is operable and accessible at reasonable times.

(d) Unless a postponement is granted under subsection (e) of this section:

(1) By July 1, 1995, a marina that berths any vessel that is over 22 feet in length and has 200 or more slips shall have a pump-out facility and a waste reception facility on-site that is operable, adequate to handle any existing and increased flows, and accessible at reasonable times;

(2) By July 1, 1996, a marina that berths any vessel that is over 22 feet in length and has 100 or more slips shall have a pump-out facility and a waste reception facility on-site that is operable, adequate to handle any existing and increased flows, and accessible at reasonable times; and

(3) By July 1, 1997, a marina that berths any vessel that is over 22 feet in length and has 50 or more slips shall have a pump-out facility and a waste reception facility on-site that is operable, adequate to handle any existing and increased flows, and accessible at reasonable times.

(e) (1) (i) Upon application by a marina owner or operator, the Secretary may grant a postponement of a requirement of subsection (d) of this section.

(ii) A postponement under this subsection:

1. May not be for more than 3 years; and

2. May not be renewed more than once and may not be renewed for more than 3 years.

(2) An application for a postponement or a renewed postponement under this subsection must be filed with the Secretary not less than 6 months before the applicable deadline.

(3) (i) Within 15 days following receipt of an application for a postponement under this subsection, the Secretary shall forward a copy of the application to the Department of Natural Resources.

(ii) The Department of Natural Resources shall provide its written comments, if any, within 60 days following receipt of the original application under this subsection.

(iii) If no comments have been received from the Department of Natural Resources within 60 days following receipt of the original application, the application shall be processed with the assumption that there are no objections by the Department of Natural Resources.

(4) In deciding whether to grant a postponement or a renewed

postponement under this subsection, the Secretary shall consider:

(i) Whether sufficient public funds are available to assist the marina owner or operator in meeting the requirements of subsection (d) of this section; and

(ii) If sufficient public funds are not available, whether compliance with the requirements of subsection (d) of this section would represent an economic hardship to the marina owner or operator.

(5) (i) The Secretary shall issue a decision on an application for postponement or renewed postponement under this subsection within 90 days following the original receipt of the application.

(ii) If no action has been taken by the Secretary within 90 days following the original receipt of the application, the postponement or renewed postponement shall be considered granted for a period of 3 years.

§9–334.

(a) The Department shall issue a written complaint if the Department has reasonable grounds to believe that the person to whom the complaint is directed has violated:

(1) This subtitle;

(2) Any rule or regulation adopted under this subtitle; or

(3) Any order or permit issued under this subtitle.

(b) A complaint issued under this section shall:

(1) Specify the provision that allegedly has been violated; and

(2) State the alleged facts that constitute the violation.

§9–335.

(a) After or concurrently with service of a complaint under this subtitle, the Department may:

(1) Issue an order that requires the person to whom the order is directed to take corrective action within a time set in the order;

(2) Send a written notice that requires the person to whom the notice is directed to file a written report about the alleged violation; or

(3) Send a written notice that requires the person to whom the notice is directed:

(i) To appear at a hearing before the Department at a time and place the Department sets to answer the charges in the complaint; or

(ii) To file a written report and also appear at a hearing before the Department at a time and place the Department sets to answer the charges in the complaint.

(b) Any order issued under this section is effective immediately, according to its terms, when it is served.

§9–336.

(a) Any complaint, order, notice, or other instrument issued by the Department under this subtitle may be served on the person to whom it is directed:

(1) In accordance with § 1–204 of this article; or

(2) By publication.

(b) If service is made by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, the person who mails the document shall file with the Department verified proof of mailing.

(c) Any notice that requires filing of a report, attendance at a hearing, or both shall be served at least 10 days before the earlier of:

(1) The time set for the hearing, if any; or

(2) The time set for the filing of the report, if any.

§9–337.

(a) The Department shall give notice and hold any hearing under this subtitle in accordance with the Administrative Procedure Act.

(b) (1) Within 10 days after being served with an order under § 9-335(a)(1) of this subtitle, the person served may request in writing a hearing before the Department.

(2) If a request for a hearing is made under this subsection, the Department shall:

(i) Hold the hearing within 10 days after receiving the request; and

(ii) Render a decision within 10 days after the hearing.

(c) Within 10 days after being served with a notice under § 9-335(a)(2) of this subtitle, the person served may request in writing a hearing before the Department.

(d) The Department may make a verbatim record of the proceedings of any hearing held under this subtitle.

(e) (1) In connection with any hearing under this subtitle, the Department may:

(i) Subpoena any person or evidence; and

(ii) Order a witness to give evidence.

(2) A subpoenaed witness shall receive the same fees and mileage reimbursement as if the hearing were part of a civil action.

(3) If a person fails to comply with a subpoena or order issued under this subsection, on petition of the Department, a circuit court, by order, may:

(i) Compel obedience to the Department's order or subpoena; or

(ii) Compel testimony or the production of evidence.

(4) The court may punish as a contempt any failure to obey its order issued under this section.

§9–338.

(a) (1) Unless the person served with an order under § 9-335(a)(1) of this subtitle makes a timely request for a hearing, the order is a final order.

(2) If the person served with an order under § 9-335(a)(1) of this subtitle makes a timely request for a hearing, the order becomes a final corrective order when the Department renders its decision following the hearing.

(b) (1) If the Department issues a notice under § 9-335(a)(2) or (3) of this subtitle, the Department may not issue an order that requires corrective action by the person to whom the notice is directed until after the later of:

(i) The time set for the hearing, if any; and

(ii) The time set for filing of the report, if any.

(2) After the time within which the Department may not issue a corrective order has passed, if the Department finds that a violation of this subtitle has occurred, the Department shall issue an order that requires correction of the violation within a time set in the order.

(3) Any order issued under this subsection is a final corrective order and the person to whom the order is directed is not entitled to a hearing before the Department as a result of the order.

(c) The Department shall:

(1) Take action to secure compliance with any final corrective order; and

(2) If the terms of the final corrective order are violated or if a violation is not corrected within the time set in the order, sue to require correction of the violation.

(d) This section does not prevent the Department or the Attorney General from taking action against a violator before the expiration of the time limitations or schedules in the order.

§9–339.

(a) The Department may bring an action for an injunction against any person who violates any provision of this subtitle or any rule, regulation, order, or permit adopted or issued by the Department under this subtitle.

(b) In any action for an injunction under this section, any finding of the Department after a hearing is prima facie evidence of each fact the Department determines.

(c) On a showing that any person is violating or is about to violate this subtitle or any rule, regulation, order, or permit adopted or issued by the Department, the court shall grant an injunction without requiring a showing of a lack of an adequate remedy at law.

(d) If an emergency arises from imminent danger to the public health, to the public welfare, or to the environment, the Department may sue for an immediate injunction to stop any pollution or other activity that is causing the danger.

§9–340.

(a) Any person aggrieved by a final decision of the Department in connection with an order or permit issued under this subtitle may take a direct judicial appeal.

(b) The appeal shall be made as provided for judicial review of final decisions in the Administrative Procedure Act.

§9–341.

(a) If any condition of a permit for discharges from a publicly owned treatment works is violated, the Department, by corrective order or by request for injunctive action under this subtitle, may restrict or prohibit the introduction of any pollutant into the treatment works by any source that did not use the treatment works before the time of the finding that the condition was violated.

(b) If the Department finds that an industrial user is not in compliance with a system of user charges required under State law or federal law, or with a condition of

a permit issued by the Department to the publicly owned treatment works into which the industrial user is introducing pollutants, the Department may enforce or apply the system of user charges directly against the industrial user by corrective order or by requesting injunctive action under 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 $10,000 for each violation, but not exceeding $100,000 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.

(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.

§9–342.1.

(a) (1) In this section, "sewage treatment plant" means any publicly or privately owned facility that is:

(i) Constructed to receive primarily and treat human sewage; and

(ii) Subject to a State discharge permit.

(2) For purposes of this section, "sewage treatment plant" means only those plants that have a discharge permit that was issued on the basis of a discharge of 500,000 gallons or more per day.

(b) (1) In this subsection, "significant violation" means a monthly average discharge as expressed in milligrams per liter that is equal to or greater than:

(i) 1.4 times the effluent limitation allowed by the discharge permit for biochemical oxygen demand; or

(ii) 1.2 times the effluent limitation allowed by the discharge permit for:

1. Suspended solids; or

2. Total Kjeldahl nitrogen (TKN).

(2) (i) If a sewage treatment plant is in significant violation of any effluent limitation under this subsection, the owner shall pay an administrative penalty of $10 for each pound that is discharged in excess of its discharge permit under this subsection.

(ii) A penalty for each significant violation of each of the effluent limitations of this subsection may not exceed $5,000 per month.

(c) (1) In this subsection, "significant violation" means a monthly average discharge as expressed in milligrams per liter that is equal to or greater than 1.2 times the effluent limitation allowed by the discharge permit for any 2 months in a consecutive 6-month period for:

(i) Phosphorus; or

(ii) Nitrogen.

(2) (i) If a sewage treatment plant is in significant violation of any effluent limitation under this subsection, the owner shall pay an administrative penalty of $10 for each pound that is discharged in excess of its discharge permit under this subsection.

(ii) A penalty for each significant violation of each of the effluent limitations of this subsection may not exceed $5,000 per month.

(d) (1) In this subsection, "significant violation" means more than 10% of the instantaneous measurements for dissolved oxygen in the effluent, measured over a period of 1 month, that violate the minimum dissolved oxygen permit limit.

(2) If a sewage treatment plant is in significant violation of the effluent limitation under this subsection, the owner shall pay an administrative penalty of $5,000 for each significant violation under this subsection.

(e) (1) In this subsection, "significant violation" means more than 10% of the instantaneous measurements of effluent pH or chlorine, over a period of 1 month, that violate the range for pH or the maximum limit for chlorine in the discharge permit.

(2) The owner of a sewage treatment plant shall pay an administrative penalty of $5,000 for each effluent limitation in a month for which a significant violation occurs under this subsection.

(f) (1) Penalties required by this section shall be:

(i) Calculated on the basis of:

1. The monthly discharge monitoring report filed by each sewage treatment plant; and

2. Any other discharge monitoring information that may be compiled by the Department; and

(ii) Assessed on a monthly basis.

(2) (i) Unless a hearing is requested, all penalties for any significant violation under this section shall be paid to the Department within 90 days of the end of the calendar month in which the significant violation occurred.

(ii) If a hearing is requested, all penalties for any significant violation under this section shall be paid to the Department within 30 days after the decision of the hearing officer.

(g) (1) Penalties for the sum of all significant violations under subsections (b), (c), (d), and (e) of this section may not exceed $25,000 per month for any sewage treatment plant.

(2) The penalties required to be imposed under this section are in addition to any other penalties provided by law.

(h) Any person required to pay a penalty under this section shall have the right to a hearing but may waive that right in writing.

(i) (1) Except as provided in paragraph (2) of this subsection, a penalty imposed under this section may not be:

(i) Waived;

(ii) Reduced; or

(iii) Used to assist the penalized person in upgrading a sewage treatment plant.

(2) A penalty imposed under this section may be waived by the Department:

(i) If the discharge was due to:

1. An act of God; or

2. A power outage or a massive discharge of any pollutant that could not reasonably have been anticipated by the owner or operator of the plant; or

(ii) As long as the sewage treatment plant:

1. A. Is in compliance with a compliance schedule contained in an order issued by the Department; and

B. Meets all interim effluent limitations established by the

Department; or

2. A. Has recently upgraded to meet more stringent standards and is operating under a start-up program and schedule approved by the Department;

B. Is implementing operational modifications to accomplish biological nutrient removal under a program and schedule approved by the Department; or

C. Is accomplishing major maintenance or facility repair under a program and schedule approved by the Department; or

(iii) If compliance with the effluent limitations set forth in this section is prevented by a judicial or administrative action initiated by a person other than an agency responsible for regulating the sewage treatment plant or the owner or operator of the sewage treatment plant.

(3) For purposes of the waiver allowed in paragraph (2)(ii) of this subsection, the Department may not issue any waiver if the compliance schedule in effect as of October 1, 1992 or any subsequent compliance schedule is modified by the Department, except that a waiver may be allowed if:

(i) The violator applies in writing for a waiver and clearly demonstrates that extraordinary circumstances prevent compliance; and

(ii) The Department determines that the violator has acted in good faith to meet all effluent limitations and has failed to comply because of extraordinary circumstances that have been documented by clear and convincing evidence.

(j) The Department shall deposit the penalties collected under this section in the Maryland Clean Water Fund created under § 9-320 of this subtitle.

(k) The Department shall collect the penalties required to be imposed under this section beginning January 1, 1993 and on the first day of each subsequent month.

§9–342.2.

(a) A person who discharges a pollutant into the waters of the State in violation of § 9–322 or § 9–323 of this subtitle shall reimburse the Department for the reasonable costs incurred by the Department in conducting environmental health monitoring or testing, including the cost of collecting and analyzing soil samples, surface water samples, or groundwater samples for the purpose of assessing the effect on public health and the environment of the person's discharge.

(b) The Department may recover costs that are reimbursable under subsection (a) of this section in a civil action.

§9–343.

(a) (1) A person who violates any provision of or fails to perform any duty imposed by this subtitle, or who violates any provision of or fails to perform any duty imposed by a rule, regulation, order, or permit adopted or issued under this subtitle, is guilty of a misdemeanor and on conviction is subject to:

(i) For a first offense, a fine not exceeding $25,000 or imprisonment not exceeding 1 year or both; or

(ii) If the conviction is for a violation committed after a first conviction of the person under this subsection, a fine not exceeding $50,000 for each day of violation or imprisonment not exceeding 2 years or both.

(2) In addition to any criminal penalties imposed on a person convicted under this subsection, the person may be enjoined from continuing the violation.

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

(b) A person is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $50,000 or imprisonment not exceeding 2 years or both if the person:

(1) Knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this subtitle or any rule, regulation, order, or permit adopted or issued under this subtitle; or

(2) Falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this subtitle or any rule, regulation, order, or permit adopted or issued under this subtitle.

§9–344.

(a) The Attorney General shall take charge of, prosecute, and defend on behalf of this State every case arising under the provisions of this subtitle, including the recovery of penalties.

(b) The provisions of this section may not limit or affect the power or authority of State's Attorneys under § 15–102 of the Criminal Procedure Article.

§9–345.

(a) There is a Water Pollution Control Fund consisting of moneys made available under water quality loan authorizations or by funds appropriated in the State budget.

(b) The Board of Public Works, upon the recommendation of the Secretary, may

award financial assistance for the following types of projects:

(1) Construction of sewerage systems under §§ 9–347 and 9–348 of this subtitle;

(2) Industrial user pretreatment projects under § 9–349 of this subtitle;

(3) Best management practices to control or prevent agriculturally related nonpoint source pollution under § 9–350 of this subtitle and Title 8, Subtitle 7 of the Agriculture Article; and

(4) Practices to reduce pollution from stormwater runoff in existing urbanized areas under § 9–350 of this subtitle.

(c) (1) The Secretary, with the approval of the Board of Public Works, shall adopt rules and regulations that establish application procedures and criteria for the award of financial assistance under this subtitle. The criteria shall provide the basis for project priority rankings and shall include, as appropriate:

(i) The water quality or public health impacts caused by existing circumstances;

(ii) Previous efforts expended to correct any existing problem;

(iii) Financial capacity of the applicant;

(iv) The problem prevention aspects of a proposed project;

(v) Cost effectiveness of a proposed project;

(vi) Planning requirements;

(vii) Provisions for monitoring and review; and

(viii) Measures to assure accountability for all funds awarded under this subtitle.

(2) Project priority systems shall be established. Prior to adopting rules and regulations and establishing project priority rankings under this section, the Secretary shall consult with the Secretaries of Natural Resources, Agriculture, and Business and Economic Development and the Secretary of the Department of Planning.

(d) For financial assistance over $500,000 awarded under the Fund, the applicant shall demonstrate, to the satisfaction of the Department, that steps were taken to include small business enterprises, minority business enterprises, and women's business enterprises by:

(1) Placing qualified small business enterprises, minority business

enterprises, and women's business enterprises on solicitation lists;

(2) Assuring that small business enterprises, minority business enterprises, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small business enterprises, minority business enterprises, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, that encourage participation by small business enterprises, minority business enterprises, and women's business enterprises; and

(5) Using the services and assistance of the Maryland Department of Transportation and the Governor's Office of Minority Affairs in identifying and soliciting small business enterprises, minority business enterprises, and women's business enterprises.

(e) If the steps required under subsection (d) of this section are not demonstrated to the satisfaction of the Department, the Department may withhold financial assistance for the project.

§9–346.

(a) To the extent not inconsistent with this subtitle, a grant, loan, or loan guarantee agreement shall contain those conditions that the Secretary requires by regulation and that the Board of Public Works requires on a specific application for financial assistance in order to achieve the goals of this subtitle and to otherwise protect the interests of the State.

(b) (1) A State loan extended under this subtitle:

(i) May not exceed $500,000 in principal amount;

(ii) Shall bear at least the same rate of interest as the most recent State general obligation bond sale preceding the date of approval by the Board of Public Works; and

(iii) Shall be repaid within 30 years.

(2) The aggregate principal amount of all loans to a single applicant in any calendar year may not exceed $500,000 unless the Board of Public Works determines that extraordinary circumstances exist.

(c) A loan guarantee of the principal of or interest on any commercial loan or obligation to finance the eligible cost of a project under this subtitle may only be made if the applicant certifies that it is unable to obtain on reasonable terms sufficient credit

to finance its actual needs without the guarantee and if the Board of Public Works determines that there is a reasonable assurance of repayment of the loan obligation. A loan guarantee may not exceed $500,000 to a single applicant unless the Board of Public Works determines that extraordinary circumstances exist.

(d) The eligible cost of a project for State financial assistance under this subtitle may include the costs of reports, plans, specifications, legal and administrative services, equipment, construction, rehabilitation or improvement, and may include land, easements, and rights-of-way. However, the eligible cost of a project to control nonpoint sources of agriculturally related water pollution may not include land or interests in land.

§9–347.

(a) Grants or loans may be awarded under this section to any State or local governmental entity responsible by law for the provision of sewerage systems in order to finance construction of those systems so as to satisfy State water quality standards and policies.

(b) (1) Except as provided in paragraph (2) and subsection (d), combined State and federal assistance shall not exceed 87 1/2 percent of federally eligible costs.

(2) Combined State and federal assistance under this section shall not exceed 77 1/2 percent if the Department has determined that:

(i) A project is eligible for federal construction grant funding before October 1, 1984; and

(ii) The information required by the federal government or the Department has not been provided by the applicant in a timely fashion to allow approval by that date.

(c) State grants or loans authorized under this section may only be used to finance projects for which construction grant funding under the federal Clean Water Act has been awarded.

(d) For projects which contain innovative or alternative technology as defined by the federal Clean Water Act, State and federal assistance may not exceed 96 1/4 percent of eligible costs for that technology.

§9–348.

(a) Grants or loans may be awarded under this section to any State or local governmental entity responsible by law for the provision of sewerage systems to finance the construction of sewerage systems needed to improve water quality whether or not the project is eligible for construction grant assistance under the federal Clean Water Act.

(b) Projects which may receive financial assistance under this section include those providing for:

(1) Chlorine removal;

(2) Nitrogen removal;

(3) Phosphorus removal when in conjunction with a nitrogen removal cost–share grant; or

(4) Wastewater collection or treatment otherwise undertaken to correct existing special water quality needs or an extraordinary public health problem.

(c) Grants or loans awarded under this section may be awarded for up to 100 percent of eligible costs.

§9–349.

(a) (1) Loans or loan guarantees may be awarded to industrial users for projects that provide for pretreatment of pollutants that are discharged directly or indirectly into publicly owned treatment works or into any conveyance leading to a publicly owned treatment plant.

(2) The Secretary and the Secretary of Business and Economic Development shall jointly administer the program established under this section with the Secretary of Business and Economic Development being primarily responsible for the assessment of the financial capability of an applicant and appropriateness of the terms and conditions of any loan assistance.

(b) Loan assistance may be awarded to a person under this section if:

(1) An agreement is executed by the person that:

(i) Specifies the purpose, amount, manner of repayment, and any other condition required by the Board of Public Works;

(ii) Obligates the person to construct, install, and operate the pretreatment project in a manner which insures compliance with all pretreatment requirements and technical specifications, to maintain the project for its expected life span, and to bind any successor in title; and

(iii) Shall be signed by the Secretary and the Secretary of Business and Economic Development or their designees;

(2) The applicant certifies that it is otherwise unable to obtain on reasonable terms sufficient credit to finance the pretreatment project and the Secretary of Business and Economic Development determines that there is a reasonable assurance of repayment of the loan;

(3) The Secretary of the Environment determines that the project meets all applicable technical standards and that all cost estimates are reasonable and represent eligible costs; and

(4) When an applicant leases the property where the pretreatment project will be constructed, that the landowner consents to the terms and conditions of the agreement.

(c) For any loan assistance exceeding $2,500, the Secretary of Business and Economic Development shall require the granting to the State of an appropriate security interest in any equipment, structures, or similar items purchased with State moneys.

(d) In accordance with § 9–345 of this subtitle, the Secretary and the Secretary of Business and Economic Development jointly shall adopt rules and regulations to implement this section.

§9–350.

(a) (1) Grants may be awarded to counties and municipalities for projects to reduce pollution from stormwater runoff in existing urbanized areas.

(2) Grants may be used for construction on privately owned property if:

(i) Necessary for the purpose of the project; and

(ii) An agreement has been made with the property owner.

(3) A grant awarded under this subsection:

(i) Shall not exceed 75 percent of all eligible costs; and

(ii) Shall not exceed $500,000.

(b) (1) In addition to cost sharing funds provided under Title 8, Subtitle 7 of the Agriculture Article, grants may be awarded for projects to implement best management practices to prevent or control agriculturally related nonpoint sources of water pollution on State land or to governmental entities in other areas in which the potential for water pollution from agriculture is substantial. When cost sharing funds are provided under Title 8, Subtitle 7 of the Agriculture Article, the procedures and requirements of that law rather than § 9–345 of this subtitle apply.

(2) Grants awarded under this subsection to governmental entities or for use on State land may be awarded for up to 100 percent of the total cost of a project. However, in awarding such grants, the applicant's financial capability to cost share and any resultant economic benefit shall be considered in determining the extent of any required matching dollar amount.

(3) All grants awarded under this subsection shall be made after prior consultation with the Secretary of Agriculture.

§9–401.

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

(b) "Administrator" means the Administrator of the United States Environmental Protection Agency.

(c) "Community water system" means a public water system that:

(1) Serves at least 15 service connections used by year–round residents of the area served by the system; or

(2) Regularly serves at least 25 year–round residents.

(d) "Contaminant" means any chemical, biological, or radioactive substance that is harmful to health if in the water.

(e) "Federal Act" means the federal Safe Drinking Water Act.

(f) "Federal agency" means any department, agency, or instrumentality of the United States.

(g) "National primary drinking water regulations" means the primary drinking water rules or regulations that the Administrator adopts under the federal Act.

(h) "Noncommunity water system" means a public water system that is not a community water system.

(i) "Nontransient noncommunity water system" means a public water system that is not a community system and that regularly serves at least 25 of the same individuals over 6 months per year.

(j) "Person" includes:

(1) The Washington Suburban Sanitary Commission;

(2) Any State, county, municipal corporation, or federal agency;

(3) Any special taxing area or district that operates a public water system; and

(4) Any officer, agent, or employee of any of these.

(k) "Primary drinking water regulation" means a rule or regulation that:

(1) Applies to public water systems;

(2) Specifies contaminants that, in the judgment of the Secretary, would have an adverse effect on the health of human beings;

(3) Specifies for each contaminant either:

(i) A maximum contaminant level if, in the judgment of the Secretary, it is economically and technologically feasible to determine the level of the contaminant in water in public water systems; or

(ii) If, in the judgment of the Secretary, it is not economically or technologically feasible to determine the level of the contaminant, each treatment technique known to the Secretary that leads to a reduction in the level of the contaminant sufficient to satisfy the requirements of this subtitle; and

(4) Contains standards and procedures:

(i) To ensure a supply of drinking water that dependably complies with the maximum contaminant levels, including quality control and testing procedures for compliance with those levels;

(ii) To ensure proper operation and maintenance of the system; and

(iii) To establish requirements as to:

1. The minimum quality of water that may be taken into the system; and

2. Siting for new facilities for public water systems.

(l) (1) "Public water system" means a system that:

(i) Provides to the public water for human consumption through pipes or other constructed conveyances; and

(ii) 1. Has at least 15 service connections; or

2. Regularly serves at least 25 individuals.

(2) "Public water system" includes:

(i) Any collection, treatment, storage, or distribution facility that is under the control of the operator of the system and is used primarily in connection with the system; and

(ii) Any collection or pretreatment storage facility that is not under the control of the operator of the system and is used primarily in connection with the system.

(m) "Supplier of water" means any person who owns or operates a public water

system.

(n) "Tamper" means to:

(1) Introduce a contaminant into a public water system with the intention of harming a person; or

(2) Otherwise interfere with the operation of a public water system with the intention of harming a person.

(o) "Transient noncommunity water system" means a noncommunity water system that does not regularly serve at least 25 of the same individuals over 6 months per year.

§9–402.

The purpose of this subtitle is to ensure that this State has the primary enforcement responsibility for drinking water standards under the federal Safe Drinking Water Act.

§9–403.

(a) This subtitle does not affect any other express powers conferred by statute on the Department of the Environment or the Department of Natural Resources.

(b) The powers, duties, and authority of the Department under this subtitle supplement and are ancillary to any other provisions of this article and the Health - General Article that relate to the Secretary's authority and responsibility to assure the purity and sanitary condition of the water supply.

§9–404.

To carry out the provisions of this subtitle and in addition to the powers set forth elsewhere in this subtitle, the Secretary may:

(1) Perform any act necessary to carry out the provisions of this subtitle that relate to adopting or enforcing State primary drinking water regulations;

(2) Administer the provisions of this subtitle and all rules, regulations, and orders adopted, issued, or effective under this subtitle;

(3) Enter into agreements, contracts, or cooperative arrangements, under appropriate terms and conditions, with any person or governmental entity;

(4) Receive financial and technical assistance from the federal government or other public or private agencies;

(5) Participate in related programs of the federal government, other states, interstate agencies, or other public or private agencies or organizations;

(6) Establish adequate fiscal controls and accounting procedures to assure proper disbursement of and accounting for funds appropriated or otherwise provided for the purpose of carrying out provisions of this subtitle;

(7) Delegate any responsibilities and duties the Secretary considers appropriate for administering the requirements of this subtitle;

(8) Set and collect fees for conducting necessary inspections and laboratory analyses; and

(9) Adopt rules and regulations that are necessary or appropriate to carry out the Secretary's functions under this subtitle.

§9–405.

(a) In this section, "dangerous contaminant" means a contaminant that, if present in a public water system, would present an imminent and substantial danger to the health of individuals.

(b) (1) On receipt of information that a dangerous contaminant is present in or likely to enter a public water system, the Secretary may take any action necessary to protect the health of the individuals whose health is or would be endangered by the dangerous contaminant.

(2) The actions that the Secretary may take under this section include:

(i) Issuing any order necessary to protect the health of individuals who are or may be users of the public water system; and

(ii) Suing for injunctive or other appropriate relief.

§9–406.

(a) The Secretary shall adopt an adequate plan for providing safe drinking water under emergency circumstances.

(b) If, in the judgment of the Secretary, emergency circumstances exist with respect to a need for safe drinking water, the Secretary may take any action necessary to provide safe drinking water where it otherwise would not be available.

(c) (1) Notwithstanding § 9-407(b) of this subtitle, the Secretary may adopt and enforce regulations for a contaminant if the Secretary determines that the contaminant poses a significant risk to public health and for which complete interim or revised national primary drinking water regulations are not in effect.

(2) As part of the Secretary's determination under paragraph (1) of this subsection, the Secretary shall prepare a report that includes:

(i) 1 year of statewide monitoring data for the contaminant, which identifies locations in the State where the contaminant level may pose a significant risk to public health;

(ii) Peer reviewed assessments, methodologies, and data concerning the particular contaminant; and

(iii) A cost/benefit analysis of implementing the proposed standard for the contaminant conducted by the Department that includes:

1. Review and comment by the Department of Business and Economic Development; and

2. After the Department provides notice of the analysis and a reasonable opportunity to comment to the affected public water systems, any submitted written statements from public water systems affected by the proposed standard.

(3) Nothing in this subsection affects the Department's authority to adopt and enforce complete interim or revised national primary drinking water regulations.

§9–407.

(a) The Secretary shall:

(1) Adopt and enforce State primary drinking water regulations; and

(2) Adopt and implement adequate procedures for enforcing the State primary drinking water regulations.

(b) The State primary drinking water regulations may not:

(1) Be more stringent than the complete interim or revised national primary drinking water regulations in effect at the time; or

(2) Require the addition of any substance for preventive health care purposes unrelated to contamination of drinking water.

(c) The enforcement procedures shall:

(1) Include monitoring and inspection procedures; and

(2) Comply with all rules and regulations adopted by the Administrator under the federal Act.

(d) As the Administrator requires by rules or regulations adopted under the federal Act, the Secretary shall keep records and make reports with respect to the Secretary's activities under this section.

§9–408.

(a) Except as provided in subsection (b) of this section, and subject to § 9-409 of this subtitle, State primary drinking water regulations shall apply to every public water system in this State.

(b) The State primary drinking water regulations do not apply to a public water system that:

(1) Consists only of distribution and storage facilities, and does not have any collection and treatment facilities;

(2) Obtains all of its water from, but is not owned or operated by, a public water system to which the State primary drinking water regulations apply;

(3) Does not sell water to any person; and

(4) Is not a carrier that conveys passengers in interstate commerce.

§9–409.

The Secretary may authorize variances or exemptions from the rules and regulations issued in accordance with § 9–407 of this subtitle, under conditions and in a manner necessary and desirable. However, the variances or exemptions are permitted only under conditions and in a manner that is not less stringent than the conditions under, and the manner in which, variances and exemptions may be granted under the federal Act.

§9–410.

(a) Each supplier of water shall give notice to the Department and the persons served by the system and shall give written notice to noncollegiate educational institutions, public schools, family child care homes, and child care centers whenever the system:

(1) Fails to comply with an applicable maximum contaminant level, treatment technique requirement, or testing procedure prescribed by a drinking water regulation or fails to perform required monitoring;

(2) Is subject to variance granted for an inability to meet a maximum contaminant level;

(3) Is subject to an exemption;

(4) Fails to comply with the requirements set by a variance or exemption; or

(5) Has concentration levels of an unregulated contaminant for which the

State may require notice due to the risk to public health.

(b) Each notice shall:

(1) State the nature and possible health effects that may result;

(2) Be provided to the persons served by the water system;

(3) Be issued in a timely manner by means of radio, television, newspaper of general circulation, written notice, or other means acceptable to the Department; and

(4) Be in a form readily understandable by the affected population.

(c) (1) By rule or regulation, the Secretary shall adopt notice requirements to meet the requirements of this section.

(2) The rules and regulations shall establish notification standards and procedures that include the manner, frequency, form, and content of the notices.

(d) For violations with the potential to have serious adverse effects on human health as a result of short–term exposure, the supplier of water shall provide notice as soon as practicable, but not later than 24 hours after the occurrence of the violation.

(e) For violations other than the violations described in subsection (d) of this section, the supplier of water shall provide written notice to each person served by the system in an annual report, or by mail not later than 1 year after the violation.

(f) (1) Each nontransient noncommunity water system, including those systems that primarily provide bottled water, shall:

(i) At a frequency determined by the Department, test the water provided by the system for the presence of methyl tertiary butyl ether; and

(ii) Report the test results to the Department.

(2) If a test conducted under this subsection indicates that the level of methyl tertiary butyl ether in the drinking water exceeds the State advisory level, as determined by the Department, the water system shall give notice of that fact to:

(i) The persons regularly served by the water system; and

(ii) If the water system serves a child care center, an elementary or secondary school, or any other facility that regularly serves minors, the parents or legal guardians of all minors regularly served by the water system.

§9–411.

In addition to any other remedy authorized under this subtitle, the Secretary may

bring an action to enjoin any violation of any rule, regulation, or order adopted or issued under this subtitle.

§9–412.

(a) A supplier of water may not:

(1) Fail to comply with § 9-410 of this subtitle;

(2) Disseminate any false or misleading information in or about any notice required under § 9-410 of this subtitle or about any remedial action being undertaken to achieve compliance with State primary drinking water regulations;

(3) Knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or permit adopted or issued under this subtitle;

(4) Fail to comply with the rules and regulations adopted under § 9-407 of this subtitle; or

(5) Fail to comply with any conditions for variances or exemptions authorized under § 9-409 of this subtitle.

(b) A person may not:

(1) Fail to comply with any order issued by the Secretary under this subtitle; or

(2) Falsify or knowingly render inaccurate any monitoring device or method required to be maintained under this subtitle or any rule, regulation, order, or permit adopted or issued under this subtitle.

§9–412.1.

(a) A person may not tamper, attempt to tamper, or make a threat to tamper with a public water system.

(b) (1) The Department may bring a civil action against any person who tampers, attempts to tamper, or makes a threat to tamper with a public water system.

(2) The court may impose a civil penalty of not more than $50,000 for actual tampering, or not more than $20,000 for each attempt to tamper.

§9–413.

(a) A person who willfully violates § 9–412(a)(4) or (5) of this subtitle is subject to a civil penalty of up to $5,000 for each day on which the violation exists.

(b) A person who violates § 9–412(a)(1), (2), or (3) of this subtitle is guilty of a

misdemeanor and on conviction is subject to a fine not exceeding $5,000 for each day on which the violation occurs or failure to comply continues.

(c) In an action brought in the appropriate court to enforce the order, a person who willfully violates or fails or refuses to comply with any order issued by the Secretary under this subtitle may be fined not more than $5,000 for each day on which the violation occurs or failure to comply continues.

(d) (1) In addition to any other remedies available at law 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 order, regulation, or plan adopted or issued under this subtitle.

(2) The penalty imposed on a supplier of water serving a population of more than 10,000 under this subsection shall be:

(i) Up to $1,000 per day for each violation, but not exceeding $25,000 total for each violation; 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 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 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) The penalty imposed on a supplier of water serving a population of 3,301 to 10,000 under this subsection shall be:

(i) Up to $500 per day for each violation, but not exceeding $12,500 total for each violation; and

(ii) Assessed with consideration given to the factors set forth in paragraph (2)(ii) of this subsection.

(4) The penalty imposed on a supplier of water serving a population of 501 to 3,300 under this subsection shall be:

(i) Up to $250 per day for each violation, but not exceeding $6,250 total for each violation; and

(ii) Assessed with consideration given to the factors set forth in paragraph (2)(ii) of this subsection.

(5) The penalty imposed on a supplier of water serving a population of 500 or less under this subsection shall be:

(i) Up to $100 per day for each violation, but not exceeding $5,000 total for each violation; and

(ii) Assessed with consideration given to the factors set forth in paragraph (2)(ii) of this subsection.

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

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

(8) All penalties collected under this subtitle shall be paid into the Maryland Clean Water Fund created under § 9–320 of this title.

§9–414.

(a) The Department may issue an order or notice if the Department has reasonable grounds to believe that a person to whom the order or notice is directed has violated:

(1) This subtitle;

(2) Any rule or regulation adopted under this subtitle; or

(3) Any order or permit issued under this subtitle.

(b) An order or notice issued under this subtitle shall:

(1) Specify the provision that allegedly has been violated;

(2) State the alleged facts that constitute the violation;

(3) State the actions necessary to correct the violation and the time allowed for corrections; and

(4) State the procedure for requesting a hearing to respond to the violation alleged in the order.

(c) If the person served with an order does not request a hearing within 30 days, the order becomes a final order.

(d) Any notice or order issued by the Department under this subtitle may be served on the person to whom it is directed:

(1) In accordance with § 1–204 of this article; or

(2) By publication.

§9–415.

(a) The Department shall give notice and hold hearings under this subtitle in accordance with the Administrative Procedure Act.

(b) (1) Within 30 days after service of the order under this subtitle the person served may request in writing a hearing before the Department.

(2) (i) If a person served with an order under this subsection makes a timely request for a hearing, the Department shall give the person written notice of the date, time, and place of the hearing, at least 10 days before the hearing date.

(ii) The order becomes final when the Department renders its decision following the hearing.

(c) The Department may make a verbatim record of the proceedings of any hearing held under this subtitle.

(d) (1) In connection with any hearing under this subtitle, the Department may:

(i) Subpoena any person or evidence; and

(ii) Order a witness to give evidence.

(2) A subpoenaed witness shall receive the same fees and mileage reimbursement as if the hearing were part of a civil action.

(3) If a person fails to comply with a subpoena or order issued under this subsection, on petition of the Department, a circuit court, by order may:

(i) Compel obedience to the Department's order or subpoena; or

(ii) Compel testimony or the production of evidence.

(4) The court may punish as contempt any failure to obey its order issued under this section.

(5) Any person aggrieved by a final decision of the Department in connection with an order or a permit issued under this subtitle may take judicial appeal in accordance with the Administrative Procedure Act.

§9–416.

(a) The Department may bring an action for an injunction against any person who violates any provision of this subtitle or any rule, regulation, order, or permit adopted or issued by the Department under this subtitle.

(b) In an action for an injunction under this section, any finding of the Department after a hearing is prima facie evidence of each fact the Department determines.

§9–417.

Each new community and nontransient noncommunity water supply system that commences operation after October 1, 1999 shall demonstrate to the Department that it has the technical, managerial, and financial capacity to operate the proposed water system in accordance with the drinking water regulations in effect, or likely to be in effect, on the date of the commencement of operations.

§9–420.

(a) For the purposes of this Part II, a "water supply facility" includes a source, treatment, storage, or distribution facility.

(b) There is a Water Supply Facilities Financial Assistance Program consisting of moneys made available under water supply loan authorizations and funds appropriated in the State budget.

(c) The Board of Public Works, upon the recommendation of the Secretary, may award financial assistance to State and local governmental entities for the acquisition, construction, equipping, rehabilitation, design, and improvement of water supply facilities.

§9–421.

(a) Grants and loans may be awarded to any State or local governmental entity responsible by law for the provision of water supply systems in order to finance eligible costs of those systems that are necessary to satisfy State drinking water standards and policies or to protect the public health and comfort.

(b) State assistance under this Part II of this subtitle, may not exceed 87.5 percent of eligible costs for each project or part of a project.

(c) In the case of a project to be operated by a State–owned institution or facility, State financial assistance shall equal the total cost of the project less the amount of any federal grant made therefor.

(d) For financial assistance over $500,000 awarded under the Fund, the applicant shall demonstrate, to the satisfaction of the Department, that steps were taken to include small business enterprises, minority business enterprises, and women's business enterprises by:

(1) Placing qualified small business enterprises, minority business enterprises, and women's business enterprises on solicitation lists;

(2) Assuring that small business enterprises, minority business enterprises, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small business enterprises, minority business enterprises, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, that encourage participation by small business enterprises, minority business enterprises, and women's business enterprises; and

(5) Using the services and assistance of the Maryland Department of Transportation and the Governor's Office of Minority Affairs in identifying and soliciting small business enterprises, minority business enterprises, and women's business enterprises.

(e) If the steps required under subsection (d) of this section are not demonstrated to the satisfaction of the Department, the Department may withhold financial assistance for the project.

§9–422.

(a) (1) Before any loan is made, the applicant shall execute an agreement specifying the purpose, amount, and manner of repayment of the loan.

(2) The agreement shall be signed on behalf of the State by the Department of the Environment and shall be approved by the Board of Public Works.

(3) To the extent not inconsistent with this Part II of Subtitle 4, a grant, loan, or loan guarantee agreement shall contain those conditions that the Secretary requires by regulation and that the Board of Public Works requires on a specific application for financial assistance.

(b) A State loan extended under this subtitle:

(1) May not exceed $500,000 principal amount for each project or part of a project in any calendar year except as provided in subsection (c) of this section;

(2) May not exceed the eligible cost of the project less the total of federal and State grants and federal loans;

(3) Shall bear at least the same rate of interest as the most recent State general obligation bond sale preceding the date of approval by the Board of Public Works; and

(4) Shall be repaid within 30 years.

(c) The aggregate principal amount of all loans for each project or part of a project in any calendar year may not exceed $500,000 unless the Board of Public Works determines that extraordinary circumstances exist.

§9–423.

(a) With the approval of the Board of Public Works, the Secretary shall adopt regulations that establish application procedures and criteria for the award of financial assistance under this Part II of Subtitle 4. The criteria shall provide the basis for project priority rankings and shall include, as appropriate:

(1) The water quality for public health impacts caused by existing circumstances;

(2) Previous efforts expended to correct any existing problem;

(3) Financial capability of the applicant;

(4) The problem prevention aspects of a proposed project;

(5) Cost effectiveness of a proposed project;

(6) Planning requirements;

(7) Provisions for monitoring and review; and

(8) Measures to assure accountability for all funds awarded under this

subtitle.

(b) The Secretary shall establish project priority systems.

§9–424.

(a) A loan guarantee of the principal of or interest on any commercial loan or obligation to finance the eligible cost of a project under this subtitle may only be made if the applicant certifies that it is unable to obtain on reasonable terms sufficient credit to finance its actual needs without the guarantee and if the Board of Public Works determines that there is a reasonable assurance of repayment of the loan obligation.

(b) A loan guarantee may not exceed $500,000 for each project or part of a project in any calendar year unless the Board of Public Works determines that extraordinary circumstances exist.

§9–425.

The eligible cost of a project for State financial assistance under this subtitle may include the costs of reports, plans, specifications, legal and administrative services, equipment, construction, rehabilitation, or improvement, and may include land, easements, and rights-of-way.

§9–426.

To receive financial assistance from the Fund, the project must be included in the county water and sewer plan approved by the county governing body and the Maryland Department of the Environment.

§9–501.

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

(b) "Community sewerage system" means a publicly or privately owned sewerage system that serves at least 2 lots.

(c) "Community water supply system" means a water supply system that serves at least 2 lots.

(d) (1) "County plan" means a comprehensive plan for adequately providing throughout the county, including all towns, municipal corporations, and sanitary districts in the county, the following facilities and services by public or private ownership:

(i) Water supply systems;

(ii) Sewerage systems;

(iii) Solid waste disposal systems;

(iv) Solid waste acceptance facilities; and

(v) Systematic collection and disposal of solid waste, including litter.

(2) "County plan" includes a revised or amended county plan.

(e) "Individual sewerage system" means a sewerage system that serves only 1 lot.

(f) "Individual water supply system" means a water supply system that supplies water to only 1 lot.

(g) "Litter" means any:

(1) Waste material;

(2) Refuse;

(3) Garbage;

(4) Trash;

(5) Debris;

(6) Dead animal; or

(7) Other discarded material.

(h) "Lot" means a parcel of land, including a part of a subdivision, that:

(1) Is used or is intended to be used as a building site; and

(2) Is not intended to be further subdivided.

(i) "Multiuse sewerage system" means a sewerage system that:

(1) Serves only 1 lot;

(2) Serves a number of individuals;

(3) Has a treatment capacity of more than 5,000 gallons a day; and

(4) Is not publicly owned or operated.

(j) "Multiuse water supply system" means an individual water supply system that:

(1) Has the capacity to supply more than 5,000 gallons of water a day; and

(2) Serves a number of individuals.

(k) (1) "Proposed county plan" means a county plan that:

(i) Has been adopted by the county governing body; and

(ii) Has not been approved by the Department.

(2) "Proposed county plan" includes any proposed amendment or revision of the county plan.

(l) "Sewage" means any human or animal excretion, street wash, domestic waste, or industrial waste.

(m) (1) "Sewerage system" means:

(i) The channels used or intended to be used to collect and dispose of sewage; and

(ii) Any structure and appurtenance used or intended to be used to collect or prepare sewage for discharge into the waters of this State.

(2) "Sewerage system" includes any sewer of any size.

(3) "Sewerage system" does not include the plumbing system inside any building served by the sewerage system.

(n) "Solid waste acceptance facility" means any sanitary landfill, incinerator, transfer station, or plant whose primary purpose is to dispose of, treat, or process solid waste.

(o) (1) "Solid waste disposal system" means any publicly or privately owned system that:

(i) Provides a scheduled or systematic collection of solid waste;

(ii) Transports the solid waste to a solid waste acceptance facility; and

(iii) Treats or otherwise disposes of the solid waste at the solid waste acceptance facility.

(2) "Solid waste disposal system" includes each solid waste acceptance facility that is used in connection with the solid waste disposal system.

(p) (1) "Subdivision" means any division of a tract or parcel of land into at least 2 lots, for the purpose of sale or building development.

(2) "Subdivision" includes any change in street lines or lot lines.

(3) Except as provided in paragraph (4) of this subsection, "subdivision"

does not include any division of land into parcels of more than 3 acres, if the division:

(i) Is for agricultural purposes; and

(ii) Does not involve any new street or easement of access.

(4) In Carroll County, "subdivision" does not include:

(i) Any division of land into parcels of more than 3 acres, if the division:

1. Is for agricultural purposes; and

2. Does not involve any new street or easement of access; or

(ii) A remainder parcel of land of 25 acres or more that exists as a result of the division of a large parcel into at least 2 smaller parcels, provided that any occupied dwelling on the remainder parcel is serviced by a properly functioning sewerage disposal system and potable water supply.

(q) (1) "Water supply system" means a publicly or privately owned or operated:

(i) Source and the surrounding area from which water is supplied for drinking or domestic purposes; and

(ii) Structure, channel, or appurtenance used or intended to be used to prepare water for use or to deliver water to a consumer.

(2) "Water supply system" does not include the plumbing system inside any building that is served by the water supply system.

§9–502.

(a) Unless the operation of a water supply system would interfere with a cleanup or remediation action of the Department, this subtitle does not prohibit the installation or operation of a water supply system that is used only to supply water for purposes other than human or animal consumption.

(b) If a county is exempt from the provisions of this subtitle, the county may not receive funds from the sanitary facilities fund.

(c) Any rule or regulation adopted under this subtitle does not limit or supersede any other county, municipal, or State law, rule, or regulation that provides greater protection to the public health, safety, or welfare.

§9–503.

(a) Each county shall have a county plan or a plan with adjoining counties that:

(1) Is approved by the Department;

(2) Covers at least the 10-year period next following adoption by the county governing body; and

(3) Deals with:

(i) Water supply systems;

(ii) Sewerage systems;

(iii) Solid waste disposal systems;

(iv) Solid waste acceptance facilities; and

(v) The systematic collection and disposal of solid waste, including litter.

(b) Except as provided in § 9-515 of this subtitle, each county governing body shall review its county plan at least once every 3 years in accordance with a schedule set by the Department.

(c) Each county governing body shall adopt and submit to the Department a revision or amendment to its county plan if:

(1) The governing body considers a revision or amendment necessary; or

(2) The Department requires a revision or amendment.

(d) (1) Before a county governing body adopts any revision or amendment to its county plan or adopts a new county plan, the governing body shall:

(i) Conduct a public hearing on the county plan, revision, or amendment that may be conducted jointly with other public hearings or meetings; and

(ii) Give the principal elected official of each municipal corporation that is affected notice of the county plan, revision, or amendment at least 14 days before the hearing.

(2) (i) Notice of the time and place of the public hearing, together with a summary of the plan, revision, or amendment, shall be published in at least 1 newspaper of general circulation in the county once each week for 2 successive weeks, with the first publication of notice appearing at least 14 days before the hearing.

(ii) Notice of the public hearing may be a part of the general notice listing all other items to be considered during the public hearing or meeting.

§9–504.

(a) To the extent that the incorporation will promote the public health, safety, and welfare, each county plan shall incorporate all or part of the subsidiary plans of each town, municipal corporation, sanitary district, privately owned facility, or local, State, or federal agency that has existing or planned development in that county.

(b) If the governing body of each county that is affected adopts a subsidiary plan for a multicounty area, the county may incorporate in its county plan all or part of the subsidiary plan.

§9–505.

(a) In addition to the other requirements of this subtitle, each county plan shall:

(1) Provide for the orderly expansion and extension of the following systems in a manner consistent with all county and local comprehensive plans prepared under Title 1, Subtitle 4, Title 3, or Title 21 of the Land Use Article and § 10–324 of the Local Government Article:

(i) Community water supply systems and multiuse water supply systems;

(ii) Community sewerage systems and multiuse sewerage systems; and

(iii) Solid waste disposal systems and solid waste acceptance facilities;

(2) Provide for the sizing and staging of facilities construction that is consistent with the county plan;

(3) Show compliance with items (1) and (2) of this subsection by using graphic and tabular information;

(4) Provide:

(i) For sewage treatment facilities that are adequate to prevent the discharge of any inadequately treated sewage or other liquid waste into any waters; or

(ii) Otherwise for safe and sanitary treatment of sewage and other liquid waste;

(5) Provide for facilities that are adequate to treat, recover, or dispose of solid waste in a manner that is consistent with the laws of this State that relate to air pollution, water pollution, and land use;

(6) Contain adequate information about:

(i) The existing sewage treatment capacity in each drainage basin or sewage treatment plant service area in the county;

(ii) The present level of use of sewage treatment plants in each drainage basin; and

(iii) Projections for use of sewage treatment plant capacity based on:

1. Outstanding building permits and subdivision plats if the county has subdivision authority; or

2. Zoning commitments if the county does not have subdivision authority;

(7) Taking into account all relevant planning, zoning, population, engineering, and economic information and all State, regional, municipal, and local plans, describe, with all practical precision, those parts of the county that reasonably may be expected to be served in the next 10 years by any:

(i) Community water supply system;

(ii) Multiuse water supply system;

(iii) Community sewerage system;

(iv) Multiuse sewerage system;

(v) Solid waste disposal system; and

(vi) Solid waste acceptance facility;

(8) Set procedures for identifying and acquiring, on a time schedule that conforms to the time requirement in item (7) of this subsection, any rights–of–way or easements that are necessary for any:

(i) Community water supply system;

(ii) Multiuse water supply system;

(iii) Community sewerage system;

(iv) Solid waste disposal system; or

(v) Solid waste acceptance facility;

(9) Taking into account all relevant planning, zoning, population, engineering, and economic information and all State, regional, municipal, and local plans, describe, with all practical precision, any parts of the county in which it is not reasonably foreseeable to have service in the next 10 years by any:

(i) Community water supply system;

(ii) Multiuse water supply system;

(iii) Community sewerage system;

(iv) Multiuse sewerage system;

(v) Solid waste disposal system; and

(vi) Solid waste acceptance facility;

(10) Set a time schedule and a proposed method for financing the construction and operation of each planned:

(i) Community water supply system;

(ii) Multiuse water supply system;

(iii) Community sewerage system;

(iv) Solid waste disposal system; and

(v) Solid waste acceptance facility;

(11) Set forth the estimated cost of constructing and operating each planned:

(i) Community water supply system;

(ii) Multiuse water supply system;

(iii) Community sewerage system;

(iv) Solid waste disposal system; and

(v) Solid waste acceptance facility;

(12) Indicate:

(i) Any source of supply from the waters of this State;

(ii) The approximate amount of water to be withdrawn from the waters of this State; and

(iii) The quantity and quality of waste to be discharged into the waters of this State;

(13) Describe, in accordance with the provisions of this subtitle, each area

in the county where:

(i) A community water supply system must be provided;

(ii) A multiuse water supply system may be installed and used;

(iii) An individual water supply system may be installed and used for an interim period until a planned community water supply system is available;

(iv) An individual water supply system may be installed and used indefinitely;

(v) A community sewerage system must be provided;

(vi) A multiuse sewerage system may be installed and used;

(vii) Except as provided in § 9–517 of this subtitle, an individual sewerage system may be installed and used for an interim period until a planned community sewerage system is available;

(viii) An individual sewerage system may be installed and used indefinitely;

(ix) A community solid waste disposal system must be provided; or

(x) A community solid waste acceptance facility must be provided for use by residents of the described area during an interim period until a planned community solid waste disposal system is available;

(14) Except as provided in § 9–515 of this subtitle, provide for amendment or revision of the county plan at least once every 2 years in accordance with a schedule adopted by the Department;

(15) Designate an appropriate agency of the county to be responsible for creating a workable plan:

(i) To keep the environment of the county free of solid waste, including litter; and

(ii) To prevent scenic pollution of both public and private property in the county;

(16) By July 1, 1987, treat each publicly owned community sewerage system as a separate entity for fiscal purposes within the local operating agency;

(17) Document compliance with and report on actions taken and plans to enforce §§ 12–605 and 12–606 of the Business Occupations and Professions Article;

(18) For a county with a population greater than 150,000 according to the

latest Department of Planning projections, include a recycling plan by July 1, 2014 that:

(i) Provides for a reduction through recycling of at least 35% of the county's solid waste stream by weight or submits adequate justification, including economic and other specific factors, as to why the 35% reduction cannot be met;

(ii) Provides for recycling of the solid waste stream to the extent practical and economically feasible, but in no event may less than a 15% reduction be submitted; and

(iii) Requires full implementation of the recycling plan by December 31, 2015; and

(19) For a county with a population less than 150,000 according to the latest Department of Planning projections, include a recycling plan by July 1, 2014 that:

(i) Provides for a reduction through recycling of at least 20% of the county's solid waste stream or submits adequate justification, including economic and other specific factors, as to why the 20% reduction cannot be met;

(ii) Provides for recycling of the solid waste stream to the extent practical and economically feasible, but in no event may less than a 10% reduction be submitted; and

(iii) Requires full implementation of the recycling plan by December 31, 2015.

(b) A plan created under subsection (a)(15) of this section may include the use of prisoners from the State correctional system or from county jails or detention centers.

(c) The recycling reductions of 35% and 20% provided in subsection (a)(18) and (19) of this section are not intended to be the maximum percentage that a county can achieve. A county that can practically and economically achieve a higher rate of recycling is encouraged to submit a recycling plan for a higher percentage.

(d) If a county with a population less than 150,000 increases to a population of above 150,000, the county shall have 2 years to revise the recycling plan to be consistent with the recycling goals under subsection (a)(18) of this section.

(e) (1) The governing bodies of 2 or more counties may adopt a regional recycling plan to comply with subsection (a)(18) or (19) of this section.

(2) A regional recycling plan which otherwise satisfies the requirements of this subtitle for each of the participating counties shall constitute the county recycling plan for each county which participates in the plan.

§9–506.

(a) (1) Except as provided in paragraphs (2) and (3) of this subsection, before a county governing body may adopt a county plan or a revision or amendment to the county plan:

(i) The county governing body shall submit the county plan, revision, or amendment to each official planning agency that has jurisdiction in the county, including any comprehensive planning agency with areawide jurisdiction, for review and comment within a 30–day period for consistency with planning programs for the area; and

(ii) The county planning agency shall certify that the plan, revision, or amendment is consistent with the county comprehensive plan prepared under Title 1, Subtitle 4 or Title 3 of the Land Use Article or § 10–324 of the Local Government Article.

(2) In Montgomery County and Prince George's County, the review and comments of the Maryland–National Capital Park and Planning Commission in accordance with § 9–516 of this subtitle constitute full compliance with the requirement for review by an official planning agency under this subsection.

(3) (i) This paragraph applies only in St. Mary's County.

(ii) A new public sewerage system or an expansion of an existing public sewerage system, or a new water supply system or an expansion of an existing water supply system, may not be allowed in St. Mary's County unless the adoption, revision, or amendment to the county plan containing the public sewerage system or water supply system:

1. Is reviewed by the St. Mary's County Planning Commission in conformity with the provisions of this paragraph; and

2. Is approved by the Board of County Commissioners or, subject to subparagraph (v) of this paragraph, the Commissioners' designee.

(iii) 1. The County Commissioners or the Commissioners' designee may not approve the adoption, revision, or amendment of the county plan that contains a new public sewerage system or an expansion of an existing public sewerage system, or a new water supply system or an expansion of an existing water supply system, until the Planning Commission:

A. Conducts a complete review of the county plan; and

B. Holds, or arranges to be held, at least one public hearing on the county plan.

2. The Planning Commission may delegate the responsibility

of holding a public hearing under this subparagraph to county staff as directed by the County Commissioners.

(iv) In its review and recommendation to the County Commissioners or the Commissioners' designee, the St. Mary's County Planning Commission shall consider and make specific findings of fact with respect to the following objectives and policies of the county plan that contains a new public sewerage system or an expansion of an existing public sewerage system, or a new water supply system or an expansion of an existing water supply system:

1. Compatibility with the Comprehensive Land Use Plan;

2. Planning and zoning issues;

3. Population estimates;

4. Engineering;

5. Economics;

6. State, regional, and municipal plans; and

7. Comments received from other agencies in the county.

(v) The County Commissioners may only appoint a designee under this subsection for purposes of considering amendments to the county plan containing a public sewerage system or water supply system in growth areas shown on an adopted Comprehensive Land Use Plan.

(b) Each county governing body shall submit to the Department:

(1) Progress reports on the development of its county plan; and

(2) A report of its review conducted at least every 2 years, including any revision or amendment of the county plan that has been adopted.

(c) (1) If the Secretary determines that a county governing body has failed to submit a timely and adequate report of its review of its county plan or any required revision or amendment of its county plan to the Department, the Secretary shall give the county governing body a written notice of:

(i) The county's failure to submit a report; or

(ii) Any specific inadequacy in the county's plan.

(2) If within 90 days of this notice a county does not submit its report or an adequate revision or amendment of its plan to the Department, the Secretary:

(i) May not issue any permit to install or alter a water supply

system, sewerage system, or solid waste disposal system in that county under § 9–204 of this title;

(ii) Shall give the county notice of its right to administrative review by the Secretary under this subsection; and

(iii) Shall give the county notice of its right to appeal the Secretary's decision to the Board of Review.

§9–507.

(a) When a county governing body submits its proposed county plan or a proposed revision or amendment of its county plan to the Department, the Department may:

(1) Approve the proposal;

(2) Disapprove the proposal;

(3) If the part approved includes all of the required elements of a county plan, approve the proposal in part and disapprove it in part; or

(4) Modify or take other appropriate action on the proposal.

(b) Before the Department approves or disapproves, in whole or in part, a proposed county plan or a proposed revision or amendment of a county plan, the Department shall submit the proposal:

(1) To the Department of Natural Resources for advice on natural resources matters;

(2) To the Department of Planning for advice on the consistency of the proposal with the local master plan and other appropriate matters; and

(3) To the Department of Agriculture for advice on the impact of water and sewerage service and solid waste facilities on productive or potentially productive agricultural land.

(c) (1) Except as otherwise provided in this subsection, the Department shall approve, disapprove, or partially approve and partially disapprove each proposed county plan or proposed revision or amendment to a county plan within 90 days after the proposal is submitted to the Department.

(2) For good cause and after notice to the county involved, the Department may extend the 90-day review period of paragraph (1) of this subsection for an additional 90 days.

(d) If the Department does not disapprove, in whole or in part, a proposed county

plan or a proposed revision or amendment of a county plan within the review period provided in subsection (c) of this section, the proposal is approved.

(e) (1) Before the Department takes any action under subsection (a) of this section, a county may use its proposed county plan or proposed revision or amendment of its county plan at the county's own risk, if the county governing body has adopted the proposed county plan, revision, or amendment.

(2) After the county governing body adopts the proposed county plan, a person shall follow the provisions of that plan except to the extent that the Department modifies or disapproves that plan.

§9–508.

(a) If the Department disapproves, in whole or in part, a proposed county plan or a proposed revision or amendment of a county plan, the Department shall give the county a written notice of disapproval that states the reasons for disapproval.

(b) At any time up to 6 months after a county receives the notice of disapproval, the county governing body may ask the Secretary to reconsider the disapproval in accordance with the rules and regulations of the Department.

§9–509.

As provided in § 9-218 of this title, a county may finance in part the cost of preparing its county plan or any revision or amendment of its county plan.

§9–510.

(a) In addition to the powers set forth elsewhere in this subtitle, the Department may:

(1) Conduct surveys and research to carry out the provisions of this subtitle; and

(2) Specify the location for any sewage treatment facility discharge point that is included in any county plan.

(b) In addition to the duties set forth elsewhere in this subtitle, the Department shall adopt rules and regulations:

(1) To carry out the provisions of this subtitle;

(2) To control, limit, or prohibit the installation and use of:

(i) Water supply systems; and

(ii) Sewerage systems;

(3) To require that, before installation of individual water supply systems or individual sewerage systems, consideration be given to:

(i) Present and future population density;

(ii) Size of parcels;

(iii) Contour of the land;

(iv) Porosity and absorbency of the soil;

(v) Ground water conditions;

(vi) Availability of water from unpolluted aquifers;

(vii) Type of construction of community water supply systems;

(viii) Type of construction of community sewerage systems;

(ix) Size of the proposed development; and

(x) Any other pertinent factors;

(4) To require that, giving consideration to the factors in item (3) of this subsection, areas be served by community facilities if the Department finds them to be reasonably necessary:

(i) By installation of the community water supply system, community sewerage system, or solid waste disposal system; and

(ii) By connection of all premises to or service to all premises by the community water supply system, community sewerage system, or solid waste disposal system;

(5) To require that community water supply systems, community sewerage systems, and solid waste disposal systems be constructed to allow the connection of those systems to a larger system, if that larger system becomes available;

(6) To allow a person to install an individual water supply system or an individual sewerage system in any area where a community water supply system or a community sewerage system is not available or required to be installed in the area if:

(i) The Department finds that the individual system is adequate and safe for use before a community system is scheduled to be available in the area; and

(ii) The individual system is constructed in the most economical and convenient way to permit connection to a community system in the area, and the person guarantees the connection to a community system:

1. When the county governing body where the area is located sets a time; and

2. In accordance with this subtitle, any rules and regulations adopted under this subtitle, and any other State law or county requirement by:

A. Posting a bond to secure actual construction and installation of the systems with satisfactory surety for the benefit of the county governing body; or

B. Making any other arrangement that the Department considers necessary and adequate to carry out the provisions of this subtitle;

(7) If a solid waste disposal system is not available or required to be installed in any area as provided in item (4) of this subsection, to allow a person to provide a solid waste acceptance facility in the area without a systematic collection and transportation system;

(8) To require that, before issuance of a permit for construction of a community or multiuse sewerage system, a financial management plan sufficient to ensure the dependable and safe operation of the system has been adopted within the county plan and approved by the Department; and

(9) To require that:

(i) Before issuance of a permit for construction of a privately owned community water supply system that will serve 4 or more residential lots or 2 or more other lots, the applicant has proposed a financial management plan sufficient to ensure the dependable and safe operation of the system, and the plan has been approved by the Department; and

(ii) The applicant shall comply with the plan as approved by the Department.

§9–511.

Unless they conform to the county plan or revision or amendment of the county plan, the following systems and facilities may not be installed or extended:

(1) A water supply system;

(2) A sewerage system;

(3) A solid waste disposal system; and

(4) A solid waste acceptance facility.

§9–511.1.

(a) A county may remove a proposed solid waste acceptance facility from the county plan if:

(1) The owner of the proposed solid waste acceptance facility fails to apply to the Department for a new permit within 1 year of inclusion in the plan;

(2) The owner of the proposed solid waste acceptance facility fails to apply to the Department for a renewal in accordance with § 10-226(b) of the State Government Article;

(3) The Department denies a permit for the proposed solid waste acceptance facility in its final decision; or

(4) The proposed solid waste acceptance facility is not constructed within 10 years after receiving a permit.

(b) For the purposes of subsection (a)(1) of this section, a new permit does not include a permit application for expansion or major modification of an existing facility.

(c) This section may not be construed to allow the county to remove a proposed solid waste acceptance facility if the solid waste acceptance facility is necessary to provide adequate capacity for the disposal of solid waste generated within the county in accordance with § 9-505 of this subtitle.

§9–512.

(a) In this section, "building permit" means any permit that allows any building construction and is issued by any State or local authority.

(b) (1) A State or local authority may not issue a building permit unless:

(i) The water supply system, sewerage system, or solid waste acceptance facility is adequate to serve the proposed construction, taking into account all existing and approved developments in the service area;

(ii) Any water supply system, sewerage system, or solid waste acceptance facility described in the application will not overload any present facility for conveying, pumping, storing, or treating water, sewage, or solid waste;

(iii) Except for essential public services, after January 1, 1992, the county in which the proposed construction is located has an approved recycling plan under § 9–505 of this subtitle and § 9–1703 of this title; and

(iv) Except for essential public services, after January 1, 1994, the county in which the proposed construction is located has met the recycling reductions submitted in an approved recycling plan under § 9–505 of this subtitle and § 9–1703 of

this title.

(2) A water supply system, sewerage system, or solid waste acceptance facility referenced in a subdivision plat shall conform to the applicable county plan.

(3) If an allocation of water or wastewater is needed, and before a State or local authority may issue a building permit, the State shall:

(i) Have an allocation of water and wastewater from the county whose facilities are affected by the proposed building construction; or

(ii) Show evidence of being able to provide an acceptable on–site sewage disposal system or well system until an allocation becomes available, or on a permanent basis if the State elects.

(4) The county shall timely review any State request for an allocation of water or wastewater, and report its findings to the State within 45 days from the date of such request.

(5) The Department may grant a waiver from the sanctions of subsection (b)(1)(iii) and (iv) of this section if the county demonstrates to the satisfaction of the Secretary that it cannot achieve the recycling goal due to unforseen or emergency circumstances beyond the county's control.

(6) (i) In the event that sanctions are imposed under this subsection, and the county submits an application for removing the sanctions, the Secretary shall promptly approve or deny the application.

(ii) In the event that the Secretary has neither approved nor denied the application within 30 days of its submission, the application shall be deemed approved and the sanctions shall be removed.

(c) To apply for a building permit, an applicant shall:

(1) Submit an application to a State or local authority on the form that the authority requires; and

(2) Provide any information that the authority reasonably requires to comply with subsection (b) of this section.

(d) (1) A State or local authority may not record or approve a subdivision plat unless any approved facility for conveying, pumping, storing, or treating water, sewage, or solid waste to serve the proposed development would be:

(i) Completed in time to serve the proposed development; and

(ii) Adequate to serve the proposed development, once completed, without overloading any water supply system, sewerage system, or solid waste

acceptance facility.

(2) Each water supply system, sewerage system, and solid waste acceptance facility in a subdivision shall:

(i) Conform to the applicable county plan; and

(ii) Take into consideration all present and approved subdivision plats and building permits in the service area.

(3) If an allocation of water or wastewater is needed, and before a State or local authority may record or approve a subdivision plat, the State shall:

(i) Have an allocation of water and wastewater from the county whose facilities are affected by the proposed development; or

(ii) Show evidence of being able to provide an acceptable on–site sewage disposal system or well system until an allocation becomes available, or on a permanent basis if the State elects.

(4) The county shall timely review any State request for an allocation of water or wastewater, and report its findings to the State within 45 days from the date of such request.

(e) To apply for approval of a subdivision plat, an applicant shall:

(1) Submit an application to the appropriate State or local authority on the form that the authority requires; and

(2) Provide any information that the authority reasonably requires to comply with subsection (d) of this section.

§9–513.

In Baltimore County or Carroll County, the county approving authority may grant an exception to the county plan that allows a person to install an individual water supply system or an individual sewerage system for an individual residence if the Secretary or a designee of the Secretary:

(1) Finds that this exception to the county plan is justified and necessary to alleviate extreme hardship; and

(2) Approves the exception to the county plan.

§9–514.

(a) (1) If the Harford County governing body does not approve and incorporate in its county plan all or part of the subsidiary plans of each town, municipal corporation, and sanitary district in Harford County, the Harford County governing body shall send

to the Department a written notice of:

(i) This action; and

(ii) The specific reasons for this action.

(2) If the Harford County governing body or the governing body of a town, municipal corporation, or sanitary district in Harford County requests, the Department may:

(i) Arbitrate the dispute; and

(ii) Decide whether to approve and incorporate all or part of this subsidiary plan in the Harford County plan.

(b) In Harford County, except as provided in subsection (c) of this section, a building permit or a zoning permit may not be issued for a new subdivision in an area where a community water supply system or a community sewerage system is scheduled to be built within 10 years under the county plan, unless there is a county approved water supply system and a county approved sewerage system for the subdivision.

(c) On their unanimous consent, the Harford County Health Officer, the Director of Planning and Zoning for Harford County, and the Director of Public Works for Harford County may recommend a waiver to the County Executive for his approval from the provisions of subsection (b) of this section if:

(1) Any lot created is a residential lot with a minimum size of 60,000 square feet;

(2) A septic reserve area with a minimum size of 20,000 square feet is established and recorded on the final plan;

(3) The subdivision site is shown in the comprehensive water and sewer plan for the 5-year to 10-year construction category;

(4) The responsible agencies conclude that the failure to install an approved sewerage collection system at the subject time on the subject property is not detrimental to the overall county water and sewer system; and

(5) The subdivision site and all the lots in the subdivision site meet other local guidelines to include applicable health, environmental, and physical characteristics including, but not limited to:

(i) Minimum lot width at building line of 150 feet;

(ii) Maximum slope in septic reserve area of 15 percent;

(iii) Percolation rate between 2 and 20 minutes; and

(iv) Soils within septic reserve areas with slight to moderate limitations for homes with septic systems.

(d) Before adopting any amendment or revision to the county water and sewer plan, the Harford County governing body shall determine whether a subdivision site or lot that has been granted a waiver under subsection (c) of this section shall be included in the amended or revised county plan.

(e) In the planning for water supply systems, sewerage systems, and solid waste disposal systems in its county plan, the Harford County governing body shall consider estimates of population density for Harford County.

§9–515.

(a) This section applies only in Montgomery County and Prince George's County.

(b) The county council of each county shall at least once every 3 years:

(1) Prepare a county plan;

(2) Prepare, review, and revise, as the county council considers necessary, a separate statement of objectives and policies to be achieved and implemented by the county plan in the county; and

(3) Consider the following in the statements of objectives and policies of the county plans:

(i) Planning;

(ii) Zoning;

(iii) Population estimates;

(iv) Engineering;

(v) Economics; and

(vi) State, regional, municipal, local, and area plans.

(c) To achieve the objectives and policies set by the county council, the county executive of each county shall:

(1) Prepare a preliminary draft of the county plan;

(2) From time to time review and, as the county executive or county council considers necessary, prepare amendments to the county plan including revisions to service area category designations; and

(3) Submit to the county council for the county council's consideration, revision, modification, comment, and approval:

(i) The draft; and

(ii) Any revision or amendment to the draft.

(d) The county executive of each county shall prepare and submit to the county council:

(1) A final draft of the county plan to conform to the action of the county council in approving the draft; and

(2) A final revision or amendment to the county plan that takes into consideration any significant change in the intervening planning or development in the county.

(e) At least 30 days before the date set for a public hearing under subsection (f) of this section, the county council of each county shall submit its final draft or the final draft of any revision or amendment of the county plan for recommendation to:

(1) The Washington Suburban Sanitary Commission; and

(2) The Maryland-National Capital Park and Planning Commission.

(f) The county council of each county shall:

(1) Hold a public hearing on:

(i) Its final draft of the county plan; and

(ii) The final draft of any revision or amendment to the county plan; and

(2) Publish a notice of the time and place of the public hearing at least 10 days before the hearing in a newspaper of general circulation in the county.

(g) (1) After the public hearing in each county, the county council shall review, may amend as the county council considers necessary, and shall adopt the county plan or the revision or amendment to the county plan.

(2) The adoption of the county plan or a revision or amendment of the county plan by the county council of the county is not final until 10 days after the action adopting it.

(3) During the 10-day period provided by paragraph (2) of this subsection, the county executive may:

(i) Review the county plan or any revision or amendment to the

county plan; and

(ii) Recommend for the consideration of the county council whatever change to the county plan or any revision or amendment to the county plan that the county executive considers necessary or desirable.

(h) After the time periods required for adoption under this section, the county council of each county shall submit to the Department, as required by § 9-506(b) and (c) of this subtitle:

(1) The county plan; or

(2) Any revision or amendment to the county plan.

§9–516.

(a) This section applies only in Montgomery County and Prince George's County.

(b) The Washington Suburban Sanitary Commission and the Maryland-National Capital Park and Planning Commission shall provide any information and assistance requested by the county council or the county executive for preparing, reviewing, adopting, revising, or amending a county plan.

(c) The county council and county executive of each county, the Washington Suburban Sanitary Commission, and the Maryland-National Capital Park and Planning Commission shall adopt procedures for:

(1) Requesting information or assistance under this section;

(2) Responding to the request; and

(3) Setting a reasonable timetable for response to a request.

(d) The Washington Suburban Sanitary Commission shall provide any requested information about the comprehensive plan for water supply systems and sewerage systems in each county as to:

(1) Engineering;

(2) Design;

(3) Present and future capacities;

(4) Available service projections;

(5) Fiscal elements; and

(6) Annual revisions of this information.

(e) The Maryland-National Capital Park and Planning Commission shall provide any requested information to each county as to:

(1) Population;

(2) Growth projections;

(3) Planning factors; and

(4) Other developmental standards.

§9–517.

In Montgomery County or Prince George's County, the comprehensive plan for water supply systems and sewerage systems may allow the installation and use of an individual sewerage system for an interim period until the necessary sewerage transmission and treatment capacity in the area is available to provide adequate community sewerage service if:

(1) A community sewerage system otherwise is required in the area; but

(2) Access to a community sewerage system is prohibited by an order of:

(i) The Department;

(ii) Montgomery County;

(iii) Prince George's County; or

(iv) The Washington Suburban Sanitary Commission.

§9–518.

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

(2) "Commission" means the Washington Suburban Sanitary Commission.

(3) "Health officer" means the health officer for Prince George's County.

(4) "Issuing authority" means any one of the following authorities that is authorized to issue or approve a permit:

(i) The Department;

(ii) The health officer;

(iii) The Montgomery County department designated by the Montgomery County government; or

(iv) The Prince George's County Health Department.

(5) "Permit" means a permit issued or approved by the issuing authority for Montgomery County or Prince George's County to install, connect to, or use an individual septic system.

(b) This section applies only in Montgomery County and Prince George's County.

(c) In each county, a person shall have a permit from an issuing authority before the person may install, connect to, or use an individual septic system.

(d) An applicant for a permit shall submit an application to the issuing authority on the form that the issuing authority requires.

(e) (1) The health officer and the Montgomery County department designated by the Montgomery County government shall:

(i) Submit each application for a permit to the Commission; and

(ii) Notify the Commission if there is more than one application for a permit in an area or subdivision of each county when:

1. The original permit application is submitted to the Commission; or

2. This fact reasonably becomes known to the health officer.

(2) This subsection does not apply to an area of each county in which a community sewerage system is not planned within 10 years under the county's comprehensive plan for sewerage systems.

(f) (1) Within 30 days after the Commission receives an application under subsection (e)(1) of this section, the Commission shall review the application and comment to the health officer, in writing, on the application.

(2) If there is more than one application for a permit in an area or subdivision of each county, the Commission may group these applications together for purposes of review and comment.

(3) In its review and comments under this subsection, the Commission shall include:

(i) A determination of the location of the nearest collection line of a community sewerage system;

(ii) The capacity, feasibility, cost, and engineering conditions or requirements for an extension of this collection line; and

(iii) If available, an estimate of the time required for this extension.

(g) (1) The issuing authority shall issue a permit to any applicant who meets the requirements of this subtitle.

(2) If the Commission does not respond as required by subsection (f) of this section, and if the permit otherwise complies with this section, the local health officer may issue the permit.

(h) (1) The issuing authority shall include on each permit that the issuing authority issues a requirement that the holder of a permit shall notify, in writing, any buyer or lessee of the permitted property:

(i) That the permitted property is served by an individual septic system;

(ii) Of the conditions, estimate of time, and other factors that concern the subsequent extension of a community sewerage system to the permitted property; and

(iii) If applicable, that the Commission did not review and comment on the application for a permit because the permitted property was in an area of the county in which at the time of the application a community sewerage system was not planned within 10 years under the county's comprehensive plan for sewerage systems.

(2) The health officer and the Montgomery County department designated by the Montgomery County government:

(i) Shall adopt rules and regulations to carry out the provisions of this subsection; and

(ii) May require the holder of a permit to record the information required by paragraph (1) of this subsection in the land records of the county in which the permitted property is located.

§9–521.

(a) A State or local authority that violates any provisions of § 9-512(b) or (d) of this subtitle is liable for a civil penalty not exceeding $100 to be collected in a civil action brought by the Department in the circuit court for any county. Each day a violation continues is a separate violation under this section.

(b) A civil penalty imposed under this section does not bar any other applicable relief or penalty.

(c) (1) An applicant who violates § 9-510(b)(9) of this subtitle, or who violates any regulation adopted under § 9-510(b)(9) of this subtitle, is liable for a civil penalty not to exceed $500 per violation to be collected in a civil action filed by the Department

in the circuit court for any county.

(2) Each day a violation continues under this subsection constitutes a separate violation of this subsection.

§9–601.

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

(b) "Bond" means any bond, note, or other evidence of indebtedness or obligation that a district is authorized to issue under this subtitle.

(c) (1) "Cost", as applied to any project, includes the cost of and all expenses incident to the construction, acquisition, improvement, or placement in operation of a project, including the cost and expenses of:

(i) The purchase price of a project;

(ii) The cost of acquiring all the capital stock of a corporation that owned a project;

(iii) Amounts paid to discharge obligations of the owner of a project, if paid to vest title to a project in the district;

(iv) Any interest in real or personal property acquired in connection with it;

(v) Financial, technical, professional, engineering, and legal services;

(vi) Plans, specifications, surveys, estimates of costs and revenues, feasibility or practicability reports, machinery, equipment, administrative expenses, and other expenses that are necessary and incident to the financing authorized for the construction, acquisition, improvement, or placement in operation of a project; and

(vii) Financing the project, including finance charges and interest before, during, and for 1 year after completion of construction.

(2) "Cost", as to any obligation or expense that is incurred before the bonds are issued, also includes the cost and expense of engineering services, estimates of costs and revenues, and any other technical or professional services that may be used in the construction, acquisition, or improvement of a project.

(d) (1) "District" means an entity that is created under this subtitle.

(2) "District" includes a board, body, or commission that assumes the principal functions of a district that is created under this subtitle and later abolished.

(e) "Governing body" means the body or board that is authorized to enact

ordinances or resolutions for a county.

(f) "Improvement" means any construction, repair, replacement, extension, or betterment of a project.

(g) "Independent system" means a water system, sewerage system, or solid waste disposal system that:

(1) Is not operated by a sanitary commission or a municipality; and

(2) Serves territory not served by a project.

(h) "Member county" means a county that:

(1) Has formed or joined a district under this subtitle; and

(2) Has not withdrawn from the district.

(i) "Municipal system" means a water system, sewerage system, or solid waste disposal system that:

(1) Is operated by a municipality; and

(2) Serves territory not served by a project.

(j) "Project" means a water system, sewerage system, solid waste disposal system, or solid waste acceptance facility or any part of these that a district owns, constructs, or operates.

(k) "Sanitary commission" means a sanitary commission created under this subtitle.

(l) "Service area" means a defined geographical area that is established as a service area by a sanitary commission under this subtitle.

(m) "Sewage" means any water-carried waste created in and carried or to be carried away from a residence, hotel, school, hospital, industrial establishment, commercial establishment, or any other building, including any household and industrial wastes that are present.

(n) (1) "Sewerage system" means a plant, system, facility, or property that can:

(i) Carry sewage away;

(ii) Collect sewage;

(iii) Neutralize sewage;

(iv) Stabilize sewage; or

(v) Treat sewage.

(2) "Sewerage system" includes the following parts of a sewerage system:

(i) A disposal field.

(ii) A drainage ditch.

(iii) A force main.

(iv) An intercepting ditch.

(v) An intercepting sewer.

(vi) A lateral sewer.

(vii) An outfall sewer.

(viii) A pumping station.

(ix) A sewage conduit.

(x) Sewage equipment.

(xi) A sewage lagoon.

(xii) A sewage pipe.

(xiii) A sewage pipe line.

(xiv) A sewage treatment plant.

(xv) A trunk sewer.

(3) "Sewerage system" includes any property or property right used in the operation of the sewerage system.

(o) "Solid waste acceptance facility" means a facility whose primary purpose is:

(1) Disposing of solid waste;

(2) Processing solid waste; or

(3) Treating solid waste.

(p) (1) "Solid waste disposal system" means a system that systematically or on a schedule collects solid waste and transports it to a solid waste acceptance facility for treatment or disposal.

(2) "Solid waste disposal system" includes a solid waste acceptance facility that is used with the system.

(q) (1) "Water system" means a plant, system, facility, or property that can supply water or distribute water.

(2) "Water system" includes the following parts of a water system:

(i) A dam.

(ii) A filtration plant.

(iii) A hydrant.

(iv) A lateral.

(v) A reservoir.

(vi) A standpipe.

(vii) A valve.

(viii) A water distribution system.

(ix) Water equipment.

(x) A water intake.

(xi) A water main.

(xii) A water meter.

(xiii) A water pumping station.

(xiv) A water purification plant.

(xv) A water supply system.

(xvi) A well.

(3) "Water system" includes any property or property right used in the operation of the water system.

§9–602.

This subtitle does not apply to:

(1) Anne Arundel County.

(2) Carroll County.

(3) Harford County.

(4) Montgomery County.

(5) Prince George's County.

(6) St. Mary's County.

(7) Wicomico County.

§9–603.

Each sanitary commission may adopt rules and regulations to carry out the provisions of this subtitle.

§9–604.

(a) Except as otherwise provided in this section, this subtitle shall be interpreted liberally to allow a district to carry out the purposes of this subtitle.

(b) This subtitle does not limit the powers of the Department of Natural Resources or the Department of the Environment.

§9–605.

(a) (1) This subtitle does not impair the validity of actions taken by a district before June 1, 1961.

(2) This subtitle ratifies the actions taken by any district before June 1, 1961.

(b) This subtitle ratifies the issuance and sale of all bonds issued or sold by a district before June 1, 1961.

§9–606.

(a) At any reasonable time, a representative of a sanitary commission may enter any public or private building or place under the jurisdiction of the district to inspect any pertinent equipment or part of the building or place.

(b) On entering any building or place under this section, the representative of the sanitary commission shall present to the owner, operator, or agent in charge appropriate credentials from the sanitary commission.

§9–607.

(a) Each district is a public corporate body that exercises public and essential government functions, for the public health and welfare.

(b) As to any project, each district may do any of the following:

(1) Acquire the project.

(2) Construct the project.

(3) Hold the project.

(4) Improve the project.

(5) Lease the project as a lessee or lessor.

(6) Maintain the project.

(7) Operate the project.

(8) Own the project.

(9) Reconstruct the project.

(10) Repair the project.

§9–608.

(a) Each district, its income, its property, and its incorporation are exempt from any State or local taxation or assessments.

(b) The bonds issued under this subtitle, their transfer, the interest payable on them, and any income derived from them, including any profit realized in their sale or exchange, shall be exempt at all times from every kind and nature of taxation by this State or by any of its political subdivisions, municipal corporations, or public agencies of any kind.

(c) When making required filings of corporate documents, each district may be required to pay the usual:

(1) Filing fees;

(2) Recording fees; and

(3) Service charges.

§9–611.

By ordinance or resolution, the governing body of a county or the governing bodies of 2 or more counties may create a district under this subtitle.

§9–612.

(a) The ordinance or resolution that creates a district shall include articles of incorporation that comply with this section.

(b) The articles of incorporation shall include:

(1) The name of the district, using the word "district";

(2) A statement that the district is formed under this subtitle;

(3) The name of each member county;

(4) The name, address, and term of office of each of the first sanitary commissioners of the district;

(5) The purposes for which the district is created; and

(6) If the district is to exercise jurisdiction over a geographical area smaller than the maximum jurisdiction allowable to the district under this subtitle, a description of the geographical jurisdiction of the district.

§9–613.

The appropriate officials of each member county shall sign the articles of incorporation and file the articles with the State Department of Assessments and Taxation.

§9–614.

(a) In this section, "amendment" means an amendment to the articles of incorporation of a district.

(b) In accordance with this section, a district may adopt amendments that:

(1) Can be included lawfully in original articles of incorporation; and

(2) Change the district's:

(i) Name;

(ii) Powers; or

(iii) Purposes.

(c) To adopt amendments, the sanitary commission shall adopt a resolution that:

(1) Directs that the proposed amendment be submitted to each member

county; and

(2) Discloses the text of the proposed amendment by printing:

(i) The text of the entire articles of organization as the articles of organization would read after adoption of the proposed amendment;

(ii) The text of a provision in the articles of incorporation as that provision would read after adoption of the proposed amendment; or

(iii) The material whose addition to or removal from the articles of incorporation is proposed.

(d) By ordinance or resolution, the governing body of each member county shall adopt or reject the proposed amendment.

(e) (1) If the governing body of each member county adopts the proposed articles of amendment, two authorized officers of the district shall:

(i) Verify the facts set forth in the articles of amendment;

(ii) Put the district's seal on the articles of amendment; and

(iii) Sign the articles of amendment.

(2) The articles of amendment shall include:

(i) The name and address of the principal office of the district;

(ii) A statement that the amendment was proposed by the sanitary commissioners;

(iii) A statement that each member county adopted the amendment; and

(iv) The text of the amendment.

(f) The district shall file the articles of amendment with the State Department of Assessments and Taxation.

§9–615.

(a) A county that is not a member county may join a district in accordance with this section.

(b) (1) To join a district, the governing body of the incoming county shall adopt an ordinance or resolution that asks the district to admit the incoming county.

(2) If the sanitary commission of the district adopts a resolution that

approves the admission of the incoming county and if the governing body of each member county adopts an ordinance or resolution that approves the admission of the incoming county, the sanitary commission and the governing body of the incoming county shall adopt and sign articles of joinder.

(c) Immediately on the admission of the county, the governing body of the new member county shall appoint a sanitary commissioner.

(d) The articles of joinder shall include:

(1) The name, address, and term of office of the first sanitary commissioner from the incoming county; and

(2) All information about the incoming county that would be required in original articles of incorporation.

(e) The district and incoming county shall file the articles of joinder with the State Department of Assessments and Taxation.

§9–616.

(a) If the district has not incurred any obligation, a member county may withdraw from a multiple county district in accordance with this section.

(b) (1) The governing body of the county seeking to withdraw shall adopt an ordinance or resolution that asks the district to allow that county to withdraw from the district.

(2) If the sanitary commission adopts a resolution that approves the withdrawal of the petitioning county and if the governing body of each member county adopts an ordinance or resolution that approves the withdrawal of the petitioning county, the sanitary district and the governing body of the withdrawing county shall adopt and sign articles of withdrawal.

(c) The district and the withdrawing county shall file the articles of withdrawal with the State Department of Assessments and Taxation.

§9–617.

(a) In this section, "corporate document" means:

(1) Articles of incorporation;

(2) Articles of amendment;

(3) Articles of joinder; or

(4) Articles of withdrawal.

(b) (1) When a corporate document is filed with it, the State Department of Assessments and Taxation shall:

(i) Endorse on the corporate document the time and date the corporate document was received; and

(ii) Examine the corporate document.

(2) If, after examination, the State Department of Assessments and Taxation determines that the corporate document is proper, the State Department of Assessments and Taxation shall:

(i) Issue a certificate of approval;

(ii) Include with the certificate of approval a copy of the corporate document; and

(iii) Record a copy of:

1. The corporate document; and

2. The certificate of approval.

(c) When the State Department of Assessments and Taxation issues a certificate of approval under this section:

(1) The corporate document is effective;

(2) The district exists as provided in the corporate document; and

(3) The corporate document is conclusively presumed to have been adopted lawfully.

§9–618.

(a) Promptly after it is created and its officers are elected, each district shall notify the State Department of Assessments and Taxation of:

(1) The principal office of the district; and

(2) The name and address of each officer of the district.

(b) Within 10 days after the district makes any change in the location of the district's principal office, the district shall notify the State Department of Assessments and Taxation of the change.

§9–621.

Except as provided in § 9-629 of this subtitle, the sanitary commission is the body

that governs a district.

§9–622.

(a) (1) The sanitary commission of each single county district consists of the following numbers of sanitary commissioners, each appointed by the governing body of the member county:

(i) Allegany County – 7;

(ii) Dorchester County – 6;

(iii) Somerset County, except as provided in paragraph (2) of this subsection – 5;

(iv) Worcester County – 5; and

(v) Other counties – 3.

(2) In a single county district in Somerset County, if there are more than 5 service areas in the single county district, the sanitary commission consists of:

(i) One sanitary commissioner from each service area; and

(ii) If there is an even number of service areas, one additional sanitary commissioner.

(b) (1) In a single county district in Somerset County, the sanitary commission consists of:

(i) A sanitary commissioner from each service area who is a resident of that service area; and

(ii) If there is an even number of service areas, one additional sanitary commissioner who is a resident of the county at large.

(2) In other counties, each sanitary commissioner shall be a resident of the county.

(c) (1) The term of a sanitary commissioner in a single county district is as follows:

(i) In Dorchester County, 6 years expiring on July 1 of the appropriate year.

(ii) In Allegany County, 6 years expiring on June 1 of the appropriate year.

(iii) In Somerset County, 6 years expiring, as required by the terms of

the sanitary commissioners on July 1, 1982, on June 1 or January 1 of the appropriate year.

(iv) In any other county, 6 years expiring on January 1 of the appropriate year.

(2) The terms of sanitary commissioners in a single county district are staggered as required by the terms provided for sanitary commissioners on July 1, 1989.

(3) The terms of the first sanitary commissioners appointed in a single county district created after June 30, 1982 are as follows:

(i) For one sanitary commissioner, 2 years expiring on the second January 1 after the single county district is created.

(ii) For one sanitary commissioner, 4 years expiring on the fourth January 1 after the single county district is created.

(iii) For one sanitary commissioner, 6 years expiring on the sixth January 1 after the single county district is created.

(d) (1) At the end of a term, a sanitary commissioner in a single county district continues to serve until a successor is appointed and qualifies.

(2) A sanitary commissioner in a single county district who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(e) At least 1 month before the term of a sanitary commissioner in a single county district expires, the governing body of the member county shall appoint a successor.

§9–623.

(a) (1) The sanitary commission of a district with 2 member counties consists of at least:

(i) One sanitary commissioner from each member county appointed as the articles of incorporation of the district provide; and

(ii) One sanitary commissioner from either member county as the articles of incorporation of the district provide.

(2) The sanitary commission of a multiple county district with at least 3 member counties consists of a number of sanitary commissioners equal to at least the number of member counties.

