

SENATE BILL 114

M3

(2lr0064)

ENROLLED BILL

— *Education, Health, and Environmental Affairs/Environmental Matters* —

Introduced by **Chair, Education, Health, and Environmental Affairs Committee**
(By Request – Departmental – Environment)

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Environment – Controlled Hazardous Substance Driver Certification –**
3 **Elimination**

4 FOR the purpose of repealing a requirement that the Department of the Environment
5 certify certain drivers of controlled hazardous substance vehicles; repealing a
6 requirement that certain drivers of controlled hazardous substance vehicles
7 carry a certain certificate; repealing requirements that certain drivers submit
8 certain evidence and pay a certain fee; altering a certain definition; repealing a
9 certain definition; requiring the Department to conduct a certain review in
10 consultation with certain officials and to report its findings and
11 recommendations to certain committees of the General Assembly on or before a
12 certain date; and generally relating to the elimination of controlled hazardous
13 substance driver certificates.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 BY repealing and reenacting, with amendments,
2 Article – Environment
3 Section 7–201, 7–249, 7–253, and 7–257
4 Annotated Code of Maryland
5 (2007 Replacement Volume and 2011 Supplement)

6 BY repealing and reenacting, with amendments,
7 Article – Environment
8 Section 7–252
9 Annotated Code of Maryland
10 (2007 Replacement Volume and 2011 Supplement)
11 (As enacted by Chapter 240 of the Acts of the General Assembly of 1982)

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

14 **Article – Environment**

15 7–201.

16 (a) In this subtitle the following words have the meanings indicated.

17 (b) “Controlled hazardous substance” means:

18 (1) Any hazardous substance that the Department identifies as a
19 controlled hazardous substance under this subtitle; or

20 (2) Low–level nuclear waste.

21 (c) (1) “Controlled hazardous substance facility” means a disposal
22 structure, system, or geographic area, designated by the Department for treatment,
23 storage related to treatment or disposal, or disposal of controlled hazardous
24 substances.

25 (2) “Controlled hazardous substance facility” includes:

26 (i) A low–level nuclear waste facility; and

27 (ii) An operating landfill that, under § 7–232(b) of this subtitle,
28 has a permit equivalent to a facility permit.

29 (d) “Controlled hazardous substance hauler” means a person who has a
30 hauler certificate issued by the Department to transport controlled hazardous
31 substances.

1 (e) “Controlled hazardous substance vehicle” means a vehicle that the
2 Department has certified as suitable for use to transport controlled hazardous
3 substances.

4 (f) “Controlled hazardous substance vehicle driver” means a person [whom
5 the Department has certified to] **WHO** [operate] **OPERATES** a controlled hazardous
6 substance vehicle.

7 (g) “Council” means the Controlled Hazardous Substances Advisory Council.

8 (h) “Discharge” means:

9 (1) The addition, introduction, leaking, spilling, or emitting of a
10 pollutant into the waters of this State; or

11 (2) The placing of a pollutant in a location where the pollutant is likely
12 to pollute.

13 (i) [“Driver certificate” means a certificate issued by the Department for a
14 person to be a controlled hazardous substance vehicle driver.

15 (j) [“Facility permit” means a permit issued by the Department to establish,
16 operate, or maintain a controlled hazardous substance facility.

17 [(k)] **(J)** “Federal act” means the Comprehensive Environmental Response,
18 Compensation, and Liability Act of 1980, as amended through January 1, 2003.

19 [(l)] **(K)** “Hauler certificate” means a certificate issued by the Department
20 that permits a person to be a controlled hazardous substance hauler.

21 [(m)] **(L)** “Hazardous substance” means any substance:

22 (1) Defined as a hazardous substance under § 101(14) of the federal
23 act; or

24 (2) Identified as a controlled hazardous substance by the Department
25 in the Code of Maryland Regulations.

26 [(n)] **(M)** “Incineration” means thermal treatment or decomposition of a
27 waste heat.

