

## **APPENDIX K**

### **Environment Article, Annotated Code of Maryland**

#### **Sections Relevant to the State's Hazardous Waste Regulatory Program**



**MICHIE'S™**  
**ANNOTATED CODE**  
**OF THE PUBLIC GENERAL LAWS**  
**OF MARYLAND**

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**Environment**

ENACTED BY CHAPTER 240, ACTS 1982  
AND CHAPTER 306, ACTS 1987

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Prepared by the Editorial Staff of the Publishers  
*Consultants*

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decisions posted as of October 3, 2013)*

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# Annotated Code of Maryland

## ENVIRONMENT.

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*Subtitle 1. Definitions.***§ 1-101. Definitions.**

(a) *In general.* — In this article the following words have the meanings indicated.

(b) *Contested case hearing.* — “Contested case hearing” means an adjudicatory hearing in accordance with the contested case procedures of Subtitle 2 of the Maryland Administrative Procedure Act.

(c) *County.* — “County” means a county of this State and, unless expressly provided otherwise, Baltimore City.

(d) *Department.* — “Department” means the Department of the Environment.

(e) *Health officer.* — “Health officer” means the Baltimore City Commissioner of Health or the health officer of a county.

(f) *Includes; including.* — “Includes” or “including” means includes or including by way of illustration and not by way of limitation.

(g) *Informational meeting.* — “Informational meeting” means a meeting, open to the public, at which the applicant or the Department presents information concerning a permit application. An informational meeting is not a contested case hearing nor an agency hearing under § 10-202(d) of the State Government Article.

(h) *Person.* — “Person” means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind and any partnership, firm, association, corporation, or other entity.

(i) *Physician.* — “Physician” means an individual who is authorized under the Maryland Medical Practice Act to practice medicine in this State.

(j) *Public hearing.* — “Public hearing” means a meeting, open to the public, at which the Department receives oral and written comments concerning a tentative determination. A public hearing is not a contested case hearing nor an agency hearing under § 10-202(d) of the State Government Article.

(k) *Secretary.* — “Secretary” means the Secretary of the Environment.

(l) *State.* — “State” means:

- (1) A state, possession, or territory of the United States;
- (2) The District of Columbia; or
- (3) The Commonwealth of Puerto Rico.

(m) *Substantively.* — “Substantively” means in a manner substantially affecting the rights, duties, or obligations of a member of the public. (1982, ch. 240, § 2; 1984, chs. 748, 779; 1985, ch. 305; 1987, ch. 306, § 3; 1993, ch. 59, § 2; 1994, ch. 3, § 1; 2003, chs. 445, 446, 460; 2009, ch. 650, § 2; ch. 651, § 2; 2010, ch. 211.)

Cited in *Md. Bd. of Pub. Works v. K. Hovnanian's Four Seasons at Kent Island, LLC*, 425 Md. 482, 42 A.3d 40 (2012).



shall perform these duties subject to the control and supervision of the Attorney General. After the Attorney General designates the counsel to the Department, the Attorney General may not reassign the counsel without consulting the Secretary. (1987, ch. 306, § 3.)

*Subtitle 5. Confidential Research Records.*

**§ 1-501. "Confidential record" defined.**

In this subtitle, "confidential record" means any record, report, statement, note, or other information that:

- (1) Is assembled or obtained for research or study by the Secretary; and
- (2) Names or otherwise identifies any person. (1987, ch. 306, § 3.)

**§ 1-502. Custody, control, use, and disclosure of confidential records.**

(a) *In general.* — (1) Each confidential record shall remain in the custody and control of the Secretary or an agent or employee of the Secretary, if the Secretary assembled or obtained the confidential record.

(2) The confidential record may be used only for the research and study for which it was assembled or obtained.

(3) A person may not disclose any confidential record to any person who is not engaged in the research or study project.

(b) *Applicability of section.* — This section does not apply to or restrict the use or publication of any statistics, information, or other material that summarizes or refers to confidential records in the aggregate, without disclosing the identity of any person who is the subject of the confidential record. (1987, ch. 306, § 3.)

**§ 1-503. Penalty for violation of subtitle.**

A person who violates any provision of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$1,000. (1987, ch. 306, § 3.)

**University of Baltimore Law Forum.** — Recent Developments: Medical Waste Assoc. v. Maryland Waste Coalition: Maryland Environmental Standing Act Does Not Apply to an Organization that Seeks Judicial Review of an Administrative Procedure, 23.2 U. Balt. L.F. 28 (1992).  
For an article, "Protecting Maryland's Environment: A Holistic Solution," see 40 U. Balt. L. F. 205 (2010).

*Subtitle 6. Public Participation in the Permitting Process.*

**§ 1-601. Scope of subtitle.**

(a) *In general.* — Permits issued by the Department under the following sections shall be issued in accordance with this subtitle:

- (1) Air quality control permits to construct subject to § 2-404 of this article;

(2) Permits to install, materially alter, or materially extend landfill systems, incinerators for public use, or rubble landfills subject to § 9-209 of this article;

(3) Permits to discharge pollutants to waters of the State issued pursuant to § 9-323 of this article;

(4) Permits to install, materially alter, or materially extend a structure used for storage or distribution of any type of sewage sludge issued, renewed, or amended pursuant to § 9-234.1 or § 9-238 of this article;

(5) Permits to own, operate, establish, or maintain a controlled hazardous substance facility issued pursuant to § 7-232 of this article;

(6) Permits to own, operate, or maintain a hazardous material facility issued pursuant to § 7-103 of this article; and

(7) Permits to own, operate, establish, or maintain a low-level nuclear waste facility issued pursuant to § 7-233 of this article.

(b) *Contested case hearing may not occur.* — For permits listed under subsection (a) of this section, a contested case hearing may not occur.

(c) *Judicial review.* — A final determination by the Department on the issuance, denial, renewal, or revision of any permit listed under subsection (a) of this section is subject to judicial review at the request of any person that:

(1) Meets the threshold standing requirements under federal law; and

(2) (i) Is the applicant; or

(ii) Participated in a public participation process through the submission of written or oral comments, unless an opportunity for public participation was not provided.

(d) *Record on review; consideration of objections.* — (1) Judicial review shall be on the administrative record before the Department and limited to objections raised during the public comment period, unless the petitioner demonstrates that:

(i) The objections were not reasonably ascertainable during the comment period; or

(ii) Grounds for the objections arose after the comment period.

(2) The court shall remand the matter to the Department for consideration of objections under paragraph (1) of this subsection.

(e) *Venue.* — (1) Unless otherwise required by statute, a petition for judicial review by a person that meets the requirements of subsection (c) of this section shall be filed with the circuit court for the county where the application for the permit states that the proposed activity will occur.

(2) The decision of the circuit court may be appealed to the Court of Special Appeals.

(f) *Consolidation of meetings or hearings; location.* — (1) When this article requires more than one public informational meeting or public hearing, the Department may consolidate some or all of the meetings or hearings for the proposed facility with similar meetings or hearings.

(2) The Department shall hold public informational meetings and public hearings at a location in the political subdivision and in close proximity to the location where the individual permit applies. (1993, ch. 59, § 2; 1999, ch. 519; 2009, ch. 650, § 2; ch. 651, § 2; 2012, ch. 358; 2013, ch. 43, § 5.)

**Effect of amendments.** — Chapter 358, Acts 2012, enacted May 2, 2012, and effective from date of enactment, added the (e)(1) designation and added (e)(2).

**Editor's note.** — Section 2, ch. 358, Acts 2012, provides that "this Act shall be construed to apply retroactively to all appeals of final permit decisions subject to Title 1, Subtitle 6 of the Environment Article."

Pursuant to § 5, ch. 43, Acts 2013, commas were added following "alter" and "use" in (a)(2), "alter" in (a)(4), and "establish" in (a)(5) and (a)(7).

**University of Baltimore Law Forum.** — For an article, "Protecting Maryland's Environment: A Holistic Solution," see 40 U. Balt. L. F. 205 (2010).

**Entitlement to contested case hearing.** — Members of the public were entitled to an opportunity for a contested case hearing as part of the process under which the Department of the Environment considered an application for a permit to expand a Prince George's County landfill. 78 Op. Att'y Gen. 174 (November 8, 1993).

## § 1-602. Notice.

(a) *Newspaper; mailings; posting; costs.* — Wherever this subtitle requires the Department to publish notice:

(1) Notice shall be published at least once a week for 2 consecutive weeks in a daily or weekly newspaper of general circulation in the geographical area in which the proposed facility is located;

(2) The Department may require notice of an informational meeting or a public hearing by mail to each person requesting the meeting or hearing or to their authorized representatives;

(3) The Department may provide additional notice by requiring the notice to be posted at the proposed facility or at public facilities in the geographical area of the proposed facility; and

(4) The applicant shall bear all costs incurred by the Department in providing notice.

(b) *Electronic posting.* — (1) In addition to the requirements set forth in subsection (a) of this section and notwithstanding any other requirements in this article, wherever this subtitle requires the Department to publish notice of an application for a permit, the Department shall:

(i) Electronically post the notice of an application for a permit on the Department's Web site; and

(ii) Provide a method for interested persons to electronically request any additional notices related to an application for a permit.

(2) The notice required under paragraph (1) of this subsection shall include:

(i) The name and address of the applicant;

(ii) A description of the location and the nature of the activity for which the permit has been sought;

(iii) A reference to the applicable statutes or regulations governing the application process;

(iv) The time and place of any scheduled informational meeting or public hearing, or a description of where this information can be found;

(v) A description of where further information about the permit application can be found; and

(vi) Any other information that the Department determines is necessary.

(c) *Responsibility for publishing.* — The Department may require the applicant to publish and send the notices required in subsection (a) of this section. (1993, ch. 59, § 2; 2009, chs. 192, 193; 2013, ch. 43, § 5; chs. 500, 501.)

**Effect of amendments.** — Chapters 500 and 501, Acts 2013, effective October 1, 2013, made identical changes. Each reenacted the section without change.

**Editor's note.** — Pursuant to § 5, ch. 43, Acts 2013, "Web site" was substituted for "web-site" in (b)(1)(i).

**University of Baltimore Law Forum.** — For an article, "Protecting Maryland's Environment: A Holistic Solution," see 40 U. Balt. L. F. 205 (2010).

### § 1-603. Applications for departmental permits.

(a) *Publication.* — The Department shall cause to be published notice of applications for permits.

(b) *Availability for inspection and copying.* — The Department shall assure that applications for permits shall be available to the public for inspection and copying.

(c) *Informational meeting.* — (1) Upon written request made within 10 working days after publication of a notice of application, or in its own discretion, the Department shall provide an opportunity for an informational meeting with respect to the application.

(2) The informational meeting may be canceled if all persons who made timely written requests withdraw the requests prior to the meeting.

(3) Unless the notice of application contained a notice of the informational meeting, the Department shall publish notice of the informational meeting.

(d) *Presentation of information concerning application.* — (1) The Department may require the applicant to attend an informational meeting or public hearing and present information concerning the application.

(2) If the applicant fails to appear and present information after a request from the Department, the application may be denied. (1993, ch. 59, § 2; 2009, ch. 650, § 2; ch. 651, § 2.)

### § 1-604. Permit determinations.

(a) *Tentative determination.* — (1) After the Department receives the permit application, the Department shall prepare a tentative determination, which shall include the following information:

- (i) A proposal to issue or to not issue a permit;
- (ii) Any proposed permit limitations and conditions;
- (iii) A brief explanation of the Department's tentative determination;

and

- (iv) Any proposed schedule of compliance.

(2) If the tentative determination is to issue a permit, the tentative determination shall include a draft permit, which shall be available to the public for inspection and copying.

(3) The Department shall publish a notice of the tentative determination. This publication shall allow 30 calendar days for public comment before the issuance of the final determination.

(4) (i) The Department shall schedule a public hearing on the tentative determination when a written request for a public hearing is made within 20 days of publication of a notice of the tentative determination.

(ii) The public hearing may be canceled if all persons who made timely written requests withdraw the requests prior to the meeting. In addition, the Department may schedule a public hearing on a tentative determination at its discretion.

(b) *Final determination.* — (1) The Department shall prepare a final determination if:

(i) Written comments adverse to the tentative determination were received by the Department within 30 days after the publication of the notice of tentative determination pursuant to this section;

(ii) Comments adverse to the tentative determination were received in writing at, or within 5 days after, the public hearing conducted pursuant to this section;

(iii) Comments adverse to the tentative determination were received orally at the public hearing conducted pursuant to this section and the Department prepared a transcript of the comments made at the hearing; or

(iv) The final determination is substantively different from the tentative determination and all persons aggrieved by the final determination have not waived, in writing, their right to request a contested case hearing.

(2) If the Department is required to prepare a final determination under this section, the Department shall publish a notice of the final determination.

(3) If the Department is not required to prepare a final determination under this section, the tentative determination is a final decision by the Department when the permit is issued or denied. (1993, ch. 59, § 2.)

### § 1-605. Petition for judicial review.

(a) *In general.* — A person petitioning for judicial review in accordance with § 1-601 of this subtitle or § 5-204 or § 16-204 of this article shall file the petition in accordance with the Maryland Rules.

(b) *Time for filing.* — A party submitting a petition for judicial review shall file the petition within 30 days after publication of a notice of final determination.

