

Legal Liability: The Operator and Superintendent

Maryland Center for Environmental Training
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Legal Liability: The Operator and Superintendent

7 contact hours

9 CC10 hours

As a water or wastewater treatment superintendent, manager or operator, it is critical you understand the various types of legal liability you face while operating your systems, and the repercussions of your actions. This course will provide participants with an overview of the legal requirements of the Clean Water Act, Safe Drinking Water Act, and Maryland's water pollution and water supply laws, as well as additional requirements created by the courts and professional certification authorities. Attendees will leave with an understanding of the consequences of failing to meet statutory requirements and professional standards in their daily activities. This interactive course will explore issues through real-life examples of legal actions against facility staff and simulations of facility operations. This training is taught by a uniquely qualified faculty; an attorney with over 30 years of experience in environmental law, including service as Enforcement Counsel for EPA, and a prior career as a contractor building water and wastewater systems.

Discuss the legal requirements of the Clean Water Act, Safe Drinking Water Act, and Maryland's water pollution and water supply laws;

Differentiate between federal and state regulations related to the water pollution and water supply laws;

Explain the differences between civil and criminal liability as they pertain to facility operations and operator actions; and

Evaluate the ramifications of failing to meet statutory requirements and professional standards in daily work activities

Agenda:

8:00 am - Noon

Introductions

Legal Framework of Liability

What is liability and how does it affect you as the operator or superintendent?

Overview of the different types of Liability

Civil vs. Criminal

Legal requirements of the Regulations as they pertain to the operator/superintendent

Clean Water Act,

Safe Drinking Water Act, and

Maryland's water pollution and water supply laws,

Additional requirements created by the courts and professional certification authorities.

Differentiate between federal and state regulations related to the water pollution and water supply laws

LUNCH

1:00 pm – 4:00 PM

Legal Negligence

Range of Potential Consequences of Operators / Superintendents failing to meet statutory requirements and professional standards

Case Studies and Penalty Calculation

Examples of Legal Actions against Facility Staff

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Superintendent & Operator Liability



Overview of Course

- Legal framework of liability
- Keys areas of potential liability
- S&O standards of responsibility
- Difference between civil & criminal liability
- Range of potential consequences if found liable

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Liability...

- A **standard of practice** to which you are legally bound and responsible
- Something that works to ones **disadvantage** if triggered
- Responsibility to pay a **penalty** or **compensation** for failing to meet established standards

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Dual Authorities


United States	Maryland
LEGISLATURE	
Congress	General Assembly
LAW	
Clean Water Act	Clean Water Act
Safe Drinking Water Act	Safe Drinking Water Act



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Two-Tier Enforcement

United States	Maryland
COURT	
District Court	Circuit Court
AGENCY	
EPA	MDE



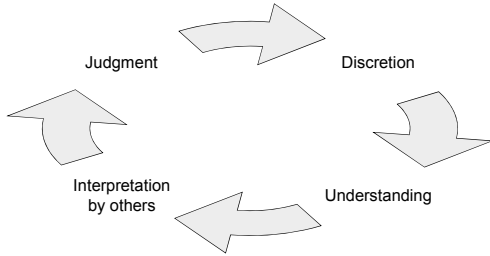
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Three-Tier Standards

United States	Maryland
STATUTES	
CWA 33 U.S. Code 1251	CWA Md. Ann. Code Env Art. 9-301
SDWA 42 U.S. Code 1201	SDWA Md. Ann. Code Env. Art. 9-350
REGULATIONS	
CWA 33 U.S. Code 1251	CWA Md. Ann. Code Env Art. 9-301
SDWA 42 U.S. Code 1201	SDWA Md. Ann. Code Env. Art. 9-350
COMMON LAW	
Negligence / Nuisance / Trespass	

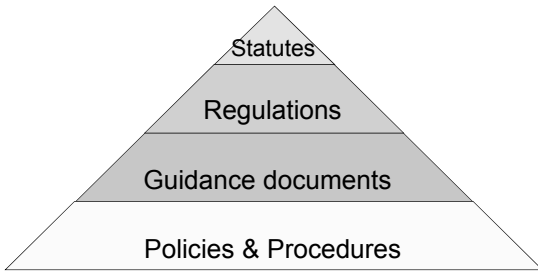
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Cycle of Legal Investigation



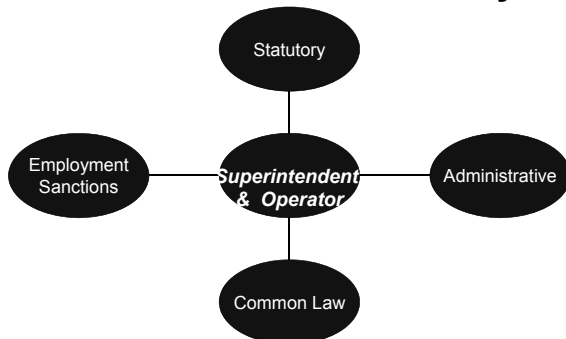
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Standards / Levels of Required Legal Knowledge



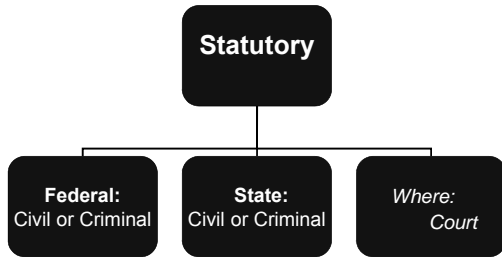
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Areas of Potential Liability



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How do you become liable as an Superintendent / Operator ?



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Your Responsibility

Based on standard in a law or ordinance enacted by an elected legislature

(Examples: Congress, Md. General Assembly, County ...)

Liability

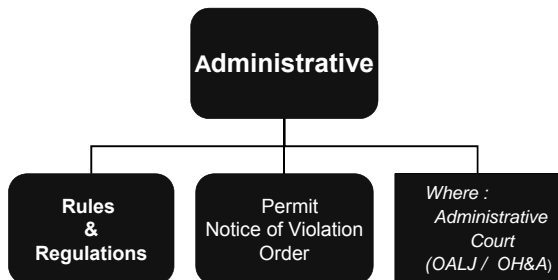
Pay **CIVIL FINE** for violating the law

If Guilty...

Go to **PRISON** or pay monetary penalty

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How do you become liable as an Superintendent / Operator ?



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Your Responsibility

Based on standard in rule,
regulation, permit or order
issued by an authorized agency
(Examples: EPA, MDE, County ...)

Liability

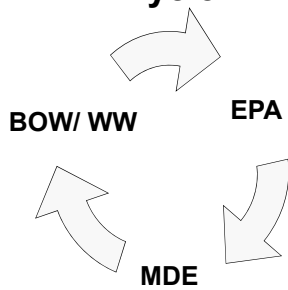
Pay CIVIL FINE for
violation

If Guilty...

Pay monetary
penalty

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Three-Tier Administrative Cycle



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**What is the Difference
between going to Court and
a hearing before an
Administrative Agency ?**

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Purpose

Court

Civil and Criminal Violations

Administrative Agency

Notices of MDE Violations

Violations of MDE Consent Orders

Violations of MDE Unilateral Orders

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Consequences

Court

Civil Fines

Criminal Penalties

Imprisonment

Cease and Desist

Administrative Agency

Administrative Fines

Correct and Repair

Upgrade



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Procedural

Court

More and Stricter rules of evidence
Almost always need Counsel
Takes more time and prep to get to trial
More time consuming

Administrative Agency

Informal rules of evidence
Counsel not always necessary
Shorter time to get to hearing



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Decision Maker

Court

Judge – Constitutional life time office
Part of the judicial branch

Administrative Agency

Administrative law judge
More expertise in area of law
At will employee
Part of the executive branch



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What is the difference between Civil and Criminal Liability ?

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Civil Liability

Plaintiff brings a Civil case

- Adjoining landowner
- Downstream property owner
- MDE
- EPA
- Businesses
- Citizens Association
- Environmental action group
- Board of Waterworks



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What are the elements to be proven in a CIVIL case?

Two elements:

Liability - A statute, rule, regulation, permit or order has not been complied with

Damage - Injury to the state, a person or damage to the property of another. Statute provides floor/ceiling amount of the fine

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Burden of Proof in a Civil case

Preponderance of the evidence:

More likely to be liable than not (55 to 60% probability)



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Possible adverse consequences of a Civil case

Court can:

- Order you to pay **civil fines** in case you violated
 - water pollution
 - drinking water law
- Order you to pay **\$ damages** in case you harmed
 - Person / Business health
 - Property rights



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Possible adverse consequences of a Civil case

Court can:

- Order you to pay to repair problem & prevent future violations

Other probable consequences:

- Loss of Certification
- Loss of Employment
- Reputation



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CRIMINAL LIABILITY

Prosecutor brings a Criminal case

- States Attorney
- United States Attorney
- MD Attorney General
- Environmental Crimes Unit



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What are the elements to be proven in a CRIMINAL case?

Two elements:

A mental **state of mind to harm** the person or property of another OR, to intentionally violate a Statute, or a rule passed under it.

A **criminal act or offense** (defined by case law or statute).

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Burden of Proof in a Criminal case

Beyond a Reasonable Doubt:

Not likely that any other reason for harm exists
(95% probability)



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Possible adverse consequences of a Criminal case

Court can sentence you to:

- Imprisonment
- Pay Penalty
- Community Service
- Probation before Judgment

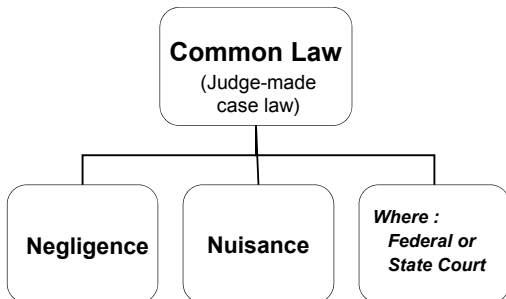
Other probable consequences:

- Loss of Certification
- Loss of Employment
- Reputation



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How do you become liable as an Superintendent / Operator ?



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Your Responsibility

Based on your actions being the cause of harm to an individual or entity (May or may not be violation of legal statutory or administrative standard)

Liability

Pay RESTITUTION for harm

If Guilty...

Pay monetary compensation

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Negligence... can mean

What you know

What you should have known

Inadvertence

Carelessness

Ignore and Overlook



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Legal Negligence – 4 Elements

1. Duty of Due Care to a foreseeable plaintiff

Due Care defined: What a reasonably prudent man would do in the same circumstance/situation

What is an example of Duty of Care?

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Legal Negligence – 4 Elements

2. Breach of the Duty of Due Care

How do you "Breach" a Duty of Care?

3. Breach is the proximate cause of damage

Proximate Cause defined: **The most, direct, primary cause, without being the sole cause or any major intervening cause**

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Legal Negligence – 4 Elements

4. Causes Damage / Injury

– Damage *Example?*

– Injury *Example?*

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Nuisance

Continuing invasion of the
real property rights of
another

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Real Property Rights

- Quiet and peaceable use and enjoyment
- Air
- Water
- Light



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Defenses to Negligence or Nuisance Claims



- **Consent**
- **Assumption of Risk**
- **Negligent, not intentional**

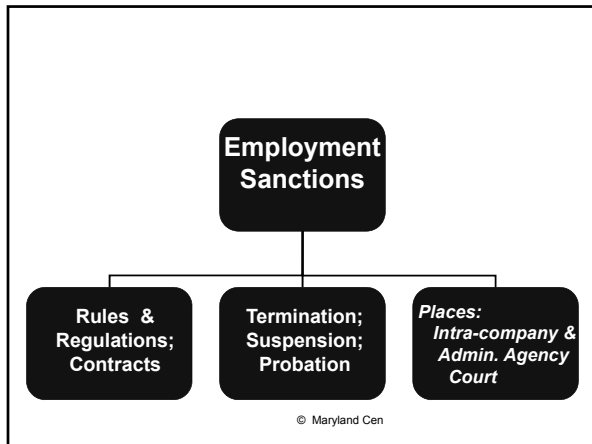
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EXERCISE

Common Law Liability ?

Are there any Common Law liabilities arising from the violation in the prior scenarios ?
Why?

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Your Responsibility

Based on applicable statutory, administrative & common law standards, plus contract & certification Board (BWW/BW) requirements

Liability

In addition to other consequences

If Guilty...

You may be looking for another career

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MD Safe Drinking Water Act Prohibited Acts

Relevant Definitions:

- 1) Supplier of water: any person who owns a public water system.
- 2) Person: Any State, County, municipal corporation or federal agency, any special district that operates a public water systems and **ANY OFFICER, AGENT, OR EMPLOYEE OF ANY THESE.**

(Source: MD Annotated Code, Environmental Article, Subtitle 9, Section 412)

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MD Safe Drinking Water Act Prohibited Acts

(a) A supplier of water may not:

- 1) Fail to comply with the statutory requirements about giving notice to persons served by the public water system if the water does not comply with
 - MCLs
 - Treatment technologies
 - Testing procedures
 - Monitoring requirements
 - Variances or exemptions

Or if the water has concentration levels of an unregulated contaminant for which MD requires public notice (9-410);

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MD Safe Drinking Water Act Prohibited Acts

(a) A supplier of water may not:

- 2) Disseminate any false or misleading information about (a) (1) previous or about remedial action taken to achieve compliance with State primary drinking water regs;
- 3) **KNOWINGLY MAKE A FALSE STATEMENT, REPRESENTATION, OR CERTIFICATION IN ANY APPLICATION, RECORD, REPORT, PLAN OR OTHER DOCUMENT FILED OR PERMIT ISSUED UNDER THIS DRINKING WATER SUBTITLE;**

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MD Safe Drinking Water Act Prohibited Acts

A supplier of water may not:

- 4) Fail to comply with primary drinking water rules and regulations; or
- 5) Fail to comply with variances or exemptions



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MD Safe Drinking Water Act Prohibited Acts

A **person** may not:

- 1) Fail to comply with any order issued by the Secretary of MDE; or
- 2) **FALSIFY OR KNOWINGLY RENDER INACCURATE ANY MONITORING DEVICE OR METHOD REQUIRED TO BE MAINTAINED UNDER THIS SUBTITLE OR ANY RULE, REGULATION, ORDER OR PERMIT ADOPTED OR ISSUED UNDER THIS DRINKING WATER SUBTITLE.**

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Board of Waterworks – Grounds for Suspension/Denial/Revocation of Certification

Statute:

Fraud or Deception in obtaining or using a certification.

- What is Fraud: knowing or willful false statement with intent that another act on it to their harm or loss.

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Board of Waterworks – Grounds for Suspension/Denial/Revocation of Certification

Regulation (COMAR Title 26, Subtitle 06, Section 15): The Regulation expands the bases for action against a holder of a certificate. It includes:

- Professional incompetence
- Falsification of records
- Failure to submit self-monitoring documents
- Negligence in operating or maintaining a water or wastewater works

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If your license is suspended or revoked by the Board of Waterworks, What rights of Appeal do you have?

- Step 1 :Request reconsideration by the Board of Water Works
- Step 2: File an appeal to the Circuit Court for Baltimore City
- Step 3: File appeal to the Maryland Court of Special Appeals
- Step 4: File an appeal to Maryland's highest court, the Court of Appeals

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Statutory Fines (Civil) and Penalties (Criminal)

Maryland Annotated Code

WASTEWATER	Civil	\$10,000.00 per day / injunctions
	Criminal	\$25,000 per day / one year imprisonment
	Administrative	Up to \$1,000 per day, \$50,000 cap (Source 9-342 Env. Article)

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Statutory Fines (Civil) and Penalties (Criminal)

Maryland Annotated Code

WATER	Civil	\$5,000.00 per day / willfully violates 9-412(a)(4) or (5) (Env. Article)
	Attempt to tamper	Up to \$20,000 for each tamper
	Tamper	Up to \$50,000
	Criminal	Criminal misdemeanor \$5000 (Source 9-412(a) (1)-(3))
	Administrative	\$1,000 per violation, \$25,000 cap (Source 9-413)

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Statutory Fines (Civil) and Penalties (Criminal)

United States Code

WASTEWATER	Civil	Not to exceed \$25,000 per day
	Criminal	Negligence \$2,500 to \$25,000 per day
		Knowing \$5,000 to \$50,000 per day or imprisonment not to exceed 3 years or both
		Knowing endangerment not to exceed \$250,000 or 15 years imprisonment or both
Administrative	\$10,000 per violation, \$125,000 cap	

(Source: 33 USC 1319)

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Statutory Fines (Civil) and Penalties (Criminal)

United States Code

WATER	Civil	\$5,000 to \$25,000 per day
		Tamper with PWS, up to \$50,000 per violation
		Failure to give proper notice of compliance with MCLs, up to \$25,000 per violation
	Criminal	Tamper with PWS, up to 5 years imprisonment or fines under Criminal Code (Art. 18)
		Willful violation up to 3 years imprisonment or fines under Criminal Code (underground water source)
Administrative	\$5,000 per day	

(Source: 33USC 300 (g)thru(i))

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Additional Area of Potential Liability...

Principal / Agent Liability

You may be held liable for the actions of your subordinates

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Principal / Agent

PRINCIPAL

One who assigns or controls

- tasks, duties, responsibilities
- frequencies
- time, place, manner, tools ("Duties")



AGENT

who performs within SCOPE OF DUTIES

- *frolic & detour*
- *fraud, bad faith*
- *illegal acts*
- *criminal acts*

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Immunity

In limited situations you may be immune from prosecution...

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Protection from liability

The King, the maker of the laws, is sovereign, so he can never break, or be liable for breaking the law.



