Title 7

Conservation

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Part I
Game, Wildlife and Dogs
Chapter 1
PROTECTED WILDLIFE

§ 101 Definitions.

For the purposes of Parts I and II of this title, unless otherwise specifically defined, or another intention clearly appears, or the context requires a different meaning:

(1) "Department" means the Department of Natural Resources and Environmental Control.

(2) "Fish and Wildlife Agent" means a law enforcement officer employed by the Department of Natural Resources and Environmental Control pursuant to this title and § 8003(13) of Title 29.

(3) "Hunt" means to chase, pursue, kill, trap or take or attempt to chase, pursue, kill, trap or take any form of wild bird or wild animal.

(4) "Protected wildlife" means all forms of game and wildlife except such as are not protected by Parts I and II of this title.

(5) "Resident" means any person not an alien who has resided a year or more within this State.

(6) "Secretary" means the Secretary of the Department of Natural Resources and Environmental Control or the Secretary's duly authorized designee, provided any such delegation of authority is consistent with Chapter 80 of Title 29.

(27 Del. Laws, c. 152 § 5; Code 1915 §§ 2358A, 2415; 40 Del. Laws, c. 191 §§ 2, 28; Code 1935 §§ 2803, 2887; 7 Del. C. 1953 § 101; 57 Del. Laws, c. 739 §§ 1, 2; 63 Del. Laws, c. 389 § 4; 70 Del. Laws, c. 105 § 1; 70 Del. Laws, c. 186 § 1.)

§ 102 Powers and duties.

(a) The Department shall protect, manage and conserve all forms of protected wildlife of this State, and enforce by proper actions and proceedings the law relating thereto. The Department shall authorize such studies as are necessary to the work of the Department, and shall collect, classify and preserve such statistics, data and information as in its discretion will tend to promote the objectives of Parts I and II of this title.

(b) The Secretary shall employ Fish and Wildlife Agents and other necessary employees and shall fix the salaries of all such employees, who shall have the power to arrest in the same manner provided in subsection (c) of this section, and for the same purpose therein described, and be subject to and serve during the pleasure of the Secretary.

(c) The Department shall prescribe the form of licenses issued by it; shall collect all fees for licenses issued by it and all fines and forfeitures imposed for violations of the game and fish laws of this State; shall have authority to arrest without warrant for all violations of the game and fish laws of this State in order to carry out the provisions thereof. The Fish and Wildlife Agents shall also have the power to make arrests of persons violating § 518 of Title 17 in their presence or view or otherwise upon the issuance of an arrest warrant based on a showing of probable cause that the individual named in the warrant committed the violation.

(d) The Department may issue a permit to any recognized sportsmen's club having its principal location in the State to hold field trials at any time on liberated game legally possessed or on liberated artificially propagated game legally possessed and take such game by shooting. Such game taken shall be immediately tagged for identification with seals or tags supplied by the Department, for which it shall receive 5 cents each. Game so tagged may be possessed, transported, bought and sold at any time and seals shall not be removed until game is finally prepared for consumption.

(26 Del. Laws, c. 162 §§ 3, 6; 26 Del. Laws, c. 164 § 15; 27 Del. Laws, c. 154; 27 Del. Laws, c. 155 § 3; Code 1915 §§ 2358B, 2360, 2363; 40 Del. Laws, c. 191 §§ 2, 3; Code 1935 §§ 2804, 2806; 47 Del. Laws, c. 148 § 1; 7 Del. C. 1953 § 106; 49 Del. Laws, c. 98 § 1; 56 Del. Laws, c. 224; 57 Del. Laws, c. 450 § 1; 57 Del. Laws, c. 739 §§ 7-12; 70 Del. Laws, c. 105 §§ 2, 3; 70 Del. Laws, c. 275 § 1.)

§ 103 Rules and regulations; expenditures; violations and penalty.

(a) The Department may promulgate such rules and regulations and may make expenditures necessary to:

(1) Fix and regulate seasons by shortening, extending or closing seasons, and to fix and regulate the bag limit on any species of protected wildlife or freshwater fish except muskrat in any specified localities whenever it finds, after investigation, and a public hearing is had as provided in subsection (b) of this section, that such action is necessary to assure the conservation of such wildlife or freshwater fish, and the maintenance of an adequate supply thereof or to limit the supply thereof when conditions warrant the same;

(2) Establish and close to hunting, trapping and/or fishing such wildlife refuges, or any lake, stream or pond, as in its judgment may be deemed best to conserve any species of wildlife or fish;

(3) Acquire by purchase, lease or agreement, gift or devise, lands, marshes or waters suitable for the purposes hereinafter enumerated, and maintain the same for said purposes:

a. To provide fish nursery ponds and game farms;

b. To provide lands or waters suitable for upland game, waterfowl, fish or fur-bearing animal propagation and protection;

c. To provide public hunting, fishing or other recreational grounds or waters to be used as areas in which the public may hunt, fish or camp in accordance with the provisions of law and the regulations of the Department;

d. To extend and consolidate lands, marshes or waters suitable for the above purposes by exchange of other lands or waters;

e. To capture, propagate, transport, buy or exchange any species of protected wildlife needed for stocking any lands, marshes or waters of this State.

(b) The Department may establish such other rules and regulations concerning any species of protected wildlife or freshwater fish except muskrat in any specified localities as it deems necessary or advisable for the protection and conservation of wildlife or freshwater fish.

(c) This section shall not be construed as authorizing the Department to change any penalty for violating any game or fish law, or to change the amount of any license fee established under Part I of this title, or to issue any license not lawfully authorized, or to extend any open season or bag limit beyond the limits prescribed by federal law or regulations.

(d) Whoever violates any rule or regulation of the Department except those pertaining to deer or wild turkeys shall be guilty of a class D environmental violation for each offense. Whoever violates any rule or regulation of the Department pertaining to antlerless deer shall be guilty of a class C environmental violation for each offense. Whoever violates any rule or regulation of the Department pertaining to antlered deer shall be guilty of a class A environmental misdemeanor for each offense. Whoever violates any rule or regulation of the Department pertaining to wild turkeys shall be guilty of a class B environmental misdemeanor for each offense.

(Code 1915 § 2358C; 40 Del. Laws, c. 191 § 2; Code 1935 § 2805; 7 Del. C. 1953 § 108; 49 Del. Laws, c. 153 §§ 1-4; 51 Del. Laws, c. 123 §§ 1, 2; 53 Del. Laws, c. 435; 57 Del. Laws, c. 739 § 14; 59 Del. Laws, c. 210 §§ 1, 2; 60 Del. Laws, c. 674 §§ 1-3; 61 Del. Laws, c. 354 § 1; 63 Del. Laws, c. 197 §§ 1-4; 70 Del. Laws, c. 275 §§ 2-7; 73 Del. Laws, c. 375 § 6[5]; 77 Del. Laws, c. 44 §§ 1, 2; 79 Del. Laws, c. 421 § 1.)

§ 104 Restrictions on expenditures and indebtedness.

The Department shall not contract any indebtedness or obligations which cannot be met by funds immediately available to its use, as provided in Part I of this title.

(Code 1915 § 2358B; 40 Del. Laws, c. 191 § 2; Code 1935 § 2804; 7 Del. C. 1953 § 109; 57 Del. Laws, c. 739 § 15.)

§ 105 Assent to federal statutes — Cooperative wildlife-restoration projects.

The State assents to the act of Congress entitled, "An Act to Provide that the United States Shall Aid the States in Wildlife-Restoration Projects, and for Other Purposes," approved September 2, 1937 [16 U.S.C. § 669 et seq.] as amended and the Department shall perform such acts as are necessary to the conduct and establishment of cooperative wildlife-restoration projects, as defined in that act of Congress, in compliance with the act and with rules and regulations promulgated by the Secretary of the Interior thereunder. The Department may receive and disburse any and all funds allocated to this State under said act of Congress and any amendment or amendments thereto.

(42 Del. Laws, c. 129 § 1; 7 Del. C. 1953 § 110; 57 Del. Laws, c. 739 § 16; 70 Del. Laws, c. 275 § 8.)

§ 106 Assent to federal statutes — Cooperative fish-restoration projects.

The State assents to the act of Congress entitled "An Act to Provide that the United States Shall Aid the States in Fish-Restoration and Management Projects, and for Other Purposes," approved August 9, 1950 [16 U.S.C. § 777 et seq.] as amended and the Department shall perform such acts as are necessary to the conduct and establishment of cooperative fish-restoration and management projects, as defined in that act of Congress, in compliance with that act and with rules and regulations promulgated by the Secretary of the Interior thereunder. The Department may receive and disburse any and all funds allocated to this State under said act of Congress and any amendment or amendments thereto.

(48 Del. Laws, c. 205 § 1; 7 Del. C. 1953 § 111; 57 Del. Laws, c. 739 § 17; 70 Del. Laws, c. 275 § 9.)

§ 107 Use of funds derived from sale of hunting and trapping licenses.

All funds derived from the issuance of licenses issued by the Department for hunting and trapping shall be deposited by the Department with the State Treasurer, retained by the State Treasurer, and specifically set aside and earmarked until expended upon by proper vouchers for the purpose of matching and securing money allotted to Delaware under the acts of Congress approved September 2, 1937 (16 U.S.C. § 669 et seq. (Wildlife Restoration)) as amended, and August 9, 1950 (16 U.S.C. § 777 et seq. (Fish Restoration and Management)) as amended, to provide federal aid to the states in wildlife and fish restoration. Any balance remaining in such fund after full provision is effected to insure matching in full of federal aid to this State for wildlife and fish restoration shall be expended by the Department with approval from the Office of Management and Budget, the Controller General's Office and the co-chairs of the Joint Finance Committee upon the fish and wildlife resources of this State in accordance with the federal guidelines to manage such fish and wildlife resources.

(42 Del. Laws, c. 77 § 1; 42 Del. Laws, c. 129 § 2; 43 Del. Laws, c. 12 § 1; 47 Del. Laws, c. 78 § 1; 7 Del. C. 1953 § 112; 51 Del. Laws, c. 47; 57 Del. Laws, c. 739 § 18; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 275 § 10; 76 Del. Laws, c. 80 § 260.)

§ 108 Use of funds derived from sale of fishing licenses.

All funds derived from the issuance of licenses issued by the Department for fishing shall be deposited by the Department with the State Treasurer, retained by the State Treasurer, and specifically set aside and earmarked until expended upon by proper vouchers for the purpose of matching and securing money allotted to Delaware under the acts of Congress approved September 2, 1937 (16 U.S.C. § 669 et seq. (Wildlife Restoration)) as amended, and August 9, 1950 (16 U.S.C. § 777 et seq. (Fish Restoration and Management)) as amended, to provide federal aid to the states in fish and wildlife restoration. Any balance remaining in such fund after full provision is effected to insure matching in full of federal aid to this State for wildlife and fish restoration shall be expended by the Department with approval from the

Office of Management and Budget, the Controller General's Office and the co-chairs of the Joint Finance Committee upon the fish and wildlife resources of this State in accordance with the federal guidelines to manage such fish and wildlife resources.

(42 Del. Laws, c. 77 § 1; 48 Del. Laws, c. 207 § 1; 7 Del. C. 1953 § 113; 50 Del. Laws, c. 258 § 1; 57 Del. Laws, c. 739 §§ 19, 20; 70 Del. Laws, c. 275 § 11; 76 Del. Laws, c. 80 § 261.)

§ 109 Deposit of receipts.

All funds received by the Department, except those which may be exempt from Chapter 61 of Title 29, and except funds derived from the issuance of yearly licenses for hunting and trapping and fishing, shall be deposited by the Department to the credit of the State Treasurer in the General Fund of the State and shall be reported in accordance with Chapter 61 of Title 29. The funds derived from the issuance of licenses for hunting, trapping or fishing shall be deposited in accordance with §§ 107 and 108 of this title.

(7 Del. C. 1953 § 114; 57 Del. Laws, c. 739 § 21; 70 Del. Laws, c. 275 § 12.)

§ 110 Disbursements.

All disbursements made by the Department for salaries, expenses and other purposes, as are by law permitted, shall be paid by the State Treasurer, to the extent there is money legally available to the Department, upon vouchers issued by the proper officers, designated by the Department, and approved by the Auditor of Accounts.

(37 Del. Laws, c. 48 § 1; 38 Del. Laws, c. 147 § 1; Code 1935 § 2807; 42 Del. Laws, c. 77 § 1; 7 Del. C. 1953 § 115; 57 Del. Laws, c. 739 § 22; 70 Del. Laws, c. 275 § 13.)

§ 111 Search and seizure powers of the Secretary and Fish and Wildlife Agents.

The Secretary and the Fish and Wildlife Agents may search and examine without warrant any person, conveyance, vehicle, game bag, game coat or other receptacle for protected wildlife, and in the presence of an occupant of any camp or tent, may search and examine without warrant such camp or tent for protected wildlife, when the Secretary or the Fish and Wildlife Agent has reason to believe and has stated to the suspected person or occupant the reason for believing that any of the laws relating to protected wildlife have been violated, and may seize and possess (take) any protected wildlife illegally in possession. This section shall not authorize the entering of a dwelling house without first procuring a search warrant.

Provisions of this section shall be subject to Chapter 23 of Title 11. If there is any conflict or inconsistency between this section and such chapter, the latter shall prevail.

(Code 1935 § 2806A; 41 Del. Laws, c. 177 § 1; 7 Del. C. 1953 § 117; 57 Del. Laws, c. 739 § 24; 70 Del. Laws, c. 105 § 4; 70 Del. Laws, c. 186 § 1.)

§ 112 Prohibition against acceptance of fees by employees of Department.

No employee of the Department shall receive or accept any fee from the sale of licenses issued by the Department.

(Code 1915 § 2358B; 40 Del. Laws, c. 191 § 2; Code 1935 § 2804; 7 Del. C. 1953 § 118; 57 Del. Laws, c. 739 § 25.)

§ 113 Protected wildlife injuring agriculture or other community interests.

When information is furnished to the Department that any species of protected wildlife has become, under extraordinary conditions, seriously injurious to agriculture or other interests in any particular community, an investigation shall be made by the Department to determine the nature and extent of the injury, whether the protected wildlife alleged to be doing the damage should be killed or captured and, if so, by whom, during what times and by what means. The Department shall issue an appropriate order giving effect to its determination.

(Code 1935 § 2821A; 41 Del. Laws, c. 177 § 4; 7 Del. C. 1953 § 119; 57 Del. Laws, c. 739 § 26; 70 Del. Laws, c. 275 § 14.)

§ 114 Protected wildlife injuring private property.

Upon receipt by the Department of information from the owner, tenant or sharecropper that any 1 or more species of protected wildlife are detrimental to his or her crops, property or other interests on the land on which he or she resides or controls, together with a statement of the location of the land, the nature of the crops, property or other interests being damaged or destroyed, the extent of the injury and the particular species of protected wildlife committing the injury, an investigation shall be made by the Department, and, if it is determined from such investigation that the injury complained of is substantial and can be abated only by killing or capturing the protected wildlife, or so many thereof as in the opinion of the Department is necessary, a permit to kill or capture any number or all of such protected wildlife on such premises shall be issued by the Department, in which permit shall be specified the time during which, the means and methods by which, and the person or persons by whom the protected wildlife may be killed or captured, and the disposition to be made of all protected wildlife so killed or captured, and such other restrictions as the Department deems necessary and appropriate in the circumstances of the particular case.

(Code 1935 § 2821B; 41 Del. Laws, c. 177 § 4; 7 Del. C. 1953 § 120; 57 Del. Laws, c. 739 § 27; 70 Del. Laws, c. 186 § 1.)

§ 115 Power of Department to take game or fish for propagating and restocking purposes.

The Department may take any game birds, animals or fish in or out of season in any way for strictly propagating and restocking purposes.

(Code 1915 § 2538; 30 Del. Laws, c. 176 § 6; Code 1935 § 3025; 7 Del. C. 1953 § 121; 57 Del. Laws, c. 739 § 28.)

Part I
Game, Wildlife and Dogs
Chapter 2
NONGAME WILDLIFE AND HABITAT PRESERVATION PROGRAMS

§ 201 Findings.

The General Assembly finds and declares:

(1) It is in the best interest of the State to preserve and enhance the diversity and abundance of nongame fish and wildlife, and to protect the habitat and natural areas harboring rare and vanishing species of fish, wildlife, plants and areas of unusual scientific significance or having unusual importance to the survival of Delaware's native fish, wildlife and plants in their natural environments.

(2) Rare and endangered species are a public trust in need of active, protective management, and that it is in the broad public interest to preserve and enhance such species.

(3) Historically fish and wildlife conservation programs have focused on the more recreationally and commercially important species and consequently, such programs have been financed largely by hunting and fishing license revenues and by the federal assistance based on excise taxes on certain hunting and fishing equipment. These traditional financing mechanisms are neither adequate nor fully appropriate to meet the needs of all fish and wildlife.

(4) It is the policy of the State to enable and encourage taxpayers voluntarily to support nongame fish and wildlife, nongame habitat and natural areas preservation programs, including rare plants protection, through contributions designated on state income tax forms.

(64 Del. Laws, c. 151 § 1.)

§ 202 Definitions.

(a) "Department" means the Department of Natural Resources and Environmental Control.

(b) "Nongame" is that fauna, including rare and endangered species, which are not commonly trapped, killed, captured or consumed, either for sport or profit.

(64 Del. Laws, c. 151 § 1.)

§ 203 Procedure for contribution; disposition thereof.

(Repealed by 73 Del. Laws, c. 179 § 2, effective July 12, 2001.)

§ 204 Preservation Fund.

(a) In order to carry out the purpose of this chapter, there is hereby created a special fund, which shall be known as the Nongame Fish and Wildlife, Nongame Habitat and Natural Areas Preservation Fund of the Treasury of the State.

(b) All moneys received from the voluntary contribution system established in § 1181 of Title 30 shall be deposited in said Fund.

(c) The General Assembly shall make no appropriation into said Fund, but individuals may, from time to time, make contributions or bequests to the Fund.

(d) The moneys contained in said Fund shall be continuously transferred to the Department of Natural Resources and Environmental Control for the exclusive purpose of carrying out the objectives of this chapter.

(e) The distribution of moneys among the subdivisions of the Department shall be determined by the Secretary of Natural Resources and Environmental Control.

(f) The Department shall make an annual report to the General Assembly, which shall include the amount of funding derived from the contributions and a summary of projects undertaken in furtherance of this chapter.

(g) From time to time as determined by the Delaware State Clearinghouse Committee, the Department shall submit a detailed report to members of the Committee of revenues, expenditures and program measures for the fiscal period in question. Such report shall also be sufficiently descriptive in nature so as to be concise and informative. The Committee may cause the Department to appear before the Committee and to answer such questions as the Committee may require.

(64 Del. Laws, c. 151 § 1.)

Part I
Game, Wildlife and Dogs
Chapter 5
LICENSES
Subchapter I
Hunting, Trapping and Fishing Licenses

§ 501 Licenses.

(a) Every resident of this State, except as otherwise provided in this chapter, shall obtain a general license before hunting, trapping and/or fishing in this State; and every resident required to obtain a hunting license who was born after January 1, 1967, shall have satisfactorily completed not less than 10 hours of approved instruction, which includes but is not limited to, the safe and proficient use of hunting equipment, hunter responsibility, principles of wildlife management, wildlife identification and a hands-on live firing experience by a trained firearms instructor before such person makes application for a hunting license. Proof of completion of authorized hunter education courses of other states or Canadian provinces shall be accepted and deemed having met the instruction requirement.

(b) Commencing July 1, 1986, every resident, except as otherwise provided, shall obtain a trapping license before trapping any animals regulated by this title. Every resident required to obtain a trapping license who was born after January 1, 1978, shall have satisfactorily completed a course in trapping education approved by the Department before such person makes application for a trapping license.

(27 Del. Laws, c. 152 § 3; Code 1915 § 2413; 40 Del. Laws, c. 191 § 26; Code 1935 § 2885; 47 Del. Laws, c. 77 § 1; 7 Del. C. 1953 § 501; 57 Del. Laws, c. 347; 58 Del. Laws, c. 32; 58 Del. Laws, c. 511 § 9; 65 Del. Laws, c. 217 § 1; 69 Del. Laws, c. 56 § 1; 77 Del. Laws, c. 129 § 1.)

§ 502 Exceptions to requirements for license.

(a) Residents and nonresidents may fish if they are the operator of a vehicle with a surf fishing vehicle permit as long as the vehicle is located on a designated Delaware state park surf fishing beach without being licensed hereunder.

(b) Residents who own or live upon farms in this State containing 20 or more acres, and the members of their immediate families who reside on the farm, may hunt, fish and trap on the farm without being licensed hereunder.

(c) Residents under 13 years of age may hunt without a license in this State when accompanied by a person who is the lawful holder of a hunting license or has a lawful right to hunt.

(d) Any child under the age of 16 years may fish or take fish or crabs or clam from any of the waters under the jurisdiction of this State without being licensed hereunder. Residents 16 and older but not over 65 years of age must purchase a fishing license to fish or take fish, crabs or clams.

(e) Residents, 65 years of age or older, are exempted from the licensing requirements of this chapter.

(f) A member of the armed forces of the United States who is a patient in a military hospital may be issued a license to hunt, trap and fish in this State without charge, upon receipt by the Department of a written statement signed by the applicant's commanding officer certifying the nature of the applicant's disability and place of station.

(g) Persons who are patients in any Veterans Administration facility in this State, or in any public hospital or sanitarium for the treatment of tuberculosis, or a patient in a rehabilitation hospital under the State Department of Health, provided such person carries identification which verifies his or her status as such a patient, shall not be required to purchase a fishing license. Forms shall be supplied to such persons when they apply for their licenses to be used for the identification purposes described in this subsection.

(h) Residents living in this State for at least 1 year immediately prior to the date of application for a license who have been honorably discharged from the armed forces of the United States and certified by the Veterans Administration as having at least a 60% service-connected disability are exempted from the licensing requirements of this chapter.

(i) Persons who are blind are exempted from the licensing requirements of this chapter.

(j) Any unarmed residents participating in an organized fox hunt are exempt from the licensing requirements of this chapter.

(k) Any resident is exempt from the fishing license requirements of this chapter while fishing in a fee fishing operation that is registered as same with the Department of Agriculture according to Chapter 4 of Title 3.

(l) Any resident who has served honorably for 90 or more consecutive days on active duty in the Armed Forces of the United States, including service as member of the Delaware National Guard, in military actions in Southwest Asia associated with Operation Iraqi Freedom or Operation Enduring Freedom may, for the first 12 months following the date the resident was honorably discharged or removed from active status, be issued a license to hunt and/or fish in this State without charge.

(27 Del. Laws, c. 152 § 3; Code 1915 §§ 2371, 2413; 40 Del. Laws, c. 191 §§ 8, 26; 40 Del. Laws, c. 199 §§ 1-3; Code 1935 §§ 2817, 2852, 2885; 7 Del. C. 1953 § 502; 55 Del. Laws, c. 444; 57 Del. Laws, c. 77; 57 Del. Laws, c. 399 §§ 1-4; 57 Del. Laws, c. 422; 60 Del. Laws, c. 411 § 1; 63 Del. Laws, c. 389 § 9; 69 Del. Laws, c. 103 § 10; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 291 § 1; 76 Del. Laws, c. 71 §§ 1-3; 76 Del. Laws, c. 72 § 1; 78 Del. Laws, c. 179 § 18.)

§ 503 Application for resident's license; proof of residence; use of license information.

(a) Each applicant for a resident's license shall present reasonable proof to the Department or its duly authorized agent that the applicant is a bona fide resident of this State. The Social Security number of the applicant shall be included on the application for any resident's license. The information contained within hunting, fishing, and trapping licenses and related databases may not be made available to the public. Government agencies may use license information for law-enforcement purposes involving fish and wildlife investigations, for research purposes involving hunting, trapping, or fishing harvest surveys conducted by Department scientists, excluding Social Security information, or as otherwise authorized by law.

(b) The Department may use or provide a contractor with license information, excluding Social Security information, for the following limited purposes:

(1) Retaining or recruiting hunters, trappers, and anglers.

(2) Sustaining and increasing associated license sales.

(c) Any contractor selected by the Department pursuant to subsection (b) of this section shall be subject to a confidentiality agreement that prevents the contractor from releasing, transferring, or using license information for any other purposes.

(27 Del. Laws, c. 152 § 3; Code 1915 § 2413; 40 Del. Laws, c. 191 § 26; Code 1935 § 2885; 7 Del. C. 1953 § 503; 57 Del. Laws, c. 739 § 32; 59 Del. Laws, c. 96 § 5; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 6 § 2; 74 Del. Laws, c. 337 § 1; 77 Del. Laws, c. 425 § 1; 78 Del. Laws, c. 39 § 1; 80 Del. Laws, c. 106 § 1.)

§ 504 License fees for residents; additional permits [Effective until July 1, 2017]

(a) Residents shall pay to the Department or its duly authorized agents the following license fees:

(1) $25 for a general hunting license.

(2) $3.50 for a trapping license.

(3) $8.50 for a general fishing license.

(4) $40 for a boat fishing license for a boat 20 feet or less, $50 for a boat fishing license for a boat greater than 20 feet.

(5) $5.00 for junior hunting license for a resident age 13 through 15 with the criteria for issuing the permit established by the Department pursuant to § 103 of this title.

(6) $100 for a guide license.

(b) During any deer season the Department may issue an additional permit to kill a single deer. The criteria for issuing the permit shall be established by the Department pursuant to § 103 of this title. The amount charged for each permit shall be $10.

(c) Vessels for hire shall pay to the Department or its duly authorized agents the following license fees:

(1) $150 for a charter boat, as defined in § 906(9) of this title, license; and

(2) $300 for a head boat, as defined in § 906(36) of this title, license.

(27 Del. Laws, c. 152 § 3; Code 1915 § 2413; 40 Del. Laws, c. 191 § 26; Code 1935 § 2885; 45 Del. Laws, c. 215 § 1; 47 Del. Laws, c. 77 § 1; 7 Del. C. 1953 § 504; 53 Del. Laws, c. 421 §§ 1, 2; 57 Del. Laws, c. 41 §§ 1, 2; 57 Del. Laws, c. 739 § 33; 65 Del. Laws, c. 217 § 2; 67 Del. Laws, c. 451 §§ 1, 2; 68 Del. Laws, c. 75; 76 Del. Laws, c. 71 §§ 4, 5; 76 Del. Laws, c. 72 §§ 2-4.)

§ 504 License fees for residents; additional tags [Effective July 1, 2017]

(a) Residents shall pay to the Department or its duly authorized agents the following license fees:

(1) $39.50 for a general hunting license.

(2) $10 for a trapping license.

(3) $8.50 for a general fishing license.

(4) $40 for a boat fishing license for a boat 20 feet or less, $50 for a boat fishing license for a boat greater than 20 feet.

(5) $5.00 for a junior hunting license for a resident age 13 through 15 with the criteria for issuing the license established by the Department pursuant to § 103 of this title.

(6) $100 for a fishing guide license and $159.50 for a hunting guide license.

(b) The Department may issue an additional tag or tags to kill deer. The criteria for issuing a tag or tags shall be established by the Department pursuant to § 103 of this title. The amount charged for each tag or set of tags shall be $20.

(c) Vessels for hire shall pay to the Department or its duly authorized agents the following license fees:

(1) $150 for a charter boat, as defined in § 906(9) of this title, license; and

(2) $300 for a head boat, as defined in § 906(36) of this title, license.

(27 Del. Laws, c. 152 § 3; Code 1915 § 2413; 40 Del. Laws, c. 191 § 26; Code 1935 § 2885; 45 Del. Laws, c. 215 § 1; 47 Del. Laws, c. 77 § 1; 7 Del. C. 1953 § 504; 53 Del. Laws, c. 421 §§ 1, 2; 57 Del. Laws, c. 41 §§ 1, 2; 57 Del. Laws, c. 739 § 33; 65 Del. Laws, c. 217 § 2; 67 Del. Laws, c. 451 §§ 1, 2; 68 Del. Laws, c. 75; 76 Del. Laws, c. 71 §§ 4, 5; 76 Del. Laws, c. 72 §§ 2-4; 80 Del. Laws, c. 333 § 2.)

§ 505 License requirements for members of the armed forces.

Any member of the armed forces of the United States of America, including any Reserve component thereof, serving on full-time active duty in the State of Delaware while not deployed or on temporary duty, and any member of Delaware's National Guard, shall be deemed a resident of this State for the purpose of obtaining a license to hunt, trap, and fish in this State. Each such application shall be supported by a written statement signed by the applicant's commanding officer certifying to the applicant's place of station and duty status.

(27 Del. Laws, c. 152 § 3; Code 1915 § 2413; 40 Del. Laws, c. 191 § 26; Code 1935 § 2885; 48 Del. Laws, c. 155 § 1; 7 Del. C. 1953 § 505; 49 Del. Laws, c. 397; 77 Del. Laws, c. 440 § 1; 78 Del. Laws, c. 34 §§ 1, 2.)

§ 506 License requirements for nonresidents; use of license information.

(a) Every nonresident, except as otherwise provided in this chapter, shall obtain a general license before hunting, trapping, fishing, clamming, or crabbing in this State. Every nonresident required to obtain a hunting license who was born after January 1, 1967, shall have satisfactorily completed not less than 10 hours of instruction, which includes the safe and proficient use of hunting equipment, hunter responsibility, principles of wildlife management, wildlife identification, and, to the degree practical, a live firing experience before such person makes application for a hunting license. This instruction is to be provided by personnel of the Department or its authorized agents. Proof of completion of authorized hunter education courses of other states or Canadian provinces shall be accepted and deemed having met the instruction requirement.

(b) Every nonresident required to obtain a trapping license who was born after January 1, 1978, shall have satisfactorily completed a course in trapping education approved by the Department before such person makes application for a trapping license.

(c) The Social Security number of the applicant shall be included on the application for any nonresident's license. The information contained within hunting, fishing, and trapping licenses and related databases may not be made available to the public. Government agencies may use license information for law-enforcement purposes involving fish and wildlife investigations, for research purposes involving hunting, trapping, or fishing harvest surveys conducted by Department scientists, excluding Social Security information, or as otherwise authorized by law.

(d) The Department may use or provide a contractor with license information, excluding Social Security information, for the following limited purposes:

(1) Retaining or recruiting hunters, trappers, and anglers.

(2) Sustaining and increasing associated license sales.

(e) Any contractor selected by the Department pursuant to subsection (d) of this section shall be subject to a confidentiality agreement that prevents the contractor from releasing, transferring, or using license information for any other purposes.

(27 Del. Laws, c. 152 § 1; Code 1915 § 2411; 40 Del. Laws, c. 191 § 24; Code 1935 § 2882; 7 Del. C. 1953 § 506; 65 Del. Laws, c. 217 § 3; 69 Del. Laws, c. 56 § 2; 70 Del. Laws, c. 275 § 17; 74 Del. Laws, c. 6 § 3; 74 Del. Laws, c. 337 § 2; 76 Del. Laws, c. 71 § 6; 77 Del. Laws, c. 425 § 2; 78 Del. Laws, c. 39 § 2; 80 Del. Laws, c. 106 § 2.)

§ 507 Exceptions to requirement of license for nonresidents.

(a)(1) Nonresidents or aliens who are occupants of farms in this State containing 20 acres or more who are engaged in the science of husbandry, who actually reside thereon, and the immediate members of the family of such occupants who also reside on said farm, may hunt, fish or trap on said farms without being licensed hereunder.

(2) A nonresident, who owns but is not an occupant of a farm in this State containing 20 acres or more and where the science of husbandry is practiced, and the immediate members of the family of the nonresident farm owner may hunt, trap, and/or fish on the farm if the farm occupant or resident, if any, gives the owner written permission or if hunting, trapping, and/or fishing is permitted pursuant to a written lease, if any, between the farm owner and the occupant or resident of the farm.

(b) Nonresidents other than aliens who are under 13 years of age may hunt without a license in this State when accompanied by a person who is the lawful holder of a hunting license or has a lawful right to hunt.

(c) Any nonresidents participating in an organized fox hunt are exempt from the licensing requirement of this chapter.

(d) Any nonresident is exempt from the fishing license requirements of this chapter while fishing in a fee fishing operation that is registered as same with the Department of Agriculture according to Chapter 4 of Title 3. Nonresidents 16 years of age or older must purchase a nonresident fishing license to fish or take fish, crabs or clams.

(e) A nonresident shall be exempt from the licensing requirement of this chapter while hunting snow geese, provided:

(1) The nonresident resides in another state or Canadian province which extends the same exemption to Delaware residents;

(2) The nonresident is properly licensed, or exempt from the licensing requirement, to hunt snow geese in the state or Canadian province in which he or she resides;

(3) The nonresident purchases a migratory waterfowl stamp as provided for by § 517 of this title; and

(4) The nonresident complies with the hunter education requirements of § 506(a) of this title.

(27 Del. Laws, c. 152 § 1; Code 1915 § 2411; 40 Del. Laws, c. 191 § 24; Code 1935 § 2882; 7 Del. C. 1953 § 507; 50 Del. Laws, c. 640 § 1; 51 Del. Laws, c. 338; 60 Del. Laws, c. 411 § 2; 63 Del. Laws, c. 389 § 10; 69 Del. Laws, c. 103 § 11; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 270 § 1; 76 Del. Laws, c. 71 §§ 7, 8; 76 Del. Laws, c. 72 § 5; 79 Del. Laws, c. 155 § 1.)

§ 508 License fees for nonresidents [Effective until July 1, 2017]

(a) Nonresidents shall pay to the Department or its duly constituted agents the following license fees:

(1) $130 or once agents can access online reciprocal fees the higher of the 2 for a general hunting license.

(2) $25 for a trapping license.

(3) $20 for a general fishing license.

(4) $12.50 for a 7-day fishing license (good for 7 consecutive days from the date of issuance).

(5) $50 for a small game hunting license good for 3 consecutive days from the date of issue and not valid for hunting deer or turkeys.

(6) $10 for an additional permit to kill a single antlerless deer.
(7) $25 for a tag to kill a single antlered deer.
(8) $25 for a tag to kill a single quality buck.
(9) Vessels for hire shall pay to the Department or its duly authorized agents the following license fees:
a. $300 for a charter boat, as defined in § 906(9) of this title, license; and
b. $600 for a head boat, as defined in § 906(36) of this title, license.
(10) $40 for a boat fishing license for a boat 20 feet or less, $50 for a boat fishing license for a boat greater than 20 feet.
(11) $50 or once agents can access online reciprocal fees the higher of the 2 for a nonresident junior license.
(12) $300 for a guide license.
(b) The criteria for issuing a permit pursuant to this section shall be established by the Department pursuant to § 103 of this title.
(27 Del. Laws, c. 152 § 1; Code 1915 § 2411; 40 Del. Laws, c. 191 § 24; Code 1935 § 2883; 47 Del. Laws, c. 152 § 1; 48 Del. Laws, c. 217 § 1; 7 Del. C. 1953 § 509; 50 Del. Laws, c. 250 § 1; 50 Del. Laws, c. 259 § 1; 57 Del. Laws, c. 42; 57 Del. Laws, c. 97; 57 Del. Laws, c. 739 § 35; 59 Del. Laws, c. 96 §§ 2, 3; 59 Del. Laws, c. 230 § 1; 61 Del. Laws, c. 120 § 1; 65 Del. Laws, c. 217 § 4; 66 Del. Laws, c. 355 § 1; 70 Del. Laws, c. 27 § 1; 71 Del. Laws, c. 270 § 2; 73 Del. Laws, c. 375 §§ 2-4[1-3]; 76 Del. Laws, c. 71 §§ 9-12; 76 Del. Laws, c. 72 §§ 6-9.)

§ 508 License and tag fees for nonresidents [Effective July 1, 2017]

(a) Nonresidents shall pay to the Department or its duly authorized agents the following license fees:
(1) $199.50 for a general hunting license.
(2) $75 for a trapping license.
(3) $20 for a general fishing license.
(4) $12.50 for a 7-day fishing license good for 7 consecutive days.
(5) $75 for a 3-day small game hunting license good for 3 consecutive days and not valid for hunting deer or turkeys.
(6) $20 for each additional tag to kill a single antlerless deer.
(7) $50 for a tag to kill a single antlered deer.
(8) $50 for a tag to kill a single quality buck.
(9) Vessels for hire shall pay to the Department or its duly authorized agents the following license fees:
a. $300 for a charter boat, as defined in § 906(9) of this title, license; and
b. $600 for a head boat, as defined in § 906(36) of this title, license.
(10) $40 for a boat fishing license for a boat 20 feet or less, $50 for a boat fishing license for a boat greater than 20 feet.
(11) $50 for a junior hunting license for a nonresident age 13 through 15.
(12) $300 for a fishing guide license and $475 for a hunting guide license.
(b) The criteria for issuing a tag pursuant to this section shall be established by the Department pursuant to § 103 of this title.
(27 Del. Laws, c. 152 § 1; Code 1915 § 2411; 40 Del. Laws, c. 191 § 24; Code 1935 § 2883; 47 Del. Laws, c. 152 § 1; 48 Del. Laws, c. 217 § 1; 7 Del. C. 1953 § 509; 50 Del. Laws, c. 250 § 1; 50 Del. Laws, c. 259 § 1; 57 Del. Laws, c. 42; 57 Del. Laws, c. 97; 57 Del. Laws, c. 739 § 35; 59 Del. Laws, c. 96 §§ 2, 3; 59 Del. Laws, c. 230 § 1; 61 Del. Laws, c. 120 § 1; 65 Del. Laws, c. 217 § 4; 66 Del. Laws, c. 355 § 1; 70 Del. Laws, c. 27 § 1; 71 Del. Laws, c. 270 § 2; 73 Del. Laws, c. 375 §§ 2-4[1-3]; 76 Del. Laws, c. 71 §§ 9-12; 76 Del. Laws, c. 72 §§ 6-9; 80 Del. Laws, c. 333 § 3.)

§ 509 Complimentary licenses.

(a) The Department may issue annually, complimentary hunting and fishing licenses to any of the following:
(1) The President of the United States;
(2) The governor of any state;
(3) Authorized officials of the game and fish departments of other states; and
(4) Authorized officials of the United States Department of the Interior, United States Fish and Wildlife Service, who are nonresidents of the State.
(b) The complimentary licenses shall not be transferable, shall be issued on such form as the Department designates, and without the payment of any fee therefor and when so issued shall be valid authority for the holder or holders thereof to hunt and fish in the State in accordance with the laws of the State. Not more than 50 such complimentary licenses shall be issued in any 1 calendar year.
(c) The Secretary may also issue letter permits, valid for up to 3 days, to visiting state and federal dignitaries. The number of outstanding permits shall not exceed 10 at any time.
(Code 1935 § 2804A; 45 Del. Laws, c. 216 § 1; 7 Del. C. 1953 § 511; 57 Del. Laws, c. 739 § 36; 59 Del. Laws, c. 110 §§ 1-3; 70 Del. Laws, c. 275 § 18.)

§ 510 Term of license.

(a) All licenses issued by the Division of Fish and Wildlife shall be in lieu of all other charges for such privileges and shall authorize their legal holder the privilege prescribed thereon only during the fiscal year, and, with the exception of fishing licenses, such licenses shall be valid only during the periods prescribed on the license.
(b) Fishing licenses shall authorize their legal holder the privilege prescribed thereon only during the calendar year beginning the 1st day

of January and such licenses shall expire on December 31 of the year they are issued.

(27 Del. Laws, c. 152 § 4; Code 1915 § 2414; 40 Del. Laws, c. 191 § 27; Code 1935 § 2886; 7 Del. C. 1953 § 512; 50 Del. Laws, c. 235 § 1; 57 Del. Laws, c. 739 § 37; 58 Del. Laws, c. 41 § 1; 73 Del. Laws, c. 375 § 7[6].)

§ 511 Licensing agents; bond requirement; service charge; regulations [Effective until July 1, 2017]

(a) The Department may authorize as many qualified persons as licensing agents as it deems necessary to effectuate the efficient distribution of the licenses, permits and stamps authorized by subchapter I of this chapter.

(b) Licensing agents shall be required by the Department to give security by means of a bond in the penal sum of $5,000, conditioned for the faithful performance of their duties and for the prompt and correct remittance to the Department of the moneys received from the sale of licenses, permits and stamps.

(c) Licensing agents may add a service charge to the required fee for a license, permit or stamp, provided the service charge does not exceed $1.50 for a license, $1.50 for a permit or $1.00 for a stamp. Such service charges, if imposed, shall be posted by the licensing agent and shall be clearly visible to prospective purchasers.

(d) Notwithstanding subsection (c) of this section, a licensing agent offering automated licensing may be authorized by the Department to add a service charge of up to $4.00 to the required fee for a license, permit or stamp. License, permit and stamp applicants, prior to their purchase of licenses, permits and/or stamps through an automated system, shall be notified of the applicable service charge or charges.

(e) The Secretary may adopt, amend, modify or repeal rules and regulations to effectuate the policy and purpose of this section.

(f)(1) Except as otherwise provided by the Constitutions or laws of the United States or of the State, as the same may expressly require or be interpreted as requiring by a court of competent jurisdiction, no claim or cause of action shall arise, and no judgment, damages, penalties, costs or other money entitlement shall be awarded or assessed against any person authorized by the Department as a licensing agent in any civil suit or proceeding at law or in equity, or before any administrative tribunal, where the following elements are present:

a. The act or omission complained of arose out of and in connection with the performance of the licensing agent's official duties set forth in this title or the rules or regulations of the Department;

b. The act or omission complained of was done in good faith and in the belief that the licensing agent was acting in accordance with its official duties set forth in this title or the rules or regulations of the Department; and

c. The act or omission complained of was done without gross or wanton negligence.

(2) The plaintiff shall have the burden of proving the absence of 1 or more of the elements of immunity as set forth in this subsection.

(3) Nothing in this subsection shall be construed to require the State, the Department, or any agency, office, or instrumentality of the State to indemnify or to reimburse any licensing agent for costs of defending any civil suit or proceeding brought against the licensing agent. Nothing in this subsection shall be construed to require the State, the Department, or any agency, office, or instrumentality of the State to provide legal representation to any licensing agent in any civil suit or proceeding brought against the licensing agent.

(26 Del. Laws, c. 162 § 3; 26 Del. Laws, c. 164 § 15; 27 Del. Laws, c. 154; 27 Del. Laws, c. 155 § 3; Code 1915 § 2360; 40 Del. Laws, c. 191 § 3; Code 1935 § 2806; 42 Del. Laws, c. 130 § 1; 7 Del. C. 1953 § 513; 57 Del. Laws, c. 739 § 38; 58 Del. Laws, c. 104; 62 Del. Laws, c. 212 § 1; 71 Del. Laws, c. 443 § 1; 73 Del. Laws, c. 375 § 8[7]; 74 Del. Laws, c. 320 § 1.)

§ 511 Licensing agents; bond requirement; service charge; regulations [Effective July 1, 2017]

(a) The Department may authorize as many qualified persons as licensing agents as it deems necessary to effectuate the efficient distribution of the licenses, permits, tags, passes, and stamps authorized by subchapter I of this chapter.

(b) Licensing agents shall be required by the Department to give security by means of a bond in the penal sum of $5,000, conditioned for the faithful performance of their duties and for the prompt and correct remittance to the Department of the moneys received from the sale of licenses, permits, tags, passes, and stamps.

(c) Licensing agents may add a service charge to the required fee for a license, permit, tag, pass, or stamp, provided the service charge does not exceed $1.50 for a license, $1.50 for a permit, $1.50 for a tag, $1.50 for a pass, or $1.00 for a stamp. Such service charges, if imposed, shall be posted by the licensing agent and shall be clearly visible to prospective purchasers.

(d) Notwithstanding subsection (c) of this section, a licensing agent offering automated licensing may be authorized by the Department to add a service charge of up to $4.00 to the required fee for a license. License applicants, prior to their purchase of licenses through an automated system, shall be notified of the applicable service charge.

(e) The Secretary may adopt, amend, modify or repeal rules and regulations to effectuate the policy and purpose of this section.

(f)(1) Except as otherwise provided by the Constitutions or laws of the United States or of the State, as the same may expressly require or be interpreted as requiring by a court of competent jurisdiction, no claim or cause of action shall arise, and no judgment, damages, penalties, costs or other money entitlement shall be awarded or assessed against any person authorized by the Department as a licensing agent in any civil suit or proceeding at law or in equity, or before any administrative tribunal, where the following elements are present:

a. The act or omission complained of arose out of and in connection with the performance of the licensing agent's official duties set forth in this title or the rules or regulations of the Department;

b. The act or omission complained of was done in good faith and in the belief that the licensing agent was acting in accordance with its official duties set forth in this title or the rules or regulations of the Department; and

c. The act or omission complained of was done without gross or wanton negligence.

(2) The plaintiff shall have the burden of proving the absence of 1 or more of the elements of immunity as set forth in this subsection.

(3) Nothing in this subsection shall be construed to require the State, the Department, or any agency, office, or instrumentality of the State to indemnify or to reimburse any licensing agent for costs of defending any civil suit or proceeding brought against the licensing agent. Nothing in this subsection shall be construed to require the State, the Department, or any agency, office, or instrumentality of the State to provide legal representation to any licensing agent in any civil suit or proceeding brought against the licensing agent.

(26 Del. Laws, c. 162 § 3; 26 Del. Laws, c. 164 § 15; 27 Del. Laws, c. 154; 27 Del. Laws, c. 155 § 3; Code 1915 § 2360; 40 Del. Laws, c. 191 § 3; Code 1935 § 2806; 42 Del. Laws, c. 130 § 1; 7 Del. C. 1953 § 513; 57 Del. Laws, c. 739 § 38; 58 Del. Laws, c. 104; 62 Del. Laws, c. 212 § 1; 71 Del. Laws, c. 443 § 1; 73 Del. Laws, c. 375 § 8[7]; 74 Del. Laws, c. 320 § 1; 80 Del. Laws, c. 333 § 4.)

§ 512 Refusal to sell and revocation of license; grounds; notice.

(a) The Department may, except as otherwise provided, revoke any hunting, fishing or trapping license, or any license issued by it, and deny any person the right to secure such license or to hunt, fish or trap anywhere in this State for a period within its discretion, but in no case longer than 1 year, if:

(1) The licensee or person has been convicted of violating any game or fish law; or

(2) The licensee or person has been convicted in any court of record of having defaced, mutilated, destroyed or carried away notices posted by a freeholder, leaseholder or the Department, or personal property or crops of any kind on lands or waters in which such licensee or person may have been hunting, trapping or fishing; or

(3) The licensee or person has been convicted of an offense involving carelessness in the use of firearms while hunting and thereby caused injury to any person or to poultry or livestock; or

(4) The licensee or person has been convicted of an offense involving the unlawful setting of forest, marsh or grass fires; or

(5) It is established to the satisfaction of the Department that the licensee, while hunting with firearms, has been in an intoxicated condition.

(b) To revoke a license then in force or to deny any person the right to secure a license or to hunt, trap or fish in this State for any period, the Department shall send a written notice to that effect to the person at his or her address either by registered mail or by delivery personally by a representative of the Department. The Department shall furnish in writing to all persons authorized to issue licenses, the names and addresses of all persons whose licenses have been revoked and the terms for which such licensees or persons have been denied the right to secure licenses or to hunt, trap or fish in this State, together with any other data the Department deems necessary.

(c) The Department may revoke any hunting or trapping license or any similar licenses issued by it or deny any person the right to secure such license or to hunt or trap anywhere in this State for a period within its discretion of not less than 3 years nor more than 5 years if the licensee has been convicted of illegally possessing, tending or setting or attempting to set or tend a killer, body-gripping trap.

(d) The provisions of § 516(g) and § 2216 of Title 13 shall supersede any provisions of this chapter to the contrary with respect to any matter involving any applicant or licensee under 516(g) or 2216 of Title 13. Any provisions hereof to the contrary notwithstanding, upon receipt of notification from the Family Court pursuant to 516(g) of Title 13 or notice from the Director of the Division of Child Support Services pursuant to § 2216 of Title 13 regarding an applicant or licensee, the Department shall:

(1) Forthwith deny the issuance or renewal of any license under this chapter, or suspend the same, and

(2) Furnish in writing the name and address of such applicant or licensee to all persons authorized to issue licenses under this chapter.

(Code 1915 § 2371; 40 Del. Laws, c. 191 § 8; Code 1935 § 2817; 7 Del. C. 1953 § 514; 57 Del. Laws, c. 739 § 39; 62 Del. Laws, c. 326 § 2; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 216 § 80; 80 Del. Laws, c. 234 § 1.)

§ 513 Display by licensee of tag or button furnished by Department.

Each holder of a license issued by the Department shall always possess on their person said license while hunting, fishing or trapping, or while serving as a guide, and shall present such license upon request to any person empowered to arrest for violations of the game and fish laws of this State.

(26 Del. Laws, c. 162 § 3; 26 Del. Laws, c. 164 §§ 3, 15; 27 Del. Laws, c. 154; 27 Del. Laws, c. 155 § 3; Code 1915 §§ 2360, 2392; 40 Del. Laws, c. 191 §§ 3, 17; Code 1935 §§ 2806, 2852; 46 Del. Laws, c. 73 § 1; 7 Del. C. 1953 § 515; 57 Del. Laws, c. 739 § 40; 77 Del. Laws, c. 237 § 1.)

§ 514 Tagging metal traps; obtaining tags; violation and penalty.

(a) No person shall set or make use of any kind of a metal trap whatsoever, except for the purpose of taking muskrats, without having first placed a metallic plate or tag on each trap, bearing in plain English the words "Trapping License, Delaware," and in addition thereto the number of the trapping license issued to the owner of the traps and the year of issuance thereof.

(b) The Department shall furnish upon application to any person who has secured a license in this State, or to any person who is entitled to trap without a license, not more than 25 suitable tags free of charge, and shall furnish upon application, additional tags at cost. Such tags shall be used only by the person to whom issued and shall not be transferable.

(c) Whoever sets or makes use of a metal trap, except for the purpose of taking muskrats, without having first placed a metallic plate or tag on each metal trap in accordance with this section, shall be guilty of a class D environmental misdemeanor for each offense, and in addition thereto shall forfeit to the Department each trap so set or made use of, and such traps shall be disposed of as the Department directs.

(Code 1915 § 2392A; 40 Del. Laws, c. 191 § 18; Code 1935 § 2852; 7 Del. C. 1953 § 516; 57 Del. Laws, c. 739 § 41; 70 Del. Laws, c. 275 § 19.)

§ 515 Possession of protected game or fish by unlicensed nonresident; penalty.

(a) No nonresident or alien shall have any protected game or wildlife in his or her possession who does not hold a hunting, trapping or fishing license, for game and fish, respectively, for the time during which he or she has protected game or wildlife in his or her possession unless such game or wildlife has been lawfully killed or caught out of the State and may be lawfully possessed in this State.

(b) Whoever violates this section shall be guilty of a class B environmental misdemeanor for each offense.

(c) Nothing in this section shall apply:

(1) To a nonresident or alien who is a bona fide freeholder or a bona fide leaseholder and actually resides on a farm in this State containing at least 20 acres of land and is engaged in the science of husbandry on said farm; or

(2) To the lawful interstate transportation of protected wildlife.

(26 Del. Laws, c. 164 § 5; Code 1915 § 2394; 40 Del. Laws, c. 191 § 19; Code 1935 § 2854; 7 Del. C. 1953 § 517; 70 Del. Laws, c. 275 § 20; 70 Del. Laws, c. 186 § 1.)

§ 516 Forgery or alteration of license; obtaining license by misrepresentation; use of license by another; penalties.