(c) *Applicability of Maryland Rules.* — An action for judicial review brought in accordance with § 1-601 of this subtitle or § 5-204 or § 16-204 of this article shall be conducted in accordance with the Maryland Rules.

(d) *Permissible changes.* — A party to the judicial review action may not challenge a facility's compliance with zoning and land use requirements or conformity with a county plan issued under Title 9, Subtitle 5 of this article. However, nothing in this subtitle shall prevent a party from challenging whether the Department has complied with §§ 2-404(b)(1)(ii) and 9-210(a)(3) of this article, when applicable, nor does this subtitle prevent a party from contesting the compliance of the facility with zoning and land use or county plan requirements in any proceeding brought in accordance with and under any applicable local laws. (1993, ch. 59, § 2; 1994, ch. 3, § 1; 1997, ch. 14, § 1;

1998, ch. 21, § 1; 2002, ch. 564, § 2; 2009, ch. 60, § 5; ch. 650, § 2; ch. 651, § 2.)

**Editor's note.** — Section 3, ch. 564, Acts 2002, provides that "this Act shall be construed to apply prospectively and shall be applied to and interpreted to affect all requests for con-

tested case hearings under Title 1, Subtitle 6 of the Environment Article made on or after July 1, 2002."

### § 1-606. Judicial review.

(a) *Definitions.* — (1) In this section the following words have the meanings indicated.

(2) "Board" means the Board of Public Works.

(3) "License" means a license under § 16-202 of this article.

(b) *Scope.* — This section applies to:

(1) A permit listed under § 1-601(a) of this subtitle;

(2) A permit listed under § 5-204(f) of this article; or

(3) A license issued under § 16-202 of this article.

(c) *Record on review.* — Any judicial review of a determination provided for in accordance with § 1-601 of this subtitle or § 5-204 or § 16-204 of this article shall be limited to a record compiled by the Department or Board, consisting of:

(1) Any permit or license application and any data submitted to the Department or Board in support of the application;

(2) Any draft permit or license issued by the Department or Board;

(3) Any notice of intent from the Department or Board to deny the application or to terminate the permit or license;

(4) A statement or fact sheet explaining the basis for the determination by the Department or Board;

(5) All documents referenced in the statement or fact sheet explaining the basis for the determination by the Department or Board;

(6) All documents, except documents for which disclosure is precluded by law or that are subject to privilege, contained in the supporting file for any draft permit or license;

(7) All comments submitted to the Department or Board during the public comment period, including comments made on the draft application;

(8) Any tape or transcript of any public hearings held on the application; and

(9) Any response to any comments submitted to the Department or Board.

(d) *Draft permit or license or tentative determination.* — (1) When a draft permit or license or tentative determination is issued, the Department or Board shall:

(i) Make available for inspection and copying no later than the date the permit, draft license, or tentative determination is issued:

1. All permit or license applications;

2. Documents submitted with a permit or license application;

3. All documents relied on in making the tentative determination;

and

4. A privilege log that identifies all documents not produced for inspection in accordance with subsection (c)(6) of this section and states the reasons for withholding each document; and



(ii) Extend the public comment period by 60 days on request by a person.

(2) A request submitted to the Department or Board under paragraph (1)(ii) of this subsection shall be:

- (i) Submitted in writing; and
- (ii) Made before the expiration of the original comment period.

(3) A public comment period may not be extended more than once under paragraph (1)(ii) of this subsection. (2009, ch. 650, § 2; ch. 651, § 2.)

**Editor's note.** — Section 2, chs. 650 and 651, Acts 2009, effective January 1, 2010, repealed former § 1-606 and enacted a new section in lieu thereof.

**§ 1-607. License and permit review times; assistance and information; notice of completed application or reasons for incompleteness; refund requests.**

(a) *License and permit review times; assistance and information.* — (1) This subsection applies to applications for all licenses and permits issued, or required to be reissued, by the Department.

(2) On or before January 1, 1998, and each year thereafter, in consultation with interested parties, the Department shall publish expected review times for each licensing and permitting program.

(3) On or before January 1, 1998, for each licensing and permitting program, the Department shall offer assistance and information to persons which may include:

- (i) Written lists of information and materials required with applications;
- (ii) Written lists of common application questions and mistakes;
- (iii) Preapplication meetings with prospective applicants to address technical issues;
- (iv) Written receipts to the applicant upon submission of an application; and
- (v) The status of active applications.

(b) *Notice of completed application or reasons for incompleteness; refund requests.* — (1) This subsection applies to permits which are:

- (i) Identified in § 1-601(a) of this subtitle; or
- (ii) Issued under Title 5, Subtitle 9 of this article.

(2) The Department shall provide to the applicant:

- (i) A notice of completed application; or
- (ii) If the Department determines that the application is incomplete, the reasons, in writing, that the application was determined to be incomplete.

(3) (i) For permits identified in § 1-601(a) of this subtitle, the notice of completed application shall include an estimated time for issuance of the tentative determination if requested by the applicant.

(ii) For permits issued under Title 5, Subtitle 9 of this article, the notice of completed application shall include an estimate of the date by which the Department will grant, deny, or condition the permit.

(4) A permit applicant may apply to the Department for a refund of all or a portion of the application fee if:

(i) 1. For permits identified in § 1-601(a) of this subtitle, the Department fails to issue a tentative determination regarding the application within the estimated time provided in the notice of completed application; or

2. For permits issued under Title 5, Subtitle 9 of this article, the Department fails to grant, deny, or condition a permit within the time periods provided under § 5-906 of this article;

(ii) The applicant demonstrates that the delay was caused solely by the Department and was not the result of procedures or requirements outside the control of the Department, including:

1. Reviews by federal, local, or other State government agencies;
2. Procedures for public participation; or
3. The failure of the applicant to submit information to the Department in a timely manner; and

(iii) 1. For permits identified in § 1-601(a) of this subtitle, the applicant applies to the Department within 60 days after the estimated time for issuance of a tentative determination; or

2. For permits issued under Title 5, Subtitle 9 of this article, the applicant applies to the Department within 60 days after the date by which the Department was to have granted, denied, or conditioned a permit under the time periods provided under § 5-906 of this article.

(5) The Secretary, or the Secretary's designee, shall review the refund request and determine if a refund of any amount is appropriate.

(6) If the Secretary denies the refund request, the Department shall provide the applicant a written explanation of the denial and of the procedures and requirements outside the control of the Department on which the denial was based within 60 days. (1997, ch. 639; 2000, ch. 61, § 1; 2008, ch. 142; 2009, ch. 60.)

*Subtitle 7. Environmental Justice.*

**§ 1-701. Environmental Justice Commission.**

(a) *"Environmental justice" defined.* — In this section, "environmental justice" means equal protection from environmental and public health hazards for all people regardless of race, income, culture, and social status.

(b) *Created.* — There is a Commission on Environmental Justice and Sustainable Communities.

(c) *Members.* — (1) The Commission consists of the following 20 members:

(i) One member of the Senate of Maryland, appointed by the President of the Senate;

(ii) One member of the House of Delegates, appointed by the Speaker of the House;

(iii) The Secretary, or the Secretary's designee;

(iv) The Secretary of Health and Mental Hygiene, or the Secretary's designee;

- (iii) Assuring the security of the facility after closing;
- (2) Design, construct, and operate the facility in the manner approved by the Department;
- (3) Establish emergency procedures and safeguards to prevent accidents and reasonably foreseeable harm to human beings or the environment;
- (4) Report periodically on the hazardous material that is received and transferred by the facility, including, as applicable, volume, and chemical, physical, biological, and radioactive nature; and
- (5) To the extent reasonably practicable, restore the facility site to its original condition if use as a facility is terminated. (1992, ch. 647.)

### § 7-112. Enforcement.

- (a) *In general.* — The Secretary may enforce the provisions of this subtitle in the same manner as the provisions of Subtitle 2 of this title.
- (b) *Penalties.* — For a violation of this subtitle a person shall be subject to the penalties listed in Subtitle 2 of this title. (1992, ch. 647.)

### § 7-113. Disposition of fees and penalties.

All fees and penalties collected by the Department under this subtitle shall be deposited in the State Hazardous Substance Control Fund established under § 7-218 of this title. (1992, ch. 647.)

### § 7-114. Information submitted to Department.

A person may not knowingly or recklessly submit false information to the Department under this subtitle. (1992, ch. 647.)

#### *Subtitle 2. Controlled Hazardous Substances.*

##### Part I. Definitions; Policy; Scope; Construction.

### § 7-201. Definitions.

- (a) *In general.* — In this subtitle the following words have the meanings indicated.
- (b) *Controlled hazardous substance.* — “Controlled hazardous substance” means:
  - (1) Any hazardous substance that the Department identifies as a controlled hazardous substance under this subtitle; or
  - (2) Low-level nuclear waste.
- (c) *Controlled hazardous substance facility.* — (1) “Controlled hazardous substance facility” means a disposal structure, system, or geographic area, designated by the Department for treatment, storage related to treatment or disposal, or disposal of controlled hazardous substances.
  - (2) “Controlled hazardous substance facility” includes:
    - (i) A low-level nuclear waste facility; and



(ii) An operating landfill that, under § 7-232(b) of this subtitle, has a permit equivalent to a facility permit.

(d) *Controlled hazardous substance hauler*. — “Controlled hazardous substance hauler” means a person who has a hauler certificate issued by the Department to transport controlled hazardous substances.

(e) *Controlled hazardous substance vehicle*. — “Controlled hazardous substance vehicle” means a vehicle that the Department has certified as suitable for use to transport controlled hazardous substances.

(f) *Controlled hazardous substance vehicle driver*. — “Controlled hazardous substance vehicle driver” means a person who operates a controlled hazardous substance vehicle.

(g) *Council*. — “Council” means the Controlled Hazardous Substances Advisory Council.

(h) *Discharge*. — “Discharge” means:

(1) The addition, introduction, leaking, spilling, or emitting of a pollutant into the waters of this State; or

(2) The placing of a pollutant in a location where the pollutant is likely to pollute.

(i) *Facility*. — “Facility permit” means a permit issued by the Department to establish, operate, or maintain a controlled hazardous substance facility.

(j) *Federal act*. — “Federal act” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended through January 1, 2003.

(k) *Hauler certificate*. — “Hauler certificate” means a certificate issued by the Department that permits a person to be a controlled hazardous substance hauler.

(l) *Hazardous substance*. — “Hazardous substance” means any substance:

(1) Defined as a hazardous substance under § 101(14) of the federal act; or

(2) Identified as a controlled hazardous substance by the Department in the Code of Maryland Regulations.

(m) *Incineration*. — “Incineration” means thermal treatment or decomposition of a waste heat.

(n) *Lender*. — “Lender” means a person who is:

(1) A holder of a mortgage or deed of trust on a site or a security interest in property located on a site; or

(2) A holder of a mortgage or deed of trust who acquires title through foreclosure or deed in lieu of foreclosure.

(o) *Low-level nuclear waste*. — “Low-level nuclear waste” means a substance that:

(1) Contains or is contaminated with radioactive material emitting primarily beta or gamma radiation; and

(2) Is neither transuranic waste nor high-level nuclear waste.

(p) *Low-level nuclear waste facility*. — “Low-level nuclear waste facility” means a controlled hazardous substance facility for low-level nuclear waste.

(q) *Low-level nuclear waste facility permit*. — “Low-level nuclear waste facility permit” means a facility permit issued by the Department for a low-level nuclear waste facility.

(r) *Person*. — “Person” includes the federal government, this State, any county, municipal corporation, or other political subdivision of this State, and any of their units.

(s) *Release*. — “Release” means the addition, introduction, leaking, spilling, emitting, discharging, escaping, or leaching of any hazardous substance into the environment.

(t) *Responsible person*. — (1) “Responsible person” means any person who:

(i) Is the owner or operator of a vehicle or a site containing a hazardous substance;

(ii) At the time of disposal of any hazardous substance, was the owner or operator of any site at which the hazardous substance was disposed;

(iii) By contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of a hazardous substance owned or possessed by such person, by any other party or entity, at any site owned or operated by another party or entity and containing such hazardous substances; or

(iv) Accepts or accepted any hazardous substance for transport to a disposal or treatment facility or any sites selected by the person.

