

SENATE BILL 221

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By: **The President (By Request – Office of the Attorney General)**

Introduced and read first time: January 12, 2022

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Department of the Environment – Enforcement Authority**

3 FOR the purpose of authorizing the Department of the Environment to conduct certain
4 enforcement activities and impose certain civil and administrative penalties for
5 violations of certain provisions of law relating to waterway construction and dam
6 safety; authorizing the Department to impose certain administrative penalties for
7 violations of certain provisions of law relating to tidal and nontidal wetlands;
8 altering certain civil, criminal, and administrative penalties applicable to violations
9 of certain provisions of law relating to drinking water and removing a requirement
10 that violations be willful to be subject to certain civil penalties; altering a certain
11 criminal penalty applicable to violations of certain provisions of law relating to the
12 certification and operation of laboratories that perform certain testing and
13 certification of drinking water; authorizing the Department to conduct certain
14 enforcement activities and impose certain civil and administrative penalties for
15 violations of certain provisions of law relating to the certification and operation of
16 laboratories that perform certain testing and certification of drinking water;
17 requiring a certain person or municipal or private corporation that operates a certain
18 waterworks, wastewater works, or industrial wastewater works to report certain
19 information annually to the Department in a certain manner; authorizing the
20 Department to conduct certain enforcement activities and impose certain civil and
21 administrative penalties for violations of certain provisions of law relating to
22 waterworks, wastewater works, and industrial wastewater works; altering a certain
23 criminal penalty applicable to violations of certain provisions of law relating to
24 waterworks, wastewater works, and industrial wastewater works; requiring certain
25 penalties collected by the Department to be paid into the Maryland Clean Water
26 Fund; altering the contents of the Nontidal Wetland Compensation Fund; and
27 generally relating to the enforcement authority of the Department of the
28 Environment.

29 BY repealing and reenacting, with amendments,
30 Article – Environment

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Section 5–514, 5–515, 5–909, and 5–911
Annotated Code of Maryland
(2013 Replacement Volume and 2021 Supplement)

BY repealing and reenacting, without amendments,
Article – Environment
Section 9–320(a)
Annotated Code of Maryland
(2014 Replacement Volume and 2021 Supplement)

BY repealing and reenacting, with amendments,
Article – Environment
Section 9–320(b), 9–412, 9–413, 9–1026, 12–101, 12–501, and 16–502
Annotated Code of Maryland
(2014 Replacement Volume and 2021 Supplement)

BY adding to
Article – Environment
Section 9–1024, 9–1025, 9–1026.1, and 12–502 through 12–505
Annotated Code of Maryland
(2014 Replacement Volume and 2021 Supplement)

BY repealing
Article – Environment
Section 12–504
Annotated Code of Maryland
(2014 Replacement Volume and 2021 Supplement)

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

Article – Environment

5–514.

(a) (1) In addition to being subject to an injunctive action under this subtitle, a person who violates any provision of this subtitle [relating to water appropriation and use] or any [rule,] regulation, order, or permit adopted or issued under [any such provision] **THIS SUBTITLE** is liable for a civil penalty not exceeding \$5,000 per violation to be collected in a civil action brought by the Department.

(2) Each day a violation occurs or continues is a separate violation under this subsection.

(3) (i) Before bringing a civil action against a local government under this subsection, the Department shall meet and consult with the local government to seek an alternative resolution to the contested issue.

(ii) Prior consultation by the Department with the local government shall constitute compliance with this subsection.

(b) A person who violates a provision of this subtitle or a regulation adopted under this subtitle is subject to the penalties provided in § 9–343 of this article.

(C) (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 REGULATION, ORDER, OR PERMIT ADOPTED OR ISSUED UNDER THIS SUBTITLE.

(2) THE PENALTY IMPOSED ON A PERSON UNDER THIS SUBSECTION SHALL BE:

(I) UP TO \$5,000 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 THE STATE OR THE NATURAL RESOURCES OF THE 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 THE 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;

1 **7. THE DEGREE OF HAZARD POSED BY THE PARTICULAR**
2 **POLLUTANT OR POLLUTANTS INVOLVED; AND**

3 **8. THE EXTENT TO WHICH THE CURRENT VIOLATION IS**
4 **PART OF A RECURRENT PATTERN OF THE SAME OR SIMILAR TYPE OF VIOLATION**
5 **COMMITTED BY THE VIOLATOR.**

6 **(3) EACH DAY A VIOLATION OCCURS IS A SEPARATE VIOLATION**
7 **UNDER THIS SUBSECTION.**

8 **(4) ANY PENALTY IMPOSED UNDER THIS SUBSECTION IS PAYABLE TO**
9 **THE STATE AND COLLECTIBLE IN ANY MANNER PROVIDED AT LAW FOR THE**
10 **COLLECTION OF DEBTS.**

11 **(5) IF ANY PERSON WHO IS LIABLE TO PAY A PENALTY IMPOSED**
12 **UNDER THIS SUBSECTION FAILS TO PAY THE PENALTY AFTER DEMAND, THE**
13 **AMOUNT, TOGETHER WITH INTEREST AND ANY COSTS THAT MAY ACCRUE, SHALL BE:**

14 **(i) A LIEN IN FAVOR OF THE STATE ON ANY PROPERTY, REAL**
15 **OR PERSONAL, OF THE PERSON; AND**

16 **(ii) RECORDED IN THE OFFICE OF THE CLERK OF COURT FOR**
17 **THE COUNTY IN WHICH THE PROPERTY IS LOCATED.**

18 **[(c)] (D) All funds collected by the Department under this section, including any**
19 **civil [penalty] OR ADMINISTRATIVE PENALTIES or any fine imposed by a court under the**
20 **provisions of this section, shall be paid into the Maryland Clean Water Fund**
21 **ESTABLISHED UNDER § 9-320 OF THIS ARTICLE.**

22 **5-515.**

23 **(a) After or concurrently with the service of a complaint under this subtitle**
24 **[relating to water appropriation and use], the Department may:**

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

27 **(2) Send a written notice that requires the person to whom the notice is**
28 **directed to file a written report about the alleged violation; or**

29 **(3) Send a written notice that requires the person to whom the notice is**
30 **directed:**

31 **(i) To appear at a hearing before the Department at a time and place**
32 **the Department sets to answer the charges in the complaint; or**

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

(b) Any order issued under this section is effective immediately, according to its terms, when it is served.