Whoever forges or alters any license or misrepresents the facts in order to obtain any license issued by the Department or use the license of another, or permits such license to be used by another, shall forfeit such license and be guilty of a class B environmental misdemeanor for each offense. In addition thereto, for altering a license in any way, the person is guilty of forgery and shall be punished accordingly.

(26 Del. Laws, c. 164 § 6; Code 1915 § 2395; 40 Del. Laws, c. 191 § 20; Code 1935 § 2855; 7 Del. C. 1953 § 518; 57 Del. Laws, c. 739 § 42; 70 Del. Laws, c. 275 § 21.)

§ 517 Migratory waterfowl stamp [Effective until Jan. 1, 2017]

(a) As used in this section:

(1) "Division" means the Division of Fish and Wildlife of the Department of Natural Resources and Environmental Control.

(2) "Migratory waterfowl" means a wild goose, brant or wild duck.

(3) "Stamp" means the migratory waterfowl stamp provided for by this section.

(b) Except as otherwise provided herein, no person may hunt or take any migratory waterfowl within this State without first procuring a migratory waterfowl stamp as provided for by this section. Such stamp must be in the possession of every person when hunting or taking any migratory waterfowl. Each stamp shall be validated by the signature of the licensee written across the face of such stamp. Such stamp shall be designed and produced in accordance with Division regulations and shall expire annually on the same date each year that all hunting licenses expire. Unless otherwise provided in this chapter, any person who is exempt from payment or charge for a hunting license shall also be exempt from the fee imposed by this section. Any person who is under the age of 16 years shall be exempt from the requirements of this subsection.

(c) A stamp shall be issued to each hunting license applicant upon written request on the forms furnished by the Division and payment of a fee of $9.00, together with any Licensing Agent fees charged in accordance with this chapter.

(d) All funds derived from the issuance of migratory waterfowl stamps shall be deposited by the Division with the State Treasurer and shall be specifically set aside and earmarked as state duck stamp account to permit separate accountability for the receipt and expenditure of funds derived from the sale of state duck stamps.

(1) The Division shall contract annually 50 percent of the revenue collected and deposited in the state duck stamp account with an appropriate nonprofit organization to utilize 50 percent of the revenue collected pursuant to this section for the development of waterfowl propagation areas in Canada from which come substantial numbers of waterfowl migrating to and through Delaware. Before paying such revenue to any nonprofit organization developing waterfowl areas, the Division shall obtain evidence that the project is acceptable to the appropriate agency having a jurisdiction over the lands and waters affected by the project.

(2) The remaining 50 percent of the funds in the state duck stamp account shall be used for the purpose of protection, preserving, restoring, enhancing and developing waterfowl habitat in Delaware.

(e) The Division is hereby granted the authority to establish, by regulation, the method for selecting appropriate designs for the migratory waterfowl stamp.

(62 Del. Laws, c. 62 § 1; 70 Del. Laws, c. 27 § 2; 70 Del. Laws, c. 275 §§ 22, 24; 71 Del. Laws, c. 270 § 3; 71 Del. Laws, c. 443 § 2; 73 Del. Laws, c. 375 § 5[4].)

§ 517 Migratory waterfowl stamp [Effective July 1, 2017]

(a) As used in this section:

(1) "Division" means the Division of Fish and Wildlife of the Department of Natural Resources and Environmental Control.

(2) "Migratory waterfowl" means a wild goose, brant or wild duck.

(3) "Stamp" means the migratory waterfowl stamp provided for by this section.

(b) Except as otherwise provided herein, no person may hunt or take any migratory waterfowl within this State without first procuring a migratory waterfowl stamp as provided for by this section. Such stamp must be in the possession of every person when hunting or taking any migratory waterfowl. Each stamp shall be validated by the signature of the licensee written across the face of such stamp. Such stamp

shall be designed and produced in accordance with Division regulations and shall expire annually on the same date each year that all hunting licenses expire. Unless otherwise provided in this chapter, any person who is exempt from payment or charge for a hunting license shall also be exempt from the fee imposed by this section. Any person who is under the age of 16 years shall be exempt from the requirements of this subsection.

(c) A stamp shall be issued to each hunting license applicant upon written request on the forms furnished by the Division and payment of a fee of $15, together with any Licensing Agent fees charged in accordance with this chapter.

(d) All funds derived from the issuance of migratory waterfowl stamps shall be deposited by the Division with the State Treasurer and shall be specifically set aside and earmarked as state duck stamp account to permit separate accountability for the receipt and expenditure of funds derived from the sale of state duck stamps.

(1) The Division shall contract annually 50 percent of the revenue collected and deposited in the state duck stamp account with an appropriate nonprofit organization to utilize 50 percent of the revenue collected pursuant to this section for the development of waterfowl propagation areas in Canada from which come substantial numbers of waterfowl migrating to and through Delaware. Before paying such revenue to any nonprofit organization developing waterfowl areas, the Division shall obtain evidence that the project is acceptable to the appropriate agency having a jurisdiction over the lands and waters affected by the project.

(2) The remaining 50 percent of the funds in the state duck stamp account shall be used for the purpose of protection, preserving, restoring, enhancing and developing waterfowl habitat in Delaware.

(e) The Division is hereby granted the authority to establish, by regulation, the method for selecting appropriate designs for the migratory waterfowl stamp.

(62 Del. Laws, c. 62 § 1; 70 Del. Laws, c. 27 § 2; 70 Del. Laws, c. 275 §§ 22, 24; 71 Del. Laws, c. 270 § 3; 71 Del. Laws, c. 443 § 2; 73 Del. Laws, c. 375 § 5[4]; 80 Del. Laws, c. 333 § 5.)

§ 518 Hunting or trapping during license revocation.

Whoever hunts or traps during a period when the Department has revoked or denied that person the right to secure a license to hunt or trap within the State shall be guilty of a class A environmental misdemeanor, and upon conviction, shall be denied the privilege of hunting or trapping, with or without a license, in the State for a period of 5 years, commencing with the date of conviction.

(62 Del. Laws, c. 326 § 3; 70 Del. Laws, c. 275 §§ 23, 24.)

§ 519 [Reserved.]

§ 520 Free sport fishing days.

The Secretary of the Department of Natural Resources and Environmental Control may designate up to 2 days within National Fishing Week, which may or may not be consecutive, during each calendar year as "free sport fishing days." On the designated "free sport fishing days," residents and nonresidents are exempt from the fishing requirements of §§ 501, 505 and 506 of this title, but are subject to all other statutory and regulatory provisions that pertain to fishing.

(69 Del. Laws, c. 26 § 1.)

§ 521 Public lands blind site fee [Effective until July 1, 2017]

Whoever utilizes a blind site on public lands managed by the Division of Fish and Wildlife and included in the Division's lottery program for the purposes of hunting waterfowl or deer shall pay an annual blind site fee of $20. This fee is hereby waived for hunters participating in Division of Fish and Wildlife designated youth hunting days.

(76 Del. Laws, c. 72 § 10; 76 Del. Laws, c. 188 § 1; 78 Del. Laws, c. 83 § 1.)

§ 521 Public lands use fees; blind site permit; conservation access pass [Effective July 1, 2017]

(a) Whoever utilizes a blind site on public lands managed by the Division of Fish and Wildlife and included in the Division's lottery program for the purposes of hunting waterfowl or deer shall pay an annual blind site permit fee of $20. This fee is hereby waived for hunters participating in Division of Fish and Wildlife designated youth hunting days.

(b) Notwithstanding paragraph (b)(1) of this section, a conservation access pass that serves as a permit is required for any registered motor vehicle as defined in Title 21 used to access public lands owned or managed by the Division of Fish and Wildlife for any, as determined by the Department, allowable activity. Such pass shall be displayed by the motor vehicle operator on or within said vehicle in a manner as specified by the Department. Such pass shall be assigned and limited to a single, specified registered motor vehicle, and may be transferred to another registered motor vehicle of same ownership for a fee of $10 paid to the Department.

(1) A conservation access pass shall not be required to access:

a. The Michael Castle Trail and those associated direct access roads and parking areas designated by the Department within the C&DCanal Conservation Area.

b. Those fishing or boating access areas, educational facilities, or shooting range facilities designated by the Department.

c. Applicable lands leased from the Department, provided access is for the purpose for which such lands are leased.

d. Other areas designated by the Department.

(2) An annual conservation access pass shall be issued free of charge with resident and nonresident general hunting licenses, resident

and nonresident hunting guide licenses, and nonresident 3-day small game hunting licenses.

(3) The following conservation access pass fees shall be paid to the Department or its duly authorized agents:

a. $32.50 for a resident annual pass.

b. $10 for a resident 3-day pass valid for 3 consecutive days.

c. $65 for a nonresident annual pass.

d. $20 for a nonresident 3-day pass valid for 3 consecutive days.

(c) All funds received from the purchase of conservation access passes shall be deposited and administered in accordance with §§ 105 and 107 of this title solely for wildlife-associated user access facilities and projects on and the management and maintenance of subject public lands.

(76 Del. Laws, c. 72 § 10; 76 Del. Laws, c. 188 § 1; 78 Del. Laws, c. 83 § 1; 80 Del. Laws, c. 333 § 6.)

Subchapter II

Raw Fur Dealers

§ 528 License requirement for commercial raw fur dealer.

A person must obtain an annual license before engaging in the business of purchasing or receiving raw furs or pelts for commercial purposes within this State, except muskrat furs or pelts.

(Code 1915 § 2415A; 40 Del. Laws, c. 191 § 30; Code 1935 § 2888; 7 Del. C. 1953 § 551; 70 Del. Laws, c. 275 § 29.)

§ 529 License fees [Effective until July 1, 2017]

A resident of Delaware shall pay to the Department a fee of $28.75 for a license under § 528 of this title. A nonresident of Delaware shall pay a fee of $287.50 for such a license.

(Code 1915 § 2415A; 40 Del. Laws, c. 191 § 30; Code 1935 § 2888; 7 Del. C. 1953 § 552; 57 Del. Laws, c. 739 § 44; 62 Del. Laws, c. 138 § 1; 67 Del. Laws, c. 260 § 1; 70 Del. Laws, c. 275 §§ 26, 29.)

§ 529 License fees [Effective July 1, 2017]

A resident of Delaware shall pay to the Department a fee of $50 for a license under § 528 of this title. A nonresident of Delaware shall pay a fee of $475 for such a license.

(Code 1915 § 2415A; 40 Del. Laws, c. 191 § 30; Code 1935 § 2888; 7 Del. C. 1953 § 552; 57 Del. Laws, c. 739 § 44; 62 Del. Laws, c. 138 § 1; 67 Del. Laws, c. 260 § 1; 70 Del. Laws, c. 275 §§ 26, 29; 80 Del. Laws, c. 333 § 7.)

§ 530 Qualification of licensee; nontransfer ability of license.

Licenses under this subchapter shall be sold only to citizens of the United States and shall not be transferable.

(26 Del. Laws, c. 162 § 3; 26 Del. Laws, c. 164 § 15; 27 Del. Laws, c. 154; 27 Del. Laws, c. 155 § 3; Code 1915 § 2360; 40 Del. Laws, c. 191 § 3; Code 1935 § 2806; 7 Del. C. 1953 § 553; 70 Del. Laws, c. 275 § 29.)

§ 531 Penalties; failure to obtain license.

Whoever engages in the business of purchasing or receiving raw furs or pelts for commercial purposes within this State, except muskrat furs or pelts, without obtaining a license as required by § 528 of this title, shall be guilty of a class B environmental misdemeanor for each offense.

(Code 1915 § 2415A; 40 Del. Laws, c. 191 § 30; Code 1935 § 2888; 7 Del. C. 1953 § 554; 62 Del. Laws, c. 138 §§ 2, 3; 70 Del. Laws, c. 275 §§ 27, 29.)

§ 532 Records to be kept by licensed fur dealers; inspection; violations and penalties.

(a) The holder of a fur dealer's license shall keep an accurate ledger of all transactions relating to the purchase or receipt of raw furs or pelts. The ledger shall contain the names and addresses of all persons from whom raw furs or pelts were purchased or received and date of receipt, and to whom raw furs or pelts were sold or delivered and date of delivery, together with the number and kind of raw furs or pelts bought or received from each of said persons and the date of receipt, the number and kind of raw furs or pelts sold or delivered to each of said persons and date of delivery, and the price paid for or received for each raw fur or pelt.

(b) The records provided for in subsection (a) of this section shall be open for inspection at all reasonable times to any person empowered to arrest for violation of the game and fish laws of this State.

(c) Whoever violates this section shall be guilty of a class C environmental violation.

(d) This section shall not apply to the pelts or furs of muskrats.

(Code 1915 § 2415B; 40 Del. Laws, c. 191 § 30; Code 1935 § 2889; 7 Del. C. 1953 § 555; 62 Del. Laws, c. 138 §§ 4, 5; 70 Del. Laws, c. 275 §§ 28, 29; 79 Del. Laws, c. 421 § 2.)

Subchapter III

Breeders of Game Animals or Birds for Commercial Purposes

§ 542 License requirement.

(a) A person must obtain an annual license before engaging in the business or industry of breeding game animals or game birds.

(b) This section shall not apply to birds or animals raised by or for the Department, or to any person engaged in the breeding of game animals or game birds the total of which shall not exceed 25 in number.

(37 Del. Laws, c. 221 §§ 1-4; Code 1935 § 2878; 7 Del. C. 1953 § 561; 57 Del. Laws, c. 739 § 45; 70 Del. Laws, c. 275 § 31.)

§ 543 License fee; qualification of licensee; nontrans ferability [Effective until July 1, 2017]

A fee of $11.50 shall be paid to the Department for a license under this subchapter which shall be issued only to citizens of the United States and which shall not be transferable.

(26 Del. Laws, c. 162 § 3; 26 Del. Laws, c. 164 § 15; 27 Del. Laws, c. 154; 27 Del. Laws, c. 155 § 3; Code 1915 § 2360; 37 Del. Laws, c. 221 §§ 1-4; 40 Del. Laws, c. 191 § 3; Code 1935 §§ 2806, 2878; 7 Del. C. 1953 § 562; 57 Del. Laws, c. 739 § 46; 67 Del. Laws, c. 260 § 1; 70 Del. Laws, c. 275 § 31.)

§ 543 License fee; qualification of licensee; nontransferability [Effective July 1, 2017]

A fee of $17.50 shall be paid to the Department for a license under this subchapter which shall be issued only to citizens of the United States and which shall not be transferable.

(26 Del. Laws, c. 162 § 3; 26 Del. Laws, c. 164 § 15; 27 Del. Laws, c. 154; 27 Del. Laws, c. 155 § 3; Code 1915 § 2360; 37 Del. Laws, c. 221 §§ 1-4; 40 Del. Laws, c. 191 § 3; Code 1935 §§ 2806, 2878; 7 Del. C. 1953 § 562; 57 Del. Laws, c. 739 § 46; 67 Del. Laws, c. 260 § 1; 70 Del. Laws, c. 275 § 31; 80 Del. Laws, c. 333 § 8.)

§ 544 Permit to ship game animals or birds out of State.

A permit to sell any game animals or game birds shall be required of a breeder to ship game animals or game birds out of this State. The permit shall be obtained from the Department. When game birds or game animals are shipped out of the State a tag permitting such shipping must be fastened to the crate or carrier carrying them.

(37 Del. Laws, c. 221 §§ 1-4; Code 1935 § 2878; 7 Del. C. 1953 § 563; 57 Del. Laws, c. 739 § 47; 70 Del. Laws, c. 275 § 31.)

§ 545 Penalty.

Whoever violates this subchapter shall be fined guilty of a class D environmental violation for each offense.

(37 Del. Laws, c. 221 §§ 1-4; Code 1935 § 2878; 7 Del. C. 1953 § 564; 70 Del. Laws, c. 275 §§ 30, 31; 79 Del. Laws, c. 421 § 2.)

Subchapter IV

Taking Protected Wildlife, Finfish and Shellfish for Scientific, Education or Propagating Purposes

§ 555 Permit to collect protected wildlife, finfish, shellfish or their nests or eggs for scientific, education or propagating purposes.

(a) No person or persons shall take, capture, have in possession or transport protected wildlife, finfish, shellfish, or their nests or eggs for scientific, education or propagating purposes except as authorized by a permit from the Director of the Division of Fish and Wildlife in accordance with existing laws and regulations.

(b) Permits issued under this section may establish any conditions and/or restrictions deemed appropriate by the Division of Fish and Wildlife.

(c) No protected wildlife, finfish, shellfish or their eggs held in captivity under said permit shall be confined under inhumane or unsanitary conditions.

(d) Each permit issued under this section shall expire on the date set forth in the permit, or on the last day of the calendar year in which it is issued if no date is set forth in the permit. Permits are revocable at the discretion of the Director of the Division of Fish and Wildlife.

(e) Each person receiving a permit under this section must file with the Division of Fish and Wildlife a report within 30 days after the expiration date of said permit.

(f) Whoever violates this section or any rule and regulation adopted pursuant to this section shall be guilty of a class C environmental violation for each offense.

(26 Del. Laws, c. 162 § 8; Code 1915 § 2365; Code 1935 § 2810; 7 Del. C. 1953 § 571; 57 Del. Laws, c. 739 § 48; 59 Del. Laws, c. 116 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 275 § 33; 79 Del. Laws, c. 143 § 2; 79 Del. Laws, c. 421 § 2.)

§ 556 Use of fertility control on game birds and game animals.

(a) No person or persons shall administer fertility control agents or immunocontraceptives to game birds or game animals except as authorized by a permit from the Director of the Division of Fish and Wildlife in accordance with existing laws and regulations.

(b) Whoever violates this section shall be guilty of a class B environmental misdemeanor for each offense.

(77 Del. Laws, c. 425 § 3.)

Subchapter V

Restricted Propagating and Shooting Preserves

§ 565 Territorial scope of subchapter.

This subchapter shall apply throughout the State.

(Code 1935 § 2811A; 47 Del. Laws, c. 295 § 1; 7 Del. C. 1953 § 581; 53 Del. Laws, c. 434; 70 Del. Laws, c. 275 § 40.)

§ 566 License to operate preserve; fee; term; renewal; regulations of Department [Effective until July 1, 2017]

The Department, upon payment to it of a fee of $25, may issue annual licenses, good for 1 calendar year, renewable annually in the discretion of the Department for a like period, upon payment of a like fee, to persons, clubs or associations, authorizing the holders thereof to carry on, pursuant to regulations issued by the Department in furtherance of the purposes of this subchapter, propagating, holding, raising, releasing and shooting of rabbits and game birds, such as but not limited to pheasant, grouse, quail and partridge, hereinafter sometimes referred to individually or collectively as game.

(Code 1935 § 2811A; 47 Del. Laws, c. 295 § 1; 7 Del. C. 1953 § 582; 57 Del. Laws, c. 739 § 50; 70 Del. Laws, c. 275 § 40; 77 Del. Laws, c. 366 § 1.)

§ 566 License to operate preserve; fee; term; renewal; regulations of Department [Effective July 1, 2017]

The Department, upon payment to it of a fee of $39.50, may issue annual licenses, good for 1 calendar year, renewable annually in the discretion of the Department for a like period, upon payment of a like fee, to persons, clubs or associations, authorizing the holders thereof to carry on, pursuant to regulations issued by the Department in furtherance of the purposes of this subchapter, propagating, holding, raising, releasing and shooting of rabbits and game birds, such as but not limited to pheasant, grouse, quail and partridge, hereinafter sometimes referred to individually or collectively as game.

(Code 1935 § 2811A; 47 Del. Laws, c. 295 § 1; 7 Del. C. 1953 § 582; 57 Del. Laws, c. 739 § 50; 70 Del. Laws, c. 275 § 40; 77 Del. Laws, c. 366 § 1; 80 Del. Laws, c. 333 § 9.)

§ 567 Prerequisites to issuance of license.

Licenses under this subchapter shall be issued only when the applicant has produced evidence satisfactory to the Department that the proposed restricted game preserve will not conflict with any reasonable prior public interest and will, in the opinion of the Department, result in a general improvement in the quantity and quality of game in other areas of the State outside of the proposed restricted area, due to the travel and movement of game caused by the heavy stocking of the restricted area. In addition, in order to be eligible for a license, the proposed restricted area must contain contiguous lands under the same ownership, lease or management, aggregating not less than 300 acres, and no license shall be granted for reservations containing an aggregate of more than 1,000 acres, nor shall more than 5,000 acres in New Castle County be covered by such licenses at any one time. Moreover, the applicant must produce evidence satisfactory to the Department that there exists, or that the applicant will forthwith supply, sufficient cover and feed upon the property embraced by the application to adequately support game in numbers which, in the opinion of the Department, will be beneficial generally to other areas of the State outside of the reservation.

(Code 1935 § 2811A; 47 Del. Laws, c. 295 § 1; 57 Del. Laws, c. 739 § 51; 67 Del. Laws, c. 44 § 1; 70 Del. Laws, c. 275 §§ 34, 40; 77 Del. Laws, c. 366 § 1.)

§ 568 Liberation of game and the killing thereof.

For the purpose of stimulating an increase in the quantity of game released upon such reservations, the licensee, the licensee's invitees or guests, when properly licensed to hunt in accordance with the laws of this State, may liberate upon the reservation, game which has been propagated, raised and held upon the premises, or which has been purchased by the licensee and taken upon the premises pursuant to the license and may kill, without regard to sex, any number of such game so liberated, even if the number exceeds the limits otherwise prescribed by law.

(Code 1935 § 2811A; 47 Del. Laws, c. 295 § 1; 7 Del. C. 1953 § 585; 57 Del. Laws, c. 739 § 53; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 275 §§ 36, 37, 40.)

§ 569 Licensee's duties to cooperate with and assist Department; records; marking or tagging game.

All activities pursuant to a license under this subchapter shall be carried on in cooperation with the Department, and, to the extent practicable, the licensee shall assist the Department in conducting breeding, propagating, feeding and care of game, and shall keep and preserve such records pertaining thereto as the Department may from time to time prescribe. All game which is released shall be marked, banded or tagged as may be prescribed by the Department and, when so identified, game killed may be transported from the preserve to the domicile of the licensee, the licensee's invitee or guest. All of the activities of the licensee shall be carried on at the expense of the licensee and shall be without cost or obligation to the Department.

(Code 1935 § 2811A; 47 Del. Laws, c. 295 § 1; 7 Del. C. 1953 § 586; 57 Del. Laws, c. 739 § 54; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 275 § 40; 77 Del. Laws, c. 366 § 1.)

§ 570 Dogs; training and field trials on preserve.

Dogs may be trained and field trials conducted, when properly licensed, upon restricted preserves on any day, including Sundays, except during the months of March through August, inclusive.

(Code 1935 § 2811A; 47 Del. Laws, c. 295 § 1; 7 Del. C. 1953 § 588; 70 Del. Laws, c. 275 § 40.)

§ 571 Game laws on restricted preserves; violations and penalties; arrest by owners.

All activities conducted pursuant to this subchapter shall be subject to the game laws and regulations of this State, except as the same may be in conflict with this chapter. Persons who trespass upon any restricted preserve authorized by this subchapter for the purpose of shooting or harassing any kind of wildlife without first obtaining permission to do so from the owner or occupant thereof, shall be guilty of class B environmental misdemeanor. The owner of a restricted preserve and the owner's duly authorized agents may be authorized by the Department to make arrests under this section.

(Code 1935 § 2811A; 47 Del. Laws, c. 295 § 1; 7 Del. C. 1953 § 589; 57 Del. Laws, c. 104; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 275 §§ 25, 39, 40.)

§ 572 Sunday operations on commercial shooting preserves; definition.

(a) Those entities licensed under this subchapter which operate as commercial game preserves may operate in accordance with this subchapter on any day, including Sundays, subject to the seasonal limitations established by the Department.

(b) For purposes of this subchapter, "commercial game preserve" shall mean any partnership, sole proprietorship, corporation, or other business entity licensed under this subchapter and operating on a for-profit basis. "Commercial game preserve" shall not include clubs, associations or private individuals engaged in similar put-and-take hunting operations licensed under this subchapter.

(78 Del. Laws, c. 27 § 1.)

Part I
Game, Wildlife and Dogs
Chapter 6
ENDANGERED SPECIES

§ 601 Importation of endangered species or hides, parts or articles made therefrom.

Notwithstanding any other provision of this title, the importation, transportation, possession or sale of any endangered species of fish or wildlife, or hides or other parts thereof, or the sale or possession with intent to sell any article made in whole or in part from the skin, hide or other parts of any endangered species of fish or wildlife is prohibited, except under license or permit from the Division of Fish and Wildlife. For the purposes of this section, endangered species shall mean those species of fish and wildlife designated by the Division of Fish and Wildlife as seriously threatened with extinction. Such a list shall in any event include, but not be limited to, endangered species as so designated by the Secretary of the Interior.

(7 Del. C. 1953 § 601; 58 Del. Laws, c. 65.)

§ 602 Sale of skins, bodies or animals of certain species prohibited.

No part of the skin or body, whether raw or manufactured, of the following species of wild animals or the animal itself may be sold or offered for sale by any individual, firm, corporation, association or partnership within the State: All endangered species as designated by the United States Department of the Interior; leopard (panthera pardus); snow leopard (uncia uncia); clouded leopard (neofelis nebulosa); tiger (panthera tigris); cheetah (acinonyx jubatus); alligators, crocodiles or caiman; vicuna (vicugna vicugna); red wolf (canis niger); polar bear (thalarctos maritimus); and harp seals (phoca groenlandica).

(7 Del. C. 1953 § 602; 58 Del. Laws, c. 65; 58 Del. Laws, c. 252 § 1.)

§ 603 Enforcement.

Any officer or agent authorized by the Secretary of the Department of Natural Resources and Environmental Control or any officer or agent authorized by the Director of the Division of Fish and Wildlife, or any police officer of the State, or any police officer of any municipality within the State, has authority to execute any warrant in search for and seizure of any goods, merchandise or wildlife sold or offered for sale in violation of this chapter, or any property or item used in connection with a violation of this chapter; such goods, merchandise, wildlife or property shall be held pending proceedings in any court of proper jurisdiction. Upon conviction, such seized goods, merchandise or wildlife shall be forfeited and, upon forfeiture, either offered to a recognized institution for scientific or educational purposes, or destroyed.

(7 Del. C. 1953 § 603; 58 Del. Laws, c. 65.)

§ 604 Permits for importation of certain fish or wildlife.

The Director of the Division of Fish and Wildlife may permit, under such terms and conditions as he or she may prescribe, the importation of any species or subspecies of fish or wildlife listed in this chapter for zoological, educational, and scientific purposes and for the propagation of such fish or wildlife in captivity for the preservation of a species, unless such importation is prohibited by any federal law or regulation.

(7 Del. C. 1953 § 604; 58 Del. Laws, c. 65; 70 Del. Laws, c. 186 § 1.)

§ 605 Penalty.

Whoever violates this chapter shall be guilty of a class A environmental misdemeanor for each offense.

(70 Del. Laws, c. 275 § 42.)

Part I
Game, Wildlife and Dogs
Chapter 7
REGULATIONS AND PROHIBITIONS CONCERNING GAME AND FISH
Subchapter I
General Provisions

§ 701 Game animals.

The following shall be considered game animals: Mink, snapping turtle, raccoon, opossum, gray squirrel, otter, muskrat, red fox, hare, rabbit, frog, deer and beaver. The Bryant fox-squirrel, otherwise known as the "sciurus niger branti," shall be protected wildlife.

(Code 1915 § 2374A; 40 Del. Laws, c. 191 § 9; Code 1935 § 2819; 41 Del. Laws, c. 177 § 2; 7 Del. C. 1953 § 701; 57 Del. Laws, c. 457; 60 Del. Laws, c. 493 § 1.)

§ 702 Game birds.

The following shall be considered game birds: The Anatidae, commonly known as geese, brant and river and sea ducks; the Rallidae, commonly known as rails, coots, mudhens and gallinules; the Limicolae, commonly known as shore birds, plovers, surf birds, snipe, woodcock, sandpipers, tattlers and curlews; the Gallinae, commonly known as wild turkeys, grouse, prairie chickens, pheasants, chukar partridges, partridges and quail; also the reed bird of the Icteridae; and the dove.

(26 Del. Laws, c. 165 § 2; Code 1915 § 2374; Code 1935 § 2820; 7 Del. C. 1953 § 702; 49 Del. Laws, c. 19.)

§ 703 Open season for game.

The open season during which it shall be lawful to catch, kill or pursue or attempt to catch, kill or pursue muskrat, or to hunt red fox by chase only shall, respectively, be as follows, including, in each instance, the days defining the open season:

(1) Muskrat: In New Castle County, December 1 to March 10, next following, but in embanked meadows or marshes in New Castle County, the open season shall be from December 1 to March 20, next following; in Kent and Sussex Counties, December 15 to March 15, next following.

(2) Red fox: October 1 to April 30, next following, red fox hunting whenever so permitted and whether occurring on public or private lands as provided herein, shall be permitted by chase only from 1/2 hour before sunrise until 1/2 hour after sunset. Red fox hunting shall be permitted only on a Tuesday, Wednesday or Thursday during such time when it is lawful to take deer with a firearm or archery. However, red fox shall not be hunted by chase at all during deer hunting season that takes place in October, November or December. Notwithstanding the foregoing, red fox may be killed in accordance with § 788 of this title. The Division of Fish and Wildlife shall determine those public lands that are available for fox hunting by chase during any deer hunting season. From January through April, fox hunting by chase during deer hunting season shall be permissible on private lands only on Tuesday, Wednesday and Thursday if the owner of the private land has authorized such hunting to occur thereon.

(26 Del. Laws, c. 165 § 3; 27 Del. Laws, c. 158 § 2; 27 Del. Laws, c. 159; Code 1915 § 2375; 37 Del. Laws, c. 220 § 1; 38 Del. Laws, c. 145 § 1; Code 1935 § 2821; 41 Del. Laws, c. 177 § 3; 44 Del. Laws, c. 147 § 1; 45 Del. Laws, c. 202 § 1; 45 Del. Laws, c. 206 § 1; 47 Del. Laws, c. 175 § 1; 47 Del. Laws, c. 394 § 2; 48 Del. Laws, c. 172 §§ 1, 2; 48 Del. Laws, c. 272 § 1; 7 Del. C. 1953 § 703; 51 Del. Laws, c. 123 § 3; 55 Del. Laws, c. 25; 68 Del. Laws, c. 15 § 2; 70 Del. Laws, c. 275 § 43; 72 Del. Laws, c. 332 § 1; 76 Del. Laws, c. 148 §§ 1, 2.)

§ 704 Prohibited hunting and trapping devices and methods; confiscation of devices; primitive weapon season.

(a) No person shall make use of any pitfall, deadfall, scaffold, cage, snare, trap, net, pen, baited hook, lure, urine or baited field or any other similar device for the purpose of injuring, capturing or killing birds or animals protected by the laws of this State, except red foxes, muskrats, raccoon, opossum, minks, otters, beavers and rabbits may be trapped and snapping turtles may be trapped or taken with a net in accordance with the regulations of the Department of Natural Resources and Environmental Control, and except as otherwise expressly provided. Landlords and tenants and their respective children may take rabbits in traps and snares during the open season for same on their freeholds and leaseholds respectively. For purposes of this section, the term "lure" means any mixture of ingredients intended to be placed at the trap location for the purpose of masking human odor or attracting wildlife. The term "lure" does not include any tangible objects such as duck or goose decoys or similar tangible devices used while hunting nor does the term include any mixture of ingredients intended for the purpose of masking human odor or attracting deer while deer hunting.

(b) No person shall make use of any drug, poison, chemical or explosive for the purpose of injuring, capturing or killing birds or animals protected by the laws of this State.

(c) The unlawful setting or placing of any of the devices or contrivances named in subsection (a) or (b) of this section is an offense

against this section, and such devices and contrivances, when found unlawfully set or placed, shall be confiscated by the Department and disposed of as the Department sees fit.

(d) No person shall shoot at, or kill any bird or animal protected by the laws of this State with any device, swivel or punt gun, or with any gun other than such as is habitually raised at arm's length and fired from the shoulder. Possession of such illegal device or gun while hunting shall be prima facie evidence of an offense under this subsection.

(e) No person shall use for hunting or have in their possession while hunting any shotgun shells loaded with lead or lead alloy missiles larger than No. 2 shot, except ammunition permitted for hunting deer during the lawful open season for deer.

(f) A muzzle-loading rifle, meaning a single-barrel gun which is loaded with black powder and projectile through the muzzle, having distinct rifling the full length of the bore, shooting a spherical or conical projectile, ignited by a flint striking a frizzen or by a percussion cap, having a minimum bore of 0.42 inches (10.67 mm), minimum powder charge of 62 grains (4 grams), may be used in the pursuit, taking or attempted taking ("hunting") of protected wildlife, provided:

(1) Such hunting takes place during the primitive weapon season established by the Department of Natural Resources and Environmental Control and is done pursuant to the requirements of law applicable to other means of hunting protected wildlife.

(2) No person engaged in such hunting shall possess or use any multi-projected loads (buck and ball), explosive bullets or any balls smaller than .42 caliber.

No weapon may be used for hunting deer during the primitive weapon season other than a muzzle-loading rifle or bow. The Department may permit the use of a single shot muzzle-loading pistol being a minimum .42 caliber with a minimum powder charge of 40 grains during the primitive weapons season for deer, when using a muzzle-loading rifle to provide the coup-de-grace, if required.

(g) Except as set forth herein, no person may use a handgun in the pursuit, taking or attempted taking (hunting) of protected wildlife. A handgun as described herein may be used for the pursuit, taking and attempted taking (hunting) of deer on privately owned lands situated south of the Chesapeake and Delaware Canal and those lands within the State owned by the State of Delaware so designated for this purpose by the Department of Natural Resources and Environmental Control, at its discretion, under the following conditions:

(1) The handgun shall be limited to revolvers and single shot pistols with a minimum barrel length of 5.75 inches and not exceeding 12.5 inches and chambered for and using straight-wall handgun ammunition in .357 magnum, .41 caliber, .41 magnum, .44 caliber, 44 magnum, .45 caliber, .454 caliber, .480 caliber or .50 caliber and using open sights, metallic/mechanical, optical or telescopic sights;

(2) The handgun must be carried openly on a sling or in a holster and not concealed;

(3) To be used:

a. During a separate 7-day season to begin on the first Saturday in January through the second Saturday in January; and

b. In place of a shotgun during the shotgun deer season.

(h) No person shall operate, provide, sell, use, or offer to operate, provide, sell, or use any computer software or service that allows a person not physically present at a hunt site to remotely control a weapon that could be used to take a live animal or bird by remote operation, including, but not limited to, weapons or devices set up to fire through the use of the Internet or through a remote control device.

(26 Del. Laws, c. 165 §§ 5, 8; 27 Del. Laws, c. 158 § 3; Code 1915 §§ 2378, 2381; Code 1935 §§ 2826, 2829; 41 Del. Laws, c. 177 § 5; 7 Del. C. 1953 § 704; 50 Del. Laws, c. 450 § 1; 53 Del. Laws, c. 198; 55 Del. Laws, c. 344; 57 Del. Laws, c. 606; 57 Del. Laws, c. 739 § 55; 58 Del. Laws, c. 331 § 1; 60 Del. Laws, c. 169 § 1; 60 Del. Laws, c. 459 § 1; 60 Del. Laws, c. 463 § 1; 60 Del. Laws, c. 493 § 2; 61 Del. Laws, c. 125 § 1; 62 Del. Laws, c. 107 § 1; 62 Del. Laws, c. 326 § 7; 63 Del. Laws, c. 51 §§ 1, 2; 63 Del. Laws, c. 389 §§ 5, 8; 68 Del. Laws, c. 28; 68 Del. Laws, c. 381 §§ 1, 2; 70 Del. Laws, c. 275 § 44; 70 Del. Laws, c. 436 §§ 1-4; 74 Del. Laws, c. 287 § 1; 75 Del. Laws, c. 38 § 1; 76 Del. Laws, c. 40 § 1; 76 Del. Laws, c. 58 §§ 1, 2; 76 Del. Laws, c. 308 § 1.)

§ 705 Visiting traps within 24-hour periods; killing of trapped animals.

(a) No person who sets or makes use of any trap, except for muskrats, shall permit more than 24 hours to elapse between visits to such trap.

(b) Notwithstanding § 704(d) of this title, a .22 caliber rimfire pistol may be used to kill animals lawfully confined or restrained by a trap or snare.

(Code 1915 § 2392A; 40 Del. Laws, c. 191 § 18; Code 1935 § 2852; 7 Del. C. 1953 § 706; 70 Del. Laws, c. 275 §§ 46, 71; 71 Del. Laws, c. 366 §§ 1, 2.)

§ 706 Damaging nest, den or lair of protected wildlife or trees, stumps or logs on another's property.

No person shall needlessly destroy, break or interfere with any nest, den or lair of any bird or animal protected by the laws of this State, or set fire to, burn, bark or in any way mutilate any tree, living or dead, stump or log, on lands of another, without the express consent of the owner or person in charge.

(26 Del. Laws, c. 165 § 6; 27 Del. Laws, c. 158 § 4; Code 1915 § 2379; Code 1935 § 2827; 7 Del. C. 1953 § 707; 70 Del. Laws, c. 275 § 71.)

§ 707 Hunting or shooting from motor vehicle, boats or farm machinery prohibited; penalty.

(a) No person shall shoot at or kill any bird or animal protected by the laws of this State by means of any firearms at any time or place while such person is the occupant of any motor vehicle, motor or sail boat or is riding in or upon any piece of farm machinery, unless said person is legally hunting crippled migratory birds from a motorboat as permitted by federal law. The presence of any person in or on any conveyance used in violation of this section shall be deemed to be a violation of this section.

(b) Whoever violates this section in the daytime, between sunrise and sunset, shall be guilty of a class C environmental violation for each offense. Whoever violates this section between sunset and sunrise of any day, shall be guilty of a class B environmental misdemeanor for each offense.

(26 Del. Laws, c. 165 § 7; 27 Del. Laws, c. 158 § 5; Code 1915 § 2380; 35 Del. Laws, c. 173 § 1; Code 1935 § 2828; 46 Del. Laws, c. 147 § 1; 7 Del. C. 1953 § 708; 51 Del. Laws, c. 339 § 2; 59 Del. Laws, c. 81; 70 Del. Laws, c. 275 §§ 47, 48, 71; 79 Del. Laws, c. 421 § 3.)

§ 708 Loaded firearms prohibited in or on motor vehicles, motorboats or farm machinery.

No person shall have a loaded shotgun or rifle in that person's possession in, against or on any automobile, other vehicle, any piece of farm machinery, motorboat while under power, sailboat while under power, or have any ammunition in the magazine or chamber of such shotgun or rifle except when it is otherwise lawful to hunt crippled migratory birds from a motorboat as permitted by federal law.

(26 Del. Laws, c. 165 § 8; Code 1915 § 2381; Code 1935 § 2829; 47 Del. Laws, c. 322 § 1; 7 Del. C. 1953 § 709; 59 Del. Laws, c. 144; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 275 § 71.)

§ 709 Hours for hunting; federal laws and regulations; prohibitions and exceptions.

No person shall pursue, catch, take or kill any migratory bird or fowl except within the hours permitted by federal laws and regulations. No person shall pursue, catch, take or kill any animal protected by the laws of this State except frogs, muskrats, raccoons, opossums, skunks, minks, otter and foxes between a half an hour after sunset of 1 day and a 1/2 before sunrise the following day. No person shall shoot muskrats within the hours named in this section.

(26 Del. Laws, c. 165 § 7; 27 Del. Laws, c. 158 § 5; Code 1915 § 2380; 35 Del. Laws, c. 173 § 1; Code 1935 § 2828; 46 Del. Laws, c. 147 § 1; 7 Del. C. 1953 § 710; 49 Del. Laws, c. 150; 70 Del. Laws, c. 275 §§ 49, 71.)

§ 710 Use of silencer on gun; penalty.

Whoever uses a silencer or noise-reducing contrivance on any gun, rifle or firearm when hunting for game or fowl, shall be guilty of a class C environmental violation.

(Code 1915 § 2381A; 35 Del. Laws, c. 169 § 1; Code 1935 § 2830; 7 Del. C. 1953 § 711; 70 Del. Laws, c. 275 §§ 50, 71; 79 Del. Laws, c. 421 § 3.)

§ 711 Hunting with automatic-loading gun prohibited; penalty.

(a) No person shall hunt for game birds or game animals in this State, except as authorized by state-sanctioned federal depredation/conservation orders for selected waterfowl species, with or by means of any automatic-loading or hand-operated repeating shotgun capable of holding more than 3 shells, the magazine of which has not been cut off or plugged with a filler incapable of removal through the loading end thereof, so as to reduce the capacity of said gun to not more than 3 shells at 1 time, in the magazine and chamber combined.

(b) Whoever violates this section shall be guilty of a class C environmental violation.

(c) Having in one's possession, while in the act of hunting game birds or game animals, a gun that will hold more than 3 shells at 1 time in the magazine and chamber combined, except as authorized in subsection (a) of this section, shall be prima facie evidence of violation of this section.

(Code 1935 § 2830A; 45 Del. Laws, c. 204 § 1; 7 Del. C. 1953 § 712; 70 Del. Laws, c. 275 §§ 51, 71; 76 Del. Laws, c. 302 §§ 1-3; 79 Del. Laws, c. 421 § 3.)

§ 712 Prohibition against Sunday hunting.

(a) On Sundays, no person shall hunt or pursue any game birds or game animals with any dog or any kind of implement which is capable of killing said game birds or game animals, except as provided in subsections (b) and (c) of this section.

(b) This section shall not be applicable to trapping, training dogs, hunting red foxes with dogs, or participating in commercial game preserve operations in accordance with the provisions of § 572 of this title.

(c) This section shall not be applicable to deer hunting on the 5 individual Sundays that occur between the opening and closing dates of the October muzzleloader deer season, between the opening and closing dates in each of the November, December and January shotgun deer seasons, and the Sunday at the end of the November shotgun deer season, for such deer hunting seasons as may be established by the Department pursuant to § 103(a)(1) of this title and promulgated pursuant to the Administrative Procedures Act, Chapter 101 of Title 29. Such Sunday deer hunting may occur on private lands at landowner discretion and on those public lands as may be so designated by and at the discretion of the applicable government agency, which shall inform the public of the location and times Sunday hunting is allowed on their respective public lands. Any government agency designating or changing the designation of such Sunday deer hunting on its public lands shall provide adequate opportunity for public comment prior to designating the location or times of such Sunday deer hunting. For the purposes of this section, "public lands" includes federal, state, county, municipal, or other government-owned lands.

(26 Del. Laws, c. 165 § 10; Code 1915 § 2383; Code 1935 § 2833; 45 Del. Laws, c. 258 § 1; 7 Del. C. 1953 § 714; 63 Del. Laws, c. 389 § 3; 70 Del. Laws, c. 275 § 71; 78 Del. Laws, c. 27 § 2; 80 Del. Laws, c. 320 § 1.)

§ 713 Fire regulations; penalty.

(a) No person shall:

(1) Fire or cause to be fired, any woodlot, forest or other wild land or property, material or vegetation being or growing thereon, other than brush in clearing land, either by dropping lighted matches, tobacco or other substance, or in any manner whatsoever without the consent of the owner or owners; or

(2) Start a fire or fires anywhere and permit same to spread to woodlots, forests or other wild lands, causing damage to or destruction of such property; or

(3) Except as provided in subsection (b) of this section, fire or cause to be fired any marshland in this State after March 1 in any year.

(b) The Department, upon application from any landowner or freeholder and after due investigation, may extend beyond March 1 the time during which marshland in this State may be fired, by the issuance of a permit thereto for such purpose, if it is found after such investigation that the landowner or freeholder has been prevented from firing landowner's or freeholder's marshland before March 1 by circumstances beyond landowner's or freeholder's control.

(c) Whoever violates this section shall be guilty of a class C environmental violation for each offense in addition to any other penalty that may be imposed for any damage caused by the setting of unlawful fires of any kind whatsoever.

(Code 1915 § 2379A; 35 Del. Laws, c. 206 § 1; 40 Del. Laws, c. 191 § 11; Code 1935 § 2832; 7 Del. C. 1953 § 715; 57 Del. Laws, c. 739 § 56; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 275 §§ 52, 53, 71; 79 Del. Laws, c. 421 § 3.)

§ 714 Trespassing; penalty.

Whoever enters upon the lands or waters of another within this State, without first obtaining permission to do so from the owner or lessee, for the purpose of hunting, trapping or fishing, shall be guilty of a class C environmental violation.

(Code 1852 § 976; 14 Del. Laws, c. 421 § 16; Code 1915 § 2409; Code 1935 § 2880; 7 Del. C. 1953 § 720; 49 Del. Laws, c. 82; 59 Del. Laws, c. 71 § 1; 70 Del. Laws, c. 275 §§ 55, 71; 79 Del. Laws, c. 421 § 3.)

§ 715 Possession of protected wildlife; prohibitions.

(a) No person shall have more than 2 times the daily bag limit or creel limit of any game bird, game animal or game fish in that person's possession at any 1 time when it is lawful to possess such wildlife, except that possession limits for game birds protected under the Migratory Bird Treaty Act [16 U.S.C. § 703 et seq.] shall be defined by federal regulations. Any game bird, game animal, or game fish that has been processed and stored for consumption at a person's permanent residence shall not count against the person's possession limit. Nothing in this section shall apply to terrapin lawfully taken and of lawful size, when it is lawful to have said animals, their meat and skins in possession.

(b) No person shall have in possession any game fish during the closed season for said fish, whether the same shall have been taken within or without the State, and no person shall at any time of the year barter, sell, offer for sale or buy any game birds, game animals or game fish protected by the laws of this State, and killed or caught either lawfully or unlawfully within or without this State, except always the muskrat, the snapping turtle and the diamond back terrapin trade during the seasons when it is lawful to have said animals and their meat in possession, and trading at any and all times in muskrat skins and other skins and in terrapin of lawful size which have been lawfully taken; and further except always hotels, restaurants, clubs and other food dispensers which may offer pheasants and quail for food consumption, provided, however, that every such food dispenser having pheasants and quail in its possession has an invoice covering the same showing purchase thereof from a licensed game breeder within or without this State, said invoice to have the game breeder's license number on it.

(c) No person shall knowingly have in possession any game birds, animals or fish which have been unlawfully killed or taken, except when confiscated by the Department and when in the possession of the Department or when in the possession of those to whom the Department has given them.

(d) Whoever violates this section shall be guilty of a class C environmental violation for each offense. In addition to being fined and/or imprisoned, the violator shall be fined $25 for each game bird, game fish and game animal caught or killed illegally, purchased or offered to purchase, sold, offered for sale, bartered or exchanged, or taken or killed or found in possession in excess of the bag or creel limit.

(Code 1915 § 2390; 31 Del. Laws, c. 51 § 2; 40 Del. Laws, c. 191 §§ 13, 14; Code 1935 § 2849; 7 Del. C. 1953 § 721; 49 Del. Laws, c. 29; 50 Del. Laws, c. 437 §§ 1, 2; 57 Del. Laws, c. 739 § 57; 60 Del. Laws, c. 493 § 3; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 275 §§ 56, 57, 71; 79 Del. Laws, c. 363 § 1; 79 Del. Laws, c. 421 § 3.)

§ 716 Hunting, fishing or trapping without a license; penalties.

Any person required by this title to obtain a license before hunting, trapping or fishing in this State and who hunts, traps or fishes without having obtained such license shall be guilty of a class C environmental violation.

(26 Del. Laws, c. 164 § 2; Code 1915 § 2391; 40 Del. Laws, c. 191 § 15; Code 1935 § 2850; 7 Del. C. 1953 § 722; 57 Del. Laws, c. 739 § 58; 70 Del. Laws, c. 275 §§ 58, 71; 79 Del. Laws, c. 421 § 3.)

§ 717 Frightening or harassing migratory birds; penalties.

Any person who shall frighten or harass migratory birds while at rest on the property of another by use of a rifle, shotgun or any other weapon, shall be guilty of a class C environmental violation.

(7 Del. C. 1953 § 724; 57 Del. Laws, c. 96; 70 Del. Laws, c. 275 §§ 59, 71; 79 Del. Laws, c. 421 § 3.)

§ 718 Requiring wearing of hunter orange in the hunting of deer; violation and penalty.

(a) "Hunter orange" means a daylight fluorescent orange color with a dominant wave length between 595 and 605 nanometers, and exotation purity of not less than 85 percent and illuminous factor of not less than 40 percent.

(b) During a time when it is lawful to take deer with a firearm, any person hunting any wildlife except migratory game birds in this State shall display on that person's head, chest and back a total of not less than 400 square inches of hunter orange material.

(c) If a hunter utilizes a ground blind to hunt deer during a time when it is lawful to take deer with a firearm and the hunter is completely concealed within a blind, then 400 square inches of hunter orange material shall be placed within 10 feet outside of the blind and at least 3 feet off of the ground.

(d) Whoever violates this section shall be guilty of a class D environmental violation.

(7 Del. C. 1953 § 705; 59 Del. Laws, c. 97 § 1; 60 Del. Laws, c. 302 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 275 §§ 61, 62, 71; 70 Del. Laws, c. 502 § 1; 76 Del. Laws, c. 301 §§ 1, 2; 79 Del. Laws, c. 421 § 3.)

§ 719 Discharge of firearms on or near public roads and public rights-of-way; penalty.

(a) No person, except in lawful self-defense, shall discharge any firearm while on or within 15 yards of a public road or right-of-way unless it is a road or right-of-way within an area controlled by the Department of Natural Resources and Environmental Control, the Department of Agriculture of the State or the United States Department of the Interior and is designated by the respective department as an area open to hunting or trapping.

(b) No person shall shoot at any wild bird or wild animal while it is on a public road, nor shall any person shoot across a public road or right-of-way at any wild bird or wild animal.

(c) Whoever violates this section shall be guilty of a class C environmental violation.

(61 Del. Laws, c. 372 § 1; 64 Del. Laws, c. 373 § 1; 70 Del. Laws, c. 275 §§ 63, 71; 79 Del. Laws, c. 421 § 3.)

§ 720 Conditional permits for disabled persons.

Notwithstanding §§ 707, 708 and 719 of this title, the Director of the Division of Fish and Wildlife, Department of Natural Resources and Environmental Control, upon written application and presentation of a medical doctor's written statement that the applicant is unable to walk or is otherwise physically disabled to the extent that the applicant cannot safely hunt except from a vehicle, may issue a conditional permit to shoot wild birds and wild animals from a stationary vehicle during established hunting seasons and in accordance with other existing laws and regulations.

(62 Del. Laws, c. 59 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 275 §§ 64, 71.)

§ 721 Killer, body-gripping traps.

Anyone who sets, tends or possesses or attempts to set or tend a killer, body-gripping trap with a jaw spread in excess of 5 inches shall be guilty of a class B environmental misdemeanor for each offense.

(62 Del. Laws, c. 326 § 1; 70 Del. Laws, c. 275 §§ 65, 71.)

§ 722 Prohibition against use of lights; penalties.

(a) No person or persons shall hunt or attempt to hunt at nighttime any species of wild bird or wild animal with any artificial light including the headlights of any vehicle or with any device that amplifies light using a power source including but not limited to night vision and infrared devices. Possession in a motor vehicle or conveyance of any firearms or other implements with which wild birds or wild animals may be killed, exposed within immediate reach, either loaded or unloaded, while using any artificial lights or any device that amplifies light, shall be prima facie evidence of the use of such firearms or other implements for hunting. Raccoons or opossums may be hunted on foot or while riding on a horse or mule at nighttime during open season with the use of a dog or artificial light or both. Frogs may be hunted on foot or from a boat at nighttime during open season with an artificial light.