(2) “Responsible person” does not include:

(i) A person who can establish by a preponderance of the evidence that at the time the person acquired an interest in a site containing a hazardous substance the person did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in, or at the site; however, any person claiming an exemption from liability under this subparagraph must establish that the person had no reason to know, in accordance with § 101(35)(B) of the federal act, and that the person satisfied the requirements of § 107(b)(3)(a) of the federal act;

(ii) A person who acquired a property containing a hazardous substance by inheritance or bequest at the death of the transferor;

(iii) A person who, without participating in the day-to-day management of a site containing a hazardous substance, holds indicia of ownership in the site or in property located on the site primarily to protect a valid and enforceable lien unless that person directly causes the discharge of a hazardous substance on or from the site;

(iv) A holder of a mortgage or deed of trust on a site containing a hazardous substance or a holder of a security interest in property located on the site who does not participate in the day-to-day management of the site unless that holder directly causes the discharge of a hazardous substance on or from the site;

(v) A fiduciary who has legal title to a site containing a hazardous substance or to property located on the site containing a hazardous substance for purpose of administering an estate or trust of which the site or property located on the site is a part unless the fiduciary:

1. Participates in the day-to-day management of the site or property;

or

2. Directly causes the discharge of a hazardous substance on or from the site;

(vi) A holder of a mortgage or deed of trust who acquires title to a site containing a hazardous substance through foreclosure or deed in lieu of foreclosure who:

1. Does not participate in the day-to-day management of the site; and
2. Does not directly cause the discharge of a hazardous substance on or from the site;

(vii) Except in the case of gross negligence or willful misconduct, an owner or operator who is:

1. A state, county, or municipal government;
2. Any other political subdivision of the State; or
3. Any unit of a state, county, or municipal government or any other political subdivision;

(viii) A holder of a mortgage or deed of trust who acquires title to an eligible property as defined in Subtitle 5 of this title subject to a written agreement in accordance with Subtitle 5 of this title provided that the holder complies with the requirements, prohibitions, and conditions of the agreement;

(ix) Subject to paragraph (3) of this subsection, a lender who extends credit for the performance of removal or remedial actions conducted in accordance with requirements imposed under this title who:

1. Has not caused or contributed to a release of hazardous substances; and
2. Previous to extending that credit, is not a responsible person at the site;

(x) Subject to paragraph (3) of this subsection, a lender who takes action to protect or preserve a mortgage or deed of trust on a site or a security interest in property located on a site at which a release or threatened release of a hazardous substance has occurred, by stabilizing, containing, removing, or preventing the release of a hazardous substance in a manner that does not cause or contribute to a release or significantly increase the threat of release of a hazardous substance at the site if:

1. The lender provides advance written notice of its actions to the Department or in the event of an emergency in which action is required within 2 hours, provides notice by telephone;
2. The lender, previous to taking the action, is not a responsible person for the site; and
3. The action taken does not violate a provision of this article; or

(xi) A person who receives a response action plan approval letter as an inculpable person or the person's successor in title who is also an inculpable person under Subtitle 5 of this title and who does not cause or contribute to new contamination or exacerbate existing contamination as provided in §§ 7-505 and 7-514 of this title.

(3) A lender taking action to protect or preserve a mortgage or deed of trust or security interest in a property located on a site, who causes or contributes to a release of a hazardous substance shall be liable solely for costs incurred as a result of the release which the lender caused or to which the lender contributed unless the lender was a responsible person prior to taking the action.

(4) (i) Paragraph (2)(i) of this subsection does not affect the liability of a previous owner or previous operator of a site containing a hazardous substance if the previous owner or previous operator is a responsible person under paragraph (1)(ii) of this subsection.

(ii) Notwithstanding paragraph (2)(i) of this subsection, a person shall be treated as a responsible person if the person:

1. Obtained actual knowledge of the release or threatened release of a hazardous substance at a site when the person owned the real property; and
2. Transferred ownership of the property after June 30, 1991 without disclosing this knowledge to the transferee.

(iii) Nothing in paragraph (2)(i) of this subsection shall affect the liability under this subtitle of a person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance at a site which is the subject of the action relating to the site if at the time of the act or omission the person knew or had reason to know that the act or omission would cause or contribute to the release or threatened release of a hazardous substance.

(5) Notwithstanding paragraph (2)(ii) of this subsection, a person shall be treated as a responsible person if the person:

- (i) Knew or had reason to know of the release or threatened release of a hazardous substance at the site; and
- (ii) Transferred ownership of the property after June 30, 1991 without disclosing this knowledge to the transferee.

(6) (i) For purposes of paragraph (2)(iii), (iv), (v), and (vi) of this subsection, "management" means directing or controlling operations, production or treatment of a hazardous substance, storage or disposal of a hazardous substance, or remediation of a hazardous substance release.

(ii) "Management" does not include rendering advice on financial matters, rendering financial assistance, or actions taken to protect or secure the site or property located on the site if the advice, assistance, or actions do not involve the treatment, storage, or disposal of a hazardous substance or remediation of a hazardous substance release.

(7) A person who owns real property is not considered an owner or operator of a vehicle or site containing a hazardous substance under paragraph (1)(i) of this subsection solely by reason of contamination from a contiguous or otherwise similarly situated real property if:

- (i) The person does not own the contiguous or otherwise similarly situated real property;
- (ii) The person's real property is or may be contaminated by a release or threatened release of a hazardous substance from the contiguous to or otherwise similarly situated real property; and
- (iii) The person meets the requirements of Section 107(q) of the federal act and any regulations adopted by the Department implementing or interpreting the requirements of that section.

(u) *Solid waste.* — (1) "Solid waste" means any:

- (i) Abandoned material or substance which is disposed of, burned, or incinerated or accumulated, stored, or treated before or in lieu of being disposed of, burned, or incinerated;



(ii) Material or substance which is recycled or accumulated, stored, or treated before recycling; or

(iii) Material or substance which is considered inherently waste-like.

(2) "Solid waste" does not include:

(i) Domestic sewage that passes through a sewer system to a publicly owned treatment work for treatment;

(ii) Industrial wastewater discharges that are point source discharges permitted under §§ 9-324 through 9-332 of this article;

(iii) Irrigation return flows;

(iv) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process; or

(v) Material that is excluded by any rule or regulation adopted under this subtitle.

(v) *Transuranic waste.* — "Transuranic waste" means waste material that is measured or assumed to contain at least 10 nanocuries or more of transuranic activity per gram of waste.

(w) *Treatment.* — "Treatment" means any method, technique, or process, including neutralization, that is designed to change the physical, chemical, or biological character or composition of any controlled hazardous substance so as to neutralize or render the waste nonhazardous, safer for transport, or reduced in volume.

(x) *Vehicle certificate.* — "Vehicle certificate" means a certificate issued by the Department for a vehicle to be a controlled hazardous substance vehicle. (NR § 8-1413.2; An. Code 1957, art. 43, § 689B; 1982, ch. 240, § 2; ch. 439; 1983, ch. 583, §§ 1, 2; 1984, chs. 255, 650; ch. 743, §§ 1, 2; 1986, ch. 609; ch. 713, §§ 1, 2; 1988, ch. 6, § 1; 1989, ch. 409; 1991, ch. 154; 1992, ch. 538; 1997, chs. 1, 2; 2003, ch. 466; 2004, ch. 25; 2006, ch. 44, § 6; 2012, ch. 176.)

**Effect of amendments.** — Chapter 176, Acts 2012, effective July 1, 2012, substituted "who operates" for "whom the Department has certified to operate" in (f); and deleted (i) and redesignated accordingly.

**Editor's note.** — Section 2, ch. 609, Acts 1986, provides that "this Act may not be regarded as relieving any governmental units of any legal responsibilities under any other applicable State or federal law."

Section 2, ch. 538, Acts 1992, provides that "a presently existing obligation or contract right may not be impaired in any way by this Act."

The references to § 101(14) of the federal act, in (1)(1), and §§ 101(35)(B) of the federal act and 107(b)(3)(a) of the federal act, in (t)(2)(i), refer to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and are codified at 42 U.S.C.S. 9601(14),

42 U.S.C.S. 9601(35)(B), and 42 U.S.C.S. 9607(b)(3)(a), respectively.

**Maryland Law Review.** — For article, "Survey of Developments in Maryland Law, 1984-85," see 45 Md. L. Rev. 794 (1986).

**University of Baltimore Law Review.** — For comment concerning federal, State and local regulation of hazardous and nonhazardous waste management, see 17 U. Balt. L. Rev. 114 (1987).

**Items persisting in environment classified as "hazardous".** — Items which persist in environment are properly classified as "hazardous substances" rather than "controlled hazardous substances." *Thomas v. State, Dep't of Health & Mental Hygiene*, 62 Md. App. 166, 488 A.2d 983 (1985).

**Cited in** *Bausch & Lomb, Inc. v. Utica Mut. Ins. Co.*, 330 Md. 758, 625 A.2d 1021 (1993).

## § 7-202. Scope of subtitle.

This subtitle does not preempt any other authority conferred by statute on the Department of the Environment or any other department or agency of this

§ 7-203

State. (NR § 8-1413.2; 1982, ch. 240, § 2; 1987, ch. 306, § 16; 1988, ch. 6, § 11.)

§ 7-203. **Legislative policy.**

The purpose of this subtitle is to provide additional and cumulative remedies to prevent, abate, and control pollution of the waters of this State, as "waters of this State" is defined in Title 9, Subtitle 1 of this article. (1982, ch. 240, § 2.)

§ 7-204. **Construction.**

This subtitle does not take away the right of any person, as riparian owner or otherwise, in equity, at common law, or under statutory law to suppress a nuisance or abate pollution. (1982, ch. 240, § 2.)

§ 7-205. **Disposal.**

(a) *Applicability of section to Hawkins Point Landfill.* — This section does not apply to Hawkins Point Controlled Hazardous Substance Landfill until July 1, 1985.

(b) *Generators.* — A generator may not dispose of a controlled hazardous substance unless the generator demonstrates to the satisfaction of the Department that:

(1) Recovery possibilities have been considered; and

(2) The controlled hazardous substance cannot be reasonably treated further to reduce the volume of or the hazard that the controlled hazardous substance poses to the environment. (1984, ch. 699.)

§ 7-205.1. **Cement kilns; controlled hazardous substances task force.**

Abrogated.

Part II. Authority of Secretary; Powers and Duties of Department;  
Rules and Regulations.

§ 7-206. **Secretary to supervise and control hazardous substances.**

(a) *In general.* — The Secretary shall have supervision and control of hazardous substances governed by this subtitle.

(b) *Separate consideration of low-level nuclear waste.* — In exercising responsibilities under this subtitle, the Secretary shall consider low-level nuclear waste separately. (NR § 8-1413.2; 1982, ch. 240, § 2.)

§ 7-207. **General powers and duties of Department.**

(a) *Powers.* — In addition to the powers set forth elsewhere in this article, the Department may:

(1) Accept and administer loans and grants from the federal government and other sources, public or private, to carry out any of its functions;

(2) Issue, modify, or revoke orders and permits that prohibit the discharge of pollutants into the waters of this State or that require construction, modification, extension, or alteration of new or existing disposal systems or treatment works or parts of them;

(3) Through the Secretary or a hearing officer designated in writing by the Secretary, hold hearings, issue hearing notices and subpoenas that require the attendance of witnesses and production of evidence, administer oaths, and take necessary testimony;

(4) Require prior submission of plans, specifications, and other information that is relative to, and inspect construction of, disposal systems or treatment works or any part of them in connection with issuing permits or approvals required by this subtitle;

(5) Issue, modify, or revoke orders and permits to install, modify, or operate disposal systems or any parts of them;

(6) Require proper maintenance and operation of disposal systems; or

(7) Exercise every incidental power necessary to carry out the purposes of this subtitle.

(b) *Duties.* — In addition to the duties set forth elsewhere in this article, the Department shall:

(1) Administer and enforce this subtitle and the rules, regulations, and orders adopted or issued under this subtitle; and

(2) Advise, consult, and cooperate with other units of this State, the federal government, other State and interstate agencies, affected groups, political subdivisions, and industries to carry out the provisions of this subtitle. (1982, ch. 240, § 2; 1983, ch. 583, § 2.)

*Cited in Bausch & Lomb, Inc. v. Utica Mut. Ins. Co.*, 330 Md. 758, 625 A.2d 1021 (1993).

### § 7-208. Rules and regulations.

(a) *In general.* — With the advice of the Council, the Department shall adopt rules and regulations to carry out the provisions of this subtitle.

(b) *Review by Secretary of Agriculture.* — Before adopting any rule or regulation that relates to substances governed by the Federal Insecticide, Fungicide, and Rodenticide Act, the Department shall submit the rule or regulation to the State Secretary of Agriculture for review and approval.

(c) *Required considerations.* — In adopting any rule or regulation, the Department shall consider among other things:

(1) Existing physical conditions;

(2) The character of an affected specific area;

(3) Zoning;

(4) The nature of any existing receiving body of water; and

(5) The technical feasibility and economic reasonableness of measuring or reducing a particular type of water pollution.

(d) *Scope of rule or regulation.* — A rule or regulation under this subtitle may:

(1) Apply to pollutant and hazardous substance sources located outside this State that cause, contribute to, or threaten environmental damage in this State;

(2) Make special provisions for alert and abatement standards and procedures for occurrences or emergencies of pollution or on other short term conditions that are an acute danger to public health or to the environment;

(3) Specify different provisions as circumstances require for different:

(i) Pollutant, solid waste, and hazardous substance sources; and

(ii) Geographical areas; or

(4) If an exemption is consistent with federal law or federal regulation, exempt persons from any requirements of this subtitle.

(e) *Specific rules and regulations.* — The Department by rule or regulation, shall:

(1) Identify all hazardous substances that are controlled hazardous substances governed by this subtitle;

(2) Set standards and describe tests to identify lethal, toxic, and other injurious effects of controlled hazardous substances;

(3) Set minimum design standards for controlled hazardous substance facilities;

(4) Establish types and quantities of controlled hazardous substances that may be disposed of;

(5) Establish procedures for monitoring the generation, transportation, treatment, storage, or disposal of controlled hazardous substances;

(6) Set minimum requirements for the operation, maintenance, monitoring, reporting, and supervision of any controlled hazardous substance facility;

(7) Set requirements for receiving and applying for facility permits;

(8) Set standards for determining bond values and fees under this subtitle;

(9) Set health and safety standards that relate specifically to the site of a controlled hazardous substance facility after consideration of, among other things, the following:

(i) Geology;

(ii) Seismology;

(iii) Hydrology;

(iv) Demography; and

(v) Climatology; and

(10) By June 30, 1991, adopt by regulation a revised State Hazardous Substance Response Plan that establishes standards and procedures for actions taken under §§ 7-220 and 7-222 of this subtitle.

