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DELAWARE STATE SENATE  
145th GENERAL ASSEMBLY

SENATE BILL NO. 241

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO CHRONIC VIOLATOR STATUS.

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

1           Section 1. Amend § 7901(a)(4), Title 7 of the Delaware Code by striking the word “persons” as it appears in said  
2 paragraph and substituting in lieu thereof the phrase “regulated parties.”

3           Section 2. Amend § 7901(b), Title 7 of the Delaware Code by inserting the phrase “, 74A,” immediately after the  
4 number “74” in the first sentence of said subsection and by inserting the phrase “, § 8028 of Title 29,” immediately after the  
5 phrase "this title" in the first sentence of said subsection.

6           Section 3. Amend § 7901, Title 7 of the Delaware Code by adding a new subsection to read as follows:

7                   “(c) The purpose of chronic violator status is to provide a mechanism for preventing or correcting  
8 circumstances in which: (1) one or more of the traditional enforcement tools and regulatory programs of the Department  
9 appear insufficient to conform behavior and deter future violations by the regulated party; or (2) the regulated party appears  
10 to be treating penalties and other sanctions as merely an on-going business expense rather than as symptomatic of  
11 underlying problems and threats to the State's environment that must be addressed and corrected.”

12           Section 4. Amend § 7902(a), Title 7 of the Delaware Code by inserting the phrase “, § 8028 of Title 29,”  
13 immediately after the phrase "this title" in said subsection.

14           Section 5. Amend § 7902(a), Title 7 of the Delaware Code by striking the phrase "be required by the Department  
15 to" as it appears in said subsection and substituting in lieu thereof the phrase ", upon request, provide the Department with  
16 information sufficient to enable a positive and accurate identification of the applicant, including without limitation, driver's  
17 license state and number, date of birth, and state incorporation information, and shall".

18           Section 6. Amend § 7902(b), Title 7 of the Delaware Code by striking the phrase “persons or entities” as it appears  
19 in said subsection and substituting in lieu thereof the phrase “regulated parties”, by striking the word "only" as it appears in  
20 said subsection and by inserting the phrase "or other request for regulatory authorization within the Department's  
21 jurisdiction," immediately after the word "application" as it appears in said subsection.

22 Section 7. Amend § 7902(b)(2), Title 7 of the Delaware Code by striking the word “Entities” as it appears in said  
23 paragraph and substituting in lieu thereof the phrase “Regulated parties.”

24 Section 8. Amend § 7902(b)(3), Title 7 of the Delaware Code by striking paragraph (3) in its entirety and  
25 substituting in lieu thereof the following:

26 “(3) The statements required by this section shall be updated and submitted for each and every initial permit  
27 application or other initial regulatory authorization request to any Branch, Section or other programmatic subdivision of the  
28 Department. Such statements shall only be required to be submitted upon receipt by the regulated party of a written request  
29 for the statement by the applicable Branch, Section or other programmatic subdivision during the application process.”

30 Section 9. Amend § 7902(c), Title 7 of the Delaware Code by striking the word “section” as it appears in said  
31 subsection and substituting in lieu thereof the word “subchapter” and by adding the following paragraphs at the end of said  
32 subsection:

33 “(6) The term ‘applicant’ shall mean any regulated party who or which has applied for or requested a  
34 permit or other regulatory authorization from the Department, or is required to apply for or request a permit or  
35 other regulatory authorization from the Department.

36 (7) The term ‘facility’ shall mean any site or structure regulated by the Department or subject to the  
37 Department's regulatory programs.

38 (8) The term ‘Department’ shall mean the Department of Natural Resources and Environmental Control,  
39 the Secretary of the Department of Natural Resources and Environmental Control, or both.

40 (9) The term ‘regulated party’ shall mean a person subject to the Department's regulatory programs.

41 (10) The term ‘person’ shall mean any individual, trust, firm, joint stock company, federal agency,  
42 partnership, corporation (including a government corporation or authority), limited liability company, business  
43 entity, association, state, municipality, commission, political subdivision of a state or any interstate body.

