

HOUSE BILL 294

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M3

2002 Regular Session
2lr0180
CF 2lr0179

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

A BILL ENTITLED

1 AN ACT concerning

2 **Environment - Water Management Fees, Penalties, and Cost Recovery**

3 FOR the purpose of authorizing the Department of the Environment to impose
4 certain penalties for violations of sediment control, stormwater management,
5 water pollution, water appropriation and use, waterway construction and
6 obstruction, and nontidal and tidal wetlands provisions under certain
7 circumstances; establishing certain criteria for consideration in the assessment
8 of the penalties; authorizing the Department to collect certain new fees
9 concerning the appropriation and use of waters of the State and the dredging
10 and filling of tidal and nontidal wetlands; expanding the use of the Maryland
11 Clean Water Fund; allowing the use of the Maryland Clean Water Fund for
12 certain costs related to emergency response, water monitoring, pollutant
13 removal, remedial action, site rehabilitation and related activities, and for the
14 recovery of those costs; and generally relating to the Department of the
15 Environment's authority over the collection of certain new fees, violations of
16 water management program provisions, and the use of the Fund.

17 BY repealing and reenacting, with amendments,
18 Article - Environment
19 Section 4-116, 4-215(a), (c), and (e), 5-514, 5-911, 5-1301, 9-101, 9-320, 9-342,
20 16-501(a) and (b), and 16-502
21 Annotated Code of Maryland
22 (1996 Replacement Volume and 2001 Supplement)

23 BY adding to
24 Article - Environment
25 Section 5-203(g), 5-502.1, and 16-502.1
26 Annotated Code of Maryland
27 (1996 Replacement Volume and 2001 Supplement)

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

1

Article - Environment

2 4-116.

3 (a) (1) Any person who violates any provision of this subtitle OR ANY
4 REGULATION OR SEDIMENT CONTROL PLAN ADOPTED OR APPROVED UNDER THIS
5 SUBTITLE OR WHO VIOLATES OR FAILS TO COMPLY WITH AN ORDER OF THE
6 DEPARTMENT WHEN DUE NOTICE IS GIVEN is guilty of a misdemeanor, and upon
7 conviction in a court of competent jurisdiction is subject to a fine not exceeding
8 [\$5,000] \$25,000 or imprisonment not exceeding one year or both for each violation
9 with costs imposed in the discretion of the court. Each day upon which the violation
10 occurs constitutes a separate offense.

11 (2) THE COURT MAY ORDER THE PERSON TO RESTORE THE AREA
12 UNLAWFULLY DISTURBED.

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

16 [(c) (1) In addition to any other sanction under this subtitle, a person is
17 liable for a civil penalty as provided in this subsection if the person:

18 (i) Clears, grades, transports, or otherwise disturbs land without
19 first installing erosion and sediment controls in accordance with an approved plan; or

20 (ii) Fails to establish erosion and sediment controls in accordance
21 with an approved plan within the time specified by a State, county, or municipal order
22 or to maintain those erosion and sediment controls.

23 (2) The appropriate county, municipal, or State agency may recover a
24 civil penalty under paragraph (1) of this subsection in a civil action in an amount
25 equal to double the cost of:

26 (i) The installation of erosion and sediment controls in accordance
27 with an approved plan;

28 (ii) Maintaining erosion and sediment controls in accordance with
29 an approved plan; and

30 (iii) The permanent restoration of the disturbed land to a stable
31 condition.

32 (3) The appropriate county, municipal, or State agency may recover a
33 civil penalty under paragraph (1) of this subsection on proof of costs as specified in
34 paragraph (2) of this subsection, without the necessity of proving that the agency
35 performed work or incurred expenses. However, if any person responsible has made
36 the required corrections within the time specified by a State, county, or municipal
37 order, the appropriate State, county, or municipal agency may recover a civil penalty

1 under this subsection in an amount equal to not more than 50 percent of the costs
2 specified in paragraph (2) of this subsection.

3 (4) Any county, municipal, or State agency that recovers penalties in
4 accordance with this subtitle shall deposit them in a special fund, to be used solely
5 for:

6 (i) Correcting to the extent possible the failure to implement or
7 maintain erosion and sediment controls; and

8 (ii) Administration of the sediment control program.]

9 (C) IN ADDITION TO ANY OTHER SANCTION UNDER THIS SUBTITLE, THE
10 APPROPRIATE COUNTY, MUNICIPAL, OR STATE AGENCY MAY BRING A CIVIL ACTION
11 AGAINST ANY PERSON FOR ANY VIOLATION OF THIS SUBTITLE, ANY REGULATION OR
12 PLAN ADOPTED OR APPROVED UNDER THIS SUBTITLE, OR ORDER ISSUED UNDER
13 THIS SUBTITLE. THE ACTION MAY SEEK THE IMPOSITION OF A CIVIL PENALTY NOT
14 EXCEEDING \$25,000 FOR EACH VIOLATION. EACH DAY UPON WHICH THE VIOLATION
15 OCCURS CONSTITUTES A SEPARATE VIOLATION.