Types:
Governmental immunity
Public Official immunity

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Limitation on Immunity

Waiver:

State and local governments
have mostly waived Immunity in
Tort

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Is public immunity available to Supervisors/Operators?



MAYBE...

Case law is broad and
vague. Depends on
the judge and facts
and circumstances
of the case.

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Powers of MDE

MDE may at anytime:

- Enter & investigate your facility
- Refuse a permit
- Abate a nuisance
- Correct, alter, extend, install facilities
- Appoint a receiver to secure results

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Enforcement Hammer

- Federal or State criminal prosecution seeking penalties & imprisonment
- Federal or State Civil action seeking fines and injunctions
- Notice of violation- site complaint
- Performance Audit inspection referral
- Warning request for information
- Administrative complaint & consent order
- Unilateral administrative order



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Resources

MDE: www.mde.state.md.us

MCET: www.mcet.org

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Superintendent and Operator Liability

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IN THE
STATE

ENVIRONMENT

**Wastewater manager charged with
violations**

A Carroll County man has been charged with 24 counts of falsifying reports and failing to monitor discharge at two of six wastewater treatment plants he operates or supervises in Western Maryland, state environmental officials said Friday.

Richard Priddey of Woodbine has been accused of violating state operating permits for the Brook Lane Psychiatric Center wastewater plant, just north of Hagerstown, and the Woodsboro wastewater treatment plant in northeastern Frederick County.

The charges ended a nine-month investigation by the state attorney general's environmental crimes unit.

The Maryland Department of the Environment regulates 341 wastewater plant operations in the state. Mr. Priddey's attorney, Theodore Levin of Baltimore, said his client plans to challenge the charges in court.

Frederick County Mobile Home Park Owner to Pay Penalty and Operators Convicted for Illegal Sewage Disposal

BALTIMORE, MD (September 29, 2009) - Attorney General Douglas F. Gansler announced today that his Environmental Crimes Unit has reached a final settlement with Dr. S. K. Singh, owner of Concord Mobile Home Park, L.P. in Frederick County, to resolve allegations of illegal disposal of sewage. The final settlement includes a \$200,000 penalty and criminal convictions for the operator of the mobile home park's wastewater treatment plant, Robert Phelps, as well as the mobile home park manager, April Phelps.

According to the terms of the settlement, Singh agreed to pay \$175,000 to the Maryland Clean Water Fund and the remaining \$25,000 to the Northeast Environmental Enforcement Project (NEEP) for training purposes. NEEP is a professional environmental association dedicated to providing regulatory and criminal agencies in the northeastern United States with training, information and support services.

Concord Mobile Home Park is owned by Dr. S.K. Singh and has approximately 60 mobile homes on the property. There is a private wastewater treatment plant that services the mobile homes. An investigation by the Environmental Crimes Unit revealed that untreated and raw sewage from domestic wastewater was being discharged from the mobile home park's wastewater treatment facility into the tributary of Renn Branch. Although Robert Phelps was the only person who was supposed to perform regular testing on the wastewater treatment plant operations, he was actually never present. The investigation revealed that his wife, April Phelps, was actually inserting falsified numbers on the logs required to be kept and submitted to the Maryland Department of the Environment. Additionally, it was discovered that April Phelps was taking water samples from another location and representing them as coming from the Concord Mobile Home Park facility.

Inspectors from the Department of the Environment took actual samples from the waters and facility to compare to the numbers being recorded on the documentation provided by April Phelps. The results listed by April Phelps indicated clean and clear water with no violation of any sewage discharge, while the actual results taken by the inspector showed extremely high violations in all tested bacterial areas.

On February 11, 2009, both Robert Phelps and April Phelps entered guilty pleas in the Circuit Court for Frederick County. Robert Phelps pleaded guilty to four counts of discharge of pollutants, four counts of failure to keep records, make reports and provide information as required by the Maryland Department of the Environment, four counts of failure to report sewer overflows and one count of perjury. The Honorable Judge Julie Solt sentenced Robert Phelps to seven years in jail with all but 90 days suspended. He was also sentenced to four years probation and ordered to pay a fine of \$3,000 to the Maryland Clean Water Fund, as well as complete 50 hours of community service. April Phelps pleaded guilty to eight counts of making false entries in a public record and one count of conspiracy to commit perjury. April Phelps was sentenced to five years in jail with all but 90 days suspended. April Phelps was also sentenced to four years probation, ordered to pay a fine of \$2,500 to the Maryland Clean Water Fund, and must complete 100 hours of community service.

BALTIMORE CHEMICAL COMPANY PLEADS GUILTY TO ENVIRONMENTAL CRIMES, ORDERED TO PAY \$165,000 IN FINES, RESTITUTION

Baltimore (November 21, 2000) - Attorney General J. Joseph Curran, Jr., announced that a Baltimore chemical company, Millennium Specialty Chemicals, Inc., pleaded guilty today in Baltimore City Circuit Court to five criminal environmental violations. The Honorable Stuart R. Berger ordered the company to pay a fine of \$50,000 to the Maryland Clean Water Fund and to pay restitution in the amount of \$65,000 to Baltimore City for costs and expenses associated with the use of a bypass pipe. As part of the plea agreement in the case, Millennium also entered into a Consent Agreement with the Maryland Department of the Environment and the Baltimore City Solicitor's Office, under which Millennium agreed to pay a total civil penalty of \$50,000, based on the same conduct, and to do several things to improve Baltimore City's ability to monitor the plant in the future.

Millennium's Colors Plant Operation, located at 2701 Broening Highway, manufactures inorganic pigments which are primarily used in the paint, thermoplastic, and ceramics industries. These red and yellow pigments contain compounds of cadmium, selenium, and zinc, which are toxic heavy metals. Millennium manufactures approximately 600,000 pounds of pigments annually. The major sources of wastewater in Millennium's Colors Plant are filtrate from filter presses, spent caustic from a calcine operation air scrubber, and water from an equipment decontamination room.

In 1993, testing by MDE determined that a portion of Millennium's industrial process wastewater exhibited excessive toxicity. Consequently, MDE required Millennium to cease discharging this wastewater to Colgate Creek and to begin discharging it into the Baltimore City sanitary sewer system. Discharges into the sanitary sewer system are regulated by the Baltimore City Department of Public Works for permit compliance.

On May 18, 1999, the Attorney General's Environmental Crimes Unit and the Maryland State Police, with assistance from the Environmental Protection Agency, the Federal Bureau of Investigation, DPW, and MDE, executed a court-ordered search and seizure warrant upon Millennium, based on an allegation that Millennium had used a bypass system to circumvent the monitoring of the company's wastewater discharge by DPW. On the day the warrant was executed, a bypass pipe which could have been used to accomplish the criminal act was located in the Colors Plant.

During the course of the investigation, ECU investigators learned that, in mid-November 1994, the manager of the Colors Plant, on his own initiative, instructed a maintenance man to install a bypass pipe. This pipe diverted wastewater around a monitoring station, which was required to be maintained under the company's wastewater discharge permit. The bypass pipe was designed to cause a false indication of the level of contaminants contained in the company's wastewater discharge. The Colors Plant manager used the bypass pipe for several hours a day on five consecutive days in 1994, when Millennium was required to monitor its wastewater under its permit.

After the pipe was used in mid-November 1994, Millennium filed a Discharge Monitoring Report. This report did not include flows that bypassed the company's monitoring station, due to the use of the bypass pipe.

The charge of Tampering with a Monitoring Device is a misdemeanor and carries a maximum fine of \$10,000 for a first offense. The charge of Making a False Statement in a Required Document is a misdemeanor and carries a maximum fine of \$10,000 for a first offense. Such conduct also subjects the violator to liability for civil penalties of up to \$10,000 per day per violation and injunctive relief.

As part of the comprehensive settlement in this case, MDE and the Baltimore City Solicitor's Office negotiated with Millennium a civil Consent Agreement, entered on October 19, 2000, under which Millennium agreed to pay a civil penalty of \$50,000 to the Maryland Clean Water Fund, and restitution in the amount of \$65,000 to the City of Baltimore, based on the conduct which was the subject of the criminal charges. Millennium also agreed to do four things: (1) remove the bypass pipe; (2) replace Millennium's internal sanitary sewer connector line; (3) provide for continued access via Millennium's new plant security system, 24 hours a day, each day, by personnel of the City's Department of Public Works to the existing sampling point inside the plant; and (4) install a readily accessible facility for measuring flow and concentration of the discharge in the replacement internal sanitary sewer connecting line.

FORMER SMITHFIELD FOODS OFFICIAL INDICTED FOR CLEAN WATER ACT VIOLATIONS

September 24, 1996 - A federal grand jury in Norfolk today indicted the former operator of wastewater treatment facilities at two Smithfield, Virginia meat-processing plants for knowingly discharging wastewater contaminated with fecal coliform into the Pagan River and attempting to cover it up, the Department of Justice announced. Fecal coliform is an organism found in manure that is often associated with bacteria known to cause serious illness in humans.

The 23 count indictment charged that Terry L. Rettig violated the Clean Water Act by knowingly discharging the contaminated wastewater into the Pagan River that flows into the James River and ultimately the Chesapeake Bay. The facilities each are owned by Smithfield Packing Company and Gwaltney of Smithfield Ltd, both subsidiaries of Smithfield Foods Inc. These plants process waste generated during hog-slaughtering and meat processing operations.

Rettig was also charged with falsifying wastewater quality reports submitted to the Virginia Department of Environmental Quality, and with discarding and destroying records required to be maintained at the plants. Federal law requires that the plants monitor the quality of the wastewater they discharge into the river and to insure they comply with their Clean Water Act permits that govern the amount of waste they can legally discharge.

The indictment also charged the 45 year-old Virginia Beach resident with violations at A-T.R. Systems Management, a company owned by Rettig that operated small sewage treatment plants on a contract basis. At A-T.R., Rettig allegedly failed to perform required monitoring, sampling, and analysis of wastewater discharged from treatment plants owned by the Town of Surry, the Twin Ponds Mobile Home Park, and the Bowers Hill Econo Travel. Rettig allegedly caused the Twin Ponds and Bowers Hill plants to discharge wastewater in violation of federal permit limits and submitted false reports to state environmental officials.

"We cannot protect our water resources unless those responsible for complying with the Clean Water Act perform their duties with complete integrity," said Helen F. Fahey, United States Attorney for the Eastern District of Virginia. *"When a licensed operator knowingly breaches the public trust, we must take strong enforcement measures to ensure future compliance."*

The maximum penalty for each count of knowingly discharging pollutants in violation of the federal Clean Water Act, or for knowingly violating the terms of a Clean Water Act permit, is three years imprisonment and a fine of \$250,000. The maximum penalty for each count of making a false statement in records filed or required to be maintained under the Clean Water Act is two years imprisonment and a fine of \$250,000. If convicted on all 23 counts charged in the indictment, Rettig faces a maximum penalty of 54 years in prison and a maximum fine of \$5.75 million.

Ex-plant operator found guilty

By ERIN COLOMB
Staff Writer

A Baltimore Federal District Court jury Thursday night found former Fort Meade sewage plant operator Richard A. Pond guilty on 10 counts for violating the Clean Water Act and theft of government property.

Pond of Laurel could be sentenced to a maximum of 20 years in jail and up to \$2.5 million in fines, said Assistant U.S. Attorney Jane Barrett.

Ms. Barrett and Assistant U.S. Attorney Robert Thomas prosecuted the case for three full days before Judge Frederick Smalkin prior to the jury's decision.

Pond was released on his own recognizance until his sentencing, which is scheduled for April 17 at 9 a.m.

"We're disappointed with the jury's verdict, and we intend to pursue post trial motions and an appeal," said defense attorney David F. Albright Jr. of Horn & Bennett P.A. of Baltimore.

As a former superintendent of the Fort Meade sewage treatment plant, Pond was

indicted when the federal government discovered he was charged with reporting 24-hour composite samples, but only grab samples had been performed, Thomas said.

"A grab sample is a sample taken at a particular time which shows you only a snapshot of what's going through the wastewater treatment at that moment. Twenty-four hour composite sampling, by contrast, requires that the permittee test the wastewater on a 24-hour basis," he said.

"The concern is that there might be metals or chemicals coming from NSA (National Security Agency) through the Fort Meade wastewater treatment without being detected."

Thomas said Pond was not charged with pollution to the Little Patuxent River. He said that they never would have been able to detect whether or not there was environmental harm because the reports were falsified.

A Maryland State auditor Marlene Patillo suspected his reports were falsified, Ms. Barrett said. After several spot checks, Ms. Patillo reported the offenses.

FBI investigations led to Pond's indictment, Ms. Barrett said.

The jury found Pond guilty on the following 10 counts:

③ One count of knowingly violating a federal permit which controls the discharges of wastewater as regulated by the Clean Water Act;

③ Eight counts of falsifying discharge monitor reports which are submitted to Maryland and to the Environmental Protection Agency; and

③ One count of theft of government property.

Ms. Barrett explained the theft of government property refers to Pond's use of the U.S. Army laboratory, equipment and employees for outside work.

"Pond was moonlighting at the Parkway Inn. He ran his wastewater samples at the army laboratory," she said.

Ms. Barrett said Pond had been involved in his activities for seven months from September 1988 to March 1989.

Smithsburg sewer plant operator ∞ fined \$1,000 for falsifying records

By MARLO BARNHART
Staff Writer

The operator of the Smithsburg sewer plant admitted in court yesterday to falsifying records on water samples and was fined \$1,000 after the judge was assured that the environment hadn't been damaged.

Taylor Lemkuhl Jr., 47, of Boonsboro, was found guilty of one count of filing false documents and certifications about monitoring activities at the Smithsburg Water Treatment Plant. In addition to the fine, Lemkuhl was ordered to surrender his certification as a sewer plant operator. He received no jail time.

Lemkuhl said his poor recordkeeping was just an oversight.

"I'm sorry it happened," he said in Washington County Circuit Court. "It wasn't done intentionally."

Assistant Maryland Attorney General Howard P. Nicholson told Judge Frederick C. Wright III that Lemkuhl's operation was targeted for surveillance after routine inspections showed possible problems with testing and documentation.

"We have inspectors who travel statewide," Nicholson said. "In November 1988, we observed problems at the Smithsburg plant."

Nicholson, who is affiliated with the Environmental Crimes Unit, said the inspector entered the plant without Lemkuhl's knowledge and marked levels on bottles of chemicals used in the operation of the plant.

"Later when those levels were checked, it was discovered that the levels hadn't moved as they should have," Nicholson said.

Those inspections prompted an investigation on April 6, 1989, when Maryland State Police and investigators watched the plant for violations. On that day, Nicholson said, Lemkuhl arrived at the plant at 9:00 a.m. and left at 11:08 a.m.

During that time, the devices that are supposed to take samples during an eight-hour period weren't in position. "Lemkuhl was seen reaching into the water and getting a grab sample in a container," Nicholson said.

When Lemkuhl was confronted with the allegations, he admitted to taking grab samples rather than the required eight-hour composite tests.

Lemkuhl and his attorney, Terry Myers, said yesterday that the April 6, 1989 incident occurred on a day when Smithsburg suffered a water main break

that drained half the town's reservoir.

But Wright was still concerned about the potential of damage to the environment because of Lemkuhl's practices.

Nicholson assured the judge that there had been no environmental impact because of the incidents. Smithsburg's treated wastewater is discharged into Grove Creek.

Wright said he would consider changing the guilty verdict to probation before judgment in six months after the fine is paid and Lemkuhl surrenders his operator's certification. Probation before judgment would allow Lemkuhl to clear his record.

Smithsburg Mayor Paul Boswell said yesterday the town has hired someone to operate the plant.

Four Ways to Get Stuck or Become Liable as a Superintendent

1) *Statutory:*

1. Federal/Civil or Criminal
2. State/Civil or Criminal
 - *Where:* Court

2) *Administrative (EPA, MDE, BoWW):*

1. Rules and Regulations (COMAR)
 - Water Pollution
 - Drinking Water
2. Permits, Notices of Violation, Orders
 - *Where:* Administrative Law Judge/Office of Hearings and Appeals

3) *Negligence:*

1. Judge-made Case Law (not statutes)
2. Immunity (Public Official, Governmental)
3. Local Government Tort Claims Act

4) *Employment Sanctions*

1. Termination, Suspension, Probation
 - *Sources:* Rules and Regulations, Contracts
 - *Places:* Intra-Company, Administrative Agency Court

What is the difference between Civil and Criminal?

1) *Who is bringing the case?*

Plaintiff brings Civil case.

Examples: Adjoining landowner, downstream property owner, MDE, EPA, businesses, citizens association, environmental action groups, Board of Waterworks. (See Notes on Standing below.)

Prosecutor brings Criminal case.

Examples: State's Attorney, United States Attorney, MD Attorney General, Criminal Enforcement Division.

2) *What are the elements to be proven in the case?*

Civil: two elements

- Liability: a statute, rule, regulation, permit, or order has not been complied with.
- Damage: injury in fact to the person or property rights of another BUT, where a statute does not require proof of damages, it will supply a fine for each day of violation of that Statute in place of proof of damages.

Criminal: two elements

- A mental state of mind to intentionally commit harm or injury to the property rights or person of another, or to violate a statute or rule adopted under it.
- A criminal act or offense (defined by case law or statute).

3) *What are the adverse consequences?*

Civil: A Court finds you liable and orders you to pay civil fines in case you violated a water pollution or drinking water law, or monetary damages in case you harmed a person/business's health or property rights. Other possible consequences: Loss of certification, loss of employment, loss of reputation.

