

CHAPTER 365

(Senate Bill 970)

AN ACT concerning

Environment – Water Appropriation Permits – Penalties

FOR the purpose of altering permit requirements relating to the appropriation and use of State groundwater; exempting from permit requirements certain users that appropriate or use groundwater below a certain quantity; authorizing the Department of the Environment to seek civil penalties for certain violations relating to the misappropriation or misuse of State groundwater or otherwise failing to comply with a water appropriation and use permit; requiring the Department to meet and consult with a local government before bringing a certain civil action; providing that the Department shall be considered in compliance of certain provisions of this Act after certain consultation with a local government; providing for the issuance of orders or notices of violations and providing for certain hearings relating to orders; ~~increasing certain criminal penalties and eliminating a certain cap on criminal penalties~~ altering certain penalties for violations of certain provisions of law; requiring certain funds to be paid into the Maryland Clean Water Fund; altering the uses of the Maryland Clean Water Fund; defining certain terms; and generally relating to water appropriation permits.

BY repealing and reenacting, with amendments,

Article – Environment

Section 5–101, 5–502, 5–514, and 9–320

Annotated Code of Maryland

(1996 Replacement Volume and 2006 Supplement)

BY adding to

Article – Environment

Section 5–515 and 5–516

Annotated Code of Maryland

(1996 Replacement Volume and 2006 Supplement)

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

Article – Environment

5–101.

- (a) In this title the following words have the meanings indicated.
- (b) “Administration” means Water Management Administration.
- (c) “Appropriate county governing body” means the county commissioners of any nonchartered county or the county council of any chartered county in which a portion of the watershed is located.
- (d) “County” includes Baltimore City unless otherwise indicated.
- (e) “Department” means Department of the Environment.
- (f) “Director” means Director of the Water Management Administration.
- (g) “Person” includes the federal government, the State, any county, municipal corporation, or other political subdivision of the State, or any of their units, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any other entity.
- (h) (1) “Pollution” means every contamination or other alteration of the physical, chemical, or biological properties, of any waters of the State.
- (2) “Pollution” includes change in temperature, taste, color, turbidity, or odor of the waters of the State or the discharge or deposit of any organic matter, harmful organism, or liquid, gaseous, solid, radioactive, or other substance into any waters of the State as will render the waters of the State harmful, detrimental, or injurious to public health, safety, or welfare, domestic, commercial, industrial, agricultural, recreational, other legitimate beneficial uses, or livestock, wild animals, birds or fish or other aquatic life.
- (i) **“PUBLIC WATER SYSTEM” HAS THE MEANING STATED IN § 9–401 OF THIS ARTICLE.**
- [(i)] (j) “Secretary” means Secretary of the Department of the Environment.
- (k) **“WATER MANAGEMENT STRATEGY AREA” MEANS AN AREA DESIGNATED BY THE DEPARTMENT IN WHICH A SPECIFIC WATER RESOURCE**

PROBLEM HAS BEEN IDENTIFIED AND FOR WHICH THE DEPARTMENT HAS ADOPTED SPECIFIC WATER USE RESTRICTIONS OR CRITERIA FOR PERMIT APPROVAL IN ORDER TO PROTECT THE WATER RESOURCE OR EXISTING WATER USERS.

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

- (1) Both surface and underground waters within the boundaries of the State subject to its jurisdiction;
- (2) That portion of the Atlantic Ocean within the boundaries of the State;
- (3) The Chesapeake Bay and its tributaries;
- (4) All ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within the State, other than those designed and used to collect, convey, or dispose of sanitary sewage; and
- (5) The floodplain of free-flowing waters determined by the Department on the basis of the 100-year flood frequency.

5-502.

