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State NPDES Authority Statutes: *Delaware*



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State NPDES Authority Statutes: Delaware

7 Del.C. Chapter 60

Current through the 2022 legislative session.

§ 6001. Findings, Policy, and Purpose.

(a) Findings.--The General Assembly hereby makes the following findings concerning the development, utilization and control of the land, water, underwater and air resources of the State:

- (1) The development, utilization and control of the land, water, underwater and air resources of the State are vital to the people in order to assure adequate supplies for domestic, industrial, power, agricultural, recreational and other beneficial uses;
- (2) The development and utilization of the land, water, underwater and air resources must be regulated to ensure that the land, water, underwater and air resources of the State are employed for beneficial uses and not wasted;
- (3) The regulation of the development and utilization of the land, water, underwater and air resources of the State is essential to protect beneficial uses and to assure adequate resources for the future;
- (4) The land, water, underwater and air resources of the State must be protected and conserved to assure continued availability for public recreational purposes and for the conservation of wildlife and aquatic life;
- (5) The land, water, underwater and air resources of the State must be protected from pollution in the interest of the health and safety of the public;
- (6) The land, water, underwater and air resources of the State can best be utilized, conserved and protected if utilization thereof is restricted to beneficial uses and controlled by a state agency responsible for proper development and utilization of the land, water, underwater and air resources of the State;
- (7) Planning for the development and utilization of the land, water, underwater and air resources is essential in view of population growth and the expanding economic activity within the State.

(b) Policy.--In view of the rapid growth of population, agriculture, industry and other economic activities, the land, water and air resources of the State must be protected, conserved and controlled to assure their reasonable and beneficial use in the interest of the people of the State. Therefore, it is the policy of this State that:



- (1) The development, utilization and control of all the land, water, underwater and air resources shall be directed to make the maximum contribution to the public benefit; and
- (2) The State, in the exercise of its sovereign power, acting through the Department should control the development and use of the land, water, underwater and air resources of the State so as to effectuate full utilization, conservation and protection of the water and air resources of the State.

(c) Purpose.--It is the purpose of this chapter to effectuate state policy by providing for:

- (1) A program for the management of the land, water, underwater and air resources of the State so directed as to make the maximum contribution to the interests of the people of this State;
- (2) A program for the control of pollution of the land, water, underwater and air resources of the State to protect the public health, safety and welfare;
- (3) A program for the protection and conservation of the land, water, underwater and air resources of the State, for public recreational purposes, and for the conservation of wildlife and aquatic life;
- (4) A program for conducting and fostering research and development in order to encourage maximum utilization of the land, water, underwater and air resources of the State;
- (5) A program for cooperating with federal, interstate, state, local governmental agencies and utilities in the development and utilization of land, water, underwater and air resources;
- (6) A program for improved solid waste storage, collection, transportation, processing and disposal by providing that such activities may henceforth be conducted only in an environmentally acceptable manner pursuant to a permit obtained from the Department.

§ 6002. Definitions

The following words and phrases shall have the meaning ascribed to them in this chapter unless the context clearly indicates otherwise:

- (1) "Activity" means construction, or operation, or use of any facility, property, or device.
- (2) "Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke or vapor or any combination thereof, exclusive of uncombined water.
- (3) "Air pollution" means the presence in the outdoor atmosphere of 1 or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life or to property, or which unreasonably interferes



with the enjoyment of life and property within the jurisdiction of this State, excluding all aspects of employer-employee relationships as to health and safety hazards.

(4) “At cost” means the expense to the government to conduct tests and analyses. No added service fee, or other fees and charges, may be included in this cost.

(5) “Board” means the Environmental Appeals Board.

(6) “Boat docking facility” shall mean a place where vessels may be secured to a fixed or floating structure or to the shoreline or shoreline structure.

(7) “Borrow pit” means any excavation into the subsurface for the purpose of extraction of earth products with the exception of excavation for utility or road construction, agricultural or highway drainage, or dredging operations under the jurisdiction of the U.S. Army Corps of Engineers.

(8) “Categorical pretreatment standard” means a pretreatment standard which applies to industrial users in a specific industrial subcategory.

(9) “Commercial landfill” means a waste disposal facility available for use by the general public and which accepts waste for disposal for profit.

(10) “Debris disposal area” means an excavation, pit or depression into which land clearing debris, along with small amounts of construction or demolition waste incidental to construction, has been placed and which is not a permitted or approved waste management facility.

(11) “Dedicated pumpout facility” means a semi-permanent connection made to a vessel for the purpose of removing sewage from the vessel on a continuous basis or automatic intermittent basis to an approved disposal facility.

(12) “Delineation” shall mean the process of defining and/or mapping a boundary that approximates the areas that contribute water to a particular water source used as a public water supply.

(13) “Department” means the Department of Natural Resources and Environmental Control.

(14) “Direct vessel sewage pumpout connection” shall mean a semipermanent connection made to a vessel for the purpose of removing vessel sewage from the vessel holding tank or head on a continuous or automatic intermittent basis to an approved sewage disposal facility.

(15) “Discharge or indirect discharge” means the discharge or the introduction of pollutants from any nondomestic source into a POTW.

(16) “Domestic wastewater” means the liquid and water-borne human and/or household type waste derived from residential, industrial, institutional or commercial sources.



(17) “Dump station” means a type of pumpout facility that receives vessel sewage from portable marine sanitation devices and delivers that sewage to an approved sewage disposal facility.

(18) “Earth products” means any solid material, aggregate or substance of commercial value, whether consolidated or loose, found in natural deposits on or in the earth, including, but not limited to clay, silt, diatomaceous earth, sand, gravel, stone, metallic ores, shale and soil.

(19) “Environmental release” means any spillage, leakage, emission, discharge or delivery into the air or waters or on or into the lands of this State of any sewage of 10,000 gallons or more oil, industrial waste, liquid waste, hydrocarbon chemical, hazardous substance, hazardous waste, restricted chemical material, vessel discharge, air contaminant, pollutant, regulated biological substance or other wastes reportable pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. § 9601 et seq.], as amended, or regulations enacted pursuant to § 6028 of this title.

(20) “Excellent ground-water recharge potential area” shall mean any area where soils and sedimentary deposits of the most coarse grained nature have the best ability to transmit water vertically through the unsaturated zone to the water table as mapped by the methods described in the Delaware Geological Survey Open File Report No. 34, “Methodology For Mapping Ground-Water Recharge Areas in Delaware's Coastal Plain” (August 1991), and as depicted on a series of maps prepared by the Delaware Geological Survey. An excellent ground-water recharge potential area shall constitute a critical area as defined under Chapter 92 of Title 29.

(21) “Garbage” shall mean any putrescible solid and semisolid animal and/or vegetable wastes resulting from the production, handling, preparation, cooking, serving or consumption of food or food materials.

(22) “Graywater” means galley, bath and shower water.

(23) “Ground water” means any water naturally found under the surface of the earth.

(24) “Hydrocarbon chemical” means any compound composed of carbon and hydrogen.

(25) “Incinerator,” “incinerator structure or facility,” and “waste incinerator” include any structure or facility operated for the combustion (oxidation) of solid waste, even if the by-products of the operation include useful products such as steam and electricity.

“Incinerator” shall not include:

- a. Crematoriums;
- b. The disposal of the bodies of animals through incineration;



- c. The burning of poultry waste or poultry manure at the same site where the waste or manure was generated, which shall include the burning of poultry waste or poultry manure generated upon an adjacent farm;
- d. The disposal of all materials used in the discovery, development, and manufacture of veterinary products, medicines and vaccines; or
- e. The disposition of mortalities from poultry operations in facilities approved by the Delaware Department of Natural Resources and Environmental Control which comply with United States Department of Agricultural Natural Resources Conservation Service Interim Conservation Practice Standard Incinerator 769 or any successor standard.

(26) “Industrial landfill” means a landsite at which industrial waste is deposited on or into the land as fill for the purpose of permanent disposal. “Industrial landfill” does not mean a facility approved for any of the following:

- a. The disposal of hazardous waste under § 6307 of this title.
- b. A sanitary landfill under § 6010 of this title.

(27) “Industrial user” means a source of indirect discharge. The term “industrial user” shall include, but not be limited to, the original source of the indirect discharge as well as the owners or operators of any intervening connections, other than those owned or operated by the receiving POTW, which convey the indirect discharge to the POTW.

(28) “Industrial waste” means any water-borne liquid, gaseous, solid or other waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development of any agricultural or natural resource.

(29) “Liquid waste” means any industrial waste or sewage or other wastes or any combination thereof which may potentially alter the chemical, physical or biological integrity of water from its natural state.

(30) “Liquid waste hauler” means any person who engages in the removal of liquid wastes from septic tanks, cesspools, seepage pits, holding tanks or other such devices and conveys such liquid waste to a location removed from the point of acceptance.

(31) “Liquid waste treatment plant operator” means any person who has direct responsibility for the operation of a liquid waste treatment plant.

(32) “Live-aboard vessel” shall mean:

- a. A vessel used principally as a residence;
- b. A vessel used as a place of business, professional or other commercial enterprise and, if used as a means of transportation, said transportation use is a



secondary or subsidiary use; this definition shall not include commercial fishing boats which do not fall under paragraph (32)a. of this section; or

c. Any other floating structure used for the purposes stated under paragraph (32)a. or b. of this section.

(33) “Marinas” are those facilities adjacent to the water which provide for mooring, berthing, or storage of boats, and which include any or all of the related ancillary structures and functions of marinas, such as docks, piers, boat storage areas, boat ramps, anchorages, breakwaters, channels, moorings, basins, boat repair services, boat sales, sales of supplies which are normally associated with boating such as fuel, bait and tackle, boat rentals and parking areas for users of the marina.

(34) “Marine Sanitation Device (MSD)” includes any equipment on board a vessel which is designed to receive, retain, treat or discharge sewage, and any process to treat such sewage. Marine sanitation devices are classified as:

a. “Type I marine sanitation device” means a device that produces an effluent having a fecal coliform bacteria count not greater than 1,000 per 100 milliliters and no visible floating solids.

b. “Type II marine sanitation device” means a device that produces an effluent having a fecal coliform bacteria count of not greater than 200 per 100 milliliters and suspended solids not greater than 150 milligrams per liter.

c. “Type III marine sanitation device” means a device that is certified to a no-discharge standard. Type III devices include recirculating and incinerating MSDs and holding tanks.

(35) “Oil” means oil of any kind and in any form, including but not limited to, petroleum products, sludge, oil refuse, oil mixed with other wastes and all other liquid hydrocarbons regardless of specific gravity.

(36) “Open dump” means any facility or site where solid waste is disposed which is not a sanitary landfill and which is not a facility for disposal for hazardous waste.

(37) “Other wastes” means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime cinders, ashes, offal, oil, tar, dye-stuffs, acids, chemicals and all discarded substances other than sewage or industrial wastes.

(38) “Persons” means any individual, trust, firm, joint stock company, federal agency, partnership, corporation (including a government corporation), association, state, municipality, commission, political subdivision of a state or any interstate body.

(39) “Pollutant” means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, hydrocarbons, oil, and



product chemicals, and industrial, municipal and agricultural waste discharged into water.

(40) "POTW pretreatment program" means a program administered by a POTW for the purpose of enforcing pretreatment standards in accordance with the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. and regulations promulgated thereunder.

(41) "Pretreatment standard" means any pollutant discharge limit promulgated by the Administrator of the United States Environmental Protection Agency in accordance with § 307(b) and (c) of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1317(b) and (c), or by the Secretary, which applies to industrial users.

(42) "Public drinking water system" shall mean a community, noncommunity or non-transient non-community water system which provides piped water to the public for human consumption. The system must have at least 15 service connections or regularly serve at least 25 individuals daily for at least 60 days.

