



SPONSOR: Sen. McBride & Rep. Smith;
Sens. DeLuca, McDowell, Sokola &
Simpson, Reps. Valihura, Mulrooney,
Quillen, Reynolds & Viola

DELAWARE STATE SENATE

142nd GENERAL ASSEMBLY

SENATE BILL NO. 60

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

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 it is important that the individuals with the responsibility and ability to maintain environmental
4 standards at Delaware facilities be held legally responsible for doing so; and

5 WHEREAS Delaware's criminal penalties for environmental polluters should be strengthened for those polluters
6 who knowingly or recklessly harm people or the environment; and

7 WHEREAS it is also important that the public have access to as much information as possible about facilities
8 engaged in potentially dangerous activities in Delaware;

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

10 Section 1. Amend Section 7903, Title 7, Delaware Code, by deleting subsection (b) as found therein and
11 replacing it with the following:

12 "(b) If the applicant can demonstrate that information provided pursuant to Section 7902 of this Title is not
13 a matter of public record at the time of the application, and that the release of such information to the public
14 would constitute an invasion of personal privacy or would seriously affect the applicant's business or
15 competitive situation, the Department may designate such information as confidential information."

16 Section 2. Amend §6013, Title 7, Delaware Code, by deleting subsections (b) and (c) in their entirety, and by
17 substituting in lieu thereof new subsections (b) and (c) to read as follows:

18 “(b) Any person who (i) intentionally, knowingly, or recklessly makes any false statement, representation or
19 certification in any application, record, report, plan or other document filed or required to be maintained under this
20 chapter, or under any permit, rule, regulation or order issued under this chapter, or (ii) who falsifies, tampers with or
21 knowingly or recklessly renders inaccurate any monitoring device or method required to be maintained under this
22 chapter, shall upon conviction be punished by a fine of not less than \$500 nor more than \$10,000 or by imprisonment
23 for not more than 6 months, or both. Each day of violation shall constitute a separate offense.

24 (c) Any person who intentionally or knowingly (1) violates § 6003 of this title, or violates any condition or
25 limitation included in a permit issued pursuant to § 6003 of this Title, or any variance condition or limitation, or
26 any rule or regulation, or any order of the Secretary, or (2) violates any requirements of a statute or regulation
27 respecting monitoring, recording and reporting of a pollutant or air contaminant discharge; or (3) violates a
28 pretreatment standard or toxic effluent standard with respect to introductions of pollutants into publicly owned
29 treatment works, and who causes serious physical injury to another person or serious harm to the environment as
30 one result of such conduct, shall be sentenced in compliance with the sentencing guidelines established for Class
31 D felonies in 11 Del.C. § 4205.”

32 Section 3. Amend §6013, Title 7, Delaware Code, by adding new subsections (d) through (m) to read as follows:

33 “(d) Any person (i) who intentionally or knowingly makes any false statement, representation or certification in
34 any application, record, report, plan or other document filed or required to be maintained under this chapter, or under
35 any permit, rule, regulation or order issued under this chapter, or (ii) who falsifies, tampers with or intentionally or
36 knowingly causes to be rendered inaccurate any monitoring device or method required to be maintained under this
37 chapter, and who causes serious physical injury to another person or serious harm to the environment as one result of
38 such conduct, shall upon conviction be sentenced in compliance with the sentencing guidelines established for Class
39 D felonies in 11 Del.C. § 4205.

40 (e) Any officer of any corporation, manager of any limited liability company, or general partner of any limited
41 partnership conducting business in the State of Delaware who intentionally or knowingly authorizes or directs
42 said business entity or its employees or agents to (i) falsify or conceal any material fact required to be disclosed
43 to the Department, (ii) destroy, conceal or alter any records that the corporation is required by this Title, the
44 Department’s regulations, or an order of the Department to maintain, or to (iii) commit any act in violation of
45 this Title or rules promulgated by the Department, shall upon conviction be punished by a fine of not less than

46 \$500 nor more than \$10,000 or by imprisonment for not more than 6 months, or both. If an act described in this
47 subsection causes serious physical injury to another person or serious harm to the environment as one result of
48 such an act, the officer, manager, or general partner committing the act shall upon conviction be sentenced in
49 compliance with the sentencing guidelines established for Class D felonies in 11 Del.C. § 4205. Nothing in this
50 subsection shall be read to establish any additional elements for conviction of the criminal offenses described in
51 subsections (a) through (d) of this section.

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

54 (g) The Superior Court shall have exclusive jurisdiction over prosecutions brought pursuant to subsections (a)
55 through (e) of this Section, and concurrent jurisdiction over prosecutions brought pursuant to subsection (h).

56 (h) Whoever violates this chapter, or any rule or regulation promulgated thereunder or any rule or regulation in
57 effect as of July 26, 1974, or any permit condition, or any order of the Secretary, shall be punished by a fine of
58 not less than \$50 nor more than \$500 for each violation. Each day of violation shall be considered as a separate
59 violation. The courts of the justices of the peace shall have jurisdiction of offenses under this subsection.

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

62 (j) The terms ‘intentionally,’ ‘knowingly,’ ‘recklessly,’ ‘negligently,’ and ‘serious physical injury,’ as used in this
63 Section, shall have the meanings assigned to them by Title 11, Chapter 2 of the Delaware Code.

64 (k) The term “serious harm to the environment” shall mean damage to the air, water, or soil which has or will,
65 beyond a reasonable doubt, cause serious physical injury to any persons working at the facility in question or
66 persons within a 50 mile radius of the facility in question.

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

70 (i) an occupation, a business, or a profession; or

71 (ii) medical treatment or medical or scientific experimentation conducted by professionally approved
72 methods and such other person had been made aware of the risks involved prior to giving consent.

73 The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence. The
74 provisions of this subparagraph are subject to the restrictions enumerated at 11 *Del.C.* § 453.
75 (m) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other criminal
76 offenses may apply under this section.

SYNOPSIS

This Bill makes a number of changes in Delaware's environmental enforcement codes, all designed to further deter individuals from engaging in activity that will pollute Delaware's environment. The major changes made by the Bill are:

- (1) The Bill ensures that all non-confidential information regarding chronic violators is made available to the public.
- (2) The Bill holds corporations and their agents criminally liable not only for intentional and knowing violations of DNREC statutes and regulations, but also reckless submissions of false statements to DNREC and reckless tampering with monitoring equipment. A reckless violation occurs when a person is aware of and consciously disregards a substantial and unjustifiable risk that a false statement or monitoring error exists or will result from the conduct. The risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

The Bill also creates felony punishments for intentional or knowing violations of environmental laws and regulations, when those violations cause serious physical harm to a person or serious damage to the environment. It also establishes criminal sanctions, including felony sanctions, for some intentional or knowing violations by corporate officers.

Author: Senator McBride