
By: **Delegates Quinter, Bobo, Hubbard, Pendergrass, and F. Turner**
Introduced and read first time: February 13, 2004
Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Water Pollution Administrative Penalties Act of 2004**

3 FOR the purpose of authorizing the Department of the Environment to impose
4 certain administrative penalties for violations of sediment control, stormwater
5 management, water pollution, water appropriation and use, waterway
6 construction and obstruction, and nontidal and tidal wetlands provisions under
7 certain circumstances; establishing certain criteria for consideration in the
8 assessment of the penalties; expanding the authorized uses of the Maryland
9 Clean Water Fund; and generally relating to the imposition and use of
10 administrative penalties by the Department of the Environment.

11 BY repealing and reenacting, with amendments,
12 Article - Environment
13 Section 4-116(e), 4-215(e), 5-514, 9-320, and 9-342(b)
14 Annotated Code of Maryland
15 (1996 Replacement Volume and 2003 Supplement)

16 BY adding to
17 Article - Environment
18 Section 5-911(f) and 16-502.1
19 Annotated Code of Maryland
20 (1996 Replacement Volume and 2003 Supplement)

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

23 **Article - Environment**

24 4-116.

25 (e) (1) In addition to any other remedies available at law or in equity and
26 after an opportunity for a hearing which may be waived in writing by the person
27 accused of a violation, the Department may impose a penalty on any person who
28 violates any provision of this subtitle or any regulation or plan adopted, approved, or

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

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

5 (i) Up to [\$1,000] \$10,000 for each violation[, but not exceeding
6 \$20,000 total for any action]; and

7 (ii) Assessed with consideration given to:

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

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

14 3. The cost of cleanup and the cost of restoration of natural
15 resources;

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

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

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

23 7. The degree of hazard posed by the particular pollutant or
24 pollutants involved;

25 8. 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 and

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

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

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

34 (5) Any penalty collected under this subsection or for a violation of §
35 4-413 of this title shall be placed in the special fund under paragraph (c)(3) of this
36 section.

1 4-215.

2 (e) (1) In addition to any other remedies available at law and after an
3 opportunity for a hearing which may be waived in writing by the person accused of a
4 violation, the Department may impose a penalty for violation of any provision of this
5 subtitle or any regulation or plan adopted or approved 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 \$20,000 total for any action]; 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;

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 and

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

32 (3) Each day a violation occurs is a separate violation under this
33 subsection.

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

1 5-514.

2 (A) (1) A person who violates or causes an act which violates a provision of
3 this subtitle or a regulation adopted under this subtitle or who violates or fails to
4 comply with a permit or an order of the Department when due notice is given is guilty
5 of a misdemeanor.

6 (2) Upon conviction the violator is subject to a fine not exceeding \$500
7 per day for each day of the offense, and not to exceed a total fine of \$25,000, with costs
8 imposed in the discretion of the court.

9 (B) (1) (I) IN ADDITION TO ANY OTHER REMEDIES AVAILABLE AT LAW OR
10 IN EQUITY AND AFTER AN OPPORTUNITY FOR A HEARING WHICH MAY BE WAIVED IN
11 WRITING BY THE PERSON ACCUSED OF A VIOLATION, THE DEPARTMENT MAY
12 IMPOSE A PENALTY FOR VIOLATION OF ANY PROVISION OF THIS SUBTITLE OR ANY
13 RULE, REGULATION, ORDER, OR PERMIT ADOPTED OR ISSUED UNDER THIS
14 SUBTITLE.

15 (II) ANY REQUEST FOR A HEARING ON A PENALTY ISSUED UNDER
16 THIS SUBSECTION SHALL BE MADE IN WRITING NO LATER THAN 10 WORKING DAYS
17 AFTER RECEIPT OF THE NOTICE ASSESSING A PENALTY.