(f) *Revised State Hazardous Substance Response Plan.* — The revised State Hazardous Substance Response Plan shall at a minimum include:

(1) Methods for discovering and investigating sites at which hazardous substances have been disposed of or otherwise come to be located;

(2) Methods for evaluating any releases or threats of releases which pose substantial danger to the public health or the environment;

(3) Factors to be considered in determining the type of response action which will be implemented, including the cost of implementing, maintaining, and operating the remedy; and

(4) Methods and criteria for determining the appropriate extent of removal, remedy, and other measures authorized by this title.

(g) *Low-level nuclear waste rules and regulations.* — In addition to the other provisions of this section, in its rules and regulations that govern low-level nuclear waste, the Department shall:

(1) Provide for the classification of low-level nuclear wastes by radionuclide content and level of radioactivity for different storage or disposal procedures;

(2) Provide for consultation with any affected political subdivision; and

(3) Set standards and procedures, including notice and hearing requirements, for revocation or suspension of a facility permit, a hauler certificate, or a vehicle certificate. (NR § 8-1413.2; 1982, ch. 240, § 2; ch. 390; 1986, ch. 713, § 2; 1988, ch. 115; 1991, ch. 154; 1993, ch. 5, § 1.)

### § 7-209. Requirements for generators.

(a) *Notice to Secretary.* — (1) By July 1, 1985, any generator generating greater than 100 kilograms of controlled hazardous substances during 1 calendar month shall notify the Secretary of:

(i) The identity of the controlled hazardous substance;

(ii) The location of generation; and

(iii) The method of treatment and disposal of controlled hazardous substances.

(2) Generators that have previously provided the United States Environmental Protection Agency (EPA) or the State with the information under this subsection are not required to file this notification.

(b) *Shipment of hazardous substances off premises; manifest.* — (1) On or after July 1, 1985, any controlled hazardous substance that is part of a total quantity generated by a generator producing greater than 100 kilograms during 1 calendar month and that is shipped off the premises on which the controlled hazardous substance is generated shall be accompanied by a copy of a controlled hazardous substance manifest form signed by the generator.

(2) This form shall contain the following information:

(i) A manifest document number;

(ii) The generator's name, mailing address, telephone number, and EPA identification number;

(iii) The name and EPA identification number of each transporter;

(iv) The name, address, and EPA identification number of the facility designated to receive the waste;

(v) The United States Department of Transportation description of the waste, as required by 49 C.F.R. 172.201, 172.202 and 172.203;

(vi) The quantity of waste being transported;

(vii) The number and type of containers; and

(viii) Any other information considered necessary by the Department.

(c) *Applicability of certain rules and regulations.* — Any generator generating greater than 100 kilograms of controlled hazardous substances during 1 calendar month is subject to all applicable rules and regulations adopted under

§ 7-208(e) of this subtitle with the exceptions that the Secretary considers necessary. (1984, ch. 743, § 2; 2008, ch. 36, § 6.)

**§ 7-210.**

Reserved.

Part III. Controlled Hazardous Substance Advisory Council.

**§ 7-211. Council established; meetings.**

(a) *Council established.* — There is a Controlled Hazardous Substance Advisory Council in the Department.

(b) *Meetings.* — The Controlled Hazardous Substance Advisory Council shall meet only at the request of the Secretary. (NR § 8-1413.2; 1982, ch. 240, § 2; 2010, ch. 220.)

**§ 7-212. Membership.**

(a) *Composition.* — (1) The Council consists of 13 members.

(2) Of the 13 members, 10 shall be appointed by the Governor with the advice of the Secretary as follows:

(i) 1 shall be the pesticides coordinator or the pesticides coordinator's designee for the Cooperative Extension Service of the University of Maryland;

(ii) 1 shall be from the State Department of Agriculture;

(iii) 1 shall be from the Department of Labor, Licensing, and Regulation, Division of Labor and Industry;

(iv) 1 shall be from the Department of Natural Resources;

(v) 1 shall be the State Fire Marshal or the State Fire Marshal's designee;

(vi) 1 shall be from an industry that generates hazardous substances;

(vii) 1 shall be from the hazardous substance disposal and management industry;

(viii) 1 shall be from an industry that generates low-level nuclear waste;

(ix) 1 shall be from the low-level nuclear waste management industry; and

(x) 1 shall be an individual who is engaged in the business of resource recovery.

(3) Of the 13 members, 3 shall be public members appointed by the Governor with the advice and consent of the Senate.

(b) *Qualifications of public members.* — A public member may not be an individual who otherwise qualifies for membership under subsection (a)(2) of this section.

(c) *Tenure; vacancies.* — (1) The term of a member is 10 years.

(2) Except for an ex officio member, the terms of members are staggered as required by the terms provided for members of the Council on July 1, 1982.

(3) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies. (NR § 8-1413.2; 1982, ch. 240, § 2; 1995, ch. 120, § 19; 2010, ch. 220.)

### § 7-213. Officers.

From among the public members, the Council shall elect a chairperson. (NR § 8-1413.2; 1982, ch. 240, § 2; 2010, ch. 220.)

### § 7-214. Compensation.

A member of the Council:

- (1) May not receive compensation as a member of the Council; but
- (2) Is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget. (NR § 8-1413.2; 1982, ch. 240, § 2; 2010, ch. 220; 2011, ch. 65.)

**Effect of amendments.** — Chapter 65, Acts date of enactment, added “as a member of the 2011, enacted April 12, 2011, and effective from Council” in (1).

### § 7-215. Duties of Council.

The Council shall advise and assist the Department in:

- (1) Identifying any hazardous substance as a controlled hazardous substance;
- (2) Developing rules and regulations for the management and disposal of controlled hazardous substances; and
- (3) Developing separate rules and regulations that relate to management and disposal of low-level nuclear wastes. (NR § 8-1413.2; 1982, ch. 240, § 2; 2010, ch. 220.)

### §§ 7-216, 7-217.

Reserved.

## Part IV. State Hazardous Substance Control Fund.

### § 7-218. Fund established.

There is a State Hazardous Substance Control Fund. (NR § 8-1413.2; 1982, ch. 240, § 2; 1984, ch. 743, § 2.)

### § 7-219. Financing of Fund.

All application and permit fees, renewal fees, transporting vehicle certification fees, and all other 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 State Hazardous Substance Control Fund. (NR § 8-1413.2; 1982, ch. 240, § 2; 1983, ch. 583, § 2; 1984, ch. 743, § 2.)

**§ 7-220. Use of Fund.**

(a) *Authorized activities.* — The Department shall use the State Hazardous Substance Control Fund for activities by the Department and by any local or State agency, with the approval of the Department that are related to identifying, monitoring, and controlling the proper disposal, storage, transportation, or treatment of hazardous substances, including program development for these activities.

(b) *Accounts.* — There shall be a separate account within the State Hazardous Substance Control Fund of moneys made available under loan authorizations or by funds appropriated in the State budget for:

(1) All costs incurred by the State for removal, restoration, or remedial action, including the restoration of natural resources where feasible, and site maintenance and monitoring in response to a release or threatened release of any hazardous substance, to the extent the costs are not reimbursable under the federal act;

(2) All cost incurred by the State in monitoring and assessing the effect on public health and natural resources of any site at which a hazardous substance is or may be present, including the costs of any subsurface borings and any analysis of samples taken, the costs of investigations conducted for the purpose of defining necessary remedial action, and the costs of litigation expenses incurred in obtaining reimbursement for expenditures;

(3) The State share mandated under § 104(c)(3) of the federal act;

(4) All cost incurred in providing public information concerning a site that does or may contain a hazardous substance; and

(5) Costs resulting from releases or threatened releases of hazardous substances whether or not the hazardous substance was placed at the site, released, or threatened to be released before July 1, 1985. (NR § 8-1413.2; 1982, ch. 240, § 2; 1983, ch. 96; 1984, ch. 743, § 2; 1985, ch. 203; 1991, ch. 154.)

**Editor's note.** — The reference to § 104(c)(3) of the federal act, in (b)(3), refers to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and is codified at 42 U.S.C.S. 9604(c)(3).

**Cited in** *Bausch & Lomb, Inc. v. Utica Mut. Ins. Co.*, 330 Md. 758, 625 A.2d 1021 (1993).

**§ 7-221. Reimbursements.**

(a) *In general.* — All expenditures from the State Hazardous Substance Control Fund made by the Department under § 7-220(b) of this subtitle in response to a release or a threatened release of a hazardous substance at a particular site shall be reimbursed to the Department for the State Hazardous Substance Control Fund by the responsible person for the release or the threatened release.

(b) *Action for costs and interests.* — (1) In addition to any other legal action authorized by this subtitle, the Attorney General may bring an action to recover costs and interest from any responsible person who fails to make a reimbursement as required under subsection (a) of this section.



(2) (i) In an action under paragraph (1) of this subsection to recover costs, the State shall make a good faith effort to identify and seek recovery against all responsible persons.

(ii) The State shall seek recovery on an apportionment basis in accordance with a person's contribution to the situation or problem, when there is a reasonable basis for determining the contribution of a responsible person.

(iii) Reimbursement in any other case shall not be apportioned.

(c) *Recovery of costs.* — The Department may recover costs for the Fund resulting from releases or threatened releases of hazardous substances whether or not the hazardous substance was placed at the site, released, or threatened to be released before July 1, 1985.

(d) *Applicability of Uniform Contribution Among Tort-Feasors Act.* — Except as otherwise provided in subsection (b) of this section, a person who is liable for a release or threatened release of a hazardous substance under this subtitle is subject to the Uniform Contribution Among Tort-Feasors Act under Title 3, Subtitle 14 of the Courts Article, including a right of contribution, as if that person had caused an injury in tort.

(e) *Joinder of other responsible persons.* — A responsible person against whom a legal action is brought under subsection (b) of this section for a release or threatened release of a hazardous substance may move to join any other responsible person under the Maryland Rules.

(f) *Duty to provide information or documents regarding hazardous substances.* — Upon request by the Department, and after reasonable notice, a person shall provide to the Department any existing information or documents relating to:

(1) The identification, nature, and quantity of any hazardous substance which is or has been generated, treated, stored, or disposed of at a site or facility, or transported to a site or facility; and

(2) The nature or extent of a release of a hazardous substance at or from a site or facility. (NR § 8-1413.2; 1982, ch. 240, § 2; 1984, ch. 743, § 2; 1985, chs. 10, 203; 1986, ch. 5, § 1; ch. 609; 1987, ch. 11, § 1; 1989, ch. 409; 1991, ch. 154; 1997, ch. 31, § 10; 1998, ch. 21, § 1.)

**Editor's note.** — Section 2, ch. 609, Acts 1986, provides that "this Act may not be regarded as relieving any governmental units of any legal responsibilities under any other applicable State or federal law."

**Cited in** *Bausch & Lomb, Inc. v. Utica Mut. Ins. Co.*, 330 Md. 758, 625 A.2d 1021 (1993).

## § 7-222. Release of hazardous substances into environment.

(a) *Removal or remedial actions — In general.* — If any hazardous substance is released or there is a substantial threat of a release into the environment, unless the Secretary determines that a removal and remedial action will be done properly and in a timely manner by the owner or operator of the facility from which the release or threat of release emanates, or by any other responsible party, the Secretary may:

(1) Enter any site or facility to carry out the provisions of this section; and

(2) (i) Act consistent with the State Hazardous Substance Response Plan to remove or arrange for the removal of and provide for remedial action relating to the hazardous substance at any time, including its removal from any contaminated natural resources;

(ii) When the Secretary determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment, take any other response measure consistent with the State Hazardous Substance Response Plan necessary to protect the public health or welfare or the environment; or

(iii) In addition to any other action authorized under this subtitle, when the Secretary determines that there may be an imminent and substantial endangerment to the public health or welfare or to the environment, issue orders to or seek injunctive relief against responsible persons as may be necessary to protect the public health and welfare or the environment.

(b) *Removal or remedial actions — Duplicate actions under federal act.* — The Department in any removal or remedial action under this subtitle may not duplicate removal or remedial actions taken under the federal act.

(c) *Denial of access.* — If entry to enable the Secretary to carry out the provisions of this section is denied, the Secretary may:

(1) Obtain a search warrant pursuant to § 7-256.1 of this subtitle; or

(2) Obtain an injunction to enter.

(d) *Reportable threshold of release; regulations.* — (1) On or after October 1, 2009, a responsible person that possesses a sample result or other environmental assessment that indicates the release of a hazardous substance into the environment, at or above a threshold established in accordance with paragraph (2) of this subsection, shall report the finding immediately to the Department.

(2) In determining a reportable threshold of a release of a hazardous substance, the Department shall consider:

(i) The quantity of a hazardous substance;

(ii) The associated risk factors of a hazardous substance; and

(iii) Any other factor determined necessary by the Department.