(b) No person or persons shall make use of any artificial light emanating from a vehicle and directing toward woods, fields, orchards, livestock, wild animals or birds, dwellings or buildings. The provisions of this subsection do not apply to the normal use of headlights of a vehicle traveling on any public or private road in a normal manner, to any police, emergency or utility company vehicle using spotlights to perform their duties, or to any farmer or landowner on the farmer's or landowner's own or leased land using artificial lights to check on equipment, crops, livestock or poultry. Nor shall this subsection apply to the normal use of headlights of a vehicle traveling in a normal manner 2 hours prior to sunrise or 2 hours after sunset.

(c) Whoever violates this section shall be guilty of a class B environmental misdemeanor.

(63 Del. Laws, c. 389 § 6; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 275 §§ 66, 71; 78 Del. Laws, c. 373 § 1.)

§ 723 Hunting or trapping in safety zones; penalty.

(a)(1) No person, except the owner or occupant, shall discharge a firearm within 100 yards of an occupied dwelling, house or residence or any barn, stable or any other building used in connection therewith, while hunting or trapping for wild birds or wild animals of any kind. The area within said distance shall be a "safety zone," and it shall be unlawful to shoot at any wild bird or wild animal while it is within such safety zone without the specific advance permission of the owner or tenant.

(2) Notwithstanding any other law or regulation to the contrary, the safety zone for hunting deer by archery device during established archery seasons shall be 50 yards.

(b) During any open hunting or trapping season, it shall be unlawful for any person, other than the owner or occupant, to hunt or to trap, pursue, disturb or otherwise chase any wild animal or bird within a safety zone without the specific, advance permission of the owner or occupant.

(c) No person, except the owner or occupant, or a person with the permission of said owner or occupant, shall discharge a firearm so that a shot, slug or bullet lands upon any occupied dwelling, house, or residence, or any barn, stable or other building used in connection therewith.

(d) Whoever violates this section shall be guilty of a class C environmental violation.

(64 Del. Laws, c. 369 § 1; 69 Del. Laws, c. 281 § 1; 70 Del. Laws, c. 275 §§ 67, 71; 77 Del. Laws, c. 425 § 4; 79 Del. Laws, c. 421 § 3.)

§ 724 Wilful obstruction or impeding of lawful hunting, fishing or trapping activities.

(a) No person shall wilfully obstruct or impede the participation of any individual in:

(1) The lawful taking of fish, crabs, oysters, clams or frogs; or

(2) The lawful hunting of any game birds or animals; or

(3) The lawful trapping of any game animals.

(b) Whoever violates this section shall be guilty of a class B environmental misdemeanor.

(c) Hunting, trapping or fishing activities while trespassing upon the private lands of another person, persons or corporation shall not be considered lawful hunting, trapping or fishing activities for purposes of this section.

(d) The conduct declared unlawful in this section shall not include any incidental interference arising from lawful activities normally conducted within the general area.

(e) This section shall not apply to law-enforcement personnel acting in the lawful performance of their duties.

(65 Del. Laws, c. 303 § 1; 70 Del. Laws, c. 275 §§ 68-71.)

§ 725 Falconry; permit; regulations; hunting.

(a) No person may take, transport or possess any raptor for falconry purposes in this State without first procuring a falconry permit from the Department. The Department shall not charge a fee for a falconry permit.

(b) The State hereby adopts Title 50 of the Code of Federal Regulations pertaining to falconry, and the Department may promulgate such other regulations as may be necessary to govern the practice of falconry.

(c) The falconry permit, when accompanied by a current hunting license, authorizes the hunting of game birds and game animals in compliance with the State's seasons and bag limits.

(71 Del. Laws, c. 362 § 1.)

§ 726 Interstate Wildlife Violator Compact.

(1) The Interstate Wildlife Violator Compact is an interstate agreement between member states to enhance the compliance with the hunting, fishing, and other wildlife laws of member states, and provides for the fair and impartial treatment of wildlife and fisheries violators.

(2) The Board of Compact Administrators has set forth prescribed requirements and procedures for any state to become a member of the Interstate Wildlife Violator Compact within the established Bylaws and Interstate Wildlife Violator Compact Operations Manual.

(3) Through this statute, the State of Delaware directs and empowers the Delaware Department of Natural Resources and Environmental Control (DNREC), Division of Fish and Wildlife to enact all provisions of the Interstate Wildlife Violator Compact.

(4) DNREC is charged to adopt and begin implementation of the Interstate Wildlife Violator Compact set forth in the Compact, Bylaws and Operations Manual, and to further recognize all current and future member states legally empowered as members of the Compact on or before July 1, 2016. DNREC shall notify the General Assembly if an extension is necessary for a maximum of 3 years due to technological capacity challenges that preclude timely implementation of the Compact.

(5) The State of Delaware by representation through DNREC's Division of Fish and Wildlife will make a formal application to the Chairman and Board of Administrators of the Interstate Wildlife Violation Compact to receive full admission, authority, and representation as an official member of the Interstate Wildlife Violator Compact.

(79 Del. Laws, c. 113 § 1.)

Subchapter II

Wild Birds Other Than Game Birds, Migratory Wild Fowl

§ 734 Prohibitions respecting wild birds other than game birds; birds not protected.

No person shall catch, kill, have in possession (living or dead), purchase, sell or expose for sale, transport or ship any wild bird other than a game bird, or any part of the plumage, skin or body of any such bird, or any game bird, except as expressly permitted by law; but house sparrows, and starlings may be killed, sold or shipped by any person in any manner and at any time.

(26 Del. Laws, c. 165 §§ 1, 4; Code 1915 §§ 2373, 2377; 28 Del. Laws, c. 197 § 1; 30 Del. Laws, c. 176 § 1; Code 1935 §§ 2818, 2825, 2890; 7 Del. C. 1953 § 741; 57 Del. Laws, c. 85; 57 Del. Laws, c. 739 § 59; 59 Del. Laws, c. 148 § 2; 70 Del. Laws, c. 275 § 77.)

§ 735 Nests and eggs protected.

No person shall take or needlessly destroy the nests or eggs of any wild bird, nor have such nests or eggs in that person's possession.

(22 Del. Laws, c. 216 § 2; Code 1915 § 2417; Code 1935 § 2891; 7 Del. C. 1953 § 742; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 275 § 77.)

§ 736 State game refuges; wildlife refuges.

(a) All state lands, except as otherwise provided, and state, county and municipal parks in Delaware shall be state game refuges and no person shall hunt upon said lands and parks or kill or injure any game therein at any time of the year.

(b) Any person may shoot and kill during the open season for same, wild duck, wild geese, brant and snipe on all state lands bordering on the Delaware Bay, Atlantic Ocean, Indian River and Assawoman Bay.

(c) Notwithstanding this section, all wildlife refuges created under this title shall be under the jurisdiction of the Department and subject to all the rules and regulations thereof including rules and regulations covering the right to hunt and fish therein.

(Code 1915 § 2417A; 30 Del. Laws, c. 176 § 5; 36 Del. Laws, c. 233 § 1; 40 Del. Laws, c. 191 § 31; Code 1935 § 2892; 7 Del. C. 1953 § 743; 57 Del. Laws, c. 739 § 60; 70 Del. Laws, c. 275 § 77.)

§ 737 Exception to application of §§ 734, 735 and 736 for holder of license for scientific purposes.

Sections 734, 735 and 736 of this title shall not apply to any person holding a license giving the right to take birds and their nests and eggs for scientific purposes.

(22 Del. Laws, c. 216 §§ 4, 6; Code 1915 § 2419; Code 1935 § 2894; 7 Del. C. 1953 § 745; 70 Del. Laws, c. 275 §§ 72, 77.)

§ 738 Erection and removal of booby, brush or stake blinds.

No booby, brush or stake blinds shall be erected sooner than 30 days prior to the open season for the hunting of wild water fowl and all such blinds shall be removed within 30 days after the close of said season.

Whoever violates this section shall be guilty of a class D environmental violation for each offense.

(Code 1935 § 2821C; 45 Del. Laws, c. 203 § 1; 7 Del. C. 1953 § 747; 49 Del. Laws, c. 338; 50 Del. Laws, c. 9 § 1; 70 Del. Laws, c. 275 §§ 73, 77; 79 Del. Laws, c. 421 § 3.)

§ 739 Prohibitions respecting bald eagles; disturbing, damaging or destroying nests; eggs; penalties.

(a) Any person who disturbs, destroys or in any manner damages a bald eagle's nest or aerie shall be guilty of a class A environmental misdemeanor.

(b) Any person shooting, killing or attempting to kill a bald eagle or any person who removes, or attempts to remove eggs or eaglets from their nest or aerie shall be guilty of a class A environmental misdemeanor.

(c) Any person who barters, offers to barter, trades, offers to trade or possesses any bald eagle, bald eagle eggs or eaglets shall be guilty of a class A environmental misdemeanor.

(7 Del. C. 1953 § 748; 57 Del. Laws, c. 88; 70 Del. Laws, c. 275 §§ 74-77.)

§ 740 Crows.

The crow may be hunted in accordance with federal regulations.

(7 Del. C. 1953 § 749; 59 Del. Laws, c. 158 § 1; 70 Del. Laws, c. 275 § 77.)

§ 741 Snow geese.

Notwithstanding any other provision of this title, a person may hunt snow geese by any method, provided the individual complies with federal laws and regulations.

(72 Del. Laws, c. 52 § 1.)

Subchapter III

Muskrats

§ 750 Placement of traps for muskrats.

The habitat of a muskrat shall be a marsh of any size, ordinarily subject to rise and fall of tide, a ditch, a stream, or land not suited to cultivation of crops due to a normally marshy condition. A trap set or found at any place other than such habitat shall be considered as having been set for game animals other than muskrats.

(27 Del. Laws, c. 157 §§ 1, 2; Code 1915 §§ 2388, 2392B; 40 Del. Laws, c. 191 § 18; Code 1935 § 2839; 7 Del. C. 1953 § 761; 70 Del. Laws, c. 275 § 86.)

§ 751 Muskrats driven from shelter by flood or freshet.

No person shall take, kill or capture, by any means whatever, any muskrat during the time of any flood or freshet, when such flood or

freshet may cause any muskrat to leave its usual and accustomed place of shelter and protection.

Whoever violates this section shall be guilty of a class D environmental violation for each offense.

(26 Del. Laws, c. 165 § 14; Code 1915 § 2387; Code 1935 § 2838; 7 Del. C. 1953 § 762; 70 Del. Laws, c. 275 §§ 78, 86; 79 Del. Laws, c. 421 § 3.)

§ 752 Hunting muskrats with dog; penalty.

(a) No person shall hunt, take, catch or kill any muskrat with dog or dogs.

(b) Whoever violates this section shall be guilty of a class D environmental violation for each offense.

(27 Del. Laws, c. 157 §§ 1, 2; Code 1915 §§ 2388, 2392B; 40 Del. Laws, c. 191 § 18; Code 1935 § 2839; 7 Del. C. 1953 § 763; 70 Del. Laws, c. 275 §§ 79, 86; 79 Del. Laws, c. 421 § 3.)

§ 753 Muskrat nailing; destroying or damaging muskrat house, den; penalties.

(a) No person shall take, capture or kill, at any time, within this State, any muskrat by the method commonly known as nailing; or dig into, tear down, remove, interfere with, destroy or damage in any way any muskrat house, nest, den, lair or refuge.

(b) Whoever violates this section shall be guilty of a class C environmental violation for each muskrat house, nest, den, lair or refuge, dug into, torn down, removed, interfered with, destroyed or damaged in any way.

(Code 1915 § 2388A; 32 Del. Laws, c. 172 § 1; Code 1935 § 2840; 7 Del. C. 1953 § 764; 70 Del. Laws, c. 275 §§ 80, 86; 9 Del. Laws, c. 421 § 3.)

§ 754 Trespassing on property of another to kill muskrats; violations and penalties.

(a) Whoever enters into or upon, or trespasses upon the ways, marshes, lands or premises of another within this State, without first obtaining the consent of the owner or lessee thereof, for the purpose of taking, trapping, capturing or killing any muskrat in any manner whatsoever, shall be guilty of a class C environmental violation.

(b) Nothing in this section shall affect the right of the party injured, to that party's civil action for damages, as in cases of trespass.

(Code 1915 § 2388B; 32 Del. Laws, c. 172 § 1; Code 1935 § 2841; 7 Del. C. 1953 § 765; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 275 §§ 81, 86; 79 Del. Laws, c. 421 § 3.)

§ 755 Taking muskrat on public road or highway; penalties.

(a) No person shall take, capture or kill, in any manner, at any time, within this State, any muskrat on any public road or highway.

(b) Whoever violates this section shall be guilty of a class D environmental violation for each offense.

(Code 1915 § 2388C; 34 Del. Laws, c. 183 §§ 1, 2; Code 1935 § 2842; 43 Del. Laws, c. 195 § 1; 7 Del. C. 1953 § 767; 70 Del. Laws, c. 275 §§ 83, 86; 79 Del. Laws, c. 421 § 3.)

§ 756 Diving or box trap; penalty.

(a) No person shall take, capture or kill, at any time, within the State, any muskrat with a trap commonly known as a diving or box trap. The setting of any such trap in any muskrat den, lead, or runway shall be prima facie evidence of an offense against this section.

(b) Whoever violates this section shall be guilty of a class D environmental violation for each offense.

(Code 1915 § 2388C; 34 Del. Laws, c. 183 §§ 1, 2; Code 1935 § 2842; 43 Del. Laws, c. 195 § 1; 7 Del. C. 1953 § 768; 70 Del. Laws, c. 275 §§ 84, 86; 79 Del. Laws, c. 421 § 3.)

§ 757 Trapping muskrats or other fur-bearing animals adjacent to Broadkiln Creek without consent of landowner; penalty.

(a) No person shall trap or take muskrats or other fur-bearing animals from any lands adjacent to Broadkiln Creek, from the corporate limits of the Town of Milton to the Delaware Bay, or from the banks of Broadkiln Creek, from the corporate limits of the Town of Milton to the Delaware Bay, without first obtaining the consent of the owner of the lands or banks of the Creek. The failure of any person trapping or taking muskrats or other fur-bearing animals, as aforesaid, to produce the consent in writing of the landowner or the owner of the bank on which traps are set for muskrats, or other fur-bearing animals are taken shall be prima facie evidence of the violation of this section.

(b) Whoever violates this section shall be guilty of a class C environmental violation for each offense.

(44 Del. Laws, c. 148 §§ 1, 2; 7 Del. C. 1953 § 769; 70 Del. Laws, c. 275 §§ 85, 86; 79 Del. Laws, c. 421 § 3.)

§ 758 Extension of muskrat open season.

Notwithstanding § 703(1) of this title, the open season during which it shall be lawful to catch, kill or pursue or attempt to catch, kill or pursue muskrat may be extended. The Department shall establish both the conditions under which an extension shall occur and the extension framework through regulations promulgated pursuant to Chapter 101 of Title 29, Administrative Procedures Act.

(77 Del. Laws, c. 437 § 1.)

§§ 759 -766. [Reserved.]

Subchapter IV

Rabbits

§ 767 Rabbit or hare hunting with ferret.

No person shall hunt, take, kill or destroy any rabbit or hare with a ferret, or have a ferret in possession while hunting.

(26 Del. Laws, c. 165 § 13; Code 1915 § 2386; Code 1935 § 2837; 7 Del. C. 1953 § 771; 70 Del. Laws, c. 275 § 90.)

§ 768 Receipt of rabbits from without the State; penalties.

(a) No person shall receive from without the State any European or San Juan rabbit or any rabbit from an endemic state or area listed as such by the United States Public Health Service.

(b) No person shall receive from without the State any rabbit which is not prohibited by subsection (a) of this section unless it is accompanied by the certificate of the Secretary of the Department of Health and Social Services or the Secretary's designee or of an equivalent agency of the place of origin recognized and approved by the Secretary of the Department of Health and Social Services or the Secretary's designee to the effect that such rabbit is free from disease.

(c) Whoever violates this section shall be guilty of a class B environmental misdemeanor for each offense.

(28 Del. Laws, c. 195; Code 1935 § 2844; 7 Del. C. 1953 § 772; 50 Del. Laws, c. 141 § 1; 70 Del. Laws, c. 149 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 275 §§ 87, 90.)

§ 769 License to sell rabbits received from another state.

A special license shall not be required for the purpose of selling rabbits received from without the State in accordance with § 768 of this title.

(28 Del. Laws, c. 195; Code 1935 § 2845; 7 Del. C. 1953 § 773; 70 Del. Laws, c. 275 §§ 88, 90.)

§ 770 Identifying rabbits received from another state.

All persons exposing rabbits for sale, which were received from without the State, shall mark on a card not less than 12 inches by 8 inches, in readable letters, the words "Shipped Rabbits," the name of the state from where the rabbits were shipped, and the name of the shipper.

(28 Del. Laws, c. 195; Code 1935 § 2846; 7 Del. C. 1953 § 774; 70 Del. Laws, c. 275 § 90.)

§ 771 Bill of lading to be shown on demand.

All persons having rabbits in their possession and offering them for sale shall show, on demand from any constable, police officer or Fish and Wildlife Agent, the bill of lading and all other memoranda of the shipment, so as to satisfy such officer that the rabbits were not killed or shipped from any place within this State.

(28 Del. Laws, c. 195; Code 1935 § 2847; 7 Del. C. 1953 § 775; 70 Del. Laws, c. 105 § 5; 70 Del. Laws, c. 275 § 90.)

§§ 772 -776. [Reserved.]

Subchapter V

Terrapin

§ 781 Taking or destroying terrapin eggs; penalty.

Whoever takes or destroys any terrapin eggs found, or collected, on or near the shore of any bay, river or stream in this State, where the water is salt, or upon any salt marsh, or beach, shall be guilty of a class D environmental violation. Anyone having possession of such eggs shall be deemed to have taken them there, unless that person proves the contrary.

(Code 1852 § 969; 12 Del. Laws, c. 329 § 9; 14 Del. Laws, c. 422 § 9; Code 1915 § 2490; Code 1935 § 2970; 7 Del. C. 1953 § 781; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 275 § 91; 79 Del. Laws, c. 421 § 3.)

§ 782 [Reserved.]

§ 783 Terrapin taken or caught in Indian River or Rehoboth Bay — Use of dredges to take terrapin; penalty.

Whoever uses any dredge for the purpose of catching or taking terrapin in the Indian River or Rehoboth Bay, or waters adjacent thereto, shall be guilty of a class D environmental violation for each offense.

(13 Del. Laws, c. 435 § 1; 14 Del. Laws, c. 420 § 1; 16 Del. Laws, c. 310 § 1; Code 1915 § 2491; Code 1935 § 2971; 7 Del. C. 1953 § 783; 70 Del. Laws, c. 275 § 93; 79 Del. Laws, c. 421 § 3.)

§ 784 Terrapin raised in private ponds.

Nothing contained in this subchapter shall prevent any person from raising terrapin in a private pond.

(24 Del. Laws, c. 151 § 1; 27 Del. Laws, c. 150; Code 1915 § 2492; Code 1935 § 2972; 7 Del. C. 1953 § 784; 70 Del. Laws, c. 275 §§ 95, 96.)

§ 785 [Reserved.]

Subchapter VI

Other Game and Fish

§ 786 Raccoon and opossum.

(a) No person shall kill any raccoon or opossum, or needlessly destroy, break or interfere with any den or lair of any raccoon or opossum, or set fire to, burn or otherwise mutilate any tree, living or dead, stump or log for the purpose of killing or destroying in any way any raccoon or opossum at any time of the year, between 1 hour before sunrise and 1 hour after sunset.

(b) Any person may trap, hunt with dogs or otherwise take raccoons from any lands during the period as defined by Departmental regulations.

(c) Raccoon and opossum may be legally trapped, statewide, in a box type trap operated in such a way as to confine but not otherwise harm the entrapped raccoon or opossum with a maximum opening dimension not to exceed 195 square inches.

(d) Any person may trap or hunt, with dogs, raccoons with permission of the landowner from any lands in New Castle County or Kent County from the southerly boundary of New Castle County Route 380 and east and southeast of the center line of U.S. Route No. 13, thence following said center line of U.S. Route No. 13 to the point where U.S. Route No. 13 forms a junction with U.S. Route No. 113 and thence along the center line of U.S. Route No. 113 to a line dividing Kent County from Sussex County during any time of the year excepting on Sundays; provided, however, that this subsection shall not apply to lands in Kent County lying east of the center line of Rt. 113, north of the Sussex County line and south of the St. Jones River.

(e) Notwithstanding § 704(d) of this title, a .22 caliber rimfire pistol may be used to hunt raccoons and opossums.

(26 Del. Laws, c. 165 § 3; 27 Del. Laws, c. 158 § 2; 27 Del. Laws, c. 159; Code 1915 § 2375; 37 Del. Laws, c. 220 § 1; 38 Del. Laws, c. 145 § 1; Code 1935 § 2821; 41 Del. Laws, c. 177 § 3; 45 Del. Laws, c. 202 § 1; 47 Del. Laws, c. 164 § 1; 7 Del. C. 1953 § 791; 52 Del. Laws, c. 245; 62 Del. Laws, c. 326 §§ 5, 6; 63 Del. Laws, c. 374 § 1; 66 Del. Laws, c. 43 § 1; 70 Del. Laws, c. 275 § 103; 71 Del. Laws, c. 366 § 3.)

§ 787 Protection of deer; penalties.

(a) No person shall hunt, chase or pursue with the intent to kill, trap, take or have in possession any deer (living or dead), except those deer legally taken during the open season and during lawful hours in each county.

(b) All evidence including weapons, ammunition, lights, communication systems and/or instrumentalities including motor vehicles used in violation of subsection (a) of this section may be seized and retained as evidence, and forfeited according to procedures set forth in the Superior Court Criminal Rules. Wherever the State seeks to have property allegedly used in violation of subsection (a) of this section forfeited, the Superior Court shall have jurisdiction over both the violation of subsection (a) of this section and the issue of forfeiture.

(c) No person shall make use of dogs for the hunting or pursuing of deer with intent to kill said deer in this State at any time.

(d) No person shall purchase, sell or expose for sale, or transport, ship or possess with the intent to sell, any deer or any part of such deer, except for the hides of lawfully killed deer, at any time. Nothing in this paragraph shall preclude the importation and consumption of venison, approved for sale by the United States Department of Agriculture, into this State.

(e) Any person may possess a deer lawfully killed in another state if the person in possession of such deer has proof of such lawful killing and possession, and presents the proof upon demand to any officer or official of this State. It shall also be lawful to possess deer within an enclosure in a public zoo or park, or if a permit for such deer has been issued by the Department.

(f) Whoever violates this section shall be guilty of a class B environmental misdemeanor for each offense. In addition to being fined and/or imprisoned, anyone found guilty of a first offense for violating subsection (a) of this section shall be required to turn in any valid hunting license and shall be denied the privilege of hunting, with or without a license, in the State for a period of 2 years, commencing with the date of conviction; for any subsequent offense, anyone found guilty shall be required to turn in any valid hunting license and shall be denied the privilege of hunting, with or without a license, in the State for a period of 5 years, commencing with the date of conviction.

(Code 1935 § 2824A; 47 Del. Laws, c. 302 § 1; 7 Del. C. 1953 § 792; 70 Del. Laws, c. 275 §§ 97, 103; 70 Del. Laws, c. 436 § 5.)

§ 788 Exceptions to the prohibition against the killing of red fox.

(a) Notwithstanding § 703(2) of this title, red foxes may be harvested statewide. The Department shall establish the season structure and framework through regulations promulgated pursuant to Chapter 101, Administrative Procedures Act, of Title 29.

(b) Notwithstanding § 703(2) of this title, the Department may issue a permit to a private landowner authorizing the landowner to manage red foxes on his or her property, provided there is a wildlife management plan for the property, the wildlife management plan has been approved by the Department, and a reduction in the number of foxes was recommended by such plan. The permit shall specify the time during which, the means and methods by which, and the person or persons by whom the red foxes may be killed or captured. The Department shall not charge a fee for the issuance of a permit under this section.

(c) Nothing in this chapter shall be construed to prevent the killing of a red fox by the owner of poultry if such fox is in the act of attacking such poultry. Such person may kill such foxes within a reasonable time after the pursuit, killing or carrying away of the poultry.

(d) Notwithstanding anything to the contrary contained in this chapter, it shall be lawful to possess, buy and sell the hides of red foxes which are legally taken in Delaware or in another state.

(26 Del. Laws, c. 165 § 12; Code 1915 §§ 2385, 2385A; 40 Del. Laws, c. 194 § 1; 40 Del. Laws, c. 195 § 1; Code 1935 § 2836; 41 Del. Laws, c. 177 § 7; 7 Del. C. 1953 § 793; 60 Del. Laws, c. 587 §§ 1, 2; 62 Del. Laws, c. 138 §§ 6, 7; 68 Del. Laws, c. 15 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 275 §§ 98, 103; 72 Del. Laws, c. 332 § 2; 76 Del. Laws, c. 173 § 1; 76 Del. Laws, c. 308 § 2.)

§ 789 Sale or shipment of red fox or red fox hides; penalty.

(a) No live red fox shall be sold, purchased, possessed or exposed for sale in this State, or shipped by freight or express, or otherwise, or taken from any place within this State to any place outside this State. Nothing in this section shall be construed to prevent the possession or transfer of red fox hides legally taken in Delaware or in another state. It shall be legal to sell the hides of red foxes legally taken in Delaware within the State or in another state.

(b) The provisions of the preceding paragraph insofar as they relate to the possession of live red foxes shall not apply to animal exhibitions owned or operated by the State or any political subdivision thereof.

(c) Whoever violates this section shall be guilty of a class B environmental misdemeanor for each offense.

(26 Del. Laws, c. 166; Code 1915 § 2408; Code 1935 § 2879; 41 Del. Laws, c. 177 § 8; 7 Del. C. 1953 § 794; 62 Del. Laws, c. 138 § 8; 63 Del. Laws, c. 52 §§ 1, 2; 70 Del. Laws, c. 275 §§ 99, 103; 72 Del. Laws, c. 332 § 3; 76 Del. Laws, c. 308 §§ 3-6.)

§ 790 Digging out or killing female fox or her young whelps; penalty.

(a) No person shall dig out or in any manner take from any den a female fox, or her young whelps, or kill or in any manner cause the death of such female fox, or her young whelps, during the period of time in which she is suckling them.

(b) Whoever violates this section shall be guilty of a class C environmental violation for every female fox or whelp so dug or taken out of any den, or killed or caused to be killed.

(26 Del. Laws, c. 166; Code 1915 § 2408; Code 1935 § 2879; 7 Del. C. 1953 § 795; 60 Del. Laws, c. 587 § 3; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 275 §§ 100, 103; 72 Del. Laws, c. 332 § 4; 79 Del. Laws, c. 421 § 3.)

§ 791 Possession of red fox whelps.

Notwithstanding any other provision of this subchapter to the contrary, the taking and possession of red fox whelps between April 1 and August 15 of each year by persons possessing no less than 5 foxhounds kept for chasing mature red foxes and having a permit issued by the Department shall be permitted for the purpose of raising the whelps for fox chasing. Any whelps possessed by virtue of this section shall have been taken only with permission of the landowner. Any whelp possessed by virtue of this section must be released each year prior to August 15. Only red fox whelps found within this State shall be subject to this section.

(64 Del. Laws, c. 36 § 1; 70 Del. Laws, c. 275 § 103.)

§ 792 Legal limit on bullfrogs; penalty.

No person shall take or kill more than 24 bullfrogs in any 1 day or night, or have the same in that person's possession for more than 5 days after the close of the season for killing excepting when they are had in possession alive for scientific or propagating purposes.

Whoever violates this section shall be guilty of a class D environmental violation.

(Code 1915 § 2384A; 37 Del. Laws, c. 215 § 1; Code 1935 § 2835; 41 Del. Laws, c. 178 § 1; 7 Del. C. 1953 § 796; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 275 §§ 101-103; 79 Del. Laws, c. 421 § 3.)

§ 793 Sale of bullfrogs.

Notwithstanding any other provisions of Part I of this title, bullfrogs, lawfully taken or killed, may be sold, bought and possessed in any quantity.

(Code 1935 § 2835(a); 44 Del. Laws, c. 149 § 1; 7 Del. C. 1953 § 797; 70 Del. Laws, c. 275 § 103.)

§ 794 Deer accidentally killed by motor vehicle.

Any person, who, while operating a motor vehicle upon any public highway in this State, accidentally strikes and kills a deer upon said public highway shall, upon producing visible evidence of collision with said deer to any State Police or Fish and Wildlife Agent of this State, be entitled to possession of said deer. This section shall apply to deer killed by collision with a motor vehicle at any time, whether during the open season for killing deer or during the legally closed season.

(7 Del. C. 1953 § 798; 52 Del. Laws, c. 171; 70 Del. Laws, c. 105 § 6; 70 Del. Laws, c. 275 § 103.)

§ 795 Prohibition of sale or transportation of live skunks or raccoons.

No live skunks or raccoons shall be sold or possessed in this State or transported into this State for any purpose without a permit from the Division.

(63 Del. Laws, c. 389 § 7; 70 Del. Laws, c. 275 § 103.)

§ 796 Limitations on harvesting gray fox.

(a) It shall be unlawful to harvest gray fox except as otherwise provided in this chapter and directed gray fox harvest seasons shall not be established.

(b) Notwithstanding subsection (a) of this section, the collateral take of gray fox shall not be unlawful south of the Chesapeake and Delaware Canal during red fox harvest seasons that are established by the Department through regulation promulgated pursuant to the Administrative Procedures Act, Chapter 101 of Title 29,

(c) The Department may at its discretion require tagging and reporting requirements through regulation promulgated pursuant to the Administrative Procedures Act, Chapter 101 of Title 29.

(d) Notwithstanding any other provision of this title, the Department may issue a permit to a private landowner authorizing the landowner to manage gray foxes on his or her property, provided there is a wildlife management plan for the property, the wildlife management plan has been approved by the Department, and a reduction in the number of foxes was recommended by such plan. The permit shall specify the time during which, the means and methods by which, and the person or persons by whom the gray foxes may be killed or captured. The Department shall not charge a fee for the issuance of a permit under this section.

(e) Nothing in this chapter shall be construed to prevent the killing of a gray fox by the owner of poultry if such fox is in the act of attacking such poultry. Such person may kill such foxes within a reasonable time after the pursuit, killing, or carrying away of the poultry.

(f) Notwithstanding anything to the contrary contained in this chapter, it shall be lawful to possess, buy, and sell the hides of gray foxes which are legally taken in Delaware or in another state.

(80 Del. Laws, c. 92 § 1; 70 Del. Laws, c. 186 § 1.)

Subchapter VII

Woodchuck or Groundhog

§ 797 Woodchuck or groundhog not protected wildlife.

The animal known as woodchuck or groundhog shall not be a form of protected wildlife in this State.

(7 Del. C. 1953 § 811; 52 Del. Laws, c. 68; 70 Del. Laws, c. 275 § 104.)

§ 798 Taking of woodchuck or groundhog.

The woodchuck or groundhog may be hunted, trapped, caught, shot, killed, sold, shipped or otherwise disposed of, by any person and at any time.

(7 Del. C. 1953 § 812; 52 Del. Laws, c. 68; 70 Del. Laws, c. 275 § 104.)

§ 799 [Reserved.]

§§ 811 , 812. [Reserved.]

Subchapter VIII

Non-native Wildlife

§ 800 Definitions.

For the purposes of Part I of this title, unless otherwise specifically defined, or another intention clearly appears, or the context requires a different meaning, the following definitions shall apply:

(1) "Invasive wildlife species" means non-native wildlife species, including but not limited to nutria, whose presence, establishment, or proliferation causes or is likely to cause, as determined by the Department, biological or environmental harm to native wildlife species or their habitats or associated economic harm.

(2) "Non-native wildlife species" means those wildlife species exclusive of finfish, that, as determined by the Department, have not historically and naturally occurred in Delaware. Non-native wildlife species include but are not limited to those wildlife species, such as coyotes, that are or become present through natural range expansion or through human actions to include but not limited to unintentional or intentional introduction or release. Non-native wildlife species may include genetically modified native species. Non-native wildlife species do not include wildlife otherwise identified under this title as a game animal, game bird, or form of unprotected wildlife, and do not include feral cats and animals otherwise identified by statute as an agricultural commodity or livestock or determined to be an agriculture commodity or livestock by and in coordination with the Delaware Department of Agriculture.

(78 Del. Laws, c. 352 § 1.)

§ 801 Non-native wildlife; rules and regulations.

The Department, with the advice and recommendations of the Freshwater Fish and Wildlife Advisory Council, may establish such rules and regulations concerning the importation, possession, transportation, disposition, introduction, release, elimination, harvest, or management of any non-native wildlife species to include but not limited to invasive wildlife species in any specified localities as it deems

necessary or advisable for the protection or conservation of native wildlife species or their habitats or for the protection of agriculture, domestic animals, property, or human health or safety.

(78 Del. Laws, c. 352 § 1.)

§ 802 Non-native wildlife injurious to native wildlife, agriculture, and other interests.

The Department may issue an appropriate order authorizing and specifying the times and means for an agency, organization, business, industry, person, or group of persons to take, harvest, or capture any species of non-native wildlife that is or has the potential to become, as determined by the Department upon appropriate evaluation or investigation, seriously injurious to native wildlife or their habitat or to agriculture, domestic animals, property, or human health or safety.

(78 Del. Laws, c. 352 § 1.)

Part I
Game, Wildlife and Dogs
Chapter 9
FINFISHING IN TIDAL WATERS

§ 901 Purpose of chapter; policy of State; interstate fishery management plan; advisory committee.

(a) The purpose of this chapter is to effectuate the State's policy toward the management and conservation of coastal finfishery resources in cooperation with the federal government, local governments of this State and the governments of other states. This chapter provides the legal framework by which the users of this State's finfishery resource can participate in the State's responsibility of governing fishing for, and the taking of, finfish in a manner that is both biologically and socioeconomically sound.

(b) It shall be the policy of the State to manage tidal water finfisheries in accordance with the development and maintenance of a management strategy that perpetuates the historic significance of recreational and commercial fisheries with priority for development of interstate management plans given to those species that are of foremost interest to recreational fishers. These species shall include the weakfish, Cynoscion regalis, striped bass, Morone saxatilis, summer flounder, Paralichthys dentatus, bluefish, Pomatomus saltatrix, Atlantic croaker, Micropogan undulatus, porgy, Stenotomus chrysops, kingfish, Menticirrhus saxatilis, codfish, Gadus morrhua, seabass, Centroprists striata, and Atlantic mackerel, Scomber scombrus.

(c) It shall also be the policy of the State to manage tidal water finfisheries in accordance with management objectives that maintain optimum yields of fish, that provide a viable experience for recreational fishers and that provide sound business opportunities for commercial fishers and for those providing services to fishers. Management shall be accomplished in cooperation with the federal government, the governments of other states and local fishing interests. Management shall be biologically and socioeconomically sound.

(d) In recognition of these fishes as migratory species which routinely spend some part of their life in the territorial seas and interior waters of different coastal states and the fishery conservation zone (3-200 nautical miles), interstate fishery management plans for each species or group of closely related species may be developed by the Department in cooperation with other interested Atlantic coast states and the appropriate federal agencies in the U.S. Department of the Interior and the U.S. Department of Commerce. The development of each interstate fishery management plan shall include an appropriate Delaware Citizens Advisory Committee whose membership shall consist of individuals who are residents of this State and shall represent the commercial and recreational interest for that fishery. Both the Citizens Advisory Committees and the Department shall abide by the following management principles in the development of an interstate fishery management plan:

(1) Fisheries management shall prevent overfishing while achieving on a continuing basis the optimum yield from each fishery;

(2) Fisheries management shall be based upon the best available scientific and socioeconomic information;

(3) Fisheries management shall, to the extent practical, manage individual stocks of fish as a unit in cooperation with other states and federal authorities throughout the range of fish;

(4) Fisheries management shall, to the extent practical, allocate or assign fishing privileges among fishers to conform to historic fisheries landing statistics and be reasonably calculated to promote conservation;

(5) If it becomes necessary to allocate or assign fishing privileges among the citizens of this State, such allocation shall, to the extent practical, promote efficiency in the utilization of fishery resources, except that no such measure shall have economic allocation as the sole purpose; and

(6) Fisheries management, to the extent practical, shall minimize costs and avoid unnecessary duplications.

(64 Del. Laws, c. 251 § 1; 70 Del. Laws, c. 186 § 1.)

§ 902 Application of chapter.

This chapter and any regulations promulgated pursuant to this chapter shall apply to fishing for, and the taking of, finfish, in the tidal waters of the State, except for eels, which is provided for under Chapter 18 of this title. This chapter and any regulations promulgated pursuant to this chapter shall not apply to cultured aquatic stock in transit to, or in or removed from, registered aquaculture facilities pursuant to Chapter 4 of Title 3.

(Code 1915 § 2500; 28 Del. Laws, c. 203; Code 1935 § 2982; 7 Del. C. 1953 § 901; 64 Del. Laws, c. 251 § 1; 69 Del. Laws, c. 103 § 8.)

§ 903 Department of Natural Resources and Environmental Control; authority; permits; regulations.

(a) The Department shall administer and enforce the laws and regulations of the State relating to finfishing in the tidal waters of the State .

(b) The Department shall have the authority to cooperate and assist departments, agencies and offices of the State and other states, local governments and the federal government in the management and conservation of finfishery resources.

(c) The Department may issue permits to scientific and/or educational institutions, or employees thereof, allowing said party or parties to be at a specific location, at a specific time, and to use equipment to fish for, or use methods to take finfish, where said equipment, method, location or time would otherwise be illegal under this chapter or any regulation promulgated pursuant to this chapter.

(d) [Repealed.]

(e) The Department in accordance with the procedures set forth in § 905 of this title shall have the authority to promulgate regulations, which shall have the force and effect of law, to enhance the conservation and management of coastal finfisheries, including the biological and socioeconomic aspects of coastal finfisheries. Any regulation pertaining to fishing for food fish shall require a statement addressing whether or not said regulation will have a significant impact upon the conservation of the fishery in question. Except where otherwise provided in this section, such regulations shall be consistent with this chapter, and may only include, and encompass, the following areas:

(1)a. Add legal fishing equipment or methods to fish for bait fish in addition to the provisions of § 908 of this title.

b. Closed and/or open areas to fish for bait fish according to the provisions of § 909 of this title.

c. Add legal fishing equipment or methods to fish for food fish in addition to § 910 of this title.

d. Restrict fishing within areas designated as striped bass spawning areas according to § 930 of this title; provided that any restriction on fishing is consistent with fishing restrictions imposed by other states adjoining designated striped bass spawning areas located in Delaware.

e. Closed or open areas within Rehoboth Bay and its tributaries, Indian River and Indian River Bay and their tributaries, Little Assawoman Bay and its tributaries, Big Assawoman Bay and its tributaries, Nanticoke River and its tributaries and all tributaries entering the Delaware River and Delaware Bay to fishing with gill nets for food fish.

f. Restrict the mesh size of recreational drift gill nets that may be fished for American shad in the Delaware River.

g. Regulate and/or restrict the type of fishing gear or methods which may be used within the geographical boundaries of permitted artificial reef sites within the Delaware Bay and within Delaware's territorial sea (defined as 0 to 3 miles seaward of Delaware's ocean coastline).

(2)a. The Department may promulgate such other regulations concerning a species of finfish that spend part or all of their life cycle within the tidal waters of the State; provided that such regulations are consistent with an interstate fisheries management plan developed for the protection and conservation of said species of finfish. Such regulations may include and encompass the following:

1. Minimum and/or maximum size limits of a species according to § 929 of this title;
2. Restrictions on the quantities of a species that may be taken;
3. Restrictions on the periods of time that a species may be taken;
4. Restrictions on the areas from which a species may be taken; and
5. Restrictions on the mesh sizes of nets from which a species may be taken.

b. In lieu of an interstate fishery management plan for any species of finfish, the Department, in conjunction with the State of New Jersey's Department of Environmental Protection, may develop a fishery management plan for said species and promulgate interim regulations concerning said species of finfish within the Delaware River and Delaware Bay; provided that the State of New Jersey's Department of Environmental Protection adopts substantially similar interim regulations. Said interim regulations, in Delaware, shall become effective on the date substantially similar regulations become effective in the State of New Jersey.

These interim regulations may include and encompass the following:

1. Minimum and/or maximum size limits of a species that may be taken and possessed;
2. Restrictions on the quantities of a species that may be taken;
3. Restrictions on the periods of time that a species may be taken;
4. Restrictions on the areas from which a species may be taken; and
5. Restrictions on the mesh sizes of nets from which a species may be taken.

Upon the acceptance by the Department of an interstate fishery management plan for a species of finfish, all interim regulations pertaining to the management of said species shall become void upon the effective date of new regulations promulgated by the Department according to subparagraph a. of this paragraph.

c. Any regulation adopted pursuant to paragraphs (e)(2)a. and b. of this section shall be consistent with the management principles for development of interstate fishery management plans as set forth under § 901 of this title.

(3) The Department may promulgate such other regulations concerning any species of finfish, including marine mammals, that spend part or all of their life cycle within the tidal waters of the State; provided, that such regulations are consistent with management plans approved by the U.S. Secretary of Commerce for the protection and conservation of said finfish or marine mammal.

(f) The Department shall have the authority to issue permits or carry out any other administrative procedure provided for under this chapter, including but not limited to, permits, licenses and applications.

(g) The passage and approval of this subsection shall repeal those provisions contained in § 929 of this title that conflict with any Department regulation only if and when the Department promulgates any regulation contrary to said section of this chapter.

(h) The Department shall have the authority to adopt emergency regulations without following the procedures set forth in § 905 of this title when such regulations are necessary to deal with an actual or imminent public health threat or danger to a fishing resource or habitat involving finfish subject to this chapter. Emergency regulations may be adopted by the Department for a period not to exceed 90 days, and may be renewed for sufficient cause for an additional 90-day period. As soon as practicable after adoption of emergency regulations hereunder, the Department shall conduct a public hearing on the matter to obtain and consider all relevant information present to determine if continuation of the emergency regulations is justified.

(i) The Department is authorized to collect pertinent data with respect to fisheries, including, but not limited to, information regarding the type and quantity of fish or weight thereof, areas in which fishing was conducted and time of fishing. The information collected by or reported to the Department shall be confidential and shall not be disclosed in a manner or form that permits identification of any person or vessel, except when required by court order.

(j) The Department shall have the authority to issue a permit to a person for the artificial propagation, aquaculture and possession of finfish which otherwise would be illegal in this State provided that all finfish removed from the tidal waters under the jurisdiction of this State for obtaining eggs or sperm are to be released immediately or disposed of in a manner specified in the permit.

(64 Del. Laws, c. 251 § 1; 64 Del. Laws, c. 279 § 1; 65 Del. Laws, c. 192 § 1; 65 Del. Laws, c. 408 § 1; 68 Del. Laws, c. 199 § 2; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 72 § 1; 76 Del. Laws, c. 71 § 13; 77 Del. Laws, c. 239 § 1.)

§ 904 Advisory Council on Tidal Finfisheries; establishment; organization; authority.

(a) There is created an Advisory Council on Tidal Finfisheries to advise the Director on all matters relating to tidal finfisheries management.

(b) The Council shall have 7 members, all of whom shall be appointed by the Governor. Council members shall consist of the following:

(1) Two members who are residents of New Castle County.

(2) Two members who are residents of Kent County.

(3) Two members who are residents of Sussex County.

(4) One member who is a resident of this state to serve as Chair.

(c) In addition to the residency requirements of subsection (b) of this section, council members shall meet the following criteria:

(1) Three council members shall represent recreational finfishing interests, such as the bait and tackle industry, fishing from shore, fishing from a privately owned vessel, or the charter or head boat industry. None of the members representing the recreational finfishing interests shall be a licensed commercial food fisher.

(2) Three council members shall represent commercial finfishing interests, such as the wholesale of seafood, fishing with fixed fishing equipment, and fishing with drifting or hauling fishing equipment.

(3) The Council Chair shall be knowledgeable about finfishing, but impartial to recreational and commercial fishing interests.

(d) No council member shall be employed by the Department.

(e) Appointments to Council shall be for terms of up to 4 years to ensure that no more than 2 members' terms shall expire in any year.

(f) A majority of members appointed to Council shall constitute a quorum to conduct official business.

(g) The Council shall meet and conduct official business after the Chair gives notice to all members of any meeting to be held by the Council, and the Council shall meet no less than once during each quarter of the State's fiscal year.

(h) Members of the Council shall serve without compensation. Each member shall be entitled to reimbursement by the Department from the Finfisheries Development Fund for actual and necessary expenses incurred traveling to and from meetings of the Council.

(i) The Council shall submit a report to the Delaware General Assembly prior to January 1 of each calendar year and said report shall consist of the following:

(1) Council's recommended revisions, additions, or deletions to this chapter, if any.

(2) A summary of Council's activities of the previous year.

(j) A council member may be removed at any time for gross inefficiency, neglect of duty, malfeasance, misfeasance, or nonfeasance in office.

(1) A member who is absent from 3 consecutive Council meetings without good cause or who attends less than 50% of Council meetings in a calendar year shall be deemed in neglect of duty.

(2) Any member who is deemed in neglect of duty shall be considered to have resigned.

(64 Del. Laws, c. 251 § 1; 70 Del. Laws, c. 186 § 1; 80 Del. Laws, c. 99 § 1.)

§ 905 Procedures for promulgation of regulations; public hearing notice; submission to Council; approval.

(a) Except as otherwise provided in this chapter, the Department shall conduct a public hearing on any relevant issue involved with the proposal of any regulation relating directly to finfishing in tidal waters of this State by the Department.

(b) Before any public hearing is held by the Department pursuant to subsection (a) of this section, the Department shall complete the following procedure:

(1) Publish notice of the public hearing in a newspaper of general circulation in the State no less than 20 days in advance of the public hearing; and

(2) Said published notice shall include a brief description of the proposed regulation, the time and location of the public hearing, and also the manner in which the public may respond to the Department on the proposed regulation.

(c) The Department shall attempt to notify each person who has been issued a commercial food fishing license or a food fishing equipment permit by the Department, and also any other interested person, of any public hearing on any proposed regulation at least 20 days in advance of any public meeting, but only if said parties have written to the Department requesting that such notice be sent to them at a specific address, and also provided that the Department has received the person's request within 1 year of the date of the public hearing scheduled on the proposed regulation.

(d) Except as otherwise provided in this chapter, after the Department has held a public hearing on any proposed regulation, the Department shall then submit said regulation and any summary of said public hearing that may have been prepared by the Department to the Council Chairperson. The Council Chairperson shall then submit the proposed regulation to the Council for its consideration and subsequent advice to the Department.

(e) Except as otherwise provided in this chapter, all final and effective regulations of the Department relating to finfisheries in the tidal waters of the State shall be filed with the Secretary of State, and shall become effective on the day of the filing thereof.

(64 Del. Laws, c. 251 § 1.)

§ 906 Definitions.

Unless otherwise provided in this chapter:

(1) "Active commercial fisher" shall mean an individual licensed by the Department to fish for commercial purposes for finfish or shellfish who has filed landing reports with the Department that account for no less than 0.1% of the landings in a specific commercial fishery identified by gear type during any 1 of the previous 3 calendar years.

(2) "Anchor gill net" shall mean a gill net held in place by anchors on the bottom.

(3) "Bag net or channel net" shall mean a bag-shaped net placed in flowing water that is fastened to poles or anchors so as to strain out finfish.

(4) "Bait fish" shall mean the following species of finfish: Minnows or shiners (Cyprinidae (family)); killifish (Fundulus spp.); anchovy (Anchova spp.); sand lance (Ammodytes spp.); mullet (Mugilidae (family)); and other species of food fish measuring less than or equal to 7 inches in length, unless otherwise protected by statute or regulation.

(5) "Bait seine or drag net" shall mean a type of net with mesh webbing not exceeding 100 yards in length with a top line having floats to keep it at the surface and a weighted bottom line. Each end may be attached to poles which 2 or more persons may use to pull the seine through shallow water.

(6) "Bar net" shall mean a single wall of gill netting with ropes or rigid bars attached at right angles between the float and lead lines so that the webbing hangs slack.

(7) "Beam trawl" shall mean a bag, cone or funnel-shaped net without wings that is dragged or towed on the bottom by a vessel or motor power. The mouth of the net is held open by a rigid beam of wood or metal.

(8) "Cast net" shall mean a circular cone-shaped net thrown by hand that has an outer line with attached weights. Once thrown, the weighted line sinks rapidly to the bottom and the weighted line is drawn together by ropes which are attached to a recovery line, closing the net.

(9) "Charter boat" shall mean any vessel-for-hire engaged in recreational fishing that is hired on a per trip basis.

(10) "Commercial finfisher" shall mean any person who takes, catches, kills or reduces to possession any species of finfish taken from the tidal waters of this State by said person and sells, trades, barters or attempts to trade, barter or sell said finfish.

(11) "Common haul seine" shall mean an encircling type of net that is 100 yards or more in length and consisting of 2 wings and a bunt or bag. The top line has floats to keep it at the surface while the bottom line or foot line is weighted. The bunt or bag is flanked by wings to which are attached auxiliary lines. It may be set by a vessel and hauled to shore by hand or power winch.

(12) "Council" shall mean the Advisory Council on Tidal Finfisheries.

(13) "Danish seine" shall mean a trawl net that is rigged for a type of fishing that involves herding finfish with ropes prior to netting. The ropes and trawl net are played out by a vessel. The 2 ropes and trawl net are retrieved by the vessel while anchored with motorized winches. The ropes while being retrieved herd the finfish into the mouth of the trawl net.

(14) "Delaware Bay" shall mean all those tidal waters under the jurisdiction of the State located within an area bordered on the north by a straight line drawn between Liston Point, Delaware and Hope Creek, New Jersey and bordered on the south by a straight line drawn between Cape May Point, New Jersey and Cape Henlopen Point, Delaware, but not including any tributaries thereto.

(15) "Delaware's internal waters" shall mean all of those tidal waters under the jurisdiction of the State, except the Atlantic Ocean, as separated from the Delaware Bay by a straight line drawn between Cape May Point, New Jersey and Cape Henlopen Point, Delaware.

(16) "Delaware River" shall mean all those tidal waters under the jurisdiction of the State located within an area to the north of a straight line connecting Liston Point, Delaware and Hope Creek, New Jersey, but not including any tributaries thereto.

(17) "Delaware's territorial sea" shall mean all of those tidal waters in the Atlantic Ocean separated from Delaware Bay under the jurisdiction of the State, the outer boundary of which is a line 3 nautical miles coterminous with the shoreline of the State.

(18) "Department" shall mean the Department of Natural Resources and Environmental Control.

(19) "Dip net" shall mean a mesh bag of netting or wire which is suspended from a circular, oval or a rectangular frame attached to a handle.

(20) "Director" shall mean the Director of the Division.

(21) "Division" means the Division of Fish and Wildlife of the Department.

(22) "Dredge" shall mean any device used to gather, scrape, scoop, fish for or otherwise take bottom dwelling finfish.

(23) "Drift gill net" shall mean a gill net that is free-floating and fished at the surface or at intermediate depths.

(24) "Finfish" shall mean any aquatic vertebrate which has fins.

(25) "Fisheries conservation zone" shall mean that portion of the Atlantic Ocean contiguous to coastal states' territorial seas with an

inner boundary as a line coterminous with the seaward boundary of Atlantic coastal states' territorial seas and an outer boundary as a line drawn in such a manner that each point unit is 200 nautical miles from the baseline from which coastal states' territorial seas are measured.