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

19 (e) (1) In addition to any other remedies available at law or in equity and
20 after an opportunity for a hearing which may be waived in writing by the person
21 accused of a violation, the Department may impose a penalty on any person who
22 violates any provision of this subtitle or request for a hearing on a penalty issued
23 under this subsection must be made in writing no later than 10 working days after
24 receipt of the notice assessing a penalty.

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

26 (i) Up to [\$1,000] \$10,000 for each violation[, but not exceeding
27 \$20,000 total for any action]; and

28 (ii) Assessed with consideration given to:

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

32 2. Any actual harm to the environment or to human health,
33 including injury to or impairment of the use of the waters of this State or the natural
34 resources of this State;

35 3. The cost of cleanup and the cost of restoration of natural
36 resources;

1 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]
3 \$25,000 FOR EACH VIOLATION against the person, an injunction to prohibit the person
4 from continuing the violation or both. EACH DAY UPON WHICH THE VIOLATION
5 OCCURS CONSTITUTES A SEPARATE VIOLATION.

6 (e) (1) In addition to any other remedies available at law and after an
7 opportunity for a hearing which may be waived in writing by the person accused of a
8 violation, the Department may impose a penalty for violation of any provision of this
9 subtitle or any regulation or plan adopted or approved under this subtitle.

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

11 (i) Up to [\$1,000] \$10,000 for each violation[, but not exceeding
12 \$20,000 total for any action]; and

13 (ii) Assessed with consideration given to:

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

17 2. Any actual harm to the environment or to human health,
18 including injury to or impairment of the use of the waters of this State or the natural
19 resources of this State;

20 3. The cost of cleanup and the cost of restoration of natural
21 resources;

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

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

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

29 7. The degree of hazard posed by the particular pollutant or
30 pollutants involved;

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

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

1 (3) Each day a violation occurs is a separate violation under this
2 subsection.

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

5 5-203.

6 (G) (1) THE DEPARTMENT MAY ADOPT RULES AND REGULATIONS
7 NECESSARY TO ADMINISTER TITLE 5, SUBTITLES 5 AND 9, AND TITLE 16 OF THIS
8 ARTICLE, IN ACCORDANCE WITH § 10-111(A) OF THE STATE GOVERNMENT ARTICLE.

9 (2) A RULE OR REGULATION ADOPTED UNDER THIS SUBSECTION SHALL
10 SET REASONABLE APPLICATION FEES, MODIFICATION APPLICATION FEES, AND
11 RESOURCE MANAGEMENT FEES FOR ALL PERMITS AND LICENSES ISSUED BY THE
12 DEPARTMENT UNDER TITLE 5, SUBTITLES 5 AND 9, AND TITLE 16 OF THE
13 ENVIRONMENT ARTICLE, INCLUDING:

14 (I) WATER APPROPRIATION AND USE;

15 (II) WATERWAY CONSTRUCTION;

16 (III) WATERWAY OBSTRUCTION;

17 (IV) NONTIDAL WETLANDS; AND

18 (V) TIDAL WETLANDS.

19 (3) A RULE OR REGULATION ADOPTED UNDER THIS SUBSECTION SHALL
20 ESTABLISH A REASONABLE FEE SCHEDULE THAT:

21 (I) PROVIDES FINANCIAL INCENTIVES TO CONSERVE THE STATE'S
22 GROUNDWATER, SURFACE WATER, AND WETLAND RESOURCES;

23 (II) RELATES TO THE ANTICIPATED COST TO THE DEPARTMENT
24 FOR REGULATING AND MONITORING THE ACTIVITY; AND

25 (III) SUPPORTS THE ANTICIPATED NEEDS OF THE DEPARTMENT
26 FOR PROGRAM DEVELOPMENT ACTIVITIES, INCLUDING:

27 1. CONDUCTING WATERSHED STUDIES AND EDUCATIONAL
28 PROGRAMS;

29 2. MONITORING AND ASSESSING THE CUMULATIVE IMPACTS
30 ASSOCIATED WITH REGULATED ACTIVITIES ON THE STATE'S GROUNDWATER,
31 SURFACE WATER, AND WETLAND RESOURCES; AND

32 3. PROVIDING TECHNICAL ASSISTANCE TO LOCAL
33 GOVERNMENTS.

1 (4) IN ADOPTING A RULE OR REGULATION UNDER THIS SUBSECTION,
2 THE DEPARTMENT SHALL CONSULT WITH REPRESENTATIVES OF THE REGULATED
3 COMMUNITY.

4 (5) ALL APPLICATION FEES, MODIFICATION APPLICATION FEES, AND
5 RESOURCE MANAGEMENT FEES COLLECTED BY THE DEPARTMENT UNDER TITLE 5,
6 SUBTITLES 5 AND 9, AND TITLE 16 OF THIS ARTICLE SHALL BE PAID TO THE
7 MARYLAND CLEAN WATER FUND.

8 5-502.1.

9 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
10 INDICATED.

11 (2) "PERMIT" MEANS A WATER APPROPRIATION AND USE PERMIT
12 ISSUED BY THE DEPARTMENT.

13 (3) "PERMITTEE" MEANS A PERSON AUTHORIZED TO WITHDRAW
14 GROUND OR SURFACE WATER WITHIN THE STATE OF MARYLAND BY AUTHORITY OF
15 A WATER APPROPRIATION AND USE PERMIT.