(3) On or before June 30, 2009, the Department shall adopt regulations to implement the provisions of this subsection. (1984, ch. 743, § 2; 1989, ch. 409; 1990, ch. 6, § 2; 1991, ch. 154; 2008, ch. 106.)

Cited in *Bausch & Lomb, Inc. v. Utica Mut. Ins. Co.*, 330 Md. 758, 625 A.2d 1021 (1993).

### § 7-223. Listing of hazardous waste sites.

(a) *Publication of master list.* — By July 1, 1984, the Department shall publish a master list of all sites at which the Department has reason to believe or has been notified that controlled hazardous substances may be present.

(b) *Periodic update of master list.* — The master list shall be updated periodically.

(c) *List of proposed sites.* — (1) By July 1, 1984, and each 6 months thereafter, the Department shall publish a list of proposed sites from the

master list at which the Department intends to conduct preliminary site assessments.

(2) The list of proposed sites shall contain at least:

- (i) A general description of the site, including its geographical location;
- (ii) The basis for its listing, including the identity and quantity of controlled hazardous substances thought to be present, if known; and
- (iii) The status or findings of the preliminary site assessment.

(3) The Department shall conduct a preliminary site assessment of sites within 6 months of their initial listing. The preliminary site assessment shall provide the basis for listing a site on the disposal site registry.

(d) *Hazardous Substance Response Plan — In general.* — (1) By January 1, 1985, the Department shall publish a State Hazardous Substance Response Plan that shall set forth procedures and standards for responding to releases of hazardous substances.

(2) The State Hazardous Substance Response Plan to the greatest extent practicable shall be consistent with the National Contingency Plan established under § 105 of the federal act.

(e) *Hazardous Substance Response Plan — Listing, ranking, investigation, etc., of sites.* — (1) The State Hazardous Substance Response Plan shall set forth the criteria for the final listing of sites and for ranking sites that require site investigation, restoration, and remedial action under this article.

(2) The criteria shall take into account factors relating to public health and the environment, including:

- (i) Potential hazards to public health and the environment;
- (ii) The risk of fire or explosion;
- (iii) Toxic hazards; and
- (iv) The criteria established under § 105 (8) of the federal act.

(f) *Disposal site registry.* — (1) By January 1, 1986, the Secretary shall publish and revise at least annually a listing of hazardous waste sites, to be known as the disposal site registry.

(2) The disposal site registry shall rank sites in priority for State remedial action, and include the following information with regard to each site:

- (i) A general description of the site, including its location, acreage, adjacent waterways, and estimates of the identity and the quantity of any controlled hazardous substance present;
- (ii) An assessment by the Department of any threat to public health or natural resources posed by the site;
- (iii) The status of any removal, restoration, or other remedial actions in progress or recommended by the Department;
- (iv) An assessment of the relative priority of the need for removal, restoration, or other remedial action at each site; and
- (v) A proposed time frame for site investigation and any necessary remedial action. (1984, ch. 743, § 2; 1985, ch. 10, § 3; 1988, ch. 6, § 1; 2013, ch. 43, § 5.)

**Editor's note.** — Pursuant to § 5, ch. 43, Acts 2013, "State" was added before "Hazardous" in (d)(2).

## Part V. General Provisions.

**§ 7-224. Prohibited acts.**

(a) *In general.* — Except as otherwise permitted in Title 9, Subtitle 3 of this article, a person may not store, discharge, treat, or dispose of a controlled hazardous substance in this State except:

- (1) In a controlled hazardous substance facility; and
- (2) In accordance with this subtitle.

(b) *Low-level nuclear waste.* — A person may not treat or discharge low-level nuclear waste or establish or operate a facility for the storage or disposal of low-level nuclear waste except in accordance with this subtitle. (NR § 8-1413.2; An. Code 1957, art. 43, § 689C; 1982, ch. 240, § 2; 1985, ch. 190; 1986, ch. 609.)

**Editor's note.** — Section 2, ch. 609, Acts 1986, provides that "this Act may not be regarded as relieving any governmental units of any legal responsibilities under any other applicable State or federal law."

**§ 7-225. High-level nuclear waste facility prohibited.**

(a) *"High-level nuclear waste" defined.* — In this section, "high-level nuclear waste" means:

- (1) Spent nuclear reactor fuel;
- (2) Liquid waste that results from the operation, in a facility for reprocessing spent nuclear fuel, of a first cycle solvent extraction system or an equivalent system;
- (3) Concentrated waste from the operation, in a facility for reprocessing spent nuclear reactor fuel, of a subsequent cycle solvent extraction system or an equivalent system; or
- (4) Any solid into which any waste that is described in item (2) or (3) of this subsection has been converted.

(b) *Scope of section.* — This section does not apply to the federal government, this State, any county, municipal corporation, or other political subdivision of this State, or any of their units.

(c) *Facility prohibited; exception.* — Except as expressly otherwise required by federal law, a person may not establish or operate a high-level nuclear waste facility for the treatment, permanent storage, or disposal of any high-level nuclear waste or transuranic waste. (An. Code 1957, art. 43, §§ 689B, 689C; 1982, ch. 240, § 2.)

**§ 7-226. Controlled hazardous substance notification report.**

(a) *Scope of section.* — This section does not apply to any controlled hazardous substance that is:

- (1) Used for residential purposes; or
- (2) Regulated by the State Department of Agriculture.

(b) *Report required.* — Any person who generates, uses, treats, stores, or disposes of a controlled hazardous substance at any time after 6 months from

the date the Department issues a rule or regulation that identifies the hazardous substance to be a controlled hazardous substance shall file a report with the Department.

(c) *Form and contents of report.* — The report required by this section:

- (1) Shall be filed within a time set by the Department;
- (2) Shall be on the form provided by the Department; and
- (3) Shall include the following information about the controlled hazardous substance, if applicable:
  - (i) Name of the hazardous substance.
  - (ii) Volume.
  - (iii) Quantity.
  - (iv) Level and kind of radioactivity.
  - (v) Half-life.
  - (vi) Manner of management.
  - (vii) Manner of disposal. (NR § 8-1413.2; 1982, ch. 240, § 2.)

### § 7-227. Interstate compact on low-level nuclear waste.

(a) *Authority of Governor to negotiate.* — On behalf of this State, the Governor may negotiate an interstate compact for the storage or disposal of low-level nuclear wastes on a regional basis.

(b) *Restrictions in compact.* — Unless federal law provides otherwise, any interstate compact negotiated under this section shall include provisions that limit the storage or disposal of any low-level nuclear waste under the interstate compact to low-level nuclear wastes produced in states that are members of the interstate compact. (An. Code 1957, art. 43, § 689D; 1982, ch. 240, § 2.)

### § 7-228. Condemnation by Department.

(a) *Authorized.* — On behalf of this State and in accordance with the Real Property Article, the Department may acquire, by condemnation, any interest in land or facility if the Department determines that:

- (1) The condemnation is necessary to perform the duties imposed by this subtitle or for any other purpose authorized under this subtitle;
- (2) The land or facility poses a substantial threat to the public health; or
- (3) Any future disturbance of the land would pose a substantial threat to the natural resources of this State.

(b) *Recovery of cost.* — On behalf of this State, the Department may recover the cost of acquiring any land or facility which is acquired through condemnation under this section from any responsible person.

(c) *Disposal of land.* — (1) If an interest in land that was acquired under this section is not needed to carry out the provisions of this subtitle, the Department shall dispose of the land as soon as practicable.

(2) The Department first shall offer the interest in land to the prior owner who shall have the right to purchase the land from the Department by paying the same amount paid by the Department to that owner at the time of condemnation.

(3) If the prior owner does not exercise the rights conferred by this subsection, the Department shall dispose of the interest in land through public sale, taking into account the following factors:

(i) The full recovery of any expenditures from the State Hazardous Substance Control Fund;

(ii) To the extent practicable, the sale of the interest in land shall be at the fair market value;

(iii) The effect of the sale on surrounding land values or uses; and

(iv) The potential for public use of the interest in land by another public agency.

(4) If the State recovers the cost of acquisition from any person under subsection (b) of this section, the State shall reimburse that person out of the proceeds of the sale of the interest in land. (NR § 8-1413.2; 1982, ch. 240, § 2; 1986, ch. 609.)

**Editor's note.** — Section 2, ch. 609, Acts 1986, provides that "this Act may not be regarded as relieving any governmental units of any legal responsibilities under any other applicable State or federal law."

### § 7-229. Immunity of persons providing assistance in connection with release of hazardous substances or materials.

A person who is called on for assistance in an emergency has the immunity from civil liability or penalty described under § 5-617 of the Courts and Judicial Proceedings Article as a result of assistance or advice rendered in:

(1) Mitigating the effects of an actual or threatened discharge of a hazardous substance or material;

(2) Preventing a discharge of a hazardous substance or material;

(3) Cleaning up a discharge of a hazardous substance or material; or

(4) Attempting any of the acts in this subsection. (1984, ch. 228; 1990, ch. 546, § 3; 1997, ch. 14, § 20.)

### §§ 7-230, 7-231.

Reserved.

#### Part VI. Controlled Hazardous Substance Facility Permit.

### § 7-232. Permit required.

(a) *In general.* — A person shall hold a facility permit before the person may own, establish, operate, or maintain a controlled hazardous substance facility in this State.

(b) *Equivalent permit.* — Subject to § 7-233 of this subtitle, if the Department determines that a permit issued under Title 9, Subtitle 2 of this article is sufficient to carry out the purposes of this subtitle, that permit shall be considered a facility permit for purposes of this subtitle, subject to the fee and other provisions of this subtitle.

(c) *Separate permit required for each facility.* — A separate facility permit is required for each controlled hazardous substance facility that a person owns, establishes, maintains, or operates. (NR § 8-1413.2; 1982, ch. 240, § 2; 1984, ch. 464; 1986, ch. 396, § 1.)

**Maryland Law Review.** — For article, "Survey of Developments in Maryland Law, 1984-85," see 45 Md. L. Rev. 794 (1986).

**Financial assurances.** — The Department of Environment acted within its authority in allowing facility permit holders to maintain a corporate guarantee that satisfies the financial assurance requirements in the pertinent fed-

eral regulation. 75 Op. Att'y Gen. 213 (February 8, 1990).

**Cited in** Thomas v. State, Dep't of Health & Mental Hygiene, 62 Md. App. 166, 488 A.2d 983 (1985); Days Cove Reclamation Co. v. Queen Anne's County, 146 Md. App. 469, 807 A.2d 156 (2002), cert. denied, 372 Md. 431, 813 A.2d 258 (2002).

### § 7-233. Issuance of low-level nuclear waste facility permit.

The Department may not issue a low-level nuclear waste facility permit to a person unless:

(1) The person meets the requirements of this subtitle for a low-level nuclear waste facility permit; and

(2) (i) The low-level nuclear waste facility permit conforms to any interstate low-level nuclear waste disposal compact of which this State is a member;

(ii) The Governor issues an executive order under § 7-234 of this subtitle; or

(iii) The Department determines under standards set by its rules or regulations that:

1. The half-life or specific activity of the low-level nuclear waste is such that within a period of not more than 6 months, the low-level nuclear waste will not require special handling, special subsurface disposal, or special storage; and

2. The low-level nuclear waste can be disposed of in the same manner as other hazardous substances or handled as conventional waste. (NR § 8-1413.4; An. Code 1957, art. 43, § 689C; 1982, ch. 240, § 2.)

### § 7-234. Executive order.

(a) *Power of Governor.* — The Governor may issue an executive order that allows the Department to issue a low-level nuclear waste facility permit if the Governor finds that there is a substantial likelihood that the absence of a low-level nuclear waste facility, inside or outside this State, will:

(1) Cause a cessation in this State of power generation, medical treatments, medical diagnosis, scientific research, or other activity that relies on nuclear sources; or

(2) Otherwise present a serious threat to public safety or health.

(b) *Submission to General Assembly.* — The Governor shall submit each executive order issued under this section to the General Assembly at a regular or special session.

(c) *Effective date.* — Unless an executive order issued under this section is disapproved specifically by a resolution in which a majority of the members of

each house concur, an executive order issued under this section is effective 30 days after the date the executive order is submitted to the General Assembly. (NR § 8-1413.4; 1982, ch. 240, § 2.)

### § 7-235. Application for facility permit.

To apply for a facility permit, an applicant shall:

- (1) Submit an application to the Department on the form that the Department requires; and
- (2) Pay to the Department an application fee set by the Department in an amount designed to cover the cost of the permit procedure. (NR § 8-1413.2; 1982, ch. 240, § 2.)

### § 7-236. Conditions prerequisite to issuance of controlled hazardous waste facility permit.

(a) *In general.* — As a prerequisite to the issuance of a facility permit, the Department shall require an applicant:

- (1) To provide evidence of financial ability to properly establish, operate, and maintain a controlled hazardous substance facility;
- (2) To file with the Department acceptable evidence of a bond or other security that the Department requires under § 7-242 of this subtitle;
- (3) To agree to permit access to the controlled hazardous substance facility for the purposes of any inspection permitted or required under this subtitle; and
- (4) To pay the permit fee assessed under § 7-237 of this subtitle.

(b) *Additional prerequisite.* — In addition to the requirements of subsection (a) of this section, the Department shall require an applicant for a permit for a low-level nuclear waste facility to report to the Department the extent and nature of its training program for the safe handling of low-level nuclear waste. (NR § 8-1413.2; 1982, ch. 240, § 2; 2006, ch. 44, § 6.)

