
By: **Chairman, Environmental Matters Committee (By Request -
Departmental - Environment)**

Introduced and read first time: February 4, 2005

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 15, 2005

CHAPTER _____

1 AN ACT concerning

2 **Environment - Water Appropriation Permits - Penalties**

3 FOR the purpose of altering permit requirements relating to the appropriation and
4 use of State groundwater; exempting from permit requirements certain users
5 that appropriate or use groundwater below a certain quantity; authorizing the
6 Department of the Environment to seek civil penalties ~~and impose~~
7 ~~administrative penalties~~ for certain violations relating to the misappropriation
8 or misuse of State groundwater or otherwise failing to comply with a water
9 appropriation and use permit; providing for the issuance of orders or notices of
10 violations and providing for certain hearings relating to orders ~~and~~
11 ~~administrative penalties~~; increasing certain criminal penalties and eliminating
12 a certain cap on criminal penalties; requiring certain funds to be paid into the
13 Maryland Clean Water Fund; altering the uses of the Maryland Clean Water
14 Fund; defining a certain ~~term~~ terms; and generally relating to water
15 appropriation permits.

16 BY repealing and reenacting, with amendments,
17 Article - Environment
18 Section 5-101, 5-502, 5-514, and 9-320
19 Annotated Code of Maryland
20 (1996 Replacement Volume and 2004 Supplement)

21 BY adding to
22 Article - Environment
23 Section 5-515 and 5-516
24 Annotated Code of Maryland

1 (1996 Replacement Volume and 2004 Supplement)

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

4 **Article - Environment**

5 5-101.

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

7 (b) "Administration" means Water Management Administration.

8 (c) "Appropriate county governing body" means the county commissioners of
9 any nonchartered county or the county council of any chartered county in which a
10 portion of the watershed is located.

11 (d) "County" includes Baltimore City unless otherwise indicated.

12 (e) "Department" means Department of the Environment.

13 (f) "Director" means Director of the Water Management Administration.

14 (g) "Person" includes the federal government, the State, any county, municipal
15 corporation, or other political subdivision of the State, or any of their units, or an
16 individual, receiver, trustee, guardian, executor, administrator, fiduciary, or
17 representative of any kind, or any partnership, firm, association, public or private
18 corporation, or any other entity.

19 (h) (1) "Pollution" means every contamination or other alteration of the
20 physical, chemical, or biological properties, of any waters of the State.

21 (2) "Pollution" includes change in temperature, taste, color, turbidity, or
22 odor of the waters of the State or the discharge or deposit of any organic matter,
23 harmful organism, or liquid, gaseous, solid, radioactive, or other substance into any
24 waters of the State as will render the waters of the State harmful, detrimental, or
25 injurious to public health, safety, or welfare, domestic, commercial, industrial,
26 agricultural, recreational, other legitimate beneficial uses, or livestock, wild animals,
27 birds or fish or other aquatic life.

28 (I) "PUBLIC WATER SYSTEM" HAS THE MEANING STATED IN § 9-401 OF THIS
29 ARTICLE.

30 [(i)] (J) "Secretary" means Secretary of the Department of the Environment.

31 (K) "WATER MANAGEMENT STRATEGY AREA" MEANS AN AREA DESIGNATED
32 BY THE DEPARTMENT IN WHICH A SPECIFIC WATER RESOURCE PROBLEM HAS BEEN
33 IDENTIFIED AND FOR WHICH THE DEPARTMENT HAS ADOPTED SPECIFIC WATER USE
34 RESTRICTIONS OR CRITERIA FOR PERMIT APPROVAL IN ORDER TO PROTECT THE
35 WATER RESOURCE OR EXISTING WATER USERS.