(3) The sanitary commission of a district that adds an incoming member

county consists of:

(i) The sanitary commissioners in office before the admission of the incoming county; and

(ii) At least one sanitary commissioner from the incoming county.

(b) A sanitary commissioner of a multiple county district shall be a resident of the member county from which the sanitary commissioner is appointed.

(c) If a member county withdraws from a district, the term of each sanitary commissioner who was appointed from that county ends when the withdrawal is effective.

(d) (1) Except for the term of the first sanitary commissioner who represents each incoming county admitted to a district, the term of a sanitary commissioner in a multiple county district is the lesser of:

(i) 6 years; or

(ii) The term provided in the articles of incorporation of the district.

(2) The term of the first sanitary commissioner from an incoming county admitted to a district is 6 years.

(3) The terms of sanitary commissioners in a multiple county district are staggered as required by the articles of incorporation of the district.

(4) At the end of a term, a sanitary commissioner in a multiple county district continues to serve until a successor is appointed and qualifies.

(5) A sanitary commissioner in a multiple county district who is appointed after a term has begun serves only for the rest of the term and as required by the articles of incorporation of the district.

§9–624.

(a) From among its sanitary commissioners, each sanitary commission shall elect a chairman who is the chief executive officer of the district.

(b) In Somerset County, from among the sanitary commissioners, the commission shall elect a vice chairman.

(c) Each sanitary commission shall appoint a secretary-treasurer.

(d) In a single county district, a sanitary commissioner may not hold any other office of the county.

§9–625.

(a) Unless the bylaws of the district require a larger number, a majority of the full authorized membership of the sanitary commission is a quorum.

(b) Each sanitary commissioner is entitled to:

(1) Compensation as approved and paid by the governing body of the member county from which appointed; and

(2) Reimbursement for expenses as provided in the district's budget.

§9–626.

(a) The secretary–treasurer of the sanitary commission shall:

(1) Collect all charges and assessments made by the district;

(2) Receive all money payable to the district; and

(3) Account to the sanitary commission for all money received.

(b) (1) To protect the funds of the district, the secretary–treasurer shall give bond to this State in accordance with this subsection.

(2) The amount of and surety on the bond shall be approved by the sanitary commissioners.

(3) The bond shall include the following condition:

"That if ....., secretary–treasurer of the ..... District, shall well and faithfully execute the office of secretary–treasurer and shall account to the sanitary commission of the ..... District for all moneys which the secretary–treasurer receives for the sanitary commission of the ..... District, or is answerable for by law, then the obligation of this bond is void, otherwise to be in full force."

(4) After the bond has been approved by the sanitary commissioners, the secretary–treasurer shall:

(i) Take, before the clerk of the circuit court for a member county, the oath of office required by Article I, § 9 of the Maryland Constitution; and

(ii) File the bond with the State Comptroller.

(5) The sanitary commission may pay the premium on a bond given under this section.

§9–627.

(a) In addition to the powers set forth elsewhere in this subtitle, a sanitary commission may:

(1) Determine the number of other officers, agents, and employees of the district; and

(2) Determine the powers, duties, and compensation of other officers, agents, and employees of the district.

(b) A sanitary commission may appoint a sanitary commissioner to any office of the district, set the compensation for that office, and require that the compensation be paid by the member county represented by that sanitary commissioner.

§9–628.

(a) In addition to the other powers to make advances set forth in this subtitle, the governing body of a member county may make advances to a district in accordance with this section.

(b) The advances shall be for the purpose of meeting the necessary operating and overhead expenses of the district from the time the district is created until it can receive funds that may be used to pay these expenses.

(c) The advances shall be:

(1) Paid from the general funds of the member county; and

(2) In the amount that the governing body of the member county considers necessary.

(d) (1) The district shall repay the advances to the member county in accordance with the terms imposed by the governing body of the member county making the advances.

(2) The governing body of the member county may not require the district to repay the advances before the time the district is allowed to impose minimum charges and usage charges under this subtitle.

(3) The district may repay the advances to the member county before the time required under paragraph (1) of this subsection.

(e) The district may repay the advances to the member county out of any funds whose use is not restricted but that are available to the district.

§9–629.

(a) The County Commissioners of Allegany County may exercise jurisdiction

over the county sanitary commission, as created under this Part III.

(b) The County Commissioners of Garrett County shall govern the district in Garrett County.

§9–632.

(a) For the purposes of carrying out this subtitle, each district has, in addition to the powers provided elsewhere in this subtitle, the powers set forth in Part IV of this subtitle.

(b) Except as otherwise provided in this subtitle, a district has all of the powers, privileges, and immunities granted to Maryland corporations under the Maryland General Corporation Law.

§9–633.

(a) Subject to the provisions of this section, a district may acquire rights in land or water rights by exercise of the right of eminent domain as set forth in Title 12 of the Real Property Article.

(b) A district's power of eminent domain does not extend to an interest in real property that is owned by a county, municipal corporation, or other political subdivision unless the governing body of that county, municipal corporation, or other political subdivision consents.

(c) A district's power of eminent domain does not extend to a privately owned and operated water system, sewerage system, or solid waste acceptance facility unless:

(1) The owners and operators of the system or facility consent;

(2) The system of a facility is not being operated or maintained as required by law; or

(3) The system is needed as an integral part of a service area.

(d) (1) After complying with this subsection and no sooner than 10 days after judgment has been entered in the condemnation proceedings, the district may take any property that has been condemned under this section.

(2) Before taking the property, the district shall pay to the court the amount of the award and costs taxed to date.

§9–634.

A district may combine the operations or finances of any combination of projects.

§9–635.

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

(2) (i) "Contracting party" means the other party to a contract made by a district under this section.

(ii) "Contracting party" includes:

1. A person;

2. A county of this State or any other state;

3. A municipal corporation of this State or any other state;

4. This State or any other state;

5. The United States;

6. Any instrumentality of this State, any other state, or the United States; and

7. Another district of this State or any other state.

(3) "Contracting party's system" means any of the following systems owned or operated by a contracting party:

(i) A sewerage system.

(ii) A solid waste acceptance facility.

(iii) A solid waste disposal system.

(iv) A water system.

(b) If its sanitary commission approves, a district may make a contract with a contracting party:

(1) To buy services from the contracting party's system;

(2) To use the facilities of the contracting party's system; or

(3) To allow a contracting party or its customers to use the services or facilities of the district.

(c) Any contract made under this section:

(1) Shall require that the fees, rates, or charges collected under the contract be sufficient to pay the obligations of the contracting party; and

(2) May allow a contracting party to collect from its customers the fees, rates, or charges due under the contract.

(d) A contract made under this section is for the benefit of holders of the district's bonds.

§9–636.

On the terms that the sanitary commission approves, a district may contract with any person, county, municipal corporation, adjoining state, or public authority or district of this State or an adjoining state, for the construction or operation of a water system, sewerage system, solid waste disposal system, or solid waste acceptance facility in this State or the adjoining state.

§9–637.

(a) In this section, "public way" means any public street, public road, public alley, or public highway.

(b) In accordance with this section, a district may enter or excavate on any public way to install, maintain, or operate a project.

(c) The district is not required to obtain a permit or to pay a fee for an entry or excavation under this section.

(d) Before beginning work under this section, the district shall notify the public authority responsible for the public way.

(e) After completing the work under this section, the district, at its own expense, shall restore the public way to a condition at least as good as the condition that existed immediately before the work began.

§9–638.

In accordance with this subtitle and the terms of the grant or gift, a district may accept a grant or gift to carry out the purposes of this subtitle.

§9–639.

(a) Except as otherwise provided in this section, the powers of a district continue as to any territory of the district that is annexed by a municipality or by a county that is not a member county.

(b) The continuation of powers under this section expires when each contract, obligation, bond, and indebtedness of the district, for which the district was liable at the time of annexation, is extinguished.

§9–640.

(a) In this section, "governmental agency" means:

(1) The federal government;

(2) This State; or

(3) An agency or instrumentality of the federal government or this State.

(b) A district may borrow from a governmental agency the amount of money that the sanitary commission considers necessary to pay the organization and planning costs for a project or a service area, including costs for:

(1) Engineering services;

(2) Legal services;

(3) Estimates of costs;

(4) Estimates of revenue;

(5) Plans or specifications; and

(6) Surveys.

(c) (1) A district may not pay interest on money borrowed from a governmental agency under this section.

(2) If a district borrows from a governmental agency under this section, the district shall repay the lending governmental agency:

(i) When work begins on the water system or sewerage system for which the borrowing was made; and

(ii) Only from funds or bond revenues that, under this subtitle, relate to the project.

§9–641.

(a) If the governing body of each member county that has territory in the service area of the project approves, a district may borrow money and pay interest to provide interim financing for a project.

(b) Borrowing under this section may not be for a period of more than 5 years.

(c) Each member county that approves a borrowing under this subsection shall guarantee payment of the principal and interest in the same way that a county makes guarantees under Part VIII of this subtitle.

§9–642.

(a) Each district shall:

(1) Keep complete and accurate records of its receipts, expenses, and expenditures; and

(2) Employ a certified public accountant to conduct a detailed audit of these records.

(b) (1) Each district shall make available for public inspection the district's financial statement and the detailed audit.

(2) At the district's principal office and during normal business hours, any person may inspect the financial statement and the detailed audit.

(3) Each year, each district shall give the governing body of each member county a certified copy of the financial statement and the detailed audit.

(c) (1) The governing body of any member county, at any time, may examine the books and records of the district.

(2) The examination by the governing body of a member county under this subsection shall be without cost to the district.

§9–643.

A district may not construct, improve, operate, or extend any project that would duplicate or compete with any utility that is similar to a project and serves substantially the same purposes, unless:

(1) The utility is a privately owned water system or sewerage system; and

(2) The sanitary commission finds that the utility is unfit for incorporation into the district's system.

§9–644.

(a) A county that has created a district may not create a new district that would serve territory served by an existing district.

(b) Unless, by ordinance or resolution, every other member county of each district of which the member county is already a member approves, a member county may not join or create another district.

§9–647.

(a) As provided in this part, the sanitary commission and the governing bodies of the member counties of a district may create or change service areas in the district.

(b) Except as provided in subsection (e) of this section, in considering a proposed service area, the sanitary commission and the governing bodies of the member counties may not create or change a service area unless they find that the creation or change:

(1) Is necessary for the existing and future health, safety, and welfare of the public in general; and

(2) Is feasible financially and from an engineering standpoint.

(c) The governing bodies of the member counties of a district:

(1) May authorize the district to retain expert engineering services to develop a plan for the creation of service areas in the district; and

(2) Shall pay from the general funds of the member counties the cost of all engineering services obtained under this subsection.

(d) In Allegany County, the boundaries of an existing service area may be changed to reduce the area included in the service area if the Sanitary Commission and the governing body of Allegany County make the findings specified in subsection (b) of this section and also find that the change in the boundaries of the service area would:

(1) Exclude only properties which are not served by any project benefiting the service area or which the Sanitary Commission finds and determines will not be served within 2 years after the latter of:

(i) The date on which the construction is completed for any project then under construction for the service area; or

(ii) The date on which the Sanitary Commission adopts a resolution to change the boundaries of the service area; and

(2) Not cause the outstanding principal balance of bonds issued for the service area to exceed 25 percent of the total value of property, as assessed for county taxation, in the service area, as proposed to be reduced, on the date on which the Sanitary Commission adopts the resolution to change the boundaries of the service area.

(e) In Worcester County, in considering a proposed service area, the Sanitary Commission and the governing body of Worcester County may not create or change a service area unless they find that the creation or change:

(1) Is necessary for the existing or future health, safety, and welfare of the public in general; and

(2) Is feasible financially and from an engineering standpoint.

§9–648.

(a) Each sanitary commission may adopt a resolution that proposes to create a service area or to change the boundaries of an existing service area. The resolution shall refer to a plat of the member counties that clearly shows the boundary lines of the proposed service area.

(b) (1) The governing body of each member county shall hold a public hearing to consider the proposed service area or boundary change.

(2) At least 10 days before the hearing required under this subsection, notice of the hearing shall be published in each member county in at least 1 newspaper of general circulation in the member county.

(c) If the governing body of each member county approves the proposed creation of a service area or the proposed boundary change, a copy of the plat and the resolution required under subsection (a) of this section shall be recorded among the land records of each member county.

(d) The sanitary commission shall give each service area to be created under this section a distinctive name.

(e) A service area is created when the requirements of this section have been met.

(f) Each service area created under this section is a separate taxing district.

(g) A change in the boundaries of an existing service area does not affect any outstanding bond issued with respect to the existing service area.

§9–649.

(a) This section does not authorize the creation of a service area that includes territory in another service area.

(b) If the required number of property owners sign a petition that requests the creation of a service area in a district, the sanitary commission shall review the petition.

(c) The required number of petitioning property owners is:

(1) In Dorchester County, the lesser of:

(i) 25 percent of the property owners in the proposed service area; or

(ii) 25 property owners in the proposed service area; and

(2) In any other member county, 25 property owners in the proposed service area.

(d) The petition:

(1) Shall include a definite statement of the boundaries of the proposed service area;

(2) May request that the proposed service area be designated as a new service area; and

(3) If the proposed service area is contiguous to an existing service area, may request that the existing service area be extended to include the proposed service area.

(e) If the sanitary commission approves the petition, the sanitary commission may:

(1) Obtain a preliminary engineering survey that describes the feasibility and probable costs of providing to the service area the services that a district can provide under this subtitle; and

(2) Submit the approved petition to the governing body of each member county of the proposed service area for consideration by that governing body.

(f) If the sanitary commission disapproves the petition or does not obtain an engineering survey, the sanitary commission shall:

(1) Notify each petitioner by mail of the sanitary commission's action; and

(2) Include in the notice an estimate of the cost of obtaining the engineering survey.

(g) If the sanitary commission does not get an engineering survey, the sanitary commission may not take further action on the petition unless the petitioners pay to the district the estimated cost of the engineering survey.

(h) If the petitioners pay the estimated cost of the engineering survey, the sanitary commission shall obtain the engineering survey in accordance with this section.

(i) If the petitioners pay the cost of a survey under this section and if a service area later is created or changed under this section, the sanitary commission shall repay to the petitioners the survey costs incurred by the petitioners.

(j) When the preliminary engineering survey is complete and after giving notice in accordance with this section, the sanitary commission shall hold a public hearing to consider the petition.

(k) (1) For at least 3 weeks before the hearing, notice of the hearing shall be published in each member county once a week in at least 1 newspaper of general

circulation in the county.

(2) The notice shall include:

(i) A description of the proposed service area; and

(ii) The time and place of the hearing.

(l) At the hearing, the sanitary commission shall provide a report of:

(1) The latest estimate of the cost of creating the proposed service area;

(2) The latest estimate of the cost of providing facilities in the proposed service area; and

(3) How much of the cost will be funded by issuing bonds under this subtitle.

(m) In deciding on a petition presented under this section, the sanitary commission shall consider:

(1) The standards required under § 9-647 of this subtitle; and

(2) Whether granting the petition would require a bond issuance that is excessive under subsection (n) of this section.

(n) A bond issuance is excessive if:

(1) The bond issuance is for funding a proposed service area; and

(2) After the bond issuance, the unamortized balance of bonds issued for the proposed service area would exceed 25 percent of the total value of property in the service area, as assessed for county taxation.

(o) The sanitary commission shall deny the petition if:

(1) Granting the petition would violate the standards of § 9-647 of this subtitle; or

(2) Granting the petition would require a bond issuance that is excessive under subsection (n) of this section.

(p) The sanitary commission shall:

(1) Issue an order that denies, grants, or modifies the petition; and

(2) Publish its order in each member county where the proposed service area is located in at least 1 newspaper of general circulation in the county.

(q) (1) The governing bodies of the member counties in the proposed service area shall review the order of the sanitary commission, if at least 10 individuals who own property in and reside in the proposed service area request a review of the order within 10 days after notice of the sanitary commission's order is published.

(2) After due notice, the governing bodies of the member counties at a hearing shall consider de novo the factors that the sanitary commission was required to consider.

(3) After the hearing, the governing bodies of the member counties may affirm or reverse the order of the sanitary commission.

(r) (1) When a proposed service area is approved finally under this section, the sanitary commission shall file plats of the service area:

(i) In the office of the sanitary commission;

(ii) With the governing body of each county in which any part of the service area lies; and

(iii) With the clerk of the circuit court for each county in which any part of the service area lies for filing in a plat book among the land records.

(2) The plats required under this subsection shall:

(i) Be made under the supervision of the sanitary commission's engineers;

(ii) Show the boundaries of the service area; and

(iii) In the case of the plat filed among the land records, be indexed in the records in the names of the district and the service area.

(s) If a service area created under this section is a new service area, the sanitary commission shall give the service area a distinctive name.

(t) A service area is created when the requirements of this section have been met.

(u) Each service area created under this section is a separate taxing district.

§9–650.

(a) In addition to the power to make any other advances under this subtitle, the governing body of a member county may advance to a district the funds necessary to organize and to meet the preliminary expenses of a service area or a proposed service area.

(b) The district shall repay advances made under this section.

(c) If a bond issue is made for the service area for which advances were made under this section, the district shall repay any outstanding advances to the member county from the proceeds of the first bond issue.

§9–651.

(a) If consolidating administrative matters of service areas will not impair any bond obligation incurred by a district under this subtitle, the district may consolidate the administrative matters of service areas in accordance with this section.

(b) If the action promotes efficient operation of the service areas, a district may:

(1) Consolidate the operational, engineering, and financial functions of service areas;

(2) Allocate costs among service areas; and

(3) If this subtitle does not commit the funds for a specific purpose, combine funds of service areas.

§9–652.

(a) After a service area has been created under § 9-648 or § 9-649 of this subtitle, the sanitary commission may obtain further surveys, plans, specifications, and estimates that relate to possible projects in a service area.

(b) The sanitary commission may create, within a service area:

(1) Water service subareas;

(2) Sewerage service subareas; and

(3) Solid waste disposal subareas.

(c) In creating a service subarea under this subsection, the sanitary commission shall consider whether that creation:

(1) Best serves the needs of the communities in the whole service area; and

(2) Promotes convenience and economy of installation and operation of projects in the whole service area.

(d) When a plan for a proposed project is complete or when the sanitary commission proposes to create service subareas, the sanitary commission shall give notice and hold a public hearing at which time any individual will be given an opportunity to be heard in accordance with this section.

(e) The hearing shall be held within 5 days of the last date that notice of the

hearing is published under subsection (f) of this section.

(f) For 3 consecutive weeks before the hearing, the sanitary commission shall publish notice of the hearing in at least 1 newspaper of general circulation in each member county in which the proposed project or service subarea is to be located.

(g) The notice shall include:

(1) The probable cost, based on the latest available estimates, of the proposed project or subarea;

(2) A statement that the plans for the proposed project or subarea may be inspected at the office of the sanitary commission; and

(3) A statement that any individual interested in the proposed project or subarea will be heard at the hearing.

(h) A statement of probable cost included in a notice under this section does not require that the actual cost be the same.

(i) After the hearing, the sanitary commission shall issue a decision on the proposal.

(j) On receipt of a proper petition that protests the proposal, the sanitary commission shall hold a second hearing and give notice of that hearing.

(k) A petition for a second hearing by the sanitary commission shall:

(1) Be signed by at least 25 resident landowners who would be served by the proposed project or who reside in the proposed service subarea;

(2) Be filed with the sanitary commission within 10 days after the sanitary commission issues a decision under subsection (i) of this section; and

(3) State the objections of the petitioners.

(l) If a proper petition for a second hearing is filed with the sanitary commission, the sanitary commission shall hold a second hearing, if any, within 15 days after the petition is filed.

(m) The sanitary commission shall give notice of the second hearing, if any, by:

(1) Mailing the notice to at least 1 petitioner; and

(2) Publishing a notice of the time and place of the hearing, at least 5 days before the second hearing, in at least 1 newspaper of general circulation in each county where the proposed project or service subarea is to be located.

(n) After the second hearing, if any, the sanitary commission shall:

(1) By majority vote of the sanitary commissioners, determine whether the petitioner's objections are reasonable; and

(2) Issue a written order that decides the issue.

(o) The sanitary commission shall give notice of its order after any second hearing under this section by:

(1) Mailing the order to at least 1 petitioner; and

(2) Publishing the order in at least 1 newspaper of general circulation in each member county where the proposed project or service subarea is to be located.

(p) Persons aggrieved by the decision of the sanitary commission following a second hearing under this section may appeal to the member counties in accordance with this section.

(q) An appeal to the member counties may be made under this section if:

(1) The appeal is signed by at least 20 of the petitioners for a second hearing before the sanitary commission; and

(2) Within 10 days after notice of the sanitary commission's decision after the second hearing is published under this section, the appeal is filed with the governing body of each member county where the proposed project or service subarea is to be located.

(r) The governing body of each member county of the proposed project or service subarea shall hear the appeal from the second hearing.

(s) After an appeal under this section, the proposed project or service subarea may not be established unless the governing body of each member county affirms the proposed project or service subarea.

(t) The decision of the governing bodies of the member counties is final.

§9–655.

(a) After the hearing processes required in § 9-648 or § 9-649 of this subtitle are complete, a sanitary district may begin construction on a project that has been approved under either of those sections.

(b) The sanitary commission shall follow the bid solicitation procedure of this section for any construction work on the project, unless the cost will be $5,000 or less.

(c) The sanitary commission may solicit bids for all or part of the project for which bids are sought.

(d) Whenever the sanitary commission solicits bids under this section for

construction contracts, the sanitary commission shall advertise the solicitation in each member county in at least 1 newspaper of general circulation in the county.

(e) In addition to the advertising required by subsection (d) of this section, the sanitary commission may advertise the solicitation in other newspapers or technical journals.

(f) If the sanitary commission awards a contract in response to bids received under this section, the sanitary commission shall award the contract to the lowest responsible bidder.

(g) If the sanitary commission determines that the prices quoted in any bid are unreasonable or unbalanced, it may reject the bid.

(h) If the sanitary commission rejects all the bids, the sanitary commission may:

(1) Readvertise; or

(2) Do the project or any part of it with its own temporary or permanent employees.

(i) The sanitary commission may include in the contract additional conditions and requirements for:

(1) Performance bonds;

(2) Penalties; and

(3) Liquidated damages.

§9–656.

(a) (1) To pay the principal and interest on bonds issued under this subtitle, a sanitary commission may set reasonable benefit assessments and reasonable connection charges.

(2) In Allegany County, a sanitary commission may also set reasonable benefit assessments to pay the cost of capital improvements to a water or sewerage system.

(3) The Sanitary Commission of Worcester County may also set reasonable benefit assessments and reasonable connection charges to pay other costs on bonds issued under this subtitle.

(4) In Dorchester County, a sanitary commission may also set reasonable benefit assessments to pay the cost of capital improvements and repairs to a water or sewerage system.

(b) (1) Except for Worcester County, a connection charge made under this

section shall be equal at least to the cost of making the connection between a water system or sewerage system and the property served by that system.

(2) In Worcester County, a connection charge shall be equal at least to:

(i) The actual cost of making the connection between a water system or sewerage system and the property served by the system; or

(ii) The average cost of making a connection based on:

1. The diameter and the length of the connector; or

2. The diameter of the connector and the width of the way in which the water pipe or sewer pipe is laid.

(3) In the case of connectors constructed under § 9-661 of this subtitle during construction of the water line or sewer line, the Sanitary Commission of Worcester County shall determine a connection charge under paragraph (2)(ii) of this subsection that is the same on each side of the way in which the line is laid.

(c) The Sanitary Commission may set benefit assessments on all property, improved or unimproved, that abuts a way in which a water main or sewer has been built.

§9–657.

(a) The sanitary commission shall classify each parcel of property on which it may make a benefit assessment as:

(1) Agricultural;

(2) Business or industrial;

(3) Small acreage;

(4) Subdivision; or

(5) A subclass of any of those classes.

(b) The sanitary commission may change the classification of a parcel of property when the use of that parcel justifies its classification in another class or subclass.

(c) Except as otherwise provided in this subtitle, the sanitary commission shall assess property:

(1) On a front-foot basis; or

(2) Under uniform rules and regulations adopted for the district and

approved by the member counties.

(d) (1) Except as otherwise provided in this section, the sanitary commission shall make front-foot assessments that, each year, are as uniform as is reasonable and practical for each class or subclass of property in each service area.

(2) Unless the parcel has an irregular shape, the sanitary commission shall determine the front-foot assessment for each parcel on the basis of the length of the parcel along the way in which the water pipe or sewer pipe is laid.

(3) If a parcel has an irregular shape, the sanitary commission shall determine the front-foot assessment in a fair and reasonable manner.

(e) As to a parcel classified as agricultural:

(1) The sanitary commission may not make a front-foot assessment until a water or sewer connection is made to the parcel; and

(2) When the water or sewer connection is made, the sanitary commission may not compute a front-foot assessment on the parcel for more than 300 feet of frontage.

(f) As to a parcel classified as subdivision:

(1) Even if the water pipe or sewer pipe does not extend along the entire frontage of the parcel, the sanitary commission may make a front-foot assessment;

(2) Unless the parcel abuts parallel streets, the sanitary commission may not make a front-foot assessment for more than 1 side of the parcel; and

(3) If the parcel is on a corner, the sanitary commission may average the frontage of the parcel and determine the front-foot assessment for the parcel in a fair and reasonable manner.

(g) The sanitary commission may make for a parcel a front-foot assessment that is less than the assessment levied on other parcels in the service area, if the parcel is served by a system:

(1) That is acquired by the sanitary commission;

(2) That was not a municipal system; and

(3) Whose cost to the sanitary commission was affected by the fact that the construction costs of the system were any part of the purchase price of the parcels serviced by the system.

(h) To acquire revenues needed to carry out the purposes of this section, the sanitary commission may change the front-foot assessment for each class and subclass

of property.

(i) (1) In this subsection "Bonnie Brook Service Area" includes the Bonnie Brook Sanitary District.

(2) In the Bonnie Brook Service Area, in order to make capital improvements and repairs or to establish a reserve for capital improvements and repairs, the Dorchester County Sanitary Commission may make a uniform assessment on each lot that abuts on a way in which a water main is laid.

(3) An assessment under this subsection is in addition to any charges made under § 9-662 of this subtitle.

(4) An assessment under this section shall be based on a flat fee for each lot under uniform rules and regulations approved by the Dorchester County Commissioners.

(j) (1) In this subsection, "service area number 1" includes sanitary district number one.

(2) In service area number 1, the Dorchester County Sanitary Commission shall impose, on each parcel that abuts any way in which a sewer is built, a benefit assessment of at least $50.

(k) The sanitary commission shall give to the owner of each parcel of property written notice of:

(1) The class and subclass of the parcel;

(2) If a front-foot assessment method is used, the number of feet assessed and the assessment for each foot;

(3) If a method other than front-foot assessment is used, the assessment made on the parcel; and

(4) The time and place of the hearing to which the owner is entitled under this subsection.

(l) The sanitary commission shall serve the owner with the notice by:

(1) Mailing the notice to the last known address of the owner;

(2) Leaving the notice with an adult who occupies the parcel; or

(3) Posting a copy of the notice on the parcel, if the parcel is vacant or unimproved.

(m) Subject to a hearing under subsection (n) of this section, a decision of the sanitary commission as to a classification or a benefit assessment is final.

(n) The sanitary commission:

(1) Shall give each property owner an opportunity for a hearing before the sanitary commission;

(2) Shall hold the hearing in accordance with the Administrative Procedure Act; and

(3) After the hearing, may adjust a classification or benefit assessment as appropriate.

(o) A benefit assessment shall be paid each year for a period of years that is coextensive with the maturity date of the bonds that financed the construction that was the subject of the benefit assessment.

§9–658.

(a) When the sanitary commission has determined a benefit assessment, and except as otherwise provided in this section, the sanitary commission shall levy a benefit assessment, so that the levy will be effective on the July 1 that next follows the first March 31 that occurs on or before which the construction is completed on the project for which the benefit assessment is made.

(b) (1) The Allegany County Sanitary Commission may make the levy of a benefit assessment effective on the date on which the construction is completed on the project for which the benefit assessment is made.

(2) If the Allegany County Sanitary Commission makes a levy on the date on which the construction is completed, it shall prorate the levy on the basis of the benefit assessment for an entire year and the time remaining until July 1.

(c) (1) The Dorchester County Sanitary Commission may make the levy of a benefit assessment effective on the date on which:

(i) The construction is substantially completed; or

(ii) The system is in use for the project for which the benefit assessment is made.

(2) If the Dorchester County Sanitary Commission makes a levy on the date on which the construction is substantially completed or when the system is in use, it shall prorate the levy on the basis of the benefit assessment for an entire year and the time remaining until July 1.

(d) While unpaid, benefit assessments and other charges are a lien on the parcel for which made.

(e) The lien granted by this section is subordinate only to State taxes and

municipal taxes.

(f) (1) As to each lien that arises against a parcel in the district, the sanitary commission shall keep a public record that:

(i) Identifies the owners of the parcel;

(ii) Describes the parcel and gives any lot number of record that applies to the parcel; and

(iii) Shows the amount of the lien.

(2) The sanitary commission shall file the record of liens among the land records of the county where the parcel is located.

(3) The record of liens shall be legal notice of all existing liens in the district.

(g) (1) To enforce the collection of unpaid benefit assessments or other charges that are at least 60 days overdue, the sanitary commission, at any time, may:

(i) Sue any person who was an owner of record of the parcel at any time since the benefit assessment was last paid; or

(ii) File a bill in equity to enforce a lien through a decree of sale of property against any person who was an owner of record of the parcel at any time since the benefit assessment was last paid.

(2) In addition to the actions that the sanitary commission may take under paragraph (1) of this subsection, in Allegany County, Dorchester County, Garrett County, and Somerset County, the sanitary commission may disconnect the service.

(3) When recorded, the lien is legal notice to any person who has any interest in a parcel.

(h) (1) The governing body of Kent County may authorize by local law the sale of real property to enforce a lien based on unpaid benefit assessments or other charges under this subtitle. The procedures for establishment, notification, and enforcement of a lien authorized by the governing body in accordance with this subsection shall conform to the provisions of Chapter 152 of the Code of Kent County, governing collection of real property taxes in arrears.

(2) If the sale of real property is authorized under paragraph (1) of this subsection, in addition to any remedy under subsection (g) of this section, the sanitary commission may request that the county tax collector conduct a sale of real property to enforce a lien at a county tax sale in accordance with the same procedures governing the sale of property for delinquent property taxes and the county tax collector may conduct

the sale.

(i) (1) In addition to any remedy under subsection (g) of this section, in Allegany County, Dorchester County, and Somerset County, the sanitary commission may request the county tax collector to conduct a sale of real property to enforce a lien representing any unpaid benefit assessment or other charges under this subtitle at a county tax sale in accordance with the same procedures governing the sale of property for delinquent property taxes.

(2) In Allegany County, the tax collector in Allegany County may conduct a county tax sale for the purpose of enforcing a lien as specified in paragraph (1) of this subsection.

(3) In Dorchester County, the tax collector in Dorchester County may conduct a county tax sale for the purpose of enforcing a lien as specified in paragraph (1) of this subsection.

(4) In Somerset County, the tax collector in Somerset County may conduct a county tax sale for the purpose of enforcing a lien as specified in paragraph (1) of this subsection.

§9–659.

(a) (1) The sanitary commission shall connect the water system or sewerage system to any parcel:

(i) Whose owner requests the connection;

(ii) That does not abut a way in which a water pipe or sewer pipe is laid; and

(iii) That is not the subject of a benefit assessment levied under § 9–657 or § 9–658 of this subtitle.

(2) However, the Sanitary Commission of Worcester County may also construct or permit the construction of a connector to any parcel described under paragraph (1) at a time and in a manner that it determines to be appropriate.

(b) The sanitary commission shall classify the parcel and determine a front–foot charge on the parcel as if the parcel abutted on a way in which a water pipe or sewer pipe is laid.

(c) When a connection is made under this section, the owner of the parcel has the same rights and duties and the district has the same remedies as to the benefit assessment that apply to benefit assessments under §§ 9–657 and 9–658 of this subtitle.

(d) Payment of a benefit assessment made under this section:

(1) Is due when levied by the sanitary commission;

(2) Is in default 60 days after the payment is due; and

(3) When in default, bears interest from the date of default:

(i) In Allegany and Somerset counties, at the rate set by the respective Sanitary Commission; and

(ii) In all other counties, at the rate of 0.5 percent a month.

§9–660.

(a) In this section, "district account" means the account maintained by a sanitary commission in accordance with this section.

(b) A sanitary commission shall:

(1) Maintain a district account; and

(2) Credit to the district account all proceeds from the benefit assessments levied under this subtitle.

(c) The sanitary commission shall use funds in the district account to pay the principal and interest on the bonds for which the benefit assessment was levied.

§9–661.

(a) (1) During construction of a water line or a sewer line, the sanitary commission, at its own expense, shall construct a connector to the property line of each parcel that abuts the way in which the water line or sewer line is laid.

(2) However, the Sanitary Commission of Worcester County may determine not to construct a connector to any parcel that lacks a plumbing system at the time of construction of the line. At a time and in a manner that it determines to be appropriate, the Sanitary Commission of Worcester County shall construct or permit the construction of a connector to any parcel:

(i) Whose owner requests the connection subsequent to the construction of the water line or sewer line; and

(ii) That abuts the way in which the line is laid.

(b) When construction on the water line or sewer line is complete, the sanitary commission shall notify each abutting property owner of the completion.

(c) On receipt of the notice of completion, and by a time set by the sanitary commission, each owner of abutting property shall:

(1) Pay the connection charge determined under this section; and

(2) Make appropriate connections of the plumbing system on the property to the connector constructed by the sanitary commission.

(d) Any plumbing system of each parcel of abutting property that is to be served shall include at least:

(1) 1 toilet that the sanitary commission approves; and

(2) 1 washbasin that the sanitary commission approves.

(e) When the plumbing system of the property has been connected to the connector constructed by the sanitary commission, the owner of the property shall disconnect, as appropriate, each cesspool, sink drain, and privy on the property so that the disconnected component is:

(1) Closed;

(2) Abandoned; and

(3) In a sanitary condition so that no odor or nuisance can arise from it.

(f) (1) Except for the Sanitary Commission of Worcester County, a sanitary commission shall determine a connection charge that is:

(i) At least equal to the actual cost to the district of constructing the connector;

(ii) Based on the length of the connector and width of the way in which the water pipe or sewer pipe is laid; and

(iii) The same on each side of the way.

(2) The Sanitary Commission of Worcester County shall determine connection charges as provided under § 9-656(b)(2)(ii) of this subtitle.

(g) (1) Except for the Sanitary Commission of Worcester County, if the connection charges collected under this section are more than the cost of the connections made, a sanitary commission shall:

(i) Keep the excess revenues in a special fund; and

(ii) Use the fund only for repairs, replacement, and extraordinary expenses of the water system or sewer system.

(2) In Worcester County, if the connection charges are more than the cost of the connections made, the Sanitary Commission shall:

(i) Keep the excess revenues in a special fund;

(ii) Use the fund for repairs, replacement, and extraordinary expenses of the water system or sewer system; or

(iii) Use the fund for any other purpose relating to the operation of the service area to which the fund relates.

§9–662.

(a) For each project that it operates, a district may charge the owners of parcels serviced by or connected to the project:

(1) A minimum charge; and

(2) A usage charge that is based on the use of the project by the owner of the parcel.

(b) The district shall use funds received from charges made under this section:

(1) To operate, maintain, and repair the project;

(2) To maintain proper depreciation allowances;

(3) To pay operation expenses of the district;

(4) To repay advances made by member counties under § 9–628 of this subtitle; and

(5) To pay the principal and interest on bonds issued under this subtitle.

(c) For water service, the sanitary commission:

(1) Shall make a minimum charge:

(i) That is based on the size of the meter serving the property and is uniform throughout the service area for each size of meter; and

(ii) That, for properties to which no meter is connected, is reasonable and uniform throughout the service area; and

(2) Subject to the meter size and uniformity requirements of this subsection, may change the minimum charge as necessary.

(d) For sewerage service, the sanitary commission shall:

(1) Make a minimum charge that is reasonable and uniform throughout the service area; and

(2) Collect, each year, the minimum charge in the same manner as the sanitary commission collects benefit assessments.

(e) If a minimum charge for sewerage service is unpaid, the minimum charge has the same status as an unpaid benefit assessment.

(f) For solid waste disposal systems, the sanitary commission shall make a minimum charge that is reasonable and uniform throughout the service area.

(g) If the sanitary commission uses a water meter, the sanitary commission shall connect the water meter at the sanitary commission's expense.

(h) For water usage, the sanitary commission shall make a charge that:

(1) Is based on meter readings; or

(2) If no water meter is connected to the property, is:

(i) Based on the estimated water usage; and

(ii) Uniform among unmetered properties in the service area.

(i) For sewerage systems and solid waste disposal systems, the sanitary commission shall make a reasonable usage charge.

(j) Except for bills for minimum charges for sewerage services, the sanitary commission:

(1) Shall send to each property owner:

(i) For water service, a bill for minimum charges and usage charges for water once each 3 or 6 months; and

(ii) For other charges, a bill once each 3, 6, or 12 months; and

(2) May stagger the frequency and dates of bills sent under this section.

(k) The property owner promptly shall pay any bill sent under this section.

(l) If a water bill is unpaid for 30 days after being sent, and after written notice is left on the premises or mailed to the last known address of the owner, the sanitary commission may:

(1) Disconnect water service to the property; and

(2) Require, before reconnecting water service, payment of the entire water bill plus a reconnection charge reasonably related to the cost of reconnection, as established by ordinance of the governing body of the county or municipal corporation in which the water service is provided.

(m) (1) If a charge for which a bill sent under this section is in default 60 days after the bill is sent, the charge is in default.

(2) When a charge is in default, it is a lien on the property and the sanitary commission may collect the charge in the same manner as benefit assessments.

(n) (1) This subsection applies only in Dorchester County and Somerset County.

(2) Notwithstanding any other provisions of law:

(i) A district may charge an owner of a parcel serviced by or connected to a project that the district operates a late fee for any unpaid usage charge that is based on the use of the project by the owner of the parcel;

(ii) A sanitary commission may require, before reconnecting water service, payment of any applicable late fees in addition to any other charge authorized by this section; and

(iii) A charge that is in default shall accrue interest from the date of default at a rate set by the sanitary commission.

(o) In Garrett County, notwithstanding any other provisions of law:

(1) The district may charge an owner of a parcel serviced by or connected to a project that the district operates a late fee for any unpaid usage charge that is based on the use of the project by the owner of the parcel;

(2) The County Commissioners of Garrett County may require, before reconnecting water service, payment of any applicable late fees in addition to any other charge authorized by this section; and

(3) A charge that is in default shall accrue interest from the date of default at a rate set by the County Commissioners.

(p) (1) This subsection applies only to property subject to a condominium regime established under Title 11 of the Real Property Article.

(2) Notwithstanding any other law, if the sanitary commission directly bills the governing body of a condominium or a person designated by the governing body of a condominium for water or sewer usage charges for all or a portion of the units in a condominium property, and a charge is in default for at least 60 days, the sanitary commission shall post notice conspicuously at or near the entry to the common area of the condominium.

(3) The sanitary commission may enter onto the common area of a condominium property at a reasonable time to post the notice required under this subsection.

§9–663.

(a) A sanitary commission:

(1) Shall control the use of water in its district; and

(2) Has jurisdiction over each fire hydrant connected to a system operated by the district.

(b) If a sanitary commission determines that there is a shortage of water or that the supply of water should be conserved, the sanitary commission may:

(1) Issue an order that requires the conservation of water; and

(2) Include in the order specific requirements for conserving water use.

(c) The sanitary commission shall publish the order in a newspaper published in each member county covered by the order.

(d) Each water user shall obey the order of the sanitary commission, effective with the earlier of:

(1) The first publication of the order; or

(2) Receipt of the order from the sanitary commission.

(e) Without notice, the sanitary commission may disconnect the water supply of any person who violates the order.

(f) (1) To prevent waste of water, a representative of a sanitary commission at any reasonable time may enter any property connected to a system operated by the district and inspect the plumbing system on the property.

(2) On entering any property, the representative of the sanitary commission shall present appropriate credentials to the owner, operator, or agent in charge.

(3) After the inspection, the representative of the sanitary commission may order necessary changes to the plumbing system:

(i) To eliminate leaks;

(ii) To prevent water loss; and

(iii) To prevent unnecessary or improper use of sewers.

§9–664.

(a) An independent system may be constructed in accordance with this section:

(1) By a member county at its own expense; or

(2) By and at the expense of the owners of property that will be served by the independent system.

(b) A person or member county may construct an independent system only if:

(1) The independent system will serve an area that is not served by a project or a municipal system; and

(2) The sanitary commission approves.

(c) The person or member county that proposes to construct the independent system shall:

(1) Submit to the sanitary commission plans and specifications for construction of the independent system; and

(2) If the sanitary commission approves the plans and specifications, construct the independent system in accordance with the approved plans and specifications.

(d) Each independent system shall be operated:

(1) At the expense of the person or county that constructs it; and

(2) Under the general supervision of the sanitary commission.

(e) The person or county that constructs an independent system shall:

(1) Keep accurate records of:

(i) The construction of the independent system;

(ii) The operation of the independent system; and

(iii) The cost of building and operating the independent system; and

(2) File copies of the records with the sanitary commission.

§9–665.

(a) (1) In accordance with this section, a district may buy an existing municipal system or independent system.

(2) The purchase may be on any terms that are:

(i) In accordance with this subtitle; and

(ii) Agreed on by the sanitary commission and the owner of the municipal system or independent system.

(3) (i) In Worcester County, notwithstanding any other provision of this article or any regulation adopted under this article, an agreement to purchase an independent system may include long-term commitments by the Sanitary Commission of Worcester County or the County Commissioners of Worcester County to provide water and sewer service to, and maintain appropriate zoning, development, permits, and other land use regulations for, land within the previous franchise area of the independent system at any terms and conditions that the Sanitary Commission or the County Commissioners determines to be appropriate.

(ii) For the purposes of this paragraph (3) of this subsection, the County Commissioners of Worcester County may make long-term commitments concerning zoning, development, permits, or other land use regulations. Also, the Sanitary Commission of Worcester County may make long-term commitments to provide for water or sewer service.

(b) Except for a nominal amount to bind the agreement, before the district pays any part of the purchase price, the seller of the municipal system or independent system shall provide the sanitary commission with a verified written statement that gives the name and address of each person who has any interest in, or claim against, any property of the municipal system or independent system.

(c) (1) By personal delivery or by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, the sanitary commission shall give notice of its intention to buy the system to each person named in the verified statement provided under subsection (b) of this section.

(2) At least 3 weeks before a purchase is made under this section, the sanitary commission shall publish, in each member county where the system to be bought is located, a notice of its intention to buy a system. The notice shall be published in each member county in at least 1 newspaper of general circulation in the county.

(3) In each notice delivered, mailed, or published under this subsection, the sanitary commission shall include a date on which the sanitary commission will hear persons who have an interest in or claim against any property of the municipal system or independent system.

(d) On or before the date specified in the notice, each person who has a claim against any property of a municipal system or independent system shall file with the sanitary commission notice of that claim.

(e) (1) On the date specified in the notice, the sanitary commission shall hold a hearing to determine the claim of any person who has filed a notice of claim with the sanitary commission.

(2) The sanitary commission's decision on the claim is final.

(f) (1) By exercise of the power of eminent domain as provided in Title 12 of the Real Property Article, the district may acquire rights in an independent system if the owner of the independent system:

(i) Has rejected an offer made under this section; or

(ii) Has not accepted, within 90 days of the offer, an offer made under this section.

(2) The district may not acquire a municipal system under the power of eminent domain.

(g) (1) When the district has paid the purchase price or condemnation award:

(i) The rights of the district with respect to the acquired system are the same as if the district had itself built that system; and

(ii) Except as otherwise provided in this subsection, all parcels of property served by the acquired system are subject to the provisions of this subtitle as if the district had itself built the system.

(2) A person whose parcel was connected properly to a municipal system or independent system at the time the district acquired that system is not required to pay a connection charge to the district for connection to that parcel.

(h) A municipality may use funds received from the district under this section:

(1) To redeem, buy, or pay the principal and interest on bonds issued for the municipal system; and

(2) To pay any other debt outstanding against the municipal system.

(i) This section does not authorize the acquisition of any part of a municipal system or independent system that:

(1) Is constructed improperly;

(2) Does not have sufficient capacity; or

(3) Was constructed without the authority from the Department that was required when that system was constructed.

§9–666.

(a) On the request of property owners whose property is not in any service area but is in an area that is contiguous to a service area, the sanitary commission may extend a project to include the properties that are the subject of the request.

(b) The sanitary commission may require that the property owners agree:

(1) To pay benefit assessments;

(2) To pay connection charges; and

(3) To any other condition that the sanitary commission makes.

§9–666.1.

(a) The provisions of this section are applicable in Dorchester County.

(b) On the request of property owners whose property is not in a service area and is not in an area that is contiguous to a service area, the sanitary commission may:

(1) Extend a project to include the properties that are the subject of the request; or

(2) Provide other services to the properties.

(c) The sanitary commission may require that the property owners agree to the terms and conditions authorized under § 9-666(b) of this subtitle.

(d) Property covered under this section and owners of property covered under this section shall be subject to the provisions of § 9-658(d) through (g), inclusive.

§9–667.

If the sanitary commission determines that any part of an independent system is unfit for incorporation into a project, the sanitary commission may:

(1) Disregard the unfit parts of the independent system; and

(2) Extend its project into the area served by the unfit parts of the independent system.

§9–668.

(a) For the construction, maintenance, or operation of any part of a project, the district may acquire any interest in real property by:

(1) Purchase; or

(2) Exercise of the power of eminent domain as provided in Title 12 of the Real Property Article.

(b) (1) Except as otherwise provided in this subsection, the district may condemn a property right in a cemetery only to install a sewer line or a water line.

(2) The district may not condemn any property rights in and may not disturb:

(i) Any existing grave;

(ii) Any grave marker or monument;

(iii) Any grave site whose title has been transferred through a sale or exchange made in good faith; or

(iv) Any grave site as to which burial rights have vested or been transferred through a sale or agreement made in good faith.

(c) Before the district condemns a property right in a cemetery, the sanitary commission shall adopt a resolution that:

(1) Is approved by a majority of the sanitary commissioners appointed from the member county in which the cemetery is located;

(2) Includes a declaration that the condemnation is necessary for the public health and safety; and

(3) Includes a declaration that immediate acquisition of the property right in the cemetery is necessary.

(d) The sanitary commission shall bury every water line and sewer line that it builds in cemetery land.

§9–669.

(a) A person who owns any structure or obstruction that is on, over, or under a way shall promptly move that structure or obstruction, if:

(1) The structure or obstruction impedes the building or operation of a project; and

(2) The sanitary commission gives reasonable notice of the need to move the object or obstruction.

(b) The person shall move the object as necessary to allow the orderly building or operation of the project.

(c) The district shall pay the cost of moving the structure or obstruction.

§9–672.

(a) In Part VII of this subtitle the following words have the meanings indicated.

(b) "Shared facility" means a water system or sewerage system that serves:

(1) More than 1 lot;

(2) More than 1 single family residence or its equivalent; or

(3) A series of water systems or sewerage systems that each serve 1 lot.

(c) "Shared facility area" means the territory served by a shared facility.

§9–673.

Part VII of this subtitle applies only to Dorchester County.

§9–674.

(a) The Dorchester County Sanitary District, Inc., may:

(1) Construct, buy, own, hold, lease, repair, maintain, improve, and operate a shared facility; and

(2) Contract with any person, any agency of the federal government or this State, or any municipality for services that relate to the facility.

(b) The shared facility may be built only:

(1) Outside an incorporated area of Dorchester County; and

(2) (i) Outside a service area; or

(ii) If inside a service area, to serve territory that the Sanitary Commission determines is not feasible to serve with an existing project.

(c) The shared facility may not serve more than 14 single family residences or their equivalent.

§9–675.

(a) The owners of property in territory that may be served by a shared facility may file a written petition with the Sanitary Commission that requests the Sanitary Commission:

(1) To build a shared facility; and

(2) To designate a shared facility area.

(b) The petition shall include:

(1) Plans for the proposed shared facility that will enable the Sanitary Commission to determine the cost and feasibility of the proposed shared facility; and

(2) A map of the proposed shared facility area.

(c) The petitioners shall provide, at their own expense, the map and plans required by this section.

§9–676.

(a) Within 90 days from the date the complete petition is filed, the Sanitary Commission shall decide on the petition.

(b) In deciding on a petition, the Sanitary Commission may designate a shared facility area if the Sanitary Commission finds that:

(1) The proposed shared facility is necessary for the public health, safety, and welfare of the residents of Dorchester County who would be affected by the proposed shared facility; and

(2) It is feasible:

(i) To construct the proposed shared facility; and

(ii) To establish the proposed shared facility area.

(c) (1) If the Sanitary Commission denies the petition, the petitioners, within 30 days after the denial, may appeal to the Dorchester County Commissioners.

(2) The Dorchester County Commissioners:

(i) Shall determine whether the proposed shared facility meets the applicable standards of this section; and

(ii) May affirm, modify, or reverse the decision of the Sanitary Commission.

(d) When a petition is approved by the Sanitary Commission or the Dorchester County Commissioners, the Sanitary Commission shall:

(1) Adopt a resolution that:

(i) Provides for construction of the shared facility; and

(ii) Designates the boundaries of the shared facility area; and

(2) File the resolution among the Dorchester County land records.

§9–677.

(a) The Sanitary Commission shall propose and, with the approval of the Dorchester County Commissioners given after a public hearing, adopt rules and regulations to carry out the provisions of this subtitle that relate to shared facilities.

(b) These rules and regulations shall include provisions for:

(1) Classification of properties in the shared facilities area; and

(2) Levy of benefit assessments in accordance with this subtitle.

§9–678.

(a) The Dorchester County Commissioners may advance funds to the Dorchester County Sanitary District, Inc., to meet the organizational and preliminary costs of establishing and constructing the shared facility.

(b) From the first revenues received from benefit assessments made for the shared facility, the Sanitary Commission shall repay advances made under this section.

§9–679.

(a) In accordance with the rules and regulations that the Dorchester County Commissioners approve:

(1) The Sanitary Commission shall make benefit assessments on the property in a shared facility area in an amount that is enough to:

(i) Pay the principal and interest on each bond issued and any other obligation incurred by the Sanitary Commission in constructing the shared facility; and

(ii) Pay any other costs incurred in building the shared facility; and

(2) The Sanitary Commission may establish reasonable charges on each parcel in the shared facility area.

(b) (1) The Sanitary Commission shall give to the owner of each parcel in the shared facility area written notice of:

(i) The class and subclass of the parcel;

(ii) The benefit assessment for the parcel; and

(iii) The time and place of the hearing to which the owner is entitled under this section.

(2) The Sanitary Commission shall mail the notice to the owner at the last known address of the owner on the Dorchester County tax assessment records.

(c) The Sanitary Commission shall give each property owner an opportunity for a hearing before the Sanitary Commission.

(d) After the hearing, the Sanitary Commission may adjust the classification or benefit assessment as appropriate.

(e) The Sanitary Commission shall make the levy of each benefit assessment the Sanitary Commission determines under this section so that the levy is effective for the July 1 that follows the first March 31 that occurs on or after the date:

(1) Construction is completed on the shared facility; or

(2) The shared facility is acquired.

(f) While unpaid, benefit assessments and other charges are a lien on the parcel for which made.

(g) The lien granted by this subsection is subordinate only to State taxes and municipal taxes.

(h) (1) As to each lien that arises against a parcel in the shared facility area, the Sanitary Commission shall keep a public record that:

(i) Identifies the owners of the parcel;

(ii) Describes the parcel and gives any lot number of record that applies to the parcel; and

(iii) Shows the amount of the lien.

(2) The Sanitary Commission shall file the record of liens with the Clerk of the Circuit Court for Dorchester County, for filing among the land records for Dorchester County.

(3) The record of liens shall be legal notice of all existing liens in the shared facility area.

(i) (1) To enforce the collection of unpaid benefit assessments or other charges that are at least 60 days overdue, the Sanitary Commission, at any time, may:

(i) Sue any person who was an owner of record of the parcel at any time since the benefit assessment was last paid; or

(ii) File a bill in equity to enforce a lien through a decree of sale of property against any person who was an owner of record of the parcel at any time since the benefit assessment was last paid.

(2) When recorded, the lien shall be legal notice to any person who has any interest in a parcel.

§9–682.

(a) Subject to the limitations and requirements of this subtitle, the sanitary commission and the member counties of the district may pledge the full faith and credit of the district and its members and issue bonds in the name of the district to pay the

cost of a project in the amount estimated when the resolution authorizing the bond issue was adopted.

(b) The issuance of bonds under this subtitle is not subject to any condition or limitation of law that is not in this subtitle.

§9–683.

A district may not issue for a service area any bonds that, when added to the outstanding and unpaid bonds already issued for that service area, would result in a total bond issuance that exceeds 25 percent of the total value of property in the service area, as assessed for county taxation.

§9–684.

(a) Before a district issues any bonds, the sanitary commission shall:

(1) Adopt a resolution that proposes the issuance of the bonds; and

(2) Submit the resolution to the governing body of each member county of the district.

(b) If the governing body of each member county approves the resolution, the district may issue the bonds in accordance with this subtitle.

§9–685.

(a) Before a district issues any bonds:

(1) The sanitary commission shall make the determinations required by this section; and

(2) After the sanitary commission makes the determinations, the district shall issue the bonds in accordance with the determinations.

(b) The sanitary commission:

(1) Shall determine the form of the bonds;

(2) Shall determine the manner of execution of the bonds;

(3) Shall determine the denominations of the bonds;

(4) Shall determine the place, which may be any bank or trust company, where the principal and interest of the bonds will be paid;

(5) Shall determine whether interest coupons will be attached to the bonds and, if so, the form of the coupons;

(6) May determine whether the bonds will be issued in:

(i) Coupon form;

(ii) Registered form; or

(iii) Coupon form and registered form;

(7) May determine whether coupon form bonds will be registered as to:

(i) Principal; or

(ii) Principal and interest;

(8) May determine a method for reconverting into coupon form bonds any bonds that are registered as to principal and interest;

(9) May determine whether the district will redeem bonds before maturity, and if so, shall specify:

(i) The terms and conditions the sanitary commission will impose as to redemption before maturity; and

(ii) The method the sanitary commission will use in determining the prices the district will pay to redeem bonds before maturity;

(10) Shall determine any other condition, term, or provision as to the bonds that the sanitary commission is required to make under this subtitle; and

(11) May determine any other condition, term, or provision as to the bonds that the sanitary commission is allowed to make under this subtitle.

§9–686.

Bonds issued under this subtitle shall:

(1) Be dated;

(2) Bear interest at the rate or rates that the sanitary commission determines;

(3) Bear the seal of the district;

(4) Be signed for the district;

(5) Bear maturity dates that:

(i) Are determined by the sanitary commission; and

(ii) Are not more than 40 years from the date of issue; and

(6) Subject to the limitation on liability of each member county of a multiple county district under § 9-696 of this subtitle, be endorsed by each member county as follows: "The payment of interest when due and the principal at maturity is guaranteed by ..... (name of member county), Maryland".

§9–687.

(a) An officer of the district shall sign the bonds for the district.

(b) Within 10 days after the sanitary commission submits the bonds to a member county for endorsement, the endorsement of the member county guaranteeing the bond shall be signed by:

(1) The clerk or secretary of the governing body of the member county; and

(2) (i) The chief executive officer of the member county; or

(ii) Another officer of the member county authorized by a resolution of the governing body of the member county to sign the endorsement.

(c) The validity of a signature or facsimile of a signature made under this section is not affected by the fact that the individual whose signature is on the bond no longer holds the office that authorized the individual to sign the bond, even if the bond is delivered after that individual leaves the office.

§9–688.

(a) In the manner that the sanitary commission determines to be in the best interest of the district and the member counties, a district may sell bonds issued under this subtitle:

(1) At public or private sale; and

(2) At a price that meets the requirements of this section.

(b) The district may not sell bonds at a price so low that the effective rate of interest is greater than the rate of interest that the sanitary commission has determined for the bonds.

(c) The effective interest rate of the bonds shall be computed:

(1) Without regard to any premium that might be paid to redeem the bonds before maturity; and

(2) Otherwise in accordance with standard tables of bond values.

§9–689.

Bonds issued under this subtitle are:

(1) Fully negotiable within the meaning of and for all the purposes of Title 8 of the Commercial Law Article; and

(2) Exempt from all State, county, and city taxation.

§9–690.

(a) Before the definitive bonds are available for delivery to bond holders, the district may issue:

(1) Interim receipts for payment for the bonds; or

(2) Temporary bonds with or without coupons.

(b) The interim receipts or temporary bonds may be exchanged for definitive bonds when the definitive bonds are available.

§9–691.

A sanitary commission may provide for the replacement of bonds that are mutilated, destroyed, or lost.

§9–692.

(a) A district may use the proceeds from bonds issued under this subtitle only:

(1) To pay costs incurred for the projects for which the bonds were issued; or

(2) In accordance with this section.

(b) The district shall disburse the proceeds as the sanitary commission provided in its authorizing resolution.

(c) (1) If the proceeds from bonds issued under this subtitle are insufficient to pay the costs incurred for the projects for which the bonds were issued, the district may issue additional bonds to make up the deficit.

(2) Unless the sanitary commission provided otherwise in its authorizing resolution, bonds issued under this subsection:

(i) Are deemed to be from the same series that originally was issued for the project; and

(ii) Shall be repaid without preference to or priority for the bonds

that already were issued for the project.

(d) If the proceeds from bonds issued under this subtitle exceed the costs incurred for the projects for which the bonds were issued and if the authorizing resolution so requires, the district shall use the surplus to retire bonds of the same series.

(e) If the proceeds from bonds issued under this subtitle exceed the costs incurred for the projects for which the bonds were issued and if the authorizing resolution does not otherwise require:

(1) The district shall use the surplus to pay the next payment of principal on the bonds;

(2) The sanitary commission shall adopt a resolution that authorizes the use of the surplus to pay for other projects that are in the same service areas as the projects for which the bonds were issued and then use the surplus in accordance with the resolution; or

(3) The district shall use the surplus to cancel bonds of the same series by buying the bonds on the open market at a price that:

(i) Does not include a premium of more than 5 percent of the par value; and

(ii) The sanitary commission determines to be in the best interests of the district and the member counties served by the projects for which the bonds having excess proceeds were issued.

§9–693.

In accordance with the provisions of this subtitle that generally govern the issuance of bonds, any district may issue refunding bonds to refund, pay, or discharge the principal or interest of:

(1) Any other bond issued under this subtitle; and

(2) Any other indebtedness incurred to acquire or construct a project.

§9–694.

(a) To retire bonds issued under this subtitle, each year, the sanitary commission, as to each series of outstanding bonds, shall determine or estimate:

(1) The principal and interest that will be due on that series through the end of the next full taxable year for property taxes in the member counties; and

(2) The amount of benefit assessments that will be collected on projects for

which that series was issued and the amount of any other funds that will be available to that series through the end of the next full taxable year for property taxes in the member counties.

(b) At least 60 days before the taxable year for property taxes, the governing body of each member county shall certify to the sanitary commission the total valuation of all taxable property in each service area in that member county.

(c) If, after making the estimate of necessary funds under this section, the sanitary commission determines that there will be insufficient benefit assessments or other funds available to pay the principal and interest referred to in subsection (a) of this section, the sanitary commission shall:

(1) Compute the deficiency as to each service area in the district; and

(2) On the basis of the tax base information supplied by the member county under this section, certify to each member county the tax rate that will be required in each service area in that member county to meet the deficiency.

(d) (1) The governing body of each member county shall impose on all real property in each service area in that member county, and may impose on personal property in the service area, a property tax that is sufficient to pay a deficiency specified in subsection (c) of this section.

(2) If, after the imposition made under paragraph (1) of this subsection, the deficiency is still unpaid, the governing body of each member county shall impose on all real and personal property in that member county a property tax that is sufficient to pay the remaining deficiency.

(3) In Allegany County:

(i) The governing body of the county shall levy a property tax on all real property within a sanitary district that is abutted or served by a sanitary sewer or water line; and

(ii) The Sanitary Commission shall certify to the governing body of the county a complete list of all real property within a district that is abutted or served by the sanitary sewer or water line.

(e) If property tax collections made under this section in a fiscal year are insufficient to meet a deficiency under subsection (c) of this section, the governing body of each member county, in accordance with subsection (d)(1) of this section, shall impose, for the next fiscal year, property taxes sufficient to make up the insufficient collections.

(f) All property taxes levied under this section:

(1) Have the status of county taxes; and

(2) Shall be collected as county taxes.

(g) At least every 60 days, the tax collecting authorities for each member county shall pay to the district the property taxes collected under this section.

(h) The district shall pay, when due, the principal and interest on bonds:

(1) First, from all other funds available, under this subtitle, for that purpose; and

(2) Then, if necessary, from tax revenues received under this section.

(i) (1) The district shall deposit the excess tax revenues in a bank in a member county where the service area from which the tax revenues were received is located.

(2) The deposit shall be to the joint credit of the member county and the district.

§9–695.

From the proceeds of the sale of bonds under this subtitle, the district may pay, on those bonds, interest that does not exceed 1 year's interest.

§9–696.

If bonds issued under this subtitle are guaranteed by more than 1 member county, the liability of each member county on its guarantee is in proportion to the assessable base of that part of the property of the county that is in the service areas for which the bonds were issued as that proportion relates to the assessable base of all property in all the service areas for which the bonds were issued.

§9–697.

(a) Each person who has a duty to act in the payment of principal and interest on bonds issued under this subtitle shall perform promptly the act that is required.

(b) (1) Before a series of bonds is issued under this subtitle, the governing body of each member county that will be affected by the series shall advance to the district not more than $25,000.

(2) From the first proceeds available from the sale of the bonds, the district shall repay the advances made by the member counties.

(c) Unless the approval is required under this subtitle, a district is not required to obtain the approval of any entity before it issues bonds.

(d) The provisions of §§ 19–205 and 19–206 of the Local Government Article do not apply to bonds issued under this subtitle.

§9–698.

(a) Before a person may dig in or do any other construction on any way in a service area, the person shall obtain from the sanitary commission approval of the digging or construction.

(b) To obtain approval, the person shall file with the sanitary commission a plan for the digging or construction that shows the depth and location of each:

(1) Conduit;

(2) Main;

(3) Pipe;

(4) Pole; and

(5) Other structure.

(c) If approval of the plans has been obtained from the sanitary commission, before a person may do any digging or construction different from the approved plans, the person shall:

(1) Submit a new plan that shows the changes in the information required for the original plan; and

(2) Obtain approval from the sanitary commission to do the digging or construction according to the new plan.

(d) If any obstruction has been constructed in, on, or under a way in violation of this section and if the sanitary commission is required to move that obstruction to build or operate a project:

(1) The district may move the obstruction and charge the cost of moving the obstruction to:

(i) The person who constructed or installed the obstruction; or

(ii) Any successor in interest to that person;

(2) The owner of the obstruction is not entitled to compensation under this subtitle for moving the obstruction; and

(3) The district is not liable for damage done to the obstruction.

(e) Before beginning work on the plumbing system on any property in a service area, a person shall:

(1) Obtain from the district a permit to do the plumbing work;

(2) Pay to the district the permit fee that the sanitary commission requires; and

(3) Allow the sanitary commission to inspect the plumbing work.

(f) Before connecting the plumbing system of any property to a water pipe or sewer pipe operated by the district, a person shall:

(1) Obtain from the district a permit to make the connection; and

(2) Comply with any additional conditions that the sanitary commission requires.

§9–699.

(a) A person may not:

(1) Interfere with an inspection made under authority of § 9-606 of this subtitle;

(2) Violate § 9-661 of this subtitle by failing:

(i) To maintain at least 1 sanitary toilet and wash basin as a part of any plumbing system that is used on any parcel after it is connected to a connector; or

(ii) To disconnect and close each cesspool, sink, drain, and privy on a parcel after it is connected to a connector;

(3) Violate a water conservation order;

(4) Construct or operate an independent system in violation of § 9-664 of this subtitle;

(5) Fail to move an obstruction in violation of § 9-669 of this subtitle;

(6) Fail, in violation of § 9-697(a) of this subtitle, to perform any act required of that person in paying principal or interest on bonds issued under this subtitle;

(7) Use, for any purpose other than repaying in accordance with this subtitle, any funds that, under this subtitle, are required to be used to pay principal and interest on bonds;

(8) Violate § 9-698 of this subtitle;

(9) Operate, or make any connection to a fire hydrant, unless the act is done:

(i) With written permission of the sanitary commission; or

(ii) By a fire department in discharge of its duties; or

(10) Deface, damage, or obstruct a fire hydrant.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $100 or imprisonment in jail not exceeding 30 days or both.

§9–701.

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

(b) "Municipal authority" means:

(1) The mayor and council of a municipality;

(2) The town commissioners of a municipality; or

(3) Any other governing body of a municipality.

(c) "System" means:

(1) A water supply system;

(2) A sewerage system;

(3) A drainage system; or

(4) A refuse disposal system.

§9–704.

(a) Except for Subtitles 2, 5, and 9 of this title, any act or part of an act that is inconsistent with the provisions of Part II of this subtitle is repealed to the extent of the inconsistency.

(b) The provisions of Part II of this subtitle do not affect any power or duty of:

(1) The Secretary;

(2) The Washington Suburban Sanitary Commission;

(3) The Anne Arundel County Sanitary Commission;

(4) The Baltimore County Metropolitan District; or

(5) Baltimore City.

§9–705.

A municipal authority may:

(1) Construct a system in a municipality;

(2) Extend or alter an existing system;

(3) Maintain and operate a system constructed, extended, altered, or acquired under this subtitle;

(4) Make a contract or an agreement with another municipal authority, or with any sanitary commission, sanitary district, county, State, or federal authority about the construction, alteration, maintenance, or operation of a system;

(5) In order to exercise any power set out in this subtitle with regard to any part of any system, acquire by purchase, in fee or as an easement, from any owner, or if the owner objects, by condemnation, any property inside or outside the municipality, including:

(i) Land;

(ii) Structures;

(iii) Buildings;

(iv) Watercourses;

(v) Water rights; and

(vi) Any privately owned system;

(6) Do any work necessary to carry out any activity under item (1), (2), or (3) of this section, including:

(i) Preliminary work;

(ii) Setting compensation for and appointing a workforce; and

(iii) Entering a highway to work on a system, water main, sewer, drain, or related equipment, if the municipal authority:

1. Has a permit to do the work;

2. Leaves the highway in a condition at least as good as that existing before entry; and

3. Pays all costs for cleanup and repair;

(7) Establish street lines and grades, or grant approval to any person to establish street lines and grades, for the proper construction, establishment, or extension of any water, sewerage, or drainage system under the control of the municipal authority; and

(8) Withhold water, sewerage, or drainage service from any property that abuts on any street for which a person establishes lines and grades without the approval of the municipal authority.

§9–706.

(a) Whenever a municipal authority acquires any property by condemnation under this subtitle, the proceedings shall be in accordance with this section and Title 12 of the Real Property Article.

(b) Notwithstanding any appeal or other proceeding by a defendant, the municipal authority may enter and take possession of the condemned property at any time at least 10 days after the return and recordation of the judgment if the municipal authority pays to the clerk of court:

(1) The amount of the award;

(2) All costs to date; and

(3) All taxes to date.

§9–707.

(a) In addition to the requirements of § 9-706 of this subtitle, whenever a municipal authority acquires a privately owned system under this subtitle, the provisions of this section apply.

(b) If a municipal authority takes possession of a privately owned system, the municipal authority:

(1) May extend, alter, maintain, or operate the acquired system together with the municipal system;

(2) Shall subject the property served by the acquired system to the same benefit assessment as property served by the municipal system;

(3) May compensate any owner of property served by the acquired system for any payment by the property owner toward the construction of the acquired system; and

(4) Shall subject an owner or the agent of the owner of property served by the acquired system to the same rules, regulations, and penalties as any owner or the agent of the owner of property served by the municipal system.

(c) If a municipal authority considers any part of the privately owned system unfit for incorporation into the municipal system, the municipal authority may disregard the unfit part of the privately owned system and extend the municipal system to serve the property served by the unfit part of the privately owned system.

(d) The provisions of Part II of this subtitle that apply to a system constructed by the municipal authority apply to the system acquired or extended by the municipal authority under this section.

§9–708.

(a) A municipal authority shall:

(1) Construct and provide at its own expense for any water main or sanitary sewer constructed or established under Part II of this subtitle, a water service pipe or sewer connection that extends from the water main or sewer to the property line of each lot that abuts on a street or right-of-way in which the water main or sewer is laid; and

(2) When the municipal authority declares that a water main or sewer is complete and ready for use, notify each owner of abutting property that the owner shall:

(i) Connect all spigots or hydrants, toilets, and waste drains with the water main or sewer, within a reasonable time as determined by the municipal authority; and

(ii) Install adequate spigots or hydrants, toilets and waste drains if:

1. There are no fixtures or drains; or

2. The municipal authority believes that the existing fixtures or drains are improper or inadequate.

(b) To prevent any use of or any injury to the public health, each owner of property that is connected with a sewer shall abandon, close, and leave, in the manner that the municipal authority directs, any:

(1) Cesspool;

(2) Drain;

(3) Privy; or

(4) Well that is determined by the municipal authority to be polluted or a menace to health.

(c) (1) After notice from the municipal authority, if a property owner in Frederick County fails to comply with the provisions of this section, the municipal

authority may:

(i) Have any necessary connections made;

(ii) Cause any cesspool, drains, or privy to be closed and abandoned; and

(iii) Charge the property owner with the cost of the connection or closing or both.

(2) For purposes of this subsection, the costs:

(i) Are a lien against the affected property until paid; and

(ii) May be collected in the same manner as county or municipal taxes.

§9–709.

(a) If any structure in, over, or under a public street, road, or alley in any county or municipality obstructs any work on a system, the municipal authority shall:

(1) Give the person in control of the structure notice of the obstruction; and

(2) Order the person in control of the structure to take any action necessary, within a time specified in the order, to enable the work to continue.

(b) After the time specified in the order for abating the violation, a person who is served with an order under this section may not violate that order.

(c) If any pipe or conduit laid under a public highway by a person in accordance with the terms of any permit issued or any plan approved under § 9-710 of this subtitle obstructs construction of any water main, sewer, or drain, the municipal authority shall remove or readjust the obstructing structure.

(d) The municipality shall pay the cost of any necessary changes made under this section.

§9–710.

(a) A person shall hold a permit issued by the municipal authority before the person may lay any pipe or conduit under any public highway in a municipality.

(b) The municipal authority shall issue a permit to lay any pipe or conduit under a public highway in the municipality if:

(1) The person intending to lay the pipe or conduit submits to the municipal authority an adequate plan for the installation, including the size, type,

and location of any pipe or conduit to be laid; and

(2) The municipal authority approves the plan.

(c) A person shall obtain the approval of the municipal authority for any proposed deviation from the approved plan before the person may deviate from the plan.

(d) If a person lays a new pipe or conduit without a permit, or not in accordance with the approved plan or an approved deviation from the plan, the municipal authority shall:

(1) Give the person reasonable notice of the violation; and

(2) Order the person to remove or readjust any pipe or conduit within a time specified in the order.

(e) After the time specified in the order for abating the violation, a person who is served with an order under this section may not violate that order.

§9–711.

(a) A municipal authority may issue bonds when and in the amounts needed to provide funds for all or part of a system's:

(1) Design;

(2) Construction;

(3) Extension;

(4) Alteration;

(5) Purchase; or

(6) Condemnation.

(b) The bonds issued under this subtitle:

(1) May be issued without previous legislative authority;

(2) May be outstanding in addition to the total indebtedness otherwise permitted by law;

(3) May be of any type and denomination determined by the municipal authority, so long as no bonds mature later than 50 years from the date of issue;

(4) Shall be exempt forever from any State, county, or municipal taxation; and

(5) Shall be a lien on all property within the municipality that issues them.

(c) (1) Before issuing bonds under Part II of this subtitle, a municipal authority shall submit to a referendum of the voters of the municipality the question of whether to issue the bonds.

(2) The referendum shall be held at:

(i) Any regular municipal election; or

(ii) A special municipal election, provided that the voters are given at least 20 days' notice of the election.

(3) The referendum ballot shall include the words "for ... bonds" and "against ... bonds".

(4) If a majority of the votes cast are "for ... bonds", the municipal authority may issue the bonds.

(5) If a majority of the votes cast are "against ... bonds", the municipal authority:

(i) May not issue the bonds; but

(ii) May submit the question at any later regular or special municipal election as provided under this section, until a majority of the votes cast is "for ... bonds".

§9–712.

(a) While any bonds issued under Part II of this subtitle are outstanding, the municipal authority annually shall levy a tax against all of the assessable property served within the municipality to pay the principal and interest on the bonds.

(b) The tax shall be:

(1) Sufficient to pay:

(i) When due, the principal and interest on the bonds; or

(ii) The part of the principal or interest on the bonds that is not paid for by the levy of the annual front-foot assessment under § 9-713 of this subtitle or by the service charges collected under § 9-714 of this subtitle; and

(2) Treated the same as any other municipal tax in every respect, including as to:

(i) Priority rights;

(ii) Interest;

(iii) Penalties; and

(iv) Manner of determination, levy, and collection.

(c) (1) Each person involved in the levy or collection of the taxes shall perform the duties promptly and properly.

(2) A person may not use any funds collected under this section for any purpose other than the payment of principal and interest on the bonds.

§9–713.

(a) To pay all or any part of the principal or interest on or to retire any outstanding bonds issued under Part II of this subtitle, the municipal authority may levy an annual front–foot assessment against any property that abuts on any street, road, alley, or right–of–way in which a water pipe, sewer, or drain is laid, or from which refuse is collected.

(b) To set front–foot assessment rates, the municipal authority may:

(1) Classify any property according to its use;

(2) Determine a fair and reasonable frontage length for:

(i) Any corner lot fronting on more than one street;

(ii) Any irregular shaped lot fronting on more than one street;

(iii) Any shallow lot fronting on more than one street;

(iv) Any agricultural property; or

(v) Any small acreage; and

(3) Change the classifications or the front–foot assessment rates from year to year, but the rate for all property assessed in the municipality for any year shall be uniform within each classification.

(c) (1) The municipal authority shall notify each owner of assessed property in writing as to:

(i) The classification of the property;

(ii) The amount of the assessment; and

(iii) The time and place for a hearing on the classification of the property and the benefit charges assessed against the property.

(2) The classification of the property and the benefit charges assessed

against the property shall be final, subject only to modification at the hearing.

(d) (1) The benefit charges are in default if not paid within 60 days after the date of levy.

(2) The levy bears interest at the rate of 1 percent a month for each month after the time the benefit charges are in default.

(3) The front–foot assessment charges are a first lien on the assessed property, subject only to prior State and county charges.

(4) The municipal authority may enforce the lien by filing in an appropriate court a complaint for a judgment against the property owner and for execution on the judgment.

(e) The municipal authority may provide terms for the extinguishment by property owners of annual front–foot benefit charges, if the extinguishment arrangement provides for the necessary payments on the outstanding bonds.

§9–714.

(a) A municipal authority may set, collect, and, if necessary, modify service rates to provide funds:

(1) To pay all or part of the principal and interest on bonds issued under Part II of this subtitle; and

(2) To pay for the cost of maintenance, repair, and operation, including overhead expenses and depreciation allowance, of systems constructed under Part II of this subtitle.

(b) The service rates shall be:

(1) Chargeable against all property served by any system under the ownership of the municipal authority; and

(2) Collectible against the owner of the property served, in the same manner as other debts are collectible at law.

(c) The municipal authority may set:

(1) The time for payment; and

(2) The penalties for nonpayment.

§9–715.

(a) To carry out any official duty under Part II of this subtitle, a representative of a municipal authority, at any reasonable time, may enter on any private property or

into any building that is within the jurisdiction of the municipality.

(b) An owner, tenant, or agent of the owner or tenant may not:

(1) Refuse to grant entry to any representative of the municipal authority who asks to enter on private property or into a building under this section; or

(2) Interfere with the carrying out of any official duty of any representative of any municipal authority under this section.

§9–716.

A municipal authority may adopt rules and regulations:

(1) To provide for the maintenance and operation of any system under its control; and

(2) To govern the installation and alteration of all water supply, plumbing, and drainage arrangements on private property, including requirements for obtaining a permit and paying a reasonable charge before doing any work on any water supply, plumbing, or drainage system.

§9–717.

A person who violates any provision of or fails to perform any duty imposed by Part II of this subtitle, or who violates any provision of or fails to perform any duty imposed by a rule, regulation, order, or permit adopted or issued under Part II of this subtitle, is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $100 or imprisonment not exceeding 30 days in the county jail, or both.

§9–720.

In Part III of this subtitle, "political subdivision":

(1) Means any public body of this State that owns or operates any water or sewerage system, including:

(i) A county;

(ii) A commission;

(iii) A district; or

(iv) A municipal corporation; and

(2) Does not include the Washington Suburban Sanitary Commission.

§9–721.

(a) The powers granted to political subdivisions by Part III of this subtitle are supplementary to any other powers of the political subdivisions.

(b) This section does not:

(1) Invalidate any procedures initiated or completed by any political subdivision before June 1, 1972; or

(2) Limit or modify any provision of any general or local law effective before June 1, 1972.

§9–722.

(a) To provide funds for the payment of principal and interest on indebtedness that is incurred to finance any water or sewerage system, a political subdivision may:

(1) Establish a reasonable charge that is not less than the actual cost, payable to the political subdivision, for connection with a water or sewerage system; and

(2) Set an annual assessment, payable to the political subdivision, on all property, improved or unimproved, that abuts on any street, road, lane, alley, or right-of-way in which there is a water main or sewer.

(b) Except for special provisions that apply only in certain political subdivisions, the provisions of §§ 9-655 through 9-658 of this title govern the imposition of assessments under this section.

§9–723.

(a) Subject to any charter provisions of a chartered county or municipal corporation, any political subdivision may establish reasonable rates for water service, and reasonable charges for sewer upkeep and sewer service to provide funds for:

(1) Maintenance, repair, and operation of any water or sewerage system; and

(2) Payment of all or part of the principal and interest on any indebtedness that is incurred to finance any water or sewerage system.

(b) The rates and charges are chargeable against all property that is connected to any water or sewer pipe that the political subdivision owns or supervises.

(c) Subject to any necessary modification and to the provisions of this section, the rates and charges shall be uniform throughout each water or sewerage district.

§9–724.

(a) The rates for water service shall:

(1) Be based on estimates of the amount of water used by the types of users specified in the rates; and

(2) Consist of:

(i) A minimum charge based on the size of the meter on the water connection leading to the property; and

(ii) A charge for water used, based on the amount of water passing through the meter during the period between the last 2 readings.

(b) (1) At its own expense, the political subdivision shall place a meter on each water connection.

(2) If the political subdivision does not have meters available to install in all property that is connected to the system in a locality, the political subdivision shall charge a flat rate to all property in which meters are not installed.

(c) (1) The political subdivision shall send bills for water service to the property, the property owner, or the property owner's designee for each property served on a monthly, every other month, quarterly, or semiannual basis.

(2) The bills are payable at the office of the political subdivision on receipt.

(3) If any bill remains unpaid after 30 days from the date the bill is sent, the political subdivision shall:

(i) Notify the owner of the property served, in writing, that the bill is in arrears and that water service will be discontinued;

(ii) Leave the notice on the owner's property or mail the notice to the last known address of the owner; and

(iii) Discontinue water service to the property until the owner pays the bill and a reconnection charge reasonably related to the cost of reconnection, as established by ordinance of the governing body of the county or municipal corporation in which the water service is provided.

(4) If any bill remains unpaid after 60 days from the date of sending the notice:

(i) The bill and the penalty imposed under paragraph (3)(iii) of this subsection shall be collectible from the property owner in the same manner and subject to the same interest as taxes are collectible in the county in which the water or sewerage

system lies; and

(ii) The water service charges and all penalties shall be a first lien on the property.

(d) (1) This subsection applies only to property subject to a condominium regime established under Title 11 of the Real Property Article.

(2) Notwithstanding any other law, if the political subdivision directly bills the governing body of a condominium or a person designated by the governing body of a condominium for water or sewer usage charges for all or a portion of the units in a condominium property, and a charge is in default for at least 60 days, the political subdivision shall post notice conspicuously at or near the entry to the common area of the condominium.

(3) The political subdivision may enter onto the common area of a condominium property at a reasonable time to post the notice required under this subsection.

§9–725.

The charge for the upkeep on sewers shall be:

(1) Collected annually; and

(2) A first lien on any property connected to any sewer pipe the political subdivision owns or supervises.

§9–726.

(a) The political subdivision shall:

(1) Select a reasonable basis for imposing the sewer service charge; and

(2) Collect the sewer service charge once, twice, or four times a year.

(b) If any bill for sewer service remains unpaid after 60 days from the date the bill was sent:

(1) The bill shall be collectible from the owner of the property served in the same manner and subject to the same interest as taxes are collectible in the county in which the water or sewerage system lies; and

(2) The sewer service charges shall be a first lien on the property.

§9–726.1.

(a) If a bill for sewerage service is unpaid for 45 days after being sent, a political subdivision may disconnect water service to the property.

(b) Before disconnecting water service under this section, the political subdivision shall provide notice:

(1) By mail sent to the last known address of the owner of the property; or

(2) By posting the notice on the premises of the property served.

(c) (1) This subsection applies if a political subdivision:

(i) Provides sewerage service to a property; but

(ii) Does not provide water service to the property and water service is provided to the property by another political subdivision or by a private water company.

(2) If a political subdivision advises another political subdivision or a private water company that a bill for sewerage service is unpaid for 45 days after being sent, subject to the notice provisions under subsection (b) of this section, the political subdivision or private water company informed of the unpaid bill may disconnect water service to the property.

(d) (1) Before reconnecting water service, a political subdivision may require full payment of the sewerage bill plus a reconnection charge reasonably related to the cost of reconnection, as established by regulation of the political subdivision.

(2) A private water company may apply a reasonable reconnection charge, in accordance with the ratemaking requirements of Title 4 of the Public Utilities Article, when it reconnects water service.

(e) This subsection does not preclude the use of any other procedure available to a political subdivision to collect unpaid sewerage charges.

(f) (1) This subsection applies only to property subject to a condominium regime established under Title 11 of the Real Property Article.

(2) Notwithstanding any other law, if the political subdivision directly bills the governing body of a condominium or a person designated by the governing body of a condominium for water or sewer usage charges for all or a portion of the units in a condominium property, and a charge is in default for at least 60 days, the political subdivision or private water company informed of the unpaid bill shall post notice conspicuously at or near the entry to the common area of the condominium.

(3) The political subdivision may enter onto the common area of a condominium property at a reasonable time to post the notice required under this subsection.

§9–727.

Before setting or modifying a rate, charge, or assessment under this section, for any water or sewerage system it constructs or acquires, the political subdivision shall:

(1) Give prompt notice of the proposed rate, charge, or assessment in at least 1 newspaper of general circulation in the area of the water or sewerage system; and

(2) Conduct a public hearing on the necessity or advisability of the proposed rates, charges, or assessments.

§9–801.

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

(b) "Development" means:

(1) Planning;

(2) Acquisition by gift, purchase, lease, or eminent domain;

(3) Construction;

(4) Reconstruction;

(5) Improvement; or

(6) Extension.

(c) "Governing body" includes any body or board that is in charge of the finances of a municipality.

(d) "Municipality" means any municipal corporation of this State.

(e) "Resolution" means any resolution or ordinance adopted by any governing body.

(f) "Revenue" includes, unless the context requires otherwise:

(1) The revenue currently derived from any existing sewerage facility that is being developed; and

(2) The revenue to be derived from any subsequent developments to the sewerage facility.

(g) "Sewerage facility" means all or any part of any plant, property, works, system, or facility that is used or useful in connection with the collection, treatment, or disposal of sewage, waste, garbage, or stormwater.

§9–802.

(a) The powers granted by this subtitle are:

(1) Supplemental to the powers granted by any general, special, or local law; and

(2) Not restricted by any debt or tax rate limitation in any general law, local law, or municipal charter.

(b) Any municipality may engage in the development of any sewerage facility under this subtitle regardless of any general, special, or local law that:

(1) Provides for the development of similar facilities;

(2) Requires approval by the voters of any municipality for the development of the sewerage facility; or

(3) Contains any other requirements, restrictions, limitations, or provisions regarding the development of the sewerage facility.

(c) Any municipality may issue bonds under this subtitle to finance the development of any sewerage facility regardless of:

(1) Any general, special, or local law that provides for the issuance of bonds for similar purposes;

(2) Any general, special, or local law that requires approval by the voters of the municipality for the issuance of bonds;

(3) An unfavorable vote by the voters of the municipality if the Department or a court of competent jurisdiction has ordered the development of the sanitary facility; or

(4) Any other requirements, restrictions, limitations, or other provisions contained in any general, special, or local law.

(d) If any provision of this subtitle is inconsistent with any general, special, or local law, the provision of this subtitle controls.

§9–803.

It is the policy of this State that each municipality that engages in the development of any sewerage facility under this subtitle shall manage the sewerage facility as economically and efficiently as possible:

(1) To promote the health and welfare of the inhabitants of the municipality and of this State by preventing, reducing, or eliminating the pollution of the waters of this State; and

(2) To provide the services of the sewerage facility to consumers at the lowest possible cost.

§9–804.

(a) In addition to the powers granted to the municipality by any general, special, or local law, and independent of any control by the Public Service Commission of Maryland, a municipality may:

(1) Subject to subsection (c)(1) of this section, engage in the development of a sewerage facility:

(i) Wholly inside the corporate boundary line;

(ii) Wholly outside the corporate boundary line; or

(iii) Partly inside and partly outside the corporate boundary line;

(2) Acquire by gift, purchase, lease, or eminent domain, in connection with the development of a sewerage facility:

(i) Land;

(ii) Land rights; or

(iii) Water rights;

(3) Accept from any federal agency loans or grants for the development of sewerage facilities and make agreements with that agency about the loans or grants;

(4) Operate and maintain any sewerage facility for the use and benefit of:

(i) The municipality;

(ii) The residents of the municipality; or

(iii) Residences or places of business that are outside the corporate boundary line of the municipality, but are:

1. Inside this State; and

2. Inside a radius of 10 miles from the corporate boundary line of the municipality;

(5) Set rates and collect fees, benefit assessments, and other charges for the services, facilities, and commodities provided by each sewerage facility;

(6) Designate an agency of the municipality:

(i) To provide the sewerage facility services, facilities, and commodities; and

(ii) To collect the fees, benefit assessments, and other charges; and

(7) Make and perform any contract with any industrial establishment:

(i) For the municipality to provide, operate, and maintain sewerage facilities to reduce or eliminate water pollution caused by any discharge of industrial waste by the industrial establishment; and

(ii) For the industrial establishment periodically to pay to the municipality amounts determined by the governing body of the municipality to be at least sufficient to compensate the municipality for the cost of providing, operating, and maintaining the sewerage facility or the part of the sewerage facility that serves the industrial establishment.

(b) Through their governing bodies, any 2 or more municipalities may:

(1) Make and perform contracts and agreements with each other about sewerage facility:

(i) Development;

(ii) Financing; and

(iii) Operation; and

(2) Agree or contract with each other:

(i) To provide for a board, commission, or other body to supervise, operate, and generally manage the sewerage facility;

(ii) To specify the powers and duties of the board, commission, or body; and

(iii) To set the compensation of the members of the board, commission, or body.

(c) (1) A municipality may not construct a sewerage facility wholly or partly inside the corporate boundary line of another municipality except with the consent of the governing body of the other municipality.

(2) A municipality may not operate a sewerage facility:

(i) For gain or profit; or

(ii) Primarily as a source of revenue to the municipality.

§9–805.

(a) By resolution, the governing body of any municipality may authorize the issuance of bonds under this subtitle to finance, wholly or partly, the cost of the development of any sewerage facility. In the determination of the cost, the governing body may include:

(1) Actual and estimated costs of issuing the bonds;

(2) Engineering expenses;

(3) Inspection expenses;

(4) Fiscal expenses;

(5) Legal expenses; and

(6) Interest estimated to accrue, during construction and for 6 months after construction, on money borrowed or expected to be borrowed under this subtitle.

(b) The resolution:

(1) May be adopted at the meeting at which the resolution is introduced;

(2) May be adopted by a majority of all members of the governing body who are in office when the resolution is introduced; and

(3) Is effective immediately on adoption.

§9–806.

(a) The authorizing resolution may provide that the bonds shall contain a recital that they are issued under this subtitle.

(b) The authorizing resolution shall state that the interest on bonds issued under this subtitle shall be payable twice a year.

(c) The authorizing resolution or any subsequent resolution may provide that the bonds issued under this subtitle:

(1) Be in 1 or more series;

(2) Bear a certain date or dates;

(3) Be executed in a certain manner;

(4) Contain certain terms, covenants, and conditions;

(5) Be in coupon or registered form, or both;

(6) May mature at a certain time or times, but not later than 40 years from their respective dates of issuance;

(7) Be payable in a certain medium of payment;

(8) Be payable at a certain place or places;

(9) Carry certain registration privileges; and

(10) Be subject to certain terms of redemption.

§9–807.

(a) The provisions of this subtitle and any resolution that authorizes the issuance of bonds under this subtitle are a contract between the municipality and the bondholder.

(b) The authorizing resolution may contain covenants as to:

(1) The disposition of the proceeds of sale of the bonds;

(2) The disposition of the revenue of the sewerage facility for which the bonds are issued, including:

(i) The pledging to the punctual payment of the bonds issued under this subtitle and of the interest on those bonds as they become due an amount sufficient to pay the bonds and interest on an equal or priority basis from all or part of the revenue of all or part of the existing or planned sewerage facility; and

(ii) The creation and maintenance of reasonable reserves, from all or part of the revenue, for the payment of the bonds issued under this subtitle and of the interest on those bonds;

(3) The issuance of additional bonds payable from the revenue of the sewerage facility;

(4) The transfer from the general funds of the municipality to the account of the sewerage facility of an amount equal to the cost of providing the municipality or any of its departments, boards, or agencies with the services, facilities, and commodities of the sewerage facility;

(5) The insurance to be carried on the sewerage facility and the disposition of insurance money;

(6) The operation and maintenance of the sewerage facility;

(7) The books of account of the sewerage facility and the inspection and audit of the books; and

(8) The terms and conditions on which the bondholders or any trustee for the bondholders may petition the circuit court for the appointment of a receiver for the sewerage facility.