### § 7-237. Facility permit fee.

The Department shall set each facility permit fee on the basis of:

- (1) The threat to the environment posed by the particular controlled hazardous substance that is to be treated, stored, or disposed of in the controlled hazardous substance facility;
- (2) The anticipated cost of monitoring and regulating the controlled hazardous substance facility;
- (3) The anticipated cost of removing and properly disposing of any controlled hazardous substance that may escape from the controlled hazardous substance facility; and
- (4) The anticipated needs for program development activities that relate to management of controlled hazardous substances. (NR § 8-1413.2; 1982, ch. 240, § 2.)



**§ 7-238. Term and renewal of permits.**

(a) *Terms.* — (1) Unless it is renewed for another term, a facility permit expires on the expiration date the Department specifies at issuance or renewal.

(2) Unless the controlled hazardous substance facility is a low-level nuclear waste facility, the Department may not issue a facility permit for a term longer than 10 years. The Department may issue a low-level nuclear waste facility permit for a term not longer than 5 years.

(b) *Renewal.* — The Department may renew a facility permit if the permit holder:

- (1) Has complied with all appropriate rules and regulations;
- (2) Pays to the Department the renewal fee set by the Department; and
- (3) Submits to the Department a renewal application on the form the Department requires. (NR § 8-1413.2; 1982, ch. 240, § 2; 1996, ch. 245; 2004, chs. 482, 483.)

**§ 7-239. Issuance of facility permit.**

(a) *Compliance with Title 1, Subtitle 6 of this article.* — Before the Department issues a controlled hazardous substance facility permit, the Department shall comply with Title 1, Subtitle 6 of this article.

(b) *Hearings.* — Before the Department issues a low-level nuclear waste facility permit, the Department shall:

- (1) Comply with Title 1, Subtitle 6 of this article; and
- (2) Conduct any public hearing required by § 1-604 of this article in the county where the proposed facility is to be located. (NR § 8-1413.2; 1982, ch. 240, § 2; 1983, ch. 583, § 2; 1993, ch. 59, § 2.)

**§ 7-239.1. Definitions.**

(a) *In general.* — In §§ 7-239.1 through 7-239.4 of this subtitle the following words have the meanings indicated.

(b) *Chemical warfare material.* — (1) “Chemical warfare material” means any of the following:

- (i) Adamsite (Phenarsazine chloride);
- (ii) GA (Ethyl-N, N-dimethyl phosphoramidocyanidate);
- (iii) GB (Isopropyl methyl phosphonofluoridate);
- (iv) GD (Pinacolyl methylphosphonofluoridate);
- (v) H, HD (Bis(2-chloroethyl) sulfide);
- (vi) HT (60 percent HD and 40 percent T (Bis[2(2-chloroethylthio)ethyl]ester));
- (vii) L (Dichloro(2-chlorovinyl)arsine);
- (viii) T (2-2' Di (3-chloroethylthio)-diethyl ether); or
- (ix) VX (O-ethyl-S-(2-diisopropylaminoethyl) methyl phospho-  
nothiolate).

(2) “Chemical warfare material” includes any substance that has chemical warfare material as an active or principal ingredient or ingredients, and degradation products of chemical warfare material.

(c) *Monitoring data.* — (1) “Monitoring data” means data from actual stack emissions under all operating conditions at a controlled hazardous substance facility.

(2) “Monitoring data” does not include trial burn data or data derived from incineration of agent simulants. (1993, ch. 612.)

### § 7-239.2. Legislative findings; compliance with requirements of subtitle.

(a) *Legislative findings.* — The State of Maryland finds that the chemical warfare materials specified under § 7-239.1 of this subtitle were designed for warfare, specifically the destruction of human beings, and for no legitimate civilian industrial use.

(b) *Disposal to ensure health and safety of State residents.* — The State recognizes the need to dispose of these chemical warfare materials as safely as possible, ensuring the health and safety of State residents by the regulation of their release into the environment.

(c) *Compliance with requirements of subtitle.* — Since these chemical warfare materials are highly toxic or carcinogenic, in addition to any other applicable requirements at law, the State shall require without exemption or waiver that an applicant for the treatment by incineration of chemical warfare materials shall comply with all the requirements of this subtitle and all regulations adopted under this subtitle. (1993, ch. 612.)

### § 7-239.3. Permit for construction, material alteration, or operation of controlled hazardous substance facility.

(a) *Chemical warfare material.* — A chemical warfare material that is a solid waste is a controlled hazardous substance.

(b) *Issuance of permit.* — In addition to any other applicable requirements, the Department may not issue a permit for the construction, material alteration, or operation of a controlled hazardous substance facility to be used for the treatment by incineration of a chemical warfare material unless:

(1) The permit applicant demonstrates to the satisfaction of the Department prior to issuance of a controlled hazardous substance facility permit:

(i) That the proposed incinerator technology has consistently met all applicable federal and State performance standards in an operational facility comparable to the proposed facility for a period of time and under conditions acceptable to the Department;

(ii) That emissions and monitoring data from a comparable facility demonstrate compliance with State toxic air pollutant standards established under Title 2 of this article;

(iii) That a destruction and removal efficiency of 99.9999 percent is achievable for each chemical warfare material to be incinerated at the facility;

(iv) That the applicant has made adequate provision to support and fund the development of a plan that demonstrates the capability of removing,

sheltering, and protecting persons from the largest area at risk from a worst-case release, as defined by the Department;

(v) That an emergency preparedness plan has been developed with adequate public participation that provides training, coordination, and equipment necessary for State and local emergency response personnel and community members to respond to a release of a chemical warfare material from the proposed facility; and

(vi) That the emergency preparedness plan has been presented at public meetings in each county potentially impacted by a worst-case release;

(2) The Department finds that the applicant has fully evaluated all reasonable alternative methods for treatment or disposal including transport to a less populated disposal site in order to create less risk of release or harm to the general public or the environment; and

(3) The local governing body of each county and municipal corporation included in the worst-case release has a reasonable opportunity to review and provide comment on the facility permit application and the emergency preparedness plan under paragraph (1)(v) of this subsection. (1993, ch. 612.)

#### § 7-239.4. Operation of controlled hazardous substance facility.

(a) *Conditions of operation.* — The Department shall require as conditions of operation of a controlled hazardous substance facility to be used for the treatment by incineration of a chemical warfare material that:

(1) Treatment by incineration be monitored on a continuous basis;

(2) Monitoring data be regularly reviewed by a qualified independent third party selected by the Department; and

(3) Monitoring data and reviews be reported to the Department in the manner and frequency determined appropriate by the Department.

(b) *Renewal or modification of permit.* — Any permit issued under this section shall be for a quantity that is specifically identified and:

(1) May be renewed for good cause as to the length of time for completion of the incineration authorized under the permit; but

(2) May not be modified as to the amount of controlled hazardous substance to be destroyed.

(c) *Disposal of incinerator following destruction of specified quantity.* — After destruction of the specific quantity of the controlled hazardous substance allowed by the terms of the permit issued under this section, the incinerator shall be disassembled and disposed of in accordance with all applicable federal and State performance standards and in a time period established by the permit.

(d) *Compensation for reviewing third party.* — In addition to the facility permit fee required under § 7-237 of this subtitle, the applicant shall pay the compensation of an independent third party with whom the Department may contract for the review of application materials and monitoring data. (1993, ch. 612.)

**§ 7-240. Denial of application — Grounds.**

The Department may deny an application for a facility permit if the Department finds that:

(1) The controlled hazardous substance facility cannot handle, treat, store, or dispose of a particular controlled hazardous substance without imposing an undue risk to the environment; or

(2) The owner of the land or any person making application has violated:

(i) Any law of this or any other state concerning controlled hazardous substances; or

(ii) Any rule or regulation or permit condition of this or any other state concerning controlled hazardous substances. (NR § 8-1413.2; 1982, ch. 240, § 2; 1984, ch. 650.)

**§ 7-241. Nontransferability of low-level nuclear waste facility permits.**

A low-level nuclear waste facility permit is not transferable. (NR § 8-1413.2; 1982, ch. 240, § 2.)

**§ 7-242. Required standards for maintenance of permit.**

(a) *In general.* — As a requirement for keeping the facility permit, each facility permit holder shall:

(1) Maintain a bond or other security that the Department considers sufficient to cover any cost for:

(i) Guaranteeing fulfillment of all requirements related to the facility permit;

(ii) Monitoring, maintaining, or closing the controlled hazardous substance facility; and

(iii) Assuring the security of the controlled hazardous substance facility after closing;

(2) Design, construct, and operate the controlled hazardous substance facility in the manner approved by the Department;

(3) Establish emergency procedures and safeguards to prevent accidents and reasonably foreseeable harm to human beings or the environment;

(4) Report periodically on the controlled hazardous substance that is received and discharged by the controlled hazardous substance facility, including, as applicable, volume, and chemical, physical, biological, and radioactive nature;

(5) In appropriate circumstances, assist in any transfer of the ownership and operation of a controlled hazardous substance facility to a qualified agency of this State or any political subdivision of this State; and

(6) To the extent reasonably practicable, restore the controlled hazardous substance facility site to its original condition if use as a controlled hazardous substance facility is terminated.

(b) *Additional requirements for low-level nuclear waste facility.* — In addition to the requirements for keeping a facility permit under subsection (a) of this section, each low-level nuclear waste facility permit holder shall:

(1) Ensure that any low-level nuclear waste being shipped to the low-level nuclear waste facility is labeled and transported in accordance with this subtitle;

(2) Refuse to accept for disposal any low-level nuclear waste that has not been labeled or transported in accordance with this subtitle; and

(3) Comply with any other requirements the Department sets. (NR § 8-1413.2; 1982, ch. 240, § 2.)

**Financial assurances.** — The Department of Environment acted within its authority in allowing facility permit holders to maintain a corporate guarantee that satisfies the financial assurance requirements in the pertinent federal regulation. 75 Op. Att'y Gen. 213 (February 8, 1990).

### § 7-243. Notification of radiation escape required.

If any radiation escapes from a low-level nuclear facility into the environment, the low-level nuclear waste facility permit holder shall:

(1) Notify the Department promptly of:

(i) The name of the radioactive substance involved;

(ii) The quantity of the radioactive substance released;

(iii) The intensity of the radiation released; and

(iv) The composition of all radionuclides of the radioactive substance in terms of constituent weights; and

(2) Provide any additional information that the Department requests. (NR § 8-1413.2; 1982, ch. 240, § 2.)

### § 7-244. Low-level nuclear waste reports.

(a) *Approval by Department.* — If a report related to low-level nuclear waste is filed by an applicant for or a holder of a low-level nuclear waste facility permit, the Department shall inform the applicant or permit holder, in writing, whether the information contained in the report is acceptable.

(b) *Publication by Department.* — From the reports filed with the Department that relate to low-level nuclear waste, the Department shall compile information and once each year publish low-level nuclear waste reports that:

(1) Index the type and quantity of low-level nuclear waste generated, stored, or disposed of in each political subdivision;

(2) Detail the activities at each low-level nuclear waste facility; and

(3) Analyze, in detail, the status and quantity of low-level nuclear waste in this State. (NR § 8-1413.2; 1982, ch. 240, § 2; ch. 911, § 11; 1984, ch. 285, § 2; 1994, ch. 662, § 6.)

### § 7-245. Inspections required.

(a) *Inspection schedule required.* — The Department shall establish a schedule for the inspection of each controlled hazardous substance facility based on:

(1) The size of the facility;

(2) The amount of hazardous waste handled by the facility;

(3) The nature of the waste handled by the facility; and

(4) The record of compliance by the facility with this subtitle and the regulations adopted under this subtitle.

(b) *Record.* — (1) The Department shall keep records of the date and findings of each inspection under this section and these records are public records.

(2) The Department periodically shall publish and make available to the public a list of the dates each controlled hazardous substance facility is inspected under this section.

(c) *Delegation of inspection authority.* — The Secretary may delegate to the health officer of any county where a controlled hazardous substance facility is located the authority to make inspections under this section. (NR § 8-1413; 1982, ch. 240, § 2; 1986, ch. 206.)

*Cited in Willow Tree Learning Ctr., Inc. v. Prince George's County, 85 Md. App. 508, 584 A.2d 157 (1991).*

### § 7-246. Inspections by health officers.

(a) *Power to inspect.* — The health officer for any county may inspect and investigate a controlled hazardous substance facility.

(b) *Duty to inspect.* — If the health officer for a county receives a complaint of an alleged violation of this subtitle at a controlled hazardous substance facility, the health officer shall inspect the controlled hazardous substance facility immediately.

(c) *Procedures.* — (1) Before making an inspection under subsection (b) of this section, the health officer shall notify the Department of the planned inspection and complaint.

(2) On the next business day after the inspection, the health officer shall report, in writing, to the Department:

- (i) The time and source of the complaint;
- (ii) The name of the Department official who was notified before the inspection;
- (iii) The time and place of the inspection;
- (iv) A summary and findings of the inspection; and
- (v) Enforcement and other recommendations. (NR § 8-1413.3; 1982, ch. 240, § 2.)

### §§ 7-247, 7-248.

Reserved.

