

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1051

(Delegate McIntosh)

Environmental Matters

Education, Health, and Environmental Affairs

Environment - Brownfields - Environmental Restoration and Development

This bill exempts certain property owners and operators from the definition of a “responsible person” under the Controlled Hazardous Substances Law and makes several changes to the Voluntary Cleanup Program (VCP) within the Maryland Department of the Environment (MDE). The bill also establishes a 17-member Environmental Restoration and Development Task Force. MDE and the Department of Business and Economic Development (DBED) must provide staff for the task force.

The bill takes effect July 1, 2003. Authorization for the task force expires January 31, 2004.

Fiscal Summary

State Effect: Any expense reimbursements for task force members and staffing costs for MDE and DBED are assumed to be minimal and absorbable within existing budgeted resources. While the bill could result in an increase in VCP applicants, any impact on VCP finances would be fiscally neutral. To the extent the bill results in an increase in useful, redeveloped properties, future tax revenues could increase.

Local Effect: Local property tax revenues may be positively affected to the extent that the bill results in the remediation of additional properties.

Small Business Effect: Potential meaningful. Small businesses could benefit to the extent the bill encourages the redevelopment of additional properties.

Analysis

Bill Summary: The bill provides for the following:

- a property owner is not considered a “responsible person” under the Controlled Hazardous Substances Law solely by reason of contamination from a contiguous or otherwise similarly situated property under specified conditions;
- MDE may reduce the application fee for participation in VCP if a lesser fee is sufficient to cover the costs of review of the application and administration and oversight of the response action plan;
- MDE may deem that a VCP application is incomplete;
- a determination by MDE that it has no further requirements under VCP is transferable to subsequent purchasers under specified conditions;
- if a determination by MDE that it has no further requirements is conditioned on certain uses or conditions, the participant must record the determination in the land records of the local jurisdiction or the determination is void; and
- the definition of “federal act” is updated to reflect recent changes in the Comprehensive Environmental Response, Compensation, and Liability Act.

The task force must: (1) review recent changes to federal law as they relate to Brownfields; (2) examine the consequences of enacting State Brownfields legislation similar to those federal changes; (3) examine the consequences of including properties under active enforcement as eligible properties under VCP; (4) examine the consequences of providing liability protections to economic development corporations and counties that take ownership of contaminated or potentially contaminated sites; (5) examine methods by which a program participant could apply for and receive a revised “no further requirements determination” based on different uses of the property; (6) examine the consequences of providing for focused site cleanups that are limited to specific types of contamination or specific portions of the property; (7) examine the consequences of authorizing economic development corporations to act as a lender under the Maryland Clean Water Revolving Loan Fund; (8) examine potential sources of increased funding for State Brownfields programs; and (9) study any other issues related to the State’s brownfields programs that the members consider appropriate. The task force must report its findings and recommendations to the Governor and the General Assembly by December 31, 2003.

Current Law: Brownfields are abandoned or underutilized industrial or commercial sites, located primarily in urban areas, which are either contaminated or perceived to be contaminated by hazardous substances. Chapters 1 and 2 of 1997 established VCP within MDE to encourage the investigation of eligible Brownfields properties, to protect public health and the environment, to accelerate the cleanup of eligible properties, and to

provide predictability and finality to the cleanup process. VCP works in conjunction with the Brownfields Revitalization and Incentive Program (BRIP) administered by DBED. BRIP provides economic incentives such as loans, grants, and property tax credits to clean up and develop certain properties.

VCP provides owners or purchasers of a contaminated site liability relief if cleanup goals are met. Eligible applicants may be either responsible persons (as defined under the Controlled Hazardous Substances Law) or prospective owners who have not previously owned the property and did not cause or contribute to contamination at the property. Eligible parties that want to participate must submit an application describing a proposed voluntary cleanup project that specifies the proposed cleanup criteria for a contaminated site and the future use of the site. MDE must notify the applicant within 60 days whether the application is approved, denied, or that MDE has no further requirements regarding controlled hazardous substances at the property. A participant must develop a response action plan on cleanup activities and MDE must notify the applicant if the plan has been approved or rejected. The response action plan approval letter must state that no further action is required on the property other than the actions described in the plan, and that the participant will receive a certificate of completion once the plan is carried out. Once notified of a project's completion, MDE must determine if the response action plan has been completed satisfactorily. A response action plan approval letter or certificate of completion is transferable. If a certificate of completion is conditioned on the permissible use of the property, this must be recorded in the land records of the local jurisdiction or the certificate is void.

The application fee is \$6,000. All application fees are paid into the Voluntary Cleanup Fund. If the direct costs of review of the application and administration and oversight of the response action plan are less than or greater than \$6,000, MDE must either refund the difference to the participant or require the participant to pay the difference to MDE.

Background: As of February 4, 2003, MDE had received applications for a total of 134 properties, 85 of which had been accepted into the program. Acceptance was pending for 42 properties. Seven properties had withdrawn from the program. Of the 85 properties that had been accepted into the program, 65 had been completed (52 properties were issued a "no further requirements determination" and 13 properties were issued a certificate of completion). Cleanups were pending on an additional 20 properties.

According to MDE, this bill addresses concerns raised by the business community regarding the costs associated to complete a VCP site application and reflects the U.S. Environmental Protection Agency's goal of expanding the opportunities for the redevelopment of Brownfields.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of the Environment, Department of Business and Economic Development, Department of Legislative Services

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Analysis by: Lesley Frymier

Direct Inquiries to:
(410) 946-5510
(301) 970-5510