28 [(o)] **(N)** “Lender” means a person who is:

29 (1) A holder of a mortgage or deed of trust on a site or a security
30 interest in property located on a site; or

1 (2) A holder of a mortgage or deed of trust who acquires title through
2 foreclosure or deed in lieu of foreclosure.

3 **[(p)] (O)** “Low-level nuclear waste” means a substance that:

4 (1) Contains or is contaminated with radioactive material emitting
5 primarily beta or gamma radiation; and

6 (2) Is neither transuranic waste nor high-level nuclear waste.

7 **[(q)] (P)** “Low-level nuclear waste facility” means a controlled hazardous
8 substance facility for low-level nuclear waste.

9 **[(r)] (Q)** “Low-level nuclear waste facility permit” means a facility permit
10 issued by the Department for a low-level nuclear waste facility.

11 **[(s)] (R)** “Person” includes the federal government, this State, any county,
12 municipal corporation, or other political subdivision of this State, and any of their
13 units.

14 **[(t)] (S)** “Release” means the addition, introduction, leaking, spilling,
15 emitting, discharging, escaping, or leaching of any hazardous substance into the
16 environment.

17 **[(u)] (T)** (1) “Responsible person” means any person who:

18 (i) Is the owner or operator of a vehicle or a site containing a
19 hazardous substance;

20 (ii) At the time of disposal of any hazardous substance, was the
21 owner or operator of any site at which the hazardous substance was disposed;

22 (iii) By contract, agreement, or otherwise, arranged for disposal
23 or treatment, or arranged with a transporter for transport for disposal or treatment, of
24 a hazardous substance owned or possessed by such person, by any other party or
25 entity, at any site owned or operated by another party or entity and containing such
26 hazardous substances; or

27 (iv) Accepts or accepted any hazardous substance for transport
28 to a disposal or treatment facility or any sites selected by the person.

29 (2) “Responsible person” does not include:

30 (i) A person who can establish by a preponderance of the
31 evidence that at the time the person acquired an interest in a site containing a
32 hazardous substance the person did not know and had no reason to know that any

1 hazardous substance which is the subject of the release or threatened release was
2 disposed of on, in, or at the site; however, any person claiming an exemption from
3 liability under this subparagraph must establish that the person had no reason to
4 know, in accordance with § 101(35)(B) of the federal act, and that the person satisfied
5 the requirements of § 107(b)(3)(a) of the federal act;

6 (ii) A person who acquired a property containing a hazardous
7 substance by inheritance or bequest at the death of the transferor;

8 (iii) A person who, without participating in the day-to-day
9 management of a site containing a hazardous substance, holds indicia of ownership in
10 the site or in property located on the site primarily to protect a valid and enforceable
11 lien unless that person directly causes the discharge of a hazardous substance on or
12 from the site;

13 (iv) A holder of a mortgage or deed of trust on a site containing a
14 hazardous substance or a holder of a security interest in property located on the site
15 who does not participate in the day-to-day management of the site unless that holder
16 directly causes the discharge of a hazardous substance on or from the site;

17 (v) A fiduciary who has legal title to a site containing a
18 hazardous substance or to property located on the site containing a hazardous
19 substance for purpose of administering an estate or trust of which the site or property
20 located on the site is a part unless the fiduciary:

21 1. Participates in the day-to-day management of the
22 site or property; or

23 2. Directly causes the discharge of a hazardous
24 substance on or from the site;

25 (vi) A holder of a mortgage or deed of trust who acquires title to
26 a site containing a hazardous substance through foreclosure or deed in lieu of
27 foreclosure who:

28 1. Does not participate in the day-to-day management
29 of the site; and

30 2. Does not directly cause the discharge of a hazardous
31 substance on or from the site;

32 (vii) Except in the case of gross negligence or willful misconduct,
33 an owner or operator who is:

34 1. A state, county, or municipal government;

35 2. Any other political subdivision of the State; or

1 3. Any unit of a state, county, or municipal government
2 or any other political subdivision;