5–909.

(a) **(1)** An applicant shall take all necessary steps to first avoid significant impairment and then minimize losses of nontidal wetlands.

(2) If the applicant demonstrates to the Department's satisfaction that all necessary steps were taken and losses or significant impairment of nontidal wetlands are unavoidable, the Department shall require the applicant to adopt mitigation practices.

(b) **(1)** By December 31, 1989 the Department, consistent with the goals established in § 5–902 of this subtitle, shall adopt by regulation standards and procedures for the mitigation of nontidal wetlands losses, including practices for nontidal wetland creation, restoration, enhancement, or monetary compensation.

(2) (I) The Department may accept monetary compensation **UNDER THIS SUBSECTION** only if it is determined that creation, restoration, or enhancement of nontidal wetlands are not feasible alternatives.

(II) Monetary compensation may not be a substitute for the requirement to avoid and minimize nontidal wetland losses.

(c) **(1)** There is a Nontidal Wetland Compensation Fund in the Department.

(2) The following money shall be deposited in the Fund:

(i) Any monetary compensation paid by an applicant instead of engaging in the creation, restoration, or enhancement of a nontidal wetland; and

(ii) Any civil, **ADMINISTRATIVE**, or criminal penalty imposed by a court in accordance with § 5–911 of this subtitle.

(3) Funds in the Nontidal Wetland Compensation Fund may be used only for the creation, restoration, or enhancement of nontidal wetlands, including:

(i) Acquisition of land;

(ii) Acquisition of easements;

(iii) Maintenance of mitigation sites;

(iv) Purchase of credits in mitigation banks; and

(v) Contractual services necessary to accomplish the intent of this paragraph.

(4) Funds credited and any interest accrued to the Fund:

(i) Shall remain available until expended; and

(ii) May not be reverted to the General Fund under any other provision of law.

(5) At the end of the fiscal year, the Department shall prepare an annual report on the Nontidal Wetland Compensation Fund that includes an accounting of all financial receipts and expenditures to and from the Fund and shall provide a copy of the report to the General Assembly, as provided under § 2–1257 of the State Government Article.

5–911.

(a) (1) The enforcement provisions in this section are in addition to any other applicable provisions in this title.

(2) In addition to the enforcement authority granted the Department, the enforcement provisions of this section may be exercised by any county that has program delegation authority.

(b) (1) The Department may revoke a permit for cause, including violation of permit conditions, obtaining a permit by misrepresentation, failing to disclose a relevant or material fact, or change in conditions.

(2) The Department shall notify the violator in writing and provide an opportunity for a hearing.

(c) The Department may issue a stop work order against any person who violates any provision of this subtitle or any regulation, order, or permit under this subtitle related to a regulated activity.

(d) (1) (I) A person who violates any provision of this subtitle or any regulation, order, or permit under this subtitle is liable for a penalty not exceeding \$10,000, which may be recovered in a civil action brought by the Department.

(II) Each day a violation continues is a separate violation under this subsection.

(2) The court may issue an injunction requiring the person to cease the violation and restore the area unlawfully disturbed.

(e) (1) A person who violates any provision of or fails to perform any duty imposed by this subtitle or by a regulation, order, or permit under this subtitle is guilty of a misdemeanor and on conviction is subject to:

(i) For a first offense, a fine not exceeding \$10,000; or

(ii) For a second or subsequent offense, a fine not exceeding \$25,000.

(2) The court may order the person to restore the area unlawfully disturbed.

(F) (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 REGULATION, ORDER, OR PERMIT ADOPTED OR ISSUED UNDER THIS SUBTITLE.

(2) THE PENALTY IMPOSED ON A PERSON UNDER THIS SUBSECTION SHALL BE:

(I) UP TO \$5,000 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 THE STATE OR THE NATURAL RESOURCES OF THE 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;

1 **5. THE EXTENT TO WHICH THE LOCATION OF THE**
2 **VIOLATION, INCLUDING LOCATION NEAR WATERS OF THE STATE OR AREAS OF**
3 **HUMAN POPULATION, CREATES THE POTENTIAL FOR HARM TO THE ENVIRONMENT**
4 **OR TO HUMAN HEALTH OR SAFETY;**

5 **6. THE AVAILABLE TECHNOLOGY AND ECONOMIC**
6 **REASONABLENESS OF CONTROLLING, REDUCING, OR ELIMINATING THE VIOLATION;**

7 **7. THE DEGREE OF HAZARD POSED BY THE PARTICULAR**
8 **POLLUTANT OR POLLUTANTS INVOLVED; AND**

9 **8. THE EXTENT TO WHICH THE CURRENT VIOLATION IS**
10 **PART OF A RECURRENT PATTERN OF THE SAME OR SIMILAR TYPE OF VIOLATION**
11 **COMMITTED BY THE VIOLATOR.**

12 **(3) EACH DAY A VIOLATION OCCURS IS A SEPARATE VIOLATION**
13 **UNDER THIS SUBSECTION.**

14 **(4) ANY PENALTY IMPOSED UNDER THIS SUBSECTION IS PAYABLE TO**
15 **THE STATE AND COLLECTIBLE IN ANY MANNER PROVIDED AT LAW FOR THE**
16 **COLLECTION OF DEBTS.**

17 **(5) IF ANY PERSON WHO IS LIABLE TO PAY A PENALTY IMPOSED**
18 **UNDER THIS SUBSECTION FAILS TO PAY THE PENALTY AFTER DEMAND, THE**
19 **AMOUNT, TOGETHER WITH INTEREST AND ANY COSTS THAT MAY ACCRUE, SHALL BE:**

20 **(I) A LIEN IN FAVOR OF THE STATE ON ANY PROPERTY, REAL**
21 **OR PERSONAL, OF THE PERSON; AND**

22 **(II) RECORDED IN THE OFFICE OF THE CLERK OF COURT FOR**
23 **THE COUNTY IN WHICH THE PROPERTY IS LOCATED.**

24 9–320.

25 (a) There is a Maryland Clean Water Fund.