(43) "Publicly owned treatment works" or "POTW" means either:

- a. A treatment works which is owned by a city, town, county, district or other public body created by or pursuant to the laws of the State; or
- b. Any such public body which has jurisdiction over the discharges to such treatment works.

(44) "Pumpout facility" means a mechanical device which is temporarily connected to a vessel for the purpose of removing sewage from a vessel to an approved sewage disposal facility.

(45) "Refuse" means any putrescible or nonputrescible solid waste, except human excreta, but including garbage, rubbish, ashes, street cleanings, dead animals, offal and solid agricultural, commercial, industrial, hazardous and institutional wastes and construction wastes resulting from the operation of a contractor.

(46) "Restricted chemical material" means:

- a. Any halogenated hydrocarbon chemical (aliphatic or aromatic) including but not limited to trichloroethane, tetrachloroethylene, methylene chloride, halogenated benzenes and carbon tetrachloride; or
- b. Any aromatic hydrocarbon chemical including, but not limited to, benzene, toluene and naphthalene; or
- c. Any halogenated phenol derivative in which a hydroxide group and 2 or more halogen atoms are substituted onto aromatic carbons of a benzene ring including, but not limited to, trichlorophenol and pentachlorophenol; or



d. Similar materials including but not limited to acrolein, acrylonitrile or benzidene.

(47) “Rubbish” means any nonputrescible solid waste, excluding ashes, such as cardboard, paper, plastic, metal or glass food containers, rags, waste metal, yard clippings, small pieces of wood, excelsior, rubber, leather, crockery and other waste materials.

(48) “Sanitary landfill” means a facility for the disposal of solid waste which meets the criteria promulgated under § 6010(g)(1) of this title.

(49) “Secretary” means the Secretary of the Department of Natural Resources and Environmental Control or the Secretary’s duly authorized designee.

(50) “Sewage” means water-carried human or animal wastes from septic tanks, water closets, residences, buildings, industrial establishments, or other places, together with such ground water infiltration, subsurface water, admixtures of industrial wastes or other wastes as may be present.

(51) “Sewage system” means any part of a wastewater disposal system including, but not limited to, all toilets, urinals, piping, drains, sewers, septic tanks, distribution boxes, absorption fields, seepage pits, cesspools and dry wells.

(52) “Sewage system cleanser” means: (i) Any solid or liquid material intended or used primarily for the purpose of cleaning, treating or unclogging any part of a sewage system, or (ii) any solid or liquid material intended or used primarily for the purpose of continuously or automatically deodorizing or disinfecting any part of a sewage system including, but not limited to, solid cakes or devices placed in plumbing fixtures. Excluded from this definition are products intended or used primarily in the manual surface cleaning, scouring, treating, deodorizing or disinfecting, of common plumbing fixtures.

(53) “Slip” means a place where a boat may be secured to a fixed or floating structure, including, but not limited to a dock, pier, mooring or anchorage. Slips may be wet (in the water) or dry (in a rack or other device on land).

(54) “Solid waste” means any garbage, refuse, refuse-derived fuel, demolition and construction waste wood, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under this chapter, as amended, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954 [42 U.S.C. § 2011 et seq.], as amended. By-products of a uniform and known composition produced as a result of a production process are not solid wastes when incinerated onsite. All incinerators under state permit as of March 1,



2000, and renewal permit applications for these incinerators shall not come under the provisions of this section and § 6003 of this title.

(55) “Source water” shall mean any aquifer or surface water body from which water is taken either periodically or continuously by a public drinking water system for drinking or food-processing purposes.

(56) “Source water assessment” shall mean the identification and evaluation of the sources of water within the State that are used by public drinking water systems in an effort to determine the susceptibility of those sources to contamination.

(57) “Source water assessment area” shall mean the delineated area which contributes water to a public water supply system. This is called a wellhead protection area for a well and a watershed or basin for a surface water intake. A source water assessment area shall constitute a critical area as defined under Chapter 92 of Title 29.

(58) “Source water assessment plan” shall mean the October 1999 U.S. EPA-approved plan for evaluating the sources of public drinking water in Delaware for their vulnerability and susceptibility to contamination.

(59) “Source Water Protection Citizens Technical Advisory Committee” shall mean a group to advise the Secretary of the Department of Natural Resources and Environmental Control, including, but not limited to, representatives of the following organizations or municipalities: DNREC, Department of Health and Social Services, Department of Agriculture, the Delaware Nature Society, the Delaware Public Health Association, the American Association of Retired Persons, the United States Geological Survey, the Christina River Conservancy, the Water Resources Agency of the University of Delaware, the Council of Farm Organizations, the Delaware Rural Water Association, the League of Women Voters, the Friends of Herring Creek, the Civic League of New Castle County, the Delaware Geological Survey, the Committee of 100, the City of Dover, the City of Lewes, the New Castle County Department of Land Use, Kent County Levy Court, Sussex County Council, the League of Local Governments, the Sussex County Association of Towns, the Homebuilders Association of Delaware, the Commercial Industrial Realty Council, and the Delaware Association of Professional Engineers; and public water suppliers.

(60) “Surface water” means water occurring generally on the surface of the earth.

(61) “Treatment works” means any device and system used in the storage, treatment, recycling and reclamation of municipal sewage, or industrial wastes of a liquid nature, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power and other equipment, and their appurtenances, extensions, improvements, remodeling, additions and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities and improvements to exclude or minimize inflow and infiltration.



- (62) “Variance” means a permitted deviation from an established rule or regulation, or plan, or standard or procedure.
- (63) “Vessel” shall mean and include every description of watercraft, boat, houseboat or other form of artificial contrivance used, or capable of being used, whether or not capable of self-propulsion, for navigation on the waters of the State.
- (64) “Vessel discharge” includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping.
- (65) “Vessel sewage” shall mean human body wastes and wastes from toilets and other receptacles intended to receive or retain human body wastes.
- (66) “Vessel sewage pumpout station” shall mean a mechanical device which is temporarily connected to a vessel for the purpose of removing vessel sewage from its holding tank or head to an approved sewage disposal facility.
- (67) “Water facility” means any well, dam, reservoir, surface water intake or waterway obstruction.
- (68) “Water pollution” means the human-made or human-induced alteration of the chemical, physical, biological or radiological integrity of water.
- (69) “Water supply system” means all plants, systems, facilities or properties used or useful, or having the present capacity for future use, in connection with the supply or distribution of water, and any integral part thereof, including water distribution systems, mains, laterals, pumping stations, stand pipes, filtration plants, purification plants, hydrants, meters, valves and equipment, appurtenances and all properties, rights, easements and franchises relating thereto and deemed necessary or convenient by the authority for the operation thereof. Except as otherwise provided in this chapter, the term “water supply system” shall not mean a dam, reservoir, surface water intake, water obstruction or well.
- (70) “Water utility” shall mean any person or entity operating within this State any water service, system, plant or equipment for public use.
- (71) “Water well contractor” means any person engaged in the business of contracting for the construction of water wells and/or installation of pumping equipment in or for wells.
- (72) “Well” means any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed when the intended use of such excavation is for the location, testing, acquisition or artificial recharge of underground water, and where the depth is greater than the diameter or width.
- (73) “Wellhead protection area” shall mean the surface and subsurface area surrounding a water well or wellfield supplying a public water system through which contaminants are



likely to reach such a well or wellfield. A Wellhead Protection Area shall constitute a critical area as defined under Chapter 92 of Title 29.

(74) “Wellhead protection plan” shall mean the March 1990 U.S. EPA-approved plan for protecting the quality of drinking water derived from public water supply wells in Delaware.

§ 6003. Permit – Required.

(a) No person shall, without first having obtained a permit from the Secretary, undertake any activity:

- (1) In a way which may cause or contribute to the discharge of an air contaminant; or
- (2) In a way which may cause or contribute to discharge of a pollutant into any surface or ground water; or
- (3) In a way which may cause or contribute to withdrawal of ground water or surface water or both; or
- (4) In a way which may cause or contribute to the collection, transportation, storage, processing or disposal of solid wastes, regardless of the geographic origin or source of such solid wastes; or
- (5) To construct, maintain or operate a pipeline system including any appurtenances such as a storage tank or pump station; or
- (6) To construct any water facility; or
- (7) To plan or construct any highway corridor which may cause or contribute to the discharge of an air contaminant or discharge of pollutants into any surface or ground water.

(b) No person shall, without first having obtained a permit from the Secretary, construct, install, replace, modify or use any equipment or device or other article:

- (1) Which may cause or contribute to the discharge of an air contaminant; or
- (2) Which may cause or contribute to the discharge of a pollutant into any surface or ground water; or
- (3) Which is intended to prevent or control the emission of air contaminants into the atmosphere or pollutants into surface or ground waters; or
- (4) Which is intended to withdraw ground water or surface water for treatment and supply; or
- (5) For disposal of solid waste.



(c) The Secretary shall grant or deny a permit required by subsection (a) or (b) of this section in accordance with duly promulgated regulations provided all of the following:

(1) No permit may be granted unless the county or municipality having jurisdiction has first approved the activity by zoning procedures provided by law.

(2) No permit may be granted to any incinerator unless all of the following apply:

a. The property on which the incinerator is or would be located is within an area which is zoned for heavy industrial activity and shall be subject to such process rules, regulations or ordinances as the county, municipality or other government entity shall require by law, such as a conditional use, so that conditions may be applied regarding the health, safety and welfare of the citizens within the jurisdiction.

b. Every point on the property boundary line of the property on which the incinerator is or would be located is all of the following:

1. At least 3 miles from every point on the property boundary line of any residence.

2. At least 3 miles from every point on the property boundary line of any residential community.

3. At least 3 miles from every point on the property boundary line of any church, school, park, or hospital.

(3) No permit or modification to a permit may be granted for an industrial landfill that authorizes a maximum height, including the cap and cover vegetation, of more than 140 feet above the mean sea level of the area.

(d) A county which requests authority to administer a system for granting or denying a septic tank permit, and which satisfies the Secretary that it has the capability, including but not limited to regulations and enforcement authority, may be authorized by the Secretary, for a term stated, to administer such a system for him or her within that county. In the event of such authorization, an applicant for a septic tank permit in that county shall not be bound by subsections (a) and (b) of this section.

(e) The Secretary may, after public hearings, publish a list of activities which do not require a permit.

(f) The Secretary may establish fees for permits issued pursuant to this section with the concurrence and approval of the General Assembly. The Secretary shall annually prepare a schedule of fees for permits issued pursuant to this section and submit the same as part of the Department's annual operating budget proposal.

(g) No county, municipality or other governmental entity shall issue any building, placement, storage or occupancy permit or license until the property owner has obtained from the



Department any necessary permits for underground discharge of wastewater and withdrawal of groundwater.

(h) The Secretary may reduce the amount of any fee charged for any permit or license issued pursuant to the provisions of this title for particular types of permits or classes or categories of permittees.

(i) No county, municipality or other governmental entity shall issue any building, placement, storage or occupancy permit or license to any person intending to operate an incinerator unless:

(1) The property on which the incinerator is or would be located is within an area which is zoned for heavy industrial activity and shall be subject to such process rules, regulations or ordinances as the county, municipality or other government entity shall require by law, such as a conditional use, so that conditions may be applied regarding the health, safety and welfare of the citizens within the jurisdiction; and

(2) Every point on the property boundary line of the property on which the incinerator is or would be located is:

a. At least 3 miles from every point on the property boundary line of any residence;

b. At least 3 miles from every point on the property boundary line of any residential community; and

c. At least 3 miles from every point on the property boundary line of any church, school, park or hospital.