Criminal: A Court finds you guilty and sentences you to imprisonment, penalties, community service, or probation before judgment. Other probable consequences: Loss of certification, loss of employment, loss of reputation.

Maryland Waterworks and Waste Systems Operators Act

TITLE 4 - WATER MANAGEMENT > Subtitle 4 - Water Pollution Control and Abatement

§ 4-417. Penalties.

(a) *Civil penalties.*- Any person who violates any provision of this subtitle, or any rule, regulation, order, or permit issued pursuant thereto, shall be liable for a penalty not exceeding \$25,000 for the violation, which may be recovered in a civil action, and the person may be enjoined from continuing the violation, as provided by this subtitle. Each day upon which the violation occurs constitutes a separate offense.

(b) *Criminal penalties; injunctive relief.*- Any person who violates any of the provisions of, or who fails to perform any duty imposed by, this subtitle, or any regulation or order issued under it, or the provisions of any permit of the Department made pursuant to this subtitle is guilty of a misdemeanor, and upon conviction, is subject to a fine not exceeding \$50,000 or by imprisonment not exceeding one year, or both, and, in addition, may be enjoined from continuing the violation. If the conviction is for a violation committed after a first conviction of the person under this subsection, punishment shall be by a fine of not more than \$50,000 per day of violation or by imprisonment not exceeding two years or both, and in addition, the person may be enjoined from continuing the violation. Each day upon which a violation occurs constitutes a separate offense.

(c) *False statements in required documents; tampering with monitoring devices.*- Any person who 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 title, or by any permit, rule, regulation or order issued under this title, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this title or by any permit, rule, regulation, or order issued under this title, upon conviction, is subject to a fine not exceeding \$10,000, or by imprisonment not exceeding six months or both.

(d) *Secretary of the Environment may assess civil penalties.*- In addition to any other remedies available at law or in equity, a civil penalty may be assessed for violation of any provisions of this subtitle, or rules, regulations, orders or permits issued pursuant thereto. The penalty may be assessed by the Secretary of the Environment, or a hearing officer designated in writing by the Secretary, after an opportunity for a hearing which may be waived in writing by the person accused of a violation. The civil penalty assessed shall be up to \$10,000 for each day of violation, not exceeding a total sum of \$100,000; consideration shall be given to the willfulness of the violation; to the damage or injury to the waters of the State or the impairment of its uses; to the cost of clean-up; to the nature and degree of injury to or interference with general welfare, health, and property; to the suitability of the waste source to its geographic location, including priority of location; to the available technology and economic reasonableness of controlling, reducing, or eliminating the waste; and other relevant factors. It is payable to the State and collectible in any manner provided at law for the collection of debts. If any person liable to pay the penalty neglects or refuses to pay it after demand, the amount, together with interest and any costs that may accrue, shall be a

lien in favor of the State upon the property, both real and personal, of the person and shall be recorded in the clerk of court's office for the political subdivision in which the property is located. Except for penalties collected for violations of [§ 4-413 of this](#) subtitle, moneys shall be placed in the Maryland Oil Disaster Containment, Clean-Up and Contingency Fund under § 4-411 (f) of this subtitle.

[An. Code 1957, art. 96A, § 28A; 1973, 1st Sp. Sess., ch. 4, § 1; 1975, ch. 444; 1980, chs. 27, 815;

Legal Negligence

4 Elements must be proven for negligence to exist:

1) Duty of Due Care to Foreseeable Plaintiffs

Ex: to drive 25 mph where posted so as not to hit a pedestrian

Due Care Defined: What a reasonably prudent person would do under the circumstances.

2) Breach of the Duty of Due Care

Ex: to drive 40 mph on a road posted with a 25 mph speed limit

3) Breach is the Proximate Cause of the Damage

Ex: speeding driver rear-ends car stopped at stop sign

Proximate Cause Defined: The most direct, primary cause without being the sole cause or any major intervening cause.

4) A Damage/Injury Results

Damage: the rear bumper and trunk of the stopped car are dented

Injury: the stopped car's driver has a concussion and soft tissue injury to the neck

Nuisance

Continuing invasion of the real property rights of another.

Property Rights

Quiet and peaceable use and enjoyment of:

- Air
- Water
- Light
- Surface, lateral, and sub-surface support

Defenses:

- Consent
- Assumption of risk
- Negligent, not intentional
- Not continuing
- Not your property

Environment
Title 10
NUISANCE CONTROL

§ 10-101. General care of sanitary interests.

Notwithstanding the provisions of Title 20, Subtitle 3 of the Health - General Article, the Secretary is responsible for the general care of the sanitary interests of the people of this State. [An. Code 1957, art. 43, § 2; 1982, ch. 240, § 2; 1988, ch. 6, § 1.]

§ 10-102. Investigation and control of nuisances.

The Secretary shall investigate all nuisances that affect the public health and devise means for the control of these nuisances. [An. Code 1957, art. 43, §§ 2, 33; 1982, ch. 240, § 2.]

§ 10-103. Rules and regulations.

(a) *Character and location.*- The Secretary may adopt rules and regulations to govern the character and location of:

- (1) Plumbing;
- (2) Drainage;
- (3) Water supply;
- (4) Offensive trades; and
- (5) Disposal of any waste material, including sewage or garbage.

(b) *Sanitary condition.*- The Secretary may adopt rules and regulations to govern the sanitary condition of:

- (1) Streets;
- (2) Cesspools;
- (3) Outhouses; and
- (4) Any sanitary feature connected with any of these. [An. Code 1957, art. 43, § 2; 1982, ch. 240, § 2.]

§ 10-104. Right of entry; inspections.

The Secretary may enter on and inspect any private property to determine whether a nuisance exists. [An. Code 1957, art. 43, § 2; 1982, ch. 240, § 2.]

§ 10-105. Injunctive actions.

The Secretary may bring an action to enjoin any person from committing any nuisance subject to this title. [An. Code 1957, art. 43, § 2; 1982, ch. 240, § 2.]

Subtitle 2. Nuisance Abatement.

§ 10-201. Investigation and notice by health officers.

(a) *Investigation.*- The health officer for each county:

(1) May investigate any condition in the county that is dangerous to human health; and

(2) Shall investigate and report on the sanitary conditions of schools, places of business, and places of employment in the county.

(b) *Complaint.*- Except in Baltimore County, on the written complaint of a physician or of at least 2 persons who claim to be affected by the condition, the health officer for the county where the condition allegedly exists immediately shall investigate any complaint that any of the following is in a condition dangerous to human health:

(1) Any watercourse, well, spring, open ditch, gutter, cesspool, drain, outhouse, pigpen, or other place.

(2) Any accumulation or deposit of any substance.

(c) *Abatement notice.*- If the health officer finds that the condition of the place or thing investigated may injure the life or health of any person, the place or thing is in a state of nuisance and the health officer shall serve a written notice to the person who is causing the nuisance, ordering the person to abate the nuisance within a time specified in the notice.

(d) *Prohibition.*- A person may not refuse or neglect to comply with the requirements of a notice served under this section.

(e) *Secretary to decide questions.*- If a question arises between health officers as to the jurisdiction or duties of a health officer in the abatement of any unhealthy nuisance, the question shall be referred to the Secretary, who shall settle the question. [An. Code 1957, art. 43, §§ 36, 49, 50, 51E; 1982, ch. 240, § 2.]

§ 10-202. Investigation and notice by Secretary.

(a) *Investigation.*- On the written complaint of 2 physicians or of at least 3 persons who claim to be affected by the condition, the Secretary shall investigate any complaint that any of the following is in a condition that injures any adjacent property or that is dangerous to human health:

(1) Any watercourse, well, spring, open ditch, gutter, cesspool, drain, outhouse, pigpen, or other place.

(2) Any accumulation or deposit of offensive or noxious matter.

(3) Any house, building, trades establishment, or manufacturing place.

(4) Any water in which mosquito larvae breed.

(b) *Abatement notice.*-

(1) If the Secretary finds that the condition of the place or thing investigated may injure any adjacent property or may injure the life or health of any individual, the place or thing is in a state of nuisance and the Secretary shall serve a written notice to the person who is causing the nuisance, ordering the person to abate the nuisance within a time specified in the notice.

(2) The notice shall be served:

(i) On the person who is causing the nuisance; or

(ii) If the person who is causing the nuisance cannot be found, on the owner or occupant of the property where the nuisance exists.

(c) *Failure to abate.*-

(1) The Secretary may file a complaint in the circuit court for the county where the nuisance exists if:

(i) The person served with the notice fails to comply with the requirements of the notice; or

(ii) Although the person served complies with the requirements of the notice, the nuisance is likely to recur on the same property.

(2) A complaint filed under this subsection may seek a court order requiring the person served with the notice to do any or all of the following:

(i) To comply with the requirements of the Secretary's abatement notice.

(ii) To abate the nuisance within a time specified in the order.

(iii) To prevent the nuisance from recurring. [An. Code 1957, art. 43, §§ 105, 106; 1982, ch. 240, § 2; 1988, ch. 6, § 1.]

§ 10-203. Summary abatement.

(a) *In general.*-

(1) If, after investigation, the Secretary finds that any of the following conditions exists, the place or thing as to which the condition exists is in a state of nuisance:

(i) The contents overflow or leak from an outhouse, a water closet, a septic tank, or a cesspool and present a hazard to public health.

(ii) An outhouse, a water closet, or a cesspool is not flytight and watertight and presents a hazard to public health.

(2) The Secretary summarily may abate any condition that is in a state of nuisance under this subsection.

(b) *Abatement order.*- Before summarily abating a nuisance under this section, the Secretary shall:

(1) Serve an abatement order on the owner of the property where the nuisance exists or, if the owner cannot be found, on the occupant or tenant of the property; or

(2) If the property is unoccupied and the owner cannot be found, attach an abatement order to the property where the nuisance exists.

(c) *Contents of order.*-

(1) The abatement order shall require and state:

(i) A time period within which the owner, occupant, or tenant of the property where the nuisance exists shall abate the nuisance; and

(ii) The work and materials necessary to abate the nuisance.

(2) The time period within which to abate the nuisance may not be less than 24 hours nor more than 5 days from the date and hour that the order is served.

(d) *Failure to abate.*-

(1) If the owner, occupant, or tenant served with an abatement order fails to abate or only partially abates the nuisance within the time specified in the order, the Secretary or a representative of the Secretary shall:

(i) Enter on the property; and

(ii) At the expense of the owner, occupant, or tenant of the property, do any work and use any materials necessary to abate the nuisance.

(2) The Secretary may not expend more than \$500 to abate the nuisance.

(e) *Cost of abatement.*- If, within 60 days after the Secretary has completed an abatement under this section, the owner, occupant, or tenant does not pay to the Secretary the cost of the abatement, the Secretary shall file suit against the owner, occupant, or tenant in the district court for the county where the nuisance was abated.

(f) *Prohibited acts.*- A person may not:

(1) Interfere with the Secretary or a representative of the Secretary summarily abating a nuisance under this section; or

(2) Refuse to allow the Secretary or a representative of the Secretary to enter on any property for the purpose of summarily abating a nuisance under this section. [An. Code 1957, art. 43, §§ 109-112, 117; 1982, ch. 240, § 2.]

Subtitle 3. Prohibited Acts; Penalties.

§ 10-301. Failure to obey abatement notice from health officer.

A person who refuses or neglects to comply with the requirements of a notice served under § 10-201 of this title is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$50. [An. Code 1957, art. 43, §§ 49, 50; 1982, ch. 240, § 2.]

§ 10-302. Failure to obey judicial abatement order.

(a) *Due diligence.*- A person who fails to exercise due diligence under a court order to abate a condition under § 10-202 of this title is guilty of a misdemeanor and on conviction is subject to:

- (1) A fine not exceeding \$10 for each day the condition is not abated; and
- (2) The cost of prosecution.

(b) *Knowing or willful violation.*- A person who knowingly or willfully acts contrary to a court order to abate a condition under § 10-202 of this title is guilty of a misdemeanor and on conviction is subject to:

- (1) A fine not exceeding \$20 for each day the violation continues; and
- (2) The cost of prosecution. [An. Code 1957, art. 43, § 108; 1982, ch. 240, § 2.]

§ 10-303. Interference with summary abatement.

In addition to any other penalty provided by law, a person is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$100 or imprisonment not exceeding 30 days or both, if the person:

- (1) Interferes with the Secretary or a representative of the Secretary summarily abating a nuisance under § 10-203 of this title; or
- (2) Refuses to allow the Secretary or a representative of the Secretary to enter on any property for the purpose of summarily abating a nuisance under § 10-203 of this title. [An. Code 1957, art. 43, § 117; 1982, ch. 240, § 2; 1988, ch. 6, § 1.]

§ 10-304. Violation of rules and regulations.

A person who violates any rule or regulation that the Secretary adopts under Subtitle 1 of this title is guilty of a misdemeanor and on conviction is subject to a fine for each offense not exceeding the lesser of the penalty provided by the rule or regulation or \$100. [An. Code 1957, art. 43, § 2; 1982, ch. 240, § 2.]

§ 10-305. Nuisances in Cecil County or Allegany County.

(a) *"Nuisance" defined.*- In this section, "nuisance" includes:

(1) Any condition that is dangerous to health or safety, such as an inadequately protected swimming pool or ditch;

(2) Any condition that may adversely affect the public health, such as an unsanitary outhouse, a foul pigpen, an improperly functioning sewage system, an unkempt junkyard, an unkempt scrap metal processing facility, an excessive accumulation of trash or garbage, dead animals, a contaminated water supply, an inadequately protected water supply, or a rat harborage;

(3) Housekeeping in any building that is so poor that the health of the owner, occupants, employees, or neighbors may be endangered; and

(4) Any condition that may endanger health through the spreading of the condition by any means, including by streams, surface drainage, air currents, winged life, domestic animals, or human beings.

(b) *Prohibition; penalty.*- In Cecil County or Allegany County, in addition to any other penalty imposed by this subtitle, a person who refuses or neglects to comply with a notice or order to abate a nuisance by the Secretary, or by the health officer for the county where the nuisance exists, is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$100 a day for each day the violation continues. [An. Code 1957, art. 43, § 104A; 1982, ch. 240, § 2; ch. 555; 1983, ch. 583, § 2; 1994, ch. 3, § 1.]

Immunity

What is it?

Protection from liability. The maker of the laws is sovereign, so he or she can never break, or be liable for breaking, the law.

Types:

- Inherited by States as sovereign immunity.
- Governmental immunity
- Public Official immunity
- Litigation-based use and blanket immunity.

Waiver:

To make state and local governments more careful, accountable, and business-like, these governments have mostly waived Sovereign and Governmental Immunity in Tort, but not public official immunity.

Is public official immunity available to superintendents and operators?

Maybe. Case law is broad and vague. This depends on the judge and the facts and circumstances of the case.

Principal

("Assigns, delegates")

Tasks, duties, responsibilities, frequencies

Time, place, manner, tools

("Duties")

("To")



NOT LIABLE for actions of employee that constitute:

*Frolic & Detour Fraud, Bad Faith, Illegal Acts,
Criminal Acts*

Standing

What is it?

A real party in interest has been injured in fact and has the right to bring an action. Based upon the injury to the plaintiff, the Court agrees to accept the case.

How does it affect you?

Recently, the Court of Appeals held that a landowner who lives four hundred feet from a solid waste, co-generation power plant has sufficient injury to challenge in court the issuance by MDE of an air pollution permit to the utility who owns the plant.

Adjoining property owners to water and wastewater plants may have standing to challenge NPDES permits or administrative orders, which injure their rights under water statutes.

TITLE 1 - DEPARTMENT OF NATURAL RESOURCES
Subtitle 5 - Environmental Standing Act

§ 1-501. Definitions.

(a) *In general.*- In this subtitle the following words have the meanings indicated.

(b) *Person.*- "Person" means any resident of the State of Maryland, any corporation incorporated under the laws of the State of Maryland, or any partnership, organization, association, or legal entity doing business in the State.

(c) *Political subdivision.*- "Political subdivision" means a county, the City of Baltimore, a multicounty agency, municipal corporation, single purpose district, and soil conservation or sanitary district.

[1978, ch. 838; 1990, ch. 6, § 2; 2005, ch. 25, § 1.]

§ 1-502. Declaration of legislative policy and intent.

The General Assembly finds and declares that the natural resources and the scenic beauty of the State of Maryland are in danger of irreparable harm occasioned by the use and exploitation of the physical environment. It further finds that improper use and exploitation constitute an invasion of the right of every resident of Maryland to an environment free from pollution to the extent possible. It further finds that the courts of the State of Maryland are an appropriate forum for seeking the protection of the environment and that an unreasonably strict procedural definition of "standing to sue" in environmental matters is not in the public interest.

[1978, ch. 838.]

§ 1-503. Actions for declaratory and equitable relief.

(a) *Standing.*- The following persons have standing to bring and maintain an action provided for in this section in the courts of equity of this State:

(1) The State of Maryland, or any agency or officer of the State, acting through the Attorney General;

(2) Any political subdivision of the State of Maryland, or any agency or officer of it acting on its behalf; and

(3) Any other person, regardless of whether he possesses a special interest different from that possessed generally by the residents of Maryland, or whether substantial personal or property damage to him is threatened. However, an individual citizen either shall reside in the county or Baltimore City where the action is brought, or shall demonstrate that the alleged condition, activity, or failure complained of affects the environment where he resides.

