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By: **The President (Administration)**

Introduced and read first time: January 18, 2002

Assigned to: Education, Health, and Environmental Affairs

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A BILL ENTITLED

1 AN ACT concerning

2 **Administrative Penalties and Cost Recovery - Air Quality and Radiation**

3 FOR the purpose of altering the amount of certain penalties that the Department of  
4 the Environment is authorized to impose for violations of certain provisions of  
5 law relating to air quality; repealing a certain cap on the amount of penalties  
6 that may be imposed for any single administrative hearing; authorizing the use  
7 of the Maryland Clean Air Fund and the State Radiation Control Fund for  
8 certain costs related to emergency response, environmental monitoring, and  
9 related activities; authorizing recovery of certain costs and requiring  
10 reimbursement of the funds for certain expenses; and generally relating to the  
11 recovery of costs in certain circumstances and the imposition of penalties for  
12 certain environmental violations.

13 BY repealing and reenacting, with amendments,  
14 Article - Environment  
15 Section 2-101, 2-107, 2-610(a), 2-610.1, 8-101, and 8-306  
16 Annotated Code of Maryland  
17 (1996 Replacement Volume and 2001 Supplement)

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

20 **Article - Environment**

21 2-101.

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

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

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

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

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

2 (d) "Emergency" means:

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

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

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

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

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

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

15 (h) "Regulated emissions" means the actual rate of emissions, in tons per year,  
16 of any registered pollutant emitted by a source, to be calculated using criteria  
17 consistent with 40 CFR 70 (operating permit program), and subject to a limit of 4,000  
18 tons per year of any single pollutant.

19 (I) "RESPONSIBLE PARTY" INCLUDES:

20 (1) THE OWNER OF THE MATERIALS THAT WERE RELEASED OR  
21 POTENTIALLY RELEASED;

22 (2) THE OWNER, OPERATOR, OR PERSON IN CHARGE OF THE FACILITY,  
23 CONTAINER, VESSEL, OR VEHICLE INVOLVED IN THE RELEASE OR POTENTIAL  
24 RELEASE OF THE AIR POLLUTANTS; OR

25 (3) ANY OTHER PERSON WHO THROUGH ACT OR OMISSION CAUSED THE  
26 RELEASE OR POTENTIAL RELEASE OF THE AIR POLLUTANTS.

27 [(i)] (J) "Source" means any person or property that contributes to air  
28 pollution.

29 2-107.

30 (a) There is a Maryland Clean Air Fund.

31 (b) All application fees, permit fees, renewal fees, and funds collected by the  
32 Department under this title or Title 6, Subtitle 4 of this article, including any civil or  
33 administrative penalty or any fine imposed by a court under these provisions, shall be  
34 paid into the Maryland Clean Air Fund.

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

3 (i) Activities conducted under this title that are related to  
4 identifying, monitoring, and regulating air pollution AND THE RELEASE OR  
5 POTENTIAL RELEASE OF AIR POLLUTANTS in this State, including program  
6 development of these activities as provided in the State budget; and

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

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

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

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

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

20 (4) When the Fund equals or exceeds a maximum limit of \$750,000,  
21 additional moneys received for the Fund by the Department shall be deposited to the  
22 General Fund.

23 (D) ALL EXPENDITURES MADE BY THE DEPARTMENT TO ASSESS AIR QUALITY  
24 IMPACTS OF AN UNAUTHORIZED RELEASE OR POTENTIAL RELEASE OF AIR  
25 POLLUTANTS NOT OTHERWISE RECOVERABLE UNDER ANY STATE OR FEDERAL LAWS  
26 OR REGULATIONS SHALL BE REIMBURSED TO THE DEPARTMENT BY THE  
27 RESPONSIBLE PARTY.

28 (E) RECOVERIES COLLECTED UNDER SUBSECTION (D) OF THIS SECTION  
29 SHALL BE PAID INTO THE FUND.

30 (F) IN ADDITION TO ANY OTHER ACTION AUTHORIZED BY THIS TITLE, THE  
31 ATTORNEY GENERAL MAY BRING AN ACTION TO RECOVER COSTS AND INTEREST  
32 FROM ANY PERSON WHO FAILS TO REIMBURSE THE DEPARTMENT AS REQUIRED  
33 UNDER PARAGRAPH (D) OF THIS SECTION.

34 2-610.1.