1 [(j)] (L) "Waters of the State" includes:

2 (1) Both surface and underground waters within the boundaries of the
3 State subject to its jurisdiction;

4 (2) That portion of the Atlantic Ocean within the boundaries of the State;

5 (3) The Chesapeake Bay and its tributaries;

6 (4) All ponds, lakes, rivers, streams, public ditches, tax ditches, and
7 public drainage systems within the State, other than those designed and used to
8 collect, convey, or dispose of sanitary sewage; and

9 (5) The floodplain of free-flowing waters determined by the Department
10 on the basis of the 100-year flood frequency.

11 5-502.

12 (a) Every person is required to obtain a permit from the Department to
13 appropriate or use or begin to construct any plant, building, or structure which may
14 appropriate or use any waters of the State, whether surface water or groundwater.
15 The permit is obtained upon written application to the Department. The applicant
16 shall provide the Department with satisfactory proof that the proposed withdrawal of
17 water will not jeopardize the State's natural resources.

18 (b) This section does not apply to [use of water for]:

19 (1) [Domestic] USE OF WATER FOR DOMESTIC purposes other than for
20 heating and cooling; [or]

21 (2) [Agricultural] USE OF WATER FOR AGRICULTURAL purposes, if the
22 average annual water use is less than 10,000 gallons per day, except as provided in
23 subsection (c)(2) of this section; OR

24 (3) USE OF GROUNDWATER AT AN AVERAGE ANNUAL WATER USE OF
25 5,000 GALLONS OF WATER PER DAY OR LESS, PROVIDED THAT:

26 (I) 1. THE USE IS NOT FOR A PUBLIC WATER SYSTEM THAT:

27 A. SERVES AT LEAST 15 SERVICE CONNECTIONS USED BY
28 YEAR-ROUND RESIDENTS OF THE AREA SERVED BY THE SYSTEM; OR

29 B. REGULARLY SERVES AT LEAST 25 YEAR-ROUND
30 RESIDENTS; OR

31 2. THE USE WILL NOT OCCUR WITHIN A WATER
32 MANAGEMENT STRATEGY AREA ESTABLISHED BY THE DEPARTMENT; AND

33 (II) THE USER FILES A NOTICE OF EXEMPTION WITH THE
34 DEPARTMENT AT LEAST 30 DAYS BEFORE THE USE IS PROPOSED TO BEGIN.

1 (c) (1) The Department shall issue a permit to a person using water prior to
2 July 1, 1988 for agricultural purposes upon written application to the Department.

3 (2) A person using less than an annual average of 10,000 gallons of water
4 per day for agricultural purposes may apply for a permit to appropriate or use waters
5 of the State.

6 (d) When the Department determines that a water supply emergency exists
7 and available water supplies are inadequate in an area to meet the needs of all
8 persons who have permits under this subtitle, the following uses shall have priority
9 for appropriation or use of water in the order listed:

10 (1) Domestic and municipal uses for sanitation, drinking water, and
11 public health and safety;

12 (2) Agricultural uses, including the processing of agricultural products;
13 and

14 (3) All other uses.

15 (e) Notwithstanding any other provision of this subtitle, an application for a
16 certificate of public convenience and necessity associated with power plant
17 construction which involves use or diversion of waters of the State made to the Public
18 Service Commission under the Public Utility Companies Article constitutes an
19 application for the permit required by this section, and the provisions of § 3-306 of
20 the Natural Resources Article apply. If an application is made to the Public Service
21 Commission, the hearing provided for by this subtitle is not required. All evidence
22 relevant to the purposes of this subtitle shall be presented at the hearing held by the
23 Public Service Commission, as required by § 7-207 of the Public Utility Companies
24 Article. The permit required by this subtitle is included in the certificate of public
25 convenience and necessity issued by the Public Service Commission.

26 5-514.