(b) *Maintenance of action.*- Any person given standing by subsection (a) of this section may bring and maintain an action for mandamus or equitable relief, including declaratory relief against any officer or agency of the State or political subdivision for failure on the part of the officer or agency of the State or political subdivision to perform a nondiscretionary ministerial duty imposed upon them under an environmental statute, ordinance, rule, regulation, or order, or for their failure to enforce an applicable environmental quality standard for the protection of the air, water, or other natural resources of the State, as expressed in a statute, ordinance, rule, regulation, or order of the State, or any political subdivision upon the request of the defendant, the court in its discretion may join as a party defendant any person against whom the plaintiff is requesting that governmental action be taken following notice to that person and if the court determines that the joinder would serve the interests of justice.

[1978, ch. 838; 1990, ch. 6, § 2.]

§ 1-504. Limitations on right of action; defenses.

(a) *Subtitle provides standing.*- This subtitle may not be construed to create or authorize any new substantive cause of action or theory of recovery not now recognized by the courts of this State, nor may it be construed as abrogating any cause of action or theory of recovery now recognized by the courts of this State but is for the sole purpose of providing standing to sue to the persons set forth in [§ 1-503 of this](#) subtitle, subject to the provisions and limitations set forth in this subtitle.

(b) *Reservation of sovereign immunity defense.*- Except as provided in § 1-503 (b) of this subtitle, nothing in this subtitle constitutes a waiver by the State or any agency of the defense of sovereign immunity, and this defense is expressly reserved.

(c) *Subtitle does not itself authorize monetary damages.*- This subtitle does not authorize an action for monetary damages. The remedies available to any plaintiff who acquires standing to sue solely by virtue of this subtitle are limited to mandamus or equitable relief, including declaratory relief as to whether a permit or order has been unlawfully issued or is being violated, and a judgment or decree for monetary damages may not be awarded. However, a judgment for monetary damages may be awarded in any action where a judgment is appropriate to a plaintiff who has standing to sue other than by virtue of this subtitle.

(d) *Administrative hearings and remedies.*- This subtitle does not abrogate the existing requirement and principles of exhaustion of administrative remedies, and this subtitle does not broaden, except as specifically set forth, the rights of intervention of persons in administrative hearings and in appeals from the hearings.

(e) *Standing in local zoning matters.*- This subtitle is not to be construed in any way to alter

the present provisions of law relating to standing in any matter affecting local zoning.

(f) *Relief; factual findings.*-

(1) Except as provided in this subtitle, relief may not be granted in any action filed under this subtitle with respect to any defendant who shows that the condition, activity, or failure complained of is under and in compliance with:

(i) A lawful, current permit or order of an agency of the State or a political subdivision authorized to issue the permit or order;

(ii) An order or other adjudication of a court of competent jurisdiction in a proceeding in which all of the material issues involved in the action were raised and determined, whether or not the parties to the prior litigation were identical to the parties in the pending action; or

(iii) A lawful current permit or order of an agency of the United States government authorized to issue the permit or order.

(2) If the court finds, upon clear and convincing evidence at any stage of the proceeding, that the condition, activity, or failure complained of exists and either presents an imminent danger to the health, welfare, or safety of the people of the State, or results in or is likely to result in irreversible or irreparable damage to the air, water, or other natural resources of the State, the court may remand the matter to the

agency with instructions to consider and make factual determinations with respect to the material issues, as determined by the court, within a time considered reasonable by the court. A finding may not be made until the defendant has been provided an opportunity by the court to present evidence rebutting the plaintiff's evidence.

[1978, ch. 838; 1979, ch. 65; 1981, ch. 481; 1990, ch. 6, § 2.]

§ 1-505. Venue, pleadings, and procedure.

(a) *Venue.*- An action pursuant to this subtitle shall be brought in the circuit court where the alleged condition, activity, or failure complained of is occurring, has occurred, or is likely to occur.

(b) *Pleadings.*- If the plaintiff is a person other than the State, an action does not lie under this subtitle unless the plaintiff, at least 30 days prior to the commencement of the action, has delivered a sufficient written notice of the alleged condition, activity, or failure to the agency of the State or its political subdivision responsible for initiating or instituting some official action as a result of the alleged condition, activity, or failure. A copy of the notice shall be simultaneously delivered to the Attorney General.

(c) *Procedure.*- In addition to the copies which are to be served upon any person named as a defendant, a copy of the summons and bill of complaint and of any supporting papers and exhibits attached to it, including in all cases a certificate from the plaintiff under subsection (b) of this section of the date of the mailings, a copy of the mailed written notice and the signed certified mail receipts returned by the addressees, must be served upon the Attorney

General, for purposes of notice and also to give him an opportunity to intervene. It is discretionary with the Attorney General and with each interested State agency or official represented by him whether to appear in the action but, upon application, at any time during the pendency of the action the Attorney General shall be permitted to intervene.

[1978, ch. 838; 1990, ch. 6, § 2.]

§ 1-506. Stay of proceedings.

(a) *Motion by defendant.*- Except as provided in subsection (e) of this section, the court may grant a stay of the proceedings brought pursuant to this subtitle upon motion of defendant made upon notice to all parties and to the Attorney General whether or not a party whenever there is pending any of the following at the time of commencement of an action brought pursuant to this subtitle:

(1) Any administrative enforcement hearing initiated by an agency of the State or a political subdivision, either prior to or after receipt of the statutory notice required by § 1-505 (b) and (c) of this subtitle, with jurisdiction by law over the condition or activity complained of, if the proceeding is being diligently prosecuted in the opinion of the court;

(2) Judicial review of any administrative action taken with respect to the condition or activity complained of;

(3) An action in court brought by the Attorney General on behalf of a State agency represented by him or by a political subdivision of the State with respect to the condition or activity complained of; or

(4) An appeal from a judgment rendered with respect to an action brought under item (3) of this subsection.

(b) *Motion by State.*- Except as provided in subsection (e) of this section, the court also may grant the stay provided for in subsection (a) of this section upon motion made by the Attorney General on behalf of the people of the State or by a State agency or official represented by him, whether or not he is a named party defendant.

(c) *Duration.*- A stay shall be granted for a time the court considers reasonable for completion of the administrative or judicial proceeding, the pendency of which is the basis for the motion for the stay, but in no event may a stay be granted for longer than 90 days without a showing of sufficient cause by the defendant or the Attorney General.

(d) *Extensions.*- The court, upon motion demonstrating sufficient cause, may grant extensions of the stay for additional periods not to exceed 90 days each.

(e) *Circumstances prohibiting stay.*- A stay pursuant to this section may not be granted if the court finds that the condition or activity complained of either presents an imminent danger to the health, welfare, or safety of the people of the State or results in, or is likely to result in, irreversible or irreparable damage to the air, water, or other natural resources of the State except pursuant to § 1-504 (f) (2) of this subtitle.

[1978, ch. 838; 1979, ch. 65; 1990, ch. 6, § 2.]

§ 1-507. Procedures.

(a) *In general.*- An action brought pursuant to this subtitle may not be compromised, discontinued, or dismissed by consent, by default, or for neglect to prosecute, except with the approval of the court. The approval may not be granted when the court determines that a monetary settlement, in excess of court costs and attorneys fees, has been offered by a defendant to a plaintiff, who has standing to sue only by virtue of this subtitle, as consideration for the settlement. If the court upon application of a defendant determines that an action in which a plaintiff has acquired standing solely by virtue of this subtitle was brought in bad faith or solely for purposes of harassment or delay, it may, after further hearing on this specific question, award to the defendant against the plaintiff a judgment for all or part of the court costs, including attorneys fees, as the defendant may establish were incurred by him in defending the action together with any damages sustained by the defendant as a result of the action having been brought, including witness fees.

(b) *Applicability of Maryland Rules.*- The Maryland Rules apply to all actions brought under this subtitle except where the provisions of this subtitle specifically describe other procedures.

[1978, ch. 838; 1998, ch. 21, § 1.]

§ 1-508. Existing rights and remedies reserved.

It is the purpose of this subtitle to provide certain remedies to abate the pollution, destruction, or substantial or unreasonable impairment of the air, water, or other natural resources of the State and therefore nothing contained in it abridges or alters rights of action or remedies which exist. A provision in this subtitle, or any act done by virtue of this subtitle, may not be construed as estopping or limiting the State or any person in the exercise of his rights to suppress nuisances or to abate any pollution.

[1978, ch. 838.]

Local Government Tort Claims Act

What does it do?

Pays up to \$200,000.00 for civil judgment in intentional or negligent tort case, plus reasonable counsel fees.

Who is covered?

An employee of the water district, a sanitary district, a municipality, county, or the state government within Maryland.

Who is not covered?

Officer, director, or employee of a private business or a Federal government official or employee.

What is not covered?

Willful, reckless, fraudulent conduct or criminal conduct by a local government official; judgments for punitive damages.

Local Governments Tort Claims Act

§ 5-301. Definitions.

(a) *In general.*- In this subtitle the following words have the meanings indicated.

(b) *Actual malice.*- "Actual malice" means ill will or improper motivation.

(c) *Employee.*-

(1) "Employee" means any person who was employed by a local government at the time of the act or omission giving rise to potential liability against that person.

(2) "Employee" includes:

(i) Any employee, either within or without a classified service or merit system;

(ii) An appointed or elected official; or

(iii) A volunteer who, at the request of the local government, and under its control and direction, was providing services or performing duties.

(d) *Local government.*- "Local government" means:

(1) A chartered county established under Article [25A of the Code](#);

(2) A code county established under Article [25B of the Code](#);

(3) A board of county commissioners established or operating under Article [25 of the Code](#);

(4) Baltimore City;

(5) A municipal corporation established or operating under Article [23A of the Code](#);

(6) The Maryland-National Capital Park and Planning Commission;

(7) The Washington Suburban Sanitary Commission;

(8) The Northeast Maryland Waste Disposal Authority;

(9) A community college or board of trustees for a community college established or operating under Title 16 of the [Education Article](#), not including Baltimore City Community College;

(10) A county public library or board of trustees of a county public library established or operating under Title 23, Subtitle [4 of the Education Article](#);

(11) The Enoch Pratt Free Library or Board of Trustees of the Enoch Pratt Free Library;

(12) The Washington County Free Library or the Board of Trustees of the Washington County Free Library;

(13) A special taxing district;

- (14) A nonprofit community service corporation incorporated under State law that is authorized to collect charges or assessments;
- (15) Housing authorities created under Division II of the Housing and Community Development Article;
- (16) A sanitary district, sanitary commission, metropolitan commission, or other sewer or water authority established or operating under public local law or public general law;
- (17) The Baltimore Metropolitan Council;
- (18) The Howard County Economic Development Authority;
- (19) The Howard County Mental Health Authority;
- (20) A commercial district management authority established by a county or municipal corporation if provided under local law;
- (21) The Baltimore City Police Department;
- (22) A regional library resource center or a cooperative library corporation established under Title 23, Subtitle [2 of the Education Article](#);
- (23) Lexington Market, Inc., in Baltimore City;
- (24) The Baltimore Public Markets Corporation, in Baltimore City;
- (25) The nonprofit corporation serving as the local public transportation authority for Carroll County pursuant to a contract or memorandum of understanding with Carroll County (Carroll County Senior Overland Service, Inc., t/a Carroll Area Transit System);
- (26) The nonprofit corporation serving as the animal control and licensing authority for Carroll County pursuant to a contract or memorandum of understanding with Carroll County (the Humane Society of Carroll County, Inc.);
- (27) Garrett County Municipalities, Inc., in Garrett County; and
- (28) The nonprofit corporation serving as the local public transportation authority for Garrett County pursuant to a contract or memorandum of understanding with Garrett County (Garrett County Community Action Committee, Inc.).

[1987, ch. 594; 1988, ch. 323; 1989, ch. 416; 1992, ch. 117; ch. 201, § 2; 1993, chs. 356, 368; 1996, ch. 10, § 16; ch. 267; 1997, ch. 14, § 9; ch. 364; 1998, ch. 67; 1999, ch. 194; 2000, ch. 556; 2006, chs. 64, 186; 2007, chs. 123, 132, 315.]

§ 5-302. Nature and extent of legal representation.

(a) *Government to provide legal defense to employees.*- Each local government shall provide for its employees a legal defense in any action that alleges damages resulting from tortious acts or omissions committed by an employee within the scope of employment with the local government.

(b) *Immunity; exceptions.*-

(1) Except as provided in paragraph (2) of this subsection, a person may not execute against an employee on a judgment rendered for tortious acts or omissions committed by the employee within the scope of employment with a local government.

(2) (i) An employee shall be fully liable for all damages awarded in an action in which it is found that the employee acted with actual malice.

(ii) In such circumstances the judgment may be executed against the employee and the local government may seek indemnification for any sums it is required to pay under § 5-303(b)(1) of this subtitle.

(c) *Effect of Workers' Compensation Act.*- If the injury sustained is compensable under the Maryland Workers' Compensation Act, an employee may not sue a fellow employee for tortious acts or omissions committed within the scope of employment.

(d) *Cooperation by employee.*-

(1) The rights and immunities granted to an employee are contingent on the employee's cooperation in the defense of any action.

(2) If the employee does not cooperate, the employee forfeits any and all rights and immunities accruing to the employee under subsection (b) of this section.

[1987, ch. 594; 1988, ch. 6, § 1; 1991, ch. 21, § 3; 1997, ch. 14, §§ 9, 20.]

§ 5-303. Liability of government; defenses.

(a) *Limitation on liability.*-

(1) Subject to paragraph (2) of this subsection, the liability of a local government may not exceed \$200,000 per an individual claim, and \$500,000 per total claims that arise from the same occurrence for damages resulting from tortious acts or omissions, or liability arising under subsection (b) of this section and indemnification under subsection (c) of this section.

(2) The limits on liability provided under paragraph (1) of this subsection do not include interest accrued on a judgment.

(b) *When government liable.-*

(1) Except as provided in subsection (c) of this section, a local government shall be liable for any judgment against its employee for damages resulting from tortious acts or omissions committed by the employee within the scope of employment with the local government.

(2) A local government may not assert governmental or sovereign immunity to avoid the duty to defend or indemnify an employee established in this subsection.

(c) *Punitive damages; indemnification.-*

(1) A local government may not be liable for punitive damages.

(2) (i) Subject to subsection (a) of this section and except as provided in subparagraph (ii) of this paragraph, a local government may indemnify an employee for a judgment for punitive damages entered against the employee.

(ii) A local government may not indemnify a law enforcement officer for a judgment for punitive damages if the law enforcement officer has been found guilty under § [3-108 of the Public Safety Article](#) as a result of the act or omission giving rise to the judgment, if the act or omission would constitute a felony under the laws of this State.

(3) A local government may not enter into an agreement that requires indemnification for an act or omission of an employee that may result in liability for punitive damages.

(d) *Defenses not waived.-* Notwithstanding the provisions of subsection (b) of this section, this subtitle does not waive any common law or statutory defense or immunity in existence as of June 30, 1987, and possessed by an employee of a local government.

(e) *Defenses available to government.-* A local government may assert on its own behalf any common law or statutory defense or immunity in existence as of June 30, 1987, and possessed by its employee for whose tortious act or omission the claim against the local government is premised and a local government may only be held liable to the extent that a judgment could have been rendered against such an employee under this subtitle.

(f) *Limitation of defenses for certain entities in Baltimore City.-*

(1) Lexington Market, Inc., in Baltimore City, and its employees, may not raise as a defense a limitation on liability described under [§ 5-406 of this](#) title.

(2) Baltimore Public Markets Corporation, in Baltimore City, and its employees, may not raise as a defense a limitation on liability described under [§ 5-406 of this](#) title.

[1987, ch. 594; 1992, ch. 303; 1997, ch. 14, § 9; 1999, chs. 177, 637; 2000, ch. 556; 2001, ch. 286; 2003, ch. 17; 2007, ch. 123.]

§ 5-304. Actions for unliquidated damages.

(a) *Scope.*- This section does not apply to an action against a nonprofit corporation described in § 5-301 (d)(23), (24), (25), (26), or (28) of this subtitle or its employees.

(b) *Notice required.*-

(1) Except as provided in subsections (a) and (d) of this section, an action for unliquidated damages may not be brought against a local government or its employees unless the notice of the claim required by this section is given within 180 days after the injury.

(2) The notice shall be in writing and shall state the time, place, and cause of the injury.

(c) (1) The notice required under this section shall be given in person or by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, by the claimant or the representative of the claimant.

(2) Except as otherwise provided, if the defendant local government is a county, the notice required under this section shall be given to the county commissioners or county council of the defendant local government.

(3) If the defendant local government is:

(i) Baltimore City, the notice shall be given to the City Solicitor;

(ii) Howard County or Montgomery County, the notice shall be given to the County Executive; and

(iii) In Anne Arundel County, Baltimore County, Harford County, or Prince George's County, the notice shall be given to the county solicitor or county attorney.

(4) For any other local government, the notice shall be given to the corporate authorities of the defendant local government.

(d) *Waiver of notice requirement.*- Notwithstanding the other provisions of this section, unless the defendant can affirmatively show that its defense has been prejudiced by lack of required notice, upon motion and for good cause shown the court may entertain the suit even though the required notice was not given.

[1987, ch. 594; 1988, ch. 6, § 1; 1989, ch. 74; 1990, ch. 6, § 2; 1997, ch. 14, § 9; 1999, ch. 34, § 1; 2006, ch. 186; 2007, chs. 123, 315; 2009, chs. 634, 635.]

PAVELKA v. CARTER

996 F.2d 645

14. Pavelka, on the other hand, contends that the **Local Government Tort Claims Act**, Maryland Cts. & Jud.Proc.Code Ann. § 5-401 et seq., operates concurrently with § 17-107 and, where its notice requirements are met, see § 5-404, makes a more substantial waiver of the County's immunity. Since she undoubtedly complied with those notice provisions, Pavelka contends, she should be permitted to recover from the County the full \$200,000 the LGTCA permits. See § 5-403(a). This argument relies heavily on *Maryland v. Harris*, 327 Md. 32, 607 A.2d 552 (1992), which implied that the Maryland Tort Claims Act (MTCA), Maryland State Gov't Code Ann. §§ 101 to 12-110, creates a more expansive waiver of immunity distinct from that provided by § 17-107 in those situations where it applies. *Harris*, 607 A.2d at 556-57.