35 (a) In addition to any other remedies available at law or in equity and after an  
36 opportunity for a hearing which may be waived in writing by the person accused of a  
37 violation, the Department may impose a penalty for violation of any provision of this

1 title, Subtitle 4 of Title 6, or any rule, regulation, order, plan for compliance,  
2 registration, or permit adopted or issued under those provisions.

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

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

7 (i) Up to [\$2,500] \$25,000 for each violation; AND

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

10 (iii)] Assessed with consideration given to:

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

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

17 3. The cost of control;

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 areas of human population, creates the potential for harm to the  
22 environment or to human health or safety;

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

25 7. The extent to which the current violation is part of a  
26 recurrent pattern of the same or similar type of violation committed by the violator.

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

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

30 (4) If any person who is liable to pay a penalty imposed under this  
31 section fails to pay it after demand, the amount, together with interest and any costs  
32 that may accrue, shall be:

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

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

3 8-101.

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

5 (b) "Board" means the Radiation Control Advisory Board.

6 (c) "Emergency" means a sudden and unforeseen condition of such public  
7 gravity and urgency that it requires immediate response to protect the public health  
8 and welfare.

9 (d) "General license" means a license that, under the rules and regulations  
10 adopted by the Department under this title, is effective without the filing of an  
11 application by the licensee.

12 (e) "Person" includes any public or municipal corporation and any agency,  
13 bureau, department, or instrumentality of State or local government and, to the  
14 extent authorized by federal law, federal government.

15 (f) "Radiation" means:

16 (1) Ionizing radiation, including gamma rays, X-rays, alpha particles,  
17 beta particles, neutrons, high speed electrons, high speed protons, and any other  
18 atomic or nuclear particles or rays;

19 (2) Any electromagnetic radiation that can be generated during the  
20 operation of a manufactured device that has an electronic circuit; or

21 (3) Any sonic, ultrasonic, or infrasonic waves that are emitted as a result  
22 of the operation, in a manufactured device, of an electronic circuit that can generate a  
23 physical field of radiation.

24 (G) "RESPONSIBLE PARTY" INCLUDES:

25 (1) THE OWNER OF THE MATERIALS THAT WERE RELEASED OR  
26 POTENTIALLY RELEASED;

27 (2) THE OWNER, OPERATOR, OR PERSON IN CHARGE OF THE FACILITY,  
28 CONTAINER, VESSEL, OR VEHICLE INVOLVED IN THE RELEASE OR POTENTIAL  
29 RELEASE OF THE RADIATION; OR

30 (3) ANY OTHER PERSON WHO THROUGH ACT OR OMISSION CAUSED THE  
31 RELEASE OR POTENTIAL RELEASE OF THE RADIATION.

32 [(g)] (H) "Specific license" means a license that, under the rules and  
33 regulations adopted by the Department under this title, is effective only after the  
34 applicant files an application and the Department approves the application.

1 8-306.

2 (a) There is a State Radiation Control Fund.

3 (b) All general license fees, specific license fees, registration fees, radiation  
4 machine certification fees, and all funds collected by the Department under this title,  
5 including any civil penalties, settlements, or fines, shall be paid into the State  
6 Radiation Control Fund.

7 (c) The Department shall use the State Radiation Control Fund for activities  
8 that are related to identifying, monitoring, and controlling sources of radiation, AND  
9 THE RELEASE OR POTENTIAL RELEASE OF RADIATION, including radiation machines,  
10 and for program development of these activities.

11 (D) ALL EXPENDITURES MADE BY THE DEPARTMENT TO PROTECT THE  
12 PUBLIC FROM THE IMPACTS OF AN UNAUTHORIZED RELEASE OR POTENTIAL  
13 RELEASE OF RADIATION NOT OTHERWISE RECOVERABLE UNDER ANY STATE OR  
14 FEDERAL LAWS OR REGULATIONS SHALL BE REIMBURSED TO THE DEPARTMENT BY  
15 THE RESPONSIBLE PARTY.

16 (E) RECOVERIES COLLECTED UNDER SUBSECTION (D) OF THIS SECTION  
17 SHALL BE PAID INTO THE FUND.

18 (F) IN ADDITION TO ANY OTHER ACTION AUTHORIZED BY THIS TITLE, THE  
19 ATTORNEY GENERAL MAY BRING AN ACTION TO RECOVER COSTS AND INTEREST  
20 FROM ANY PERSON WHO FAILS TO REIMBURSE THE DEPARTMENT AS REQUIRED  
21 UNDER PARAGRAPH (D) OF THIS SECTION.

22 [(d)] (G) The Department shall adopt regulations for the management and use  
23 of the money in the Fund.

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