(c) (1) On petition of the bondholders or a trustee for the bondholders, the circuit court may appoint for a sewerage facility a receiver who may:

(i) Enter and take possession of the sewerage facility;

(ii) Operate and maintain the sewerage facility;

(iii) Set sewerage facility rates, fees, or charges; and

(iv) Collect, receive, and apply all revenue of the sewerage facility.

(2) By mandamus or other appropriate suit, action, or proceeding in any court of competent jurisdiction, any bondholder may enforce:

(i) The duties under this subtitle of the municipality and its governing body and officers; and

(ii) The resolutions adopted under this subtitle.

§9–808.

(a) (1) Except for bonds issued under this subtitle and sold to the United States or to any agency, instrumentality, or corporation of the federal government, any bond issued under this subtitle shall be sold:

(i) At public sale;

(ii) After advertisement; and

(iii) At a price that is not less than par.

(2) Any bond issued under this subtitle may be sold, at a price that is not less than par, to the United States or to any agency, instrumentality, or corporation of the federal government at private sale.

(b) The governing body of the municipality that issues the bonds may:

(1) Issue, to any purchaser of a bond, an interim receipt or certificate pending preparation of the definitive bond; and

(2) Determine the form and provisions of the interim receipt or certificate.

(c) Any bond and interim receipt or certificate issued under this subtitle is:

(1) Fully negotiable within the meaning of and for all the purposes of Title

8 of the Commercial Law Article; and

(2) Forever exempt from State, county, or municipal taxation.

§9–809.

(a) (1) Any bond issued under this subtitle that bears the signatures of the officers in office on the date the bond is signed is a valid and binding obligation notwithstanding that:

(i) At the time of delivery of or payment for the bond, any or all of the signers are no longer officers of the municipality; or

(ii) Any proceeding that relates to the development of the sewerage facility for which the bond is issued is invalid or irregular.

(2) A signature may be by facsimile as provided in § 2-303 of the State Finance and Procurement Article.

(b) A recital in the bond that the bond is issued under this subtitle is conclusive evidence of:

(1) The validity of the bond; and

(2) The regularity of the issuance of the bond.

§9–810.

(a) Except as provided in subsection (b) of this section, the general credit and taxing powers of any municipality are pledged to the payment of any bonds issued by the municipality under this subtitle.

(b) A holder of a bond issued under this subtitle may not compel the exercise of the taxing power of the municipality to pay the bond or the interest on the bond, if:

(1) A covenant in the authorizing resolution so limits the liability of the municipality; and

(2) The bond recites in substance that:

(i) The bond and the interest on the bond are payable from the revenue pledged to the payment of the bond; and

(ii) The bond does not constitute a debt of the municipality within the meaning of any constitutional or statutory limitation.

(c) In accordance with the provisions of this subtitle and the authorizing resolution, all bonds of the same issue:

(1) Subject to the prior and superior rights of outstanding bonds, claims, or obligations, may have a prior and paramount lien on the revenue of the sewerage facility, over and ahead of:

(i) All bonds of any subsequent issue payable from the revenue;

(ii) Any claims of any nature subsequently arising against the revenue; and

(iii) Any obligations of any nature subsequently incurred against the revenue;

(2) May be equally and ratably secured by a lien on the revenue, without priority because of:

(i) Number;

(ii) Date of bonds;

(iii) Date of sale;

(iv) Date of execution; or

(v) Date of delivery; and

(3) In the manner and to the extent set forth in the authorizing resolution, including a provision for the subordination of fewer than all the bonds, may be subordinated and junior in standing, with respect to the payment of principal and interest and the security for the payment, to any other bonds that the authorizing resolution designates.

§9–811.

(a) To assure that each sewerage facility always remains self-supporting, the governing body of a municipality that issues bonds under this subtitle shall set, collect, and whenever necessary revise reasonable rates, fees, benefit assessments, or charges for the services, facilities, and commodities of the sewerage facility.

(b) The rates, fees, benefit assessments, or charges shall be set so as to produce revenue and reserves that are at least sufficient:

(1) To pay, when due, all bonds and the interest on the bonds, for the payment of which the revenue is pledged, charged, or otherwise encumbered; and

(2) To provide for all expenses of operation and maintenance of the sewerage facility.

§9–812.

(a) Any municipality that issues bonds under this subtitle for the development of any sewerage facility may appropriate or expend the revenue from the sewerage facility for:

(1) Paying, when due, all bonds and the interest on the bonds, for the payment of which the revenue is pledged, charged, or otherwise encumbered;

(2) Providing for all expenses of operation and maintenance of the sewerage facility;

(3) Paying and discharging the principal and interest on any notes, bonds, or other obligations:

(i) Not issued under this subtitle, but for payment of which the revenue of the sewerage facility is pledged, charged, or encumbered; or

(ii) Issued to finance the development of the sewerage facility, but which do not constitute a lien, charge, or encumbrance on the revenue of the sewerage facility; and

(4) Providing a reserve for improvements to the sewerage facility.

(b) Any municipality may transfer the revenue of any sewerage facility to the general funds of the municipality only after the municipality has made adequate provision for the purposes set out in subsection (a) of this section.

§9–813.

(a) Any municipality may issue refunding bonds to refund, pay, or discharge the principal and interest on all or any part of the outstanding bonds:

(1) Issued by the municipality to finance the development of all or part of the sewerage facility; and

(2) In arrears or about to become due.

(b) The provisions of this subtitle that concern authorization and issuance of bonds apply to authorization and issuance of refunding bonds.

§9–814.

This subtitle may be cited as "The Sewerage Facilities Bond Act".

§9–901.

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

(b) "Authority" means:

(1) A body politic and corporate that is created under this subtitle; or

(2) If that body is abolished, the unit that:

(i) Succeeds to the principal functions of that body; or

(ii) Is given by law the powers under this subtitle of the former body.

(c) "Board" means the governing body of an authority.

(d) (1) "Bond" means any note, bond, or other evidence of indebtedness or obligation that an authority may issue under § 9-932 of this subtitle.

(2) "Bond" includes refunding bonds and joint cost and refunding bonds.

(e) (1) "Cost" means:

(i) The purchase price of a project; or

(ii) Any expense necessary or incident to financing, acquiring, improving, or constructing a project, or to placing a project in operation.

(2) "Cost" includes:

(i) Any obligation or expense that an authority incurs, before the authority issues a bond under this subtitle, to acquire, improve, or construct a project, including an obligation or expense for:

1. An engineering study;

2. An estimate of cost;

3. An estimate of revenue; or

4. Any other technical or professional service; and

(ii) The cost of a project, including:

1. Acquiring all of the stock of a corporation that owns the project;

2. Discharging the obligations of the corporation to vest title to all or part of the project in the authority;

3. Acquiring any real property, right, easement, franchise, permit, machinery, or equipment;

4. Any improvement;

5. Any finance charge;

6. Any interest charge before, during, or for 1 year after completion of construction of the project;

7. Any engineering or legal service, plan, specification, survey, estimate of cost, estimate of revenue, or other item necessary to determine the feasibility or practicability of acquiring, improving, or constructing the project; and

8. Any administrative expense.

(f) "Federal agency" means:

(1) The United States government; or

(2) Any agency of the United States government.

(g) "Governing body" means the unit of a political subdivision that is authorized by law to enact laws for the political subdivision.

(h) "Improvement" means the construction, repair, replacement, or betterment of, or additions to, a project:

(1) To place or maintain the project in proper condition for safe, efficient, and economic operation; or

(2) To meet requirements for service in areas that:

(i) May be served by the authority; and

(ii) Are not currently being served.

(i) "Law" includes any enactment, order, resolution, or ordinance of a political subdivision.

(j) "Political subdivision" means any county, municipal corporation under Article XI-E of the Maryland Constitution, sanitary district, or other political subdivision of this State.

(k) "Project" means all or part of any water system or sewerage system, or any combination of all or parts of water systems or sewerage systems, that is owned, constructed, or operated by an authority under this subtitle.

(l) "Sewage" means water-carried waste that is created in and carried away or to be carried away from any private or public building.

(m) (1) "Sewerage system" means:

(i) Any plant, system, facility, or property that can:

1. Carry sewage away;

2. Collect sewage;

3. Dispose of sewage;

4. Neutralize sewage; or

5. Prepare sewage for discharge; and

(ii) Any integral part of the plant, system, facility, or property.

(2) "Sewerage system" includes the following parts of a sewerage system:

(i) An appurtenance.

(ii) A conduit.

(iii) A disposal field.

(iv) A drainage ditch.

(v) Any equipment.

(vi) A force main.

(vii) An intercepting sewer.

(viii) A lagoon.

(ix) A lateral sewer.

(x) An outfall sewer.

(xi) A pipeline.

(xii) A pumping station.

(xiii) A sewage treatment plant.

(xiv) A sewer pipe.

(xv) A surface water intercepting ditch.

(xvi) A trunk sewer.

(3) "Sewerage system" includes any related property, property right, or franchise.

(n) (1) "Water system" means:

(i) Any plant, system, facility, or property that can supply or distribute water; and

(ii) Any integral part of the plant, system, facility, or property.

(2) "Water system" includes the following parts of a water system:

(i) An appurtenance.

(ii) A dam.

(iii) Any equipment.

(iv) A filtration plant.

(v) An intake.

(vi) A lateral.

(vii) A pumping station.

(viii) A purification plant.

(ix) A reservoir.

(x) A standpipe.

(xi) A valve.

(xii) A water distribution system.

(xiii) A water hydrant.

(xiv) A water main.

(xv) A water meter.

(xvi) A water source.

(xvii) A water supply system.

(xviii) A well.

(3) "Water system" includes any related property, property right, or franchise.

§9–902.

(a) To accomplish the purposes of this subtitle, the provisions of this subtitle:

(1) Are full and complete authority without regard to the provisions of any other law; and

(2) Shall be liberally construed.

(b) However, this subtitle does not restrict the control that the Department of the Environment and the Department of Natural Resources may exercise over an authority.

(c) This subtitle:

(1) Provides an additional and alternative method to accomplish the purposes of this subtitle;

(2) Is supplemental and additional to powers contained in other laws; and

(3) Does not derogate any existing power.

§9–903.

This subtitle does not apply to:

(1) Montgomery County; or

(2) Prince George's County.

§9–905.

An authority:

(1) Is an instrumentality that exercises public and essential government functions;

(2) Provides for the public health and welfare; and

(3) May acquire, hold, construct, extend, repair, improve, operate, or lease as a lessor or lessee 1 or more projects that are wholly or partly within 1 or more of the member political subdivisions.

§9–906.

By law, the governing bodies of 1 or more political subdivisions may create an authority as provided in this subtitle.

§9–907.

(a) Each incorporating political subdivision shall include in the law that creates an authority the articles of incorporation for the authority.

(b) The articles of incorporation shall include:

(1) An appropriate name for the authority, which includes the word "authority";

(2) A statement that the authority is formed under this subtitle;

(3) The name of each incorporating political subdivision;

(4) The name, address, and term of office for each member of the 1st board of directors of the authority;

(5) If the governing body of any incorporating political subdivision determines that its members are the board of directors of the authority, a statement to this effect; and

(6) The purpose of the authority.

(c) The officers of each incorporating political subdivision shall sign, acknowledge, and file the articles of incorporation for record with the State Department of Assessments and Taxation.

(d) (1) The State Department of Assessments and Taxation shall:

(i) Receive the articles of incorporation;

(ii) Mark the date and time of receipt to the articles; and

(iii) Issue a certificate of approval for any articles that comply with this subtitle.

(2) When the State Department of Assessments and Taxation issues a certificate of approval, the authority:

(i) Begins to exist as a public body politic and corporate;

(ii) Is conclusively considered to be lawfully and properly created;

(iii) May exercise its powers under this subtitle; and

(iv) Has the right to exist as a corporation for a term of 50 years.

§9–908.

(a) (1) In this section, "articles of amendment" means a document that proposes or adopts an amendment to the articles of incorporation of an authority.

(2) "Articles of amendment" includes a document that restates the articles of incorporation.

(b) An authority may amend its articles of incorporation in accordance with this section:

(1) To adopt a new name; or

(2) To change, enlarge, or diminish its powers, duties, and purposes.

(c) (1) To amend its articles of incorporation, the board of directors of an authority shall adopt a resolution that proposes the amendments.

(2) If the articles of incorporation are to be replaced, the resolution shall contain the language of the new articles of incorporation.

(3) If any provision in the articles of incorporation is to be added, deleted, or amended, the resolution shall contain the language of the entire amended provision.

(4) The resolution shall direct submission of the amendment to the governing body of each member political subdivision.

(5) After the board of directors submits the amendment to the governing body of each member political subdivision, the governing body shall adopt or reject the amendment by law.

(d) Articles of amendment under this section shall include:

(1) The name and location of the principal office of the authority;

(2) The complete amendment; and

(3) A statement that the amendment:

(i) Was proposed by the board of directors of the authority; and

(ii) Was adopted by the governing body of each member political subdivision.

(e) If the governing body of each member political subdivision adopts the amendment:

(1) Two authorized officers of the authority shall:

(i) Sign and acknowledge articles of amendment under the seal of the authority; and

(ii) Verify under oath the matters and facts set forth in the articles of amendment; and

(2) The authority shall file the articles of amendment for record with the State Department of Assessments and Taxation.

(f) (1) The State Department of Assessments and Taxation shall:

(i) Receive the articles of amendment;

(ii) Mark the date and time of receipt to the articles of amendment; and

(iii) Issue a certificate of approval for any articles of amendment that comply with this subtitle.

(2) When the State Department of Assessments and Taxation issues a certificate of approval, the articles of amendment:

(i) Are in full force and effect; and

(ii) Are conclusively deemed to be lawfully and properly adopted.

§9–909.

(a) When an authority is organized and elects its initial officers, the secretary of the authority shall file for record with the State Department of Assessments and Taxation:

(1) The name and address of each officer of the authority; and

(2) The location of the principal office of the authority.

(b) Within 10 days after any change in location of the principal office of the authority, the secretary of the authority shall file notice of the new location with the State Department of Assessments and Taxation.

§9–910.

(a) (1) Except as provided in this section, if an authority has 2 or more members, any of the member political subdivisions may withdraw from the authority.

(2) Any political subdivision may join the authority.

(b) After an authority that has 2 or more member political subdivisions incurs an obligation, the member political subdivisions may not withdraw from the authority.

(c) (1) By law, the governing body of a political subdivision shall show its intention to withdraw from or join an existing authority.

(2) If, by resolution, the board of directors of an authority consents to the withdrawal of a political subdivision from the authority, the following persons shall sign and acknowledge articles of withdrawal:

(i) The authorized officers of the withdrawing political subdivision; and

(ii) The authorized officers of the authority.

(3) If, by resolution, the board of directors of an authority consents to the addition of a political subdivision as a member of the authority, the following persons shall sign and acknowledge articles of joinder:

(i) The authorized officers of the joining political subdivision;

(ii) The authorized officers of the authority; and

(iii) After they are authorized by law of the governing bodies of their respective political subdivisions, the authorized officers of the political subdivisions that are then members of the authority.

(d) Articles of joinder under this section shall include, for the joining political subdivision, all of the information required under § 9-907(b) of this subtitle, including the name, address, and term of office of the 1st member of the board of directors of the authority from the joining political subdivision.

(e) The officers of the authority shall file articles of withdrawal or articles of joinder under this section for record with the State Department of Assessments and Taxation.

(f) (1) The State Department of Assessments and Taxation shall:

(i) Receive the articles of withdrawal or articles of joinder;

(ii) Mark the date and time of receipt to the articles; and

(iii) Issue a certificate of approval for any articles that comply with this subtitle.

(2) When the State Department of Assessments and Taxation issues a certificate of approval, the articles of withdrawal or articles of joinder:

(i) Are in full force and effect; and

(ii) Are conclusively considered to be lawfully and properly adopted.

§9–911.

(a) An authority may terminate its existence after the authority:

(1) Pays or provides for payment of the principal of and interest on each bond that the authority issued;

(2) Settles any other claim against the authority; and

(3) Has the approval by law of the governing body of each member political subdivision.

(b) To terminate its existence, an authority shall:

(1) Comply with the provisions of this section; and

(2) File articles of dissolution for record with the State Department of Assessments and Taxation.

(c) The articles of dissolution shall include:

(1) A statement that requests the termination of the existence of the authority;

(2) A statement that the authority has:

(i) Paid or provided for payment of the principal of and interest on each bond that the authority issued; and

(ii) Settled each other claim against the authority; and

(3) The signatures of the authorized officers of the authority.

(d) (1) If the articles of dissolution comply with this subtitle, the State Department of Assessments and Taxation shall:

(i) Note the termination of existence of the authority on the records of the Department; and

(ii) Issue a certificate of approval to the board of directors of the authority.

(2) On approval of the articles of dissolution by the State Department of Assessments and Taxation, the existence of the authority ends.

§9–914.

(a) This section applies to any authority that is incorporated or continued by only 1 political subdivision.

(b) At the election of the governing body of the political subdivision, the board of directors of the authority consists of:

(1) The members of the governing body of the political subdivision; or

(2) Five citizens of the political subdivision who are appointed by the governing body of the political subdivision.

(c) (1) The term of a director who is also a member of the governing body of the political subdivision is the same as the term of office for the member on the governing body of the political subdivision.

(2) The term of a citizen director:

(i) Begins on the date of appointment; and

(ii) Is 5 years, except that the respective terms of the directors serving on the initial board are 1 year, 2 years, 3 years, 4 years, and 5 years from the January 1 after the incorporation of the authority.

(3) The terms of citizen directors are staggered as required by the terms provided for the 1st directors in paragraph (2)(ii) of this subsection.

(4) At the end of a term:

(i) A citizen director continues to serve until a successor is appointed and qualifies; or

(ii) A director who is a member of the governing body of the political subdivision ceases to be a director.

(5) A citizen director who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(6) At a meeting held at least 1 month before the end of a term of a citizen director, the governing body of the political subdivision that is represented by the citizen director shall designate a successor, who shall be deemed to be appointed at the end of the term.

(d) If a political subdivision joins the authority, the governing body of the joining political subdivision immediately shall appoint 1 director for a term that is the same as the terms of the other directors.

§9–915.

(a) This section applies to an authority that has two or more member political subdivisions.

(b) Except as provided in subsection (g) of this section, the number of directors

of the authority is the greater of:

(1) Five; or

(2) The number of member political subdivisions.

(c) Except as provided in subsection (g) of this section, the articles of incorporation for the authority shall provide for:

(1) The appointment of directors;

(2) The staggering of their terms; and

(3) Where the number of member political subdivisions is less than five, the apportioning of the directors between or among the member political subdivisions.

(d) (1) The term of a director may not be more than 5 years.

(2) If a vacancy occurs during the term of a director, the governing body of the political subdivision that is represented by the director shall fill the vacancy.

(e) If a political subdivision joins the authority, the governing body of the joining political subdivision immediately shall appoint one director for a term that is the same as the terms of the other directors.

(f) If a political subdivision withdraws from the authority, any director who was appointed to represent the withdrawing political subdivision immediately ceases to be a director.

(g) In Harford County:

(1) The number of directors of the authority is the greater of:

(i) Seven; or

(ii) The number of member political subdivisions.

(2) The articles of incorporation for the authority shall provide for the apportioning of the directors between or among the member subdivisions if the number of political subdivisions is less than seven.

§9–916.

(a) (1) A majority of the full authorized membership of the board of directors of an authority is a quorum to do business.

(2) Unless the bylaws require a larger number, the board may take any action by a majority vote of the directors present at a validly called meeting.

(b) The board shall determine the times and places of its meetings.

(c) (1) A citizen director is entitled to the compensation set by:

(i) The governing body of the single political subdivision that incorporated or continues the authority; or

(ii) The governing bodies of the member political subdivisions.

(2) However, the compensation for a citizen director may not be increased or decreased during the term of the director.

(3) A director who is also a member of the governing body of a political subdivision may not receive compensation for service as a director.

(d) The board may:

(1) Set the number of officers, agents, and employees that the board considers proper;

(2) Set the powers, duties, and compensation for these employees; and

(3) Elect or appoint any director as an officer, agent, or employee.

§9–917.

In addition to the powers set forth elsewhere in this subtitle, an authority may:

(1) Do anything necessary or convenient to carry out the purposes of this subtitle;

(2) Adopt bylaws to regulate the affairs of the authority and conduct the business of the authority;

(3) Have, use, alter, or abandon a corporate seal;

(4) Sue, be sued, complain, and defend in all courts;

(5) Maintain an office at any place that the authority determines; and

(6) Manage the properties and business of the authority.

§9–918.

(a) An authority may not use any of its powers under this subtitle to construct, improve, maintain, or operate a project that in any way duplicates or competes with an existing public or private utility that serves substantially the same purposes.

(b) (1) By law, the governing bodies of the member political subdivisions may

limit the projects that the authority may begin. If a limitation is made, the authority may not begin a project that is not authorized.

(2) If the governing bodies of the member political subdivisions do not limit the projects that the authority may begin, the authority has all of the powers granted by this subtitle.

(c) (1) The governing body of a political subdivision that has created an authority under this subtitle may not create any other authority to serve any part of the same area.

(2) Unless the governing body of every other member political subdivision consents by law, a member political subdivision may not create or join in the creation of any other authority.

§9–919.

For the purposes of operation and financing, an authority may combine any water system and sewerage system into a single project.

§9–920.

(a) The board of directors of an authority may:

(1) Acquire, lease as a lessee, hold, and use any interest in any property or franchise that is necessary or desirable to carry out the purposes of the authority;

(2) Sell, lease as a lessor, transfer, or otherwise dispose of any interest in any property or franchise of the authority; and

(3) Acquire any right in land or water right in connection with land by gift, purchase, or eminent domain.

(b) To condemn an interest in property that is owned by a political subdivision, an authority must obtain the consent of the governing body of the political subdivision.

§9–921.

Subject to reasonable local police regulation that is established by the governing body of any political subdivision that has jurisdiction in the area, an authority may enter on, use, occupy, or dig up any street, road, highway, or public or private land that is necessary to acquire, construct, or maintain a project.

§9–922.

(a) When the owner of any property connects the property with a project operated by an authority, the authority may charge a reasonable tapping fee.

(b) The tapping fee is in addition to any charges that the authority makes for

rental or use of its projects.

§9–923.

An authority may accept:

(1) From a federal agency, any grant to aid in the construction, acquisition, or operation of a project; and

(2) From any source, aid or a contribution of money, property, labor, or any other thing of value for any stated purpose.

§9–924.

If a political subdivision that is not a member of an authority annexes real property that is served by the authority, the authority may continue to do business on and exercise jurisdiction over its properties and facilities over its annexed real property as long as:

(1) Any bond or indebtedness of the authority in effect at the time of the annexation remains outstanding or unpaid; or

(2) Any contract or other obligation of the authority in effect at the time of the annexation continues in force.

§9–925.

(a) Each authority shall:

(1) Keep a complete record of its receipts and expenditures;

(2) Employ a certified public accountant to audit its books and accounts;

(3) Keep a detailed audit and financial statement of its accounts available and open for public inspection at its principal office during business hours; and

(4) File annually a certified copy of the detailed audit and financial statement with the governing body of each member political subdivision.

(b) (1) In person or by authorized agents, the governing body of any member political subdivision may examine and audit the books and records of the authority.

(2) An examination or audit under this subsection is without cost to the authority.

§9–928.

An authority may issue its bonds to pay any part of the cost of a project of the authority.

§9–929.

(a) The issuance of a bond under this subtitle is not subject to conditions or limitations in any other law of this State.

(b) Sections 8-201, 8-206, and 8-208 of the State Finance and Procurement Article do not apply to any refunding bond issued under this subtitle.

§9–930.

(a) A bond issued under this subtitle:

(1) Is not a pledge of the faith and credit of this State or any of its political subdivisions; and

(2) Shall say on its face that neither the faith and credit of this State nor the faith and credit of any of its political subdivisions is pledged to the payment of the principal of or interest on the bond.

(b) The issuance of a bond under this subtitle does not obligate this State or any of its political subdivisions directly, indirectly, or contingently:

(1) To levy any tax; or

(2) To make any appropriation for payment of the bonds, except from funds pledged in accordance with this subtitle.

§9–931.

A bond issued under this subtitle is a security:

(1) In which any person who conducts a banking business, investment business, or insurance business, any fiduciary, any other person, or any public officer or agency of this State or of any political subdivision may invest funds, including capital that:

(i) Is in the control of the person, officer, or agency; or

(ii) Belongs to the person, officer, or agency; and

(2) That may be deposited with and received by any officer or agency of this State, or any political subdivision, or any officer of a political subdivision, for any purpose for which the deposit of bonds or other obligations of this State is authorized by law.

§9–932.

By resolution of its board of directors, an authority may:

(1) Issue bonds of the authority;

(2) Secure the payment of the bonds by pledge or deed of trust of all or any part of the revenue of the authority;

(3) Either before or after the issuance of bonds, make any agreement that the authority considers advisable with:

(i) A purchaser or holder of the bonds; or

(ii) Any other person in connection with the bonds; and

(4) Provide generally for:

(i) The security for the bonds; and

(ii) The rights of the holders of the bonds.

§9–933.

(a) An authority may issue bonds under this subtitle without:

(1) Obtaining the approval or consent of any unit of the State government; or

(2) Doing anything not specifically required by this subtitle.

(b) An authority may sell bonds under this subtitle at public or private sale and at a price the authority determines is in the best interests of:

(1) The authority; and

(2) The political subdivision that is to be served.

§9–934.

(a) This section applies only in Allegany County, Dorchester County, and the town of Middletown in Frederick County.

(b) (1) An authority may not issue bonds unless the question of issuance of the bonds is submitted to the registered voters who reside within the geographical area served by the authority.

(2) The governing body and the board of election supervisors in each political subdivision shall do whatever is necessary and proper to submit the question to a referendum of the qualified voters of the political subdivision.

(c) A qualified voter at a referendum under this section is an individual who:

(1) Lives within the geographic area served by the authority; and

(2) Is qualified and registered to vote in State and county elections in the area.

(d) (1) The board of directors of the authority shall set the date for the referendum.

(2) Except as otherwise provided in this subtitle, the Election Law Article governs the conduct of the referendum.

(e) The appropriate board of election supervisors shall print the words "For the bond issue" and "Against the bond issue" on each ballot at a referendum under this section.

(f) (1) If a majority of the qualified voters who vote on the question vote "For the bond issue", the authority may issue the bonds.

(2) If a majority of the qualified voters who vote on the question vote "Against the bond issue", the authority may not issue the bonds.

(g) A referendum under this section does not prevent an authority from submitting the same or a similar question at another referendum that is held at a later time.

§9–935.

(a) (1) Before the preparation of definitive bonds, an authority may issue interim receipts or temporary bonds with or without coupons.

(2) Issuance of interim receipts or temporary bonds is subject to the restrictions that govern the issuance of definitive bonds.

(b) Interim receipts or temporary bonds are exchangeable for definitive bonds when the definitive bonds are executed and available for delivery.

(c) An authority may provide for the replacement of any bond that is lost, destroyed, or mutilated.

§9–936.

(a) If an authority considers it necessary, the authority may include any limitation or restriction on the issuance of additional bonds:

(1) In the resolution that provides for the issuance of bonds of the authority; or

(2) In any trust agreement that secures the bonds.

(b) If a resolution or trust agreement places any limitation or restriction on the issuance of additional bonds, the authority shall honor the limitation or restriction when the authority issues additional bonds.

§9–937.

By resolution of its board of directors, an authority may provide for the issuance of:

(1) Refunding bonds to refund any bonds of the authority that were issued under this subtitle and are outstanding; or

(2) A single issue of bonds to:

(i) Pay the cost of a project or of the improvement, extension, or reconstruction of or additions to a project; and

(ii) Refund bonds that:

1. Were issued under this subtitle and are outstanding; and

2. Have matured, are subject to redemption, or can be retired.

§9–938.

(a) To secure any bond issued under this subtitle, an authority may enter into a trust agreement with a corporate trustee, which may be:

(1) A trust company; or

(2) A bank that has the powers of a trust company.

(b) In the resolution or trust agreement that authorizes the authority to issue bonds, the authority:

(1) May pledge or assign the revenues to be received from the operation of any project for which the bonds are issued;

(2) In the case of bonds that finance a sewerage system, and to the extent allowed under § 9-946 of this subtitle, may pledge or assign as security for the bonds the revenues to be received from the water system of the authority;

(3) May not convey or mortgage any part of a project;

(4) May include reasonable, proper, and lawful provisions for protecting and enforcing the rights and remedies of bondholders, including:

(i) Covenants stating the duties of the authority to acquire, construct, improve, maintain, operate, repair, and insure any project for which the

bonds are issued;

(ii) Provisions for the custody, protection, and use of the funds of the authority; and

(iii) Provisions for the employment of consulting engineers in connection with the construction or maintenance of any project for which the bonds are issued;

(5) May state the rights and remedies of bondholders and, in the case of a trust agreement, of trustees;

(6) May restrict the individual right of action of a bondholder in any way that is customary in a trust agreement or trust indenture that secures bonds or debentures of a corporation; and

(7) May include any other provision that the authority considers to be reasonable and proper for the security of bondholders.

(c) Except as otherwise provided in this subtitle, an authority may provide for:

(1) Payment of the proceeds of the sale of its bonds and payment of any revenue of the authority to any officer, board, or depositary that the authority designates as custodian of the proceeds and revenues; and

(2) Disbursement of the proceeds and revenues with any safeguards and restrictions that the authority determines.

(d) An authority may treat any expense that is incurred in carrying out the provisions of a resolution or trust agreement under this section as a part of the cost of operation of the project.

§9–939.

(a) A resolution or trust agreement that provides for the issuance of or secures bonds under this subtitle may:

(1) Include any of the provisions in subsections (c) through (f) of this section; and

(2) Require the authority to adopt resolutions or take any other lawful action that is necessary to enforce those provisions.

(b) If a resolution or trust agreement includes any of the provisions of subsections (c) through (f) of this section, the authority may adopt resolutions and take any other lawful action that is necessary to enforce those provisions.

(c) If the owner, tenant, or occupant of a parcel of land is obligated to pay rates,

fees, or charges for the use of or services furnished by any project of an authority, the authority may require the owner, tenant, or occupant to deposit with the authority, before the use is made or the services are furnished, a reasonable amount:

(1) To insure payment of the rates, fees, or charges; and

(2) To be applied to payment of any delinquent rates, fees, or charges.

(d) If the owner, tenant, or occupant of a parcel of land does not pay any rate, fee, or charge for the use of or services furnished by any project of an authority within 30 days after the rate, fee, or charge becomes due and payable, the authority, at the end of the 30-day period, may:

(1) Disconnect the parcel of land from the water system or sewerage system of the authority or otherwise suspend services; and

(2) Recover the amount of the rate, fee, or charge that is delinquent, plus interest:

(i) In a civil action; or

(ii) By foreclosure of the lien for the rate, fee, or charge.

(e) If any rate, fee, or charge for the use of or services furnished to a lot or parcel of land by a sewerage system that is owned, constructed, or operated by an authority under this subtitle is not paid within 30 days after the rate, fee, or charge becomes due and payable, the owner, tenant, or occupant of the parcel of land shall stop disposing of sewage or industrial wastes from the parcel of land directly or indirectly into the sewerage system until the rate, fee, or charge, plus interest, is paid.

(f) (1) If the owner, tenant, or occupant of a parcel of land does not stop disposing of sewage or industrial wastes as required by subsection (e) of this section, any political subdivision or person who supplies or sells water for use on the parcel of land shall stop supplying or selling the water within 5 days after receiving notice of the delinquency from the authority.

(2) If a political subdivision or person does not stop supplying or selling water for use on a parcel of land as required by paragraph (1) of this subsection, the authority may shut off the supply of water to the parcel of land.

§9–940.

Subject to any restriction in the resolution or trust agreement that provides for the issuance of or secures the bonds of an authority, any holder of the bonds, any holder of any coupons from the bonds, or any trustee under a trust agreement that secures the bonds may:

(1) Enforce in any civil action any right granted by the resolution or trust

agreement or by any law of this State; and

(2) Compel the performance of any duty imposed on the authority or an officer of the authority by this subtitle or by the resolution or trust agreement, including setting, charging, and collecting rates, fees, and charges for the use of or services furnished by any project.

§9–941.

(a) An authority shall pay the principal of and interest on its bonds only from the funds from which this subtitle authorizes payment.

(b) For any bond that an authority issues, the authority:

(1) Shall place the date of issue on the bond;

(2) Shall set the maturity date for the bond, which shall be any time up to 40 years from the date of issue; and

(3) May provide for the redemption of the bond before maturity:

(i) At the option of the authority; and

(ii) At a price and on terms and conditions that the authority fixes before it issues the bond.

(c) A bond or certificate that otherwise conforms to this section is valid and sufficient for all purposes whether or not the officer whose signature or a facsimile of whose signature is on the bond or certificate is still an officer when the bond or certificate is delivered.

(d) An authority:

(1) Shall determine the form of its bonds; and

(2) May issue its bonds in coupon or registered form or both.

(e) An authority shall determine:

(1) The manner of execution of its bonds;

(2) The denominations of its bonds; and

(3) The places for payment of the principal of and interest on its bonds, which may be any bank or trust company.

(f) A bond issued under this subtitle is fully negotiable as provided in Title 8 of the Commercial Law Article.

(g) An authority may provide for:

(1) The registration of any coupon bond as to:

(i) Principal only; or

(ii) Both principal and interest; and

(2) The reconversion into a coupon bond of any bond that is registered as to both principal and interest.

§9–942.

(a) An authority shall:

(1) Use the proceeds of any bond that it issues only to pay for the project for which the bond was issued; and

(2) Disburse the proceeds of any bond in the manner and under any restrictions that the authority provides in the resolution or trust agreement that authorizes the issuance of or secures the bond.

(b) (1) If, for any reason, the proceeds of an issue of bonds are less than the cost of the project for which the authority issued the bonds, the authority may issue additional bonds, in a manner similar to that followed in issuing the original bonds, to provide the amount of the deficit.

(2) Unless otherwise provided in the resolution or trust agreement that authorizes the issuance of or secures the original bonds, additional bonds issued under this subsection:

(i) Are of the same issue as the original bonds; and

(ii) Are entitled to payment from the same fund, without any preference or priority being given to the original bonds.

(c) If the proceeds of an issue of bonds exceed the cost of the project for which the authority issued the bonds, the authority shall deposit the surplus to the credit of the reserve account or sinking fund for the bonds.

§9–945.

(a) An authority may enter into any contract that the authority determines is necessary or incidental to the exercise of its powers or the performance of its duties under this subtitle, including a contract with:

(1) Any federal agency, this State, any agency of this State, any political subdivision, or any person:

(i) Providing for or relating to furnishing the services and facilities of a project of the authority; or

(ii) In connection with the services and facilities of a water system or sewerage system that is owned or controlled by the federal agency, this State, the agency of this State, the political subdivision, or the person;

(2) Any person, political subdivision, or public authority of this or any adjoining state for the construction and operation of a project that is located partly in this State and partly in the adjoining state; and

(3) Any federal agency or political subdivision relating to:

(i) The use by the authority of the services or facilities of any water system or sewerage system that is not owned or operated by the authority; or

(ii) The use by the federal agency, political subdivision, or residents of the political subdivision of:

1. Any project acquired or constructed by the authority under this subtitle; or

2. The services or facilities of the project.

(b) A contract under this section:

(1) Is subject to any provision, limitation, or condition that is contained in:

(i) A resolution of the authority that authorizes the authority to issue bonds; or

(ii) A trust agreement that secures bonds of the authority;

(2) May provide for the collection of fees, rates, or charges for the services and facilities furnished to a political subdivision or any of its residents, and may provide that the collection be done:

(i) By a political subdivision or any agent of a political subdivision; or

(ii) By any agent of an authority; and

(3) May provide for the enforcement of any delinquent charge.

(c) Any law that is enacted by a political subdivision under a contract under this section:

(1) Is not repealable if any bond to which the contract relates is outstanding and unpaid; and

(2) Is for the benefit of the bondholders.

(d) A contract under this section and any law of a political subdivision that is enacted under the contract shall provide that the total of any rates, fees, and charges is sufficient to pay all of the obligations that are assumed by the other party to the contract.

§9–946.

(a) An authority may set, charge, and collect rates, fees, and charges in connection with each of its projects to provide funds that, with any other available funds, are sufficient at all times:

(1) To pay:

(i) The expenses of the authority;

(ii) The cost of construction, extension, repair, improvement, maintenance, and operation of each facility and property of the authority;

(iii) The cost of maintenance, repair, and operation of each project for which the authority issued bonds under this subtitle, including the creation of reserves for the maintenance, repair, operation, replacement, depreciation, and necessary extensions of the project; and

(iv) The principal of and interest on all bonds of the authority whenever due and payable, including the creation of reserves to provide a margin of safety; and

(2) To fulfill the terms of any agreement that is made with:

(i) A purchaser or holder of any bond of the authority;

(ii) A political subdivision that is incorporated or is a member of the authority; or

(iii) A political subdivision that is or will be served by the authority.

(b) An authority may:

(1) Set rates, fees, and charges for the services and facilities of its water system that are sufficient to pay:

(i) The cost of maintenance, repair, and operation of its sewerage system; and

(ii) The principal of and interest on bonds that the authority issues for its sewerage system; and

(2) Subject to prior pledges of surplus revenue, pledge any surplus revenue of its water system for the purposes stated in item (1) of this subsection.

(c) (1) An authority may base rates, fees, and charges for the services and facilities of its sewerage system on:

(i) The quantity of water used;

(ii) The amount of the water bill;

(iii) The number and size of sewer connections;

(iv) The number and kind of plumbing fixtures in use in the premises that are connected with the sewerage system;

(v) The number or average number of individuals who reside in, work in, or are otherwise connected with the premises that are connected with the sewerage system;

(vi) The type or character of the premises that are connected with the sewerage system;

(vii) Any other factor that affects the use of the facilities furnished; or

(viii) Any combination of these factors.

(2) If any premises obtain all or part of their water from a source other than a public water system, an authority may charge the premises for sewerage services:

(i) By gauging or metering; or

(ii) In any other manner that the authority approves.

(d) An authority may base rates, fees, and charges for any of its other services and facilities on any factor that the authority determines to be reasonable and proper.

(e) The rates, fees, and charges of an authority shall be:

(1) Reasonable;

(2) Uniform by class; and

(3) Determined solely by the authority.

(f) (1) Any person who questions whether the rates, fees, or charges of an authority are reasonable or uniform may sue the authority:

(i) In the circuit court for the county in which the project is located;

or

(ii) If the project is located in 2 or more counties, in the circuit court for the county in which the principal office of the project is located.

(2) The circuit court has exclusive jurisdiction to determine the reasonableness and uniformity of the rates, fees, and other charges of an authority.

§9–947.

If the sewage or other waste that a manufacturing, commercial, or industrial plant or other building or premises discharges into a sewerage system is, because of its character, an unreasonable burden on the sewerage system, the authority that owns, operates, or maintains the sewerage system may:

(1) Impose an additional charge on the owner, tenant, or occupant of the plant, building, or premises; or

(2) Require the owner, tenant, or occupant of the plant, building, or premises, before it discharges its sewage or other waste, to treat the sewage or waste in a manner that the authority determines.

§9–948.

(a) An authority may use data that a political subdivision furnishes under this section to calculate the rates, fees, and charges of the authority for sewer services to a consumer of water.

(b) By the 15th day of the month after the month in which the political subdivision issues water bills, and at the request of the authority, each member political subdivision shall submit to the authority:

(1) A list of the water meter readings on which the water bills were based; or

(2) A statement of the amounts of the water bills.

§9–949.

(a) An authority has a lien on real estate:

(1) For:

(i) The amount of any fee, rent, or charge, including a tapping fee, imposed on an owner, tenant, or occupant of the real estate for the use and services of a project of the authority; and

(ii) Any accrued interest on the fee, rent, or charge; and

(2) From the time when the fee, rent, or charge is due and payable.

(b) A lien under this section is superior to any interest of an owner, tenant, or occupant of the affected real estate.

(c) A lien under this section binds or affects a subsequent bona fide purchaser of the real estate who purchases for valuable consideration and without actual notice of the lien only after the amount of the lien is entered in a lien register that is:

(1) Furnished for this purpose by and at the expense of the authority; and

(2) Kept among the land records of the county where the real estate is located.

(d) The clerk of the circuit court in the county where the real estate is located:

(1) Shall keep and make available for public inspection any lien register that an authority provides to the clerk under this section; and

(2) Shall record and index in the lien register any entry that the authority certifies.

(e) (1) To discharge a lien under this section, a person shall pay to the authority:

(i) The total amount of the lien; and

(ii) Any interest that has accrued on the lien to the date of payment.

(2) When a person discharges a lien under this subsection, the authority shall deliver to the person a certificate of payment.

(3) When a person presents a certificate of payment to the clerk of the circuit court in the county where the real estate is located, the clerk, without any fee, shall record the discharge of the lien in the lien register.

§9–950.

(a) In this section, "abutting lot" means a parcel of land:

(1) That abuts on a street or other public way that contains a sanitary sewer that is part of, is served by, or may be served by the sewerage system of an authority; and

(2) On which a building has been constructed for residential, commercial, or industrial use.

(b) Except as provided in subsection (c) of this section, when an authority acquires or constructs a sewerage system under this subtitle, the authority, by rule,

regulation, or resolution, may require each owner of an abutting lot to:

(1) Connect with the sewerage system of the authority each building that is constructed for residential, commercial, or industrial use on the abutting lot; and

(2) Stop using any other method for the disposal of sewage or other polluting matter.

(c) The authority may not require the owner of an abutting lot to connect any building on the abutting lot if the abutting lot is served by a facility for the disposal of sewage or other polluting matter that was constructed and is operated in accordance with standards set or approved by the Secretary.

(d) Whenever this section requires a person to connect a building to the sewerage system of an authority, the person shall make the connection in accordance with the rules and regulations of the authority.

(e) The rules and regulations of an authority may set a reasonable charge for making a connection under this section.

§9–951.

(a) A political subdivision that owns or operates a water system may contract with an authority as provided in subsection (b) of this section to shut off the supply of water to any premises that are connected with any sewerage system of the authority.

(b) If the owner, tenant, or occupant of any premises described in subsection (a) of this section fails, within the time stated in the contract, to pay any rate, fee, or charge for the use or services of the sewerage system of an authority, the authority may shut off the supply of water to the premises.

§9–952.

(a) (1) Notwithstanding any other law, the governing body of a political subdivision may transfer jurisdiction over, lease, lend, give, sell, or convey to an authority, on the request of the authority, with or without consideration, any of the following:

(i) Any facility;

(ii) Any right or interest in a facility;

(iii) Any property that appertains to a facility;

(iv) Any real property; or

(v) Any right or interest in real property.

(2) The authority shall use property transferred or conveyed under

this subsection in connection with the construction, extension, repair, improvement, maintenance, or operation of 1 or more projects of the authority.

(3) The transfer or conveyance shall be on terms and conditions that the governing body of the political subdivision determines to be in the best interests of the political subdivision.

(b) (1) If the land is necessary or desirable in connection with the construction, extension, repair, improvement, maintenance, or operation of any project, this State consents to the use by an authority of any land that is:

(i) Owned or controlled by this State; and

(ii) 1. Below the high-water mark of any waters of this State; or

2. In the right-of-way of any State highway.

(2) The State Highway Administration must approve the use of land that is in any State highway right-of-way.

§9–953.

After an authority pays or provides for the payment of the principal of and interest on each bond that is secured by a pledge of the revenue of a project, and subject to any agreement that concerns the operation or disposition of the project, the authority may convey the project to its member political subdivisions.

§9–956.

In addition to the powers set forth elsewhere in this subtitle, a political subdivision may:

(1) Contract with an authority:

(i) For the collection, treatment, or disposal of sewage; and

(ii) With respect to any matter or thing concerning which the authority may contract with the political subdivision under this subtitle; and

(2) Lend money to an authority to pay the organization and preliminary expenses of the authority, on condition that the loan is repaid out of the proceeds of the 1st bond issue of the authority.

§9–957.

(a) An authority is not required to pay any tax or assessment on:

(1) Any project; or

(2) The income from any project.

(b) This State, any political subdivision, and any other public agency in this State may not tax:

(1) Any bond that is issued under this subtitle;

(2) The transfer of the bond; or

(3) Any income from the bond, including any profit on the sale of the bond.

§9–958.

(a) Any money that an authority receives under this subtitle as proceeds from the sale of bonds or as revenues is a trust fund that the authority shall hold and apply only as provided in this subtitle.

(b) The resolution or trust agreement that provides for the issuance of or secures bonds of an authority shall provide that any officer to whom, or any bank, trust company, or other fiscal agent to which, the authority pays any money received under this subtitle shall:

(1) Act as trustee of the money; and

(2) Hold and apply the money:

(i) For the purposes of this subtitle; and

(ii) Subject to any provision of the resolution or trust agreement.

§9–1001.

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

(b) "Certification" means certification by the Department under this subtitle.

(c) "Person" includes any state, county, municipal corporation, federal agency, or special taxing area.

(d) "Public drinking water system" has the meaning stated in the federal Safe Drinking Water Act for "public water system".

(e) "Water quality laboratory" means any person who, by any method, examines a public drinking water system:

(1) To determine whether it complies with the federal Safe Drinking Water Act or State standards for public drinking water; or

(2) To produce laboratory information for enforcement of the federal Safe

Drinking Water Act or State standards for public drinking water.

§9–1002.

The provisions of this subtitle that require the payment of a fee for certification or renewal of a certification do not apply to any county or municipal corporation in this State.

§9–1003.

(a) The Department shall:

(1) Adopt rules and regulations to carry out the provisions of this subtitle;

(2) Establish a proficiency testing program to test the performance of any water quality laboratory; and

(3) Set standards for:

(i) Demonstrating satisfactory performance in a proficiency testing program; and

(ii) Conducting the program.

(b) The Secretary shall have each water quality laboratory inspected at least triennially.

§9–1006.

A water quality laboratory shall be certified by the Department before the water quality laboratory may be operated in this State.

§9–1007.

To qualify for certification, a water quality laboratory shall:

(1) Meet the standards and qualifications the Department sets; and

(2) Comply with the rules and regulations that the Department adopts under this subtitle.

§9–1008.

Any person who wishes to operate a water quality laboratory shall:

(1) Submit to the Department, on the form the Department requires, an application for certification of the water quality laboratory; and

(2) Pay to the Department the application fee set by the Department.

§9–1009.

Before certifying any water quality laboratory, the Secretary shall have the water quality laboratory inspected.

§9–1010.

The Department shall certify any water quality laboratory that meets the requirements of this subtitle.

§9–1011.

While it is effective, certification under this subtitle authorizes the certified water quality laboratory to:

(1) Be operated; and

(2) Test well water for State standards.

§9–1012.

(a) A certification expires on the first anniversary of its effective date unless the certification is renewed for a 1–year term as provided in this section.

(b) At least 1 month before a certification expires, the Department shall send to the certified water quality laboratory, by first–class mail to the last known address of the water quality laboratory, a renewal notice that states:

(1) The date on which the current certification expires;

(2) The date by which the renewal application must be received by the Department for the renewal to be issued and mailed before the certification expires; and

(3) The amount of the renewal fee.

(c) Before the certification expires, the certified water quality laboratory may renew its certification for an additional 1–year term if the water quality laboratory:

(1) Otherwise is entitled to be certified;

(2) Pays to the Department the renewal fee set by the Department; and

(3) Submits to the Department a renewal application on the form that the Department requires.

(d) The Department shall renew the certification of each water quality laboratory that meets the requirements of this subtitle.

§9–1013.

If the water quality laboratory meets the renewal requirements of this subtitle, the Secretary shall reinstate the certification of a water quality laboratory the certification of which has not been renewed for any reason.

§9–1014.

(a) A water quality laboratory certification is not transferable.

(b) Each certified water quality laboratory shall display its certificate of certification conspicuously in the place of business of the certified water quality laboratory.

§9–1015.

(a) If a water quality laboratory located outside of this State examines any of the public drinking water of this State, the results of that examination may not be accepted by this State unless the water quality laboratory is certified under this subtitle.

(b) A person who operates a water quality laboratory in another state and who wishes to have the water quality laboratory certified in this State shall:

(1) Submit to the Department, on the form that the Department requires, an application for certification of the water quality laboratory;

(2) Show to the satisfaction of the Department that the water quality laboratory meets at least the minimum standards and qualifications adopted by the Department under this subtitle for water quality laboratories in this State; and

(3) Pay to the Department the application fee set by the Department.

(c) A water quality laboratory that is in another state and is certified under this subtitle may renew its certification in accordance with the provisions of this subtitle.

§9–1016.

Subject to the hearing provisions of § 9-1017 of this subtitle, the Secretary may reprimand or revoke or suspend the certification of any water quality laboratory that:

(1) Fraudulently or deceptively obtains or attempts to obtain a certification;

(2) Fraudulently or deceptively uses a certification;

(3) Fails to meet substantially the standards and qualifications adopted by the Department under this subtitle; or

(4) Fails to comply with the rules and regulations adopted by the

Department under this subtitle.

§9–1017.

(a) Before the Secretary takes any action under § 9-1016 of this subtitle, the Secretary shall give the water quality laboratory against which the action is contemplated:

(1) Written notice of the charges filed against it; and

(2) An opportunity for a hearing before the Secretary.

(b) The Secretary shall give notice and hold the hearing in accordance with the Administrative Procedure Act.

§9–1018.

(a) Any person aggrieved by a final decision of the Secretary in a contested case under this subtitle may take a direct judicial appeal.

(b) The appeal shall be made as provided for judicial review of final decisions in the Administrative Procedure Act.

§9–1021.

A person may not operate or attempt to operate a water quality laboratory in this State unless the water quality laboratory is certified by the Department.

§9–1022.

Unless the water quality laboratory the person operates is certified under this subtitle, a person may not represent to the public by title, by description of services, methods or procedures, or otherwise that the person operates a certified water quality laboratory.

§9–1023.

A person may not:

(1) Sell or fraudulently obtain, or provide or aid in selling or fraudulently obtaining or providing, a certification issued under this subtitle; or

(2) Operate as a certified laboratory under a certification that is unlawfully or fraudulently obtained or unlawfully issued.

§9–1026.

A person who violates any provision of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $1,000 or imprisonment not exceeding

1 year or both.

§9–1027.

This subtitle may be cited as the "Maryland Water Quality Laboratory Certification Act".

§9–1101.

(a) In Garrett County, before constructing on private property a building that will need a septic tank disposal system, the person who proposes to construct the building shall obtain a septic tank permit from the Garrett County Health Department.

(b) An applicant for a septic tank permit under this section shall submit to the Garrett County Health Department:

(1) An application on the form that the Garrett County Health Department requires; and

(2) A plan for the septic tank system.

(c) Before issuing a septic tank permit, the Garrett County Health Department may inspect the site of the proposed septic tank.

(d) If it approves the application, the Garrett County Health Department shall issue a septic tank permit.

(e) A person may not build a septic tank in violation of this section.

(f) A person who violates subsection (e) of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $100.

§9–1102.

(a) This section applies to charges for sewer service or solid waste disposal service provided in Worcester County by any State, county, or municipal agency that does not also provide water services.

(b) If a bill for sewer service or solid waste disposal service remains unpaid for 30 days after being sent, the agency providing that service:

(1) After giving written notice, may stop the service; and

(2) Before restoring the service, may require payment of the entire unpaid bill plus $5.

(c) The notice required by this section shall be:

(1) Left on the premises served; or

(2) Mailed to the last known address of the owner of the premises served.

(d) Unpaid sewer charges, including any penalty, shall be:

(1) A first lien against the property; and

(2) Collectible as taxes.

§9–1103.

(a) In this section, "public agency" means:

(1) Any State, county, or municipal authority;

(2) Any public drainage commission;

(3) Any public sewerage commission;

(4) Any public water commission; or

(5) Any sanitary district created under Subtitle 6 of this title.

(b) (1) A public agency may make a contract or an agreement with the Washington Suburban Sanitary Commission:

(i) To connect any drainage, sewerage, or water system of that public agency with facilities of the Washington Suburban Sanitary Commission;

(ii) To buy water from or sell water to the Washington Suburban Sanitary Commission;

(iii) To accept drainage or sewage from the Washington Suburban Sanitary Commission; and

(iv) To send drainage or sewage to the Washington Suburban Sanitary Commission.

(2) A public agency may make any other agreement with the Washington Suburban Sanitary Commission to aid in the building or operation of any drainage system, sewerage system, or water system built or operated by the public agency or the Washington Suburban Sanitary Commission.

(c) The powers granted in this section are in addition to and not limited by any other powers granted to a public agency.

§9–1104.

(a) The Department may establish a privatization program for performing soil percolation tests in one or more counties in the State.

(b) In order to be eligible to participate in the program established under subsection (a) of this section a person shall:

(1) Be a sanitarian licensed in the State or a qualified professional who meets standards at least as stringent as the State sanitarian licensing requirements;

(2) Have demonstrated experience in working with on-site sewage disposal systems; and

(3) Meet any other requirements established by the local health department to ensure the quality of testing performed under the program.

(c) The health department for any county seeking to establish a privatization program under this section shall work with the Department to implement the program.

(d) The Department may adopt regulations to implement the privatization program.

§9–1105.

(a) This section applies only in Carroll County.

(b) There is an On–Site and Small Community Wastewater Disposal Fund in the Carroll County Health Department.

(c) The Carroll County Health Department shall use the Fund to provide grants to persons to correct existing or potential public health hazards through innovative or alternative on–site sewage disposal systems and eligible small community self–help projects.

(d) The Fund shall consist of 10% of all soil evaluation fees that the Carroll County Health Department has collected and retained and deposited into the Fund as authorized under § 3–202 of the Health – General Article.

(e) Notwithstanding any other provision of law to the contrary, any unexpended moneys in the Fund may not be transferred or revert to the General Fund of the State, but shall remain in the Fund to be used for the purposes specified in subsection (c) of this section.

§9–1106.

The governing body of Howard County may enact local laws governing the installation and use of multiuse sewerage systems that are not inconsistent with State

law.

§9–1107.

The Howard County governing body may require the recipient of a permit to install a multiuse sewerage system to post a performance bond before installing the multiuse sewerage system.

§9–1108.

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

(2) "Nitrogen removal technology" means the best available technology for the removal of nitrogen.

(3) "On–site sewage disposal system" means a sewage treatment unit, collection system, disposal area, and related appurtenances.

(b) A person may not:

(1) Install, or have installed, on property a person owns in the State in the Chesapeake and Atlantic Coastal Bays Critical Area, an on–site sewage disposal system to service a newly constructed building, unless the on–site sewage disposal system utilizes nitrogen removal technology; or

(2) Replace or have replaced, an existing on–site sewage disposal system on property a person owns in the State in the Chesapeake and Atlantic Coastal Bays Critical Area, unless the replacement on–site sewage disposal system utilizes nitrogen removal technology.

(c) (1) Subject to paragraph (2) of this subsection and in accordance with § 9–1605.2(h) of this title, the Department shall assist homeowners in paying the cost difference between a conventional on–site sewage disposal system and a system that utilizes nitrogen removal technology with money from the Bay Restoration Fund, if sufficient funds are available.

(2) In calendar years 2010, 2011, and 2012, the Department shall assist homeowners by paying 100% of the cost difference between a conventional on–site sewage disposal system and a system that utilizes nitrogen removal technology with money from the Bay Restoration Fund, if the homeowner:

(i) Is required under subsection (b)(2) of this section to replace an existing on–site sewage disposal system with an on–site sewage disposal system that utilizes nitrogen removal technology; and

(ii) Has a failing on–site sewage disposal system.

(d) (1) Subject to paragraph (2) of this subsection, a person who violates

subsection (b) of this section is subject to the civil and administrative penalties and the enforcement mechanisms provided in §§ 9–334 through 9–342 of this title.

(2) The penalties imposed under this section may not exceed $8,000.

(e) (1) The Department shall adopt regulations to implement this section.

(2) The regulations adopted in accordance with paragraph (1) of this subsection shall include provisions to ensure that appropriate management measures are provided for the operation and maintenance of nitrogen removal technology.

§9–1108.1.

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

(2) "Nitrogen removal technology" has the meaning stated in § 9–1108 of this subtitle.

(3) "On–site sewage disposal system" has the meaning stated in § 9–1108 of this subtitle.

(4) "Vendor" means a person that sells, offers for sale, or distributes on–site sewage disposal systems that utilize nitrogen removal technology.

(b) (1) In accordance with subsection (c) of this section, the Department shall evaluate and rank all best available nitrogen removal technologies for on–site sewage disposal systems to advise local governments and residents of the State of approved technologies that qualify for funding under § 9–1605.2(h)(2) of this title.

(2) The Department shall:

(i) Make available the evaluation and ranking of all best available nitrogen removal technologies required under this section on the Department's Web site; and

(ii) Provide the evaluation and ranking of all best available nitrogen removal technologies to a county, municipality, or resident of the State in any correspondence relating to approved technologies that qualify for funding under § 9–1605.2(h)(2) of this title.

(c) The Department shall evaluate and rank all best available nitrogen removal technologies for on–site sewage disposal systems based on:

(1) The total amount of nitrogen reduction the technology can achieve;

(2) The total cost of the technology, including the estimated annual cost of operation and maintenance, including electricity costs;

(3) The cost per pound of the nitrogen reduction; and

(4) Any other information the Department determines is necessary.

(d) Beginning June 1, 2011, and every 2 years thereafter, the Department shall request information from vendors necessary to carry out the requirements of this section.

§9–1109.

(a) In this section, "individual sewerage system" means a privately owned system of sewers, piping and treatment tanks or other facilities that:

(1) Serves only a single lot for the disposal of sewage; and

(2) Discharges to the surface waters of the State.

(b) Except as provided in subsection (c) of this section, a person may not install an individual sewerage system in the State.

(c) Subject to the Department's approval, a person may install an individual sewerage system in the State for residential use if an existing on–site sewage disposal system fails and cannot be repaired or replaced by any means.

§9–1110.

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

(2) "Community sewerage system" means a publicly or privately owned sewerage system that serves at least two lots.

(3) "Controlling authority" means a unit of government, a body public and corporate, or an intercounty agency authorized by the State, a county, or a municipal corporation to provide for the management, operation, and maintenance of a community sewerage system, shared facility, or multiuse sewerage system.

(4) "Shared facility" means a sewerage system that:

(i) Serves more than one:

1. Lot and is owned in common by the users;

2. Condominium unit and is owned in common by the users or by a condominium association;

3. User and is located on individual lots owned by the users; or

4. User on one lot and is owned in common by the users;

(ii) Is located wholly or partly on any of the common elements of a

condominium; or

(iii) Serves a housing cooperative or other multiple ownership cooperative.

(b) This section may not be construed as requiring a local jurisdiction to:

(1) Be a controlling authority; or

(2) Authorize or allow the use of a shared facility or a community sewerage system within the local jurisdiction.

(c) A shared facility or community sewerage system may be approved only if the system:

(1) Is managed, operated, and maintained by:

(i) A controlling authority; or

(ii) A third party under contract with the controlling authority; and

(2) Discharges:

(i) To the surface waters of the State in accordance with a permit issued under § 9–323 of this title;

(ii) By way of land application under a nutrient management plan required under § 8–803.1 of the Agriculture Article that assures 100% of the nitrogen and phosphorus in the applied effluent will be taken up by vegetation; or

(iii) By way of an on–site sewerage system.

§9–1111.

(a) In this section, "rural zone" means an area of Montgomery County designated as a Rural Zone, Rural Cluster Zone, Rural Density Transfer Zone, Rural Neighborhood Cluster Zone, or Rural Service Zone as described in the Montgomery County Code Zoning Ordinance.

(b) (1) Except as provided in subsection (c) of this section, in Montgomery County, an on–site sewage disposal system or well located in a rural zone may only serve one additional lot or parcel that has been subdivided from a single property on which the on–site sewage disposal system or well is located under an on–site sewage disposal system easement or well easement, respectively, provided that:

(i) The property on which the on–site sewage disposal system or well is located does not have an existing on–site sewage disposal system easement or well easement;

(ii) The subdivision of the property was made in accordance with a State or county agricultural land conservation program if the property is subject to an agricultural land conservation easement; and

(iii) Only one on–site sewage disposal system easement may serve only one subdivided lot or parcel.

(2) An easement for an on–site sewage disposal system or well under paragraph (1) of this subsection may be granted from the original parcel to a new lot or parcel being created and the easement must not be granted to any lot or parcel that did not originate from the same original parcel.

(c) An on–site sewage disposal system or well under subsection (b)(1) of this section may not:

(1) Serve land that is designated by the State or the governing body of Montgomery County as a special protection area; or

(2) Decrease the land available for agricultural production by more than 4,000 square feet.

§9–1301.

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

(b) "Abandon" means to discontinue the use of a well permanently.

(c) "Board" means the State Board of Well Drillers.

(d) "Owner" means a person who has the right to drill into, produce, and appropriate the production of water, for the owner, for another person, or for both of them.

(e) "Underground water" means a supply of water that may be developed by any type of well or spring from beneath the surface of the ground whether the water flows from the well or spring by natural force or is withdrawn by pumping, other mechanical device, or artificial process.

(f) "Well" means a hole made in the ground:

(1) To explore for groundwater;

(2) To obtain or monitor groundwater;

(3) To inject water into any underground formation from which groundwater may be produced; or

(4) To transfer heat to or from the ground or groundwater, if the hole:

(i) Extends more than 20 feet below the surface of the ground; and

(ii) Is not a well for obtaining geothermal resources under § 5-601 of this article.

(g) "Well driller" means a person who is in charge of:

(1) Making, altering, repairing, or sealing a well; or

(2) Installing, altering, repairing, or disconnecting well system equipment.

§9–1302.

A well is considered to be abandoned if:

(1) It is in such a state of disrepair that its continued use for the purpose of obtaining ground water is impracticable; or

(2) It has been disconnected permanently from any water supply system or irrigation system.

§9–1303.

This subtitle does not limit the powers of any State unit that has jurisdiction of and supervision over the public and drinking water supplies of this State.

§9–1304.

This subtitle denies any municipality, county, or other political subdivision of this State the right to adopt and enforce any additional rule or regulation that relates to construction of wells.

§9–1305.

(a) The Department shall adopt rules and regulations for the construction of wells.

(b) The rules and regulations may recognize a variation:

(1) In the primary use or construction of wells; and

(2) Of the materials penetrated in different localities.

(c) Before the Department adopts any rule or regulation that relates to the construction of wells, the Department shall submit the proposed rule or regulation to the Board for comment.

(d) Notwithstanding any provisions to the contrary, a county board of health,

delegated by the Department of the Environment to implement a well inspection program, may collect a fee for the issuance of well permits required under § 9-1306 of this subtitle. However, a county health department may not collect a fee for test or irrigation wells.

§9–1305.1.

(a) The Department shall adopt regulations to require that whenever the Department tests water from a well used for domestic purposes the following information shall be given to a person who requests the test and to any other person for whose benefit the test is requested:

(1) A certificate of potability;

(2) The complete results of the test, whether the test requested is bacteriological or chemical in nature; and

(3) The name, address, and telephone number of the appropriate agency of local government that the person may contact for an explanation of the test results.

(b) The regulations shall apply to any person or unit of State or local government that tests the water from a well.

§9–1306.

(a) Except as indicated in subsection (b) of this section, a person may not drill a well in this State unless the Department issues a permit to drill the well.

(b) A person who has not been issued a permit by the Department may, after having notified the county board of health and a municipality if the temporary dewatering device will be located inside the municipality's corporate boundary line or if the temporary dewatering device will be located 1 mile or less outside the municipality's corporate boundary line, install a temporary dewatering device to facilitate the installation of underground utilities if the device:

(1) Is installed 30 feet or less below the ground surface;

(2) Is not located in any trench used for the installation of underground utilities;

(3) Contains no mechanical pumping equipment below the surface; and

(4) Is removed no more than 30 days after installation.

(c) A person installing a temporary dewatering device under subsection (b) of this section shall restore the subsurface conditions of the installation area as nearly as possible to the conditions that existed before the installation.

§9–1307.

(a) In applying for a permit to drill a well, the well driller shall:

(1) Give the Department any information the Department requires; and

(2) Notify a municipality if the well will be drilled inside the municipality's corporate boundary line or if the well will be drilled 1 mile or less outside the municipality's corporate boundary line.

(b) As a condition to issuing a permit to drill a well, the Department may require that samples of the materials encountered in drilling the well be preserved and submitted to the Department.

(c) (1) (i) A county board of health may establish a permit fee to defray county expenses in inspecting wells, collecting water samples, and issuing certificates of potability.

(ii) For an interim certificate of potability, a county board of health shall accept initial test results prepared by a private State certified laboratory.

(2) (i) The fee may be charged before a permit required under § 9–1306 of this subtitle is issued.

(ii) Except as provided in subparagraph (iii) of this paragraph, the fee may not exceed $160 per well or $160 per cluster of wells to be used exclusively to transfer heat to or from the ground or groundwater.

(iii) In Anne Arundel County only:

1. Subject to item 2 of this subparagraph, the fee charged shall be set so as to produce funds to reflect the actual cost of inspecting wells, collecting water samples, and issuing certificates of potability by the Anne Arundel County Board of Health; and

2. For a well drilled to replace an existing well the fee charged shall be no more than 50% of the fee as calculated under item 1 of this subparagraph.

(3) A permit shall be issued within a reasonable period of time after receipt of the application and shall be valid for a period of 12 months from the date of issuance by the approved delegated permitting authority.

(d) A county board of health may waive a fee for a well that is drilled to replace a well not in conformity with the regulations adopted under § 9–1305 of this subtitle.

§9–1308.

On completion of the drilling of any well, the well driller shall file a final report

with the Department. The report shall include:

(1) The log of each well;

(2) The size and depth of each well;

(3) The diameters and lengths of casing and screen installed;

(4) The static and pumping levels;

(5) The yield of each well; and

(6) Any other information relating to the construction or operation of the well that the Department requires.

§9–1309.

(a) The owner of any well shall maintain it in accordance with the rules and regulations of the Department.

(b) On abandoning any existing well or test hole, the well owner shall:

(1) Notify the Department; and

(2) Effectively seal and fill the well or test hole in accordance with the rules and regulations of the Department.

§9–1310.

An owner of a pumping well or flowing well may not discharge or permit the discharge from the well of water that is allowed to run to waste and not put to useful service.

§9–1311.

(a) A person who violates any provision of this subtitle or of any rule or regulation adopted under this subtitle is guilty of a misdemeanor and on conviction is subject to:

(1) For a first offense, a fine not exceeding $500 or imprisonment not exceeding 3 months or both; or

(2) For a subsequent offense, a fine not exceeding $1,000 or imprisonment not exceeding 1 year or both.

(b) The Department may bring an action for an injunction against any person who violates any provision of this subtitle or any rule, regulation, or permit adopted or issued under this subtitle. In any action for an injunction under this subsection, any finding of the Department after a hearing is prima facie evidence of each fact the

Department determines.

(c) A person is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $10,000 or imprisonment not exceeding 6 months or both if the person:

(1) Knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this subtitle or any rule, regulation, or permit adopted or issued under this subtitle; or

(2) Falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this subtitle or any rule, regulation, or permit adopted or issued under this subtitle.

(d) The Attorney General shall take charge of, prosecute, and defend on behalf of this State every case arising under the provisions of this subtitle, including the recovery of penalties.

§9–1401.

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

(b) (1) "Innovative and alternative septic system" means any new, experimental, or nonconventional technology that is added to or used in place of a conventional septic or other on-site sewerage system.

(2) "Innovative and alternative septic system" includes but is not limited to:

(i) A sand mound septic system;

(ii) A septic tank-sewerage evapotranspiration system that is powered by solar energy;

(iii) A septic tank-filter cloth trench system; and

(iv) Any other innovative on-site sewerage disposal technology that is developed in the future.

(c) "Program" means the Innovative and Alternative Septic System Grant Program.

§9–1402.

There is an Innovative and Alternative Septic System Grant Program in the Department.

§9–1403.

(a) The purpose of the Program is to make State grants to political subdivisions of this State who, in turn, will make grants to owners of improved properties with failed systems and owners of previously recorded land that has failed a soil percolation test to install and experiment with innovative and alternative septic systems on the land in order to develop additional types of on-site systems that can be utilized.

(b) The Office of Environmental Programs in the Department shall manage and supervise the Program.

§9–1404.

(a) The Department may make grants to political subdivisions of this State under the Program from funds provided in the State budget.

(b) Each political subdivision of this State shall make grants from the money received from the Department to eligible persons who apply under this subtitle.

(c) The State grants awarded by each political subdivision may not exceed 87.5 percent of the anticipated cost of the innovative and alternative septic system, except that grants for systems allowing the development of unimproved properties may not exceed 50 percent.

§9–1405.

(a) The Secretary:

(1) Shall adopt rules and regulations to carry out the provisions of this experimental Program under this subtitle;

(2) Shall request demographic, land use, fiscal impact, or other pertinent information from the Department of Planning or any community planning agency; and

(3) Shall prepare and submit a report to the Governor that describes the activities of the Program and makes recommendations to improve the Program.

(b) The political subdivisions of this State shall administer the Program according to the rules and regulations adopted by the Department.

§9–1406.

(a) To be eligible for State funds from a political subdivision under the Program, an applicant shall:

(1) Own property in this State that:

(i) Has an existing failed septic system; or

(ii) Is unimproved, was platted before 1972, and has failed percolation testing requirements;

(2) Have made a good faith effort to obtain approval of or to utilize a conventional septic system;

(3) Agree to conditions of experiment as outlined by the Office of Environmental Programs; and

(4) Only apply for 1 grant to serve 1 home site to upgrade an existing system or to improve 1 unimproved site with a new home and innovative and alternative septic system.

(b) This section does not apply to the development of an unimproved parcel of land that is proposed to be subdivided into building lots.

§9–14A–01.

(a) If the statement "all toilets on this property are required to be waterless toilets approved by the Maryland Department of the Environment" is recorded in the land use covenant or deed for a parcel of property, the Department may:

(1) Authorize reductions in initial disposal system size;

(2) Establish the amount of the reductions on a case by case basis; and

(3) Prohibit the installation or use of conventional plumbing fixtures where a reduction has been authorized under paragraphs (1) and (2) of this subsection.

(b) The Department may adopt regulations to implement the provisions of this section.

§9–1501.

In this subtitle, "cleaning agent" means a laundry detergent, dishwashing compound, household cleaner, metal cleaner, degreasing compound, commercial cleaner, industrial cleaner, phosphate compound, or other substance that is intended to be used for cleaning purposes.

§9–1502.

This subtitle does not apply to a cleaning agent that is:

(1) A detergent used in dairy, beverage, or food processing cleaning equipment;

(2) A phosphoric acid product, including a sanitizer, brightener, acid cleaner, or metal conditioner;

(3) A detergent used in hospitals, veterinary hospitals or clinics, or health care facilities or in agricultural production;

(4) A detergent used by industry for metal cleaning or conditioning;

(5) Manufactured, stored, or distributed for use or sale outside of the State;

(6) Used in any laboratory, including a biological laboratory, research facility, chemical laboratory, and engineering laboratory; or

(7) Used in a commercial laundry that provides laundry services for a hospital, health care facility, or veterinary hospital.

§9–1503.

(a) Except as provided in subsection (b) of this section, a person may not use, sell, manufacture, or distribute for use or sale within the State any cleaning agent that contains more than 0.0 percent phosphorus by weight expressed as elemental phosphorus except for an amount not exceeding 0.5 percent phosphorus that is incidental to manufacturing.

(b) Except as provided in subsection (c) of this section, a person may use, sell, manufacture, or distribute for use or sale a cleaning agent that contains greater than 0.0 percent phosphorus by weight, but does not exceed 8.7 percent phosphorus by weight that is:

(1) A detergent used in a commercial dishwashing machine; or

(2) A substance the Secretary, by rule and regulation, excludes from the 0.0 percent phosphorus limitation of subsection (a) of this section based on a finding that compliance with this section would:

(i) Create a significant hardship on the user; or

(ii) Be unreasonable because of the lack of an adequate substitute cleaning agent.

(c) (1) A person may not use, sell, manufacture, or distribute for use or sale within the State any detergent for use in a household dishwashing machine that contains more than 0.5 percent phosphorus by weight.

(2) After July 1, 2013, a person may not use, sell, manufacture, or distribute for use or sale within the State any detergent for use in a commercial dishwashing machine that contains more than 0.5 percent phosphorus by weight.

§9–1504.

(a) The Department shall adopt rules and regulations to carry out the provisions

of this subtitle.

(b) The Department shall enforce this subtitle.

§9–1505.

(a) (1) Any person who uses a cleaning agent in violation of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $100.

(2) (i) Except as provided in subparagraph (ii) of this paragraph, any person who sells, distributes, or manufactures a cleaning agent in violation of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $1,000.

(ii) Any person who knowingly sells or distributes for use or sale within the State a detergent for use in a household dishwashing machine in violation of § 9–1503(c) of this subtitle is guilty of a misdemeanor and on conviction is subject to:

1. For a first offense, a fine not exceeding $1,000; or

2. For a second or subsequent offense, a fine of not less than $1,000 and not exceeding $25,000.

(b) The Department may seize any cleaning agent held for sale or distribution in violation of this subtitle. The seized cleaning agents are considered forfeited.

§9–1601.

(a) Unless the context clearly requires otherwise, in this subtitle the following words have the meanings indicated.

(b) "Administration" means the Maryland Water Quality Financing Administration.

(c) "Bay Restoration Fund" means the Bay Restoration Fund established under § 9–1605.2 of this subtitle.

(d) "Biological nutrient removal" means a biological nutrient removal technology capable of reducing the nitrogen in wastewater effluent to not more than 8 milligrams per liter, as calculated on an annually averaged basis.

(e) "Board" means the Board of Public Works.

(f) "Bond" means a bond, note, or other evidence of obligation of the Administration issued under this subtitle, including a bond or revenue anticipation note, notes in the nature of commercial paper, and refunding bonds.

(g) "Bond resolution" means the resolution or resolutions of the Director, including the trust agreement, if any, authorizing the issuance of and providing for

the terms and conditions applicable to bonds.

(h) "Borrower" means a local government or a person as defined in § 1–101(h) of this article who has received a loan.

(i) "Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund" means the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund established under § 9–1605.3 of this subtitle.

(j) "Community sewerage system" means a publicly or privately owned sewerage system that serves at least two lots.

(k) "Director" means the Director of the Administration.

(l) "Drinking Water Loan Fund" means the Maryland Drinking Water Revolving Loan Fund.

(m) "Eligible costs" means the costs identified under § 9–1605.2(i) of this subtitle.

(n) "Enhanced nutrient removal" means:

(1) An enhanced nutrient removal technology that is capable of reducing the nitrogen and phosphorus concentrations in wastewater effluent to concentrations of not more than 3 milligrams per liter total nitrogen and not more than 0.3 milligrams per liter total phosphorus, as calculated on an annually averaged basis; or

(2) If the Department has determined that the concentrations under item (1) of this subsection are not practicable for a wastewater facility, the lowest average annual wastewater effluent nitrogen and phosphorus concentrations that the Department determines are practicable for that facility.

(o) "Equivalent dwelling unit" means a measure of wastewater effluent where one unit is equivalent to:

(1) If a local government or billing authority for a wastewater facility has established a definition for "equivalent dwelling unit" on or before January 1, 2004, the average daily flow of wastewater effluent that the local government or billing authority has established to be equivalent to the average daily flow of wastewater effluent discharged by a residential dwelling, which may not exceed 250 gallons; or

(2) If a local government or billing authority has not established a definition for "equivalent dwelling unit" on or before January 1, 2004, or if a local government or billing authority has established a definition that exceeds 250 gallons of wastewater effluent per day, an average daily flow of 250 gallons of wastewater effluent.

(p) "Facility" means a wastewater facility or all or a portion of a water supply system as defined in § 9–201(u) of this title.

(q) "Federal Safe Drinking Water Act" means Title XIV of the Public Health Service Act, P.L. 93–523, as amended, 42 U.S.C. § 300f, et seq., and the rules and regulations promulgated thereunder.

(r) "Federal Water Pollution Control Act" means the Water Pollution Control Act of 1972, P.L. 92–500, as amended, 33 U.S.C. § 1251, et seq., and rules and regulations promulgated thereunder.

(s) "Fund" means a fund established by this subtitle, including the Water Quality Fund, the Drinking Water Loan Fund, the Bay Restoration Fund, and the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund.

(t) "Grant" means a grant from the Administration to a grantee.

(u) "Grant agreement" means a written agreement between the Administration and a grantee with respect to a grant.

(v) "Grantee" means the grant recipient.

(w) "Lender" has the meaning stated in § 9–1606.1 of this subtitle.

(x) "Linked deposit" has the meaning stated in § 9–1606.1 of this subtitle.

(y) "Linked deposit loan" has the meaning stated in § 9–1606.1 of this subtitle.

(z) "Linked deposit program" has the meaning stated in § 9–1606.1 of this subtitle.

(aa) "Loan" means a loan from the Administration to a borrower for the purpose of financing all or a portion of the cost of a wastewater facility, if the loan is from the Water Quality Fund, or water supply system, if the loan is from the Drinking Water Loan Fund.

(bb) "Loan agreement" means a written agreement between the Administration and a borrower with respect to a loan.

(cc) "Loan obligation" means a bond, note, or other evidence of obligation, including a mortgage, deed of trust, lien, or other security instrument, issued or executed by a borrower to evidence its indebtedness under a loan agreement with respect to a loan.

(dd) (1) "Local government" means a county, municipal corporation, sanitary district, or other State or local public entity that has authority to own or operate a facility.

(2) "Local government" includes any combination of two or more of the public entities under paragraph (1) of this subsection when acting jointly to construct or operate a facility.

(ee) (1) "Person" means an individual, corporation, partnership, association, nonprofit entity, the State, any unit of the State, commission, special taxing district, or the federal government.

(2) "Person" does not include a county, municipal corporation, bi–county or multicounty agency under Division II of the Land Use Article or Division II of the Public Utilities Article, housing authority under Division II of the Housing and Community Development Article, school board, community college, or any other unit of a county or municipal corporation, or a local fire department, as defined in § 9–401 of the Public Safety Article.

(ff) (1) "Residential dwelling" means a room or group of rooms occupied as living quarters by an individual, a single family, or other discrete group of persons with facilities that are used or intended to be used for living, sleeping, cooking, sanitation, and eating, including an apartment unit, condominium unit, cooperative unit, town house unit, mobile home, or house.

(2) "Residential dwelling" does not include a hospital, hotel, motel, inn, boarding house, club, dormitory, school, college, or similar seasonal, institutional, or transient facility.

(gg) "Single site" means a discrete grouping of buildings or structures that are located on contiguous or adjacent property and owned by the same user.

(hh) (1) "User" means any person discharging wastewater to:

(i) A wastewater facility that has a State discharge permit or national pollutant discharge elimination system discharge permit;

(ii) An on–site sewage disposal system; or

(iii) A sewage holding tank.

(2) "User" does not include a person whose sole discharge is stormwater under a stormwater permit.

(ii) (1) "Wastewater facility" means any equipment, plant, treatment works, structure, machinery, apparatus, interest in land, or any combination of these, which is acquired, used, constructed, or operated:

(i) For the storage, collection, treatment, neutralization, stabilization, reduction, recycling, reclamation, separation, or disposal of wastewater;

(ii) To improve water conservation, reduce energy consumption, or increase security; or

(iii) For the final disposal of residues resulting from the treatment of wastewater.

(2) "Wastewater facility" includes:

(i) Treatment or disposal plants; outfall sewers, interceptor sewers, and collector sewers; pumping and ventilating stations, facilities, and works; and other real or personal property and appurtenances incident to their development, use, or operation;

(ii) Any programs and projects for managing, reducing, treating, recapturing, abating, or controlling nonpoint sources of water pollution, including stormwater or subsurface drainage water; and

(iii) Any programs and projects for improving estuarine conservation and management.

(jj) "Water Quality Fund" means the Maryland Water Quality Revolving Loan Fund.

(kk) "Water supply system" has the meaning stated in § 9–201(u) of this title.

§9–1602.

There is a Maryland Water Quality Financing Administration in the Department.

§9–1603.

(a) The Secretary, with the approval of the Governor, shall appoint the Director of the Administration who shall serve at the pleasure of the Secretary. The Director is a special appointment in the State Personnel Management System. The Director shall operate and exercise the powers of the Administration under the direction of the Secretary in accordance with the provisions of this subtitle. The Director shall receive such salary and have such deputies, assistants, employees, and professional consultants as provided in the State budget.

(b) The Attorney General shall be the legal advisor for and represent the Administration.

§9–1604.

(a) In addition to the powers set forth elsewhere in this subtitle, but subject to such rules or program directives as the Secretary may from time to time prescribe, the Administration may:

(1) Adopt and alter an official seal;

(2) Sue and be sued, plead, and be impleaded;

(3) Adopt bylaws, rules, and regulations to carry out the provisions of this subtitle;

(4) Maintain an office at such place as the Secretary may designate;

(5) Subject to subsection (b) of this section, employ consultants, accountants, attorneys, financial experts, and other personnel and agents as may be necessary in its judgment, and fix their compensation;

(6) Establish regulations, criteria, or guidelines with respect to loans, loan agreements, loan obligations, grants, grant agreements, and grant obligations;

(7) Receive and accept from any source, private or public, contributions, grants, or gifts of money or property;

(8) Enter into contracts of any kind, and execute all instruments necessary or convenient with respect to carrying out the powers in this subtitle to accomplish the purposes of the Administration;

(9) Make loans, enter into loan agreements, and accept and enforce loan obligations;

(10) Award grants, enter into grant agreements, and accept and enforce grant obligations;

(11) Subject to the prior approval of the Board and the Secretary, issue bonds under this subtitle; and

(12) Do all acts and things necessary or convenient to carry out the powers granted by this subtitle.

(b) (1) In accordance with the State budget, the Administration may set the compensation of an Administration employee in a position that:

(i) Is unique to the Administration;

(ii) Requires specific skills or experience to perform the duties of the position; and

(iii) Does not require the employee to perform functions that are comparable to functions performed in other units of the Executive Branch of State government.

(2) The Secretary of Budget and Management, in consultation with the Secretary, shall determine the positions for which the Administration may set compensation under paragraph (1) of this subsection.

(c) (1) This subsection applies to financial assistance provided by the Administration under:

(i) The Water Quality Fund;

(ii) The Bay Restoration Fund;

(iii) The Biological Nutrient Removal Program; and

(iv) The Supplemental Assistance Program.

(2) The Administration shall ensure the fair and equitable distribution of financial assistance among wastewater treatment facilities with a design capacity of less than 500,000 gallons per day and wastewater treatment facilities with a design capacity of 500,000 gallons or more per day.

§9–1605.

(a) (1) There is a Maryland Water Quality Revolving Loan Fund. The Water Quality Fund shall be maintained and administered by the Administration in accordance with the provisions of this subtitle and such rules or program directives as the Secretary or the Board may from time to time prescribe.

(2) The Water Quality Fund is a special, continuing, nonlapsing fund which is not subject to § 7–302 of the State Finance and Procurement Article and which shall be available in perpetuity for the purpose of providing financial assistance in accordance with the provisions of this subtitle and Title VI of the Federal Water Pollution Control Act.

(3) Subject to the provisions of any applicable bond resolution regarding the holding or application of amounts in the Water Quality Fund, the Treasurer shall separately hold, and the Comptroller shall account for, the Water Quality Fund.

(4) (i) Except as provided in subparagraph (ii) of this paragraph, and subject to the provisions of any applicable bond resolution governing the investment of amounts in the Water Quality Fund, the Water Quality Fund shall be invested and reinvested in the same manner as other State funds.

(ii) The Administration, in cooperation with the Treasurer, may establish a linked deposit program to carry out the purposes of this subtitle and Title VI of the Federal Water Pollution Control Act.

(5) Any investment earnings shall be retained to the credit of the Water Quality Fund.

(6) The Water Quality Fund shall be subject to biennial audit by the Office of Legislative Audits as provided for in § 2–1220 of the State Government Article.

(b) There shall be deposited in the Water Quality Fund:

(1) Federal capitalization grants and awards or other federal assistance received by the State pursuant to Title VI of the Federal Water Pollution Control Act and any funds transferred to the Water Quality Fund pursuant to § 302 of the federal

Safe Drinking Water Act;

(2) Funds appropriated by the General Assembly for deposit to the Water Quality Fund;

(3) Payments received from any borrower in repayment of a loan, including amounts withheld by the State Comptroller and paid to the Administration pursuant to a pledge made by a borrower under § 9–1606(d) of this subtitle or § 7–222 of the State Finance and Procurement Article;

(4) Net proceeds of bonds issued by the Administration;

(5) Interest or other income earned on the investment of moneys in the Water Quality Fund; and

(6) Any additional moneys made available from any sources, public or private, for the purposes for which the Water Quality Fund has been established.

(c) (1) The Administration may establish accounts and subaccounts within the Water Quality Fund as may be considered desirable to:

(i) Effectuate the purposes of this subtitle;

(ii) Comply with the provisions of any bond resolution;

(iii) Meet the requirements of any federal law, or of any federal grant or award to the Water Quality Fund; or

(iv) Meet any rules or program directives established by the Secretary or the Board.

(2) The accounts and subaccounts established under paragraph (1) of this subsection may include:

(i) A federal receipts account;

(ii) A State receipts account;

(iii) A management and administration expense account;

(iv) A bond proceeds account;

(v) An account to segregate a portion or portions of the revenues or corpus of the Water Quality Fund as security for bonds of the Administration;

(vi) A loan repayment account; and

(vii) An investment earnings account.

(d) Amounts in the Water Quality Fund may be used only:

(1) To make loans, on the condition that:

(i) The loans are made at or below market interest rates, including interest free loans, at terms not to exceed the lesser of 30 years or the projected useful life of the project;

(ii) Annual principal and interest payments will commence not later than 1 year after completion of any wastewater facility and all loans will be fully amortized on the expiration of the term of the loan;

(iii) The local government borrower will establish a dedicated source of revenue for repayment of loans;

(iv) In the case of a wastewater facility owned by a borrower other than a local government, the borrower will provide adequate security for repayment of loans; and

(v) The Water Quality Fund will be credited with all payments of principal and interest on all loans;

(2) To buy or refinance debt obligations of local governments at or below market rates, if such debt obligations were incurred after March 7, 1985;

(3) To guarantee, or purchase insurance for, bonds, notes, or other evidences of obligation issued by a local government for the purpose of financing all or a portion of the cost of a wastewater facility, if such action would improve credit market access or reduce interest rates;

(4) As a source of revenue or security for the payment of principal and interest on bonds issued by the Administration if the proceeds of the sale of such bonds will be deposited in the Water Quality Fund;

(5) To earn interest on Water Quality Fund accounts;

(6) To establish a linked deposit program to promote loans for controlling nonpoint sources of pollution and protecting the quality of the waters of the State;

(7) For the reasonable costs of administering the Water Quality Fund and conducting activities under Title VI of the Federal Water Pollution Control Act;

(8) For any other purpose authorized by Title VI of the Federal Water Pollution Control Act or § 302 of the federal Safe Drinking Water Act; and

(9) To provide financial assistance in the form of grants, negative interest loans, forgiveness of principal, subsidized interest rates, and any other form of financial assistance as authorized or required by:

(i) The American Recovery and Reinvestment Act of 2009, as may be amended and supplemented;

(ii) Title VI of the Federal Water Pollution Control Act;

(iii) § 302 of the federal Safe Drinking Water Act; or

(iv) Federal appropriations or authorization acts.

(e) The costs of administering the Water Quality Fund shall be paid from federal capitalization grants and awards, from bond sale proceeds, and from amounts received from borrowers pursuant to loan agreements, and not from any State moneys appropriated to the Fund, except general funds of the State used to match federal capitalization grants and awards to the Water Quality Fund.

§9–1605.1.

(a) (1) There is a Maryland Drinking Water Revolving Loan Fund. The Drinking Water Loan Fund shall be maintained and administered by the Administration in accordance with the provisions of this subtitle and such rules or program directives as the Secretary or the Board may from time to time prescribe.

(2) The Drinking Water Loan Fund is a special, continuing, nonlapsing fund which is not subject to § 7–302 of the State Finance and Procurement Article and which shall be available in perpetuity for the purpose of providing financial assistance in accordance with the provisions of this subtitle and the federal Safe Drinking Water Act.

(3) Subject to the provisions of any applicable bond resolution regarding the holding or application of amounts in the Drinking Water Loan Fund, the Treasurer shall separately hold, and the Comptroller shall account for, the Drinking Water Loan Fund.

(4) (i) Except as provided in subparagraph (ii) of this paragraph, and subject to the provisions of any applicable bond resolution governing the investment of amounts in the Drinking Water Loan Fund, the Drinking Water Loan Fund shall be invested and reinvested in the same manner as other State funds.

(ii) The Administration, in cooperation with the Treasurer, may establish a linked deposit program to carry out the purposes of this subtitle and the federal Safe Drinking Water Act.

(5) Any investment earnings shall be retained to the credit of the Drinking Water Loan Fund.

(6) The Drinking Water Loan Fund shall be subject to biennial audit by the Office of Legislative Audits as provided for in § 2–1220 of the State Government Article.

(7) The Administration shall operate the Drinking Water Loan Fund in accordance with §§ 9–1616 through 9–1621, inclusive, of this subtitle.

(b) There shall be deposited in the Drinking Water Loan Fund:

(1) Federal grants and awards or other federal assistance received by the State for the purpose of making loans to borrowers for water supply systems and any funds transferred from the Water Quality Fund pursuant to § 302 of the federal Safe Drinking Water Act;

(2) Funds appropriated by the General Assembly for deposit to the Drinking Water Loan Fund;

(3) Payments received from borrowers for deposit to the Drinking Water Loan Fund in repayment of a loan, including amounts withheld by the State Comptroller and paid to the Administration pursuant to a pledge made by a borrower under § 9–1606(d) of this subtitle or § 7–222 of the State Finance and Procurement Article;

(4) Net proceeds of bonds issued by the Administration;

(5) Interest or other income earned on the investment of moneys in the Drinking Water Loan Fund; and

(6) Any additional moneys made available from any sources, public or private, for the purposes for which the Drinking Water Loan Fund has been established.