15. But the MTCA actually waives the state's sovereign immunity in such negligence cases if its notice requirements are met. § 12-104(b); § 12-105(b). The LGTCA does not waive local governmental immunity when a local governmental entity is sued in its own capacity, *Khawaja v. Mayor of Rockville*, 89 Md.App. 314, 598 A.2d 489, 494 & n. 6 (1991), cert. granted, 325 Md. 551, 601 A.2d 1114 (1992), so the logic of *Harris* is inapplicable. The County's direct liability for Pavelka's accident is thus limited to that provided by § 17-107.

16. The LGTCA does have a function, however, and that function is to protect local government employees from suits and judgments on alleged torts committed by them within the scope of their employment, in order to maintain their incentive to perform to the best of their abilities. *Ennis v. Crenca*, 322 Md. 285, 587 A.2d 485, 488 (1991). To that end, it obligates local governments to defend their employees for job-related tort claims. § 5-402(a). It also bars direct execution of judgments against those employees, absent proof of actual malice, and forces successful plaintiffs to execute their judgments against the local government employers instead. §§ 5-402(b), 5-403(b). The employers are expressly obligated to pay these judgments, § 5-403(b), but their obligations are not without limit: liability on an individual claim is limited to \$200,000, § 5-403(a), punitive damages cannot be recovered, § 5-403(c), and the employer may raise any defenses or immunities held by the employee, even where those defenses or immunities could not have been vicariously asserted by the employer to bar respondeat superior liability at common law. Compare § 5-403(d)-(e) with the Maryland common law rule discussed in *James v. Prince George's*

County, 288 Md. 315, 418 A.2d 1173, 1182-83 (1980), superseded by statute as stated in *Prince George's County v. Fitzhugh*, 308 Md. 384, 519 A.2d 1285 (1987).

17. The County doesn't debate the existence of this obligation to fund judgments against its employees imposed by the LGTCA, but pins its hopes instead on the claim that its bus driver Carter is herself immune from suit, hence not subject to a liability which would trigger its obligation. We therefore turn next to that.

B

18. The district court found Pavelka's claim against Carter barred by § 17-107(c), but we disagree, for the reasons expressed below.

19. Governmental immunity from negligence torts in Maryland extends beyond the governmental entity itself to protect "public officials" exercising discretionary functions. *James*, 418 A.2d at 1178. It does not, however, extend to "mere government employee[s] or agent[s]" performing ministerial functions like Carter, a city bus driver. *Id.*

20. On appeal, Carter does not in fact contend that driving a bus was a discretionary function or that she was a public official. Indeed, she ignores this line of cases altogether and argues that notwithstanding any general rules applicable to employee liability, fidelity to the purpose of § 17-107 requires that she be absolved of potential liability in excess of the security required by the Transportation article. She also argues that the claim against her is barred by the doctrine of respondeat superior.

*Excerpted from the Opinion of Circuit Judge
PHILLIPS c. 1993*

*Retrieved 22 October 2009 from:
<http://openjurist.org/996/f2d/645/pavelka-v-r-carter>*

Board of Waterworks

Grounds for Suspension/Denial/Revocation of Certification

1) Statute:

- Fraud or deception in obtaining or using a certification.
- *What is Fraud?:* Knowing or willful making of a false statement or omission with intent that another act on same to their detriment.

2) Regulation (COMAR Title 26, Sub-Title 06. Section 15)

- The Regulation Broadens and elaborates the grounds for proceedings against a holder of a certificate. It includes:
 - a. Professional incompetence
 - b. Falsification of records
 - c. Failure to submit self-monitoring documents
 - d. Negligence in operating or maintaining a water or wastewater works.

Title 26 - DEPARTMENT OF THE ENVIRONMENT

Subtitle 06 WATERWORKS AND WASTE SYSTEMS OPERATORS

Chapter 01 General Regulations

Authority: Environment Article, DD12-205 and 12-302—12-307, Annotated Code of Maryland

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Board" means the State Board of Waterworks and Waste Systems Operators.

(2) "Categorical industrial users" means industrial users subject to pollutant discharge limits promulgated by the Environmental Protection Agency in accordance with § 307 of the Clean Water Act that regulates process wastewater.

(3) Certificate.

(a) "Certificate" means a certificate of certification as an operator or superintendent, issued by the Board.

(b) "Certificate" includes:

(i) An operator certificate, as limited by Regulation .06C of this chapter;

(ii) A superintendent certificate, as limited by Regulation .06F of this chapter;

(iii) A temporary certificate, as limited by Regulation .06B of this chapter;

(iv) A limited certificate, as limited by Regulation .06E of this chapter;

(v) A grandparented certificate, as limited by Regulation .06D of this chapter; and

(vi) A certification renewal card.

(4) "Certified operator" means an operator who has a current operator certificate issued by the Board.

(5) "Certified superintendent" means a superintendent who has a current superintendent certificate issued by the Board.

(6) "Department" means the Department of the Environment.

(7) "Direction" means supervision provided by:

(a) A certified operator located on-site;

(b) A set of site-specific standard operating procedures approved by the Maryland Department of the Environment with a certified operator available on call; or

(c) Direct on-site control.

(8) "Industrial wastewater works" means a facility used to collect, store, pump, treat, or discharge any waste substance that results from:

(a) A manufacturing process;

(b) A business process; or

(c) The development of natural resources.

(9) Operator.

(a) "Operator" means an individual who participates in the operation of:

(i) A waterworks, including the control of the flow, processing, or distribution of water;

(ii) A wastewater works, including the collection, control of flow, processing, or discharge of wastewater and effluent; or

(iii) An industrial wastewater works, including collection, control of flow, processing, or discharge of industrial wastewater and effluent.

(b) "Operator" does not include a superintendent.

(10) Package Activated Sludge Plant.

(a) "Package activated sludge plant" means a wastewater treatment plant that is determined by the Department to have the following characteristics:

(i) Employs an activated sludge process;

(ii) Its major components are prefabricated at the factory and transported to the site; and

(iii) It is designed with an emphasis on automated operation to minimize on-site supervision required.

(b) Package activated sludge plants shall be designated by the Department on a case-by-case basis.

(11) "Pretreatment plant" means an industrial wastewater works discharging to a wastewater works.

(12) "Responsible charge" means responsibility for the operation and supervision of all or any part of a waterworks, wastewater works, or industrial wastewater works.

(13) "Secretary" means the Secretary of the Environment.

(14) "Significant industrial users" means:

(a) All categorical industrial users subject to categorical pretreatment standards;

(b) Noncategorical industrial users with 25,000 gallons per day or more discharge of process wastewater to the publicly owned wastewater treatment plant;

(c) Noncategorical industrial users which make up 5 percent or more of the dry weather hydraulic or organic capacity of the publicly owned wastewater treatment plant; or

(d) Any industrial user with a reasonable potential to adversely affect the operation of a publicly owned wastewater treatment plant or violating any pretreatment standard or requirement.

(15) "Superintendent" means an individual who is designated by any employing or appointing person, county, municipality, sanitary district, or this State as the individual in responsible charge of a waterworks, wastewater works, or industrial wastewater works.

(16) "Wastewater collection system" means that portion of a wastewater works that collects, stores, or pumps any liquid or waterborne waste.

(17) "Wastewater treatment plant" means that portion of a wastewater works that receives, treats, and discharges any liquid or waterborne waste.

(18) Wastewater Works.

(a) "Wastewater works" means a facility used to collect, store, pump, treat, or discharge any liquid or waterborne waste.

(b) "Wastewater works" does not include:

- (i) A facility that is used only by a private residence;
- (ii) A facility that uses a septic tank or subsoil absorption; or
- (iii) An industrial wastewater works.

(19) "Water distribution system" means that portion of the waterworks that receives, stores, pumps, and distributes water for human consumption.

(20) "Water treatment plant" means that portion of the waterworks that collects and treats water for human consumption.

(21) "Waterworks" means a facility used to collect, store, pump, treat, or distribute water for human consumption. "Waterworks" does not include a facility that is used only by a private residence.

(22) "Works" means a specific waterworks, wastewater works, or industrial wastewater works.

.02 Board Organization.

A. Function. The Board, in accordance with these regulations, shall:

- (1) Review and approve all applications for certification and certification renewal;
- (2) Interview applicants for certification in specific cases, when referred by the secretary of the Board;
- (3) Prepare and give examinations to qualified applicants for certification;
- (4) Hear appeals concerning certification requirements;
- (5) Determine the subject, scope, form, and passing score for examinations;
- (6) Investigate all reports of fraud or deception in the obtaining or use of a certificate issued by the Board;
- (7) Investigate all reports of unsatisfactory performance in the operation or supervision of a waterworks, wastewater works, or industrial wastewater works;
- (8) Take disciplinary action, including the reprimand of a certificate holder or suspension or revocation of a certificate; and
- (9) Recommend regulations for promulgation by the Secretary.

B. Meetings. The Board shall meet at least annually, at the times and places that it determines.

C. Communication with the Board. All communications with the Board should be directed to the Secretary of the Board of Waterworks and Waste Systems Operators, 2500 Broening Highway, Baltimore, Maryland 21224.

.03 Classification of Facilities.

A. Industrial Wastewater Works.

(1) Industrial wastewater works are classified into the seven classes set out in Table 1 of Regulation .16 of this chapter.

(2) Unless the Department determines that a reasonable potential exists to adversely affect the quality of the receiving body of water or the environment, the following categories are not industrial wastewater works as defined in Environment Article, § 12-101(h), Annotated Code of Maryland:

- (a) Petroleum storage and distribution facilities;
- (b) Seafood processors;
- (c) Vehicle washing facilities;
- (d) Vehicle maintenance facilities;
- (e) Sand and gravel facilities;
- (f) Stone quarries;
- (g) Industries dechlorinating supply water as their only treatment;
- (h) Industries discharging only stormwater runoff; and
- (i) Industries performing tank or pipe hydrostatic testing.

(3) The Department may require classification of any individual works within the categories identified under § A(2) (a)—(i).

(4) Classification of the pretreatment plants will be required only for significant industrial users.

B. Wastewater Treatment Plants. Wastewater treatment plants are classified into the eight classes set out in Table 2 of Regulation .16 of this chapter.

C. Wastewater Collection Systems.

(1) Wastewater collection systems are classified into the following two classes:

- (a) Class 1—Wastewater collection systems with gravity flow;
- (b) Class 2—Wastewater collection systems with gravity and pumped or vacuum flow.

(2) A wastewater collection system is not classified as a separate entity if it is under the operation and supervision of certified wastewater treatment plant personnel.

D. Water Treatment Plants. Water treatment plants are classified into the six classes set out in Table 3 of Regulation .16 of this chapter.

E. Water Distribution Systems.

(1) Water distribution systems are classified as one class, Water Distribution (WD).

(2) A water distribution system is not classified as a separate entity if it is under the operation and supervision of certified water treatment plant personnel.

.04 Classification, Authority, and Requirements of Operators and Superintendents.

A. Industrial Wastewater Works Operators and Superintendents.

(1) The classification of industrial wastewater works operators and superintendents is determined by the classification of industrial wastewater works.

(2) Classification, authority, and certification requirements of the industrial wastewater works operators and superintendents are set out in Table 4 of Regulation .16 of this chapter.

B. Wastewater Treatment Plant Operators and Superintendents.

(1) The classification of wastewater treatment plant operators and superintendents is determined by the classification of wastewater treatment plants.

(2) Classification, authority, and requirements of the wastewater treatment plant operators and superintendents are set out in Table 5 of Regulation .16 of this chapter.

C. Wastewater Collection Systems Operators and Superintendents.

(1) The classification of wastewater collection systems operators and superintendents is determined by the classification of the wastewater collection systems.

(2) Classification, authority, and requirements of the wastewater collection systems operators and superintendents are set out in Table 6 of Regulation .16 of this chapter.

D. Water Treatment Plant Operators and Superintendents.

(1) The classification of water treatment plant operators and superintendents is determined by the classification of water treatment plants.

(2) Classification, authority, and requirements of the water treatment plant operators and superintendents are set out in Table 7 of Regulation .16 of this chapter.

E. Water Distribution Systems Operators and Superintendents.

(1) Water distribution systems operators and superintendents are classified under one class, Water Distribution (WD).

(2) Minimum education and experience requirements for water distribution systems operators and superintendents are:

(a) Successful completion of high school or high school equivalency; and

(b) One year experience in water distribution.

.05 Certification.

A. General.

(1) An individual may not practice as an operator or superintendent in a works unless that individual has been certified by the Board in the appropriate classification.

(2) Unless the Department determines that a reasonable potential exists to adversely affect the quality of the receiving body of water or the environment, operators or superintendents working in the following categories need not be certified under this regulation:

- (a) Petroleum storage and distribution facilities;
- (b) Seafood processors;
- (c) Vehicle washing facilities;
- (d) Vehicle maintenance facilities;
- (e) Sand and gravel facilities;
- (f) Stone quarries;
- (g) Industries dechlorinating supply water as their only treatment;
- (h) Industries discharging only stormwater runoff; and
- (i) Industries performing tank or pipe hydrostatic testing.

(3) The Department may require certification of operators and superintendents working in the industrial wastewater works of any individual facility within the categories identified under § A(2)(a)--(i).

(4) Certification of operators and superintendents working in pretreatment plants may be required only for those plants that are significant industrial users.

B. Individuals Who Shall Have an Operator, Grandparented, or Limited Certificate.

(1) Wastewater Treatment Plant and Water Treatment Plant. Individuals who are responsible for one or more of the following tasks shall be certified as water treatment plant or wastewater treatment plant operators:

- (a) Makes decisions regarding the control of flow, and processing of raw and finished water, wastewater, or sludge;
- (b) Observes variations in operating conditions, and interprets meter and gauge readings and test results to determine processing requirements;
- (c) In the absence of the superintendent, makes operating decisions based on the superintendent's directives.

(2) Wastewater Collection System and Water Distribution System. Individuals who are responsible for one or both of the following tasks shall be certified as wastewater collection system or water distribution system operators:

- (a) Determines remedial action in emergencies;
- (b) In the absence of the superintendent, makes operating decisions based on the superintendent's directives.

(3) Industrial Wastewater Works and Pretreatment Plants. An individual who is responsible for one or both of the following tasks shall be certified as an industrial wastewater works operator:

- (a) Makes decisions on operation procedures;
- (b) Trains and directs employees to maintain equipment operating procedures.

C. Individuals Who Shall Have a Superintendent Certificate. Individuals appointed to the following positions by an employing or appointing person, county, municipality, sanitary district, or this State shall be certified as superintendents:

- (1) Superintendent of the works; or
- (2) Assistant superintendent of the works.

D. Employment of Certified Personnel. A person, county, municipality, sanitary district, or this State may not operate a works unless all operators and superintendents as provided in this regulation are certified by the Board.

.06 Types of Certificates and Certification Requirements.

A. The Board shall issue a certificate only for a class of works at which the applicant is employed or is awaiting specific employment.

B. Temporary Certificates and Certification.

(1) The Board shall issue a temporary certificate to an applicant who:

(a) Is employed by a waterworks, wastewater works, or industrial wastewater works in Maryland, and is awaiting specific assignment to duties in the job functions defined in Regulation .05 of this chapter;

(b) Applies for certification; and

(c) Pays a certification fee in accordance with Regulation .07 of this chapter.

(2) The temporary certificate holder shall work only under the direction of a holder of a superintendent, operator, or limited certificate.

(3) The Board may not issue a temporary certificate to an applicant if the certificate applied for would replace a temporary certificate that could be renewed.

C. Operator Certificates and Certification.

(1) The Board shall issue an operator certificate to an applicant who:

(a) Is employed or is awaiting specific employment, in the job functions defined in Regulation .05B of this chapter, at a waterworks, wastewater works, or industrial wastewater works that is regulated under Environment Article, Annotated Code of Maryland;

(b) Meets the education and experience requirements established in Regulations .04 and .16 of this chapter;

(c) Passes an appropriate examination given by the Board; and

(d) Pays a certification fee in accordance with Regulation .07 of this chapter.

(2) Experience as an operator in Maryland that was obtained in the certification class for which operator certification has been requested is fully creditable toward the experience requirements established in Regulations .04 and .16 of this chapter if the experience:

(a) Was obtained under a valid certificate from the Board; or

(b) Occurred before March 29, 1991.

(3) The following experience may be credited toward the experience requirements established in Regulations .04 and .16 of this chapter, as determined by the Board:

(a) Experience as an operator in Maryland that was obtained in a certification class other than the one for which operator certification has been requested, if the experience:

(i) Was obtained under a valid certificate from the Board, or

(ii) Occurred before March 29, 1991;

(b) Experience as an operator that was obtained in another state, in the armed forces of the United States, or at other federal facilities; or

(c) Related experience that was not as an operator.

(4) The approval of experience credit under §C(3)(b) or (c) of this regulation is based upon the following information in writing from the applicant:

(a) A description of the unit processes for which the applicant seeks experience credit;

(b) A description of the applicant's specific job duties for which the applicant seeks experience credit; and

(c) Verification from the applicant's present employer or previous employer, or both, of the information provided in §C(4)(a) and (b) of this regulation.

