

# SENATE BILL 883

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8lr3025

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By: **Senator Stone**

Introduced and read first time: February 15, 2008

Assigned to: Rules

Re-referred to: Education, Health, and Environmental Affairs, February 22, 2008

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 20, 2008

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## CHAPTER \_\_\_\_\_

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

15 BY repealing and reenacting, with amendments,

16 Article – Environment

17 Section ~~7-506 and 7-512~~ 7-506(a)

18 Annotated Code of Maryland

19 (2007 Replacement Volume and 2007 Supplement)

20 BY adding to

21 Article – Environment

22 Section 7-510.1

23 Annotated Code of Maryland

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#### EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (2007 Replacement Volume and 2007 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 7–506.

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

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

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

12 (ii) Information demonstrating the person’s status as a  
13 responsible person or an inculpable person;

14 (iii) Information demonstrating that the property is an eligible  
15 property as defined in § 7–501 of this subtitle;

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

19 (v) An environmental site assessment that includes:

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

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

28 (vi) A description, in summary form, of a proposed voluntary  
29 cleanup project that includes the proposed cleanup criteria under § 7–508 of this  
30 [subtitle and] **SUBTITLE**, the proposed future use of the property, if appropriate, **AND**  
31 **ANTICIPATED PROJECT START AND END DATES**; and

32 (2) Pay to the Department:

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

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

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

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

11 ~~(e) (1) The applicant may delay submitting the Phase II site assessment~~  
12 ~~until after the application and applicable fees are submitted.~~

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

17 ~~(d) (1) On submission of the [application,]~~ **APPLICATION;**

18 ~~(I) [the] THE Department shall publish a notice of the~~  
19 ~~application on its website AND SCHEDULE A PUBLIC INFORMATIONAL MEETING ON~~  
20 ~~THE APPLICATION; AND~~

21 ~~(II) [and the] THE applicant shall post notice at the property~~  
22 ~~that is the subject of the application.~~

23 ~~(2) The notices required under paragraph (1) of this subsection shall~~  
24 ~~include:~~

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

26 ~~(ii) The name, address, and telephone number of the office~~  
27 ~~within the Department from which information about the application may be obtained;~~  
28 ~~[and]~~

29 ~~(iii) The time period during which the Department will receive~~  
30 ~~and consider written comments from the public; AND~~

31 ~~(IV) THE DATE OF THE PUBLIC HEARING REQUIRED UNDER~~  
32 ~~PARAGRAPH (3) OF THIS SUBSECTION.~~

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

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

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

~~2. The application is denied or incomplete; or~~

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

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

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

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

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

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

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

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

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

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

3           ~~(5) The participant and any successors in interest in a property~~  
4 ~~subject to a no further requirements notice shall continue to be protected from liability~~  
5 ~~in the event of any violation of the conditions placed on the use of the property,~~  
6 ~~provided that the participant and any successors in interest did not cause or~~  
7 ~~contribute to the violation.~~

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

9                   ~~(i) The applicant is not an eligible applicant;~~

10                   ~~(ii) The property is not an eligible property; or~~

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

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

14                           ~~2. The contamination was caused by an act of God.~~

15           ~~(2) For the purposes of paragraph (1)(iii) of this subsection, any~~  
16 ~~property identified in the Comprehensive Environmental Response, Compensation,~~  
17 ~~and Liability Information System in accordance with the federal act as of October 1,~~  
18 ~~1997 is presumed to have been initially contaminated on or before October 1, 1997.~~

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

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

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

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

32           ~~(2) If the determination by the Department that it has no further~~  
33 ~~requirements is conditioned on certain uses of the property or on the maintenance of~~  
34 ~~certain conditions and the participant fails to record the determination in the land~~

1 ~~records in accordance with paragraph (1) of this subsection, the determination shall be~~  
 2 ~~void.~~

3 ~~(3) (i) If a determination by the Department that it has no further~~  
 4 ~~requirements at a property is conditioned on certain uses of the property or on the~~  
 5 ~~maintenance of certain conditions, the participant shall send a copy of the~~  
 6 ~~determination to a one call system as defined in § 12-101 of the Public Utility~~  
 7 ~~Companies Article.~~

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

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

## 16 **7-510.1.**

17 **THE DEPARTMENT SHALL CONDUCT REGULAR INSPECTIONS OF A SITE TO**  
 18 **ENSURE THAT:**

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

21 **(2) THE RESPONSE ACTION PLAN PARTICIPANT IS ACHIEVING**  
 22 **THE CLEANUP CRITERIA SELECTED UNDER § 7-508(B) OF THIS SUBTITLE AND**  
 23 **SPECIFIED IN THE RESPONSE ACTION PLAN.**

## 24 ~~7-512.~~

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

29 ~~(1) Provides 10 days written notice of the anticipated withdrawal to~~  
 30 ~~the Department;~~

31 ~~(2) Stabilizes and secures the eligible property to the satisfaction of~~  
 32 ~~the Department to ensure protection of the public health and the environment; and~~

33 ~~(3) Forfeits any application fees.~~

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

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

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

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

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

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

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

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

23           ~~(i) Shall stabilize and secure the eligible property to ensure~~  
24 ~~protection of the public health and the environment; and~~

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

27           ~~(3) If the Department withdraws approval of a responsible person's~~  
28 ~~response action plan:~~

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

31           ~~(ii) The Department may take any applicable enforcement~~  
32 ~~action authorized under this title.~~

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

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

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

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.