16 (B) EXCEPT FOR PERMITS AUTHORIZING AN ANNUAL AVERAGE USE OF LESS
17 THAN 10,000 GALLONS OF WATER PER DAY, A PERSON OBTAINING A PERMIT UNDER
18 THIS SECTION SHALL PAY AN ANNUAL WATER APPROPRIATION AND USE
19 MANAGEMENT FEE BASED, IN PART, ON THE QUANTITY OF WATER AUTHORIZED FOR
20 APPROPRIATION OR USE BY THE PERMIT ISSUED BY THE DEPARTMENT.

21 (C) A RULE OR REGULATION ADOPTED BY THE DEPARTMENT TO SET A
22 REASONABLE FEE SCHEDULE SHALL BE BASED ON THE CRITERIA ESTABLISHED IN §
23 5-203(G)(3) OF THIS TITLE AND THE QUANTITY OF WATER FOR APPROPRIATION OR
24 USE AUTHORIZED BY THE PERMIT.

25 (D) A PERSON SHALL PAY A SEPARATE ANNUAL WATER APPROPRIATION AND
26 USE MANAGEMENT FEE FOR EACH WATER APPROPRIATION AND USE PERMIT HELD
27 BY THE PERSON.

28 5-514.

29 (A) (1) [A] ANY person who violates or causes an act which violates a
30 provision of this subtitle or a regulation adopted under this subtitle or who violates or
31 fails to comply with a permit or an order of the Department when due notice is given
32 is guilty of a misdemeanor. Upon conviction the violator is subject to a fine not
33 exceeding [\$500] \$25,000 per day for each day of the offense, [and not to exceed a
34 total fine of \$25,000,] with costs imposed in the discretion of the court.

35 (2) EACH DAY UPON WHICH THE VIOLATION OCCURS CONSTITUTES A
36 SEPARATE OFFENSE.

37 (3) THE COURT MAY ORDER THE PERSON TO RESTORE THE AREA
38 UNLAWFULLY DISTURBED.

1 (B) IN ADDITION TO ANY OTHER SANCTION IMPOSED UNDER THIS SUBTITLE,
2 A PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE OR OF ANY
3 REGULATION, ORDER, OR PERMIT ADOPTED OR ISSUED UNDER THIS SUBTITLE IS
4 LIABLE FOR A CIVIL PENALTY NOT EXCEEDING \$25,000 FOR EACH VIOLATION. EACH
5 DAY UPON WHICH THE VIOLATION OCCURS CONSTITUTES A SEPARATE VIOLATION,
6 TO BE COLLECTED IN A CIVIL ACTION BROUGHT BY THE DEPARTMENT.

7 (C) (1) IN ADDITION TO ANY OTHER REMEDIES AVAILABLE AT LAW OR IN
8 EQUITY AND AFTER AN OPPORTUNITY FOR A HEARING WHICH MAY BE WAIVED IN
9 WRITING BY THE PERSON ACCUSED OF A VIOLATION, THE DEPARTMENT MAY
10 IMPOSE A PENALTY FOR VIOLATION OF ANY PROVISION OF THIS SUBTITLE OR ANY
11 RULE, REGULATION, ORDER, OR PERMIT ADOPTED OR ISSUED UNDER THIS
12 SUBTITLE. ANY REQUEST FOR A HEARING ON A PENALTY ISSUED UNDER THIS
13 SUBSECTION MUST BE MADE IN WRITING NO LATER THAN 10 WORKING DAYS AFTER
14 RECEIPT OF THE NOTICE ASSESSING A PENALTY.

15 (2) THE PENALTY IMPOSED ON A PERSON UNDER THIS SUBSECTION
16 SHALL BE:

17 (I) UP TO \$10,000 FOR EACH VIOLATION; AND

18 (II) ASSESSED WITH CONSIDERATION GIVEN TO:

19 1. THE WILLFULNESS OF THE VIOLATION, THE EXTENT TO
20 WHICH THE EXISTENCE OF THE VIOLATION WAS KNOWN TO BUT UNCORRECTED BY
21 THE VIOLATOR, AND THE EXTENT TO WHICH THE VIOLATOR EXERCISED
22 REASONABLE CARE;

23 2. ANY ACTUAL HARM TO THE ENVIRONMENT OR TO HUMAN
24 HEALTH, INCLUDING INJURY TO OR IMPAIRMENT OF THE USE OF THE WATERS OF
25 THE STATE OR THE NATURAL RESOURCES OF THE STATE;

26 3. THE COST OF CLEANUP AND THE COST OF RESTORATION
27 OF NATURAL RESOURCES;

28 4. THE NATURE AND DEGREE OF INJURY TO OR
29 INTERFERENCE WITH GENERAL WELFARE, HEALTH, AND PROPERTY;

30 5. THE EXTENT TO WHICH THE LOCATION OF THE
31 VIOLATION, INCLUDING LOCATIONS NEAR WATERS OF THE STATE OR AREAS OF
32 HUMAN POPULATION, CREATES THE POTENTIAL FOR HARM TO THE ENVIRONMENT
33 OR TO HUMAN HEALTH OR SAFETY;

34 6. THE AVAILABLE TECHNOLOGY AND ECONOMIC
35 REASONABLENESS OF CONTROLLING, REDUCING, OR ELIMINATING THE VIOLATION;

36 7. THE DEGREE OF HAZARD POSED BY THE PARTICULAR
37 POLLUTANT OR POLLUTANTS INVOLVED; AND

1 8. THE EXTENT TO WHICH THE CURRENT VIOLATION IS
2 PART OF A RECURRENT PATTERN OF THE SAME OR SIMILAR TYPES OF VIOLATIONS
3 COMMITTED BY THE VIOLATOR.