(c) The Administration may from time to time establish accounts and subaccounts within the Drinking Water Loan Fund as may be deemed desirable to effectuate the purposes of this subtitle, to comply with the provisions of any bond resolution, to meet the requirements of any federal law, or of any federal grant or award to the Drinking Water Loan Fund, or to meet any rules or program directives established by the Secretary or the Board.

(d) Amounts in the Drinking Water Loan Fund may be used only:

(1) To make loans at or below market rates on the condition that:

(i) The local government borrower will establish a dedicated source of revenue;

(ii) In the case of a water supply system owned by a borrower other than a local government, the borrower shall provide adequate security for the repayment of the loan;

(iii) The Drinking Water Loan Fund will be credited with all payments of principal and interest on all loans; and

(iv) Annual principal and interest payments will commence not later than 1 year after completion of any drinking water facility and, except as provided in § 130 of the federal Safe Drinking Water Act, all loans will be fully amortized not later than 20 years after project completion;

(2) To buy or refinance debt obligations of local governments issued by a local government for the purposes of financing all or a portion of the cost of a water supply system at or below market rates, if such debt obligations were incurred after July 1, 1993;

(3) To guarantee or purchase insurance for bonds, notes, or other evidences of indebtedness issued by a local government for the purposes of financing all or a portion of the cost of a water supply system, if such action would improve credit market access or reduce interest rates;

(4) As a source of revenue or security for the payment of principal and interest on bonds issued by the Administration if the proceeds of the sale of such bonds will be deposited in the Drinking Water Loan Fund;

(5) To earn interest on Drinking Water Loan Fund accounts;

(6) For the reasonable costs of administering the Drinking Water Loan Fund and conducting activities under any federal law that may apply to federal deposits to the Drinking Water Loan Fund;

(7) To establish a linked deposit program for loans in accordance with this subtitle and the federal Safe Drinking Water Act;

(8) For loan subsidies for disadvantaged communities as provided by the federal Safe Drinking Water Act, including but not limited to loan forgiveness, provided that such loan subsidies shall not exceed 30% of the annual federal capitalization grant received by the Administration;

(9) For any other purpose authorized for any federal funds deposited in the Drinking Water Loan Fund including, without limitation, any purpose authorized by the federal Safe Drinking Water Act, including source water protection expenditures eligible for assistance from the Drinking Water Loan Fund; and

(10) To provide financial assistance in the form of grants, negative interest loans, forgiveness of principal, subsidized interest rates, and any other form of financial assistance as authorized or required by:

(i) The American Recovery and Reinvestment Act of 2009, as may be amended and supplemented;

(ii) § 302 of the federal Safe Drinking Water Act;

(iii) Title VI of the Federal Water Pollution Control Act; or

(iv) Federal appropriations or authorization acts.

(e) The costs of administering the Drinking Water Loan Fund shall be paid from federal grants and awards, from bond sale proceeds, and from amounts received from borrowers pursuant to loan agreements, and may not be paid from any State moneys appropriated to the Drinking Water Loan Fund, except general funds of the State used to match federal grants and awards to the Drinking Water Loan Fund.

§9–1605.2. IN EFFECT

(a) (1) There is a Bay Restoration Fund.

(2) It is the intent of the General Assembly that the Bay Restoration Fund be:

(i) Used, in part, to provide the funding necessary to upgrade any of the wastewater treatment facilities that are located in the State or used by citizens of the State in order to achieve enhanced nutrient removal where it is cost–effective to do so; and

(ii) Available for treatment facilities discharging into the Atlantic Coastal Bays or other waters of the State, but that priority be given to treatment facilities discharging into the Chesapeake Bay.

(3) The Bay Restoration Fund shall be maintained and administered by the Administration in accordance with the provisions of this section and any rules or program directives as the Secretary or the Board may prescribe.

(4) There is established a Bay Restoration Fee to be paid by any user of a wastewater facility, an on–site sewage disposal system, or a holding tank that:

(i) Is located in the State; or

(ii) Serves a Maryland user and is eligible for funding under this subtitle.

(b) (1) (i) Beginning on July 1, 2012, the Bay Restoration Fee is:

1. For each residential dwelling that receives an individual sewer bill and each user of an on–site sewage disposal system or a holding tank that receives a water bill:

A. $2.50 per month if the wastewater generated by a residential dwelling is treated at a wastewater facility that does not discharge into the Chesapeake Bay Watershed or the Coastal Bays Watershed;

B. $2.50 per month if the on–site sewage disposal system or holding tank is not located within the Chesapeake Bay Watershed or the Coastal Bays

Watershed;

C. $5.00 per month if the wastewater generated by a residential dwelling is treated at a wastewater facility that does discharge into the Chesapeake Bay Watershed or the Coastal Bays Watershed; and

D. $5.00 per month if the wastewater on–site sewage disposal system or holding tank is located within the Chesapeake Bay Watershed or the Coastal Bays Watershed;

2. For each user of an on–site sewage disposal system that does not receive a water bill:

A. $30 per year if the on–site sewage disposal system is not located within the Chesapeake Bay Watershed or the Coastal Bays Watershed; or

B. $60 per year if the on–site sewage disposal system is located within the Chesapeake Bay Watershed or the Coastal Bays Watershed;

3. For each user of a sewage holding tank that does not receive a water bill:

A. $30 per year if the sewage holding tank is not located within the Chesapeake Bay Watershed or the Coastal Bays Watershed; and

B. $60 per year if the sewage holding tank is located within the Chesapeake Bay Watershed or the Coastal Bays Watershed; and

4. For a building or group of buildings under single ownership or management that receives a sewer bill and that contains multiple residential dwellings that do not receive an individual sewer bill or for a nonresidential user:

A. For each equivalent dwelling unit not exceeding 2,000 equivalent dwelling units, $2.50 per month if the wastewater generated by a building or group of buildings containing multiple residential dwellings is treated at a wastewater facility that does not discharge into the Chesapeake Bay Watershed or the Coastal Bays Watershed;

B. For each equivalent dwelling unit not exceeding 2,000 equivalent dwelling units, $5.00 per month if the wastewater generated by a building or group of buildings containing multiple residential dwellings is treated at a wastewater facility that does discharge into the Chesapeake Bay Watershed or the Coastal Bays Watershed; and

C. For each equivalent dwelling unit exceeding 2,000 equivalent dwelling units, zero.

(ii) For a nonresidential user, the Bay Restoration Fee may be

calculated based on an estimate of equivalent dwelling units of wastewater effluent generated, if the nonresidential user's wastewater bill is based on wastewater generated and not on water usage.

(2) (i) For a residential dwelling that receives an individual sewer bill, a user of an on–site sewage disposal system or a holding tank that receives a water bill, a building or group of buildings under single ownership or management that receives a water and sewer bill and that contains multiple residential dwellings that do not receive an individual sewer bill, and a nonresidential user, the restoration fee shall be:

1. Stated in a separate line on the sewer or water bill, as appropriate, that is labeled "Bay Restoration Fee"; and

2. Collected for each calendar quarter, unless a local government or billing authority for a water or wastewater facility established some other billing period on or before January 1, 2004.

(ii) 1. A. If the user does not receive a water bill, for users of an on–site sewage disposal system and for users of a sewage holding tank, the county in which the on–site sewage disposal system or holding tank is located shall be responsible for collecting the restoration fee.

B. A county may negotiate with a municipal corporation located within the county for the municipal corporation to collect the restoration fee from on–site sewage disposal systems and holding tanks located in the municipal corporation.

2. The governing body of each county, in consultation with the Bay Restoration Fund Advisory Committee, shall determine the method and frequency of collecting the restoration fee under subsubparagraph 1 of this subparagraph.

(3) The total fee imposed under paragraph (1) of this subsection may not exceed $120,000 annually for a single site.

(4) (i) For purposes of measuring average daily wastewater flow, the local government or billing authority for a wastewater facility shall use existing methods of measurement, which may include water usage or other estimation methods.

(ii) The averaging period is:

1. The billing period established by the local government or billing authority; or

2. If a billing period is not established by the local government or billing authority, a quarter of a calendar year.

(5) (i) The Bay Restoration Fee under this subsection may not be reduced as long as bonds are outstanding.

(ii) Any change in the manner of determining the Bay Restoration Fee may not reduce the amount of funds available for the payment of outstanding bonds.

(c) A user of a wastewater facility is exempt from paying the restoration fee if:

(1) (i) 1. The user's wastewater facility's average annual effluent nitrogen and phosphorus concentrations, as reported in the facility's State discharge monitoring reports for the previous calendar year, demonstrate that the facility is achieving enhanced nutrient removal, as defined under § 9–1601(n) of this subtitle; or

2. The Department has determined that the wastewater facility does not discharge nitrogen or phosphorus and is not required to monitor for nitrogen or phosphorus in its discharge permit; and

(ii) The user's wastewater facility has not received a State or federal grant for that facility;

(2) (i) The user's wastewater facility discharges to groundwater and the annual average nutrient concentrations in the wastewater prior to discharge to groundwater have not exceeded 3 milligrams per liter total nitrogen and 0.3 milligrams per liter total phosphorus, as demonstrated by analysis of the groundwater from monitoring wells located on the property and as reported in discharge monitoring reports for the previous calendar year; and

(ii) The user's wastewater facility has not received a federal or State grant for that facility; or

(3) The Department determines that:

(i) The user's wastewater facility discharges noncontact cooling water, water from dewatering operations, or reclaimed wastewater from a facility whose users pay in to the Fund; and

(ii) The discharge does not result in a net increase in loading of nutrients compared to the intake water.

(d) (1) Subject to the approval of the Administration, a local government or a billing authority for a water or wastewater facility shall establish a program to exempt from the requirements of this section a residential dwelling able to demonstrate substantial financial hardship as a result of the restoration fee.

(2) (i) Except as provided in subparagraph (ii) of this paragraph, the Bay Restoration Fee shall be collected by the local government or the billing authority for the water or wastewater facility, as appropriate, on behalf of the State.

(ii) For a wastewater facility without a billing authority, the Comptroller may collect the restoration fee from the facility owner.

(3) A local government, billing authority for a water or wastewater facility, or any other authorized collecting agency:

(i) May use all of its existing procedures and authority for collecting a water or sewer bill, an on–site sewage disposal system bill, or a holding tank bill in order to enforce the collection of the Bay Restoration Fee; and

(ii) Shall establish a segregated account for the deposit of funds collected under this section.

(4) (i) This paragraph applies only in Dorchester County.

(ii) An unpaid Bay Restoration Fee shall be a lien against the property served by a wastewater facility, on–site sewage disposal system, or holding tank.

(iii) A notice of lien shall be recorded in the land records of Dorchester County.

(iv) The County Council may collect the Bay Restoration Fee on behalf of the Dorchester County Sanitary District.

(5) (i) In Caroline County, an unpaid Bay Restoration Fee shall be a lien against the property served by a wastewater facility, on–site sewage disposal system, or holding tank.

(ii) A notice of lien shall be recorded in the land records of Caroline County.

(e) (1) A local government, the billing authority for a water or wastewater facility, or any other authorized collecting agency shall complete and submit, under oath, a return and remit the restoration fees collected to the Comptroller:

(i) On or before the 20th day of the month that follows the calendar quarter in which the restoration fee was collected; and

(ii) For other periods and on other dates that the Comptroller may specify by regulation, including periods in which no restoration fee has been collected.

(2) Except to the extent of any inconsistency with this subsection, the provisions of Title 13 of the Tax – General Article that are applicable to the sales and use tax shall govern the administration, collection, and enforcement of the restoration fee under this section.

(3) The Comptroller may adopt regulations necessary to administer, collect, and enforce the restoration fee.

(4) (i) From the restoration fee revenue, the Comptroller shall

distribute to an administrative cost account the amount that is necessary to administer the fee, which may not exceed 0.5% of the fees collected by the Comptroller.

(ii) After making the distribution required under subparagraph (i) of this paragraph, the Comptroller shall deposit the restoration fee in the Bay Restoration Fund.

(5) The State Central Collection Unit may collect delinquent accounts under this section in accordance with § 3–302 of the State Finance and Procurement Article.

(f) (1) (i) The Bay Restoration Fund is a special, continuing, nonlapsing fund that is not subject to § 7–302 of the State Finance and Procurement Article and shall be available in perpetuity for the purpose of providing financial assistance in accordance with the provisions of this section.

(ii) Money in the Fund may not revert or be transferred to the General Fund or a special fund of the State.

(2) The Bay Restoration Fund shall be available for the purpose of providing financial assistance in accordance with the provisions of this section for:

(i) Eligible costs of projects relating to planning, design, construction, and upgrades of wastewater facilities to achieve enhanced nutrient removal as required by the conditions of a grant agreement and a discharge permit; and

(ii) All projects identified in subsections (h) and (i) of this section.

(3) Subject to the provisions of any applicable bond resolution regarding the holding or application of amounts in the Bay Restoration Fund, the Treasurer shall separately hold, and the Comptroller shall account for, the Bay Restoration Fund.

(4) Subject to the provisions of any applicable bond resolution governing the investment of amounts in the Bay Restoration Fund, the Bay Restoration Fund shall be invested and reinvested in the same manner as other State funds.

(5) Any investment earnings shall be retained to the credit of the Bay Restoration Fund.

(6) The Bay Restoration Fund shall be subject to audit by the Office of Legislative Audits as provided under § 2–1220 of the State Government Article.

(7) The Administration shall operate the Bay Restoration Fund in accordance with §§ 9–1616 through 9–1621 of this subtitle.

(g) There shall be deposited in the Bay Restoration Fund:

(1) Funds received from the restoration fee;

(2) Net proceeds of bonds issued by the Administration;

(3) Interest or other income earned on the investment of money in the Bay Restoration Fund; and

(4) Any additional money made available from any sources, public or private, for the purposes for which the Bay Restoration Fund has been established.

(h) (1) With regard to the funds collected under subsection (b)(1)(i)1 of this section from users of an on–site sewage disposal system or holding tank that receive a water bill and subsection (b)(1)(i)2 and 3 of this section, beginning in fiscal year 2006, the Comptroller shall:

(i) Establish a separate account within the Bay Restoration Fund; and

(ii) Disburse the funds as provided under paragraph (2) of this subsection.

(2) The Comptroller shall:

(i) Deposit 60% of the funds in the separate account to be used for:

1. Subject to paragraphs (3), (4), (5), and (6) of this subsection, with priority first given to failing systems and holding tanks located in the Chesapeake and Atlantic Coastal Bays Critical Area and then to failing systems that the Department determines are a threat to public health or water quality, grants or loans for up to 100% of:

A. The costs attributable to upgrading an on–site sewage disposal system to the best available technology for the removal of nitrogen;

B. The cost difference between a conventional on–site sewage disposal system and a system that utilizes the best available technology for the removal of nitrogen;

C. The cost of repairing or replacing a failing on–site sewage disposal system with a system that uses the best available technology for nitrogen removal;

D. The cost, up to the sum of the costs authorized under item B of this item for each individual system, of replacing multiple on–site sewage disposal systems located in the same community with a new community sewerage system that is owned by a local government and that meets enhanced nutrient removal standards; or

E. The cost, up to the sum of the costs authorized under item C of this item for each individual system, of connecting a property using an on–site sewage disposal system to an existing municipal wastewater facility that is achieving enhanced nutrient removal or biological nutrient removal level treatment, including payment of the principal, but not interest, of debt issued by a local government for such connection costs;

2. The reasonable costs of the Department, not to exceed 8% of the funds deposited into the separate account, to:

A. Implement an education, outreach, and upgrade program to advise owners of on–site sewage disposal systems and holding tanks on the proper maintenance of the systems and tanks and the availability of grants and loans under item 1 of this item;

B. Review and approve the design and construction of on–site sewage disposal system or holding tank upgrades;

C. Issue grants or loans as provided under item 1 of this item; and

D. Provide technical support for owners of upgraded on–site sewage disposal systems or holding tanks to operate and maintain the upgraded systems; and

3. A portion of the reasonable costs of a local public entity that has been delegated by the Department under § 1–301(b) of this article to administer and enforce environmental laws, not to exceed 10% of the funds deposited into the separate account, to implement regulations adopted by the Department for on–site sewage disposal systems that utilize the best available technology for the removal of nitrogen; and

(ii) Transfer 40% of the funds to the Maryland Agriculture Water Quality Cost Share Program in the Department of Agriculture in order to fund cover crop activities.

(3) Funding for the costs identified in paragraph (2)(i)1 of this subsection shall be provided in the following order of priority:

(i) For owners of all levels of income, the costs identified in paragraph (2)(i)1A and B of this subsection; and

(ii) For low–income owners, as defined by the Department, the costs identified in paragraph (2)(i)1C of this subsection:

1. First, for best available technologies for nitrogen removal; and

2. Second, for other wastewater treatment systems.

(4) Funding for the costs identified in paragraph (2)(i)1D of this subsection may be provided if:

(i) The environmental impact of the on–site sewage disposal system is documented by the local government and confirmed by the Department;

(ii) It can be demonstrated that:

1. The replacement of the on–site sewage disposal system with a new community sewerage system is more cost effective for nitrogen removal than upgrading each individual on–site sewage disposal system; or

2. The individual replacement of the on–site sewage disposal system is not feasible; and

(iii) The new community sewerage system will only serve lots that have received a certificate of occupancy, or equivalent certificate, on or before October 1, 2008.

(5) Funding for the costs identified in paragraph (2)(i)1E of this subsection may be provided only if all of the following conditions are met:

(i) The environmental impact of the on–site sewage disposal system is documented by the local government and confirmed by the Department;

(ii) It can be demonstrated that:

1. The replacement of the on–site sewage disposal system with service to an existing municipal wastewater facility that is achieving enhanced nutrient removal or biological nutrient removal level treatment is more cost–effective for nitrogen removal than upgrading the individual on–site sewage disposal system; or

2. The individual replacement of the on–site sewage disposal system is not feasible;

(iii) The project is consistent with the county's comprehensive plan and water and sewer master plan;

(iv) 1. The on–site sewage disposal system was installed as of October 1, 2008, and the property the system serves is located in a priority funding area, in accordance with § 5–7B–02 of the State Finance and Procurement Article; or

2. The on–site sewage disposal system was installed as of October 1, 2008, the property the system serves is not located in a priority funding area, and the project meets the requirements under § 5–7B–06 of the State Finance and Procurement Article and is consistent with a public health area of concern:

A. Identified in the county water and sewer plan; or

B. Certified by a county environmental health director with concurrence by the Department and, if funding is approved, subsequently added to the county water and sewer plan within a time frame jointly agreed on by the Department and the county that takes into consideration the county's water and sewer plan update and amendment process; and

(v) The funding agreement for a project that meets the conditions for funding under subparagraph (iv)2 of this paragraph includes provisions to ensure:

1. Denial of access for any future connections that are not included in the project's proposed service area; and

2. That the project will not unduly impede access to funding for upgrading individual on–site sewage disposal systems in the county with best available technology for nitrogen removal.

(6) The Comptroller, in consultation with the Administration, may establish any other accounts and subaccounts within the Bay Restoration Fund as necessary to:

(i) Effectuate the purposes of this subtitle;

(ii) Comply with the provisions of any bond resolution;

(iii) Meet the requirements of any federal or State law or of any grant or award to the Bay Restoration Fund; and

(iv) Meet any rules or program directives established by the Secretary or the Board.

(i) (1) In this subsection, "eligible costs" means the additional costs that would be attributable to upgrading a wastewater facility from biological nutrient removal to enhanced nutrient removal, as determined by the Department.

(2) Funds in the Bay Restoration Fund shall be used only:

(i) To award grants for up to 100% of eligible costs of projects relating to planning, design, construction, and upgrade of a wastewater facility for flows up to the design capacity of the wastewater facility, as approved by the Department, to achieve enhanced nutrient removal in accordance with paragraph (3) of this subsection;

(ii) In fiscal years 2016 and thereafter, for up to 87.5% of the total cost of projects, as approved by the Department, relating to combined sewer overflows abatement, rehabilitation of existing sewers, and upgrading conveyance systems, including pumping stations;

(iii) In fiscal years 2010 and thereafter, for a portion of the operation and maintenance costs related to the enhanced nutrient removal technology, which may not exceed 10% of the total restoration fee collected from users of wastewater facilities under this section by the Comptroller annually;

(iv) In fiscal years 2018 and thereafter, after payment of outstanding bonds and the allocation of funds to other required uses of the Bay Restoration Fund for funding in the following order of priority:

1. For funding an upgrade of a wastewater facility to enhanced nutrient removal at wastewater facilities with a design capacity of 500,000 gallons or more per day;

2. For funding for the most cost–effective enhanced nutrient removal upgrades at wastewater facilities with a design capacity of less than 500,000 gallons per day; and

3. As determined by the Department and based on water quality and public health benefits, for the following:

A. For costs identified under item (ii) of this paragraph;

B. For costs identified under subsection (h)(2)(i)1 of this section; and

C. With respect to a local government that has enacted and implemented a system of charges to fully fund the implementation of a stormwater management program, for grants to the local government for a portion of the costs of the most cost–effective and efficient stormwater control measures, as determined and approved by the Department, from the restoration fees collected annually by the Comptroller from users of wastewater facilities under this section;

(v) As a source of revenue or security for the payment of principal and interest on bonds issued by the Administration if the proceeds of the sale of the bonds will be deposited in the Bay Restoration Fund;

(vi) To earn interest on Bay Restoration Fund accounts;

(vii) For the reasonable costs of administering the Bay Restoration Fund, which may not exceed 1.5% of the total restoration fees imposed on users of wastewater facilities that are collected by the Comptroller annually;

(viii) For the reasonable administrative costs incurred by a local government or a billing authority for a water or wastewater facility collecting the restoration fees, in an amount not to exceed 5% of the total restoration fees collected by that local government or billing authority;

(ix) For future upgrades of wastewater facilities to achieve additional

nutrient removal or water quality improvement, in accordance with paragraphs (6) and (7) of this subsection;

(x) For costs associated with the issuance of bonds;

(xi) Subject to the allocation of funds and the conditions under subsection (h) of this section, for projects related to the removal of nitrogen from on–site sewage disposal systems and cover crop activities; and

(xii) For costs associated with the implementation of alternate compliance plans authorized in § 4–202.1(k)(3) of this article.

(3) The grant agreement and State discharge permit, if applicable, shall require an owner of a wastewater facility to operate the enhanced nutrient removal facility in a manner that optimizes the nutrient removal capability of the facility in order to achieve enhanced nutrient removal performance levels.

(4) The grant agreement shall require a grantee to demonstrate, to the satisfaction of the Department, that steps were taken to include small business enterprises, minority business enterprises, and women's business enterprises by:

(i) Placing qualified small business enterprises, minority business enterprises, and women's business enterprises on solicitation lists;

(ii) Assuring that small business enterprises, minority business enterprises, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small business enterprises, minority business enterprises, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, that encourage participation by small business enterprises, minority business enterprises, and women's business enterprises; and

(v) Using the services and assistance of the Maryland Department of Transportation and the Governor's Office of Minority Affairs in identifying and soliciting small business enterprises, minority business enterprises, and women's business enterprises.

(5) If the steps required under paragraph (4) of this subsection are not demonstrated to the satisfaction of the Department, the Department may withhold financial assistance for the project.

(6) (i) All wastewater facilities serving Maryland users that have contributed to the Bay Restoration Fund are eligible for grants under this section, including the Blue Plains Wastewater Treatment Plant in the District of Columbia.

(ii) Grants issued under paragraph (2)(i) of this subsection for upgrades to the Blue Plains Wastewater Treatment Plant may be awarded only if each party to the Blue Plains Intermunicipal Agreement of 1985 contributes a proportional share of the upgrade costs in accordance with the Blue Plains Intermunicipal Agreement of 1985, as revised and updated.

(7) Priority for funding an upgrade of a wastewater facility shall be given to enhanced nutrient removal upgrades at wastewater facilities with a design capacity of 500,000 gallons or more per day.

(8) (i) The eligibility and priority ranking of a project shall be determined by the Department based on criteria established in regulations adopted by the Department, in accordance with subsection (k) of this section.

(ii) The criteria adopted by the Department shall include, as appropriate, consideration of:

1. The cost–effectiveness in providing water quality benefit;

2. The water quality benefit to a body of water identified by the Department as impaired under Section 303(d) of the Clean Water Act;

3. The readiness of a wastewater facility to proceed to construction; and

4. The nitrogen and phosphorus loads discharged by a wastewater facility.

(9) A wastewater facility that has not been offered or has not received funds from the Department under this section or from any other fund in the Department may not be required to upgrade to enhanced nutrient removal levels, except as otherwise required under federal or State law.

(j) (1) There is a Bay Restoration Fund Advisory Committee.

(2) The Committee consists of the following members:

(i) The Secretaries of the Environment, Agriculture, Planning, Natural Resources, and Budget and Management, or their designees;

(ii) One member of the Senate, appointed by the President of the Senate;

(iii) One member of the House of Delegates, appointed by the Speaker of the House of Delegates;

(iv) Two individuals representing publicly owned wastewater facilities, appointed by the Governor;

(v) Two individuals representing environmental organizations, appointed by the Governor;

(vi) One individual each from the Maryland Association of Counties and the Maryland Municipal League, appointed by the Governor;

(vii) Two individuals representing the business community, appointed by the Governor;

(viii) Two individuals representing local health departments who have expertise in on–site sewage disposal systems, appointed by the Governor; and

(ix) One individual representing a university or research institute who has expertise in nutrient pollution, appointed by the Governor.

(3) The Governor shall appoint the chairman of the Committee from the designated members of the Committee.

(4) The Committee may consult with any stakeholder group as it deems necessary.

(5) (i) The term of a member is 4 years.

(ii) A member continues to serve until a successor is appointed.

(iii) The terms of the members appointed by the Governor are staggered as required by the terms provided for members of the Committee on October 1, 2004.

(iv) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(v) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(6) The Committee shall:

(i) Perform an analysis of the cost of nutrient removal from wastewater facilities;

(ii) Identify additional sources for funding the Bay Restoration Fund;

(iii) Make recommendations to improve the effectiveness of the Bay Restoration Fund in reducing nutrient loadings to the waters of the State;

(iv) Make recommendations regarding the appropriate increase in the restoration fee to be assessed in fiscal year 2008 and subsequent years as necessary to meet the financing needs of the Bay Restoration Fund;

(v) In consultation with the governing body of each county:

1. Identify users of on–site sewage disposal systems and holding tanks; and

2. Make recommendations to the governing body of each county on the best method of collecting the Bay Restoration Fee from the users of on–site sewage disposal systems and holding tanks that do not receive water bills;

(vi) Advise the Department on the components of an education, outreach, and upgrade program established within the Department under subsection (h)(2)(i)2 of this section;

(vii) Study the availability of money from the Fund for the supplemental assistance program within the Department to provide grants to smaller, economically disadvantaged communities in the State to upgrade their wastewater collection and treatment facilities;

(viii) Advise the Secretary concerning the adoption of regulations as described in subsection (k) of this section; and

(ix) Beginning January 1, 2006, and every year thereafter, report to the Governor and, subject to § 2–1246 of the State Government Article, the General Assembly on its findings and recommendations.

(7) Members of the Committee:

(i) May not receive compensation; but

(ii) Are entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(8) The Department of the Environment, Department of Agriculture, Department of Planning, Department of Natural Resources, and Department of Budget and Management shall provide staff support for the Committee.

(k) (1) Beginning January 1, 2009, and every year thereafter, the Department and the Department of Planning shall jointly report on the impact that a wastewater treatment facility that was upgraded to enhanced nutrient removal during the calendar year before the previous calendar year with funds from the Bay Restoration Fund had on growth within the municipality or county in which the wastewater treatment facility is located.

(2) (i) In preparing the report required under paragraph (1) of this subsection, the Department of the Environment and the Department of Planning shall:

1. Include the number of permits issued for residential and commercial development to be served by the upgraded wastewater treatment facility;

and

2. Determine what other appropriate information is to be included in the report.

(ii) In determining the information that should be included in the report under subparagraph (i) of this paragraph, the Department of the Environment and the Department of Planning shall act:

1. In consultation with the Bay Restoration Fund Advisory Committee; and

2. With the assistance of the municipality and county in which an upgraded wastewater treatment facility is located.

(3) The Department and the Department of Planning shall submit the report required under paragraph (1) of this subsection to the President of the Senate, the Speaker of the House, the Senate Budget and Taxation Committee, the Senate Education, Health, and Environmental Affairs Committee, the House Appropriations Committee, the House Environment and Transportation Committee, and the Governor, in accordance with § 2–1246 of the State Government Article.

(l) The Department shall adopt regulations that are necessary or appropriate to carry out the provisions of this section.

9–1605.2. ** TAKES EFFECT JULY 1, 2030 PER CHAPTER 150 OF 2012 **

(a) (1) There is a Bay Restoration Fund.

(2) It is the intent of the General Assembly that the Bay Restoration Fund be:

(i) Used, in part, to provide the funding necessary to upgrade any of the wastewater treatment facilities that are located in the State or used by citizens of the State in order to achieve enhanced nutrient removal where it is cost–effective to do so; and

(ii) Available for treatment facilities discharging into the Atlantic Coastal Bays or other waters of the State, but that priority be given to treatment facilities discharging into the Chesapeake Bay.

(3) The Bay Restoration Fund shall be maintained and administered by the Administration in accordance with the provisions of this section and any rules or program directives as the Secretary or the Board may prescribe.

(4) There is established a Bay Restoration Fee to be paid by any user of a wastewater facility, an on–site sewage disposal system, or a holding tank that:

(i) Is located in the State; or

(ii) Serves a Maryland user and is eligible for funding under this subtitle.

(b) (1) (i) Beginning on July 1, 2030, the Bay Restoration Fee is:

1. For each residential dwelling that receives an individual sewer bill and each user of an on–site sewage disposal system or a holding tank that receives a water bill, $2.50 per month;

2. For each user of an on–site sewage disposal system that does not receive a water bill, $30 per year;

3. For each user of a sewage holding tank that does not receive a water bill, $30 per year; and

4. For a building or group of buildings under single ownership or management that receives a sewer bill and that contains multiple residential dwellings that do not receive an individual sewer bill or for a nonresidential user:

A. For each equivalent dwelling unit not exceeding 3,000 equivalent dwelling units, $2.50 per month;

B. For each equivalent dwelling unit exceeding 3,000 equivalent dwelling units and not exceeding 5,000 equivalent dwelling units, $1.25 per month; and

C. For each equivalent dwelling unit exceeding 5,000 equivalent dwelling units, zero.

(ii) For a nonresidential user, the Bay Restoration Fee may be calculated based on an estimate of equivalent dwelling units of wastewater effluent generated, if the nonresidential user's wastewater bill is based on wastewater generated and not on water usage.

(2) (i) For a residential dwelling that receives an individual sewer bill, a user of an on–site sewage disposal system or a holding tank that receives a water bill, a building or group of buildings under single ownership or management that receives a water and sewer bill and that contains multiple residential dwellings that do not receive an individual sewer bill, and a nonresidential user, the restoration fee shall be:

1. Stated in a separate line on the sewer or water bill, as appropriate, that is labeled "Bay Restoration Fee"; and

2. Collected for each calendar quarter, unless a local government or billing authority for a water or wastewater facility established some other billing period on or before January 1, 2004.

(ii) 1. A. If the user does not receive a water bill, for users of an on–site sewage disposal system and for users of a sewage holding tank, the county in which the on–site sewage disposal system or holding tank is located shall be responsible for collecting the restoration fee.

B. A county may negotiate with a municipal corporation located within the county for the municipal corporation to collect the restoration fee from on–site sewage disposal systems and holding tanks located in the municipal corporation.

2. The governing body of each county, in consultation with the Bay Restoration Fund Advisory Committee, shall determine the method and frequency of collecting the restoration fee under subsubparagraph 1 of this subparagraph.

(3) The total fee imposed under paragraph (1) of this subsection may not exceed $120,000 annually for a single site.

(4) (i) For purposes of measuring average daily wastewater flow, the local government or billing authority for a wastewater facility shall use existing methods of measurement, which may include water usage or other estimation methods.

(ii) The averaging period is:

1. The billing period established by the local government or billing authority; or

2. If a billing period is not established by the local government or billing authority, a quarter of a calendar year.

(5) (i) The Bay Restoration Fee under this subsection may not be reduced as long as bonds are outstanding.

(ii) Any change in the manner of determining the Bay Restoration Fee may not reduce the amount of funds available for the payment of outstanding bonds.

(c) A user of a wastewater facility is exempt from paying the restoration fee if:

(1) (i) 1. The user's wastewater facility's average annual effluent nitrogen and phosphorus concentrations, as reported in the facility's State discharge monitoring reports for the previous calendar year, demonstrate that the facility is achieving enhanced nutrient removal, as defined under § 9–1601(n) of this subtitle; or

2. The Department has determined that the wastewater facility does not discharge nitrogen or phosphorus and is not required to monitor for nitrogen or phosphorus in its discharge permit; and

(ii) The user's wastewater facility has not received a State or federal

grant for that facility;

(2) (i) The user's wastewater facility discharges to groundwater and the annual average nutrient concentrations in the wastewater prior to discharge to groundwater have not exceeded 3 milligrams per liter total nitrogen and 0.3 milligrams per liter total phosphorus, as demonstrated by analysis of the groundwater from monitoring wells located on the property and as reported in discharge monitoring reports for the previous calendar year; and

(ii) The user's wastewater facility has not received a federal or State grant for that facility; or

(3) The Department determines that:

(i) The user's wastewater facility discharges noncontact cooling water, water from dewatering operations, or reclaimed wastewater from a facility whose users pay in to the Fund; and

(ii) The discharge does not result in a net increase in loading of nutrients compared to the intake water.

(d) (1) Subject to the approval of the Administration, a local government or a billing authority for a water or wastewater facility shall establish a program to exempt from the requirements of this section a residential dwelling able to demonstrate substantial financial hardship as a result of the restoration fee.

(2) (i) Except as provided in subparagraph (ii) of this paragraph, the Bay Restoration Fee shall be collected by the local government or the billing authority for the water or wastewater facility, as appropriate, on behalf of the State.

(ii) For a wastewater facility without a billing authority, the Comptroller may collect the restoration fee from the facility owner.

(3) A local government, billing authority for a water or wastewater facility, or any other authorized collecting agency:

(i) May use all of its existing procedures and authority for collecting a water or sewer bill, an on–site sewage disposal system bill, or a holding tank bill in order to enforce the collection of the Bay Restoration Fee; and

(ii) Shall establish a segregated account for the deposit of funds collected under this section.

(4) (i) This paragraph applies only in Dorchester County.

(ii) An unpaid Bay Restoration Fee shall be a lien against the property served by a wastewater facility, on–site sewage disposal system, or holding tank.

(iii) A notice of lien shall be recorded in the land records of Dorchester County.

(iv) The County Council may collect the Bay Restoration Fee on behalf of the Dorchester County Sanitary District.

(5) (i) In Caroline County, an unpaid Bay Restoration Fee shall be a lien against the property served by a wastewater facility, on–site sewage disposal system, or holding tank.

(ii) A notice of lien shall be recorded in the land records of Caroline County.

(e) (1) A local government, the billing authority for a water or wastewater facility, or any other authorized collecting agency shall complete and submit, under oath, a return and remit the restoration fees collected to the Comptroller:

(i) On or before the 20th day of the month that follows the calendar quarter in which the restoration fee was collected; and

(ii) For other periods and on other dates that the Comptroller may specify by regulation, including periods in which no restoration fee has been collected.

(2) Except to the extent of any inconsistency with this subsection, the provisions of Title 13 of the Tax – General Article that are applicable to the sales and use tax shall govern the administration, collection, and enforcement of the restoration fee under this section.

(3) The Comptroller may adopt regulations necessary to administer, collect, and enforce the restoration fee.

(4) (i) From the restoration fee revenue, the Comptroller shall distribute to an administrative cost account the amount that is necessary to administer the fee, which may not exceed 0.5% of the fees collected by the Comptroller.

(ii) After making the distribution required under subparagraph (i) of this paragraph, the Comptroller shall deposit the restoration fee in the Bay Restoration Fund.

(5) The State Central Collection Unit may collect delinquent accounts under this section in accordance with § 3–302 of the State Finance and Procurement Article.

(f) (1) (i) The Bay Restoration Fund is a special, continuing, nonlapsing fund that is not subject to § 7–302 of the State Finance and Procurement Article and shall be available in perpetuity for the purpose of providing financial assistance in accordance with the provisions of this section.

(ii) Money in the Fund may not revert or be transferred to the General Fund or a special fund of the State.

(2) The Bay Restoration Fund shall be available for the purpose of providing financial assistance in accordance with the provisions of this section for:

(i) Eligible costs of projects relating to planning, design, construction, and upgrades of wastewater facilities to achieve enhanced nutrient removal as required by the conditions of a grant agreement and a discharge permit; and

(ii) All projects identified in subsections (h) and (i) of this section.

(3) Subject to the provisions of any applicable bond resolution regarding the holding or application of amounts in the Bay Restoration Fund, the Treasurer shall separately hold, and the Comptroller shall account for, the Bay Restoration Fund.

(4) Subject to the provisions of any applicable bond resolution governing the investment of amounts in the Bay Restoration Fund, the Bay Restoration Fund shall be invested and reinvested in the same manner as other State funds.

(5) Any investment earnings shall be retained to the credit of the Bay Restoration Fund.

(6) The Bay Restoration Fund shall be subject to audit by the Office of Legislative Audits as provided under § 2–1220 of the State Government Article.

(7) The Administration shall operate the Bay Restoration Fund in accordance with §§ 9–1616 through 9–1621 of this subtitle.

(g) There shall be deposited in the Bay Restoration Fund:

(1) Funds received from the restoration fee;

(2) Net proceeds of bonds issued by the Administration;

(3) Interest or other income earned on the investment of money in the Bay Restoration Fund; and

(4) Any additional money made available from any sources, public or private, for the purposes for which the Bay Restoration Fund has been established.

(h) (1) With regard to the funds collected under subsection (b)(1)(i)1 of this section from users of an on–site sewage disposal system or holding tank that receive a water bill and subsection (b)(1)(i)2 and 3 of this section, beginning in fiscal year 2006, the Comptroller shall:

(i) Establish a separate account within the Bay Restoration Fund;

and

(ii) Disburse the funds as provided under paragraph (2) of this subsection.

(2) The Comptroller shall:

(i) Deposit 60% of the funds in the separate account to be used for:

1. Subject to paragraphs (3), (4), (5), and (6) of this subsection, with priority first given to failing systems and holding tanks located in the Chesapeake and Atlantic Coastal Bays Critical Area and then to failing systems that the Department determines are a threat to public health or water quality, grants or loans for up to 100% of:

A. The costs attributable to upgrading an on–site sewage disposal system to the best available technology for the removal of nitrogen;

B. The cost difference between a conventional on–site sewage disposal system and a system that utilizes the best available technology for the removal of nitrogen;

C. The cost of repairing or replacing a failing on–site sewage disposal system with a system that uses the best available technology for nitrogen removal;

D. The cost, up to the sum of the costs authorized under item B of this item for each individual system, of replacing multiple on–site sewage disposal systems located in the same community with a new community sewerage system that is owned by a local government and that meets enhanced nutrient removal standards; or

E. The cost, up to the sum of the costs authorized under item C of this item for each individual system, of connecting a property using an on–site sewage disposal system to an existing municipal wastewater facility that is achieving enhanced nutrient removal or biological nutrient removal level treatment, including payment of the principal, but not interest, of debt issued by a local government for such connection costs;

2. The reasonable costs of the Department, not to exceed 8% of the funds deposited into the separate account, to:

A. Implement an education, outreach, and upgrade program to advise owners of on–site sewage disposal systems and holding tanks on the proper maintenance of the systems and tanks and the availability of grants and loans under item 1 of this item;

B. Review and approve the design and construction of on–site

sewage disposal system or holding tank upgrades;

C. Issue grants or loans as provided under item 1 of this item; and

D. Provide technical support for owners of upgraded on–site sewage disposal systems or holding tanks to operate and maintain the upgraded systems; and

3. A portion of the reasonable costs of a local public entity that has been delegated by the Department under § 1–301(b) of this article to administer and enforce environmental laws, not to exceed 10% of the funds deposited into the separate account, to implement regulations adopted by the Department for on–site sewage disposal systems that utilize the best available technology for the removal of nitrogen; and

(ii) Transfer 40% of the funds to the Maryland Agriculture Water Quality Cost Share Program in the Department of Agriculture in order to fund cover crop activities.

(3) Funding for the costs identified in paragraph (2)(i)1 of this subsection shall be provided in the following order of priority:

(i) For owners of all levels of income, the costs identified in paragraph (2)(i)1A and B of this subsection; and

(ii) For low–income owners, as defined by the Department, the costs identified in paragraph (2)(i)1C of this subsection:

1. First, for best available technologies for nitrogen removal; and

2. Second, for other wastewater treatment systems.

(4) Funding for the costs identified in paragraph (2)(i)1D of this subsection may be provided if:

(i) The environmental impact of the on–site sewage disposal system is documented by the local government and confirmed by the Department;

(ii) It can be demonstrated that:

1. The replacement of the on–site sewage disposal system with a new community sewerage system is more cost effective for nitrogen removal than upgrading each individual on–site sewage disposal system; or

2. The individual replacement of the on–site sewage disposal system is not feasible; and

(iii) The new community sewerage system will only serve lots that have received a certificate of occupancy, or equivalent certificate, on or before October 1, 2008.

(5) Funding for the costs identified in paragraph (2)(i)1E of this subsection may be provided only if all of the following conditions are met:

(i) The environmental impact of the on–site sewage disposal system is documented by the local government and confirmed by the Department;

(ii) It can be demonstrated that:

1. The replacement of the on–site sewage disposal system with service to an existing municipal wastewater facility that is achieving enhanced nutrient removal or biological nutrient removal level treatment is more cost–effective for nitrogen removal than upgrading the individual on–site sewage disposal system; or

2. The individual replacement of the on–site sewage disposal system is not feasible;

(iii) The project is consistent with the county's comprehensive plan and water and sewer master plan;

(iv) 1. The on–site sewage disposal system was installed as of October 1, 2008, and the property the system serves is located in a priority funding area, in accordance with § 5–7B–02 of the State Finance and Procurement Article; or

2. The on–site sewage disposal system was installed as of October 1, 2008, the property the system serves is not located in a priority funding area, and the project meets the requirements under § 5–7B–06 of the State Finance and Procurement Article and is consistent with a public health area of concern:

A. Identified in the county water and sewer plan; or

B. Certified by a county environmental health director with concurrence by the Department and, if funding is approved, subsequently added to the county water and sewer plan within a time frame jointly agreed on by the Department and the county that takes into consideration the county's water and sewer plan update and amendment process; and

(v) The funding agreement for a project that meets the conditions for funding under subparagraph (iv)2 of this paragraph includes provisions to ensure:

1. Denial of access for any future connections that are not included in the project's proposed service area; and

2. That the project will not unduly impede access to funding for upgrading individual on–site sewage disposal systems in the county with best available

technology for nitrogen removal.

(6) The Comptroller, in consultation with the Administration, may establish any other accounts and subaccounts within the Bay Restoration Fund as necessary to:

(i) Effectuate the purposes of this subtitle;

(ii) Comply with the provisions of any bond resolution;

(iii) Meet the requirements of any federal or State law or of any grant or award to the Bay Restoration Fund; and

(iv) Meet any rules or program directives established by the Secretary or the Board.

(i) (1) In this subsection, "eligible costs" means the additional costs that would be attributable to upgrading a wastewater facility from biological nutrient removal to enhanced nutrient removal, as determined by the Department.

(2) Funds in the Bay Restoration Fund shall be used only:

(i) To award grants for up to 100% of eligible costs of projects relating to planning, design, construction, and upgrade of a wastewater facility for flows up to the design capacity of the wastewater facility, as approved by the Department, to achieve enhanced nutrient removal in accordance with paragraph (3) of this subsection;

(ii) In fiscal years 2016 and thereafter, for up to 87.5% of the total cost of projects, as approved by the Department, relating to combined sewer overflows abatement, rehabilitation of existing sewers, and upgrading conveyance systems, including pumping stations;

(iii) In fiscal years 2010 and thereafter, for a portion of the operation and maintenance costs related to the enhanced nutrient removal technology, which may not exceed 10% of the total restoration fee collected from users of wastewater facilities under this section by the Comptroller annually;

(iv) In fiscal years 2018 and thereafter, after payment of outstanding bonds and the allocation of funds to other required uses of the Bay Restoration Fund for funding in the following order of priority:

1. For funding an upgrade of a wastewater facility to enhanced nutrient removal at wastewater facilities with a design capacity of 500,000 gallons or more per day;

2. For funding for the most cost–effective enhanced nutrient removal upgrades at wastewater facilities with a design capacity of less than 500,000

gallons per day; and

3. As determined by the Department and based on water quality and public health benefits, for the following:

A. For costs identified under item (ii) of this paragraph;

B. For costs identified under subsection (h)(2)(i)1 of this section; and

C. With respect to a local government that has enacted and implemented a system of charges to fully fund the implementation of a stormwater management program, for grants to the local government for a portion of the costs of the most cost–effective and efficient stormwater control measures, as determined and approved by the Department, from the restoration fees collected annually by the Comptroller from users of wastewater facilities under this section;

(v) As a source of revenue or security for the payment of principal and interest on bonds issued by the Administration if the proceeds of the sale of the bonds will be deposited in the Bay Restoration Fund;

(vi) To earn interest on Bay Restoration Fund accounts;

(vii) For the reasonable costs of administering the Bay Restoration Fund, which may not exceed 1.5% of the total restoration fees imposed on users of wastewater facilities that are collected by the Comptroller annually;

(viii) For the reasonable administrative costs incurred by a local government or a billing authority for a water or wastewater facility collecting the restoration fees, in an amount not to exceed 5% of the total restoration fees collected by that local government or billing authority;

(ix) For future upgrades of wastewater facilities to achieve additional nutrient removal or water quality improvement, in accordance with paragraphs (6) and (7) of this subsection;

(x) For costs associated with the issuance of bonds;

(xi) Subject to the allocation of funds and the conditions under subsection (h) of this section, for projects related to the removal of nitrogen from on–site sewage disposal systems and cover crop activities; and

(xii) For costs associated with the implementation of alternate compliance plans authorized in § 4–202.1(k)(3) of this article.

(3) The grant agreement and State discharge permit, if applicable, shall require an owner of a wastewater facility to operate the enhanced nutrient removal facility in a manner that optimizes the nutrient removal capability of the facility in

order to achieve enhanced nutrient removal performance levels.

(4) The grant agreement shall require a grantee to demonstrate, to the satisfaction of the Department, that steps were taken to include small business enterprises, minority business enterprises, and women's business enterprises by:

(i) Placing qualified small business enterprises, minority business enterprises, and women's business enterprises on solicitation lists;

(ii) Assuring that small business enterprises, minority business enterprises, and women's business enterprises are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small business enterprises, minority business enterprises, and women's business enterprises;

(iv) Establishing delivery schedules, where the requirement permits, that encourage participation by small business enterprises, minority business enterprises, and women's business enterprises; and

(v) Using the services and assistance of the Maryland Department of Transportation and the Governor's Office of Minority Affairs in identifying and soliciting small business enterprises, minority business enterprises, and women's business enterprises.

(5) If the steps required under paragraph (4) of this subsection are not demonstrated to the satisfaction of the Department, the Department may withhold financial assistance for the project.

(6) (i) All wastewater facilities serving Maryland users that have contributed to the Bay Restoration Fund are eligible for grants under this section, including the Blue Plains Wastewater Treatment Plant in the District of Columbia.

(ii) Grants issued under paragraph (2)(i) of this subsection for upgrades to the Blue Plains Wastewater Treatment Plant may be awarded only if each party to the Blue Plains Intermunicipal Agreement of 1985 contributes a proportional share of the upgrade costs in accordance with the Blue Plains Intermunicipal Agreement of 1985, as revised and updated.

(7) Priority for funding an upgrade of a wastewater facility shall be given to enhanced nutrient removal upgrades at wastewater facilities with a design capacity of 500,000 gallons or more per day.

(8) (i) The eligibility and priority ranking of a project shall be determined by the Department based on criteria established in regulations adopted by the Department, in accordance with subsection (k) of this section.

(ii) The criteria adopted by the Department shall include, as appropriate, consideration of:

1. The cost–effectiveness in providing water quality benefit;

2. The water quality benefit to a body of water identified by the Department as impaired under Section 303(d) of the Clean Water Act;

3. The readiness of a wastewater facility to proceed to construction; and

4. The nitrogen and phosphorus loads discharged by a wastewater facility.

(9) A wastewater facility that has not been offered or has not received funds from the Department under this section or from any other fund in the Department may not be required to upgrade to enhanced nutrient removal levels, except as otherwise required under federal or State law.

(j) (1) There is a Bay Restoration Fund Advisory Committee.

(2) The Committee consists of the following members:

(i) The Secretaries of the Environment, Agriculture, Planning, Natural Resources, and Budget and Management, or their designees;

(ii) One member of the Senate, appointed by the President of the Senate;

(iii) One member of the House of Delegates, appointed by the Speaker of the House of Delegates;

(iv) Two individuals representing publicly owned wastewater facilities, appointed by the Governor;

(v) Two individuals representing environmental organizations, appointed by the Governor;

(vi) One individual each from the Maryland Association of Counties and the Maryland Municipal League, appointed by the Governor;

(vii) Two individuals representing the business community, appointed by the Governor;

(viii) Two individuals representing local health departments who have expertise in on–site sewage disposal systems, appointed by the Governor; and

(ix) One individual representing a university or research institute who has expertise in nutrient pollution, appointed by the Governor.

(3) The Governor shall appoint the chairman of the Committee from the designated members of the Committee.

(4) The Committee may consult with any stakeholder group as it deems necessary.

(5) (i) The term of a member is 4 years.

(ii) A member continues to serve until a successor is appointed.

(iii) The terms of the members appointed by the Governor are staggered as required by the terms provided for members of the Committee on October 1, 2004.

(iv) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(v) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(6) The Committee shall:

(i) Perform an analysis of the cost of nutrient removal from wastewater facilities;

(ii) Identify additional sources for funding the Bay Restoration Fund;

(iii) Make recommendations to improve the effectiveness of the Bay Restoration Fund in reducing nutrient loadings to the waters of the State;

(iv) Make recommendations regarding the appropriate increase in the restoration fee to be assessed in fiscal year 2008 and subsequent years as necessary to meet the financing needs of the Bay Restoration Fund;

(v) In consultation with the governing body of each county:

1. Identify users of on–site sewage disposal systems and holding tanks; and

2. Make recommendations to the governing body of each county on the best method of collecting the Bay Restoration Fee from the users of on–site sewage disposal systems and holding tanks that do not receive water bills;

(vi) Advise the Department on the components of an education, outreach, and upgrade program established within the Department under subsection (h)(2)(i)2 of this section;

(vii) Study the availability of money from the Fund for the supplemental assistance program within the Department to provide grants to smaller,

economically disadvantaged communities in the State to upgrade their wastewater collection and treatment facilities;

(viii) Advise the Secretary concerning the adoption of regulations as described in subsection (k) of this section; and

(ix) Beginning January 1, 2006, and every year thereafter, report to the Governor and, subject to § 2–1246 of the State Government Article, the General Assembly on its findings and recommendations.

(7) Members of the Committee:

(i) May not receive compensation; but

(ii) Are entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(8) The Department of the Environment, Department of Agriculture, Department of Planning, Department of Natural Resources, and Department of Budget and Management shall provide staff support for the Committee.

(k) (1) Beginning January 1, 2009, and every year thereafter, the Department and the Department of Planning shall jointly report on the impact that a wastewater treatment facility that was upgraded to enhanced nutrient removal during the calendar year before the previous calendar year with funds from the Bay Restoration Fund had on growth within the municipality or county in which the wastewater treatment facility is located.

(2) (i) In preparing the report required under paragraph (1) of this subsection, the Department of the Environment and the Department of Planning shall:

1. Include the number of permits issued for residential and commercial development to be served by the upgraded wastewater treatment facility; and

2. Determine what other appropriate information is to be included in the report.

(ii) In determining the information that should be included in the report under subparagraph (i) of this paragraph, the Department of the Environment and the Department of Planning shall act:

1. In consultation with the Bay Restoration Fund Advisory Committee; and

2. With the assistance of the municipality and county in which an upgraded wastewater treatment facility is located.

(3) The Department and the Department of Planning shall submit the report required under paragraph (1) of this subsection to the President of the Senate, the Speaker of the House, the Senate Budget and Taxation Committee, the Senate Education, Health, and Environmental Affairs Committee, the House Appropriations Committee, the House Environment and Transportation Committee, and the Governor, in accordance with § 2–1246 of the State Government Article.

(l) The Department shall adopt regulations that are necessary or appropriate to carry out the provisions of this section.

§9–1605.3.

(a) (1) There is a Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund.

(2) The Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund shall be maintained and administered by the Administration in accordance with the provisions of this subtitle and such rules or Program directives as the Secretary or the Board may from time to time prescribe.

(b) The purpose of the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund is to provide financial assistance for the implementation of urban and suburban stormwater management practices, and stream and wetland restoration.

(c) There shall be deposited in the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund:

(1) Money distributed to the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund under § 8–2A–04 of the Natural Resources Article and appropriated in the State budget for the Fund;

(2) Net proceeds of bonds issued by the Administration;

(3) Interest or other income earned on the investment of moneys in the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund; and

(4) Any other moneys from any other source accepted for the benefit of the Fund.

(d) (1) The Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund is a special, continuing, nonlapsing fund that is not subject to § 7–302 of the State Finance and Procurement Article.

(2) Money in the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund may not revert or be transferred to the General Fund of the State.

(3) Subject to the provisions of any applicable bond resolution regarding the holding or application of amounts in the Chesapeake and Atlantic Coastal Bays

Nonpoint Source Fund, the Treasurer shall separately hold, and the Comptroller shall account for, the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund.

(4) Subject to the provision of any applicable bond resolution governing the investment of amounts in the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund, the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund shall be invested and reinvested in the same manner as other State funds.

(5) Any investment earnings shall be retained to the credit of the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund.

(6) The Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund shall be subject to audit by the Office of Legislative Audits as provided under § 2–1220 of the State Government Article.

(7) The Administration may from time to time establish accounts and subaccounts within the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund as may be deemed desirable to effectuate the purposes of this subtitle, to comply with the provisions of any bond resolution, or to meet any requirement or rules or program directives established by the Secretary or the Board.

(8) The Administration shall operate the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund in accordance with §§ 9–1607 through 9–1622 of this subtitle.

(e) The Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund shall be used:

(1) To award grants for up to 100 percent of project costs relating to planning, design, and construction of urban and suburban stormwater management practices, and stream and wetland restoration;

(2) As a source of revenue or security for the payment of principal and interest on bonds issued by the Administration if the proceeds of the sale of such bonds will be deposited in the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund;

(3) For costs associated with the issuance of bonds;

(4) To earn interest on the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund accounts; and

(5) For the reasonable costs of administering the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund.

(f) (1) (i) In this subsection the following words have the meanings indicated.

(ii) "Certified minority business enterprise" has the meaning stated

in § 14–301 of the State Finance and Procurement Article.

(iii) "Small business" has the meaning stated in § 14–501 of the State Finance and Procurement Article.

(2) For financial assistance over $500,000 awarded under the Fund, the grantee shall demonstrate, to the satisfaction of the Department, that steps were taken to include small businesses, certified minority business enterprises, and certified minority business enterprises classified as women–owned businesses by:

(i) Placing small businesses, certified minority business enterprises, and certified minority business enterprises classified as women–owned businesses on solicitation lists;

(ii) Assuring that small businesses, certified minority business enterprises, and certified minority business enterprises classified as women–owned businesses are solicited whenever they are potential sources;

(iii) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small businesses, certified minority business enterprises, and certified minority business enterprises classified as women–owned businesses;

(iv) Establishing delivery schedules, where the requirement permits, that encourage participation by small businesses, certified minority business enterprises, classified as women–owned businesses; and

(v) Using the services and assistance of the Department of Transportation and the Governor's Office of Minority Affairs in identifying and soliciting small businesses, certified minority business enterprises, and certified minority business enterprises classified as women–owned businesses.

(3) In determining whether the grantee took the steps described in paragraph (2) of this subsection, the Department shall consider the availability to the grantee of small businesses, certified minority business enterprises, and certified minority business enterprises classified as women–owned businesses that are capable of completing all or part of the project.

(g) If the steps required under subsection (f) of this section are not demonstrated to the satisfaction of the Department, the Department may withhold financial assistance for the project.

§9–1606.

(a) A loan made by the Administration shall be evidenced by a loan agreement. Loans made from the Water Quality Fund, except for loans made in accordance with § 9–1605(d)(9) of this subtitle, shall be subject to the provisions of § 9–1605(d)(1) of this subtitle. Loans made from the Drinking Water Loan Fund, except for loans made

in accordance with § 9–1605.1(d)(10) of this subtitle, shall be subject to the provisions of § 9–1605.1(d)(1) of this subtitle. Subject to the provisions of any applicable bond resolution, the Administration may consent to the modification, with respect to rate of interest, time of payment of any installment of principal or interest, security, or any other term of any loan agreement or loan obligation. In connection with any security received by or owned by the Administration, including any loan obligations, the Administration may commence any action to protect or enforce the rights conferred upon it by any law or loan agreement or loan obligation.

(b) Notwithstanding any other provision of public general or public local law, charter, or ordinance, a borrower may issue and sell loan obligations to the Administration:

(1) At private sale, without public bidding;

(2) Without regard to any limitations on the denomination of such obligations; and

(3) At any interest rate or cost or at any price that the borrower considers necessary or desirable.

(c) A borrower may pay any fees or charges necessary to enable the Administration to sell its bonds, including any fees for the insurance of its loan obligations or bonds of the Administration, or to provide any other guarantee, credit enhancement, or additional security for any such loan obligations or bonds.

(d) Notwithstanding any other provision of public general or public local law, charter, or ordinance, a borrower may agree with the Administration to pledge any moneys that the borrower is entitled to receive from the State, including the borrower's share of the State income tax, to secure its obligations under a loan agreement. The State Comptroller and the State Treasurer shall cause any moneys withheld under such a pledge to be paid to, or applied at the direction of, the Administration.

(e) Each loan agreement shall contain a provision whereby the borrower acknowledges and agrees that the borrower's loan obligation is cancelable only upon repayment in full and that neither the Administration, the Secretary, nor the Board is authorized to forgive the repayment of all or any portion of the loan, except for loans to disadvantaged communities, pursuant to the federal Safe Drinking Water Act, and loans made in accordance with §§ 9–1605(d)(9) and 9–1605.1(d)(10) of this subtitle.

(f) In the event of a default on a loan obligation by a borrower other than a local government, the Administration may place a lien against property of the borrower securing the loan which, subject to the tax liens of the federal, State, and local governments, shall have the same priority and status as a lien of the State for unpaid taxes under §§ 14–804 and 14–805 of the Tax – Property Article. The Administration may exercise the same rights and powers in enforcing such lien and collecting funds for the payment of amounts in default under the loan obligation as

the State may exercise in collecting unpaid taxes under Title 14, Subtitle 8 of the Tax – Property Article.

§9–1606.1.

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

(2) "Lender" means a financial institution that:

(i) Is eligible to make commercial loans;

(ii) Agrees to receive linked deposits under this subtitle; and

(iii) 1. Is a public depository of State funds insured by the Federal Deposit Insurance Corporation; or

2. Is an institution of the Farm Credit System organized under the Farm Credit Act of 1971, as amended.

(3) "Linked deposit" means a deposit or investment that is placed by the Administration with a lender and earns income below the prevailing market rate for equivalent deposits or investments made with the lender at the time of the deposit or investment.

(4) "Linked deposit loan" means a loan from a lender to a borrower that:

(i) Is used for the purposes of § 9-1605(d)(6) or § 9-1605.1(d)(7) of this subtitle; and

(ii) Is provided at an interest rate below the prevailing market rate to the same extent income earned on the linked deposit is below income paid on equivalent deposits.

(5) "Linked Deposit Program" means a program established by the Administration whereby a linked deposit is placed with a lender based on the agreement of the lender to provide a linked deposit loan to a borrower.

(b) (1) A borrower desiring to acquire a linked deposit loan shall apply to a lender.

(2) The Administration shall certify to a lender that a borrower is eligible for a linked deposit loan consistent with § 9-1605(d)(6) or § 9-1605.1(d)(7) of this subtitle.

(c) Upon approval of a linked deposit loan by the lender, the Administration and lender shall enter into an agreement under which the amount and term of, and schedule for payment of principal and interest on, the linked deposit shall be determined.

(d) On receiving a linked deposit from the Administration, the lender shall

execute a loan commitment with the borrower.

(e) A linked deposit loan is not a debt of the State or a pledge of the credit of the State.

§9–1607.

(a) The Administration may, subject to the prior approval of the Board and the Secretary, issue bonds for the purpose of providing moneys for deposit to a fund.

(b) With respect to each issue of bonds, the Director shall adopt a bond resolution determining:

(1) The date or dates of issue;

(2) The date or dates of maturity and the amount or amounts maturing on such date or dates;

(3) The fixed or variable rate or rates of interest payable on the bonds, or manner of determining the same, and the date or dates of such payment;

(4) The form or forms and denomination or denominations, manner of execution and the place or places of payment of the bonds and of the interest thereon, which may be at any bank or trust company within or without this State;

(5) Whether the bonds or any part thereof shall be made redeemable before maturity and, if so, upon what terms, conditions, and prices; and

(6) Any other matter relating to the forms, terms, conditions, issuance, and sale of the bonds.

(c) No person executing the bonds or approving the issuance of the bonds shall be liable personally on the bonds or subject to any personal liability by reason of the issuance of the bonds.

(d) The Administration may enter into agreements with agents, banks, insurers, or others for the purpose of enhancing the marketability of or as security for the bonds.

§9–1608.

(a) If any officer whose signature or a facsimile of whose signature appears on any bonds shall cease to be such officer before the delivery of the bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he or she had remained in office until such delivery.

(b) Notwithstanding any other provisions of this subtitle or any recitals in any bonds issued hereunder, all such bonds shall be deemed to be negotiable instruments

under the laws of this State.

(c) The bonds shall be exempt from the provisions of §§ 19–205 and 19–206 of the Local Government Article and §§ 8–206 and 8–208 of the State Finance and Procurement Article, and the Administration may sell such bonds in such manner, either at public or at private sale, and for such price as it may determine.

§9–1609.

(a) The Administration is authorized, subject to the prior approval of the Board and the Secretary, to provide for the issuance of its bonds for the purpose of refunding any bonds of the Administration then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the earliest or any subsequent date of redemption, purchase, or maturity of such bonds. Refunding bonds may be issued in the discretion of the Director for any public purpose, including, without limitation, the public purposes of realizing savings in the effective costs of debt service, directly or through a debt restructuring, or alleviating an impending or actual default, or relieving the Administration of contractual agreements which in the opinion of the Director have become unreasonably onerous or impracticable or impossible to perform. Refunding bonds, in one or more series, may be issued in an amount in excess of that of the bonds to be refunded. Without limiting the extent of any sources of payment provided by the Administration, refunding bonds may be made payable from escrowed bond proceeds and from interest, income, and profits, if any, on investments.

(b) The proceeds of any bonds issued for the purpose of refunding outstanding bonds may, in the discretion of the Director, be applied to the purchase or retirement at maturity or redemption of such outstanding bonds either on their earliest or any subsequent redemption date, and may, pending such application, be placed in escrow to be applied to such purchase or retirement at maturity or redemption on such date as may be determined by the Director.

(c) Any such escrowed proceeds, pending such use, may be invested and reinvested in obligations of or guaranteed by the United States of America, or in certificates of deposit or time deposits secured by obligations of or guaranteed by the United States of America, maturing at such time or times as shall be appropriate to assure the prompt payment, as to principal, interest, and redemption premium, if any, of the outstanding bonds to be so refunded. The interest, income and profits, if any, earned or realized on any such investment may also be applied to the payment of the outstanding bonds to be so refunded. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and interest, income, and profits, if any, earned or realized on the investments thereof may be returned to the Administration for use by it in any lawful manner.

§9–1610.

The Administration is further authorized and empowered, subject to the prior

approval of the Board and the Secretary:

(1) To issue, prior to the preparation of definitive bonds, interim receipts or temporary bonds, exchangeable for definitive bonds when such bonds have been executed and are available for delivery; and

(2) To issue and sell its bond anticipation notes, the principal of and interest on such notes to be made payable to the owner or owners thereof out of the first proceeds of sale of bonds therein designated, and to issue and sell its revenue anticipation notes or grant anticipation notes, the principal of and interest on such notes to be made payable to the owner or owners thereof out of the first receipts of the revenues or grants, as the case may be, therein designated. The authorizing resolution may make provision for the issuance of such notes in series as funds are required and for the renewal of such notes at maturity with or without resale. The issuance of such notes and the details thereof, the rights of the holders thereof, and the rights, duties, and obligations of the Administration in respect thereto shall be governed by the provisions of this subtitle relating to bonds, insofar as the same may be applicable.

§9–1611.

(a) Bonds may be secured by a trust agreement by and between the Administration and a corporate trustee, which may be any trust company or bank having trust powers, within or without the State. Such trust agreement may pledge or assign all or any part of the revenues or corpus of the Water Quality Fund, Drinking Water Loan Fund, the Bay Restoration Fund, or the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund, or any account within these funds, and may pledge or assign or grant a lien on or security interest in any loan agreement or loan obligation. Any such trust agreement or resolution authorizing the issuance of bonds may contain such provisions for the protection and enforcement of the rights and remedies of the bondholders as may be deemed reasonable and proper, including covenants setting forth the duties of the Administration in relation to the making, administration and enforcement of loans and the custody, safeguarding and application of moneys. Such trust agreement may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action by bondholders. In addition to the foregoing, such trust agreement may contain such other provisions as the Director may deem reasonable and proper for the security of the bondholders, including, without limitation, covenants pertaining to the issuance of additional parity bonds upon conditions stated therein consistent with the requirements of this subtitle.

(b) The proceeds of the sale of bonds shall be disbursed in such manner and under such restrictions, if any, as may be provided in such trust agreement.

(c) (1) The revenues and moneys designated as security for bonds shall be set aside at such regular intervals as may be provided in the bond resolution in a special account in the Water Quality Fund, if the net sale proceeds will be deposited in the Water Quality Fund, the Drinking Water Loan Fund, if the net sale proceeds will be deposited in the Drinking Water Loan Fund, the Bay Restoration Fund, if the net sale

proceeds will be deposited in the Bay Restoration Fund, or the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund, if the net sale proceeds will be deposited in the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund, which is pledged to, and charged with, the payment of:

(i) The interest upon such bonds as such interest falls due;

(ii) The principal of such bonds as it falls due;

(iii) The necessary charges of the trustee, bond registrar, and paying agents; and

(iv) The redemption price or purchase price of bonds retired by call or purchase as provided in the bond resolution or trust agreement.

(2) Any amounts set aside in such special account which are not needed to provide for the payment of the items included under paragraph (1) of this subsection may be used for any other lawful purpose, to the extent provided in the bond resolution. Such pledge shall be valid and binding from the time when the pledge is made. Such revenues or other moneys so pledged and thereafter received by the Administration shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having any claims of any kind in tort, contract, or otherwise against the Administration or the Water Quality Fund, the Drinking Water Loan Fund, the Bay Restoration Fund, or the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund, irrespective of whether such parties have notice thereof. Neither the bond resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Administration, any public general or public local law to the contrary notwithstanding.

(d) Any net earnings of the Administration, beyond that necessary for the retirement of bonds or to implement the public purposes or programs of the Administration, shall not inure to the benefit of any person, other than the State of Maryland for use to accomplish the purposes of this subtitle.

§9–1612.

Any owner of bonds and the trustee, except to the extent the rights herein given may be restricted by a bond resolution, may, either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of this State or granted hereunder or under the bond resolution, and may enforce and compel the performance of all duties required by this subtitle or by a bond resolution to be performed by the Administration or by any officer, employee, or agent thereof.

§9–1613.

Bonds are securities in which all public officers and public bodies of the State of Maryland and its political subdivisions and all banks, trust companies, savings and

loan associations, investment companies and others carrying on a banking business, all insurance companies and insurance associations and others carrying on an insurance business, all personal representatives, executors, administrators, guardians, trustees and other fiduciaries, and all other persons may legally and properly invest funds, including capital in their control or belonging to them. Bonds are securities which may properly and legally be deposited with and received by a State or municipal officer or any agency or political subdivision of the State for any purpose for which the deposit of bonds or other obligations of the State is now or may hereafter be authorized by law.

§9–1614.

(a) The bonds shall not be deemed to constitute a debt, liability, or a pledge of the faith and credit of the State of Maryland or of any political subdivision thereof other than the Administration, but such bonds shall be payable solely from the revenues and funds herein provided therefor. However, this section does not limit the ability of a borrower to set, impose, levy, or collect an assessment, rate, fee, tax or charge to pay to the Administration any amounts required under a loan agreement or loan obligation of the borrower.

(b) Notwithstanding any other provision of public general or public local law, charter, or ordinance regulating the creation of public debts or the making of contracts, a local government may enter into a loan agreement with the Administration for the purpose of financing all or a portion of the cost of a wastewater facility or water supply system. The express powers contained and enumerated in Titles 5 and 10 of the Local Government Article and in the charter of the City of Baltimore are deemed to incorporate and include the power and authority contained in this section.

§9–1615.

The bonds of the Administration, their transfer, the interest payable thereon, and any income derived therefrom, including any profit realized in the sale or exchange thereof, shall at all times be exempt from taxation of every kind and nature whatsoever by the State of Maryland or by any of its political subdivisions, municipal corporations, or public agencies of any kind.

§9–1616.

The Administration shall not be required to give any bond as security for costs, supersedeas, or any other security in any suit or action brought by or against it, or in proceedings to which it may be a party, in any court of this State, and the Administration shall have the remedies of appeal of whatever kind to all courts without bonds, supersedeas, or security of any kind. No builder's, materialman's, contractor's, laborer's, or mechanic's liens of any kind or character shall ever attach to or become a lien upon the Water Quality Fund, the Drinking Water Loan Fund, the Bay Restoration Fund, or the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund, or any property, real or personal, belonging to the Administration and no assignment of wages shall be binding upon or recognized by the Administration.

§9–1617.

The Administration shall make provision for a system of financial accounting, controls, audits, and reports in accordance with generally accepted principles of governmental accounting. All accounting systems and records, auditing procedures and standards, and financial reporting for the Water Quality Fund, the Drinking Water Loan Fund, and the Bay Restoration Fund shall conform to the requirements of Title VI of the Federal Water Pollution Control Act, the federal Safe Drinking Water Act, and the Bay Restoration Fund Act, as applicable and, to the extent not inconsistent therewith, generally accepted principles of governmental accounting. As soon as practical after the closing of the fiscal year, an audit shall be made of the financial books, records, and accounts of the Administration. The audit shall be made by independent certified public accountants, selected by the Administration, and licensed to practice in the State as auditors. The auditors may not have a personal interest either directly or indirectly in the fiscal affairs of the Administration. They shall be experienced and qualified in the accounting and auditing of public bodies. The report of audit shall be prepared in accordance with generally accepted auditing principles and point out any irregularities found to exist. The auditors shall report to the Secretary the results of their examination, including their unqualified opinion on the presentation of the financial positions of the Water Quality Fund, the Drinking Water Loan Fund, and the Bay Restoration Fund, and the results of the Administration's financial operations. If they are unable to express an unqualified opinion they shall state and explain in detail the reasons for their qualifications, disclaimer, or opinion including recommendations necessary to make possible future unqualified opinions.

§9–1617.1.

(a) (1) The Administration shall make provisions for a system of financial accounting, controls, audits, and reports in accordance with generally accepted principles of governmental accounting.

(2) All accounting systems and records, auditing procedures and standards, and financial reporting for the Water Quality Fund, the Drinking Water Loan Fund, the Bay Restoration Fund, and the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund shall conform to the requirements of Title VI of the Federal Water Pollution Control Act, the federal Safe Drinking Water Act, the Bay Restoration Fund Act, and the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund under Title 8, Subtitle 2A of the Natural Resources Article, as applicable, and generally accepted principles of governmental accounting.

(b) (1) As soon as practical after the closing of the fiscal year, an audit shall be made of the financial books, records, and accounts of the Administration.

(2) The audit shall be made by independent certified public accountants, selected by the Administration, and licensed to practice in the State as auditors.

(3) The auditors:

(i) May not have a personal interest either directly or indirectly in the fiscal affairs of the Administration; and

(ii) Shall be experienced and qualified in the accounting and auditing of public bodies.

(4) The audit report shall be prepared in accordance with generally accepted auditing principles and point out any irregularities found to exist.

(5) (i) The auditors shall report to the Secretary the results of their examination, including their unqualified opinion on the presentation of the financial positions of the Water Quality Fund, the Drinking Water Loan Fund, the Bay Restoration Fund, and the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund and the results of the Administration's financial operations.

(ii) If the auditors are unable to express an unqualified opinion, the auditors shall state and explain in detail the reasons for their qualifications, disclaimer, or opinion including recommendations necessary to make possible future unqualified opinions.

§9–1618.

The Administration shall continue until terminated by law, except that no such law shall take effect so long as the Administration shall have bonds outstanding, unless adequate provision has been made for the payment thereof. Upon termination of the existence of the Administration, all its rights and properties shall pass to and be vested in the State.

§9–1619.

The provisions of this subtitle are severable, and if any of its provisions are held unconstitutional by any court of competent jurisdiction, the decision of the court shall not affect or impair any of the remaining provisions.

§9–1620.

This subtitle shall be deemed to provide an additional and alternative method for the doing of things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

§9–1621.

This subtitle, being necessary for the welfare of the State and its inhabitants, shall be liberally construed to effect the purposes hereof.

§9–1622.

This subtitle may be cited as the Maryland Water Quality Financing Administration Act.

§9–1701.

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

(b) "Compost" means the product of composting in accordance with the standards established by the Secretary of Agriculture under § 6–221 of the Agriculture Article.

(c) "Composting" means the controlled aerobic biological decomposition of organic waste material in accordance with the standards established by the Secretary under this title.

(d) (1) "Composting facility" means a facility where composting takes place.

(2) "Composting facility" does not include a facility that is required to obtain:

(i) A natural wood waste recycling facility permit in accordance with this title;

(ii) A sewage sludge utilization permit in accordance with this title; or

(iii) A refuse disposal permit in accordance with this title.

(e) (1) "Computer" means a desktop personal computer or laptop computer, including the computer monitor.

(2) "Computer" does not include:

(i) A personal digital assistant device; or

(ii) A computer peripheral device, including:

1. A mouse or other similar pointing device;

2. A printer; or

3. A detachable keyboard.

(f) (1) "Covered electronic device" means a computer or video display device with a screen that is greater than 4 inches measured diagonally.

(2) "Covered electronic device" does not include a video display device

that is part of a motor vehicle or that is contained within a household appliance or commercial, industrial, or medical equipment.

(g) "Covered electronic device takeback program" means a program, established by a covered electronic device manufacturer or a group of covered electronic device manufacturers, for the collection and recycling, refurbishing, or reuse of a covered electronic device labeled with the name of the manufacturer or the manufacturer's brand label, including:

(1) Providing, at no cost to the returner, a method of returning a covered electronic device to the manufacturer, including postage paid mailing packages or designated collection points throughout the State;

(2) Contracting with a recycler, local government, other manufacturer, or any other person; or

(3) Any other program approved by the Department.

(h) "Director" means the Director of the Office of Recycling.

(i) "Manufacturer" means a person that is the brand owner of a covered electronic device sold or offered for sale in the State, by any means, including transactions conducted through sales outlets, catalogs, or the Internet.

(j) (1) "Natural wood waste" means tree and other natural vegetative refuse.

(2) "Natural wood waste" includes tree stumps, brush and limbs, root mats, logs, and other natural vegetative material.

(k) (1) "Natural wood waste recycling facility" means a facility where recycling services for natural wood waste are provided.

(2) "Natural wood waste recycling facility" does not include a collection or processing facility operated by:

(i) A nonprofit or governmental organization located in the State; or

(ii) A single individual or business that provides recycling services for its own employees or for its own recyclable materials generated on its own premises.

(l) "Office" means the Office of Recycling within the Department.

(m) "Recyclable materials" means those materials that:

(1) Would otherwise become solid waste for disposal in a refuse disposal system; and

(2) May be collected, separated, composted, or processed and returned to the marketplace in the form of raw materials or products.

(n) (1) "Recycling" means any process in which recyclable materials are collected, separated, or processed and returned to the marketplace in the form of raw materials or products.

(2) "Recycling" includes composting.

(o) "Recycling services" means the services provided by persons engaged in the business of recycling, including the collection, processing, storage, purchase, sale, or disposition of recyclable materials.

(p) "Resource recovery facility" means a facility in existence as of January 1, 1988 that:

(1) Processes solid waste to produce valuable resources, including steam, electricity, metals, or refuse–derived fuel; and

(2) Achieves a volume reduction of at least 50 percent of its solid waste stream.

(q) (1) "Solid waste stream" means garbage or refuse that would, unless recycled, be disposed of in a refuse disposal system.

(2) "Solid waste stream" includes organic material capable of being composted that is not composted in accordance with regulations adopted under § 9–1725(b) of this subtitle.

(3) "Solid waste stream" does not include:

(i) Hospital waste;

(ii) Rubble;

(iii) Scrap material;

(iv) Land clearing debris;

(v) Sewage sludge; or

(vi) Waste generated by a single individual or business and disposed of in a facility dedicated solely for that entity's waste.

(r) (1) "Video display device" means an electronic device with an output surface that displays or is capable of displaying moving graphical images or visual representations of image sequences or pictures that show a number of quickly changing images on a screen to create the illusion of motion.

(2) "Video display device" includes a device that is an integral part of the display and cannot easily be removed from the display by the consumer and that produces the moving image on the screen.

(3) A video display device may use a cathode–ray tube (CRT), liquid crystal display (LCD), gas plasma, digital light processing, or other image–projection technology.

(s) "White goods" includes:

(1) Refrigerators;

(2) Stoves;

(3) Washing machines;

(4) Dryers;

(5) Water heaters; and

(6) Air conditioners.

(t) (1) "Yard waste" means organic plant waste derived from gardening, landscaping, and tree trimming activities.

(2) "Yard waste" includes leaves, garden waste, lawn cuttings, weeds, and prunings.

§9–1702.

(a) There is an Office of Recycling created within the Department.

(b) The Secretary shall appoint a Director and sufficient staff to perform the functions of the Office. After July 1, 1989, the number of staff shall be as provided in the budget.

(c) The Secretary may adopt regulations to carry out the provisions of this subtitle.

(d) The Office shall:

(1) Assist the counties in developing an acceptable recycling plan required under § 9–1703 of this subtitle and § 9–505 of this title, including technical assistance to the local governments;

(2) Coordinate the efforts of the State to facilitate the implementation of the recycling goals at the county level;

(3) Review all recycling plans submitted as part of a county plan as required under § 9–505 of this title and advise the Secretary on the adequacy of the recycling plan; and

(4) Administer the Statewide Electronics Recycling Program under Part

IV of this subtitle.

(e) Beginning on January 1, 1990, and biannually thereafter, the Office shall, in coordination with the Maryland Environmental Service, study and report to the Governor and, subject to § 2–1246 of the State Government Article, the General Assembly on:

(1) The availability of local, national, and international markets for recycling materials;

(2) The identification and location of recycling centers, including an analysis of existing recycling centers and the need to expand these facilities or construct new recycling centers;

(3) Programs necessary to educate the public on the need to participate in recycling efforts;

(4) The economics and financing of existing and proposed systems of waste disposal and recycling;

(5) State procurement policies for the purchase of recycled materials;

(6) Programs necessary to reduce the amount of solid waste generated for disposal by a State agency or unit;

(7) The liaison role with local governments, the federal government, and the private sector;

(8) The percentage reduction in the amount of solid waste that has been achieved by each county; and

(9) Economically feasible methods for the recycling of scrap automobile tires, batteries, and white goods.

(f) (1) By December 1, 1988, the Office shall, in coordination with the Maryland Environmental Service and the Governor's Task Force on Solid Waste, make recommendations to the General Assembly for the financing of a comprehensive system of recycling at the State and local level, including funding for recycling centers, recycling equipment, recycling education, and marketing strategies.

(2) After the financing recommendations are made under paragraph (1) of this subsection, each county may submit to the Office and the Governor a detailed request for funds necessary to assist in the development and implementation of a recycling plan under guidelines developed by the Office.

(g) In studying feasible methods for the management and recycling of used tires under subsection (e)(9) of this section, the Office of Recycling shall consult with the appropriate industry, including representatives of:

(1) Tire manufacturers;

(2) Tire dealers; and

(3) Tire recyclers.

§9–1703.

(a) Each county shall submit a recycling plan to the Secretary for approval when the county submits its county plan to the Secretary in accordance with the provisions of § 9–505 of this title.

(b) In preparing the recycling plan as required in § 9–505 of this title, the county shall address:

(1) Methods to meet the solid waste stream reduction;

(2) The feasibility of source separation of the solid waste stream generated within the county;

(3) The recyclable materials to be separated;

(4) The strategy for the collection, processing, marketing, and disposition of recyclable materials, including the cost–effective use of recycling centers;

(5) Methods of financing the recycling efforts proposed by the county;

(6) Methods for the separate collection and composting of yard waste;

(7) The feasibility of a system for the composting of mixed solid wastes;

(8) The feasibility of a system for the collection and recycling of white goods;

(9) The separate collection of other recyclable materials;

(10) The strategy for the collection, processing, marketing, and disposition of recyclable materials from county public schools;

(11) The strategy for the collection and recycling of fluorescent and compact fluorescent lights that contain mercury;

(12) The collection and recycling of recyclable materials from residents of apartment buildings and condominiums that contain 10 or more dwelling units by property owners or managers of apartment buildings and councils of unit owners of condominiums;

(13) If applicable, a method for implementing a reporting requirement for recyclable materials generated at apartment buildings and condominiums that contain

10 or more dwelling units;

(14) The collection and recycling of recyclable materials from special events; and

(15) Any other alternative methods of recycling that will attain or exceed the solid waste stream reduction goals determined by the county.

(c) (1) In preparing the recycling plan as required under § 9–505 of this title, the county may address methods for the separate collection and recycling of covered electronic devices, including efforts by the county to establish partnerships with covered electronic device manufacturers, recyclers, retailers, or other local governments for the collection and recycling of covered electronic devices.

(2) If a county elects to address methods for the separate collection and recycling of covered electronic devices in its recycling plan, any reduction in the county's solid waste stream attributable to the implementation of the methods shall count towards the county's required reduction through recycling of the solid waste stream under § 9–505 of this title.

(d) A county that achieves a reduction of at least 5 percent in the volume of its waste through the utilization of 1 or more resource recovery facilities in operation as of January 1, 1988, shall be considered to have achieved a reduction by recycling of 5 percent of its solid waste stream.

(e) In preparing a recycling plan, a county may not calculate a tax or mandatory deposit on any beverage container that is enacted by a county or municipality to achieve the recycling goals required under § 9–505 of this title.

(f) For the purpose of determining weight, the Department may not preclude the use of portable weigh scales.

(g) A county shall revise its recycling plan by:

(1) October 1, 2010, to address the requirements of subsection (b)(10) of this section;

(2) October 1, 2011, to address the requirements of subsection (b)(11) of this section; and

(3) October 1, 2015, to address the requirements of subsection (b)(14) of this section.

§9–1704.

(a) (1) If a county with a population greater than 150,000 determines it cannot achieve a reduction of 35% of its solid waste stream under § 9–505 of this title, the county shall:

(i) Conduct a public hearing on the proposed reduction that may be conducted jointly with other public hearings or meetings; and

(ii) Publish notice of the time and place of the public hearing, together with a summary of the justification for the proposed reduction, in a newspaper of general circulation in the county once a week for 2 consecutive weeks before the hearing in the county.

(2) The Secretary shall review a county plan that does not meet the 35% recycling goal to determine whether the county's maximum goal, as stated in the plan, can be demonstrated to have a reasonable basis.

(3) The Secretary shall require revision of a county plan if, pursuant to a review under paragraph (2) of this subsection, the county's determination of its maximum goal is found to be unsupported by competent, material, and substantial evidence in light of the entire plan as submitted.

(b) (1) If a county with a population less than 150,000 determines it cannot achieve a reduction of 20% of its solid waste stream under § 9–505 of this title, the county shall:

(i) Conduct a public hearing on the proposed reduction that may be conducted jointly with other public hearings or meetings; and

(ii) Publish notice of the time and place of the public hearing, together with a summary of the justification for the proposed reduction in a newspaper of general circulation in the county once a week for 2 consecutive weeks before the hearing in the county.

(2) The Secretary shall review a county plan that does not meet the 20% recycling goal to determine whether the county's maximum goal, as stated in the plan, can be demonstrated to have a reasonable basis.

(3) The Secretary shall require revision of a county plan if, pursuant to a review under paragraph (2) of this subsection, the county's determination of its maximum goal is found to be unsupported by competent, material, and substantial evidence in light of the entire plan as submitted.

(4) (i) Subject to subparagraph (ii) of this paragraph, when calculating a county's recycling rate for the purposes of this subsection, a county with a population of less than 100,000 may combine its recycling rate with the recycling rates of one or more adjacent counties.

(ii) A county may not use the recycling rate calculation in this paragraph for more than 5 consecutive years.

(iii) Subject to subparagraph (iv) of this paragraph, each county that elects to use the recycling rate calculation in this paragraph shall submit a letter of

concurrence from the highest elected official of the county to the Secretary:

1. That states the county's agreement to combine its recycling rate calculation with the recycling rate calculation of an adjacent county; and

2. At the same time the annual report required under § 9–1705(b) of this subtitle is submitted.

(iv) The annual report required under § 9–1705(b) of this subtitle shall be submitted as one report for the counties that elect to use the recycling rate calculation under this paragraph.

(v) The Secretary shall calculate one recycling rate for the counties that elect to use the recycling rate calculation in accordance with this paragraph.

§9–1705.

(a) Beginning on July 1, 1990, and biannually thereafter, each county which has not achieved the percentage of reduction in its solid waste stream required by this article shall, as a part of its solid waste plan update, provide a report to the Department which shall include:

(1) The total amount, by weight, of solid waste collected;

(2) The total amount, by weight, of solid waste disposed of at solid waste acceptance facilities;

(3) The amount and types of materials recycled;

(4) The methods of disposal of solid waste used, other than recycling; and

(5) The percentage reduction in the solid waste stream that has been achieved.

(b) A county that has achieved the percentage of solid waste stream reduction required by this article shall provide the report described in subsection (a) of this section to the Department annually, on a calendar year basis.

(c) All reports shall be provided within 90 days after the close of the annual or biannual reporting period.

§9–1706.

(a) The Office of Recycling, in cooperation with the Department of General Services and other State agencies, shall develop a recycling plan that reduces by recycling the amount of the solid waste stream generated for disposal by the State government by at least 30% or to an amount that is determined practical and economically feasible, but in no case may the amount to be recycled be less than 15%.

(b) A recycling plan under subsection (a) of this section shall include a system for recycling aluminum, glass, paper, and plastic generated for disposal by the State government, including the placement of collection bins in State–owned or State–operated office buildings in locations in the State where it is determined to be practical and economically feasible.

(c) By July 1, 2014, each State agency and unit of State government shall implement the recycling plan required under this section.

§9–1706.1.

(a) There is a voluntary statewide waste diversion goal of 60% by the year 2020.

(b) There is a voluntary statewide recycling goal of 55% by the year 2020.

(c) The goals in subsections (a) and (b) of this section may be accomplished through the cooperative efforts of waste generators, State agencies, local governments, the waste industry, the recycling industry, environmental groups, boards of education, and other interested parties.

§9–1707. IN EFFECT

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

(2) (i) "Newsprint" means paper of the type generally used in the publication of newspapers or commercial advertising inserts printed by the publisher that are made primarily from mechanical woodpulps combined with some chemical woodpulp.

(ii) "Newsprint" includes paper made from old newspapers that have been deinked, using the recycled pulp in lieu of virgin pulp.

(3) "Reporting period" means:

(i) The calendar year for 2005 and earlier; and

(ii) The calendar year and the immediately preceding two calendar years for 2006 and all subsequent years.

(b) (1) Except as provided in subsection (h) of this section, the recycled content percentage requirements for newspapers distributed in the State shall, on a statewide basis, be in accordance with the recycled content percentage requirements specified in subsection (c) of this section for the reporting period.

(2) In the year following any reporting period in which the Secretary determines, based on the reports submitted under subsection (e) of this section, that the recycled content percentage requirements specified in subsection (c) of this section have not been met on a statewide basis, each newspaper shall:

(i) For newspapers distributed in the State, satisfy the recycled content percentage requirement under subsection (c) of this section for the reporting period; or

(ii) Pay the newsprint recycling incentive fee required under subsection (d) of this section for that reporting period.

(c) (1) To satisfy the recycled content percentage requirement of this section for a reporting period, at least the percentage specified in paragraph (2) of this subsection, by weight, of the total newsprint used by the publisher during that reporting period for newspapers distributed in the State shall be recycled materials.

(2) The recycled content percentage requirement is:

(i) 12% for 1992;

(ii) 12% for 1993;

(iii) 20% for 1994, 1995, 1996, 1997, 1998, and 1999;

(iv) 25% for 2000;

(v) 30% for 2001 and 2002;

(vi) 35% for 2003 and 2004; and

(vii) 40% for 2005 and all subsequent reporting periods.

(d) (1) The newsprint recycling incentive fee for any reporting period is $10 for each ton of a publisher's recycled content deficiency for the reporting period, as determined under paragraph (2) of this subsection.

(2) A publisher's recycled content deficiency for a reporting period is the difference between:

(i) The product of multiplying the total tons of newsprint used by the publisher for the reporting period times the required percentage for that reporting period; and

(ii) The actual tonnage of recycled material contained in the newsprint used by the publisher for the reporting period.

(e) (1) A publisher of a newspaper distributed in the State shall complete and file with the Secretary:

(i) A quarterly report, on or before the last day of the month that follows each calendar quarter; and

(ii) An annual report, on or before January 31 following each

calendar year.

(2) Except as provided in paragraph (3) of this subsection, a report required under this subsection shall:

(i) Be in the form and manner and contain any information that the Secretary requires by regulation; and

(ii) State, for the period covered by the report:

1. The total weight of newsprint used by the publisher; and

2. The weight of recycled material contained in that newsprint.

(3) The Secretary may not require the disclosure of the price per ton of newsprint paid by any publisher in any report required under this subsection.