## Part VII. Transportation of Controlled Hazardous Substances.

### § 7-249. Restrictions on transporting controlled hazardous substances.

(a) *Certificates required.* — A person may not transport any controlled hazardous substance from any source in this State or to any controlled hazardous substance facility in this State unless:

- (1) The person holds a hauler certificate; and
  - (2) A vehicle certificate has been issued for the transporting vehicle.
- (b) *Exception.* — This section does not apply to the transportation of any controlled hazardous substance that is:
- (1) Used for residential purposes; or
  - (2) Regulated by the State Department of Agriculture. (NR § 8-1413.2; 1982, ch. 240, § 2; ch. 439; 2012, ch. 176.)

**Effect of amendments.** — Chapter 176, Acts 2012, effective July 1, 2012, deleted (a)(3) and (c) and made related changes.

### § 7-250. Issuance of low-level nuclear waste hauler certificate.

The Department may not issue a hauler certificate to transport a low-level nuclear waste unless:

- (1) The applicant files with the Department acceptable evidence of a bond or other security as required under § 7-252 of this subtitle;
- (2) The applicant agrees not to transport any low-level nuclear waste unless the receiving low-level nuclear waste facility has been notified and has indicated its capability and willingness to take the low-level nuclear waste; and
- (3) The Department finds that the applicant is qualified to meet and capable of meeting the requirements of this subtitle. (NR § 8-1413.2; 1982, ch. 240, § 2.)

### § 7-251. Scope of controlled hazardous substance hauler certificate.

A hauler certificate authorizes its holder to transport a controlled hazardous substance while the certificate is effective and may require:

- (1) Use of specific routes, designated after consultation with the Department of Transportation, to a controlled hazardous substance facility;
- (2) Use of certain types of vehicles, equipment, or handling procedures; and
- (3) Satisfaction of other conditions which the Department determines to be reasonably necessary to assure, to the extent possible, transportation of controlled hazardous substances in a safe and secure manner. (1982, ch. 240, § 2; ch. 301, § 1.)

### § 7-252. Standards for hauler certificate; driver certificate.

(a) *Standards for hauler certificate.* — Each controlled hazardous substance hauler:

- (1) Shall maintain a bond or other security that the Department considers sufficient to indemnify this State for abatement of any pollution that may result from the improper transportation of a controlled hazardous substance;

(2) Shall pay an annual vehicle certificate fee set by the Department but not more than \$50;

(3) When transporting any controlled hazardous substance, shall carry the manifest and the vehicle certificate in the cab of the controlled hazardous substance vehicle;

(4) May not transport a controlled hazardous substance unless the controlled hazardous substance is labeled properly and in secure containers in accordance with the rules and regulations of the Department that apply to that particular controlled hazardous substance;

(5) On the request of any police officer, shall stop the controlled hazardous substance vehicle and display to the police officer all required documentation and allow inspection and sampling of the controlled hazardous substance to determine if there is a violation of:

- (i) The provisions of the vehicle certificate; or
- (ii) Any federal or state law;

(6) Except under the supervision of the Department during an emergency, may not remove the controlled hazardous substance from the controlled hazardous substance vehicle, or treat, store for any period of time, or mix any controlled hazardous substance except in a controlled hazardous substance facility; and

(7) Shall report periodically, on a form required by the Department, the following information about shipments of controlled hazardous substances:

- (i) The source of the controlled hazardous substance;
- (ii) The nature of the controlled hazardous substance; and
- (iii) The disposal destination.

(b) *Driver certificate.* — Each controlled hazardous substance vehicle driver, when transporting any controlled hazardous substance, shall comply with subsection (a)(3), (4), (5), and (6) of this section and all applicable State rules and regulations. (NR § 8-1413.2; 1982, ch. 240, § 2; ch. 439; 2012, ch. 176; 2013, ch. 15.)

**Effect of amendments.** — Chapter 176, Acts 2012, effective July 1, 2012, deleted “and the driver certificate” after “the manifest” in (a)(3)(i); deleted (a)(5)(ii) and redesignated accordingly; rewrote (b); and made related changes. Chapter 15, Acts 2013, effective October 1, 2013, rewrote (a)(3).

**§ 7-253. Transportation standards for generators.**

If a person who generates a controlled hazardous substance desires to have it transported to a controlled hazardous substance facility, the person:

(1) Except as is otherwise required by federal or State law, shall label the controlled hazardous substance as required by the rules and regulations of the Department;

(2) Shall provide for each controlled hazardous substance vehicle a manifest that describes the controlled hazardous substance, including volume and chemical, physical, and biological characteristics;

(3) Shall require evidence of a hauler certificate and a vehicle certificate;

(4) May contract for treatment, storage, or disposal of a controlled hazardous substance only with:



- (i) A facility permit holder; or
  - (ii) A controlled hazardous substance hauler who has a valid contract with a controlled hazardous substance facility for treatment, storage, or disposal of controlled hazardous substances; and
- (5) Shall report, from time to time on the form the Department requires, the following information about shipments of controlled hazardous substances:
- (i) Source;
  - (ii) Name of the controlled hazardous substance hauler;
  - (iii) Destination intended by the controlled hazardous substance hauler at the time of shipment;
  - (iv) Volume; and
  - (v) Nature. (NR § 8-1413.2; 1982, ch. 240, § 2; ch. 439; 1988, ch. 6, § 1; 1989, ch. 5, § 1; 2012, ch. 176.)

**Effect of amendments.** — Chapter 176, driver certificate” after “a hauler certificate” in Acts 2012, effective July 1, 2012, deleted “a (3).

### §§ 7-254, 7-255.

Reserved.

## Part VIII. Enforcement.

### § 7-256. Right of entry.

(a) *Entry for purpose of inspection.* — At any reasonable time, a representative of the Department or a representative of the health department of the political jurisdiction where the hazardous substance facility is located may enter any hazardous substance facility:

- (1) To inspect the hazardous substance facility;
- (2) To obtain water, waste, soil, or air samples;
- (3) To drill test wells; and
- (4) To measure the volume and kinds of substances that are received, treated, stored, or disposed of.

(b) *Municipality.* — If a municipality in which a hazardous substance facility is located does not have a health department, the mayor of the municipality may designate the municipal agency that may enter and inspect a hazardous substance facility under this section. (NR § 8-1413.2; 1982, ch. 240, § 2; 1989, ch. 409.)

**Cited in** One 1995 Corvette VIN denied, 528 U.S. 927, 120 S. Ct. 321, 145 L. Ed. #1G1YY22P585103433 v. Mayor & City Council, 353 Md. 114, 724 A.2d 680 (1999), cert. 2d 250 (1999).

### § 7-256.1. Administrative search warrants.

(a) *Application for warrant — In general.* — An authorized official or employee of the Department may apply to a judge of the District Court or a circuit court for an administrative search warrant to enter any factory, warehouse, vehicle, building, establishment, or other premises to conduct any

inspection required or authorized by law to determine compliance with the provisions of this subtitle relating to controlled hazardous substances.

(b) *Application for warrant — Form; contents; approval by Attorney General required.* — (1) The application shall be in writing and signed and sworn to by the applicant and shall particularly describe the place, structure, premises, vehicle, or records to be inspected and the nature, scope, and purpose of the inspection to be performed by the applicant.

(2) Before the filing of a search warrant application with a court, it shall be approved by the Attorney General of Maryland as to its legality in both form and substance under the standards and criteria of this section; and a statement to this effect shall be included as part of the application.

(c) *Bases for issuance of warrant.* — A judge of a court referred to in subsection (a) of this section may issue the warrant on finding that:

(1) The applicant has sought access to the property for the purpose of making an inspection; and

(i) After requesting, at a reasonable time, the owner, tenant, or other individual in charge of the property to allow access, has been denied access to the property; or

(ii) After making a reasonable effort, has been unable to locate any of these individuals;

(2) The requirements of subsection (b) of this section are met;

(3) The official or employee of the Department is authorized or required by law to make an inspection of the property for which the warrant is sought; and

(4) Probable cause for the issuance of the warrant has been demonstrated by the applicant by specific evidence of an existing violation of any provision of this subtitle or any rule or regulation adopted under this subtitle or by showing:

(i) That a reasonable administrative inspection program exists regarding controlled hazardous substances; and

(ii) That the proposed inspection comes within that program.

(d) *Specificity required as to place or thing to be inspected.* — An administrative search warrant issued under this section shall specify the place, structure, premises, vehicle, or records to be inspected. The inspection conducted may not exceed the limits specified in the warrant.

(e) *Scope of authorized activity.* — An administrative search warrant issued under this section authorizes the applicant and other officials or employees of the Department to enter the specified property to perform the inspection, sampling, and other functions authorized by law to determine compliance with the provisions of this subtitle relating to controlled hazardous substances.

(f) *Time period for return of warrant.* — An administrative search warrant issued under this section shall be executed and returned to the judge by whom it was issued within:

(1) The time specified in the warrant, not to exceed 30 days; or

(2) If no time period is specified in the warrant, 15 days from the date of its issuance.

(g) *Information obtained considered confidential.* — Any information obtained pursuant to an administrative search warrant shall be considered as

confidential and may not be disclosed except to the extent utilized in an administrative or judicial proceeding. (1983, ch. 115; 1988, ch. 6, § 1.)

### § 7-257. Suspension and revocation of permits or certificates.

(a) *Violation of federal or State law, rule, or regulation.* — In accordance with the Administrative Procedure Act and after notice and hearing, the Department may suspend or revoke any facility permit, hauler certificate, or vehicle certificate for violation of any federal or State law, rule, or regulation that relates to controlled hazardous substances.

(b) *Additional grounds for revocation of facility permit.* — The Department may revoke any facility permit issued under this subtitle if the Department finds that:

- (1) False or inaccurate information was contained in the application;
- (2) Conditions or requirements of the facility permit have been or are about to be violated;
- (3) Substantial deviation from plans, specifications, or requirements has occurred;
- (4) The Department has been refused entry to the premises for the purpose of inspecting to insure compliance with the conditions of the facility permit;
- (5) A change in conditions exists that requires temporary or permanent reduction or elimination of any permitted discharge;
- (6) Any State or federal water quality standard or effluent limitation has been or is threatened to be violated; or
- (7) Any other good cause exists for revoking the permit. (NR §§ 8-1413, 8-1413.2; 1982, ch. 240, § 2; 1983, ch. 103; 2012, ch. 176.)

**Effect of amendments.** — Chapter 176, “driver certificate” after “hauler certificate” in Acts 2012, effective July 1, 2012, deleted (a).

### § 7-258. Complaint.

(a) *Issuance of complaint.* — The Department shall issue a written complaint if the Department has reasonable grounds to believe that the person to whom the complaint is directed has violated:

- (1) This subtitle;
- (2) Any rule or regulation adopted under this subtitle; or
- (3) Any order, permit, or certificate issued by the Department under this subtitle.

(b) *Contents.* — A complaint issued under this section shall:

- (1) Specify the provision that allegedly has been violated; and
- (2) State the alleged facts that constitute the violation. (1982, ch. 240, § 2.)

**Non-governmental entities authorized to enforce or bring suit.** — In environmental litigation brought by a citizens group against two companies alleging violations of various Maryland environmental laws, the companies’ motion to dismiss was denied as to the group’s claims asserted under Maryland law because there was no merit to the compa-

nies' contention that no non-governmental entities were authorized to enforce or bring suit to enforce the requirements of the environmental statutes. *Chesapeake Bay Found., Inc. v. Severstal Sparrows Point, LLC*, 794 F. Supp. 2d 602 (D. Md. 2011).

**§ 7-259. Issuance of notice or order.**

(a) *In general.* — After or concurrently with service of a complaint under this subtitle, the Department may:

(1) Issue an order that requires the person to whom it is directed to take corrective action within a time set in the order;

(2) Send a written notice that requires the person to whom it 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 allegations of the complaint; or

(ii) To file a written report and also appear at a hearing before the Department at a time and place the Department sets to answer the charges in the complaint.

(b) *Effective date of order.* — Any order issued under this section is effective immediately, according to its terms, when it is served. (1982, ch. 240, § 2.)

**§ 7-260. Service.**

(a) *Manner of service.* — Any complaint, corrective order, notice, or other instrument issued by the Department under this subtitle may be served on the person to whom it is directed:

(1) In accordance with § 1-204 of this article; or

(2) By publication.

(b) *Certificate of service.* — If service is made by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, the person who mails the document shall file with the Department verified proof of mailing.

(c) *Time of service.* — Any notice that requires filing of a report, attendance at a hearing, or both shall be served at least 10 days before the earlier of:

(1) The time set for the hearing, if any; or

(2) The time set for the filing of the report, if any. (1982, ch. 240, § 2; 1983, ch. 563; 2007, ch. 366.)

**§ 7-261. Hearings.**

(a) *Application of Administrative Procedure Act.* — (1) The Department shall give notice and hold any hearing under this subtitle in accordance with the Administrative Procedure Act.

(2) Any hearing related to a complaint shall be held in the manner provided in the Administrative Procedure Act for hearings in contested cases.

(b) *Hearing on order under § 7-259(a)(1).* — (1) Within 10 days after being served with an order under § 7-259(a)(1) of this subtitle, the person served may request, in writing, a hearing before the Department.

(2) (i) If a request for a hearing is made under this subsection, the Department shall hold the hearing promptly after receiving the request and render a decision promptly after the hearing.