26 (b) The following payments shall be made into the Maryland Clean Water Fund:

27 (1) All application fees, permit fees, renewal fees, and funds collected by
28 the Department under this subtitle, including any civil or administrative penalty or any
29 fine imposed by a court under the provisions of this subtitle;

30 (2) Any civil OR ADMINISTRATIVE penalty or any fine imposed by a court
31 under the provisions of:

(I) Title 5, Subtitle 5 of this article [relating to water appropriation and use];

[(3) Any civil or administrative penalty or any fine imposed by a court under the provisions of]

(II) Title 4, Subtitle 1 of this article; [and]

(III) SUBTITLE 4 OF THIS TITLE;

(IV) SUBTITLE 10 OF THIS TITLE; AND

(V) TITLE 12 OF THIS ARTICLE; AND

[(4)] (3) Any fees or funds that the Department collects under Subtitle 2, Part III of this title and §§ 9–269 and 9–270 of this title and any civil or administrative penalty or fine imposed by a court under the provisions of Subtitle 2 of this title.

9–412.

(a) A supplier of water may not:

(1) Fail to comply with § 9–410 of this subtitle;

(2) Disseminate any false or misleading information in or about any notice required under § 9–410 of this subtitle or about any remedial action being undertaken to achieve compliance with State primary drinking water regulations;

(3) Knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or permit adopted or issued under this subtitle;

(4) Fail to comply with the [rules and] regulations adopted under § 9–404(9) OR § 9–407 of this subtitle; or

(5) Fail to comply with any conditions for variances or exemptions authorized under § 9–409 of this subtitle.

(b) A person may not:

(1) Fail to comply with any order issued by the Secretary under this subtitle; [or]

(2) FAIL TO COMPLY WITH THE REGULATIONS ADOPTED UNDER § 9-404(9) OR § 9-407 OF THIS SUBTITLE; OR

[(2)] (3) Falsify or knowingly render inaccurate any monitoring device or method required to be maintained under this subtitle or any [rule,] regulation, order, or permit adopted or issued under this subtitle.

9-413.

(a) (1) [A] IN ADDITION TO BEING SUBJECT TO AN INJUNCTIVE ACTION UNDER THIS SUBTITLE, A person who [willfully] violates [§ 9-412(a)(4) or (5)] ANY PROVISION of this subtitle is subject to a civil penalty of up to [\$5,000] \$10,000 for each day on which the violation exists.

(2) CIVIL PENALTIES MAY BE COLLECTED IN A CIVIL ACTION BROUGHT BY THE DEPARTMENT.

(3) EACH DAY A VIOLATION OCCURS IS A SEPARATE VIOLATION UNDER THIS SUBSECTION.

(b) A person who violates § 9-412(a)(1), (2), or (3) of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding [\$5,000] \$10,000 for each day on which the violation occurs or failure to comply continues.

(c) [In an action brought in the appropriate court to enforce the order, a person who willfully violates or fails or refuses to comply with any order issued by the Secretary under this subtitle may be fined not more than \$5,000 for each day on which the violation occurs or failure to comply continues.

(d)] (1) In addition to any other remedies available at law 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 order, regulation, or plan adopted or issued under this subtitle.

(2) The penalty imposed on a supplier of water [serving a population of more than 10,000] under this subsection shall be:

(i) Up to [\$1,000] \$5,000 per day for each violation, but not exceeding [\$25,000] \$100,000 total for each violation; 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;

1 2. Any actual harm to the environment or to human health,
2 including injury to or impairment of the use of the waters of [this] **THE** State or the natural
3 resources of the State;

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

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

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

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

13 7. The degree of hazard posed by the particular pollutant or
14 pollutants involved;

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

17 9. Whether or not penalties were assessed or will be assessed
18 under other provisions of this subtitle.

19 [(3) The penalty imposed on a supplier of water serving a population of
20 3,301 to 10,000 under this subsection shall be:

21 (i) Up to \$500 per day for each violation, but not exceeding \$12,500
22 total for each violation; and

23 (ii) Assessed with consideration given to the factors set forth in
24 paragraph (2)(ii) of this subsection.

25 (4) The penalty imposed on a supplier of water serving a population of 501
26 to 3,300 under this subsection shall be:

27 (i) Up to \$250 per day for each violation, but not exceeding \$6,250
28 total for each violation; and

29 (ii) Assessed with consideration given to the factors set forth in
30 paragraph (2)(ii) of this subsection.

31 (5) The penalty imposed on a supplier of water serving a population of 500
32 or less under this subsection shall be:

(i) Up to \$100 per day for each violation, but not exceeding \$5,000 total for each violation; and

(ii) Assessed with consideration given to the factors set forth in paragraph (2)(ii) of this subsection.]

(3) THE PENALTY IMPOSED ON A PERSON UNDER THIS SUBSECTION SHALL BE:

(I) UP TO \$5,000 PER DAY FOR EACH VIOLATION, BUT NOT EXCEEDING \$100,000 TOTAL FOR EACH VIOLATION; AND

(II) ASSESSED WITH CONSIDERATION GIVEN TO THE FACTORS SET FORTH IN PARAGRAPH (2)(II) OF THIS SUBSECTION.

[(6)] (4) Each day a violation occurs is a separate violation under this subsection.

[(7)] (5) Any penalty imposed under this subsection is payable to the State and collectible in any manner provided at law for the collection of penalties.

[(8)] (D) All penalties collected under this subtitle shall be paid into the Maryland Clean Water Fund [created] **ESTABLISHED** under § 9–320 of this title.

9–1024.

(A) THE DEPARTMENT MAY ISSUE AN ORDER OR A NOTICE IF THE DEPARTMENT HAS REASONABLE GROUNDS TO BELIEVE THAT A PERSON TO WHOM THE ORDER OR NOTICE IS DIRECTED HAS VIOLATED:

(1) THIS SUBTITLE;

(2) ANY REGULATION ADOPTED UNDER THIS SUBTITLE; OR

(3) ANY ORDER OR PERMIT ISSUED UNDER THIS SUBTITLE.