(j) For any industrial landfill not approved by the Department to accept waste as of February 20, 2020, the Secretary shall grant or deny a permit for an industrial landfill under subsection (a) or (b) of this section in accordance with duly promulgated regulations and:

(1) The county, municipality, or other governmental entity having jurisdiction is satisfied that all the following have been established:

a. The property on which the industrial landfill is or would be located is within an area which is zoned for heavy industrial activity.

b. The property on which the industrial landfill is or would be located is subject to such process rules, regulations, or ordinances as the county, municipality, or other government entity shall require by law.

c. The necessary conditions may be applied in order to ensure the health, safety, and welfare of citizens within the jurisdiction.

d. Every point on the property boundary line of the property on which the Industrial landfill is or will be located is at least a $\frac{1}{4}$ mile from all of the following property boundary lines:



1. Any residence, school, park, and hospital.
2. Any residential community.
3. Any wetlands.

(2) No permit or modification to a permit may be granted by the Secretary for an industrial landfill that authorizes a maximum height, including the cap and cover vegetation of more than 140 feet above the mean sea level of the area.

§ 6004. Permit – Application; Hearing; Extension.

(a) Any person desiring to obtain a permit required by § 6003 of this title or a variance or an application to establish a redemption center or a certificate of public convenience and necessity required by subchapter V of this chapter shall submit an application therefor in such form and accompanied by such plans, specifications and other information as required by applicable statute or regulation.

(b) Except as otherwise provided in subsection (c) of this section, upon receipt of an application in proper form, the Secretary shall advertise in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State:

- (1) The fact that the application has been received;
- (2) A brief description of the nature of the application; and
- (3) The place at which a copy of the application may be inspected.

The Secretary shall hold a public hearing on an application, if he or she receives a meritorious request for a hearing within a reasonable time as stated in the advertisement. A public hearing may be held on any application if the Secretary deems it to be in the best interest of the State to do so. Such notice shall also be sent by mail to any person who has requested such notification from the Department by providing the name and mailing address. The reasonable time stated shall be 15 days, unless federal law requires a longer time, in which case the longer time shall be stated. A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the permit's probable impact. The applicant shall be responsible for the cost of any such advertisements and notices made by the Department as required by this section, not to exceed \$500.

(c) The advertisement and notice requirements set forth in subsection (b) of this section may not apply to a permit application received by the Department whenever the subject matter of said application relates to the following:



- (1) Air quality control permit applications for open burning, or for the construction or operation of emission control equipment on an existing gasoline dispensing facility, a delivery vessel or a dry cleaning facility;
- (2) Water quality control permit applications for a sewage system for 3 or fewer families, a municipal or publicly owned or operated sewage collection system that does not have a pump or lift station, or, a commercial septic system that is used to treat and dispose of 500 gallons or less per day of domestic wastewater only;
- (3) Water well construction permit applications for any well from which the Department determines that the withdrawal under normal operations will not exceed 1,000,000 gallons per day.

The Secretary may act without public notice on any permit application that is specified in this subsection.

(d) Advertisements required under subsection (b) of this section may be placed by persons desiring to obtain a permit under § 6003 of this title, provided the advertisement meets the requirements contained in subsection (b) of this section and any additional requirements as may be specified by the Department.

(e)

(1) The Secretary may renew or extend the term of a construction permit issued under § 6003(b)(1) of this title for up to 2 additional years, and in either case, may forgo the process set forth in subsections (a) through (d) of this section if all of the following apply:

a. There has been no previous renewal or extension.

b. The permit holder certifies to the Secretary that there have been no material changes to the plans, specifications, and other information set forth in the application previously submitted that would lead to a net adverse environmental impact.

c. The permit holder submits a written request for renewal or extension to the Secretary within 3 years of the date the permit was granted.

d. There are no other circumstances that, in the sole discretion of the Secretary, warrant conditioning the grant of a renewal or extension on compliance with one or more of subsections (a) through (d) of this section.

(2) An extension or renewal granted under this subsection is final and is not appealable under § 6008 of this title.



§ 6005. Enforcement; Civil and Administrative Penalties; Expenses.

(a) The Secretary shall enforce this chapter.

(b) Whoever violates this chapter or any rule or regulation duly promulgated thereunder, or any condition of a permit issued pursuant to § 6003 of this title, or any order of the Secretary, shall be punishable as follows:

(1) If the violation has been completed, by a civil penalty imposed by Superior Court of not less than \$1,000 nor more than \$10,000 for each completed violation. Each day of continued violation shall be considered as a separate violation. The Superior Court shall have jurisdiction of a violation in which a civil penalty is sought. If the violation has been completed and there is a substantial likelihood that it will reoccur, the Secretary may also seek a permanent or preliminary injunction or temporary restraining order in the Court of Chancery.

(2) If the violation is continuing, the Secretary may seek a monetary penalty as provided in paragraph (b)(1) of this section. If the violation is continuing or is threatening to begin, the Secretary may also seek a temporary restraining order or permanent injunction in the Court of Chancery. In his or her discretion, the Secretary may endeavor by conciliation to obtain compliance with all requirements of this chapter. Conciliation shall be giving written notice to the responsible party:

- a. Specifying the complaint;
- b. Proposing a reasonable time for its correction;
- c. Advising that a hearing on the complaint may be had if requested by a date stated in the notice; and
- d. Notifying that a proposed correction date will be ordered unless a hearing is requested.

If no hearing is requested on or before the date stated in the notice, the Secretary may order that the correction be fully implemented by the proposed date or may, on his or her own initiative, convene a hearing, in which the Secretary shall publicly hear and consider any relevant submission from the responsible party as provided in § 6006 of this title.

(3) In his or her discretion, the Secretary may impose an administrative penalty of not more than \$10,000 for each day of violation. Prior to assessment of an administrative penalty, written notice of the Secretary's proposal to impose such penalty shall be given to the violator, and the violator shall have 30 days from receipt of said notice to request a public hearing. Any public hearing, if requested, right of appeal and judicial appeal shall be conducted pursuant to §§ 6006-6009 of this title. Assessment of an administrative penalty shall be determined by the nature, circumstances, extent and gravity of the violation, or violations, ability of violator to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from



the violation and such other matters as justice may require. Simultaneous violations of more than 1 pollutant or air contaminant parameter or of any other limitation or standard imposed under this chapter shall be treated as a single violation for each day. In the event of nonpayment of the administrative penalty after all legal appeals have been exhausted, a civil action may be brought by the Secretary in Superior Court for collection of the administrative penalty, including interest, attorneys' fees and costs, and the validity, amount and appropriateness of such administrative penalty shall not be subject to review.

(c)

(1) Whenever the Secretary determines that any person has violated this chapter, or a rule, or regulation, or condition of a permit issued pursuant to § 6003 of this title, or an order of the Secretary, said person shall be liable for all expenses incurred by the Department:

- a. In abating the violation; or
- b. Controlling a pollution incident related to the violation; or
- c. Cleanup and restoration of the environment; or
- d. The costs incurred by the Department in recovering such expenses.

Such expenses shall include, but not be limited to, the costs of investigation, legal fees and assistance, public hearings, materials, equipment, human resources, contractual assistance and appropriate salary and overtime pay for all state employees involved in the effort notwithstanding merit system laws, regulations or rules to the contrary. The Secretary shall submit a detailed billing of expenses to the liable person.

(2) In the event the liable person desires to challenge the detailed billing submitted by the Secretary, such person shall, within 20 days of receipt of the detailed billing request an administrative hearing before the Secretary. Testimony at the administrative hearing shall be under oath and shall be restricted to issues relating to:

- a. The finding of violation; and
- b. The billing of expenses submitted by the Secretary.

A verbatim transcript of testimony at the hearing shall be prepared and shall, along with the exhibits and other documents introduced by the Secretary or other party, constitute the record. The Secretary shall make findings of fact based on the record, and enter an order which shall contain reasons supporting the decision. An appeal of the decision of the Secretary may be perfected to Superior Court within 30 days of the decision of the Secretary. In lieu of holding an administrative hearing on the detailed billing, or in the event a liable person fails or refuses to



pay any of the expenses listed in the detailed billing, the Secretary may seek to compel payment through the initiation of a civil action in any court of competent jurisdiction within the State of Delaware. This subsection shall not be affected by the appeal provisions of § 6008 of this title.

(d) Any expenses and 75 percent of civil or administrative penalties collected by the Department under this section are hereby appropriated to the Department to carry out the purposes of this chapter; however any expenditure or transfer must be approved by the Director of the Office of Management and Budget and the Controller General. The Department shall submit quarterly reports on the progress of the expenditures and/or projects. All expenditures must be recommended by the Department and approved by the Secretary. All penalty funds will be deposited in the Penalty Fund Account. All of the penalty fund expenditures made by the Department of Natural Resources and Environmental Control shall be reported annually to the Joint Finance Committee in the Department's annual budget presentation. Included in this presentation shall be an explanation of the process used to select the recipients of penalty fund money.

(e) Penalties or fines created by this section may be tripled with respect to any person or entity that was designated a chronic violator pursuant to § 7904 of this title at the time that the act leading to the penalty or fine occurred.

§ 6006. Public Hearings.

Any public hearing held by the Secretary concerning any regulation or plan, permit application, alleged violation or variance request shall be conducted as follows:

(1) For any hearing on an application for a permit or an alleged violation or variance request, notification shall be served upon the applicant or alleged violator as summonses are served or by registered or certified mail not less than 20 days before the time of said hearing. Not less than 20 days' notice shall also be published in a newspaper of general circulation in the county in which the activity is proposed or the alleged violation has occurred and in a daily newspaper of general circulation throughout the State.

(2) For a hearing on a regulation or plan proposed for adoption, notification shall be published in a newspaper of general circulation in each county and in a newspaper of general circulation in the State. Such notification shall include:

- a. A brief description of the regulation or plan;
- b. Time and place of hearing; and
- c. Time and place where copies of the proposed regulation may be obtained and a copy of the plan is available for public scrutiny.



Such notice shall also be sent to any persons who have requested such notification from the Department by providing the name and mailing address.

(3) The permit applicant or the alleged violator or party requesting a variance may appear personally or by counsel at the hearing and produce any competent evidence in his or her behalf. The Secretary or his or her duly authorized designee may administer oaths, examine witnesses and issue, in the name of the department, notices of hearings or subpoenas requiring the testimony of witnesses and production of books, records or other documents relevant to any matter involved in such hearing; and subpoenas shall also be issued at the request of the applicant or alleged violator or party requesting a variance. In case of contumacy or refusal to obey a notice of hearing or subpoena under this section, the Superior Court in the county in which the hearing is held shall have jurisdiction upon application of the Secretary, to issue an order requiring such person to appear and testify or produce evidence as the case may require.

(4) A record from which a verbatim transcript can be prepared shall be made of all hearings and shall, also with the exhibits and other documents introduced by the Secretary or other party, constitute the record. The expense of preparing any transcript shall be borne by the person requesting it. The Secretary shall make findings of fact based on the record. The Secretary shall then enter an order that will best further the purpose of this chapter, and the order shall include reasons. The Secretary shall promptly give written notice to the persons affected by such order.

(5) The Secretary may establish a fee schedule for applications and hearings, and may collect from the applicant or from a violator finally adjudged guilty, the necessary expenses of the Department for conducting the hearing, or a reasonable fee for processing an application, or both. Any fees collected under this chapter are hereby appropriated to the Department to carry out the purposes of this chapter. The Secretary shall report through the annual budget process the receipt, proposed use and disbursement of these funds.

§ 6007. Establishment of Environmental Appeals Board.

