

SENATE BILL 936

M3

3lr3038
CF HB 635

By: **Senator Folden**

Introduced and read first time: February 17, 2023

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

2 **Water Pollution Control – Discharges From Construction Sites – Limits on**
3 **Liability**

4 FOR the purpose of limiting the liability of a certain person for certain discharges from a
5 construction site; and generally relating to discharges from construction sites.

6 BY repealing and reenacting, with amendments,
7 Article – Environment
8 Section 9–342
9 Annotated Code of Maryland
10 (2014 Replacement Volume and 2022 Supplement)

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

13 **Article – Environment**

14 9–342.

15 (a) (1) [In] **SUBJECT TO SUBSECTION (C) OF THIS SECTION**, IN addition to
16 being subject to an injunctive action under this subtitle, a person who violates any provision
17 of this subtitle or of any rule, regulation, order, or permit adopted or issued under this
18 subtitle is liable to a civil penalty not exceeding \$10,000, to be collected in a civil action
19 brought by the Department.

20 (2) Each day a violation occurs is a separate violation under this
21 subsection.

22 (b) (1) [In] **SUBJECT TO SUBSECTION (C) OF THIS SECTION**, IN addition to
23 any other remedies available at law or in equity and after an opportunity for a hearing

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 which may be waived in writing by the person accused of a violation, the Department may
2 impose a penalty for violation of any provision of this subtitle or any rule, regulation, order,
3 or permit adopted or issued under this subtitle.

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

5 (i) Up to \$10,000 for each violation, but not exceeding \$100,000
6 total; and

7 (ii) Assessed with consideration given to:

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

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

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

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

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

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

23 7. The degree of hazard posed by the particular pollutant or
24 pollutants involved; and

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

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

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

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

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

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

5 (6) Any penalty collected under this subsection shall be placed in a special
6 fund to be used for monitoring and surveillance by the Department to assure and maintain
7 an adequate record of any violations, including discharge of waste material and other
8 pollutants into the waters of this State or into the environment.

9 (C) (1) **THIS SUBSECTION APPLIES ONLY TO A PERSON THAT:**

10 (I) **HOLDS A DISCHARGE PERMIT ISSUED BY THE DEPARTMENT**
11 **FOR STORMWATER ASSOCIATED WITH CONSTRUCTION ACTIVITY; OR**

12 (II) **IS AUTHORIZED FOR COVERAGE UNDER A GENERAL**
13 **DISCHARGE PERMIT FOR STORMWATER ASSOCIATED WITH CONSTRUCTION**
14 **ACTIVITY.**

15 (2) **A PERSON IS NOT LIABLE UNDER THIS SECTION, AND NO CIVIL OR**
16 **ADMINISTRATIVE PENALTY MAY BE IMPOSED, FOR A DISCHARGE FROM A**
17 **CONSTRUCTION SITE:**

18 (I) **UNLESS:**

19 1. **THE DEPARTMENT PREVIOUSLY PROVIDED WRITTEN**
20 **NOTICE TO THE PERSON OF THE CONDITION THAT GAVE RISE TO THE DISCHARGE;**
21 **AND**

22 2. **THE PERSON WILLFULLY CAUSED OR FAILED TO**
23 **PREVENT THE DISCHARGE OF POLLUTANTS FROM THE CONSTRUCTION SITE INTO**
24 **WATERS OF THE STATE; OR**

25 (II) **IF THE DISCHARGE WAS DUE TO AN ACT OF GOD, INCLUDING**
26 **ANY WEATHER EVENT IN WHICH 2 OR MORE INCHES OF RAIN FELL WITHIN 24 HOURS.**

27 (3) **THE CIVIL OR ADMINISTRATIVE PENALTY IMPOSED ON A PERSON**
28 **UNDER THIS SECTION FOR A DISCHARGE FROM A CONSTRUCTION SITE MAY NOT**
29 **EXCEED:**

30 (I) **\$5,000 FOR EACH VIOLATION; OR**

1 **(II) \$25,000 TOTAL.**

2 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
3 October 1, 2023.