3 (viii) A holder of a mortgage or deed of trust who acquires title to
4 an eligible property as defined in Subtitle 5 of this title subject to a written agreement
5 in accordance with Subtitle 5 of this title provided that the holder complies with the
6 requirements, prohibitions, and conditions of the agreement;

7 (ix) Subject to paragraph (3) of this subsection, a lender who
8 extends credit for the performance of removal or remedial actions conducted in
9 accordance with requirements imposed under this title who:

10 1. Has not caused or contributed to a release of
11 hazardous substances; and

12 2. Previous to extending that credit, is not a responsible
13 person at the site;

14 (x) Subject to paragraph (3) of this subsection, a lender who
15 takes action to protect or preserve a mortgage or deed of trust on a site or a security
16 interest in property located on a site at which a release or threatened release of a
17 hazardous substance has occurred, by stabilizing, containing, removing, or preventing
18 the release of a hazardous substance in a manner that does not cause or contribute to
19 a release or significantly increase the threat of release of a hazardous substance at the
20 site if:

21 1. The lender provides advance written notice of its
22 actions to the Department or in the event of an emergency in which action is required
23 within 2 hours, provides notice by telephone;

24 2. The lender, previous to taking the action, is not a
25 responsible person for the site; and

26 3. The action taken does not violate a provision of this
27 article; or

28 (xi) A person who receives a response action plan approval letter
29 as an inculpable person or the person's successor in title who is also an inculpable
30 person under Subtitle 5 of this title and who does not cause or contribute to new
31 contamination or exacerbate existing contamination as provided in §§ 7-505 and
32 7-514 of this title.

33 (3) A lender taking action to protect or preserve a mortgage or deed of
34 trust or security interest in a property located on a site, who causes or contributes to a
35 release of a hazardous substance shall be liable solely for costs incurred as a result of

1 the release which the lender caused or to which the lender contributed unless the
2 lender was a responsible person prior to taking the action.

3 (4) (i) Paragraph (2)(i) of this subsection does not affect the
4 liability of a previous owner or previous operator of a site containing a hazardous
5 substance if the previous owner or previous operator is a responsible person under
6 paragraph (1)(ii) of this subsection.

7 (ii) Notwithstanding paragraph (2)(i) of this subsection, a
8 person shall be treated as a responsible person if the person:

9 1. Obtained actual knowledge of the release or
10 threatened release of a hazardous substance at a site when the person owned the real
11 property; and

12 2. Transferred ownership of the property after June 30,
13 1991 without disclosing this knowledge to the transferee.

14 (iii) Nothing in paragraph (2)(i) of this subsection shall affect the
15 liability under this subtitle of a person who, by any act or omission, caused or
16 contributed to the release or threatened release of a hazardous substance at a site
17 which is the subject of the action relating to the site if at the time of the act or
18 omission the person knew or had reason to know that the act or omission would cause
19 or contribute to the release or threatened release of a hazardous substance.

20 (5) Notwithstanding paragraph (2)(ii) of this subsection, a person shall
21 be treated as a responsible person if the person:

22 (i) Knew or had reason to know of the release or threatened
23 release of a hazardous substance at the site; and

24 (ii) Transferred ownership of the property after June 30, 1991
25 without disclosing this knowledge to the transferee.

26 (6) (i) For purposes of paragraph (2)(iii), (iv), (v), and (vi) of this
27 subsection, "management" means directing or controlling operations, production or
28 treatment of a hazardous substance, storage or disposal of a hazardous substance, or
29 remediation of a hazardous substance release.

30 (ii) "Management" does not include rendering advice on
31 financial matters, rendering financial assistance, or actions taken to protect or secure
32 the site or property located on the site if the advice, assistance, or actions do not
33 involve the treatment, storage, or disposal of a hazardous substance or remediation of
34 a hazardous substance release.