27 (A) (1) IN ADDITION TO BEING SUBJECT TO AN INJUNCTIVE ACTION UNDER
28 THIS SUBTITLE, A PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE
29 RELATING TO WATER APPROPRIATION AND USE OR ~~OF~~ ANY RULE, REGULATION,
30 ORDER, OR PERMIT ADOPTED OR ISSUED UNDER ANY SUCH PROVISION IS LIABLE ~~TO~~
31 FOR A CIVIL PENALTY NOT EXCEEDING \$5,000 \$10,000 PER VIOLATION TO BE
32 COLLECTED IN A CIVIL ACTION BROUGHT BY THE DEPARTMENT.

33 (2) EACH DAY A VIOLATION OCCURS OR CONTINUES IS A SEPARATE
34 VIOLATION UNDER THIS SUBSECTION.

35 (B) A person who violates or causes an act which violates a provision of this
36 subtitle or a regulation adopted under this subtitle or who violates or fails to comply
37 with a permit or an order of the Department when due notice is given is guilty of a
38 misdemeanor. Upon conviction the violator is subject to a fine not exceeding [\$500]
39 ~~\$5,000~~ \$10,000 per day for each day of the offense, [and not to exceed a total fine of
40 \$25,000,] with costs imposed in the discretion of the court.

1 ~~(C)~~ ~~(1)~~ IN ADDITION TO ANY OTHER REMEDIES AVAILABLE AT LAW OR IN
2 EQUITY AND AFTER AN OPPORTUNITY FOR A HEARING THAT MAY BE WAIVED IN
3 WRITING BY THE PERSON ACCUSED OF A VIOLATION, THE DEPARTMENT MAY
4 IMPOSE A PENALTY FOR VIOLATION OF ANY PROVISION OF THIS SUBTITLE RELATING
5 TO WATER APPROPRIATION AND USE OR ANY RULE, REGULATION, ORDER, OR PERMIT
6 ADOPTED OR ISSUED UNDER ANY SUCH PROVISION.

7 ~~(2)~~ THE PENALTY IMPOSED ON A PERSON UNDER THIS SUBSECTION
8 SHALL BE:

9 ~~(1)~~ UP TO \$1,000 FOR EACH VIOLATION, BUT NOT EXCEEDING
10 \$50,000 TOTAL; AND

11 ~~(H)~~ ASSESSED WITH CONSIDERATION GIVEN TO:

12 1. THE WILLFULNESS OF THE VIOLATOR TO COMMIT THE
13 VIOLATION, THE EXTENT TO WHICH THE EXISTENCE OF THE VIOLATION WAS
14 KNOWN TO BUT UNCORRECTED BY THE VIOLATOR, AND THE EXTENT TO WHICH THE
15 VIOLATOR EXERCISED REASONABLE CARE;

16 2. ANY ACTUAL HARM TO THE ENVIRONMENT OR TO HUMAN
17 HEALTH, INCLUDING INJURY TO OR IMPAIRMENT OF THE USE OF THE WATERS OF
18 THE STATE OR THE NATURAL RESOURCES OF THE STATE;

19 3. THE NATURE AND DEGREE OF INJURY TO OR
20 INTERFERENCE WITH GENERAL WELFARE, HEALTH, AND PROPERTY;

21 4. THE EXTENT TO WHICH THE LOCATION OF THE
22 VIOLATION, INCLUDING ANY LOCATION NEAR WATERS OF THE STATE OR AREAS OF
23 HUMAN POPULATION, CREATES THE POTENTIAL FOR HARM TO THE ENVIRONMENT
24 OR TO HUMAN HEALTH OR SAFETY;

25 5. THE AVAILABLE TECHNOLOGY AND ECONOMIC
26 REASONABLENESS OF CONTROLLING, REDUCING, OR ELIMINATING THE VIOLATION;
27 AND

28 6. THE EXTENT TO WHICH THE CURRENT VIOLATION IS
29 PART OF A RECURRENT PATTERN OF THE SAME OR SIMILAR TYPE OF VIOLATION
30 COMMITTED BY THE VIOLATOR.

31 ~~(3)~~ EACH DAY A VIOLATION OCCURS OR CONTINUES IS A SEPARATE
32 VIOLATION UNDER THIS SUBSECTION.