(B) AN ORDER OR A NOTICE ISSUED UNDER THIS SUBTITLE SHALL:

(1) SPECIFY THE PROVISION THAT ALLEGEDLY HAS BEEN VIOLATED;

(2) STATE THE ALLEGED FACTS THAT CONSTITUTE THE VIOLATION;

1 **(3) STATE THE ACTIONS NECESSARY TO CORRECT THE VIOLATION**
2 **AND THE TIME ALLOWED FOR CORRECTIONS; AND**

3 **(4) STATE THE PROCEDURE FOR REQUESTING A HEARING TO**
4 **RESPOND TO THE VIOLATION ALLEGED IN THE ORDER.**

5 **(C) IF THE PERSON SERVED WITH AN ORDER DOES NOT REQUEST A**
6 **HEARING WITHIN 30 DAYS, THE ORDER BECOMES A FINAL ORDER.**

7 **(D) ANY NOTICE OR ORDER ISSUED BY THE DEPARTMENT UNDER THIS**
8 **SUBTITLE MAY BE SERVED ON THE PERSON TO WHOM IT IS DIRECTED:**

9 **(1) IN ACCORDANCE WITH § 1-204 OF THIS ARTICLE; OR**

10 **(2) BY PUBLICATION.**

11 **9-1025.**

12 **(A) THE DEPARTMENT SHALL GIVE NOTICE AND HOLD HEARINGS UNDER**
13 **THIS SUBTITLE IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT.**

14 **(B) (1) WITHIN 30 DAYS AFTER SERVICE OF THE ORDER UNDER THIS**
15 **SUBTITLE, THE PERSON SERVED MAY REQUEST IN WRITING A HEARING BEFORE THE**
16 **DEPARTMENT.**

17 **(2) (I) IF A PERSON SERVED WITH AN ORDER UNDER THIS**
18 **SUBSECTION MAKES A TIMELY REQUEST FOR A HEARING, THE DEPARTMENT SHALL**
19 **GIVE THE PERSON WRITTEN NOTICE OF THE DATE, TIME, AND PLACE OF THE**
20 **HEARING AT LEAST 10 DAYS BEFORE THE HEARING DATE.**

21 **(II) THE ORDER BECOMES FINAL WHEN THE DEPARTMENT**
22 **RENDERS ITS DECISION FOLLOWING THE HEARING.**

23 **(C) THE DEPARTMENT MAY MAKE A VERBATIM RECORD OF THE**
24 **PROCEEDINGS OF ANY HEARING HELD UNDER THIS SUBTITLE.**

25 **(D) (1) IN CONNECTION WITH ANY HEARING HELD UNDER THIS SUBTITLE,**
26 **THE DEPARTMENT MAY:**

27 **(I) SUBPOENA ANY PERSON OR EVIDENCE; AND**

28 **(II) ORDER A WITNESS TO GIVE EVIDENCE.**

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

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

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

8 **(II) COMPEL TESTIMONY OR THE PRODUCTION OF EVIDENCE.**

9 **(4) THE COURT MAY PUNISH AS CONTEMPT ANY FAILURE TO OBEY AN**
10 **ORDER ISSUED UNDER THIS SECTION.**

11 **(5) ANY PERSON AGGRIEVED BY A FINAL DECISION OF THE**
12 **DEPARTMENT IN CONNECTION WITH AN ORDER OR A PERMIT ISSUED UNDER THIS**
13 **SUBTITLE MAY TAKE JUDICIAL APPEAL IN ACCORDANCE WITH THE**
14 **ADMINISTRATIVE PROCEDURE ACT.**

15 **(E) THIS SECTION DOES NOT PREVENT THE DEPARTMENT OR THE**
16 **ATTORNEY GENERAL FROM TAKING ACTION AGAINST A VIOLATOR BEFORE THE**
17 **EXPIRATION OF THE TIME LIMITATIONS OR SCHEDULES IN THE ORDER.**

18 9-1026.

19 **(A) (1) IN ADDITION TO BEING SUBJECT TO AN INJUNCTIVE ACTION**
20 **UNDER THIS SUBTITLE, A PERSON WHO VIOLATES ANY PROVISION OF THIS SUBTITLE**
21 **OR OF ANY REGULATION, ORDER, OR PERMIT ADOPTED OR ISSUED UNDER THIS**
22 **SUBTITLE IS LIABLE TO PAY A CIVIL PENALTY NOT EXCEEDING \$10,000, TO BE**
23 **COLLECTED IN A CIVIL ACTION BROUGHT BY THE DEPARTMENT.**

24 **(2) EACH DAY A VIOLATION OCCURS IS A SEPARATE VIOLATION**
25 **UNDER THIS SUBSECTION.**

26 **(B) A person who violates any provision of this subtitle is guilty of a misdemeanor**
27 **and on conviction is subject to a fine not exceeding [\$1,000] \$10,000 or imprisonment not**
28 **exceeding 1 year or both.**

29 **(C) (1) IN ADDITION TO ANY OTHER REMEDIES AVAILABLE AT LAW OR IN**
30 **EQUITY AND AFTER AN OPPORTUNITY FOR A HEARING, WHICH MAY BE WAIVED IN**
31 **WRITING BY THE PERSON ACCUSED OF A VIOLATION, THE DEPARTMENT MAY**

1 IMPOSE A PENALTY FOR VIOLATION OF ANY PROVISION OF THIS SUBTITLE OR ANY
2 REGULATION, ORDER, OR PERMIT ADOPTED OR ISSUED UNDER THIS SUBTITLE.

3 (2) THE PENALTY IMPOSED ON A PERSON UNDER THIS SUBSECTION
4 SHALL BE:

5 (I) UP TO \$5,000 FOR EACH VIOLATION, BUT NOT EXCEEDING
6 \$100,000 TOTAL; AND

7 (II) ASSESSED WITH CONSIDERATION GIVEN TO:

8 1. THE WILLFULNESS OF THE VIOLATION, THE EXTENT
9 TO WHICH THE EXISTENCE OF THE VIOLATION WAS KNOWN TO BUT UNCORRECTED
10 BY THE VIOLATOR, AND THE EXTENT TO WHICH THE VIOLATOR EXERCISED
11 REASONABLE CARE;

12 2. ANY ACTUAL HARM TO THE ENVIRONMENT OR TO
13 HUMAN HEALTH, INCLUDING INJURY TO OR IMPAIRMENT OF THE USE OF THE
14 WATERS OF THE STATE OR THE NATURAL RESOURCES OF THE STATE;

15 3. THE COST OF CLEANUP AND THE COST OF
16 RESTORATION OF NATURAL RESOURCES;

17 4. THE NATURE AND DEGREE OF INJURY TO OR
18 INTERFERENCE WITH GENERAL WELFARE, HEALTH, AND PROPERTY;

19 5. THE EXTENT TO WHICH THE LOCATION OF THE
20 VIOLATION, INCLUDING LOCATION NEAR WATERS OF THE STATE OR AREAS OF
21 HUMAN POPULATION, CREATES THE POTENTIAL FOR HARM TO THE ENVIRONMENT
22 OR TO HUMAN HEALTH OR SAFETY;

23 6. THE AVAILABLE TECHNOLOGY AND ECONOMIC
24 REASONABLENESS OF CONTROLLING, REDUCING, OR ELIMINATING THE VIOLATION;

25 7. THE DEGREE OF HAZARD POSED BY THE PARTICULAR
26 POLLUTANT OR POLLUTANTS INVOLVED; AND

27 8. THE EXTENT TO WHICH THE CURRENT VIOLATION IS
28 PART OF A RECURRENT PATTERN OF THE SAME OR SIMILAR TYPE OF VIOLATION
29 COMMITTED BY THE VIOLATOR.

