



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
AS AMENDED BY
SENATE AMENDMENT NO. 1

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

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

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

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

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

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

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

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

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

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“(b) Any person who intentionally, knowingly, or recklessly (i) 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 (ii) 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. Each day of violation shall constitute a separate offense.

(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 11 Del.C. § 4205.”

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

“(d) Any person (i) 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 (ii) 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 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 11 Del.C. § 4205.

(e) Any officer of any corporation, manager of any limited liability company, or general partner of any limited partnership conducting business in the State of Delaware who intentionally or knowingly authorizes or directs said business entity or its employees or agents to (i) falsify or conceal any material fact required to be disclosed to the Department, (ii) 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 to (iii) 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 11 Del.C. § 4205. 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) through (e) of this Section, and concurrent jurisdiction over prosecutions brought pursuant to subsection (h).
- (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 be punished by a fine of not less than \$50 nor more than \$500 for each violation. Each day of violation shall be considered as a separate violation. The courts of the justices of the peace shall have jurisdiction of offenses under this subsection.
- (i) Any person prosecuted pursuant to subsection (h) of this Section shall not be prosecuted for the same offense under subsections (a) through (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 Title 11, Chapter 2 of the Delaware Code.
- (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 of Delaware.
- (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—
 - (i) an occupation, a business, or a profession; or
 - (ii) 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 subparagraph by a preponderance of the evidence. The provisions of this subparagraph are subject to the restrictions enumerated at 11 *Del.C.* § 453.

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