(26) "Fishing," "fished" or "to fish" shall mean to take, catch, kill or reduce to possession or to attempt to take, catch, kill or reduce to possession any finfish by any means whatsoever.

(27) "Fishing equipment" shall mean any dredge, tool, net, line, instrument, device, gear, harpoon, spear, hook or hook and line used or attempted to be used to fish for finfish.

(28) "Fish pot" or "fish trap" or "minnow trap" shall mean a rigid device of various designs and dimensions used to trap finfish with the catching principle based on 1 or more conical funnels to prevent finfish from escaping after they enter the pot or trap. A fish pot or fish trap may be circular, rectangular, cylindrical, cubical or of any other shape. It may be constructed with wire mesh, fish netting over a ridged frame of wood, steel, any other material or any combination of materials. A minnow trap shall have a conical funnel opening of no more than 2 inches.

(29) "Fixed gill net" shall mean any gill net that is not a drifting gill net.

(30) "Food fish" shall mean all species of finfish not specified as bait fish or game fish in this chapter except for eels which are governed by Chapter 18 of this title.

(31) "Food fish dealer" shall mean:

a. Any person licensed under § 2902, § 2903, § 2904, § 2905 or § 2908 of Title 30 who receives food fish from a commercial finfisher;

b. Any commercial finfisher who trades, barters and/or sells food fish to any person licensed under § 2906 of Title 30; or

c. Any commercial finfisher who trades, barters and/or sells food fish to any person whose principle place of business is located outside this State.

(32) "Fyke net" shall mean a hoop net with 1 or more wings or a leader attached and held in place with anchors or stakes to help guide finfish into the hoop net.

(33) "Game fish" shall mean the following species of finfish: smallmouth bass (Micropterus dolomieu); largemouth bass (Micropterus salmoides); black crappie (Pomoxis nigromaculatus); white crappie (Pomoxis annularis); rock bass (Ambloplites rupestris); white bass (Morone chrysops); walleye (Stizostedion vitreum); northern pike (Esox lucius); chain pickerel (Esox niger); muskellunge (Esox masquinongy); muskellunge hybrid (Esox masquinongy x lucius); salmon and trout (Salmonidae (family)); sunfishes (Lepomis spp.); white bass-striped bass hybrid (Morone saxatilis x crysops).

(34) "Gill net" shall mean an upright net or fence of fiber or monofilament netting with a float line also known as a cork line, on top, and a weighted line, also known as a lead line, on the bottom in which finfish are caught in the meshes of the net. Finfish, of a size for which the net is designed, swim into the net and can pass only part way through a single mesh. The finfish becomes "gilled" and can neither go forward through the net nor backward out of the net. Gill nets may be suspended at the surface, in mid-water or close to the bottom by controlling the number of floats on the float line and the size and number of weights on the weighted line. The net may be operated in either a stationary or movable manner.

(35) "Harpoon" shall mean an instrument with pointed barbed blade or blades that is detachable from the pole, shaft or handle of the instrument. It may be thrown by hand or discharged from a gun or a mechanical device.

(36) "Headboat" shall mean any vessel-for-hire engaged in recreational fishing that is hired on a per person basis.

(37) "Hook" shall mean a curved piece of wire, or other material, with or without a barbed end that is used to fish for finfish. A hook may consist of 1 hook, or 2 or 3 hooks that have been united together, and these may be known as a single, double or treble hook, respectively.

(38) "Hook and line" shall mean a single fishing line with 1 or more hooks held by, or attended by, or under the immediate control of, 1 or more persons. The hook and line may be attached to a pole, reel, float or stake or may be held by a person.

(39) "Hoop net" shall mean a conical or cylindrical net distended by a series of hoops or frames covered by web netting or wire mesh and may have 1 or more internal funnel-shaped throats that have tapered ends that are directed away from the mouth of the net.

(40) "Individual" shall mean a human being.

(41) "Interstate fisheries management plan" shall mean a document prepared in cooperation with at least 2 other Atlantic coastal states that ascertains factual circumstances, establishes objectives and proposes management measures that will achieve the objective for single species of finfish or a group of closely related finfishes.

(42) "Lampara net" shall mean an encompassing type of net that has a large central bunt and relatively short wings. The wings have a larger mesh than the bunt. This net is set from a moving vessel so as to surround a school of finfish, and then the 2 wings are pulled simultaneously. There is no pursing devices other than the closing of the lines as the net is drawn through the water by the vessel.

(43) "Lift net" shall mean a shallow bag of netting or wire which is attached to a frame that may have a round, rectangular or other shape, and is suspended by a line or bridle. It is lowered beneath the surface and raised rapidly to the surface.

(44) "Long haul seine" shall mean a type of haul seine that may be over 1,000 yards in length and is towed by 2 motorized vessels. It may be towed and/or hauled to a shoal area where the finfish catch is concentrated in the net and brailed from the bunt or bag.

(45) "Longline" shall mean a fishing line with a series of hooks on separate but attached short lines. It can be anchored or drifted. It

may also be known as a trotline or setline.

(46) "Long seine" shall mean a modification of the common haul seine with 1 end of the net fastened to an anchor, stake or another vessel while the other end is pulled by a vessel. The pulled end is swept in a circle so that it will pass by the fastened end.

(47) "Mouth" of a tributary, stream, canal, creek or ditch shall mean any point on a line drawn between the outermost 2 points of land or jetties on each bank of the tributary, stream, canal, creek or ditch.

(48) "Nonresident" shall mean any person who has not continuously resided for 1 year within this State prior to the date in question.

(49) "Otter trawl" shall mean a funnel-shaped net with wings, a throat section and cod or bag end that is dragged or towed on the bottom or off of the bottom by 1 or more vessels. Floats and weights are utilized to keep the mouth of the net open. To spread the net, each wing is fastened to an "otter" board or trawl door. Each door is fitted with chains that can be attached to a towing cable from the trawling vessel. The resistance of the door at different angles forces them to pull in opposite directions and keeps the mouth of the net opened.

(50) "Pair trawl" shall mean any net including a trawl net, gill net or any type of seine net that is rigged for a type of fishing that involves towing the net with 2 or more vessels.

(51) "Parallel net" shall mean a gill net which is set across the mouth of a bay, arc of a beach or other restricted body of water. Finfish are gilled when the tide ebbs or flows.

(52) "Person" shall mean any individual, organization, group, business, partnership, corporation or any other type of entity.

(53) "Pound net" or "trap net" shall mean a type of entrapment gear that consists of an arrangement of netting or wire supported upon stakes or piles and has the head ropes or lines above the water or in a frame that is supported by floats and anchors. A pound net or trap net may consist of an enclosure known as the pound proper, crib or pocket which has a netting floor and section known as a heart, from the entrance of which a straight wall known as the leader or runner extends outward. There may be several combinations of hearts, pounds or pockets. Finfish are voluntarily directed by the leader towards and into the heart and/or pound, and then into the crib or pocket where they are removed periodically by various devices and methods, such as dip nets.

(54) "Power" shall mean any mechanical device operated by an engine, motor or other source of energy other than human muscle.

(55) "Purse seine" or "long net" shall mean an encircling type of net that consists of a long wall of webbing without a prominent bunt or bag. The top edge is floated with a series of floats and the bottom edge is weighted and has a drawstring which is threaded through a series of rings along the bottom of the net below the lead line. A purse seine may be set around a school of finfish by 1 or more vessels. Once the school of finfish has been completely encircled, the bottom of the net is pursed with the drawstring so that the weighted line is bunched or puckered.

(56) "Push net" shall mean a modification of the dip net. It is a shallow wire or netting mesh bag attached to a wooden or metal frame which has a handle. It is pushed over the bottom.

(57) "Recreational finfisher" shall mean any person who takes, catches, kills or reduces to possession any species of finfish taken from the tidal waters of this State by said person and who does not sell, trade or barter or attempt to sell, trade or barter said finfish.

(58) "Resident" shall mean any person who has continuously resided within this State for 1 year prior to the date in question.

(59) "Run around gill net" or "ring net" shall mean a gill net that is set around a school of finfish by 1 or more vessels. Finfish are gilled while seeking to escape the net.

(60) "Scottish seine" shall mean a trawl net that is rigged for a type of finfishing that involves herding the finfish with ropes prior to netting. It is similar to Danish seining but the vessel is moving when it retrieves the trawl net and is not anchored.

(61) "Secretary" shall mean the Secretary of the Department.

(62) "Semidrift gill net" shall mean a drift gill net that has 1 end attached to a stake or a vessel.

(63) "Spear" shall mean an instrument with 1 or more pointed barbed or barless prongs or blades that are not detachable from the handle or shaft of the instrument. It may be thrown by hand or propelled by a gun or mechanical device.

(64) "Staked gill net" shall mean a gill net held in place by stakes or poles which have been pushed or driven into the bottom.

(65) "Stop seine" or "stop net" shall mean any type of net, generally a haul seine, which is set across the mouth of a bay, arc of a beach or other restricted body of water that may cause finfish to be stranded behind the net when the tide ebbs.

(66) "Tidal water" shall mean those waters where the lunar tide regularly ebbs and flows.

(67) "Trammel net" shall mean a type of fishing gear that has 3 panels of netting which are suspended from a common float line and attached to a single bottom or weighted line. The 2 outside webs or walls of netting are of a larger mesh than the inside webbing. The inside net has a greater depth and hangs loosely between the outer panels of webbing. A finfish swimming from either side of the fishing gear passes through the larger mesh outer panel and strikes the smaller mesh middle panel and the finfish is carried through 1 of the openings of the other larger mesh panel, forming a sack or pocket in which the finfish is entrapped. A trammel net can be used to fish in ways that are similar to gill nets.

(68) "Trawl net" or "seine trawl" shall mean a bag, cone or funnel-shaped net with or without wings towed through the water or dragged over the bottom by 1 or more vessels or by motor power.

(69) "Troll line" or "troll lines" shall mean a fishing line or lines with 1 or more hooks at the free end of each line that is drawn or towed with a boat.

(70) "Vessel" shall mean any boat of any length or width.

(71) "Weir" shall mean any fixed type of fishing equipment that consists of fences made of wooden stakes or out of other materials constructed in such a manner so as to intercept or attempt to intercept finfish. The fences form successive enclosures called the heart, pound and pocket into which the finfish are directed by a prolonged fence known as a leader.

(28 Del. Laws, c. 203; Code 1935 § 2985; 7 Del. C. 1953 § 904; 61 Del. Laws, c. 256 § 3; 64 Del. Laws, c. 251 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 214 § 1; 72 Del. Laws, c. 362 § 1; 73 Del. Laws, c. 29 § 1.)

§ 907 Equipment and methods used for fishing for game fish.

Unless otherwise authorized by the adoption of Department regulation or issuance of Division permits, it shall be illegal for any person to fish for any game fish in the tidal waters of the State with any fishing equipment, or by any method, unless it is provided for in the following subdivisions:

(1) A hook and line may be used, and each hook and line shall have no more than 3 hooks or 3 separate lures with hooks;

(2) At any 1 time the number of hooks and lines any 1 person shall be permitted to use to fish for any game fish in the tidal waters of the State shall be no more than 2.

(Code 1915 § 2503; 28 Del. Laws cc. 203 204; Code 1935 §§ 2986, 2987; 44 Del. Laws, c. 154 § 1; 7 Del. C. 1953 §§ 905, 906; 57 Del. Laws, c. 146 §§ 1, 2; 64 Del. Laws, c. 251 § 1.)

§ 908 Equipment and methods used for fishing for bait fish.

Unless otherwise authorized by the adoption of any Department regulation or issuance of Division permits subsequent to April 27, 1984, it shall be illegal for any person to fish for bait fish in the tidal waters of the State with any fishing equipment or by any method, except a hook and line, a fish pot or a fish trap, including a minnow trap, a dip net, a lift net that is operated without the use of power, a push net, a cast net that is operated without the use of power, a spear, a common haul seine that is operated without the use of power, a gill net being fished in more or less a straight line, and a bait seine or a bag net.

(28 Del. Laws, c. 203; Code 1935 § 2988; 7 Del. C. 1953 § 907; 64 Del. Laws, c. 251 § 1; 64 Del. Laws, c. 279 § 2.)

§ 909 Fishing for bait fish in tidal waters.

Unless otherwise provided by adoption of Department regulation subsequent to April 27, 1984, it shall be legal to fish for bait fish in all tidal waters of this State.

(64 Del. Laws, c. 251 § 1.)

§ 910 Types of fishing equipment and methods used for fishing for food fish.

Unless otherwise authorized by this chapter or the adoption of any Department regulation or issuance of Division permits subsequent to April 27, 1984, it shall be illegal for any person to fish for food fish in the tidal waters of the State with any fishing equipment or by any method, except:

(1) A hook and line;

(2) A troll line;

(3) A dip net;

(4) A lift net operated without the use of power;

(5) A push net;

(6) A cast net operated without the use of power;

(7) A spear or harpoon;

(8) A common haul seine operated without the use of power;

(9) A bait seine;

(10) A bag net;

(11) A hoop net not exceeding 72 inches in diameter;

(12) A fyke net not exceeding 72 inches in diameter and with wings or leaders not exceeding 180 feet in length;

(13) A fish pot or fish trap not exceeding 125 cubic feet and with an escape panel constructed of biodegradable netting and measuring at least 8 inches x 8 inches; and

(14) A gill net being fished in more or less a straight line.

(Code 1915 § 2510A; 28 Del. Laws, c. 203; 30 Del. Laws, c. 180 § 1; Code 1935 §§ 2989, 2996; 7 Del. C. 1953 §§ 908, 909; 57 Del. Laws, c. 146 § 3; 61 Del. Laws, c. 256 § 4; 64 Del. Laws, c. 251 § 1.)

§ 911 Scientific permit; issuance; information; expiration; report; equipment marking and identification requirements.

(a) For purposes that are scientific or for the propagation of finfish, the Director may issue a scientific permit to any scientific or educational institution, consultant, organization and/or person enabling them to fish, possess and/or transport finfish into or from the tidal waters of this State by the use of fishing equipment and/or methods, during times, and at certain locations, that would normally be considered illegal according to this chapter or any Department regulations.

(b) Prior to the issuance of a scientific permit the applicant shall provide the Director with all the information that is requested by any application supplied by the Division to said applicant.

(c) Each scientific permit shall expire on the date set forth in the permit, or on the last day of the calendar year during which the permit was issued, whichever date is earliest.

(d) Each applicant that is issued a scientific permit shall file an information report with the Director within 30 days after the expiration date of said permit. The content of said report shall be determined by the Director at the time the scientific permit is issued.

(e) Each applicant that is issued a scientific permit shall comply with the marking requirements that are set forth in § 920 of this title.

(f) Each applicant that is issued a scientific permit shall be assigned an identification number by the Division and this number shall be attached and maintained in a legible manner on the fishing equipment in the same manner that is required of fisher under § 921 of this title.

(g) Each applicant that is issued a scientific permit shall not be classified a commercial finfisherman for purposes of this chapter, or any Department regulation, provided that the applicant submits all reports to the Director that are required by this chapter and any Department regulation promulgated pursuant to this chapter or any permit condition.

(64 Del. Laws, c. 251 § 1; 70 Del. Laws, c. 186 § 1.)

§ 912 Sale, trade and/or barter of game fish.

(a) No person who catches or takes any species of game fish from or out of the tidal waters of this State shall sell, trade and/or barter said game fish, unless the Director has authorized such sale, trade or barter by issuing the person a permit.

(b) No person who catches or takes any species of game fish from or out of the tidal waters of this State shall attempt to sell, trade and/or barter said game fish, unless the Director has authorized such attempted sale, trade or barter by issuing the person a permit.

(64 Del. Laws, c. 251 § 1.)

§ 913 Sale, trade and/or barter of food fish.

(a) No individual who catches or takes any species of food fish, from or out of the tidal waters of this State shall sell, trade and/or barter said food fish, unless said individual has been issued a valid commercial food fishing license by the Department.

(b) No individual who catches or takes any species of food fish from or out of the tidal waters of this State shall attempt to sell, trade and/or barter said food fish, unless said individual has been issued a valid commercial food fishing license by the Department.

(c) No individual shall purchase, trade for or barter for any food fish, from another individual who catches or takes food fish from or out of the tidal waters of this State unless said other individual who catches or takes food fish from or out of the tidal waters of this State possesses a valid commercial food fishing license.

(d) No individual shall fish with a drifting gill net unless said individual has been issued a valid commercial food fisher's license and appropriate fishing equipment permits by the Department.

(e) No individual who catches or takes any species of food fish from or out of the tidal waters of this State shall give or transfer said food fish without compensation to another individual for subsequent sale, trade or barter unless the individual giving or transferring said food fish has been issued a valid commercial food fishing license by the Department.

(f) No individual shall sell, trade and/or barter or attempt to sell, trade and/or barter any food fish taken with food fishing equipment for which a food fishing equipment permit has been issued to a recreational finfisher.

(g) Any person who violates subsection (a), (b), (c), (d) or (f) of this section shall be guilty of a Class C environmental violation.

(h) Any person who violates subsection (e) of this section shall be guilty of a Class D environmental violation. Each food fish purchased, traded or bartered for shall constitute a separate violation.

(64 Del. Laws, c. 251 § 1; 65 Del. Laws, c. 193 §§ 1-4; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 579 §§ 1, 2; 79 Del. Laws, c. 421 § 4.)

§ 914 Commercial food fishing license; requirements and fees.

A commercial food fishing license shall be issued to an individual in accordance with the requirements and procedure set forth below in this section:

(1) The fee for a commercial food fishing license for an individual who is a resident of this State shall be $150.

(2) The fee for a commercial food fishing license for an individual who is a nonresident of this State shall be $1,500, except that for a resident of the State of New Jersey, who qualifies as a commercial fisher to obtain a food fishing equipment permit for gill net to fish in only that portion of the Delaware River, east of the center line of the shipping channel, and north of 39 degrees 30' north latitude the fee shall be $150.

(3) When by or pursuant to the laws or regulations of any other state should said state impose any tax, other fee or restrictions on nonresidents for the privilege of commercial fishing for food fish within its boundaries, which tax, or other fee is in the aggregate greater or restriction is greater to include but not be limited to the nonavailability of a license for nonresidents, the similar or identical taxes, other fees, license requirements and restrictions shall be imposed by the Department upon the residents of that state who seek to apply for a commercial food fishing license from the Department to fish within the boundaries of this State.

(4) A commercial food fishing license shall expire on the last day of the calendar year in which said license is issued by the Department.

(5) The Department shall not issue any commercial food fishing license after December 31 in any calendar year.

(6) All commercial food fishing license holders shall file monthly reports of their catch by effort, species and weight on forms provided by the Department.

(64 Del. Laws, c. 251 § 1; 67 Del. Laws, c. 184 § 1; 70 Del. Laws, c. 56 §§ 1, 2; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 496 § 1; 73 Del. Laws, c. 124 § 1.)

§ 915 Food fishing equipment permit; requirements, fees and restrictions.

(a) A valid food fishing equipment permit issued by the Department is required before any individual shall: fish for food fish in the tidal waters of this State with the fishing equipment specified in subsection (b) of this section or sell, trade and/or barter food fish caught or taken with hook and line. Exceptions to the foregoing may be made as authorized by this chapter or by scientific permit issued by the Director. The Department shall not charge a fee for a food fishing equipment permit for hook and line.

(b) The following food fishing equipment permits and fees shall apply to individuals who fish for food fish in the tidal waters under the jurisdiction of this State. Any resident of this State, 65 years of age or older, who is not a commercial foodfishing licensee, is exempt from the foodfishing equipment permit fees but must comply with all other foodfishing equipment permit procedures and requirements. Food fishing equipment permit fees apply to the appropriate amount of equipment being fished in the water of any point in time:

(1) A common haul seine (more than 300 ft.) — residents $25 per net; nonresidents $250 per net;

(2) A bag-net — residents $10 per net; nonresidents $100 per net;

(3) A hoop net not exceeding 72 inches in diameter — residents $10 per net; nonresidents $100 per net;

(4) A fyke net not exceeding 72 inches in diameter and with wings or leaders not exceeding 30 fathoms (180 ft.) in length — residents $5.00 per fyke; nonresidents $50 per fyke;

(5) A fish pot or fish trap with a funnel opening of more than 4 inches in diameter and not exceeding 125 cubic feet and with an escape panel constructed of a biodegradable netting measuring at least 8 inches x 8 inches — residents $1.00 per pot or trap; nonresidents $10 per pot or trap;

(6) A gill net — residents $5.00 per 50 fathoms (300 ft.) or any part thereof; nonresidents $50 per 50 fathoms (300 ft.) or any part thereof;

(7) A gill net — New Jersey resident — $5.00 per 50 fathoms (300 ft.) or any part thereof.

(c) When by or pursuant to the laws or regulations of any other state should said state impose any tax, other fee or restrictions on nonresidents for the privilege of fishing with similar equipment as set forth in subsection (b) of this section within its boundaries, which tax, or other fee, is in the aggregate greater or restriction is greater to include but not be limited to the nonavailability of a permit for nonresidents, the similar or identical taxes, other fees, permit requirements and restrictions shall be imposed by the Department upon the residents of that state who seek to apply for a fishing equipment permit from the Department to fish with equipment as set forth in subsection (b) of this section within the tidal waters of this State.

(d) A food fishing equipment permit shall expire on the last day of the calendar year in which said permit is issued by the Department.

(e) The Department shall not issue any food fishing equipment permits for gill nets to any commercial fisher unless a commercial fisher can, on the basis of credible evidence provided to the Department, establish that he or she has previously engaged in commercial gill net fishing involving the sale of his or her catch during any 4 of the 5 calendar years preceding 1984. Food fishing equipment permits for gill nets when issued hereunder shall be renewed on an annual basis, subject to the payment of license and permit fees. No food fishing equipment permits for gill nets shall be issued to new commercial fishers after calendar year 1984 unless the total number of existing food fishing equipment permits for gill nets issued to commercial fishers is less than 111, the number issued in 1999. The Department shall issue additional food fishing equipment permits for gill nets to individuals who have completed a commercial fishing apprenticeship program of at least 150 days in no less than a 1-year period with an active commercial fisher licensed by the Department, not to exceed a total of 111 in number, under and pursuant to a lottery conducted by the Department. Food fishing equipment permits for gill nets may be transferred to a spouse or a child of the permit holder or to an individual who has completed the apprenticeship program of at least 150 days in no less than a 1-year period with an active commercial fisher licensed by the Department.

(f) Any person who fishes in the tidal waters of this State and uses at any time more than 200 feet of any fixed net or more than 2 fish pots exceeding the dimensions prescribed by paragraph (b)(5) of this section shall be presumed to be a commercial fisher for purposes of this chapter and any regulations promulgated by the Department.

(g) Notwithstanding subsection (e) of this section, the Department may issue a food fishing equipment permit for a gill net to a resident commercial fisher who provides credible evidence to the Department that he or she has:

(1) Served full-time in the armed forces of the United States outside the geographic boundaries of this State during any of the 5 years preceding 1984 or during the 30-day period in 1984 (April 27-May 27) when gill nets permits were available to commercial fishers, provided that in the 5-year period preceding 1984 the resident commercial fisher met the qualifications for such a permit in the years he or she was not in the armed forces;

(2) Maintained his or her Delaware domicile while serving full time in the armed forces of the United States; and

(3) Prior to serving in the armed forces of the United States was engaged in commercial gill net fishing in the tidal waters under the jurisdiction of this State that involved the sale of his or her catch.

(h) Notwithstanding subsection (e) of this section, the Department is authorized between January 1, 1990, and April 1, 1990, to issue up to 7 food fishing equipment permits for gill nets to residents of the State of New Jersey to fish no more than 600 ft. of gill net in only that portion of the Delaware River east of the center line of the shipping channel and north of 39 degrees 30' north latitude and who provides credible evidence to the Department that he or she has previously engaged in commercial gill net fishing involving the sale of his or her

catch during any 4 of the 5 calendar years preceding 1984.

(i)(1) It shall be lawful for any person who has appropriate food fishing equipment permits for gill nets and a recreational drift gill net permit issued by the Department to fish any drifting gill net, subject to the provisions of this subsection.

(2) It shall be unlawful for any recreational finfisher who has been issued a recreational drift gill net permit by the Department to fish a drift gill net in any waters of the State except in a section of the Delaware River, not including any tributaries thereto, located to the south of a line beginning at the tip of the southernmost jetty at the mouth of the C & D Canal and extending due east and to the north of a line beginning at Liston Point and continuing due east during a period of time beginning at 12:01 a.m. on March 15 and ending at 12:00 p.m. on May 10 next ensuing each year.

(3) It shall be lawful for any recreational finfisher who has been issued a recreational drift gill net permit for gill nets and appropriate food fishing equipment permit for gill nets by the Department to fish a single drift net provided it does not exceed 300 feet in length.

(4) An application for a recreational drift gill net permit may be submitted annually to the Department on a form supplied by the Department. Each application shall provide credible evidence that the person applying for the recreational drift gill net permit fished a drift gill net prior to 1984 in the Delaware River for American shad. Applications shall be submitted to the Department prior to 4:30 p.m. on the last Friday in February. The Department shall hold a public drawing of the applicants no later than 4:30 p.m. on the first Friday in March. The first 10 applications drawn will be issued a recreational drift net permit to be valid until midnight on May 10 next ensuing. If any of the 10 selected applicants fail to obtain his or her recreational drift gill net permit from the Department by 4:30 p.m. on the second Friday in March, applicants drawn in numerical order after the first 10 shall be authorized to be issued a recreational drift gill net permit.

(j) The Department shall only issue food fishing equipment permits for hook and line to persons who make application for such permits in calendar year 1996, and who, prior to April 2, 1995, had been issued a commercial food fishing license. Food fishing equipment permits for hook and line shall be renewed annually thereafter, subject to the payment of license fees, and if not so renewed, such permits shall not thereafter be eligible for renewal. To qualify for the annual renewal, the permit holder shall have filed monthly reports as required by § 914(6) of this title for the previous year that indicate at least 100 pounds of food fish were caught during a particular month and sold, traded and/or bartered to or by a person with a valid wholesaler, retailer or restaurant license issued in accordance with Chapter 29 of Title 30. Copies of receipts that are dated and signed by the permit holder and the person with the valid wholesaler, retailer or restaurant license shall be attached to the monthly report as certification of the sale, trade and/or bartering of the 100 pounds of food fish caught by the permit holder.

(k) Notwithstanding subsection (j) of this section, when the total number of food fishing equipment permits for hook and line drops below 172, the number issued in 1999, the Department shall issue additional food fishing equipment permits for hook and line, not to exceed 172 in number, under and pursuant to a lottery conducted by the Department. An individual is eligible to participate in the lottery if the individual has met either of the following requirements:

(1) The individual has completed an apprenticeship program of at least 150 days in no less than a 1-year period with an active commercial fisher licensed by the Department.

(2) The individual has completed the requirements to receive a Merchant Mariner Credential issued by the United States Coast Guard National Maritime Center with the capacity of Master. The credential must be in good standing with the United States Coast Guard National Maritime Center at the time the application for the license is made. The individual must also present a letter of recommendation to the Department from an active commercial fisher licensed by the Department. The letter would include the name, address, and contact information of the active commercial fisher who is making the recommendation as well as an assessment of the individuals fishing skills and an explanation of the length of time and capacity in which the licensed fisher has known the individual. Upon verification of authenticity of the letter of recommendation by the Department, the individual shall be entered in the lottery.

(l) It shall be unlawful for food fishing equipment other than hook and line and dip nets to be on board a vessel when a person is commercially fishing with hook and line from said vessel.

(m) A food fishing equipment permit for hook and line shall be deemed invalid when the holder thereof is on board a vessel with more than 1 other person who does not possess a food fishing equipment permit for hook and line.

(n) An individual at least 15 years of age may enter into an agreement with an active commercial fisher licensed by the Department to serve as a commercial fishing apprentice to said commercial fisher. This agreement shall be in writing on a form provided by the Department and filed with the Department. An apprentice shall not enter into an agreement with more than 1 active commercial fisher at any one time and an active commercial fisher shall not enter into an agreement with more than 1 apprentice at any 1 time. In the event an agreement is cancelled by either party, the Department shall credit an apprentice with time served and said time shall be retained if the apprentice signs an agreement with another active commercial fisher. A commercial fishing apprentice must complete no less than 150 days of commercial fishing activities over no less than a 1-year period. Eight hours of commercial fishing activities shall equal 1 day. Commercial fishing activities shall include fishing, operating a vessel, maintaining fishing equipment or a vessel, handling and/or transporting fish for sale, or other activities directly associated with a commercial fishery. Fishing activities shall be documented on a daily log provided by the Department. Logs shall be submitted to the Department on a monthly basis on or before the 10th of the following month. An apprentice who completes no less than 150 days of commercial fishing activities over no less than a 1-year period shall be eligible for the following:

(1) Commercial food fishing equipment permit for gill nets transferred by another active commercial fisher;

(2) Authorization to commercially fish with a hook and line transferred by another active commercial fisher;

(3) Participation in lotteries conducted by the Department for commercial food fishing equipment permits for gill nets or authorization to commercially fish with a hook and line; and

(4) Commercial crab dredge license, commercial conch pot license and commercial conch dredge license according to the provisions of § 1920 of this title.

If, during the previous calendar year, fewer commercial gill net permits or commercial hook and line permits are issued than in 1999, the Department shall conduct a lottery for the number of said permits different from the number issued in 1999. In 1999, the Department issued 111 commercial gill net permits and 172 commercial hook and line permits.

(28 Del. Laws, c. 203; Code 1935 § 2989; 7 Del. C. 1953 § 908; 57 Del. Laws, c. 146 § 3; 61 Del. Laws, c. 256 § 4; 64 Del. Laws, c. 251 § 1; 65 Del. Laws, c. 67 § 1; 65 Del. Laws, c. 193 § 5; 65 Del. Laws, c. 495 § 1; 65 Del. Laws, c. 496 § 1; 67 Del. Laws, c. 184 §§ 2, 3; 68 Del. Laws, c. 199 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 496 §§ 2, 3; 73 Del. Laws, c. 29 §§ 2-4; 73 Del. Laws, c. 124 § 2; 80 Del. Laws, c. 348 § 1.)

§ 916 Finfisheries Development Fund.

(a) There is hereby established a Finfisheries Development Fund, which shall be funded by the following sources:

(1) Moneys received by the Department for commercial food fishing license fees and food fishing equipment permits;

(2) Moneys received from the payment of fines for committing a violation of this chapter or regulations or permits promulgated or issued pursuant to this chapter; and

(3) Moneys received from the sale of the following confiscated or unclaimed items: fishing equipment or any perishable item that has been taken into possession or custody by the Department and could have been used as evidence.

(b) Finfisheries development funds shall be used only for the following purposes:

(1) The development and maintenance of finfishing facilities in the State that are used to aid and assist finfishers;

(2) Actual and necessary traveling expenses incurred by members of the Council in connection with their attendance at Council meetings;

(3) Actual and necessary travel, lodging and food expenses incurred by members of the Council or the designee of the Council in connection with attendance at interstate fish management meetings whenever federal funds are not available;

(4) Postage for mailing notices of public hearings, fishery reports and other materials related to finfisheries management;

(5) Printing materials pertaining to the promulgation of regulations, printing notices of public hearings and other meetings, printing announcements and printing information pertinent to finfisheries management;

(6) Conducting research on, and taking inventories of, finfish of significance to Delaware's commercial and recreational fishers, such research and inventorying to be contracted out or performed by Department personnel.

(c) For the purposes of implementing subsection (b) of this section, all moneys received from the sources set forth in subsection (a) of this section shall be deposited at least monthly with the State Treasurer. The State Treasurer shall retain said moneys in a special fund until expended upon proper vouchers of the Department to carry out the purposes of subsection (b) of this section.

(64 Del. Laws, c. 251 § 1; 65 Del. Laws, c. 192 § 2; 70 Del. Laws, c. 186 § 1.)

§ 917 Areas restricted for using certain fishing equipment.

(a) No person shall fish with any fixed fishing equipment in tidal waters located outside the mouths of tributaries known as the Salem River, Christina River, Delaware City Canal and Chesapeake and Delaware Canal, and more specifically described as circular areas, each with a 1/2 nautical mile radius from a point of origin at the midpoint of the mouth of each said tributary.

(b) No person shall fish with any fixed fishing equipment in tidal waters located outside the mouths of tributaries known as the Smyrna River, Leipsic River, Mahon River, Little River, Mispillion River and Roosevelt Inlet, and more specifically described as sectors, each with a 1/2 nautical mile radius from a point of origin at the midpoint of the mouth of each said tributary and between a northern angle of 45 degrees northeast and a southern angle of 45 degrees southeast.

(c) No person shall fish with any fixed fishing equipment in tidal water located outside the entrance channel to the Murderkill River and more specifically described as a sector with a 1/2 nautical mile radius from a point located at the established day marker approximately 1 mile east of the mouth of the Murderkill River, and between a northern angle of 45 degrees northeast and a southern angle of 45 degrees southeast.

(d) No person shall fish with any type of net that obstructs navigation or fish with any net that extends more than 1/3 the distance, measured perpendicular, from shore to opposite shore in any river, channel, stream, canal, ditch or any tributary located in this State.

(e) No person shall fish with any type of net, within 300 feet of any constructed dam or spillway on a tidal water river, stream, canal, ditch or tributary located in this State.

(f) No person shall fish with any type of fixed, anchored or stake nets within 150 feet of any other person's legally fixed, anchored or staked net.

(g) No person shall fish with any type of net except a bait seine, a cast net, a dip net, a lift net, a minnow trap or a push net in Delaware's territorial sea within a 1 nautical mile radius from a point of origin at the midpoint of the mouth of the Indian River Inlet or in Delaware's internal waters within a 1/2 nautical mile radius from a point of origin at the midpoint of the mouth of the Indian River Inlet.

(h) No person shall fish with any type of fishing equipment except a hook and line over another person's leased shellfish grounds as

provided in Chapter 19 of this title unless said person has permission from the lease holder to fish with other types of legal fishing equipment.

(i) No person shall fish with any type of net except a bait seine, a cast net, a dip net, a lift net, a minnow trap or push net within 1/2 nautical mile of the mean high-water line of the shore of Delaware's territorial sea or within 1/2 nautical mile of the mean high-water line of the shore of Delaware Bay from Cape Henlopen Point to the northern boundary of the Beach Plum Island Nature Preserve, where it intersects with the shoreline of the Delaware Bay, between May 1 and November 30, inclusive, of each year.

(j) No person shall fish with any gill net equal to or less than 200 feet which is anchored, staked or fixed in any way within 1/2 nautical mile of the mean high-water line of the shore of Delaware's territorial sea or within 1/2 nautical mile of the mean high-water line of the shore of Delaware Bay from the northern boundary of the Beach Plum Island Nature Preserve, where it intersects with the shoreline of the Delaware Bay, to the Murderkill River between May 1 and June 30, inclusive, of each year unless said person has been issued a valid commercial food fishing license by the Department.

(k) Notwithstanding subsection (d) of this section, a person may fish in the Nanticoke River with a drift net that extends more than 1/3 the distance measured perpendicular from shore to opposite shore provided the drift net does not obstruct navigation.

(64 Del. Laws, c. 251 § 1; 65 Del. Laws, c. 106 § 1; 65 Del. Laws, c. 193 § 6; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 437 §§ 1, 2; 72 Del. Laws, c. 363 §§ 1, 2; 76 Del. Laws, c. 255 § 1.)

§ 918 Interfering with fishing equipment.

No person shall, except in an emergency, interfere with, break, damage or destroy any fishing equipment that is being used in the tidal waters of this State for the taking of any finfish in a manner provided for by this chapter or any regulation promulgated or permit issued by the Department pursuant to this chapter.

(Code 1915 § 2510; 28 Del. Laws, c. 203; Code 1935 § 2998; 7 Del. C. 1953 § 911; 64 Del. Laws, c. 251 § 1; 65 Del. Laws, c. 193 §§ 7, 8.)

§ 919 Menhaden fishing; penalties.

(a) It shall be unlawful for any person to fish, use, employ or attempt to fish, use or employ any purse seine to take or attempt to take menhaden in the tidal waters of this State.

(b)-(h) [Repealed.]

(i) Whoever violates this section shall be guilty of a Class A environmental misdemeanor.

(59 Del. Laws, c. 418 § 1; 64 Del. Laws, c. 115 §§ 1-3; 68 Del. Laws, c. 320 § 1; 79 Del. Laws, c. 421 § 4.)

§ 920 Marking requirement for fishing equipment; exception for minnow traps; removal of stakes, anchors and lines.

(a) No person shall fish with any fixed net in the tidal waters of this State unless said net, pot or trap is marked in accordance with the following criteria:

(1) In the Delaware River and Bay, Atlantic Ocean out to 3 nautical miles, Indian River and Bay, Rehoboth Bay, and Little and Big Assawoman Bays, during the period beginning at 12:01 a.m., April 1 of each year, and ending at 12:00 p.m., November 30 of each year all fixed fishing equipment shall be marked on each end with a minimum marking of a red or international orange flag that measures at least 12 inches x 12 inches on a staff 4 feet, measured from the surface of the water to the bottom of the flag. In addition to the red or international orange flags, there shall be attached to each net between each red or international orange flag white floats visible on the surface of the water at all times that shall measure at least 4 inches in diameter, and 1 such white float shall be located at least 20 feet inside of each required red or international orange flag. During the period beginning at 12:01 a.m., December 1 of each year, and ending at 12:00 p.m., March 31 in the ensuing year, in the Delaware River and Bay, Atlantic Ocean out of 3 nautical miles, Indian River and Bay, Rehoboth Bay, and Little and Big Assawoman Bays, red or international orange floats at least 8 inches in diameter may be substituted for the required end flags on fixed nets. In the tributaries to the Delaware River and Bay, Indian River and Bay, Rehoboth Bay, Little and Big Assawoman Bays and the Chesapeake Bay, a red or international orange float that measures at least 8 inches in diameter or a red or international orange flag that measures at least 12 inches x 12 inches on a staff 4 feet, measured from the surface of the water to the bottom of the flag, is required at any time.

(2) In the internal waters of this State, if more than 1 net is set in a series with fixed rigging, said series of nets and associated rigging shall not exceed 500 yards and shall be required to be marked on each end with the required red or international orange flag and white floats as described in paragraph (a)(1) of this section.

(3) In the internal waters of this State all drifting fishing nets shall be marked on each end with a minimum marking of either a red or international orange float that measures at least 8 inches in diameter or by a red or international orange flag that measures at least 12 inches by 12 inches on a staff at least 3 feet, measured from the surface of the water to the bottom of the flag.

(4) In the territorial sea, all nets or series of nets shall be marked in accordance with this subsection.

(5) For the purpose of measuring the length of any net, the top line or float line attached to the net shall be the measurement.

(6) No less than 24 square inches of any reflective material shall be attached and maintained to each red or international orange float or flag staff that is used to mark said nets in all tidal waters of the State.

(7) All fish pots and/or traps shall be marked with white floats that shall be at least 8 inches in diameter.

(8) This subsection shall not apply to minnow traps.

(9) All the flags, floats and reflective material referred to in this subsection shall be maintained in a visible manner at all times during their use in the tidal waters of this State.

(b) No person shall intentionally leave any stake, anchor, line or float in any tidal water for a period of time longer than 14 days after said person or other cause has removed fishing equipment from said stake, anchor, line or float.

(64 Del. Laws, c. 251 § 1; 65 Del. Laws, c. 194 §§ 1-4; 67 Del. Laws, c. 309 § 1; 79 Del. Laws, c. 405 § 1.)

§ 921 Identification requirements for equipment.

No fisher shall fish with any food fishing equipment in the tidal waters of this State that is permitted under the provisions of § 915 of this title that does not have attached to it a fisher's food fishing equipment permit number that is assigned by the Department. The permit number shall be attached to all required end red or international orange flags or floats and shall also be attached to all white markers required for fish pots and/or traps. The permit number attached to the aforementioned items shall be maintained so that the permit number is legible and readable at all times during its use. The permit number once attached to the aforementioned items shall be at least 2 inches high, and in block style numerals, and attached in such a manner that it is visible above the surface of the water. Reflective tape may be used to form the license number to be attached to the aforementioned items.

(64 Del. Laws, c. 251 § 1; 70 Del. Laws, c. 186 § 1.)

§ 922 Length restrictions on certain nets.

No person shall fish in Delaware's internal waters with any 1 gill net that exceeds 200 yards in length, or fish in said waters with more than 1 gill net in a continuous series when the series of gill nets exceeds 500 yards in total length, unless each 200 yard-long net is separated from another single gill net by a distance of at least 150 feet between the required end red or international orange flags or each 500 yard-long series of nets is separated by a distance of at least 150 feet between the required end red or international orange flags.

(64 Del. Laws, c. 251 § 1.)

§ 923 Gill nets; restrictions on use; seasons.

(a) Unless otherwise authorized by a scientific permit issued by the Division, no person shall fish more than an aggregate of 200 feet of gill net, that is anchored, staked or fixed in any way in the tidal waters of this State at any time during a period beginning at midnight on May 10 and ending at midnight September 30 next ensuing during any calendar year, except where otherwise prohibited in this chapter.

(b) The use of any gill net equal to or less than 200 feet which is anchored, staked or fixed in any way shall be further restricted to the area within 1/2 nautical mile of the mean high-water line of the shore of the Delaware River and Bay and to the area within 1,000 feet of the mean high-water line of the shore of the Rehoboth Bay and its tributaries, Indian River and Indian River Bay and their tributaries, Little Assawoman Bay and its tributaries, Big Assawoman Bay and its tributaries, Nanticoke River and its tributaries and all tributaries entering the Delaware River and Bay during a period beginning at midnight on May 10 and ending at midnight on September 30 next ensuing, except where otherwise prohibited in this chapter or by Department regulation.

(c) Unless otherwise authorized by a scientific permit issued by the Division, no person shall fish any drifting gill net in the tidal waters of this State during the period 12:01 a.m. Saturday through to 4:00 p.m. Sunday or on a legal state holiday during a period beginning at midnight May 10 and ending at midnight on September 30 next ensuing during any calendar year.

(d) During the period beginning at 12:01 a.m. April 1 through midnight May 10, no person shall fish more than an aggregate of 1,000 yards of anchored, staked, fixed or drifting gill nets and, furthermore, no more than an aggregate of 1,000 yards of anchored, staked, fixed or drifting gill net shall be fished from any vessel regardless of the number of commercially licensed food fishers on said vessel.

(e) During the period beginning midnight May 10 and ending at midnight September 30 next ensuing during any calendar year, no person shall fish more than an aggregate of 1,000 yards of drifting gill nets, and, furthermore, no more than an aggregate of 1,000 yards of drifting gill nets shall be fished from any vessel regardless of the number of commercially licensed food fishers on said vessel.

(f) Except for gill nets equal to or less than 200 feet which are anchored, staked or fixed in any way, no person shall fish a gill net of any type without obtaining a commercial food fishing license pursuant to § 914 of this title and a food fishing equipment permit pursuant to § 915 of this title.

(g) Residents of the State of New Jersey who possess valid commercial food fishing equipment permits for gill nets shall be authorized to fish up to, but not to exceed, 600 feet of drifting gill net in the Delaware River on the east side of the shipping channel north of 39 degrees 39' north latitude only during a period of the year beginning at 12:01 a.m. on March 15 and ending at 12:00 p.m. on May 10.

(h) In the event a person with a commercial food fishing license and a food fishing equipment permit for gill nets is disabled and unable to deploy or set his or her gill nets, the person shall be issued a written permit by the Department authorizing his or her spouse, child or grandchild to deploy or set said person's gill nets for a period to be specified by the physician who certifies the disability. Such persons shall be limited during their lifetime to a total of 2 years during which their gill nets may be set or deployed by a spouse, child and/or grandchild. For purposes of this subsection, the term "disabled " shall mean a person certified in writing by a licensed medical physician in Delaware to be temporarily unable to perform the substantial and material duties associated with the setting or deploying of gill nets based upon medical evidence.

(64 Del. Laws, c. 251 § 1; 64 Del. Laws, c. 279 §§ 3, 4; 65 Del. Laws, c. 193 § 9; 67 Del. Laws, c. 184 § 4; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 28 § 2.)

§ 924 Unattended fishing equipment.

(a) No person shall leave fixed fishing equipment that is being fished in the tidal waters of this State unattended for any longer than 48 hours unless inclement weather provides for unsafe navigation.

(b) No person shall leave drifting fishing equipment that is being fished in the tidal waters of this State unattended at any time; insofar that the person fishing said drifting fishing equipment shall remain on his or her vessel and within sighting distance of said equipment.

(64 Del. Laws, c. 251 § 1; 70 Del. Laws, c. 186 § 1.)

§ 925 Fishing with explosives, chemicals, poisons and other devices; exception for Department and agents.

(a) No person shall fish for finfish in the tidal waters of the State with any explosives, chemicals, poisons and/or poisoned baits or other substances or devices employing explosives, electricity, chemicals or poisons, unless it is otherwise specified as a legal means to fish for and/or take finfish in this chapter or any regulation promulgated by the Department or permit issued by the Division.

(b) The use of electric lights shall be illegal for commercial fishing, except lights required by the U.S. Coast Guard and lights used for illumination for visual purposes.

(c) The Department and its authorized agents may use fish suffocants, shockers and/or similar devices and materials for fish management and/or scientific purposes, provided that written permission to do so is obtained from the Director beforehand.

(Code 1915 § 2511; 28 Del. Laws, c. 203; Code 1935 § 2999; 7 Del. C. 1953 § 912; 64 Del. Laws, c. 251 § 1; 65 Del. Laws, c. 193 § 10; 79 Del. Laws, c. 263 § 1.)

§ 926 Extracting oil or making fertilizer from food and game fish; penalty.

(a) No person shall have in his or her possession and/or bring into this State any finfish, other than menhaden, legally taken in this State or other waters, for the purpose of extracting oil therefrom, and/or for the purpose of converting such finfish into fertilizer. The parts of a processed legally taken finfish not to be used for human consumption, including the entrails, bones, fins and other waste parts thereof, may be further reduced or rendered for use as fertilizer and/or animal feed products.

(b) Any person who violates this section shall be guilty of a class B environmental misdemeanor.

(Code 1915 § 2520; 28 Del. Laws, c. 203; Code 1935 § 3008; 7 Del. C. 1953 § 914; 64 Del. Laws, c. 251 § 1; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 421 § 4.)

§ 927 Fishing with trawl nets, purse seines, run around gill nets; penalty; exceptions.

(a) No person shall fish with or use in the tidal waters of this State any type of trawl net that is operated in any manner by wind or sail power, motor power, hydraulics, pulleys, by being pulled by a power vessel or other mechanical advantage, or any purse seine operated in any manner, or any run around gill net, except as provided by §§ 911 and 919 of this title.

(b) Any person who is determined to be in violation of this section shall be fined not less than $2,000 and not more than $5,000, plus the payment of costs, and/or imprisoned for up to 6 months; and for any subsequent violation of this section the person shall be fined not less than $5,000, plus the payment of costs, and/or imprisoned for up to 6 months.

(c) Any authorized employee of the Department who has probable cause to believe that there is or has been a violation of this section may seize the following items under the following conditions:

(1) Any finfish located, found, retained, taken and/or caught in violation of this section; or

(2) Any other item to be used as evidence in any case to be brought for violation of this section.

(d) Any authorized employee of the Department who has seized finfish pursuant to this section shall comply with § 935 of this title.

(e) Any authorized employee of the Department who has seized any finfish or other items pursuant to this section may seek to have said finfish or items forfeited, in which case the Superior Court shall have jurisdiction over the alleged violation if the fair market value of the forfeited finfish or other items exceeds $100, and any forfeiture of the finfish or other items shall be in accordance with the rules of procedure for the Superior Court. The Justice of Peace Courts shall have jurisdiction over any violation in which the forfeiture sought is of finfish or other items of $100 or less in fair market value.

(64 Del. Laws, c. 251 § 1; 65 Del. Laws, c. 193 §§ 11, 12; 73 Del. Laws, c. 241 § 1.)

§ 928 Interstate transfer of finfish.

(a) No person who catches food fish outside the jurisdictional boundaries of the State shall land and/or transfer said food fish from said person's vessel to a shore or any facility located in the State for the purpose of transporting, selling, packing and/or processing said food fish, except for taxidermy purposes, unless said person has been issued by the Department a valid commercial food fishing license in accordance with § 913 and § 914 of this title.

(b) Any person who catches food fish outside the jurisdictional boundaries of the State and then has said food fish transported into this State by means other than by a vessel for the purpose of transporting, selling, packing and/or processing said food fish shall not be required to acquire a commercial food fishing license from the Department.

(64 Del. Laws, c. 251 § 1.)

§ 928A Trade in shark fins; penalty.

(a) For the purpose of this section:

(1) "Shark" shall mean any species of the subclass Elasmbranchii, exclusive of the Spiny dogfish (Squalus acanthias) and Smooth dogfish (Mustelus canis); and

(2) "Shark fin" shall mean the raw, dried or otherwise processed detached fin, or the raw, dried or otherwise processed detached tail, of a shark.

(b) Except as otherwise provided in this section, no person shall possess, sell, offer for sale, trade or distribute a shark fin.

(c) Any person who holds a license and permit issued by the Department to take or land sharks for commercial purposes may possess or distribute, but not sell within Delaware, a shark fin taken or landed by that person pursuant to, and consistent with, the terms of that license or permit.

(d) Any person holding a license issued by the Department, or those persons exempt from licensing requirements concerning taking or landing sharks for recreational purposes, may possess a shark fin taken or landed by that person for personal use.

(e) The Department may issue scientific permits pursuant to § 911 of this title permitting possession of a shark fin for bona fide scientific research purposes.

(f) Any shark fin seized by the Department through the enforcement of this section shall upon forfeiture be destroyed by the Department, and not sold.

(g) Changes, deletions, or additions relative to new fisheries subject to this section may be devised and enacted by the General Assembly or by the Department regulatory process.

(h) Whoever violates this section shall be guilty of a class B environmental misdemeanor for each offense.

(79 Del. Laws, c. 22 § 1.)

§ 929 Size limits on finfish; exceptions [Subject to the provisions of 64 Del. Laws, c. 251, § 4]

(a) Unless otherwise provided in this chapter or by regulation promulgated by the Department or permit issued by the Division subsequent to April 27, 1984, no person shall possess any finfish listed in this section or any regulations promulgated by the Department that measure less than the dimensions set forth in this section or any regulation promulgated by the Department, unless said finfish is the legal product of artificial propagation and aquaculture authorized under permit issued by the Division. The dimensions of said finfish shall be the total measured from the tip of its snout to the furthest tip of its tail.

(b) Unless otherwise provided in this chapter or by regulation promulgated by the Department or permit issued by the Division subsequent to April 27, 1984, no person shall possess any finfish in the State unless said finfish has at least the following dimensions:

(1) Striped bass (Morone saxatilis) taken from or caught in Delaware's internal waters shall have a minimum length of 14 inches;

(2) Striped bass taken from or caught in Delaware's territorial sea shall have a minimum length of 24 inches;

(3) Weakfish (Cynoscion regalis): The minimum length of a weakfish shall be 10 inches;

(4) Atlantic croaker (Micropogan undulatus): The minimum length of an Atlantic croaker shall be 8 inches;

(5) Atlantic sturgeon (Acipenser oxyrhynchus): The minimum length of an Atlantic sturgeon shall be 54 inches;

(6) Summer flounder (Paralichthys dentatus): The minimum length of a summer flounder shall be 12 inches;

(7) Tautog (Tautoga onitis): The minimum length of a tautog shall be 12 inches; and

(8) White perch (Marone americana): The minimum length of white perch shall be 8 inches.