30 (3) EACH DAY A VIOLATION OCCURS IS A SEPARATE VIOLATION
31 UNDER THIS SUBSECTION.

1 (4) ANY PENALTY IMPOSED UNDER THIS SUBSECTION IS PAYABLE TO
2 THE STATE AND COLLECTIBLE IN ANY MANNER PROVIDED AT LAW FOR THE
3 COLLECTION OF DEBTS.

4 (5) IF ANY PERSON WHO IS LIABLE TO PAY A PENALTY IMPOSED
5 UNDER THIS SUBSECTION FAILS TO PAY THE PENALTY AFTER DEMAND, THE
6 AMOUNT, TOGETHER WITH INTEREST AND ANY COSTS THAT MAY ACCRUE, SHALL BE:

7 (I) A LIEN IN FAVOR OF THE STATE ON ANY PROPERTY, REAL
8 OR PERSONAL, OF THE PERSON; AND

9 (II) RECORDED IN THE OFFICE OF THE CLERK OF COURT FOR
10 THE COUNTY IN WHICH THE PROPERTY IS LOCATED.

11 (D) ALL PENALTIES COLLECTED UNDER THIS SUBTITLE SHALL BE PAID
12 INTO THE MARYLAND CLEAN WATER FUND ESTABLISHED UNDER § 9-320 OF THIS
13 TITLE.

14 9-1026.1.

15 (A) THE ATTORNEY GENERAL, AT THE REQUEST OF THE DEPARTMENT,
16 MAY BRING AN ACTION FOR AN INJUNCTION AGAINST ANY PERSON WHO VIOLATES
17 ANY PROVISION OF THIS SUBTITLE OR ANY REGULATION, ORDER, OR PERMIT
18 ADOPTED OR ISSUED BY THE DEPARTMENT UNDER THIS SUBTITLE.

19 (B) IN ANY ACTION FOR AN INJUNCTION UNDER THIS SECTION, ANY FINDING
20 OF THE DEPARTMENT AFTER A HEARING IS PRIMA FACIE EVIDENCE OF EACH FACT
21 THE DEPARTMENT DETERMINES.

22 (C) ON A SHOWING THAT ANY PERSON IS VIOLATING OR IS ABOUT TO
23 VIOLATE ANY PROVISION OF THIS SUBTITLE OR ANY REGULATION, ORDER, OR
24 PERMIT ISSUED BY THE DEPARTMENT UNDER THIS SUBTITLE, A COURT SHALL
25 GRANT AN INJUNCTION WITHOUT REQUIRING A SHOWING OF A LACK OF AN
26 ADEQUATE REMEDY AT LAW.

27 (D) IF AN EMERGENCY EXISTS THAT CREATES IMMINENT DANGER TO THE
28 PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, THE ATTORNEY GENERAL AT
29 THE REQUEST OF THE DEPARTMENT MAY INSTITUTE A CIVIL ACTION FOR AN
30 IMMEDIATE INJUNCTION TO STOP ANY POLLUTION OR ACTIVITY THAT IS CAUSING
31 THE DANGER.

32 12-101.

(a) In this title the following words have the meanings indicated.

(b) “Board” means the State Board of Waterworks and Waste Systems Operators.

(c) (1) “Certificate” means, unless the context requires otherwise, a certificate of certification as an operator, industrial operator, or superintendent, issued by the Board.

(2) “Certificate” includes:

(i) A certificate; and

(ii) A temporary certificate, as limited by § 12–305 of this title.

(d) “Certified industrial operator” means, unless the context requires otherwise, an industrial operator who is certified by the Board.

(e) “Certified operator” means, unless the context requires otherwise, an operator who is certified by the Board.

(f) “Certified superintendent” means, unless the context requires otherwise, a superintendent who is certified by the Board.

(g) (1) “Industrial operator” means an individual who operates the controls or maintains the logs of an industrial wastewater works.

(2) “Industrial operator” does not include a superintendent.

(h) “Industrial wastewater works” means a facility used to collect, store, pump, treat, or discharge any waste substance that results from:

(1) A manufacturing process;

(2) A business process; or

(3) The development of a natural resource.

(i) (1) “Operator” means an individual who participates in the operation of:

(i) A waterworks, including the control of the flow, processing, and distribution of water; or

(ii) A wastewater works, including the collection, control of flow, processing, and discharge of wastewater and effluent.

(2) “Operator” does not include a superintendent.

(j) **“PERSON” INCLUDES THE FEDERAL GOVERNMENT, THE STATE, ANY COUNTY, MUNICIPAL CORPORATION, AND OTHER POLITICAL SUBDIVISION OF THE STATE, AND ANY OF THEIR UNITS, AND AN INDIVIDUAL, A RECEIVER, A TRUSTEE, A GUARDIAN, AN EXECUTOR, AN ADMINISTRATOR, A FIDUCIARY, A REPRESENTATIVE OF ANY KIND, AN OPERATOR, A CERTIFIED OPERATOR, A SUPERINTENDENT, A CERTIFIED SUPERINTENDENT, AN INDUSTRIAL OPERATOR, AND A CERTIFIED INDUSTRIAL OPERATOR, AND ANY PARTNERSHIP, FIRM, ASSOCIATION, PUBLIC OR PRIVATE CORPORATION, WATERWORKS, WASTEWATER WORKS, INDUSTRIAL WASTEWATER WORKS, AND ANY OTHER ENTITY.**

(K) **“Responsible charge” means responsibility for the operation and performance of all or any part of a waterworks, wastewater works, or industrial wastewater works.**

~~[(k)]~~ (L) **“Superintendent” means an individual who is designated by any employing or appointing person, county, municipality, sanitary district, or [this] THE State as the individual in responsible charge of a waterworks, wastewater works, or industrial wastewater works.**

~~[(l)]~~ (M) (1) **“Wastewater works” means a facility used to collect, store, pump, treat, or discharge any liquid or waterborne waste.**

(2) **“Wastewater works” does not include:**

- (i) A facility that is used only by a private residence;
- (ii) A facility that uses a septic tank or subsoil absorption; or
- (iii) An industrial wastewater works.