35 (7) A person who owns real property is not considered an owner or
36 operator of a vehicle or site containing a hazardous substance under paragraph (1)(i)

1 of this subsection solely by reason of contamination from a contiguous or otherwise
2 similarly situated real property if:

3 (i) The person does not own the contiguous or otherwise
4 similarly situated real property;

5 (ii) The person's real property is or may be contaminated by a
6 release or threatened release of a hazardous substance from the contiguous to or
7 otherwise similarly situated real property; and

8 (iii) The person meets the requirements of Section 107(q) of the
9 federal act and any regulations adopted by the Department implementing or
10 interpreting the requirements of that section.

11 **[(v)] (U)** (1) "Solid waste" means any:

12 (i) Abandoned material or substance which is disposed of,
13 burned, or incinerated or accumulated, stored, or treated before or in lieu of being
14 disposed of, burned, or incinerated;

15 (ii) Material or substance which is recycled or accumulated,
16 stored, or treated before recycling; or

17 (iii) Material or substance which is considered inherently
18 waste-like.

19 (2) "Solid waste" does not include:

20 (i) Domestic sewage that passes through a sewer system to a
21 publicly owned treatment work for treatment;

22 (ii) Industrial wastewater discharges that are point source
23 discharges permitted under §§ 9-324 through 9-332 of this article;

24 (iii) Irrigation return flows;

25 (iv) Materials subjected to in-situ mining techniques which are
26 not removed from the ground as part of the extraction process; or

27 (v) Material that is excluded by any rule or regulation adopted
28 under this subtitle.

29 **[(w)] (V)** "Transuranic waste" means waste material that is measured or
30 assumed to contain at least 10 nanocuries or more of transuranic activity per gram of
31 waste.

1 ~~[(x)]~~ **(W)** “Treatment” means any method, technique, or process, including
2 neutralization, that is designed to change the physical, chemical, or biological
3 character or composition of any controlled hazardous substance so as to neutralize or
4 render the waste nonhazardous, safer for transport, or reduced in volume.

5 ~~[(y)]~~ **(X)** “Vehicle certificate” means a certificate issued by the Department
6 for a vehicle to be a controlled hazardous substance vehicle.

7 7–249.

8 (a) A person may not transport any controlled hazardous substance from any
9 source in this State or to any controlled hazardous substance facility in this State
10 unless:

11 (1) The person holds a hauler certificate; **AND**

12 (2) A vehicle certificate has been issued for the transporting vehicle[;
13 and

14 (3) A driver certificate has been issued for the vehicle driver].

15 (b) This section does not apply to the transportation of any controlled
16 hazardous substance that is:

17 (1) Used for residential purposes; or

18 (2) Regulated by the State Department of Agriculture.

19 **[(c) The requirement of a driver certificate in subsection (a) of this section
20 does not apply to persons transporting hazardous waste generated and disposed of on
21 private property, if the hazardous waste is transported over roads maintained by the
22 generator or disposer.]**

23 7–252.

24 (a) Each controlled hazardous substance hauler:

25 (1) Shall maintain a bond or other security that the Department
26 considers sufficient to indemnify this State for abatement of any pollution that may
27 result from the improper transportation of a controlled hazardous substance;

28 (2) Shall pay an annual vehicle certificate fee set by the Department
29 but not more than \$50;

30 (3) When transporting any controlled hazardous substance, shall:

1 (i) Carry the manifest [and the driver certificate] in the cab of
2 the controlled hazardous substance vehicle; and

3 (ii) Display prominently the vehicle certificate or affix the
4 vehicle certificate to the outside of the left door of the cab of the controlled hazardous
5 substance vehicle;

6 (4) May not transport a controlled hazardous substance unless the
7 controlled hazardous substance is labeled properly and in secure containers in
8 accordance with the rules and regulations of the Department that apply to that
9 particular controlled hazardous substance;

10 (5) On the request of any police officer, shall stop the controlled
11 hazardous substance vehicle and display to the police officer all required
12 documentation and allow inspection and sampling of the controlled hazardous
13 substance to determine if there is a violation of:

14 (i) The provisions of the vehicle certificate; **OR**

15 (ii) [The provisions of a driver certificate; or

16 (iii)] Any federal or state law;

17 (6) Except under the supervision of the Department during an
18 emergency, may not remove the controlled hazardous substance from the controlled
19 hazardous substance vehicle, or treat, store for any period of time, or mix any
20 controlled hazardous substance except in a controlled hazardous substance facility;
21 and

22 (7) Shall report periodically, on a form required by the Department,
23 the following information about shipments of controlled hazardous substances:

24 (i) The source of the controlled hazardous substance;

25 (ii) The nature of the controlled hazardous substance; and

26 (iii) The disposal destination.