18 (2) THE PENALTY IMPOSED ON A PERSON UNDER THIS SUBSECTION
19 SHALL BE:

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

21 (II) ASSESSED WITH CONSIDERATION GIVEN TO:

22 1. THE WILLFULNESS OF THE VIOLATION, THE EXTENT TO
23 WHICH THE EXISTENCE OF THE VIOLATION WAS KNOWN TO BUT UNCORRECTED BY
24 THE VIOLATOR, AND THE EXTENT TO WHICH THE VIOLATOR EXERCISED
25 REASONABLE CARE;

26 2. ANY ACTUAL HARM TO THE ENVIRONMENT OR TO HUMAN
27 HEALTH, INCLUDING INJURY TO OR IMPAIRMENT OF THE USE OF THE WATERS OF
28 THE STATE OR THE NATURAL RESOURCES OF THE STATE;

29 3. THE COST OF CLEANUP AND THE COST OF RESTORATION
30 OF NATURAL RESOURCES;

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

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

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

3 7. THE DEGREE OF HAZARD POSED BY THE PARTICULAR
4 POLLUTANT OR POLLUTANTS INVOLVED; AND

5 8. THE EXTENT TO WHICH THE CURRENT VIOLATION IS
6 PART OF A RECURRENT PATTERN OF THE SAME OR SIMILAR TYPES OF VIOLATIONS
7 COMMITTED BY THE VIOLATOR.

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

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

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

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

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

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

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

26 5-911.

27 (F) (1) (I) IN ADDITION TO ANY OTHER REMEDIES AVAILABLE AT LAW OR
28 EQUITY AND AFTER AN OPPORTUNITY FOR A HEARING WHICH MAY BE WAIVED IN
29 WRITING BY THE PERSON ACCUSED OF A VIOLATION, THE DEPARTMENT MAY
30 IMPOSE A PENALTY FOR VIOLATION OF ANY PROVISION OF THIS SUBTITLE OR ANY
31 RULE, REGULATION, ORDER, OR PERMIT ADOPTED OR ISSUED UNDER THIS
32 SUBTITLE.

33 (II) ANY REQUEST FOR A HEARING ON A PENALTY ISSUED UNDER
34 THIS SUBSECTION SHALL BE MADE IN WRITING NO LATER THAN 10 WORKING DAYS
35 AFTER RECEIPT OF THE NOTICE ASSESSING THE PENALTY.

36 (2) THE PENALTY IMPOSED ON A PERSON UNDER THIS SUBSECTION
37 SHALL BE:

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

2 (II) ASSESSED WITH CONSIDERATION GIVEN TO:

3 1. THE WILLFULNESS OF THE VIOLATION, THE EXTENT TO
4 WHICH THE EXISTENCE OF THE VIOLATION WAS KNOWN TO BUT UNCORRECTED BY
5 THE VIOLATOR, AND THE EXTENT TO WHICH THE VIOLATOR EXERCISED
6 REASONABLE CARE;

7 2. ANY ACTUAL HARM TO THE ENVIRONMENT OR TO HUMAN
8 HEALTH, INCLUDING INJURY TO OR IMPAIRMENT OF THE USE OF THE WATERS OF
9 THE STATE OR THE NATURAL RESOURCES OF THE STATE;

10 3. THE COST OF CLEANUP AND THE COST OF RESTORATION
11 OF NATURAL RESOURCES;

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

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

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

20 7. THE DEGREE OF HAZARD POSED BY THE PARTICULAR
21 POLLUTANT OR POLLUTANTS INVOLVED; AND

22 8. THE EXTENT TO WHICH THE CURRENT VIOLATION IS
23 PART OF A RECURRENT PATTERN OF THE SAME OR SIMILAR TYPE OF VIOLATION
24 COMMITTED BY THE VIOLATOR.

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

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

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

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

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

1 (6) ANY PENALTY COLLECTED UNDER THIS SUBSECTION SHALL BE
2 PLACED IN THE NONTIDAL WETLAND COMPENSATION FUND ESTABLISHED UNDER
3 THIS SUBTITLE.

4 9-320.

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

6 (b) All application fees, permit fees, renewal fees, and funds collected by the
7 Department under this subtitle, including any civil or administrative penalty or any
8 fine imposed by a court under the provisions of this subtitle, shall be paid into the
9 Maryland Clean Water Fund.