~~[(m)]~~ (N) (1) **“Waterworks” means a facility used to collect, store, pump, treat, or distribute water for human consumption.**

(2) **“Waterworks” does not include a facility that is used only by a private residence.**

12–501.

(a) A person or municipal or private corporation may not operate a waterworks, wastewater works, or industrial wastewater works unless the facility is under the responsible charge of a certified superintendent or certified operator as provided under § 12–402 of this title.

(b) After July 1, 1982, a person or municipal or private corporation may not operate a waterworks or wastewater works unless all operators in the waterworks or wastewater works are certified operators.

(c) After July 1, 1982, a person or municipal or private corporation may not operate an industrial wastewater works unless all industrial operators in the industrial wastewater works are certified industrial operators.

(d) **ON OR BEFORE JULY 1 EACH YEAR, BEGINNING IN 2023, A PERSON OR MUNICIPAL OR PRIVATE CORPORATION THAT OPERATES A WATERWORKS, A WASTEWATER WORKS, OR AN INDUSTRIAL WASTEWATER WORKS SHALL REPORT TO THE DEPARTMENT, USING FORMS APPROVED BY THE DEPARTMENT, ON ALL CERTIFIED SUPERINTENDENTS, CERTIFIED OPERATORS, AND CERTIFIED INDUSTRIAL OPERATORS WHO ARE PARTICIPATING IN THE OPERATION OF, OR ARE CURRENTLY IN RESPONSIBLE CHARGE OF, THE WATERWORKS, WASTEWATER WORKS, OR INDUSTRIAL WASTEWATER WORKS.**

(E) The Department shall enforce this section.

12-502.

(A) **THE DEPARTMENT MAY ISSUE AN ORDER OR A NOTICE IF THE DEPARTMENT HAS REASONABLE GROUNDS TO BELIEVE THAT A PERSON TO WHOM THE ORDER OR A NOTICE IS DIRECTED HAS VIOLATED:**

(1) **THIS TITLE;**

(2) **ANY REGULATION ADOPTED UNDER THIS TITLE; OR**

(3) **ANY ORDER OR PERMIT ISSUED UNDER THIS TITLE.**

(B) **AN ORDER OR A NOTICE ISSUED UNDER THIS TITLE SHALL:**

(1) **SPECIFY THE PROVISION THAT ALLEGEDLY HAS BEEN VIOLATED;**

(2) **STATE THE ALLEGED FACTS THAT CONSTITUTE THE VIOLATION;**

(3) **STATE THE ACTIONS NECESSARY TO CORRECT THE VIOLATION AND THE TIME ALLOWED FOR CORRECTIONS; AND**

(4) **STATE THE PROCEDURE FOR REQUESTING A HEARING TO RESPOND TO THE VIOLATION ALLEGED IN THE ORDER.**

(C) **IF THE PERSON SERVED WITH AN ORDER DOES NOT REQUEST A HEARING WITHIN 30 DAYS, THE ORDER BECOMES A FINAL ORDER.**

(D) **ANY NOTICE OR ORDER ISSUED BY THE DEPARTMENT UNDER THIS TITLE MAY BE SERVED ON THE PERSON TO WHOM IT IS DIRECTED:**

(1) IN ACCORDANCE WITH § 1-204 OF THIS ARTICLE; OR

(2) BY PUBLICATION.

12-503.

(A) THE DEPARTMENT SHALL GIVE NOTICE AND HOLD HEARINGS UNDER THIS TITLE IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT.

(B) (1) WITHIN 30 DAYS AFTER SERVICE OF THE ORDER UNDER THIS TITLE, THE PERSON SERVED MAY REQUEST IN WRITING A HEARING BEFORE THE DEPARTMENT.

(2) (I) IF A PERSON SERVED WITH AN ORDER UNDER THIS TITLE MAKES A TIMELY REQUEST FOR A HEARING, THE DEPARTMENT SHALL GIVE THE PERSON WRITTEN NOTICE OF THE DATE, TIME, AND PLACE OF THE HEARING AT LEAST 10 DAYS BEFORE THE HEARING DATE.

(II) THE ORDER BECOMES FINAL WHEN THE DEPARTMENT RENDERS ITS DECISION FOLLOWING THE HEARING.

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

(D) (1) IN CONNECTION WITH ANY HEARING UNDER THIS TITLE, THE DEPARTMENT MAY:

(I) SUBPOENA ANY PERSON OR EVIDENCE; AND

(II) ORDER A WITNESS TO GIVE EVIDENCE.

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

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

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

(II) COMPEL TESTIMONY OR THE PRODUCTION OF EVIDENCE.

1 **(4) THE COURT MAY PUNISH AS CONTEMPT ANY FAILURE TO OBEY AN**
2 **ORDER ISSUED UNDER THIS SECTION.**

3 **(5) ANY PERSON AGGRIEVED BY A FINAL DECISION OF THE**
4 **DEPARTMENT IN CONNECTION WITH AN ORDER OR A PERMIT ISSUED UNDER THIS**
5 **TITLE MAY TAKE JUDICIAL APPEAL IN ACCORDANCE WITH THE ADMINISTRATIVE**
6 **PROCEDURE ACT.**

7 **(E) THIS SECTION DOES NOT PREVENT THE DEPARTMENT OR THE**
8 **ATTORNEY GENERAL FROM TAKING ACTION AGAINST A VIOLATOR BEFORE THE**
9 **EXPIRATION OF THE TIME LIMITATIONS OR SCHEDULES IN THE ORDER.**

10 **[12-504.**

11 (a) A person or municipal or private corporation that violates any provision of this
12 title or any rule or regulation adopted under this title is guilty of a misdemeanor and on
13 conviction is subject to a fine not exceeding \$25 for each day of violation.

14 (b) Each day of employment in violation of this title or of any rule or regulation
15 adopted under this title is a separate offense.]