(a) There is hereby created an Environmental Appeals Board which shall consist of 7 Delaware residents, appointed by the Governor with the advice and consent of the Senate. The Chairperson shall be appointed by the Governor and serve at the Governor's pleasure. Each county shall be represented by 2 members. Registered members of either major political party shall not exceed the other major political party by more than 1. The term of each member appointed shall be 3 years. Vacancies in Board membership shall be filled by the Governor for the remainder of the unexpired term.

(b) The Board is a quasi-judicial review board which is constituted in order to hear appeals of decisions of the Secretary. The Board or its designee may issue subpoenas by certified mail for witnesses or evidence, administer oaths to witnesses and conduct prehearing conferences for



the simplification of issues by consent, for the disposal of procedural requests or disputes and to regulate and expedite the course of the hearing.

(c) A simple majority of the Board shall constitute a quorum. A simple majority of those members of the Board present shall be required to override the decision of the Secretary. The Board shall schedule, but not necessarily conduct, a hearing within 30 days following the receipt of the appeal. In any event, the Board shall conduct, but not necessarily complete, the hearing within 180 days following the receipt of the appeal unless the parties agree otherwise. The Board may verbally announce the decision at the conclusion of the hearing. A written decision shall be mailed to the parties by certified mail within 90 days after the completion of the hearing. If the Board fails to conduct the hearing or to issue the written opinion as required, the decision of the Secretary shall be a final decision for the purposes of appeal.

(d) Any member of the Board with a personal or private financial interest in the outcome of an appeal before the Board shall disqualify himself or herself from any consideration of that matter and shall inform the Chairperson who shall note such interest on the record of the hearing.

(e) Each Board member shall be compensated for such reasonable expenses as travel and meals for each meeting and hearing attended.

(f) The Environmental Appeals Board shall adopt such rules and regulations as are necessary to provide procedures to implement the terms of §§ 6007-[6009](#) of this title, which shall apply to appeals to the Environmental Appeals Board. Prior to adopting any such rules and regulations, the Board shall designate a day, time and place for a public hearing on such proposed rules or for any amendments to existing or proposed rules and regulations. The Board shall give 20 days' notice of such hearing by publication in a newspaper of general circulation in the State and shall make copies of such proposed regulations available to the public upon request. The public hearing on such regulations shall be consistent with the provisions of Chapter 101 of Title 29.

(g) In any appeal to the Board there shall be required a reasonable fee, as established by the General Assembly, to cover such costs as are incurred during the appeal. The fees charged by the Environmental Appeals Board shall be deposited in a special account in the name of the Environmental Appeals Board and shall be used solely for the costs and expenses of that Board in holding its hearings and proceedings.

§ 6008. Appeals to Board.

(a) Any person whose interest is substantially affected by any action of the Secretary may appeal to the Environmental Appeals Board within 20 days after receipt of the Secretary's decision or publication of the decision. The Board shall conduct a public hearing for all appeals in accordance with Chapter 101 of Title 29. Deliberations of the Board may be conducted in executive session. Each member who votes shall indicate the nature of his or her vote in the written decision.



(b) Whenever a final decision of the Secretary concerning any case decision, including but not limited to any permit or enforcement action is appealed, the Board shall hold a public hearing in accordance with Chapter 101 of Title 29. The record before the Board shall include the entire record before the Secretary. All parties to the appeal may appear personally or by counsel at the hearing and may produce any competent evidence in their behalf. The Board may exclude any evidence which is plainly irrelevant, immaterial, insubstantial, cumulative or unduly repetitive, and may limit unduly repetitive proof, rebuttal and cross-examination. The burden of proof is upon the appellant to show that the Secretary's decision is not supported by the evidence on the record before the Board. The Board may affirm, reverse or remand with instructions any appeal of a case decision of the Secretary.

(c) Appeals of regulations shall be on the record before the Secretary. The Board may hear new evidence if it is relevant to or clarifies those issues in the record before the Secretary. The Board may exclude any new evidence which is plainly irrelevant, immaterial, insubstantial, cumulative or unduly repetitive. Regulations will be presumed valid, and the burden will be upon the appellant to show that the regulations are arbitrary and capricious, or adopted without a reasonable basis in the record. The Board shall take due account of the Secretary's experience and specialized competence and of the purposes of this chapter in making its determination. The board may affirm, reverse or remand any appeal of regulations promulgated by the Secretary.

(d) The decision of the Board shall be signed by all members who were present at the hearing.

(e) There shall be no appeal of a decision by the Secretary to deny a permit on any matter involving state-owned land including subaqueous lands, except an appeal shall lie on the sole ground that the decision was discriminatory in that the applicant, whose circumstances are like and similar to those of other applicants, was not afforded like and similar treatment.

(f) No appeal shall operate to stay automatically any action of the Secretary, but upon application, and for good cause, the Secretary or the Court of Chancery may stay the action pending disposition of the appeal.

(g) At any time after the appeal to the Board, the parties may, by stipulation, proceed directly to Superior Court, in which case the Court may affirm, reverse or remand the Secretary's decision based on the record before the Secretary and the Board and whatever other evidence the parties may submit by stipulation. The standard of review for such an appeal shall be governed by subsections (b) and (c) of this section.

(h) In those circumstances in which the Board concludes that an immediate and expedited review of a decision of the Secretary is appropriate or necessary, the Board may hold a public hearing on the appeal at the earliest possible time and issue a decision on such appeal. In such a case, the notice requirements of this section and Chapter 101 of Title 29 do not apply, and the Board shall give advance notice of the hearing only to the extent reasonably possible.



§ 6009. Appeal from the Board's Decision.

(a) Any person or persons, jointly or severally, or any taxpayer, or any officer, department, board or bureau of the State, aggrieved by any decision of the Board, may appeal to the Superior Court in and for the county in which the activity in question is wholly or principally located by filing a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Any such appeal shall be perfected within 30 days of the receipt of the written opinion of the Board.

(b) The Court may affirm, reverse or modify the Board's decision. The Board's findings of fact shall not be set aside unless the Court determines that the records contain no substantial evidence that would reasonably support the findings. If the Court finds that additional evidence should be taken, the Court may remand the case to the Board for completion of the record.

(c) No appeal shall operate to stay automatically any action of the Secretary, but upon application, and for good cause, the Board or the Court of Chancery may stay the action pending disposition of the appeal.

§ 6010. Rules and Regulations; Plans.

(a) The Secretary may adopt, amend, modify or repeal rules or regulations, or plans, after public hearing, to effectuate the policy and purposes of this chapter. No such rule or regulation shall extend, modify or conflict with any law of this State or the reasonable implications thereof.

(b) The Secretary shall formulate, amend, adopt and implement, after a public hearing, a statewide comprehensive water plan for the immediate and long-range development and use of the water resources of the State.

(c) The Secretary may formulate, amend, adopt and implement, after public hearing, a statewide air resources management plan to achieve the purpose of this chapter and comply with applicable federal laws and regulations. Any implementation plan in effect at the time of enactment of this chapter shall continue to be in effect unless amended or repealed by the Secretary.

(d) The Secretary may formulate, amend, adopt and implement, after public hearing, a statewide water pollution management plan to achieve the purposes of this chapter and comply with applicable federal laws and regulations. Any implementation plan in effect at the time of the enactment of this chapter shall continue to be in effect unless amended or repealed by the Secretary.

(e) The Secretary shall formulate, amend, develop and implement, after public hearing, a State solid waste plan in accordance with the requirements of subtitle D of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580) as amended [42 U.S.C. § 6941 et seq.], and any regulations thereunder, hereafter referred to as RCRA: Provided, however, that such plan shall be formulated in coordination with the Delaware Solid Waste Authority and shall



include provisions of the statewide solid waste management plan adopted by the Delaware Solid Waste Authority pursuant to § 6403(j) of this title which reflect the applicable functions and activities of the Delaware Solid Waste Authority under Chapter 64 of this title.

(f) The Secretary:

- (1) Shall approve the allocation and use of water in the State on the basis of equitable apportionment;
- (2) Shall approve all new plans and designs of all impounding water facilities by any state, county, municipal, public or private water user within the State pursuant to subchapter V of this chapter; and
- (3) May require reports from all Delaware water users as to a description of their water facilities, and past and present records of water use.

(g)

(1) The Secretary, after notice and public hearing, shall promulgate regulations containing criteria for determining which facilities shall be classified as sanitary landfills and which shall be classified as open dumps within the meaning of this chapter. At a minimum such criteria shall provide that a facility may be classified as a sanitary landfill and not an open dump only if there is no reasonable probability of adverse effects on health or the environment from disposal of solid waste at such facility. Such regulations may provide for the classification of the types of sanitary landfills.

(2) On the date as determined under paragraph (g)(3) of this section below, the open dumping of solid waste or hazardous waste and the establishment of new open dumps is prohibited and all solid waste, including solid waste originating in other states but not including hazardous waste, shall be utilized for resource recovery or disposed of in sanitary landfills, within the meaning of this chapter, or otherwise disposed of in an environmentally sound manner, except in the case of any practice or disposal of solid waste under a timetable or schedule for compliance established under paragraph (g)(5) of this section below.

(3) Except as provided in paragraphs (g)(4) and (5) of this section below, the prohibition contained in paragraph (g)(2) of this section above shall take effect on the date of promulgation of regulations containing criteria under paragraph (g)(1) of this section or on the date of approval of the state solid waste plan under § 4007 of RCRA [42 U.S.C. § 6947], whichever is later.

(4) To assist in the formulation of the state solid waste plan, the Secretary, utilizing the criteria adopted pursuant to paragraph (g)(1) of this section above, shall develop and publish an inventory of all disposal facilities or sites in Delaware which are open dumps within the meaning of this chapter. With respect to any active disposal facilities or sites the Secretary shall coordinate the development of the inventory with the Delaware Solid Waste Authority. Prior to publication of the inventory the Secretary shall provide written



notice of the proposed open dump designation to the owner and operator of the disposal facility or site which notice shall contain a detailed statement of deficiencies under the criteria adopted pursuant to paragraph (g)(1) of this section above. Upon receipt of notification the owner or operator shall, within 30 days, be entitled to request a public hearing before the Secretary pursuant to § 6006 of this title to challenge the designation; otherwise, the designation shall become a final decision of the Secretary. With 60 days of publication of the open dump inventory, the owner or operator of a disposal facility or site may apply to the Secretary for a timetable or schedule for compliance or closure under paragraph (g)(5) of this section below. During the pendency of any such application and prior to final action and disposition thereon the prohibition set forth in paragraph (g)(3) of this section above shall not apply with respect to that site. Upon application by the owner or operator, a site or facility may be removed from the open dump inventory after a determination by the Secretary that the basis upon which the site was designated as an open dump no longer exists. Any such application to remove a site or facility from the inventory shall be advertised in accordance with § 6004(b) of this title.

(5) All existing disposal facilities or sites for solid waste which are open dumps listed in the inventory under paragraph (g)(4) of this section shall comply with such measures as may be required by the Secretary, consistent with the requirements of RCRA [42 U.S.C. § 6901 et seq.], for closure or upgrading. The Secretary shall establish a timetable or schedule for compliance for such practice or disposal of solid waste which specifies a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with the prohibition on open dumping of solid waste within a reasonable time (not to exceed 5 years) from the date of publication of criteria under paragraph (g)(1) of this section.

(h)

(1) Subject to subsection (f) of this section, the Secretary shall establish procedures for the issuance of water allocation permits which shall be granted concurrently with any license or permit to construct, extend or operate an irrigation well or surface water intake on any farm or farmland in the State. A water allocation permit issued pursuant to this subsection shall reserve the right of the person to whom the permit is issued to utilize up to 20 acre-inches per year, but not more than 10 acre-inches per month.

