

SENATE BILL 883

M3

8lr3025

By: **Senator Stone**

Introduced and read first time: February 15, 2008

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Voluntary Cleanup Program – Enforcement and Oversight – Requirements**

3 FOR the purpose of requiring a certain description of a proposed voluntary cleanup
4 project to include project start and end dates; requiring the Department of the
5 Environment to schedule and hold a certain public informational meeting on an
6 application to participate in a certain voluntary cleanup program within a
7 certain period of time; requiring a certain notice to include the date of a certain
8 public informational meeting; requiring the Department to conduct regular
9 inspections of a certain site to ensure that the participant is implementing the
10 approved response action plan and that the response action plan is achieving
11 the cleanup criteria; requiring the Department to take any enforcement action
12 necessary to ensure the clean up of the eligible property; and generally relating
13 to requirements of the Voluntary Cleanup Program.

14 BY repealing and reenacting, with amendments,
15 Article – Environment
16 Section 7–506 and 7–512
17 Annotated Code of Maryland
18 (2007 Replacement Volume and 2007 Supplement)

19 BY adding to
20 Article – Environment
21 Section 7–510.1
22 Annotated Code of Maryland
23 (2007 Replacement Volume and 2007 Supplement)

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

26 **Article – Environment**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 7-506.

2 (a) To participate in the Program, an applicant shall:

3 (1) Submit an application, on a form provided by the Department, that
4 includes:

5 (i) Information demonstrating to the satisfaction of the
6 Department that the contamination did not result from the applicant knowingly or
7 willfully violating any law or regulation concerning controlled hazardous substances;

8 (ii) Information demonstrating the person's status as a
9 responsible person or an inculpable person;

10 (iii) Information demonstrating that the property is an eligible
11 property as defined in § 7-501 of this subtitle;

12 (iv) A detailed report with all available relevant information on
13 environmental conditions including contamination at the eligible property known to
14 the applicant at the time of the application;

15 (v) An environmental site assessment that includes:

16 1. Established Phase I site assessment standards and
17 follows principles established by the American Society for Testing and Materials and
18 that demonstrates to the satisfaction of the Department that the assessment has been
19 conducted in accordance with those standards and principles; and

20 2. A Phase II site assessment unless the Department
21 concludes, after review of the Phase I site assessment, that there is sufficient
22 information to determine that there are no recognized environmental conditions, as
23 defined by the American Society for Testing and Materials; and

24 (vi) A description, in summary form, of a proposed voluntary
25 cleanup project that includes the proposed cleanup criteria under § 7-508 of this
26 [subtitle and] **SUBTITLE**, the proposed future use of the property, if appropriate, **AND**
27 **PROJECT START AND END DATES**; and

28 (2) Pay to the Department:

29 (i) An initial application fee of \$6,000 which the Department
30 may reduce on a demonstration of financial hardship in accordance with subsection (b)
31 of this section;

32 (ii) An application fee of \$2,000 for each application submitted
33 subsequent to the initial application for the same property; and

1 (iii) An application fee of \$2,000 for each application submitted
2 subsequent to the initial application for contiguous or adjacent properties that are part
3 of the same planned unit development or a similar development plan.

4 (b) The Department shall adopt regulations to establish criteria for
5 determining whether an applicant has demonstrated financial hardship.

6 (c) (1) The applicant may delay submitting the Phase II site assessment
7 until after the application and applicable fees are submitted.

8 (2) If an applicant delays filing a Phase II site assessment, all related
9 deadlines for public notice and action by the Department shall be extended and
10 conform with the date the Phase II site assessment is submitted and the application is
11 complete.

12 (d) (1) On submission of the [application,] **APPLICATION:**

13 (I) [the] **THE** Department shall publish a notice of the
14 application on its website **AND SCHEDULE A PUBLIC INFORMATIONAL MEETING ON**
15 **THE APPLICATION; AND**

16 (II) [and the] **THE** applicant shall post notice at the property
17 that is the subject of the application.