(5) The minimum experience requirements for operator certification for individuals whose applications for temporary or operator certification were received by the Board before the effective date of this regulation shall be:

(a) For wastewater collection class 1, 1 year or 1,800 hours, whichever occurs first;

(b) For wastewater collection class 2 and industrial class 6, 2 years or 3,600 hours, whichever occurs first;

(c) For industrial class 5, wastewater classes 4, 5, S, and A, and water class 4, 3 years or 5,400 hours, whichever occurs first; and

(d) For all other classes, the requirements set forth in Regulation .16 of this chapter.

(6) Except as provided in §C(3)(a)—(c) of this regulation, the minimum requirements for operator certification shall be as set forth in Regulations .04 and .16 of this chapter.

(7) As set forth in Tables 4, 5, and 7 of Regulation .16 of this chapter, the holder of a valid operator certificate may be authorized to operate more than one class of works or system.

D. Grandparented Certificates and Certification.

(1) The Board shall issue a grandparented certificate to any applicant who:

- (a) Meets the education and experience requirements in accordance with Regulation .04 of this chapter;
- (b) Is employed as an operator in the waterworks for a public water system:
 - (i) As defined in COMAR 26.04.01; and
 - (ii) Not covered by this chapter before February 5, 2001, as determined by the Approving Authority;
- (c) Applies for certification; and
- (d) Pays a certification fee in accordance with Regulation .07 of this chapter.

(2) A grandparented certificate shall be site-specific, and expire immediately upon termination of employment at the waterworks identified in the certificate.

(3) If the classification of the plant or distribution system changes to a higher level, the grandparented certificate is no longer valid.

(4) All grandparented certificates shall be applied for by February 5, 2003.

E. Limited Certificates. A limited certificate shall be site-specific and expire immediately upon termination of employment at the works identified in the certificate.

F. Superintendent Certificates and Certification.

(1) The Board shall issue a superintendent certificate for a specific works to an applicant who:

- (a) Has a valid operator certificate from the Board for the classification in which the applicant is employed as set out in Regulations .04 and .16 this chapter;
- (b) Meets the education requirements set out in Regulations .04 and .16 of this chapter;
- (c) Meets the experience requirements set out in Regulations .04 and .16 of this chapter and §E(2) of this regulation;
- (d) Is appointed by the employing or appointing person, county, municipality, sanitary district, or this State; and
- (e) Pays a certification fee in accordance with Regulation .07 of this chapter.

(2) The following experience may be credited toward the experience requirements for superintendent certification:

- (a) Experience gained with an operator certificate from the Board in the class of facility for which superintendent certification has been requested; and
- (b) Other experience as determined by the Board, including:
 - (i) Experience in responsible charge of a facility as defined in Regulation .01B(12) of this chapter, and
 - (ii) Other management experience acceptable to the Board.

(3) Requests for crediting of experience under §E(2)(b) of this regulation shall include:

(a) A written description of the applicant's specific job duties and responsibilities; and

(b) Written verification from the applicant's present employer or previous employer, or both, of the information provided in §E(3)(a) of this regulation.

G. Education Substituted for Experience.

(1) Education may be substituted for a portion of the experience requirements set out in Regulations .04 and .16 of this chapter.

(2) The following are eligible for education substitution:

(a) College course work in science or engineering at the rate of 30 semester credit hours of course work for a year of experience; and

(b) Other job-related courses or training as determined by the Board.

(3) The substitution of education for experience is limited as follows:

(a) Only education completed beyond the minimum educational requirements specified in Regulations .04 and .16 of this chapter may be substituted for experience;

(b) The substitution of college course work in science or engineering for experience is specified in Regulation .16 of this chapter;

(c) The substitution of education for experience may not exceed a total of 1 year; and

(d) Each request to substitute education for experience shall be supported by an official transcript sent directly to the Board from the applicant's college or university, or by other documentation acceptable to the Board.

H. Experience Substituted for Education. When applicable, experience may be substituted for the education requirements set out in Regulations .04 and .16 of this chapter. Substitution of experience for education shall be limited as follows:

(1) One year of experience may be substituted for 1 year of college;

(2) One year of experience beyond the minimum experience requirement may be substituted for education.

I. Certificate. Each certificate shall:

(1) Indicate the classification the operator, limited, or temporary certificate holder is authorized to operate as set out in Tables 4--7 of Regulation .16 this chapter;

(2) Indicate the works that the superintendent certificate holder is authorized to superintend;

(3) Indicate the certification number and the date of issuance; and

(4) Bear the seal of the Board and be signed as follows:

(a) Superintendent, operator, and limited certificates shall be signed by the chairman and the secretary of the Board;

(b) Temporary certificates shall be signed by the secretary of the Board.

.07 Payment of Fees.

A. Payment of all fees under this chapter shall be in the form of a personal check, cashier's check, or money order made payable to the "Board of Waterworks and Waste Systems Operators".

B. Payment of fees shall accompany the completed application form for examination, or certificate issuance or renewal.

C. All fees are nonrefundable.

D. Except as provided in §F of this regulation, the following fees are established by the Board for items and services provided under this chapter:

<i>Service</i>	<i>Types of Certificates</i>			
	<i>Operator</i>	<i>Temporary</i>	<i>Superintendent</i>	<i>Grandparented/ Limited</i>
Exam fee	\$75	N/A	N/A	N/A
Reciprocity	\$75	N/A	N/A	N/A
Late Renewal	\$150	\$150	\$150	\$150
Reinstatement	\$150	N/A	N/A	N/A
Replace certificate	\$25	\$25	\$25	\$25
Replace renewal card	\$15	\$15	\$15	\$15
Issue certificate	\$75	\$75	\$75	\$75
Name/address change	No charge for any name/address change			

E. The renewal fee paid by an individual shall be based upon the types and categories of certificates held by that individual, as shown below:

<i>Certification Categories</i>	<i>Types of Certificates</i>			
	<i>Operator</i>	<i>Temporary</i>	<i>Superintendent</i>	<i>Grandparented/ Limited</i>
Wastewater Water treatment	\$75	\$75	\$75	\$75
Industrial wastewater	\$75	\$75	\$75	\$75
Wastewater collection	\$75	\$75	\$75	\$75
Water distribution	\$75	\$75	\$75	\$75

F. The maximum fee for the renewal of all certificates held by an individual shall be \$150.

.08 Duration of All Certificates.

A. Except as provided in §B of this regulation, superintendent, operator, temporary, grandparented, and limited certificates are valid for 3 years from the date of issuance.

B. The initial superintendent certificate issued to an individual in any category is valid for 1 year and shall be renewed by the Board for 3 years once the certificate holder has satisfactorily completed the superintendent certification training program approved by the Board.

C. A certificate is invalid after the expiration date of the current certificate if not renewed in accordance with the requirements of Regulation .12 of this chapter.

D. A certificate holder may request to consolidate multiple certificate renewal dates if all renewal requirements for the certificates have been met. Certificates may be valid for less than 3 years in this event.

.09 Application Procedures.

A. An application to the Board for certification or examination shall be:

(1) Addressed to the secretary of the Board of Waterworks and Waste Systems Operators, 2500 Broening Highway, Baltimore, Maryland 21224;

(2) Made on forms provided by the Board;

(3) Completed fully and signed by the applicant; and

(4) Accompanied by the fee specified by Regulation .07 of this chapter.

B. In addition to satisfying the requirements of §A of this regulation, each application for certification shall be:

(1) Attested by the employing or appointing authority of the works where the applicant is employed; and

(2) Accompanied by verification that the applicant meets the education and experience requirements set forth in Regulations .04 and .16 of this chapter.

C. In addition to satisfying the requirements of §A of this regulation, each application for examination shall be postmarked, or delivered to the Board, at least 21 days before the examination for which application is made.

.10 Examination for Certification.

A. The Board shall permit an applicant to take the examination for certification only after the Board has determined that the applicant has:

(1) Any type of valid certification as set forth in Regulation .06 of this chapter; or

(2) Submitted an application to renew a temporary certificate late.

B. Scope of Examinations. Examinations shall be based on the need-to-know criteria for each specific classification determined by the Board.

C. Passing Score for Examinations. The passing score for examinations is a minimum of 70 percent.

D. Schedule and Frequency of Examinations. Examinations shall be held at least twice yearly. Exact dates, times, and locations of the examinations shall be set by the Board.

E. Notification. Each applicant approved for an examination by the Board shall be:

- (1) Notified in writing at least 14 days before the examination of the time and place of the examination; and
- (2) Required to show some form of positive identification before taking the examination.

F. If the exam is passed, a certificate may not be issued until all requirements are met as set out in Regulations .06 and .09 of this chapter.

.11 Reciprocity.

A. General. The Board may grant operator certification to out-of-State applicants without examination, if the applicant:

- (1) Submits an application that provides evidence of educational and experience qualifications which satisfies Regulations .04 and .16 of this chapter;
- (2) Possesses a valid certificate from the Association of Boards of Certification, or from another state which administers examinations that are substantially equivalent to the examinations in Maryland;
- (3) Is employed or awaiting specific employment pending certification in Maryland;
- (4) Pays an application fee as specified in Regulation .07 of this chapter; and
- (5) Upon approval of the application for reciprocity, pays a certification fee as specified by Regulation .07 of this chapter.

B. Procedure.

- (1) Operators. Applicants for operator certification by reciprocity shall submit information in writing on forms provided by the Board. The application shall be verified by the present employer in Maryland and accompanied by proof of requirements set out in Regulations .04 and .16 of this chapter.
- (2) Superintendents. Superintendent certification may not be granted by way of reciprocity. Upon certification as an operator by reciprocity, persons shall follow superintendent certification requirements set out in these regulations.

.12 Requirements for Renewal of All Certificates.

A. Except as provided in Regulation .08 of this chapter, the Board shall renew an operator, limited, grandparented, or superintendent certificate if the certificate holder:

- (1) Meets the applicable training requirements set out in Regulation .13 of this chapter;
- (2) Pays a renewal fee in accordance with Regulation .07 of this chapter; and
- (3) Submits the application for renewal and payment of the renewal fee to the Board before the current certificate expires.

B. Temporary Certificate.

(1) The Board may renew a temporary certificate if the certificate holder:

(a) Complies with §A of this regulation; and

(b) Has taken an examination for operator certification during the 3-year period which ends with the expiration date of the certificate.

(2) The examination taken under §B(1)(b) of this regulation shall have been for the classification of works for which renewal has been requested.

C. Late Renewal Procedures.

(1) Holders of expired operator, limited, grandparented, or superintendent certificates shall:

(a) Meet the requirements of §A(1) of this regulation;

(b) Pay the renewal fee and a late renewal fee to the Board in accordance with Regulation .07 of this chapter not later than 90 days after the expiration date of the certificate; and

(c) Submit to the Board a completed application and the fees due.

(2) Holders of expired temporary certificates shall submit a completed application to the Board which includes:

(a) The renewal fee and the late renewal fee in accordance with Regulation .07 of this chapter; and

(b) Verification that since the certificate was issued or last renewed, the applicant has:

(i) Taken the Board-approved examination for the same certification class that is being renewed; and

(ii) Met the applicable training requirements set out in Regulation .13 of this chapter.

(3) Those who fail to comply with §C(1) of this regulation may:

(a) Apply to the Board for reinstatement in accordance with §D of this regulation; or

(b) Comply with Regulations .09 and .10 of this chapter.

D. Reinstatement.

(1) Limitations.

(a) A request for reinstatement shall be submitted to the Board within 2 years after the expiration date of the operator certificate that is to be reinstated.

(b) Temporary, limited, grandparented, and superintendent certificates may not be reinstated.

(c) The Board may not grant a request for reinstatement that is received after the 2-year period following the expiration of the operator certificate. The operator shall apply for a temporary certificate, and complete the requirements for operator certification in accordance with Regulation .06C of this chapter.

(2) To qualify for reinstatement of an expired operator certificate, an individual shall:

(a) Submit a written request for reinstatement on a form provided by the Board;

(b) Provide evidence that the individual has satisfied the training requirements in Regulation .13 of this chapter for the last renewal period covered by the expired certificate, and has completed additional training in accordance with §D(3) of this regulation; and

(c) Pay a reinstatement fee in accordance with Regulation .07 of this chapter.

(3) The additional training that must be completed before submitting a request for reinstatement shall be:

(a) For reinstatement up to 1 year following the expiration date of the operator certificate, 1/3 of the training units specified by Table 8 in Regulation .16 of this chapter for the class of operator certificate that is to be reinstated;

(b) For reinstatement from 1 to 2 years following the expiration date of the operator's certificate, 2/3 of the training units specified by Table 8 in Regulation .16 of this chapter for the class of operator certificate that is to be reinstated.

.13 Training.

A. Training Requirements for Certification Renewal. In order to be eligible for certification renewal, operators and superintendents shall demonstrate completion of the training requirements set out in Table 8 of Regulation .16 of this chapter.

B. Except as provided in §C of this regulation, training used to renew a certificate under Regulation .12 of this chapter shall be completed during the 3-year period that precedes the expiration date of the certificate.

C. Training used to renew a certificate late may be taken either during the 3-year period that preceded the expiration date of the certificate or during the late renewal period.

D. Training Approval. The Board, in conjunction with the Department, will approve courses for purposes of satisfying the training requirements in §A, based on the following factors:

- (1) Course objectives;
- (2) Course outline;
- (3) Training material;
- (4) Instructor credentials; and
- (5) Student evaluation methods and criteria.

E. Type of Training. Any of the following types of training may be approved:

- (1) Academic courses;
- (2) On-the-job training;
- (3) Home-study courses;
- (4) Laboratory practice;
- (5) Technical part of operator or superintendent meetings; and
- (6) Providing instructions.

F. Assignment of Units for Approved Training.

(1) The Board in conjunction with the Department will assign training units to approved training courses on the following basis:

- (a) Training with successfully completed final examination—1.5 units for each hour of instruction;
- (b) All other training—1 unit for each hour of instruction.

(2) Instructors shall earn units at the rate of 1.5 times for each hour of instruction given.

G. Training Used for Certification Renewal.

(1) Training that is to be used to satisfy the requirements for certificate renewal must have been approved by the Board for the class of certificate that is to be renewed.

(2) A certificate holder may not use the units from an approved training course more than once per renewal period to satisfy the requirements for certification renewal.

(3) If the Board has approved a training course for both operators and superintendents, a certificate holder may apply the units from that course toward the renewal of either an operator or a superintendent certificate renewal, but not both.

(4) Process related training means a class or training event where at least 50 percent of the material presented concerns the processes listed in Tables 1, 2, and 3 of Regulation .16 of this chapter.

H. The Board may direct operators or superintendents to participate in specific training as determined necessary.

.14 Reconsideration.

A. If the Board denies an application to issue or renew a certificate, for reasons other than those set forth in Regulation .15A of this chapter, the Board shall notify the applicant, in writing, of:

- (1) The reason, or reasons, for the denial; and
- (2) The applicant's right to request reconsideration.

B. An applicant may request reconsideration of a denied application by:

- (1) Submitting new or additional information to the Board; or
- (2) Requesting an informal meeting with the Board.

C. Requests for reconsideration under §B of this regulation shall be based upon one or more of the following grounds:

- (1) Clerical errors in the minutes, decisions, or other parts of the record related to the denial;
- (2) Mistake of fact or law by the Board; or

(3) Newly discovered or additional evidence that the applicant could not have discovered by due diligence in time to be considered as part of the initial denial.

D. Requests for reconsideration shall be submitted to the Board in writing by certified mail within 30 days of receipt of the denial under §A of this regulation.

.15 Denials, Reprimands, Suspensions, and Revocations.

A. Grounds for Board Action.

(1) Denials. Subject to the hearing provisions of § B of this regulation, the Board may deny certification, limited certification, or temporary certification to any applicant if the applicant fraudulently or deceptively:

(a) Obtains or attempts to obtain a certificate, limited certificate, or temporary certificate for the applicant or for another person; or

(b) Uses a certificate, limited certificate, or temporary certificate.

(2) Reprimands, Suspensions, and Revocations. Subject to the hearing provisions of § B of this regulation, the Board may reprimand any certificate holder, or suspend or revoke a certification for either of the following:

(a) If the certificate holder fraudulently or deceptively:

(i) Obtains or attempts to obtain a certificate, limited certificate, or temporary certificate for the applicant or for another.

(ii) Uses a certificate, limited certificate, or temporary certificate; (b) Other reasonable cause,

such as:

(i) Professional incompetency, (ii) Falsification of records,

(iii) Failure to submit required self-monitoring documents, (iv) Negligence in operation and maintenance of the works.

B. Right to a Hearing.

(1) Before the Board revokes or suspends a certificate or reprimands a certificate holder, it shall:

(a) Notify the certificate holder in writing by certified mail to his last known address that it is considering action for reasons stated in the notice;

(b) Request the certificate holder to appear at a hearing of the Board of Waterworks and Waste Systems Operators at a designated time and place to show cause why the certificate should not be revoked or suspended or the certificate holder reprimanded.

(2) The form of the notice and the hearing shall conform to the provisions of the Administrative Procedure Act, State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

C. Ex Parte Hearing. If, after due notice, the individual against whom the action is contemplated fails or refuses to appear, the Board, nevertheless, may hear and determine the matter.

D. Effect of Adverse Finding by the Board.

(1) If, after the hearing by the Board, the certificate is revoked or suspended, the certificate holder shall:

(a) Cease his or her activities as a certified operator or superintendent; and

(b) Return the certificate to the Board.

(2) Until the notice of revocation or suspension is delivered to the last known address of the certificate holder, the certificate remains valid.

(3) Voluntary surrender by the certificate holder of his certificate will constitute a waiver of the hearing before the Board.

