

CHAPTER 665

(House Bill 259)

AN ACT concerning

Environmental Health Monitoring and Testing – Reimbursement of Costs

FOR the purpose of ~~authorizing the Department of the Environment to factor in costs incurred by a county in conducting certain environmental health monitoring or testing related to a certain violation when assessing a certain penalty; requiring the Department to reimburse a county from the Maryland Clean Water Fund for certain costs incurred by the county in conducting environmental health monitoring or testing related to a certain violation; limiting reimbursement to certain circumstances and certain amounts; requiring the Department to use the Maryland Clean Water Fund for the reimbursement of counties for certain costs incurred in conducting certain environmental health monitoring or testing; requiring certain persons to reimburse a county for certain costs that the county incurs in conducting environmental health monitoring or testing for a certain purpose *subject to a certain exception*; prohibiting the county from recovering the reimbursable costs under certain circumstances; authorizing the county to recover the reimbursable costs in a civil action; authorizing the Department of the Environment to recover the reimbursable costs on behalf of the county under certain circumstances; authorizing the Department to adopt certain regulations; requiring a person who discharges a pollutant into the waters of the State in violation of certain provisions of law to reimburse the Department for certain costs incurred by the Department in conducting environmental health monitoring or testing for a certain purpose; authorizing the Department to recover the reimbursable costs in a civil action; and generally relating to reimbursement of counties and the Department of the Environment for costs of conducting environmental health monitoring or testing.~~

BY adding to

Article – Environment
Section 1–304 and 9–342.2
Annotated Code of Maryland
(2007 Replacement Volume and 2008 Supplement)

~~BY repealing and reenacting, with amendments,~~

~~Article – Environment
Section 9–320
Annotated Code of Maryland
(2007 Replacement Volume and 2008 Supplement)~~

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

Article - Environment

1-304.

~~(A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE DEPARTMENT MAY FACTOR IN ANY COSTS INCURRED BY A COUNTY IN CONDUCTING ENVIRONMENTAL HEALTH MONITORING OR TESTING RELATED TO A VIOLATION OF THIS ARTICLE WHEN ASSESSING A PENALTY AGAINST A PERSON FOR A VIOLATION OF THIS ARTICLE THAT OCCURS ON A PROPERTY THAT IS ISSUED A LICENSE OR PERMIT UNDER THIS ARTICLE.~~

~~(B) (1) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AND SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE DEPARTMENT SHALL REIMBURSE A COUNTY FROM THE MARYLAND CLEAN WATER FUND FOR COSTS INCURRED BY THE COUNTY IN CONDUCTING ENVIRONMENTAL HEALTH MONITORING OR TESTING RELATED TO A VIOLATION OF THIS ARTICLE THAT OCCURS ON A PROPERTY THAT IS ISSUED A LICENSE OR PERMIT UNDER THIS ARTICLE.~~

~~(2) A REIMBURSEMENT UNDER THIS SECTION:~~

~~(I) IS REQUIRED ONLY IF THE DEPARTMENT COLLECTS A FINE AS A RESULT OF THE VIOLATION; AND~~

~~(II) MAY NOT EXCEED THE AMOUNT OF THE FINE.~~

~~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; 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:~~

~~(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; AND~~

~~(3) **THE REIMBURSEMENT OF COUNTIES FOR COSTS INCURRED BY THE COUNTIES IN CONDUCTING ENVIRONMENTAL HEALTH MONITORING OR TESTING RELATED TO A VIOLATION OF THIS ARTICLE THAT OCCURS ON A PROPERTY THAT IS ISSUED A LICENSE OR PERMIT UNDER THIS ARTICLE.**~~

~~(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.~~

~~(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.~~

(A) (1) ~~THE~~ EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE FOLLOWING PERSONS SHALL REIMBURSE A COUNTY FOR THE REASONABLE COSTS INCURRED BY THE COUNTY IN CONDUCTING ENVIRONMENTAL HEALTH MONITORING OR TESTING, INCLUDING THE COST OF COLLECTING AND ANALYZING SOIL SAMPLES, SURFACE WATER SAMPLES, OR GROUNDWATER SAMPLES FOR THE PURPOSE OF ASSESSING THE EFFECT ON PUBLIC HEALTH AND THE ENVIRONMENT OF THE PERSON'S RELEASE OR THREAT OF RELEASE OF A HAZARDOUS SUBSTANCE, DISCHARGE OF OIL, OR DISCHARGE OF A POLLUTANT IN THE WATERS OF THE STATE:

~~(1)~~ (I) A RESPONSIBLE PERSON AS DEFINED UNDER TITLE 7, SUBTITLE 2 OF THIS ARTICLE;

~~(2)~~ (II) A PERSON RESPONSIBLE FOR THE DISCHARGE AS DEFINED UNDER TITLE 4, SUBTITLE 4 OF THIS ARTICLE; OR

~~(3)~~ (III) A PERSON RESPONSIBLE FOR THE DISCHARGE OF A POLLUTANT INTO THE WATERS OF THE STATE IN VIOLATION OF § 9-322 OR § 9-323 OF THIS ARTICLE.

(2) A PERSON MAY NOT BE REQUIRED TO REIMBURSE A COUNTY FOR COSTS UNDER PARAGRAPH (1) OF THIS SUBSECTION IF THE PERSON HAS ENTERED INTO A CONSENT ORDER WITH THE DEPARTMENT.

(B) COSTS INCURRED BY A COUNTY FOR ENVIRONMENTAL HEALTH MONITORING OR TESTING UNDER ACTIVITIES THAT ARE DUPLICATIVE OF STATE ACTIVITIES, OR ARE NOT REASONABLY NECESSARY TO PROTECT HUMAN HEALTH OR THE ENVIRONMENT, ARE NOT ELIGIBLE FOR REIMBURSEMENT UNDER SUBSECTION (A) OF THIS SECTION.

(C) A COUNTY MAY RECOVER COSTS THAT ARE REIMBURSABLE UNDER SUBSECTION (A) OF THIS SECTION IN A CIVIL ACTION.

(D) IF A COUNTY DETERMINES THAT IT WOULD BE MORE EFFICIENT TO COMBINE THE COUNTY'S CLAIM FOR REIMBURSEMENT UNDER SUBSECTION (A) OF THIS SECTION WITH A PENDING CLAIM BY THE DEPARTMENT, THE DEPARTMENT SHALL, ON REQUEST BY THE COUNTY, SEEK TO RECOVER REIMBURSABLE COSTS ON BEHALF OF THE COUNTY.

(E) THE DEPARTMENT MAY ADOPT REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SECTION.

9-342.2.

(A) A PERSON WHO DISCHARGES A POLLUTANT INTO THE WATERS OF THE STATE IN VIOLATION OF § 9-322 OR § 9-323 OF THIS SUBTITLE SHALL REIMBURSE THE DEPARTMENT FOR THE REASONABLE COSTS INCURRED BY THE DEPARTMENT IN CONDUCTING ENVIRONMENTAL HEALTH MONITORING OR TESTING, INCLUDING THE COST OF COLLECTING AND ANALYZING SOIL SAMPLES, SURFACE WATER SAMPLES, OR GROUNDWATER SAMPLES FOR THE PURPOSE OF ASSESSING THE EFFECT ON PUBLIC HEALTH AND THE ENVIRONMENT OF THE PERSON'S DISCHARGE.

(B) THE DEPARTMENT MAY RECOVER COSTS THAT ARE REIMBURSABLE UNDER SUBSECTION (A) OF THIS SECTION IN A CIVIL ACTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2009.

Approved by the Governor, May 19, 2009.