4 (3) EACH DAY A VIOLATION OCCURS OR CONTINUES IS A SEPARATE
5 VIOLATION UNDER THIS SUBSECTION.

6 (4) ANY PENALTY IMPOSED UNDER THIS SUBSECTION IS PAYABLE TO
7 THE STATE AND COLLECTIBLE IN ANY MANNER PROVIDED AT LAW FOR THE
8 COLLECTION OF DEBTS.

9 (5) IF ANY PERSON WHO IS LIABLE TO PAY A PENALTY IMPOSED UNDER
10 THIS SUBSECTION FAILS TO PAY IT AFTER DEMAND, THE AMOUNT, TOGETHER WITH
11 INTEREST AND ANY COSTS THAT MAY ACCRUE, SHALL BE:

12 (I) A LIEN IN FAVOR OF THE STATE ON ANY PROPERTY, REAL OR
13 PERSONAL, OF THE PERSON; AND

14 (II) RECORDED IN THE OFFICE OF THE CLERK OF COURT FOR THE
15 COUNTY IN WHICH THE PROPERTY IS LOCATED.

16 (6) ANY PENALTY COLLECTED UNDER THIS SUBSECTION FOR
17 VIOLATIONS OF § 5-503 OF THIS SUBTITLE SHALL BE PLACED IN THE NONTIDAL
18 WETLAND COMPENSATION FUND ESTABLISHED UNDER THIS TITLE.

19 (7) ANY PENALTY COLLECTED UNDER THIS SUBSECTION FOR
20 VIOLATIONS OF § 5-502 OF THIS SUBTITLE SHALL BE PLACED IN THE MARYLAND
21 CLEAN WATER FUND ESTABLISHED UNDER § 9-320 OF THIS ARTICLE.

22 5-911.

23 (a) (1) The enforcement provisions in this section are in addition to any
24 other applicable provisions in this title.

25 (2) In addition to the enforcement authority granted the Department,
26 the enforcement provisions of this section may be exercised by any county that has
27 program delegation authority.

28 (b) The Department may revoke a permit for cause, including violation of
29 permit conditions, obtaining a permit by misrepresentation, failing to disclose a
30 relevant or material fact, or change in conditions. The Department shall notify the
31 violator in writing and provide an opportunity for a hearing.

32 (c) The Department may issue a stop work order against any person who
33 violates any provision of this subtitle or any regulation, order, or permit under this
34 subtitle related to a regulated activity.

35 (d) (1) A person who violates any provision of this subtitle or any regulation,
36 order, or permit under this subtitle is liable for a penalty not exceeding [\$10,000]
37 \$25,000 FOR EACH VIOLATION, which may be recovered in a civil action brought by the

1 Department. Each day a violation continues is a separate violation under this
2 subsection.

3 (2) The court may issue an injunction requiring the person to cease the
4 violation and restore the area unlawfully disturbed.

5 (e) (1) A person who violates any provision of or fails to perform any duty
6 imposed by this subtitle or by a regulation, order, or permit under this subtitle is
7 guilty of a misdemeanor and on conviction is subject to:

8 (i) For a first offense, a fine not exceeding [\$10,000] \$25,000 FOR
9 EACH DAY OF VIOLATION; or

10 (ii) For a second or subsequent offense, a fine not exceeding
11 [\$25,000] \$50,000 FOR EACH DAY OF VIOLATION.

12 (2) EACH DAY UPON WHICH THE VIOLATION OCCURS CONSTITUTES A
13 SEPARATE OFFENSE.

14 (3) The court may order the person to restore the area unlawfully
15 disturbed.

16 (F) (1) IN ADDITION TO ANY OTHER REMEDIES AVAILABLE AT LAW OR IN
17 EQUITY AND AFTER AN OPPORTUNITY FOR A HEARING WHICH MAY BE WAIVED IN
18 WRITING BY THE PERSON ACCUSED OF A VIOLATION, THE DEPARTMENT MAY
19 IMPOSE A PENALTY FOR VIOLATION OF ANY PROVISION OF THIS SUBTITLE OR ANY
20 RULE, REGULATION, ORDER, OR PERMIT ADOPTED OR ISSUED UNDER THIS
21 SUBTITLE. ANY REQUEST FOR A HEARING ON A PENALTY ISSUED UNDER THIS
22 SUBSECTION MUST BE MADE IN WRITING NO LATER THAN 10 WORKING DAYS AFTER
23 RECEIPT OF THE NOTICE ASSESSING THE PENALTY.