(4) Suspensions of certificates may not exceed 1 year or suspensions shall terminate when the certificate holder complies with all conditions stipulated by the Board at the time of suspension, whichever is later.

(5) After the expiration of 1 year following revocation of a certificate, the person previously holding the certificate may apply for a new certificate subject to a new examination and review by the Board.

E. Judicial Review.

(1) A person aggrieved by a final decision of the Board under § D may take a direct judicial appeal.

(2) The appeal shall be made as provided for judicial review of final decisions in the Administrative Procedure Act.

.16 Tables.

**Table 1
CLASSIFICATION OF INDUSTRIAL WASTEWATER WORKS**

<i>Class of Plants</i>	<i>Type of Treatment Systems</i>	<i>Typical Processes Included in the System</i>
1	Basic Treatment	Petroleum base oil separators, liquid cooling, and pH control.
2	Physical Treatment	Sedimentation, screening, pH control, solids removal.
3	Land Treatment	Primary treatment, sedimentation, solids removal, pumping and land treatment.
4	Biological Lagoons	Aerobic or anaerobic waste stabilization lagoons, disinfection, and chemical addition.
5	Activated Sludge	Primary treatment, sedimentation, activated sludge, and sludge handling.
6	Physical Chemical Treatment	Reduction of chemical and toxic substances including but not limited to cyanide and chromium, acid-alkali neutralization, coagulation, and flocculation.
7	Site Specific	Plants not covered under the first six types of treatment yet covered under these regulations.

**Table 2
CLASSIFICATION OF WASTEWATER TREATMENT PLANTS**

<i>Class of Plants</i>	<i>Types of Treatment Systems</i>	<i>Typical Processes Included in the System</i>
1	Lagoons	Aerated or nonaerated lagoons, filtration, disinfection, and land or wetland treatment.
2	Physical/Biological	Primary treatment, sand filter, land or wetland treatment, and disinfection.
3	Package Activated Sludge Plants	Screening, activated sludge, sedimentation, filtration, disinfection, chemical addition, sludge handling, pumping and land or wetland treatment.
4	Trickling Filters Rotating Biological Contractors (RBC)	Preliminary treatment, primary treatment, sedimentation, activated sludge, oxidation ditches, filtration, chemical addition, disinfection, sludge handling, and pumping.
5	Activated Sludge	Preliminary treatment, primary treatment, sedimentation, activated sludge, oxidation ditches, filtration, chemical addition, disinfection, sludge handling, and pumping.
6	Site Specific	Other alternative technology systems not covered under this classification system.
S*	Solids Handling	Chemical conditioning, sludge thickening, sludge digestion, thermal treatment, chlorine treatment, filtration, dewatering, composting, land application.
A**	Advanced Wastewater Treatment	Filtration, activated carbon adsorption, nitrification, denitrification, phosphorus removal, ammonia stripping, chemical feeding and conditioning, coagulation and flocculation.

*Class S will only be required when the specific works is limited to solids handling.

**Class A is used in conjunction with other classes.

**Table 3
CLASSIFICATION OF WATER TREATMENT PLANTS**

<i>Class of Plants</i>	<i>Type of Treatment Systems</i>	<i>Typical Processes Included in the System</i>
1	Disinfection	Chlorination.
2	Chemical Treatment	Chlorination, pH control, and fluoridation.
3	Simple Iron Removal	Chlorination, pH control, fluoridation, filtration, and iron removal utilizing ion exchange or contact oxidation processes.
4	Complete Treatment	Chlorination, pH control, fluoridation, aeration, coagulation, sedimentation, filtration, and complex iron removal.
5	Site Specific	Site specific - any alternative technology plant not covered under the classification system.
G	No chemical treatment	Well, storage tanks, UV disinfection

**Table 4
INDUSTRIAL WASTEWATER WORKS**

A	B	C	D				E			
			Operators				Superintendents			
Class of Plants	Class of Operators and Superintendents	Authorized to Operate or Supervise Plants (Class)	1 Education Requirements	2 Maximum Education Substitution	3 Experience Requirements	4 Maximum Experience Substitution	1 Education Requirements	2 Maximum Education Substitution	3 Experience Requirements	4 Maximum Experience Substitution
1	1	1	Completion of High School OR High School School Equivalency	NONE	250 hours or 6 months ¹	NONE	Completion of High School	NONE	NONE	NONE
2	2	2					OR High School Equivalency			
3	3	2 and 3								
4	4	2 and 4			500 hours or 1 year ¹	1800 hours or 1 year ³	2 years college ⁴ 1 year college ⁴	2 years ⁵ 1 year ⁵	3600 hours or 2 years ⁶ 1800 hours or 1 year ⁶	1800 hours or 1 year ³
5	5	1,2,3,4, and 5			5400 hours or 3 years ⁷					
6	6	1,2, and 6			3600 hours or 2 years ⁷					
7	7	7								
AS DETERMINED BY THE BOARD										

Notes:

- 1 Whichever is longer, years of experience is based on 1 hour/day operation.
- 2 Whichever is longer, years of experience is based on 2 hours/day operation.
- 3 One year of college course work in science or engineering leading toward a degree, for 1 year experience.
- 4 In science, engineering, or management leading toward a degree.
- 5 One year experience for 1 year college.
- 6 Experience obtained as provided in Regulation .06E of this chapter.
- 7 Whichever is longer (for applications received by the Board before the effective date of these regulations, see Regulation .06 of this chapter).

**Table 5
WASTEWATER TREATMENT PLANTS**

A	B	C	D Operators				E Superintendents								
			1	2	3	4	1	2	3	4					
Class of Plants	Class of Operators	Authorized to Operate or Supervise Plants (Class)	Education Requirements	Maximum Education Substitution	Experience Requirements	Maximum Experience Substitution	Education Requirements	Maximum Education Substitution	Experience Requirements	Maximum Experience Substitution					
1	1	1	Completion of High School OR High School Equivalency	NONE	500 hours or 1 year ¹	NONE	Completion of High School OR High School Equivalency	NONE	NONE	NONE					
2	2	1 and 2			1800 hours or 2 years ²	1800 hours or 1 year ²					2 years college ⁴	2 years ⁵	3600 hours or 2 years ⁶	1800 hours or 1 year ³	
3	3	1,2, and 3					5400 hours or 3 years ⁹	AS DETERMINED BY THE BOARD	AS DETERMINED BY THE BOARD	AS DETERMINED BY THE BOARD					AS DETERMINED BY THE BOARD
4	4	1,2, and 4			Completion of High School OR High School Equivalency	NONE					5400 hours or 3 years ⁹	1800 hours or 1 year ³	2 years college ⁴	2 years ⁵	
5	5	1,2,3, and 5					S ⁷	S ⁷	S ⁷	OR High School Equivalency					NONE
6	6	6			A ⁸	A ⁸					A ⁸	Completion of High School OR High School Equivalency	NONE	5400 hours or 3 years ⁹	

Notes:

- 1 Whichever is longer, years of experience is based on 2 hours/day operation.
- 2 Whichever is longer, years of experience is based on 3.5 hours/day operation.
- 3 One year of college course work in science or engineering leading toward a degree, for 1 year experience.
- 4 In science, engineering, or management leading toward a degree.
- 5 One year experience for 1 year college.
- 6 Experience obtained as provided in Regulation .06E of this chapter.
- 7 Is limited to solids handling.
- 8 Class A is used in conjunction with other classes.
- 9 Whichever is longer (for applications received by the Board before the effective date of these regulations, see Regulation .06 of this chapter).

**Table 6
WASTEWATER COLLECTION SYSTEMS**

A	B	C	D Operators				E Superintendents			
			1	2	3	4	1	2	3	4
Class of Plants	Class of Operators and Superintendents	Authorized to Operate or Supervise Plants (Class)	Education Requirements	Maximum Education Substitution	Experience Requirements	Maximum Experience Substitution	Education Requirements	Maximum Education Substitution	Experience Requirements	Maximum Experience Substitution
1	1	1	Completion of High School OR High School Equivalency	NONE	1800 hours or 1 year ³	NONE	Completion of High School OR High School Equivalency	NONE	NONE	NONE
2	2	2			3600 hours or 2 years ³	1800 hours or 1 year ¹				

Notes:

- 1 One year of college course work in science or engineering leading toward a degree, for 1 year experience.
- 2 Experience obtained as provided in Regulation .06E of this chapter.

3 Whichever is longer (for application received by the Board before the effective date of these regulations, see Regulation .06 of this chapter).

**Table 7
WATER TREATMENT PLANTS**

A	B	C	D Operators				E Superintendents				
			1 Education Requirements	2 Maximum Education Substitution	3 Experience Requirements	4 Maximum Experience Substitution	1 Education Requirements	2 Maximum Education Substitution	3 Experience Requirements	4 Maximum Experience Substitution	
1	1	1	Completion of High School OR High School Equivalency	NONE	500 hours or 1 year ¹	NONE	Completion of High School OR High School Equivalency	NONE	NONE	900 hours or 1 year ^{1,6}	NONE
2	2	1 and 2							500 hours or 1 year ^{1,6}		
3	3	1, 2, and 3			1800 hours or 2 years ²	900 hours or 1 year ^{2,3}	1 year college ⁴	1 year ⁵	900 hours or 1 year ^{2,6}	900 hours or 1 year ³	
4	4	1, 2, 3, and 4			5400 hours or 3 years ⁷	1800 hours or 1 year ³	2 years college ⁴	2 years ⁵	3600 hours or 2 years ⁶	1800 hours or 1 year ³	
5	5	5			AS DETERMINED BY THE BOARD						

Notes:

- 1 Whichever is longer, years of experience is based on 2 hours/day operation.
- 2 Whichever is longer, years of experience is based on a 3.5 hours/day operation.
- 3 One year of college course work in science or engineering leading toward a degree, for 1 year of experience.
- 4 In science, engineering, or management leading toward a degree.
- 5 One year experience for 1 year college.
- 6 Experience obtained as provided in Regulation .06E of this chapter.
- 7 Whichever is longer (for applications received by the Board before the effective date of these regulations, see Regulation .06 of this chapter).

**Table 8
TRAINING REQUIREMENTS FOR OPERATORS AND SUPERINTENDENTS
CERTIFICATE RENEWAL FOR 3-YEAR RENEWAL PERIOD**

Class	INDUSTRIAL WASTEWATER WORKS			WASTEWATER TREATMENT PLANTS			WASTEWATER COLLECTION SYSTEMS			WATER TREATMENT PLANTS			WATER DISTRIBUTION SYSTEMS		
	Operators (4)	Super- intendents (3)	Limited and Temporary (4)	Operators (4)	Super- intendents (3)	Limited and Temporary (4)	Operators (4)	Super- intendents (3)	Limited and Temporary (4)	Operators (4)	Super- intendents (3)	Limited, Grandparented, and Temporary (4)	Operators (4)	Super- intendents (3)	Limited, Grandparented, and Temporary (4)
	UNITS ⁽²⁾			UNITS ⁽²⁾			UNITS ⁽²⁾			UNITS ⁽²⁾			UNITS ⁽²⁾		
1	0	0	0	16	7	24	16	7	24	16	7	24	16	7	24
2	0	0	0	16	7	24	16	7	24	16	7	24			
3	16	7	24	30	7	45				30	7	45			
4	16	7	24	30	7	45				30	7	45			
5	30	7	45	30	7	45				(1)					
6	16	7	24	(1)		(1)									
8	(1)		(1)												
S															
A				16	7	24									
G				16		24				7	7	16			

Notes:

- 1 For site-specific operator classifications, training units to be determined by the Board on a case-by-case basis.
- 2 For operators that hold multiple certificates, units of training may be applied to multiple classifications if the training is approved as defined in Regulation .13.
- 3 For superintendents, training units approved by the Board for superintendents are required in addition to their operator's training.
- 4 Effective January 1, 2006, for all operator categories, except WD, C1 and C2, a minimum of 50 percent of the training units submitted for issuance or renewal of a certificate shall be process related.

Workers' Compensation Act

§ 1-401. Compliance with Workers' Compensation Act

Before a license or permit may be issued under this article to an employer to engage in an activity in which the employer may employ a covered employee, as defined in § [9-101 of the Labor and Employment](#) Article, the employer shall file with the issuing authority:

- (1) A certificate of compliance with the Maryland Workers' Compensation Act; or
- (2) The number of a workers' compensation insurance policy or binder.

[1975, ch. 657, § 18; 1991, ch. 21, § 3.]

§ 1-404. Secretary's duties, powers, and functions; units to report to Secretary; interference with Secretary's or his agent's right to entry; penalty.

(a) *Budget.*- The Secretary is responsible for the budget of the office of the Secretary and for the budget of each unit in the Department.

(b) *Rules and regulations.*-

(1) The Secretary may adopt rules and regulations to carry out the provisions of law that are within the jurisdiction of the Secretary.

(2) The Secretary shall review and may revise the rules and regulations of:

(i) Each unit in the Department that is authorized by law to adopt rules and regulations; and

(ii) The Department.

(c) *Advisory board.*- The Secretary may create an advisory board for the Department. The Secretary shall determine the size of the advisory board. The members shall be representative of the different professional areas or fields of endeavor with which the Department is concerned.

(d) *Advisory councils.*- The Secretary may create any advisory council that the Secretary considers necessary and assign appropriate functions to it.

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(1) The Secretary is responsible for the coordination and direction of all planning that the office of the Secretary initiates.

(2) The Secretary shall keep fully apprised of plans, proposals, and projects of each unit in the Department and, except as expressly provided otherwise, may approve, disapprove, or modify any of them.

(f) *Units to report to Secretary.*- Each unit in the Department shall report to the Secretary as provided in the rules, regulations, or written directives that the Secretary adopts.

(g) *Transfer of functions, staff, or funds.*- Except as expressly provided otherwise, the Secretary may transfer, by rule, regulation, or written directive, any function, staff, or funds from any unit in the Department to the office of the Secretary or another unit in the Department. Any staff transferred to the office of the Secretary shall be provided space, equipment, and services by the unit from which it was transferred, unless the Secretary orders removal to another location for the proper and efficient functioning of that office.

(h) *Grants-in-aid.*- The Secretary may apply for, receive, and spend grants-in-aid by the federal government or any of its agencies or any other federal funds made available to the Department for use in carrying out the powers and duties of the Secretary or the Department.

(i) *Payment of moneys collected into General Fund.*- Except as otherwise provided by law, the Secretary shall pay all money collected by the Department under this article into the General Fund of

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(j) *Subpoena power; administration of oaths and taking of depositions or testimony.-*

(1) The Secretary or a designee of the Secretary may subpoena any person or evidence, administer oaths, and take depositions and other testimony.

(2) If a person fails to comply with a lawful order or subpoena issued under this subsection, on petition of the Secretary or designee, a court of competent jurisdiction may compel obedience to the order or subpoena or compel testimony or the production of evidence.

(3) A witness who is subpoenaed at the request of the Secretary or designee is entitled to receive the same fees and mileage provided for by law in civil cases. However, a witness who is subpoenaed at the request of any other party is not entitled to fees or mileage, unless the Secretary or designee certifies that the testimony was material to the matter investigated. The fee and mileage paid under this subsection shall be audited and paid by this State in the same way other expenses are audited and paid and shall be charged to the general appropriation for the Department.

(k) *Right of entry to places of business or public premises; interference prohibited; penalty.-*

(1) The Secretary or any agent or employee of the Secretary may enter, at any reasonable hour, a place of business or public premises if the entry is necessary to carry out a duty under this article.

(2) A person may not deny or interfere with an entry under this subsection.

(3) A person who violates any provision of this subsection is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$100.

(l) *Secretary to carry out and enforce provisions of article.-* The Secretary shall carry out and enforce the provisions of this article, the rules and regulations of the Department, and any other provisions of law that relate to the Secretary or the Department.

[1987,
ch. 306,
§ 3.]

§ 1-405. Investigations; information about certain cancers; release of information.

(a) *Investigations.*- The Secretary shall investigate:

(1) The influence of locality, employment, habit, and other conditions on health; and

(2) The causes of diseases and mortality to the extent that they may relate to environmental factors.

(b) *Information about certain cancers.*- The Secretary may adopt procedures to obtain information about cancers that are caused by environmental carcinogens and toxic substances and about the incidence of these diseases.

[1987, ch. 306, § 3; 1989, ch. 26; 1991, ch. 469, § 1.]

TITLE 9 - WATER, ICE, AND SANITARY FACILITIES
Subtitle 3 - Water Pollution Control

§ 9-326. Conditions on discharge permits.

(a) *Conditions imposed by Department.-*

(1) The Department may make the issuance of a discharge permit contingent on any conditions the Department considers necessary to prevent violation of this subtitle.

(2) In permits for the discharge of pollutants from publicly owned treatment works, the Department:

(i) May impose as conditions appropriate measures to establish and insure compliance by industrial users with any system of user charges required by State or federal law or by any rule, regulation, or guideline adopted under State or federal law; and

(ii) Shall impose as conditions requirements for the permit holder to provide information about new introductions of pollutants or substantial changes in the volume or character of pollutants being introduced into the treatment works.

(b) *Grant of right of entry.-* Issuance of a discharge permit is contingent on the grant by the permit holder to the Department of a right of entry on the permit site at any reasonable time to inspect and investigate for violation or potential violation of any condition of the permit.

[NR § 8-1413; 1982,
ch. 240, § 2.]

§ 9-327. Refusal of permit.

The Department may refuse to issue a discharge permit if:

(1) The applicant fails or refuses to allow any representative of the Department to inspect the proposed permit site;

(2) The Department finds that issuance of the permit would violate any State or federal law or any rule or regulation adopted under any State or federal law; or

(3) The applicant fails or refuses to pay the permit fee assessed under § 9-325 (c) of this subtitle.