(4) A publisher shall pay any newsprint recycling incentive fee required for a calendar year with the annual report that covers that year.

(f) (1) There is a State Recycling Trust Fund.

(2) The Fund shall consist of:

(i) The newsprint recycling incentive fee;

(ii) The telephone directory recycling incentive fee collected under § 9–1709 of this subtitle;

(iii) The covered electronic device manufacturer registration fee collected under § 9–1728 of this subtitle;

(iv) The mercury switch or mercury switch assembly removal fees collected under § 6–905.4(c)(6)(iii)3 of this article;

(v) All fines and penalties collected under this subtitle and under §§ 6–905.4 and 6–905.6 of this article;

(vi) Money appropriated in the State budget to the Fund; and

(vii) Any other money from any other source accepted for the benefit of the Fund.

(3) The Secretary shall administer the Fund.

(4) The Treasurer shall hold the Fund separately and the Comptroller shall account for the Fund.

(5) At the end of each fiscal year, any unspent or unencumbered balance in the Fund that exceeds $2,000,000 shall revert to the General Fund of the State in accordance with § 7–302 of the State Finance and Procurement Article.

(6) In accordance with the State budget, the Fund shall be used only:

(i) To provide grants to the counties to be used by the counties to develop and implement local recycling plans;

(ii) To provide grants to counties that have addressed methods for the separate collection and recycling of covered electronic devices in accordance with § 9–1703(c)(1) of this subtitle;

(iii) To provide grants to municipalities to be used by the municipalities to implement local covered electronic device recycling programs; and

(iv) To carry out the purposes of the land management administration.

(7) (i) The Treasurer shall invest the money in the Fund in the same manner as other State money may be invested.

(ii) Any investment earnings of the Fund shall be credited to the General Fund of the State.

(g) Repealed.

(h) (1) (i) There is a Newsprint Recycling Board in the Department.

(ii) The Newsprint Recycling Board shall meet only at the request of the Secretary.

(2) The Newsprint Recycling Board is composed of 9 members appointed by the Governor as follows:

(i) 2 shall be representatives of newspaper publishers appointed from a list of at least 5 names submitted by the Maryland Delaware District of Columbia Press Association;

(ii) 1 shall be a representative of the Northeast Waste Disposal Authority;

(iii) 1 shall be a representative of the Maryland Environmental Service;

(iv) 1 shall be a representative of local governments;

(v) 1 shall be a representative of the newspaper recycling

manufacturing industry;

(vi) 1 shall be a representative of an industry, other than an industry that uses old newspapers; and

(vii) 2 shall be representatives of environmental groups with some expertise in recycling.

(3) The Governor shall appoint the Chairman of the Newsprint Recycling Board from among the members.

(4) (i) The term of a member of the Newsprint Recycling Board is 3 years.

(ii) The terms of the members of the Newsprint Recycling Board are staggered as required by the terms of the members of the Board serving on December 31, 1991.

(iii) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(iv) A member of the Newsprint Recycling Board may not serve more than two 3–year terms.

(v) The members of the Newsprint Recycling Board shall serve without compensation, but shall be reimbursed for all reasonable expenses incurred in the performance of their duties.

(5) Upon the application of a newspaper publisher, the Newsprint Recycling Board shall, on the affirmative vote of a majority of the members eligible to vote, excuse the publisher of all or part of the recycled content percentage requirements of this section for the newspaper publisher under such terms and conditions and for such periods as the Board considers appropriate if the Board determines, after taking into consideration the publisher's supply contracts which existed as of March 15, 1990, that:

(i) The publisher could not obtain from manufacturers serving the mid–Atlantic region an adequate supply of recycled newsprint comparable in quality to virgin newsprint; and

(ii) The publisher has made a good faith effort to meet the recycled content percentage requirements.

(6) If the Newsprint Recycling Board fails to act on an application for an excuse of all or part of the recycled content percentage requirements made under paragraph (5) of this subsection within 45 days of the filing of the application with the Board, the application shall be deemed approved.

(7) The Newsprint Recycling Board shall:

(i) Review the reports filed under subsection (e) of this section;

(ii) Analyze the availability and utilization of newsprint containing recycled material;

(iii) Comment on the appropriateness of the recycled content percentage requirements, including whether the requirements encourage manufacturers of virgin newsprint to convert to recycling;

(iv) Comment on the need for continuation of the provisions of this section and the impact the provisions of this section have on users of old newspapers for purposes other than producing newsprint;

(v) Work with municipalities and other collectors of old newspapers to develop a reliable system to provide a stable and quality supply of old newspapers for recycling;

(vi) Work to encourage the location of production facilities in the region to ensure an increase in the supply of recycled newsprint; and

(vii) Work to encourage the reuse of old newspapers.

(i) A county, municipality, or any agency of a county or municipality may not:

(1) Impose on a publisher or distributor of newspapers by law, ordinance, or regulation any recycling content percentage requirements or taxes or charges based on the percent of recycled or virgin fiber contained in a newspaper; or

(2) Require the publisher or distributor of newspapers to collect or dispose of old newspapers in any way not imposed on the nonpublisher businesses in the county or municipality.

9–1707. // EFFECTIVE DECEMBER 31, 2017 PER CHAPTER 713 OF 2009 //

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

(2) (i) "Newsprint" means paper of the type generally used in the publication of newspapers or commercial advertising inserts printed by the publisher that are made primarily from mechanical woodpulps combined with some chemical woodpulp.

(ii) "Newsprint" includes paper made from old newspapers that have been deinked, using the recycled pulp in lieu of virgin pulp.

(3) "Reporting period" means:

(i) The calendar year for 2005 and earlier; and

(ii) The calendar year and the immediately preceding two calendar years for 2006 and all subsequent years.

(b) (1) Except as provided in subsection (h) of this section, the recycled content percentage requirements for newspapers distributed in the State shall, on a statewide basis, be in accordance with the recycled content percentage requirements specified in subsection (c) of this section for the reporting period.

(2) In the year following any reporting period in which the Secretary determines, based on the reports submitted under subsection (e) of this section, that the recycled content percentage requirements specified in subsection (c) of this section have not been met on a statewide basis, each newspaper shall:

(i) For newspapers distributed in the State, satisfy the recycled content percentage requirement under subsection (c) of this section for the reporting period; or

(ii) Pay the newsprint recycling incentive fee required under subsection (d) of this section for that reporting period.

(c) (1) To satisfy the recycled content percentage requirement of this section for a reporting period, at least the percentage specified in paragraph (2) of this subsection, by weight, of the total newsprint used by the publisher during that reporting period for newspapers distributed in the State shall be recycled materials.

(2) The recycled content percentage requirement is:

(i) 12% for 1992;

(ii) 12% for 1993;

(iii) 20% for 1994, 1995, 1996, 1997, 1998, and 1999;

(iv) 25% for 2000;

(v) 30% for 2001 and 2002;

(vi) 35% for 2003 and 2004; and

(vii) 40% for 2005 and all subsequent reporting periods.

(d) (1) The newsprint recycling incentive fee for any reporting period is $10 for each ton of a publisher's recycled content deficiency for the reporting period, as determined under paragraph (2) of this subsection.

(2) A publisher's recycled content deficiency for a reporting period is the difference between:

(i) The product of multiplying the total tons of newsprint used by

the publisher for the reporting period times the required percentage for that reporting period; and

(ii) The actual tonnage of recycled material contained in the newsprint used by the publisher for the reporting period.

(e) (1) A publisher of a newspaper distributed in the State shall complete and file with the Secretary:

(i) A quarterly report, on or before the last day of the month that follows each calendar quarter; and

(ii) An annual report, on or before January 31 following each calendar year.

(2) Except as provided in paragraph (3) of this subsection, a report required under this subsection shall:

(i) Be in the form and manner and contain any information that the Secretary requires by regulation; and

(ii) State, for the period covered by the report:

1. The total weight of newsprint used by the publisher; and

2. The weight of recycled material contained in that newsprint.

(3) The Secretary may not require the disclosure of the price per ton of newsprint paid by any publisher in any report required under this subsection.

(4) A publisher shall pay any newsprint recycling incentive fee required for a calendar year with the annual report that covers that year.

(f) (1) There is a State Recycling Trust Fund.

(2) The Fund shall consist of:

(i) The newsprint recycling incentive fee;

(ii) The telephone directory recycling incentive fee collected under § 9–1709 of this subtitle;

(iii) The covered electronic device manufacturer registration fee collected under § 9–1728 of this subtitle;

(iv) All fines and penalties collected under this subtitle;

(v) Money appropriated in the State budget to the Fund; and

(vi) Any other money from any other source accepted for the benefit of the Fund.

(3) The Secretary shall administer the Fund.

(4) The Treasurer shall hold the Fund separately and the Comptroller shall account for the Fund.

(5) At the end of each fiscal year, any unspent or unencumbered balance in the Fund that exceeds $2,000,000 shall revert to the General Fund of the State in accordance with § 7–302 of the State Finance and Procurement Article.

(6) In accordance with the State budget, the Fund shall be used only:

(i) To provide grants to the counties to be used by the counties to develop and implement local recycling plans;

(ii) To provide grants to counties that have addressed methods for the separate collection and recycling of covered electronic devices in accordance with § 9–1703(c)(1) of this subtitle;

(iii) To provide grants to municipalities to be used by the municipalities to implement local covered electronic device recycling programs; and

(iv) To carry out the purposes of the land management administration.

(7) (i) The Treasurer shall invest the money in the Fund in the same manner as other State money may be invested.

(ii) Any investment earnings of the Fund shall be credited to the General Fund of the State.

(g) Repealed.

(h) (1) (i) There is a Newsprint Recycling Board in the Department.

(ii) The Newsprint Recycling Board shall meet only at the request of the Secretary.

(2) The Newsprint Recycling Board is composed of 9 members appointed by the Governor as follows:

(i) 2 shall be representatives of newspaper publishers appointed from a list of at least 5 names submitted by the Maryland Delaware District of Columbia Press Association;

(ii) 1 shall be a representative of the Northeast Waste Disposal

Authority;

(iii) 1 shall be a representative of the Maryland Environmental Service;

(iv) 1 shall be a representative of local governments;

(v) 1 shall be a representative of the newspaper recycling manufacturing industry;

(vi) 1 shall be a representative of an industry, other than an industry that uses old newspapers; and

(vii) 2 shall be representatives of environmental groups with some expertise in recycling.

(3) The Governor shall appoint the Chairman of the Newsprint Recycling Board from among the members.

(4) (i) The term of a member of the Newsprint Recycling Board is 3 years.

(ii) The terms of the members of the Newsprint Recycling Board are staggered as required by the terms of the members of the Board serving on December 31, 1991.

(iii) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(iv) A member of the Newsprint Recycling Board may not serve more than two 3–year terms.

(v) The members of the Newsprint Recycling Board shall serve without compensation, but shall be reimbursed for all reasonable expenses incurred in the performance of their duties.

(5) Upon the application of a newspaper publisher, the Newsprint Recycling Board shall, on the affirmative vote of a majority of the members eligible to vote, excuse the publisher of all or part of the recycled content percentage requirements of this section for the newspaper publisher under such terms and conditions and for such periods as the Board considers appropriate if the Board determines, after taking into consideration the publisher's supply contracts which existed as of March 15, 1990, that:

(i) The publisher could not obtain from manufacturers serving the mid–Atlantic region an adequate supply of recycled newsprint comparable in quality to virgin newsprint; and

(ii) The publisher has made a good faith effort to meet the recycled content percentage requirements.

(6) If the Newsprint Recycling Board fails to act on an application for an excuse of all or part of the recycled content percentage requirements made under paragraph (5) of this subsection within 45 days of the filing of the application with the Board, the application shall be deemed approved.

(7) The Newsprint Recycling Board shall:

(i) Review the reports filed under subsection (e) of this section;

(ii) Analyze the availability and utilization of newsprint containing recycled material;

(iii) Comment on the appropriateness of the recycled content percentage requirements, including whether the requirements encourage manufacturers of virgin newsprint to convert to recycling;

(iv) Comment on the need for continuation of the provisions of this section and the impact the provisions of this section have on users of old newspapers for purposes other than producing newsprint;

(v) Work with municipalities and other collectors of old newspapers to develop a reliable system to provide a stable and quality supply of old newspapers for recycling;

(vi) Work to encourage the location of production facilities in the region to ensure an increase in the supply of recycled newsprint; and

(vii) Work to encourage the reuse of old newspapers.

(i) A county, municipality, or any agency of a county or municipality may not:

(1) Impose on a publisher or distributor of newspapers by law, ordinance, or regulation any recycling content percentage requirements or taxes or charges based on the percent of recycled or virgin fiber contained in a newspaper; or

(2) Require the publisher or distributor of newspapers to collect or dispose of old newspapers in any way not imposed on the nonpublisher businesses in the county or municipality.

§9–1708.

(a) (1) A person may operate a natural wood waste recycling facility in this State only in accordance with the provisions of this section.

(2) In addition to the other provisions of this section, after July 1, 1992, a

person may not operate a natural wood waste recycling facility in the State without a permit issued by the Department under this section.

(b) (1) A natural wood waste recycling facility may accept only natural wood waste.

(2) A natural wood waste recycling facility shall be operated in a manner that prevents health hazards and minimizes nuisances. Discharges to air or waters of the State shall be limited to discharges allowable under permits governing solid waste disposal, water pollution control, or air pollution control. Dust resulting from the operations shall be controlled at all times.

(3) Adequate personnel and equipment shall be maintained at all times to ensure proper operation and prompt attention to correct problems associated with the construction and maintenance of a natural wood waste recycling facility.

(4) The disposal site shall be under the supervision of a responsible individual present at the disposal site at all times during the operation of a natural wood waste recycling facility.

(5) Access to a natural wood waste recycling facility shall be controlled at all times, and entrances shall be adequately closed when the site is not in operation.

(6) Suitable measures to prevent and to control fires at a natural wood waste recycling facility shall be provided.

(7) A person may not burn wood waste at a natural wood waste recycling facility except as permitted by the Department or, when applicable, by the local governmental authority.

(c) (1) The Secretary may by regulation establish additional conditions under which a person may operate a natural wood waste recycling facility.

(2) On or before July 1, 1992, the Department shall adopt regulations to establish a permit system for natural wood waste recycling facilities.

(d) The provisions of §§ 9–334 through 9–342 of this title and § 10–104 of this article shall be used and shall apply to enforce violations of this section.

(e) A facility required to obtain a permit by the Department under Subtitle 2 of this title is not required to obtain a permit under this section.

§9–1709.

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

(2) "Directory publisher" means a person engaged in publishing telephone directories of any kind as part of its business that:

(i) In the previous calendar year used at least 50 tons of directory stock in telephone directories that were distributed in the State; or

(ii) Anticipates using, in the current calendar year, at least 50 tons of directory stock in telephone directories that are distributed in the State.

(3) "Directory stock" means the type of paper that is used chiefly for printing a telephone directory.

(4) "Runable" means the ability of directory stock to run without breaking on a printing press using:

(i) Flexography;

(ii) Letterpress; and

(iii) Offset printing processes.

(5) "Telephone directory" means a listing of names, telephone numbers, and addresses produced for distribution in the State to households and businesses.

(b) (1) Except as provided in subsection (f) of this section, the recycled content percentage requirements for telephone directories distributed in the State shall be in accordance with the recycled content percentage requirements specified in subsection (c) of this section for the calendar year.

(2) Each directory publisher shall:

(i) For telephone directories distributed in the State, satisfy the recycled content percentage under subsection (c) of this section for the calendar year; or

(ii) Pay the directory recycling incentive fee required under subsection (d) of this section for that calendar year.

(c) (1) To satisfy the recycled content percentage requirement of this section for a calendar year, at least the percentage specified in paragraph (2) of this subsection, by weight, of the total directory stock used by the publisher during that calendar year for telephone directories distributed in the State shall be recycled materials.

(2) The recycled content percentage requirement is:

(i) 12% for 1994;

(ii) 15% for 1995;

(iii) 20% for 1996, 1997, 1998, and 1999;

(iv) 25% for 2000;

(v) 30% for 2001 and 2002;

(vi) 35% for 2003 and 2004; and

(vii) 40% for 2005 and all subsequent calendar years.

(d) (1) The directory recycling incentive fee for any calendar year is $10 for each ton of a publisher's recycled content deficiency for the year, as determined under paragraph (2) of this subsection.

(2) A publisher's recycled content deficiency for a calendar year is the difference between:

(i) The product of multiplying the total tons of directory stock used by the publisher for the year times the required percentage for that year; and

(ii) The actual tonnage of recycled material contained in the directory stock used by the publisher for the year.

(e) (1) A publisher of a telephone directory distributed in the State shall complete and file with the Secretary an annual report, on or before January 31 following each calendar year.

(2) Except as provided in paragraph (3) of this subsection, a report required under this subsection shall:

(i) Be in the form and manner and contain any information that the Secretary requires by regulation; and

(ii) State, for the period covered by the report:

1. The total weight of directory stock used by the publisher; and

2. The weight of recycled material contained in that directory stock.

(3) The Secretary may not require the disclosure of the price per ton of directory stock paid by any publisher in any report required under this subsection.

(4) A publisher shall pay any directory recycling incentive fee required for a calendar year with the annual report that covers that year.

(5) Any publisher of telephone directories distributed in the State who fails to submit the report required under this subsection shall be deemed to have failed to meet the percentages established in subsection (c) of this section.

(f) On written application of a directory publisher, the Secretary may exempt a directory publisher from compliance with the provisions of this section if the Secretary

determines that the directory publisher was unable to obtain:

(1) An adequate supply of directory stock containing recycled materials comparable in price and quality to virgin stock; or

(2) Directory stock that is runable.

(g) Any revenue collected under subsection (d) of this section shall be deposited in the Recycling Trust Fund established under § 9–1707 of this subtitle.

§9–1710.

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

(2) "Container" means any rigid plastic container or plastic bottle.

(3) "Label" means a molded, imprinted, or raised symbol located on or near the bottom of a container.

(4) "Plastic bottle" means a plastic container intended for single use that:

(i) Has a neck that is smaller than the container;

(ii) Accepts a screw-type, snap cap, or other similar closure; and

(iii) Has a capacity of at least 16 fluid ounces but less than 5 gallons.

(5) "Rigid plastic container" means any formed or molded container, other than a bottle that:

(i) Is intended for single use;

(ii) Is predominantly composed of plastic resin;

(iii) Has a relatively inflexible finite shape or form; and

(iv) Has a capacity of at least 8 ounces but less than 5 gallons.

(b) A person may not distribute for sale in the State any container unless the container is labeled indicating the plastic resin used to produce the container.

(c) (1) The label required under subsection (b) of this section shall:

(i) Appear on or near the bottom of the container;

(ii) Be clearly visible; and

(iii) Consist of:

1. A number placed within 3 arrows forming a triangle as described in paragraph (2) of this subsection; and

2. Letters placed below the triangle of arrows.

(2) (i) The 3 arrows shall form an equilateral triangle with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius.

(ii) The arrowhead of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow.

(iii) The triangle formed by the 3 arrows curved at their midpoints shall depict a clockwise path around the code number.

(3) The numbering and lettering shall be as follows:

(i) For polyethylene terepthalate, the letters "PETE" and the number 1;

(ii) For high density polyethylene, the letters "HDPE" and the number 2;

(iii) For vinyl, the letter "V" and the number 3;

(iv) For low density polyethylene, the letters "LDPE" and the number 4;

(v) For polypropylene, the letters "PP" and the number 5;

(vi) For polystyrene, the letters "PS" and the number 6; and

(vii) For any other plastic resin, the word "Other" and the number 7.

(d) Any person who knowingly and willfully distributes for sale a container in violation of this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $50 per violation.

(e) The Department shall adopt regulations to administer and enforce the provisions of this section.

§9–1711.

(a) (1) Except as provided in paragraph (4) of this subsection, this section applies only to:

(i) A property owner or manager of an apartment building that contains 10 or more dwelling units; and

(ii) A council of unit owners of a condominium that contains 10 or more dwelling units.

(2) This section does not affect the authority of a county, municipality, or other local government to enact and enforce recycling requirements, including establishing civil penalties, for an apartment building or a condominium that are more stringent than the requirements of this section.

(3) This section does not require a county to manage or enforce the recycling activities of an apartment building or condominium that is located within the boundaries of a municipality.

(4) This section does not apply in Ocean City.

(b) (1) On or before October 1, 2014, each property owner or manager of an apartment building or a council of unit owners of a condominium shall provide for recycling for the residents of the dwelling units, including:

(i) The collection of recyclable materials from residents of the dwelling units; and

(ii) The removal for further recycling of recyclable materials collected from residents of the dwelling units.

(2) A county may require a property owner or manager of an apartment building or a council of unit owners of a condominium that provides for recycling for the residents of the dwelling units in accordance with paragraph (1) of this subsection to report to the county on recycling activities in a manner determined by the county.

(c) The recycling required under subsection (b) of this section shall be carried out in accordance with the recycling plan required under § 9–1703 of this subtitle for the county in which the apartment building or condominium that contains 10 or more dwelling units is located.

(d) A person that violates subsection (b) or (c) of this section is subject to a civil penalty not exceeding $50 for each day on which the violation exists.

(e) An enforcement unit, officer, or official of a county, municipality, or other local government may conduct inspections of an apartment building or condominium to enforce subsection (b) of this section.

(f) Any penalties collected under subsection (d) of this section shall be paid to the county, municipality, or other local government that brought the enforcement action.

§9–1712.

(a) (1) This section applies to any special event that:

(i) Includes temporary or periodic use of a public street, publicly owned site or facility, or public park;

(ii) Serves food or drink; and

(iii) Is expected to have 200 or more persons in attendance.

(2) This section does not affect the authority of a county, a municipality, or any other local government to enact and enforce recycling requirements, including establishing civil penalties, for a special event that are more stringent than the requirements of this section.

(b) (1) In addition to any other conditions required as part of a special events or other permit, the organizer of a special event shall:

(i) Provide a recycling receptacle immediately adjacent to each trash receptacle at the special event;

(ii) Ensure that all recycling receptacles are clearly distinguished from trash receptacles by color or signage; and

(iii) Ensure that all recyclable materials deposited into recycling receptacles at the special event are collected for recycling.

(2) A county may require the organizer of a special event that provides for recycling to report to the county on recycling activities in a manner determined by the county.

(c) The recycling required under subsection (b) of this section shall be carried out in accordance with the recycling plan required under § 9–1703 of this subtitle for the county in which the special event takes place.

(d) A person that violates subsection (b) or (c) of this section is subject to a civil penalty not exceeding $50 for each day on which the violation exists.

(e) An enforcement unit, officer, or official of a county, a municipality, or any other local government may conduct inspections of a special event location to enforce subsection (b) of this section.

(f) Any penalties collected under subsection (d) of this section shall be paid to the county, municipality, or other local government that brought the enforcement action.

§9–1721.

Nothing in this part is intended to regulate or otherwise to interfere with the conduct of a consumer or farmer who composts organic materials generated on a farm or residential site controlled by that consumer or farmer for the production of safe compost

to be used by the consumer or farmer for personal, household, family, or agricultural purposes.

§9–1722.

The Department shall maintain information on its Web site to educate the public about composting and to promote composting in the State as a part of the Department's efforts to encourage waste diversion.

§9–1723.

(a) All yard waste collected separately from other solid waste may be transported to a composting facility.

(b) The composting facility may be located at a refuse disposal system.

§9–1724.

An owner or operator of a refuse disposal system may not accept truckloads of separately collected yard waste for final disposal unless the owner or operator provides for the composting or mulching of the yard waste.

§9–1725.

(a) A person may operate a composting facility in the State only in accordance with this part and any regulation, order, or permit adopted or issued under this part.

(b) (1) The Department shall adopt regulations to implement the provisions of this part.

(2) Regulations adopted under paragraph (1) of this subsection may:

(i) Establish conditions under which a person may construct and operate a composting facility in the State;

(ii) Establish a tiered system of permits or approvals for composting facilities based on the type of feedstock, size of the facility, and other factors determined by the Department to be appropriate;

(iii) Establish design and operational conditions for composting facilities to protect public health and the environment and to minimize nuisances;

(iv) Establish exceptions to any requirement to obtain a composting facility permit or approval;

(v) Exempt certain organic materials that are composted from being designated as solid wastes; and

(vi) Establish any other provisions the Department deems necessary

to implement the provisions of this subtitle related to composting.

§9–1726.

The provisions of §§ 9–334 through 9–342 of this title shall be used and shall apply to enforce violations of:

(1) This part;

(2) Any regulation adopted under this part; or

(3) Any order or permit issued under this part.

§9–1727.

(a) This section applies to a manufacturer that sells or offers for sale a new covered electronic device in the State.

(b) A manufacturer may not sell or offer for sale to any person in the State a new covered electronic device unless:

(1) The covered electronic device is labeled with the name of the manufacturer or the manufacturer's brand label; and

(2) The manufacturer has registered with and, if applicable, submitted a registration fee to the Department as provided under this part.

§9–1728.

(a) A covered electronic device manufacturer's registration shall include:

(1) The brand names under which the manufacturer sells or offers for sale covered electronic devices in the State;

(2) Whether the manufacturer has implemented a covered electronic device takeback program;

(3) If the manufacturer has implemented a covered electronic device takeback program:

(i) A toll–free number or Web site address that provides information about the takeback program, including a detailed description of how a person may return a covered electronic device for recycling, refurbishing, or reuse; and

(ii) One year after the implementation of the program and each year thereafter, a report on the implementation of the program during the prior year, including:

1. The total weight of the covered electronic devices received

by the program from Maryland during the prior year;

2. The total number of covered electronic devices from Maryland recycled, refurbished, and reused during the prior year; and

3. The processes and methods used to recycle, refurbish, or reuse the covered electronic devices received from Maryland;

(4) The total number of covered electronic devices sold in the State in the prior year, including:

(i) The types of covered electronic devices sold; and

(ii) The brand names under which the covered electronic devices were sold; and

(5) Any additional information required by the Department in regulation.

(b) The registration shall:

(1) Be submitted to the Department by March 1 of each year; and

(2) If the manufacturer has implemented a covered electronic device takeback program, be updated prior to any significant change in the program.

(c) (1) The covered electronic device manufacturer registration fee shall be paid by a manufacturer in accordance with this subsection.

(2) For the initial registration by a manufacturer, the registration fee is:

(i) $10,000 for a manufacturer that sold at least 1,000 covered electronic devices in the State in the prior year; and

(ii) $5,000 for a manufacturer that sold at least 100 but not more than 999 covered electronic devices in the State in the prior year.

(3) For each subsequent annual registration by a manufacturer that did not have an implemented covered electronic device takeback program in the prior year, the registration fee is:

(i) 1. On or after March 1, 2013, and before March 1, 2016, $10,000 for a manufacturer that sold at least 1,000 covered electronic devices in the State in the prior year; and

2. On or after March 1, 2016, $5,000 for a manufacturer that sold at least 1,000 covered electronic devices in the State in the prior year; and

(ii) $5,000 for a manufacturer that sold at least 100 but not more than 999 covered electronic devices in the State in the prior year.

(4) For each subsequent annual registration by a manufacturer that had an implemented covered electronic device takeback program in the prior year, the registration fee is $500.

(5) There is no registration fee for a manufacturer that sold less than 100 covered electronic devices in the State in the prior year.

(6) The registration fee required under this subsection shall:

(i) Be submitted to the Department by March 1 of each year; and

(ii) Be paid into the State Recycling Trust Fund.

(d) (1) The Department shall:

(i) Review the registration submitted under this section; and

(ii) If the registration does not meet the requirements of this section and the regulations adopted by the Department under this subtitle, notify the manufacturer of the insufficiency.

(2) Within 60 days after receipt of a notice of insufficiency, the manufacturer shall submit a revised registration that addresses the insufficiencies noted by the Department.

(e) The Department shall maintain a list of registered covered electronic device manufacturers on its Web site.

(f) The sales data submitted in accordance with subsection (a)(4) of this section shall be treated as confidential and proprietary, and may not be disclosed except as otherwise required by law.

§9–1728.1.

(a) In this section, "retailer" means any person that sells a covered electronic device to a consumer.

(b) If a manufacturer is subject to the requirements of §§ 9–1727 and 9–1728 of this part, a retailer may not sell or offer for sale to any person in the State a new covered electronic device manufactured by the manufacturer, unless the manufacturer has complied with the requirements of §§ 9–1727 and 9–1728 of this part.

§9–1728.2.

(a) A manufacturer that has implemented a covered electronic device takeback program shall include educational and instructional materials relating to the destruction and sanitization of data from a covered electronic device:

(1) With each new covered electronic device sold or offered for sale in the State;

(2) On the manufacturer's covered electronic device takeback program Web site; or

(3) As information provided through the manufacturer's covered electronic device takeback program toll–free number.

(b) A manufacturer that is participating in a covered electronic device takeback program established by a group of covered electronic device manufacturers shall be considered as having implemented a covered electronic device takeback program under this part.

§9–1729.

The Department may adopt regulations necessary to implement the provisions of this subtitle, including the required components of a covered electronic device takeback program.

§9–1730.

(a) The provisions and penalties of § 9–342 of this title shall be used and shall apply to enforce violations of this part.

(b) (1) In addition to any other penalty provided by law, the Department may assess against any retailer that violates § 9–1728.1(b) of this part a fine up to $1,000 for each violation, but not exceeding $10,000 total.

(2) A fine under paragraph (1) of this subsection may be assessed only after the retailer that committed the violation has been issued three warnings regarding the violation.

(3) Each day on which a violation occurs or continues is a separate violation under this subsection.

§9–1801.

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

(b) "Household" means any single or multiple residence, hotel, bunkhouse, ranger station, crew quarters, or camping or picnic ground.

(c) (1) "Household hazardous waste" means any waste material, including garbage or trash, derived from a household that would be listed as hazardous waste under the Resource Conservation and Recovery Act but for the fact that the waste is derived from a household.

(2) "Household hazardous waste" may include:

(i) Agricultural chemicals;

(ii) Cleaning agents and solvents;

(iii) Motor oils;

(iv) Paint;

(v) Pesticides; and

(vi) Preservatives.

§9–1802.

(a) By January 1, 1990, each county shall prepare and submit an assessment of the feasibility of establishing a program for the acceptance of household hazardous waste from residents of the county to the Secretary.

(b) The assessment prepared and submitted under subsection (a) of this section shall include:

(1) The estimated cost of providing one household hazardous waste collection day every year;

(2) The feasibility and estimated cost of establishing a regional household hazardous waste collection day every year for the county's geographic region of the State; and

(3) Any other information that would be of use to the State in determining whether to mandate household hazardous waste collection days in each county.

§9–1803.

The Secretary shall assist each county in the preparation of the assessments required under § 9-1802 of this subtitle.

§9–1901.

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

(b) "Distributor" means any person that:

(1) Sells a packaged product to a retailer; or

(2) Receives a shipment or consignment of, or in any other manner acquires, packaged products for distribution to a retailer for:

(i) Sale to a consumer; or

(ii) Promotional purposes.

(c) (1) "Manufacturer" means any person that manufactures a package or packaging component.

(2) "Manufacturer" includes any person that sells a package or packaging component to a distributor.

(d) (1) "Package" means a container used to market, protect, or handle a product.

(2) "Package" includes:

(i) A unit package, an intermediate package, and a shipping container as defined by the American Society for Testing and Materials; and

(ii) An unsealed receptacle such as a carrying case, crate, cup, pail, rigid foil or other tray, wrap, wrapping film, bag, and tub.

(e) (1) "Packaging component" means any individual assembled part of a package.

(2) "Packaging component" includes any interior or exterior blocking, bracing, cushioning, weatherproofing, coating, closure, label, ink, dye, pigment, adhesive, or any other additive.

(3) "Packaging component" does not include any package or packaging component that contains cadmium and is intended for reuse more than 5 times.

§9–1902.

(a) Except as provided in §§ 9-1903 and 9-1904 of this subtitle, on or after July 1, 1993, a manufacturer or distributor may not sell or offer for sale or for promotional purposes any package or packaging component or any product in a package or packaging component to which any of the following was intentionally added during manufacture or distribution:

(1) Lead;

(2) Cadmium;

(3) Mercury; or

(4) Hexavalent chromium.

(b) The sum of the concentration levels of lead, cadmium, mercury, and hexavalent chromium incidentally present in a package or packaging component may

not exceed:

(1) By July 1, 1993, 600 parts per million by weight or 0.06%;

(2) By July 1, 1994, 250 parts per million by weight or 0.025%; and

(3) By July 1, 1995, 100 parts per million by weight or 0.01%.

(c) Tin plated steel that meets the American Society for Testing and Materials Specification A-623 shall be considered a single packaging component.

§9–1903.

The provisions of this subtitle do not apply to:

(1) If it contains a code indicating the date of manufacture, a package or packaging component that was manufactured prior to July 1, 1993;

(2) Until July 1, 1997, a package and packaging component that would not exceed the concentration levels set forth in § 9-1902 of this subtitle but for the addition of recycled materials;

(3) A package or packaging component conditionally exempt under § 9-1904 of this subtitle; and

(4) Any alcoholic beverage bottled before October 1, 1992.

§9–1904.

(a) A manufacturer or distributor of a package or packaging component may submit to the Department an application for a conditional exemption from the provisions of this subtitle.

(b) On the written application of a manufacturer or distributor, the Department may grant a conditional exemption if the Department finds that:

(1) In order to comply with a health or safety requirement of federal law, lead, cadmium, mercury, or hexavalent chromium have been added to the package or packaging component in the manufacturing, forming, printing, or distribution process; or

(2) The regulated substance is essential to the protection, safe handling, or function of the package contents.

(c) A conditional exemption granted under this section:

(1) Expires 2 years after the date the Department grants the exemption; and

(2) If the manufacturer or distributor meets the criteria under subsection (b) of this section, may be renewed for additional periods of 2 years.

§9–1905.

(a) To enforce the provisions of this subtitle, the Department may:

(1) Notify a manufacturer that there are grounds for suspecting that a package or packaging component produced by the manufacturer may not be in compliance with the provisions of this subtitle; and

(2) Request the manufacturer to certify that the package or packaging component is in compliance.

(b) If the manufacturer certifies that the package or packaging component is exempt under § 9-1903 of this subtitle, the manufacturer shall identify the specific basis on which the exemption is claimed.

(c) If the manufacturer fails to certify that the package or packaging component is in compliance or is exempt, the Department may seek an injunction under § 9-1906 of this subtitle to require the manufacturer to withdraw the package or packaging component in question from sale or promotional use within the State.

§9–1906.

(a) (1) Any person who violates any provision of this subtitle or any regulation adopted under this subtitle, including making a false statement in a certificate of compliance, shall be liable to the State for a civil penalty of up to $1,000 for each violation, but not exceeding a total of $10,000 for any action.

(2) Each package or packaging component in violation constitutes a separate violation.

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

(b) Any person who previously has been assessed a civil penalty under this section and who willfully violates any provision of this subtitle or any regulation adopted under this subtitle, including making a false statement in a certificate of compliance, is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $20,000.

(c) The Department may seek an injunction to require the removal of a package or packaging component from sale or promotional use within the State against:

(1) Any person who violates or threatens to violate any provision of this subtitle or any regulation adopted under this subtitle; and

(2) A manufacturer who fails to certify on request of the Department that a package or packaging component produced by the manufacturer is in compliance with or is exempt under the provisions of this subtitle.

§9–1907.

The Department may adopt regulations to administer the provisions of this subtitle.

§9–2001.

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

(b) "Biodegradable" means capable of decomposing:

(1) In a marine environment; and

(2) In wastewater treatment plant processes in accordance with relevant established guidelines identified by the Department, such as:

(i) ASTM International;

(ii) Organisation for Economic Co–operation and Development;

(iii) International Organization for Standardization; or

(iv) Other comparable organizations or authorities.

(c) "Over–the–counter drug" means a drug that is a personal care product that contains a label, drug fact panel, or list of the active ingredients that identifies the product as a drug as required under 21 C.F.R. Section 201.66 (Format and Content Requirements for Over–the–Counter (OTC) Drug Product Labeling).

(d) (1) "Personal care product" means a manufactured good or a component of a manufactured good that is intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for purposes of cleansing, beautifying, promoting attractiveness, or altering appearance.

(2) "Personal care product" does not include a prescription drug.

(e) "Plastic" means a synthetic material that is made from linking monomers through a chemical reaction to create an organic polymer chain that can be molded or extruded at high heat into various solid forms that retain a defined shape during use by a consumer.

(f) "Synthetic plastic microbead" means any intentionally added solid plastic particle that is not biodegradeable that:

(1) Measures less than 5 millimeters in size; and

(2) Is used in a rinse–off personal care product for exfoliation or cleansing purposes.

§9–2002.

(a) (1) This subsection does not apply to over–the–counter drugs.

(2) On or after December 31, 2017, a person may not manufacture for sale a personal care product that contains synthetic plastic microbeads.

(3) On or after December 31, 2018, a person may not accept for sale a personal care product that contains synthetic plastic microbeads.

(b) (1) On or after December 31, 2018, a person may not manufacture for sale an over–the–counter drug that contains synthetic plastic microbeads.

(2) On or after December 31, 2019, a person may not accept for sale an over–the–counter drug that contains synthetic plastic microbeads.

§9–2003.

(a) The Department shall adopt regulations identifying biodegradable guidelines that are acceptable for use by a wastewater treatment plant.

(b) The Department shall periodically review the biodegradable guidelines to ensure that the most scientifically effective methods are being utilized to prevent, to the maximum extent practicable, the entrance of synthetic plastic microbeads in the natural aquatic environment of the State.

§10–101.

Notwithstanding the provisions of Title 20, Subtitle 3 of the Health - General Article, the Secretary is responsible for the general care of the sanitary interests of the people of this State.

§10–102.

The Secretary shall investigate all nuisances that affect the public health and devise means for the control of these nuisances.

§10–103.

(a) The Secretary may adopt rules and regulations to govern the character and location of:

(1) Plumbing;

(2) Drainage;

(3) Water supply;

(4) Offensive trades; and

(5) Disposal of any waste material, including sewage or garbage.

(b) The Secretary may adopt rules and regulations to govern the sanitary condition of:

(1) Streets;

(2) Cesspools;

(3) Outhouses; and

(4) Any sanitary feature connected with any of these.

§10–104.

The Secretary may enter on and inspect any private property to determine whether a nuisance exists.

§10–105.

The Secretary may bring an action to enjoin any person from committing any nuisance subject to this title.

§10–201.

(a) The health officer for each county:

(1) May investigate any condition in the county that is dangerous to human health; and

(2) Shall investigate and report on the sanitary conditions of schools, places of business, and places of employment in the county.

(b) Except in Baltimore County, on the written complaint of a physician or of at least 2 persons who claim to be affected by the condition, the health officer for the county where the condition allegedly exists immediately shall investigate any complaint that any of the following is in a condition dangerous to human health:

(1) Any watercourse, well, spring, open ditch, gutter, cesspool, drain, outhouse, pigpen, or other place.

(2) Any accumulation or deposit of any substance.

(c) If the health officer finds that the condition of the place or thing investigated may injure the life or health of any person, the place or thing is in a state of nuisance and

the health officer shall serve a written notice to the person who is causing the nuisance, ordering the person to abate the nuisance within a time specified in the notice.

(d) A person may not refuse or neglect to comply with the requirements of a notice served under this section.

(e) If a question arises between health officers as to the jurisdiction or duties of a health officer in the abatement of any unhealthy nuisance, the question shall be referred to the Secretary, who shall settle the question.

§10–202.

(a) On the written complaint of 2 physicians or of at least 3 persons who claim to be affected by the condition, the Secretary shall investigate any complaint that any of the following is in a condition that injures any adjacent property or that is dangerous to human health:

(1) Any watercourse, well, spring, open ditch, gutter, cesspool, drain, outhouse, pigpen, or other place.

(2) Any accumulation or deposit of offensive or noxious matter.

(3) Any house, building, trades establishment, or manufacturing place.

(4) Any water in which mosquito larvae breed.

(b) (1) If the Secretary finds that the condition of the place or thing investigated may injure any adjacent property or may injure the life or health of any individual, the place or thing is in a state of nuisance and the Secretary shall serve a written notice to the person who is causing the nuisance, ordering the person to abate the nuisance within a time specified in the notice.

(2) The notice shall be served:

(i) On the person who is causing the nuisance; or

(ii) If the person who is causing the nuisance cannot be found, on the owner or occupant of the property where the nuisance exists.

(c) (1) The Secretary may file a complaint in the circuit court for the county where the nuisance exists if:

(i) The person served with the notice fails to comply with the requirements of the notice; or

(ii) Although the person served complies with the requirements of the notice, the nuisance is likely to recur on the same property.

(2) A complaint filed under this subsection may seek a court order

requiring the person served with the notice to do any or all of the following:

(i) To comply with the requirements of the Secretary's abatement notice.

(ii) To abate the nuisance within a time specified in the order.

(iii) To prevent the nuisance from recurring.

§10–203.

(a) (1) If, after investigation, the Secretary finds that any of the following conditions exists, the place or thing as to which the condition exists is in a state of nuisance:

(i) The contents overflow or leak from an outhouse, a water closet, a septic tank, or a cesspool and present a hazard to public health.

(ii) An outhouse, a water closet, or a cesspool is not flytight and watertight and presents a hazard to public health.

(2) The Secretary summarily may abate any condition that is in a state of nuisance under this subsection.

(b) Before summarily abating a nuisance under this section, the Secretary shall:

(1) Serve an abatement order on the owner of the property where the nuisance exists or, if the owner cannot be found, on the occupant or tenant of the property; or

(2) If the property is unoccupied and the owner cannot be found, attach an abatement order to the property where the nuisance exists.

(c) (1) The abatement order shall require and state:

(i) A time period within which the owner, occupant, or tenant of the property where the nuisance exists shall abate the nuisance; and

(ii) The work and materials necessary to abate the nuisance.

(2) The time period within which to abate the nuisance may not be less than 24 hours nor more than 5 days from the date and hour that the order is served.

(d) (1) If the owner, occupant, or tenant served with an abatement order fails to abate or only partially abates the nuisance within the time specified in the order, the Secretary or a representative of the Secretary shall:

(i) Enter on the property; and

(ii) At the expense of the owner, occupant, or tenant of the property, do any work and use any materials necessary to abate the nuisance.

(2) The Secretary may not expend more than $500 to abate the nuisance.

(e) If, within 60 days after the Secretary has completed an abatement under this section, the owner, occupant, or tenant does not pay to the Secretary the cost of the abatement, the Secretary shall file suit against the owner, occupant, or tenant in the district court for the county where the nuisance was abated.

(f) A person may not:

(1) Interfere with the Secretary or a representative of the Secretary summarily abating a nuisance under this section; or

(2) Refuse to allow the Secretary or a representative of the Secretary to enter on any property for the purpose of summarily abating a nuisance under this section.

§10–301.

A person who refuses or neglects to comply with the requirements of a notice served under § 10-201 of this title is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $50.

§10–302.

(a) A person who fails to exercise due diligence under a court order to abate a condition under § 10-202 of this title is guilty of a misdemeanor and on conviction is subject to:

(1) A fine not exceeding $10 for each day the condition is not abated; and

(2) The cost of prosecution.

(b) A person who knowingly or willfully acts contrary to a court order to abate a condition under § 10-202 of this title is guilty of a misdemeanor and on conviction is subject to:

(1) A fine not exceeding $20 for each day the violation continues; and

(2) The cost of prosecution.

§10–303.

In addition to any other penalty provided by law, a person is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $100 or imprisonment not exceeding 30 days or both, if the person:

(1) Interferes with the Secretary or a representative of the Secretary summarily abating a nuisance under § 10-203 of this title; or

(2) Refuses to allow the Secretary or a representative of the Secretary to enter on any property for the purpose of summarily abating a nuisance under § 10-203 of this title.

§10–304.

A person who violates any rule or regulation that the Secretary adopts under Subtitle 1 of this title is guilty of a misdemeanor and on conviction is subject to a fine for each offense not exceeding the lesser of the penalty provided by the rule or regulation or $100.

§10–305.

(a) In this section, "nuisance" includes:

(1) Any condition that is dangerous to health or safety, such as an inadequately protected swimming pool or ditch;

(2) Any condition that may adversely affect the public health, such as an unsanitary outhouse, a foul pigpen, an improperly functioning sewage system, an unkempt junkyard, an unkempt scrap metal processing facility, an excessive accumulation of trash or garbage, dead animals, a contaminated water supply, an inadequately protected water supply, or a rat harborage;

(3) Housekeeping in any building that is so poor that the health of the owner, occupants, employees, or neighbors may be endangered; and

(4) Any condition that may endanger health through the spreading of the condition by any means, including by streams, surface drainage, air currents, winged life, domestic animals, or human beings.

(b) In Cecil County or Allegany County, in addition to any other penalty imposed by this subtitle, a person who refuses or neglects to comply with a notice or order to abate a nuisance by the Secretary, or by the health officer for the county where the nuisance exists, is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $100 a day for each day the violation continues.

§12–101.

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

(b) "Board" means the State Board of Waterworks and Waste Systems Operators.

(c) (1) "Certificate" means, unless the context requires otherwise, a certificate

of certification as an operator, industrial operator, or superintendent, issued by the Board.

(2) "Certificate" includes:

(i) A certificate; and

(ii) A temporary certificate, as limited by § 12–305 of this title.

(d) "Certified industrial operator" means, unless the context requires otherwise, an industrial operator who is certified by the Board.

(e) "Certified operator" means, unless the context requires otherwise, an operator who is certified by the Board.

(f) "Certified superintendent" means, unless the context requires otherwise, a superintendent who is certified by the Board.

(g) (1) "Industrial operator" means an individual who operates the controls or maintains the logs of an industrial wastewater works.

(2) "Industrial operator" does not include a superintendent.

(h) "Industrial wastewater works" means a facility used to collect, store, pump, treat, or discharge any waste substance that results from:

(1) A manufacturing process;

(2) A business process; or

(3) The development of a natural resource.

(i) (1) "Operator" means an individual who participates in the operation of:

(i) A waterworks, including the control of the flow, processing, and distribution of water; or

(ii) A wastewater works, including the collection, control of flow, processing, and discharge of wastewater and effluent.

(2) "Operator" does not include a superintendent.

(j) "Responsible charge" means responsibility for the operation and performance of all or any part of a waterworks, wastewater works, or industrial wastewater works.

(k) "Superintendent" means an individual who is designated by any employing or appointing person, county, municipality, sanitary district, or this State as the individual in responsible charge of a waterworks, wastewater works, or industrial

wastewater works.

(l) (1) "Wastewater works" means a facility used to collect, store, pump, treat, or discharge any liquid or waterborne waste.

(2) "Wastewater works" does not include:

(i) A facility that is used only by a private residence;

(ii) A facility that uses a septic tank or subsoil absorption; or

(iii) An industrial wastewater works.

(m) (1) "Waterworks" means a facility used to collect, store, pump, treat, or distribute water for human consumption.

(2) "Waterworks" does not include a facility that is used only by a private residence.

§12–102.

The General Assembly enacts this title to establish a certification program for superintendents, operators, and industrial operators of waterworks, wastewater works, and industrial wastewater works:

(1) To protect the quality of water in which wastes are placed;

(2) To protect the public health; and

(3) To prevent pollution.

§12–103.

This title does not limit the right of an individual to practice a health occupation that the individual is authorized to practice under this article or the Health - General Article.

§12–201.

There is a State Board of Waterworks and Waste Systems Operators in the Department.

§12–202.

(a) (1) The Board consists of 11 members.

(2) With the advice and consent of the Senate, the Governor shall appoint 8 members who represent one or more of the following:

(i) Municipal government;

(ii) County government;

(iii) A sanitary or a metropolitan commission;

(iv) Waterworks supervision;

(v) Wastewater works or industrial wastewater works supervision;

(vi) Agriculture;

(vii) Industrial wastewater works superintendents; and

(viii) The Maryland Environmental Service.

(3) The Secretary shall appoint:

(i) 1 engineer member from the Department; and

(ii) 2 public members who represent the community at large.

(b) Before taking office, each appointee to the Board shall take the oath required by Article I, § 9 of the Maryland Constitution.

(c) (1) The term of a member appointed by the Governor is 4 years.

(2) The terms of members are staggered as required by the terms provided for members of the Board on July 1, 1981. The terms of those members end as follows:

(i) Three in 1982;

(ii) One in 1983;

(iii) One in 1984; and

(iv) Two in 1985.

(3) At the end of a term, a member appointed by the Governor continues to serve until a successor is appointed and qualifies.

(4) A member who is appointed by the Governor after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(d) The members appointed by the Secretary serve at the pleasure of the Secretary.

(e) The Governor may remove for incompetence or misconduct a member appointed by the Governor.

§12–203.

(a) From among its members, the Board annually shall elect a chairman.

(b) The Secretary of the Environment shall designate a representative of the Department as Board secretary.

(c) The manner of election of officers shall be as the Board determines.

§12–204.

(a) The Board shall meet at least once a year, at the times and places that it determines.

(b) Each member of the Board is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(c) The Board may employ a staff in accordance with the State budget.

§12–205.

In addition to the powers set forth elsewhere in this title, the Board may recommend:

(1) Standards to the Secretary for the classification of waterworks, wastewater works, and industrial wastewater works; and

(2) Rules and regulations for adoption by the Secretary to carry out the provisions of this title.

§12–206.

(a) (1) The Board may set reasonable fees for the issuance and renewal of certificates and its other services.

(2) The fees charged may be set so as to produce funds to approximate the cost of maintaining the Board.

(b) In accordance with the State budget, the Board may pay expenses incurred in carrying out the provisions of this title.

(c) The Board shall pay all funds collected under this section into the General Fund of this State.

§12–301.

(a) Except as otherwise provided in this section, an individual shall be certified by the Board in an appropriate classification before a waterworks, wastewater works, or industrial wastewater works may employ the individual as:

(1) A superintendent; or

(2) An operator or industrial operator in a job function determined by the Secretary.

(b) This section does not prevent a governmental agency or a person from continuing to employ in a waterworks, wastewater works, or industrial wastewater works, until July 2, 1982, an operator or industrial operator who is not certified under this title.

§12–302.

(a) The Secretary shall adopt rules and regulations for the qualifications of applicants.

(b) To qualify for certification, the applicant shall meet the education and experience requirements that the Secretary sets by rule or regulation under this section.

(c) Except as otherwise provided in this title or the rules and regulations adopted under this title, the applicant shall pass an examination given by the Board under this subtitle.

§12–303.

(a) To apply for certification, an applicant shall submit an application to the Board on the form that the Board requires.

(b) The Secretary shall adopt rules and regulations as to application procedures.

§12–304.

(a) The Secretary shall adopt rules and regulations for the examination of applicants.

(b) An applicant who otherwise qualifies for certification is entitled to be examined as provided in this section.

(c) The Board shall give examinations to applicants at least twice a year, at the times and places that the Board determines.

(d) The Board shall notify each qualified applicant of the time and place of examination.

(e) Subject to subsection (a) of this section, the Board shall determine the subjects, scope, form, and passing score for examinations given under this subtitle.

§12–305.

(a) The Board shall certify any applicant who meets the requirements of this title and of any applicable rule or regulation adopted under this title.

(b) The Board may issue a temporary certification to any applicant who lacks the experience or the education that is acceptable to the Board for certification, if the applicant:

(1) Applies for certification under § 12–303 of this subtitle; and

(2) Complies with any applicable rule or regulation adopted under this title for this purpose.

§12–306.

(a) Except as otherwise provided in this section, certification authorizes a waterworks, wastewater works, or industrial wastewater works to employ the certified individual as an operator, industrial operator, or superintendent in an appropriate job classification.

(b) Certification as an operator authorizes the operator to perform tasks assigned by a certified superintendent, if an operator is not prohibited from performing those tasks by the rules and regulations adopted under this title.

(c) The Secretary shall adopt rules and regulations to classify or certify superintendents, operators, and industrial operators to perform certain tasks in waterworks, wastewater works, and industrial wastewater works.

§12–307.

The Secretary shall adopt rules and regulations for the term and renewal of certifications.

§12–308.

(a) Subject to the hearing provisions of § 12–309 of this subtitle, the Board may deny certification or temporary certification to any applicant, if the applicant:

(1) Fraudulently or deceptively obtains or attempts to obtain a certificate or temporary certificate for the applicant or for another; or

(2) Fraudulently or deceptively uses a certificate or temporary certificate.

(b) Subject to the hearing provisions of § 12–309 of this subtitle, the Board may reprimand any certificate holder, or suspend or revoke a certification or temporary certification, if:

(1) The certificate holder:

(i) Fraudulently or deceptively obtains or attempts to obtain a certificate or temporary certificate for the certificate holder or another; or

(ii) Fraudulently or deceptively uses a certificate or temporary certificate; or

(2) The Board has any other reasonable cause for the action.

§12–309.

(a) Except as otherwise provided in the Administrative Procedure Act, before the Board takes any action under § 12-308 of this subtitle, it shall give the individual against whom the action is contemplated an opportunity for a hearing before the Board.

(b) The Board shall give notice and hold the hearing in accordance with the Administrative Procedure Act.

(c) If after due notice the individual against whom the action is contemplated fails or refuses to appear, nevertheless the Board may hear and determine the matter.

§12–310.

(a) Except as provided in this section for an action under § 12-308 of this subtitle, any person aggrieved by a final decision of the Board in a contested case, as defined in the Administrative Procedure Act, may:

(1) Appeal the decision to the Board of Review; and

(2) Then take any further appeal allowed by the Administrative Procedure Act.

(b) (1) Any person aggrieved by a final decision of the Board under § 12-308 of this subtitle may not appeal to the Secretary or Board of Review but may take a direct judicial appeal.

(2) The appeal shall be made as provided for judicial review of final decisions in the Administrative Procedure Act.

§12–401.

(a) The Secretary shall classify all waterworks, wastewater works, and industrial wastewater works in this State.

(b) In determining the classification of a waterworks, wastewater works, or industrial wastewater works, the Secretary shall consider:

(1) The size or capacity of the facility;

(2) The type of treatment used;

(3) The character of the water or wastes treated; and

(4) Any other physical conditions that affect the facility.

§12–402.

(a) Except as provided in subsection (b) of this section, each waterworks, wastewater works, and industrial wastewater works shall be under the supervision of a superintendent who is certified in the appropriate classification.

(b) A waterworks, a wastewater works, and an industrial wastewater works may have a certified operator serve in responsible charge instead of a certified superintendent if approved by the Department and if the facility:

(1) Serves fewer than 500 persons;

(2) Has minimal treatment requirements as determined by the Department; and

(3) Employs no more than two operators.

(c) The Department shall enforce this section.

§12–403.

The Secretary shall adopt rules and regulations to carry out the provisions of this title.

§12–404.

(a) The Department shall provide the necessary training throughout this State to carry out the provisions of this title.

(b) The Department shall request budget support for the federal and State approved training center in this State.

§12–501.

(a) A person or municipal or private corporation may not operate a waterworks, wastewater works, or industrial wastewater works unless the facility is under the responsible charge of a certified superintendent or certified operator as provided under § 12–402 of this title.

(b) After July 1, 1982, a person or municipal or private corporation may not operate a waterworks or wastewater works unless all operators in the waterworks or wastewater works are certified operators.

(c) After July 1, 1982, a person or municipal or private corporation may not operate an industrial wastewater works unless all industrial operators in the industrial

wastewater works are certified industrial operators.

(d) The Department shall enforce this section.

§12–504.

(a) A person or municipal or private corporation that violates any provision of this title or any rule or regulation adopted under this title is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $25 for each day of violation.

(b) Each day of employment in violation of this title or of any rule or regulation adopted under this title is a separate offense.

§12–601.

This title may be cited as the "Maryland Waterworks and Waste Systems Operators Act".

§12–602.

Subject to the evaluation and reestablishment provisions of the Program Evaluation Act, and except for the rules and regulations adopted by the Secretary, this title shall terminate and be of no effect after July 1, 2021.

§13–101.

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

(b) "Board" means the State Board of Well Drillers.

(c) "Geotechnical" refers to that category of well driller license which authorizes the practice of well drilling limited to wells constructed for the purpose of sampling, measuring, or test pumping for scientific, engineering, or regulatory purposes, including wells constructed specifically for the removal of contaminants from an aquifer, but not including water supply test wells.

(d) (1) "License" means, unless the context requires otherwise, any license issued by the Board under this title to practice well drilling.

(2) "License" includes, unless otherwise indicated:

(i) A well driller license; and

(ii) A restricted license.

(e) "Person" means:

(1) The federal government, this State, any county, municipal corporation, or other political subdivision of this State, or any of their units;

(2) Any individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind; and

(3) Any partnership, firm, association, corporation, or other entity.

(f) "Practice well drilling" includes engaging in any of the following activities for profit:

(1) Making, altering, repairing, or sealing a well; or

(2) Installing, altering, repairing, or disconnecting well system equipment.

(g) "Restricted license" means any license issued by the Board that authorizes its holder to engage in some, but not all, of the activities which constitute the practice of well drilling.

(h) "Water supply" refers to that category of well driller license which authorizes the practice of well drilling limited to wells constructed for the purpose of obtaining a water supply, including wells constructed for the purpose of installing a heat pump.

(i) "Well" means any hole made in the ground:

(1) To explore for groundwater;

(2) To obtain or monitor groundwater;

(3) To inject water into any underground formation from which groundwater may be produced; or

(4) To transfer heat to or from the ground or groundwater, if the hole:

(i) Extends more than 20 feet below the surface of the ground; and

(ii) Is not a well for obtaining geothermal resources under § 5–601 of this article.

(j) "Well driller license" means any license issued by the Board to engage in all activities that constitute the practice of well drilling, including all activities permitted under any restricted license.

(k) (1) "Well system equipment" means any equipment that is necessary to draw or purify water from a well.

(2) "Well system equipment" includes any casing, grout, screen, water tank, water pump, or water conditioning equipment.

§13–102.

(a) This title does not limit the right of an individual to practice a health occupation that the individual is authorized to practice under this article or the Health – General Article.

(b) This title does not limit the right of an individual to install or repair a water pump, a water tank, or water conditioning equipment if the individual is authorized to provide plumbing services as a master plumber in the State.

§13–201.

There is a State Board of Well Drillers in the Department.

§13–202.

(a) (1) The Board consists of seven members appointed by the Governor with the advice of the Secretary and the advice and consent of the Senate.

(2) Of the seven Board members:

(i) One shall be from the Department of the Environment;

(ii) One shall be from the Department of Natural Resources;

(iii) One shall be a public member; and

(iv) Four shall be licensed master well drillers who are actively practicing well drilling at the time of appointment and shall include:

1. One from Caroline, Cecil, Dorchester, Kent, Queen Anne's, Somerset, Talbot, Wicomico, or Worcester county;

2. One from Baltimore City or Baltimore, Carroll, Harford, Howard, or Montgomery county;

3. One from Anne Arundel, Calvert, Charles, Prince George's, or St. Mary's county; and

4. One from Allegany, Frederick, Garrett, or Washington county.

(b) Before taking office, each appointee to the Board shall take the oath required by Article I, § 9 of the Maryland Constitution.

(c) (1) The term of a member is 2 years.

(2) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(3) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(d) The Governor may remove a member for incompetence or misconduct.

§13–203.

(a) The public member is the chairman of the Board.

(b) Except for the chairman, the manner of election of officers and their terms of office shall be as the Board determines.

§13–204.

(a) (1) With the approval of the Secretary, the Board may employ and discharge an executive director.

(2) The executive director is entitled to compensation in accordance with the State budget.

(b) (1) The executive director shall have a broad knowledge of well drilling.

(2) The executive director shall devote the time that is necessary to fulfill the duties of the office and may not hold any position or engage in another business that interferes or appears to be inconsistent with the position of executive director.

§13–205.

(a) The Board shall determine the times and places of its meetings.

(b) Each member of the Board is entitled to:

(1) Compensation in accordance with the State budget unless the member otherwise is a public official; and

(2) Reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(c) (1) With the approval of the Secretary, the Board may employ a Board secretary and other staff.

(2) The Board secretary and other staff are entitled to compensation in accordance with the State budget.

§13–206.

(a) In addition to the powers set forth elsewhere in this title, the Board may adopt regulations to carry out the provisions of this title.

(b) In addition to the duties set forth elsewhere in this title, the Board shall:

(1) Carry out the provisions of this title;

(2) Review and comment on proposed regulations that relate to well system equipment and the construction of wells that are submitted to it before adoption by the Secretary;

(3) Collect and account for any funds received under this title;

(4) Keep a record of:

(i) Each license that it issues; and

(ii) Each action it takes under § 13-310 of this title;

(5) Require any person who practices well drilling to be covered in accordance with its regulations by a reasonable performance bond and reasonable contractor's liability insurance; and

(6) Have an official seal.

(c) On complaint or on its own motion, the Board may investigate allegations of practicing well drilling without a license.

§13–207.

(a) (1) The Board shall set reasonable fees necessary to carry out its responsibilities under this title.

(2) The Board may set fees for the issuance and renewal of licenses according to class of license.

(b) The Board shall pay any fee collected under this title into the General Fund of the State.

§13–301.

(a) Except as otherwise provided in this title, a person shall be licensed by the Board before the person may practice well drilling in this State.

(b) A person who has not been licensed by the Board may, after having notified the county board of health, install a temporary dewatering device to facilitate the installation of underground utilities if the device:

(1) Is installed 30 feet or less below the ground surface;

(2) Is not located in any trench used for the installation of underground utilities;

(3) Contains no mechanical pumping equipment below the surface; and

(4) Is removed no more than 30 days after installation.

(c) A person installing a temporary dewatering device under subsection (b) of this section shall restore the subsurface conditions of the installation area as nearly as possible to the conditions that existed before the installation.

§13–302.

(a) The Board shall adopt rules and regulations for the qualifications of applicants.

(b) Except as otherwise provided in this title, to qualify for a license, an applicant shall meet any reasonable qualifications or requirements that the Board establishes for license applicants.

§13–303.

To apply for a license, an applicant shall:

(1) Submit an application to the Board on the form that the Board requires; and

(2) Pay to the Board an application fee set by the Board.

§13–304.

(a) If the Board requires an examination, an applicant who otherwise qualifies for a license is entitled to be examined for that license as provided in this section.

(b) The Board shall give any examination that it requires to applicants at the times and places that the Board determines.

(c) The Board shall notify each qualified applicant of the time and place of examination.

(d) (1) The Board shall determine the subjects, scope, form, and passing score for examinations given under this subtitle.

(2) The Board may supplement a written examination given under this section with an oral or practical examination.

§13–305.

(a) Subject to the provisions of this section, the Board may make a reciprocal agreement with any other state to waive any examination or fee requirement of this title for an applicant who is licensed to practice well drilling in that state.

(b) An agreement made under this section may allow the Board to grant a waiver only if the applicant provides adequate evidence that the applicant:

(1) Meets the qualifications or requirements established by the Board under this title; and

(2) Became licensed in the other state after passing in that or any other state an examination that is similar to any required examination for which the applicant is seeking the waiver.

(c) An agreement may be made under this section only if, under the agreement, the other state waives the examination or fee requirement of licensees of this State to a similar extent as this State waives the examination or fee requirements for individuals licensed in that state.

§13–306.

(a) The Board shall issue an appropriate license to any applicant who:

(1) Meets the requirements of this title;

(2) Pays the required fee; and

(3) Provides evidence of any performance bond and contractor's liability insurance that the Board may require.

(b) (1) In accordance with its rules and regulations, the Board shall issue well driller licenses and restricted licenses.

(2) (i) There are 3 categories of well driller licenses:

1. Well driller general;

2. Well driller–geotechnical; and

3. Well driller–water supply.

(ii) A well driller license may be limited to the drilling of wells for particular purposes.

(3) There are 3 categories of restricted licenses:

(i) Water conditioner installer;

(ii) Water pump installer; and

(iii) Well rig operator.

(c) (1) There is a master class license and a journeyman class license in each

category of well driller license.

(2) There is an apprentice class well driller license which shall serve as:

(i) The apprentice license for all categories of well driller licenses; and

(ii) The apprentice license for the well rig operator category of restricted license.

(3) There is an apprentice class license in the following restricted license categories:

(i) Water conditioner installer; and

(ii) Water pump installer.

(4) The Board shall designate on each license issued the category and, where applicable, the class of the license.

(d) Until July 1, 1993, this title does not prohibit any master well driller licensed by the Board on July 1, 1990 from practicing well drilling while obtaining the education and experience required to be licensed under any one of the 3 categories of well driller licenses in this title.

(1) The Board may waive the examination requirement of this title for any master well driller licensed by the Board on July 1, 1990 who provides to the Board satisfactory evidence that the licensee has:

(i) Well driller–geotechnical – installed geotechnical wells during the past 7 years and obtained national certification as a monitoring well driller or completed a 40–hour training program dealing with hazardous waste or monitoring site operations required by the Occupational Safety and Health Administration;

(ii) Well driller–water supply – installed 20 water supply wells during the past 7 years and acquired 10 of the 20 hours of continuing education required by § 13–308 of this subtitle in water conditioning and water pump technology; or

(iii) Well driller–general – fulfilled the requirements of subparagraphs (i) and (ii) of this paragraph.

(2) The Board shall adopt regulations to implement the provisions of this section.

§13–307.

(a) Each class of license authorizes the licensee to practice well drilling under

the conditions set by the rules and regulations of the Board for that class of license while the license is effective.

(b) A license does not permit a licensee to make any well for which the following permits have not been obtained from the Department, if required:

(1) A permit to drill a well under § 9-1306 of this article; or

(2) A water appropriation or use permit under § 5-502 of this article.

§13–308.

(a) A license expires on the date set by the Board, unless the license is renewed for an additional term as provided in this section. A license may not be renewed for a term longer than 2 years.

(b) At least 1 month before the license expires, the Board shall send to the licensee, by first–class mail to the last known address of the licensee, a renewal notice that states:

(1) The date on which the current license expires;

(2) The date by which the renewal application must be received by the Board for the renewal to be issued and mailed before the license expires; and

(3) The amount of the renewal fee.

(c) Before the license expires, the licensee periodically may renew it for an additional 2–year term if the licensee:

(1) Otherwise is entitled to be licensed;

(2) Pays to the Board a renewal fee set by the Board; and

(3) Submits to the Board:

(i) A renewal application on the form that the Board requires;

(ii) Satisfactory evidence of compliance with the performance bond and contractor's liability insurance requirements of the Board; and

(iii) Satisfactory evidence of compliance with any continuing education requirement established under this subtitle for license renewal.

(d) (1) Beginning July 1, 1985, within the license renewal period, each licensee shall comply with the continuing education requirements of this section as a precondition for the renewal of that license.

(2) A licensee shall complete 20 hours of approved continuing education

instruction covering well drilling subject matter approved by the Board.

(3) (i) The Board shall approve the substance and form of each continuing education course, if the course is:

1. Offered by qualified instructors experienced in the well drilling industry and approved by the Board; or

2. Conducted by educational institutions approved by the Board.

(ii) The licensee is responsible for the cost of any continuing education course.

(4) The Board may waive the requirements of this subsection if a person can show just cause why that person is not able to meet the requirements.

(e) The Board may not require a licensee who applies for a renewal of the license to take an examination.

(f) The Board shall renew the license of each licensee who meets the requirements of this section.

§13–309.

(a) Subject to the provisions of this section, the Board shall issue a temporary license to an applicant who:

(1) Demonstrates to the satisfaction of the Board that granting a temporary license to the applicant is in the public interest and does not pose a substantial risk of harm to the public health or welfare or the environment;

(2) Meets the requirements of §§ 13-303 and 13-306 of this subtitle; and

(3) Passes an examination on applicable Maryland well construction regulations.

(b) While it is effective, a temporary license to practice well drilling authorizes the holder to practice well drilling subject to the same restrictions imposed on the holder of a license of the same category and class.

(c) A temporary license expires at the first to occur of the following:

(1) When the Board issues or refuses to issue a license under § 13-306 of this subtitle; or

(2) On the expiration date that the Board designates on the temporary license.

§13–310.

(a) Subject to the hearing provisions of § 13-311 of this subtitle, the Board shall suspend or revoke a license if the licensee:

(1) Fraudulently or deceptively obtains or attempts to obtain a license for the licensee or for another;

(2) Fraudulently or deceptively uses a license; or

(3) Is guilty of gross negligence, incompetence, or misconduct while practicing well drilling.

(b) Subject to the hearing provisions of § 13-311 of this subtitle, the Board may deny a license to any applicant on any of the grounds specified in subsection (a) of this section.

(c) Subject to the hearing provisions of § 13-311 of this subtitle, the Board may deny a license to any applicant, reprimand a licensee, or suspend or revoke a license if the Board finds that the applicant or licensee:

(1) Has violated any law, rule, or regulation that applies to practicing well drilling; or

(2) Has been disciplined by a licensing or disciplinary authority of any other state or county, or been convicted or disciplined by a court of any state or county, for an act that would be grounds for disciplinary actions under this subtitle.

§13–311.

(a) Except as otherwise provided in the Administrative Procedure Act, before the Board takes any action under § 13–310 of this subtitle or § 13–506 of this title, it shall give the person against whom the action is contemplated an opportunity for a hearing before the Board.

(b) The Board shall give notice and hold the hearing in accordance with the Administrative Procedure Act.

(c) The hearing notice shall be served in accordance with § 1–204 of this article at least 30 days before the hearing.

(d) The person may be represented at the hearing by counsel.

(e) The Board may issue subpoenas and administer oaths in connection with any proceeding under this section.

(f) If after due notice the person against whom the action is contemplated fails or refuses to appear, nevertheless the Board may hear and determine the matter.

§13–312.

Any person aggrieved by a final decision of the Board in a contested case, as defined in § 10-202 of the State Government Article, may take an appeal as allowed in §§ 10-222 and 10-223 of the State Government Article.

§13–313.

On the affirmative vote of at least 5 members of the Board, the Board may reinstate a license or reissue a license to any person whose license has been suspended.

§13–401.

This title does not affect any authority of a political subdivision of this State or any other unit of this State to adopt or enforce laws, ordinances, rules, or regulations that govern wells or the use of water.

§13–402.

A political subdivision of this State may not require as a condition to practicing well drilling:

(1) Any authorization other than as provided in this title; or

(2) Any additional performance bond or contractor's liability insurance.

§13–403.

(a) At the request of the Board or the Department, the Attorney General shall bring an action for an injunction against any person who violates any provision of this title or any order or permit issued by the Board or the Department under this title.

(b) In any action for an injunction under this section, any finding of the Board after a hearing is prima facie evidence of each fact the Board determines.

(c) On a showing that any person is violating or is about to violate any order or permit issued by the Board or the Department, a court shall grant an injunction without requiring a showing of a lack of an adequate remedy at law.

(d) If an emergency exists that creates imminent danger to the public health or welfare or the environment, the Attorney General at the request of the Board or the Department may institute a civil action for an immediate injunction to stop any pollution or other activity that is causing the danger.

§13–404.

The Attorney General shall represent this State in each case that arises under this title, including the recovery of penalties.

§13–501.

A person may not practice, attempt to practice, or offer to practice well drilling unless licensed by the Board.

§13–502.

Unless authorized to practice well drilling under this title, a person may not represent to the public by title, by description of services, methods, or procedures, or otherwise that the person is authorized to practice well drilling in this State.

§13–505.

(a) A person who violates any provision of this title or of any regulation adopted under this title is guilty of a misdemeanor and on conviction is subject:

(1) To a fine not exceeding $500 or imprisonment not exceeding 3 months, or both; or

(2) To a fine not exceeding $1,000 or imprisonment not exceeding 1 year, or both, for any subsequent violation of this title that occurs within 2 years of an earlier violation of this title.

(b) Each day that a person practices well drilling without a license constitutes a separate offense.

§13–506.

(a) Instead of or in addition to any other penalties under this title, the Board may impose a civil penalty on a person who violates § 13-501 or § 13-502 of this subtitle in an amount not exceeding $1,000 per day for all violations cited on a single day.

(b) In setting the amount of the civil penalty, the Board shall consider:

(1) The seriousness of the violation;

(2) The harm caused by the violation;

(3) The good faith of the violator;

(4) History of previous violations by the violator; and

(5) Other relevant factors.

(c) If a violator fails to pay a civil penalty within 30 days of its imposition by the Board, the matters shall be forwarded to the Central Collection Unit in the Department of Budget and Management for the collection of the civil penalty.

(d) The Board shall pay any penalty collected under this section into the General

Fund of the State.

§13–601.

This title may be cited as the "Maryland Well Drillers Act".

§13–602.

Subject to the Program Evaluation Act, the provisions of this title and all rules and regulations adopted under this title creating the State Board of Well Drillers and relating to the regulation of well drillers are of no effect and may not be enforced after July 1, 2021.

§14–101.

The General Assembly finds and declares that the production and development of oil and gas resources is important to the economic well-being of the State and the nation. The drilling and production of oil and gas should be conducted in a manner that will minimize their effects on the surrounding environment. Furthermore, proper evaluation of a project and the use of the most environmentally sound drilling and production methods are necessary to prevent adverse environmental consequences that would be detrimental to the general welfare, health, safety, and property interests of the citizens of the State. In addition, there are certain circumstances where oil and gas exploration or production should be prohibited, such as when these operations will have a significant adverse effect on the environment. The General Assembly finds that the conduct of exploration or production of oil and gas resources under this subtitle will allow the safe utilization of the State's natural resources and will provide for the protection of the State's environment.

§14–102.

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

(b) "Coalbed methane" means methane and any other gaseous substance occurring in or produced from a coal seam or related, associated, or adjacent rock materials.

(c) "County" includes Baltimore City unless otherwise indicated.

(d) "Department" means the Department of the Environment.

(e) "Field" means the general area underlaid by one or more pools.

(f) "Fund" means the Oil and Gas Fund.

(g) "Gas" means all natural gas and other fluid hydrocarbons, not defined as oil, which are produced from a natural reservoir.

(h) "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the wellhead in liquid form, except liquid hydrocarbons known as distillate or condensate recovered or extracted from gas.

(i) "Owner" means the person who has the right to drill into and produce from a pool, or to store in a pool, and appropriate the oil or gas the person produces or stores either for the person or others.

(j) "Person" means any individual, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind.

(k) "Pool" means an underground reservoir containing a common accumulation of oil, gas, or both.

(l) "Producer" means the owner of a well capable of producing oil, gas, or both.

(m) "Product" means any commodity produced in its natural state by an oil or gas well.

(n) (1) "Production" means the act or process of producing oil or gas from a natural reservoir.

(2) "Production" does not include the sale or distribution of oil or gas.

(o) (1) "Underground storage" means the storing of gas or oil in a geological stratum beneath the surface of the earth.

(2) "Underground storage" includes the injection of gas or oil into and withdrawal from an underground storage reservoir and any other operation necessary for or convenient to the storage of gas or of oil.

(p) "Underground storage reservoir" means the stratum and subsurface area that are used or are to be used for or in connection with the underground storage of gas or of oil.

§14–103.

The Department may enforce effectively the provisions of this subtitle through the adoption and promulgation of rules and regulations. The Department may not prorate or limit the output of any gas or oil well.

§14–104.

(a) A person may not drill any well for the exploration, production, or underground storage of gas or oil in the State without obtaining a permit from the Department of the Environment under the terms and conditions and on the forms the Department prescribes.

(b) (1) The Department shall require an applicant to submit an environmental assessment for the purpose of evaluating an application.

(2) The Department shall coordinate with the Department of Natural Resources in its evaluation of the environmental assessment.

(c) The permit serves as the permit required under the provisions of Title 9, Subtitle 13 of this article, dealing with well drillers.

(d) A person may not dispose of any product of a gas or oil well without the necessary permits issued by the Department.

§14–105.

(a) (1) An applicant for a permit to drill a well under § 14–104 of this subtitle shall submit an application in a manner satisfactory to the Department.

(2) The application for a permit to drill a well under § 14–104 of this subtitle and each application for a permit renewal shall include a closure cost estimate for the proper sealing and plugging of the gas or oil well and reclamation of the site.

(b) The Department shall establish and collect fees for:

(1) The issuance of a permit to drill a well under § 14–104 of this subtitle;

(2) The renewal of a permit to drill a well under § 14–104 of this subtitle; and

(3) The production of oil and gas wells installed after October 1, 2010.

(c) The fees imposed under subsection (b) of this section shall be set by the Department at the rate necessary to implement the purposes set forth in § 14–123 of this subtitle.

(d) In any fiscal year, if the fee schedule established by the Department generates revenue that exceeds the amount necessary to operate a regulatory program to oversee the drilling of oil and gas wells, the Department shall reduce the fees in the following fiscal year.

(e) The fees collected by the Department under this section shall be deposited in the Oil and Gas Fund established under § 14–122 of this subtitle.

(f) The Department shall provide public notice, public informational hearings, and judicial review in accordance with the provisions of § 5–204 of this article.

§14–106.

(a) The Department may bifurcate an application to drill for oil or gas when the drilling will be conducted in geologic formations not yet proven to be productive.

(b) If the Department bifurcates the permit process it may issue a permit for exploration only. Production may not commence until the environmental assessment required by § 14–104 of this subtitle has been completed and approved by the Department and the Department has issued a permit for production. An additional opportunity for a public hearing shall be provided in accordance with § 14–105(f) of this subtitle prior to the issuance of any permit for production.

(c) If the Department bifurcates the permit process, the environmental assessment required under § 14–104 of this subtitle may also be bifurcated to address separately environmental issues associated with exploration and production. However, prior to granting a permit to conduct exploratory drilling in the coastal plain, the Department shall require the applicant to submit an environmental assessment that contains general information regarding the environmental impacts of possible production, including the potential effects of transporting and storing oil or gas and the potential adverse environmental impacts that may arise due to the environmental characteristics of the drilling site.

§14–107.

Notwithstanding any other law, a person may not drill for oil or gas in the waters of the Chesapeake Bay, any of its tributaries, or in the Chesapeake Bay Critical Area.

§14–107.1.

(a) (1) In this section, "hydraulic fracturing" means a drilling technique that expands existing fractures or creates new fractures in rock by injecting fluids, often a mixture of water and chemicals, sand, or other substances, and often under pressure, into or underneath the surface of the rock for purposes that include well drilling for the exploration or production of natural gas.

(2) "Hydraulic fracturing" includes:

(i) Fracking;

(ii) Hydrofracking; and

(iii) Hydrofracturing.

(b) On or before October 1, 2016, the Department shall adopt regulations to provide for the hydraulic fracturing of a well for the exploration or production of natural gas in the State.

(c) Regulations adopted by the Department in accordance with subsection (b) of this section may not become effective until October 1, 2017.

(d) The Department may not issue a permit for the hydraulic fracturing of a well for the exploration or production of natural gas in the State until October 1, 2017.

§14–108.

The Department shall deny the permit if the Department determines that:

(1) The proposed operation shall violate a requirement of this subtitle or a regulation adopted under this subtitle;

(2) The proposed drilling or well operation poses a substantial threat to public safety or a risk of significant adverse environmental impact to, but not limited to, the following:

(i) The Chesapeake Bay;

(ii) The Chesapeake Bay Critical Area;

(iii) Tidal or nontidal wetlands;

(iv) Endangered or threatened species, species in need of conservation, or the habitat of any of them;

(v) Historic properties under § 5A–326 of the State Finance and Procurement Article;

(vi) Populated areas;

(vii) Freshwater, estuarine, or marine fisheries; or

(viii) Other significant natural resources;

(3) The applicant has failed to receive applicable permits or approvals for the operation from all State and local regulatory units responsible for air and water pollution, sediment control, and zoning;

(4) The operation will constitute a significant physical hazard to a neighboring dwelling unit, school, church, hospital, commercial or industrial building, public road, or other public or private property in existence at the time of the application for the permit;

(5) The operation will have a significant adverse effect on the uses of a publicly owned park, forest, or recreation area in existence at the time of the application for the permit; or

(6) The applicant has not corrected any violations committed by the applicant under any prior permit.

§14–109.

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

(2) "Explosives" means normal commercial explosives, blasting agents, and detonators.

(3) "Seismic operations" means the controlled application of vibratory energy from any source to determine if favorable conditions exist for the subsurface entrapment of oil or gas.

(4) "Seismic section" means a graphic, near-vertical display of waveform data that is usually processed by a computer program to facilitate the interpretation of subsurface conditions.

(b) (1) Unless a person obtains a permit from the Department, a person may not conduct seismic operations in the State.

(2) An applicant for a permit to conduct seismic operations shall submit an application that includes the information required by the Department.

(3) (i) In addition to any other information required by the Department, an applicant for a permit to conduct seismic operations on the waters of the Chesapeake Bay and its navigable tributaries shall provide to the Department a written agreement to submit to the Department processed seismic sections for any operation conducted on the waters of the Chesapeake Bay and its navigable tributaries.

(ii) The Department shall hold processed seismic sections submitted under this subsection confidential.

(4) The Department shall determine the terms and conditions for the issuance of a permit to conduct seismic operations.

(5) An applicant for a permit to conduct seismic operations shall demonstrate evidence of sufficient liability insurance coverage, in an amount determined by the Department, for any personal injury or property damage resulting from a seismic operation.

(6) The Department may deny an application for a permit if:

(i) The applicant does not submit the information required by the Department;

(ii) The proposed activity poses a substantial risk of causing environmental damage that cannot be mitigated by the applicant, particularly to:

1. The Chesapeake Bay;

2. The Chesapeake Bay Critical Area;

3. A nontidal wetland;

4. An endangered or threatened species or the habitat of any of these species;

5. A designated archaeological site; or

6. A populated area; or

(iii) The proposed operation will violate regulations adopted by the Department in accordance with this section.

(7) If the Department decides to deny the permit, the notification of denial shall state the reason, any modification necessary for approval of the application, and the rights of the applicant to appeal the decision as provided in Title 10, Subtitle 2 of the State Government Article.

(c) A person may not use explosives in seismic operations conducted on the waters of the Chesapeake Bay and its tributaries.

(d) A person may use explosives in seismic operations conducted on land if the person complies with the requirements for the use of explosives established by the Department.

§14–110.

(a) (1) A permit shall be expressly conditioned upon compliance with all requirements of this subtitle and any regulations adopted under this subtitle.

(2) The Department may place in a permit conditions which the Department deems reasonable and appropriate to assure that the operation shall fully comply with the requirements of this subtitle, and provide for public safety and the protection of the State's natural resources.

(b) Violation of a permit condition is a violation of this subtitle subject to enforcement and penalties under this subtitle.

§14–110.1.

(a) In this section, "water supply" means a source of water used for drinking or other domestic purpose or for agriculture, including livestock.

(b) For each permit the Department issues under this subtitle to drill a well for the exploration or production of gas in deep shale deposits, there is a presumptive impact area around the gas well in which it is presumed that contamination of a water supply was caused by the activities of gas exploration or production.

(c) The presumptive impact area shall be in effect:

(1) Within a radius of 2,500 feet from the vertical wellbore; and

(2) For 365 days after the last event of well drilling, completion, or hydraulic fracturing.

(d) Within a presumptive impact area established under subsections (b) and (c) of this section, the permittee shall replace, at no expense to an owner of real property in the presumptive impact area, a water supply that is contaminated as a result of the permittee's drilling or operation of the gas well.

(e) A water supply within a presumptive impact area that no longer yields potable water as a result of the drilling or operation of a gas well shall be considered to be replaced adequately by a permittee if the permittee provides for the affected property owner a new or retrofitted well or other alternative water supply that is capable of yielding potable water equal to the volume used or needed by the property owner before the contamination of the water supply.

(f) The permittee and the property owner may agree on monetary compensation or other mitigation instead of restoration.

(g) The Department may not require a permittee to replace a water supply or compensate a property owner, as provided in this section, if the permittee demonstrates to the Department by a preponderance of the evidence that:

(1) The contamination is not the result of activities relating to the gas well; or

(2) The contamination existed before the commencement of activities allowed by the permit and was not worsened by those activities.

(h) The Department may adopt regulations to implement this section.

(i) The presumption of causation established under this section does not apply to contamination of a water supply if:

(1) The permit applicant requests the permission of the property owner to sample and test the water supply before commencement of activities and to provide the property owner with a complete copy of the test results; and

(2) The property owner refuses permission.

(j) This section may not be construed to affect any common law remedies available to a property owner.

(k) (1) The presumption of causation established under this section shall apply in:

(i) A proceeding for judicial review under § 14–117 of this subtitle;

(ii) An action for an injunction under § 14–118 of this subtitle; or

(iii) A civil action for damages or equitable relief brought by a property owner against a permittee.

(2) The presumption may be rebutted by a preponderance of the evidence.

§14–111.

(a) Except as provided in subsection (d) of this section, every holder of a permit to drill for gas or oil shall:

(1) Submit a completion report on forms to be supplied by the Department within 30 days after the drilling of a well has been completed;

(2) Submit cutting samples at the request of the Department;

(3) Notify the Department when a well is about to be abandoned;

(4) Comply with all the requirements of this subtitle, including the proper sealing and plugging of a gas or oil well and reclamation of the site;

(5) Provide financial assurance of at least $50,000 for each gas or oil well, including each well on a multiwell pad, but not less than the most recent closure cost estimate provided by the permit holder under § 14–105(a) of this subtitle;

(6) Obtain and keep in effect comprehensive general liability insurance coverage in an amount not less than $300,000 for each person and $500,000 for each occurrence or accident to pay damages for injury to persons or damage to property caused by sudden accidental occurrences arising from, or in support of, the activities authorized by a permit issued under § 14–104 of this subtitle, including the costs and expenses incurred in the investigation, defense, or settlement of claims;

(7) Obtain and keep in effect environmental pollution liability insurance in an amount not less than $1,000,000 per loss for bodily injury and property damage to persons and natural resource damage, including the costs of cleanup and remediation, caused by the sudden or nonsudden release of pollutants arising from, or in support of, the activities authorized by a permit issued under § 14–104 of this subtitle, including the costs and expenses incurred in the investigation, defense, or settlement of claims;

(8) In the event of an assignment or transfer of a permit, maintain the existing financial assurance required under this section until replacement financial assurance is approved by the Department; and

(9) Notify the Department of the location of the equipment required by regulation for the prevention and containment of gas leaks and oil spills.

(b) The environmental pollution liability insurance required under subsection (a)(7) of this section shall be maintained for 5 years after the Department determines that:

(1) The gas or oil well has been properly sealed and plugged; and

(2) The site has been reclaimed.

(c) The permit holder's financial assurance required under subsections (a) and (b) of this section shall:

(1) Extend to the owner or owners of the surface and subsurface property; and

(2) Cover the acts and omissions of the permit holder's contractors and subcontractors during their activities in connection with the drilling, operation, and closure of the well.

(d) (1) Except as provided in paragraph (2) of this subsection, a holder of a permit to drill for gas or oil that has a well in existence on or before October 1, 2013, shall provide financial assurance by maintaining the same performance bond and liability insurance that is required for the holder's most recent permit or permit renewal issued on or before October 1, 2013.

(2) If a gas or oil well is in existence on or before October 1, 2013, and is modified after October 1, 2013, by recompletion, stimulation, deepening, or adding lateral extensions, the holder of the permit for the gas or oil well shall comply with the requirements for financial assurance contained in subsections (a), (b), (c), and (e) of this section.

(e) The Department may adopt regulations to:

(1) Increase the minimum amounts of financial assurance required under subsection (a) of this section;

(2) Enable permit applicants to offer, and the Department to authorize, alternative means for demonstrating financial assurance, including:

(i) A performance bond;

(ii) A blanket bond;

(iii) Cash;

(iv) A certificate of deposit;

(v) A letter of credit;

(vi) Self–insurance;

(vii) A corporate guarantee; or

(viii) Any other surety the Department determines to be good and

sufficient; and

(3) Establish alternative financial assurance requirements as appropriate for a new gas storage well and a gas storage well that is modified by recompletion, stimulation, deepening, or adding lateral extensions.

(f) The Department shall adopt regulations requiring each holder of a permit to drill for gas or oil to have equipment available for the prevention and containment of gas leaks and oil spills.

(g) A permit or the transfer of a permit may not become effective until the financial assurance requirements of this section have been satisfied.

§14–112.

(a) (1) Except as provided in paragraph (2) of this subsection, a well for the production or underground storage of gas or oil may not be drilled on any property nearer than 1,000 feet to the boundary of the property except by agreement with the owners of the gas and oil on adjacent lands.

(2) A well for the production of coalbed methane may not be drilled on any property nearer than 500 feet to the boundary of the property except by agreement with the owners of coalbed methane on adjacent lands.

(b) On property on which it is impossible to locate a well the required minimum distance from the boundary, and where no agreement with the owners of the gas and oil or coalbed methane on adjacent lands has been made, a well may be located nearer than the required minimum distance under subsection (a) of this section to the boundary with the consent of the Department. However, when any permit to drill a well nearer than the required minimum distance to the boundary has been applied for, the Department shall notify every landowner, royalty owner, or leaseholder within the required minimum distance of the location of the proposed well, giving them a reasonable opportunity to file objections to the issuance of the permit. The Department then shall hold a hearing. If the Department determines that it is necessary for the well to be located nearer than the required minimum distance to the boundary, it may issue the permit. If a permit is issued, any landowner, royalty owner, or leaseholder within the required minimum distance of the proposed well has the right to a rehearing and appeal to the courts provided in this subtitle. A request for a rehearing or an appeal to the courts stays the authority granted under the permit until final determination of the issued permit is made.

(c) The Department, by rule or regulation, shall prescribe the distance between any two wells on any property.

§14–113.

On completion of a well producing gas or oil on any leased lands included under a unit operation agreement, royalties from the producing well shall be paid on all lands

originally included within the unit operation agreement. Within six months after the completion of the producing well, the lands within the unit operation agreement not included as "in pool" acreage and on which no royalties are payable, shall be released, unless the owner of the lands has otherwise agreed in writing. This section does not extend to any leases and unit operation agreements in effect on June 1, 1956.

§14–114.

(a) Except in an emergency, a rule, regulation, order, or amendment may not be made by the Department without a public hearing upon at least ten days' notice. The public hearing shall be held at the time and place prescribed by the Department. Any interested person is entitled to be heard by the Department.

(b) When an emergency requiring immediate action exists, the Department is authorized to issue an emergency order without notice or hearing. An emergency order takes effect upon promulgation. An emergency order may not remain effective for more than 15 days.

(c) All rules, regulations, and orders issued by the Department shall be in writing, entered and indexed in books kept by the Department as public documents open for inspection during normal office hours. A copy of any rule, regulation, or order certified by the Secretary of the Department or the Secretary's designee shall be received in evidence in all courts with the same effect as the original.