24 (2) THE PENALTY IMPOSED ON A PERSON UNDER THIS SUBSECTION
25 SHALL BE:

26 (I) UP TO \$10,000 FOR EACH VIOLATION; AND

27 (II) ASSESSED WITH CONSIDERATION GIVEN TO:

28 1. THE WILLFULNESS OF THE VIOLATION, THE EXTENT TO
29 WHICH THE EXISTENCE OF THE VIOLATION WAS KNOWN TO BUT UNCORRECTED BY
30 THE VIOLATOR, AND THE EXTENT TO WHICH THE VIOLATOR EXERCISED
31 REASONABLE CARE;

32 2. ANY ACTUAL HARM TO THE ENVIRONMENT OR TO HUMAN
33 HEALTH, INCLUDING INJURY TO OR IMPAIRMENT OF THE USE OF THE WATERS OF
34 THE STATE OR THE NATURAL RESOURCES OF THE STATE;

35 3. THE COST OF CLEANUP AND THE COST OF RESTORATION
36 OF NATURAL RESOURCES;

1 4. THE NATURE AND DEGREE OF INJURY TO OR
2 INTERFERENCE WITH GENERAL WELFARE, HEALTH, AND PROPERTY;

3 5. THE EXTENT TO WHICH THE LOCATION OF THE
4 VIOLATION, INCLUDING LOCATIONS NEAR WATERS OF THE STATE OR AREAS OF
5 HUMAN POPULATION, CREATES THE POTENTIAL FOR HARM TO THE ENVIRONMENT
6 OR TO HUMAN HEALTH OR SAFETY;

7 6. THE AVAILABLE TECHNOLOGY AND ECONOMIC
8 REASONABLENESS OF CONTROLLING, REDUCING, OR ELIMINATING THE VIOLATION;

9 7. THE DEGREE OF HAZARD POSED BY THE PARTICULAR
10 POLLUTANT OR POLLUTANTS INVOLVED; AND

11 8. THE EXTENT TO WHICH THE CURRENT VIOLATION IS
12 PART OF A RECURRENT PATTERN OF THE SAME OR SIMILAR TYPE OF VIOLATION
13 COMMITTED BY THE VIOLATOR.

14 (3) EACH DAY A VIOLATION OCCURS OR CONTINUES IS A SEPARATE
15 VIOLATION UNDER THIS SUBSECTION.

16 (4) ANY PENALTY IMPOSED UNDER THIS SUBSECTION IS PAYABLE TO
17 THE STATE AND COLLECTIBLE IN ANY MANNER PROVIDED AT LAW FOR THE
18 COLLECTION OF DEBTS.

19 (5) IF ANY PERSON WHO IS LIABLE TO PAY A PENALTY IMPOSED UNDER
20 THIS SUBSECTION FAILS TO PAY IT AFTER DEMAND, THE AMOUNT, TOGETHER WITH
21 INTEREST AND ANY COSTS THAT MAY ACCRUE, SHALL BE:

22 (I) A LIEN IN FAVOR OF THE STATE ON ANY PROPERTY, REAL OR
23 PERSONAL, OF THE PERSON; AND

24 (II) RECORDED IN THE OFFICE OF THE CLERK OF COURT FOR THE
25 COUNTY IN WHICH THE PROPERTY IS LOCATED.

26 (6) ANY PENALTY COLLECTED UNDER THIS SUBSECTION SHALL BE
27 PLACED IN THE NONTIDAL WETLAND COMPENSATION FUND ESTABLISHED UNDER
28 THIS SUBTITLE.

29 5-1301.

30 (a) Any person who violates any provision of this title is guilty of a
31 misdemeanor. Upon conviction in a court of competent jurisdiction, unless another
32 penalty is specifically provided elsewhere in this title, the person is subject to a fine
33 not exceeding [\$500] \$25,000 with costs imposed in the discretion of the court. Every
34 fine and cost shall be paid in accordance with Article 38, § 4 of the Code.

35 (b) Any person found guilty of a second or subsequent violation of any
36 provision of this title in a court of competent jurisdiction, unless another penalty is
37 specifically provided elsewhere in this title, is subject to a fine not exceeding [\$1,000]

1 \$50,000 or imprisonment not exceeding 1 year or both with costs imposed in the
2 discretion of the court. For the purpose of this subsection, a second or subsequent
3 violation is a violation which has occurred within 2 years of any prior violation of this
4 title.

5 (c) In addition to any administrative penalty provided in this title, a violation
6 of any regulation or restriction adopted by any unit within the Department of the
7 Environment pursuant to the provisions of this title is a misdemeanor and is
8 punishable as provided in subsections (a) and (b) of this section.

9 9-101.

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

11 (b) "Discharge" means:

12 (1) The addition, introduction, leaking, spilling, or emitting of a
13 pollutant into the waters of this State; or

14 (2) The placing of a pollutant in a location where the pollutant is likely to
15 pollute.

16 (c) (1) "Disposal system" means a system for disposing of wastes by surface,
17 above surface, or underground methods.

18 (2) "Disposal system" includes a treatment works and a disposal well.

19 (d) (1) "Effluent limitation" means a restriction or prohibition that:

20 (i) Is established under federal law or a law of this State; and

21 (ii) Specifies quantities, rates, or concentrations of chemical,
22 physical, biological, or other constituents that are discharged into the waters of this
23 State.