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

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

- (1) [Domestic] **USE OF WATER FOR DOMESTIC** purposes other than for heating and cooling; [or]
- (2) [Agricultural] **USE OF WATER FOR AGRICULTURAL** purposes, if the average annual water use is less than 10,000 gallons per day, except as provided in subsection (c)(2) of this section; **OR**
- (3) **USE OF GROUNDWATER AT AN AVERAGE ANNUAL WATER USE OF 5,000 GALLONS OF WATER PER DAY OR LESS, PROVIDED THAT:**

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

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

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

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

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

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

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

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

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

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

(3) All other uses.

(e) Notwithstanding any other provision of this subtitle, an application for a certificate of public convenience and necessity associated with power plant construction which involves use or diversion of waters of the State made to the Public Service Commission under the Public Utility Companies Article constitutes an application for the permit required by this section, and the provisions of § 3-306 of the

Natural Resources Article apply. If an application is made to the Public Service Commission, the hearing provided for by this subtitle is not required. All evidence relevant to the purposes of this subtitle shall be presented at the hearing held by the Public Service Commission, as required by § 7-207 of the Public Utility Companies Article. The permit required by this subtitle is included in the certificate of public convenience and necessity issued by the Public Service Commission.

5-514.

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

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

(3) **(I) BEFORE BRINGING A CIVIL ACTION AGAINST A LOCAL GOVERNMENT UNDER THIS SUBSECTION, THE DEPARTMENT SHALL MEET AND CONSULT WITH THE LOCAL GOVERNMENT TO SEEK AN ALTERNATIVE RESOLUTION TO THE CONTESTED ISSUE.**

(II) PRIOR CONSULTATION BY THE DEPARTMENT WITH THE LOCAL GOVERNMENT SHALL CONSTITUTE COMPLIANCE WITH THIS SUBSECTION.

(B) A person who violates ~~or causes an act which violates~~ a provision of this subtitle or a regulation adopted under this subtitle ~~or who violates or fails to comply with a permit or an order of the Department when due notice is given is guilty of a misdemeanor. Upon conviction the violator is subject to a fine not exceeding [\$500] \$10,000 per day for each day of the offense, [and not to exceed a total fine of \$25,000,] with costs imposed in the discretion of the court~~ **IS SUBJECT TO THE PENALTIES PROVIDED IN § 9-343 OF THIS ARTICLE.**

(C) **ALL FUNDS COLLECTED BY THE DEPARTMENT UNDER THIS SECTION, INCLUDING ANY CIVIL PENALTY OR ANY FINE IMPOSED BY A COURT UNDER THE PROVISIONS OF THIS SECTION, SHALL BE PAID INTO THE MARYLAND CLEAN WATER FUND.**

5-515.

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

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

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

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

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

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

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

5-516.

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

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

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

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

2. RENDER A DECISION PROMPTLY AFTER THE HEARING.

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

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

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

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

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

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

(I) SUBPOENA ANY PERSON OR EVIDENCE; AND

(II) ORDER A WITNESS TO GIVE EVIDENCE.

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

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

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

(II) COMPEL TESTIMONY OR THE PRODUCTION OF EVIDENCE.

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

9-320.

(a) There is a Maryland Clean Water Fund.

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

(1) All application fees, permit fees, renewal fees, and funds collected by the Department under this subtitle, including any civil or administrative penalty or any fine imposed by a court under the provisions of this subtitle[, shall be paid into the Maryland Clean Water Fund]; AND

(2) ANY CIVIL PENALTY OR ANY FINE IMPOSED BY A COURT UNDER THE PROVISIONS OF TITLE 5, SUBTITLE 5 OF THIS ARTICLE RELATING TO WATER APPROPRIATION AND USE.

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

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

(1) THE IDENTIFICATION, MONITORING, AND REGULATION OF THE PROPER DISCHARGE OF EFFLUENT INTO THE WATERS OF THE STATE

INCLUDING PROGRAM DEVELOPMENT OF THESE ACTIVITIES AS PROVIDED BY THE STATE BUDGET; AND

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

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2007.

Approved by the Governor, May 8, 2007.