(2) For the purposes of this subsection:

a. An “acre-inch” of water is the amount of water required to cover 1 acre of land to a depth of 1 inch and is equal in volume to 27,154 gallons of water.

b. An “irrigation well” is an agricultural well which is used exclusively for the watering of lands or crops other than household lawns and gardens.

(i) The Secretary shall waive the requirements of § 6004(b) of this title for irrigation wells if:

(1) The permit application is submitted between and April 1 and October 1, inclusive;



- (2) The permit application is to replace an existing irrigation well;
- (3) The existing well has a valid allocation permit; and
- (4) The replacement well will not exceed allocation permitted amounts.

(j) An emergency circumstance is deemed to exist if a well will replace an existing well and if the Department of Agriculture and/or the Department of Natural Resources and Environmental Control determines that the lack of water or delay in obtaining water poses an immediate and significant danger to the health or welfare of persons or their property, or if 1 or both of the Departments have determined that other exceptional circumstances exist. Verbal approval must be given for the installation of a well if an emergency circumstance exists, provided that:

- (1) Within 72 hours after the verbal issuance of a permit number under emergency circumstances, the applicant submits to the Department a well permit application and well completion report, which must include the permit number.
- (2) All wells constructed under emergency circumstances must be constructed in conformance with all applicable regulations and officially established policies.

(k) If an emergency circumstance exists when State offices are closed, a well may be constructed, providing that it replaces an existing well and that the Department is notified verbally on the first working day following such action. A well permit application, including the well permit number, the appropriate application fee, and a well completion report must be submitted within 72 hours after notification.

(l) The following persons shall serve on an advisory committee that oversees the agriculture irrigation well procedures:

- (1) The Secretary of Agriculture, or the Secretary's designee;
- (2) The Secretary of the Department of Natural Resources and Environmental Control, or the Secretary's designee;
- (3) One person to represent the Delaware Farm Bureau;
- (4) One person to represent the Fruit and Vegetable Growers Association of Delaware;
- (5) One person who is an irrigation dealer;
- (6) One person who is a commercial irrigation well driller;
- (7) One person from the University of Delaware Water Resources Agency; and
- (8) One person from the Delaware Geological Survey.

The Secretary of Agriculture and the Secretary of the Department of Natural Resources and Environmental Control shall determine that the committee members meet the above



descriptions. The Secretary of Agriculture, or the Secretary's designee, shall serve as the chairperson of the advisory oversight committee.

§ 6011. Variance.

(a) The Secretary may, upon application of a person (except an application concerning (1) a source of water or a sewerage facility for 3 or fewer families or (2) open burning, on which the Secretary may act without public notification), grant a variance to that person from any rule or regulation promulgated pursuant to this chapter after following the notice and hearing procedure set forth in § 6004 of this title.

(b) The variance may be granted if the Secretary finds that:

(1) Good faith efforts have been made to comply with this chapter;

(2) The person applying is unable to comply with this chapter because the necessary technology or other alternative methods of control are not available or have not been available for a sufficient period of time or the financial cost of compliance by using available technology is disproportionately high with respect to the benefits which continued operation would bestow on the lives, health, safety and welfare of the occupants of this State and the effects of the variance would not substantially and adversely affect the policy and purposes of this chapter;

(3) Any available alternative operating procedure or interim control measures are being or will be used to reduce the impact of such source on the lives, health, safety and/or welfare of the occupants of this State; and

(4) The continued operation of such source is necessary to national security or to the lives, health, safety or welfare of the occupants of this State.

(c) The Secretary shall publish his or her decision, except a decision involving (1) a source of water or a sewerage facility for 3 or fewer families or (2) open burning, and the nature of the variance, if granted, and the conditions under which it was granted. The variance may be made effective immediately upon publication.

(d) Any party may appeal a decision of the Secretary on a variance request to the Environmental Appeals Board under § 6008 of this title within 15 days after the Secretary publishes his or her decision.

(e) No variance can be in effect longer than 1 year but may be renewed after another hearing pursuant to this section.

(f) The granting of a variance shall not in any way limit any right to proceed against the holder for any violation of the variance. This chapter, or any rule, or regulation, which is not incorporated in the variance provisions, shall remain in full effect.



(g) Notwithstanding other provisions of this section, the Secretary is not authorized to approve requests for fundamentally different factor variances from categorical pretreatment standards promulgated by the Administrator of the United States Environmental Protection Agency pursuant to § 307(b) or (c) of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1317(b) or (c). The Secretary is authorized to accept and review such variance requests, and, upon review, deny such request or recommend that the Administrator of the United States Environmental Protection Agency approve such a variance request.

§ 6012. Temporary Emergency Variances.

(a) Notwithstanding § 6011 of this title, other than subsection (g) of that section, the Secretary may grant a variance to any rules or regulations promulgated pursuant to this chapter, for a period not to exceed 60 days. The request for a temporary emergency variance shall be submitted in writing, setting forth the reasons for the request.

(b) A temporary emergency variance may be granted only after a finding of fact by the Secretary that:

(1) Severe hardship would be caused by the time period involved in obtaining variances pursuant to § 6011 of this title;

(2) The emergency was of such an unforeseeable nature so as to preclude, because of time limitations, an application under § 6011 of this title;

(3) The conditions set forth in § 6011(b)(1)-(4) of this title are satisfied.

(c) Temporary emergency variances granted pursuant to this section may not be extended more than once.

(d) The granting of any temporary emergency variance shall be published within 5 days of the granting of said variance.

§ 6013. Criminal Penalties.

(a) Any person who willfully or negligently:

(1) Violates § 6003 of this title, or violates any condition or limitation included in a permit issued pursuant to § 6003 of this title, or any variance condition or limitation, or any rule or regulation, or any order of the Secretary; or

(2) Violates any requirements of a statute or regulation respecting monitoring, recording and reporting of a pollutant or air contaminant discharge; or

(3) Violates a pretreatment standard or toxic effluent standard with respect to introductions of pollutants into publicly owned treatment works



shall be punished by a fine of not less than \$2,500 nor more than \$25,000 for each day of such violation.

(b) Any person who intentionally, knowingly, or recklessly:

(1) Makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under this chapter, or under any permit, rule, regulation or order issued under this chapter; or

(2) Who falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained under this chapter, shall upon conviction be punished by a fine of not less than \$500 nor more than \$10,000 or by imprisonment for not more than 6 months, or both.

(c) Any person who intentionally or knowingly:

(1) Violates § 6003 of this title, or violates any condition or limitation included in a permit issued pursuant to § 6003 of this title, or any variance condition or limitation, or any rule or regulation, or any order of the Secretary; or

(2) Violates any requirements of a statute or regulation respecting monitoring, recording and reporting of a pollutant or air contaminant discharge; or

(3) Violates a pretreatment standard or toxic effluent standard with respect to introductions of pollutants into publicly owned treatment works, and who causes serious physical injury to another person or serious harm to the environment as one result of such conduct, shall be guilty of a class D felony and shall, upon conviction, be sentenced in compliance with the sentencing guidelines established for class D felonies in § 4205 of Title 11.

(d) Any person:

(1) Who intentionally or 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 chapter, or under any permit, rule, regulation or order issued under this chapter; or

(2) Who falsifies, tampers with or intentionally or knowingly causes to be rendered inaccurate any monitoring device or method required to be maintained under this chapter, and who causes serious physical injury to another person or serious harm to the environment as 1 result of such conduct, shall be guilty of a class D felony and shall, upon conviction, be sentenced in compliance with the sentencing guidelines established for class D felonies in § 4205 of Title 11.

(e) Any officer of any corporation, manager of any limited liability company, or general partner of any limited partnership conducting business in the State who intentionally or knowingly authorizes or directs said business entity or its employees or agents to:



- (1) Falsify or conceal any material fact required to be disclosed to the Department;
- (2) Destroy, conceal or alter any records that the corporation is required by this title, the Department's regulations, or an order of the Department to maintain; or
- (3) Commit any act in violation of this title or rules promulgated by the Department; shall upon conviction be punished by a fine of not less than \$500 nor more than \$10,000 or by imprisonment for not more than 6 months, or both. If an act described in this subsection causes serious physical injury to another person or serious harm to the environment as one result of such an act, the officer, manager or general partner committing the act shall be guilty of a class D felony and shall, upon conviction be sentenced in compliance with the sentencing guidelines established for class D felonies in § 4205 of Title 11. Nothing in this subsection shall be read to establish any additional elements for conviction of the criminal offenses described in subsections (a) through (d) of this section.

(f) Each day of violation with respect to acts or omissions described in this section shall be considered as a separate violation.

(g) The Superior Court shall have exclusive jurisdiction over prosecutions brought pursuant to subsections (a)--(e) of this section. Prosecutions pursuant to subsection (h) of this section may be brought in the jurisdiction of the Courts of the Justices of the Peace.

(h) Whoever violates this chapter, or any rule or regulation promulgated thereunder, or any rule or regulation in effect as of July 26, 1974, or any permit condition, or any order of the Secretary, shall:

- (1) For the first conviction, be fined not less than \$100 nor more than \$500 for each day of violation;
- (2) For a subsequent conviction for the same offense within a 10-year period, be fined not less than \$500 nor more than \$1,500 for each day of violation; and
- (3) In addition to the penalties provided in paragraphs (h)(1) and (h)(2) of this section, if the offense involves the failure to acquire a permit as required under this chapter, the offender shall be assessed the cost of the permit, plus a 25 percent surcharge, in addition to the fine.

(i) Any person prosecuted pursuant to subsection (h) of this section shall not be prosecuted for the same offense under subsections (a)-(e) of this section.

(j) The terms "intentionally," "knowingly," "recklessly," "negligently," and "serious physical injury," as used in this section, shall have the meanings assigned to them by Chapter 2 of Title 11.

(k) The term "serious harm to the environment" shall mean damage to the air, water or soil which has or will, beyond a reasonable doubt, cause serious physical injury to any persons working at the facility in question or persons within the State.



(l) It is an affirmative defense to a prosecution that the specific conduct charged was freely and knowingly consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:

(1) An occupation, a business or a profession; or

(2) Medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subsection by a preponderance of the evidence. The provisions of this subsection are subject to the restrictions enumerated at § 453 of Title 11.

(m) All general defenses affirmative defenses, and bars to prosecution that may apply with respect to other criminal offenses may apply under this section.

§ 6014. Regulatory and Compliance Information, Facility Performance and Public Information.

(a) The Department shall develop an Environmental Information System that will include general information about facilities and sites under the Department's regulatory jurisdiction as defined by Chapters 40, 60, 62, 63, 66, 70, 72, 74, 77, 78, and 91 of this title and Chapter 63 of Title 16. The Environmental Information System shall include information on all such facilities and sites related to permitting requirements, emissions and discharge monitoring and reporting data, compliance inspections, violations and enforcement actions. The System shall provide the public with information that indicates when a facility has been inspected, what violations are detected, when the facility comes into compliance, and any enforcement action that results from violations at the facility.

(b) The Secretary shall create or contract with a third party to create a central unified notification system to notify the public in a timely manner of environmental releases. That system shall be designed in a such a manner as to ensure the notification, within 12 hours after the Department is informed of an environmental release, of:

(1) The State Representative and State Senator in whose district the release occurred;

(2) Any community or civic group the majority of whose membership lives within 5 miles of the reporting facility that has identified itself to the Department as an entity wishing to receive notice pursuant to this subsection; and

(3) Any individual who lives within 5 miles of the reporting facility and who has identified himself or herself to the Department as a person wishing to receive notice pursuant to this subsection.