(d) The Department may act either upon its own motion or the petition of any interested person. On the filing of a petition concerning any matter within its jurisdiction, it shall promptly fix a date for a hearing and cause notice of the hearing to be given. The hearing shall be held promptly after the filing of the petition. If the hearing relates to the issuance of a permit for or with respect to a specific well, it shall be held in the county or municipal corporation where the well is located. The Department shall enter its order within ten days after the hearing.

§14–115.

(a) The Department may summon witnesses, administer oaths, and require the production of records, books, and documents for examination at any hearing or investigation it conducts.

(b) If any person fails or refuses to comply with a subpoena issued by the Department, or if any witness refuses to testify as to any matter regarding which the witness may be interrogated, any court of competent jurisdiction, upon the application of the Department, may issue an attachment for the person and compel the person to comply with the subpoena, and appear before the Department and produce records, books, and documents for examination and give testimony. If a person disobeys a subpoena or refuses to testify, the court may punish the person for contempt.

§14–116.

Any person adversely affected by any rule, regulation, determination, or order of the Department may within 15 days after its effective date apply to the Department in writing for a rehearing. The application shall be acted upon within 15 days after its filing. The rehearing, if granted, shall be held promptly.

§14–117.

(a) Except as provided in § 14-105 of this subtitle, any person aggrieved by any action of the Department may apply to the circuit court of the county in which the person resides or the well is located for review of its decision. Any other interested party may intervene. The Department may become a party to the appeal. The case shall be docketed at once but may not take precedence over any other civil cause, action, or proceeding on the docket. The court shall hear the proceedings de novo, determine all matters of law and fact without a jury, and render its decision approving, setting aside, or modifying the Department's action.

(b) Any party aggrieved by the final decision of the court may appeal to the Court of Special Appeals.

§14–118.

Upon application of the Department, verified by oath or affirmation, the circuit court of the county where the well is located, sitting in equity, may by injunction enforce compliance with, or restrain the violation of any order, notice, rule or regulation made under the provisions of this subtitle or restrain the violation or attempted violation of any of the provisions of this subtitle.

§14–119.

(a) A person who is the owner or operator of any gas well may not willfully take gas from the well unless the gas is metered by a standard metering system. The cleaning or blowing of a well is not construed as a "taking" within the meaning of this section. If any person or operator producing gas from any well violates the terms of this section, the person's or operator's interest in the lease under which the well is being produced shall be void and subject to cancellation at the suit of the owners of the royalty interest in the leased premises on which the violation occurs.

(b) The Department shall inspect, read, or test any meters, through which natural gas is being measured upon the request of any lessor, lessee, operator, or royalty owner from whose land, lease, or royalty interest, natural gas is being produced.

§14–120.

(a) For each offense, any person who willfully 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 of:

(1) Up to $50,000;

(2) An amount sufficient to cover the cost of damages resulting from all of the following caused by the permittee, including a contractor of the permittee:

(i) Any oil or gas spill;

(ii) Any other discharge; and

(iii) Any violation of this subtitle; and

(3) Costs imposed in the discretion of the court.

(b) Any penalty imposed under this subtitle is in addition to any other penalties provided by law.

§14–121.

(a) The Department may make inspections as it determines necessary to ensure compliance with this subtitle.

(b) In order to carry out an inspection in accordance with this section, the Department, or its authorized agents, may:

(1) Conduct tests or sampling, or examine books, papers, and records that relate to any matter under an investigation in accordance with this subtitle; and

(2) At reasonable times, enter and examine any property, facility, operation, or activity.

§14–122.

(a) There is an Oil and Gas Fund.

(b) The Fund consists of:

(1) Fees collected by the Department under § 14–105 of this subtitle;

(2) Funds appropriated by the General Assembly for deposit to the Fund;

(3) Fines and proceeds from financial assurance instruments collected by the Department in accordance with this subtitle that exceed the amount necessary to reclaim a site; and

(4) Any additional money made available from any sources, public or private, for the purposes for which the Fund has been established.

(c) (1) The Fund is a special, nonlapsing fund that is not subject to § 7–302 of the State Finance and Procurement Article.

(2) Notwithstanding any law to the contrary, unused money in the Fund may not revert to the General Fund.

(d) The Fund shall be maintained and administered by the Department in accordance with the provisions of this subtitle and any regulations the Department adopts.

§14–123.

The Department shall use money in the Fund solely to administer and implement programs to oversee the drilling, development, production, and storage of oil and gas wells, and other requirements related to the drilling of oil and gas wells, including all costs incurred by the State to:

(1) Review, inspect, and evaluate monitoring data, applications, licenses, permits, analyses, and reports;

(2) Perform and oversee assessments, investigations, and research;

(3) Conduct permitting, inspection, and compliance activities; and

(4) Develop, adopt, and implement regulations, programs, or initiatives to address risks to public safety, human health, and the environment related to the drilling and development of oil and gas wells, including the method of hydrofracturing.

§14–124.

Beginning November 1, 2010, the Department shall report each year to the General Assembly, in accordance with § 2–1246 of the State Government Article, on:

(1) The status of the Fund;

(2) Revenues of and expenditures from the Fund;

(3) The efficiency of the regulatory program under this subtitle;

(4) Compliance rates within the regulatory program under this subtitle; and

(5) Based on the factors listed in items (1) through (4) of this section, the necessity to review and adjust the fee in accordance with § 14–105(d) of this subtitle.

§14–125.

The Department shall adopt regulations:

(1) To carry out this subtitle; and

(2) To establish procedures for imposing and collecting the fees established in accordance with § 14–105 of this subtitle.

§14–201.

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

(b) "Department" means the Department of the Environment.

(c) "Gas" means natural gas, whether or not processed by the removal of component parts not essential to its use for light, heat, power, or manufactured gas of any combination or mixture.

(d) "Gas storage company" means any corporation of this State, any other state, the District of Columbia, or the United States, which is engaged in supplying gas to local consumers in this State and which desires to engage in the underground storage of gas in this State in whole or in part for either direct or ultimate distribution to its consumers.

(e) "Public body" means the State, any political subdivision, or any unit of, or created by, either the State or any political subdivision.

(f) "Underground storage" or "underground storage of gas" means the storing of gas in a geological stratum or strata beneath the surface of the earth, together with all operations necessary or convenient therefor including but not limited to the following: acquisition, preparation, alteration, maintenance, utilization, and operation of an underground storage reservoir for the storage of gas together with the injection of gas into the underground storage reservoir and its withdrawal therefrom.

(g) "Underground storage reservoir" means the stratum or strata and the subsurface areas which are or are to be used for, or in connection with, the underground storage of gas.

§14–202.

(a) Subject to the limitations and provisions contained in this subtitle, a gas storage company may acquire by eminent domain the right to utilize for underground storage of gas, geological strata lying not less than 800 feet below the surface of a maximum of 12,000 acres of land in Prince George's County. However, the 12,000 acres shall be within the area located west of highway U.S. 301 where located as of July 1, 1965; north of the Charles County boundary line; east of 76 degrees 56 minutes 30 seconds west longitude; and south of 38 degrees 45 minutes 45 seconds north latitude. The use of eminent domain in any case under this subsection shall be in accordance with the provisions of Title 12 of the Real Property Article, which are applicable to any eminent domain proceeding case under this subtitle.

(b) Subject to the limitations and provisions contained in this subtitle, a gas storage company may acquire, in Prince George's County, by negotiation and agreement, the right to utilize for underground storage of gas, geological strata owned by any public body and lying not less than 800 feet below the surface of land, which right the public body may grant for the consideration agreed upon with the gas storage company. If the company and public body cannot agree upon the consideration, or if there is no public authority other than the General Assembly which has power to enter into the agreement, then the company may acquire the right by eminent domain, in the manner provided in Title 12 of the Real Property Article for the taking by eminent domain of private property for a public use, which provisions are applicable to any case under this subtitle. If the State is made a party, service of process shall be made upon the Attorney General.

(c) A gas storage company may acquire by eminent domain the rights provided for in subsections (a) and (b) of this section in geological strata lying not less than 800 feet below the surface of land in Prince George's County even though this land is already devoted to a public use under authority of law, if the exercise of these rights do not materially interfere with the public use.

§14–203.

The right to take by eminent domain under § 14–202(a) and (b) of this subtitle, may not be exercised unless the gas storage company desiring the right first obtains an order from the Public Service Commission, made after a public hearing, finding the underground storage project to be in the public interest. The company also shall obtain an underground gas storage permit. A permit may not be issued without the consent of the Department.

§14–204.

(a) In any eminent domain proceedings under § 14–202(a) and (b) of this subtitle, the owner of the land shall be compensated for the right to utilize geological strata being taken by eminent domain for the underground storage of gas, and for any commercially recoverable oil or gas not owned by the gas storage company in the strata.

(b) In any eminent domain proceedings under § 14–202(a) of this subtitle, the owner or owners in fee of the land have the right by unanimous election in their answer to have the jury make, after evidence is presented, alternate inquisitions assessing the fair value of the underground storage rights, and the fair value of the fee–simple ownership, including all improvements. On the tenth day following the date of the verdicts, the court shall enter a judgment of condemnation on the inquisition for the fair value of the underground storage rights, unless on or before the tenth day every owner shall join in an irrevocable election, filed in writing in the case, to have a judgment of condemnation entered on the inquisition for the fee–simple title to the property including all improvements, in which case the court shall enter a judgment of condemnation for the fee–simple title to the property. Unless all persons having an

interest in the fee–simple title join in the election provided for, the court shall enter judgment of condemnation on the inquisition for the underground storage rights. In the event the property owner elects to have a judgment of condemnation entered on the inquisition for the fee–simple title to the property, he shall be entitled to defer final settlement for a period of time not exceeding six months from the date of the election. However, nothing in this subtitle shall prevent the gas storage company from utilizing underground storage rights during this time, subsequent to the inquisition. The property owner has the duty, during the period prior to final settlement, to maintain the property in reasonable condition, normal wear and tear excepted.

§14–205.

The right to utilize geological strata for the underground storage of gas, acquired by any gas storage company by eminent domain under § 14–202(a) and (b) of this subtitle, is subject to the right of the owner of the land or of other rights or interests, to penetrate the strata for the purpose of exploring or recovering gas not owned by the company or water, oil, or other minerals from other strata. If the owner desires to penetrate the underground gas storage reservoir in order to recover the gas, water, oil, or other minerals from a lower stratum, he may do so provided he gives the company sufficient written notice to permit proper precautions to be taken. The company, after receiving notice, at its expense and responsibility, shall supervise the penetration to assure that it is made in a manner which will not hamper or impair the operation of the underground storage reservoir, result in the pollution of gas stored there, or permit the escape of any gas.

§14–206.

Gas injected into underground storage in Prince George's County which remains under the surface of land in the county, unless and until it is disposed of with the consent of the gas storage company, shall remain the personal property of the company. It is not subject to production, taking, reduction to possession, waste, or interference by the owner of the surface of the land or by any other person except the company or its authorized agents. Gas injected into underground storage in Prince George's County and which is found under the surface of any land in Anne Arundel, Calvert, Charles, and St. Mary's counties other than in gas mains is subject to the property rights of the captor of the gas or the owner of the land, in all respects as though the gas occurred there naturally. In such a case, the owner of the land may alternatively elect to proceed against the gas storage company for his damages.

§14–207.

For the privilege of using geological strata beneath the surface of the earth in Prince George's County or underground storage of gas in volumes greater than the minimum volume specified, a gas storage company shall pay the county an annual underground storage use fee. The fee applies annually to all gas in storage, except the specified minimum volume, on the last day of each calendar year. It is computed at the following annual rates on the commodity charge paid for the gas by the gas storage

company, as evidenced by the tariff under which the gas was purchased:

Rate	Cubic feet of gas in storage
No fee	On the first 5 billion
2 percent	On all over 5 billion but not over 10 billion
4 percent	On all over 10 billion but not over 15 billion
6 percent	On all over 15 billion but not over 20 billion
8 percent	On all over 20 billion but not over 25 billion
10 percent	On all over 25 billion.

§14–208.

Nothing in this subtitle limits or impairs any right to exercise the power of eminent domain which may be vested in any gas storage company by any other law.

§14–209.

Nothing in this subtitle repeals, amends, or otherwise affects any other law of the State or its political subdivisions relating to the underground storage of gas or the pollution of underground waters.

§14–301.

"Department" means the Department of the Environment.

§14–302.

The provisions of this subtitle apply only to the storage of natural or artificial gas and petroleum products in Prince George's County.

§14–303.

The Department shall prescribe rules and regulations to effectuate the provisions of this subtitle, and any permit to drill, bore, drive, dig, or otherwise conduct any operation for the storage of natural or artificial gas or petroleum products and their derivatives may contain the restrictions the Department determines necessary in the public interest to protect the waters of the State, including subsurface and percolating waters.

§14–304.

The following regulations are additional to the regulations prescribed by the Department and do not limit the regulatory authority of the Department granted under § 14-303 of this subtitle:

(1) Every applicant for a storage permit shall, at the time of application, file with the Department a surety bond in the amount of $1,000, payable to the Comptroller of the State on a form approved by the Department and executed by a responsible surety company authorized to do business in the State. The bond is intended to assure that necessary safety measures are maintained, and that any well or other opening used in connection with the storage project is properly sealed after abandonment of the project if this action is considered necessary by the Department to protect one or more of the natural resources of the State. Any transferee shall file a similar bond.

(2) A permeable sand or stratum containing gas, or into which gas or a liquefied petroleum derivative has been forced under pressure, may not be drilled or left open in a manner permitting an avoidable escape of gas to occur. A well connected with a storage reservoir containing either natural gas or a petroleum derivative stored under pressure, may not be situated within 50 yards of any existing building used as a residence or office.

(3) All freshwater sands penetrated in drilling to a storage reservoir shall be fully protected by cement grout placed to provide an effective seal to the nearest thick clay bed above the gas storage stratum having a thickness of at least 25 feet. In order to provide an effective seal in the nearest thick clay bed above the gas storage stratum, the clay bed shall have a thickness and other geologic properties adequate, in the opinion of the Department, to constitute sufficient protection to the potable freshwater supplies existing in any aquifers.

§14–305.

A person may not drill, bore, drive, dig, or otherwise conduct any operation for the purpose of obtaining access to a pocket or other underground area for the purpose of storing natural or artificial gas or petroleum products and their derivatives, unless a permit for the operation, construction, and storage has been first obtained from the Department. Nothing in this subtitle shall be construed to apply to the installation or maintenance of underground tanks or vessels commonly used to store these products.

§14–306.

Every application for a permit shall be accompanied by at least two copies of an accurate map prepared by a competent engineer or geologist showing the location, extent, and depth of the proposed storage place and of all wells drilled or proposed to be drilled to the storage place. A copy of the map shall be sent to the Department and it shall review the application and map to determine the presence or absence of the danger of pollution, contamination, diversion, or depletion of subsurface and percolating waters. The Department may take the testimony of any other person. It shall decide whether the granting of any application would likely endanger the public safety, health and welfare, and in accordance with its determination, grant or deny the application.

§14–307.

The provisions of this subtitle are enforceable by proceedings in the Circuit Court of Prince George's County to obtain injunctive relief.

§14–308.

Any person who violates the provisions of this subtitle is guilty of a misdemeanor and upon conviction subject to a fine of not more than $500.

§14–401.

The Governor, for and in the name of the State of Maryland, shall join with other states in the interstate compact to conserve oil and gas, which was executed in Dallas, Texas, on February 16, 1935, and is now deposited with the Department of State of the United States, and which has been extended with the consent of Congress.

§14–402.

The Governor, for and in the name of the State, may execute agreements for the further extension of the expiration date of the compact and to determine if, and when, it is in the best interest of the State to withdraw from the compact, upon 60 days' notice as provided by its terms. If the Governor determines that the State should withdraw from the compact, the Governor may give the necessary notice and take all steps necessary to effect the withdrawal of the State from the compact.

§14–403.

The Governor is the official representative of the State on the Interstate Oil Compact Commission. The Governor shall exercise and perform for the State every power and duty as a member of the Commission. The Governor may appoint an assistant representative to act in the Governor's stead as the official representative of the State as a member of the Commission. The assistant representative provided for in the compact shall take the oath of office prescribed by the Constitution. The oath shall be filed with the office of the Secretary of State. State members shall be reimbursed for expenses incurred while actually engaged in the performance of their duties, in accordance with the Standard State Travel Regulations.

§14–404.

Article I

This agreement may become effective within any compacting state at any time as prescribed by that state, and shall become effective within those states ratifying it whenever any three of the states of Texas, Oklahoma, California, Kansas and New Mexico have ratified and Congress has given its consent. Any oil-producing state may become a party hereto as hereinafter provided.

Article II

The purpose of this compact is to conserve oil and gas by the prevention of physical waste thereof from any cause.

Article III

Each state bound hereby agrees that within a reasonable time it will enact laws, or if the laws have been enacted, then it agrees to continue the same in force, to accomplish within reasonable limits the prevention of:

(a) The operation of any oil well with an inefficient gas-oil ratio.

(b) The drowning with water of any stratum capable of producing oil or gas, or both oil and gas, in paying quantities.

(c) The avoidable escape into the open air or the wasteful burning of gas from a natural gas well.

(d) The creation of unnecessary fire hazards.

(e) The drilling, equipping, locating, spacing or operating of a well or wells so as to bring about physical waste of oil or gas or loss in the ultimate recovery thereof.

(f) The inefficient, excessive or improper use of the reservoir energy in producing any well.

The enumeration of the foregoing subjects shall not limit the scope of the authority of any state.

Article IV

Each state bound hereby agrees that it will, within a reasonable time, enact statutes, or if such statutes have been enacted then that [it] will continue the same in force, providing in effect that oil produced in violation of its valid oil and/or gas conservation statutes or any valid rule, order or regulation promulgated thereunder, shall be denied access to commerce; and providing for stringent penalties for the waste of either oil or gas.

Article V

It is not the purpose of this compact to authorize the states joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof, or create or perpetuate monopoly, or to promote regimentation, but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations.

Article VI

Each state joining herein shall appoint one representative to a commission hereby constituted and designated as the Interstate Oil Compact Commission, the duty of which said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances, and conditions as may be disclosed for bringing about conservation and the prevention of physical waste of oil and gas, and

at such intervals as said commission deems beneficial it shall report its findings and recommendations to the several states for adoption or rejection.

The commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their several jurisdictions to promote the maximum ultimate recovery from the petroleum reserves of said states, and to recommend measures for the maximum ultimate recovery of oil and gas. Said commission shall organize and adopt suitable rules and regulations for the conduct of its business.

No action shall be taken by the commission except: (1) by the affirmative votes of the majority of the whole number of the compacting states represented at any meeting, and (2) by a concurring vote of a majority in interest of the compacting states at said meeting, such interest to be determined as follows: such vote of each state shall be in the decimal proportion fixed by the ratio of its daily average production during the preceding calendar half-year to the daily average production of the compacting states during said period.

Article VII

No state by joining herein shall become financially obligated to any other state, nor shall the breach of the terms hereof by any state subject such state to financial responsibility to the other states joining herein.

Article VIII

This compact shall expire September 1, 1937. But any state joining herein may, upon sixty (60) days notice, withdraw herefrom.

The representatives of the signatory states have signed this agreement in a single original which shall be deposited in the archives of the Department of State of the United States, and a duly certified copy shall be forwarded to the governor of each of the signatory states.

This compact shall become effective when ratified and approved as provided in Article I. Any oil-producing state may become a party hereto by affixing its signature to a counterpart to be similarly deposited, certified, and ratified.

Done in the City of Dallas, Texas, this sixteenth day of February, 1935.

§14–501.

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

(b) "Coastal area" means all that land and water area lying within Anne Arundel, Baltimore, Calvert, Caroline, Cecil, Charles, Dorchester, Harford, Kent, Prince George's, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester counties, the Chesapeake Bay, and lying seaward to the State's territorial jurisdiction.

(c) "Construction" means any clearing, grading, excavation, building or

other action that would affect the natural environment of the coastal area, or the commencement of any of these activities. This does not include any activity for the sole purpose of securing biological or geological data or other data for an economic or environmental analysis.

(d) "Department" means the Department of the Environment.

(e) "Facility" means:

(1) Any pipeline carrying crude oil or natural gas ashore from offshore sources;

(2) Any intermediate production terminal or refinery which is designed to process at least ten thousand barrels of crude oil per calendar day;

(3) Any crude oil storage facility:

(i) Whose total design capacity is at least 100,000 barrels;

(ii) Which occupies at least fifty acres; or

(iii) Whose average throughput is at least ten thousand barrels per calendar day;

(4) Any facility for the processing, transmission, or storage of natural gas with a total design capacity for at least one billion cubic feet of gas for storage or two hundred million cubic feet for processing;

(5) Any operations base which:

(i) Includes port and harbor facilities;

(ii) Occupies at least twenty–five acres; and

(iii) Is designed, constructed and operated as an assembly area for the storage, handling, and transport of supplies whose next and final destination is any oil and/or gas exploration, development, or production–related operation conducted in the territorial sea, contiguous zone or high seas area; or

(6) Any fabrication yard which is an assembly operation used for the construction or preparation of petroleum drilling rigs, jackets or platforms, or wellhead installations, whose final destination is installation or operation in the territorial sea, contiguous zone, or high seas area.

(f) "Government agencies" means the government of the United States, the State of Maryland, or any other state, their political subdivisions, units, or instrumentalities thereof, and interstate units.

(g) "Person" includes corporations, companies, associations, firms,

partnerships, and joint stock companies, as well as individuals and government agencies.

(h) "Secretary" means the Secretary of the Environment.

§14–502.

(a) Maryland's coastal area, which borders the Atlantic Ocean and the Chesapeake Bay, is rich in a variety of natural, commercial, recreational, industrial, and esthetic resources. These resources possess great immediate as well as potential value for the State and the nation as a whole. However, the coastal area and the fish, shellfish, and other living marine resources and wildlife contained therein are ecologically fragile. They constitute a unique, irreplaceable, natural, and esthetic resource of great economic value.

(b) Extraction of mineral resources and fossil fuels from the Baltimore Canyon Trough and elsewhere may create immediate, increasing, and competing demands upon the lands and waters of the State's coastal area. The interests of the State and the nation require a method of resolving these competing demands which will give a high priority to the natural systems of the coastal zone and promote the public health, safety and welfare.

(c) Certain facilities associated with extraction and refining of mineral and fossil fuel resources may adversely affect the State's interest if they are located in the coastal area without an adequate planning of their impact and without sufficient safeguards. The State, therefore, requires a system of assessing the economic, fiscal, social, cultural, and environmental impacts associated with the establishment of such facilities, as a lack of proper assessment may cause irreparable damage to the integrity of the coastal area if these facilities are established in the coastal area.

(d) Meeting the energy requirements of the State and nation and planning for the proper use or development of the coastal area is imperative. To that end the State is developing a coastal zone management plan, pursuant to the federal Coastal Zone Management Act of 1972, which will recommend permissible land and water uses within the coastal zone and which must provide for adequate consideration of the national interest in the siting of facilities necessary to meet requirements which are other than local in nature, and which must further provide for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit. It is in the State's interest that all parties including all units of State government, county government, the federal government, business, industry, and the public at large participate in planning the uses for Maryland's coastal area. The completion of the plans will enable Maryland to properly use, develop, and protect the coastal area.

(e) Without adequate planning, the establishment of certain oil–related facilities in the coastal area may have an immediate impact on the environmental, economic, fiscal, social and cultural well–being of the people residing in the area where

these facilities are established. Therefore, local concern should be reflected in making decisions as to location of these facilities and to that end, county governments should be actively involved in the planning for the coastal areas. If, however, the extent of oil–related facilities contemplated affects environmental, economic, social, and cultural factors beyond the borders of the particular subdivision involved, in addition to involving potential expenditure of State funds in excess of tax revenues derived from the facilities, then the State interest and the national interest become a factor in the consideration of where these oil–related facilities shall be located.

(f) The national public interest in assuring adequate facilities for the production of energy resources requires that the State and local governments promptly and expeditiously assess the impact of these facilities and determine, at the earliest practicable time, whether to grant necessary State and local authorizations.

(g) The foregoing subsections constitute the findings and intent of the General Assembly in enacting provisions for comprehensive State review prior to permitting the establishment of certain facilities within Maryland's coastal area, and to that end this subtitle may be cited as the "Coastal Facilities Review Act".

§14–503.

(a) A person may not construct, or cause to be constructed, a facility in the coastal area unless he first obtains a permit pursuant to this subtitle. However, facilities for which on-site construction, excluding site preparation, has legally begun prior to July 1, 1975 are exempt from the provisions of this subtitle.

(b) The Secretary after receiving the advisory comments of the Secretaries of Natural Resources, Business and Economic Development, and Transportation and the Secretary of the Department of Planning may adopt rules and regulations to implement the provisions of this subtitle.

§14–504.

(a) Any person proposing to construct a facility in the coastal area shall file an application with the Department in the form the Secretary prescribes. The application shall be accompanied by the information the Secretary requires and shall include the following information:

(1) A project description specifying:

(i) What is planned to be constructed, its purpose, use, location, cost, and size; and

(ii) The methods of construction, construction schedule, and operation procedure.

(2) A list of all licenses, permits or other approvals required by any government unit.

(3) All information necessary or required for any application to the State or any of its units or departments, for any other permit, license or approval required for or in connection with the facility.

(4) Detailed information as to the need for the facility and facts concerning alternate site locations as may be requested by the Secretary.

(b) The Department shall establish a reasonable fee schedule to reimburse the Department for the costs of filing and processing of an application required by this subtitle. The fee shall include at least the cost of the statement required by § 14–506 of this subtitle, payable in advance of any required State expenditure.

(c) All units and departments of the State shall, to the fullest extent possible, cooperate with any person proposing to construct a facility in the coastal area by supplying the person with information and assistance as he may request.

§14–505.

Notwithstanding any contrary provisions of this article, an application for a permit required by this subtitle shall be considered an application for all other permits or licenses required under this article for the facility and the action taken by the Secretary on the application shall be deemed to be action taken on all other permits and licenses, including wetlands licenses.

§14–506.

(a) Upon the filing of an application and prior to deciding whether or not to grant the permit, a statement of the economic, fiscal, and environmental impact of the proposed facility shall be prepared by one or more appropriate parties selected by the Secretary after receiving the advisory comments of the Secretaries of Natural Resources, Business and Economic Development, and Transportation and the Director of Planning. The statement shall be prepared and filed within six months after selection of the appropriate party or parties. The statement, with written background and supporting material, shall be available to the public. The time for filing the statement may be extended by the Secretary for up to but not more than an additional 12 months for good cause.

(b) The statement shall include, but not be limited to, the following:

(1) An inventory of existing economic and environmental conditions at the project site and in the immediate area;

(2) A project description of what is to be constructed, and the manner and construction schedule and the method of construction;

(3) A complete description of the proposed facility including at least its anticipated size, effluent load, and production levels;

(4) An assessment of the probable economic, fiscal, and environmental impact of the project upon the natural environment of the project site coastal area and the immediate area;

(5) Recommendations for minimizing any adverse economic, fiscal, or environmental impacts;

(6) An evaluation of the need for the facility and the relative merit of other possible sites; and

(7) In the case of a refinery, a description of the manner of transportation of the feed stock and the product of the crude oil.

(c) The application shall not be processed further nor shall the analysis required be undertaken until the county government wherein the facility is proposed to be located or wherein the pipeline will terminate, has certified to the Department that all local land use classifications, including zoning, special exceptions, variances or conditional uses, necessary for the location and operation of the proposed facility have been or will be granted. If the county government in its discretion stays the certification and so notifies the Department that it will continue its stay until the analysis is completed then, and only in that event may the application be processed and the analysis prepared as set forth under this subtitle.

§14–507.

(a) Further action may not be taken by the Secretary under this subtitle without completion of the statement required under § 14-506 of this subtitle, and its being made available to the public, and until the county government, where the proposed facility is to be located has certified to the Department that all necessary local approval has been or is reasonably expected to be extended for commencement of construction.

(b) Not more than 60 days after the statement is completed, the Department shall hold at least one public hearing in the county in which the facility or any part of it is situated to solicit the views of the public about the permit application. Prior to the public hearing the Department shall make the statement available to the public. In addition, any comments on the statement prepared by the Department or any other State department, any proposed permits to be issued by any State agency to the applicant, any conditions proposed by the Department prior to granting a permit, and any other pertinent information shall be made available to the public prior to the hearing.

(c) The Department shall give notice of the public hearing by furnishing the same to the appropriate State and local government units as well as publishing notice in a newspaper of statewide circulation and in a newspaper published in or having general circulation in each affected county.

§14–508.

(a) Within 90 days following the completion of the public hearing under § 14–507 of this subtitle, and after receiving the advisory comments and recommendations of the Secretaries of Natural Resources, Business and Economic Development, and Transportation and the Director of Planning, the Secretary shall decide whether to grant, grant conditionally, or deny the permit. The Secretary's decision shall be in writing and based upon the economic and environmental statement, the public hearing record, and a determination that the applicant has shown satisfactorily that the facility:

(1) Conforms with and meets all applicable air, water, noise, and solid waste laws of the State as determined and certified in writing by the appropriate State unit with jurisdiction over these laws;

(2) Conforms with adopted or approved county or local land use planning and the official county or local comprehensive zoning map;

(3) Conforms with the State development plan, if such plan has been lawfully approved and adopted;

(4) Would have no material adverse effect upon the natural environment of the area, its scenic or natural beauty, rare or irreplaceable natural resources, or unique historic sites;

(5) Would not be so located or constructed as to have a material adverse effect upon the public health, safety, or welfare;

(6) Would not be a potential or immediate undue burden on the water supply of the site or region;

(7) Would not materially contribute to an extant level of undue environmental degradation or resource exhaustion;

(8) Conforms with any coastal zone management program developed by the State of Maryland pursuant to the federal Coastal Zone Management Act of 1972;

(9) Would have no material adverse effect upon critical areas identified and designated pursuant to § 5–611 of the State Finance and Procurement Article and Title 1, Subtitle 4 or Title 3 of the Land Use Article;

(10) Would not impose, directly or indirectly, a substantial burden on existing State, regional, or county public facilities beyond their respective capacities, or that new public facilities, if necessary, either:

(i) Would not be completed in time to serve the facility; or

(ii) Would be inadequate to serve the facility without causing

overloading of the public facilities; and

(11) Evidences fewer undesirable environmental, economic, fiscal, and cultural consequences in its specific or general proposed location than other specific or general locations.

(b) (1) The Secretary shall adopt regulations as provided in this subsection.

(2) Procedural regulations adopted under this subsection shall:

(i) Provide for notice to interested persons of any decision to issue or deny a permit; and

(ii) Permit a person to file a petition for judicial review in accordance with the provisions of § 5–204 of this article.

(c) The Department shall periodically inspect, and the applicant shall allow such inspection, to determine if the terms of the granted permit are being met.

§14–509.

(a) A request for judicial review of the Secretary's action on any application shall be made within 30 days after the decision has been rendered. Proceedings shall be filed in the circuit court of any county having jurisdiction in which the facility or any part of it is to be situated.

(b) A request for judicial review may be made only by an aggrieved party, by a properly designated official of the county government where the proposed facility is to be located, or by the Department of Planning pursuant to § 5-611 of the State Finance and Procurement Article.

(c) In order to expedite judicial review, any court of the State, either at the trial or appellate level, which acquires jurisdiction over any legal challenge to the Secretary's action on any application shall give highest priority to such proceeding in the scheduling of appropriate hearings and trials and in the respective court's deliberations.

§14–510.

(a) Any person who violates any provision of this subtitle may be enjoined by a court of competent jurisdiction upon application of the Department acting through the Attorney General.

(b) Any person who violates any provision of this subtitle or any regulation, permit, or order issued thereunder, is liable to a penalty not exceeding $10,000, as well as being subject to being enjoined as provided in subsection (a) of this section. The monetary penalty thus provided may be recovered in a civil action by the Department through the Attorney General.

§14–511.

(a) This subtitle shall be liberally construed to effectuate its intents and purposes.

(b) Nothing in this subtitle may be construed to be in derogation of any powers or State laws in existence on July 1, 1975, but shall be regarded as supplemental and in addition to powers conferred by other laws.

§15–101.

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

(b) "Bureau" means Bureau of Mines.

(c) "Department" means the Department of the Environment.

(d) "Director" or "Director of the Bureau" means Director of the Bureau of Mines.

(e) "Drift" means a horizontal passageway, level, or gangway, driven from the surface outcrop into the coal bed.

(f) "Entry" means a passageway in a coal bed which is approximately level and is used for haulage, traveling way, or ventilation. In a dipping bed, entries on the strike are known as "levels" or "gangways" and to the dip are known as "slopes".

(g) "Excavations and workings" includes any excavated portion of a mine, whether abandoned or being worked. The term also includes any underground workings, shafts, tunnels, and other ways and openings including those being sunk or driven, together with roads, appliances, machinery, and material connected with them below the surface.

(h) "Face" means the advancing breast of a mine working place, either of an entry or room.

(i) "Gassy mine" means a mine or portion of a mine in which methane is found by an approved or permissible flame safety lamp, detector, or device, or by air analysis in an amount of 0.25 percent or more. Once a mine is determined to be a gassy mine, it is always so considered. In this title, the words "gassy" and "gaseous" are synonymous.

(j) "Mine" includes a shaft, slope, drift, or inclined plane connected with an excavation penetrating coal stratum, which excavation is ventilated by one general air current, and any appliance and equipment for hoisting and extracting coal. It includes any part of the mining property and plant on the surface or underground, which contributes directly or indirectly to the mining or handling of coal and is connected by one general system of mine railroads, over which coal may be delivered to one or more points outside the mine. The word also includes a portion of a mine or opening whether or not the mine or opening employs a system of railroads, when the sense so requires.

(k) "Operator" means any person, partnership, or corporation who removes or intends to remove more than 250 tons of coal from the earth by surface coal mining or deep coal mining within 12 consecutive calendar months in any one location.

(l) "Panel" means a unit area in a system of mining by which the mine is divided into large rectangles or panels isolated or surrounded by solid pillars of coal into which pairs of entries are driven for the development of rooms and the extraction of pillars.

(m) "Secretary" means Secretary of the Environment.

(n) "Shaft" means an opening, the axis of which is approximately vertical, extending downwards from the surface. It includes an underground shaft driven between two levels.

(o) "Slope" means an inclined opening in a dipping coal or fireclay bed, and an inclined tunnel to a coal or fireclay bed.

(p) "Superintendent" means the person who, on behalf of the operator, has immediate supervision of a mine.

(q) "Working place" means a room, breast, entry crosscut, or pillar where coal is being mined or extracted and where at least one miner per working shift of the mine regularly is employed until the place is finished or stopped.

§15–201.

(a) There is a Bureau of Mines, established as part of the Department.

(b) The main office of the Bureau shall be located in either Garrett County or Allegany County. The Director of the Bureau, with the approval of the Secretary, shall select the location.

§15–202.

The Secretary shall appoint the Director of the Bureau of Mines who shall serve at the Secretary's pleasure. The Director shall have executive ability and either a degree in mining engineering from an accredited institution of higher education or comparable knowledge in the principles and practices of mining, planning, design, conservation, and research, and experience in reclamation, abandoned mine restoration, drainage abatement, and administration. The Director shall devote full time to the duties of the Director's office, and may not directly or indirectly have a financial interest in any way in any coal mine, mining operation, or mining investment in this or any contiguous state. The Director is responsible for the exercise of every power and duty conferred on the Department by the provisions of this title and delegated to the Director by the Secretary.

§15–203.

(a) The Bureau shall supervise the execution and enforcement of any law enacted for the health and safety of persons and protection and conservation of property within, about, or related to bituminous coal mines in the State. To this end, it shall adopt and enforce necessary rules and regulations after giving due notice.

(b) The Bureau shall compile, publish, and distribute to interested persons, the mining laws and rules and regulations. The publication shall be made at reasonable times to keep the laws and rules and regulations current. The Bureau shall keep a record of any inspection or investigation and a copy of any official communication or record of work to be done. It shall preserve any report, statistics, and information received relating to the development of coal or other mining, or the enforcement of the provisions of this title.

(c) The Bureau shall encourage and assist reasonable efforts to improve mining methods and conditions to discover better ways to protect life and health, extend the serviceable use of instrumentalities, and promote the prosperity of the industry by reducing waste of natural resources and fostering economy in mining. It shall compile, statistically analyze, and compare available data regarding coal or other mining processes and operations, and advise any person engaged in that industry.

(d) The Director may institute proceedings in the name of the State by an action at law, suit in equity, or prosecution to enforce any provision of this title or any rule or regulation. This power does not exclude any right of an interested person to invoke the usual and ordinary process of a court against a violator of the mining laws.

(e) The Bureau may enter and inspect any mine in order to determine its safety condition. If the inspected mine is found unsafe or is operated in an unsafe manner, the Bureau shall order the immediate correction of the unsafe condition. If the unsafe condition is not corrected in the time prescribed, the Bureau shall order the mine closed until the owner or operator makes the necessary correction.

(f) The Bureau shall collect information in regard to mineral production and mine output.

(g) The Department shall report annually concerning the following information for each major watershed in Allegany and Garrett counties, on a cumulative and annual basis:

(1) The total number of acres for which new or amended permits have been issued;

(2) The total number of acres which have been stripped;

(3) The total number of acres which have been planted; and

(4) The total number of acres for which the Bureau has released the

revegetation bond.

(h) The Department may apply for, accept, administer, and expend funds from any source for the administration and implementation of this title, including the reclamation and revegetation of any land or water area affected by the mining of bituminous coal.

§15–204.

(a) (1) There is a Land Reclamation Committee. It consists of the following 13 members:

(i) Two members of the Department, including a chairman of the Committee appointed by the Secretary;

(ii) A representative of the soil conservation district of Allegany County;

(iii) A representative of the soil conservation district of Garrett County;

(iv) Two members appointed by the Governor with the advice and consent of the Senate for 3-year terms to represent the mining industry;

(v) One member who is a representative of Allegany County to be appointed by the Governor, on the recommendation of the Allegany County Commissioners, with the advice and consent of the Senate to represent the local government for a 3-year term;

(vi) One member who is a representative of Garrett County to be appointed by the Governor, on the recommendation of the Garrett County Commissioners, with the advice and consent of the House of Delegates to represent local government for a 3-year term;

(vii) Two members from the community who do not have any interests in any mining operation, one to be a resident of Garrett County and one to be a resident of Allegany County, appointed by the Secretary for 3-year terms; and

(viii) Three members of the Department of Natural Resources appointed by the Secretary of Natural Resources.

(2) Committee members representing the community or local government shall receive the per diem set by the Secretary for each day they meet with the Committee or are called on by the chairman to transact other business of the Committee. Funds for the per diem allowances shall be provided for in the budget of the Department.

(3) The Committee shall meet at the chairman's request and at least twice

a year. A quorum consists of at least 9 members. No action may be approved by the Committee unless a quorum is present and a majority of those present approves the action.

(4) Members of the Land Reclamation Committee shall file a United States Department of the Interior State Employee Statement of Employment and Financial Interests.

(5) Committee members shall recuse themselves from proceedings that may affect their direct or indirect financial interests.

(b) The Committee may:

(1) Study and recommend surface coal mine reclamation policies, practices, and standards;

(2) From time to time, review the surface coal mining laws, regulations, and policies for the purpose of recommending changes to improve the efficiency and effectiveness of the program;

(3) Review proposed changes to the surface coal mining laws and regulations to provide comments to the General Assembly and the Department;

(4) Review the Department's administration of the surface coal mining regulatory program and the abandoned coal mine reclamation program to determine compliance with the purpose of the subtitles;

(5) Enter on any surface coal mining operation to determine mining and reclamation conditions; and

(6) Recommend research, demonstration, and cost-sharing projects to promote optimum revegetation of surface coal mined lands.

§15–205.

(a) (1) Before any person conducts surface coal mining and reclamation operations, the person shall obtain the Committee's approval of the reclamation plan for the site.

(2) Notwithstanding any provision of the State Government Article, public notice on pending applications provided in accordance with the provisions of this subtitle shall be the only notice required by law.

(3) The Committee shall publish a public notice that it has received a proposed reclamation plan from the applicant.

(i) The public notice shall be published in a newspaper of general circulation in the county of the proposed mining and reclamation operation.

(ii) The public notice shall include the name of the applicant, the ownership of the land to be affected, a description of the location of the proposed operation, the location where the application is available for public inspection, and notice that written comments and requests for a public informational hearing will be received by the Committee for at least 30 days after the newspaper publication.

(4) If a hearing is requested, the Committee shall hold a public informational hearing on the proposed reclamation plan. The Committee shall notify the applicant and any person who requests a hearing of the date, time, and location of the hearing and shall publish the date, time, and location of the hearing in a newspaper of general circulation in the area of the proposed operation.

(5) Any public informational hearing shall be at least 15 but not more than 60 days after the Committee provides public notice of the hearing. Members of the public shall be provided an opportunity to comment on the proposed reclamation plan, in writing, until the date of any hearing.

(6) The Committee shall approve or reject the proposed reclamation plan. If a public informational hearing is requested, the Committee shall approve or reject the proposed reclamation plan after the hearing. If the proposed reclamation plan is rejected, the applicant shall be notified in writing of the reason for rejection or the Committee's suggested modifications. The applicant may resubmit the plan with corrections or the Committee's suggested modifications. If the changes are made, the Committee may approve the reclamation plan.

(7) The Committee shall notify the applicant, the Department, and any participants to a hearing, of its decision.

(b) The Committee shall determine that revegetation of reclaimed surface coal mined land meets the revegetation standards of the regulatory program before the Department may release any bond held to assure revegetation of the land.

(c) If the Committee has reason to believe that a violation of the subtitle, regulations, or permit conditions exists, the Committee shall notify the Department. The Department shall provide the Committee with a report that indicates the results of an inspection, or the reason why no action was taken.

§15–301.

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

(b) "Examining authority" means the Director of the Bureau or the Director's designee when referring to the procedure for grant or suspension of a permit of competence or grant or suspension of a first–class mine foreman certificate of competence or a fire–boss certificate of competence.

§15–302.

The examining authority shall inquire into the background and qualifications of each applicant for any certificate or permit of competence. It shall prepare, correct, and grade the individual examinations for the various certificates of competency.

§15–303.

(a) An applicant for a first-class mine foreman certificate of competence shall produce evidence satisfactory to the examining authority that he is at least 18 years of age and a citizen of the State or of another state that accords similar privileges to a citizen of Maryland. He shall furnish a verified history of his experience in mining employment, showing in detail the several mines in which he has worked, their location, the particular occupation followed during a period of at least five years, and in particular his knowledge of and extent of experience with gaseous mines. Each applicant shall pay an examination fee of $5 to the State.

(b) An applicant for a "permit of competence" shall produce evidence satisfactory to the examining authority that he is qualified by experience to take the examination for the permit.

(c) An applicant for a fire-boss certificate of competence shall produce evidence satisfactory to the examining authority that he is a resident of the State, or of another state that accords similar privileges to a resident of Maryland, and at least 18 years of age. He shall furnish a verified history of his experience in mining employment, showing in detail the several mines in which he has worked, their location, the particular employment followed during a period of at least 3 years, and, in particular, his knowledge of and extent of experience with gaseous mines. Each applicant shall pay an examination fee of $3 to the State.

§15–304.

The Bureau may establish a place within the mining area of the State to give instruction to an applicant for a "first-class mine foreman's certificate", a "fire-boss certificate", or a "permit of competence", and other instruction required under this subtitle or any rule and regulation made under it. The Bureau may conduct courses in order to qualify properly any person who makes application for the various types of certificates.

§15–305.

(a) Any applicant for a certificate of competence shall answer in writing at least ten questions designed to discover his knowledge of mining theory, including ventilation, drainage, mining methods, and the mining laws of the State. In addition, he shall answer orally, if feasible during a visit to a coal mine, at least ten questions on practical mine problems which are designed to display his perception, resourcefulness, and practical judgment. The oral questions and replies shall be reduced to writing and become a part of the record of the examination. The examining authority shall grade

an applicant on a basis of 100 points credited for perfect answers, allowing equal weight for each qualification of theoretical knowledge, perception, resourcefulness, and judgment. Any applicant failing to receive an average of at least 70 points fails the examination. Each applicant shall be notified of his grade.

(b) An applicant for a first–class certificate of competence shall be admitted to an examination after he files, on a form the examining authority provides, a sworn statement as to any matter of fact which establishes his right to take the examination, and pays the fee prescribed for the examination. In the examination for first–class mine foreman certificate, the applicant shall be tested as to his theoretical knowledge of noxious and explosive gas found in a coal mine. In addition, he shall answer orally, if feasible during a visit in a gaseous coal mine, at least ten questions on practical mine problems which are designed to display his perception, resourcefulness, and practical judgment. The examination procedure and grading shall be as provided in subsection (a) of this section.

(c) In the examination for fire–boss certificate, the applicant shall be tested as to his theoretical knowledge of noxious and explosive gas found in a coal mine. In addition, he shall answer orally, if feasible during a visit in a gaseous coal mine, at least ten questions on practical mine problems which are designed to display his perception, resourcefulness, and practical judgment. The examination procedure and grading shall be as provided in subsection (a) of this section.

(d) In the examination for a permit of competence:

(1) The examining authority shall give the examination;

(2) The applicant shall pay the examining authority a $1 examination fee for each examination taken;

(3) At the discretion of the examining authority, the examination may be oral or written. If the examination is oral, it shall be reduced to writing and filed among the examining authority's records;

(4) The examination shall include practical mining questions relating to ventilation and the methods of detecting noxious and explosive gas in a mine;

(5) The applicant shall demonstrate to the examining authority that he is qualified to supervise the operation of a small mine;

(6) If the applicant fails the examination, he may request another examination after 60 days from the unsuccessful examination and the examining authority shall conduct another examination as soon as practicable; and

(7) The examining authority shall issue a "permit of competence" if the applicant is found qualified. No applicant may be required to display the theoretical knowledge required for the holder of a first–class certificate. He shall be qualified in the practicable aspects of conditions relating to the safety of the employees of this type

mine.

§15–306.

The examining authority shall keep the applications for certificates, any supporting evidence, and the records of the examinations as a permanent record. It shall endorse on each application the action taken.

§15–307.

An applicant who is aggrieved by the examining authority's refusal to grant a first–class mine foreman certificate or permit of competence may apply to the Secretary of Budget and Management who shall review the examination. If the Secretary of Budget and Management finds the refusal unwarranted, the Secretary shall direct that the applicant be awarded the certificate or permit. If the Secretary upholds the decision of the examining authority, the applicant may appeal to the circuit court for the county in which the applicant resides. The court may hear and determine the matter, issuing any order as may be just.

§15–308.

Upon payment to the State of a certificate fee of $1, each successful applicant shall be entitled to a certificate signed by the examining authority. The certificate shall state the name, age, and residence of the person certified, the position for which the person qualified, and the person's experience. A photograph furnished by the certificate holder shall be mounted on the certificate across which shall be impressed the seal and signature of the examining authority. A certificate may not be transferred. If the certificate is lost or destroyed, the examining authority, when satisfied of the loss or destruction, shall supply the certificate holder with a copy of it, on payment to the State of a fee of 50 cents.

§15–309.

A person may not forge or counterfeit a certificate or permit of competence, or any official copy, or knowingly make or cause to be made any false statement in any certificate, permit, or any official copy provided for by this subtitle, or urge another to do so, or knowingly use any forged or false certificate, permit, or official copy, or knowingly make, give, alter, or produce, or use any false declaration, representation, or statement in any certificate, permit, or official copy or obtain any certificate, permit, or any document containing the official copy.

§15–310.

(a) A person holding a certificate or permit of competence may be charged with violation of law, fraud, intemperate habits, incapacity, or other good cause for cancellation or suspension of the certificate or permit. The charge shall be in writing and filed with the Director of the Bureau.

(b) A certificate or permit of competence may be canceled or suspended only by the examining authority. Except as provided in subsection (d) of this section, a certificate or a permit may be canceled or suspended only after a hearing at which the person charged has the right to appear. The hearing shall be held within 30 days after the receipt of the charges by the examining authority, which shall give the person charged written notice of the charge at least 15 days prior to the hearing. A hearing of the examining authority shall be on the call of its chairman.

(c) If the examining authority is satisfied that the certificate or permit holder has become unworthy to hold it by reason of violation of law, fraud, intemperate habits, incapacity, or other good cause, it may cancel or suspend the right to use the certificate or permit for a period not longer than two years.

(d) The provisions of subsections (b) and (c) of this section to the contrary notwithstanding, if the Director of the Bureau is satisfied that a person, if allowed to continue to hold a certificate or permit, may commit or permit an act to be committed, or permit a condition, that would tend to endanger the lives or health of any person employed in or about a mine, the Director may suspend the right of the certificate or permit holder to use the certificate or permit. The suspension may not be for more than 30 days or until the examining authority acts pursuant to this section, whichever is sooner. The Director of the Bureau shall give notice of action to the certificate or permit holder, and to the certificate or permit holder's employer.

(e) A person whose certificate or permit of competence has been canceled or suspended is eligible to take an examination for a new certificate or permit two years after the date of the cancellation or suspension.

§15–311.

(a) If any matter, thing, or practice in, about, or connected with any mine may become dangerous or defective and endangers the bodily safety of any person, the Bureau may give written notice to the mine operator by way of a special order. The order shall state in detail the matter, thing, or practice which may become dangerous or defective, and require its correction, suggesting changes as conditions may require. If the matter, thing, or practice involves the safety of a mine or a considerable portion of a mine, and the mine operator after receipt of this order neglects or refuses to take immediate steps to remedy the matter, thing, or practice, the Bureau may institute proceedings before the circuit court for the county in which the affected mine is located, to restrain the operator from operating the mine until he complies with the safety order. The court shall proceed immediately to hear and determine fully the case, and may make any order confirming, modifying, enforcing, or vacating the safety order as is just and proper. The cost may be awarded as the court directs.

(b) If the Bureau discovers or learns there is an imminent danger existing in all or part of a mine, it shall order immediately the person then in charge of the mine to remove at once every person from where the danger exists. If the person in charge of the mine fails to comply with the order, the Bureau shall take whatever steps it deems

necessary to remove or have removed every person from the place where the danger exists. Every person shall remain out of all or that portion of the mine until the danger is ended.

(c) In addition to any other authority conferred in this title, the Bureau may enter and inspect any mine to determine the conditions of safety in that mine. If the Bureau finds the mine unsafe or operated in an unsafe manner, it shall order the unsafe condition corrected immediately. If the mine owner or operator fails to correct the unsafe condition, the mine shall be closed until the condition is corrected.

§15–312.

All first-class mine foremen and fire-boss certificate holders shall be subject to continuing education every 3 years. The continuing education shall emphasize mine health and safety legislation and regulations, advances in mining technology, and advances in first aid that have occurred since the certificate holder's most recent examination. All first-class mine foremen and fire-boss certificates issued prior to July 1, 1980 shall expire no later than July 1, 1983 unless reissued in accordance with this section.

§15–313.

(a) The Director may enter into an agreement with an agency responsible for the regulation of coal mining in another state to provide for the recognition in Maryland of mine foreman and fire-boss certificates or other certifications issued by that state if:

(1) The Director determines that the certification requirements of that state are substantially equivalent to the corresponding Maryland requirements; and

(2) The other state provides reciprocal recognition of certificates issued by the Bureau.

(b) (1) An individual who holds a mine foreman certificate, fire-boss certificate, or other certification issued by an agency of another state that has entered into an agreement under subsection (a) of this section may apply to the Bureau for reciprocal certification.

(2) An applicant for reciprocal certification shall submit to the Bureau:

(i) An application on the form provided by the Bureau;

(ii) A copy of the applicant's mine foreman certificate, fire-boss certificate, or other certification issued by the other state; and

(iii) Any other information that the Bureau requires.

(c) The examining authority:

(1) Shall review an application submitted under subsection (b) of this section;

(2) In accordance with the agreement entered into under subsection (a) of this section, may require that the applicant satisfy any additional requirements that the Bureau establishes for reciprocal certification; and

(3) If the applicant qualifies for reciprocal certification, may require the applicant to pay a fee to the State comparable to the fee for a certificate issued under other provisions of this subtitle.

(d) An individual to whom a reciprocal certificate is issued under this section shall promptly notify the Bureau if the state which issued the original mine foreman certificate, fire-boss certificate, or other certification that was a basis for the reciprocal certification suspends, revokes, or takes other disciplinary action against the original certificate.

(e) The holder of a reciprocal certificate is subject to the jurisdiction of the Bureau in the same manner as the holder of:

(1) A mine foreman certificate or fire-boss certificate issued under this subtitle; or

(2) Any other certification recognized under this subtitle.

§15–401.

(a) Each operator shall notify the Bureau immediately in the manner the Bureau prescribes if:

(1) Any change occurs in the name of the operator of a mine, an executive official concerned with its operation, or in the designation of the mine;

(2) A mine has been abandoned or work discontinued;

(3) Work has commenced for the purpose of opening a new mine. The notice shall include sketch maps outlining the plans intended to be pursued in the opening;

(4) The working of a mine is resumed after an abandonment or discontinuance for a period exceeding two months; or

(5) A squeeze, crush, or fire occurs, or a dangerous body of water, explosive, or noxious gas is found.

(b) Each operator shall obtain from the Bureau and keep accessible at the mine a supply of the printed laws, rules, regulations, notices, forms, and record books required by law. He shall see that this material is delivered to every worker.

(c) At least once a week, each operator shall require the superintendent or managing official in charge of the mine to examine, read, and countersign in ink any report the mine foreman enters in the mine record book. If the person finds on examination or otherwise that the law is being violated, he shall stop any violation immediately. Each operator shall require the superintendent or other managing official in charge of the mine, and any other official in whatever capacity, to comply with the provisions of this subtitle, and especially not to obstruct the mine foreman or any other official in the execution of his duties. The operator, or a representative other than the mine foreman, shall visit every working place in each mine once every 60 days in order to note the condition of each place.

(d) Each operator shall assist the Bureau and its officers in making any proper inspection. He shall execute promptly every proper order made under the provisions of this subtitle. An operator may not willfully neglect or refuse to obey any order, or interfere with the Bureau or any agent in the proper discharge of its or his duties.

§15–402.

(a) In order to secure efficient management and proper ventilation of the mine, promote the health and safety of the persons employed, and protect and preserve the property connected with it, the operator of any coal mine in the State shall employ a competent and practical mine foreman in every mine where eight or more persons are employed. Except in a nongassy mine, the mine foreman shall possess a first-class mine foreman's certificate of competence. He shall have charge of the mine under the supervision and control of the operator.

(b) In a mine in which seven or less persons are employed, the mine operator himself shall hold or shall employ a person who holds a permit of competence issued by the mining authority as provided for in Subtitle 3 of this title. The mine foreman need not possess a first-class mine foreman's certificate of competence.

(c) If the mine workings become so extensive that the mine foreman is personally unable to discharge his duties, the operator shall employ a sufficient number of competent persons or assistants who have the same qualifications as the mine foreman. However, if any emergency arises making it impossible for any operator to secure the immediate services of a certified or qualified person, he may employ any qualified and experienced person as mine foreman or assistant mine foreman for a period not exceeding 30 days, subject to the Bureau's approval.

(d) The mine foreman shall devote his entire time to his duties when the mine is in operation. Subject to the supervision and control of the operator, he has charge of the inside workings of the mine and any person employed there. He shall see that any applicable provision of this title, and rules and regulations made pursuant to it are strictly obeyed. For this purpose, the mine foreman, personally or by an assistant shall:

(1) Visit each working place each day while the employees are at work, to see that it is properly timbered, drained, secured, and reasonably safe and that a

sufficient supply of timber and other facilities is on hand ready for use;

(2) See that any loose coal or other dangerous material is taken down or secured, especially upon traveling ways and airways, standing water is drained from passageways and working places, explosive and noxious gases and dangerous accumulations of dust are removed, and rock dusting is properly done so that in general the ventilation, stoppings, doors, timbering, drainage, equipment, electrical installations, traveling and airways, trackage, and other mine works and ways are in good working order and reasonably safe condition;

(3) Instruct every employee in safety measures, including the placing of timber to prevent falls and other accidents and the safeguarding of moving parts of machinery which may injure persons passing nearby so that at all times, as required by this subtitle, every person and property is protected against any mining risk;

(4) Promptly attend to the removal of any dangerous conditions coming to his knowledge and, in case it is not feasible, immediately to remove the danger and order every person whose safety is menaced to leave and remain away from the vicinity of the danger until notified that it has been removed;

(5) Post danger signals of uniform type across the entrance to any mine, portion of the mine, or other conspicuous point in case of danger, and see that the signals are kept there until the danger has been removed; and

(6) Report immediately to the operator of the mine if the ventilation or other machinery fails to discharge its functions adequately, or upon discovery of accumulations of gas, water, or any other unusually dangerous condition.

(e) If assistant mine foremen are employed, they shall assist the mine foreman in complying with the provisions of this subtitle. In the absence of the mine foreman, the superintendent shall designate an assistant to perform the duties of the mine foreman. The assistant is subject to the same penalties as the mine foreman for any violation of this subtitle or rules or regulations made under it.

(f) The superintendent or mine foreman in direct charge of the operation of any mine is the agent of the operator. He is jointly responsible with the operator for any failure to comply with the provisions of this subtitle or rules or regulations made under it which govern operators or agents.

(g) The mine foreman, or his assistant on each day the mine works, shall enter plainly and sign in ink, in a book provided for the purpose, a report of the condition of the mine and of his examination of it made on that day and he shall include the following facts:

(1) Any danger or dangerous condition observed or reported, and what steps have been taken to remedy the condition;

(2) If there is a proper supply of material on hand for the safe working of

the mine;

(3) If the requirements of this subtitle are complied with; and

(4) If the mine is gassy, a report of all air measurements within the mine as elsewhere required to be taken.

(h) If the mine is not gassy, a weekly report of all air measurements in the mine are to be taken as required elsewhere. Each report shall be kept in the foreman's office for examination by the district mine inspector and any person employed at the mine.

(i) The mine foreman each day carefully shall read and countersign with red ink any report entered on the record book of the fire boss.

(j) The mine foreman, on behalf of the operator, shall report immediately to the district mine inspector any violation of this subtitle. The foreman shall make an immediate report to the inspector and mine operator upon the occurrence of any serious or fatal accident on the form the Bureau prescribes.

(k) If the mine foreman or assistant mine foreman violates any provision of this subtitle, or by neglect or for any other cause becomes incapable of properly discharging his duties, the district mine inspector, after investigation, shall prefer charges before the examining authority and take any additional steps the nature of the situation requires.

(l) A mine official, worker, or other person may not solicit or receive any money or other consideration from any person to procure or continue employment for any person, or procure any favor, promotion, advantage, or facility in employment in or about the mine.

§15–403.

(a) The operator of every gassy mine shall employ a sufficient number of fire bosses. Each fire boss shall satisfy the operator of his competence, and shall have first obtained a certificate of competence from the examining authority as prescribed in this title.

(b) Any mine foreman holding a first-class certificate of competency may act as fire boss. In an emergency, any fire boss, properly certified, may act as assistant mine foreman until a regularly qualified person is employed.

(c) The operator shall provide a permanent station at or near the principal entrance of the mine, indicated plainly by legible signs, where the fire boss shall give information regarding the state of the mine to each worker before he goes on his shift. When the working portion of any mine is 1 mile or more from the entrance to the mine or from the bottom of the shaft or slope, a station, with the approval of the district mine inspector, may be located near the workings. No one, except the mine foreman, fire boss, or someone expressly authorized in an emergency, may pass beyond the station

until every part of the mine has been examined and reported safe. The fire boss may not permit any unauthorized person to enter into or remain in any portion of a mine through which a dangerous accumulation of gas is being passed into the ventilating current from any portion of the mine. He shall report any violation of this provision to the mine foreman. When the station of the fire boss is located at a distance within the mine convenient to portions being worked, the operator shall wall off any abandoned workings, whether finished or not, from the main intake and manway heading or passageway of the mine by a stopping of masonry or concrete, sufficiently heavy to keep explosive or noxious gas from entering the intake air at any point between the fire bosses' station and the entrance to the mine.

(d) Suitable duplicate record books shall be kept at the mine office on the surface and at the fire bosses' permanent station. They shall be accessible to the district mine inspector and any worker at the mine. The fire boss shall enter and sign in ink a full daily report of each day's examination stating clearly the approximate amount and location of explosive or noxious gas in the mine. The report also shall state clearly the nature and location of any danger discovered in any place in the mine, and whether it has been reported immediately to the mine foreman. The mine foreman shall read and countersign the report each day.

(e) A fire boss may not neglect to make any examination required, fail to report any danger discovered, knowingly report falsely on any condition within the mine, or fail or neglect to make the reports required.

§15–404.

(a) A person may not work in any mine until he has satisfied the operator that he can do the work allotted to him without endangering the lives of his fellow workers, unless the person works with an experienced miner or other qualified person who instructs the person how to perform his duties safely and properly.

(b) Each miner shall examine his working place before commencing work. After any stoppage of work during the shift he shall repeat this examination. If any part of the roof needs propping, he shall prop it and may not commence or resume work until it is made safe. Each miner shall be very careful to keep his working place in a safe condition at all times.

(c) Each miner immediately shall cease work if he finds his place has become dangerous from any cause or condition beyond his power to remedy. Upon leaving the place, he shall install a plain danger signal at the entrance to warn other persons from entering. He shall immediately notify the mine foreman, and may not return until notified by the mine foreman that the danger has been removed.

(d) Each worker at any mine shall notify the mine foreman or other official of any unsafe condition, including unsafe conditions of any working place, haulage road, or traveling way, or of damage to doors, brattices, or of obstructions to any air passage or failure in the ventilation which may become known to him.

(e) A person intentionally or carelessly may not damage any safety lamp, instrument, air course, or brattice, or without authority handle, remove, or damage any fencing, means of signalling, apparatus, or machinery, or obstruct or throw open airways, or enter a place in or about any mine against caution, or carry fire, open lights, matches, pipes, or other smokers' articles in a gassy mine, or open any door the opening of which is forbidden, or disobey any order given in carrying out the provisions of this subtitle or rule or regulation pursuant to it, or do any other act whereby the lives or health of persons employed or the security of the mine property is endangered.

(f) Each employee shall observe in and about the mine any special duty relating to the security of life or property as the Bureau, by classes of employment, defines and requires by rule or regulation.

(g) The mine operator shall direct the attention of each worker to the general and special rules and regulations and to any exit and escapeway of the mine in which he works.

§15–405.

(a) If a mine disaster occurs, the proper State and federal inspection authorities shall be notified promptly. All facilities of the mine shall be made available for recovery operations.

(b) After a disaster, when the mine has been placed in condition to operate, an inspection of the entire mine shall be made by State and federal coal mine inspectors. If the inspection discloses any dangerous condition, the mine may not resume operation until the condition is corrected.

§15–406.

(a) The operator of each coal mine shall report monthly to the district mine inspector, on forms the Bureau provides, all required information regarding any fatal and serious accident that has occurred in and about the mine.

(b) If any district mine inspector receives notice that a fatal accident has occurred at any mine, he shall go immediately to the mine to investigate the cause of the accident and report in writing to the Bureau. A copy of the report shall be sent to the operator of the mine. The district mine inspector may require the attendance of witnesses, and administer oaths and affirmations to them. If any person neglects or refuses to obey the summons of the inspector, or to testify, except when his refusal is privileged, the inspector shall certify the person for neglect or refusal to the circuit court for the county in which the investigation is held. The court may punish the neglect or refusal as a contempt. The costs of any investigation shall be paid by the county in which the accident may occur, on the warrant of the Director of the Bureau.

§15–407.

(a) In this section, "pozzolan" means the finely divided residue which results

from combustion of ground or powdered coal and is released by combustion gases, as defined by the test methods published by the American Society for Testing Methods.

(b) (1) Any person who uses pozzolan for landfill shall do so in a manner which complies with sound engineering practices.

(2) Any person who uses pozzolan for landfill, structural building, soil improvement, agriculture, soil conditioning, or land reclamation shall minimize dust and wind erosion and shall comply with all silt control regulations and permit requirements of the Department.

§15–501.

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

(b) Repealed.

(c) "Auger mining" means the mechanical removal of coal from the subsurface by augering from the outcrop. It is an integral part of open–pit mining.

(d) "Committee" means the Land Reclamation Committee.

(e) "Deep mining" means any method of extracting coal from the subsurface, except open–pit mining and auger mining, and includes methods such as drift mining, shaft mining, and inclined slope mining.

(f) "Degree" means the angle of slope from the horizontal.

(g) "Department" means the Department of the Environment.

(h) "Federal approval of the State program" means approval by the federal government pursuant to the federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95–87).

(i) "Imminent danger to the health and safety of the public" means the existence of a condition which is reasonably expected to cause substantial physical harm to persons outside the permit area. A reasonable expectation of harm exists if a rational person would not subject himself to the danger.

(j) "Land" means the surface of the land on which open–pit mining is conducted.

(k) "Land affected" means the areas on which open–pit mining activities occur or where those activities disturb the natural land surface. These areas also shall include any adjacent land, the use of which is incidental to any open–pit mining activity, any land affected by the construction of a new road or the improvement or use of an existing road to gain access to the site of the activities for haulage, and any excavation, working, impoundment, dam, ventilation shaft, entryway, refuse bank, dump, stockpile, overburden pile, spoil bank, culm bank, tailing, hole or depression,

repair area, storage area, processing area, shipping area, or any other area on which is sited a structure, facility, or other property or material on the surface that results from or is incident to open–pit mining activities.

(l) "Land eligible for remining" means any land that would otherwise be eligible for expenditures under Subtitle 11 of this title.

(m) "Landowner" means a person in whom the legal title to the land is vested.

(n) (1) "Open–pit mining", "strip mining", and "surface coal mining" are terms used interchangeably in this subtitle to mean the mining or recovery of bituminous coal by removing the strata or material which overlies or is above the coal deposit or seam in its natural condition, or any other recovery of coal by methods other than deep–mining, and land affected by such activities.

(2) These terms include methods such as contour, strip, auger, mountain top removal, box cut, open–pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal at or near the mine site.

(3) "Open–pit mining", "strip mining", or "surface coal mining" do not include the incidental extraction of coal at a level that does not exceed within any calendar year 16 2/3 percent of the total cumulative production of coal and other minerals removed from a mining area for purposes of bona fide sale or reasonable commercial use.

(o) "Operator" means any person, partnership, limited liability company, or corporation that removes or intends to remove more than 250 tons of coal from the earth by surface coal mining within 12 consecutive calendar months in any one location.

(p) "Orphaned land" means land on which open–pit mining was conducted before June 1, 1967 and which has not been reclaimed.

(q) "Orphaned land reclamation project" or "project" means a competently designed reclamation project, which may include backfilling and revegetation, to restore orphaned lands.

(r) "Overburden" means the strata or material overlying a bituminous coal deposit in its natural state.

(s) "Owner's cash contribution" means the sum that an owner of property benefited by an orphaned land reclamation project agrees to pay in a lump sum on approval of the project.

(t) "Permit" means a permit to conduct open–pit mining pursuant to this subtitle.

(u) "Person" includes the federal government, the State, any county, municipal corporation, or other political subdivision of the State, or any of their units, or any individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, associations, public or private corporation, or any other entity.

(v) "Principal owner" means an owner or beneficial owner of at least 10 percent of a corporation, firm, partnership, limited liability company, or association.

(w) "Prospect" means the removal of soil or rock material overlying bituminous coal to determine the location or value of the coal resource of the area, but not to sell, exchange, or transfer.

(x) "Secretary" means the Secretary of the Environment.

(y) "Spoil pile" means the overburden and reject coal as it is piled or deposited in open–pit mining.

§15–502.

This subtitle is an exercise of the police powers of the State for the general welfare of the people, by providing for the protection and conservation of the natural resources of the State and the improvement of areas of land and communities affected in the mining of bituminous coal by the open-pit, strip mining, or auger mining method. Its purpose is:

(1) To aid in the protection of wildlife and restore these lands to productive purposes while decreasing soil erosion;

(2) To aid in preventing pollution of rivers and streams;

(3) To prevent combustion of unmined coal;

(4) To provide for reclamation of the stripped areas;

(5) To improve generally the use and enjoyment of these lands; and

(6) To improve generally the health, welfare, and living conditions in the communities and counties in which coal mining is an important industry.

§15–503.

(a) The Bureau may make and enforce any rule and regulation necessary to prevent, minimize, or repair damage to the land or the natural resources associated with the land which may result from any open-pit mining operation.

(b) The Department is authorized to administer a surface mining control program consistent with the requirements of the federal Surface Mining Control and

Reclamation Act, any amendments to that Act, and any rule or regulation promulgated under that Act.

§15–504.

(a) (1) (i) A person may not conduct open–pit mining as an operator within the State without a currently valid license from the Department.

(ii) Each application for a license as an open–pit mining operator shall be made in writing to the Department, on a form the Department furnishes and accompanied by a $200 fee. The application shall contain information concerning the applicant as required by the Department. In the case of an application submitted by a corporation, partnership, or association, the application shall contain information concerning officers, directors, and principal owners, as the Department requires.

(2) (i) Every person licensed as an open–pit mining operator shall renew the person's license annually and pay a $10 renewal fee.

(ii) The application for renewal of a license as an open–pit mining operator shall be made on or before January 1 of the next succeeding year.

(iii) The county fiscal authority shall notify the Department in writing by no later than December 15 of those open–pit mining operators who have not paid all of their county coal severance taxes and surcharges, including any interest and penalties for late payment, that are due through the previous month of November, as provided under §§ 20–301 through 20–303 and 20–308 of the Local Government Article and § 15–509 of this subtitle. The county fiscal authority shall send this notice of nonpayment to the affected operator at the same time that the county fiscal authority notifies the Department. In the absence of this notification, the Department shall presume that all coal severance taxes and surcharges, including any interest and penalties for late payment, have been paid. The Department may not renew a person's open–pit mining operator's license unless all of that person's county coal severance taxes and surcharges, including any interest and penalties for late payment, that are due through the previous month of November have been paid.

(iv) If an open–pit mining operator provides the Department with written notification from the county fiscal authority which states that the open–pit mining operator has not paid all of the operator's county coal severance taxes and surcharges, including any interest and penalties for late payment, as provided in paragraph (2)(iii) of this subsection, but the county and the operator have agreed on a payment schedule, the Department may issue a license to the operator on the condition that the operator comply with the payment schedule.

(b) The Director of the Bureau shall investigate every application for a license or renewal. The Director may not issue any new open–pit mining operator's license or renew any existing license to any person or operator if the Director finds the applicant for licensure or renewal has failed to correct a violation of the rules and regulations

established under this subtitle, or to comply with any of the provisions of this subtitle. If the applicant is a corporation, limited liability company, partnership, or association, the Director may not issue or renew the license if the Director finds that any officer, director, or principal owner of the corporation, limited liability company, partnership, or association, has previously failed and continues to fail to comply with any of the provisions of this subtitle, or if any officer, director, or principal owner is or has been an officer, director, or principal owner of any other corporation, limited liability company, partnership, or association, which has previously failed and continues to fail to comply with any of the provisions of this subtitle. The Director may not issue or renew any license to any person or operator who has forfeited any bond posted in connection with strip–mining activity in any state. If the applicant is a corporation, limited liability company, partnership, or association, the Director may not issue or renew the license if the Director finds that any officer, director, or principal owner of the corporation, limited liability company, partnership, or association, has previously forfeited any bond posted in connection with strip–mining activity in any state.

(c) (1) Any license held under this section may be suspended by the Department if: (i) due to persistent or repeated failure to comply with the requirements under this subtitle, permit revocation procedures under § 15–508(c) of this subtitle have been brought for any operation owned or controlled by the licensee; and (ii) continued operation by the licensee at any other location is determined by the Department to be a contributing factor in the failure to comply. For purposes of this paragraph, continued operation by the licensee at any other location shall include operation by the licensee directly, or operation by any corporation, limited liability company, partnership, or association of which the licensee is an officer, director, or principal owner, and which involves use of equipment or resources employed on the permit area in violation under this paragraph.

(2) The Department also may suspend the license of any corporation, limited liability company, partnership, or association that is found to be a contributing factor in the persistent or repeated failure to comply with the requirements under this subtitle, which failure caused the Department to bring permit revocation procedures under § 15–508(c) of this subtitle.

(3) (i) The Department shall provide a licensee with notice and an opportunity for a hearing before it may suspend a license under this subsection.

(ii) Unless stayed by the Department or by a reviewing court, any decision by the Department to suspend a license shall be effective immediately.

(d) A licensed operator shall notify the Department, on a form the Department furnishes, within 30 days of the date of any changes in officers, directors, principal owners, or resident agents. The Department shall investigate each new officer, director, principal owner, or resident agent in accordance with subsection (b) of this section. If the Department finds that any officer, director, principal owner, or resident agent is or has been an officer, director, principal owner, or resident agent of any other corporation, limited liability company, partnership, or association that has failed or continues to

fail to comply with any provision of this subtitle, or has forfeited any bond posted in connection with strip–mining activity in any state, the Department shall notify the operator and require corrective action to be taken within 30 days. If the operator does not submit proof that corrective action has been taken, the Department shall suspend the operator's license. If corrective action is not taken prior to the expiration date of the license, the Department may not renew the operator's license.

§15–505.

(a) Before any person conducts open–pit mining, he shall obtain a permit from the Department for each separate operation. All permits shall require the operator to comply with all amendments to this subtitle and rules and regulations adopted pursuant thereto. A permit may not be issued if the Department determines that reclamation cannot be accomplished in accordance with the requirements of this subtitle or rules and regulations adopted pursuant thereto. The permit is valid for a term not to exceed 5 years, unless the Department suspends or cancels it prior to that time. If an applicant demonstrates that a specified longer term is necessary to obtain financing for equipment and opening the operation, the Department may grant a permit for such longer term. A permit issued under this subtitle shall carry with it the right of successive renewal and may be renewed if the permit meets the requirements of this subtitle and rules and regulations adopted under this subtitle. A permit may not be transferred or assigned without written approval from the Department.

(b) (1) Subject to paragraph (2) of this subsection, the Department may not issue, extend or renew any permit to mine coal by the open–pit or strip method on any land the State owns whether or not the ownership includes mineral rights incident to the land, except when the Secretary, with the recommendation of the Land Reclamation Committee and the approval of the Board of Public Works, determines that an abandoned mine on State land will be reclaimed in conjunction with the proposed mining or except when the Secretary, with the recommendation of the Land Reclamation Committee and the approval of the Board of Public Works, determines that the mining could occur in conjunction with public construction activities that will disturb the vegetation and topsoil of State land. If the Department's failure to issue, extend or renew a permit involves taking a property right without just compensation in violation of the Constitution of the United States or the Maryland Constitution and the General Assembly has not appropriated sufficient funds to pay the compensation, the State may use available funds under Program Open Space to purchase or otherwise pay for the property rights.

(2) Subject to valid existing rights, as that term is used in the federal Surface Mining Control and Reclamation Act of 1977, the Department may not issue, extend or renew any permit:

(i) Which would adversely affect any publicly owned park or place recorded in the National Register of Historic Sites, unless approved by the federal, State or local agency with jurisdiction over the park or historic site;

(ii) Within the Youghiogheny River scenic corridor, notwithstanding any other provision of law;

(iii) Within 100 feet of the outside right–of–way line of any public road (except where mine access roads or haulage roads join the right–of–way line), unless the Department, after public notice and opportunity for a public hearing in the locality, determines that the interests of the public and the affected landowners will be protected;

(iv) Within 300 feet from any occupied dwelling, unless waived by the owner thereof;

(v) Within 300 feet of any public building, school, public park, church, community or institutional building; or

(vi) Within 100 feet of a cemetery.

(c) The application for a permit or permit revision shall be submitted in a manner satisfactory to the Department and shall contain at a minimum:

(1) A copy of the applicant's advertisement to be published, following approval by the Department, in a newspaper of general circulation in the county of the proposed mining site which includes the ownership of the land to be affected, a description of the location and boundaries of the proposed site sufficient so that the proposed operation is easily locatable by local residents, the location of where the application is available for public inspection, and notice that written comments and requests for a public hearing will be received by the Department for at least 30 days after the last newspaper publication;

(2) A U.S. Geological Survey quadrangle sheet, 7 1/2 minute series enlarged to a scale satisfactory to the Department showing the location of the land affected by the contemplated operation. The map shall be prepared and certified by a registered engineer or registered surveyor approved by the Department. It shall show the boundaries of the area of land which will be affected, the drainage area above and below the area, the location and names of all streams, roads, railroads, buildings, and utility lines on or immediately adjacent to the area, the name of the owner of the area, the boundaries and names of the owners of all surface areas abutting the permit area, and the nearest municipality;

(3) The results of test borings which the operator has conducted at the site of the proposed operation. The application shall include data such as the nature and depth of the overburden, the thickness of the coal seam, a complete analysis of the coal seam and soil samples, the crop line and strike and dip of the coal seam, and the location of the test boring holes;

(4) A determination of the probable hydrologic consequences of the mining and reclamation operations upon surface and ground waters both on and off the permit area. Information pertaining to the coal seam, test borings, core samples

and soil samples shall be available to the public except that information as to the chemical and physical properties of the coal seam other than its potential toxicity shall be confidential;

(5) A certificate stating that the applicant has a liability insurance policy for the operation for which the permit is sought in such amount as the Department determines to be necessary to compensate any person injured or damaged by the operation;

(6) A permit fee of $10; and

(7) A detailed mining and reclamation plan showing at a minimum, the method for construction of all haul roads, the method for removing and stockpiling topsoil material, the method of mining, a plan for blasting, a plan for control of drainage from the site, a plan for and method of backfilling and regrading, and a plan for revegetation of the area affected.

(d) Procedures for review of an application shall be as follows:

(1) Notwithstanding any provision of the State Government Article, public notice on pending applications provided in accordance with the provisions of this subtitle shall be the only notice required by law.

(2) (i) Except as provided in subparagraph (iii) of this paragraph, upon receipt of a complete application for a permit or permit revision the Department shall require the applicant to publish an approved advertisement of the application submitted under subsection (c) of this section.

(ii) The public notice required in subparagraph (i) of this paragraph shall be published at least once a week for 4 successive weeks in a newspaper of general circulation in the county of the proposed mining operation.

(iii) The public notice required in subparagraph (i) of this paragraph may not be required for an application for permit revision that does not propose significant alterations in a permit in accordance with the Department's regulations.

(3) The Department shall provide written notice of applications for permits or permit revisions to any interested person who requests written notice.

(4) If a public informational hearing is requested, the Department shall notify the applicant and any person who requests the hearing of the date, time, and location of the hearing and shall publish the date, time, and location of the hearing in a newspaper of general circulation in the area of the proposed operation. The Department shall hold a public informational hearing on the application. A record of the hearing shall be made and shall be available to the public.

(5) Any public informational hearing shall be at least 15 but not more than 60 days after the Department provides public notice of the hearing. Members of

the public shall be provided an opportunity to comment on the application in writing until the date of any hearing and copies of the application shall be available for public inspection at the Department 15 days before any hearing.

(6) The Department shall review all aspects of the application, including information pertaining to any other permit required from the Department for the proposed strip mining operation in a timely manner.

(7) (i) Upon completion of the review required by paragraph (6) of this subsection, the Department shall grant, require modification of, or deny the application for a permit and notify the applicant and any participant to a public informational hearing, in writing, of its decision:

1. Within 90 days after the date the Department determines that an application for a new permit or an application for permit revision that proposes significant alterations in the permit is complete; or

2. Within 45 days after receiving:

A. A revised application for a new permit; or

B. An application for a permit revision that does not propose significant alterations in the permit.

(ii) The applicant for a permit shall have the burden of establishing that the application is in compliance with all of the requirements of this subtitle and the rules and regulations issued under this subtitle.

(iii) The Department may provide for one extension of the deadlines in subparagraph (i) of this paragraph for up to 30 days by notifying the applicant in writing prior to the expiration of the original deadlines.

(8) The Department shall immediately notify the operator, local governments, and any participants to a public informational hearing of the decision by the Department. Within 30 days of notification, any person adversely affected by the decision may request an adjudicatory hearing. The Department shall hold a hearing in accordance with Title 10, Subtitle 2 of the State Government Article within 30 days of the request and render a decision within 30 days thereafter.

(9) Any applicant, or any person with an interest which is or may be adversely affected, who has participated in the administrative proceedings as an objector, and who is aggrieved by the decision of the Department, or if the Department fails to act within the time limits specified in this subtitle, shall have the right to judicial review in accordance with § 10–222 of the State Government Article.

(e) In addition to any fee required in this subtitle, each applicant for a permit to mine coal by open–pit or strip method shall pay to the Department, before the permit is issued, a special reclamation fee of $75 for each acre of land affected. The fee shall

be paid only when an acre is initially permitted. This fee shall be deposited in the Bituminous Coal Open–Pit Mining Reclamation Fund. The payment shall be based on the same number of acres as that for which a bond is required. Notwithstanding the provisions of § 15–515 of this subtitle, the Secretary shall use the funds produced by the fee under this subsection to backfill, grade, and plant areas affected by open–pit mining where the funds received from forfeiture on bonds, cash, securities, and other collateral are not sufficient to do the necessary backfilling, grading, and planting. However, if at any time the money produced by this fee and at that time in the Bituminous Coal Open–Pit Mining Reclamation Fund exceed the sum of $750,000, then the Secretary may use this excess money in accordance with the provisions of § 15–515 of this subtitle.

(f) The operator is responsible for the prevention of stream pollution in excess of federal or State standards.

(g) The application for a permit shall include for all land to be affected by the open–pit coal mining and reclamation operations:

(1) On a form furnished by the Department, the written consent of the landowner and any owner of a legal or equitable interest in the land surface for the applicant to enter on any land to be affected by the operator conducting open–pit coal mining and reclamation operations; or

(2) A conveyance that expressly grants or reserves to the applicant the right to extract coal by open–pit mining methods.

(h) The Department may not issue a permit to an applicant if any strip mining operation owned or controlled by the applicant is currently in violation of the federal Surface Mining Control and Reclamation Act of 1977 (P.L. 95–87), any other law pertaining to air or water environmental protection, or any provisions of this subtitle or any rule, regulation, notice, order or permit issued under this subtitle unless the applicant submits proof that the violation is in the process of being corrected to the satisfaction of the appropriate jurisdictional agency.

(i) (1) If the requirements of this subtitle are met and no claim is outstanding under this subtitle against the operator, or any officer or director of a corporation, a permit shall be issued. Any additional permit is subject to each requirement for the original permit.

(2) However, the Bureau may not issue a strip mining permit on slopes of 20 degrees or more from the horizontal. Slope measurements shall be made every 200 feet along the contour of the original premining natural slope beginning with the proposed initial point of mining and including the proposed terminal point of mining. If any 200–foot section has a slope of 20 degrees or more a strip mining permit may not be issued for that 200–foot section, except that a permit may be issued in the case of land eligible for remining when in the opinion of the Land Reclamation Committee the land could be restored to its original contour.

(j) If the Director of the Bureau does not approve the application for a permit or permit revision, he promptly shall notify the operator by registered or certified mail setting forth his reasons for the disapproval. The operator then may take the steps required to have the Bureau's objections removed.

(k) A transfer, assignment, or sale of the rights granted under any permit issued pursuant to this subtitle may not be made without the written approval of the Department.

§15–506.

(a) The Department shall establish a process to determine which, if any, land areas are unsuitable for all or certain types of surface coal mining operations. A surface area may be designated unsuitable for certain types of surface coal mining operations if such operations will:

(1) Be incompatible with existing State or local land use plans or programs;

(2) Affect fragile or historic lands in which such operations could result in significant damage of important historic, cultural, scientific, and esthetic values and natural systems;

(3) Affect renewable resource lands in which such operations could result in a substantial loss or reduction of long–range productivity of water supply or of food or fiber products, such lands to include aquifers and aquifer recharge areas; or

(4) Affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.

(b) The Department shall designate an area as unsuitable for all or certain types of coal surface mining operations if the Department determines that reclamation as required by this subtitle is not technologically and economically feasible.

(c) Any person having an interest which is or may be adversely affected shall have the right to petition the Department to have an area designated unsuitable for surface coal mining operations or to have such a designation terminated. A petition shall describe the petitioner's interest and contain allegations of fact and other supporting data. Within 10 months after receipt of the petition the Department shall hold a public hearing in the county in which the area is located, after publication of the time and place of such a hearing. Prior to the hearing any person may intervene by filing allegations of facts with supporting evidence. Within 60 days after such hearing, the Department shall issue a written decision regarding the petition, and the reasons therefor.

(d) Prior to designating any land areas as unsuitable for surface coal mining operations, the Department shall prepare a detailed statement on (1) the potential coal

resources of the area, (2) the demand for coal resources, and (3) the impact of such designation on the environment, the economy, and the supply of coal.

(e) The Department shall condition all permits in order to protect lands identified or under study pursuant to this section. Once an area has been designated unsuitable for certain types of surface coal mining, the Department may not issue a permit to conduct such operations on that area. The Department shall determine the point in time at which the filing of a petition under this section shall act to stay issuance of a permit applied for under § 15–505 of this subtitle.

§15–507.

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

(2) "Open-acre" means the disturbed area, excluding any area which has not been cleared and grubbed and any area which has been satisfactorily backfilled, regraded, topsoiled, seeded, and mulched (or reclaimed to an alternate post-mining land use) in accordance with an approved reclamation plan, and which will not be redisturbed.

(3) "Open-acre limit" means the number of acres approved to be bonded as open-acres and for which a bond is posted before the issuance of a permit.

(b) (1) After receiving notification from the Department that the permit application has been approved, but before the permit is issued, the operator shall file with the Department a bond for performance payable to the State and conditioned on the operator faithfully performing every requirement of this subtitle, the rules and regulations issued under this subtitle, and permit conditions.

(2) (i) The amount of the bond shall be determined by the Department and may not be less than $500 per acre or a fraction thereof based on the number of acres of land permitted.

(ii) However, the amount of bond for the open-acre limit approved by the Department in the permit application may not be less than an additional $1,500 per acre or fraction thereof.

(3) The liability of the operator under the bond shall be for the duration of the open-pit mining operation and for a period coincidental with the operator's responsibility under § 15-513 of this subtitle.

(c) All bonds required by this section shall be on a form provided by the Department, shall be payable to the State of Maryland, and shall be executed by the operator and a corporate surety licensed to do business in the State. Instead of a corporate surety, any of the following are acceptable:

(1) A deposit of cash or negotiable bonds of the United States government. The cash deposit or market value of the securities shall be at least equal to the

required sum of the bond. On receipt of a deposit of cash or securities, the Department immediately shall place it with the State Treasurer, who shall receive and hold the deposit in trust, in the name of the State for the purposes for which it is made. The State Treasurer is responsible for the custody and safekeeping of the deposit. The operator, making the deposit, may demand and receive from the State Treasurer all or any portion of any deposited securities, if the operator replaces them with other negotiable securities of the class specified as having a market value at least equal to the sum of the bond;

(2) A certificate of deposit in an amount equivalent to the required bond:

(i) Issued by:

1. A financial institution, as defined in § 1–101 of the Financial Institutions Article, that is physically located in the State or that otherwise subjects itself to the jurisdiction of the U.S. District Court for the District of Maryland; or

2. A federal credit union, as defined in 12 U.S.C. § 1752, that is physically located in the State or that otherwise subjects itself to the jurisdiction of the U.S. District Court for the District of Maryland; and

(ii) Accompanied by written agreement of the financial institution or federal credit union to pay on demand to the State in the event of forfeiture; or

(3) An irrevocable letter of credit if it is equivalent to the required bond, issued by a bank that is physically located in the State or that otherwise subjects itself to the jurisdiction of the U.S. District Court for the District of Maryland, and expressly states that the total sum is guaranteed to be available and payable directly to the State on demand in the event of forfeiture. The irrevocable letter of credit may not expire during the anticipated life of the mining activities and the reclamation period thereafter.

(d) The amount of the bonds required by this section shall be sufficient to assure completion of the reclamation plan by the Department in the event of forfeiture and in no case may the bonds required for any permit be less than $10,000.

(e) The operator shall post an additional bond prior to commencing operations on any additional acreage exceeding that covered by the original permit provided the additional acreage is covered in an application previously submitted and approved in accordance with this subtitle. On receipt of the additional bond the Department shall issue an amended permit for the acreage covered by the additional bond.

(f) An operator may not engage in open-pit mining if he has forfeited any prior bond posted under this section.

(g) When an operator submits the mining and reclamation progress report required under § 15-508(b) of this subtitle, the Department, on advice of the Committee, may adjust the amount of surety required from the operator to assure

completion of reclamation and revegetation.

(h) Prior to the release of any bond required by this subtitle, the operator shall publish an advertisement of the release at least once a week for 4 consecutive weeks in a newspaper of general circulation in the jurisdiction affected. The operator shall notify adjoining property owners, local governmental bodies, sewage authorities, and water companies by certified mail. The Department shall afford interested persons an opportunity to submit written comments and to request a hearing on the proposed bond release. Upon receipt of an application for release of bonds, including proof of the advertisement and notifications, the Department shall conduct an evaluation of the reclamation work involved. The Department shall notify the operator in writing of its approval or disapproval. No bond may be fully released until all requirements of this subtitle, rules and regulations adopted pursuant to this subtitle, and permit conditions have been met.

§15–508.

(a) (1) The Department may require an operator to establish and maintain such records, make such reports, and provide such information as may reasonably be required to enable the Department to determine whether the operator has acted or is acting in compliance with this subtitle and rules and regulations promulgated pursuant to it.

(2) The operator of every strip mine operation shall, on or before the 25th day of each month, file with the Department a monthly report covering the preceding calendar month on a form furnished by the Department. The report shall state the actual tonnage of coal produced by each seam, the number of employees, and the number of serious and fatal accidents which have occurred.

(3) The operator of every strip mine operation shall, on a schedule established by the Department, file with the Department an annual report on a form furnished by the Department. The report shall summarize the information from the monthly reports and the mining and reclamation progress report for the preceding calendar year.

(b) (1) The operator of every strip mine operation which continues to operate beyond 1 year shall, on a schedule established by the Department, file with the Department a mining and reclamation progress report. The report shall provide, on forms furnished by the Department, the following information:

(i) The total acres and open acre limit approved, permitted, and bonded;

(ii) The total acres affected, backfilled, and planted on the permit;

(iii) The total acres of approved planting on the permit;

(iv) The total open acres on the permit; and

(v) The information reported on the mining and reclamation progress report for the preceding year.