(c) Any person, who comes into possession by purchasing, trading or bartering for, any finfish measuring less than the dimensions set forth in this section or the dimensions set forth in any regulation promulgated by the Department, shall immediately report the possession of said finfish to the Department and then dispose of said finfish in a manner directed by the Department provided that none may be sold, traded or bartered.

(d) [Repealed.]

(64 Del. Laws, c. 251 § 1; 65 Del. Laws, c. 407 §§ 1, 2; 65 Del. Laws, c. 408 § 2; 67 Del. Laws, c. 293 § 1; 70 Del. Laws, c. 55 § 1.)

§ 930 Striped bass spawning areas.

(a) For purposes of this chapter or any regulation promulgated by the Department or permit issued by the Division, striped bass spawning areas in the State shall mean the Nanticoke River and its tributaries and the Chesapeake and Delaware Canal.

(b) The Department may promulgate regulations pertaining to spawning area restrictions.

(64 Del. Laws, c. 251 § 1.)

§ 931 Theft and attempted theft of fishing equipment or finfish from fishing equipment.

(a) No person shall take and/or remove any finfish from any fishing equipment that is owned by another person without having received written authority to take and/or remove said finfish.

(b) No person shall attempt to take and/or remove any finfish from any fishing equipment that is owned by another person without having received the express written authority to attempt to take and/or remove said finfish.

(c) No person shall remove legally placed fishing equipment of another person without the written permission of the lawful owner thereof.

(d) No person shall attempt to remove legally placed fishing equipment of another person without the written permission of the lawful owner thereof.

(e) The Division and employees thereof shall have the authority to confiscate and sell any finfish taken in violation of this section. The purpose of any sale of confiscated finfish shall be to determine the fair market value of the illegally taken finfish and prevent the wasting of the perishable resource. The moneys received from the sale of any finfish shall be paid to the owner of the fishing equipment from which the finfish were illegally removed.

(f) Theft of finfish, or attempted theft of finfish, from another person's fishing equipment shall be a class A misdemeanor, unless the value of the finfish is $300 or more, in which case it shall be a class E felony. Whoever violates this section shall be fined and/or imprisoned in accordance with the fines and/or terms of imprisonment specified in Chapter 42 of Title 11 for a class A misdemeanor and a class E felony.

(64 Del. Laws, c. 251 § 1; 70 Del. Laws, c. 500 § 1; 73 Del. Laws, c. 28 § 2.)

§ 932 Removal and inspection of fishing equipment by authorized personnel; confiscation and sale of illegally used equipment.

(a) Any authorized employee of the Department may inspect any fishing equipment placed in the tidal waters of this State.

(b) Any authorized employee of the Department may remove any fishing equipment used in the tidal waters of the State that is not marked, identified and/or being used for fishing according to this chapter or regulation promulgated by the Department or permit issued by the Division, provided that the Department notify, or attempt to notify, the owner of said equipment when said owner is known, and give such owner the opportunity to remove said fishing equipment.

(c) Any fishing equipment removed from the tidal waters of the State, as provided for in this section, which is not claimed by its owner within 30 days after its removal shall be subject to the following provisions that provide for its disposition by public sale:

(1) After the 30-day waiting period the Department shall advertise the sale of the removed fishing equipment in a newspaper of general circulation throughout the State. The advertisement shall give a brief description of the property and the procedure for the sale thereof.

(2) The sale of the advertised property will be conducted by the Department. The Department shall accept sealed bids for the property, with the property being sold to the highest bid received.

(3) Any moneys received from the sale of the removed property shall be retained by the Department for a period of 1 year after receipt of said moneys, during which time the owner of the removed property may file a claim with the Department for the payment of said moneys. The expenses of the Department for arranging the public sale of the removed fishing equipment may be deducted from any moneys paid to the owner of the removed fishing equipment.

(4) Moneys from the public sale of the removed fishing equipment that are not claimed by the owner of said equipment within 1 year after the receipt of said moneys shall be deposited into the Finfisheries Development Fund.

(Code 1915 § 2516; 28 Del. Laws, c. 203; Code 1935 § 3004; 7 Del. C. 1953 § 952; 57 Del. Laws, c. 739 §§ 62, 63; 64 Del. Laws, c. 251 § 1.)

§ 933 Search of persons, boats, vessels and commercial facilities.

Any authorized employee of the Department, after determining there is probable cause that there has been a violation of this chapter or any regulation promulgated by the Department or any permit issued by the Division, may do the following without obtaining a warrant beforehand:

(1) Search, examine and/or inspect any person and/or any person's vehicle, vessel and/or any container or other receptacle in and/or on any vehicle or vessel that is under the control or possession of said person for the purpose of determining said person's compliance with this chapter or any regulation promulgated by the Department or permit issued by the Division pertaining to the size, limits, sale, purchase and possession of finfish and/or the method of taking finfish;

(2) Detain any person and/or person's vehicle or vessel for a reasonable length of time to conduct any search, examination and/or inspection thereof, as described in paragraph (1) of this section; and

(3) Inspect, search and/or examine any commercial facility in the business of selling and/or storing finfish in the presence of any occupant of said facility to determine compliance with this chapter and any regulation promulgated by the Department or permit issued by the Division.

(64 Del. Laws, c. 251 § 1.)

§ 934 Seizure and forfeiture of finfish.

(a) Any authorized employee of the Department who has probable cause to believe that there is a violation of this chapter or any regulation promulgated by the Department or permit issued by the Division may seize the following items under the following conditions: Any finfish located, found, retained, taken and/or caught in violation of this chapter or any regulation promulgated by the Department or permit issued by the Division.

(b) Any authorized employee of the Department who has seized finfish pursuant to this section shall comply with the provisions of § 935 of this title.

(c) Any authorized employee of the Department who has seized any finfish pursuant to this section may seek to have the finfish forfeited. If the fair market value of the seized finfish exceeds $100, then the Superior Court shall have jurisdiction over the alleged violation, and any forfeiture of the finfish shall be in accordance with the appropriate rules of procedure of the Superior Court and § 935 of this title. If the fair market value of the seized finfish is $100 or less, then the Justice of the Peace Courts shall have jurisdiction over the alleged violation,

and any forfeiture of the finfish shall be in accordance with the appropriate rules of procedure of the Justice of the Peace Courts.

(Code 1915 § 2516; 28 Del. Laws, c. 203; Code 1935 § 3004; 7 Del. C. 1953 § 952; 57 Del. Laws, c. 739 §§ 62, 63; 64 Del. Laws, c. 251 § 1; 65 Del. Laws, c. 193 § 13.)

§ 935 Sale of seized finfish.

(a) Except as otherwise provided in this chapter, in view of the perishable nature of fish, any employee of the Department authorized to enforce this chapter or any regulation promulgated by the Department or permit issued by the Division who seizes any finfish may dispose of said finfish in accordance with the following procedures:

(1) Finfish may be sold, and any person may purchase said finfish for money at or above fair market value;

(2) The moneys received from the sale of the finfish shall be deposited with the Superior Court in which the complaint and/or charges for the alleged violation are to be filed. Thereafter, disposition of the proceeds will be in accordance with the Rules of Civil Procedure for the Superior Court of the State of Delaware. In each case where the Superior Court has declared the finfish and moneys obtained from the sale thereof as being forfeited, all moneys not subject to valid claim by other parties and remaining with the Superior Court shall be deposited by the Superior Court into the Finfisheries Development Fund. Upon the acquittal or dismissal of charges against the alleged violator the proceeds shall be returned to said person; and

(3) The seizure and sale of finfish shall be without prejudice to any other rights and/or remedies provided for by law, contract or agreement, or this chapter or any regulations promulgated by the Department or permit issued by the Division.

(b) Whenever the Department seizes any finfish, it may elect not to follow the procedures for the disposal of said finfish that are set forth in subsection (a) of this section, and the Department may dispose of said seized finfish in accordance with the following procedures:

(1) Finfish that have been seized after an alleged violation of this chapter or any regulation promulgated by the Department or permit issued by the Division may be sold by the person alleged to have committed said violation;

(2) The proceeds of the sale by the alleged violator shall be deposited with the Superior Court;

(3) Upon the conviction of the alleged violator, the disposition of the proceeds will be in accordance with the procedure set forth in paragraph (a)(2) of this section. Upon the acquittal, or dismissal of the charges against the alleged violator, the proceeds shall be returned to said person; and

(4) Paragraph (a)(3) of this section shall be applicable to any sale of finfish under this subsection.

(Code 1915 § 2514; 28 Del. Laws, c. 203; Code 1935 § 3002; 7 Del. C. 1953 § 915; 64 Del. Laws, c. 251 § 1.)

§ 936 Enforcement; penalties; seizure and forfeiture of illegally used property; injunctions; false statements.

(a) The Secretary, the Department and persons authorized by the Secretary shall enforce this chapter and any regulation promulgated by the Department or any permit issued by the Division.

(b) Any person, organization, group, business, corporation, partnership or any other type of entity that violates this chapter or regulation promulgated by the Department or permit issued by the Division shall be punishable as follows:

(1) If there has been a violation of any provisions in §§ 910, 917, 918, 920, 921, 922, 923, 924, 925, and/or 928 of this title or any regulation promulgated by the Department or permit issued by the Division relating to fishing equipment or methods of fishing, each violator thereof shall be guilty of a Class D environmental violation. For any second violation of any provisions in §§ 910, 917, 918, 920, 921, 922, 923, 924, 925 and/or 928 of this title or any regulation promulgated by the Department or permit issued by the Division relating to fishing equipment or methods of fishing, each violator thereof shall be guilty of a Class C environmental violation. For any subsequent violation of any provisions in §§ 910, 917, 918, 920, 921, 922, 923, 924, 925 and/or 928 of this title or any regulation promulgated by the Department or permit issued by the Division relating to fishing equipment or methods of fishing, each violator thereof shall be guilty of a Class B environmental misdemeanor;

(2) If there has been a violation of any section of this chapter or any regulation promulgated by the Department or permit issued by the Division other than a provision of §§ 910, 913, 917, 918, 920, 921, 922, 923, 924, 925, 926, 927 and/or 928 of this title or regulation promulgated by the Department or permit issued by the Division relating to fishing equipment or method of fishing, each violator thereof shall be guilty of a Class D environmental violation. For each violation of any section of this chapter, any regulation promulgated by the Department pursuant thereto, or any permit issued by the Division which involves the illegal taking of a striped bass in the tidal waters of this State, shall be guilty of a Class C environmental violation. Each striped bass illegally taken shall constitute a separate violation;

(3) Nothing expressed in this section should be interpreted to limit or supersede the authority of the Secretary and authorized personnel to seize and seek the forfeiture of any finfish and/or other items as provided for in any other provisions of this chapter. The Superior Court shall have jurisdiction of a violation in which forfeiture involves finfish or other items exceeding $100 in fair market value. The Justice of Peace Courts shall have jurisdiction of a violation in which forfeiture involves finfish or other items with a fair market value of $100 or less; and

(4) Except as otherwise provided in this chapter, the Justice of the Peace Court shall have jurisdiction over any violation of this chapter or any regulation promulgated by the Department or any permit issued by the Division.

(c) If any violation of any provision in this chapter or regulation promulgated by the Department or permit issued by the Division is continuing or threatening to begin, the Secretary may, in addition to having the violator prosecuted in either the Superior Court or Justice of the Peace Court as provided for in this section, seek a temporary restraining order, a temporary injunction or permanent injunction in the

Court of Chancery.

(d) Any person, organization, group, business, corporation, partnership or any other type of entity that knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under any provision of this chapter, any permit or any regulation promulgated or issued under this chapter shall be guilty of a class A misdemeanor. The Justice of the Peace Courts shall have jurisdiction over offenses under this subsection. No fine imposed under this subsection shall be suspended.

(e) Any commercial food fishing license holder who does not file a monthly report on his or her catch by effort, species and weight on forms provided by the Department, as required in § 914(6) of this title, by 4:30 p.m. of the last working day of the month following the month for which the report is due, may have his or her commercial food fishing license revoked by the Director until such time when all reporting requirements are fulfilled in a manner acceptable to the Director.

(Code 1915 § 2516; 28 Del. Laws, c. 203; Code 1935 § 3004; 7 Del. C. 1953 § 952; 57 Del. Laws, c. 739 §§ 62, 63; 64 Del. Laws, c. 251 § 1; 65 Del. Laws, c. 192 § 3; 65 Del. Laws, c. 193 § 14; 67 Del. Laws, c. 310 § 1; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 421 § 4.)

§ 937 Suspension or refusal to issue commercial finfishing license.

If a commercial fisher during a 1-year period has committed 3 or more violations of any provision of this chapter or any regulation promulgated by the Department or permit issued by the Division and is convicted of said violations, the Department, upon the recommendation of the Council, may suspend or refuse to issue a commercial food fishing license to said fisher.

(64 Del. Laws, c. 251 § 1; 70 Del. Laws, c. 186 § 1.)

§ 938 Creel limits on finfish; exceptions.

(a) Unless otherwise provided in this chapter, or by regulations promulgated by the Department, or permit issued by the Division, a fisher shall not have in possession at or between the place caught and the fisher's personal abode or temporary or transient place of lodging more finfish than exceed the following numbers for the species listed:

10 for tautog (Tautoga onitis) or blackfish.

(b) Each finfish of a species in possession that exceeds the number authorized in subsection (a) of this section shall constitute a separate violation.

(67 Del. Laws, c. 298 § 1; 68 Del. Laws, c. 374 § 2; 70 Del. Laws, c. 186 § 1.)

§ 939 Fishing seasons; exception.

(a) Notwithstanding § 938 of this title, it shall be unlawful for any person to possess or retain more than 3 tautog (Tautoga onitis) during the period beginning at 12:01 a.m. on April 1 through and including midnight on June 30 next ensuing except that an individual who free dives without the aid of an underwater mechanical breathing device may take by spear and possess not more than 10 tautog per day during this period.

Notwithstanding § 929(b)(7) of this title, it shall be unlawful to possess any tautog during the period beginning at 12:01 a.m. on April 1 through and including midnight on June 30, next ensuing, which measures less than 15 inches long in total length.

(b) Each tautog taken and retained in violation of the provisions in subsection (a) of this section shall constitute a separate violation.

(68 Del. Laws, c. 374 § 1; 69 Del. Laws, c. 177 § 1.)

§ 940 Food fish dealer permits.

(a) If a fishery management plan approved by the Secretary of the U.S. Department of Commerce or Atlantic States Marine Fisheries Commission requires the commercial landings of a food fish species to be managed with a quota, said food fish species, if landed in this State by a commercial finfisher, shall not be purchased, sold, traded and/or bartered by a food fish dealer without a food fish dealer permit. The Department shall not charge a fee for a food fish dealer permit.

(b) All food fish dealer permit holders shall maintain log books, supplied by the Department, for those food fish species that have management plans which require commercial landings to be monitored for purposes of a quota. Food fish dealer permit holders shall forward copies of their log book entries to the Department as prescribed by the Department. The log books shall record the following:

(1) The commercial food fishing license number of the commercial finfisher who landed the food fish; and

(2) The number and/or weight, by species, of food fish purchased, traded and/or bartered from each commercial finfisher.

(c) The Department may adopt, amend, modify or repeal rules and regulations to effectuate the policy and purpose of this section.

(71 Del. Laws, c. 214 § 2; 70 Del. Laws, c. 186 § 1.)

§ 941 Headboat/charter boat fishing permits; reporting requirements.

(a) If a fishery management plan approved by the Secretary of the U.S. Department of Commerce or Atlantic States Marine Fisheries Commission requires the landings of a finfish species by headboats and charter boats to be monitored, said finfish species, if caught on a headboat or charter boat, shall not be landed in this State unless the owner or operator of said boat has been issued a headboat/charter boat fishing permit. The Department shall not charge a fee for the headboat/charter boat fishing permit.

(b) All headboat/charter boat fishing permit holders shall maintain a logbook, supplied by the Department, for those finfish species that have management plans which require landings to be monitored. Headboat/charter boat fishing permit holders shall forward copies of their

logbook entries to the Department as prescribed by the Department. The logbooks shall contain, but not be limited to:

(1) The headboat/charter boat fishing permit number; and

(2) The number and/or weight, by species, of finfish landed on each date.

(c) The Department may adopt, amend, modify or repeal rules and regulations to effectuate the policy and purpose of this section.

(72 Del. Laws, c. 362 § 2.)

§ 942 Control of invasive finfish species.

(a) Definitions.

(1) "Invasive finfish species" means a non-native finfish species, including the eggs thereof or other biological material, capable of spread, reproduction or propagation, whose introduction or proliferation causes or is likely to cause, as determined by the Department, economic or environmental harm or harm to human health or safety.

(2) "Non-native finfish species" means finfish species that are not naturally occurring in Delaware but are capable of living and reproducing in the wild without continued human agency, including invasive finfish species. Non-native finfish species may include genetically modified native species.

(b) The Department is authorized to authorize, regulate, prohibit, prescribe, or restrict anywhere in the State the acquisition, importation, introduction, possession, transportation, disposition, or release into public or private tidal waters of any invasive finfish species. The Department is further authorized to prescribe and regulate the methods used to take or eliminate invasive finfish species from tidal waters.

(78 Del. Laws, c. 319 § 1.)

§ 943 Tagging striped bass.

The affixing of a tag on a striped bass by a commercial fisherman shall be required before landing or putting on shore.

(80 Del. Laws, c. 165 § 1.)

Part I
Game, Wildlife and Dogs
Chapter 11
FINFISHING IN NONTIDAL WATERS
Subchapter I
General Provisions

§ 1101 Application of chapter.

This chapter shall apply to fishing for finfish in all the nontidal waters of this State. This chapter shall not apply to cultured aquatic stock in transit to, or in or removed from, registered aquaculture facilities pursuant to Chapter 4 of Title 3.

(64 Del. Laws, c. 251 § 2; 69 Del. Laws, c. 103 § 9.)

§ 1102 Definitions.

(a) Unless otherwise provided in this chapter, and in addition to the words defined in this section, the words and definitions contained in § 906 of this title are hereby incorporated into this section and chapter.

(b) "Freshwater finfish" or "freshwater fish" as used in this chapter shall mean any species of finfish that may be found in fresh or nontidal waters of this State.

(c) "Nontidal waters" or "freshwater" as used in this chapter or any regulation promulgated by the Department or permit issued by the Division or Director shall mean those waters in the State where the lunar tide does not regularly ebb and flow.

(64 Del. Laws, c. 251 § 2.)

§ 1103 Equipment and methods used for fishing for freshwater finfish.

Unless otherwise authorized by regulation promulgated by the Department or permit issued by the Division or Director, it shall be illegal for any person to fish for any freshwater fish in the nontidal waters of this State with any fishing equipment or by any method, unless it is provided for in the following paragraphs:

(1) A hook and line may be used, and each hook and line shall have no more than 3 hooks or 3 separate lures with hooks.

(2) Except for a person fishing for freshwater finfish with a hook and line through ice, the number of hooks and lines any 1 person shall be permitted to use to fish for any freshwater finfish in the nontidal or fresh waters of the State shall be no more than 2. Fishing through ice shall be governed by regulations promulgated by the Department.

(3) A person may use a dip net to aid in landing any freshwater finfish taken or caught by hook and line in the nontidal or fresh waters of the State.

(4) Upon the request of an owner or tenant of any pond, lake or impoundment located in the State, the Director may issue a permit to said owner or tenant, authorizing said owner or tenant to fish for freshwater finfish with any fishing equipment, or by any method other than what has been authorized by this chapter or any regulation promulgated by the Department or permit issued by the Director. However, no owner or tenant of any pond, lake or impoundment located in this State shall use or attempt to use any chemical, poison and/or electrical equipment or device to fish for freshwater finfish.

(5) Upon the request of the owner of any privately owned pond located in the State, employees of the Division may be authorized by the Director to use any chemical, poison and/or electrical equipment or device to fish in said owner's pond for the purpose of fish management practices.

(6) Carp may be taken and/or fished for by using a bow and arrow and/or spear, unless said equipment or method is otherwise restricted by any regulation promulgated by the Department.

(Code 1915 § 2529; 30 Del. Laws, c. 176 § 8; Code 1935 § 3017; 7 Del. C. 1953 § 1106; 64 Del. Laws, c. 251 § 2.)

§ 1104 Regulations promulgated by Department.

Nothing in this chapter shall be interpreted to lessen or preclude the Department's authority to promulgate regulations pertaining to freshwater fish pursuant to the provisions of § 103 of this title.

(64 Del. Laws, c. 251 § 2.)

§ 1105 Sale and attempted sale of freshwater finfish.

(a) No person shall sell, trade or barter any finfish taken from the nontidal waters of this State, unless said person has been authorized to do so in a permit issued by the Director.

(b) No person shall attempt to sell, trade or barter any freshwater finfish taken from the nontidal water of this State, unless said person has been authorized to do so in a permit issued by the Director.

(64 Del. Laws, c. 251 § 2.)

§ 1106 Enforcement of chapter; violations.

(a) The Secretary, the Department and persons authorized by the Secretary shall enforce this chapter and any regulation promulgated by the Department or any permit issued by the Division or Director.

(b) Any person, organization, group, business, corporation, partnership or any other type of entity that violates this chapter and/or any permit issued by the Division or Director pursuant to this chapter shall be punished under § 1304 of this title.

(c) Any person, organization, group, business, corporation, partnership or any other type of entity that violates any regulation promulgated by the Department pursuant to § 103 of this title, shall be punished under § 103(d) of this title.

(23 Del. Laws, c. 128 § 2; Code 1915 § 2539; 40 Del. Laws, c. 191 § 34; Code 1935 § 3026; 7 Del. C. 1953 § 1124; 64 Del. Laws, c. 251 § 2.)

§ 1107 Fee fishing operations; exemptions.

Any person who lawfully takes and has fish in the person's possession from a fee fishing operation, registered as same with the Department of Agriculture according to Chapter 4 of Title 3, is exempt from any seasonal restrictions, size limits and/or creel limits on said fish, provided said person has in the person's possession a valid receipt for said fish, issued by the owner or the owner's agent of the fee fishing operation pursuant to § 407(d) of Title 3.

(69 Del. Laws, c. 103 § 13; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 178 § 1.)

Subchapter II

Fresh Water Trout Fishing

§ 1124 Issuance of special trout fishing stamp.

The Department shall annually issue a distinctive stamp for fresh water trout fishers, which shall be known as the Delaware trout fishing stamp.

(7 Del. C. 1953 § 1125; 50 Del. Laws, c. 257 § 2; 57 Del. Laws, c. 739 § 68; 70 Del. Laws, c. 186 § 1.)

§ 1125 Sale of stamps; applications; price.

(a) Licensing Agents, who are authorized by the Department to sell fishing licenses, shall, upon request, be furnished with trout fishing stamps, and for their sale shall be entitled to the compensation provided by § 511 of this title for the sale of migratory waterfowl stamps.

(b) Applications for the purchase of the said stamps shall be in writing and signed by the applicant; they shall include such information as to the identity of the applicant and the applicant's previous season's trout catch as the Department may require.

(c) The purchase price of the special trout fishing stamps shall be set by the Department annually, but the maximum prices shall be as follows:

(1) For Delaware residents: $4.20 for persons 16 years of age and older; and $2.10 for persons 12 to 16 years of age. Stamps are not required for any Delaware resident under 12 years of age.

(2) For nonresidents: $6.20. Stamps are not required for any nonresident under 12 years of age.

(7 Del. C. 1953 § 1126; 50 Del. Laws, c. 257 § 2; 57 Del. Laws, c. 739 § 69; 63 Del. Laws, c. 315 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 443 § 3.)

§ 1126 Stamp to be signed in ink; exemptions from purchase of stamp.

Anyone who wishes to fish for trout shall purchase a trout fishing stamp and sign one's name in ink across the face of said stamp; one shall then be permitted to take trout during the open season for such fish and in a manner permitted by law from the fresh waters which are stocked with trout by the Department. Any person exempt from purchasing a Delaware fishing license under § 502(f)-(j), § 502(l) or § 507(e) of this title is also exempt from purchasing a Delaware trout stamp.

(7 Del. C. 1953 § 1127; 50 Del. Laws, c. 257 § 2; 57 Del. Laws, c. 739 § 70; 63 Del. Laws, c. 315 § 2; 69 Del. Laws, c. 103 § 12; 70 Del. Laws, c. 186 § 1.)

§ 1127 Exception for owner or lessee of land traversed by trout-stocked waters.

An owner or bona fide lessee of land traversed by trout-stocked waters and members of his or her immediate family may fish such waters upon his or her land without purchasing a stamp.

(7 Del. C. 1953 § 1128; 50 Del. Laws, c. 257 § 2; 70 Del. Laws, c. 186 § 1.)

§ 1128 Use of proceeds of sale of stamps.

All moneys received from the sale of Delaware trout fishing stamps shall be deposited at least monthly by the Department with the State Treasurer, to be by him or her retained until expended upon proper vouchers of the Department only for the purchase of trout for restocking those waters of the State considered suitable for such purpose or for the improvement of such waters for trout fishing.

(7 Del. C. 1953 § 1129; 50 Del. Laws, c. 257 § 2; 57 Del. Laws, c. 739 § 71; 70 Del. Laws, c. 186 § 1.)

§ 1129 Offenses; penalty.

The following acts shall be offenses under this subchapter punishable as a Class D environmental violation for each such act:

(1) To alter or change a Delaware trout fishing stamp in any way;

(2) To loan such a stamp to another person for use as authority to fish in trout-stocked waters;

(3) To furnish any false information as to the identity of the applicant upon the application for such a stamp;

(4) To take or attempt to take any rainbow, brown, or brook trout from any fresh waters stocked by the Department with trout without having purchased a stamp and affixed and signed the same as provided in this subchapter, except upon lands owned or leased as provided in § 1127 of this title;

(5) Upon demand by any Fish and Wildlife Agent to fail or refuse to exhibit a stamp when fishing in trout-stocked waters; except upon lands owned or leased as provided in § 1127 of this title.

(7 Del. C. 1953 § 1130; 50 Del. Laws, c. 257 § 2; 57 Del. Laws, c. 739 § 72; 70 Del. Laws, c. 105 § 7; 79 Del. Laws, c. 421 § 5.)

Part I
Game, Wildlife and Dogs
Chapter 13
ENFORCEMENT OF GAME AND FISH LAWS

§ 1301 Arrest of violators without warrant by license holders.

Every person holding a license for hunting or fishing, as prescribed by law, may arrest, without warrant, violators of this part.

(26 Del. Laws, c. 162 § 10; Code 1915 § 2367; Code 1935 § 2813; 7 Del. C. 1953 § 1301.)

§ 1302 Arrest of violators without warrant by freeholder, leaseholder or employee.

Any freeholder or leaseholder or member of his or her family or any person in his or her employ may arrest, without warrant, any person who, upon the freehold or leasehold, commits any violation of this part.

(26 Del. Laws, c. 162 § 11; Code 1915 § 2368; Code 1935 § 2814; 7 Del. C. 1953 § 1302; 70 Del. Laws, c. 186 § 1.)

§ 1303 Confiscation and disposition of game and fish unlawfully taken.

The Department shall confiscate all game and fish unlawfully taken or had in possession, and dispose of the same by destroying it or distributing it among charitable institutions.

(26 Del. Laws, c. 162 § 13; Code 1915 § 2370; Code 1935 § 2816; 7 Del. C. 1953 § 1303; 57 Del. Laws, c. 739 § 73.)

§ 1304 Environmental misdemeanors, environmental violations, sentences and fines.

(a) Violations of Chapters 1, 5, 6, 7, 9, 18, 19, 21, 23, 24, 25, 26, 27, and 28 and of subchapter I of Chapter 11 of this title or Department orders, rules or regulations promulgated to implement provisions of these chapters are designated as environmental misdemeanors and violations.

(b) Environmental misdemeanors and environmental violations are classified for purposes of sentencing into the following 4 categories :

(1) Class A environmental misdemeanors;

(2) Class B environmental misdemeanors;

(3) Class C environmental violations;

(4) Class D environmental violations.

(c) Any violation of Chapters 1, 5, 6 or 7 or of subchapter I of Chapter 11 of this title for which there is no prescribed penalty shall be a class C environmental violation.

(d) Any person convicted of a class A environmental misdemeanor shall be fined not less than $1000, nor more than $10,000, plus the costs of prosecution and court costs, or such person shall be imprisoned for up to 60 days, or such person shall be both fined and imprisoned according to the foregoing limitations. Any person convicted of a class A environmental misdemeanor within 5 years of a prior conviction for a class A environmental misdemeanor shall be fined not less than $2,000, nor more than $20,000, plus the costs of prosecution and court costs, or such person shall be imprisoned for up to 120 days, or such person shall be both fined and imprisoned according to the foregoing limitations.

(e) Any person convicted of a class B environmental misdemeanor shall be fined not less than $250, nor more than $1,000, plus the costs of prosecution and court costs, or such person shall be imprisoned for up to 30 days, or such person shall be both fined and imprisoned according to the foregoing limitations. Any person convicted of a class B environmental misdemeanor within 5 years of a prior conviction for a class B or greater environmental misdemeanor shall be fined not less than $500, nor more than $2,000, plus the costs of prosecution and court costs, or such person shall be imprisoned for up to 60 days, or such person shall be both fined and imprisoned according to aforesaid limitations.

(f) Any person convicted of a class C environmental violation shall be fined not less than $100, nor more than $250, plus the costs of prosecution and court costs. Any person convicted of a class C environmental violation within 5 years of a prior conviction for a class C or greater environmental violation shall be fined not less than $100, nor more than $500, plus the costs of prosecution and court costs, or such person shall be imprisoned for up to 20 days, or such person shall be both fined and imprisoned according to the foregoing limitations.

(g) Any person convicted of a class D environmental violation shall be fined not less than $50, nor more than $100, plus the costs of prosecution and court costs. Any person convicted of a class D environmental violation within 5 years of a prior conviction for a class D or greater environmental violation shall be fined not less than $100, nor more than $500, plus the costs of prosecution and court costs.

(h) Any fine imposed for any environmental misdemeanor shall not be suspended to any amount less than the minimum prescribed fine.

(i) Any conviction of a class C or class D environmental violation, for a first offense, shall not be reported on criminal history records provided by the State Bureau of Identification for employment purposes under § 8513(c) of Title 11. This provision shall not apply to a subsequent conviction of a class C or class D environmental violation within 5 years, and any such subsequent conviction shall be reported on a criminal history record provided by the State Bureau of Identification for employment purposes under § 8513(c) of Title 11.

(26 Del. Laws, c. 164 § 16; 26 Del. Laws, c. 165 § 16; Code 1915 §§ 2391A, 2405; 30 Del. Laws, c. 176 § 3; 40 Del. Laws, c. 191 § 23;

Code 1935 §§ 2851, 2865; 7 Del. C. 1953 § 1304; 52 Del. Laws, c. 290; 63 Del. Laws, c. 389 § 2; 70 Del. Laws, c. 275 § 106; 70 Del. Laws, c. 436 § 6; 79 Del. Laws, c. 421 § 6; 80 Del. Laws, c. 216 § 1.)

§ 1305 Violations by corporations; service; collection of fines.

Where a corporation is accused of violating this part, the warrant of arrest may be read to the president, secretary, or manager in this State, or to any general or local agent thereof in any county where the action or indictment is pending. Upon return of the warrant so served, the corporation shall be deemed in court and subject to the jurisdiction thereof. Any fine imposed may be collected by execution against the property of the corporation. This section shall not exempt an agent or employee from prosecution.

(26 Del. Laws, c. 164 § 10; Code 1915 § 2399; Code 1935 § 2859; 7 Del. C. 1953 § 1305.)

§ 1306 Failure of officer or Fish and Wildlife Agent to do duty; penalty.

Whoever, being an official, officer or Fish and Wildlife Agent, fails to perform any act, duty or obligation enjoined upon the person by this part, shall be guilty of a class D environmental violation.

(26 Del. Laws, c. 164 § 11; Code 1915 § 2400; Code 1935 § 2860; 7 Del. C. 1953 § 1306; 70 Del. Laws, c. 105 § 8; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 421 § 6.)

§ 1307 Report to Department.

Any court or officer of any court, before whom any prosecution, under this part, is commenced or shall go on appeal, and within 20 days after trial or dismissal thereof, shall report in writing the result thereof and the amount of fine or forfeiture collected, if any, and the disposition thereof, to the Department, remitting at the same time all money collected from fines and forfeitures.

(26 Del. Laws, c. 164 §§ 12, 15; 27 Del. Laws, c. 155 §§ 2, 3; Code 1915 § 2401; Code 1935 § 2861; 7 Del. C. 1953 § 1307; 57 Del. Laws, c. 739 § 74.)

§ 1308 Affidavit, complaint or indictment charging several offenses; proof.

Two or more offenses may be charged in the same affidavit, complaint or indictment. Proof as to a part of a bird, animal or fish shall be sufficient to sustain a charge to the whole of it. The violation of this part as to a number of animals, birds or fish may be charged in the same count, and punished as a separate offense as to each animal, bird or fish.

(26 Del. Laws, c. 164 § 13; Code 1915 § 2402; Code 1935 § 2862; 7 Del. C. 1953 § 1308.)

§ 1309 Jurisdiction of justices of peace; appeal; bond.

(a) The justices of the peace in this State shall have jurisdiction of all offenses under this part, unless another court is given exclusive jurisdiction.

(b) Any person charged before a justice of the peace with a violation of this part shall have the right to appeal to the Court of Common Pleas for the county wherein the hearing before the justice of the peace takes place. The appeal shall be allowed by the justice at any time within 15 days from the day of giving the judgment and not after, counting the day as 1, upon the party entitled to the appeal, or the party's agent or attorney, praying it and offering sufficient security in such sum as the justice deems sufficient to cover the judgment appealed from and the costs on the appeal. The justice shall make an entry thereof as follows:

"On the _____ day of _____, 20_____, the said _____ appeals, and _____ becomes surety in the _____ sum of _____ that the said appeal shall be prosecuted with effect, and also that any judgment which shall be rendered against the said _____ or that person's executors or administrators, upon said appeal, shall be satisfied."

The entry shall be signed by the sureties or it shall be void. When signed it shall be an obligation of record to the extent of the sum therein expressed, and shall bind the sureties and their executors and administrators, jointly and severally, to satisfy any judgment rendered on the appeal against the party appealing, or that person's executors or administrators, and, if the appeal is not duly entered in Court, or is dismissed, then to satisfy the judgment appealed from with all costs on the appeal. A civil action may be sustained on such entry before a justice, if the demand does not exceed $200, or if above that sum in the Court of Common Pleas, or if the appeal is not entered, or is dismissed, execution may be issued against the defendant and surety.

(25 Del. Laws, c. 228 §§ 1, 2; Code 1915 § 2410; Code 1935 § 2863; 7 Del. C. 1953 § 1309; 69 Del. Laws, c. 423 § 5; 70 Del. Laws, c. 186 § 1.)

§ 1310 Illegal possession of Atlantic sailfish, blue marlin, white marlin and striped marlin; penalties.

(a) No person shall sell, possess for sale, offer for sale, offer to purchase, purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport or cause to be transported, carry or cause to be carried, by any means whatever, for the purpose of sale, or barter, the carcass, processed byproduct, or any portion thereof of any Atlantic sailfish (istiophorus americanus), blue marlin (makaira nigricans ampla), white marlin (makaira albida) or striped marlin (makaira mitsukurii).

(b) This section shall not apply to Atlantic sailfish, blue marlin, white marlin or striped marlin, whole, packed or processed in transportation in unbroken packages and coming from any other state or country, but such packages shall be clearly marked by stencil, tag or otherwise, showing the true origin of the shipment and its destination beyond the limits of this State.

(c) Any person, who violates any provision of this section shall be charged with a class B environmental misdemeanor.

(d) The Justice of the Peace Courts shall have jurisdiction of offenses under this section.

(7 Del. C. 1953 § 1201; 55 Del. Laws, c. 347; 79 Del. Laws, c. 421 § 6.)

§ 1311 Fines payable by mail.

(a) Applicability. — Any duly constituted law-enforcement officer of the Department of Natural Resources and Environmental Control or peace officer in this State, who charges any person with any of the offenses which are violations of laws or regulations established or promulgated under the authority of Parts I and II of this title, Chapter 47 of this title or Chapter 21 of Title 23, may, in addition to issuing a summons for any such offenses, provide the violator with a voluntary assessment form which, when properly executed by the officer and the offender, allows the offender to dispose of the charges without the necessity of personally appearing in the court to which the summons is returnable.

(b) Definitions. —

(1) "Payment" as used in this section shall mean the total amount of the fine and of the costs as herein provided and of the penalty assessment added to the fine pursuant to the Delaware Victim Compensation Law, Chapter 90 of Title 11.

(2) "Voluntary assessment form" as used in this section means the written agreement or document signed by the violator wherein he or she agrees to pay by mail the fine for the offense described therein together with costs and penalty assessment.

(c) Places and time of payment. — Payments made pursuant to this section shall be remitted to the court to which the summons is returnable and shall be disbursed in accordance with § 1307 of this title. The payment must be received by the court within 10 days from the date of arrest (excluding Saturday and Sunday) and shall be paid only by check or money order.

(d) Offenses designated as "offenses subject to voluntary assessment"; exceptions. — All offenses, as now or hereafter set forth in this title or Title 23, or regulations promulgated under the authority of this title or Title 23, are hereby designated as offenses subject to voluntary assessment except the following offenses: Violation of § 787(a) of this title.

(e) Offer and acceptance of voluntary assessment; effect; withdrawal of acceptance; request for hearing. —

(1) At the time of making an arrest for any offense subject to this section, the arresting officer may offer the alleged violator the option of accepting a voluntary assessment. The alleged violator's signature on the voluntary assessment form constitutes an acknowledgment of guilt of the offense stated in the form, and an agreement to pay the fine as herein provided, together with costs and penalty assessment, within 10 days from the date of arrest (excluding Saturday and Sunday) during which time payment must be received by the court.

(2) The alleged violator, after signing and receiving the voluntary assessment form, may withdraw his or her acceptance of the voluntary assessment and request a hearing on the charge stated in such form, provided that the alleged violator, within 10 days from the date of arrest (excluding Saturday and Sunday), personally or in writing notifies the court to which payment of the penalty assessment was to be made that he or she wishes to withdraw his or her acceptance of the voluntary assessment and requests a hearing on the charge stated in the voluntary assessment form. If the alleged violator notifies the court of such withdrawal and request for hearing as aforesaid, he or she shall be prosecuted for the charge stated in the voluntary assessment form as if such form had not been issued.

(f) Penalty. — If an alleged violator elects the option of accepting a voluntary assessment in accordance with subsection (e) of this section, the penalty for offenses designated as offenses subject to voluntary assessment shall be the minimum fine for each specific offense charged, and fines shall be cumulative if more than 1 offense is charged.

(g) Court costs and applicability of Delaware Victim Compensation Law. — In lieu of any other court costs, and provided the offense is not subject to other proceedings under this section, each fine for an offense under this section shall be subject to court costs of $8.50. Each fine for an offense under this section shall be subject also to the penalty assessment which is or may be provided for in the Delaware Victim Compensation Law, Chapter 90 of Title 11.

(h) Agreement to accept voluntary assessment; procedure. — Whenever a person is arrested for commission of an offense subject to voluntary assessment and has elected to make payment as herein provided, the arresting officer, using the uniform Department of Natural Resources and Environmental Control complaint and summons citation, shall complete the information section and prepare the voluntary assessment form indicating the amount of the fine, have the arrested person sign the voluntary assessment form, give a copy of the citation and form to the arrested person and release the arrested person from custody. The arresting officer shall also inform the arrested person of the court to which payment shall be submitted. No officer shall receive or accept custody of a payment. If the person declines to accept the voluntary assessment, the arresting officer shall follow the procedure for arrest as set forth in Chapter 19 of Title 11.

(i) Payment of fine as complete satisfaction; repeat offenders. —

(1) Payment of the prescribed fine, costs and penalty assessment is a complete satisfaction of the violation, except as provided in paragraph (i)(2) of this section, but does not waive any administrative penalty in the nature of license revocation which may be lawfully revoked by the Department of Natural Resources and Environmental Control.

(2) In the event that following compliance with the payment provisions of this section, it is determined that within the 2-year period immediately preceding the violation, the violator was convicted of or made a payment pursuant to this section in satisfaction of a violation of the same section of this title, personal appearance before the court to which the summons is returnable shall be required. Notice of the time and place for the required court appearance shall be given to the violator by the court to which the summons for the offense would be returnable.

(j) Removal from applicability of section. —

(1) If a payment due pursuant to this section is not received by the court to which the summons is returnable within 10 days from the

date of arrest (excluding Saturday and Sunday), the violator shall be prosecuted for the offense charged on the voluntary assessment form in a manner as if a voluntary assessment form had not been issued. Upon conviction in such prosecution, the court shall impose penalties as provided for by this title and Title 23 or other law relating to the particular violation charged, and this section, as to payment of fines under voluntary assessments, shall not apply.

(2) In addition to the penalties provided for in paragraph (j)(1) of this section, it is a class B misdemeanor, punishable as provided by Title 11, for any person, who has elected to make payment pursuant to this section, to fail to do so within 10 days (excluding Saturday and Sunday) from the date of arrest.

(k) Nonexclusive procedure. — The procedure prescribed is not exclusive of any other method prescribed by law for the arrest and prosecution of persons violating this title.

(61 Del. Laws, c. 378 § 1; 62 Del. Laws, c. 213 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 436 §§ 7-9.)

§ 1312 Wildlife Theft Prevention Special Fund.

(a) There is hereby established by this section a Wildlife Theft Prevention Special Fund which shall consist of:

(1) Moneys received from fines imposed for violations of Chapters 1, 5, 6 and 7 of this title;

(2) Moneys received from donations to the Fund;

(3) Moneys appropriated by the General Assembly to the Fund to carry out the purposes provided for in this section.

(b) Funds from the Wildlife Theft Prevention Special Fund shall be expended only for the following purposes:

(1) Financing of rewards to persons other than peace officers, Department of Natural Resources and Environmental Control personnel or members of their immediate families, responsible for information leading to the conviction of any person for unlawfully taking, wounding or carrying, possessing, transporting or selling wildlife or trapping, attempting to trap or illegally setting traps for the purpose of catching wildlife. The Division of Fish and Wildlife shall establish a schedule of rewards for information received and payment shall be made from the funds available for this purpose. The amount of such reward shall not exceed $1,000;

(2) Financing of a statewide telephone reporting system containing the name of Operation Game Theft;

(3) Promotion of public recognition and awareness of the Wildlife Theft Prevention Special Program.

(c) The Wildlife Theft Prevention Special Fund shall be expended in conformity with the laws governing the state financial operations, except that regulations shall be developed by the Department to maintain the confidentiality of the informant's identity.

(d) For the purpose of implementing paragraph (a)(1) of this section, all moneys received from fines assessed for violation of Chapters 1, 5, 6 and 7 of this title shall be deposited at least monthly with the State Treasurer to be retained by him or her in a Special Fund until expended upon proper vouchers of the Department to carry out the purposes of this section.

(62 Del. Laws, c. 326 § 4; 67 Del. Laws, c. 307 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1313 Peace officers ex officio Fish and Wildlife Agents.

All constables and police officers, and all other peace officers of this State, shall be ex officio Fish and Wildlife Agents.

(70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 275 § 107; 78 Del. Laws, c. 266 § 12.)

Part I
Game, Wildlife and Dogs
Chapter 15
ATLANTIC STATES MARINE FISHERIES COMPACT

§ 1501 Governor to enter into Compact; provisions thereof.

The Governor of this State shall execute a Compact on behalf of this State with any 1 or more of the States of Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida and with such other states as may enter into the Compact, legally joining therein in the form substantially as follows:

ATLANTIC STATES MARINE FISHERIES COMPACT

The contracting states solemnly agree:

Article I

The purpose of this compact is to promote the better utilization of the fisheries, marine, shell and anadromous, of the Atlantic seaboard by the development of a joint program for the promotion and protection of such fisheries, and by the prevention of the physical waste of the fisheries from any cause. It is not the purpose of this compact to authorize the states joining herein to limit the production of fish or fish products for the purpose of establishing or fixing the price thereof, or creating and perpetuating monopoly.

Article II

This agreement shall become operative immediately as to those states executing it whenever any two or more of the States of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida have executed it in the form that is in accordance with the laws of the executing state and the Congress has given its consent. Any state contiguous with any of the aforementioned states and riparian upon waters frequented by anadromous fish, flowing into waters under the jurisdiction of any of the aforementioned states, may become a party hereto as hereinafter provided.

Article III

Each state joining herein shall appoint 3 representatives to a Commission hereby constituted and designated as the Atlantic States Marine Fisheries Commission. One shall be the executive officer of the administrative agency of such state charged with the conservation of the fisheries resources to which this compact pertains or, if there be more than 1 officer or agency, the official of that state named by the governor thereof. The second shall be a member of the legislature of such state designated by the Commission or Committee on Interstate Cooperation of such state, or if there be none, or if said Commission on Interstate Cooperation cannot constitutionally designate the said member, such legislator shall be designated by the governor thereof; provided that if it is constitutionally impossible to appoint a legislator as a commissioner from such state, the second member shall be appointed by the governor of said state in his or her discretion. The third shall be a citizen who shall have a knowledge of and interest in the marine fisheries problem to be appointed by the governor. This Commission shall be a body corporate with the powers and duties set forth herein.

Article IV

The duty of the said Commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell and anadromous of the Atlantic seaboard. The Commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdictions to promote the preservation of those fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fisheries resources of the aforementioned states.

To that end the Commission shall draft and, after consultation with the Advisory Committee hereinafter authorized, recommend to the governors and legislatures of the various signatory states legislation dealing with the conservation of the marine, shell and anadromous fisheries of the Atlantic seaboard. The Commission shall, more than one month prior to any regular meeting of the legislature in any signatory state, present to the governor of the state its recommendations relating to enactments to be made by the legislature of that state in furthering the intents and purposes of this compact.

The Commission shall consult with and advise the pertinent administrative agencies in the states party hereto with regard to problems connected with the fisheries and recommend the adoption of such regulations as at deems advisable.

The Commission shall have power to recommend to the states party hereto the stocking of the waters of such states with fish and fish eggs or joint stocking by some or all of the states party hereto and when 2 or more of the states shall jointly stock waters the Commission shall act as the coordinating agency for such stocking.

Article V

The Commission shall elect from its number a Chairman and a Vice Chairman and shall appoint and at its pleasure remove or discharge such officers and employees as may be required to carry the provisions of this compact into effect and shall fix and determine their duties, qualifications and compensation. Said Commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain 1 or more offices for the transaction of its business and may meet at any time or place but must meet at least once a year.

Article VI

No action shall be taken by the Commission in regard to its general affairs except by the affirmative vote of a majority of the whole number of compacting states present at any meeting. No recommendation shall be made by the Commission in regard to any species of fish except by the affirmative vote of a majority of the compacting states which have an interest in such species. The Commission shall define what shall be an interest.

Article VII

The Fish and Wildlife Service of the Department of the Interior of the Government of the United States shall act as the primary research agency of the Atlantic States Marine Fisheries Commission cooperating with the research agencies in each state for that purpose. Representatives of the said Fish and Wildlife Service shall attend the meetings of the Commission.

An advisory committee to be representative of the commercial fishermen and the salt water anglers and such other interests of each state as the Commission deems advisable shall be established by the Commission as soon as practicable for the purpose of advising the Commission upon such recommendations as it may desire to make.

Article VIII

When any state other than those named specifically in Article II of this compact shall become a party thereto for the purpose of conserving its anadromous fish in accordance with the provisions of Article II the participation of such state in the action of the Commission shall be limited to such species of anadromous fish.

Article IX

Nothing in this compact shall be construed to limit the powers of any signatory state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any signatory state imposing additional conditions and restrictions to conserve its fisheries.

Article X

Continued absence of representation of any representative on the Commission from any state party hereto shall be brought to the attention of the governor thereof.

Article XI

The states party hereto agree to make annual appropriation to the support of the Commission in proportion to the primary market value of the products of their fisheries, exclusive of cod and haddock, as recorded in the most recent published reports of the Fish and Wildlife Service of the United States Department of the Interior, provided no state shall contribute less than $200 per annum and the annual contribution of each state above the minimum shall be figured to the nearest $100.

The compacting states agree to appropriate initially the annual amounts scheduled below, which amounts are calculated in the manner set forth herein, on the basis of the catch record of 1938. Subsequent budgets shall be recommended by majority of the Commission and the cost thereof allocated equitably among the states in accordance with their respective interests and submitted to the compacting states.

Schedule of Initial Annual State Contributions:

Maine $ 700
New Hampshire 200
Massachusetts 2,300
Rhode Island 300
Connecticut 400
New York 1,300
New Jersey 800
Delaware 200
Maryland 700
Virginia 1,300
North Carolina 600
South Carolina 200
Georgia 200
Florida 1,500

Article XII

This compact shall continue in force and remain binding upon each compacting state until renounced by it. Renunciation of this compact must be preceded by sending 6 months' notice in writing of intention to withdraw from the compact to the other states party hereto.

(43 Del. Laws, c. 287 § 1; 7 Del. C. 1953 § 1501; 70 Del. Laws, c. 186 § 1.)

§ 1502 Atlantic States Marine Fisheries Commissioners; qualifications; term of office; vacancies; removal.

(a) In pursuance of Article III of the Compact authorized in § 1501 of this title, there shall be 3 members (hereinafter called Commissioners) of the Atlantic State Marine Fisheries Commission (hereinafter called Commission) from the State. The first Commissioner from the State shall be the Commissioner of Conservation of the State ex officio, and the term of any such ex officio Commissioner shall terminate at the time the ex officio Commissioner ceases to hold the office of Commissioner of Conservation and the successor as Commissioner shall be the successor as Commissioner of Conservation. The second Commissioner from the State shall be a

legislator designated by said Commission on Interstate Cooperation, and the term of any such ex officio Commissioner shall terminate at the time the ex officio Commissioner ceases to hold said legislative office, and the successor as Commissioner shall be named in like manner. The Governor, (by and with the advice and consent of the Senate) shall appoint a citizen as a third Commissioner who has a knowledge of and interest in the marine fisheries problem. The term of such Commissioner shall be 3 years and such Commissioner shall hold office until a successor is appointed and qualified. Vacancies occurring in the office of such Commissioner from any reason or cause shall be filled by appointment by the Governor (by and with the advice and consent of the Senate) for the unexpired term.

(b) The Commissioner of Conservation as ex officio Commissioner may delegate, from time to time, to any deputy or other subordinate in his or her department or office, the power to be present and participate, including voting as his or her representative or substitute at any meeting of or hearing by or other proceeding of the Commission.

(c) The terms of each of the initial 3 members shall begin at the date of the appointment of the appointive Commissioner, if the said Compact has then gone into effect in accordance with Article II of the Compact; otherwise they shall begin upon the date upon which the Compact becomes effective in accordance with said Article II.

(d) Any Commissioner may be removed from office by the Governor upon charges and after a hearing.

(43 Del. Laws, c. 287 § 2; 7 Del. C. 1953 § 1502; 69 Del. Laws, c. 62 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1503 Powers of Commission and Commissioners; duties of other state officials.

The Commission and the Commissioners thereof shall have all the powers provided for in the Compact and all the powers necessary or incidental to the carrying out of the Compact in every particular. All officers of the State shall do all things falling within their respective provinces and jurisdiction necessary or incidental to the carrying out of the Compact in every particular; it being the policy of the State to perform and carry out the said Compact and to accomplish the purposes thereof. All officers, bureaus, departments and persons of and in the state government or administration of the State shall, at convenient times and upon request of the Commission furnish the Commission with information and data possessed by them or any of them and aid said Commission by loan of personnel or other means lying within their legal rights respectively.