(c) The facility from which an environmental release has occurred shall pay to the Department the cost of the Department's notification under subsection (b) of this section. Such cost shall include a prorated share of the annual fixed costs incurred by the Department for the maintenance of the notification system created pursuant to subsection (b) of this section, and a



prorated share of the initial development costs of the notification system to be equally distributed over the first 5 years of the system's existence, both to be determined in the sole discretion of the Department. The facility shall make payment under this subsection within 30 days of receiving written notice of the amount of payment due. Failure to make payment pursuant to this subsection in a timely fashion shall constitute a violation punishable under § 6005 of this title. For purposes of this section facility shall mean any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), wastewater treatment plant, pit, pond, lagoon, impoundment, landfill, storage container, or any site or area where an environmental release has occurred.

(d) Any records, reports or information obtained pursuant to this chapter and any permits, permit applications and related documentation shall be available to the public for inspection and copying; provided, that upon a showing satisfactory to the Secretary by any person that such records, reports, permits, permit applications, documentation or information, or any part thereof (other than effluent data) would, if made public, divulge methods or processes entitled to protection as trade secrets of such person, the Secretary shall consider, treat and protect such record, report or information, or part thereof, as confidential; provided further, however:

(1) That any such record, report or information accorded confidential treatment may be disclosed or transmitted to other officers, employees or authorized representatives of this State or of the United States concerned with carrying out this chapter or when relevant in any proceeding to effectuate the purpose of this chapter; and

(2) That any report environmental release, air contaminant or water pollutant emissions may be made available to the public as reported and as correlated with any applicable emission standards or limitations.

§ 6015. Interference with Department Personnel.

No person shall obstruct, hinder, delay or interfere with, by force or otherwise, the performance by Department personnel of any duty under this chapter, or any rule or regulation or order or permit or decision promulgated or issued thereunder.

§ 6016. Departmental Investigations; Witnesses; Oaths; Attendance.

In furtherance of the policy and purposes of this chapter, the Secretary may make or cause to be made any investigation or study which is, in his or her opinion, necessary for the purpose of enforcing this chapter. For such purposes the investigative officer designated by the Secretary may subpoena witnesses and the production of documents and compel their testimony. Testimony received at a Departmental investigation shall be under oath and open to the public. Findings of these investigations or studies shall be made public.



§ 6017. Sealing Noncomplying Equipment.

(a) The Department may seal, after consultation with the Attorney General, any source required to have a permit which is installed, altered, used or operated without such a permit or which is in violation of a cease and desist order.

(b) If the equipment is sealed, no person shall tamper with or remove the seal from any equipment so sealed. Violation of this provision shall make the violator upon conviction liable to punishment as provided in § 6005 of this title.

(c) A seal may be removed from equipment only upon receipt of written authorization from the Department. The Department shall order removal of the seal after the reason(s) which caused the sealing has been corrected.

§ 6018. Cease and Desist Order.

The Secretary shall have the power to issue an order to any person violating any rule, regulation or order or permit condition or provision of this chapter to cease and desist from such violation; provided, that any cease and desist order issued pursuant to this section shall expire (1) after 30 days of its issuance, or (2) upon withdrawal of said order by the Secretary, or (3) when the order is suspended by an injunction, whichever occurs first.

§ 6019. Voluntary Compliance.

Nothing in this chapter shall prevent the Department from making efforts to obtain voluntary compliance by way of warning, notice or other educational means; this section does not, however, require that such voluntary methods be used before proceeding by way of compulsory enforcement.

§ 6020. Liberal Construction.

This chapter, being necessary for the welfare of the State and its inhabitants, shall be liberally construed in order to preserve the land, air and water resources of the State.

§ 6021. Federal Aid; Other Funds.

The Department may cooperate with and receive moneys from the federal government, any state or local government or any industry or other source. Such moneys received are appropriated and made available for the study and preservation of land, water and air resources.



§ 6022. Temporary Limits and Procedures for Hazardous Operations.

Where no rule or regulation has been promulgated which sets specific limits for the use, emission or discharge, or operating procedure for hazardous operations, the Secretary may set temporary limits or operating procedure; provided, that the temporary limits or orders shall not be effective for more than 6 months unless adopted into permanent rules and regulations within that period. The affected parties shall be given a hearing before the Department within 30 days, if requested, on any action taken under this section.

§ 6023. Licensing of Well Water Contractors, Pump Installer Contractors, Drillers, Drivers, Pump Installers, Septic Tank Installers, Liquid Waste Treatment Plant Operators and Liquid Waste Haulers.

(a) No person shall:

(1) Engage in the drilling, boring, coring, driving, digging, construction, installation, removal or repair of a water well or water test well; or

(2) Install, maintain or repair pumping equipment in or from a well without a license issued by the Department, except (i) as, or under the supervision of, a licensed plumber, or (ii) an agricultural well on land owned or leased by the person installing, maintaining or repairing the pumping equipment. For the purpose of this paragraph "agricultural well" shall mean a well used for irrigation of crops, for the watering of livestock or poultry, for aquaculture uses, or for other on-farm purposes where the water is not to be used for human consumption or to service a residential dwelling.

(b) No person shall engaged in the construction, repair, installation or replacement of a septic tank system or any part thereof except as or under the supervision of a licensed septic tank installer.

(c) No person shall operate any liquid waste treatment system without a duly licensed liquid waste treatment plant operator.

(d) No person shall haul, convey or transport any liquid waste in any container without a license issued by the Department.

(e) Any person requiring a license for any activity specified in subsections (a)-(d) of this section shall file an application with the Secretary in such form and accompanied by such information as the Secretary may require by regulation.

(f) The Secretary shall have the exclusive power to grant or deny any license required under subsections (a), (b), (c) and (d) of this section. The Secretary shall adopt regulations setting forth requirements, including an acceptable performance or an examination for obtaining and retaining any such license.



§ 6024. Right of Entry.

The Secretary, or the Secretary's duly authorized designee, in regulating water pollution, air pollution, solid waste disposal or any other matter over which he or she has jurisdiction pursuant to this chapter, may enter, at reasonable times, upon any private or public property for the purpose of determining whether a violation exists of a statute or regulation enforceable by him or her, upon given verbal notice, and after presenting official identification to the owner, occupant, custodian or agent of said property.

§ 6025. Solid Waste.

(a) The Secretary shall have exclusive authority to effectuate the purposes of this chapter concerning solid waste, set forth in § 6001(c)(6) of this title notwithstanding any authority heretofore conferred upon or exercised by any other state agency, but any regulations heretofore duly adopted by any other state agency shall remain in effect and be enforceable by the Secretary unless repealed, amended or modified by the Secretary. Chapter 64 of this title shall not be interpreted to be in conflict with either the purposes of this chapter concerning solid waste as set forth in § 6001(c)(6) of this title, or any regulation promulgated thereunder.

(b) No person shall cause or contribute to the disposal or discharge of solid waste anywhere in the State including any surface or ground water, except:

- (1) Through municipal or private solid waste collection systems which have received a permit from the Department; or
- (2) In solid waste disposal facilities which have received a permit from the Department; or
- (3) In containers specially provided for solid waste collection by any state or municipal agency or private or public group, organization, agency or company which has received a permit from the Department.

(c) Any person charged with violation of subsection (b) of this section, upon conviction, shall be fined not less than \$500 nor more than \$1500 for each violation and there shall be no suspension of the fine. Each day of continued violation or part thereof shall be considered as a separate offense. The court shall, in addition to levying the fine, order the person convicted to remove or cause to be removed any improperly disposed solid waste. In addition to the fine, the sentencing judge may order community service directed to the removal of solid waste illegally disposed of in the State, and may order restitution for costs incurred in remediation of the solid waste illegally disposed of in the State. The Courts of the Justices of the Peace shall have jurisdiction of offenses under this section.

(d) In the event a motor vehicle is used during or in aid of the disposal or discharge of solid waste in violation of subsection (b) of this section, and the identity of the offender is not otherwise apparent, there shall be a rebuttable presumption that the registered owner of the



motor vehicle caused or contributed to such disposal or discharge. The rebuttable presumption set forth in this section shall not apply to operators of buses carrying 9 or more persons.

(e) Any person, who causes or contributes to the disposal or discharge of solid waste anywhere in the State including any surface or ground water, except:

(1) Through municipal or private solid waste collection systems which have received a permit from the Department; or

(2) In solid waste disposal facilities which have received a permit from the Department; or

(3) In containers specially provided for solid waste collection by any state or municipal agency or private or public group, organization, agency or company which has received a permit from the Department, shall be civilly liable to the owner or person in possession of the real property upon which the solid waste is disposed or discharged, for any property damage sustained, for costs incurred by the owner or person in possession for clean up and proper disposal of the solid waste, and for reasonable attorneys' fees. This cause of action is in addition to any other causes of action, rights and/or remedies the owner or person in possession may have.

§ 6026. License Fees.

(a)

(1) The Secretary may establish fees, subject to approval by the General Assembly, for granting any license to any percolation tester, system designer, site evaluator, system inspector, well water contractor, pump installer contractor, well driver, well driller, pump installer, septic tank system installer, liquid waste hauler and liquid waste treatment plant operator.

(2) Notwithstanding any other provisions of law to the contrary, the General Assembly hereby authorizes and approves the following schedule of license fees to be imposed by the Department effective July 1, 2003: Percolation Tester, \$40 annual fee; System Designer, \$40 annual fee; Site Evaluator, \$40 annual fee; System Inspector, \$40 annual fee; Septic Tank System Installer, \$40 annual fee; and Liquid Waste Hauler; \$40 annual fee.

(3) Any fees collected under this subsection are hereby appropriated to the Department to carry out the purposes of this chapter.

(b) The Secretary may establish fees for conveyance of oil and hazardous substance through pipeline after holding public hearings on such a fee schedule.

(c) Any fee collected under this subsection is hereby appropriated to the Department to carry out the purposes of this chapter.



§6027. Change of Authority.

The word “Secretary” shall be substituted wherever the words “Water and Air Resources Commission” or “Commission” appear in the Delaware Code and any authority vested in the “Water and Air Resources Commission” or “Commission” is hereby delegated to the Secretary without qualification.

§ 6028. Report of Discharge of Pollutant or Air Contaminant.

(a) Any person who causes or contributes to an environmental release or to the discharge of an air contaminant into the air, or a pollutant, including petroleum substances, into surface water, groundwater or on land, or disposal of solid waste in excess of any reportable quantity specified under either regulations implementing § 102 of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended [42 U.S.C. § 9602], § 311 of the Clean Water Act of 1980, as amended [33 U.S.C. § 1321], or Department regulations, whichever restriction is most stringent, shall report such an incident to the Department as soon as the person has knowledge of said environmental release or discharge and activating their emergency site plan if appropriate unless circumstances exist which make such notification impossible. Such initial notification shall be made in person or by telephone to a number specifically assigned by the Department for this purpose and shall include, to the maximum extent practicable, the following information:

- (1) The facility name and location of release;
- (2) The chemical name or identity of any substance involved in the release;
- (3) An indication of whether the substance is an extremely hazardous substance;
- (4) An estimate of the quantity of any such substance that was released into the environment;
- (5) The time and duration of the release;
- (6) The medium or media into which the release occurred;
- (7) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals;
- (8) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordination pursuant to the emergency plan);
- (9) The names and telephone number of the person or persons to be contacted for further information; and



(10) Such other information as the Department may require.

This information shall be made available to the public by posting on the Department's internet web site no later than 1 business day after the release is reported. Discharges in compliance with a validly issued state permit or in compliance with other state and federal regulations are exempt from the reporting requirement.

(b) The Department shall adopt regulations revising the list, referred to in subsection (a) of this section, of pollutants environmental releases or air contaminants and their reportable quantities which are to be reported to the Department.