44 (11) The term ‘regulatory program’ shall mean any program for the conservation and protection of the  
45 environment and the State's natural resources, which includes without limitation: a.) those programs established  
46 by or acting under 7 Del. C. Chapters 40, 60, 62, 63, 66, 70, 72, 74, 74A, 77, 78, and 91, § 8028 of Title 29, and 16  
47 Del. C. Chapters 63 and 78; b.) the permits, rules, policies and regulations issued under said Chapters; and c.)  
48 related delegated federal law.”

49 Section 10. Amend § 7904, Title 7 of the Delaware Code by inserting the phrase “and chronic violator status” at  
50 the end of the title of said section.

51 Section 11. Amend § 7904(a), Title 7 of the Delaware Code by striking the said subsection in its entirety and  
52 substituting in lieu thereof the following new subsections:

53 "(a) A chronic violator is a regulated party that has demonstrated an inability or unwillingness to comply with one  
54 or more of the Department's regulatory programs.

55 (1) The criteria for determining whether a regulated party has demonstrated such inability or  
56 unwillingness shall include without limitation one or more of the following: a.) whether the regulated party has  
57 engaged in a pattern of willful neglect or reckless disregard of the permits or regulatory programs of the  
58 Department; b.) whether the regulated party has adequately capitalized, funded or modernized its operations,  
59 maintenance, mechanical integrity efforts, training programs and risk management reviews so that compliance  
60 with the Department's regulatory programs can be reasonably expected; and c.) whether the regulated party has  
61 used recognized and generally accepted good engineering and other related professional practices established  
62 within the regulated party's field or industry so that compliance with the Department's regulatory programs can be  
63 reasonably expected.

64 (2) The Department shall have discretion to commence, review and reconsider chronic violator status as  
65 to any particular regulated party at any time.

66 (3) Chronic violator status shall be deemed an alleged violation, and the regulated party under  
67 consideration for chronic violator status shall be deemed an alleged violator, solely for the purpose of referring to  
68 and prescribing the minimum procedures for a public hearing on chronic violator status, as set forth in 7 Del. C. §  
69 6006. The Secretary shall then enter an Order on chronic violator status that will best further the policies and  
70 purposes of the laws and regulations pursuant to which the regulated party holds a permit or other regulatory  
71 authorization from the Department, of the laws and regulations under the Department's jurisdiction violated by the  
72 regulated party, and of this subchapter. The Department may combine a public hearing on chronic violator status  
73 with a public hearing on any enforcement action and may join one or more regulated parties in the public hearing.

74 (4) The Environmental Appeals Board, as established by 7 Del. C. § 6007, is granted jurisdiction to hear  
75 an appeal from the Secretary's Order on chronic violator status, and any such appeal shall be pursuant to the  
76 provisions and procedures for appeals of case decisions as set forth in 7 Del. C. §§ 6008 and 6009.

77 (5) The Department may adopt, amend, modify or repeal regulations, after public hearing, to make its  
78 regulations consistent with this subchapter, and to effectuate the policy and purposes of this subchapter, including  
79 without limitation, regulations to provide a process for determining when a regulated party shall be declared a  
80 chronic violator and to set the terms and conditions under which the status of chronic violator would be lifted.

81 (b) One or more of the factors to be considered in determining whether a regulated party has engaged in a pattern  
82 of willful neglect or reckless disregard of the permits or regulatory programs of the Department shall include  
83 without limitation:

84 (1) the nature and extent of the harm caused or threatened by violations or by conduct of the regulated  
85 party;

86 (2) the impact on the integrity of regulatory programs;

87 (3) duration of noncompliance, including without limitation the duration of the violations and the duration  
88 over which violations have continued to occur;

89 (4) number of violations of a similar nature;

90 (5) total number of violations of all types;

91 (6) economic benefit attributable to violations and noncompliance;

92 (7) relationship and relevance of violations to activity for which permit is sought;

93 (8) whether any or all of the violations were willful or grossly negligent or involving other states of mind;

94 (9) failure to perform environmental, financial and other due diligence in purchasing or taking a  
95 controlling interest in a regulated party or some or all of a regulated party's assets;

96 (10) the demonstrated attitude of new owners or managers, where ownership or  
97 management has changed at the facility;

98 (11) actions taken or not taken to prevent, mitigate or respond to harm caused  
99 or threatened by the violation;

100 (12) whether any or all of the violations were self-reported within 15  
101 consecutive days after the date of discovery; and

102 (13) the amount of an illegal release of a pollutant in proportion to the amount legally authorized to be  
103 released, if any.