16 **12-504.**

17 **(A) (1) IN ADDITION TO BEING SUBJECT TO AN INJUNCTIVE ACTION**
18 **UNDER THIS TITLE, A PERSON WHO VIOLATES ANY PROVISION OF THIS TITLE OR ANY**
19 **REGULATION, ORDER, OR PERMIT ADOPTED OR ISSUED UNDER THIS TITLE IS LIABLE**
20 **TO PAY A CIVIL PENALTY NOT EXCEEDING \$10,000, TO BE COLLECTED IN A CIVIL**
21 **ACTION BROUGHT BY THE DEPARTMENT.**

22 **(2) EACH DAY A VIOLATION OCCURS IS A SEPARATE VIOLATION**
23 **UNDER THIS SUBSECTION.**

24 **(B) (1) A PERSON WHO VIOLATES ANY PROVISION OF OR FAILS TO**
25 **PERFORM ANY DUTY IMPOSED BY THIS TITLE, OR WHO VIOLATES ANY PROVISION OF**
26 **OR FAILS TO PERFORM ANY DUTY IMPOSED BY A REGULATION, AN ORDER, OR A**
27 **PERMIT ADOPTED OR ISSUED UNDER THIS TITLE IS GUILTY OF A MISDEMEANOR AND**
28 **ON CONVICTION IS SUBJECT TO:**

29 **(I) FOR A FIRST OFFENSE, A FINE NOT EXCEEDING \$10,000 OR**
30 **IMPRISONMENT NOT EXCEEDING 1 YEAR OR BOTH; OR**

31 **(II) IF THE CONVICTION IS FOR A VIOLATION COMMITTED**
32 **AFTER A FIRST CONVICTION OF THE PERSON UNDER THIS SUBSECTION, A FINE NOT**

1 EXCEEDING \$20,000 FOR EACH DAY OF VIOLATION OR IMPRISONMENT NOT
2 EXCEEDING 2 YEARS OR BOTH.

3 (2) IN ADDITION TO ANY CRIMINAL PENALTIES IMPOSED ON A
4 PERSON CONVICTED UNDER THIS SUBSECTION, THE PERSON MAY BE ENJOINED
5 FROM CONTINUING THE VIOLATION.

6 (3) EACH DAY ON WHICH A VIOLATION OCCURS IS A SEPARATE
7 VIOLATION UNDER THIS SUBSECTION.

8 (C) (1) IN ADDITION TO ANY OTHER REMEDIES AVAILABLE AT LAW OR IN
9 EQUITY AND AFTER AN OPPORTUNITY FOR A HEARING, WHICH MAY BE WAIVED IN
10 WRITING BY THE PERSON ACCUSED OF A VIOLATION, THE DEPARTMENT MAY
11 IMPOSE A PENALTY FOR VIOLATION OF ANY PROVISION OF THIS TITLE OR ANY
12 REGULATION, ORDER, OR PERMIT ADOPTED OR ISSUED UNDER THIS TITLE.

13 (2) THE PENALTY IMPOSED ON A PERSON UNDER THIS SUBSECTION
14 SHALL BE:

15 (I) UP TO \$5,000 FOR EACH VIOLATION, BUT NOT EXCEEDING
16 \$100,000 TOTAL; AND

17 (II) ASSESSED WITH CONSIDERATION GIVEN TO:

18 1. THE WILLFULNESS OF THE VIOLATION, THE EXTENT
19 TO WHICH THE EXISTENCE OF THE VIOLATION WAS KNOWN TO BUT UNCORRECTED
20 BY THE VIOLATOR, AND THE EXTENT TO WHICH THE VIOLATOR EXERCISED
21 REASONABLE CARE;

22 2. ANY ACTUAL HARM TO THE ENVIRONMENT OR TO
23 HUMAN HEALTH, INCLUDING INJURY TO OR IMPAIRMENT OF THE USE OF THE
24 WATERS OF THE STATE OR THE NATURAL RESOURCES OF THE STATE;

25 3. THE COST OF CLEANUP AND THE COST OF
26 RESTORATION OF NATURAL RESOURCES;

27 4. THE NATURE AND DEGREE OF INJURY TO OR
28 INTERFERENCE WITH GENERAL WELFARE, HEALTH, AND PROPERTY;

29 5. THE EXTENT TO WHICH THE LOCATION OF THE
30 VIOLATION, INCLUDING LOCATION NEAR WATERS OF THE STATE OR AREAS OF
31 HUMAN POPULATION, CREATES THE POTENTIAL FOR HARM TO THE ENVIRONMENT
32 OR TO HUMAN HEALTH OR SAFETY;

1 **6. THE AVAILABLE TECHNOLOGY AND ECONOMIC**
2 **REASONABLENESS OF CONTROLLING, REDUCING, OR ELIMINATING THE VIOLATION;**

3 **7. THE DEGREE OF HAZARD POSED BY THE PARTICULAR**
4 **POLLUTANT OR POLLUTANTS INVOLVED; AND**

5 **8. THE EXTENT TO WHICH THE CURRENT VIOLATION IS**
6 **PART OF A RECURRENT PATTERN OF THE SAME OR SIMILAR TYPE OF VIOLATION**
7 **COMMITTED BY THE VIOLATOR.**

8 **(3) EACH DAY A VIOLATION OCCURS IS A SEPARATE VIOLATION**
9 **UNDER THIS SUBSECTION.**

10 **(4) ANY PENALTY IMPOSED UNDER THIS SUBSECTION IS PAYABLE TO**
11 **THE STATE AND COLLECTIBLE IN ANY MANNER PROVIDED AT LAW FOR THE**
12 **COLLECTION OF DEBTS.**

13 **(5) IF ANY PERSON WHO IS LIABLE TO PAY A PENALTY IMPOSED**
14 **UNDER THIS SUBSECTION FAILS TO PAY THE PENALTY AFTER DEMAND, THE**
15 **AMOUNT, TOGETHER WITH INTEREST AND ANY COSTS THAT MAY ACCRUE, SHALL BE:**