(2) The mining and reclamation progress report shall be accompanied by a map prepared and certified by a registered professional engineer, a registered land surveyor, or other person approved by the Department. The map shall contain the information required under § 15–505(c)(2) of this subtitle and the following additional information:

(i) The surveyed boundaries of the areas presently disturbed;

(ii) The surveyed boundaries of all backfilled areas;

(iii) The surveyed boundaries of all planted areas, including the month and year each area was planted;

(iv) The boundaries of the areas remaining to be disturbed;

(v) The present location and length of the highwall; and

(vi) A legend containing all information required by this subsection.

(3) (i) Upon notification by the Department of the schedule to file the mining and reclamation report, an operator may notify the Department, in writing, if land has not been disturbed on any strip mine operation during the preceding year.

(ii) If the Department approves the notification, the map required under paragraph (2) of this subsection will not be required to be submitted with the mining and reclamation progress report.

(4) (i) The Department shall review the mining and reclamation progress report.

(ii) If the Department determines that the report is correct, the report shall be approved.

(iii) If the Department does not approve the report, the Department shall notify the operator in writing, setting forth the reasons for disapproval, and identifying the action necessary to secure approval.

(iv) The operator shall take the action necessary to secure approval of the report.

(c) (1) The Department and its authorized agents, without advance notice and upon presentation of appropriate credentials, shall have the right of entry to, on or through any open–pit mining or prospecting operation or any premises in which any records required to be maintained under this subtitle are located to determine conditions of safety and to assure compliance with the provisions of this subtitle, any

rules and regulations promulgated under it and any permit conditions, and shall have access to and the right to copy any records, reports, or other information, and to inspect any monitoring equipment or method of operation required by the Department under this subtitle.

(2) If an operator fails to comply with requirements of this subtitle, any rule or regulation or permit condition, the Department immediately shall notify the operator by certified mail or personal delivery of the failure and require compliance within a reasonable time but not to exceed 90 days. The Department may extend beyond 90 days the total time for abatement of a violation, if the operator demonstrates by clear and convincing evidence, and the Department makes a written finding, that compliance within 90 days is unattainable either because of conditions totally beyond the control of the operator, or because abatement of the violation within 90 days would require action violative of mine safety standards established under federal or State law or would clearly cause more environmental harm than it would prevent. If the operator does not comply within the time specified, or any extension which may be granted, the Department shall issue a cease and desist order requiring the operator immediately to cease all or a portion of the open–pit mining operation in question until the Department determines that the operator is in full compliance. Copies of all records, reports, inspection materials, and information shall be available to the public. If the operator persistently or repeatedly fails to comply with a notice or order, the Department shall issue an order requiring the operator to show cause why the permit should not be revoked and provide opportunity for an adjudicatory hearing in accordance with § 15–514 of this subtitle. The Department also may order the immediate stopping of any operation conducted by an operator who lacks the license or permit required by this subtitle.

(d) If the Department determines that a probable permit acreage or boundary violation exists, it may order an operator to submit a map showing the status of the operation as of the date of the order.

(e) If, on the basis of an inspection, the Department determines that any condition or practice exists, which condition or practice creates an imminent danger to the health or safety of the public, or is causing or may reasonably be expected to cause significant imminent environmental harm, the Department or its agent shall immediately issue a cease and desist order requiring the operator immediately to cease open–pit mining on all or part of the operation in question until the Department determines that the operator is in full compliance. If cessation of open–pit mining is not sufficient to abate the imminent danger or harm, the Department shall also impose such affirmative obligations upon the operator as are necessary to abate the danger or harm.

(f) Within 30 days from the date of a notice or order under this section, or from the date of a related civil penalty assessment under § 15–521(b) of this subtitle, whichever is later, any person having an interest which is or may be adversely affected may request an adjudicatory hearing pursuant to Title 10, Subtitle 2 of the State Government Article. If a civil penalty assessment is made, any adjudicatory hearing

on the penalty amount shall be combined with the hearing on the violation, and the assessment must be paid into escrow in accordance with § 15–521(b)(4) of this subtitle. The Department shall conduct an investigation and provide the operator and other interested persons written notice of the time and place of the hearing at least 5 days prior to the hearing. Within 30 days of the hearing the Department shall issue a written decision. Prior to the decision, the Department may grant temporary relief from a notice or order if an applicant can show a substantial likelihood of success on the merits, a public hearing on the temporary relief is held, and the relief will not adversely affect the health or safety of the public or cause significant imminent environmental harm to land, air, or water resources.

(g) A person seeking administrative or judicial review of a notice or order, or who participates in an action under § 15–528 of this subtitle, may request the Department or court to assess an opposing party for all expenses, including attorneys' fees, reasonably incurred by the person in connection with the proceedings. The Department or court may order reimbursement as deemed proper.

(h) Any person may request an inspection by providing the Bureau with a signed written statement that gives reason to believe that an operation may be in violation of this subtitle or the Bureau's rules and regulations. If an inspection is made the person who requested the inspection shall have a right to accompany the inspector; provided that, he or she voluntarily remains under the control and direction of the inspector at all times, and assumes all risk of injury. In any case, the person shall be provided with a written report from the Bureau that indicates the results of an inspection, or the reason why no action was taken on the request.

§15–509.

(a) On the basis of the approved monthly reports of coal produced submitted under § 15–508 of this subtitle, the Department shall assess a 15 cent mine reclamation surcharge for each ton of coal removed by the open–pit or strip method.

(b) Of the amount assessed under subsection (a) of this section:

(1) An amount equal to 9 cents for each ton of coal produced for the month shall be deposited to the credit of the Bituminous Coal Open–Pit Mining Reclamation Fund and shall be administered in accordance with §§ 15–515, 15–516, and 15–517 of this subtitle; and

(2) An amount equal to 6 cents for each ton of coal produced for the month shall be remitted to the fiscal authority of the county in which the coal was removed.

(c) The provisions of subsection (b)(2) of this section may not apply for a month when the provisions of § 15–517(b) or (e) of this subtitle apply.

(d) On the basis of the approved monthly reports of coal produced that are submitted under § 15–508 of this subtitle, the Department shall assess a 2 cent bond supplement reserve surcharge for each ton of coal removed by the open–pit or

strip method, which amount shall be deposited to the credit of the Bituminous Coal Open–Pit Mining Reclamation Fund and administered in accordance with §§ 15–515, 15–516 and 15–517 of this subtitle.

§15–510.

(a) Each operator shall comply with the requirements of this section.

(b) (1) The operator shall regrade in a manner the Department establishes by rule and regulation and in accordance with the approved reclamation plan. Any regrading shall include, but is not limited to, backfilling, compacting (where necessary to insure stability or prevent leaching of toxic materials), and regrading to restore to the approximate original contour of the affected area with all highwalls, spoil piles, and depressions eliminated, unless depressions are approved by the Department to prevent erosion and retain moisture to assist revegetation.

(2) All spoil from a permitted area shall be reclaimed within that permitted area or placed on abandoned mine land in a manner approved by the Department. Spoil from a permitted area may not be placed on abandoned mine land if it is needed to achieve the approximate original contour within that permitted area or to meet other permit requirements.

(c) The operator shall seal off with a material approved by the Department each opening from an underground mining operation at the base of the final cut. The seal shall be constructed in a way to avoid creating danger from impoundment of any large quantity of water.

(d) If the operator proposes to impound water to provide a lake or pond for wildlife, recreational, or other water supply purposes, he shall file a formal request with the Department and receive approval before the pond or lake is created.

(e) An operator, with the written approval of the landowner, may propose an alternative plan for reclamation if the land can be used for suitable purposes. The alternate plan shall be submitted to the Department as part of the mining and reclamation plan.

(f) Unless the operator obtains the prior written approval of the Department, all backfilling described in the approved reclamation plan shall be completed before backfilling equipment is moved from the operation.

(g) An owner of either surface rights or mineral rights may not interfere with an operator in the discharge of any duties imposed by this subtitle.

§15–511.

(a) (1) (i) After completion of all coal removal, backfilling, regrading, and planting on the permit, the operator shall file with the Department a completion report on a form furnished by the Department no later than the time the next mining and

reclamation progress report required by § 15–508(b) of this subtitle is to be submitted.

(ii) The report shall identify the operation, the area of land affected by the strip mining operation, and identify any area proposed to be reserved for deep mining or any other lawful purpose in accordance with subsection (b) of this section.

(2) The completion report shall be accompanied by a completion map. The map shall be prepared and certified by a registered professional engineer or registered land surveyor and contain the following information:

(i) The information required by the map under § 15–505(c)(2) of this subtitle;

(ii) The surveyed boundaries of the areas affected on the permit;

(iii) The surveyed boundaries of all areas which have been backfilled and planted on the permit and indicate the month and year each area was planted;

(iv) The surveyed boundaries of any areas proposed to be reserved for deep mining or other purposes under subsection (b) of this section; and

(v) A legend which indicates the total acres of the permit, acres affected on the permit, the acres remaining open on the permit, and the acres reserved for deep mining or other purposes.

(3) (i) The Department shall review the completion report.

(ii) If the Department determines the report is correct, the report shall be approved.

(iii) If the report is not approved, the Department shall notify the operator, in writing, setting forth the reasons for disapproval and identify the action necessary to secure approval.

(iv) The operator shall take the action necessary to secure approval of the report.

(v) Approval of the completion report by the Department exempts the operator from the filing of further mining and reclamation progress reports on the permit pursuant to § 15–508(b) of this subtitle.

(b) If the operator or any other person desires to conduct deep mining on the premises or use a portion of the permit area for haulageways or any other lawful purpose, the operator may designate a location, subject to the Department's approval, to be used for one or more of these purposes. At a designated and approved location it is not necessary to backfill as required by this subtitle until the deep mining or other use is completed. During this time the bond on file for that portion of the operation may not be released unless a bond as required by Subtitle 6 of this title is filed with

the Department. The area of each reserved opening and its location shall be described in the completion report and designated on the attached map. Before commencing operation of a deep mine, a permit must be obtained and a bond filed as required by Subtitle 6 of this title.

(c) If within two years after the completion of the strip mining operation deep mining has not been initiated at the proposed location, reclamation shall be completed in accordance with this subtitle.

§15–512.

To encourage optimum revegetation, the Committee may recommend to the Department that it contribute up to 50 percent of the cost of fertilizer, lime, and seed required by an approved mining and reclamation plan.

§15–513.

(a) (1) No later than the time the mining and reclamation progress report required by § 15–508(b) of this subtitle is submitted, the operator shall submit a backfilling and planting report on a form furnished by the Department for all affected areas which have been backfilled, regraded, and planted in accordance with this subtitle and the approved reclamation plan. The report shall provide the following information:

(i) The number of acres affected on the permit;

(ii) The number of acres backfilled and planted for the period of the report;

(iii) The number of backfilled and planted acres previously reported;

(iv) A map showing the area of the permit being reported as backfilled and planted; and

(v) Such other relevant information as the Department requires.

(2) The Department shall inspect the reported area to determine if the backfilling and planting has been done in accordance with the approved reclamation plan. If the Department determines that the reported area has been backfilled and planted according to the approved plan, the report shall be approved.

(3) If the Department does not approve the backfilling and planting report, it shall notify the operator in writing, setting forth the reasons for disapproval and identifying the action necessary to secure approval. The operator shall take the action necessary to secure approval of the report.

(b) (1) Upon approval of the backfilling and planting report required by subsection (a) of this section, the Department shall release that portion of the liability

on the bond representing the open–acre amount determined under § 15–507(b)(2)(ii) of this subtitle in accordance with provisions set forth in § 15–507(h) of this subtitle.

(2) (i) If the report required by subsection (a) of this section is approved, the operator shall be responsible for the successful revegetation of the reported area for the period specified in subparagraph (ii) or (iii) of this paragraph unless liability is extended by the Department to insure compliance with the requirements of this subtitle, rules and regulations, or permit conditions.

(ii) On land eligible for remining, the period of operator responsibility is 2 full years after the approval of the report. The authority for this subparagraph shall terminate on September 30, 2004, or on any later date authorized under the federal Surface Mining Control and Reclamation Act.

(iii) For any reported area other than land eligible for remining, the period of operator responsibility is 5 full years after the approval of the report.

(3) No sooner than 2 years after the report required by subsection (a) of this section is approved, if the revegetation has been established on the area in accordance with this subtitle and the approved reclamation plan and the Committee has approved the revegetation on the area, the Department may release an additional portion of the bond required by § 15–507(b) of this subtitle in accordance with § 15–507(h) of this subtitle.

(4) The Department shall at all times retain bonds in an amount sufficient to insure completion of the reclamation plan by the Department in the event of forfeiture.

(5) When the operator has successfully completed all surface coal mining and reclamation activities, the Department may release the remaining portion of the bond, but not before the expiration of the period specified for operator responsibility in paragraph (2) of this subsection; provided, however, that no bond shall be fully released until all reclamation requirements of this subtitle are fully met.

§15–514.

(a) (1) If the Director determines that an operator has failed to comply with any provision of this subtitle, or any rule, regulation, or permit issued under this subtitle, or that the operator has not produced coal or removed overburden on the permit site for a period of 6 months, the Director may issue an order requiring the operator to show cause why the permit should not be revoked and give the operator 30 days in which to request a contested case hearing.

(2) (i) If a hearing is requested, the Director shall inform the permittee and all interested parties of the time and place of the hearing.

(ii) Any hearing held under this section shall be held in accordance with Title 10, Subtitle 2 of the State Government Article.

(3) If the operator fails to show cause why the permit should not be revoked, the Director shall revoke the permit and forfeit the bond posted by the operator in accordance with § 15-507 of this subtitle.

(4) If the Director revokes a permit and forfeits the bond under this subsection, the operator of the permit forfeits:

(i) All rights and claims to the permit;

(ii) All materials furnished with the application for the permit; and

(iii) Any subsequent amendments to the permit.

(b) (1) If the Director revokes a permit and forfeits the bond, the Director shall notify the operator and the surety or the holder of any other securities if applicable, in writing, that all bonds are forfeited and shall make claim for payment.

(2) If the surety or the holder of any other securities refuses to make payment within a reasonable time, the Director shall certify the case to the Attorney General, who shall file suit to collect the forfeited bond.

(3) The Director shall deposit all funds received from the forfeiture of bonds with the State Treasurer to the credit of the Bituminous Coal Open-Pit Mining Reclamation Fund.

§15–514.1.

(a) In this section, "permit" includes all areas approved in the application for mining.

(b) A permit that has been revoked under § 15-514(a) of this subtitle may be reinstated for the sole purpose of reissuing all or part of the permit to another qualified operator in accordance with subsection (c) of this section.

(c) In order to be qualified to obtain a reissued permit under this section, an operator shall:

(1) Provide to the Director proof of the right to mine as required by § 15-505(g) of this subtitle;

(2) Enter into an agreement with the Department to assume the duties and responsibilities of the permit and to conduct mining operations in accordance with the requirements of this subtitle, regulations issued under this subtitle, and the conditions of the permit;

(3) File with the Department a performance bond as required under § 15-507 of this subtitle; and

(4) Provide to the Director any other information required to reissue the permit in accordance with this subtitle.

§15–515.

(a) (1) Any funds that the Department receives and retains from license and special reclamation fees, mine reclamation surcharge, forfeiture of bonds, cash deposits, or securities shall be deposited to the credit of the State Treasurer in a bank the Treasurer designates. The funds shall be maintained as a special fund on the books of the Comptroller of the Treasury in an account known as the "Bituminous Coal Open–Pit Mining Reclamation Fund". The Secretary shall use the funds to implement this subtitle and to backfill, grade, and plant areas affected by open–pit mining. However, funds received from the reclamation surcharge under § 15–509 of this subtitle shall only be used by the Secretary for reclamation of land affected by open–pit or strip method mining in the county in which the surcharge is assessed and collected.

(2) (i) Funds received from forfeiture of bonds, and the bond supplement reserve established under § 15–517 of this subtitle, when the bond is not sufficient, shall be used to reclaim the land affected by the operation on which the liability was charged on the bond and to perform the requirements of this subtitle, regulations issued under this subtitle, and permit conditions that the operator has failed to perform.

(ii) Funds received on a forfeiture in excess of the amount required to reclaim the land affected and to perform the requirements that the operator has failed to perform may be used to reclaim any other land affected by open–pit mining of bituminous coal.

(3) Funds placed in the reserve in accordance with § 15–516 of this subtitle shall be used to replace water supplies affected by any open–pit mining operation after all bonds on the operation have been fully released.

(b) The Secretary shall administer the Fund subject to the provisions for financial management and budgeting established by the Department of Budget and Management. The Secretary annually shall coordinate the preparation of a budget required to implement this subtitle, including reclamation of lands affected by bituminous coal open–pit mining.

(c) For the purpose of performing duties under this section, the Department, its agents, employees, and contractors may enter on private property for access to and reclamation of any land affected by open–pit mining or prospecting. Entry onto private property for purposes other than reclamation of land on which liability was charged on a forfeited bond may not be undertaken without prior consent of the property owner. If, after real and bona fide effort, the consent of the property owner cannot be secured, the Department may apply to a court where the property or any part of it is located for an order directing that the entry be permitted. "Bona fide effort" shall include either 30 days' advance notice in writing by certified mail, return receipt requested, to the last

known address of the property owner or posting notice on the property not less than 30 days in advance, or other requirements as the court may deem appropriate. The Department shall reimburse the landowner or lessee who is farming the property for agricultural products destroyed or damaged by the Department's agents, employees, or contractors. The Department shall be responsible for any other damages that may be incurred as a result of entry onto private property.

§15–516.

(a) The Secretary shall establish within the Bituminous Coal Open-Pit Mining Reclamation Fund a reserve to be used to replace water supplies that are determined to have been affected by an open-pit mining operation, after all the bonds under § 15-507 of this subtitle covering the operation that affected the water supply have been released in accordance with § 15-507 of this subtitle.

(b) One cent of the mine reclamation surcharge that the Department assesses for each ton of coal removed by the open-pit or strip method under § 15-509 of this subtitle shall be paid into the water supply replacement reserve.

(c) (1) When the amount of the reserve equals or exceeds $50,000, payment of the 1 cent into the reserve shall end temporarily.

(2) When the amount of the reserve is reduced below $25,000 because of payment made under this section, payment of the 1 cent into the reserve shall resume.

§15–517.

(a) The Secretary shall establish within the Bituminous Coal Open-Pit Mining Reclamation Fund a bond supplement reserve to be used if funds received from the forfeiture of bonds under § 15-514 of this subtitle are not sufficient:

(1) To reclaim the land affected by the operation on which the liability was charged on the bond; and

(2) To perform:

(i) The requirements of this subtitle;

(ii) The requirements of regulations adopted under this subtitle; and

(iii) Any permit condition that the operator has failed to perform.

(b) The Secretary shall deposit to the credit of the bond supplement reserve the following funds:

(1) A portion of the assessment under § 15-509(b)(1) of this subtitle equal to 2 cents for each ton of coal produced for the month;

(2) The amount of the assessment under § 15-509(b)(2) of this subtitle; and

(3) The amount of the assessment under § 15-509(d) of this subtitle.

(c) When the amount of money in the bond supplement reserve equals or exceeds $750,000 at the end of the month, deposits into the reserve of the amounts provided in subsection (b)(1) and (2) of this section shall end temporarily.

(d) The assessment under § 15-509(d) of this subtitle shall end temporarily for any month when:

(1) The amount of money in the bond supplement reserve equals or exceeds $750,000 at the end of the month;

(2) An amount equal to the amount paid to the bond supplement reserve under subsection (b)(1) of this section from the assessment under § 15-509(d) of this subtitle has been credited to the Bituminous Coal Open-Pit Mining Reclamation Fund; and

(3) An amount equal to the amount paid to the bond supplement reserve under subsection (b)(2) of this section from the assessment under § 15-509(d) of this subtitle has been remitted to the fiscal authority of the county in which the coal was removed.

(e) At the end of any month when the amount of money in the bond supplement reserve is reduced below $500,000:

(1) The assessment under § 15-509(d) of this subtitle shall resume; and

(2) Deposits into the bond supplement reserve of the amounts in subsection (b)(1), (2), and (3) of this section shall resume.

(f) The Secretary shall notify each county when remitting or suspending the remittance of the amount under § 15-509(b)(2) of this subtitle.

(g) The Secretary shall meet and confer with the Land Reclamation Committee at least 30 days before procuring any services for which funds from the bond supplement reserve will be used, and shall provide the Committee an opportunity to submit comments and recommendations about the proposed expenditure.

§15–518.

(a) A person who conducts any prospecting activity shall be subject to the reclamation requirements and to the enforcement and penalty provisions of this subtitle.

(b) A person who intends to prospect for coal in an area not included in a valid surface coal mining permit shall file a notice of intent to prospect with the Department

at least 2 weeks prior to the commencement of any surface disturbance associated with prospecting.

(c) The notice of intent to prospect shall be in writing and submitted on forms prescribed by the Department. The notice shall include:

(1) A description of the area to be prospected;

(2) A description of the legal basis upon which the person who intends to prospect claims the right to enter and conduct prospecting operations on the area;

(3) A description of the intended prospecting operations;

(4) A statement of the period of the proposed prospecting; and

(5) A plan for reclamation of the area in accordance with the requirements of this subtitle upon completion of the prospecting.

(d) A person who proposes to conduct prospecting operations which are reasonably likely to cause substantial disturbance to the land surface or cause serious harm to water supply or water quality may not commence any disturbance related to the proposed prospecting prior to obtaining the written approval of the Department and submitting to the Bureau a bond in a form acceptable under § 15-507(c) of this subtitle, payable to the State, conditioned on the faithful performance of the requirements of this section. The bond shall be in the amount that the Department determines necessary to assure completion of reclamation and revegetation.

(e) If the Department determines, after review of the notice filed pursuant to this section, that the proposed prospecting operation is reasonably likely to cause substantial disturbance to the natural land surface or to cause serious harm to a water supply or water quality, the Department shall so inform the person submitting the notice, and the requirements of subsection (d) of this section shall apply to such persons and operations.

(f) The Department shall deny written approval to prospect where it finds that the person intending to prospect has failed to reclaim any other prospecting or surface coal mining operation in accordance with the requirements of this subtitle applicable to that operation.

(g) A person may not remove more than 200 tons of coal pursuant to this section.

(h) Prospecting operations, and any of its related activities, including but not limited to excavations, construction of roads, drill holes, the removal of facilities and equipment, and reclamation shall be conducted in accordance with performance and reclamation regulations established for prospecting.

(i) Information submitted to the Department pursuant to this section concerning trade secrets or confidential commercial or financial information which

relates to the competitive rights of the person or entity intending to prospect shall not be available for public examination.

(j) A person who conducts any prospecting activity in violation of this section, or rules or regulations promulgated under this section, shall be subject to the enforcement and penalty provisions of this subtitle.

§15–519.

(a) If the Department finds that the probable total annual production at all locations of a surface coal mining operator will not exceed 300,000 tons, the cost of the following activities, which shall be performed by a qualified public or private laboratory or such other public or private qualified entity designated by the Department, shall be assumed by the Department upon written request of the operator in connection with a permit application:

(1) The determination of probable hydrologic consequences required by § 15-505(c)(4) of this subtitle, including engineering analyses and designs necessary for the determination;

(2) The development of cross-section maps and plans required by § 15-505(c)(7) of this subtitle;

(3) The geologic drilling and statement of results of test borings and core samplings required by § 15-505(c)(3) of this subtitle;

(4) The collection of any archaeological and historical information required by the Department and the preparation of plans necessitated thereby;

(5) Preblast surveys required by the Department; and

(6) The collection of site-specific resource information and production of protection and enhancement plans for fish and wildlife habitats and other environmental values required by the Department under this subtitle.

(b) The Department shall provide or assume the cost of training coal operators that meet the qualifications in subsection (a) of this section concerning the preparation of permit applications and compliance with the Maryland Surface Mining Control Program, and shall ensure that qualified coal operators are aware of the assistance available under this section.

(c) A coal operator that receives assistance pursuant to this section shall reimburse the Department for the cost of the services rendered if the Department finds that the operator's actual and attributed annual production of coal for all locations exceeds 300,000 tons during the 12 months immediately following the date on which the operator is issued the surface coal mining and reclamation permit.

§15–520.

(a) Any person who mines coal by the open-pit mining method as an operator without having applied for and received a license as provided in this subtitle is guilty of a misdemeanor. On conviction, he is subject to a fine of not less than $5,000 and not exceeding $10,000, or imprisonment not exceeding six months, or both.

(b) Any person who mines coal by the open-pit mining method without having received a permit, as provided in this subtitle, who mines coal by the open-pit mining method without securing an amended permit, who mines coal by the open-pit mining method without furnishing the proper bond required by this subtitle, who knowingly or intentionally submits false information to the Department, or knowingly fails to make any statement, representation, or certification in any document required to be filed with the Department, or who does not fully comply with every provision and requirement of this subtitle or any rule, regulation, permit, notice or order issued pursuant thereto, is guilty of a misdemeanor, and upon conviction, is subject to a fine of not more than $10,000 or by imprisonment for not more than 1 year or both.

(c) Any person who mines coal by the open-pit or strip method on any land the State owns in violation of § 15-505 of this subtitle without a permit the Bureau issues is guilty of a misdemeanor and upon conviction is subject to a fine of not less than $1,000 and not exceeding $10,000 or imprisonment not exceeding two years, or both. A separate offense shall exist for each day a violation occurs.

In addition to any fine imposed, every person convicted of violating § 15-505 shall pay the Director a sum sufficient to reclaim the area mined.

(d) Any fine imposed under this subtitle by the District Court shall be paid to the State. A fine imposed by the circuit court for any county shall be paid to the Bituminous Coal Open-Pit Mining Reclamation Fund. A fine imposed under this section and paid into the Fund shall be used for the sole purpose of foresting or reclaiming land affected by open-pit mining of bituminous coal.

(e) Any person who shall willfully resist, prevent, impede, or interfere with the Secretary or any of his agents in the performance of duties under this subtitle shall be guilty of a misdemeanor, and on conviction, is subject to a fine of not more than $5,000 or by imprisonment for not more than 1 year or both.

§15–521.

(a) Any person who violates any provision of this subtitle, or any rule, regulation, order, or permit issued pursuant thereto, shall be liable for a penalty not exceeding $10,000 for the violation, which may be recovered in a civil action, and the person may be enjoined from continuing the violation, as provided by this subtitle. Each day upon which the violation occurs constitutes a separate offense.

(b) (1) In addition to any other remedies available at law or in equity, a civil penalty may be assessed for violation of any provision of this subtitle, or rule,

regulation, order or permit issued under it; and shall be assessed whenever the Bureau issues a cease and desist order on imminent danger or significant imminent environmental harm under § 15-508(e) of this subtitle. The penalty may be assessed by the Secretary or a hearing officer designated by the Secretary, only after the person charged with the violation has been given an opportunity for a public hearing in accordance with paragraph (4) of this subsection. Where the person charged with the violation fails to request a public hearing, a civil penalty shall be assessed only after the Department determines that a violation did occur and the amount of the penalty which is warranted and has issued an order requiring the penalty be paid. The civil penalty assessed may not exceed $5,000 for each day of violation.

(2) In determining whether or not to seek assessment of a civil penalty, the Department shall consider:

(i) The willfullness of the violation and whether any negligence was involved;

(ii) The seriousness of the violation in terms of potential or actual damage to land and structures, irreparable harm to the environment, or hazard to the health or safety of the public;

(iii) The history of violations at the particular mine site;

(iv) Any demonstrated good faith by the operator in attempting rapid compliance after notification of the violation; and

(v) The effect of the violation on reclamation of the affected area.

(3) The civil penalty is payable to the State and collectible in any manner provided at law for the collection of debts. If any person liable to pay the penalty neglects or refuses to pay it after demand, the amount, together with interest and any costs that may accrue, shall be a lien in favor of the State upon the property, both real and personal, of the person and shall be recorded in the clerk of court's office for the political subdivision in which the property is located. The moneys shall be credited to the Bituminous Coal Open-Pit Mining Reclamation Fund.

(4) Within 30 days from the date of an assessment order by the Department, the person charged with the violation may request an adjudicatory hearing in accordance with Title 10, Subtitle 2 of the State Government Article; provided that, at the time of the request the full amount of the penalty must be paid over to the Secretary for placement in an escrow account pending completion of administrative and judicial review of the assessment. Failure to forward the full amount to the Secretary within 30 days of an assessment order shall result in a waiver of all legal rights to contest the amount of the penalty or the underlying violation. If it is eventually determined that no violation occurred, or the amount of the penalty is reduced, the Secretary shall remit within 30 days the appropriate amount to the person, with interest at the rate of 6 percent.

(c) If an operator fails to correct a violation within the time for compliance specified by a notice or order issued under § 15-508(c) or (e) of this subtitle, the Secretary shall assess a civil penalty of not less than $750 for each subsequent day up to 30 days thereafter during which the violation continues, and may assess the penalty beyond that time.

(d) The Department may waive assessment of the civil penalty required by subsection (c) of this section when a violation was issued for the failure of the operator to submit:

(1) The monthly report and annual report required under § 15-508(a) of this subtitle;

(2) The mining and reclamation progress report required under § 15-508(b) of this subtitle;

(3) The backfilling and planting report required under § 15-513 of this subtitle; or

(4) The completion report required under § 15-511(a) of this subtitle.

§15–522.

Whenever a corporation or limited liability company violates any rule or regulation promulgated under § 15-503 of this subtitle, any permit issued pursuant to this subtitle, or fails to correct a violation within the time specified by a notice or order issued under § 15-508(c) or (e) of this subtitle, any officer, director or agent of the corporation or limited liability company who willfully and knowingly authorized, ordered or carried out the violation or failure shall be subject to the penalty provisions of § 15-520(b) and § 15-521(b) and (c) of this subtitle.

§15–523.

(a) On application of the Department, acting through the Attorney General, verified by oath, the circuit court for the county where a mining operation is located may, by appropriate order, enforce compliance with or enjoin the violation of any order, notice, rule, regulation or permit of the Department issued under this subtitle.

(b) The provisions of this section are not intended to expand the authority of the Secretary to adopt rules and regulations as otherwise provided by law.

§15–524.

(a) Nothing in this subtitle shall be construed as affecting in any way the right of any person to enforce or protect his interest in water resources affected by open-pit mining.

(b) Before the release of all bonds on a permit, the operator of an open-pit mine

shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution, or interruption proximately resulting from such open-pit mine operations.

(c) (1) If the Department determines that the water supply has been affected by open-pit mining operations, the Department shall notify the operator of its determination and shall establish a reasonable schedule for the operator to replace the water supply.

(2) If the operator fails to comply with the schedule for replacing the affected water supply established in the Department's notification under paragraph (1) of this subsection, the Department shall order the operator to replace the affected water supply.

(3) On request from the operator, the Department shall use funds from the Bituminous Coal Open-Pit Mining Reclamation Fund, other than funds collected under § 15-505(e) of this subtitle, to replace the affected water supply, if the operator agrees to reimburse the Fund for money expended by the Department as provided in subsection (f) of this section.

(d) (1) On request from the owner of the affected water supply, the Department may use funds from the Bituminous Coal Open-Pit Mining Reclamation Fund, other than funds collected under § 15-505(e) of this subtitle, to replace the affected water supply if the operator fails to comply with either the schedule established in the Department's notification or the Department's order under subsection (c) of this section.

(2) These funds may be used to replace a water supply only after the owner of the affected water supply agrees to reimburse the Fund for moneys expended by the Department as provided in subsection (f) of this section.

(e) (1) If the Department determines that the water supply has been affected by open-pit mining operations after bonds on the operations have been forfeited, the Department may use funds received from forfeiture on bonds, or funds from the Bituminous Coal Open-Pit Mining Reclamation Fund where funds received from forfeiture on bonds are not sufficient, to replace the water supply.

(2) If the Department determines that the supply has been affected by open-pit mining operations after all bonds on the operation have been fully released, instead of requiring the operator to replace the water supply under subsection (c) of this section, the Department shall use funds from the reserve under § 15-516 of this subtitle to replace the water supply. The use of funds from the reserve may not be construed to extend any permit where bonds have been fully released.

(f) (1) If, after final administrative and judicial review of the Department's

determination or order issued under subsection (c) of this section, it is determined that the water supply contamination, diminution, or interruption did proximately result from the operator's open-pit mining operation, and if the Department has expended moneys from the Bituminous Coal Open-Pit Mining Reclamation Fund to replace the water supply, the operator shall reimburse the Fund for all moneys expended by the Department to replace the water supply.

(2) If, after final administrative and judicial review of the Department's determination or order issued under subsection (c) of this section, it is determined that the water supply contamination, diminution, or interruption did not proximately result from the operator's open-pit mining operation, and if the Department has expended moneys from the Fund to replace the water supply, the property owner shall reimburse the Fund for all moneys expended by the Department to replace the water supply.

(3) (i) If, after final administrative and judicial review of the Department's determination or order issued under subsection (c) of this section, it is determined that the water supply contamination, diminution, or interruption did not proximately result from the operator's open-pit mining operation, and if the operator has replaced the water supply, the operator may request reimbursement from the Department for the actual direct costs incurred by the operator to replace the water supply.

(ii) The request shall be in writing, signed by the operator, and shall include a statement of the actual direct costs incurred by the operator to replace the water supply, and a statement that the operator is not eligible for reimbursement for all or any part of the costs for which reimbursement is requested from any other source.

(iii) The Department shall reimburse the operator for the operator's eligible costs to replace the water supply from the Bituminous Coal Open-Pit Mining Reclamation Fund, other than funds collected under § 15-505(e) of this subtitle.

(g) (1) The operator shall be liable for any expenditures from the Bituminous Coal Open-Pit Mining Reclamation Fund in excess of funds received from forfeiture on bonds required to replace the water supply under subsection (e) of this section.

(2) The Department may recover from the operator all costs of water supply replacement in excess of funds received from forfeiture on bonds.

§15–525.

No person may engage in or be directly responsible for blasting or the use of explosives in open-pit mining operations without being certified by the Department. The Department shall establish a program providing training, examination and certification.

§15–526.

For the purpose of any hearing required by this subtitle, the Department is

authorized to administer oaths, subpoena witnesses, or written or printed materials, and take evidence including but not limited to inspections of the land affected and other surface coal mining operations carried on by the operator in the general vicinity. A verbatim record of each hearing required by this subtitle shall be made unless waived by all parties, and a transcript made available on the motion of any party or by order of the Department.

§15–527.

(a) An employee of the State of Maryland who performs any function or duty under this subtitle may not have a direct or indirect financial interest in any open-pit or deep mining operation. For purposes of this section, prohibited financial interests shall be determined in accordance with federal regulations adopted under the federal Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87).

(b) This section is intended to be read in conjunction with and to supplement the provisions of the Maryland Public Ethics Law, but in the event of any conflict, the requirements of this section shall prevail.

(c) Any person who knowingly violates any provision of this section is guilty of a misdemeanor and, on conviction, is subject to a fine of not more than $2,500 or imprisonment for not more than 1 year or both.

§15–528.

(a) Except as provided in subsection (b) of this section, any person, as defined in this subtitle, who has an interest that is or may be adversely affected may commence a civil action on his own behalf to compel compliance with this subtitle:

(1) Against the Department if there is alleged a failure of the Department to perform any act or duty under this subtitle that is not discretionary; or

(2) Against any other person who is alleged to be in violation of any rule, regulation, order, or permit issued under this subtitle.

(b) An action may not be commenced under subsection (a) of this section:

(1) Prior to 60 days after the plaintiff has given notice in writing of the alleged violation to the Department, the Attorney General, and to any alleged violator; provided that, the action may be brought immediately if the alleged violation constitutes an imminent threat to the health or safety of the plaintiff, or would immediately affect a legal interest of the plaintiff; or

(2) If the Department or the State has commenced and is diligently prosecuting a civil action to require compliance under this subtitle, but any person may intervene in the action as a matter of right.

(c) The Secretary of the United States Department of Interior may intervene as

a matter of right in any action brought under this subtitle.

(d) This section is intended to be read in conjunction with and to supplement the provisions of Subtitle 5 of Title 1 of the Natural Resources Article (Environmental Standing Act), but in the event of any conflict, the requirements of this section shall prevail.

§15–529.

If any provision of this subtitle or the applicability thereof to any person or circumstances is held invalid, the remainder of this subtitle and the application of such provision to other persons or circumstances shall not be affected thereby.

§15–601.

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

(b) "Abandoned" means an operation from which coal has not been removed for a six-month period.

(c) "Affected area" means: (i) the land within the permit area from which coal is removed and which is occupied by pillars; (ii) all land adjacent to the mine openings utilized by the operator; and (iii) off-site disposal areas.

(d) "Completed" means an operation where backfilling, sealing, revegetation, and other requirements of the permit have been accomplished.

(e) "Deep mining" means the extraction of coal through underground mining methods, including gaining access to the coal deposits by means of vertical or inclined shafts, by drift mining from the coal outcrop, or by other means that do not involve the stripping away of overburden to expose the deposit.

(f) "Mine opening sealing" means adequate sealing of a mine so that discharge from the mine is not or will not become injurious to animal or aquatic life or to use of water for domestic or industrial consumption or recreation or does not or will not violate water quality or effluent standards.

(g) "Opening" means a passage into a coal bed that is used for haulage, traveling ways, ventilation, or removal or introduction of water.

(h) "Operator" means any person, partnership, or corporation who removes or intends to remove more than 250 tons of coal from the earth by deep coal mining within 12 consecutive calendar months in any one location.

(i) "Subsidence" means the sinking or settling of a land surface area from beneath which coal has been extracted.

§15–602.

In this subtitle the General Assembly intends to provide for the reclamation of the land affected by deep mining operations; provide for the protection of the waters of the State that otherwise might be affected adversely by pollution from deep mines; and provide for the improvement of the health, welfare, and living conditions in the communities and counties in which coal mining is an important industry.

§15–603.

(a) The Secretary shall adopt rules and regulations for prevention of water pollution or damage to the land surface resulting from deep mining operations. The rules and regulations shall include standards and procedures for ensuring reclamation or sealing of mined areas after operations cease.

(b) The Secretary may study and recommend and shall approve all procedures for reclamation, conservation, and revegetation of affected areas, including mine opening sealing, prevention or reclamation of subsidence damage, underground fires, disposition of spoil, restoration of plant cover, prevention of erosion, prevention of the creation of acid water, and any other actions that will ensure conservation and beneficial utilization of the natural resources of the State.

(c) The Secretary shall review all mining and reclamation plans, progress reports, inspection reports, and completion reports.

(d) The Secretary may enter to inspect any deep mine operation to determine reclamation progress, conservation, and water quality conditions and investigate for violations of this subtitle.

(e) In order to protect the stability of land, the Secretary shall suspend deep mining under urbanized areas, cities, towns and communities and adjacent to industrial or commercial buildings, major impoundments or permanent streams if the Secretary finds imminent danger to inhabitants of the urbanized areas, cities, towns and communities.

(f) The surface effects of deep mining shall be subject to the applicable provisions of Subtitle 5 of this title and any rules or regulations adopted pursuant thereto.

§15–604.

All funds received by the Secretary from permit fees and surcharges shall be deposited to the credit of the Deep Mining Fund to be used only for the administration and implementation of this subtitle, including mine opening sealing and reclamation of subsidence damage.

§15–605.

(a) A person may not continue or commence operation of any deep mine as an operator within the State without first obtaining a license from the Department.

(b) The application for a license shall be made in writing on a form the Department furnishes and accompanied by a $200 fee. The application shall contain the information concerning the applicant that the Department requires. If a corporation, partnership, or association submits the application, it shall contain the information concerning officers, directors, and principal owners that the Department requires. Subject to subsection (c) of this section, a license is renewable annually on application made on or before January 1 of the next succeeding year and payment of a $10 renewal fee.

(c) (1) The Secretary shall investigate each application for a license or renewal.

(2) The Secretary may not issue a license to or renew the license of an applicant if the Secretary finds that the applicant:

(i) Failed to correct a violation of any rule or regulation adopted under this subtitle;

(ii) Failed to comply with any provision of this subtitle; or

(iii) Forfeited any bond posted in connection with deep mining activities in any state.

(3) With respect to an application of a corporation, partnership, or association, the Secretary may not issue a license to or renew the license of the applicant, if the Secretary finds that any of its officers, directors, or principal owners:

(i) Failed and continues to fail to comply with any provision of this subtitle;

(ii) Is or has been an officer, or principal owner of any other corporation, partnership, or association that previously failed and continues to fail to comply with any provision of this subtitle; or

(iii) Forfeited any bond posted in connection with deep mining activity in any state.

(4) The provisions of this subsection are not intended to expand the authority of the Secretary to adopt rules and regulations as otherwise provided by law.

§15–606.

(a) A person may not continue or commence operation of any deep mine as an

operator after January 1, 1977 without first obtaining a permit from the Secretary.

(b) The application for a permit shall be on a form prescribed by the Secretary and shall be accompanied by a $200 fee. As part of the application, the operator shall include: (1) two copies of an accurate map or plan as required by subsection (i) of this section; (2) a detailed mine opening sealing plan and general reclamation plan for the affected area; (3) any other information required by the Secretary; and (4) an application for each other permit required for the operation by the Environment Article.

(c) (1) Notwithstanding any provision of the State Government Article, public notice on pending applications provided in accordance with the provisions of this subtitle shall be the only notice required by law.

(2) Upon submission of the completed applications required by subsection (b) of this section, the Department shall require the applicant to publish an approved public notice of the opportunity to submit written comments and to request a hearing.

(3) The public notice shall:

(i) Be published in a newspaper of general circulation in the county of the proposed mining site at least once a week for 4 successive weeks;

(ii) Identify the ownership of the land within the proposed permit area;

(iii) Describe the location of the proposed operation sufficiently so that it can be easily located by local residents;

(iv) Indicate the location where a copy of the application is available for public inspection; and

(v) Include a statement that written comments and requests for a public hearing will be received by the Department for 30 days after the last newspaper publication.

(4) The Department shall provide written notice of applications for permits to any person who requests written notice.

(5) Prior to the hearing, the Secretary shall seek the recommendations of the Land Reclamation Committee concerning the general reclamation plan for the affected area.

(d) (1) If a hearing is requested within the comment period set forth in the public notice, the Department shall notify the applicant and any person who requests the hearing of the date, time, and location of the hearing. The Department shall publish the date, time, and location of the hearing in a newspaper of general circulation in the county of the proposed operation.

(2) The Department shall hold the hearing at least 15 but not more than 60 days after the Department provides public notice of the hearing. Members of the public shall be provided an opportunity to comment on the application in writing until the date of the hearing and copies of the application shall be available for public inspection at the Department and at the soil conservation district office in the county of the proposed mine site 15 days before the hearing.

(3) A record of the hearing shall be made and be available to the public.

(e) (1) The Secretary shall approve, reject, or modify the proposed deep mining plans. If a hearing is requested, after the hearing, the Secretary shall approve, reject, or modify the proposed deep mining plans.

(2) If the Secretary modifies or rejects a deep mining plan, the operator shall be notified in writing of the reasons for rejection or the modifications required. The operator may resubmit the plan with the requested corrections or modifications to the Secretary.

(f) A permit issued under this subtitle is valid for a period of up to five years from its issuance or until the operation is completed or abandoned, unless the Department suspends or revokes the permit or unless the permittee requests a change in operations.

(g) A permit is renewable on application and payment of a $200 fee.

(h) A permit may not be issued to any operator for the purpose of mining any abandoned mine or part of it that has been sealed in compliance with this subtitle, unless a detailed projected mining plan in the form of a cost-benefit analysis is submitted to and approved by the Secretary. The Secretary may not approve a plan unless the plan shows that a continuation of mining would not affect adversely the current environmental balance of the area and would be advantageous for the more complete recovery and utilization of the natural resources.

(i) The operator of any coal mine in the State shall make, or cause to be made by a competent mining engineer or surveyor, an accurate map of the mine for each seam of coal worked, on a scale of not less than 200 feet to the inch, which shows:

(1) The boundary lines of the property, the location of all buildings, railway tracks, wagon or other roads, rivers, streams, lakes and ponds, with the depth indicated, other important landmarks on the surface of the property; connecting lines of contiguous properties; and any lines with relation to contiguous mines or coal properties.

(2) The openings, excavations, shafts, slopes, drifts, tunnels, planes, entries, rooms, crosscuts, and the name and location number of each coal mine, if so identified.

(3) The elevation datum at top and bottom of each shaft, slope, and any

drifts, tunnels, planes, at the faces of entries, as found at each semiannual survey; and in rooms and entries adjacent to boundary lines between the mine and any adjoining mine at points not more than 300 feet apart; the date of entry of each datum; and the location and elevation of any body of water dammed within or held back in any portion of the mine, giving as nearly as ascertainable, the true area of the body of water.

(4) The direction of the air currents in the mine, indicated by arrows.

§15–607.

The Department shall adopt regulations to protect against, prevent, or correct material damage due to subsidence.

§15–608.

(a) Nothing in this subtitle shall be construed as affecting the right of any person to enforce or protect that person's interest in water resources affected by deep mining.

(b) The operator of a deep mine shall replace the water supply of an owner of interest in real property who obtains all or part of the owner's supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where the supply has been affected by contamination, diminution, or interruption proximately resulting from deep mining operations.

(c) (1) If the Department determines that the water supply has been affected by deep mining operations, the Department shall notify the operator of its determination and shall establish a reasonable schedule for the operator to replace the water supply.

(2) If the operator fails to comply with the schedule for replacing the affected water supply established in the Department's notification under paragraph (1) of this subsection, the Department shall order the operator to replace the affected water supply.

(3) On request from the operator, the Department shall use funds from the Deep Mining Fund to replace the affected water supply, if the operator agrees to reimburse the Fund for money expended by the Department as provided in subsection (f) of this section.

(d) (1) On request from the owner of the affected water supply, the Department may use funds from the Deep Mining Fund to replace the affected water supply if the operator fails to comply with either the schedule established in the Department's notification or the Department's order under subsection (c) of this section.

(2) These funds may be used to replace a water supply only after the owner of the affected water supply agrees to reimburse the Fund for moneys expended by the

Department as provided in subsection (f) of this section.

(e) (1) If the Department determines that the water supply has been affected by deep mining operations after bonds on the operations have been forfeited, the Department may use funds received from forfeiture on bonds, or funds from the Deep Mining Fund where funds received from forfeiture on bonds are not sufficient, to replace the water supply.

(2) If the Department determines that the water supply has been affected by deep mining operations after all bonds on the operation have been fully released, instead of requiring the operator to replace the water supply under subsection (c) of this section, the Department shall use funds from the Deep Mining Fund to replace the water supply. The use of these funds may not be construed to extend any permit where bonds have been fully released.

(f) (1) The operator shall reimburse the Fund for all moneys expended by the Department to replace the water supply if:

(i) After final administrative and judicial review of the Department's determination or order issued under subsection (c) of this section, it is determined that the water supply contamination, diminution, or interruption did proximately result from the operator's deep mining operation; and

(ii) The Department has expended moneys from the Deep Mining Fund to replace the water supply.

(2) The property owner shall reimburse the Fund for all moneys expended by the Department to replace the water supply if:

(i) After final administrative and judicial review of the Department's determination or order issued under subsection (c) of this section, it is determined that the water supply contamination, diminution, or interruption did not proximately result from the operator's deep mining operation; and

(ii) The Department has expended moneys from the Fund to replace the water supply.

(3) (i) The operator may request reimbursement from the Department for the actual direct costs incurred by the operator to replace the water supply if:

1. After final administrative and judicial review of the Department's determination or order issued under subsection (c) of this section, it is determined that the water supply contamination, diminution, or interruption did not proximately result from the operator's deep mining operation; and

2. The operator has replaced the water supply.

(ii) The request shall be in writing, signed by the operator, and

include a statement of the actual direct costs incurred by the operator to replace the water supply and a statement that the operator is not eligible for reimbursement for all or any part of the costs for which reimbursement is requested from any other source.

(iii) The Department shall reimburse the operator for the operator's eligible costs to replace the water supply from the Deep Mining Fund.

(g) (1) The operator shall be liable for any expenditures from the Deep Mining Fund in excess of funds received from forfeiture on bonds required to replace the water supply under subsection (e) of this section.

(2) The Department may recover from the operator all costs of water supply replacement in excess of funds received from forfeiture on bonds.

§15–609.

(a) When, by sale, lease, assignment, or otherwise, one operator succeeds to the interest of another in any uncompleted mining operation, the Department may release the first operator from all liabilities imposed on him by this subtitle with reference to the operation and transfer the permit to the successor operator, if both operators have complied with the requirements of this subtitle and the successor operator assumes the duties and responsibilities of the first operator with reference to reclamation of the land according to the authorized mining and reclamation plan and posts suitable bond or other security required by § 15-612 of this subtitle.

(b) The successor operator shall pay a $20 fee on filing a transfer of permit.

§15–610.

(a) If the Department determines that the activities under the mining and reclamation plan and other terms and conditions of the permit fail substantially to achieve the purposes and requirements of this subtitle, the Department shall give the operator written notice of:

(1) The Department's determination;

(2) The Department's intention to modify the mining and reclamation plan and other terms and conditions of the permit in a stated manner; and

(3) The operator's right to a hearing on the proposed modification at a stated time and place.

(b) The hearing shall be held within 60 days after written notice is forwarded to the operator. After the hearing, the Department may modify the mining and reclamation plan and other terms and conditions of the permit in the manner stated in the notice or in another manner it considers reasonably appropriate in view of the evidence submitted at the hearing. Refusal of the operator to comply with the

conditions set forth in the permit so modified by the Department shall result in the revocation of the permit.

(c) A fee may not be charged to the operator for a departmental modification of the permit.

§15–611.

(a) If the Department has reason to believe that a violation of this subtitle, any rules or regulations adopted under it, or the terms and conditions of a permit, including the approved mining and reclamation plan, has occurred, the Department shall serve written notice of a violation on the operator, specifying the facts constituting the apparent violation and inform the operator of his right to a hearing at a stated time and place. Subsequent to or concurrent with service of the written notice, the Department may suspend the permit or issue an order until the violation is corrected.

(b) The hearing shall be held within 45 days after the notice is forwarded to the operator. The operator may appear at the hearing, either personally or through counsel, and present evidence on his behalf. The Department shall render a decision regarding the violation within ten days after the hearing.

(c) The Department may revoke the permit if the violation is not corrected.

(d) Any operator whose permit is suspended or revoked shall be denied a new permit or a renewal of the old permit to engage in mining until he has complied fully with the provisions of this subtitle, the rules and regulations adopted under it, and the terms and conditions of his permit, including any modifications and the approved mining and reclamation plan, and until he has satisfactorily corrected all previous violations.

§15–612.

(a) (1) After receiving notification that an application for a permit has been approved, but before commencing deep mining operations, the operator shall file a bond with the Department.

(2) Before commencing operations on an additional opening not included in the original bond made in the application for a permit, the operator shall post an additional bond or deposit. The operator also shall submit additional information that would have been required to be included with the original application for a permit. On receipt of the additional bond or deposit and the additional material, the Secretary may issue an amended permit covering any additional opening covered by the additional bond.

(b) The bond shall be on a form prescribed and furnished by the Department, payable to the State of Maryland, and conditioned on faithful performance of the requirements of this subtitle by the operator.

(c) The amount of the bond shall be equal to the amount the Department determines to be the cost of reclamation of the affected area. Liability under the bond shall be for the duration of the mining operation, and for a period of five years after the mine has been completed, provided that a bond may not be fully released until all requirements of this subtitle, regulations adopted in accordance with this subtitle, and permit conditions have been met.

(d) The bond shall be executed by the operator and by a corporate surety approved by the Department.

(e) (1) The operator may elect to deposit cash, a certificate of deposit from a bank that is physically located in the State or that otherwise subjects itself to the jurisdiction of the U.S. District Court for the District of Maryland, or negotiable bonds of the United States government with the Department in lieu of a corporate surety. The cash deposit or market value of the securities may not be less than the required sum of the bond.

(2) On receipt of any deposit of cash or securities, the Secretary immediately shall forward it to the State Treasurer, who shall receive and hold it in the name of the State in trust for the purpose for which the deposit is made.

(3) The operator making the deposit may demand and receive from the State Treasurer the whole or any portion of any securities so deposited, on depositing with the State Treasurer other negotiable securities of the classes specified in this section having a market value at least equal to the required sum of the bond.

(f) On submission of the annual progress report required by § 15-615 of this subtitle, the Secretary may adjust the amount of the bond or security required from the operator to assure completion of reclamation work.

§15–613.

(a) The performance bond or cash deposit in lieu of a bond shall be forfeited on failure of the operator to perform in the manner set forth in the authorized mining and reclamation plan and to reclaim the land as provided for in the permit or on revocation of the permit. The Department shall notify the operator by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, of its intention to initiate forfeiture proceedings. The operator has 30 days to show cause why the bond or cash deposit should not be forfeited.

(b) If the operator shows cause, the Department shall provide a reasonable time, but not less than six months, for the operator to restore the land to comply with the permit.

(c) If the operator fails to show cause, the bond or cash deposit shall be forfeited nisi, and the Department shall give notice of the forfeiture to the operator, to the legal owner of the land if different from the operator, and to the surety. If a showing of intention to restore in compliance with the permit is not submitted to the Department

within 30 days after the forfeiture nisi, the bond or cash deposit shall be forfeited absolute.

(d) (1) Funds received from forfeiture on bonds shall be deposited in the Deep Mining Fund and be used to reclaim the land affected by the operation on which the liability was charged on the bond and to perform the requirements of this subtitle, regulations issued under this subtitle, and permit conditions that the operator has failed to perform.

(2) Funds received on a forfeiture in excess of the amount required to reclaim the land affected and to perform the requirements that the operator has failed to perform may be used to reclaim any other land affected by deep mining.

§15–614.

An operator may not conduct deep mining within the State if he previously has forfeited any bond posted pursuant to deep mining activities, unless, on application, the operator repays to the Department the cost of reclamation, if the Department has reclaimed the land with interest at the current rate for the time elapsed, less the amount of the forfeited bond. If the land is still unreclaimed, the operator shall reclaim the land covered by the forfeited bond at his own expense, including any additional erosional, sedimentation, or pollution damage resulting from the lack of proper reclamation during the interim.

§15–615.

(a) By the twenty-fifth day of each month, a deep mine operator shall file a monthly progress report with the Secretary on a form furnished by the Secretary. In the report, the operator shall indicate the total area affected, number of mine openings, tonnage of coal removed, and changes in this information over previous months. An annual report shall be furnished to the Secretary not later than February 25 of each year for the preceding year covering facts the Secretary may require regarding the production and condition of the operation during the calendar year preceding. The operator also shall update the information on the maps previously supplied with the permit application.

(b) On the basis of the approved annual and monthly progress or completion reports the Secretary shall assess a 15-cent surcharge for each ton of coal removed during the past year. Nine cents of the amounts collected from each ton of coal removed shall be retained by the Secretary and 6 cents shall be remitted directly to the county in which the coal was removed.

(c) Every six months the operator of each mine shall cause to be accurately shown on the map and on the copies any extension of any portion of the mine, which was made during the intervening period, and any portion of the mine and mine workings, discontinued or abandoned.

(d) If the district mine inspector reasonably believes that any map of any mine

or copy furnished to him under the provisions of this section is inaccurate, he may order a survey of what he believes has been mapped incorrectly. The cost of the survey is recoverable from the operator as other debts are recoverable by law. However, if the map claimed to be inaccurate is found to be sufficiently accurate for its intended purpose, the reasonable cost of the survey is payable by the State.

§15–616.

(a) Within 30 days after an operation is abandoned or completed, the operator shall file with the Department a completion report on a form prescribed and furnished by the Secretary.

(b) The operator shall attach to the completion report:

(1) A map of the operation certified by a surveyor or engineer that shows the boundary lines of the tract and the access to the operation from the nearest public highway;

(2) The area of land affected by the deep mining operation; and

(3) Details of the completed reclamation work.

§15–617.

On application of the Department, verified by oath, the circuit court of the county or city where the mining operation is located may enjoin compliance with or violation of any order, notice, rule, or regulation of the Department made in accordance with this subtitle.

§15–618.

Any operator who mines coal by the deep mining method without having a permit or amended permit or without providing bond as provided in this subtitle, who knowingly or intentionally includes false information in the application for a permit, or who does not fully comply with the permit or adopted rules and regulations is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $5,000.

§15–701.

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

(b) "Board" means the Board of Public Works.

(c) "Costs" means the costs of acquisition, improvement, development, rehabilitation, construction, reconstruction and development of land and facilities and its financing, including the cost of engineering and legal services, appraisals, plans, specifications, surveys, investigations, feasibility studies, estimates of costs and revenues, and other necessary or incidental capital expenditures.

(d) "Land" means real property, including improvements, rights–of–way, water, riparian or other vested rights, easements, privileges, and any other estate or interest in real property.

(e) "Studies" means the collection, analysis, and preparation of information, alternatives, and recommendations to permit the State or any of its political subdivisions singly or jointly to determine a course of action to meet the purposes of this subtitle.

§15–702.

(a) It is the intention of the General Assembly to provide for the restoration of State waters affected by pollution from any abandoned mine to the quality necessary to support fish and other aquatic life, recreation, and other beneficial purposes. To accomplish this objective, the Secretary may acquire and rehabilitate land occupied or degraded by any abandoned deep or strip mine to prevent the land from contributing to water pollution and take whatever other measures are necessary to prevent, control, and abate water pollution from any abandoned mining area.

(b) The Secretary may promulgate rules and regulations to implement the provisions of this subtitle.

§15–703.

The Secretary may implement the provisions of this subtitle by methods including, but not limited to, backfilling, grading, revegetating abandoned strip mines, sealing abandoned deep mines, and controlling erosion and water drainage.

§15–704.

(a) Proceeds from the Mine Reclamation and Water Quality Restoration Loan of 1970 shall be credited on the books of the State Comptroller to be expended exclusively to finance the costs of acquisition, improvements, or rehabilitation of land and acquisition, construction, reconstruction, extension, and improvement of facilities in connection with the prevention, control, and abatement of pollution of the waters of this State from abandoned deep or strip mines, including the prevention of drainage. The proceeds of the loan may be expended for: (1) improvement or rehabilitation, including drainage prevention, of land owned by the State or a political subdivision and occupied or degraded by an abandoned strip mine or deep mine; or (2) acquisition, improvement, or rehabilitation, including drainage prevention, of private land occupied or degraded by abandoned mines. However, the proceeds may not be used to improve, rehabilitate, or prevent drainage from any land that the State or a political subdivision does not own, unless the owner of the land contributes to the cost an amount at least equal to the increase in the value of the land resulting from improvement or rehabilitation. This amount or the manner of determining this amount and the manner of payment shall be determined by the Secretary. The owner of the land need not pay the increase in the value of the land resulting from

the improvement or rehabilitation until such time as the land use is changed from agriculture or other open space use.

(b) Land acquired under the provisions of this subtitle may be sold to a private person, retained by the State, or transferred to a political subdivision after the land has been rehabilitated and water pollution from the land has been controlled. Every purchase, sale, and/or transfer of land is by action of the Board who may promulgate rules and regulations governing the transactions. The Board may accept gifts of land from any private citizen, group, quasi-public organization, or political subdivision in order to accomplish the purposes of this subtitle. Land acquired by the State by gift, after rehabilitation and control of water pollution, either may be sold or retained by the State or transferred to a political subdivision as directed by the Board. Any money received from the sale of land acquired under this section shall be deposited in the treasury and constitutes a permanent special fund known as the "Abandoned Mine Drainage Capital Fund". The money in the Fund may be utilized only for the same purposes as the proceeds of the loan authorized by this subtitle.

§15–705.

The Department may cooperate with any other State unit or political subdivision and expend funds jointly for any water pollution control project undertaken under the provisions of this subtitle where the objectives of the project may be achieved better or economy realized by a cooperation and joint action, or where the cooperation and joint action is in the public interest.

§15–706.

The Department may take advantage of any available federal program to augment the money it has available under the provisions of this subtitle.

§15–801.

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

(b) "Affected land" means the land from which the mineral is removed by surface mining, and all other land area in which the natural land surface has been disturbed as a result of or incidental to the surface mining activities of the permittee, including private ways and roads appurtenant to the area, land excavations, workings, refuse piles, spoil piles, and tailings.

(c) "Borrow pit" means an area from which soil or other unconsolidated materials are removed to be used, without further processing, as fill for activities such as landscaping, building construction, or highway construction and maintenance.

(d) "Contiguous" means in actual contact, sharing a common property boundary, or separated only by a stream or the right-of-way of a road or highway.

(e) "Department" means the Department of the Environment.

(f) "Land" means the surface of the land upon which surface mining is conducted.

(g) "Landowner" means a person who possesses legal title to the land.

(h) "Licensee" means a person who is authorized by the Department to conduct surface mining and reclamation activities under § 15-807 of this subtitle.

(i) "Minerals" means any solid material, aggregate, or substance of commercial value, whether consolidated or loose, found in natural deposits on or in the earth, including clay, diatomaceous earth, gravel, marl, metallic ores, sand, shell, soil, and stone. The term does not include coal.

(j) "Mining and reclamation plan" means the permittee's written proposal as required and approved by the Department for the conduct of mining and the reclamation of the affected land.

(k) "Neighboring" means in close proximity or in the immediate vicinity, but not in actual contact.

(l) "Operation" means the pit located upon a single tract of land or a continuous pit embracing or extending upon two or more contiguous tracts of land.

(m) "Overburden" means the strata or material overlying a mineral deposit, or in between mineral deposits in its natural state, and before its removal by surface mining.

(n) "Permittee" means a person who holds a valid permit to conduct surface mining and reclamation operations approved by the Department under § 15-810 of this subtitle.

(o) "Person" means an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any other entity.

(p) "Pit" means the place any minerals are being mined by the surface mining method.

(q) "Pre-law surface mine" means a noncoal surface mine which was mined and unreclaimed prior to January 1, 1977.

(r) "Reclamation" means the reasonable rehabilitation of the affected land for useful purposes and the protection of the natural resources of the surrounding area including ponds.

(s) "Refuse" means all waste soil, rock, mineral, scrap, tailings, slimes, and other materials directly connected with the mining, cleaning, and preparation of substances mined and includes all waste materials deposited on or in the permit area from other sources.

(t) "Spoil pile" means the overburden and reject materials as piled or deposited in surface mining.

(u) "Surface mining" means all of the following:

(1) The breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals;

(2) Any activity or process constituting all or part of a process for the extraction or removal of minerals from their original location; or

(3) The extraction of sand, gravel, rock, stone, earth, or fill from borrow pits for highway construction purposes or other public facilities.

(v) "Tract" means a single parcel of land or two or more contiguous parcels of land with common ownership.

(w) "Unreclaimed" means land which has not been rehabilitated for useful purposes or the protection of natural resources.

§15–802.

(a) The General Assembly finds and declares that:

(1) The extraction of minerals by mining is a basic and essential activity making an important contribution to the economic well-being of the State and the nation and that this activity must be balanced against potential health, safety, and environmental effects;

(2) All reasonable steps should be taken:

(i) To protect these resources from encroachment by other land uses that would make these resources unavailable for future use; and

(ii) To balance this activity against other possible land uses, including consideration of uses for surrounding properties;

(3) Although it is not practical to extract minerals required by our society without disturbing the surface of the earth and producing waste materials and the very character of certain surface mining operations precludes complete restoration of the land to its original condition, it is possible to conduct mining in a way to minimize its effects on the surrounding environment;

(4) Proper reclamation of mined land is necessary to prevent undesirable land and water conditions that would be detrimental to the general welfare, health, safety, beauty, and property rights of the citizens of the State;

(5) There are certain circumstances in which surface mining is not

desirable, as when the operation will have an unduly adverse effect on wildlife or freshwater, estuarine, or marine fisheries; and

(6) The conduct of mining and reclamation of mined lands as provided by this subtitle will allow the mining of valuable minerals and provide for the protection of the State's environment and the subsequent beneficial use of the mined and reclaimed land.

(b) This subtitle is an exercise of the police powers of the State for the general welfare of the people of the State, by providing for the protection and conservation of the natural resources of the State and the reclamation of areas of land affected in the surface mining of metallic and nonmetallic minerals other than coal, to aid in the protection of birds and wildlife, to decrease soil erosion, to prevent pollution of rivers, streams, and lakes, to prevent loss or waste of valuable mineral resources, to prevent and eliminate hazards to health and safety, to provide for reclamation of mined areas so as to assure the use of these lands for productive purposes, and generally to provide for the continued use and enjoyment of these lands.

§15–803.

(a) The Department may adopt regulations reasonably necessary for the administration of this subtitle. Regulations shall be adopted in accordance with the provisions of the Administrative Procedure Act.

(b) In adopting regulations under this subtitle, the Department shall recognize the basic and essential resource utilization aspect of the surface mining industry and the importance of the industry to the economic well-being of the State.

§15–804.

(a) The Department shall review mineral resources plan elements developed by local planning commissions under § 1–411 or § 3–107 of the Land Use Article to determine whether the proposed plan is consistent with the programs and goals of the Department.

(b) The Department shall make its determination within 60 days after submission by a local planning commission.

§15–805.

(a) All funds received by the Department from license fees, permit fees, special reclamation fees, the forfeiture of bonds and of cash deposits and securities, and fines collected upon conviction of a permittee or a licensee under §§ 15–807(f) and 15–808(k) of this subtitle shall be deposited to the credit of the State Treasurer in a bank the Treasurer designates, and shall be maintained as a special fund on the books of the Comptroller of the Treasury in an account, to be known as the "Surface Mined Land Reclamation Fund". This Fund shall be used by the Department for the administration and implementation of this subtitle, including rehabilitating the area of land affected

by the operation upon which liability was charged on the bond.

(b) For the reclamation of pre–law surface mines, the Department may use funds received from the following sources:

(1) A forfeiture in excess of the amount required for reclaiming the area of land affected by the operation on which the liability was charged;

(2) A forfeiture relating to land which the Department determines to be physically impossible to reclaim; and

(3) Licensing fees, permitting fees, fines, funds received from the special reclamation fees established by § 15–808(i) of this subtitle or any other source.

(c) The special reclamation fees and the State match established by § 15–808(i) and (j) of this subtitle shall only be used for the reclamation of pre–law surface mines.

§15–806.

The Department may employ qualified surface mine inspectors and other personnel deemed necessary by the Department to enforce the provisions of this subtitle and any rules and regulations adopted under it. The Department shall establish standards of qualification for surface mine inspectors, particularly as regards the disciplines of mining engineering, civil engineering, water quality, geology, hydrology, agronomy, forestry, biology, health, safety, and any other field deemed necessary for qualification.

§15–807.

(a) Except as otherwise provided in this subtitle, a person may not engage in surface mining within the State without first obtaining a surface mining license.

(b) An application for a license shall be in writing and on a form prepared and furnished by the Department. If the application is made by a corporation, partnership, or association it shall contain information concerning its officers, directors, and principal owners, as the Department reasonably requires.

(c) The application shall be accompanied by a $300 fee. The license shall be renewable annually, and the renewal fee is $150. The application for renewal shall be made annually by January 1.

(d) The Department may not issue any new surface mining license or renew any existing surface mining license to any person if it finds, after investigation, that the applicant has failed and continues to fail to comply with any of the provisions of this subtitle.

(e) A license under this section is not required for the following activities:

(1) Those aspects of deep mining that do not have a significant effect on the surface, if the affected land does not exceed 3 acres in area;

(2) Operations engaged in processing minerals;

(3) Excavation or grading conducted solely in aid of on-site farming or on-site construction for purposes other than surface mining;

(4) Removal of overburden and mining of limited amounts of any mineral when done only for the purpose of prospecting and to the extent necessary to determine the location, quantity, or quality of any natural deposit, if no minerals are sold, processed for sale, or consumed in the regular operation of business;

(5) The handling, processing, or storage of slag and stone on the premises of a manufacturer as a part of any manufacturing process that requires stone as a raw material or produces slag as a by-product;

(6) The extraction of minerals by a landowner for the landowner's own noncommercial use from land owned or leased by the landowner;

(7) Mining operations if the affected land does not exceed 1 acre in area;

(8) Dredging from submerged public or private lands in the State if this activity is conducted under a license from the State Board of Public Works or by permit from the Department, as provided for in Title 16 of this article; or

(9) The extraction of sand, gravel, rock, stone, earth, or fill from borrow pits for highway construction purposes or other public facilities, if the work is performed under a bond, a contract, and the specifications of the Department that require reclamation of the area affected in the manner provided by this subtitle.

(f) Any person who violates the provisions of this section is guilty of a misdemeanor and, on conviction, is subject to a fine of not more than $10,000. The fine shall be paid to the Surface Mined Land Reclamation Fund.

§15–808.

(a) A licensee may not engage in surface mining within the State except on affected land that is covered by a valid surface mining permit.

(b) The application shall be in writing and on a form prepared and furnished by the Department and shall fully state the information called for. In addition, the applicant may be required to furnish other information the Department reasonably deems necessary in order to enforce this subtitle.

(c) A permit may cover more than one tract of land, if the tracts are contiguous and are described in the application.

(d) (1) Except as waived by the provisions of paragraph (3) of this subsection, the application shall be accompanied by an agreement, in a form specified by the Department, signed by the applicant and the landowner, if he is a different person from the applicant, stating that:

(i) The Department may enter the land, after making a reasonable effort to notify the permittee, the owner, or any subsequent owners, at any reasonable time during the term of the permit and until the performance bond is released, and while on the property, Department personnel shall comply with all government regulations;

(ii) If a bond forfeiture is ordered, the Department and its representatives and contractors may enter the land and take actions necessary to carry out reclamation which the operator has failed to complete; and

(iii) The agreement shall be recorded in each county where the land is located as §§ 3-102 and 3-103 of the Real Property Article provide at the expense of:

1. The Department for an agreement that is executed on or before July 1, 1985; or

2. The applicant for any agreement that is executed after July 1, 1985.

(2) The application shall be accompanied by a mining and reclamation plan and map which meet the requirements of § 15-822 of this subtitle. No permit may be issued until the plan is approved by the Department.

(3) The Department may waive the requirements of paragraph (1) of this subsection if a contract between the applicant and the landowner, if he is a different person from the applicant, was entered into before July 1, 1974.

(e) Each application for a permit shall be accompanied by a filing fee required by:

(1) Subsection (f) of this section for an original permit;

(2) § 15-815 of this subtitle for a modification of a permit;

(3) § 15-816 of this subtitle for a renewal of a permit; and

(4) § 15-819 of this subtitle for a transfer of a permit.

(f) The fee for an original permit shall be $12 for each acre of affected land for each year of operation requested, but the fee may not exceed $1,000 per year.

(g) The fee shall be paid annually during the term of the permit.

(h) (1) If the term of the permit exceeds 5 years, the permittee shall pay additional fees, based on the formula in subsection (f) of this section for each 5-year portion of the term of the permit. These additional fees shall be paid to the Department within 1 year before the completion of each 5-year portion of the term of the permit.

(2) Any permit that was granted on or before June 30, 1985, is not subject to the additional fees required by paragraph (1) of this subsection until the time of modification or renewal of the permit under §§ 15-815 and 15-816 of this subtitle.

(i) In addition, before a surface mining permit is issued the applicant shall pay a special reclamation fee of $30 for each acre of land affected. The payment shall be based on the same number of acres as that for which bond is required.

(j) The Governor each year shall place an item in the budget to provide for the matching moneys required by this subsection. These matching funds may be provided by the State in the current budget at the time the permit is issued or in the next succeeding State budget. When all pre-law surface mined lands have been reclaimed, this fee shall cease to be collected.

(k) (1) Any person who violates the provisions of this section or who knowingly or intentionally has filed false information in the application for a permit, or who has not fully complied with all provisions and requirements of the permit, is guilty of a misdemeanor, and, on conviction, is subject to a fine of:

(i) Not more than $25,000; and

(ii) An amount sufficient to cover the cost of reclaiming the affected land.

(2) The fine and any payment for reclamation shall be paid into the Surface Mined Land Reclamation Fund.

§15–809.

(a) On receipt of an application and accompanying documents, the Department shall review it and make further inquiries, inspections, or examinations as necessary or desirable for proper evaluation. If the Department objects to any part of the application or accompanying documents, it shall notify promptly the applicant by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, of its objections, setting forth its reasons, and shall afford the applicant a reasonable opportunity to make amendments or take actions required to remove the objections. The Department shall submit a copy of the application and accompanying documents to the Department of Planning for review with respect to matters that are the responsibility of the Department of Planning.

(b) Public notice and informational hearings shall be conducted in accordance with the provisions of § 5-204(b) through (e) of this article.

(c) The Department may waive the notice requirements of this section and the holding of a public informational hearing on an application for a permit that affects an area that is 5 acres or less in size or a permit modification that affects an area that is 20 acres or less in size.

§15–810.

(a) The Department shall approve and grant or deny the permit requested as expeditiously as possible, but not later than 30 days after the application forms or any supplemental information required are filed with the Department. The Department shall process the permit application concurrently with any local or county land use and zoning reviews.

(b) The Department may deny the permit on finding that:

(1) Any requirement of this subtitle or any rule or regulation adopted under it will be violated by the proposed operation;

(2) The operation will have an unduly adverse effect on wildlife or fresh water, estuarine, or marine fisheries;

(3) The applicant has failed to provide applicable permits or approvals covering the operation from all State and local regulatory agencies responsible for air and water pollution and sediment control;

(4) The operation will constitute a substantial physical hazard to a neighboring dwelling house, school, church, hospital, commercial or industrial building, public road, or other public or private property in existence at the time of application for the permit;

(5) The operation will have a significantly adverse effect on the uses of a publicly owned park, forest, or recreation area in existence at the time of application for the permit;

(6) The applicant does not possess a valid surface mining license from the State;

(7) The applicant has not corrected all violations which he may have committed under any prior permit and which resulted in:

(i) Revocation of his permit;

(ii) Termination of the operation by order of the Department;

(iii) Forfeiture of part or all of his bond or other security;

(iv) Conviction of a misdemeanor under §§ 15–807(f) and 15–808(k) of this subtitle; or

(v) Any other court order issued against the applicant as a result of departmental action; or

(8) Previous experience with similar operations indicates a substantial probability that the operation will result in substantial deposits of sediment in stream beds or lakes, landslides, or other water pollution.

(c) The Department may not issue the permit until the appropriate county has:

(1) Completed its review of the proposed land use; and

(2) Provided the Department with a written statement that states that the proposed land use conforms with all applicable county zoning and land use requirements.

(d) In the absence of any of these findings, a permit shall be granted. However, no permit becomes effective until the applicant has deposited with the Department an acceptable performance bond or other security pursuant to § 15–823 of this subtitle.

(e) Public notice, informational hearings, and judicial review shall be conducted in accordance with the provisions of § 5–204 of this article.

§15–811.

(a) Any permit issued shall be expressly conditioned upon compliance with all requirements of the approved mining and reclamation plan for the operation and with further reasonable and appropriate requirements and safeguards deemed necessary by the Department to assure that the operation will comply fully with the requirements and objectives of this subtitle. The conditions may include a requirement of visual screening, vegetative or otherwise, to screen the view of the operation from public highways, public parks, or residential areas existing at the time of the original application, if the Department finds screening to be feasible and desirable.

(b) Violation of these conditions shall be treated as a violation of this subtitle subject to the remedies and penalties under § 15-808(k), § 15-821, or § 15-832 of this subtitle.

§15–812.

(a) The General Assembly finds that in certain regions of the State dewatering of surface mines located in karst terrain may significantly interfere with water supply wells and may cause in some instances sudden subsidence of land, known as sinkholes. Dewatering in karst terrain may result in property damage to landowners in a definable zone of dewatering influence around a surface mine.

(b) It is the intent of the General Assembly to protect affected property owners in Baltimore, Carroll, Frederick, and Washington counties where karst terrain is found by directing the Department to establish zones of dewatering influence around surface

mines in karst terrain and to administer a program requiring permittees to mitigate or compensate affected property owners in these counties.

§15–813.

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

(2) "Dewater" or "dewatering" means to pump water out of a pit.

(3) "Karst terrain" means an irregular topography that is:

(i) Caused by a solution of limestone and other carbonate rock; and

(ii) Characterized by closed depressions, sinkholes, caverns, solution cavities, and underground channels that, partially or completely, may capture surface streams.

(4) "Lineaments" means the surface manifestation of cracks, fissures, fractures, and zones of weakness that, generally, are observable on aerial photographs as straight or nearly straight lines.

(b) (1) If a permittee is issued a water appropriation permit under § 5–502 of this article to dewater a pit located in karst terrain in Baltimore, Carroll, Frederick, and Washington counties, the Department shall establish, as a condition of the permittee's surface mining permit under § 15–810 of this subtitle, a zone of dewatering influence around the surface mine.

(2) The areal extent of the zone of dewatering influence shall be based, as appropriate, on local topography, watersheds, aquifer limits, and other hydrogeologic factors, including the occurrence of natural fractures, cracks, crevices, lineaments, igneous dikes, changes in rock type, and variations in the water–bearing characteristics of formations.

(c) Within the zone of dewatering influence established under subsection (b)(1) of this section, the permittee shall:

(1) Replace, at no expense to the owner of real property that is affected by the surface mine dewatering, a water supply that fails as a result of declining ground water levels; and

(2) Upon a determination by the Department of proximate cause after the permittee has received proper notice and an opportunity to respond and provide information, pay monetary compensation to the affected property owner or repair any property damage caused as a result of the sudden subsidence of the surface of the land.

(d) (1) An individual domestic water supply within a zone of dewatering influence that is no longer capable of yielding water because of declining water levels shall be considered to be replaced adequately by a permittee if the permittee provides

for the affected property owner a new or retrofitted well that is capable of meeting the minimum yield requirements established in regulations adopted by the Department of the Environment during the period of pit dewatering.

(2) A municipal, industrial, commercial, institutional, or farming water supply within a zone of dewatering influence that is no longer capable of yielding water because of declining water levels shall be considered to be replaced adequately by a permittee if the permittee provides for the affected property owner a new or retrofitted well or other alternative water supply that is capable of yielding water equal to the volume used or needed by the property owner before the disruption of water supply.

(e) (1) Real or personal property within the zone of dewatering influence in karst terrain in Baltimore, Carroll, Frederick, and Washington counties found by the Department to have been damaged as a result of sudden land surface subsidence shall be considered to be repaired adequately by a permittee if the permittee returns the damaged property to its condition before the subsidence of the surface of the land.

(2) If the damaged real or personal property is not capable of being restored to its pre–subsidence condition, the permittee shall compensate the owner of the real or personal property monetarily by the difference of the fair market value of the property as the property would exist but for the sudden land subsidence, and the fair market value of the property as a result of the damage.

(3) Notwithstanding the other provisions of this subsection, the permittee and the property owner may agree on monetary compensation or other mitigation in lieu of restoration.

(f) The Department may not require a permittee to replace water supplies, as provided in this section, if the permittee demonstrates to the Department by clear and convincing evidence that the proximate cause of the loss of water supply is not the result of pit dewatering.

(g) The Department shall provide opportunity for a contested case hearing in accordance with the provisions of § 5–204 of this article.

(h) The Department shall adopt regulations to establish an administrative process to expedite the resolution of water supply loss or property damage claims arising under this section.

(i) Compensation, restoration, or mitigation provided by this section does not apply to:

(1) Improvements that are made to real property within an established zone of dewatering influence following a final decision by the Department to issue a surface mining permit; or

(2) Improvements that are made to real property following the establishment of a zone of dewatering influence as a condition of an existing surface

mine permit.

§15–814.

(a) Except as provided in subsection (b) of this section, a surface mining permit shall be granted for such period as requested and deemed reasonable, but not exceeding 25 years. If the mining operation has been completed and the reclamation required under the approved mining and reclamation plan is completed prior to the expiration of the permit, the permit may terminate. Termination of a permit does not relieve the permittee of any obligations which he has incurred under his approved mining and reclamation plan or otherwise. If the permittee wishes to continue operation of his preparation plant, his permit may remain valid but shall be modified.

(b) A permit shall be void if surface mining has not commenced within two years of its issuance.

§15–815.

(a) Any permittee engaged in surface mining under a surface mining permit may apply at any time for modification of the permit. The application shall be in writing on forms furnished by the Department and fully state the information called for. In addition, the applicant may be required to furnish other information the Department reasonably deems necessary to enforce this subtitle. However, it is not necessary to resubmit information which has not changed since the original application, if the applicant so states in writing.

(b) A modification under this section may affect the land area covered by the permit, the approved mining and reclamation plan coupled with the permit, or other terms and conditions of the permit. A permit may be modified to include land contiguous to the existing affected land, but not other lands. The mining and reclamation plan may be modified in any manner, if the Department determines that the modified plan fully meets the standards set forth in § 15-822 of this subtitle and that the modifications would be generally consistent with the bases for the issuance of the original permit. Other terms and conditions may be modified only if the Department determines that the permit as modified would meet the requirements of §§ 15-808 and 15-810 of this subtitle. No modification may extend the expiration date of any permit issued under this subtitle.

(c) Except as otherwise provided in subsection (d) of this section, a $100 fee shall be charged for a permit modification.

(d) (1) In addition to the fee required in subsection (c) of this section, a fee shall be charged equal to $12 for each additional acre of affected land over and above the amount of land covered in the original permit, for each year of operation.

(2) The additional fee may not exceed $1,000 per year.

(e) The Department shall approve and grant the permit modification requested

as expeditiously as possible but not later than 30 days after the application forms or any supplemental information required are filed with the Department.

(f) The Department may deny the permit modification on finding:

(1) An uncorrected violation of the type listed in § 15-810(b)(7) of this subtitle;

(2) Failure to submit an adequate mining and reclamation plan in light of conditions existing at the time of the modification; or

(3) Failure or refusal to pay the modification fee.

(g) If the Department denies an application to modify a permit, the Department shall give the permittee written notice of:

(1) The Department's determination;

(2) Any changes in the application which would make it acceptable; and

(3) The permittee's right to a hearing at a stated time and place.

(h) The date for the hearing may not be less than 15 days nor more than 30 days after the date of the notice unless the Department and the permittee mutually agree on another date.

§15–816.

(a) The procedure to be followed and standards to be applied in renewing a permit shall be the same as those for the initial application for a permit, except that it is not necessary to resubmit information which has not changed since the time of the original application, if the applicant so states in writing. However, the applicant may be required to furnish other information the Department deems necessary to evaluate the renewal request. In the absence of any changes in legal requirements for the issuance of a permit since the date on which the original permit was issued, the only basis for the denial of a renewal permit shall be:

(1) An uncorrected violation of the type listed in § 15-810(b)(7) of this subtitle;

(2) Failure to submit an adequate mining and reclamation plan in light of conditions existing at the time of renewal; or

(3) Failure or refusal to pay the renewal fee.

(b) Application for a renewal of a permit cannot be made any earlier than 1 year prior to the expiration date of the original permit.

(c) Except as otherwise provided in subsection (d) of this section, the fee to be

charged for a permit renewal shall be $12 for each acre of affected land for each year of operation, but not exceeding $1,000 per year.

(d) The fee shall be paid annually during the term of the permit.

(e) If the term of a permit which is renewed exceeds 5 years, the permittee shall pay additional fees, based on the formula in subsection (c) of this section, for each 5-year portion of the term of the renewed permit. These additional fees shall be paid to the Department within 1 year before the completion of any 5-year portion of the term of the permit.

(f) If the Department denies an application to renew a permit, the Department shall give the permittee written notice of:

(1) The Department's determination;

(2) Any changes in the application that would make it acceptable; and

(3) The permittee's right to a hearing at a stated time and place.

(g) The date for the hearing may not be less than 15 days nor more than 30 days after the date of the notice unless the Department and the permittee mutually agree on another date.

§15–817.

No modification or renewal of a permit becomes effective until any required changes have been made in the performance bond or other security posted under the provisions of § 15-823 of this subtitle, so as to assure the performance of obligations assumed by the permittee under the permit and the mining and reclamation plan.

§15–818.

In lieu of a modification or renewal, a permittee may apply for a new permit in the manner prescribed by §§ 15-808 and 15-822 of this subtitle.

§15–819.

(a) When the interest of a permittee in any uncompleted mining operation is sold, leased, assigned, or otherwise disposed of, the Department may release the first permittee from all liabilities imposed upon him by this subtitle with reference to the operation and transfer the permit to the successor in interest, if both the permittee and the successor in interest have complied with the requirements of this subtitle and the successor in interest assumes the duties and responsibilities of the first permittee with reference to reclamation of the land according to the authorized mining and reclamation plan and posts suitable bond or other security required by § 15-823 of this subtitle.

(b) The successor in interest shall pay a $500 fee on filing a transfer of permit.

(c) The Department shall approve and grant the permit transfer as expeditiously as possible but not later than 30 days after the application forms or any supplemental information required are filed with the Department.

(d) The Department may deny the permit transfer on finding:

(1) That either permittee has an uncorrected violation of the type listed in § 15-810(b)(7) of this subtitle;

(2) Failure of the successor permittee to submit an adequate mining and reclamation plan in light of conditions existing at the time of the modification; or

(3) Failure of the successor permittee to pay the transfer fee.

(e) If the Department denies an application to transfer a permit, the Department shall give the permittee and the successor in interest written notice of:

(1) The Department's determination;

(2) Any changes in the application which would make it acceptable; and

(3) The right of the permittee and the successor in interest to a hearing at a stated time and place.

(f) The date for the hearing may not be less than 15 days nor more than 30 days after the date of the notice unless the parties mutually agree on another date.

§15–820.

(a) If the Department determines from the inspections of the affected land required by § 15-828 of this subtitle that the activities under the mining and reclamation plan and other terms and conditions of the permit fail substantially to achieve the purposes and requirements of this subtitle, the Department shall give the permittee written notice of:

(1) The Department's determination;

(2) The Department's intention to modify the mining and reclamation plan and other terms and conditions of the permit in a stated manner; and

(3) The permittee's right to a hearing on the proposed modification at a stated time and place.

(b) The date for the hearing may not be less than 15 days nor more than 30 days after the date of the notice unless the Department and the permittee mutually agree on another date. Following the hearing the Department may modify the mining and reclamation plan and other terms and conditions of the permit, in the manner stated in the notice or in another manner it deems reasonably appropriate in view of the evidence

submitted at the hearing. Refusal of the permittee to comply with the conditions set forth in the permit so modified by the Department shall result in the revocation of the permit.

(c) No fee may be charged to the permittee for a departmental modification of the permit.

§15–821.

(a) (1) The Department shall serve written notice of a violation on the permittee or person required to have a permit, specifying the facts constituting the apparent violation if the Department has reason to believe that a violation of this subtitle, any rules or regulations adopted under this subtitle, or the terms and conditions of a permit, including the approved mining and reclamation plan has occurred.

(2) The Department also shall inform the permittee or person required to have a permit of the right to a hearing. Subsequent to or concurrent with service of the written notice, the Department may suspend the permit or issue an order requiring necessary corrective actions be taken within the time prescribed in its order.

(b) Any person that receives a notice of suspension or violation or an order under this section may request in writing a hearing before the Department not later than 10 days after the date the order is served, in which case a hearing shall be scheduled within 10 days from receipt of the request. The permittee or person required to have a permit may appear at the hearing, either personally or through counsel, and present evidence. The Department shall render a decision regarding the violation within 30 days from the date of the hearing.

(c) The Department may revoke the permit if the violation is not corrected.

(d) Any permittee whose permit is suspended or revoked shall be denied a new permit or a renewal of the old permit to engage in mining until the permittee has complied fully with:

(1) The provisions of this subtitle;

(2) Any regulations adopted under this subtitle; and

(3) The terms and conditions of the permittee's permit, including any modifications, and the approved mining and reclamation plan, and until the permittee has satisfactorily corrected all previous violations.

§15–822.

(a) The applicant shall submit with his application for a surface mining permit a proposed mining and reclamation plan. The plan shall include at least the following:

(1) The purpose for which the land previously was used;

(2) The use which is proposed to be made of the land following reclamation;

(3) The manner in which the land is to be opened for mining and how the mining activity is to progress across the tract;

(4) The location of affected areas;

(5) The manner in which topsoil and subsoil are to be conserved and restored and, if conditions do not permit the conservation and restoration of all or part of the topsoil and subsoil, a full explanation of the conditions and alternate procedures proposed;

(6) Where backfilling is required, or where the proposed subsequent land use requires fill, the manner in which the compaction of the fill will be accomplished;

(7) The manner and type of landscaping and screening of the working areas which are exposed to public view during mining;

(8) The proposed practices to protect adjacent surface resources;

(9) The specifications for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed, and the proposed method of accomplishment;

(10) The manner and type of revegetation or other surface treatment of the affected areas;

(11) A time schedule that meets the requirements of this section; and

(12) Maps and any other supporting documents required by the Department to illustrate the above points.

(b) The applicant shall furnish with the mining and reclamation plan, in a reasonable manner satisfactory to the Department, an accurately surveyed topographic map, in duplicate, on a scale of not smaller than one inch equals 200 feet and with a contour interval of spacing appropriate for the area, showing the location of the tract of land to be affected by mining, and representative cross-sections. The surveyed topographic map and cross-sections shall be prepared and certified by a registered professional engineer or registered surveyor and show the boundaries of the proposed affected land, together with the drainage area above and below the area, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, the outcrop line of any mineral deposit to be mined, the location of all buildings within 200 feet of the outer perimeter of the area affected, the names and addresses of the owners and present occupants, the purpose for which each building is used, the name of the owner of the tract where the proposed mining is to occur, and the names of the adjacent landowners, the municipality or district and county and nearest

municipality. The topographic map also shall show the locations of test borings or sampling which the operator has conducted or will conduct at the site of the proposed operation. The cross-sections shall include the location of the test borings or sample sites, the nature and depth of the various strata, the thickness of any mineral seam or deposit, an analysis of any mineral deposit or ore, the thickness of the overburden, and an analysis of the overburden. Aerial photographs of the tract of land to be affected by the mining also shall be provided if they are required by the Department. The information resulting from the test borings is confidential information and not a matter of public record. The Department may waive any of the requirements of this subsection if the operator extracts less than 30,000 tons per year or 20,000 cubic yards per year of minerals and the affected area is less than five acres in size.

(c) The plan shall include a summary statement covering:

(1) The method of compliance with State air and water pollution requirements;

(2) The method of prevention, elimination, or minimization of conditions that would be hazardous to animal or fish life in or adjacent to the area;

(3) The method of rehabilitation of settling ponds;

(4) The method of control of contaminates and disposal of mining refuse; and

(5) The method of restoring or establishing stream channels and stream banks to a condition minimizing erosion, siltation, and other pollution.