33 ~~(4)~~ ANY PENALTY IMPOSED UNDER THIS SUBSECTION IS PAYABLE TO
34 THE STATE AND COLLECTABLE IN ANY MANNER PROVIDED AT LAW FOR THE
35 COLLECTION OF DEBTS.

36 ~~(D)~~ (C) ALL FUNDS COLLECTED BY THE DEPARTMENT UNDER THIS
37 SECTION, INCLUDING ANY CIVIL OR ADMINISTRATIVE PENALTY OR ANY FINE

1 IMPOSED BY A COURT UNDER THE PROVISIONS OF THIS SECTION, SHALL BE PAID
2 INTO THE MARYLAND CLEAN WATER FUND.

3 5-515.

4 (A) AFTER OR CONCURRENTLY WITH THE SERVICE OF A COMPLAINT UNDER
5 THIS SUBTITLE RELATING TO WATER APPROPRIATION AND USE, THE DEPARTMENT
6 MAY:

7 (1) ISSUE AN ORDER THAT REQUIRES THE PERSON TO WHOM THE
8 ORDER IS DIRECTED TO TAKE CORRECTIVE ACTION WITHIN A TIME SET IN THE
9 ORDER;

10 (2) SEND A WRITTEN NOTICE THAT REQUIRES THE PERSON TO WHOM
11 THE NOTICE IS DIRECTED TO FILE A WRITTEN REPORT ABOUT THE ALLEGED
12 VIOLATION; OR

13 (3) SEND A WRITTEN NOTICE THAT REQUIRES THE PERSON TO WHOM
14 THE NOTICE IS DIRECTED:

15 (I) TO APPEAR AT A HEARING BEFORE THE DEPARTMENT AT A
16 TIME AND PLACE THE DEPARTMENT SETS TO ANSWER THE CHARGES IN THE
17 COMPLAINT; OR

18 (II) TO FILE A WRITTEN REPORT AND ALSO APPEAR AT A HEARING
19 BEFORE THE DEPARTMENT AT A TIME AND PLACE THE DEPARTMENT SETS TO
20 ANSWER THE CHARGES IN THE COMPLAINT.

21 (B) ANY ORDER ISSUED UNDER THIS SECTION IS EFFECTIVE IMMEDIATELY,
22 ACCORDING TO ITS TERMS, WHEN IT IS SERVED.

23 5-516.

24 (A) THE DEPARTMENT SHALL GIVE NOTICE AND HOLD ANY HEARING
25 RELATED TO ORDERS ~~AND PENALTIES~~ IMPOSED UNDER THE WATER APPROPRIATION
26 AND USE PROVISIONS OF THIS SUBTITLE IN ACCORDANCE WITH THE
27 ADMINISTRATIVE PROCEDURE ACT.

28 (B) (1) WITHIN 10 DAYS AFTER BEING SERVED WITH AN ORDER UNDER §
29 5-515(A)(1) OF THIS SUBTITLE, THE PERSON SERVED MAY REQUEST IN WRITING A
30 HEARING BEFORE THE DEPARTMENT.

31 (2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, IF A
32 REQUEST FOR A HEARING ON AN ORDER IS MADE UNDER THIS SUBSECTION, THE
33 DEPARTMENT SHALL:

34 1. HOLD THE HEARING PROMPTLY AFTER RECEIVING THE
35 REQUEST; AND

36 2. RENDER A DECISION PROMPTLY AFTER THE HEARING.

1 (II) IF A REQUEST FOR A HEARING ON AN ORDER IS MADE UNDER
2 THIS SUBSECTION AND THE DEPARTMENT ALLEGES IN THE ORDER THAT THERE IS
3 AN IMMINENT THREAT OR DANGER TO THE PUBLIC HEALTH OR SAFETY OR TO THE
4 ENVIRONMENT, THE DEPARTMENT SHALL:

5 1. HOLD THE HEARING WITHIN 10 DAYS AFTER RECEIVING
6 THE REQUEST; AND

7 2. RENDER A DECISION WITHIN 10 DAYS AFTER THE
8 HEARING.