24 (2) "Effluent limitation" includes:

25 (i) Parameters for toxic and nontoxic discharges;

26 (ii) Standards of performance for new sources; and

27 (iii) Ocean discharge standards.

28 (e) "Industrial user" means:

29 (1) A person who is engaged in manufacturing, fabricating, or
30 assembling goods; or

31 (2) A member of any class of significant producers of pollutants
32 identified under rules or regulations adopted by:

- 1 (i) The Secretary; or
- 2 (ii) The administrator of the United States Environmental
3 Protection Agency.

4 (f) "National pollutant discharge elimination system" means the national
5 system for issuing permits as designated by the Federal Water Pollution Control Act.

6 (g) "Pollutant" means:

- 7 (1) Any waste or wastewater that is discharged from:
- 8 (i) A publicly owned treatment works; or
- 9 (ii) An industrial source; or
- 10 (2) Any other liquid, gaseous, solid, or other substance that will pollute
11 any waters of this State.

12 (h) "Pollution" means any contamination or other alteration of the physical,
13 chemical, or biological properties of any waters of this State, including a change in
14 temperature, taste, color, turbidity, or odor of the waters or the discharge or deposit of
15 any organic matter, harmful organism, or liquid, gaseous, solid, radioactive, or other
16 substance into any waters of this State, that will render the waters harmful or
17 detrimental to:

- 18 (1) Public health, safety, or welfare;
- 19 (2) Domestic, commercial, industrial, agricultural, recreational, or other
20 legitimate beneficial uses;
- 21 (3) Livestock, wild animals, or birds; or
- 22 (4) Fish or other aquatic life.

23 (i) "Publicly owned treatment works" means a facility that is:

- 24 (1) Owned by this State or a political subdivision, municipal corporation,
25 or other public entity; and
- 26 (2) Used for the treatment of pollutants.

27 (J) "RESPONSIBLE PARTY" INCLUDES:

- 28 (1) THE OWNER OF THE MATERIALS THAT WERE DISCHARGED;
- 29 (2) THE OWNER, OPERATOR, OR PERSON IN CHARGE OF THE FACILITY,
30 CONTAINER, VESSEL, OR VEHICLE INVOLVED IN THE DISCHARGE; OR
- 31 (3) ANY PERSON WHO THROUGH ACT OR OMISSION CAUSED THE
32 DISCHARGE.

1 [(j)] (K) (1) "Solid waste" means any garbage, refuse, sludge, or liquid
2 from industrial, commercial, mining, or agricultural operations or from community
3 activities.

4 (2) "Solid waste" includes:

5 (i) Scrap tires as defined in § 9-201 of this title; and

6 (ii) Organic material capable of being composted in accordance with
7 Subtitle 17, Part III of this title.

8 (3) "Solid waste" does not include:

9 (i) Solid or dissolved material in domestic sewage or in irrigation
10 return flows; or

11 (ii) Compost as defined in § 9-1701 of this title.

12 [(k)] (L) "Water quality standard" means a water quality standard that is
13 adopted and effective under federal law or a law of this State.

14 [(l)] (M) "Waters of this State" includes:

15 (1) Both surface and underground waters within the boundaries of this
16 State subject to its jurisdiction, including that part of the Atlantic Ocean within the
17 boundaries of this State, the Chesapeake Bay and its tributaries, and all ponds, lakes,
18 rivers, streams, public ditches, tax ditches, and public drainage systems within this
19 State, other than those designed and used to collect, convey, or dispose of sanitary
20 sewage; and

21 (2) The flood plain of free-flowing waters determined by the Department
22 of Natural Resources on the basis of the 100-year flood frequency.

23 9-320.

24 (a) There is a Maryland Clean Water Fund.

25 (b) All application fees, permit fees, renewal fees, and funds collected by the
26 Department under this subtitle, including any civil or administrative penalty or any
27 fine imposed by a court under the provisions of the subtitle, AND ALL APPLICATION
28 FEES, APPLICATION MODIFICATION FEES, AND RESOURCE MANAGEMENT FEES
29 COLLECTED BY THE DEPARTMENT UNDER TITLE 5, SUBTITLES 5 AND 9, AND TITLE 16
30 OF THIS ARTICLE shall be paid into the Maryland Clean Water Fund.

31 [(c)] The Department shall use the Maryland Clean Water Fund for activities
32 that are related to identifying, monitoring, and regulating the proper discharge of
33 effluent into the waters of the State including program development of these
34 activities as provided in the State budget. Priority shall be given to activities
35 pertaining to the water quality of the Chesapeake Bay and its tributaries.]