(43 Del. Laws, c. 287 § 3; 7 Del. C. 1953 § 1503.)

§ 1504 Powers of Commission supplementary to powers vested by laws of other compacting states.

Any powers granted to the Commission shall be regarded as in aid of and supplemental to and in no case a limitation upon any of the powers vested in said Commission by other laws of the State of Delaware or by the laws of the States of Maine, New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida or by the Congress or the terms of the Compact.

(43 Del. Laws, c. 287 § 4; 7 Del. C. 1953 § 1504.)

§ 1505 Receipts and disbursements of Commission; annual report; examination of accounts.

(a) The Commission shall keep accurate accounts of all receipts and disbursements and shall report to the Governor and the General Assembly of the State on or before December 10 in each year, setting forth in detail the transactions conducted by it during the 12 months preceding December 1 of that year and shall make recommendations for any legislative action deemed by it advisable, including amendments to the statutes of the State necessary to carry out the intent and purposes of the Compact between the signatory states.

(b) The Auditor of Accounts of the State may, from time to time, examine the accounts and books of the Commission, including its receipts, disbursements and such other items referring to its financial standing as the Auditor deems proper and report the results of such examination to the Governor of the State.

(43 Del. Laws, c. 287 § 5; 7 Del. C. 1953 § 1505.)

Part I
Game, Wildlife and Dogs
Chapter 17
DOGS

§ 1701 Field trials; permit.

Field trials with dogs may not be held in this State without first securing a permit from the Department. The Department may grant permits to bona fide field trial clubs or associations to hold field trials in this State under such rules and regulations adopted by the Department, safeguarding the interests of the game of this State. Dogs brought into the State to participate in such field trials and which are removed from the State within 10 days, are exempt from the state dog license tax.

(Code 1915 § 2406L; 34 Del. Laws, c. 185 § 1; Code 1935 § 2876; 7 Del. C. 1953 § 1711; 57 Del. Laws, c. 739 § 81; 77 Del. Laws, c. 428 §§ 1, 2.)

§ 1702 Dogs on state coastal beaches.

Whoever, being the owner, possessor, harborer or custodian of any dog, allows such dog to be upon the designated swimming or sunbathing area of a state coastal beach strand at any time between May 1 and September 30, inclusive, of any year, except when such dog is on said property on behalf of a law enforcement agency or a blind person, as defined in § 2101 of Title 31, is guilty of a violation and shall be fined not less than $25 nor more than $50. For each subsequent offense, the person shall be fined not less than $50 nor more than $100. "Coastal beach strand" shall mean all that coastal real property between the western base of the dunes and the low water mark except those lands within a municipality which has enacted an ordinance governing the activities of dogs on said real property.

(64 Del. Laws, c. 283 § 1; 71 Del. Laws, c. 135 § 11; 74 Del. Laws, c. 253; 77 Del. Laws, c. 428 §§ 1, 2.)

§ 1703 License for special dog training area; requirements.

Upon application of any club or organization having 20 or more members who are citizens of this State, or upon application of 20 or more citizens of this State, and the payment of an annual registration fee of $10, the Department may issue a license authorizing the establishment and maintenance by such club, organization of citizens, on land owned by them, or over which they have legal control, of a special dog training area wherein and whereon dogs may be trained at any time during the year. No such dog training area shall be less than 100 acres, nor more than 250 acres.

(Code 1935 § 2869A; 48 Del. Laws, c. 131 § 1; 7 Del. C. 1953 § 1721; 55 Del. Laws, c. 329; 57 Del. Laws, c. 739 § 82; 71 Del. Laws, c. 135 § 13; 77 Del. Laws, c. 428 §§ 1, 2.)

§ 1704 Stocking area; training therein; hunting and trapping.

The licensees shall, from time to time, during each year stock each such area with 25 pieces of game per 100 acres at their own expense, under supervision of the Department, unless the Department determines that the area is already adequately stocked. The licensees may at any time during the year train their own dogs or the dogs of other persons on such area or permit others so to do under such conditions as are mutually agreed upon. Neither the licensees nor any other person shall, at any time, hunt or trap within the confines of such area, except that the licensees or any person authorized by them may hunt or trap vermin and predators for the purpose of exterminating vermin and predators on such area.

(Code 1935 § 2869A; 48 Del. Laws, c. 131 § 1; 7 Del. C. 1953 § 1722; 57 Del. Laws, c. 739 § 83; 77 Del. Laws, c. 428 §§ 1, 2.)

§ 1705 Marking of boundary lines; posting of notice; penalty.

(a) The boundary lines of the special dog training area shall be plainly and conspicuously posted prior to September 1 of each year with legible notices, at least 10 inches by 12 inches in size, placed not more than 100 yards apart which shall bear the following warning:

SPECIAL DOG TRAINING AREA HUNTING UNLAWFUL THIS LAND IS SET ASIDE UNDER SPECIAL LICENSE FOR THE TRAINING OF DOGS.

ENTERING HEREON FOR THE PURPOSE OF HUNTING OR DISTURBING GAME OR PERMITTING DOGS TO ENTER WITHOUT AUTHORIZATION IS PUNISHABLE BY PENALTY OF TWENTY-FIVE DOLLARS ($25.00) FOR EACH OFFENSE.

(Name and address of licensee to be printed here)

(b) Whoever violates any of the provisions of any such notice and warning is guilty of a violation and shall be fined $25 for each offense, together with the costs of prosecution.

(Code 1935 § 2869A; 48 Del. Laws, c. 131 § 1; 7 Del. C. 1953 § 1723; 71 Del. Laws, c. 135 § 14; 77 Del. Laws, c. 428 §§ 1, 2.)

§ 1706 Injuring or destroying fence, wire or poster; penalty.

No person shall wilfully, negligently or maliciously cut, remove, cover up, deface or otherwise mutilate, injure or destroy any special dog training area boundary fence, wire or poster placed in accordance with this subchapter.

Whoever violates this section is guilty of a violation and shall be fined $10 for each offense, together with costs of prosecution.

(Code 1935 § 2869A; 48 Del. Laws, c. 131 § 1; 7 Del. C. 1953 § 1724; 71 Del. Laws, c. 135 § 15; 77 Del. Laws, c. 428 §§ 1, 2.)

§ 1707 Training of dogs; unlawful to carry firearm; penalty.

(a) The owner or custodian of any bird, rabbit, raccoon or fox dog, may train and break the same, at any time of the year, daylight or night, except during the months of March, April, May, June, July and August. If while training or breaking dogs, the owner or custodian thereof exercises reasonable precaution to keep such dogs in control, and if any such dog, during such training, wanders off and out of control of the owner or custodian without the owner's or custodian's fault, such dog shall not be deemed to be running at large within the meaning of this section. If any dog kills any game protected by the laws of this State, during the closed season while so training, the owner or custodian shall be fined not less than $2.00 nor more than $5.00 for each offense.

(b) No person shall carry a firearm while training a dog in closed game season.

(c) The Department may issue an annual permit to the owner or custodian of any retriever dog authorizing the training of such dog or dogs at any time of the year provided such owner or custodian is a trainer of retriever dogs, and provided no game is to be used in the training. Any person to whom such a permit shall issue may possess artificially reared game and may hunt such game with a shotgun; but such game must be hand-liberated during dog training.

(Code 1915 § 2406E; 34 Del. Laws, c. 185 § 1; 35 Del. Laws, c. 166 § 1; 37 Del. Laws, c. 225 § 1; Code 1935 § 2869; 45 Del. Laws, c. 208 § 1; 7 Del. C. 1953 § 1704; 56 Del. Laws, c. 257; 57 Del. Laws, c. 739 § 77; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 431 § 1; 77 Del. Laws, c. 428 § 3.)

§ 1708 Penalties.

(a) Whoever violates this chapter, unless otherwise specifically provided, shall be fined not less than $50 or more than $100 for each offense. For each subsequent offense, the person shall be fined not less than $100 or more than $250. All fines imposed following a conviction for violation for any section of this subchapter shall be remitted by the sentencing court or voluntary assessment center to the county in which the offense occurred.

(b) Applicability. — Any duly constituted law-enforcement officer of this State or any of its political subdivisions, the county, or any animal welfare officer employed by the county who charges a person with any offense which is a violation of a law, ordinance or regulation established or promulgated under the authority of this chapter shall, in addition to issuing a summons for any such offense, provide the alleged violator with a voluntary assessment form which, when properly executed by the officer, allows the offender to dispose of the charge without the necessity of personally appearing in the court to which the summons is returnable.

(c) Definitions. —

(1) "Payment" as used in this section shall mean the total amount of the fine and costs as herein provided and any assessment added to the fine pursuant to Delaware law.

(2) "Voluntary assessment form" as used in this section shall mean the written document issued to an alleged violator which advises such person that they may dispose of the charge without the necessity of personally appearing in court by paying the fine together with any costs and statutory assessments.

(d) Places and time of payment. — Payments made pursuant to this section shall be remitted to the voluntary assessment center or court to which the summons is returnable and shall be disbursed to the county in which the offense occurred. The payment must be received by the voluntary assessment center or court within 30 days from the date of arrest (excluding Saturday and Sunday) and shall be paid only by check or money order or by electronic means as authorized by the voluntary assessment center.

(e) Offenses designated as "offenses subject to voluntary assessment" exceptions. — All offenses, as now or hereafter set forth in this chapter, or ordinances or regulations promulgated under authority thereof, are hereby designated as offenses subject to voluntary assessment except for violations punishable under § 3079F of Title 16.

(f) Offer and acceptance of voluntary assessment; effect; request for hearing. —

(1) At the time of making an arrest for any offense subject to this section, the arresting officer, or animal welfare officer may offer the alleged violator the option of accepting a voluntary assessment. The alleged violator's acceptance of the voluntary assessment constitutes an acknowledgment of guilt of the offense stated in the form, and an agreement to pay the fine as herein provided, together with costs and assessments, within 30 days from the date of arrest (excluding Saturday and Sunday), during which time payment must be received by the applicable court or voluntary assessment center.

(2) In lieu of paying the voluntary assessment, a person who has been issued a voluntary assessment form may request a hearing on any charge stated in such form by notifying, in writing, the voluntary assessment center or court to which payment was to be made of such request within 30 days of the date of arrest. If the alleged violator makes a timely request for a hearing, the charge shall be prosecuted as if the voluntary assessment had not been permitted and the officer shall swear to the summons prior to trial.

(g) Penalty. — If an alleged violator elects the option of accepting a voluntary assessment in accordance with subsection (f) of this section, the penalty imposed shall be the minimum fine for each offense charged, and fines shall be cumulative if more than 1 offense is charged.

(h) Court costs and assessments. — In lieu of any other court costs, and provided the offense is not subject to other proceedings under this section, each fine for an offense under this section shall be subject to court costs of $20, unless otherwise provided by court rule in lieu thereof. Each fine for an offense under this section shall be subject to all penalty assessments which are provided for in Chapter 90 of Title 11 or any other provision of the Code.

(i) Agreement to accept voluntary assessment; procedure. — Whenever a person is arrested for commission of an offense subject to voluntary assessment and has elected to make payment as herein provided, the arresting officer, using the uniform Delaware complaint and summons citation, shall complete the information section and prepare the voluntary assessment form indicating the amount of the fine, and give a copy of the citation and form to the arrested person and release the arrested person from custody. The arresting officer shall also inform the arrested person of the court or voluntary assessment center to which payment should be submitted if the person does not request a hearing. No officer shall receive or accept custody of a payment. If the person declines to accept voluntary assessment, the arresting officer shall issue a citation and summons or, if appropriate, follow the procedure for arrest as set forth in Chapter 19 of Title 11.

(j) Payment of fine as complete satisfaction; repeat offenders. —

(1) Payment of the prescribed fine, costs and penalty assessment is a complete satisfaction of the violation, except as provided in paragraph (j)(2) of this section, but does not waive any administrative penalty in the nature of license revocation which may lawfully be revoked by a county.

(2) In the event that following compliance with the payment provisions of this section, it is determined that within the 2-year period immediately preceding the violation, the violator was convicted of or made a payment pursuant to this section in satisfaction of a violation of the same section of this title, personal appearance before the court to which the summons is returnable shall be required. Notice of the time and place for the required court appearance shall be given to the violator by the court to which the summons for the offense would be returnable.

(k) Removal from applicability of section. — If a payment due pursuant to this section is not received by voluntary assessment center or the court to which the summons is returnable within 30 days from the date of arrest (excluding Saturday and Sunday), the violator shall be prosecuted for the offense charged on the voluntary assessment form in a manner as if a voluntary assessment form had not been issued. Upon conviction in such prosecution, the court shall impose penalties as provided for by this chapter and this section.

(l) Nonexclusive procedure. — The procedure prescribed is not exclusive of any other method prescribed by law for the arrest and prosecution of persons violating this chapter.

(Code 1915 § 2406E; 34 Del. Laws, c. 185 § 1; 35 Del. Laws, c. 166 § 1; 37 Del. Laws, c. 225 § 1; Code 1935 § 2869; 45 Del. Laws, c. 208 § 1; 7 Del. C. 1953 § 1704; 56 Del. Laws, c. 257; 57 Del. Laws, c. 739 § 77; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 431 § 1; 77 Del. Laws, c. 428 § 4; 80 Del. Laws, c. 248 § 6.)

§§ 1709 -1729. [Reserved]

§§ 1730 -1740. Seizure and impoundment of dangerous or potentially dangerous dogs; notification of dog owner; request for hearing; exceptions; hearing procedures; appeal; finding to declare a dog dangerous; duties of owner; finding to declare a dog potentially dangerous; duties of owner; liability of owner for costs of impoundment; rules and regulations; violations by owners of dangerous or potentially dangerous dogs; penalties; local ordinances.

(Repealed by 77 Del. Laws, c. 428 § 5, effective July 1, 2010.)

Part I
Game, Wildlife and Dogs
Chapter 18
EEL FISHING

§ 1801 Definitions.

(a) [Repealed.]

(b) "Commercially fish" shall mean for any person to attempt to take, take, catch, kill or reduce to possession any eel for the purpose of selling, trading or exchanging for money, materials or services with another or to set or fish any commercial eel fishing gear as defined in § 1810(3) of this title.

(c) "Delaware Bay" shall mean all those waters and submerged lands under the jurisdiction of the State located within an area bordered on the north by a straight line drawn between Liston Point, Delaware and Hope Creek, New Jersey and bordered on the south by a line drawn from Cape May Light to Harbor of Refuge Light; thence to the northernmost extremity of Cape Henlopen, but not including any tributaries thereto.

(d) "Delaware River" shall mean all those waters and submerged lands under the jurisdiction of the State located within an area to the north of a straight line connecting Liston Point, Delaware and Hope Creek, New Jersey, but not including any tributaries thereto.

(e) "Department" shall mean the Department of Natural Resources and Environmental Control.

(f) "Eels" shall mean American eels, Anguilla rostrata.

(g) "Initially sold" shall mean the first transaction of eel exchange between the person catching the eels and another person for monetary, material or services exchange.

(h) [Repealed.]

(i) "Nontidal waters" shall mean those waters where the tide does not regularly rise and fall.

(j) "Person" shall mean any human being.

(k) "Resident" shall mean a person who has resided in this State continuously for 1 year.

(l) "Secretary" shall mean the Secretary of the Department of Natural Resources and Environmental Control or the Secretary's duly authorized designee.

(m) "Tidal waters" shall mean those waters where the tide regularly rises and falls.

(n) "To fish" shall mean to attempt to take, take, catch, kill or reduce to possession any eel by any means whatsoever.

(61 Del. Laws, c. 256 § 1; 70 Del. Laws, c. 186 § 1; 80 Del. Laws, c. 196 §§ 4, 5.)

§ 1802 Commercial license requirements; restrictions.

(a) It shall be unlawful for any person to initially sell or offer for sale 25 or more eels per day unless the person selling or offering such eels for sale has a valid commercial eel fishing license issued by the Department.

(b) It shall be unlawful for any person to fish for eels with commercial eel fishing gear in the tidal waters of this State unless the person has a valid commercial eel fishing license on board the vessel used to fish issued by the Department.

(c) It shall be unlawful to fish for eels for the purpose of initially selling such eels in nontidal waters within the State unless authorized to do so by the Department.

(d) A commercial eel fishing license shall be valid from January 1 through December 31 next ensuing.

(e) Application for a commercial eel fishing license shall be made on the forms provided by the Department.

(f) The fee for a commercial eel fishing license to take eels shall be $115 for residents and $1,150 for nonresidents.

(g) A licensee may designate a resident of such licensee's state as an alternate on his or her license application, who shall be approved by the Department to fish for eels with the licensee's commercial eel fishing gear in the event that said licensee is unable to fish his or her commercial eel fishing gear already in the water and capable of catching eels.

(h) It shall be unlawful for an alternate to any commercial eel fishing licensee to sell or offer for sale any eels without the written consent of the licensee and without prior notification to the Department.

(i) Any person issued a commercial eel license by the Department shall file monthly reports of their catch by area, effort and weight on forms provided by the Department. The monthly report must be filed with the Department by 4:30 p.m. of the last working day of the month following the month for which the information contained in the report reflects. Failure to abide with the filing requirement, set forth in this subsection, will result in:

(1) A warning issued by the Secretary, for the first failure to file;

(2) Suspension of the commercial eel fishing license by the Secretary for a period of up to 30 days or until such time as the report is filed, whichever occurs sooner, for the second failure to file; and

(3) Revocation of the commercial eel license by the Secretary until such time when all reporting requirements are fulfilled in a manner acceptable to the Secretary, for a third or subsequent failures to file.

(61 Del. Laws, c. 256 § 1; 67 Del. Laws, c. 260 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 53 § 1.)

§ 1803 Use of funds derived from sale of commercial licenses.

All funds derived from the issuances of commercial eel fishing licenses shall be deposited by the Department in the General Fund.

(61 Del. Laws, c. 256 § 1.)

§ 1804 Reciprocity for commercial nonresident licenses.

When by or pursuant to the laws or regulations of any other state, should any other state impose any tax, other fee or restrictions on nonresidents for the privilege of commercial eel fishing within its boundaries, which tax, or other fee is in the aggregate greater or restriction is greater, to include the nonavailability of a license for nonresidents, the same taxes, other fees, license requirements and restrictions shall be imposed by the Department upon residents of the state who seek to apply for a license to commercially fish for eels within the boundaries of this State.

(61 Del. Laws, c. 256 § 1.)

§ 1805 Commercial license number.

(a) The Department shall assign a number to all commercial eel fishing licensees.

(b) It shall be unlawful for a commercial eel fishing licensee to fish with commercial eel fishing gear without fixing his or her assigned number in 2 inch block numbers, prefixed by "E" to each piece of gear, in a conspicuous place on the floats, markers, stakes or flags observable above the surface of the waters at all times.

(61 Del. Laws, c. 256 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1806 Prohibited fishing devices and substances.

(a) It shall be unlawful for any person to make use of any net, trap, catching device, contrivance, explosive, chemical or substance whatsoever, except commercial eel fishing gear or noncommercial eel fishing gear as defined in § 1801 of this title, for the purpose of taking or attempting to take eels for any reason whatsoever in any waters of this State. Said devices and/or substances when found unlawfully in use may be confiscated by the Department. Said devices and/or substances shall be destroyed or disposed of by public auction. Costs of the auction will be taken from the proceeds; any balance from the auction will revert to the General Fund of the State.

(b) It shall be legal for the Department and its authorized agents to use chemicals, electrofishing apparatus and other devices deemed appropriate for use in eel management, research and other scientific purposes; provided consent is obtained from owners of privately owned waters, or in the event such owners cannot be located after a reasonable search, a notice will be posted on those waters and surrounding shores of the intended use of these chemicals or devices 5 days prior to their use.

(61 Del. Laws, c. 256 § 1.)

§ 1807 Illegal use or destruction of fishing gear.

It shall be unlawful for any person to fish, lift, remove or wilfully damage or destroy any commercial or noncommercial eel fishing gear owned by another person, except that employees of the Department may inspect commercial eel fishing gear to insure compliance with this chapter.

(61 Del. Laws, c. 256 § 1.)

§ 1808 Penalty.

Any person who violates any of the provisions of this chapter shall be guilty of a class C environmental violation. Justices of the Peace Courts shall have jurisdiction over offenses under this chapter.

(61 Del. Laws, c. 256 § 1; 79 Del. Laws, c. 421 § 7.)

§ 1809 Department of Natural Resources and Environmental Control; authority; regulations.

(a) The Department of Natural Resources and Environmental Control shall administer and enforce the laws and regulations of this State relating to eel fishing. The Department shall have the authority to cooperate with and assist departments, agencies and offices of this State and other states, local governments, and the federal government in the management and conservation of eels.

(b) The Department of Natural Resources and Environmental Control shall have the authority to promulgate regulations concerning eels in accordance with the Administrative Procedures Act, Chapter 101 of Title 29. Eel regulations promulgated by the Department shall be consistent with the adopted Interstate Fishery Management Plan for American Eel. Such regulations may include any of the following:

(1) Minimum and maximum size limits.

(2) The quantities of eels that may be taken.

(3) The periods of time that eels may be taken.

(4) The areas from which eels may be taken.

(5) The gear by which eels may be taken.

(70 Del. Laws, c. 204 § 1; 72 Del. Laws, c. 296 § 1; 80 Del. Laws, c. 196 § 1.)

§ 1810 Temporary limits [Effective until fulfillment of requirements in the introductory paragraph of this section]

The following limits prescribed by the Atlantic States Marine Fisheries Commission for eel on August 20, 2013, shall be in effect until the Department adopts regulations pursuant to the authority granted in § 1809 of this title.

(1) Minimum mesh size for eel pots shall not be less than 1/2 inch by 1/2 inch.

(2) It shall be unlawful for any person to possess any eel that measures less than 9 inches in total length.

(3) "Commercial eel fishing gear" shall include the following items:

a. A fyke net or hoop net of a diameter not exceeding 30 inches when more than 1 such net is being fished by a person;

b. Eel pots when more than 2 such pots are being fished by a person;

c. Any seine net with a mesh size of less than 1 inch and greater than 100 feet in total length; and

d. A minnow trap when more than 2 such traps are being fished by any person.

(4) "Noncommercial eel fishing gear" shall include the following items:

a. A fyke net or hoop net of a diameter not exceeding 30 inches when only 1 is in use by a person;

b. Eel pots when 2 or less pots are being fished by a person;

c. A seine net less than or equal to 100 feet in length;

d. A cast net;

e. A lift net or umbrella net less than or equal to 5 feet in diameter;

f. A dip net less than or equal to 3 feet in diameter;

g. Spear, arrow or gigs;

h. A minnow trap when less than 2 are being fished by a person;

i. Hooks and lines when an individual places, sets or tends 3 or less separate lines with any 1 line having no more than 3 hooks attached (double and treble hooks counted as 1 hook).

(5) It shall be unlawful for any person to possess more than 25 eels, unless said person has been issued a valid commercial eel license or has in that person's possession a valid receipt for said eels from another person who is authorized to catch or take eels for commercial purposes.

(72 Del. Laws, c. 296 § 2; 80 Del. Laws, c. 196 § 2.)

§ 1811 Quota management system implementation.

If a fishery management plan approved by the Atlantic States Marine Fisheries Commission requires the implementation of a quota management system for commercial landings of eel, any regulations adopted by the Department of Natural Resources shall not establish such quota management system, including, but not limited to, requirements associated with setting a statewide quota management system for eels and limitations or conditions on the number or transfer of commercial eel licenses. Any such quota management system required by the Atlantic States Marine Fisheries Commission shall be implemented through legislative action.

(80 Del. Laws, c. 196 § 3.)

Part II
Shellfish
Chapter 19
GENERAL PROVISIONS

§ 1901 Definitions.

The following definitions shall apply to Chapters 19 through 28 inclusive of this title:

(1) "Bivalve shellfish" means any species of shellfish having 2 shells connected by a hinge.

(2) "Commercial purpose" means a person's intent to sell shellfisheries to another.

(3) "Crab pot" means a cube shaped wire device that contains opening or openings toward the inside for the entrance and capture of crabs without the assistance of any manually exerted tension to any closing mechanism.

(4) "Culled" means separated live shellfish from all other material and organisms.

(5) "Cultivation" means the process of preparing and/or improving shellfish grounds to foster the growth and survival of shellfish.

(6) "Delaware's Inland Bays" shall mean Rehoboth Bay, Indian River and Indian River Bay and Little Assawoman Bay and Big Assawoman Bay and their respective tributaries.

(7) "Department" means Department of Natural Resources and Environmental Control.

(8) "East line" means a political division of the Delaware Bay along a line running due east from the Port Mahon lighthouse (Delaware State Plan Coordinates: N431, 537.3600, E504, 396.9600).

(9) "Hand tongs" means any grasping device consisting of 2 pieces joined at 1 end of a pivot and manipulated by physical exertion of a person.

(10) "Market oysters" means oysters harvested for sale to another for consumption.

(11) "Mean high water" means the level of the water surface which is an average of the highest daily tides over a period of at least 29 days.

(12) "Mechanical device" means an apparatus operated by a machine used to take shellfish.

(13) "Natural oyster beds" means those shellfish grounds designated to be "natural oyster beds" by the Department.

(14) "Nonresident" means any person not an alien who has not continuously resided for 1 year within this State.

(15) "Patent tongs" means any grasping device consisting of 2 pieces joined at 1 end by a pivot and raised with a rope, cable or other hoisting device used to take shellfish.

(16) "Person" means a human being.

(17) "Public tonging area" means any shellfish ground designated by the Department to be used for the tonging of oysters in areas exclusive of Delaware's Inland Bays.

(18) "Resident" means any person not an alien who has continuously resided 1 year or more within this State.

(19) "Secretary" means the Secretary of the Department of Natural Resources and Environmental Control or a duly authorized designee provided any such delegation of authority is consistent with Chapter 80 of Title 29.

(20) "Shellfish" means any mollusca, crustacea and chelicerata that includes oysters, clams, lobsters, mussels, whelks, bay scallops, crabs, shrimp and horseshoe crabs.

(21) "Shellfishing" means to attempt to take, catch, kill or reduce to possession any shellfish by any means whatsoever.

(22) "Shellfish aquaculture" means the culture or rearing of any life stage of bivalve shellfish for commercial purposes within an area leased for that purpose. Within the leased area, said shellfish may be reared in an artificial enclosure, or on any other type of structure or substrate, either on land or in the water.

(23) "Shellfish grounds" means the submerged lands of the rivers, bays and oceans sustaining or capable of sustaining shellfish under the jurisdiction of the State.

(24) "Spat" means immature oysters.

(60 Del. Laws, c. 513 § 2; 64 Del. Laws, c. 243 § 1; 67 Del. Laws, c. 194 §§ 2, 3; 68 Del. Laws, c. 33 § 1; 69 Del. Laws, c. 284 § 1; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 178 § 2.)

§ 1902 Duties of Department; powers; making and enforcing regulations.

(a) The Department shall have control and direction of the shellfish industry and of the protection of shellfish resources throughout this State. The Department may adopt, promulgate, amend and repeal regulations consistent with the law, which shall be enforced by the Department or any peace officers for the following purposes:

(1) To preserve and improve the shellfish industry of this State;

(2) To prevent and control the spread of shellfish-borne diseases by providing for the sanitary harvesting, handling, transportation, processing, production and sale of shellfish;

(3) To regulate, inspect and approve any vessel or equipment used in the shellfish industry in this State;

(4) To provide for the issuance of licenses or leases to persons engaged in the shellfish industry in this State and for the revocation for

cause of such licenses or leases;

(5) To provide for the preservation and improvement of the shellfish resources of this State, when deemed necessary.

(b) The regulations of the Department shall have the force and effect of law and shall supersede all local ordinances and regulations enacted or adopted which are inconsistent therewith.

(c) For the purpose of enforcing the marine fisheries laws on the waters under the jurisdiction of the State, the Department shall keep and maintain suitable vessels to patrol these waters. The patrol vessel shall be subject to call at all times to enforce the marine fisheries laws of the State. On board the patrol boats shall be kept log books in which shall be recorded the daily activities of all the functions performed on any work day.

(7 Del. C. 1953 § 1907; 51 Del. Laws, c. 151 § 1; 57 Del. Laws, c. 739 §§ 91, 92; 60 Del. Laws, c. 513 § 2; 70 Del. Laws, c. 588 § 1; 79 Del. Laws, c. 178 § 2.)

§ 1903 Filing of regulations.

A copy of the regulations adopted pursuant to this chapter and any amendments thereto shall be filed in the office of the Secretary of State. The regulations of the Department shall be published by the Department in convenient form and distributed to or made available to all persons shellfishing in Delaware who request this information.

(7 Del. C. 1953 § 1907; 51 Del. Laws, c. 151 § 1; 57 Del. Laws, c. 739 §§ 91, 92; 60 Del. Laws, c. 513 § 2.)

§ 1904 Unlawful taking of shellfish.

(a) It shall be unlawful to take any shellfish from any waters or shellfish grounds of this State unless specifically authorized by statute or regulation.

(b) Except on leased shellfish aquaculture sites, it is unlawful to take or attempt to take shellfish, except crabs, conchs (whelks) and clams, for commercial purposes on Sundays, provided however, that clams may not be taken for commercial purposes on any Sunday between and including this State's designated Memorial Day and Labor Day, next ensuing.

(c) It shall be unlawful to take shellfish for commercial purposes between sunset and sunrise, except a commercial crab pot licensee or a commercial conch pot licensee may take blue crabs or conchs, respectively, 1 hour before sunrise.

(60 Del. Laws, c. 513 § 2; 67 Del. Laws, c. 2 § 1; 67 Del. Laws, c. 194 § 4; 68 Del. Laws, c. 412 §§ 1, 2; 69 Del. Laws, c. 284 §§ 2, 3; 79 Del. Laws, c. 178 § 2.)

§ 1905 Leases.

(a) Authorized lease of shellfish grounds. — The Department is hereby authorized to lease, in the name of the State, tracts or parcels of shellfish grounds to be used for protecting, planting and harvesting shellfish beneath the waters of this State, subject to the provisions, limitations and restrictions set forth herein.

(b) Shellfish grounds not leasable. — No lease, other than a scientific lease, shall be granted for any of the following shellfish grounds of this State, nor shall any person acquire by lease, assignment, appropriation or otherwise any of the following shellfish grounds:

(1) Except in the case of shellfish aquaculture in Delaware's Inland Bays, shellfish grounds within 1,000 feet of the natural shoreline (mean high water) of any waters under the jurisdiction of the State;

(2) Natural oyster beds;

(3) Any leasing of shellfish aquaculture grounds in Delaware's Inland Bays shall be governed by a separate chapter.

(c) Scientific use of shellfish grounds. — The Secretary is hereby authorized to issue a permit in the name of the State to educational and/or scientific institutions for tracts or parcels of shellfish grounds to be used for scientific and/or management purposes determined by the Secretary to be in the best interests of shellfisheries management. Such permit shall contain at least the following information and criteria: Seasonal dates, seasonal harvest, size limits and the reason for the issuance of the permit. The cost of processing shall be paid by the applicant.

(7 Del. C. 1953 § 1908; 51 Del. Laws, c. 151 § 1; 57 Del. Laws, c. 640; 57 Del. Laws, c. 739 § 93; 58 Del. Laws, c. 107 § 1; 60 Del. Laws, c. 513 § 2; 79 Del. Laws, c. 178 § 2.)

§ 1906 Size and advertising of shellfish grounds; application for lease.

(a) Except in the case of shellfish aquaculture leases on Delaware's Inland Bays, no new shellfish grounds shall be leased to any person in tracts consisting of less than 50 or more than 100 acres. All new leases will be in a general rectangular shape. The restriction contained in this subsection shall not apply to those leases granted for scientific purposes as described in § 1905(c) of this title.

(b) Except in the case of shellfish aquaculture leases on Delaware's Inland Bays, the Department shall annually advertise the general locations of shellfish grounds which may be leased and are not currently subject to a valid lease. Such advertisements shall be in 1 daily newspaper of statewide distribution and shall be published on 2 separate occasions at least 30 days apart between January 1 and March 1 of each calendar year. Upon specific request, the Department shall furnish a more detailed description of the specific shell-lands available for lease.

(c) Except in the case of shellfish aquaculture leases on Delaware's Inland Bays, any person wishing to lease shellfish grounds in accordance with this section shall make application to the Department prior to March 15 on the form which shall be provided by the Department. Each application must be complete. The Department may require additional and/or supplemental information if deemed

necessary.

(d) Except in the case of shellfish aquaculture leases on Delaware's Inland Bays, in the event that more than 1 application is received for the same grounds, the grounds will be leased on a competitive sealed bid over and above the base fee for the first year.

(60 Del. Laws, c. 513 § 2; 79 Del. Laws, c. 178 § 2.)

§ 1907 Fees for lease.

(a) Except in the case of shellfish aquaculture in Delaware's Inland Bays, the Department shall charge $0.90 per acre annually for shellfish grounds leased pursuant to this chapter to a resident of the State.

(b) Except in the case of shellfish aquaculture in Delaware's Inland Bays, the Department shall charge $11.50 per acre annually for new shellfish grounds leased pursuant to this chapter to nonresidents.

(c) Except in the case of shellfish aquaculture in Delaware's Inland Bays, the Department shall charge $1.75 per acre annually for shellfish grounds to nonresidents who hold valid leases at the time of adoption of this chapter.

(d) Except in the case of shellfish aquaculture in Delaware's Inland Bays, in addition to the above application fee for a shellfish ground lease, there will be an additional charge of $17.25 per corner within 60 days of the approval and acceptance of a lease. The Department will inspect all corners for said leased grounds and where necessary will assist in the relocation of buoys to their correct location. All corners will be located in accordance with the lease as filed with the Department.

(7 Del. C. 1953 § 1908; 51 Del. Laws, c. 151 § 1; 57 Del. Laws, c. 640; 57 Del. Laws, c. 739 § 93; 58 Del. Laws, c. 107 § 1; 60 Del. Laws, c. 513 § 2; 67 Del. Laws, c. 260 § 1; 79 Del. Laws, c. 178 § 2.)

§ 1908 Term of leases.

(a) Except in the case of Delaware's Inland Bays, all shellfish leases shall begin on January 1 and end December 31 of the same year. In no case shall a shellfish lease be transferred or subleased, except to a person eligible according to this chapter.

(b) Upon Department approval, a lease will be drawn up and executed by the Secretary and the applicant. Said lease shall be recorded with the Department and shall grant the exclusive shellfishing rights of those shellfish grounds to the lessee.

(7 Del. C. 1953 § 1908; 51 Del. Laws, c. 151 § 1; 57 Del. Laws, c. 640; 57 Del. Laws, c. 739 § 93; 58 Del. Laws, c. 107 § 1; 60 Del. Laws, c. 513 § 2; 71 Del. Laws, c. 245 § 1; 79 Del. Laws, c. 178 § 2.)

§ 1909 Actions subsequent to granting of lease.

(a) Except in the case of shellfish aquaculture leases on Delaware's Inland Bays, upon approval of the application, the successful applicant will, within 30 days after location of the corners by the Department, mark all corners of the area leased with buoys or stakes approved by the Department. Such buoys or stakes shall, in addition to other requirements of the Department, extend vertically at least 6 feet above mean high water.

(b) Except in the case of shellfish aquaculture leases on Delaware's Inland Bays, any buoys, or stakes removed, destroyed or broken in such a manner that said buoys or stakes are less than 6 feet above mean high water shall be replaced with a positive flotation buoy within 5 days and subsequently a buoy or stake extending 6 feet above mean high water within 30 days.

(7 Del. C. 1953 § 1908; 51 Del. Laws, c. 151 § 1; 57 Del. Laws, c. 640; 57 Del. Laws, c. 739 § 93; 58 Del. Laws, c. 107 § 1; 60 Del. Laws, c. 513 § 2; 79 Del. Laws, c. 178 § 2.)

§ 1910 Monthly report; failure to submit.

Except in the case of shellfish aquaculture in Delaware's Inland Bays, any person issued a commercial shellfishing license or permit by the Department shall file monthly reports of his or her catch by area, effort, species, and weight or number on forms provided by the Department. A commercial shellfishing license or permit holder who does not file said monthly report by 4:30 p.m. of the last working day of the month following the month for which the report is due shall be guilty of a class D environmental violation.

(7 Del. C. 1953 § 1908; 51 Del. Laws, c. 151 § 1; 57 Del. Laws, c. 640; 57 Del. Laws, c. 739 § 93; 58 Del. Laws, c. 107 § 1; 60 Del. Laws, c. 513 § 2; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 436 §§ 1-3; 79 Del. Laws, c. 178 § 2; 79 Del. Laws, c. 421 § 8.)

§ 1911 Removal of shellfish; presumptions.

(a) It shall be unlawful for any person to take, carry away or remove shellfish or equipment from shellfish grounds leased, pursuant to this chapter, to a person other than himself or herself. If convicted, said person shall be guilty of grand or petty larceny according to the value of shellfish or equipment in question.

(b) For the purpose of determining the value of shellfish unlawfully removed, all shellfish found on board a vessel utilized in the removal of shellfish from grounds leased to another shall be presumed to have been unlawfully removed from those leased grounds.

(c) Any vessel on or over grounds leased to another shall be presumed to be removing shellfish from those grounds if that vessel has overboard at that time any device used for the taking of shellfish.

(60 Del. Laws, c. 513 § 2; 70 Del. Laws, c. 186 § 1.)

§ 1912 Definitions.

(a) Any person who violates any of the provisions of Chapters 19, 21, 23, 24, 25 and 28 of this title, except §§ 1910, 1911, 2306, 2506, 2509 of this title, or any rules or regulations adopted pursuant thereto except those adopted under the auspices of Chapter 20 of this title,

shall be guilty of a class D environmental violation. Justice of the Peace Courts shall have jurisdiction over all offenses under this section.

(b) Any person convicted of violating any of the provisions of Chapters 19, 21, 23, 24, 25, 26 and 28 of this title, or any rules or regulations adopted pursuant thereto, may have, upon the recommendation to the Secretary by the majority of the Council on Shellfisheries and/or at the discretion of the Secretary, any licenses or permits issued to the person revoked for a term to be determined by the Department.

(60 Del. Laws, c. 513 § 2; 69 Del. Laws, c. 284 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 73 §§ 1, 2; 73 Del. Laws, c. 132 § 2; 79 Del. Laws, c. 178 § 2; 79 Del. Laws, c. 421 § 8.)

§ 1913 Inspection and seizure.

(a) Any employee, authorized by the Department, at a reasonable time may board any boat, inspect equipment, materials or shellfish, or lands associated with or used in the taking or cultivation of shellfish.

(b) The Department may seize any shellfish or equipment as evidence which is believed to be in violation of or is being used by a violator of Chapters 19 through 28 of this title or the regulations promulgated pursuant thereto. Seized equipment, at the discretion of the Department, may be released upon the posting of a bond, the value of which shall be determined by the magistrate.

(60 Del. Laws, c. 513 § 2; 69 Del. Laws, c. 284 § 1.)

§ 1914 Disposition of evidence.

In the event that any shellfish are seized as evidence as a result of an investigation or an arrest for any violation of the statutes or regulations governing shellfish in the State, said shellfish shall be disposed of as deemed appropriate by the Department.

(60 Del. Laws, c. 513 § 2.)

§ 1915 Licensees with disabilities.

In the event a person with a commercial shellfishing license is disabled and unable to perform the physical requirements necessary to harvest, transport and/or market shellfish for which he or she is licensed to harvest, said person may be issued a written permit by the Department authorizing a member of said person's immediate family, as defined in § 1918(c) of this title to assist said person or perform in place of said person the harvesting, transporting and marketing of the shellfish for a period or periods not exceeding a total of 24 months. The duration and nature of the disability shall be specified in writing by a medical physician licensed to practice in the State. The 24 months may be continuous or fragmented. For purposes of this section, the term "disabled" shall mean a person, certified in writing by a licensed medical physician in Delaware, to be temporarily unable to perform the substantial and material duties associated with the harvesting, transporting or marketing of the shellfish in question based upon medical evidence.

(73 Del. Laws, c. 28 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1916 Expiration of licenses and permits.

All licenses and permits issued pursuant to Chapters 21 through 28 of this title shall automatically expire on December 31 of each calendar year.

(7 Del. C. 1953 § 1906; 51 Del. Laws, c. 151 § 1; 57 Del. Laws, c. 739 § 89; 60 Del. Laws, c. 513 § 2; 69 Del. Laws, c. 284 § 1; 71 Del. Laws, c. 245 § 3.)

§ 1917 Reciprocity for commercial nonresident licenses.

(a) This section applies to this title.

(b) When by or pursuant to the laws of any other state, should any other state impose any tax, other fee or restrictions on nonresidents for the privilege of commercial shellfishing or leasing of shellfish grounds within its boundaries, which tax or other fee is in the aggregate greater or restriction is greater, to include but limited to the nonavailability of license or leasing for nonresidents, the same taxes, other fees, license requirements and restrictions shall be imposed by the Division of Fish and Wildlife of the Department of Natural Resources and Environmental Control upon the residents of the state who seek to apply for a license to commercially shellfish or lease shellfish grounds within the boundaries of this State.

(60 Del. Laws, c. 513 § 2.)

§ 1918 Limited entry and transfer of commercial crabbing licenses.

(a) Notwithstanding the provisions of § 2303 of this title, the Department shall not issue any commercial crab pot license to any new licensee after March 13, 1990, and shall not issue crab pot licenses to any new licensee until the number of commercial crab pot licenses drops to 82 or below as of October 31 of any year. At that time, a lottery will be held by the Department to allow the number of commercial crab pot licenses to increase to 100.

(b) Notwithstanding the provisions of § 2307 of this title, the Department shall not issue any crab dredgers licenses to any new licensee after March 13, 1990, and shall not issue crab dredgers licenses to any new licensee until the number of crab dredgers licenses drops to 18 or below as of March 31 of any year. At that time, a lottery will be held by the Department to allow the number of crab dredgers licenses to increase to 21.

(c) A commercial crab pot licensee or crab dredgers licensee may transfer a license at any time, including posthumously, to a member of the immediate family. A member of the immediate family shall mean a parent, child, sibling or spouse. A commercial crab pot licensee also

may transfer a license, including posthumously, to a designee provided the designee has been listed as same on the license for at least 2 consecutive years. The transfer of the appropriate license shall be in writing.

(d) Notwithstanding subsection (c) of this section, no license shall be transferred to any person under 16 years of age.

(e) An active commercial fisher with a commercial crab dredger's license may transfer his or her license to a commercial fishing apprentice who has completed no less than 150 days of commercial fishing activities over no less than a 1-year period.

(67 Del. Laws, c. 194 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 216 §§ 1, 2; 73 Del. Laws, c. 29 § 5; 78 Del. Laws, c. 42 §§ 1-3; 80 Del. Laws, c. 348 § 2.)

§ 1919 Prohibition against the selling of both licenses and the privilege of being designated a designee; penalties.

(Repealed by 73 Del. Laws, c. 29 § 6, effective May 3, 2001.)

§ 1920 Apprenticeships.

An individual at least 15 years of age may enter into an agreement with an active commercial fisher licensed by the Department to serve as a commercial fishing apprentice to said commercial fisher. This agreement shall be in writing on a form provided by the Department and filed with the Department. In the event an agreement is cancelled by either party, the Department shall credit an apprentice with time served and said time shall be retained if the apprentice signs an agreement with another active commercial fisher. An apprentice shall not enter into an agreement with more than 1 active commercial fisher at any 1 time and an active commercial fisher shall not enter into an agreement with more than 1 apprentice at any 1 time. An apprentice must compete no less than 150 days of commercial fishing activities over no less than a 1-year period to be eligible for the transfer or enter lotteries for certain commercial fishing licenses. Eight hours of commercial fishing activities shall equal 1 day. Commercial fishing activities shall include fishing, operating a vessel, maintaining fishing equipment or a vessel, handling and transporting fish for sale, or other activities directly associated with a commercial fishery. Fishing activities shall be documented on a daily log form provided by the Department. Said logs shall be signed by the apprentice and the commercial fisher listed on the agreement and witnessed by another commercial fisher licensed by the Department. Log sheets shall be submitted to the Department on a monthly basis on or before the tenth day of the following month. An apprentice who completes no less than 150 days of commercial fishing activities over no less than a 1-year period shall be eligible for the following:

(1) Commercial crab dredgers license transferred by another active commercial crab dredger;

(2) Commercial conch pot license transferred by another active commercial conch potter;

(3) Commercial conch dredge license transferred by another active commercial conch dredger;

(4) Commercial crab pot license transferred by another active commercial crab potter;

(5) Oyster harvesting license transferred from another active oyster harvester;

(6) Commercial clam tong/rake license transferred from another active commercial clam tong/raker;

(7) Commercial dredge clam license transferred from another active commercial clam dredger;

(8) Commercial lobster pot license transferred from another active commercial lobster potter;

(9) Commercial surf clam license transferred from another active commercial surf clammer;

(10) Commercial horseshoe crab collecting permit transferred from another active horseshoe crab collector;

(11) Participation in lotteries conducted by the Department for commercial crab dredgers licenses, commercial conch pot licenses and commercial conch dredge licenses; and

(12) Commercial food fishing equipment permits for gill nets and authority to commercially fish with hook and line according to the provisions of § 915(n) of this title.

If, during the previous calendar year, fewer commercial crab dredgers licenses are issued than in 1999, the Department shall conduct a lottery for the number of said licenses different from the number issued in 1999 and the previous year. In 1999, the Department issued 52 commercial conch pot licenses. If during the previous calendar year, fewer commercial conch dredge licenses are issued than in 1999, the Department shall conduct a lottery for the number of said licenses different from the number issued in 1999 and the previous year. In 1999, the Department issued 15 conch dredge licenses.

(73 Del. Laws, c. 29 § 7; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 49 § 1; 79 Del. Laws, c. 178 § 2; 80 Del. Laws, c. 348 § 2.)

Part II
Shellfish
Chapter 20
GENERAL PROVISIONS

§ 2001 Definitions.

The following definitions shall apply to Chapters 19 through 28 inclusive of this title:

(1) "Bivalve shellfish" means any species of shellfish having 2 shells connected by a hinge.

(2) "Certified dealer" shall mean anyone who is certified by the Department as being qualified to sell shellfish products.

(3) "Delaware corporation" shall mean a corporation or other legal entity whose ownership or Board of Directors is comprised of 50% or more Delaware residents. If fewer than 50% of the ownership or Board of Directors of a corporation is comprised of Delaware residents, then the corporation shall be considered a nonresident corporation.

(4) "Delaware partnership" shall mean a partnership comprised of at least 50% Delaware residents. If fewer than 50% of a partnership is comprised of Delaware residents, then the partnership shall be considered a nonresident partnership.

(5) "Delaware's Inland Bays" shall mean Rehoboth Bay, Indian River and Indian River Bay, Little Assawoman Bay, and Big Assawoman Bay and their respective tidal tributaries.

(6) "Department" means Department of Natural Resources and Environmental Control.

(7) "Handle shellfish" shall mean to take ownership either temporarily or permanently of a shellfish aquaculture product.

(8) "Off-bottom rearing cages and enclosures" mean any cage or artificial enclosure that retains for rearing purposes any stage of the life cycle of bivalve shellfish where such cage or enclosure is staked on or suspended above the bottom of the bay or tributary to the bay.

(9) "Secretary" means the Secretary of the Department of Natural Resources and Environmental Control or a duly authorized designee provided any such delegation of authority is consistent with Chapter 80 of Title 29.

(10) "Seed-on-cultch" shall mean bivalve shellfish seed attached to shell material.

(11) "Seed stock" shall mean immature or sub-legal stages of shellfish available for culturing or planting purposes.

(12) "Shellfish aquaculture" means the culture or rearing of any life stage of bivalve shellfish for commercial purposes within a leased area. Within the leased area, said shellfish may be reared in an artificial enclosure, or on any other type of structure or substrate, either on land or water.

(13) "Shellfish grounds" for the purposes of this chapter means the submerged lands of Delaware's Inland Bays and their tributaries capable of sustaining shellfish under the jurisdiction of the State.

(79 Del. Laws, c. 178 § 3.)

§ 2002 Duties of Department; powers; making and enforcing regulations.

(a) The Department is authorized to adopt, promulgate, amend and repeal regulations consistent with Titles 7 and 29 which shall be enforced by the Department for the following purposes:

(1) To issue and administer leases, licenses, and permits to engage in shellfish aquaculture and to amend or revoke said leases, licenses or permits for due cause;

(2) To identify areas where shellfish aquaculture leases may be established that are compatible with commercial and recreational finfishing and shellfishing, boating navigation and safety, public water access and use, and native biota. In no cases shall the sum total of areas identified for shellfish aquaculture leasing in Rehoboth Bay and Indian River Bay exceed 5% of their respective total subaqueous lands in each bay at mean high water and no more than 10% of the total subaqueous lands of Little Assawoman Bay at mean high water.

(3) To add acreage for shellfish aquaculture from areas not identified by the Department as long as all state and federal criteria for leasing are met and the percentage of subaqueous bottom available for leasing in each inland bay as detailed in paragraph (a)(2) of this section is not exceeded.

(4) To inspect and approve vessels and equipment intended to be used in Inland Bays waterways in support of the shellfish aquaculture industry;

(5) To attempt to prevent and control the spread of shellfish-borne diseases among both shellfish aquaculture products as well as wild shellfish and to provide for the sanitary harvesting, handling, transportation, processing, production and sale of shellfish aquaculture products and wild shellfish;

(6) To inspect and approve the importation of any live or dead shellfish and/or seed-on-cultch material to be used for shellfish aquaculture purposes conducted in or on waters of Delaware's Inland Bays or having a discharge into waters of Delaware's Inland Bays;

(7) To provide for the conservation, preservation and improvement of the wild shellfish resources of the Inland Bays or their tributaries when deemed necessary;

(8) To set criteria for the approval or denial of shellfish aquaculture leases in Delaware's Inland Bays;

(9) To establish criteria for the approval or denial of any requests to conduct shellfish aquaculture outside of identified shellfish

aquaculture lease sites;

(10) To establish criteria for what constitutes active use of shellfish aquaculture lease sites and the criteria that define the abandonment of a shellfish aquaculture lease site, and for the release of the abandoned acreage into the inventory of available shellfish aquaculture lease sites;

(11) To establish marking requirements for shellfish aquaculture lease sites and any equipment moored on, suspended above, or placed on subaqueous lands leased for shellfish aquaculture purposes;

(12) To establish eligibility requirements for lease applicants and reporting requirements for shellfish planted and/or harvested from shellfish aquaculture lease sites;

(13) To approve the species of shellfish that may be used for aquaculture purposes in Delaware's Inland Bays;

(14) To establish the eligibility of shellfish seed stock proposed for planting on shellfish aquaculture leases, including consideration of the use of disease-free stock and the genetic make-up of the stock;

(15) To establish what types of mechanical gear may be used to harvest shellfish from identified shellfish aquaculture lease sites;

(16) To establish seasonal restrictions on when leased shellfish aquaculture sites may be actively worked;

(17) To approve methodologies to determine wild shellfish densities that will allow for prospective aquaculture lease sites.

(b) The regulations of the Department shall have the force and effect of law and shall supersede all local ordinances and regulations enacted or adopted which are inconsistent therewith.

(79 Del. Laws, c. 178 § 3.)

§ 2003 Filing of regulations.

A copy of the regulations adopted pursuant to this chapter and any amendments thereto shall be filed in the office of the Registrar of Regulations. The regulations of the Department shall be published by the Department in convenient form and distributed to or made available to all persons who request this information.