18 (2) The notices required under paragraph (1) of this subsection shall
19 include:

20 (i) The name and address of the applicant and the property;

21 (ii) The name, address, and telephone number of the office
22 within the Department from which information about the application may be obtained;
23 [and]

24 (iii) The time period during which the Department will receive
25 and consider written comments from the public; **AND**

26 (IV) **THE DATE OF THE PUBLIC HEARING REQUIRED UNDER**
27 **PARAGRAPH (3) OF THIS SUBSECTION.**

28 (3) **THE DEPARTMENT SHALL HOLD A PUBLIC INFORMATIONAL**
29 **MEETING ON THE PROPOSED RESPONSE ACTION PLAN AT THE PARTICIPANT'S**
30 **EXPENSE WITHIN 20 DAYS AFTER THE PUBLICATION OF THE NOTICE.**

31 (e) (1) (i) The Department shall notify the applicant in writing, within
32 45 days after receipt of the application, whether:

1 1. The application, including the applicant's status as a
2 responsible person or an inculpable person, is approved;

3 2. The application is denied or incomplete; or

4 3. The Department has no further requirements related
5 to the investigation of controlled hazardous substances at the eligible property as
6 provided in paragraph (3) of this subsection.

7 (ii) If the Department denies the application or determines that
8 the application is incomplete, the Department shall provide to the applicant the
9 reasons for its decision in writing.

10 (2) (i) An applicant may resubmit an application within 60 days
11 after receipt of notice of the Department's decision to deny the initial application or
12 determination that the application is incomplete.

13 (ii) The Department shall approve or deny a resubmitted or
14 revised application within 30 days after receipt.

15 (3) If the Department notifies the applicant that the Department has
16 no further requirements at the eligible property in accordance with paragraph (1)(i)3
17 of this subsection, the Department shall include a statement that this notice does not:

18 (i) Subject to the provisions of § 7-505 of this subtitle, prevent
19 the Department from taking action against any person to prevent or abate an
20 imminent and substantial endangerment to the public health or the environment at
21 the eligible property;

22 (ii) Remain in effect if the notice of no further requirements is
23 obtained through fraud or a material misrepresentation;

24 (iii) Affect the authority of the Department to take any action
25 against a responsible person concerning previously undiscovered contamination at an
26 eligible property after a no further requirements notice has been issued by the
27 Department; or

28 (iv) Affect the authority of the Department to require additional
29 cleanup for future activities at the site that result in contamination by hazardous
30 substances.

31 (4) The no further requirements notice shall provide the same liability
32 protections as provided in § 7-513(b)(3) and (4) of this subtitle.

33 (5) The participant and any successors in interest in a property
34 subject to a no further requirements notice shall continue to be protected from liability
35 in the event of any violation of the conditions placed on the use of the property,

1 provided that the participant and any successors in interest did not cause or
2 contribute to the violation.

3 (f) (1) The Department shall deny an application if:

4 (i) The applicant is not an eligible applicant;

5 (ii) The property is not an eligible property; or

6 (iii) The property was initially contaminated by a release of
7 hazardous substances after October 1, 1997 unless:

8 1. The property is acquired by an inculpable person; or

9 2. The contamination was caused by an act of God.

10 (2) For the purposes of paragraph (1)(iii) of this subsection, any
11 property identified in the Comprehensive Environmental Response, Compensation,
12 and Liability Information System in accordance with the federal act as of October 1,
13 1997 is presumed to have been initially contaminated on or before October 1, 1997.

14 (g) (1) Within 30 days after receiving notification of approval of an
15 application, a participant shall inform the Department in writing whether the
16 participant intends to proceed or withdraw from the Program.

17 (2) If a participant does not notify the Department of the participant's
18 intent to proceed or withdraw in accordance with paragraph (1) of this subsection, the
19 application will be deemed to be withdrawn.

20 (h) A determination by the Department that it has no further requirements
21 may be transferred to a subsequent purchaser of the property provided that the
22 subsequent purchaser did not cause or contribute to the contamination.

23 (i) (1) If a determination by the Department that it has no further
24 requirements is conditioned on certain uses of the property or on the maintenance of
25 certain conditions, the participant shall record the determination in the land records
26 of the local jurisdiction within 30 days after receiving the determination.