[NR § 8-1413; 1982, ch. 240, § 2; 1984, ch. 798.]

§ 9-219. Appropriation of federal or other funds for sewerage systems, collector lines, or facilities in Patuxent River Watershed.

(a) *Application of section.*- This section does not apply if the State would lose or be denied any federal assistance or other funds because of its application.

(b) *Required use of federal or other funds.*-

(1) If federal grants, loans, or other funds are available for sewerage systems in the Patuxent River Watershed area, the Department shall use them to upgrade and floodproof existing sewerage systems, collector lines, or facilities in the area to meet standards currently in effect under this subtitle.

(2) If available funds can be used to upgrade and floodproof any existing sewerage systems, collector lines, or facilities in the Patuxent River Watershed area, the Department may not use the funds to construct any new sewerage system, collector line, or facility in the area.

(c) *Permitted appropriations.*- Notwithstanding subsection (b) of this section, the Department may use available funds to construct a new sewerage system, collector line, or facility that does not discharge into a river, including a new sewerage system that incorporates land disposal of treated sewage effluent.

[HE § 9-211; 1987,
ch. 612, § 2.]

§ 9-220. Order by Secretary if water supply system, sewerage system, or refuse disposal system is inefficient; action by Secretary if results are not produced.

(a) *Order by Secretary - In general.*- The Secretary shall order the owner or person in charge of a water supply system, sewerage system, or refuse disposal system to correct the following improper conditions, if, after investigation, the Secretary determines that, because of incompetent supervision or inefficient operation, the water supply system, sewerage system,

or refuse disposal system:

(1) Is not producing reasonable results from a sanitary

viewpoint; (2) Is a menace to health or comfort; or

(3) Is causing a nuisance.

(b) *Order by Secretary - Results required in specified time.*- The order shall require that the water supply system, sewerage system, or refuse disposal system produce specific, reasonable results within a time that the Secretary sets.

(c) *Action by Secretary if results are not produced.*-

(1) If the water supply system, sewerage system, or refuse disposal system does not produce the required results within the time that the Secretary sets, the Secretary may order the owner or person in charge to appoint, within a time that the Secretary sets, a person approved by the Secretary to take charge of and operate the system in a manner that will secure the results demanded by the Secretary.

(2) The person who is served with an order under paragraph (1) of this subsection shall pay the salary of the person who is appointed in compliance with the order.

[HE § 9-207; 1987,
ch. 612, § 2.]

§ 9-221. Order to alter, extend, or install water supply system, sewerage system, or refuse disposal system; powers of health officer.

(a) *Order by Department - In general.*- If, after investigation, the Department determines that any water supply system, sewerage system, or refuse disposal system is a menace to health or comfort or is causing a nuisance, and that conditions cannot be improved sufficiently only by changing the method of operation, the Department may order the owner:

(1) To alter or extend the water supply system, sewerage system, or refuse disposal system; or

(2) To install a new water supply system, sewerage system, or refuse disposal system.

(b) *Order by Department - Stating date to complete work.*- An order under subsection (a) of this section shall state a reasonable date for completion of the work.

(c) *Powers of health officer as to refuse disposal systems.*- The Secretary may authorize a health officer:

(1) To investigate refuse disposal systems; and

(2) To enforce any regulation of the Department concerning refuse disposal systems.

[HE § 9-208; 1987, ch. 612, § 2.]

§ 9-222. Secretary may order installation of public water supply system, public sewerage system, or refuse disposal system.

(a) *Findings by Secretary that justify order.*- The Secretary may issue an order under subsection (b) of this section, if, after investigation, the Secretary determines that the absence or incompleteness of a public water supply system, public sewerage system, or refuse disposal system in a county, municipal corporation, sanitary district, subdivision, or locality:

(1) Is sufficiently prejudicial to the health or comfort of that or any other county, municipal corporation, sanitary district, subdivision, or locality; or

(2) Causes a condition by which any of the waters of this State are being polluted or could become polluted in a way that is dangerous to health or is a nuisance.

(b) *Contents of order.*- An order under this section may require:

(1) The installation, alteration, extension, utilization, operation, or the completion of a public water supply system, public sewerage system, or refuse disposal system in a county, municipal corporation, sanitary district, subdivision, or locality within a time that the Secretary sets; or

(2) The installation of any device, the establishment of any method, or the enforcement of any measure or regulation that the Secretary considers proper under the circumstances.

[HE § 9-209; 1987, ch. 612, § 2; 1988, ch. 412.]

Superintendent and Operator Liability Case Studies

Scenario #1 (Sara)

In February of 2006, Sara does not have time to fill out and submit a daily monitoring report for four days. Three of these four days were Fridays when she had to get home to prepare dinner for house guests and take the children to the sitter's. On the Mondays following those three Fridays, without checking whether lab tests were done, she filled out the DMR for the prior Friday based on her past experience.

AS A GROUP, DISCUSS THIS SCENARIO AND RESPOND TO THE FOLLOWING QUESTIONS:

- a) Are there any Civil or Criminal violations in this scenario?
- b) If so, would this be taken up with MDE/BOWW Administratively or Judicially by the Circuit Court?
- c) Which laws are applicable to this scenario - Federal, State or both?
- d) Which laws are applicable to this scenario - Statutory, Common or both?

Superintendent and Operator Liability Case Studies

Scenario #2 (Jim)

In May of 2006, Jim did not monitor for BOD5 or Total Suspended Solids for two weeks out of five. On three days during May, Jim did not record calibrations of the DO meter and two other measuring devices. On four occasions in May there were exceedances of the fecal coliform effluent standard and the dissolved oxygen standard. Jim reported each of these to MDE within twenty four hours.

AS A GROUP, DISCUSS THIS SCENARIO AND RESPOND TO THE FOLLOWING QUESTIONS:

- a) Are there any Civil or Criminal violations in this scenario?
- b) If so, would this be taken up with MDE/BOWW Administratively or Judicially by the Circuit Court?
- c) Which laws are applicable to this scenario - Federal, State or both?
- d) Which laws are applicable to this scenario - Statutory, Common or both?

Superintendent and Operator Liability Case Studies

Scenario #3 (Ponds)

Pat worked as an operator at a federal facility and in the evenings and on weekends he worked as a superintendent at a small package plant at a privately owned motel. One Thursday morning in August of 2006, Pat was in a hurry to get over to his federal job. At the motel he took a grab sample when he was supposed to take a composite sample. The next day on the DMR, Pat put down the results for a composite sample. That Sunday night Pat wanted to get home from the motel to watch an Orioles game after working at the motel. Pat wrote down on the DMR that a fecal coliform analysis had been done and used the results from an analysis he had done earlier that month, since it was similar conditions at the plant. Pat watched the Orioles beat the Philly's 6-4 that night.

AS A GROUP, DISCUSS THIS SCENARIO AND RESPOND TO THE FOLLOWING QUESTIONS:

- a) Are there any Civil or Criminal violations in this scenario?
- b) If so, would this be taken up with MDE/BOWW Administratively or Judicially by the Circuit Court?
- c) Which laws are applicable to this scenario - Federal, State or both?
- d) Which laws are applicable to this scenario - Statutory, Common or both?

Hypothetical A

Buck Jones, a long time employee of CG&E, is an operator of an open holding pit, which is used infrequently for discharges from a CG&E generator plant in Oystertown, Maryland in St. Lucy's County. The permit contains effluent limits, which are ordinary and customary for a generator plant of its size with 100,000 gpd.

CG&E, desiring to be a corporate citizen, informs the Maryland Department of the Environment of the following facts and inferences:

Buck Jones is responsible for filling out and signing daily and monthly monitoring reports for the permit. Buck hates to conduct analyses and measurements or to fill out forms. In the Spring of 2005 Buck decided to use a plant sump-pump and connected it to an industrial brand hose. Buck diverted the intermittent flow from the holding pit through the sump pump and industrial hose to a storm drain on the southwest corner of the CG&E property. The storm drain runs about one quarter mile downgradient to a point where it discharges into the Potomac River, just about a mile north of its confluence with the Chesapeake Bay.

Each fall, Buck disconnects the sump pump and the hose, so that the miniscule flows (400-600 gpd) in the winter are discharged from the permitted discharge point. Each spring he reconnects the sump pump and the hose. Buck Jones submitted daily and monthly monitoring reports which showed no discharges (or exceedances, of course) in the winter. In the summer when demand on the plant for electricity was highest, Buck's reports generally showed discharges within permit limits, but occasionally (every 5-6 weeks) indicated minor exceedances due to hot water, coal tar, and acids.

CG&E informed MDE's Water Management Administration that it had reason to believe that one of its employees who held an operator's certificate from the Maryland Board of Waterworks was reporting data without conducting proper tests. For the last three summers, CG&E has received several complaints from neighbors downstream along the Potomac and the Bay about sightings of dozens of dying fish and chemical-like odors, since it is the largest industrial discharger in the area. It is September 2008.

A) You are a division chief for enforcement in the Water Management Administration. The Vice President for Compliance at CG&E has turned over its files on Buck Jones, the monitoring records, and the neighbors' complaints to you.

- What enforcement issues, if any, are presented by these facts?
- Is there a public health or pollution issue here?
- What, if any, further investigation would you conduct?

B) You are an assistant attorney general assigned to the Water Management Administration. The WMA division chief for enforcement wants your guidance on the probable legal issues raised.

- How would you advise him?

Hypothetical B

OFFICERS/DIRECTORS of Hagerstown Rustproofing

This is a 25 year old locally-owned company. In 1994, it purchased for \$50,000 pollution control equipment which pre-treats the wastewater by removing the heaviest concentrations as well as diluting the cyanide from the electro-plating process.

Recently, the equipment has begun to malfunction. The employees have reported this to management. State of the art technology has improved the pollution control effectiveness for electroplating by 35%.

The discharge from Hagerstown Rustproofing has risen above the permit limit of 5.0 ppm four times during May 2004 due to malfunction of the control equipment.

The company has no previous permit violations known to MDE. During the peak demand periods for electroplating, its pre-treatment effort has not been adequate.

The Hagerstown Sanitary Commission has added appropriate chemicals and tertiary treatment to bring the effluent from the rustproofing plant within permit limitations. Once or twice, it has sent an advisory warning notice letter to Hagerstown Rustproofing to control its discharges.

When the pollution control equipment broke down on June 4, 2004, the company could not afford the \$20,000 repair, but attempted several quick-fixes. The vice president was advised by the shop foreman of the alteration of the monitoring devices as a response to the equipment breakdown. By late June, this was repaired so that accurate readings could be made.

For the next thirty days following the June 4 breakdown, the company exceeded the pre-treatment standard for cyanide on 11 separate days.

You call a meeting of the Board and officers with counsel to discuss what to do with MDE and the Sanitary Commission and how to deal with controlling the pollution and its financial impact on the company balance sheet.

SHOP FOREMAN/MACHINE OPERATORS of Hagerstown Rustproofing

On June 4, 2004, the pollution control equipment at Hagerstown Rustproofing broke. Cyanide levels rose to 14.0 ppm while the permit level was 5.0. The shop foreman and the machine operators altered the two green weir boxes which monitor the flow from the rustproofing plant into the wastewater system.

They also telephoned the vice president of the company to let him know about the breakdown. The officers advised them to call local chemists and machine repair shops to keep the pollution control equipment as functional as practical, but not to spend more than \$6,000 on it. The officers also advised them in mid-June to quickly repair the monitoring devices.

The shop foreman and machine operator were so busy taking care of the marginal repairs to the pollution control equipment that they did not repair the monitoring devices until early July.

Both are full-time employees with pension rights and employment rights in the event of suspension or termination.

Hypothetical C

Cast of Characters

Roy – Director of Water and Wastewater

Bob – Superintendent of Water and Wastewater

Joe – Licensed Operator for Water, authority to sign DMRs

Sam – Licensed Operator for Wastewater, authority to sign MORs

Bill – City Manager, works for Mayor, accountable to Mayor and City Council

The Situation

Roy is the Director of Water and Wastewater Works for the Town of Chester on the Eastern Shore. The water supply is from Lake Easton. Since the plant was built sixty years ago, he has been able to comply due to excellent raw water quality. During the last few summers, there is an increased amount of blue-green and synural algae in the lake and raw water. There is a lot of farm runoff into the lake. The State of Maryland has not been developing or enforcing non-point source pollution controls. The increased algal counts contribute to the filter fouling and increase the frequency of filter backwashing. The facility's contact basins are grossly undersized, causing your plant to function as a direct filtration plant instead of the designed declining rate.

During the mid-1990s Roy had to obtain an NPDES permit for the discharge of pollutants from the backwash water. The permit had limits for alum, suspended solids, and chlorine. He has had to use increasing amounts of alum to comply with turbidity requirements of the Safe Drinking Water Act. During the last two budget cycles, Roy submitted budgets to the City Manager Bill and to the City Council requesting

design and construction money for a permanent wastewater treatment facility (WTF) with dissolved air flotation units to handle the solids removal from the backwash. From Roy's limited engineering budget, he estimated that the WTF would take one year to design and two years to build, and cost \$2.8 million.

The City Manager and the City Council are reluctant to issue a bond or to raise taxes for this because there does not seem to be an urgent problem. Bill, the City Manger, told you to do what you can on purchasing additional chemicals, but not to rock the boat by pushing for large amounts of money. An audit review by Sally, the MDE inspector, about two years ago commented on the growing problem of algal bloom and non-point runoff into the water source.

To deal with the synura algae, which has a fishy taste and odor, Roy directed his Superintendent for Water and Wastewater, Bob, to use powder activated carbon. He ordered Bob to increase the amount of alum to enhance solids capture on the filter. Sam is a licensed operator for wastewater. Sam usually handles the filter samples, digestion, and record keeping for the wastewater permit, but he is on vacation for ten days. Joe is a licensed operator for water. He usually handles water treatment and testing, but is assigned to handle Sam's tasks on the wastewater side in Sam's absence.

This weekend Joe notices the backwash water is blackened from the use of carbon. So do a number of tourists and neighbors who call in to the plant to complain about the color and odor from the discharged water. In sampling under the NPDES permit, Joe takes the alum sample and dissolved solids sample, but forgets to digest the alum sample as part of the protocol. Due to all these complaint calls, Joe forgets to write down the results of his testing. The NPDES permit calls for testing for total dissolved solids, not dissolved solids as one would run on the water side. Before testing the backwash water, Joe runs the sample through a filter to remove the carbon, eliminating it as one would do on the water side. Between handling all these calls and tests and not wanting to disturb his bosses over the weekend, Joe decides to wait and tell Bob about these matters on Monday morning when Bob gets back to work.

Roy came in on Monday, July 21 and learn that Joe had received seventeen complaints from citizens and tourists and that MDE is sending an inspector later this week to review the records and filter samples taken over the weekend. After using the alum, Joe discharged a sternpak of polyaluminum chloride from a valve on a tank into the containment area. A drain had been left open in the containment area, which resulted in the polychloride discharging into a low volume trout stream called Chester Creek, which feeds into Lake Easton. In the next two days Roy received a number of phone calls from residents along Chester Creek regarding fish kills. From compiling the data in the phone calls, you estimate that about twelve trout have been killed. He immediately called Sally to inform her of the problem, the corrective measures you have taken, and the safeguards you are installing on the suspect valve and drain.

On Wednesday, July 23, Sally – the MDE inspector – shows up to inspect the plant, the records, the backwash samples, and the discharge into Chester Creek. Roy had received indications to expect her on Thursday or Friday. Sally watches Joe run the backwash sample through a filter to remove the carbon before conducting the protocol for alum. She observes Joe use the dissolved solids test and informs him that the total solids test, not the dissolved solids test, was proper under the wastewater regulations. Sally took some water samples from the backwash filter area and the contact ponds.

In August, she compared her lab results on those samples to the Monthly Operating Reports, submitted for May, June, and July 2005. These were signed by Sam. She found that the limits in the NPDES permit for the backwash filter were being exceeded in regards to alum, and that untreated and partially treated industrial waste from the contact basins was polluting Chester Creek, a tributary of the Easton River, and were violating effluent limitations for suspended solids set forth in the NPDES permit. Sally has not been over to see the plant in about two years and due to her large number of cases has not been in touch with you or Bob in about fifteen months. Due to cross training, she has learned to inspect water and wastewater plants, but her true expertise is in storm water management and non-point source pollution.

The State of Maryland has a strong command/control enforcement-oriented Governor with zero tolerance for pollution of the waters of the State. The Attorney General's Office has drawn up civil and criminal charges against the Mayor, the City Council, the City Manager, Bob, Joe, Sam, and you. Both sets of charges (civil and criminal) allege:

- i) the failure of each of you to design and construct the WTF;
- ii) the failure of all of you to use the proper test protocol, including pre-filtering, and accurate record-keeping, and;
- iii) the sternpak discharge, which caused the fish kill in Chester Creek.

The Attorney General's representatives, Chris and Joan, have offered to meet with each of you together or separately on Tuesday, August 29. They believe this is a serious violation and intend to act consistently with the enforcement policies of the State. If nothing can be resolved, they state that they will file a civil suit and a criminal indictment on Friday, August 29 against each person or entity named above.

Your Problem:

- 1) From your standpoint, what are the legal, technical, and practical issues of which you are aware in regards to the three charges (i-iii) described above?
- 2) What statements and approaches would you make with the other potential defendants from the City (Roy, Bill, Bob, Joe, and Sam) and perhaps the elected officials?
- 3) What statements and approaches would you make to the Assistant Attorneys General?