(79 Del. Laws, c. 178 § 3.)

§ 2004 Unlawful taking of shellfish on areas leased for aquaculture purposes.

(a) It shall be unlawful for anyone to take any bivalve shellfish from any shellfish aquaculture grounds leased to another unless specifically authorized in writing by the holder of said lease.

(b) It shall be unlawful to harvest or remove bivalve shellfish from aquaculture lease sites including off-bottom cages and enclosures between sunset and sunrise.

(c) It shall be unlawful to have both wild-caught bivalve shellfish and shellfish aquaculture products on the same vessel or to place wild-caught bivalve shellfish and shellfish aquaculture products in the same container prior to transfer to a licensed buyer or shellfish dealer.

(79 Del. Laws, c. 178 § 3.)

§ 2005 Leases.

(a) Authorized lease of shellfish grounds. — The Department is hereby authorized to lease, in the name of the State, tracts or parcels of shellfish grounds in Delaware's Inland Bays to be used for shellfish aquaculture beneath the waters of this State, subject to the provisions, limitations and restrictions set forth herein.

(b) Scientific use of shellfish grounds. — The Secretary is hereby authorized to issue a lease in the name of the State to educational and/or scientific institutions or their designees for tracts or parcels of shellfish grounds to be used for scientific and/or educational purposes determined by the Secretary to be in the best interests of the shellfisheries aquaculture industry. Such a permit shall contain at least the following information and criteria: geographic location of the lease, species of shellfish being reared on the leased grounds, and the reason for the issuance of the lease. At no time may the aquaculture products produced on shellfish grounds leased for scientific purposes be sold or traded or offered for sale or trade. Importation of any shellfish or shellfish parts from areas outside of Delaware's Inland Bays must be approved in advance by the Department according to regulations filed by the Department. The cost of processing this application shall be paid by the applicant. Anyone deploying and leaving in place any equipment for scientific use of shellfish grounds in the Inland Bays shall conform to all applicable Department equipment marking requirements and shall be responsible for the removal of this equipment upon the termination of the scientific investigation.

(79 Del. Laws, c. 178 § 3.)

§ 2006 Size and advertising of shellfish grounds; application for lease.

(a) No shellfish grounds shall be leased to any person or persons, partnerships or corporations in tracts consisting of less than 1 acre or more than 5 acres in Rehoboth and Indian River Bays combined. All leases shall be granted in minimum increments of 1 acre. An applicant may lease 1-5 acres in Little Assawoman Bay in addition to any acreage leased by the applicant in Rehoboth and Indian River Bay. All leases will be in a general rectangular shape. The initial offering of sites available for leasing shall be by public lottery conducted by the Department. Included in the lottery shall be all eligible applicants who indicate in writing before the published deadline their desire to participate in the lottery. Opportunity to participate in the lottery shall be duly noticed by the Department in a press release and publication of a legal notice in 2 newspapers of state-wide distribution at least 30 days prior to the lottery. The first participant selected in the lottery shall have first choice among available lease sites. The second participant selected shall have second choice. The third participant shall have

third choice and so on until all available acreage for leasing has been assigned, or there are no more applicants remaining in the lottery. Subsequent to the initial lottery, potential lease sites shall be available for leasing on a first-come, first-serve basis.

(b) After 3 years from the date of issuance of the first lease, the Department shall decide by regulation if the size of leases issued to any 1 applicant may be increased beyond 5 acres. Those already holding leases shall have first right of refusal concerning adding to their acreage beyond 5 acres up to the maximum acreage allowed to any 1 applicant. The restriction contained in this subsection shall not apply to those leases granted for scientific purposes as described in § 2005(b) of this title.

(c) The Department shall annually make available to anyone requesting it the general locations of identified shellfish grounds which are available to be leased and are not currently subject to a valid lease. Upon specific request, the Department shall furnish a more detailed description of the remaining specific shellfish aquaculture subaqueous lands identified for lease.

(d) Any person wishing to lease shellfish grounds in accordance with this section shall make application to the Department on a form which shall be provided by the Department. Each application must be complete. The Department may require additional and/or supplemental information if deemed necessary.

(e) The Department shall have the final authority to approve a proposed lease in an area not identified for shellfish aquaculture by the Department, taking into consideration comments received at any public hearings relative to the proposed lease.

(f) In the event that more than 1 application is received for the same lease grounds, the grounds will be leased on a first-come, first-serve basis.

(79 Del. Laws, c. 178 § 3.)

§ 2007 Fees for lease.

(a) The Department shall charge a 1-time fee of $300 for each shellfish aquaculture lease application received or each request for the transfer of an existing shellfish aquaculture lease. This fee is nonrefundable even if the application is eventually rejected or withdrawn.

(b) The Department shall charge a Delaware resident or Delaware resident partnership or Delaware resident corporation an annual fee of $100/acre for administration of a shellfish aquaculture lease.

(c) The Department shall charge a nonresident of this State or a nonresident partnership or nonresident corporation $1,000/acre annually for administration of a shellfish aquaculture lease.

(d) All revenue generated by the fees in this section shall be deposited in an appropriated special fund account that shall be used to partially offset the expenses of the Department activities pursuant to this chapter.

(79 Del. Laws, c. 178 § 3.)

§ 2008 Term of leases.

(a) Shellfish aquaculture leases shall be renewable annually for a term of 15 years from the date of issue. In the event that the original lessee does not pay their annual leased acreage fee by December 31 of each year, then these formerly leased grounds will become part of the inventory of potential lease sites on a first-come, first-served basis. Lease holders may designate any portion of their lease acreage in minimum 1-acre increments to be released to the inventory of available lease acreage at any time during the calendar year. There shall be no refund of lease fees for any acreage so released.

(b) At the end of 15 years from issuance of a lease, the original lessee shall have first right to renew the lease for another 15-year period. In the event that the original lessee or their designee fails to renew their lease for 1 or more acres of their original lease acreage, then after 60 days following the expiration date of the lease on the acreage in question, the acreage not renewed shall revert to the inventory of available lease sites. Any equipment on lease acreage that is not renewed must be removed by the original lease holder within 30 days after the termination of the lease, or it will be considered by the Department as abandoned.

(c) It shall be lawful for any lease holder to transfer his or her lease to another eligible applicant at any time within 30 days after written notification is received and approved by the Department, provided such notification is signed and notarized by both the parties making and receiving the transfer. Any stipulations or restrictions placed by the Department on the lease site in question shall be binding for any subsequent holders of a lease for this particular lease site.

(79 Del. Laws, c. 178 § 3; 70 Del. Laws, c. 186 § 1.)

§ 2009 Harvester licenses.

(a) For an annual fee of $25 the Department shall issue and administer shellfish aquaculture harvester licenses to any qualifying individual desiring to work on leased shellfish aquaculture sites who is not the lease holder of the shellfish aquaculture sites. The Department shall establish by regulation the qualifications for obtaining a shellfish aquaculture harvesting license.

(b) It shall be unlawful for any individual(s) working on a shellfish aquaculture lease site to not have at all times at least 1 person who is the holder of the lease for the site in question or 1 person having in his or her possession a valid shellfish aquaculture harvest license.

(c) It shall be unlawful for any licensed shellfish harvester to work on any shellfish aquaculture lease site without first obtaining the written permission of the lease holder for the site in question. Such written permission from the lease holder shall be in the possession of the shellfish aquaculture harvester licensee at all times while working on the lease site in question.

(79 Del. Laws, c. 178 § 3; 70 Del. Laws, c. 186 § 1.)

§ 2010 Reports; failure to submit.

(a) Shellfish aquaculture lessees shall file reports on the number of shellfish planted on any leased areas in a manner and frequency as specified by Department regulation, but shall include as a minimum the number of bivalve shellfish planted and number subsequently harvested annually.

(b) Any lease holder who fails to submit timely reports shall be charged with a class D misdemeanor for a first offense and fined $25-$100. Anyone convicted of a second offense within 2 years of the first offense for failure to report in a timely fashion shall be charged with a class B misdemeanor and fined $250-$1,000. Anyone convicted of a third offense for failure to report within 2 years of a second offense for failure to report will be subject to having his or her lease revoked by the Department.

(79 Del. Laws, c. 178 § 3; 70 Del. Laws, c. 186 § 1.)

§ 2011 Unlawful removal of shellfish or tampering with shellfish aquaculture equipment; presumptions, illegal harvesting gear.

(a) It shall be unlawful for any person to intentionally tamper with, damage, take, carry away or remove shellfish or shellfish equipment from shellfish grounds leased, pursuant to this chapter, to a person other than himself or herself. If convicted, this person shall be guilty of grand or petty larceny according to the value of shellfish or equipment in question. In the case of shellfish grounds leased by a corporation, it shall be unlawful for any individual to remove shellfish from leased shellfish grounds unless the individual is a bona fide employee of or member of the corporation or is acting on behalf of the corporation that holds the lease to the shellfish grounds in question.

(b) Anyone convicted of damaging or removing equipment lawfully placed for shellfish aquaculture on a leased site may, at the discretion of the appropriate court, be required to make restitution to the lease holder in the amount of the replacement value for the equipment so damaged or removed.

(c) For the purpose of determining the value of shellfish unlawfully removed, all shellfish found on board a vessel utilized in the removal of shellfish from grounds leased to another shall be presumed to have been unlawfully removed from those leased grounds.

(d) Any vessel or person on or over grounds leased to another shall be presumed to be removing shellfish from those grounds if that vessel or person has overboard or in his or her possession at that time any device used for the taking of shellfish, subject to the discretion of the investigating Department officer.

(e) It shall be unlawful to sell or transfer aquaculture products to a final customer or consumer that has not been handled by a certified shellfish dealer/processor.

(79 Del. Laws, c. 178 § 3; 70 Del. Laws, c. 186 § 1.)

§ 2012 Penalties.

(a) Any person convicted of violating any of the provisions of this chapter or regulations promulgated pursuant thereto shall have committed a class B misdemeanor subject to a fine of from $250 to $1,000 for the first offense and $1,000 for each offense thereafter.

(b) Any person convicted of a second offense for violating any of the provisions of this chapter, or any rules or regulations adopted pursuant thereto, may have, at the discretion of the Secretary, any licenses or leases issued to the person(s), partnership or corporation revoked for a term to be determined by the Department.

(c) All revenue generated by the fines in this section shall be deposited in an appropriated special fund account that shall be used to partially offset the expenses of the Department activities pursuant to this chapter.

(79 Del. Laws, c. 178 § 3.)

§ 2013 Inspection and seizure.

(a) Any employee, authorized by the Department, may board any boat, and inspect equipment, materials or shellfish, or leased subaqueous lands associated with or used in the taking or culture of shellfish for aquaculture purposes.

(b) The Department may seize any shellfish or equipment as evidence which is believed to be in violation of or is being used by a violator of Chapters 19 through 28 of this title or the regulations promulgated pursuant thereto. Seized equipment, at the discretion of the Department, may be released upon the posting of a bond, the value of which shall be determined by the court having jurisdiction over the case.

(c) In the event that any bivalve shellfish are seized as evidence as a result of an investigation or arrest for any violation of the statutes in this chapter or Department regulations governing shellfish aquaculture, these shellfish shall be destroyed and disposed of as deemed appropriate by the Department. The lessee in consultation with the court of record shall determine the fair market value of the shellfish that were seized.

(d) In addition to being subject to the penalties of § 2012 of this title, anyone convicted of illegally removing bivalve shellfish products from a leased aquaculture site shall be assessed the fair market value of the shellfish so seized.

(e) Undamaged equipment that is seized by the Department shall be made available to the rightful owner as expeditiously as possible, provided the rightful owner can be identified with a reasonable amount of effort. If the rightful owner cannot be readily located or does not claim his or her equipment within 30 days of removal or the final disposition the case, this equipment shall be considered abandoned and will be disposed of by Department procedures.

(f) Any shellfish aquaculture equipment that the Department determines is abandoned as defined by Department regulation, which is not claimed by its owner within 30 days after its removal or disposition of the case by the court having jurisdiction, shall be disposed of according to Department procedures for the disposition of abandoned equipment and the funds from the public sale of abandoned

equipment shall be deposited into an appropriated special fund account that the Department maintains to partially offset the Department's costs associated with administering this chapter.

(79 Del. Laws, c. 178 § 3; 70 Del. Laws, c. 186 § 1.)

§ 2014 Expiration of licenses and permits.

All shellfish harvester licenses for a given year shall expire on December 31 each year.

(79 Del. Laws, c. 178 § 3.)

§ 2015 Reciprocity for nonresident leases and licenses.

When by or pursuant to the laws of any other state, should any other state impose any tax, other fee or restrictions on nonresidents for the privilege of commercial shellfish aquaculture or leasing of shellfish aquaculture grounds within its boundaries, which tax or other fee is in the aggregate greater or restriction is greater, to include but limited to the nonavailability of license or leasing for nonresidents, the same taxes, other fees, license requirements and restrictions shall be imposed by the Department upon the residents of the state who seek to apply for a license to lease shellfish aquaculture grounds within the boundaries of the Inland Bays of this State.

(79 Del. Laws, c. 178 § 3.)

Part II
Shellfish
Chapter 21
OYSTERS

§ 2101 Oyster harvesting license.

Except in the case of shellfish aquaculture leases on Delaware's Inland Bays pursuant to Chapter 20 of this title, it shall be unlawful for a person to harvest oysters from the natural oyster beds or from leased shellfish grounds in the State unless said person has been issued an oyster harvesting license by the Department.

(1) An oyster harvesting license shall be valid only on the vessel listed on said license by the Department. The Department shall not simultaneously list a vessel on more than 3 oyster harvesting licenses.

(2) The Department may list no more than 1 person as an apprentice on an oyster harvesting license.

(3) The fee for an oyster harvesting license shall be $57.50 for residents of this State.

(4) The fee for an oyster harvesting license shall be $575 for nonresidents of this State.

(5) The Department shall not issue any oyster harvesting licenses to any new licensee after June 30, 2011.

(6) An oyster harvesting license shall automatically expire on December 31 of each calendar year. If a person does not renew a license within 1 year of expiration of any oyster harvesting license such person forfeits any right to such license.

(7) An oyster harvesting licensee may transfer a license at any time, including posthumously, to a member of the immediate family. A member of the immediate family shall mean a parent, child, sibling or spouse. The transfer of the license shall be in writing.

(60 Del. Laws, c. 513 § 2; 71 Del. Laws, c. 245 §§ 4, 5; 73 Del. Laws, c. 132 § 1; 78 Del. Laws, c. 55 § 1; 79 Del. Laws, c. 178 § 4.)

§ 2102 Natural oyster beds.

(a) It shall be unlawful for a person to harvest oysters from the natural oyster beds at any time except as specifically authorized by the Department.

(b) The Department shall determine on an annual basis the amount of oysters available for harvest from specific natural oyster beds by analyzing the best available scientific data on said oysters.

(60 Del. Laws, c. 513 § 2; 73 Del. Laws, c. 132 § 1.)

§ 2103 Eligibility to harvest oyster for direct sale.

(a) It shall be unlawful for a person to harvest oysters from the natural oyster beds for direct sale unless said person meets 1 of the following criteria:

(1) Held at least 2 specific commercial shellfish licenses on September 30, 1999;

(2) Held an oyster harvesting license to harvest oysters from natural oyster beds in Delaware prior to September 30, 1999;

(3) Held a public oyster tonger's license to take oysters from public tonging areas in Delaware prior to September 30, 1999;

(4) Held an oyster harvesting license and was eligible to harvest oysters for direct sale pursuant to this section prior to June 30, 2011;

(5) An oyster harvesting license has been transferred to such person pursuant to § 2101(7) of this title and the prior holder of such license was eligible to harvest oysters for direct sale pursuant to this section; or

(6) An oyster harvesting license was transferred to such person pursuant to § 1920 of this title and the prior holder of such license was eligible to harvest oysters for direct sale pursuant to this section.

(b) "Direct sale" shall mean to immediately sell or attempt to sell oysters harvested from the State's natural oyster beds to another person.

(c) It shall be unlawful for a person to harvest oysters from the natural oyster beds for subsequent use other than direct sale.

(73 Del. Laws, c. 132 § 1; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 55 §§ 2, 3.)

§ 2104 Oyster harvesting methods.

(a) It shall be unlawful for a person to use any hydraulic dredge or mechanical device employing a vacuum or suction for the harvesting of oysters from any natural oyster bed without the prior written permission of the Department.

(b) It shall be unlawful for a person to harvest oysters from the State's natural oyster beds without immediately culling said live oysters from all shell and other materials and returning said shell and other materials to the State's natural oyster beds. Oysters shall be culled as aforesaid so that 2 bushels of oysters shall not contain more than 5 percent shells and other materials.

(7 Del. C. 1953 §§ 2105, 2111; 51 Del. Laws, c. 151 § 1; 58 Del. Laws, c. 107 § 2; 60 Del. Laws, c. 513 § 2; 73 Del. Laws, c. 132 § 1.)

§ 2105 Oyster harvest fees and tags.

Except where otherwise noted, nothing in this section shall apply to oyster aquaculture products harvested from leased sites on Delaware's Inland Bays:

(1) An annual oyster harvest fee of $1.25 per bushel of oysters harvested from the State's natural oyster beds shall be prepaid to the Department by a resident of this State on or before specific dates established by the Department.

(2) An annual oyster harvest fee of $12.50 per bushel of oysters harvested from the State's natural oyster beds shall be prepaid to the Department by nonresidents of the state area before specific date or dates established by the Department.

(3) A person's total oyster harvest fees shall be determined by dividing the number of bushels of oysters authorized to be harvested in a given year by the number of eligible persons who sign up to participate in the oyster harvest during said year multiplied by the appropriate oyster harvest fee.

(4) The Department shall issue tags to those persons who prepay their annual oyster harvest fees at the rate of 1 tag per bushel or 1 tag per 30-bushel cage.

(5) The Department shall notify each person who has been issued an oyster harvesting license of the amount of oysters available for harvest during a given year.

(6) Oyster harvesting tags, once issued to a person by the Department, shall not be reimbursable or transferable.

(7) It shall be unlawful for a person who harvests oysters from the natural oyster beds of this State for direct sale to not place said oysters in a bushel bag or 30-bushel cage prior to landing said oysters. "Landing" shall mean to bring to shore.

(8) It shall be unlawful for a person who harvests oysters from the natural oyster beds of this State for direct sale to not attach an oyster harvesting tag in the locked position to a bushel bag or 30-bushel cage containing oysters prior to landing said oysters.

(9) It shall be unlawful for a person to attach an oyster harvesting tag which had been previously attached to a bushel bag or a 30-bushel cage to another bushel bag or 30-bushel cage.

(10) It shall be unlawful for any person to have any bushel bag or 30-bushel cage that is empty or partially filled with oysters on board a vessel that has an oyster harvesting tag attached.

(11) It shall be lawful for anyone with a valid oyster harvesting license to transfer oyster harvesting tags to another licensed oyster harvester authorized to participate in the oyster harvesting season, provided said transfer is made prior to said tags being issued by the Department. All transfers shall be in writing on forms supplied by the Department.

(7 Del. C. 1953 § 2111; 58 Del. Laws, c. 107 § 2; 60 Del. Laws, c. 513 § 2; 73 Del. Laws, c. 132 § 1; 78 Del. Laws, c. 41 § 1; 79 Del. Laws, c. 178 § 4.)

§ 2106 Authority.

(a) The Department is authorized to adopt shellfish regulations to establish the dates for annual open seasons to harvest oysters from the State's natural oyster beds.

(b) The Department is authorized to adopt shellfish regulations to establish the areas where oysters that are harvested from the State's natural oyster beds for direct sale shall be landed.

(c) The Department is authorized to adopt shellfish regulations to govern the type and amount of gear or equipment that may be used to harvest oysters from the State's natural oyster beds.

(d) The Department is authorized to adopt shellfish regulations to establish a minimum size of oysters for harvest.

(e) The Department is authorized to adopt shellfish regulations to establish an annual oyster harvest quota.

(73 Del. Laws, c. 132 § 1; 70 Del. Laws, c. 186 § 1.)

§ 2107 Oyster Recovery Fund.

(a) There is hereby established an Oyster Recovery Fund which shall be funded from the following sources:

(1) Fee received by the Department for oyster harvesting licenses;

(2) Revenue received by the Department for oyster harvest fees; and

(3) Fees received for leasing shellfish grounds in Delaware Bay.

(b) Oyster Recovery Funds shall be used by the Department for the following:

(1) To purchase shells to be placed on natural oyster beds;

(2) To purchase oysters to be placed on natural oyster beds;

(3) To conduct research on oysters; and

(4) To transfer oysters from one natural bed to another.

(73 Del. Laws, c. 132 § 1; 70 Del. Laws, c. 186 § 1.)

§ 2108 Importation of oysters prohibited.

It shall be unlawful for a person to bring oysters from outside the State to be placed in the waters of the State without the prior written permission of the Department.

(73 Del. Laws, c. 132 § 1; 70 Del. Laws, c. 186 § 1.)

§ 2109 Oyster harvesting from private leased beds.

(a) Except in the case of shellfish aquaculture leases on Delaware's Inland Bays, it shall be unlawful for any person to harvest oysters from leased shellfish grounds unless said person notifies the Department of said harvest at least 48 hours prior to harvesting oysters from leased shellfish grounds.

(b) It shall be unlawful for any person to harvest oysters from natural oyster beds on any date said person notified the Department when he or she would be harvesting oysters from leased shellfish grounds.

(73 Del. Laws, c. 132 § 1; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 178 § 4.)

Part II
Shellfish
Chapter 23
BLUE CRABS (CALLINECTES SAPIDUS)

§ 2301 Minimum size.

It shall be unlawful for any person to take from any waters within the jurisdiction of the State or have in his or her possession at any time any hard-shell blue crab measuring less than 5 inches from tip to tip, nor any soft-shell blue crab measuring less than 3 1/2 inches from tip to tip, nor any peeler blue crab measuring less than 3 inches from tip to tip. The minimum size of hard-shell blue crabs shall not apply to mature female blue crabs that are identified by having a rounded or u-shaped apron. The apron is the abdomen which is the rear portion of the blue crab that is folded underneath the body. Any commercial measure of blue crabs shall not contain more than 5% crabs that are less than the respective minimum size.

(7 Del. C. 1953 §§ 2303, 2304; 51 Del. Laws, c. 151 § 1; 57 Del. Laws, c. 587 §§ 1, 2; 60 Del. Laws, c. 513 § 2; 67 Del. Laws, c. 194 § 5; 70 Del. Laws, c. 186 § 1.)

§ 2302 Female blue crabs bearing eggs.

It shall be unlawful for any person to take or have in his or her possession or offer for sale at any time any female blue crab bearing eggs visible thereon (sponge crabs), or any female blue crab from which the egg pouch or bunion has been removed.

(7 Del. C. 1953 § 2301; 51 Del. Laws, c. 151 § 1; 60 Del. Laws, c. 513 § 2; 70 Del. Laws, c. 186 § 1.)

§ 2303 Commercial crab pot license.

(a) It shall be unlawful for any person to catch or land crabs for commercial purposes in this State unless said person has applied for and secured from the Department and has in his or her possession a valid commercial crab pot license. The fee for a resident commercial crab pot license shall be $28.75 for up to 50 pots; $57.50 for up to 100 pots; $86.25 for up to 150 pots; and $115 for up to 200 pots. The fee for nonresident commercial crab pot licenses shall be $287.50 for up to 50 pots; $575 for up to 100 pots; $862.50 for up to 150 pots; and $1,150 for up to 200 pots. Said license shall be valid only for commercial taking of crabs from 1 vessel owned and operated by the applicant or designees approved in the license. Designees for a holder of a resident commercial crab pot license must be residents of the State.

(b) The license issued pursuant to this section shall automatically expire on December 31 of each calendar year.

(c) In the event that a licensee is unable to tend his or her crab pots from the vessel specified in his or her license application, said licensee shall apply to the Department within 48 hours after the boat or vessel has been disabled for a written permit to be carried on his or her person to tend that licensee's pots from another specified vessel for a period to be specified by the Department.

(d) A commercial crab pot license may designate no more than 2 persons on said licensee's commercial crab pot license as designees. A commercial crab pot licensee's designees are authorized, whether in the presence of the licensee or not, to place, use, set or tend said licensee's crab pots while operating the vessel owned by the licensee that is listed on said licensee's commercial crab pot license.

(e) Notwithstanding subsection (a) of this section, the number of commercial crab pot licensees that may list the same vessel on their commercial crab pot license shall not exceed 3 and the total number of crab pots that 3 licensees may be licensed to place, use, set or tend from the same vessel shall not exceed 500 pots.

(7 Del. C. 1953 § 2305; 51 Del. Laws, c. 151 § 1; 57 Del. Laws, c. 739 § 99; 59 Del. Laws, c. 90; 60 Del. Laws, c. 513 § 2; 67 Del. Laws, c. 260 § 1; 68 Del. Laws, c. 9 § 9; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 216 §§ 4, 5; 71 Del. Laws, c. 245 § 6.)

§ 2304 Area permitted for commercial crabbing.

It shall be unlawful for any commercial crabber to catch or take, or attempt to catch or take, for commercial purposes any hard-shell, soft-shell or peeler crabs from any waters of the rivers and bays of this State and the tributaries thereof or sell, offer for sale or buy any hard-shell crabs taken from said waters, except the Delaware Bay and the Delaware River and that area of Roy's Creek which lies south of Fenwick Island Ditch.

(7 Del. C. 1953 §§ 2303, 2304; 51 Del. Laws, c. 151 § 1; 57 Del. Laws, c. 587 §§ 1, 2; 60 Del. Laws, c. 513 § 2; 61 Del. Laws, c. 352 § 1.)

§ 2305 Seasons; limits.

(a) No person shall catch and take or attempt to catch and take crabs in any of the waters under the jurisdiction of this State with any commercial crab pot between December 1 of each year and the last day of February immediately following.

(b) The Department may restrict the number of crab pots which may be set by any 1 licensee when, in its discretion, the Department determines from biological evidence that emergency restrictions are necessary to protect crabs or other shellfish resources of the State; they may do so with such advance notice as it deems necessary.

(c) No person shall catch and take or attempt to catch and take crabs by dredge in any of the waters under the jurisdiction of this State

between March 31 of each year and December 15 thence next ensuing of any year.

(60 Del. Laws, c. 513 § 2.)

§ 2306 Marking of commercial crab pots and vessels; penalties.

(a) The buoys of all crab pots placed for commercial purposes shall be colored a specific color combination as assigned to each commercial crab pot licensee. The crabbing vessel specified on the license shall display the same color code assigned to the licensee on a panel measuring at least 2 feet by 2 feet. Said panel must be fully visible from either side of the vessel.

(b) It shall be unlawful for any person to lift any commercial crab pot from a vessel other than the 1 corresponding with the color code on that crab pot buoy. Any commercial crab pot which is not marked as specified in this section may be confiscated by the Department. Any person guilty of taking crabs from a commercial crab pot from a vessel other than the 1 corresponding with the color code of that pot buoy shall be guilty of a class C environmental violation.

(60 Del. Laws, c. 513 § 2; 79 Del. Laws, c. 421 § 9.)

§ 2307 Crab dredger's license; fees.

It shall be unlawful for any person to dredge for blue crabs in this State unless said person has applied for and secured from the Department and has in his or her possession a valid crab dredger's license. The fee for a resident crab dredger's license shall be $57.50. The fee for a nonresident crab dredger's license shall be $575.

(7 Del. C. 1953 § 2305; 51 Del. Laws, c. 151 § 1; 57 Del. Laws, c. 739 § 99; 59 Del. Laws, c. 90; 60 Del. Laws, c. 513 § 2; 67 Del. Laws, c. 260 § 1; 70 Del. Laws, c. 186 § 1.)

§ 2308 Area where dredging permitted; method of taking; crabs taken by oysterers or clammers.

(a) Dredging for blue crabs is permitted only on unleased shellfish grounds in Delaware Bay. Under no circumstances shall any person operate a dredge for the purpose of taking crabs over leased shellfish grounds, natural oyster beds, public tonging areas or other areas declared off limits to potting or dredging for crabs by the Secretary, pursuant to Chapters 19 through 25 of this title.

(b) It shall be unlawful for any person to use any hydraulic dredge or mechanical device which employs a vacuum or suction method for the taking or catching or harvesting of crabs from any of the waters under the jurisdiction of this State without the prior written consent of the Department which may be granted for research purposes.

(c) Those crabs of legal size and condition taken by oysterers with a valid oyster harvesting license or by a clammer with a valid commercial dredge clam license while engaged in legal dredging operations may be retained for noncommercial purposes.

(60 Del. Laws, c. 513 § 2; 70 Del. Laws, c. 186 § 1.)

§ 2309 Unloading locations.

It shall be unlawful for any person to unload blue crabs taken from the waters or shellfish grounds within the jurisdiction of the State at any port or unloading facilities located outside the geographic boundaries of the State.

(60 Del. Laws, c. 513 § 2.)

§ 2310 Noncommercial crabbing; daily limits.

(a) Noncommercial crabbing is permitted in any of the waters under the jurisdiction of the State unless otherwise posted by the Department.

(b) It is unlawful for any person actively engaged in noncommercial crabbing to sell any crabs.

(c) It shall be unlawful for any person to place, use, set or tend any noncommercial crab pot unless said pot is attached to an all white buoy with said person's full name and permanent mailing address inscribed either on the white buoy or on a waterproof tag attached to said buoy that is legible at all times.

(d) It shall be unlawful for any person to take in any 1 day more than 1 bushel of blue crabs unless otherwise authorized to do so by license or permit.

(e) Unless otherwise authorized, it shall be unlawful for any person to leave, place, use, set or tend any noncommercial crab pots in the tidal waters of this State between and including December 1 and the last day of February immediately following.

(f) Unless otherwise authorized, it shall be unlawful for any person who does not have a valid commercial crab pot license to have, place, use, set or tend more than 2 crab pots in the tidal waters of this State.

(7 Del. C. 1953 § 2302; 51 Del. Laws, c. 151 § 1; 60 Del. Laws, c. 513 § 2; 67 Del. Laws, c. 194 § 6; 68 Del. Laws, c. 382 §§ 1-3.)

§ 2311 Crab pot attendance; abandonment; confiscation; forfeiture.

(a) It shall be unlawful for any person who places, uses or sets a crab pot in the tidal waters of this State to fail to tend and remove crabs from said crab pot at least once every 72 hours.

(b) Failure to tend and remove crabs from a crab pot in the tidal waters of this State at least 72 hours after said pot is tagged by the Department shall constitute abandonment of said crab pot.

(c) Any employee of the Department authorized to enforce this chapter shall be authorized to seize and confiscate any crab pot which has been determined to have been abandoned pursuant to subsection (b) of this section.

(d) Upon a determination that a crab pot has been abandoned and seized by the Department, ownership in said crab pot shall be forfeit to

the Department.

(e) Notwithstanding the provisions set forth in subsections (a), (b) and (c) of this section, any employee of the Department authorized to enforce this chapter shall be authorized to seize any crab pot which fails to be placed, used or set in compliance with the provisions of this chapter.

(f) Title to a crab pot seized by the Department and not claimed by the lawful owner after proper notification from the Department within 90 days of said notification shall be forfeit to the Department.

(68 Del. Laws, c. 382 § 4.)

§ 2312 Vessels used by commercial crab dredgers in Delaware waters.

(a) It shall be unlawful for a crab dredge licensee to dredge crabs from the waters of this State from any vessel other than 1 vessel owned and operated by said crab dredge licensee. The vessel shall be listed on the crab dredger's license.

(b) It shall be unlawful for a resident crab dredge licensee to list a vessel on his or her crab dredger's license if said vessel has been exclusively used in commercial fishing operation in waters outside the jurisdiction of this State during the previous 2 years. However, for a vessel acquired by a crab dredger licensee to replace a vessel listed on his or her crab dredger's license, the provision for that vessel not having been exclusively used in commercial fishing operations in waters outside the jurisdiction of this State during the previous 2 years shall not be in effect.

(69 Del. Laws, c. 119 § 1; 70 Del. Laws, c. 186 § 1.)

Part II
Shellfish
Chapter 24
HARD CLAMS (MERCENARIA MERCENARIA)

§ 2401 Minimum size.

It shall be unlawful for any person to possess hard clams taken from the waters under the jurisdiction of the State which measure less than 1 1/2 inches. Any commercial measure of hard clams shall not contain more than 5% clams that are less than 1 1/2 inches.

(60 Del. Laws, c. 513 § 2.)

§ 2402 Commercial clam tong/rake license.

It shall be unlawful for any person to tong or to rake clams for commercial purposes in this State unless said person has applied for and secured from the Department and has in his or her possession a valid clam tong/rake license. The fee for a commercial clam tong/rake license shall be $57.50 for residents and $575 for nonresidents. A commercial clam tong/rake license will entitle the holder to harvest a maximum number set by Department regulations.

(60 Del. Laws, c. 513 § 2; 67 Del. Laws, c. 260 § 1; 70 Del. Laws, c. 186 § 1.)

§ 2403 Area permitted; method of taking under clam tong/rake license.

(a) It shall be unlawful to take clams from any leased shellfish grounds or contaminated area, as determined by the Department, in Delaware Bay, Indian River and Bay, Rehoboth Bay, Little and Big Assawoman Bays and the tributaries thereof, except a person authorized in writing by the holder of a lease site may take clams from said leased shellfish grounds. Such written authorization shall be at all times on the person of a least 1 member of any crew while working on leased shellfish grounds.

(b) It shall be unlawful to take or attempt to take clams under a clam tong/rake license with any device from a vessel powered by sail or mechanical means.

(60 Del. Laws, c. 513 § 2; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 178 § 5.)

§ 2404 Commercial dredge clam license.

It shall be unlawful for any person to dredge for hard clams in this State unless said person has applied for, secured from the Department and has in his or her possession a valid clam dredger's license. The fee for a resident clam dredger's license shall be $57.50. The fee for a nonresident clam dredger's license shall be $575.

(60 Del. Laws, c. 513 § 2; 67 Del. Laws, c. 260 § 1; 70 Del. Laws, c. 186 § 1.)

§ 2405 Commercial dredge clam license — Area permitted; method of taking under commercial dredge clam license.

(a) It shall be unlawful to dredge for hard clams with a commercial dredge clam license on leased shellfish grounds, except that a person may dredge hard clams from his or her own leased shellfish grounds as long as those grounds are not within Delaware's Inland Bays.

(b) It shall be unlawful to dredge hard clams in any waters designated as contaminated by the Department.

(c) It shall be unlawful for any person to use any hydraulic dredge or mechanical device which employs a vacuum or suction method for the taking or catching or harvesting of clams from any of the waters under the jurisdiction of this State without the prior written consent of the Department.

(60 Del. Laws, c. 513 § 2; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 588 § 2; 79 Del. Laws, c. 178 § 5.)

§ 2406 Seasons; limits.

Except in the case of clams reared on shellfish aquaculture lease sites on Delaware's Inland Bays, the Department will establish by regulation the seasons for the taking of clams and/or limit the number of clams which may be harvested commercially by any 1 licensee. If, in its discretion, the Department determines from biological evidence that emergency restrictions are necessary to protect clams or other shellfish resources of the State, they may do so with advance notice as it deems necessary.

(60 Del. Laws, c. 513 § 2; 79 Del. Laws, c. 178 § 5.)

§ 2407 Unloading locations.

It shall be unlawful for any person to unload hard clams taken from the waters or shellfish grounds within the jurisdiction of the State at any port or unloading facilities located outside the geographic boundaries of the State.

(60 Del. Laws, c. 513 § 2.)

§ 2408 Noncommercial clamming permit.

(a) It shall be unlawful for any person to harvest, in any 1 day, hard clams for noncommercial purposes in excess of the daily recreational clam limit unless said person has applied for and received from the Department, and has in his or her possession, a valid noncommercial

clamming permit. The fee for a resident noncommercial clam permit will be $5.75. The fee for a nonresident noncommercial clamming permit will be $57.50.

(b) The Department will establish, by regulation, the seasons for taking clams and/or limit the number of clams that may be harvested in any 1 day for noncommercial clamming permit holders.

(60 Del. Laws, c. 513 § 2; 67 Del. Laws, c. 260 § 1; 68 Del. Laws, c. 9 § 8; 70 Del. Laws, c. 186 § 1.)

§ 2409 Recreational clamming.

The Department will establish, by regulation, the seasons for the taking of clams and/or limit the number of clams which may be taken for recreational purposes.

(60 Del. Laws, c. 513 § 2; 76 Del. Laws, c. 71 § 13.)

Part II
Shellfish
Chapter 25
AMERICAN LOBSTERS (HOMARUS AMERICANUS)

§ 2501 Size limit.

It shall be unlawful for any person to take from any waters within the jurisdiction of the State or have in that person's possession at any time any American lobster with a minimum carapace length measuring less than 3 1/4 inches between January 1, 1989 and December 31, 1990; 3 9/32 inches between January 1, 1991, and December 31, 1991; and 3 5/16 inches after January 1, 1992, and 3 3/8 inches beginning July 1, 2004. The carapace, or body shell, is measured from the rear end of the eye socket along a line parallel to the center line of the carapace to the posterior end of the carapace. Further, it shall be unlawful for any person to take from any waters within the jurisdiction of the state or have in that person's possession, at any time, any female American lobster with a carapace length measuring more than 5 1/2 inches except that beginning July 1, 2008, no male or female lobster may be taken or possessed that has a carapace length measuring more than 5 1/4 inches.

(7 Del. C. 1953 § 2502; 55 Del. Laws, c. 77 § 2; 60 Del. Laws, c. 513 § 2; 67 Del. Laws, c. 302 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 368 §§ 1-3; 76 Del. Laws, c. 300 § 1.)

§ 2502 Female lobsters bearing eggs.

It shall be unlawful for a person to take, offer for sale or have in his or her possession at any time any female lobster bearing eggs visible thereon (berried lobsters) or any female lobster from which the eggs have been removed.

(7 Del. C. 1953 § 2502; 55 Del. Laws, c. 77 § 2; 60 Del. Laws, c. 513 § 2; 70 Del. Laws, c. 186 § 1.)

§ 2503 Landing of dismembered lobsters.

It shall be unlawful for any person, firm or corporation to bring to shore in Delaware or have in possession on the waters of this State any dismembered lobsters, detached tails or claws, picked or cooked lobster meat.

(60 Del. Laws, c. 513 § 2.)

§ 2504 Commercial lobster pot license.

(a) It shall be unlawful for any person to catch or land lobsters for commercial purposes in this State unless said person has applied for, secured from the Department and has in his or her possession a valid commercial lobster pot license. The fee for a resident commercial lobster license shall be $57.50. The fee for a nonresident commercial lobster license shall be $575. Said license shall be valid only for the commercial taking of lobsters from 1 vessel operated by the applicant or designee as specified in the license.

(b) Residential commercial lobster licenses shall be issued only to residents of this State.

(c) In the event that a licensee is unable to tend his or her lobster pots from the vessel specified in his or her license application, said licensee shall apply to the Secretary for a written permit to be carried on his or her person to tend his or her pots from another specified vessel for a period to be specified by the Department.

(60 Del. Laws, c. 513 § 2; 67 Del. Laws, c. 260 § 1; 70 Del. Laws, c. 186 § 1.)

§ 2505 Area permitted; method of taking.

(a) Potting for lobsters is permitted in any waters under the jurisdiction of the State.

(b) It shall be unlawful to take or attempt to take lobsters for commercial purposes by any method other than a lobster pot. The number of and design of said pots will be established by regulation.

(c) It shall be unlawful to take or attempt to take lobsters by dragging, dredging, trawling and spearing.

(7 Del. C. 1953 § 2501; 55 Del. Laws, c. 77 § 2; 60 Del. Laws, c. 513 § 2.)

§ 2506 Marking of commercial lobster pots and vessels.

The buoys of all lobster pots placed for commercial purposes shall be marked with the color code and number that is assigned to each commercial lobster pot licensee. All buoys must be of a positive flotation material. The lobstering vessel specified on the license shall display the color code assigned to the licensee on a panel measuring at least 2 feet by 2 feet. Said panel must be fully visible from either side of said vessel. It shall be unlawful for any person to lift any commercial lobster pot from a vessel other than the 1 corresponding to the color code on that pot buoy. Any pot attached to a buoy, which is not marked as specified in the regulation, may be confiscated by the Department. Any person guilty of removing lobsters from any commercial lobster pot from a vessel other than the 1 corresponding to the color code on that pot buoy shall be guilty of a class C environmental violation.

(60 Del. Laws, c. 513 § 2; 79 Del. Laws, c. 421 § 10.)

§ 2507 Seasons; limits.

The Department will establish by regulation the seasons for the taking of lobsters and will determine the number of lobster pots which may be set by any 1 licensee. If, in its discretion, the Department determines from biological evidence that emergency restrictions are necessary to protect lobsters or other shellfish resources of the State, it may do so with advance notice as it deems necessary.

(7 Del. C. 1953 § 2501; 55 Del. Laws, c. 77 § 2; 60 Del. Laws, c. 513 § 2.)

§ 2508 Noncommercial lobstering.

(a) A lobster pot placed by a person for noncommercial purposes shall be marked with a buoy painted white and have black lettering, and be marked with the initials "N.C." followed by a dash and then followed by the owner's initials (i.e., John Smith would mark his lobster pot buoys as follows: "N.C. — J.S."). The use of more than 2 lobster pots by any individual or his or her agents shall constitute prima facie evidence of commercial intent and shall be unlawful.

(b) Noncommercial potting for lobster is permitted in any waters under the jurisdiction of the State.

(c) It shall be unlawful for any person who is engaged in noncommercial lobstering to sell any lobsters.

(d) Any individual diver may catch, by hand, up to 2 lobsters a day.

(60 Del. Laws, c. 513 § 2; 70 Del. Laws, c. 186 § 1.)

§ 2509 Unloading locations.

It shall be unlawful for any person to unload lobsters taken from the waters or shellfish grounds within the jurisdiction of the State at any port or unloading facilities located outside the geographic boundaries of the State. Any person violating this section will be guilty of a class C environmental violation.

(60 Del. Laws, c. 513 § 2; 79 Del. Laws, c. 421 § 10.)

Part II
Shellfish
Chapter 26
SURF CLAMS (SPISULA SOLIDISSIMA)

§ 2601 Commercial surf clam license.

It shall be unlawful for any person to harvest surf clams in this State unless said person has applied for and secured from the Department of Natural Resources and Environmental Control and has in his or her possession a valid surf clam harvester's license. The fee for a resident surf clam harvester's license shall be $50 for residents and $500 for nonresidents.

(64 Del. Laws, c. 243 § 2; 70 Del. Laws, c. 186 § 1.)

§ 2602 Seasons.

The Department will establish by regulation the seasons for the harvesting of surf clams.

(64 Del. Laws, c. 243 § 2.)

§ 2603 Minimum size.

It shall be unlawful for any person to possess surf clams taken from the waters under the jurisdiction of the State which measure less than the size limit designated by the Department.

(64 Del. Laws, c. 243 § 2.)

§ 2604 Permitted harvesting areas.

(a) It shall be unlawful to harvest surf clams in any waters designated as contaminated by the Department.

(b) The Department may open and close harvesting areas by regulation. If, in its discretion, the Department determines from biological evidence that emergency restrictions are necessary to protect clams or other shellfish resources of the State, it may do so with advance notice, as it deems necessary.

(64 Del. Laws, c. 243 § 2; 70 Del. Laws, c. 588 § 3.)

§ 2605 Penalty.

Any person who violates this chapter shall be fined not less than $100 nor more than $1,000 for a first offense. For each subsequent conviction, a person shall be guilty of a class C environmental violation for the first offense. For each subsequent conviction, a person shall be guilty of a class B environmental misdemeanor.

(64 Del. Laws, c. 243 § 2; 79 Del. Laws, c. 421 § 11.)

Part II
Shellfish
Chapter 27
HORSESHOE CRABS (LIMULUS POLYPHEMUS)

§ 2701 Authority of the Department.

(a) The Department shall establish and administer a program for the conservation and management of horseshoe crabs. Such program shall include the promulgation of regulations for:

(1) Administration of a permitting system and issuance of permits as defined by this chapter;

(2) Designation of areas for harvest and restriction as necessary to sensitive habitat and public safety;

(3) Definition of acceptable equipment and methods of harvest;

(4) Designation of lawful seasons for collection;

(5) Establishment of limits or the quantities to be harvested; and

(6) Establishment of reporting requirements for all permit holders authorized to take horseshoe crabs.

(b) Before implementing rules and regulations, and any subsequent changes thereto, the Department shall conduct a public hearing on the proposed regulations. The Department shall publish notice of a public hearing in newspapers of general circulation in the State no less than 20 days in advance of the public hearing. Said notice shall include a brief description of the proposed regulation, the time and location of the public hearing and the manner in which the public may respond to the Department on the proposed regulation. The regulations shall be filed with the Secretary of State prior to implementation.

(c) The Department shall be authorized to adopt interim regulations notwithstanding the provisions of subsection (b) of this section in order to implement administrative procedures and the provisions of subsection (a) of this section in a timely manner. These interim regulations may be adopted by the Department for a period not to exceed 90 days. Interim regulations shall become effective upon the date they are filed with the Secretary of State.

(d) The Department shall be further authorized to adopt emergency regulations notwithstanding the provisions of subsection (b) of this section when such regulations are necessary to deal with an actual or eminent threat to the horseshoe crab resources and the fishery thereof. Emergency regulations may be adopted by the Department for a period not to exceed 90 days. As soon as practicable after adoption of emergency regulations hereunder, the Department shall conduct a public hearing on the matter in accordance with subsection (b) of this section for the purpose of implementing regulations. Emergency regulations shall become effective upon the date they are filed with the Secretary of State.

(68 Del. Laws, c. 33 § 2.)

§ 2702 Scientific collecting permit.

The Department may issue a scientific collecting permit to a person to permit the collecting of horseshoe crabs solely for scientific, medical or educational purposes. There shall be no fee for this collecting permit. The person shall apply to the Department for a collecting permit on an application provided by the Department, and shall present in writing the specific purpose for which the horseshoe crab will be used and shall present credible evidence that the disposition of the horseshoe crabs collected shall be for scientific, medical or educational purposes. Where possible only males shall be collected. Also, those collected for above purposes shall be returned to the original habitat when feasible.

(68 Del. Laws, c. 33 § 2.)

§ 2703 Dredging.

Unless otherwise authorized by the Department, it shall be unlawful for any person to use dredges to take horseshoe crabs in this State unless said person has a valid horseshoe crab dredge permit issued annually by the Department. The fee for a resident horseshoe crab dredge permit shall be $100. The fee for a nonresident horseshoe crab dredge permit shall be $1,000. The Department shall not issue a horseshoe crab dredge permit to any person unless said person is the current owner and operator of an oyster vessel licensed to transplant oysters from natural oyster beds as provided under the provisions of Chapter 19 of this title and shellfish regulations adopted by the Department. The permit shall designate the vessel to be used to dredge for horseshoe crabs. The Department shall not issue more than 5 horseshoe crab dredge permits during any 1 calendar year.

(68 Del. Laws, c. 33 § 2.)

§ 2704 Collecting permits for other than scientific purposes.

(a) A commercial collecting permit shall be required of any individual 16 years of age or older, (including a property owner), collecting horseshoe crabs, except for personal, noncommercial uses. The collection fee to obtain a commercial collecting permit for residents of Delaware shall be $100. The collection fee to obtain a commercial collecting permit for nonresidents shall be $1,000. A commercial collecting permit shall not be required of a property owner, or a property owner's tenant or agent, on those lands from which crabs are taken

for personal usage. An agent or tenant shall mean a person who has written permission from the property owner of the land from which horseshoe crabs are taken to act on the owner's behalf.

(b) Any municipality, town, other local government or individual who collects dead horseshoe crabs in order to clean up a beach or to otherwise dispose of said crabs properly shall be required to obtain a beach clean-up collecting permit. There shall be no fee for a beach clean-up collecting permit.

(c) Unless authorized by a scientific collecting permit issued by the Department, it shall be unlawful for any person to take or attempt to take horseshoe crabs by any method unless said person has obtained a valid collecting permit as provided in this section.

(d) When by, or pursuant to, the laws or regulations of any other state should said state impose any tax, other fee or restrictions on nonresidents for the privilege of commercially collecting horseshoe crabs within its boundaries, which tax or other fee is in the aggregate greater or restriction is greater, to include but not be limited to, the nonavailability of a permit for nonresidents, the similar or identical taxes, other fees, permit requirements and restrictions shall be imposed by the Department upon the residents of that state who seek to apply for a commercial collecting permit from the Department to collect horseshoe crabs within the boundaries of this State.

(68 Del. Laws, c. 33 § 2; 70 Del. Laws, c. 186 § 1.)

§ 2705 Penalties.

(a) Any person who is convicted 2 times in the same calendar year for violations of this chapter or any regulation promulgated by the Department pursuant thereto shall be subject to the following provisions:

(1) If the person holds a valid permit at the time of the second conviction, said permit shall be revoked by the Department. Persons whose permits are revoked shall not be eligible to reapply for a permit under this chapter until 5 years after the date of revocation.

(2) If said person does not hold a valid permit at the time of the second conviction, such person shall not be eligible to apply for any permit outlined in this chapter for a period of 5 years after the second conviction.

(b) Any person convicted of a violation of any provision of this chapter or any regulation promulgated by the Department pursuant thereto, shall be guilty of a class B environmental misdemeanor. Each individual horseshoe crab taken in violation of any provision of this chapter or regulation promulgated by the Department pursuant thereto shall constitute a separate violation.

(c) The Justice of the Peace Court shall have jurisdiction over violations of this chapter.

(d) The Department shall not renew any permit to collect or dredge horseshoe crabs until the applicant has reported his or her harvest of the previous calendar year's total number of horseshoe crabs to the Department on forms provided by the Department.

(68 Del. Laws, c. 33 § 2; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 421 § 12.)

Part II
Shellfish
Chapter 28
CONCHS (WHELKS) BUSYCON CANALICULATUM AND B. CARICA.

§ 2801 Definitions.

(a) "Bullrake" means any rake with a width of more than 14 inches measured perpendicular to the tines or any rake with a handle of more than 7 feet.

(b) "Conch pot" means any pot, basket, box, cage, container or other similar catching device that has at least 1 escape vent measuring at least 5" x 10" in the top or parlor section of said pot, basket, box, cage or container or other similar catching device.

(c) "Delaware's internal waters" means all of those tidal waters under the jurisdiction of the State, except the Atlantic Ocean, as separated from the Delaware Bay by a straight line drawn between Cape May Point, New Jersey and Cape Henlopen Point, Delaware.

(d) "Delaware's territorial sea" means all of those tidal waters in the Atlantic Ocean separated from the Delaware Bay under the jurisdiction of the State, the outer boundary of which is a line 3 nautical miles coterminous with the shoreline of the State.

(e) "Trawline" means a long line, anchored on each end, to which more than 1 conch pot is attached by short lines.

(69 Del. Laws, c. 284 § 4; 71 Del. Laws, c. 122 § 1.)

§ 2802 Commercial conch pot license; fees; exemptions.

(a) It shall be unlawful for any person to catch, take or harvest conchs while fishing more than 2 conch pots in the waters of this State unless said person has in possession a valid commercial conch pot license.

(b) It shall be unlawful for any person to attempt to catch, take or harvest conchs while fishing more than 2 conch pots in the waters of this State unless said person has in possession a valid commercial conch pot license.

(c) It shall be unlawful for the operator of any vessel not equipped with a dredge to have on board said vessel more than 5 bushels of conchs unless said operator has in possession a valid commercial conch pot license.