36 (C) THE DEPARTMENT SHALL USE THE MARYLAND CLEAN WATER FUND FOR:

1 (1) RESPONDING TO THE DISCHARGE OF POLLUTANTS AND
2 PERFORMING REASONABLE REMEDIAL MEASURES TO PREVENT, CONTROL, OR
3 ABATE POLLUTION OR UNDESIRABLE CHANGES IN THE QUALITY OF THE WATERS OF
4 THE STATE; AND

5 (2) ACTIVITIES BY THE DEPARTMENT RELATED TO PROGRAM
6 DEVELOPMENT ASSOCIATED WITH THIS TITLE AS PROVIDED BY THE STATE BUDGET
7 AND ACTIVITIES RELATED TO:

8 (I) IDENTIFICATION, MONITORING, AND REGULATION OF THE
9 PROPER DISCHARGE OF EFFLUENT INTO THE WATERS OF THE STATE;

10 (II) MANAGEMENT, CONSERVATION, PROTECTION AND
11 PRESERVATION OF THE STATE'S GROUNDWATER, SURFACE WATER AND WETLAND
12 RESOURCES; AND

13 (III) REMOVAL OF WATERWAY OBSTRUCTIONS, THE FAILURE OF
14 WHICH HAS THE POTENTIAL TO POLLUTE THE WATERS OF THE STATE.

15 (D) IN DETERMINING THE USE OF THE MARYLAND CLEAN WATER FUND,
16 PRIORITY SHALL BE GIVEN TO ACTIVITIES PERTAINING TO WATER QUALITY OF THE
17 CHESAPEAKE BAY AND ITS TRIBUTARIES, THE COASTAL BAYS AND THEIR
18 TRIBUTARIES, AND OTHER SENSITIVE WATERS OF THE STATE.

19 (E) ALL EXPENDITURES MADE BY THE DEPARTMENT TO PROTECT THE
20 PUBLIC FROM THE IMPACTS OF AN UNAUTHORIZED DISCHARGE NOT OTHERWISE
21 RECOVERABLE UNDER ANY STATE OR FEDERAL LAWS OR REGULATIONS SHALL BE
22 REIMBURSED TO THE DEPARTMENT BY THE RESPONSIBLE PARTY.

23 (F) IN ADDITION TO ANY OTHER LEGAL ACTION AUTHORIZED BY THIS TITLE,
24 THE ATTORNEY GENERAL MAY BRING AN ACTION TO RECOVER COSTS AND INTEREST
25 FROM ANY PERSON WHO FAILS TO MAKE REIMBURSEMENT AS REQUIRED UNDER
26 SUBSECTION (E) OF THIS SECTION.

27 (G) RECOVERIES COLLECTED UNDER SUBSECTIONS (E) AND (F) OF THIS
28 SECTION SHALL BE PAID INTO THE FUND.

29 [(d)] (H) Notwithstanding any law to the contrary, unexpended moneys in the
30 Fund shall not revert to the general treasury at the end of a fiscal year.

31 9-342.

32 (a) In addition to being subject to an injunctive action under this subtitle, a
33 person who violates any provision of this subtitle or of any rule, regulation, order, or
34 permit adopted or issued under this subtitle is liable to a civil penalty not exceeding
35 [\$10,000] \$25,000 FOR EACH VIOLATION, to be collected in a civil action brought by
36 the Department. Each day a violation occurs is a separate violation under this
37 subsection.

1 (b) (1) In addition to any other remedies available at law or in equity and
2 after an opportunity for a hearing which may be waived in writing by the person
3 accused of a violation, the Department may impose a penalty for violation of any
4 provision of this subtitle or any rule, regulation, order, or permit adopted or issued
5 under this subtitle.

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

7 (i) Up to [\$1,000] \$10,000 for each violation[, but not exceeding
8 \$50,000 total]; and

9 (ii) Assessed with consideration given to:

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

13 2. Any actual harm to the environment or to human health,
14 including injury to or impairment of the use of the waters of this State or the natural
15 resources of this State;

16 3. The cost of cleanup and the cost of restoration of natural
17 resources;

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

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

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

25 7. The degree of hazard posed by the particular pollutant or
26 pollutants involved; and

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

29 (3) Each day a violation occurs is a separate violation under this
30 subsection.

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

33 (5) If any person who is liable to pay a penalty imposed under this
34 subsection fails to pay it after demand, the amount, together with interest and any
35 costs that may accrue, shall be:

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

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

5 (6) Any penalty collected under this subsection shall be placed in a
6 special fund to be used for monitoring and surveillance by the Department to assure
7 and maintain an adequate record of any violations, including discharge of waste
8 material and other pollutants into the waters of this State or into the environment.

9 16-501.

10 (a) Any person who violates any provision of this title is guilty of a
11 misdemeanor. Unless another penalty is specifically provided elsewhere in this title,
12 the person, upon conviction, is subject to a fine not exceeding [\$500] \$25,000, with
13 costs imposed in the discretion of the court.

14 (b) Any person found guilty of a second or subsequent violation of any
15 provision of this title, unless another penalty is specifically provided elsewhere in this
16 title, is subject to a fine not exceeding [\$1,000] \$50,000, or imprisonment not
17 exceeding 1 year, or both with costs imposed in the discretion of the court. For the
18 purpose of this subsection, a second or subsequent violation is a violation which has
19 occurred within 2 years of any prior violation of this title.

20 16-502.

