

SENATE BILL 812

M3

6lr3538
CF 6lr2729

By: **Senator Hough**

Introduced and read first time: February 5, 2016

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Sediment Control – Violations – Enforcement**

3 FOR the purpose of authorizing a person aggrieved by a certain final decision of the
4 Department of the Environment to seek judicial review; requiring the Department
5 to deliver a certain number of warning notices and provide an opportunity for
6 corrective action before imposing a certain penalty on a person accused of a certain
7 violation; making stylistic changes; and generally relating to violations of State
8 sediment control laws.

9 BY repealing and reenacting, with amendments,
10 Article – Environment
11 Section 4–115 and 4–116
12 Annotated Code of Maryland
13 (2013 Replacement Volume and 2015 Supplement)

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

16 **Article – Environment**

17 4–115.

18 (a) Any person aggrieved by a final decision of the Department in connection with
19 an order or permit issued under this subtitle **OR A HEARING REQUESTED UNDER §**
20 **4–116(E) OF THIS SUBTITLE** may take a direct judicial appeal.

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

23 4–116.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) (1) Any person who violates any provision of this subtitle is guilty of a
2 misdemeanor, and upon conviction in a court of competent jurisdiction is subject to a fine
3 not exceeding \$10,000 or imprisonment not exceeding one year or both for each violation
4 with costs imposed in the discretion of the court.

5 (2) The court may order the person to restore the area unlawfully
6 disturbed.

7 (3) Each day upon which the violation occurs constitutes a separate
8 offense.

9 (b) Any agency whose approval is required under this subtitle or any interested
10 person may seek an injunction against any person who violates or threatens to violate any
11 provision of this subtitle.

12 (c) (1) In addition to any other sanction under this subtitle, the appropriate
13 State, county, or municipal agency may bring a civil action against a person for a violation
14 of this subtitle.

15 (2) (i) The action may seek the imposition of a civil penalty up to
16 \$10,000 for each violation.

17 (ii) In imposing a penalty under this paragraph, the court may
18 consider the cost of restoring the area unlawfully disturbed.

19 (3) (i) A county or municipal agency that recovers penalties in
20 accordance with this subtitle shall deposit them in a special fund, to be used solely for:

21 1. Correcting to the extent possible the failure to implement
22 or maintain erosion and sediment controls; and

23 2. Administration of the sediment control program.

24 (ii) A State agency that recovers penalties in accordance with this
25 subtitle shall deposit them into the Maryland Clean Water Fund established under §
26 9-320 of this article.

27 (d) If a county or municipality fails to enforce any provision of this subtitle, the
28 Department may request the Attorney General to take appropriate legal action to correct
29 the violation and to recover penalties or fees under this section.

30 (e) (1) **(I)** In addition to any other remedies available at law or in equity
31 [and after an opportunity for a hearing which may be waived in writing by the person
32 accused of a violation], the Department may impose a penalty on any person who violates
33 any provision of this subtitle or any regulation or plan adopted, approved, or issued under
34 this subtitle **IF:**

1 **1. THE DEPARTMENT HAS DELIVERED THREE**
2 **SEPARATE WARNING NOTICES TO THE PERSON ACCUSED OF THE VIOLATION;**

3 **2. THE PERSON ACCUSED OF THE VIOLATION HAS NOT**
4 **TAKEN CORRECTIVE ACTION WITHIN 1 WEEK FROM RECEIPT OF A THIRD AND FINAL**
5 **WARNING NOTICE; AND**

6 **3. THE DEPARTMENT HAS PROVIDED AN OPPORTUNITY**
7 **FOR A HEARING.**

8 **(II) 1. AN OPPORTUNITY FOR A HEARING UNDER**
9 **SUBPARAGRAPH (I) OF THIS PARAGRAPH MAY BE WAIVED IN WRITING BY THE**
10 **PERSON ACCUSED OF THE VIOLATION.**

11 **2.** Any request for a hearing on a penalty issued under this
12 subsection must be made in writing no later than 10 working days after receipt of the notice
13 assessing a penalty.

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

15 (i) Up to \$1,000 for each violation, but not exceeding \$20,000 total
16 for any action; and

17 (ii) Assessed with consideration given to:

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

21 2. Any actual harm to the environment or to human health,
22 including injury to or impairment of the use of the waters of this State or the natural
23 resources of this State;

24 3. The cost of cleanup and the cost of restoration of natural
25 resources;

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

28 5. The extent to which the location of the violation, including
29 location near waters of this State or areas of human population, creates the potential for
30 harm to the environment or to human health or safety;

31 6. The available technology and economic reasonableness of
32 controlling, reducing, or eliminating the violation;

1 7. The degree of hazard posed by the particular pollutant or
2 pollutants involved;

3 8. The extent to which the current violation is part of a
4 recurrent pattern of the same or similar type of violation committed by the violator; and

5 9. Whether or not penalties were assessed or will be assessed
6 under other provisions of this subtitle.

7 (3) Each day a violation occurs is a separate violation under this
8 subsection.

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

11 (5) Any penalty collected under this subsection or for a violation of § 4–413
12 of this title shall be placed in the Maryland Clean Water Fund established under § 9–320
13 of this article.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2016.