



SPONSOR: Rep. Smith & Rep. Valihura &  
Sen. McBride; Reps. D. Ennis,  
George, Lavelle, Mulrooney, Quillen,  
Reynolds, Spence, Viola; Sens.  
Cloutier, Connor, DeLuca, Marshall,  
McDowell, Simpson, Sokola,  
Sorenson

HOUSE OF REPRESENTATIVES

142nd GENERAL ASSEMBLY

HOUSE BILL NO. 109

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE WITH RESPECT TO ENFORCEMENT OF  
ENVIRONMENTAL LAWS AND REGULATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 WHEREAS existing Delaware statutes and regulations have not been sufficient to deter some companies from  
2 polluting Delaware's environment and jeopardizing the safety of its residents; and

3 WHEREAS the use of outside inspectors for facilities that chronically violate Delaware's environmental laws  
4 will ensure that the State is made aware on a regular basis of any irregularities at such facilities; and

5 WHEREAS entities conducting business in Delaware that adversely affects the environment should be required  
6 to file regular statements under oath to ensure that the state is able to properly monitor those businesses; and

7 WHEREAS it is important to clarify the state's existing legal authority to close facilities that have a pattern of  
8 jeopardizing the environment, and to create new legal authority to accelerate fines against chronic violators;

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

10 Section 1. Amend Title 7, Section 6005 of the Delaware Code by adding a new subsection (e) which shall read  
11 as follows:

12 "Any fines created by this Section may be tripled with respect to any person or entity that was designated a chronic  
13 violator pursuant to Section 7904 of this Title at the time that the act leading to the fine occurred."

14 Section 2. Delete Title 7, Section 7902 of the Delaware Code, and replace it with the following:

15 "§7902 Statement required.

(a) Applicants for, and holders of, permits to conduct stormwater management, NPDES, oil pollution liability, air, hazardous waste, solid waste, commercial subaqueous, wetlands, coastal zone, storage tank, extremely hazardous substances, hazardous substances cleanup and emergency planning and community right-to-know activities under the authority of Chapters 40, 60, 62, 63, 66, 70, 72, 74, 74A, 77, 78 or 91 of this title or Chapter 63 of Title 16, shall be required by the Department to submit a statement containing the following information on an annual basis:

- (1) A complete list of all current members of the board of directors, all current corporate officers, all persons owning more than 20 percent of the applicant's stock or other resources, all subsidiary companies, parent companies and companies with which the applicant's company shares 2 or more directors;
- (2) The names of the persons serving as the applicant's local chief operating officer with respect to each facility covered by the permit in question.
- (3) A description of all notices of violation, criminal citations, arrests, convictions, or civil or administrative penalties assessed against the applicant or any other person identified under paragraphs (1) or (2) of this section for the violation of any environmental statute, regulation, permit, license, approval or order, regardless of the state in which it occurred, for the 5 years prior to the date of the statement;
- (4) A description of the disposition of any of the items identified pursuant to paragraph (3) of this section and any actions that have been taken to correct the violations that led to such enforcement of actions.
- (5) A description of any felony or other criminal conviction for a crime involving harm to the environment or violation of environmental standards of any person identified in paragraphs (1) or (2) of this section that resulted in a fine greater than \$1,000 or a sentence longer than 7 days, regardless of whether such fine or sentence was suspended;
- (6) Copies of any and all settlements of environmental claims involving the applicant, whether or not such settlements were based on agreements where the applicant did not admit liability;
- (7) If the applicant has been designated as a chronic violator under Section 7904 of this Title, or has been found guilty, pled guilty, or pled no contest to any crime involving violation of

environmental standards which resulted in serious physical injury or serious harm to the environment, a statement made under oath by the applicant's local chief operating officer with respect to the facilities covered by the permit, stating that (a) disclosures made by the applicant under federal and state environmental statutes and regulations during the preceding calendar year have been, to the chief operating officer's knowledge, complete and accurate, and (b) that the facility has implemented policies, programs, procedures, standards or systems reasonably designed, in light of the size, scope and nature of facility operations, to detect, deter and promptly correct any noncompliance with state environmental statutes and regulations. The statement filed pursuant to this paragraph shall include an acknowledgement by the affiant that intentionally false statements submitted in compliance with this paragraph constitute criminal perjury as defined at 11 Del.C. §§1221-1222.