(d) The plan shall provide that reclamation activities, particularly those relating to control of erosion, shall be conducted to the extent feasible simultaneously with mining operations and be initiated at the earliest feasible time after completion or termination of mining on any segment of the permit area. The plan shall provide that reclamation activities be completed promptly and not later than two years after completion of mining on each segment of the area for which a permit is requested unless the Department specifically permits a longer period.

(e) The Department may approve, approve subject to stated modifications, or reject the plan which is proposed. The Department shall approve a reclamation plan, as submitted or as modified, if it finds that the plan adequately provides for timely completion of those actions necessary to achieve the purposes and requirements of this subtitle and that, in addition, the plan meets the following minimum standards:

(1) The final slopes in all excavations in soil, sand, gravel, and other unconsolidated materials shall be at an angle to minimize the possibility of slides and be consistent with the future use of the land;

(2) To the extent feasible, the plan shall in all instances reduce safety hazards and provide surface gradients that permit appropriate and reasonably

productive use of the land at the completion of the mining;

(3) Provisions for safety to persons and to adjoining property shall be provided in all excavations;

(4) In open pit mining operations, all overburden and spoil shall be left in a configuration which is in accordance with accepted conservation practices and suitable for the proposed subsequent use of the land;

(5) Suitable drainage ditches or conduits shall be constructed or installed or grading completed to avoid the collection or existence of small pools of water that are, or likely to become, noxious, odious, or foul on the mined area; and

(6) The type of vegetative cover and methods of its establishment shall be specified and conform to accepted and recommended agronomic and reforestation practices established by the Department. Advice and technical assistance may be obtained through the State soil and water conservation districts.

(f) If conditions do not permit the planting of vegetation on all or part of the affected land, and if these conditions pose an actual or potential threat of soil erosion and siltation, alternative procedures shall be proposed to prevent the threat of soil erosion and siltation. If the procedures do not prevent these conditions, the Department may not approve them.

(g) Lakes, ponds, and marsh land shall be considered adequately reclaimed land when approved by the Department.

§15–823.

(a) After receiving notification from the Department that the application for a permit has been approved, but prior to commencing mining, the applicant shall file with the Department a bond for each mining operation, on a form to be prescribed and furnished by the Department, payable to the State and conditioned that the operator will perform faithfully all the requirements of this subtitle.

(b) The amount of the bond required shall be for a maximum of $1,250 per acre based on the number of acres of affected land covered by the permit. But, a bond may not be filed for less than $8,000. However, the Department shall determine whether the total bond fee is unreasonable and excessive for a particular tract of land and whether a lesser total amount for the bond is sufficient to cover reclamation. In making this determination, the Department shall consider the size of the operation, the amount of land to be mined, the acreage that is unreclaimed at any one time, the proposed method of regrading and revegetation of the site, the proposed use of the land following reclamation, and any other relevant factors.

(c) Liability under the bond shall be for the duration of the mining permit and for a period of 5 years after its expiration, unless previously released in whole or in part, as provided in § 15–824 of this subtitle.

(d) The bond shall be executed by the permittee and corporate surety licensed to do business in the State. In lieu of a corporate surety, one of the following shall be acceptable:

(1) Deposits of cash or negotiable bonds of the United States government. The cash deposit or market value of the securities shall be equal at least to the required sum of the bond. The Department, on receipt of any deposit of cash or securities, immediately shall forward it to the State Treasurer, who shall receive and hold the bond in the name of the State, in trust, for the purposes for which the deposit is made. The State Treasurer at all times is responsible for the custody and safekeeping of these deposits. The permittee making the deposit may demand and receive from the State Treasurer the whole or any portion of any securities so deposited, on depositing with the State Treasurer other negotiable securities of the classes specified in this section having a market value at least equal to the sum of the bond;

(2) A certificate of deposit if it is equivalent to the required bond, issued by a bank physically located in the State or that otherwise subjects itself to the jurisdiction of the U.S. District Court for the District of Maryland, and accompanied by written agreement of the bank to pay on demand to the State in event of forfeit; or

(3) An irrevocable letter of credit if it is equivalent to the required bond, issued by a bank physically located in the State or that otherwise subjects itself to the jurisdiction of the U.S. District Court for the District of Maryland, and expressly states that the total sum is guaranteed to be available, and payable directly to the State on demand for the surface mining and reclamation.

(e) A bond or other security filed as above shall contain a provision that it cannot be canceled by the surety, bank, or other issuing entity, except after not less than 90 days written notice to the Department and to the permittee. At least 45 days prior to the cancellation date indicated in the notice, the permittee shall file with the Department a commitment from a surety, bank, or other issuing entity, to provide a substitute bond or other security which will be effective on the cancellation date indicated in the notice.

§15–824.

(a) On completion of the mining operations, and after the requirements of the permit have been fully complied with, the Department shall release the bond.

(b) An amount of the bond or cash deposit, proportioned to the restored portion of the affected land in ratio to all of the affected land covered by the permit, may be released on application by the permittee and inspection and approval by the Department.

§15–825.

(a) The performance bond or cash deposit in lieu of a bond shall be forfeited on failure of the permittee to perform in the manner set forth in the authorized mining and reclamation plan and to reclaim the land as provided for in the permit or upon

revocation of the permit. The Department shall notify the permittee by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, of its intention to initiate forfeiture proceedings. The permittee has 30 days to show cause why the bond or cash deposit should not be forfeited.

(b) On the permittee's showing of cause, the Department shall provide for a reasonable time, for the permittee to restore the land to comply with the permit.

(c) On failure of the permittee to show cause, the bond or cash deposit shall be forfeited nisi, and notice by the Department shall be given to the permittee and legal owner of the land if different from the permittee and surety of the forfeiture. If a showing of intention to restore in compliance with the permit is not submitted to the Department within 30 days from the forfeiture nisi, the bond or cash deposit shall be forfeited absolute.

(d) On an absolute forfeiture, the Department shall use the funds made available by the forfeiture to reclaim the affected land as promptly and completely as possible.

§15–826.

No permittee may conduct surface mining within the State if the permittee previously has forfeited any bond posted pursuant to surface mining activities, unless on application the permittee repays the Department the cost of reclamation if the Department had reclaimed the land, plus interest at the rate set as § 11-107(a) of the Courts and Judicial Proceedings Article provides, for the time elapsed, less the amount of the forfeited bond. If the land is still unreclaimed, the permittee shall reclaim the land covered by the forfeited bond at the permittee's expense, including any additional erosion, sedimentation, or pollution damage resulting from the lack of proper reclamation during the interim.

§15–827.

(a) The permittee shall file an operations and progress report with the Department by March 31 of each year, on a form prescribed and furnished by the Department, which shall cover the preceding calendar year and shall:

(1) Identify the mine, the permittee, and the permit number;

(2) Identify the location of the operation as to county, district, nearest municipality, and nearest public road;

(3) Report the type of mineral produced, the volume produced, and the value of production of each for the previous year. Individual company data is confidential and may be released only with the permittee's written consent;

(4) State the acreage disturbed by surface mining during the previous year;

(5) State and describe the amount and type of reclamation carried out during the previous year;

(6) Estimate the acreage to be newly disturbed by mining in the next year; and

(7) Provide any additional information or maps which the Department reasonably requires.

(b) In addition, at the end of each calendar year the permittee shall furnish to the Department a new surveyed map, showing the status of the operation and indicating the area affected and reclaimed during the preceding year, particularly with relation to the property lines and boundaries shown on the map and survey furnished with the original application. A registered professional engineer or professional surveyor is not required to prepare this progress report map. However, if prepared by the permittee, the map shall be of reasonable quality, accuracy, and legibility, and acceptable to the Department.

§15–828.

(a) At any reasonable time which the Department elects, but at least once a year, the Department shall cause each permit area to be inspected to determine if the permittee has complied with the mining and reclamation plan, the requirements of this subtitle, any rules and regulations adopted under it, the terms and conditions of the permit, and if the current status of the operation conforms with the most recent annual progress report. Accredited representatives of the Department at any reasonable time may enter on the land subject to the permit to inspect and investigate it but while on the property, Department personnel shall comply with all governmental safety regulations.

(b) The permittee shall proceed with reclamation as scheduled in the approved mining and reclamation plan. Following each inspection, the Department shall notify the permittee by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, of any deficiencies noted. The permittee shall proceed with mining and reclamation as scheduled in the approved mining and reclamation plan. Following each inspection, the Department shall notify the permittee of any deficiencies noted. Upon failure by the permittee to correct these deficiencies, the Department may take action to suspend or revoke the permit as provided in § 15-821 of this subtitle.

(c) If the Department finds that reclamation of the permit area is not proceeding in accordance with the mining and reclamation plan, or if the Department finds that reclamation has not been properly completed in conformance with the mining and reclamation plan within two years or longer if authorized by the Department, after termination of mining on any segment of the permit area, or if the permittee has not complied with corrective requirements following revocation of a permit, it shall initiate forfeiture proceedings against the bond or other security filed by the permittee.

§15–829.

(a) An operation is considered abandoned if no mineral has been produced or overburden removed for a period of one year, and the permittee has vacated the site of the operation covered by the permit without having complied with all the requirements of the mining and reclamation plan, verified by inspection and written report made by the Department. If the permittee, within 30 days after receiving notification from the Department terming the operation abandoned, does not submit sufficient evidence to the Department that the operation in fact is not abandoned and a reasonable timetable satisfactory to the Department regarding plans for the reactivation of the operation, the Department shall declare the operation abandoned and initiate legal proceedings against the permittee.

(b) An operation is considered halted if active work has ceased temporarily due to weather conditions, market conditions, or other reasonable cause explained in writing by the permittee to the satisfaction of the Department, and accompanied by a statement that the permittee fully intends to resume active operation when the adverse conditions have passed. All necessary pollution controls shall be properly maintained during this period. No operation may be halted for a period exceeding 24 consecutive months. On failure of the permittee to resume mining or initiate reclamation, the Department shall declare the operation abandoned and initiate legal proceedings against the permittee.

§15–830.

(a) On completion of reclamation of an area of affected land, the permittee immediately shall notify the Department. The Department shall make an inspection of the area, and if it finds that the permittee has not completed to the Department's reasonable satisfaction all the reclamation required by the permit, the Department shall order the permittee to do so at once and shall reinspect the area following completion of the work. If the Department finds that reclamation has been completed properly and if the Department has received the final reclamation report required under subsection (b) of this section, it shall notify the permittee in writing and release the permittee from further obligations regarding the affected land. At the same time it shall release all or the appropriate portion of any performance bond or cash deposit which the permittee has posted under § 15-823 of this subtitle.

(b) The permittee shall furnish a final reclamation report which includes the following:

(1) The terms of the original surface mining permit and all subsequent modifications;

(2) A summary of the original mining and reclamation plan and all subsequent modifications;

(3) A statement summarizing any departures from the mining and

reclamation plan and the reasons for them;

(4) A statement summarizing any problems encountered during the progress of mining work or reclamation work, and the measures taken to correct these problems;

(5) The total acreage of land disturbed and reclaimed;

(6) The status or condition of areas progressively reclaimed since the initiation of mining work in the area; and

(7) A final map that is consistent with the original mining and reclamation map required by § 15-822(b) of this subtitle.

§15–831.

Architects, engineers, or other persons preparing specifications for construction projects, which specifications include the requirement that the construction contractor supply fill for the project, shall include within the specifications a specific reference to this subtitle and the rules and regulations pertaining to it adopted by the Department. If this reference is omitted from the specifications and reclamation and planting of the land is required under this subtitle, any contract based on the specifications may be amended, at the option of the construction contractor, to allow a reasonable price for the reclamation and planting of the land in accordance with a plan acceptable to the Department.

§15–832.

(a) In addition to the State prosecuting a criminal action under any provision of this subtitle, the Attorney General may bring a civil action in the circuit court of the county or city where the mining operation is located against any person who violates any provision of this subtitle or any regulation, permit, notice, or order issued under this subtitle. The circuit court may find the violator liable to the State for a penalty not exceeding $5,000 for each offense. Each day on which the violation occurs constitutes a separate offense.

(b) On application of the Department, verified by oath or affirmation, the circuit court of the county or city where the mining operation is located, may enforce by injunction compliance with, or restrain the violation of any order, notice, permit, rule, or regulation of the Department made pursuant to the provisions of this subtitle or restrain the violation or attempted violation of any of the provisions of this subtitle.

§15–833.

This subtitle, including reclamation requirements, does not apply to surface mining operations or mined lands in existence on the effective date, July 1, 1975, nor to their continuance and extension for 18 months from that date, but subsequent operations of existing surface mines may be continued only by permit of the

Department under the provisions of this subtitle.

§15–834.

(a) (1) The provisions of this subtitle do not apply to activities of the State Highway Administration, any county roads department in the State, any legally constituted public governing entities such as municipal corporations, or to activities of any person acting under contract with any of these public agencies or entities, on highway rights-of-way or borrow pits owned, operated, or maintained solely in connection with the construction, repair, and maintenance of the public roads systems of the State or other public facilities.

(2) This exemption does not become effective until the public agencies or entities have adopted reclamation standards applying to the activities and the standards are approved by the Department.

(b) The provisions of this subtitle do not apply to mining on federal lands when performed under a valid permit from the appropriate federal agency having jurisdiction over the land.

(c) Any or all of the provisions of this subtitle do not apply in any county if the Secretary determines that the county laws are as restrictive as the provisions of this subtitle with respect to regulating surface mining, reclamation and revegetation procedures, abandoned areas, and bonding requirements.

§15–901.

The Interstate Mining Compact is hereby enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

Article I
Findings and Purposes

(a) The party states find that:

1. Mining and the contributions thereof to the economy and well–being of every state are of basic significance.

2. The effects of mining on the availability of land, water and other resources for other uses present special problems which properly can be approached only with due consideration for the rights and interests of those engaged in mining, those using or proposing to use these resources for other purposes, and the public.

3. Measures for the reduction of the adverse effects of mining on land, water and other resources may be costly and the devising of means to deal with them are of both public and private concern.

4. Such variables as soil structure and composition, physiography,

climatic conditions, and the needs of the public make impracticable the application to all mining areas of a single standard for the conservation, adaptation, or restoration of mined land, or the development of mineral and other natural resources; but justifiable requirements of law and practice relating to the effects of mining on land, water, and other resources may be reduced in equity or effectiveness unless they pertain similarly from state to state for all mining operations similarly situated.

5. The states are in a position and have the responsibility to assure that mining shall be conducted in accordance with sound conservation principles, and with due regard for local conditions.

(b) The purposes of this compact are to:

1. Advance the protection and restoration of land, water and other resources affected by mining.

2. Assist in the reduction or elimination or counteracting of pollution or deterioration of land, water and air attributable to mining.

3. Encourage, with due recognition of relevant regional, physical, and other differences, programs in each of the party states which will achieve comparable results in protecting, conserving, and improving the usefulness of natural resources, to the end that the most desirable conduct of mining and related operations may be universally facilitated.

4. Assist the party states in their efforts to facilitate the use of land and other resources affected by mining, so that such use may be consistent with sound land use, public health, and public safety, and to this end to study and recommend, wherever desirable, techniques for the improvement, restoration or protection of such land and other resources.

5. Assist in achieving and maintaining an efficient and productive mining industry and in increasing economic and other benefits attributable to mining.

Article II

Definitions

As used in this compact, the term:

(a) "Mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter; any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location; and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but shall not include those aspects of deep mining not having significant effect on the surface, and shall not include excavation or grading when conducted solely in aid of on site farming

or construction.

(b) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

Article III

State Programs

Each party state agrees that within a reasonable time it will formulate and establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:

1. The protection of the public and the protection of adjoining and other landowners from damage to their lands and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations.

2. The conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational or aesthetic value and utility of land and water.

3. The institution and maintenance of suitable programs for adaptation, restoration, and rehabilitation of mined lands.

4. The prevention, abatement and control of water, air and soil pollution resulting from mining, present, past and future.

Article IV

Powers

In addition to any other powers conferred upon the Interstate Mining Commission, established by Article V of this compact, such commission shall have power to:

1. Study mining operations, processes and techniques for the purpose of gaining knowledge concerning the effects of such operations, processes and techniques on land, soil, water, air, plant and animal life, recreation, and patterns of community or regional development or change.

2. Study the conservation, adaptation, improvement and restoration of land and related resources affected by mining.

3. Make recommendations concerning any aspect or aspects of law or practice and governmental administration dealing with matters within the purview of this compact.

4. Gather and disseminate information relating to any of the matters within the purview of this compact.

5. Cooperate with the federal government and any public or private entities having interests in any subject coming within the purview of this compact.

6. Consult, upon the request of a party state and within resources available therefor, with the officials of such state in respect to any problem within the purview of this compact.

7. Study and make recommendations with respect to any practice, process, technique, or course of action that may improve the efficiency of mining or the economic yield from mining operations.

8. Study and make recommendations relating to the safeguarding of access to resources which are or may become the subject of mining operations to the end that the needs of the economy for the products of mining may not be adversely affected by unplanned or inappropriate use of land and other resources containing minerals or otherwise connected with actual or potential mining sites.

Article V

The Commission

(a) There is hereby created an agency of the party states to be known as the "Interstate Mining Commission", hereinafter called "the commission". The commission shall be composed of one commissioner from each party state who shall be the governor thereof. Pursuant to the laws of his party state, each governor shall have the assistance of an advisory body (including membership from mining industries, conservation interests, and such other public and private interests as may be appropriate) in considering problems relating to mining and in discharging his responsibilities as the commissioner of his state on the commission. In any instance where a governor is unable to attend a meeting of the commission or perform any other function in connection with the business of the commission, he shall designate an alternate, from among the members of the advisory body required by this paragraph, who shall represent him and act in his place and stead. The designation of an alternate shall be communicated by the governor to the commission in such manner as its bylaws may provide.

(b) The commissioners shall be entitled to one vote each on the commission. No action of the commission making a recommendation pursuant to Article IV–3, IV–7, and IV–8 or requesting, accepting or disposing of funds, services, or other property pursuant to this paragraph, Articles V (g), V (h), or VII shall be valid unless taken at a meeting at which a majority of the total number of votes on the commission is cast in favor thereof. All other action shall be by a majority of those present and voting: provided that action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, is present. The commission may establish and

maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(c) The commission shall have a seal.

(d) The commission shall elect annually, from among its members, a chairman, a vice–chairman, and a treasurer. The commission shall appoint an executive director and fix his duties and compensation. Such executive director shall serve at the pleasure of the commission. The executive director, the treasurer, and such other personnel as the commission shall designate shall be bonded. The amount or amounts of such bond or bonds shall be determined by the commission.

(e) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director with the approval of the commission, shall appoint, remove or discharge such personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of such personnel.

(f) The commission may establish and maintain independently or in conjunction with a party state, a suitable retirement system for its employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as it may deem appropriate.

(g) The commission may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation.

(h) The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph (g) of this article shall be reported in the annual report of the commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant or services borrowed and the identity of the donor or lender.

(i) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(j) The commission annually shall make to the governor, legislature and advisory body required by Article V (a) of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been made by the commission. The commission may make such additional reports as it may deem desirable.

Article VI

Advisory, Technical, and Regional Committees

The commission shall establish such advisory, technical, and regional committees as it may deem necessary, membership on which shall include private persons and public officials, and shall cooperate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities. Such committees may be formed to consider problems of special interest to any party states, problems dealing with particular commodities or types of mining operations, problems related to reclamation, development, or use of mined land, or any other matters of concern to the commission.

Article VII
Finance

(a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specified recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one half in equal shares, and the remainder in proportion to the value of minerals, ores, and other solid matter mined. In determining such values, the commission shall employ such available public source or sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of minerals, ores, and other solid matter mined.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under Article V (h) of this compact: provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under Article V (h) hereof, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject

to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VIII

Entry Into Force and Withdrawal

(a) This compact shall enter into force when enacted into law by any four or more states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article IX

Effect on Other Laws

Nothing in this compact shall be construed to limit, repeal or supersede any other law of any party state.

Article X
Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

§15–902.

In accordance with Article V (i) of the compact, the Commission shall file copies of its bylaws and any amendments thereto with the Department of the Environment.

§15–1001.

(a) Any person who violates any provision of this title is guilty of a misdemeanor. Upon conviction in a court of competent jurisdiction, unless another penalty is specifically provided elsewhere in this title, the person is subject to a fine not exceeding $500, with costs imposed in the discretion of the court.

(b) Any person found guilty of a second or subsequent violation of any provision of this title in a court of competent jurisdiction, unless another penalty is specifically provided elsewhere in this title, is subject to a fine not exceeding $1,000, or imprisonment not exceeding one year, or both with costs imposed in the discretion of the court. For the purpose of this subsection, a second or subsequent violation is one which has occurred within two years of any prior violation of this title.

(c) In addition to any administrative penalty provided in this title, violation of any rule or regulation or restriction promulgated by any unit within the Department pursuant to the provisions of this title is a misdemeanor and is punishable as provided in subsections (a) and (b) of this section.

§15–1101.

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

(b) "Board" means Board of Public Works.

(c) "Department" means the Department of the Environment.

(d) "Land" means real property, including improvements, rights–of–way, water, riparian or other vested rights, easements, privileges, and any other estate or interest in real property.

§15–1102.

It is the intention of the General Assembly to promote the reclamation of mined areas left without adequate reclamation which continue to degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger use of land or water resources, or endanger the health or safety of the public. To accomplish these objectives, the Department is hereby authorized to administer an abandoned mine reclamation program consistent with the requirements of the federal Surface Mining Control and Reclamation Act.

§15–1103.

(a) Except for funds deposited in the Acid Mine Drainage Abatement and Treatment Fund under subsection (b) of this section, any funds the Department receives pursuant to Title IV of the federal Surface Mining Control and Reclamation Act of 1977 shall be deposited, together with any other funds appropriated for the purposes of this subtitle, in a special fund on the books of the Comptroller of the Treasury in an account known as the "Federal–State Reclamation Fund". The Department shall use the funds to accomplish the purposes of this subtitle in accordance with the provisions of this subtitle. The provisions of this subtitle shall apply only to the "Federal–State Reclamation Fund".

(b) (1) There is an Acid Mine Drainage Abatement and Treatment Fund in the Department.

(2) Funds granted to the Department for acid mine drainage abatement and treatment under Title IV of the federal Surface Mining Control and Reclamation Act of 1977, as amended, may be deposited by the Department into the Acid Mine Drainage Abatement and Treatment Fund.

(3) Funds deposited into the Acid Mine Drainage Abatement and Treatment Fund, together with all interest earned on those funds, shall remain available until expended and may not revert to the General Fund.

(4) The Department may expend funds deposited into the Acid Mine Drainage Abatement and Treatment Fund and any interest accrued only to abate and treat acid mine drainage in accordance with the provisions of Title IV of the federal Surface Mining Control and Reclamation Act.

§15–1104.

(a) The Department is authorized to promulgate and enforce any rules and regulations necessary for the administration of this subtitle.

(b) The Department may enter into cooperative projects with other states or governmental bodies in order to carry out the purposes of this subtitle.

§15–1105.

(a) The Department is authorized to develop a reclamation plan in accordance with the provisions of the federal Surface Mining Control and Reclamation Act of 1977, and to submit such plan to the federal government for approval pursuant to that Act.

(b) Subsequent to federal approval of the reclamation plan, the Department may apply for and accept any and all funds available for reclamation, and shall administer them in accordance with the provisions of this subtitle. Such funds may be used for all costs related to elimination of the adverse effects of past coal mining practices, including but not limited to, planning and engineering costs, costs of

plans, specifications, surveys, investigations and feasibility studies, construction and inspection costs, actual operation and maintenance costs of permanent facilities, and all administrative expenses.

§15–1106.

(a) The expenditure of funds available for the purposes of this subtitle shall reflect the following priorities in the order stated:

(1) The protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices;

(2) The protection of public health, safety, and general welfare from adverse effects of coal mining practices;

(3) The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources, and agricultural productivity;

(4) Research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques;

(5) The protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, recreation, and conservation facilities adversely affected by coal mining practices; and

(6) The development of publicly owned land adversely affected by coal mining practices including land acquired as provided in this article for recreation and historic purposes, conservation, and reclamation purposes and open space benefits.

(b) Lands and water eligible for reclamation expenditures under this title are those which were mined for coal, or which were affected by such mining, wastebanks, coal processing, or other coal mining processes and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and lands and water made eligible through amendments to the federal Surface Mining Control and Reclamation Act of 1977 as amended through October 1, 1994, and for which there is no continuing reclamation responsibility under State or federal law.

§15–1107.

(a) (1) The Department may seek an order from the circuit court for the county in which the land or water resources is located authorizing the Department, its agents, employees, or contractors to enter upon the property adversely affected by past coal mining practices and any other property to have access to the affected property and to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects, if the Department makes a finding of fact that:

(i) Land or water resources have been adversely affected by past coal mining practices;

(ii) The adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and

(iii) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices:

1. Are not known, or not readily available; or

2. Will not give permission for the Department, its agents, employees, or contractors to enter on the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(2) The court shall consider whether the entry is a necessary exercise of the police power for the protection of the public health, safety, and welfare, and the actions of the Department under a court order shall not be construed as an act of condemnation of or trespass on property. The money expended for the work and the benefits accruing to any premises so entered shall be chargeable against the land and shall mitigate or offset any claim in or any action brought by any owner of any interest in the premises for any alleged damages by virtue of the entry. This provision is not intended to create new rights of action or eliminate existing immunities.

(b) Within 6 months after completion of a project pursuant to this subtitle, the Department shall itemize the moneys expended by the Department and file a notarized statement prepared by an independent appraiser as to the increase in value of the land attributable to the reclamation project with the clerk of the circuit court for the county in which the affected land lies. The statement shall constitute a lien upon the land for an amount equal to the increase in the value attributable to the project; provided that, no lien shall be filed:

(1) If the owner of the surface rights acquired the property prior to May 2, 1977, and neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation project;

(2) If the primary purpose of the reclamation project is to benefit the health, safety, and environmental values of the general public;

(3) If the cost of filing the lien exceeds the increase in the fair market value of the property as a result of the reclamation project; or

(4) If the reclamation project is necessitated by an unforeseen occurrence and the project does not significantly increase the fair market value of the property.

(c) The landowner may, within 60 days of the filing of the lien, petition the circuit court to determine the increase in the market value of the land as a result of the

reclamation project.

(d) The lien provided in this section shall constitute a lien upon the said land as of the date of the expenditure of the moneys and shall have priority as a lien second only to the lien of real estate taxes imposed upon said land. All funds received by the State pursuant to this section shall be credited to the Federal-State Reclamation Fund.

§15–1108.

(a) The Department is authorized to acquire any land, by purchase, donation, or condemnation, which is adversely affected by past coal mining practices if it is determined that acquisition of such land is necessary to successful reclamation and that:

(1) The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes or provide open space benefits; and

(2) Permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or

(3) Acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this subtitle, or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

(b) The total price paid for land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices.

(c) Title to all lands acquired pursuant to this section shall be in the name of the State.

(d) Land acquired pursuant to this section, or land already in State ownership which is determined to be in need of reclamation, may be reclaimed as follows:

(1) The Department may proceed to reclaim such land in accordance with this subtitle;

(2) The Department may sell such land to the federal government on the condition that it be reclaimed in accordance with Title IV of the federal Surface Mining Control and Reclamation Act of 1977; or

(3) If land is deemed to be suitable for industrial, commercial, residential, or recreational development, the Department may sell it by competitive bidding upon condition that its use be consistent with local and State land use plans and that all adverse effects of past coal mining practices have been or will be eliminated.

(e) In addition to the authority contained above, the Department may acquire land by purchase, donation or condemnation and reclaim and transfer such land to any local government, person, firm, association, corporation or other entity, if it is determined that such action is an integral and necessary element of an economically feasible plan for a project to construct or rehabilitate housing for persons:

(1) Disabled as the result of employment in the mines or work incidental thereto;

(2) Displaced by the acquisition of land pursuant to this subtitle;

(3) Dislocated as the result of adverse effects of coal mining practices which constitute an emergency situation endangering the public health, safety, or general welfare; or

(4) Dislocated as the result of natural disasters or catastrophic failures from any cause.

Land transferred pursuant to this subsection need not be at fair market value; provided that no profit shall accrue to any entity due to the difference between fair market value and the price required by the Department. No part of any moneys available under this subtitle may be used to pay actual construction costs of housing.

(f) Any and all purchase, sale, or transfer of land pursuant to this subtitle shall be by action of the Board. All funds received by the State from the sale of land shall be credited to the Federal-State Reclamation Fund.

(g) In all cases where land is acquired pursuant to this subtitle, the Department shall hold a public hearing in the county in which the land is located, for the purpose and at a time which will ensure that local citizens and governments may participate in the decision concerning the proper use or disposition of the land after restoration.

§15–1109.

The Department shall have the right to enter upon any property where there is no reasonable expectation of privacy for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property or trespass.

§15–1201.

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

(b) "Mineral" includes:

(1) Gas;

(2) Oil and oil shale;

(3) Coal;

(4) Gaseous, liquid, and solid hydrocarbons;

(5) Cement materials, sand and gravel, road materials, and building stone;

(6) Chemical substances;

(7) Gemstone, metallic, fissionable, and nonfissionable ores; and

(8) Colloidal and other clay, steam, and geothermal resources.

(c) "Mineral interest" means an interest in a mineral estate, however created and regardless of form, whether absolute or fractional, divided or undivided, corporeal or incorporeal, including a fee simple or any lesser interest or any kind of royalty, production payment, executive right, nonexecutive right, leasehold, or lien in minerals, regardless of character.

(d) "Severed mineral interest" means a mineral interest that is severed from the interest in the surface estate overlying the mineral interest.

(e) "Surface estate" means an interest in the estate overlying a mineral interest.

(f) (1) "Surface owner" means any person vested with a whole or undivided fee simple interest or other freehold interest in the surface estate.

(2) "Surface owner" does not include the owner of a right–of–way, easement, or leasehold on the surface estate.

(g) (1) "Unknown or missing owner" means any person vested with a severed mineral interest whose present identity or location cannot be determined:

(i) From the records of the county where the severed mineral interest is located; or

(ii) By diligent inquiry in the vicinity of the owner's last known place of residence.

(2) "Unknown or missing owner" includes the heirs, successors, or assignees of an unknown or missing owner.

§15–1202.

(a) (1) Except as provided in paragraph (2) of this subsection, this subtitle applies to all mineral interests.

(2) This subtitle does not apply to a mineral interest:

(i) Held by the United States or a Native American tribe, except to the extent permitted by federal law; or

(ii) Held by the State or an agency or political subdivision of the State, except to the extent permitted by State law.

(b) The purpose of this subtitle is to make uniform the law governing dormant mineral interests among the states.

(c) This subtitle does not limit or affect any other procedure provided by law for clearing an abandoned mineral interest from title to real property.

(d) This subtitle does not limit or affect water rights.

§15–1203.

(a) (1) On or after October 1, 2011, a surface owner of real property that is subject to a mineral interest may maintain an action to terminate a dormant mineral interest.

(2) A mineral interest is dormant for the purpose of this subtitle if:

(i) The mineral interest is unused for a period of 20 or more years preceding the commencement of termination of the mineral interest; and

(ii) Notice of the mineral interest was not recorded during the period of 20 or more years preceding the commencement of termination of the mineral interest.

(b) (1) The action must be in the nature of and require the same notice as is required in an action to quiet title as set forth in § 14–108 of the Real Property Article.

(2) The action may be maintained, whether or not the owner of the severed mineral interest is an unknown or missing owner.

(c) (1) Except as provided in paragraph (2) of this subsection, the following actions taken by or under the authority of the owner of a mineral interest in relation to any mineral that is part of the mineral interest shall constitute use of the entire mineral interest:

(i) Active mineral operations on or below the surface of the real property or other property utilized or pooled with the real property, including production, geophysical exploration, exploratory or developmental drilling, mining, exploitation, and development of minerals;

(ii) Payment of taxes on a separate assessment of the mineral interest or of a transfer or severance tax relating to the mineral interest, in accordance

with § 8–229 of the Tax – Property Article;

(iii) Recordation of an instrument that creates, reserves, or otherwise evidences a claim to, or the continued existence of, the mineral interest, including an instrument that transfers, leases, or divides the interest; and

(iv) Recordation of a judgment or decree that makes a specific reference to the mineral interest.

(2) The injection of substances for the purpose of disposal or storage does not constitute use of a mineral interest.

(d) (1) A surface owner of real property that is subject to a mineral interest who brings an action to terminate a dormant mineral interest in accordance with this section shall bring the action in the circuit court of the jurisdiction in which the real property is located.

(2) A court order that terminates a mineral interest merges the terminated mineral interest, including express and implied appurtenant surface rights and obligations, with the surface estate in shares proportionate to the ownership of the surface estate, subject to existing liens for taxes or assessments.

(3) (i) A court order that terminates a mineral interest shall identify:

1. The mineral interest;

2. Each surface estate into which the mineral interest is merged, including the tax map and parcel number;

3. The name of each surface owner;

4. If known, the name of each person that owned the mineral interest prior to the termination date; and

5. Any information determined by the court as appropriate to describe the effect of the termination and merger of the mineral interest.

(ii) The clerk of the court that issued the order shall record the order in the land records.

(e) This section shall apply notwithstanding any provision to the contrary in:

(1) The instrument that creates, reserves, transfers, leases, divides, or otherwise evidences the claim to, or the continued existence of, the mineral interest; or

(2) Another recorded document, unless the instrument or other recorded document provides an earlier termination date.

§15–1204.

(a) (1) An owner of a mineral interest may record, at any time, a notice of intent to preserve the mineral interest or a part of a mineral interest.

(2) A mineral interest is preserved in the county in which the notice is recorded.

(b) (1) The following individuals may record a notice in accordance with subsection (a) of this section:

(i) An owner of the mineral interest;

(ii) Another person legally authorized to act on behalf of the owner; or

(iii) A co–owner, for the benefit of any or all co–owners.

(2) A notice recorded under subsection (a) of this section shall contain:

(i) 1. The name of the owner, or co–owners, of the mineral interest; or

2. If the identity of the owner cannot be determined, information that states that the owner cannot be determined; and

(ii) An identification of the mineral interest or part of the mineral interest to be preserved, in accordance with subsection (c) of this section.

(c) A mineral interest shall be identified by:

(1) A reference to the location in the records of the instrument that creates, reserves, or otherwise evidences the interest;

(2) The judgment or decree that confirms the mineral interest;

(3) A legal description of the mineral interest, if accompanied by a reference to the name of the record owner under whom the owner of the mineral interest claims; or

(4) A general reference to any or all mineral interests of the owner in any real property situated in the county, if:

(i) A previously recorded instrument created, reserved, or otherwise evidenced the mineral interest; or

(ii) A judgment or decree confirms the mineral interest.

§15–1205.

(a) In this section, "litigation expenses" means costs and expenses that the court determines are reasonably and necessarily incurred in preparing for and prosecuting an action, including reasonable attorney's fees.

(b) In an action to terminate a mineral interest in accordance with § 15–1203 of this subtitle, the court shall permit the owner of the mineral interest to record a late notice of intent to preserve the mineral interest as a condition of dismissal of the action, if the owner of the mineral interest pays the litigation expenses incurred by the surface owner of the real property that is subject to the mineral interest.

(c) This section does not apply in an action in which a mineral interest has been unused in accordance with § 15–1203 of this subtitle for a period of 40 years or more preceding the commencement of the action.

§15–1206.

(a) If the title to a severed mineral interest is vested in an unknown or missing owner, the circuit court of the county where the severed mineral interest is located may on petition, and after notice and a hearing:

(1) Place the severed mineral interest in trust by order;

(2) Appoint a trustee for the unknown or missing owner;

(3) Order the trustee to create a separate trust bank account to manage all trust assets;

(4) Authorize the trustee to sell, execute, and deliver a valid lease on the minerals to the owner of the surface estate; and

(5) Place conditions on the authorization in item (4) of this subsection.

(b) A petition to create a trust for a severed mineral interest and to appoint a trustee under subsection (a) of this section may be filed by a person vested in fee simple with the whole or undivided interest in the surface estate or estates.

(c) (1) If the unknown or missing owner of a vested severed mineral interest does not contest a trust created under subsection (a)(1) of this section on or before 5 years after the date that the court issued the order creating the trust, the trustee shall file a petition to terminate the trust and to convey title to the severed mineral interest to the surface owners.

(2) The petition in paragraph (1) of this subsection shall:

(i) Name as defendants:

1. The surface owners; and

2. Any other person with a legal interest in the severed mineral interest, including any unknown or missing owners; and

(ii) Include:

1. A legal description of the severed mineral interest;

2. A description of the putative property interests of each of the parties;

3. The last known address of each of the parties;

4. An affidavit signed by the surface owners, affirming fee simple ownership of the surface estate or estates, and requesting the court to convey title to the severed mineral interest at issue; and

5. An affidavit signed by the trustee, affirming that after conducting a diligent inquiry, including a search in the county where the severed mineral interest is located, performed in accordance with generally accepted standards of title examination of the land records of the county, records of register of wills of the county, and records of the circuit court for the county, the trustee cannot locate the unknown or missing owner.

(d) Following a petition by the trustee made under subsection (c) of this section, the court shall, after notice, hold a hearing on the motion and enter an order requiring the trustee to convey the unknown or missing owner's mineral interest to the named surface owners if:

(1) The unknown or missing owner does not appear to contest the petition; and

(2) The court finds that the individuals named in the petition as the surface owners are in fact the fee simple owners of the surface estate or estates.

(e) If the court orders the conveyance in accordance with subsection (d) of this section, the trustee shall:

(1) Convey by recordable instrument the unknown or missing owner's severed mineral interest to the named surface owners;

(2) Pay from any trust account all required taxes, court costs, expenses, and fees, including any fee for services to the trustee authorized by the court;

(3) Pay any balance remaining in any trust account after the payments set forth in item (2) of this subsection to the named surface owners;

(4) Close any trust account; and

(5) Make a final report to the court accounting for the financial transactions of the trust.

(f) After the conveyance to the surface owners in accordance with subsection (e) of this section, the surface owners shall be entitled to receive all proceeds from the lease of the mineral interest conveyed.

(g) After receiving the final report of the trustee in accordance with subsection (e)(5) of this section, the court shall order the trust terminated and the trustee discharged.

(h) (1) A trust created under this section shall be administered by the court as provided by the Maryland Rules.

(2) Under this section, procedures for notice to interested persons, the forms of petitions, and the conduct and requirements at a hearing shall be as provided by the Maryland Rules.

§16–101.

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

(b) "Board" means the Board of Public Works.

(c) "County" includes Baltimore City unless otherwise indicated.

(d) "Department" means the Department of the Environment.

(e) "Dredging" means the removal or displacement by any means of soil, sand, gravel, shells, or other material, whether or not of intrinsic value, from any State or private wetlands.

(f) (1) "Filling" means:

(i) The displacement of navigable water by the depositing into State or private wetlands of soil, sand, gravel, shells, or other materials; or

(ii) The artificial alteration of navigable water levels by any physical structure, drainage ditch, or otherwise.

(2) "Filling" includes storm drain projects which flow directly into tidal waters of the State.

(3) "Filling" does not include:

(i) Drainage of agricultural land;

(ii) In–place replacement or repair of shore erosion control structures using substantially similar materials and construction design; or

(iii) Planting of wetlands vegetation when no grading or fill in State or private wetlands is necessary.

(g) "Landward boundary of wetlands" means the common boundary between wetlands, as defined in this section, and lands not included within the definitions of wetlands appearing in this section.

(h) "Licensed marine contractor" has the meaning stated in Title 17, Subtitle 3 of this article.

(i) (1) "Nonwater–dependent project" means a temporary or permanent structure that, by reason of its intrinsic nature, use, or operation, does not require location in, on, or over State or private wetlands.

(2) "Nonwater–dependent project" includes:

(i) A dwelling unit on a pier;

(ii) A restaurant, a shop, an office, or any other commercial building or use on a pier;

(iii) A temporary or permanent roof or covering on a pier;

(iv) A pier used to support a nonwater–dependent use; and

(v) A small–scale renewable energy system on a pier, including:

1. A solar energy system and its photovoltaic cells, solar panels, or other necessary equipment;

2. A geothermal energy system and its geothermal heat exchanger or other necessary equipment; and

3. A wind energy system and its wind turbine, tower, base, or other necessary equipment.

(3) "Nonwater–dependent project" does not include:

(i) A fuel pump or other fuel–dispensing equipment on a pier;

(ii) A sanitary sewage pump or other wastewater removal equipment on a pier; or

(iii) An office on a pier for managing marina operations, including monitoring vessel traffic, registering vessels, providing docking services, and housing electrical or emergency equipment related to marina operations.

(j) "Person" means any natural person, partnership, joint–stock company, unincorporated association or society, the federal government, the State, any unit of the State, a political subdivision, or other corporation of any type.

(k) (1) "Pier" means any pier, wharf, dock, walkway, bulkhead, breakwater, piles, or other similar structure.

(2) "Pier" does not include any structure on pilings or stilts that was originally constructed beyond the landward boundaries of State or private wetlands.

(l) (1) "Private wetlands" means any land not considered "State wetland" bordering on or lying beneath tidal waters, which is subject to regular or periodic tidal action and supports aquatic growth.

(2) "Private wetlands" includes wetlands, transferred by the State by a valid grant, lease, patent, or grant confirmed by Article 5 of the Maryland Declaration of Rights, to the extent of the interest transferred.

(m) (1) "Public notice" means the public notice and public informational hearing procedures established in § 5–204(b) through (e) of this article.

(2) "Public notice" does not mean notice as provided for in § 16–303 of this title.

(n) "Regular or periodic tidal action" means the rise and fall of the sea produced by the attraction of the sun and moon uninfluenced by wind or any other circumstance.

(o) "Secretary" means the Secretary of the Environment.

(p) "State wetlands" means any land under the navigable waters of the State below the mean high tide, affected by the regular rise and fall of the tide. Wetlands of this category which have been transferred by the State by valid grant, lease, patent or grant confirmed by Article 5 of the Maryland Declaration of Rights shall be considered "private wetland" to the extent of the interest transferred.

§16–102.

(a) In many areas of the State much of the wetlands have been lost or despoiled by unregulated dredging, dumping, filling, and like activities, and the remaining wetlands are in jeopardy of being lost or despoiled by these and other activities. The loss or despoliation:

(1) Will affect adversely, if not eliminate entirely, the value of the wetlands as a source of nutrient to finfish, crustacea, and shellfish of significant economic value;

(2) Will destroy the wetlands as a habitat for plants and animals of significant economic value and eliminate or substantially reduce marine commerce, recreation, and aesthetic enjoyment;

(3) In most cases, will affect the natural ability of tidal wetlands to reduce flood damage and affect adversely the public health and welfare; and

(4) Will reduce substantially the capacity of the wetlands to absorb silt and result in increased silting of channel and harbor areas to the detriment of free navigation.

(b) It is the public policy of the State, taking into account varying ecological, economic, developmental, recreational, and aesthetic values, to preserve the wetlands and prevent their despoliation and destruction.

§16–103.

(a) Except as specifically provided in this title, a riparian owner may not be deprived of any right, privilege, or enjoyment of riparian ownership that the riparian owner had prior to July 1, 1970.

(b) The provisions of this title do not transfer the title or ownership of any land or interest in land.

§16–104.

(a) This section does not apply to a nonwater–dependent project located on State or private wetlands in Prince George's County.

(b) (1) Except as provided in paragraphs (2) and (3) of this subsection and notwithstanding any other provision of law, the Board of Public Works may not issue a license to authorize a nonwater–dependent project located on State wetlands.

(2) The Board of Public Works may issue a license to authorize a nonwater–dependent project located on State wetlands if the project:

(i) 1. Involves a commercial activity that is permitted as a secondary or accessory use to a permitted primary commercial use;

2. Is not located on a pier that is attached to residentially, institutionally, or industrially used property;

3. Avoids and minimizes impacts to State or private wetlands and other aquatic resources;

4. Is located in:

A. An intensely developed area and the project is authorized under a program amendment to a local jurisdiction's critical area program approved on or after July 1, 2013, if the approved program amendment includes necessary changes to the local jurisdiction's zoning, subdivision, and other ordinances so as to be consistent with or more restrictive than the requirements provided under this paragraph; or

B. An area that has been excluded from a local critical area program if the exclusion has been adopted or approved by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays;

5. Is approved by the local planning and zoning authorities after the local jurisdiction's program amendment under item 4A of this item, if applicable, has been approved;

6. Allows or enhances public access to State wetlands;

7. Does not expand beyond the length, width, or channelward encroachment of the pier on which the project is constructed;

8. Has a height of up to 18 feet unless the project is located at a marina and the Secretary recommends additional height;

9. Is up to 1,000 square feet in total area;

10. Is not located in, on, or over vegetated tidal wetlands, submerged aquatic vegetation, a natural oyster bar, a public shellfish fishery area, a Yates Bar, or an area with rare, threatened, or endangered species or species in need of conservation; and

11. Does not adversely impact a fish spawning or nursery area or an historic waterfowl staging area; or

(ii) 1. Is located on a pier that was in existence on or before December 31, 2012;

2. Satisfies all of the requirements under item (i)1 through 8 of this paragraph; and

3. If applicable, has a temporary or permanent roof or covering that is up to 1,000 square feet in total area.

(3) (i) The Board of Public Works may issue a license to authorize a nonwater–dependent project for a small–scale renewable energy system on a pier located on State wetlands if the project:

1. Involves the installation or placement of a small–scale renewable energy system that is permitted as a secondary or accessory use on a pier that is authorized under this title;

2. Avoids and minimizes impacts to State or private wetlands and other aquatic resources;

3. Is located in:

A. The Chesapeake and Atlantic Coastal Bays Critical Area and the project is authorized under a program amendment to a local jurisdiction's critical area program approved on or after July 1, 2013, if the approved program amendment includes necessary changes to the local jurisdiction's zoning, subdivision, and other ordinances so as to be consistent with or more restrictive than the requirements provided under this paragraph; or

B. An area that has been excluded from a local critical area program if the exclusion has been adopted or approved by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays;

4. Is approved by the local planning and zoning authorities after the local jurisdiction's program amendment under item 3A of this subparagraph, if applicable, has been approved;

5. Is not located in, on, or over vegetated tidal wetlands, submerged aquatic vegetation, a natural oyster bar, a public shellfish fishery area, a Yates Bar, or an area with rare, threatened, or endangered species or species in need of conservation; and

6. Does not adversely impact a fish spawning or nursery area or an historic waterfowl staging area.

(ii) A license issued under subparagraph (i) of this paragraph may include the installation or placement of:

1. A solar energy system attached to a pier if the device or equipment associated with that system does not extend more than:

A. 4 feet above or 18 inches below the deck of the pier; or

B. 1 foot beyond the length or width of the pier;

2. A solar energy system attached to a piling if there is only one solar panel per boat slip;

3. A solar energy system attached to a boathouse roof if the device or equipment associated with that system does not extend beyond the length, width, or height of the boathouse roof;

4. A closed–loop geothermal heat exchanger under a pier if the geothermal heat exchanger or any associated devices or equipment do not:

A. Extend beyond the length, width, or channelward encroachment of the pier;

B. Deleteriously alter long shore drift; or

C. Cause significant individual or cumulative thermal impacts to aquatic resources; or

5. A wind energy system attached to a pier if there is only one wind energy system per pier for which:

A. The height from the deck of the pier to the blade extended at its highest point is up to 12 feet;

B. The rotor diameter of the wind turbine is up to 4 feet; and

C. The setbacks of the wind energy system from the nearest property line and from the channelward edge of the pier to which that system is attached are at least 1.5 times the total height of the system from its base to the blade extended at its highest point.

(c) (1) Except as provided in paragraph (2) of this subsection and notwithstanding any other provision of law, the Secretary may not issue a permit to authorize a nonwater–dependent project located on private wetlands.

(2) Except for the public access requirement under subsection (b)(2)(i)6 of this section, the Secretary may issue a permit to authorize a nonwater–dependent project located on private wetlands if the project satisfies all of the requirements under subsection (b)(2) or (3) of this section.

§16–105.

(a) The Department, jointly with the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, shall:

(1) Review existing regulations applicable to the construction of piers and bulkheads in the tidal wetlands of the State and in the Chesapeake Bay Critical Area; and

(2) By regulation, develop a procedure to avoid duplication of regulatory jurisdiction by the State and local jurisdictions concerning the construction of piers and bulkheads in the tidal wetlands of the State and in the Chesapeake Bay Critical Area.

(b) The procedure that the Department and Commission develop under subsection (a) of this section shall include provision for recognition of:

(1) State jurisdiction over the construction of piers and bulkheads in State and private wetlands designated under this title; and

(2) Local jurisdiction over:

(i) The construction of piers and bulkheads landward of the boundary lines of State and private wetlands as mapped under this title; and

(ii) Zoning divisional lines and building codes.

§16–106.

(a) (1) A person that undertakes or authorizes an activity that requires a license or permit under this title shall:

(i) Hire a licensed marine contractor to do the work; or

(ii) Be a licensed marine contractor.

(2) Notwithstanding any other provision of law, a residential or commercial property owner shall be exempt from the requirement to be or to hire a licensed marine contractor under subsection (a) of this section if:

(i) The property owner performs marine contractor services on the property owner's own property; and

(ii) The property owner obtains the necessary tidal wetlands licenses or permits required under this title.

(b) (1) A person who violates subsection (a) of this section or any regulation adopted under this section is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $10,000 or imprisonment not exceeding 1 year or both.

(2) Each day that a person conducts marine contractor services without a license constitutes a separate offense.

(c) (1) In addition to any other sanction under this section, a civil action may be brought against a person for a violation of subsection (a) of this section or any regulation adopted under this section.

(2) A person may be liable for a civil penalty under this subsection not to exceed $10,000 for each violation.

(d) Any penalties collected under this section shall be paid into the Wetlands and Waterways Program Fund established under § 5–203.1 of this article, for the administration of the Marine Contractors Licensing Board established under Title 17 of this article.

(e) The Department shall adopt regulations to administer and enforce the provisions of this section.

§16–107.

(a) (1) This section applies to a development project to expand a marina that historically operated as a working marina for the sole purpose of supporting aquaculture or seafood operations.

(2) This section does not apply to a development project to expand a marina if the existing or expanded marina is used to allow a person to moor, dock, or store recreational or pleasure vessels.

(b) (1) Except as provided in subsection (c) of this section, the Board may issue a license under this title for a development project to expand a marina that is located in an area where the water depth is less than 4 1/2 feet at mean low water and on a waterway without strong flushing if the development project:

(i) Enhances aquaculture activities or seafood operations;

(ii) Is located in a marina or seafood operation at a marina operated by a nonprofit organization to promote aquaculture activities or oyster restoration in the State;

(iii) Does not adversely impact submerged aquatic vegetation; and

(iv) Will further the policies of the State related to aquaculture.

(2) The license authorized under paragraph (1) of this subsection may authorize dredging to improve navigational access to the marina or marina facility operations.

(c) The Board may not issue a license under this title unless the applicant for the license has obtained the following authorizations if required by local, State, or federal law:

(1) Local planning or zoning authorization;

(2) An aquaculture lease;

(3) A water column lease or a submerged land lease issued by the Department of Natural Resources; and

(4) A permit issued by the U.S. Army Corps of Engineers under § 404 of the federal Clean Water Act or under § 10 of the federal Rivers and Harbors Act.

§16–201.

(a) A person who is the owner of land bounding on navigable water is entitled to any natural accretion to the person's land, to reclaim fast land lost by erosion or avulsion during the person's ownership of the land to the extent of provable existing boundaries. The person may make improvements into the water in front of the land to preserve that person's access to the navigable water or, subject to subsection (c), protect the shore of that person against erosion. After an improvement has been constructed, the improvement is the property of the owner of the land to which the improvement is attached. A right covered in this subtitle does not preclude the owner from developing any other use approved by the Board. The right to reclaim lost fast land relates only

to fast land lost after January 1, 1972, and the burden of proof that the loss occurred after this date is on the owner of the land.

(b) The rights of any person, as defined in this subtitle, which existed prior to July 1, 1973 in relation to natural accretion of land are deemed to have continued to be in existence subsequent to July 1, 1973 to July 1, 1978.

(c) (1) Improvements to protect a person's property against erosion shall consist of nonstructural shoreline stabilization measures that preserve the natural environment, such as marsh creation, except:

(i) In areas designated by Department mapping as appropriate for structural shoreline stabilization measures; and

(ii) In areas where the person can demonstrate to the Department's satisfaction that such measures are not feasible, including areas of excessive erosion, areas subject to heavy tides, and areas too narrow for effective use of nonstructural shoreline stabilization measures.

(2) (i) Subject to subparagraph (ii) of this paragraph, in consultation with the Department of Natural Resources, the Department shall adopt regulations to implement the provisions of this subsection.

(ii) Regulations adopted by the Department under subparagraph (i) of this paragraph shall include a waiver process that exempts a person from the requirements of paragraph (1) of this subsection on a demonstration to the Department's satisfaction that nonstructural shoreline stabilization measures are not feasible for the person's property.

§16–202.

(a) A person may not dredge or fill on State wetlands without a license.

(b) To apply for a license, the applicant shall submit a delineation of the affected tidal wetlands and all other information required by the Department.

(c) (1) Subject to paragraph (3) of this subsection, within 45 days from receipt of the application, the Department shall notify the applicant whether the application is complete and whether the delineation is correct.

(2) Subject to paragraph (3) of this subsection, if the Department fails to notify the applicant about the application or delineation within 45 days, the delineation shall be treated by the Department as correct, and the application shall be treated as complete.

(3) Upon written notice to the applicant, the Department may provide for an extension of the deadline under this subsection if the following extenuating circumstances prevent consideration of the application:

(i) Inclement weather conditions;

(ii) A review is required by a federal, State, or local government agency; or

(iii) A request is made by an applicant.

(d) (1) Subject to paragraph (2) of this subsection, once the application is complete in accordance with subsection (c) of this section, the Department shall grant, deny, or condition a license within 45 days if:

(i) The application is not subject to public notice and hearing requirements under subsection (g) of this section; or

(ii) The application does not require an action by the Board.

(2) Upon written notice to the applicant, the Department may provide for a 30–day extension of the deadline under this subsection for the following extenuating circumstances:

(i) A review is required by a federal, State, or local government agency; or

(ii) A request is made by an applicant.

(e) (1) Once the application is complete under subsection (c) of this section, the Department shall issue public notice of an opportunity to submit written comments or to request a hearing in accordance with § 5–204(b) through (e) of this article.

(2) A hearing requested under paragraph (1) of this subsection shall be held within 45 days of the hearing request, unless extenuating circumstances justify an extension of time.

(3) The hearing that may be requested under this subsection is not a contested case hearing under Title 10, Subtitle 2 of the State Government Article.

(f) The Secretary shall assist the Board in determining whether to issue a license to dredge or fill State wetlands. The Secretary shall submit a report indicating whether the license should be granted and, if so, the terms, conditions, and consideration required after consultation with any interested federal, State, and local unit, and after issuing public notice, holding any requested hearing, and taking any evidence the Secretary thinks advisable.

(g) (1) Upon receipt of a report by the Secretary, the Board shall decide if issuance of the license is in the best interest of the State, taking into account the varying ecological, economic, developmental, recreational, and aesthetic values each application presents. If the Board decides to issue the license, the issuance of the license shall be for consideration and on terms and conditions the Board determines.

Every license shall be in writing.

(2) With respect to an application for a license to fill or construct a shore erosion control structure other than riprap on State wetlands, the Board may issue the license without public notice if the fill area is less than 300 feet in length parallel to the fast land as close to the fast land as structurally feasible but not more than 10 feet channelward of the mean high water line and if after a site visit the report of the Secretary recommends that the license be granted. The Board may issue a license without public notice where an emergency exists caused by act of God, natural disaster, catastrophe, or other similar natural event when the health, safety, or welfare of the citizens of the State would be jeopardized by a delay caused by time requirements for public notice. However, the license may be granted by the Board only with the concurrence of the Secretary. The Secretary shall provide prompt public notice of the emergency license issuance and the opportunity to submit written comments or to request a hearing to determine whether the emergency license shall be revoked or made permanent. If a hearing is requested, the hearing shall be scheduled within 30 days of the emergency issuance of the license.

(3) If the report of the Secretary recommends that a license be granted, the Board may issue the license without public notice:

(i) To fill or construct a shore erosion control structure of riprap on State wetlands if the fill area is less than 500 feet in length parallel to the fast land as close to the fast land as structurally feasible but not more than 10 feet channelward of the mean high water line;

(ii) To repair or replace a bulkhead for the purpose of shore erosion control where the bulkhead is presently functional, but is deteriorating or damaged, provided that the repair or replacement structure does not extend more than 18 inches channelward of the existing structure. Repair or replacement may include riprap placed along the base of the bulkhead, provided that the riprap shall not extend more than 10 feet channelward of the bulkhead;

(iii) To fill near shore shallow water bottom extending no more than 35 feet channelward of the mean high water line provided the fill area is less than 500 feet in length parallel to the fast land for the purpose of shore erosion control by landscaping and wetland plant establishment;

(iv) To construct or repair a private noncommercial boat ramp provided the ramp does not exceed 12 feet in width and extend more than 30 feet channelward of the mean high water line; or

(v) To maintenance dredge a mooring, private or commercial boat ramp, mobile boat hoist slip, or marine railway when no more than 100 cubic yards of material nor an area greater than 1,500 square feet need to be dredged.

(4) With respect to the maintenance dredging of projects in State

wetlands for which a license is to be issued, the license may include provision for periodic maintenance dredging if recommended by the report of the Secretary provided that the maintenance dredging be effected:

(i) Within the area, depth, and in conformity with other limitations contained in the license;

(ii) That no more than 500 cubic yards of material be dredged at each maintenance dredging to restore licensed works;

(iii) That the material from maintenance dredging be deposited upon the designated or other upland site approved by the Secretary; and

(iv) That the Secretary be notified and approve of each maintenance dredging operation.

(5) The provisions for periodic maintenance dredging under paragraph (4) of this subsection shall be effective for no more than 6 years beyond the date of issuance of the license.

(6) If the licensee desires to continue maintenance dredging beyond the expiration date authorized in paragraph (5) of this subsection, the licensee must obtain a new license by submitting an application to the Board for review in accordance with the procedures of this section.

(h) The provisions of this section do not apply to any operation for:

(1) Dredging and filling being conducted as of July 1, 1970, as authorized under the terms of an appropriate permit or license granted under the provisions of existing State and federal law;

(2) Dredging of seafood products by any licensed operator, harvesting of seaweed, or mosquito control and abatement as approved by the Department of Agriculture;

(3) Improvement of wildlife habitat or agricultural drainage ditches as approved by an appropriate unit;

(4) Routine maintenance or repair of existing bulkheads, provided that there is no addition or channelward encroachment; or

(5) Aquaculture activities occurring under a lease issued by the Department of Natural Resources under Title 4, Subtitle 11A of the Natural Resources Article.

(i) (1) The Board may not approve a license or an amendment to a license authorizing the dredge material deposited in the Hart–Miller Island Dredged Material Containment Facility to exceed an elevation of:

(i) 44 feet above the mean low water mark in the north cell; and

(ii) 28 feet above the mean low water mark in the south cell.

(2) On or after January 1, 2010, the Board may not approve a license or an amendment to a license authorizing the deposit of dredge material at the Hart–Miller Dredged Material Containment Facility.

§16–203.

Notwithstanding any other provision of law, a landowner shall be exempt from all local permit requirements to perform routine maintenance and repair of a bulkhead.

§16–204.

(a) Any person that satisfies subsection (b) of this section may petition the circuit court in the county where the land is located within 30 days after receiving the decision of the Board. The appeal shall be heard on the record compiled before the Board.

(b) A party has standing to file a petition under subsection (a) of this section if the party:

(1) Meets the threshold standing requirements under federal law; and

(2) (i) Is the applicant; or

(ii) Participated in a public participation process through the submission of written or oral comments, unless an opportunity for public participation was not provided.

(c) (1) A contested case hearing may not occur on a decision of the Board in accordance with § 16–202 of this subtitle.

(2) Judicial review under this section shall be conducted in accordance with Title 1, Subtitle 6 of this article.

§16–205.

(a) The Board may require as a condition to issuance of a wetlands license that compensation be made to the State, of a kind and in an amount deemed appropriate by the Board.

(b) (1) The Board shall establish a compensation rate for cables, pipelines, or similar structures in accordance with this subsection.

(2) The minimum compensation rate:

(i) Is $2.50 per linear foot per year for cables, pipelines, or similar

structures;

(ii) Applies to each individual cable, pipeline, or similar structure; and

(iii) Applies to all new and existing authorizations beginning July 2, 2012.

(3) The Board may:

(i) Increase the compensation rate as considered appropriate; and

(ii) Adjust the compensation rate to reflect changes in the Consumer Price Index as published by the Bureau of Labor Statistics of the U.S. Department of Labor or by an appropriate method selected by the Board.

(c) (1) The Board shall establish an annual compensation rate for nonwater–dependent projects authorized under § 16–104(b)(2) of this title.

(2) The Board shall assess an annual compensation rate for a nonwater–dependent project that is:

(i) Based on the most recent data provided by the State Department of Assessments and Taxation in the assessment record for the real property to which the nonwater–dependent project is attached; and

(ii) Computed by:

1. Multiplying the total square footage of the nonwater–dependent project by a fraction, the denominator of which is the total square footage of the land area of the real property to which the nonwater–dependent project is attached, and the numerator of which is the assessed land value of the real property to which the nonwater–dependent project is attached; and

2. Multiplying the rate calculated under item 1 of this item by a percentage considered appropriate by the Board not to exceed 100%.

(3) In determining the appropriate percentage under paragraph (2)(ii)2 of this subsection, the Board may consider:

(i) The extent to which the nonwater–dependent project is used on a seasonal or year–round basis;

(ii) The extent of the economic impact of the nonwater–dependent project on the local jurisdiction;

(iii) The nature and extent of the environmental impact of the nonwater–dependent project;

(iv) The extent to which the nonwater–dependent project and, if applicable, its roof or covering, are permanent or temporary;

(v) Any history of violation of this title by the licensee;

(vi) Any real property lease rates for the area for a commercial activity similar to the licensee's or any real property appraisals obtained by the licensee; and

(vii) Any other factor that the Board considers relevant.

(4) The Board may periodically recalculate the annual compensation rate to reflect:

(i) Any change to the data provided by the State Department of Assessments and Taxation under paragraph (2)(i) of this subsection; or

(ii) A change in any factor the Board considers under paragraph (3) of this subsection.

(d) Monetary compensation received by the State in conjunction with a wetlands license may not be applied to the State Annuity Bond Fund Account.

(e) (1) There is created a special fund, known as the Tidal Wetlands Compensation Fund.

(2) The following money shall be deposited in the Tidal Wetlands Compensation Fund:

(i) Any monetary payment by a licensee in lieu of creating, restoring, or enhancing tidal wetlands that is required by the Department or the Board as a condition of a permit or license;

(ii) Any penalty imposed by a court in accordance with this title; and

(iii) Any penalty imposed by the Department under this title.

(f) Funds in the Tidal Wetlands Compensation Fund may be appropriated only for the creation, restoration, or enhancement of tidal wetlands, including:

(1) Acquisition of land or easements;

(2) Maintenance of mitigation sites;

(3) Purchase of credits in mitigation banks;

(4) Management of invasive or nuisance species identified by the Department;

(5) Cost sharing assistance to landowners in the management and control of phragmites under Title 8, Subtitle 21 of the Natural Resources Article; and

(6) Contractual services necessary to accomplish the intent of this subsection.

(g) Funds credited and any interest accrued to the Fund:

(1) Shall remain available until expended; and

(2) May not revert to the General Fund under any other provision of law.

(h) All monetary compensation paid to the State in conjunction with a wetlands license other than that specified under subsection (e)(2) of this section shall be deposited in the Wetlands and Waterways Program Fund established under § 5–203.1 of this article.

§16–301.

(a) The Secretary shall promptly delineate the landward boundaries of any wetlands in the State. The landward boundaries of the wetlands shall be shown on suitable maps or aerial photographs on a scale of 1 inch to 200 feet. The maps shall cover an entire political subdivision of the State as determined by the Secretary.

(b) The Secretary shall hold a public hearing in the county of the affected wetlands on completion of the boundary map required in subsection (a) of this section and adoption of proposed regulations provided in § 16-302 of this subtitle. The Secretary shall give notice of the hearing by registered or certified mail not less than 30 days prior to the hearing date, to each owner shown on tax records as an owner of land designated on the map as a wetland. The notice shall include the proposed regulations. The Secretary shall publish notice of the hearing at least once not more than 30 days and not fewer than 10 days before the date of the hearing in a newspaper published within and having a general circulation in every county where the wetlands are located.

(c) After considering the testimony at the hearing and any other pertinent fact, considering the rights of every affected property owner, and the purposes of this subtitle, the Secretary shall establish by order the landward bounds of each wetland and the regulations applicable to the wetland. A copy of the order, together with a copy of the map depicting the boundary lines, shall be filed among the land records in accordance with subsection (d) of this section in every county affected after final appeal has been completed. The Secretary shall give notice of the order to each owner of record of any land designated as wetlands by mailing a copy of the order to the owner by registered or certified mail. The Secretary also shall publish the order in a newspaper published within and having a general circulation in every county where the wetlands are located.

(d) Filing among the land records means that the clerk of the circuit court

for each affected county shall maintain all wetlands maps and regulations so as to be accessible to the public and shall display prominently to the public an index map prepared by the Department, which shall indicate the location of each wetlands map within the county, referenced by number corresponding to the map on file. Filing of maps and regulations in accordance with this subsection shall be deemed to constitute notice at all times, to the public and to all property owners affected by this subtitle, of the applicability to the wetlands areas indicated on the maps, regardless of ownership, of the requirement to obtain a permit before dredging or filling private wetlands.

§16–302.

(a) To promote the public safety, health, welfare, wildlife, and marine fisheries, the Secretary may adopt regulations governing dredging, filling, removing, or otherwise altering or polluting private wetlands. The regulations may vary as to specific tracts of wetlands because of the character of the wetlands.

(b) The regulations shall be adopted with the advice and consent of the Maryland Agricultural Commission, and in consultation with any appropriate unit in the affected political subdivision.

(c) The Secretary shall transmit a copy of any proposed regulations to the Maryland Agricultural Commission. Within 60 days from the receipt of the copy, the Maryland Agricultural Commission shall inform the Secretary of the Commission's decision as to the acceptance or rejection of the regulations. Failure to so inform the Secretary shall be considered approval of the regulations by the Commission.

§16–303.

(a) The Secretary may:

(1) Modify, correct, or update the boundary maps established under § 16-301 of this subtitle; or

(2) Amend the regulations adopted under § 16-302 of this subtitle.

(b) The Secretary shall notify members of the public and affected property owners of proposed changes to wetlands maps or regulations as follows:

(1) A public hearing on proposed changes shall be held in each county in which affected wetlands are located; and

(2) Notice of proposed changes and of the public hearing shall be:

(i) Published in the Maryland Register;

(ii) Published at least once not more than 30 days and not fewer than 10 days before the date of the hearing in at least 1 newspaper published within and having a general circulation in every county where the affected wetlands are

located, according to the advice of the county executive or president of the county commissioners;

(iii) Posted by the Department in the offices of each county government at locations that will best inform the public according to the advice of the county executive or president of the county commissioners; and

(iv) For proposed changes to wetlands maps and not for proposed changes to regulations, mailed by the Department by certified mail not less than 30 days before the public hearing to each owner shown on the tax records as an owner of land affected by a modification, correction, or update of the boundary map.

(c) Each revised map and amended regulation shall be filed among the land records in accordance with § 16-301(d) of this subtitle.

(d) (1) Subject to the provisions of paragraph (2) of this subsection, the amendment of a wetlands boundary map under this section may not be deemed to alter the boundaries of the Chesapeake Bay Critical Area designated under § 8-1807 of the Natural Resources Article.

(2) The boundaries of the Critical Area may be amended under § 8-1809 of the Natural Resources Article.

§16–304.

Notwithstanding any regulation adopted by the Secretary to protect private wetlands, the following uses are lawful on private wetlands:

(1) Conservation of soil, vegetation, water, fish, shellfish, and wildlife;

(2) Trapping, hunting, fishing, and catching shellfish, if otherwise legally permitted;

(3) Exercise of riparian rights to improve land bounding on navigable water, to preserve access to the navigable water, or to protect the shore against erosion;

(4) Reclamation of fast land owned by a natural person and lost during the person's ownership of the land by erosion or avulsion to the extent of provable preexisting boundaries. The right to reclaim lost fast land relates only to fast land lost after January 1, 1972. The burden of proof that the loss occurred after this date is on the owner of the land; and

(5) Routine maintenance and repair of existing bulkheads, provided that there is no addition or channelward encroachment.

§16–305.

Notwithstanding any other provision of law, a landowner shall be exempt from all

local permit requirements to perform routine maintenance and repair of a bulkhead.

§16–306.

(a) (1) Any person who has a recorded interest in land affected by any regulation adopted under this subtitle may appeal the regulation or designation of the person's land as wetland to the circuit court in the county where the land is located.

(2) The appeal shall be filed within 30 days after the later to occur:

(i) Notice that the Department's final adoption of the regulation has been published in the Maryland Register under § 10-114 of the State Government Article; or

(ii) Notice that the Department's final adoption of the regulation or designation of the person's land as wetland has been filed among the land records under § 16-303 of this subtitle.

(b) (1) The court shall review the administrative record of the Department's promulgation of the regulation or designation of the person's land as wetland.

(2) The court shall declare the regulation or designation invalid if the court finds that:

(i) The regulation or designation violates any provision of the United States or Maryland Constitution;

(ii) The regulation or designation exceeds the statutory authority of the Department; or

(iii) The Department failed to comply with statutory requirements for adoption of the regulation or designation of the person's land as wetland.

(c) If the court finds the regulation is invalid, the court shall enter a finding that the regulation does not apply to the petitioner. However, the finding may not affect any land other than that of the petitioner. The Secretary shall record a copy of the finding among the land records in the county.

(d) The person who appealed to the circuit court or the Department may appeal the decision of the circuit court to the Court of Special Appeals.

§16–307.

(a) (1) Any person proposing to conduct on any wetland an activity not authorized by the regulations adopted under the provisions of § 16–302 of this subtitle shall apply for a permit with the Secretary, on the form the Secretary prescribes.

(2) The application shall include a detailed description of the proposed

work and a map showing the areas of wetland directly affected, the location of the proposed work, and the names of the owners of record of adjacent land, and every claimant of water rights in or adjacent to the wetland known to the applicant.

(3) (i) Within 30 days after receipt of an application, the Secretary shall notify the applicant, in writing, of the extent of State wetlands involved in the proposed activity and indicate the method of compliance with the license requirements of § 16–202 of this title.

(ii) If the applicant claims that any part of the designated State wetlands is private wetlands by virtue of the existence of a valid grant, lease, or patent, or a grant confirmed by Article 5 of the Maryland Declaration of Rights, the Secretary shall investigate and determine the validity of the claim and notify the applicant of the Secretary's determination.

(iii) If, within 30 days after receipt of the Secretary's determination, the applicant files with the Secretary a written objection to the determination, the Secretary shall promptly institute an appropriate judicial proceeding to determine whether the land or part of the land covered by the application in dispute, is State or private wetland. The State shall bear the cost of the proceeding.

(4) The Secretary shall mail a copy of the application to the chief administrative officer in the county where the proposed work or any portion is located.

(5) (i) No later than 30 days after receipt of the application, the Secretary shall issue public notice of the opportunity to submit written comments or to request a hearing. A hearing shall be held if requested.

(ii) If an electric company, as defined in § 1–101 of the Public Utilities Article, applies to the Public Service Commission for a certificate of public convenience associated with power plant construction which involves private wetlands, the hearing and permit procedure shall be in accordance with § 3–306 of the Natural Resources Article.

(iii) At a requested hearing any person may appear and give testimony.

(6) Every permit application, map, or document shall be open for public inspection at the offices of the Secretary and the chief administrative officer in the county.

(7) A person may not reapply until after the expiration of 18 months from the date of the denial of a prior application or the final determination of an appeal from the denial.

(b) In granting, denying, or limiting any permit, the Secretary or the Secretary's designated hearing officer shall consider the effect of the proposed work with reference to the public health and welfare, marine fisheries, shellfisheries, wildlife, economic

benefits, the protection of life and property from flood, hurricane, and any other natural disaster, and the public policy set forth in this title. In granting a permit the Secretary may impose conditions or limitations designed to carry out the public policy set forth in this title. The Secretary may require a bond in an amount and with surety and conditions satisfactory to the Secretary, to secure compliance with any condition or limitation in the permit. The Secretary may suspend or revoke a permit if the Secretary finds that the applicant has not complied with any condition or limitation in the permit or has exceeded the scope of the work as set forth in the application. The Secretary shall state on the record the Secretary's findings and reasons for any action taken under this subsection.

(c) The Secretary shall render a decision within 30 days after the public comment period. Failure to act in conformance with either of these requirements is automatic approval of the application for permit as submitted.

(d) The Secretary shall provide opportunity for judicial review in accordance with the provisions of § 5–204 of this article.

§16–309.

The court may order the State to pay court costs of any appeal in accordance with the provisions of § 16–306 of this subtitle if the court finds that the financial situation of the person appealing warrants this action.

§16–310.

The court exercising equity jurisdiction in the county where the land or any part of the land is located may restrain any violation of this subtitle in an action brought by the Department or any authorized unit or officer of the Department.

§16–401.

This subtitle does not affect any past or future accretion to land under private ownership bounding on or surrounded by the waters of the Chincoteague, Isle of Wight, or Sinepuxent Bay.

§16–402.

(a) Any island created or formed within the confines of Sinepuxent, Isle of Wight, or Chincoteague Bay by the dumping or depositing of excavated material from dredging or any other artificial means employed by the State or the United States or both during the construction or maintenance of the Ocean City inlet and the channel in the bays, together with any accretion to any of those islands, in the past or future, are natural resources of the State and title to them is retained for the use of the Department.

(b) The Commissioner of Land Patents may not issue any patent for land created in the Chincoteague, Isle of Wight, or Sinepuxent Bay.

§16–403.

Subject to the approval of the Board, the Department may use the land described in this subtitle for conservation purposes in the manner and under the regulations the Department deems in the best interest of the State. However, any person who may lawfully hunt or fish in Worcester County may hunt or fish on these lands during the open season for hunting or fishing.

§16–501.

(a) Any person who violates any provision of this title is guilty of a misdemeanor. Unless another penalty is specifically provided elsewhere in this title, the person, upon conviction, is subject to a fine not exceeding $10,000, with costs imposed in the discretion of the court.

(b) Any person found guilty of a second or subsequent violation of any provision of this title, unless another penalty is specifically provided elsewhere in this title, is subject to a fine not exceeding $25,000, or imprisonment not exceeding 1 year, or both with costs imposed in the discretion of the court. For the purpose of this subsection, a second or subsequent violation is a violation which has occurred within 2 years of any prior violation of this title.

(c) In addition to any administrative penalty provided in this title, violation of any provision of any permit or license issued under this title or of any regulation adopted by any unit within the Department under the provisions of this title is a misdemeanor and is punishable as provided in subsections (a) and (b) of this section.

(d) Any person who knowingly violates any provision of this title is liable to the State for restoration of the affected wetland to its condition prior to the violation, if possible. The court shall specify a reasonable time for completion of the restoration.

(e) (1) The provisions of this title are enforceable against any person charged with dredging or filling private wetlands without a permit, notwithstanding a defense that pertinent wetlands maps and regulations had not been properly filed among the land records, if the court finds that the person charged had actual notice of the applicable regulatory requirements before the person dredged or filled the private wetlands.

(2) This subsection shall apply only to dredging or filling activities occurring after July 1, 1981.

§16–502.

(a) (1) A person who violates any provision of this title or any regulation, permit, license, or order issued under this title shall be liable for a penalty not exceeding $10,000, which may be recovered in a civil action.

(2) In imposing a penalty under this subsection, the court may consider

the factors in § 9-342(b)(2)(ii) of this article and any other relevant factors.

(b) The circuit court may issue an injunction requiring the person to cease the violation and restore the area unlawfully dredged or filled.

(c) Before taking any civil action to recover a penalty under subsection (a) of this section, the Department shall provide the person alleged to have violated this title with written notice of the proposed penalty and an opportunity for an informal meeting concerning settlement of the proposed civil action.

§16–503.

(a) Whenever the Department believes a violation of any provision of this title or any regulation has occurred, the Department shall cause a written complaint to be served upon the alleged violator. The complaint shall specify the provision of law or regulation allegedly violated and the alleged fact that constitutes the violation. Subsequent to or concurrent with service of the complaint as provided in subsection (c) of this section, the Department may issue an order requiring necessary corrective action be taken within the time prescribed in its order.

(b) Any person named in the order may request in writing a hearing before the Department not later than 10 days after the date the order is served, in which case a hearing shall be scheduled within 10 days from the receipt of the request. A decision shall be rendered within 30 days from the date of the hearing. Notice of a hearing shall be served on the alleged violator in accordance with the provisions of subsection (c) of this section not less than 10 days before the time set for the hearing. The order shall become effective immediately according to its terms upon service.

(c) Except as otherwise provided, any notice, order, or other instrument issued by or under authority of the Department shall be served in accordance with § 1–204 of this article. Where service is made by mailing, proof of service may be made by the sworn statement or affidavit of the person who mailed the notice, order, or other instrument. The sworn statement or affidavit shall be filed with the Department.

(d) A verbatim record of the proceedings of hearings may be taken when necessary or advisable by the Department. A subpoenaed witness shall receive the same fees and mileage as in any civil action. If a witness refuses to obey a notice of hearing or subpoena issued under this section, any circuit court, upon the application of the Department, may issue an order requiring the person to appear, testify, or produce evidence as required. The failure to obey a court order may be punished by the court as contempt.

(e) (1) A person aggrieved by an order may appeal to the circuit court of the county in which the land is located.

(2) The court shall review the administrative record of the Department's order.

(3) The court shall declare the Department's order invalid if the court finds that the order:

(i) Is unconstitutional;

(ii) Exceeds the statutory authority or jurisdiction of the Department;

(iii) Results from an unlawful procedure;

(iv) Is affected by any other error of law;

(v) Is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or

(vi) Is arbitrary or capricious.

§17–101.

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

(b) "Board" means the Marine Contractors Licensing Board.

(c) "Entity" means a business with its principal office in the State that employs more than one individual to provide marine contractor services in the State.

(d) "License" means a professional license issued by the Board to an individual or entity to perform marine contractor services in the State.

(e) "Licensed marine contractor" means an individual or entity that has received a license from the Board to perform marine contractor services.

(f) (1) "Marine contractor services" means construction, demolition, installation, alteration, repair, or salvage activities located in, on, over, or under State or private tidal wetlands.

(2) "Marine contractor services" includes:

(i) Dredging and filling;

(ii) The construction, demolition, installation, alteration, repair, or salvage of structures, including boathouses, boat or other personal watercraft lifts or ramps, slips, docks, floating platforms, moorings, piers, pier access structures, pilings, wetland observation platforms, wetland walkways, and wharfs; and

(iii) The construction, demolition, installation, alteration, repair, or salvage of stabilization and erosion control measures, including revetments, breakwaters, bulkheads, groins, jetties, stone sills, marsh establishments, and beach nourishment or other similar projects.

§17–201.

(a) There is a Marine Contractors Licensing Board.

(b) Subject to the provisions of this title, the Board is responsible for the licensing and regulation of individuals and entities that provide marine contractor services in the State.

§17–202.

(a) (1) The Board consists of seven members appointed by the Governor, with the advice of the Secretary, and with the advice and consent of the Senate.

(2) Of the seven members:

(i) One shall be employed by the Department;

(ii) One shall be employed by the Department of Natural Resources;

(iii) Three shall be licensed marine contractors and shall include:

1. One from Anne Arundel, Calvert, Charles, Prince George's, or St. Mary's counties;

2. One from Baltimore City, or Baltimore, Cecil, Harford, Kent, or Queen Anne's counties; and

3. One from Caroline, Dorchester, Somerset, Talbot, Wicomico, or Worcester counties; and

(iv) Two shall be private citizens, appointed at large, who represent diverse interests, and shall include:

1. One from Baltimore City, or Anne Arundel, Baltimore, Calvert, Charles, Harford, Prince George's, or St. Mary's counties; and

2. One from Caroline, Cecil, Dorchester, Kent, Queen Anne's, Somerset, Talbot, Wicomico, or Worcester counties.

(b) Before taking office, each appointee to the Board shall take the oath required by Article I, § 9 of the Maryland Constitution.

(c) (1) The term of a member of the Board is 3 years.

(2) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(3) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(d) The Governor may remove a member from the Board for incompetence, misconduct, neglect of duty, or other sufficient cause.

§17–203.

(a) From among its members, the Board shall elect a chair, vice chair, and secretary annually.

(b) The Board shall determine the manner of the election of officers.

§17–204.

(a) The Board shall meet at least twice a year, at the times and places that the Board determines.

(b) Each member of the Board is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

(c) The Board may employ staff in accordance with the State budget.

§17–205.

(a) The Board may:

(1) Recommend regulations for adoption by the Secretary to carry out the provisions of this title; and

(2) Make inquiries and conduct an investigation regarding any applicant for a license.

(b) The Board shall:

(1) Carry out the provisions of this title;

(2) Collect and account for the fees provided for under this title; and

(3) Keep a current record of all individuals and entities licensed under this title, including:

(i) The names of individuals and entities that are licensed;

(ii) The issuance and expiration dates of the licenses; and

(iii) Any other information that the Board considers appropriate.

§17–206.

(a) (1) The Board shall set reasonable fees for the issuance and renewal of licenses and other services that the Board provides.

(2) The fees imposed by the Board shall be set so as to produce funds to approximate the costs of maintaining the Board.

(b) The Board shall pay all funds collected under this title into the Wetlands and Waterways Program Fund under § 5–203.1 of this article for the administration of the Board.

§17–301.

(a) Except as otherwise provided in this title, a person shall be licensed by the Board as a marine contractor or be employed by an individual or entity that is licensed as a marine contractor before the person may:

(1) Perform marine contractor services in the State; or

(2) Solicit to perform marine contractor services in the State.

(b) An individual or an entity may qualify for a license.

(c) An individual who is employed by an agency of the federal government or the State may perform marine contractor services while in the performance of the duties of their employment without having to obtain a license from the Board under this title.

(d) A residential or commercial property owner may perform marine contractor services on the property owner's own property without having to obtain a license from the Board under this title.

§17–302.

(a) To qualify for a license, an applicant shall meet the requirements of this section and any regulations adopted under this section.

(b) If the applicant is an entity, the entity shall appoint a member of the entity as the representative member to make the application on behalf of the entity.

(c) An individual applicant or, if the applicant is an entity, the representative member shall:

(1) Have at least 2 years of experience as a full–time marine contractor or demonstrate similar contractor experience;

(2) Pass a written marine contractor test recognized by the Board;

(3) Have a federal tax identification number; and

(4) Carry:

(i) Commercial general liability insurance with a $300,000 total aggregate minimum; and

(ii) Workers' compensation insurance, unless exempt by law.

§17–303.

(a) (1) To apply for a license, an applicant shall:

(i) Submit to the Board an application on the form that the Board provides;

(ii) Submit the documents required under this section; and

(iii) Pay to the Board the required application fee set by the Board.

(2) If the applicant is an entity, the representative member shall complete the application form and otherwise be responsible for the entity's compliance with this section.

(b) (1) If the applicant is an individual, the application form provided by the Board shall require:

(i) The name of the applicant;

(ii) The address of the applicant; and

(iii) The current and previous employment of the applicant relevant to the field of marine contracting.

(2) If the applicant is an entity, the application form provided by the Board shall require:

(i) A list of the entity's owners; and

(ii) For each entity owner, the same information required regarding an individual applicant under paragraph (1) of this subsection.

(3) For all applicants, the application form shall require:

(i) The address of the applicant's proposed principal place of business and of each proposed branch office;

(ii) All trade or fictitious names that the applicant intends to use while performing marine contractor services; and

(iii) As the Board considers appropriate, any other information to assist in the evaluation of:

1. An individual applicant; or

2. If the applicant is an entity, any entity member.

(c) The application form provided by the Board shall contain a statement advising the applicant of the penalties for violation of this title provided under § 17–403 of this title.

(d) (1) If the applicant is an individual, the individual shall sign the application form under oath.

(2) If the applicant is an entity, the representative member of the entity shall sign the application form under oath, and shall provide proof to the Board that the representative member is a member of the entity.

(e) An applicant for a license shall submit with the application proof of the insurance required under § 17–302(c)(4) of this subtitle.

§17–304.

The Board may not issue a license to an applicant whose trade or fictitious name or trademark is so similar to that used by another licensee that the public may be confused or misled by the similarity.

§17–305.

(a) The Board shall issue a license that is valid for 2 years to any applicant who meets the requirements of this title and any regulation adopted under this title.

(b) The Board shall include on each license that the Board issues:

(1) The full name of the licensee;

(2) The license number;

(3) The location of the principal office and of each branch office if the licensee is an entity;

(4) The date of issuance of the license;

(5) The date on which the license expires; and

(6) The name of the representative member if the licensee is an entity.

§17–306.

While a license to an entity is in effect, the license authorizes the entity to:

(1) Employ as marine contractors individuals who are not licensed marine contractors to provide marine contractor services to the public on behalf of the licensee; and

(2) Represent itself to the public as a licensed marine contractor entity.

§17–307.

A licensed marine contractor shall:

(1) Include the contractor's marine contractor license number in all advertising related to the provision of marine contractor services; and

(2) Prominently display the contractor's marine contractor license number on all large equipment used in the course of the licensee's work as a marine contractor.

§17–308.

(a) The Secretary shall adopt regulations to stagger the terms of the licenses.

(b) A license expires on the date the Secretary sets, in accordance with subsection (a) of this section.

(c) At least 2 months before a license expires, the Board shall send to the licensee, by first–class mail or electronically, to the last known address of the licensee:

(1) A renewal application form; and

(2) A notice that states:

(i) The date on which the current license expires;

(ii) The date by which the Board must receive the renewal application for the renewal to be issued and mailed before the license expires; and

(iii) The amount of the renewal fee.

(d) Before a license expires, the licensee may renew the license for an additional 2–year term if the licensee:

(1) Is otherwise entitled to be licensed;

(2) Pays to the Board:

(i) The required renewal fee set by the Board; and

(ii) Any outstanding fees; and

(3) Submits to the Board:

(i) Satisfactory evidence of compliance with the continuing education requirements established under subsection (e) of this section;

(ii) Satisfactory evidence of compliance with the insurance requirements established under § 17–302 of this subtitle;

(iii) Satisfactory evidence of the resolution of any license violations, suspensions, denials, revocations, or other Board actions taken under this title; and

(iv) A renewal application on the form that the Board provides.

(e) (1) A licensee shall complete 12 hours of continuing education instruction covering marine contractor subject matter approved by the Board.

(2) (i) The Board shall approve the substance and form of a continuing education course if the course is:

1. Offered by a qualified instructor; or

2. Conducted by an educational institution approved by the Board.

(ii) The licensee is responsible for the cost of any continuing education course.

(f) The Board shall renew the license of each licensee who meets the requirements of this section.

§17–309.

Within 5 days after the change, a licensee shall submit to the Board written notice of:

(1) If the licensee is an individual or entity, any change in the address or telephone number of an existing office or principal place of business; and

(2) If the licensee is an entity, the addition of a branch office.

§17–310.

(a) Except as otherwise provided in § 10–226 of the State Government Article, and subject to the notice and hearing requirements in subsection (c) of this section, the Board may deny, refuse to renew, suspend, or revoke a license if the applicant or licensee:

(1) Violates any provision of this title or any regulation adopted under this title;

(2) Fraudulently or deceptively obtains or attempts to obtain a license for the licensee or for another person;

(3) Fraudulently or deceptively uses a license;

(4) Commits any gross negligence, incompetence, or misconduct while practicing marine contractor services;

(5) Fails to comply with the terms of a tidal wetlands authorization issued under § 16–202 or § 16–307 of this article;

(6) Violates any provision of, or regulations adopted under, § 16–202 or § 16–307 of this article; or

(7) In the Chesapeake and Atlantic Coastal Bays Critical Area, as defined under § 8–1802 of the Natural Resources Article, fails to comply with:

(i) The terms of a State or local permit, license, or approval; or

(ii) Any State or local law, an approved plan, or other legal requirement.

(b) The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, established under Title 8, Subtitle 18 of the Natural Resources Article, shall notify the Board of any licensed marine contractor or applicant for a license that fails to comply with any requirement under subsection (a)(7) of this section.

(c) (1) Before the Board takes any final action under subsection (a) of this section, the Board shall give the applicant or licensee against whom the action is contemplated notice and the opportunity for a hearing before the Board.

(2) The Board shall provide notice and hold a hearing in accordance with the Administrative Procedure Act.

(3) At least 30 days before the hearing, the hearing notice shall be:

(i) Served personally on the individual; or

(ii) Sent by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, to the last known address of the individual or entity.

(4) If, after due notice, the applicant or licensee against whom the action is contemplated fails or refuses to appear, the Board may hear and determine the matter.

(d) Except as provided under subsection (c) of this section, any person aggrieved by a final decision of the Board may take an appeal as authorized under §§ 10–222 and 10–223 of the State Government Article.

(e) For purposes of this section, an act or omission of any principal, agent, or employee of an applicant or licensee may be construed to be the act or omission of the applicant or licensee, as well as of the principal, agent, or employee.

§17–401.

An individual or entity may not conduct, attempt to conduct, or offer to conduct

marine contractor services unless the individual or entity is licensed by the Board.

§17–402.

Unless authorized to perform marine contractor services under this title, an individual or entity may not represent to the public by title, by description of services, methods, or procedures, or otherwise, that the individual or entity is authorized to perform marine contractor services in the State.

§17–403.

(a) (1) A person who violates any provision of this title or any regulation adopted under this title is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $10,000 or imprisonment not exceeding 1 year or both.

(2) Each day that a person conducts marine contractor services without a license constitutes a separate offense.

(b) (1) In addition to any other sanction under this subtitle, a civil action may be brought against a person for a violation of this title, or any regulation adopted under this title.

(2) A person may be liable for a civil penalty under this subsection not to exceed $10,000 for each violation.

(c) Any penalties collected under this section shall be paid into the Wetlands and Waterways Program Fund, established under § 5–203.1 of this article, to be used for the administration of the Board.