104 (c) In addition, one or more of the types of violations and conduct to be considered by the Secretary shall include,  
105 but not be limited to:

106 (1) violations that cause or threaten harm to the environment or to public health or safety;

107 (2) violations resulting in criminal convictions;

108 (3) tampering with monitoring or sampling equipment or interfering with samples or analytical results;

109 (4) filing false reports or inaccurate or misleading information;

110 (5) failing to maintain or use required pollution control equipment, structures or practices;

- 111 (6) repeatedly failing to submit required reports of regulated activity such as Discharge Monitoring  
112 Reports;
- 113 (7) repeatedly conducting a regulated activity without a required permit or other authorization;
- 114 (8) noncompliance with the terms, conditions and requirement of permits, licenses, and other regulatory  
115 authorizations;
- 116 (9) noncompliance with Court Orders including without limitation Consent Orders;
- 117 (10) alleged violations that were the subject of negotiated settlements notwithstanding any general release  
118 of liability and whether such violations have been found or proved in concurrent or subsequent proceeding or  
119 public hearings; and
- 120 (11) violations and conduct by related persons, business entities and other regulated parties including  
121 without limitation conduct and violations by common employees, managers, officers, directors, shareholders,  
122 principals, partners, and owners.

123 Section 12. Amend § 7904, Title 7 of the Delaware Code, by re-designating current subsection "(b)" as new  
124 subsection "(d)" and by re-designating current subsection "(c)" as new subsection "(e)".

125 Section 13. Amend the re-designated § 7904(d), Title 7 of the Delaware Code by striking the phrase "facilities or"  
126 as it appears in the first sentence of said subsection; and further by striking the word "facilities" as it appears in the first  
127 sentence and substituting the phrase "regulated parties."

128 Section 14. Amend the re-designated § 7904(e), Title 7 of the Delaware Code by inserting the phrase "or institute  
129 procedures" immediately after the phrase "promulgate regulations" in the last sentence of said subsection and by inserting a  
130 new paragraph to read as follows:

131 "(6) The Department shall have the power to subpoena all documents and information in connection with  
132 the administration of this subchapter." immediately after paragraph (5) as it appears in said re-designated subsection."

133 Section 15. Amend § 7905, Title 7 of the Delaware Code by inserting the phrase ", regulated parties" immediately  
134 after the phrase "All applicants" in the first sentence of said section and by inserting the sentence " The Department shall  
135 have the power to subpoena all documents and information in connection with the administration of this subchapter." at the  
136 end of said section.

137 Section 16. Amend § 7906, Title 7 of the Delaware Code by striking the phrase "day for each violation" as it  
138 appears in the first sentence of said section and substituting in lieu thereof the phrase "each discrete occurrence and per  
139 each release of any and all separate, identifiable or constituent pollutants."

140           Section 17. Amend § 7906, Title 7 of the Delaware Code by striking the word “person” as it appears in the first  
141 sentence of said section and by striking the word “person’s” as it appears in the second sentence of said section and  
142 substituting in lieu thereof the phrase “regulated party” and the phrase “regulated party’s” respectively.

143           Section 18. Amend § 7906, Title 7 of the Delaware Code by inserting a new sentence at the end of said section to  
144 read as follows: “Any administrative penalties collected by the Department under this section are hereby appropriated  
145 pursuant and subject to the procedures and requirement to 7 Del. C. § 6005(d).”

146           Section 19. Amend § 6005(e), Title 7 of the Delaware Code by inserting the phrase “Penalties or” immediately  
147 before the word “Fines” in the first sentence of said subsection, and by inserting the phrase “penalty or” immediately before  
148 the word “fine” at the end of the first sentence of said subsection.

#### SYNOPSIS

This Bill revises DNREC's chronic violator program. It adds a purpose section, makes various technical revisions, adds and makes consistent several definitions, clarifies and expands the standard and criteria for chronic violator status, adds categories of factors, types of violations, and conduct to be considered, updates DNREC's authority to promulgate regulations, adds an opportunity for a public hearing, and enhances administrative penalties.

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