16 **(I) A LIEN IN FAVOR OF THE STATE ON ANY PROPERTY, REAL**
17 **OR PERSONAL, OF THE PERSON; AND**

18 **(II) RECORDED IN THE OFFICE OF THE CLERK OF COURT FOR**
19 **THE COUNTY IN WHICH THE PROPERTY IS LOCATED.**

20 **(D) ALL PENALTIES COLLECTED UNDER THIS TITLE SHALL BE PAID INTO**
21 **THE MARYLAND CLEAN WATER FUND ESTABLISHED UNDER § 9-320 OF THIS**
22 **ARTICLE.**

23 **12-505.**

24 **(A) THE ATTORNEY GENERAL, AT THE REQUEST OF THE DEPARTMENT OR**
25 **THE BOARD, MAY BRING AN ACTION FOR AN INJUNCTION AGAINST ANY PERSON WHO**
26 **VIOLATES ANY PROVISION OF THIS TITLE OR ANY REGULATION, ORDER, OR PERMIT**
27 **ADOPTED OR ISSUED BY THE DEPARTMENT OR THE BOARD UNDER THIS TITLE.**

28 **(B) IN ANY ACTION FOR AN INJUNCTION UNDER THIS SECTION, ANY FINDING**
29 **OF THE DEPARTMENT OR THE BOARD AFTER A HEARING IS PRIMA FACIE EVIDENCE**
30 **OF EACH FACT THE DEPARTMENT OR THE BOARD DETERMINES.**

(C) ON A SHOWING THAT ANY PERSON IS VIOLATING OR IS ABOUT TO VIOLATE ANY PROVISION OF THIS TITLE OR ANY REGULATION, ORDER, OR PERMIT ISSUED BY THE DEPARTMENT OR THE BOARD UNDER THIS TITLE, A COURT SHALL GRANT AN INJUNCTION WITHOUT REQUIRING A SHOWING OF A LACK OF AN ADEQUATE REMEDY AT LAW.

(D) IF AN EMERGENCY EXISTS THAT CREATES IMMINENT DANGER TO THE PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, THE ATTORNEY GENERAL AT THE REQUEST OF THE DEPARTMENT OR THE BOARD MAY INSTITUTE A CIVIL ACTION FOR AN IMMEDIATE INJUNCTION TO STOP ANY POLLUTION OR OTHER ACTIVITY THAT IS CAUSING THE DANGER.

16-502.

(a) (1) A person who violates any provision of this title or any regulation, permit, license, or order issued under this title shall be liable for a penalty not exceeding \$10,000, which may be recovered in a civil action.

(2) In imposing a penalty under this subsection, the court may consider the factors in § 9-342(b)(2)(ii) of this article and any other relevant factors.

(3) EACH DAY A VIOLATION OCCURS IS A SEPARATE VIOLATION UNDER THIS SUBSECTION.

(b) The circuit court may issue an injunction requiring the person to cease the violation and restore the area unlawfully dredged or filled.

(c) Before taking any civil action to recover a penalty under subsection (a) of this section, the Department shall provide the person alleged to have violated this title with written notice of the proposed penalty and an opportunity for an informal meeting concerning settlement of the proposed civil action.

(D) (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 TITLE OR ANY REGULATION, ORDER, OR PERMIT ADOPTED OR ISSUED UNDER THIS TITLE.

(2) THE PENALTY IMPOSED ON A PERSON UNDER THIS SUBSECTION SHALL BE:

(I) UP TO \$5,000 FOR EACH VIOLATION, BUT NOT EXCEEDING \$100,000 TOTAL; AND

(II) ASSESSED WITH CONSIDERATION GIVEN TO:

1 1. THE WILLFULNESS OF THE VIOLATION, THE EXTENT
2 TO WHICH THE EXISTENCE OF THE VIOLATION WAS KNOWN TO BUT UNCORRECTED
3 BY THE VIOLATOR, AND THE EXTENT TO WHICH THE VIOLATOR EXERCISED
4 REASONABLE CARE;

5 2. ANY ACTUAL HARM TO THE ENVIRONMENT OR TO
6 HUMAN HEALTH, INCLUDING INJURY TO OR IMPAIRMENT OF THE USE OF THE
7 WATERS OF THE STATE OR THE NATURAL RESOURCES OF THE STATE;

8 3. THE COST OF CLEANUP AND THE COST OF
9 RESTORATION OF NATURAL RESOURCES;

10 4. THE NATURE AND DEGREE OF INJURY TO OR
11 INTERFERENCE WITH GENERAL WELFARE, HEALTH, AND PROPERTY;

12 5. THE EXTENT TO WHICH THE LOCATION OF THE
13 VIOLATION, INCLUDING LOCATION NEAR WATERS OF THE STATE OR AREAS OF
14 HUMAN POPULATION, CREATES THE POTENTIAL FOR HARM TO THE ENVIRONMENT
15 OR TO HUMAN HEALTH OR SAFETY;

16 6. THE AVAILABLE TECHNOLOGY AND ECONOMIC
17 REASONABLENESS OF CONTROLLING, REDUCING, OR ELIMINATING THE VIOLATION;

18 7. THE DEGREE OF HAZARD POSED BY THE PARTICULAR
19 POLLUTANT OR POLLUTANTS INVOLVED; AND

20 8. THE EXTENT TO WHICH THE CURRENT VIOLATION IS
21 PART OF A RECURRENT PATTERN OF THE SAME OR SIMILAR TYPE OF VIOLATION
22 COMMITTED BY THE VIOLATOR.

23 (3) EACH DAY A VIOLATION OCCURS IS A SEPARATE VIOLATION
24 UNDER THIS SUBSECTION.

25 (4) ANY PENALTY IMPOSED UNDER THIS SUBSECTION IS PAYABLE TO
26 THE STATE AND COLLECTIBLE IN ANY MANNER PROVIDED AT LAW FOR THE
27 COLLECTION OF DEBTS.

28 (5) IF ANY PERSON WHO IS LIABLE TO PAY A PENALTY IMPOSED
29 UNDER THIS SUBSECTION FAILS TO PAY THE PENALTY AFTER DEMAND, THE
30 AMOUNT, TOGETHER WITH INTEREST AND ANY COSTS THAT MAY ACCRUE, SHALL BE:

1 **(I) A LIEN IN FAVOR OF THE STATE ON ANY PROPERTY, REAL**
2 **OR PERSONAL, OF THE PERSON; AND**

3 **(II) RECORDED IN THE OFFICE OF THE CLERK OF COURT FOR**
4 **THE COUNTY IN WHICH THE PROPERTY IS LOCATED.**

5 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2022.