27 (2) If the determination by the Department that it has no further
28 requirements is conditioned on certain uses of the property or on the maintenance of
29 certain conditions and the participant fails to record the determination in the land
30 records in accordance with paragraph (1) of this subsection, the determination shall be
31 void.

32 (3) (i) If a determination by the Department that it has no further
33 requirements at a property is conditioned on certain uses of the property or on the
34 maintenance of certain conditions, the participant shall send a copy of the

1 determination to a one-call system as defined in § 12-101 of the Public Utility
2 Companies Article.

3 (ii) Any obligation for the participant to send the information
4 required under subparagraph (i) of this paragraph does not negate the obligation of an
5 owner as defined in § 12-101(f) of the Public Utility Companies Article to become a
6 member of the one-call system under Title 12 of the Public Utility Companies Article.

7 (j) Subject to the provisions of § 7-516(a) of this subtitle and approval by the
8 Department, if an owner of an eligible property that has limited permissible uses
9 wants to change the use of the eligible property, the owner is responsible for the cost of
10 cleaning up the property to the appropriate standard.

11 **7-510.1.**

12 **THE DEPARTMENT SHALL CONDUCT REGULAR INSPECTIONS OF A SITE TO**
13 **ENSURE THAT:**

14 **(1) THE PARTICIPANT IS IMPLEMENTING THE APPROVED**
15 **RESPONSE ACTION PLAN TO THE SATISFACTION OF THE DEPARTMENT; AND**

16 **(2) THE RESPONSE ACTION PLAN IS ACHIEVING THE CLEANUP**
17 **CRITERIA.**

18 **7-512.**

19 (a) Except as provided in subsections (b) and (c) of this section, a participant
20 may withdraw from the Program at the time of a pending application or response
21 action plan, or after receiving a certificate of completion, and may not be obligated to
22 complete an application or a response action plan if the participant:

23 (1) Provides 10 days written notice of the anticipated withdrawal to
24 the Department;

25 (2) Stabilizes and secures the eligible property to the satisfaction of
26 the Department to ensure protection of the public health and the environment; and

27 (3) Forfeits any application fees.

28 (b) (1) Except as provided in paragraph (2) of this subsection, an
29 inculpable person who withdraws from the Program may not be required by the
30 Department to clean up the eligible property.

31 (2) If an inculpable person withdraws from the Program, the
32 inculpable person shall be liable for new contamination or the exacerbation of existing
33 contamination at the eligible property as provided in § 7-505 of this subtitle.

1 (c) If a responsible person withdraws from the Program, the Department
2 [may] **SHALL** take any applicable enforcement action authorized under this title
3 **NECESSARY TO ENSURE THE CLEANUP OF THE ELIGIBLE PROPERTY.**

4 (d) If a participant fails to meet the schedule for implementation and
5 completion of the response action plan that is set forth in the plan, the Department
6 may:

7 (1) Reach an agreement with the participant to revise the schedule of
8 completion in the response action plan; or

9 (2) If an agreement cannot be reached under paragraph (1) of this
10 subsection, withdraw approval of the response action plan.

11 (e) (1) Except as provided in paragraph (2) of this subsection, if the
12 Department withdraws approval of an inculpable person's response action plan under
13 subsection (d)(2) of this section, the inculpable person may not be required by the
14 Department to complete the response action plan.

15 (2) If the Department withdraws approval of an inculpable person's
16 response action plan under subsection (d)(2) of this section, the inculpable person:

17 (i) Shall stabilize and secure the eligible property to ensure
18 protection of the public health and the environment; and

19 (ii) Shall be liable for new contamination or the exacerbation of
20 existing contamination at the eligible property as provided in § 7-505 of this subtitle.

21 (3) If the Department withdraws approval of a responsible person's
22 response action plan:

23 (i) The responsible person shall stabilize and secure the eligible
24 property to ensure protection of the public health and the environment; and

25 (ii) The Department may take any applicable enforcement
26 action authorized under this title.

27 (f) If an application, a response action plan, or certificate of completion is
28 withdrawn under this section:

29 (1) Any letter or certificate of completion issued to an applicant or a
30 participant under this subtitle shall be void; and

31 (2) Any bond or other security shall be maintained for a period not to
32 exceed 16 months from the date the response action plan is withdrawn.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2008.