(c) The reporting requirements under this section are in addition to and not in lieu of, any other discharge reporting requirements found in any other state, federal, county or local government permits, regulations or ordinances.

(d) At the Department's discretion, the Department may require said person to file a written report with the Department describing in detail the facts and circumstances of the discharge and measures proposed to prevent such discharge from occurring in the future.

(e) Discharges of an air contaminant or pollutant (including petroleum substances) that are wholly contained within a building are exempt from the reporting requirements.

(f) Any person who violates this section or any rule or regulation duly promulgated hereunder shall be punishable in accordance with the enforcement provisions of this chapter.

§ 6029. Limitations on Scope of Chapter.

This chapter shall not apply to or change the existing law in respect to:

(1) The landowner's right to place a dam across a gully on his or her property or across a stream that originates on that landowner's property where provision is made for continued established average minimum flow occurring for 7 consecutive days within the lowest flow year of record; or

(2) The right to build and maintain a dam or construct a pond and divert water from any stream on any stream having a minimum flow of not more than ½ million gallons of water per day, and utilize up to 360 acre inches of the impounded water per year so long as such action does not affect the established average minimum flow in the stream below the dam at any time; or

(3) Ponds not larger than 60,000 square feet constructed for purposes of conservation, recreation, propagation and protection of fish and wildlife, watering of stock or fire protection; or

(4) Linear water and wastewater utility projects that have a maximum width of disturbance of 30 feet or less and with a maximum total disturbance of 1 acre or less are: (i) subject to Erosion and Sediment Control regulations adopted by the Department, and (ii) exempt from Stormwater Management regulation adopted by the Department.



For the purposes of this section “erosion and sediment control” means the control of solid material, both mineral and organic, during a land disturbing activity, to prevent its transport out of the disturbed area by means of wind, water, gravity, or ice. For the purposes of this section “stormwater management” means:

- a. For water quantity control, a system of vegetative, structural, and other measures that controls the volume and rate of Stormwater runoff which may be caused by land disturbing activities upon the land; and
- b. For water quality control, a system of vegetative, structural, and other measures that controls adverse effects on water quality that may be caused by land disturbing activities upon the land.

§ 6030. Approval of Water Use.

No increase in the amount of water used shall be made by a user without prior approval of the Department.

§ 6031. Obligation of Recipients of Water Allocations.

(a) The Secretary shall, when the use of water pursuant to an allocation granted under § 6010(f) of this title causes the depletion or exhaustion of an existing use of water, require as a condition of such allocation that the recipient of such allocation take 1 or more of the following actions:

- (1) To provide free of charge to the affected person a complete water supply connection to a water supply distribution system and to provide water to the affected person for a term of 3 years in an amount not to exceed 100,000 gallons per year. Water used by the affected person which exceeds 100,000 gallons per year shall be paid for by the affected person on a quarterly basis at the rates established by the Public Service Commission as applicable to the supply of public water in the area in question; and/or
- (2) To provide free of charge to the affected person an alternative source of water supply at least equal in quality and quantity to that existing at the time of the granting of the allocation.

(b) The Secretary shall, when an allocation granted pursuant to § 6010(f) of this title causes the depletion or exhaustion of an existing use of water, require as a condition of such allocation that the person receiving such allocation provide free of charge to the affected person an interim water supply which is adequate to meet such person's need. The Secretary shall determine the level of interim water supply sufficient to meet the needs of the affected person and shall further determine the dates on which the interim water supply will commence and terminate.



(c) The Secretary shall, upon receipt of a verified petition setting forth factual allegations that an allocation granted pursuant to § 6010(f) of this title caused the depletion or exhaustion of petitioner's existing use of water, schedule and conduct a hearing to consider the petition. Prior to a hearing under this subsection the Secretary shall give at least 20 days' notification of the date of the hearing to the petitioner and the person granted the allocation. The petitioner or the person granted the allocation may appear personally or by counsel at the hearing and produce any competent evidence. The Secretary or the Secretary's designee may administer oaths, examine witnesses and issue in the name of the Department subpoenae when requested by a petitioner or a person granted an allocation. A verbatim transcript of testimony at the hearing shall be prepared and shall, along with the exhibits and other documents introduced into evidence, constitute the record. The Secretary or the Secretary's designee shall make findings of fact based on the record and issue an order to effectuate such findings and further the purposes of this subsection. Any person whose interest is substantially affected by any order of the Secretary may appeal to the Environmental Appeals Board as provided in § 6008 of this title.

§ 6032. Licensing of Site Evaluators, Percolation Testers and On-Site System Designers and Contractors.

(a) No person shall conduct percolation tests or soil evaluations or design, inspect or install on-site wastewater treatment and disposal systems without first having obtained a license from the Secretary. As a prerequisite of licensing, the Secretary may require the person to demonstrate familiarity with test procedures and applicable regulations, and to sign a statement under penalty of perjury that he or she will abide by all statutes and regulations governing the design, inspection and installation of on-site wastewater treatment and disposal systems. In addition, the Secretary may require each licensee or class of licensees to show proof of surety to cover liability for such risks and in such amounts as the Secretary may establish by regulation after public notice in accordance with § 6006 of this title.

(b) Any license by the Secretary shall be for a fixed term not to exceed 3 years and shall be renewable upon application.

(c) The Secretary shall adopt such other regulations after public notice and hearing in accordance with § 6006 of this title as necessary to accomplish the purposes of this title.

(d) The license requirements shall not apply in a county which has been delegated authority to issue septic tank permits pursuant to § 6003(d) of this title.

§ 6033. Pretreatment Program.

(a) The Secretary shall develop, implement and enforce, and may amend, modify and repeal, a state pretreatment program in compliance with the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. and regulations promulgated thereunder. In addition to any



other authority which the Secretary may exercise for this purpose under this chapter or other chapters of this Code, the Secretary may:

- (1) Require any POTW to develop, submit for approval to the Secretary, administer and enforce a POTW pretreatment program;
- (2) Review, approve and deny requests for approval of POTW pretreatment programs submitted by a POTW to the Secretary;
- (3) Require any POTW, whether or not such POTW is required to develop and enforce a POTW pretreatment program, to develop, submit for approval to the Secretary and enforce specific limits on or prohibitions against discharges of pollutants by industrial users of such POTW to prevent interference with such POTW;
- (4) Incorporate conditions into new or existing permits issued to POTWs, such as, but not limited to, compliance schedules, modification clauses, the elements of an approved pretreatment program and specific limits on or prohibitions against discharges by industrial users into such POTW;
- (5) Review, approve and deny requests from POTWs required to develop POTW programs to modify categorical pretreatment standards to reflect removals achieved by such POTW;
- (6) Require any POTW or industrial user to submit reports, monitor activities and maintain records to assure compliance with this section and regulations hereunder;
- (7) Require compliance by industrial users with pretreatment standards, and discharge limits and prohibitions;
- (8) Adopt, amend, modify or repeal rules or regulations to effectuate this section and comply with federal laws and regulations respecting pretreatment. Such rules and regulations shall be adopted, after public hearing, in accordance with § 6010 of this title; provided, however, that the Secretary may incorporate into state regulations without a public hearing a categorical pretreatment standard which has previously been promulgated by regulation by the Administrator of the United States Environmental Protection Agency. Prior to incorporating any such categorical pretreatment standard without a public hearing, the Secretary shall comply with §§ 10115, 10116 and 10118 of Title 29.

(b) The Secretary may seek any relief authorized by this chapter against any industrial user even if a POTW has acted or will act to seek such relief.

§ 6034. Sewage System Cleansers and Additives.

(a) No person shall distribute, sell, offer or expose for sale in this State any sewage system cleanser or additive containing any restricted chemical materials in excess of 1 part per hundred



by weight. The penalty for an initial violation of this subsection shall be a formal written warning by the Secretary for the first offense; and for any subsequent violation a fine of \$500 shall be imposed.

(b) No person shall use, introduce or apply, or cause any other person to use, introduce or apply in any sewage system, surface waters or groundwaters in this State any sewage system cleanser or additive containing any restricted chemical material or any combination thereof, in excess of 1 part per hundred. The penalty for violating this subsection shall be a fine of \$100 for the first offense and \$1,000 for each subsequent offense.

(c) No person shall serve water, or a product containing water, to the public from a well ordered closed due to the presence of restricted chemical materials. The penalty for each such violation shall be a fine of not less than \$1,000 nor more than \$10,000. Any subsequent violation of this subsection by a violator shall result in the closing of the facility until a new and safe source of water is found and is operative in the facility.

(d) The Courts of the Justices of the Peace shall have jurisdiction over offenses under this section.

(e) The Secretary, with assistance from the Division of Public Health, shall:

(1) Conduct a public education program by utilizing mass-media instruments within 90 days of July 17, 1984;

(2) Thereafter, conduct random spot checks in appropriate business concerns to insure that no restricted chemical materials are on sale; and

(3) Take appropriate enforcement action for violations of the sale or use of restricted chemical materials as provided in subsections (a) and (b) of this section.

§ 6035. Vessel Sewage Discharge.

(a) Marina owners/operators for marinas that are located in whole or in part on tidal waters of the State, and that provide dockage for vessels with a portable toilet or toilets or Type III marine sanitation device or devices (MSD), shall provide convenient access, as determined by the Department, to an approved, fully operable and well maintained pumpout facility or facilities and/or dump station or stations for the removal of sewage from said vessels to a Department approved sewage disposal system.

(b)

(1) Owners/operators may agree to pool resources for a single pumpout dump station with Departmental approval based on criteria of number and class of vessels, marina locations, cost per pump out use, and ultimate method of sewage treatment and disposal (i.e. septic system or waste water treatment facility).



(2) The owner/operator of any boat docking facility that is located in whole or in part on tidal waters of the State, and that provides dockage for a live-aboard vessel or vessels with a Type III marine sanitation device or devices, shall install and maintain at all times, in a fully operable condition, an approved dedicated pumpout facility at each live-aboard vessel slip for the purpose of removing sewage from the live-abroad vessel on a continuous or automatic, intermittent basis to a Department approved sewage disposal system.

(3) Any discharge, by any means, of untreated or inadequately treated vessel sewage into or upon the waters of any marina, boat docking facility or tidal water of the State is prohibited.

(4) All vessels while on waters of the State shall comply with 33 U.S.C. § 1322, as amended February 4, 1987.

(5) The Secretary shall have authority to adopt reasonable rules and regulations to implement this section.

§ 6036. Projects of State Significance.

The Department shall adopt objective standards and criteria to identify “projects of state significance” which standards and criteria shall be used by the Department in evaluating projects in the State requiring the review or approval of the Department. The process to be followed by the Department in the adoption of said objective standards and criteria shall include the following:

(1) In making the determination of whether any proposed project is a project of state significance, the Department shall consider, without limitation, the following factors:

a. Environmental impact, including, without limitation, probable air, land and water pollution likely to be generated by the proposed use under normal operating conditions and as the result of mechanical malfunction and human error; likely destruction of wetlands and flora and fauna; impact and effect of site preparation and facility operations on land erosion, drainage of the area in question, especially as it relates to flood control, and the quality and quantity of surface and ground water resources, such as the use of water for processing, cooling, effluent removal and other purposes; and the likelihood of generation of glare, heat, noise, vibration, radiation, electromagnetic interference and obnoxious odors.

b. Economic effect, including, without limitation, the number of jobs created and the income which will be generated by the wages and salaries of these jobs in relation to the amount of land required, and the amount of tax revenues potentially accruing to state and local government.



c. Effect on neighboring land uses including, without limitation, effect on public access to all state surface waters, effect on recreational areas and effect on adjacent residential and agricultural areas.