10 (c) [The Department shall use the Maryland Clean Water Fund for activities
11 that are related to identifying, monitoring, and regulating the proper discharge of
12 effluent into the waters of the State including program development of these
13 activities as provided in the State budget. Priority shall be given to activities
14 pertaining to the water quality of the Chesapeake Bay and its tributaries.] THE
15 DEPARTMENT SHALL USE THE MARYLAND CLEAN WATER FUND FOR:

16 (1) RESPONDING TO THE DISCHARGE OF POLLUTANTS AND
17 PERFORMING REASONABLE REMEDIAL MEASURES TO PREVENT, CONTROL, OR
18 ABATE POLLUTION OR UNDESIRABLE CHANGES IN THE QUALITY OF THE WATERS OF
19 THE STATE; AND

20 (2) ACTIVITIES BY THE DEPARTMENT RELATED TO PROGRAM
21 DEVELOPMENT ASSOCIATED WITH THIS TITLE AS PROVIDED BY THE STATE BUDGET
22 AND ACTIVITIES RELATED TO:

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

25 (II) MANAGEMENT, CONSERVATION, PROTECTION, AND
26 PRESERVATION OF THE STATE'S GROUNDWATER, SURFACE WATER, AND WETLAND
27 RESOURCES; AND

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

30 (d) IN DETERMINING THE USE OF THE MARYLAND CLEAN WATER FUND,
31 PRIORITY SHALL BE GIVEN TO ACTIVITIES PERTAINING TO WATER QUALITY OF THE
32 CHESAPEAKE BAY AND ITS TRIBUTARIES, THE COASTAL BAYS AND THEIR
33 TRIBUTARIES, AND OTHER SENSITIVE WATERS OF THE STATE.

34 (E) Notwithstanding any law to the contrary, unexpended moneys in the Fund
35 shall not revert to the general treasury at the end of a fiscal year.

1 9-342.

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

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

8 (i) Up to [\$1,000] \$10,000 for each violation[, but not exceeding
9 \$50,000 total]; and

10 (ii) 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 but uncorrected by the violator, and the extent
13 to which the violator exercised reasonable care;

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

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

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

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

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

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

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

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

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

34 (5) If any person who is liable to pay a penalty imposed under this
35 subsection fails to pay it after demand, the amount, together with interest and any
36 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 16-502.1.

10 (A) (1) IN ADDITION TO ANY OTHER REMEDIES AVAILABLE AT LAW OR IN
11 EQUITY AND AFTER AN OPPORTUNITY FOR A HEARING WHICH MAY BE WAIVED IN
12 WRITING BY THE PERSON ACCUSED OF A VIOLATION, THE DEPARTMENT MAY
13 IMPOSE A PENALTY FOR VIOLATION OF ANY PROVISION OF THIS SUBTITLE OR ANY
14 RULE, REGULATION, ORDER, PERMIT, OR LICENSE ADOPTED OR ISSUED UNDER THIS
15 SUBTITLE.

16 (2) ANY REQUEST FOR A HEARING ON A PENALTY ISSUED UNDER
17 SUBSECTION (B) OF THIS SECTION SHALL BE MADE IN WRITING NO LATER THAN 10
18 WORKING DAYS AFTER RECEIPT OF THE NOTICE ASSESSING THE PENALTY.

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

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

21 (2) ASSESSED WITH CONSIDERATION GIVEN TO:

22 (I) THE WILLFULNESS OF THE VIOLATION, THE EXTENT TO WHICH
23 THE EXISTENCE OF THE VIOLATION WAS KNOWN TO BUT UNCORRECTED BY THE
24 VIOLATOR, AND THE EXTENT TO WHICH THE VIOLATOR EXERCISED REASONABLE
25 CARE;

26 (II) ANY ACTUAL HARM TO THE ENVIRONMENT OR TO HEALTH,
27 INCLUDING INJURY TO OR IMPAIRMENT OF THE USE OF THE WATERS OF THE STATE
28 OR THE NATURAL RESOURCES OF THE STATE;

29 (III) THE COST OF CLEANUP AND THE COST OF RESTORATION OF
30 NATURAL RESOURCES;

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

33 (V) THE EXTENT TO WHICH THE LOCATION OF THE VIOLATION,
34 INCLUDING LOCATIONS NEAR WATERS OF THE STATE OR AREAS OF HUMAN
35 POPULATION, CREATES THE POTENTIAL FOR HARM TO THE ENVIRONMENT OR TO
36 HUMAN HEALTH OR SAFETY;

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

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

5 (VIII) THE EXTENT TO WHICH THE CURRENT VIOLATION IS PART OF
6 A RECURRENT PATTERN OF THE SAME OR SIMILAR TYPE OF VIOLATION COMMITTED
7 BY THE VIOLATOR.

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

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

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

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

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

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

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
23 effect July 1, 2004.