27 (b) [(1) A driver certificate authorizes its holder to operate a vehicle
28 transporting hazardous substances while the certificate is effective.

29 (2)] Each controlled hazardous substance vehicle driver[:

30 (i) Shall submit to the Department evidence that the person
31 has received adequate training in the proper and safe handling of controlled
32 hazardous substances;

1 (ii) Shall pay an annual driver certificate fee set by the
2 Department but not more than \$20; and

3 (iii) When], **WHEN** transporting any controlled hazardous
4 substance, shall comply with subsection (a)(3), (4), (5), and (6) of this section and all
5 applicable State rules and regulations.

6 7-253.

7 If a person who generates a controlled hazardous substance desires to have it
8 transported to a controlled hazardous substance facility, the person:

9 (1) Except as is otherwise required by federal or State law, shall label
10 the controlled hazardous substance as required by the rules and regulations of the
11 Department;

12 (2) Shall provide for each controlled hazardous substance vehicle a
13 manifest that describes the controlled hazardous substance, including volume and
14 chemical, physical, and biological characteristics;

15 (3) Shall require evidence of a hauler certificate[, a driver certificate,]
16 and a vehicle certificate;

17 (4) May contract for treatment, storage, or disposal of a controlled
18 hazardous substance only with:

19 (i) A facility permit holder; or

20 (ii) A controlled hazardous substance hauler who has a valid
21 contract with a controlled hazardous substance facility for treatment, storage, or
22 disposal of controlled hazardous substances; and

23 (5) Shall report, from time to time on the form the Department
24 requires, the following information about shipments of controlled hazardous
25 substances:

26 (i) Source;

27 (ii) Name of the controlled hazardous substance hauler;

28 (iii) Destination intended by the controlled hazardous substance
29 hauler at the time of shipment;

30 (iv) Volume; and

31 (v) Nature.

1 7-257.

2 (a) In accordance with the Administrative Procedure Act and after notice and
3 hearing, the Department may suspend or revoke any facility permit, hauler certificate,
4 [driver certificate,] or vehicle certificate for violation of any federal or State law, rule,
5 or regulation that relates to controlled hazardous substances.

6 (b) The Department may revoke any facility permit issued under this
7 subtitle if the Department finds that:

8 (1) False or inaccurate information was contained in the application;

9 (2) Conditions or requirements of the facility permit have been or are
10 about to be violated;

11 (3) Substantial deviation from plans, specifications, or requirements
12 has occurred;

13 (4) The Department has been refused entry to the premises for the
14 purpose of inspecting to insure compliance with the conditions of the facility permit;

15 (5) A change in conditions exists that requires temporary or
16 permanent reduction or elimination of any permitted discharge;

17 (6) Any State or federal water quality standard or effluent limitation
18 has been or is threatened to be violated; or

19 (7) Any other good cause exists for revoking the permit.

20 SECTION 2. AND BE IT FURTHER ENACTED, That the Department of the
21 Environment:

22 (1) shall conduct a review, in consultation with federal and State
23 transportation officials, relating to the efficiency and regulatory consistency of its
24 controlled hazardous substance vehicle certification process; and

25 (2) on or before December 15, 2012, shall report its findings and
26 recommendations, in accordance with § 2-1246 of the State Government Article, to the
27 Senate Education, Health, and Environmental Affairs Committee and the House
28 Environmental Matters Committee.

29 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
30 effect July 1, 2012.