(ii) If a request for a hearing 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 hold the hearing within 10 days after receiving the request and render a decision within 10 days after the hearing.

(c) *Hearing after notice under § 7-259(a)(2)*. — Within 10 days after being served with a notice under § 7-259(a)(2) of this subtitle, the person served may request, in writing, a hearing before the Department.

(d) *Record of proceedings*. — The Department may make a verbatim record of the proceedings of any hearing held under this subtitle.

(e) *Subpoenas; witnesses*. — (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 issued under this subsection, on petition of the Department, a circuit court, by order, may:

(i) Compel obedience to the order or subpoena; or

(ii) Compel testimony or the production of evidence.

(4) The court may punish as a contempt any failure to obey its order issued under this section. (1982, ch. 240, § 2; 1986, ch. 609.)

**Editor's note.** — Section 2, ch. 609, Acts 1986, provides that "this Act may not be regarded as relieving any governmental units of any legal responsibilities under any other applicable State or federal law."

### § 7-262. Final corrective orders.

(a) *Order under § 7-259(a)(1)*. — (1) Unless the person served with an order under § 7-259(a)(1) of this subtitle makes a timely request for a hearing, the order is a final order.

(2) If the person served with an order under § 7-259(a)(1) of this subtitle makes a timely request for a hearing, the order becomes a final corrective order when the Department renders its decision following the hearing.

(b) *Orders after notice under § 7-259(a)(2) or (3)*. — (1) If the Department issues a notice under § 7-259(a)(2) or (3) of this subtitle, the Department may not issue an order that requires corrective action by the person to whom the notice is directed until after the later of:

(i) The time set for the hearing, if any; and

(ii) The time set for filing of the report, if any.

(2) After the time within which the Department may not issue a corrective order has passed, if the Department finds that a violation of this subtitle has occurred, the Department shall issue an order that requires correction of the violation within a time set in the order.

(c) *Duty of Department to enforce order*. — The Department shall:

(1) Take action to secure compliance with any final corrective order; and  
(2) If the terms of the final corrective order are violated or if a violation is not corrected within the time set in the order, sue to require correction of the violation.

(d) *Other action permitted.* — This section does not prevent the Department or the Attorney General from taking action against a violator before the expiration of the time limitations or schedules in the order. (1982, ch. 240, § 2.)

### § 7-263. Injunctive relief.

(a) *In general.* — The Department may bring an action for an injunction against any person who violates any provision of this subtitle or any rule, regulation, order, hauler certificate, vehicle certificate, or facility permit issued by the Department under this subtitle.

(b) *Department findings.* — In any action for an injunction under this section, any finding of the Department after a hearing is prima facie evidence of each fact the Department determines.

(c) *Grounds for injunction.* — On a showing that any person is violating or is about to violate this subtitle or any rule, regulation, order, hauler certificate, vehicle certificate, or facility permit issued by the Department, the court shall grant an injunction without requiring a showing of a lack of an adequate remedy at law.

(d) *Emergency.* — If an emergency exists from imminent danger to the public health, to the public welfare, or to the environment, the Department may sue for an immediate injunction to stop the activity that is causing the danger. (1982, ch. 240, § 2; ch. 241, § 1; 1991, ch. 154.)

### § 7-264. Judicial review.

(a) *In general.* — Any person aggrieved by a final decision of the Department in connection with an order, hauler certificate, vehicle certificate, or facility permit issued under this subtitle may take a direct judicial appeal.

(b) *Application of Administrative Procedure Act.* — The appeal shall be made as provided for judicial review of final decisions in the Administrative Procedure Act. However, an order of the Department suspending or revoking a facility permit under § 7-257 of this subtitle may not be stayed pending review. (1982, ch. 240, § 2; 1984, ch. 743, § 2; 1988, ch. 6, § 1.)

Cited in Maryland Comm'n on Human Relations v. Baltimore Gas & Elec. Co., 296 Md. 46, 459 A.2d 205 (1983).

### § 7-265. Specific offenses and penalties.

(a) *Specific offenses.* — A person who commits any of the following offenses is guilty of a felony and on conviction is subject to a fine not exceeding \$100,000 or imprisonment not exceeding 5 years, or both:

(1) Storing, treating, dumping, discharging, abandoning, or otherwise disposing of a controlled hazardous substance in any place other than a

controlled hazardous substance facility for which a current facility permit is in effect;

(2) Transporting for treatment, storage, or disposal a controlled hazardous substance to any place other than a controlled hazardous substance facility for which a current facility permit is in effect;

(3) Falsifying any information required by the Department under this subtitle or any rule, regulation, order, hauler certificate, vehicle certificate, or facility permit issued under this subtitle; or

(4) Authorizing, directing, or permitting any offense listed in this section.

(b) *Penalties for violation.* — A person who is convicted of violating the following sections of this subtitle or any regulation adopted under the following sections of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$50,000 or imprisonment for not more than 3 years, or both:

(1) § 7-209 of this subtitle;

(2) § 7-249 of this subtitle; or

(3) § 7-252 of this subtitle.

(c) *Separate offense for each day.* — Each day on which a violation occurs constitutes a separate offense under this section.

(d) *Knowing violations; penalties.* — (1) Any person who knowingly transports, treats, stores, exports, or otherwise disposes of a controlled hazardous substance in a manner that would constitute a violation under subsection (a) of this section and who knows at that time the violation places another person in imminent danger of death or serious bodily injury is guilty of a felony and on conviction is subject to a fine not exceeding \$250,000 or imprisonment not exceeding 15 years or both.

(2) For the purposes of this subsection, in determining whether a person's state of mind is knowing and whether a person knew that the violation or conduct placed another person in imminent danger of death or serious bodily injury, the criteria provided under § 3008 (f) of the Resource Conservation and Recovery Act (42 U.S.C. § 6928 (f)) shall apply. (NR § 8-1413.2; 1982, ch. 240, § 2; ch. 491; 1986, chs. 609, 768; 1991, ch. 154; 1992, ch. 22, § 1.)

**Editor's note.** — Section 2, ch. 609, Acts 1986, provides that "this Act may not be regarded as relieving any governmental units of any legal responsibilities under any other applicable State or federal law."

Cited in *Bausch & Lomb, Inc. v. Utica Mut. Ins. Co.*, 330 Md. 758, 625 A.2d 1021 (1993).

### § 7-266. Civil penalties.

(a) *Civil action.* — In addition to being subject to an injunctive action under this subtitle, a person who violates any provision of this subtitle or of any rule, regulation, order, hauler certificate, vehicle certificate, or facility permit adopted or issued under this subtitle is liable to a civil penalty not exceeding \$25,000, to be collected in a civil action. Each day a violation occurs is a separate violation under this subsection.

(b) *Administrative action.* — (1) In addition to any other remedies available at law or in equity and after an opportunity for a hearing which may be

waived in writing by the person accused of a violation, the Department may impose a penalty for violation of any provision of this subtitle or any rule, regulation, order, hauler certificate, vehicle certificate, driver certificate, or facility permit adopted or issued under this subtitle.

(2) The penalty imposed on a person under this subsection shall be:

(i) Up to \$25,000 for each violation, but not exceeding \$100,000 total; and

(ii) Assessed with consideration given to:

1. The willfulness of the violation, the extent to which the existence of the violation was known to but uncorrected by the violator, and the extent to which the violator exercised reasonable care;

2. Any actual harm to the environment or to human health, including injury to or impairment of the use of the waters of this State or the natural resources of this State;

3. The cost of cleanup and the cost of restoration of natural resources;

4. The nature and degree of injury to or interference with general welfare, health, and property;

5. The extent to which the location of the violation, including location near waters of this State or areas of human population, creates the potential for harm to the environment or to human health or safety;

6. The available technology and economic reasonableness of controlling, reducing, or eliminating the violation;

7. The degree of hazard posed by the particular waste material or materials involved; and

8. The extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator.

(3) Each day a violation occurs is a separate violation under this subsection.

(4) Any penalty imposed under this subsection is payable to this State and collectible in any manner provided at law for the collection of debts.

(5) If any person who is liable to pay a penalty imposed under this subsection fails to pay it after demand, the amount, together with interest and any costs that may accrue, shall be:

(i) A lien in favor of this State on any property, real or personal, of the person; and

(ii) Recorded in the office of the clerk of court for the county in which the property is located.

(6) Any penalty collected under this subsection shall be placed in a special fund to be used for monitoring and surveillance by the Department to assure and maintain an adequate record of any violations, including discharge of waste material and other pollutants into the waters of this State or into the environment. (1982, ch. 24, § 2; 1983, chs. 99, 573; ch. 583, § 2; 1986, ch. 45; 1987, ch. 11, § 1; 1991, ch. 154.)

**Civil penalty unconditional.** — This section authorizes the agency to assess a civil penalty for a violation, and the penalty is not conditioned upon a finding that the violation

caused actual harm to the environment. *American Recovery Co. v. Department of Health & Mental Hygiene*, 306 Md. 12, 506 A.2d 1171 (1986).



Cited in *Reisch v. State*, 107 Md. App. 464, 668 A.2d 970 (1995), cert. denied, 675 A.2d 993 (1996).

### § 7-266.1. Civil penalties — Punitive damages.

(a) *In general.* — In addition to being subject to penalties under §§ 7-266 and 7-267 of this subtitle and cost recovery under § 7-221 of this subtitle, a responsible person who fails without sufficient cause to comply with a final order issued under this subtitle is subject to punitive damages, not exceeding three times the amount of any costs that are incurred by the State:

(1) After the date of the final decision as provided in subsection (b) of this section; and

(2) As a result of the responsible person's failure to comply with the final order.

(b) *Procedure.* — (1) Before seeking the punitive damages authorized by subsection (a) of this section, the Department shall issue to the responsible person a determination that the responsible person failed without sufficient cause to comply with a final order issued under this subtitle.

(2) A responsible person subject to a determination issued by the Department under paragraph (1) of this subsection is entitled to a contested case hearing to determine whether the responsible person had sufficient cause for the failure to comply with the final order.

(3) Following a final decision upholding the determination issued by the Department, the State may commence a civil action against the responsible person to recover the punitive damages. (2004, chs. 72, 73.)

### § 7-267. Criminal penalties.

(a) *Violating subtitle, rules, regulations, orders, certificates, or permits.* — (1) Except as provided in § 7-265 of this subtitle, a person who violates any provision of or fails to perform any duty imposed by this subtitle, or who violates any provision of or fails to perform any duty imposed by a rule, regulation, order, hauler certificate, vehicle certificate, or facility permit adopted or issued under this subtitle, is guilty of a misdemeanor and on conviction is subject to:

(i) For a first offense, a fine not exceeding \$25,000 or imprisonment not exceeding 1 year or both; or

(ii) If the conviction is for a violation committed after a first conviction of the person under this subsection, a fine not exceeding \$50,000 for each day of violation or imprisonment not exceeding 2 years or both.

(2) In addition to any criminal penalties imposed on a person convicted under this subsection, the person may be enjoined from continuing the violation.

(3) Each day on which a violation occurs is a separate violation under this subsection.

(b) *False statements in required documents.* — A person is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$25,000 or imprisonment not exceeding 2 years or both if the person:

(1) Knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this subtitle or any rule, regulation, order, hauler certificate, vehicle certificate, or facility permit adopted or issued under this subtitle; or

(2) Falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this subtitle or any rule, regulation, order, hauler certificate, vehicle certificate, or facility permit adopted or issued under this subtitle. (NR § 8-1413.2; 1982, ch. 240, § 2; ch. 241, § 1; 1991, ch. 154.)

**Cited** in *Bausch & Lomb, Inc. v. Utica Mut. Ins. Co.*, 330 Md. 758, 625 A.2d 1021 (1993).

**§ 7-268. Attorney General responsible for cases.**

The Attorney General shall take charge of, prosecute, and defend on behalf of this State every case arising under the provisions of this subtitle, including the recovery of penalties. (1982, ch. 240, § 2; ch. 241, § 1.)

**Non-governmental entities authorized to enforce or bring suit.** — In environmental litigation brought by a citizens group against two companies alleging violations of various Maryland environmental laws, the companies' motion to dismiss was denied as to the group's claims asserted under Maryland law because there was no merit to the companies' contention that no non-governmental entities were authorized to enforce or bring suit to enforce the requirements of the environmental statutes. *Chesapeake Bay Found., Inc. v. Severstal Sparrows Point, LLC*, 794 F. Supp. 2d 602 (D. Md. 2011).

*Subtitle 3. Appalachian States Low-Level Radioactive Waste Compact.*

**§ 7-301. Definitions.**

Article I.

Definitions

As used in the compact, unless the context clearly indicates otherwise:

- a. "Broker" means any intermediate person who handles, treats, processes, stores, packages, ships or otherwise has responsibility for or possesses low-level waste obtained from a generator.
- b. "Carrier" means a person who transports low-level waste to a regional facility.
- c. "Commission" means the Appalachian States Low-Level Radioactive Waste Commission.
- d. "Disposal" means the isolation of low-level waste from the biosphere.
- e. "Facility" means any real or personal property, within the region, and improvements thereof or thereon, and any and all plant, structures, machinery and equipment, acquired, constructed, operated or maintained for the management or disposal of low-level waste.
- f. "Generate" means to produce low-level waste requiring disposal.

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