9 (C) WITHIN 10 DAYS AFTER BEING SERVED WITH A NOTICE UNDER §
10 5-515(A)(2) OF THIS SUBTITLE, THE PERSON SERVED MAY REQUEST IN WRITING A
11 HEARING BEFORE THE DEPARTMENT.

12 (D) THE DEPARTMENT MAY MAKE A VERBATIM RECORD OF THE
13 PROCEEDINGS OF ANY HEARING HELD UNDER THIS SUBTITLE.

14 (E) (1) IN CONNECTION WITH ANY HEARING UNDER THIS SUBTITLE, THE
15 DEPARTMENT MAY:

16 (I) SUBPOENA ANY PERSON OR EVIDENCE; AND

17 (II) ORDER A WITNESS TO GIVE EVIDENCE.

18 (2) A SUBPOENAED WITNESS SHALL RECEIVE THE SAME FEES AND
19 MILEAGE REIMBURSEMENT AS IF THE HEARING WERE PART OF A CIVIL ACTION.

20 (3) IF A PERSON FAILS TO COMPLY WITH A SUBPOENA OR ORDER
21 ISSUED UNDER THIS SUBSECTION, ON PETITION OF THE DEPARTMENT, A CIRCUIT
22 COURT, BY ORDER, MAY:

23 (I) COMPEL OBEDIENCE TO THE DEPARTMENT'S ORDER OR
24 SUBPOENA; OR

25 (II) COMPEL TESTIMONY OR THE PRODUCTION OF EVIDENCE.

26 (4) THE COURT MAY PUNISH AS CONTEMPT ANY FAILURE TO OBEY ITS
27 ORDER ISSUED UNDER THIS SECTION.

28 9-320.

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

30 (b) THE FOLLOWING PAYMENTS SHALL BE MADE INTO THE MARYLAND
31 CLEAN WATER FUND:

32 (1) All application fees, permit fees, renewal fees, and funds collected by
33 the Department under this subtitle, including any civil or administrative penalty or
34 any fine imposed by a court under the provisions of this subtitle[,] AND

1 (2) [shall be paid into the Maryland Clean Water Fund] ANY CIVIL ~~OR~~
2 ~~ADMINISTRATIVE~~ PENALTY OR ANY FINE IMPOSED BY A COURT UNDER THE
3 PROVISIONS OF TITLE 5, SUBTITLE 5 OF THIS ARTICLE RELATING TO WATER
4 APPROPRIATION AND USE.

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

10 (C) THE DEPARTMENT SHALL USE THE MARYLAND CLEAN WATER FUND FOR
11 ACTIVITIES THAT ARE RELATED TO:

12 (1) IDENTIFICATION, MONITORING, AND REGULATION OF THE PROPER
13 DISCHARGE OF EFFLUENT INTO THE WATERS OF THE STATE INCLUDING PROGRAM
14 DEVELOPMENT OF THESE ACTIVITIES AS PROVIDED BY THE STATE BUDGET; ~~OR~~ AND

15 (2) THE MANAGEMENT, CONSERVATION, PROTECTION, AND
16 PRESERVATION OF THE STATE'S GROUNDWATER AND SURFACE WATER INCLUDING
17 PROGRAM DEVELOPMENT OF THESE ACTIVITIES AS PROVIDED BY THE STATE
18 BUDGET.

19 (D) IN DETERMINING THE USE OF THE MARYLAND CLEAN WATER FUND,
20 PRIORITY SHALL BE GIVEN TO ACTIVITIES PERTAINING TO THE WATER QUALITY OF
21 THE CHESAPEAKE BAY AND ITS TRIBUTARIES.

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

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
25 effect October 1, 2005.