(2) The Secretary shall further elaborate on the definition of “heavy industry” in accordance with § 7005(c) of this title. The Secretary shall delineate “heavy industry of state significance” as part of this process, which shall be a subcategory of projects of state significance. Heavy industry uses of any kind, including heavy industry of state significance, not in operation on June 28, 1971, shall be prohibited in the coastal zone and no permits may be issued therefor.

(3) All agencies of state government shall assist the Department in developing objective standards and criteria to identify projects of state significance and shall provide such information as the Department requests. The Department shall develop regulations specifying the objective standards and criteria which are to be used to identify projects of state significance and shall make such regulations available for public review no later than 9 months after the effective date of this legislation. The Department shall hold a public hearing on said regulations and shall announce such hearing by publication in a newspaper of general circulation in each county of the State. The Department shall adopt regulations specifying the objective standards and criteria for identifying projects of state significance, with exception of heavy industry of state significance, no later than 13 months after the effective date of this legislation. The Department shall submit to the State Coastal Zone Industrial Control Board standards and criteria for identifying heavy industry of state significance for adoption no later than 11 months after the effective date of this legislation. The State Coastal Zone Industrial Control Board shall adopt said standards and criteria no later than 13 months after the effective date of this legislation.

§ 6037. Obligation of Persons Who Contaminate Drinking Water Supplies.

(a)

(1) The Secretary shall develop and publish the necessary forms to be used by any person who believes his or her drinking water supply has been contaminated to petition for an alternative water supply, said petition will include, at a minimum, the following:

a. Well information including a valid DNREC well permit number, or other certified documentation as to how and when the well or other water intake was constructed; and

b. The contaminant and its concentration in the form of a signed analytical report from a certified drinking water laboratory which identifies the sample, the contaminant, its concentration, and the analytical method detection limit; and



c. The date the sample was collected, the name of the person collecting the sample, a description of the sample container, and the preservation techniques used, if any.

(2) The form shall be notarized and certified as being true and factual by the petitioner. Failure to provide all relevant information, or providing false information, will be grounds to reject a petition.

(b) Upon the Secretary's receipt of a certified petition that sets forth allegations that a discharge of a substance into a drinking water supply has affected a petitioner's use of an existing drinking supply well or other drinking water intake through any activity, the Secretary shall notify all potentially responsible parties who shall be given 30 days in which to either respond to the petition, propose remedial action or request a hearing on the merits of the petition.

(c) After evaluating all available information in his or her possession, the Secretary will issue an order either verifying or rejecting the contentions contained in the petition. The Secretary's decision to verify the petition and grant relief must be based on findings of fact contained in the certified petition and other scientifically conclusive evidence in his or her possession, which at a minimum establishes that:

(1) A state or federal drinking water standard has been exceeded; and

(2) A source, due to its nature, proximity, and hydrogeologic connection to the affected water supply is the likely cause of the contamination provided that the activity does not contain a valid state or federal permit with which the permittee has fully complied and provided that the permit did not anticipate the contamination of the drinking water supply.

(d) Upon verification of a petition as set forth in subsection (c) of this section, the Secretary shall require that if any activity results in the contamination of an existing drinking water supply by contaminants other than bacteria, viruses, nitrate or pesticides, which have been applied according to the manufacturer's instructions, then the person(s) who is responsible for the contamination shall complete 1 of the following activities which is deemed to be the most cost effective:

(1) Provide at no cost to each person who has had his or her existing drinking water supply contaminated, the installation of an alternative water supply of at least equal quantity and quality to said person's water supply that existed on the date the water supply was contaminated; or

(2) Provide at no cost to each person who has had his or her existing drinking water supply contaminated, a complete water supply connection to a water supply distribution system and provide water to said person for a term of up to 3 years in an amount not to exceed 100,000 gallons per year. Said 3-year term shall commence on the first day water is supplied to said person by the person who contaminated the drinking water supply. Water used by said person that exceeds 100,000 gallons per year shall be paid by said person at a rate that is established by the appropriate rate setting body taking



into consideration the rate charged for the supply of public water in the water supply area before it was contaminated, or the rate charged in a similar area; or

(3) Provide at no cost the treatment system necessary to maintain the water supply as an adequate drinking water supply and provide the costs of operation and maintenance of the system for a period of 3 years.

(e) In addition to the provisions of subsection (d) of this section, the Secretary may require that the person who has caused the contamination of a person's drinking water supply by contaminates other than bacteria, viruses, nitrate or pesticides, shall provide at no cost to each person who has had his or her drinking water supply contaminated an interim water supply that is of a quality and quantity to meet said person's needs as shall be determined by the Secretary on a case-by-case basis. In addition, the Secretary shall determine the dates on which the interim water supply shall commence and be terminated.

(f) Any affected party may appeal a decision by the Secretary concerning a replacement water supply petition to the Environmental Appeals Board in accordance with § 6008 of this title.

(g) Any hearing that may be conducted pursuant to the provisions of this section shall be done according to procedures as set forth in § 6006 of this title.

(h) For the purposes of this section, "contamination" means the human alteration of the chemical, physical, biological or radiological integrity of water which violates federal or state drinking water standards.

§ 6037b. Recreational Water.

(a) The Secretary shall provide for the sanitary control of natural swimming and bathing places.

(b) The Secretary shall consult with the Director of the Division of Public Health prior to making any recommendations on swimming or bathing conditions that pose a significant risk to the public health.

§ 6038. Borrow Pits.

(a) The Secretary shall develop, implement and enforce, and may amend, modify and repeal, after notice and public hearing, a program to protect the waters of the State from adverse environmental impacts relating to the operation of borrow pits. In addition to any other authority which the Secretary may exercise for the purpose under this chapter or other chapters of the Delaware Code, the Secretary may:

(1) Require borrow pit owners/operators to obtain operating permits from the Department of Natural Resources and Environmental Control;

(2) Require reclamation of abandoned pits by owners/operators;



(3) Require borrow pit owners/operators to secure the borrow pit premises from illegal dumping, disposal of wastes or vandalism; and

(4) Adopt, amend, modify or repeal rules or regulations to effectuate this section.

(b) Fees may be collected or charged for permits to be issued under this section in an amount determined by the issuing authority, which fee shall not exceed the sum of \$80 per disturbed acre, per year, per project.

(c) The Secretary may delegate all or part of the program to any county having rules or regulations governing borrow pits which, upon a finding by the Secretary, are at least equivalent to state requirements.

§ 6039. Debris Disposal Area Remediation.

(a) The Secretary may develop, implement and administer a program for the identification, investigation, assessment, mitigation and remediation of debris disposal areas created as part of the construction of residential or subdivision developments. Any person who caused or contributed to the creation or use of a debris disposal area on or after December 8, 1988, shall be subject to enforcement for illegal disposal and may be required by order from the Department to remove and properly dispose of such material. The Department is authorized to develop policies, procedures and guidelines and may establish, amend, modify and repeal, after notice and public hearing, such regulations as may be necessary to effectuate the purposes of this section. The Department may establish an application fee not to exceed \$250 for homeowners to participate in the remediation program. The money generated by this application fee shall be placed in the "Debris Disposal Area Remediation Account." This account shall only be used to offset costs of this program. Homeowners who wish to excavate and remove buried debris from their own residential property or homeowners who have already excavated and removed buried debris from their own residential property are eligible for reimbursement of the cost of remediation up to a maximum reimbursement of \$10,000, provided that:

(1) The cost was incurred on or after December 8, 1988;

(2) The disposal areas were created as part of the construction of residential or subdivision developments in accordance with this section; and

(3) Satisfactory documentation of the work and expenses incurred are provided.

(b) The Department shall report the findings from the study and the evaluation and make recommendations to the Governor and the General Assembly no later than March 15, 1999.

(c) There shall be established within the Department an account to be known as the "Debris Disposal Area Remediation Account." All funds made available to the Department in accordance with the provisions of subsection (b) of this section shall be placed in the Debris Disposal Area Remediation Account to be used by the Department or its agents to carry out the



purposes of this section. The Department may establish presumptive remedies to address the remediation of debris disposal areas. These funds shall be used for the purpose of identifying, investigating, assessing, mitigating or remediating debris disposal areas and associated effects as determined by the Department. Notwithstanding any other provision to the contrary, up to \$7,500 per site may also be used to cover any secondary damage that may occur to existing structures or property as the result of the remediation, which, if applicable, shall be in addition to the maximum reimbursement amount established in subsection (a) of this section.

(d) The Department may use funds from the Debris Disposal Area Remediation Account to identify, investigate, assess, mitigate or remediate any debris disposal area constructed, used or filled subsequent to December 8, 1988, if the party responsible for the area does not respond as required to any order issued by the Secretary, and if such site presents an imminent threat to human health, safety or the environment as determined by the Department. In addition to the assessment of any penalty as provided in § 6005(a) and (b) of this title, any person who fails to comply with any order issued by the Secretary to identify, investigate, assess, mitigate or remediate any debris disposal area may be liable for all costs incurred by the Department to do so as provided in § 6005 (c) of this title.

(e) Except to the extent provided herein, no provision contained in this section shall relieve any party from compliance with or liability under any other environmental statute, including, but not limited to, Chapters 60, 62, 63, 66, 74 and 77 of Title 7.

§ 6042. Civil and Administrative Penalties; Community Environmental Project Fund.

(a) There is hereby established a Community Environmental Project Fund, referred to herein as the “Fund.” The Fund shall be held as a separate account within the Department and may be invested by the State Treasurer in securities consistent with investment policies established by the Cash Management Policy Board.

(b) The Fund shall consist of 25 percent of all civil or administrative penalties collected by the Department pursuant to § 4015, § 6005, § 6617, § 7011, § 7214, § 7906, § 9109, or § 9111 of this title. Twenty-five percent of such civil and administrative penalties are hereby appropriated to the Fund, subject to the requirements of this section.

(c) Moneys shall be expended from the Fund only for Community Environmental Projects, referred to herein as “Projects.” As used herein the term “Community Environmental Project” means a project that is undertaken for the purpose of effecting pollution elimination, minimization, or abatement, or improving conditions within the environment so as to eliminate or minimize risks to human health, or enhancement of natural resources for the purposes of improving indigenous habitats or the recreational opportunities of the citizens of the 1 Delaware. The Secretary may, by regulation, provide for further definition of such Projects.

(d) The Secretary, after consultation with the Community Involvement Advisory Council, shall give priority to Community Environmental Projects which benefit communities that are most impacted by specific infraction(s) or violation(s). Specifically, the Secretary, at his or her discretion, shall determine whether a proposed Project is located within the watershed or



airshed adversely affected by a violation or infraction as part of the evaluation process. The Secretary shall ensure that records identify the location of each civil or administrative penalty. No provision of this section shall be construed to require the Department to expend funds from the Fund in the absence of a suitable Project within the community where the violation or infraction occurred. The Secretary may also determine that the requirements of this subsection cannot practicably be met with respect to expenditures from the Fund associated with a penalty from a facility or location because such amount is insufficient or too large to be an appropriate expenditure. The expenditure of funds required under this subsection may be waived by the Secretary, with the concurrence of the Director of the Office of Management and Budget and Controller General.

(e) In the event that the requirements of this section conflict with applicable federal or State of Delaware requirements pertaining to the establishment and collection of penalties or other assessments by the Department, such requirements shall take precedence over the conflicting requirements of this section.

(f) The Department shall submit quarterly reports on the progress of the expenditures and/or projects conducted with the Community Environmental Project Fund to the Governor and members of the General Assembly. All of the expenditures made by or on behalf of the Fund, together with an explanation the process utilized for selecting and prioritizing Projects, shall be reported annually to the Joint Finance Committee in the Department's budget presentation.