21 (a) [In lieu of the State prosecuting a criminal action under any provision of
22 this title, the Attorney General may bring a civil action in the circuit court against
23 any person who violates any provision of this title or any regulation, permit, license,
24 or order issued under this title.] ANY PERSON WHO VIOLATES ANY PROVISION OF
25 THIS SUBTITLE, OR ANY RULE, REGULATION, ORDER, OR PERMIT ISSUED UNDER THIS
26 SUBTITLE, SHALL BE LIABLE FOR A PENALTY NOT EXCEEDING \$25,000 FOR EACH
27 VIOLATION, WHICH MAY BE RECOVERED IN A CIVIL ACTION. EACH DAY A VIOLATION
28 OCCURS OR CONTINUES IS A SEPARATE VIOLATION UNDER THIS SUBSECTION.

29 (b) The circuit court may issue an injunction requiring the person to cease the
30 violation and restore the area unlawfully dredged or filled.

31 16-502.1.

32 (A) IN ADDITION TO ANY OTHER REMEDIES AVAILABLE AT LAW OR IN EQUITY
33 AND AFTER AN OPPORTUNITY FOR A HEARING WHICH MAY BE WAIVED IN WRITING
34 BY THE PERSON ACCUSED OF A VIOLATION, THE DEPARTMENT MAY IMPOSE A
35 PENALTY FOR VIOLATION OF ANY PROVISION OF THIS SUBTITLE OR ANY RULE,
36 REGULATION, ORDER, PERMIT, OR LICENSE ADOPTED OR ISSUED UNDER THIS
37 SUBTITLE. ANY REQUEST FOR A HEARING ON A PENALTY ISSUED UNDER
38 SUBSECTION (B) OF THIS SECTION MUST BE MADE IN WRITING NO LATER THAN 10
39 WORKING DAYS AFTER RECEIPT OF THE NOTICE ASSESSING THE PENALTY.

1 (B) THE PENALTY IMPOSED ON A PERSON UNDER THIS SECTION SHALL BE:

2 (1) UP TO \$10,000 FOR EACH VIOLATION; AND

3 (2) ASSESSED WITH CONSIDERATION GIVEN TO:

4 (I) THE WILLFULNESS OF THE VIOLATION, THE EXTENT TO WHICH
5 THE EXISTENCE OF THE VIOLATION WAS KNOWN TO BUT UNCORRECTED BY THE
6 VIOLATOR, AND THE EXTENT TO WHICH THE VIOLATOR EXERCISED REASONABLE
7 CARE;

8 (II) ANY ACTUAL HARM TO THE ENVIRONMENT OR TO HUMAN
9 HEALTH, INCLUDING INJURY TO OR IMPAIRMENT OF THE USE OF THE WATERS OF
10 THE STATE OR THE NATURAL RESOURCES OF THE STATE;

11 (III) THE COST OF CLEANUP AND THE COST OF RESTORATION OF
12 NATURAL RESOURCES;

13 (IV) THE NATURE AND DEGREE OF INJURY TO OR INTERFERENCE
14 WITH GENERAL WELFARE, HEALTH, AND PROPERTY;

15 (V) THE EXTENT TO WHICH THE LOCATION OF THE VIOLATION,
16 INCLUDING LOCATIONS NEAR WATERS OF THE STATE OR AREAS OF HUMAN
17 POPULATION, CREATES THE POTENTIAL FOR HARM TO THE ENVIRONMENT OR TO
18 HUMAN HEALTH OR SAFETY;

19 (VI) THE AVAILABLE TECHNOLOGY AND ECONOMIC
20 REASONABLENESS OF CONTROLLING, REDUCING, OR ELIMINATING THE VIOLATION;

21 (VII) THE DEGREE OF HAZARD POSED BY THE PARTICULAR
22 POLLUTANT OR POLLUTANTS INVOLVED; AND

23 (VIII) THE EXTENT TO WHICH THE CURRENT VIOLATION IS PART OF A
24 RECURRENT PATTERN OF THE SAME OR SIMILAR TYPE OF VIOLATION COMMITTED
25 BY THE VIOLATOR.

26 (C) EACH DAY A VIOLATION OCCURS OR CONTINUES IS A SEPARATE
27 VIOLATION UNDER THIS SECTION.

28 (D) ANY PENALTY IMPOSED UNDER THIS SECTION IS PAYABLE TO THE STATE
29 AND COLLECTIBLE IN ANY MANNER PROVIDED BY LAW FOR THE COLLECTION OF
30 DEBTS.

31 (E) IF ANY PERSON WHO IS LIABLE TO PAY A PENALTY IMPOSED UNDER THIS
32 SECTION FAILS TO PAY IT AFTER DEMAND, THE AMOUNT, TOGETHER WITH
33 INTEREST AND ANY COSTS THAT MAY ACCRUE, SHALL BE:

34 (1) A LIEN IN FAVOR OF THE STATE ON ANY PROPERTY, REAL OR
35 PERSONAL, OF THE PERSON; AND

1 (2) RECORDED IN THE OFFICE OF THE CLERK OF COURT FOR THE
2 COUNTY IN WHICH THE PROPERTY IS LOCATED.

3 (F) ANY PENALTY COLLECTED UNDER THIS SECTION SHALL BE PLACED IN
4 THE WETLANDS COMPENSATION FUND ESTABLISHED UNDER § 16-205 OF THIS TITLE.

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 July 1, 2002.