(8) If the applicant has been designated as a chronic violator under Section 7904 of this Title, a detailed written report from an independent inspector who has inspected the applicant's premises for the purpose of detecting potential safety and environmental hazards to employees and the surrounding community. The Secretary may waive the duty to submit a detailed written report upon a showing of good cause by the applicant. A showing by the applicant that the acts which caused it to be designated as a chronic violator did not jeopardize public health shall constitute "good cause" under this paragraph.

(b) Notwithstanding the above, persons or entities subject to this section shall submit the statements required by this section only upon their initial permit application, provided that

- (1) Chronic violators will be subject to the provisions of paragraphs (a)(1) through (a)(8) on an annual basis as long as they are designated as chronic violators
- (2) Entities that have been found guilty, pled guilty, or pled no contest to any crime involving violation of environmental standards which resulted in serious physical injury or serious harm to the environment shall be subject to the provisions of paragraphs (a)(1) through (a)(7) on an annual basis for a period of five years from the date of the finding of guilt or plea of no contest.

(3) Except where required by subparagraphs (1) or (2) of this subsection, entities which have been permitted by the Department for a period of five years or more shall not be required to comply with paragraphs (a)(1) through (a)(8) for new permits.

(c) The following terms shall have the following meanings in connection with this Section:

(1) The term ‘independent inspector’ shall mean a person or entity, approved by the Department subject to regulations that shall be promulgated within six months of this Act becoming law, which is sufficiently knowledgeable regarding state environmental standards to inspect the facility in question, and which has received no funds (other than funds for conducting other independent inspections) from the applicant, its parents, or its subsidiaries within the three years prior to Department approval.

(2) The term ‘local chief operating officer’ shall mean the person physically working within the State of Delaware who has supervisory authority over all other persons at the facility subject to permitting requirement. A permitted facility in the State of Delaware must have a chief operating officer.

(3) The term ‘physically working within the State of Delaware’ means spending part of at least of 20% of all weekdays (other than legal holidays) physically present and working within the borders of the State of Delaware.

(4) The term “serious physical injury” as used in this section shall have the same meaning assigned to it by Title 11, Chapter 2 of the Delaware Code.

(5) 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 in the State of Delaware.

Section 3. Amend Section 7904(c), Title 7 of the Delaware Code by adding a new paragraph (5) to that subsection that shall read as follows:

“(5) The applicant or permit holder is engaged in a pattern of ongoing violations of the permit, state laws, or state regulations, which presents a serious, imminent threat to public health.”

96           Section 4. Amend Section 7904(c), Title 7 of the Delaware Code by adding the following sentence to the end of  
97 that subsection:  
98           “The Department shall promulgate regulations providing for expedited hearings with respect to permits revoked  
99 under this subparagraph, and providing for expedited appeals of such suspensions or revocations to the Environmental  
100 Appeals Board.”

#### SYNOPSIS

This bill makes several improvements to Delaware’s environmental enforcement statutes.

1. The bill requires annual disclosure statements by entities whose compliance history makes them most likely to cause harm to the environment, rather than simply requiring statements at the time of permit applications.
2. The bill requires the persons in charge of permit-holding entities with poor environmental records to submit sworn statements verifying the entity’s compliance with DNREC standards.
3. The bill allows DNREC to require independent audits of facilities found to be “chronic violators,” in order to ensure that those facilities most consistently in violation of state regulations and standards undergo a rigorous outside review.
4. The bill allows for tripling of fines against chronic violators who commit new violations that can be punished by fines. This fine provision will also allow the DNREC Secretary to assess higher penalties against companies, which the Secretary must now seek Court permission to assess.

The bill clarifies DNREC’s ability to close facilities that have a pattern of committing violations of statutes or regulations, where those violations jeopardize public health or public safety.