(d) It shall be unlawful for a commercial conch pot licensee to place, use, set or tend more than 2 conch pots from any vessel other than a vessel owned and operated by said licensee. Said vessel shall be listed by the Department on the licensee's commercial conch pot license.

(e) It shall be unlawful for more than 1 commercial conch pot licensee to place, use, set or tend conch pots from the same vessel.

(f) The Department is authorized to issue a commercial conch pot license to a person who applies for same on forms to be supplied by the Department. To be eligible for a commercial conch pot license, an applicant shall comply with 1 of the following conditions:

(1) Produce receipts, personal income tax records or affidavits from a certified public accountant that indicates said applicant previously harvested conchs in Delaware for commercial purposes; or

(2) Be eligible for a commercial crab pot license in Delaware pursuant to the provisions of § 1918 of Title 7.

An applicant who is eligible for a commercial conch pot license shall apply and pay all applicable fees to the Department within 90 days of August 26, 1994. An applicant who is not eligible or an applicant who does not obtain a commercial conch pot license within 90 days of August 26, 1994, or a commercial conch pot licensee who fails to renew the license as provided in the provisions of subsection (g) of this section may register with the Department on a form provided by the Department for a commercial conch pot license that may become valid after a 5-year waiting period.

(g) A commercial conch pot licensee shall renew the license for at least 1 year in every 3 consecutive years. Any person who does not renew the commercial conch pot license for at least 1 year in every 3 consecutive years shall be deemed not eligible for a commercial conch pot license.

(h) The annual fee for a commercial conch pot license shall be $57.50 for residents and $575 for nonresidents.

(i) A commercial conch pot licensee may designate no more than 2 persons who are residents of this State on the license as designee or designees. A commercial conch pot licensee's designee is authorized to place, use, set, tend or remove the licensee's conch pots while operating a vessel listed on the licensee's commercial conch pot license without the licensee being on board the vessel.

(j) An active commercial fisher with a commercial conch pot license may transfer his or her license to a commercial fishing apprentice who has completed no less than 150 days of commercial fishing activities over no less than a 1-year period.

(69 Del. Laws, c. 284 § 4; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 29 § 8; 80 Del. Laws, c. 348 § 3.)

§ 2803 Commercial conch dredge license; fees; exceptions.

(a) It shall be unlawful for any person, while operating a vessel equipped with a dredge or a vessel with a bullrake on board, to possess more than 15 bushels of conchs unless said person has in possession a valid commercial conch dredge license.

(b) It shall be unlawful for a commercial conch dredge licensee to dredge conchs from any vessel other than a vessel owned and operated by said licensee. Said vessel shall be listed by the Department on the licensee's commercial conch dredge license.

(c) The Department is authorized to issue a commercial conch dredge license to a person who applies for same on forms to be supplied by the Department. To be eligible for a commercial conch dredge license, an applicant shall meet 1 of the following conditions:

(1) Produce receipts, personal income tax records or affidavits from a certified public accountant the applicant previously harvested conchs in Delaware for commercial purposes; or

(2) Be eligible for a commercial crab dredger's license in Delaware according to the provisions of § 1918 of Title 7.

An applicant who is eligible for a commercial conch dredge license shall apply and pay all applicable fees to the Department within 90 days of August 26, 1994. An applicant who is not eligible or an applicant who does not obtain a commercial conch dredge license within 90 days of August 26, 1994, or a commercial conch dredge licensee who fails to renew the license as provided in the provisions of subsection (d) of this section may register with the Department on a form provided by the Department for a commercial conch dredge license that may become valid after a 5-year waiting period.

(d) A commercial conch dredge licensee shall renew the license for at least 1 year in every 3 consecutive years. Any person who does not renew the commercial conch pot license for at least 1 year in every 3 consecutive years shall be deemed not eligible for a commercial conch dredge license.

(e) The fee for a resident commercial conch dredge license shall be $57.50 for residents and $575 for nonresidents.

(f) An active commercial fisher with a commercial conch dredge license may transfer his or her license to a commercial fishing apprentice who has competed no less than 150 days of commercial fishing activities over no less than a 1-year period.

(69 Del. Laws, c. 284 § 4; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 29 § 9; 80 Del. Laws, c. 348 § 3.)

§ 2804 Minimum size.

It shall be unlawful for any person to possess any conch which measures less than a minimum possession size limit specified in regulations promulgated by the Department. The Department is authorized to promulgate regulations to establish the minimum possession size limit of conchs.

(69 Del. Laws, c. 284 § 4.)

§ 2805 Areas closed for commercial conch potting or dredging.

It shall be unlawful for any person to operate a dredge for the purpose of catching, taking or harvesting conchs over leased shellfish grounds, natural oyster beds or other areas declared closed to dredging for conchs by the Department by regulation; provided however, that those conchs of legal size taken by a person on a vessel with a valid oyster harvesting license or a person with a valid commercial clam dredge license while engaged in lawful dredging operations, whether or not over leased shellfish grounds, natural oyster beds, or other areas declared closed to dredging for conchs by the Department, may be retained for noncommercial purposes. The Department is authorized to promulgate regulations that close areas to either dredging or potting for conchs.

(69 Del. Laws, c. 284 § 4.)

§ 2806 Seasons closed for commercial conch potting or dredging.

The Department is authorized to promulgate regulations that close seasons to either dredging or potting for conchs.

(69 Del. Laws, c. 284 § 4.)

§ 2807 Marking of conch pots.

(a) In Delaware's internal waters, it shall be unlawful for any commercial conch pot licensee to catch, take or harvest conchs with any conch pot or attempt to catch, take or harvest conchs with any conch pot unless each conch pot is attached to a floating buoy. In Delaware's territorial sea, conch pots may be attached to a trawline up to 1,200 feet long, provided each end of the trawline is attached to a buoy. The buoys for commercial conch pots and trawlines shall be a specific color combination as assigned to each commercial conch pot licensee by the Department. Any person who has a valid commercial crab pot license shall be assigned the same color code for the person's commercial conch pot buoys as assigned to the person's commercial crab pots. An additional buoy shall be attached at the farthest position from the conch pot or trawline which shall be colored 1/2 white and 1/2 black. The Department shall assign a commercial conch pot number to each commercial conch pot licensee. Inscribed on the 1/2 white and 1/2 black buoy the farthest from the conch pot shall be a capital letter "C" followed by said person's commercial conch pot number. The letter "C" and conch pot number shall be at least 2 inches tall, and a contrasting color to be legible at all times.

(b) It shall be unlawful for any person other than a commercial conch pot licensee to catch, take or harvest conchs with any conch pot or attempt to catch, take or harvest conchs with any conch pot unless said conch pot is attached to an all white buoy with said persons full name and permanent mailing address inscribed either on the white buoy or on a waterproof tag attached to said buoy. The person's name and address shall be legible at all times.

(69 Del. Laws, c. 284 § 4; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 122 § 2.)

§ 2808 Conch pot attendance; abandonment; confiscation; forfeiture.

(a) It shall be unlawful for any person who places, uses or sets a conch pot in the tidal waters of this State to fail to tend and remove conchs from said conch pot at least once every 72 hours.

(b) Failure to tend and remove conchs from a conch pot in the tidal waters of this State at least 72 hours after said pot is tagged by the Department shall constitute abandonment of said conch pot.

(c) Any employee of the Department authorized to enforce this chapter shall be authorized to seize and confiscate any conch pot which

has been determined to have been abandoned pursuant to subsection (b) of this section.

(d) Upon a determination that a conch pot has been abandoned and seized by the Department, ownership in said conch pot shall be forfeited to the Department.

(e) Notwithstanding the provisions set forth in subsections (a), (b) and (c) of this section, any employee of the Department authorized to enforce this chapter shall be authorized to seize any conch pot which fails to be placed, used or set in compliance with the provisions of this chapter.

(f) Title to a conch pot seized by the Department and not claimed by the lawful owner after proper notification from the Department within 90 days of said notification shall be forfeited to the Department.

(69 Del. Laws, c. 284 § 4.)

Part III
Transfers
Chapter 29
TRANSFER OF FINFISH, EEL FISHING AND SHELLFISH PERMITS AND LICENSES

§ 2901 Applicability.

The provisions of this chapter shall apply to the fisheries covered by Chapters 9, 18, 19, 21, 23, 24, 25, 26, 27 and 28 of this title which are or become closed to new entrants.

(78 Del. Laws, c. 263 § 1; 80 Del. Laws, c. 196 § 6.)

§ 2902 Transfers of permits and licenses.

Any person who holds a valid permit or license issued by the Department for any of the fisheries referenced and subject to § 2901 of this title shall be entitled to assign or transfer such permit or license to an eligible person as defined in this chapter under terms and conditions agreeable to the permit or license holder and the assignee or transferee.

(78 Del. Laws, c. 263 § 1.)

§ 2903 Eligibility.

In order to be eligible for the transfer of a permit or license under this chapter the assignee or transferee of the permit or license shall be any of the following:

(1) An apprentice with at least 150 days of commercial fishing experience;

(2) An alternate or designee with actual fishing experience during at least 1 calendar year; or

(3) The holder of a valid permit or license for any of the fisheries covered under § 2901 of this title with actual fishing experience during at least 2 calendar years.

Actual fishing experience as provided herein may be established by catches reported by or attributed to the prospective assignee or transferee engaged in fishing.

(78 Del. Laws, c. 263 § 1.)

§ 2904 Death, incapacity and disability.

(a) In the event of the death of a permit or license holder covered by this chapter any permit or license of the decedent may be transferred as follows:

(1) The decedent may by will or other written document designate the recipient of any permit or license, provided however, that if the recipient is not eligible to receive the permit or license under the provisions of § 2903 of this title, the recipient shall have 2 years from the date of death of the permit or license holder to transfer the permit or license to an eligible person, otherwise the permit or license shall be relinquished.

(2) If the decedent has not designated the recipient of the permit or license as provided in paragraph (a)(1) of this section above, the executor or personal representative of the estate of the decedent shall be entitled to transfer any permit or license to an eligible person within 2 years of the date of death of the permit or license holder, otherwise the permit or license shall be relinquished.

(3) The provisions of this subsection (a) shall apply to any permit or license holder who died on or after January 1, 2010.

(b) In the event of the mental incapacity of a permit or license holder, the guardian, attorney-in-fact, or other person authorized to act on behalf of the incapacitated license or permit holder, shall be entitled to transfer any permit or license to an eligible person within 2 years of the date the guardian, attorney-in-fact, or other person authorized to act on behalf of the incapacitated license or permit holder is entitled to act on behalf of the incapacitated permit or license holder, otherwise the permit or license shall be relinquished.

(c) In the event of the physical disability of a permit or license holder, the permit or license holder with the disability shall be entitled to assign any permit or license to an eligible person in accordance with § 2902 of this title.

(d) Any person authorized to act on behalf of any permit or license holder pursuant to subsections (a) and (b) of this section shall be entitled to assign the permit or license in accordance with § 2902 of this title to an eligible person prior to the time of transfer or relinquishment of the permit or license.

(78 Del. Laws, c. 263 § 1.)

§ 2905 Notification and transfer or assignment.

(a) Any person holding a permit or license, or such persons authorized representative as provided herein, shall provide written notification to the Department of the intent to transfer or assign the permit or license, and provide such other information as may be necessary to establish the eligibility to make the transfer or assignment in accordance with this chapter.

(b) The Department shall process notifications as provided herein within 30 days of the date of receipt of the notification and other documentation, and provide a written response indicating approval or disapproval of the transfer or assignment. For any disapproval the Department shall indicate the reasons and any actions needed to obtain approval.

(c) Any permit or license which is approved for transfer or assignment by the Department shall include the allotment of catch or other entitlements associated with the permit or license.

(78 Del. Laws, c. 263 § 1.)

§ 2906 Savings.

The provisions of this chapter shall be in addition to and not affect any other entitlements or allowances regarding the transfer or assignment of permits and licenses covered by this chapter.

(78 Del. Laws, c. 263 § 1.)

Part III

Transfers

Chapter 30

URBAN AND COMMUNITY FORESTRY PROGRAM

§§ 3001 -3008. Findings and policy; definitions; powers and duties; Community Forestry Council; duties of Forestry Administrator; development, distribution of comprehensive community forestry plan; approval; annual report on the status of Delaware Urban and Community Forestry Program; rules, regulations.

(Repealed by 72 Del. Laws, c. 235 § 1, effective July 29, 1999.)

Part IV
Agricultural and Soil Conservation; Drainage and Reclamation of Lowlands
Chapter 37
AGRICULTURAL CONSERVATION AND ADJUSTMENT

§ 3701 Purpose of chapter; limitations.

(a) It is recognized and declared that:

(1) The soil resources and fertility of the land of this State, the economic use thereof, and the prosperity of the farming population of this State are matters affected with a public interest;

(2) The welfare of this State has been impaired and is in danger of being further impaired through failure to conserve adequately its soil resources, and by the decrease in the purchasing power of the net income per person on farms in the State as compared with the net income per person in the State not on farms;

(3) Such evils have been augmented and are likely to be augmented by similar conditions in other states and are so interrelated with such conditions in other states, that the remedying of such conditions in this State requires action by this State in cooperation with the governments and agencies of other states and of the United States and requires assistance therein by the government and agencies of the United States; and

(4) The formulation and effectuation by this State of state plans in conformity with § 7 of the Soil Conservation and Domestic Allotment Act [16 U.S.C. § 590g] is calculated to remedy said conditions and will tend to advance the public welfare of this State.

(b) Therefore, in order to promote the welfare of the people of this State by aiding in the preservation and improvement of soil fertility, in the promotion of the economic use and conservation of land, and in the reestablishment, at as rapid a rate as is practicable and in the general public interest, of the ratio between the purchasing power of the net income per person on farms and that of the net income per person not on farms that prevailed during the 5-year period August 1909 to July 1914, inclusive, as determined from statistics available in the United States Department of Agriculture, and the maintenance of such ratio, the State assents to and accepts the Soil Conservation and Domestic Allotment Act [16 U.S.C. § 590a et seq.] and adopts the policy and purpose of cooperating with the government and agencies of other states and of the United States in the accomplishment of the policy and purposes specified in § 7 of said act; subject, however, to the limitations that:

(1) The powers conferred in this chapter shall be used only to assist voluntary action calculated to effectuate such purposes;

(2) In carrying out the purposes specified in this section due regard shall be given to the maintenance of a continuous and stable national supply of agricultural commodities adequate to meet consumer demand at prices fair to both the producers and consumers.

(41 Del. Laws, c. 175 § 2; 7 Del. C. 1953 § 3701.)

§ 3702 Definitions.

For the purposes of this chapter, unless otherwise specifically defined, or another intention clearly appears, or the context requires a different meaning:

(1) "Other states of the United States" includes Puerto Rico.

(2) "Person" includes an individual, corporation, partnership, firm, statutory trust, business trust, joint-stock company, association, syndicate, group, pool, joint venture and any other unincorporated association or group.

(3) "University" means the University of Delaware.

(41 Del. Laws, c. 175 §§ 3, 4; 7 Del. C. 1953 § 3702; 73 Del. Laws, c. 329 § 42.)

§ 3703 Designation of state agency.

The University shall be the state agency of this State to carry out the policy and purposes of this chapter and to formulate and administer state plans pursuant to the terms of this chapter.

(41 Del. Laws, c. 175 § 4; 7 Del. C. 1953 § 3703.)

§ 3704 Formulation and administration of state conservation plans.

(a) The University shall formulate for each calendar year and submit to the Secretary of Agriculture of the United States for and in the name of this State, a state plan for carrying out the purposes of this chapter during such calendar year.

(b) The University may modify or revise any such plan in whatever manner, consistent with the terms of this chapter, it finds necessary to provide for more substantial furtherance of the accomplishment of the purposes of this chapter.

(c) Each plan shall provide for such participation in its administration by such voluntary county and community committees, or voluntary associations of agricultural producers, organized under this chapter, as the University determines to be necessary or proper for the effective administration of the plan.

(d) Each plan shall provide, through agreements with agricultural producers or through other voluntary methods, for such adjustments in the utilization of land, in farming practices, and in the acreage or in the production for market, or both, of agricultural commodities, as the

University determines to be calculated to effectuate as substantial accomplishment of the purposes of this chapter as may reasonably be achieved through action of this State, and for payments to agricultural producers in connection with such agreements or methods in such amounts as the University determines to be fair and reasonable and calculated to promote such accomplishment of the purposes of this chapter without depriving such producers of a voluntary and uncoerced choice of action.

(e) Any such plan shall provide for the educational programs that the University determines to be necessary or proper to promote the more substantial accomplishment of the purposes of this chapter.

(f) Each plan shall contain an estimate of expenditures necessary to carry out such plan together with a statement of the amount that the University determines to be necessary to be paid by the Secretary of Agriculture of the United States as a grant in aid of such plan under § 7 of the Soil Conservation and Domestic Allotment Act [16 U.S.C. § 590g], in order to provide for the effective carrying out of such plan, and shall designate the amount and due date of each installment of such grant, the period to which such installment relates, and the amount determined by the University to be necessary for carrying out such plan during such period.

(g) The University may conduct such investigations as it finds to be necessary for the formulation and administration of such plans. The investigations shall be paid for from federal funds provided for the purposes of this chapter.

(41 Del. Laws, c. 175 § 5; 7 Del. C. 1953 § 3704.)

§ 3705 Receipt and disbursement of funds.

(a) The University may receive on behalf of this State all grants of money or other aid made available from any source to assist the State in carrying out the policy and purposes of this chapter. All such money or other aid together with any moneys appropriated or other provisions made by this State for such purpose, shall be forthwith available to the University as the agency of the State subject, in the case of any conditioned funds or other aid, to the conditions upon which such funds or other aid has been received, for the purpose of administering this chapter and may be expended by the University in carrying out only such state plans or in otherwise effectuating the purposes and policies of this chapter.

(b) Subject to any conditions upon which any such money or other aid is made available to the State and to the terms of any applicable plan made effective pursuant to this chapter, such expenditures may include, but need not be limited to, expenditures for administrative expenses; equipment, cost of research and investigation, cost of educational activities; compensation and expenses of members of the State Advisory Board; reimbursement to other state agencies or to voluntary committees or associations of agricultural producers for costs to such agencies; committees or associations of assistance in the administration of this chapter requested in writing by the University and rendered to the University; reimbursement of any other fund from which it has made expenditures in providing services in the administration of this chapter; payments to agricultural producers provided for in any plan made effective pursuant to this chapter; salaries of employees; and all other expenditures requisite to carrying out this chapter.

(c) The University shall provide for the keeping of full and accurate accounts as such state agency, separate from its accounts kept in its other capacities, showing all receipts and expenditures of moneys, securities or other property received, held or expended under this chapter and shall provide for the auditing of all such accounts and for the execution of surety bonds for all employees entrusted with moneys or securities under this chapter.

(41 Del. Laws, c. 175 § 6; 7 Del. C. 1953 § 3705.)

§ 3706 Additional powers and duties of the University.

(a) The University shall utilize such available services and assistance of other state agencies and of voluntary county and community committees and associations of agricultural producers as it determines to be necessary or calculated to assist substantially in the effective administration of this chapter.

(b) The University may make such rules and regulations, and do any and all other acts consistent with this chapter, which it finds to be necessary or proper for the effective administration of this chapter.

(c) The University may obtain, by lease or purchase, such equipment, office accommodations, facilities, services and supplies, and employ such technical or legal experts or assistants and such other employees, including clerical and stenographic help, as it determines to be necessary or proper to carry out this chapter, and may determine the qualifications, duties and compensation of such experts, assistants and other employees.

(d) All other agencies of this State may assist the University in carrying out this chapter upon written request of the University, in any manner determined by the University to be necessary or appropriate for the effective administration of this chapter.

(41 Del. Laws, c. 175 § 7; 7 Del. C. 1953 § 3706.)

§ 3707 Agricultural communities.

(a) The University shall designate within each county of this State such geographic units, which shall be called "communities," as it determines to be the most convenient for the administration of this chapter and of state plans adopted pursuant to this chapter, and shall establish the boundaries of such communities.

(b) The University may revise the boundaries of such communities, in conformity with the respective standards prescribed herein, at such time or times as it finds that a revision is necessary either to cause communities to conform to the standards or to provide for the more substantial or more efficient accomplishment of the purposes of this chapter.

(41 Del. Laws, c. 175 § 8; 7 Del. C. 1953 § 3707.)

§ 3708 Organization of producers and committees.

The University shall establish and define the duties:

(1) Within each community, of a voluntary association of agricultural producers all of whose members shall be entitled to equal rights;

(2) Of a community committee within each community elected by the association membership of said community from their own membership;

(3) Of a county board of directors within each county, consisting of the chairperson of the community committees within the county, which county board shall elect a chairperson and such other officers as are deemed necessary;

(4) Of a county policy committee within each county elected by the county board of directors from their own members.

(41 Del. Laws, c. 175 § 9; 7 Del. C. 1953 § 3708; 70 Del. Laws, c. 186 § 1.)

§ 3709 State Advisory Board; selection; qualifications; functions.

(a) The University shall, by regulations, provide for the selection of 6 persons of legal age, resident in this State, who shall be selected from the standpoint of their qualification by actual farming experience and comprehensive understanding of the agricultural problems of this State, to act as farmer members of a State Advisory Board. There shall be not less than 1 nor more than 3 selected from any 1 of the counties.

(b) The State Advisory Board, upon the request of the University, shall advise the University with regard to all matters of major importance in carrying out this chapter.

(41 Del. Laws, c. 175 § 10; 7 Del. C. 1953 § 3709.)

§ 3710 Reports.

The University shall compile or require to be made such reports as it determines to be necessary or proper in order to ascertain whether any plans provided for in this chapter are being carried out according to their terms. The University shall provide for compliance, on the part of all persons and agencies participating in the administration of any such plan, with such requirements, and may make, or cause to be made, such investigations as it determines to be necessary or proper to assure the correctness of and to make possible the verification of such reports.

(41 Del. Laws, c. 175 § 11; 7 Del. C. 1953 § 3710.)

Part IV
Agricultural and Soil Conservation; Drainage and Reclamation of Lowlands
Chapter 38
GIANT REED GRASS CONTROL

§ 3801 Declared public and common nuisance.

The existence of growth of giant reed grass (Phragmites australis) is declared to be a public and common nuisance.

(64 Del. Laws, c. 263 § 1.)

§ 3802 Department of Natural Resources and Environmental Control; investigations; rules and regulations; programs of control; acceptance of grants.

(a) The State Department of Natural Resources and Environmental Control may make such investigations, studies and determinations as it may deem advisable in order to ascertain the extent of growth and infestation of Phragmites australis in this State, and the effect of such species on wildlife and the environment.

(b) The Department may promulgate such rules and regulations as in its judgment are necessary to carry into effect this chapter and may alter or suspend such rules when necessary.

(c) The Department may institute programs of control and eradication.

(d) The Department may enter into agreements with any county or subdivision of this State, with any adjoining state or with agencies of the federal or state government to effect a program of control and eradication.

(e) The Department may accept, use or expend such aid, gift or grant as may from time to time be made available from any source, public or private, for the purposes of carrying out this chapter.

(64 Del. Laws, c. 263 § 1.)

§ 3803 Agreements relating to eradication.

The State Department of Natural Resources and Environmental Control may enter into an agreement with any designated county in this State for the purpose of control and eradication of Phragmites australis within that county. When such agreement is executed and certified in writing to the Secretary of State, the Department and the county may conduct surveys to determine the location and amount of infestations of Phragmites australis within that county, and may provide technical and financial assistance to landowners on a cost-sharing basis with those landowners in a cooperative control or eradication program, and may effect a program of mowing, spraying or other control or eradication practices on road rights-of-way, drainage ditch banks, parks, playgrounds and other public and private lands. The agreement between the Department and county may be terminated by either party on 30 days' written notice.

(64 Del. Laws, c. 263 § 1.)

Part IV
Agricultural and Soil Conservation; Drainage and Reclamation of Lowlands
Chapter 39
SOIL AND WATER CONSERVATION DISTRICTS
Subchapter I
General Provisions

§ 3901 Declaration of policy.

It is the policy of the State to provide for the preservation of the productive power of Delaware land and the optimum development and use of certain surface water resources of the State by furthering the conservation, protection, development and utilization of land and water resources, including the impoundment, and disposal of water and by preventing and controlling floodwater and sediment damages, and thereby to preserve natural resources and promote their beneficial use, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, provide recreation development, protect the tax base, protect public lands and highways, and protect and promote the health, safety and general welfare of the people of this State.

(44 Del. Laws, c. 212 § 2; 7 Del. C. 1953 § 3901; 54 Del. Laws, c. 188 § 2; 55 Del. Laws, c. 456 § 1.)

§ 3902 Definitions.

For the purpose of this chapter, unless otherwise specifically defined, or another intention clearly appears, or the context requires a different meaning:

(1) "Board of district supervisors" or "board" means the governing body of a soil and water conservation district, elected or appointed in accordance with this chapter.

(2) "Cooperator" means a landowner for whom a district provides, or has agreed to provide, in accordance with this chapter, services, material and equipment with respect to the landowner's land within the district.

(3) "Department of Natural Resources and Environmental Control" or "Department" means the agency responsible for the administration of soil and water conservation districts in Delaware, with the powers and duties prescribed by this chapter.

(4) "Farmer" means any person holding legal title to a farm and being actively engaged in farming operations.

(5) "Landowner" or "owner of land" means and includes any person, firm or corporation who shall hold title to any land in this State.

(6) "Soil and water conservation district" or "district" means a governmental subdivision of this State, the boundaries of which coincide with county boundaries, and having the powers and duties prescribed by this chapter.

(44 Del. Laws, c. 212 § 3; 7 Del. C. 1953 § 3902; 54 Del. Laws, c. 188 § 2; 57 Del. Laws, c. 711 § 1; 57 Del. Laws, c. 739 § 166.)

§ 3903 Conservation districts.

The 3 soil and water conservation districts heretofore created under this chapter shall hereafter be known as the Kent Conservation District, the New Castle Conservation District and the Sussex Conservation District, respectively, and the said districts shall continue to exercise all the powers and duties prescribed for districts by this chapter.

(7 Del. C. 1953 § 3903; 54 Del. Laws, c. 188 § 2; 57 Del. Laws, c. 739 § 167; 59 Del. Laws, c. 561 § 1.)

§ 3904 Advisor to Department.

The Department may invite the Secretary of Agriculture of the United States of America to appoint 1 person to serve with the Department in an advisory capacity.

(7 Del. C. 1953 § 3904; 54 Del. Laws, c. 188 § 2; 57 Del. Laws, c. 739 § 168.)

§ 3905 General powers and duties of Department.

(a) The Department shall:

(1) Formulate policies and general programs to be carried out by the Department and by soil and water conservation districts for the prevention of erosion, floodwater and sediment damages and for the conservation, protection, development and utilization of the State's soil and water resources, including the impoundment and disposal of water, and removal of sediment from waterways, lakes, ponds or other bodies of water;

(2) Exercise overall responsibility for administration and direction of the programs of the districts;

(3) Advise and assist any district in developing and carrying out its program for the prevention of erosion, floodwater and sediment damages, and the conservation, protection, development and utilization of soil and water resources, including the impoundment and disposal of water, and removal of sediment from waterways, lakes, ponds or other bodies of water;

(4) Cooperate with and give such other assistance, financial and otherwise, as the Department may judge to be useful to any district in the exercise of its powers and performance of its duties, including the entering into of such agreements as may be appropriate with such

district, with landowners, and with other state, federal, or local agencies, subject to such conditions as the Department deems necessary to advance the purposes of this chapter;

(5) Receive and allocate or otherwise expend any funds appropriated by the General Assembly of this State, or received from any other source, for the use or benefit of the Department or of the districts;

(6) Be the administrative agency to represent this State in all matters arising from this chapter;

(7) Keep a full and accurate record of all its proceedings and of all its resolutions, regulations and orders issued or adopted;

(8) Make an annual audit of all its accounts of receipts and disbursements;

(9) Formulate and establish rules and procedures for conducting elections of district supervisors, and for conducting all other local referendums which may from time to time become necessary in order to give landowners an opportunity to reach majority conclusions with respect to the programs of the district;

(10) Make such other rules and regulations as it deems necessary to carry out the purposes of this chapter;

(11) Make and execute contracts and other instruments, necessary or convenient to the exercise of its powers, with any federal, state or local agency, or with any person; and

(12) Adopt rules and regulations for surface water impoundment; upon request by any landowner within the drainage area involved, make hydrological and engineering studies to determine pertinent factors, including, but not limited to, the projected supply of available water, the past use of said water and the contemplated water use, and on the basis of said factors to permit impoundment, subject to the jurisdiction and authority of the Secretary and the Department of Natural Resources and Environmental Control to disapprove said permit within 30 days of submission to them of the completed plans and permit by the Department. No action by the Department shall establish any new permanent water rights nor substantially impair any existing rights to beneficial use of water.

(b) In addition to the above powers, and any other powers granted in other sections of this chapter, the Department may:

(1) Appoint such employees as it requires, within the limits of available funds, and determine their qualifications, duties and compensation;

(2) Call upon the Attorney General of the State for such legal services as it requires;

(3) Conduct surveys, investigations and research relating to erosion, floodwater and sediment damages, and to the conservation, protection, development and utilization of land and water resources, including impoundment and disposal of water, and removal of sediment from waterways, lakes, ponds or other bodies of water, and the prevention and control measures and works of improvement needed; publish the results of such surveys, investigations and research; disseminate information concerning such preventive and control measures and works of improvement; except, that any agricultural research shall be in cooperation with the Delaware Agricultural Experiment Station;

(4) Develop comprehensive plans for, and carry out, preventive and control measures and works of improvement for the prevention of erosion, floodwater and sediment damages and for the conservation, protection, development and utilization of land and water resources, including the impoundment and disposal of water, and removal of sediment from waterways, lakes, ponds or other bodies of water;

(5) Obtain or accept the cooperation and financial, technical or material assistance of the United States or any of its agencies, and of this State or any of its agencies or subdivisions, or from any other source, for use in carrying out the functions of the Department under this chapter;

(6) Obtain options upon and acquire by purchase, exchange, lease, gift, grant, bequest, devise or otherwise any property, real or personal, or rights or interests therein; maintain, administer and improve any properties acquired; receive income from such properties and expend such income in carrying out the purposes and provisions of this chapter; and sell, lease, or otherwise dispose of any of its real or personal property or interests therein, in furtherance of the purposes and provisions of this chapter, including conveyances, with or without consideration, of lands or interests therein to soil and water conservation districts for use in carrying out their authorized purposes;

(7) Construct, improve, operate and maintain such structures as may be necessary or convenient for the performance of any of the functions authorized in this chapter, and also, with the prior approval and agreement of the State Highway Department, which under § 131 of Title 17 has responsibility for the absolute care, management and control of public roads, causeways, highways and bridges in the State, construct, improve, protect or repair public roads, causeways, highways or bridges in those cases where other works of improvement authorized in this chapter affect such roads, causeways, highways or bridges;

(8) Cooperate, or enter into agreements with, and within the limits of available appropriations or other funds, furnish financial or other aid to any agency, governmental or otherwise, or any landowner, in the carrying out of operations authorized by this chapter, subject to such conditions as the Department may deem necessary to advance the purposes of this chapter;

(9) Appoint district supervisors in certain cases as in this chapter provided;

(10) Accept from tax ditches of the State in accordance with § 4161(10) of this title:

a. The responsibility for certain specified responsibilities for maintenance of the tax ditch;

b. All rights-of-way assigned by court order to the tax ditch for construction and maintenance operations;

c. Any and all powers possessed by the tax ditch, or the managers thereof, related to obstruction of, or damage to said tax ditch, or to the addition of territory to a tax ditch, or to the alteration of a tax ditch;

(11) Carry out specified responsibilities for maintenance of those tax ditches that choose to turn over such rights to the Department;

(12) Exercise all rights, under law, to utilize and protect the rights-of-way transferred to the Department by tax ditches for maintenance purposes, including those rights pertaining to obstruction of, or damage to, a tax ditch in § 4186 of this title, except that such rights-of-way may be used by the Department or its agents for maintenance purposes only; and

(13) Cooperate with other agencies and departments of the State, federal agencies, or any other landowners for use of the state dredge at the cost of the state agency and/or department, federal agency or the landowners requesting use of the state dredge. Cost for the use of the state dredge shall be limited to actual project costs incurred by the Department plus an amount equal to 10 percent of the actual project costs incurred for overhead expenses.

(7 Del. C. 1953 § 3906; 54 Del. Laws, c. 188 § 2; 55 Del. Laws, c. 456 §§ 2-6; 55 Del. Laws, c. 460; 57 Del. Laws, c. 739 §§ 169, 170; 59 Del. Laws, c. 166; 60 Del. Laws, c. 183 §§ 1-4; 67 Del. Laws, c. 306 § 1.)

§ 3906 Boards of district supervisors; composition; term.

(a) There shall be a board of supervisors for each district, each board to consist of 4 elected supervisors, an optional supervisor who, in Kent County shall be a member of the Levy Court, in Sussex County shall be a member of County Council, and in New Castle County, shall be the County Executive or the County Executive's designated representative, and 2 optional supervisors who shall not be farmers and who may be appointed by the Secretary of the Department of Natural Resources and Environmental Control upon the request of the district involved. The vote and authority of each supervisor shall be equal. The county agricultural agent shall serve as secretary to the board but shall have no vote.

(b) The elected members of the Kent and Sussex districts shall be farmers residing in those respective counties. In New Castle County, 2 of the elected supervisors shall be farmers residing in the southern portion of the County, and the remaining 2 who shall not be farmers, shall reside in the northern portion of the County, according to a division established by the Secretary of the Department of Natural Resources and Environmental Control.

(c) The term of office of each elected supervisor shall be 4 years. The term of office of a supervisor appointed by the Secretary of the Department of Natural Resources and Environmental Control shall be 3 years. An optional supervisor appointed by the Kent County Levy Court and the Sussex County Council shall hold office during the pleasure of that body so long as that optional supervisor remains a member of the appointing body. The Secretary of the Department of Natural Resources and Environmental Control may fill the vacancy of any elected supervisor, or supervisor appointed by the Secretary of the Department of Natural Resources and Environmental Control occurring otherwise than by expiration of term, by appointment of a qualified individual to serve the remainder of the unexpired term.

(44 Del. Laws, c. 212 § 6; 7 Del. C. 1953 § 3907; 54 Del. Laws, c. 188 § 2; 55 Del. Laws, c. 462 § 1; 57 Del. Laws, c. 739 § 171; 65 Del. Laws, c. 362 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 95 §§ 1, 2.)

§ 3907 Organization of board; quorum; expenses of district supervisors.

The board of district supervisors annually shall designate by election 1 of its members to be its chairperson, and shall designate future chairpersons by the same means. A majority of the board shall constitute a quorum, but the concurrence of a majority of the entire board on any matter within its duties shall be required for its determination, except as the board may invest any of its supervisors with power to determine specified matters or to perform routine duties. The board shall be authorized, in its discretion, to reimburse supervisors for their expenses, including travel expenses, necessarily incurred in the discharge of their duties as members of the board.

Any district supervisor may be removed from office by the Department of Natural Resources and Environmental Control, upon notice and hearing, for neglect of duty or misconduct, but for no other reason.

(7 Del. C. 1953 § 3908; 54 Del. Laws, c. 188 § 2; 57 Del. Laws, c. 739 § 172; 70 Del. Laws, c. 186 § 1.)

§ 3908 Soil and water conservation district; governmental subdivision; powers.

A soil and water conservation district organized under this chapter shall constitute a governmental subdivision of this State, and such district, and the board of supervisors thereof, shall have authority to exercise the following powers, in addition to others granted in other sections of this chapter, subject to the responsibility of the Department of Natural Resources and Environmental Control for the administration and direction of the programs of the districts:

(1) To develop comprehensive plans for, and carry out, preventive and control measures and works of improvement for the prevention of erosion, floodwater and sediment damages, and the conservation, development and utilization of land and water resources, including the disposal of water and removal of sediment from waterways, lakes, ponds or other bodies of water, within the district;

(2) To conduct, in cooperation with the Department of Natural Resources and Environmental Control surveys, investigations and research relating to the prevention of erosion, floodwater and sediment damages, and the conservation, protection, development and utilization of land and water resources, including the disposal of water, and removal of sediment from waterways, lakes, ponds or other bodies of water;

(3) To cooperate or enter into agreements with, and, within the limits of appropriations or other funds duly made available to it by law, to provide aid to any agency, governmental or otherwise, or any landowner within the district, in carrying out the program of the district, subject to such conditions as the board may deem necessary to carry out the purposes of this chapter;

(4)(a) To make available, on such terms as the board shall prescribe, to any landowners within the district, through existing agencies if agreements with them seem feasible, or by such other means as the board shall prescribe, such services, materials and equipment as will assist such landowners to carry on operations for any of the purposes of this chapter;

(b) To make available on request, and on such terms as the Board shall prescribe, to any cooperator who is a resident of the State and who owns land in a neighboring state, services, materials and equipment for the benefit of such cooperator's land in the neighboring state;

(5) To construct, improve, operate and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter;

(6) To obtain options upon and acquire by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer and improve any properties acquired; to receive income from such properties and expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease or otherwise dispose of any of its real or personal property or interests therein, in furtherance of the purposes of the district;

(7) To accept the cooperation of, and financial, technical and material assistance from, the United States or any of its agencies, or from this State or any of its agencies or subdivisions, or from any other source, for use in carrying out the purposes of the district;

(8) To sue and be sued in the name of the district; to make and execute contracts and other legal instruments, necessary or convenient to the exercise of its powers, with any federal, state or local agency, or with any person; and to receive and expend funds; and

(9) To promote the conservation, protection, development and utilization of land and water resources through various informational and educational activities as the Board may deem necessary in the furtherance of its duties under this chapter.

(7 Del. C. 1953 § 3909; 54 Del. Laws, c. 188 § 1; 57 Del. Laws, c. 711 § 2; 57 Del. Laws, c. 739 § 173; 60 Del. Laws, c. 183 §§ 5, 6; 61 Del. Laws, c. 18 § 1.)

§ 3909 Cooperation.

Any 2 or more soil and water conservation districts organized under this chapter may cooperate with one another or with the State or any agency or subdivision thereof in the exercise of all powers conferred upon such districts or any or all duties prescribed for such districts by this chapter.

(44 Del. Laws, c. 212 § 9; 7 Del. C. 1953 § 3910; 54 Del. Laws, c. 188 § 1.)

§ 3910 Primary jurisdiction of Secretary and the Department of Natural Resources and Environmental Control.

The Secretary and the Department of Natural Resources and Environmental Control shall have paramount jurisdiction over water use in this State. In case of any conflict between this chapter and Part VII of this title, relating to water and air resources, Part VII shall prevail.

(7 Del. C. 1953 § 3911; 55 Del. Laws, c. 442 § 8; 57 Del. Laws, c. 739 § 174.)

§ 3911 Appeals.

Any owner of land within the drainage area of the watershed or tax ditch involved, aggrieved by the Department's action, may appeal to the Superior Court within 30 days after the date of the hearing. The sole grounds for reversal by the Court, sitting without a jury, shall be:

(1) Abuse of the Department's discretion;

(2) infringement of constitutional rights; or

(3) the impairment of vested rights of the complainant.

In the event of such appeal, the Department shall be represented by the Attorney General of the State.

(7 Del. C. 1953 § 3912; 55 Del. Laws, c. 456 § 7; 57 Del. Laws, c. 739 § 175.)

Subchapter II

State and County Appropriations to Districts

§ 3921 Annual appropriations to Division of Watershed Stewardship of Department of Natural Resources and Environmental Control.

The General Assembly shall annually appropriate:

(1) To the Division of Watershed Stewardship for use in New Castle County, a sum not in excess of $75,000;

(2) To the Division of Watershed Stewardship for use in Kent County, a sum not in excess of $75,000;

(3) To the Division of Watershed Stewardship for use in Sussex County, a sum not in excess of $75,000.

(7 Del. C. 1953 § 3921; 55 Del. Laws, c. 414 § 2; 57 Del. Laws, c. 739 § 176; 57 Del. Laws, c. 749; 60 Del. Laws, c. 326 § 1; 62 Del. Laws, c. 68 § 101; 63 Del. Laws, c. 322 § 106; 69 Del. Laws, c. 291 § 239; 77 Del. Laws, c. 430 §§ 2, 3.)

§ 3922 Appropriations by the several county governments.

The government of each county shall annually appropriate to the Division of Watershed Stewardship a sum equal to the annual appropriation to the Division by the General Assembly, for use in the respective counties, pursuant to § 3921 of this title.

(7 Del. C. 1953 § 3922; 55 Del. Laws, c. 414 § 2; 57 Del. Laws, c. 739 § 177; 57 Del. Laws, c. 749; 77 Del. Laws, c. 430 § 4.)

§ 3923 Use of appropriated money in Sussex, Kent and New Castle Counties.

The money appropriated pursuant to § 3921 of this title shall be used by the Division of Watershed Stewardship to pay or assist in paying all costs including personnel required for planning, construction, installation and maintenance of tax ditches, public group ditches, highway ditches and resource conservation projects in Sussex, Kent and New Castle Counties, which tax ditches shall be organized under Chapter 41 of this title; Article 2, Chapter 65, and Article 1, Chapter 105 of the 1935 Revised Code of Delaware; and which public group ditches shall be ditches providing water management and drainage for groups of landowners and for landowners and portions of state highways and for which necessary construction permits, easements or rights-of-way for construction and maintenance operations shall have been acquired by this State or by Sussex, Kent or New Castle County, and which highway ditches shall be ditches maintained by the public on state or county-owned easements or rights-of-way adjacent to the roads of Sussex, Kent or New Castle County, and which resource conservation projects shall be defined in applications or project plans submitted to the Secretary of the United States Department of Agriculture for Watershed Planning or Resource Conservation and Development assistance. The money appropriated shall be paid from time to time by the State Treasurer and the governments of Sussex, Kent and New Castle Counties to the Division of Watershed Stewardship, or to the Sussex Conservation District, the Kent Conservation District, or the New Castle Conservation District, or directly to the contractors and suppliers furnishing work, labor, services and materials for such projects or to landowners for rights-of-way or easements, or shall be paid or otherwise made available to other state agencies for work, labor, services and materials for certain portions of such projects as shall be determined by the Division and upon certification by the Division that such payments are proper and for the purposes authorized by this section.

(7 Del. C. 1953 § 3923; 55 Del. Laws, c. 414 § 2; 56 Del. Laws, c. 92; 57 Del. Laws, c. 739 § 178; 57 Del. Laws, c. 749; 59 Del. Laws, c. 561 § 2; 59 Del. Laws, c. 562 § 1; 64 Del. Laws, c. 382 § 1; 77 Del. Laws, c. 430 § 5.)

§ 3924 [Reserved.]

§ 3925 Transfer of funds prohibited.

Funds appropriated for use by a particular district in a particular county shall only be used by that district in that county.

(7 Del. C. 1953 § 3925; 55 Del. Laws, c. 414 § 2; 57 Del. Laws, c. 749.)

Part IV
Agricultural and Soil Conservation; Drainage and Reclamation of Lowlands
Chapter 40
EROSION AND SEDIMENTATION CONTROL

§ 4001 Legislative findings and statement of policy.

(a) Legislative findings. — The General Assembly finds that erosion and sedimentation continue to present serious problems throughout the State, and that the removal of a stable ground cover in conjunction with the decrease in the infiltration capability of soils resulting from the creation of additional impervious areas such as roads and parking lots has accelerated the process of soil erosion and sediment deposition resulting in pollution of the waters of the State. This damages domestic, agricultural, industrial, recreational, fish and wildlife and other resource uses. The General Assembly further finds that accelerated stormwater runoff increases flood flows and velocities, contributes to erosion, sedimentation, and degradation of water quality, overtaxes the carrying capacity of streams and storm sewers, greatly increases the costs of public facilities in carrying and controlling stormwater, undermines flood plain management and flood control efforts in downstream communities, reduces groundwater recharge, and threatens public health, welfare, and safety.

(b) Statement of policy. — In consideration of these legislative findings, it is declared to be the policy of this chapter to strengthen and extend the present erosion and sediment control activities and programs of this State for both rural and urban lands and to provide for control and management of stormwater runoff consistent with sound water and land use practices. These activities will reduce to the extent possible any adverse effects of stormwater runoff on the water and lands of the State. This policy, to be carried out by establishing and implementing by the Department of Natural Resources and Environmental Control, hereinafter referred to as the "Department," in cooperation with conservation districts, counties, municipalities and other local governments and subdivisions of this State, and other public and private entities, a statewide comprehensive and coordinated erosion and sediment control and stormwater management program to conserve and protect land, water, air and other resources of the State. This program shall be consistent with, and coordinated with other environmental programs implemented by the Department such as wetlands protection and groundwater protection.

(61 Del. Laws, c. 522 § 1; 67 Del. Laws, c. 234 § 1.)

§ 4002 Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Agricultural structure" means a structure, which is located on a farm, used exclusively in connection with producing, harvesting, storing, drying, or raising agricultural commodities, including the raising of livestock. "Agricultural structure" does not include structures used for human habitation, public use, or a place of employment where agricultural products are processed, treated, or packaged.

(2) "Certified construction reviewer" means an individual who has passed a departmental sponsored or approved training course and who provides on-site construction review for sediment control and stormwater management in accordance with regulations promulgated under this chapter.

(3) "Designated watershed or subwatershed" means a watershed or subwatershed proposed by a conservation district, county, municipality or state agency and approved by the Department. The Department may establish additional requirements due to existing water quantity or water quality problems. These requirements shall be implemented on an overall watershed or subwatershed master plan developed for water quality and/or water quantity protection.

(4) "Land disturbing activity" or "land disturbance" means any land change or construction activity for residential, commercial, industrial, or institutional land use which may result in soil erosion from water or wind or movement of sediments or pollutants into state waters or onto lands in the State, or which may result in accelerated stormwater runoff, including clearing, grading, excavating, transporting, and filling of land. This paragraph does not apply to commercial forestry practices.

(5) "Person" means any state or federal agency, individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission board, public or private institution, utility, cooperative, municipality or other political subdivision of this State, any interstate body, or any other legal entity.

(6) "Responsible personnel" means any foreperson or superintendent who is in charge of on-site clearing and land disturbing activities for sediment and stormwater control associated with a construction project.

(7) "Sediment and stormwater management plan" or "plan" means a plan for the control of soil erosion, sedimentation, stormwater quantity and water quality impacts which may result from any land disturbing activity.

(8) "Standard plan" means a set of predefined standards or specification for minor land disturbing activities that preclude the need for the preparation of a detailed sediment and stormwater management plan under specific conditions established by regulation by the Department under this chapter.

(9) "State waters" means any and all waters, public or private, on the surface of the earth which are contained within, flow through or border upon the State or any portion thereof.

(10) "Stormwater" means the runoff of water from the surface of the land resulting from any form of precipitation and including snow or ice melt.

(11) "Stormwater management" means:

a. For water quantity control, a system of vegetative, structural, and other measures that controls the volume and rate of stormwater runoff which may be caused by land disturbing activities or activities upon the land; and

b. For water quality control, a system of vegetative structural, and other measures that controls adverse effects on water quality that may be caused by land disturbing activities or activities upon the land.

(12) "Stormwater utility" means the establishment of an administrative organization that has been created for the purposes of funding sediment control, stormwater management or flood control planning, design, construction, maintenance, and overall resource needs by authorized and imposed charges.

(61 Del. Laws, c. 522 § 1; 67 Del. Laws, c. 234 § 1; 69 Del. Laws, c. 350 §§ 1, 2; 70 Del. Laws, c. 186 § 1; 80 Del. Laws, c. 274 § 1.)

§ 4003 Duties of persons engaged in land disturbing activities.

(a) After July 1, 1991, unless exempted, no person shall engage in land disturbing activities without submitting a sediment and stormwater management plan to the appropriate plan approval authority and obtaining a permit to proceed.

(b) Projects which do not alter stormwater runoff characteristics may be required to provide water quality enhancement even if the predevelopment runoff characteristics are unchanged. Criteria will be detailed in the regulations regarding level of water quality control and variance procedures.

(c) Each land developer shall certify, on the sediment and stormwater management plan submitted for approval, that all land clearing, construction, development, and drainage will be done according to the approved plan.

(d) All approved land disturbing activities shall have associated therein at least 1 individual who functions as responsible personnel.

(61 Del. Laws, c. 522 § 1; 67 Del. Laws, c. 234 § 1.)

§ 4003A Runoff Control near Mill Creek, Little Mill, Red Clay, White Clay Creek, Persimmon Creek and Shellpot Creek.

All land development subject to this chapter in the Mill Creek, Little Mill Creek, Red Clay Creek, White Clay Creek, Persimmon Creek and Shellpot Creek watersheds of New Castle County will, in addition to meeting all other requirements for stormwater management, be required to demonstrate successful management of any increase in stormwater runoff volume from predevelopment land use conditions. Successful management of increased stormwater volume shall include but not be limited to; recharge, infiltration and reuse where soils and site conditions are applicable. For any increase in volume that cannot be recharged, infiltrated or reused, volume management may be achieved by modifying the release rate for the increase in volume so as not to increase the flood elevation for all storms up to and including the 100-year return period.

(75 Del. Laws, c. 433 § 1.)

§ 4004 Applicability.

(a) The provisions of this chapter shall not apply to agricultural land management practices unless the conservation district or the Department determines that the land requires a new or updated soil and water conservation plan, and the owner or operator of the land has refused either to apply to a conservation district for the development of such a plan, or to implement a plan developed by a conservation district.

(b) The Department shall adopt standard plans for the construction of agriculture structures and it shall not be necessary for any person seeking approval to submit a sediment and stormwater management plan.

(c) Utility projects disturbing less than 5,000 square feet of land are not subject to the provisions of this chapter.

(d) Subject to sediment and erosion controls, land disturbing activities of 1 acre or less, excluding nonresidential properties, are not subject to the provisions of this chapter.

(e) Land disturbing activities not subject to the land management practices set forth in subsection (a) of this section which are conducted on 10 acres or less of agricultural lands for agricultural purposes shall be subject to standard plans adopted by the Department, and it shall not be necessary for any person seeking approval to submit a detailed sediment and stormwater management plan.

(f) Subject to water quality management and sediment and erosion controls, nonerosive conveyances of stormwater discharges from land disturbing activities which drain into tidal areas and tidal waters are not subject to the quantity management provisions of this chapter.

(g) Linear water and wastewater utility projects that have a maximum width of disturbance of 30 feet or less and with a maximum total disturbance of 1 acre or less are: (i) subject to Erosion and Sediment Control regulations adopted by the Department, and (ii) exempt from Stormwater Management regulation adopted by the Department. For the purposes of this section "erosion and sediment control" means the control of solid material, both mineral and organic, during a land disturbing activity, to prevent its transport out of the disturbed area by means of wind, water, gravity, or ice. For the purposes of this section "stormwater management" means:

(1) For water quantity control, a system of vegetative, structural, and other measurers that controls the volume and rate of stormwater runoff which may be caused by land disturbing activities upon the land; and

(2) For water quality control, a system of vegetative, structural, and other measures that controls adverse effects on water quality that may be caused by land disturbing activities upon the land.

(61 Del. Laws, c. 522 § 1; 67 Del. Laws, c. 234 § 1; 80 Del. Laws, c. 274 § 2; 80 Del. Laws, c. 392 § 1.)

§ 4005 Program funding and financial assistance.

(a) The Department, conservation districts, counties or municipalities are authorized to receive from federal, state, or other public or private sources financial, technical or other assistance for use in accomplishing the purposes of this chapter. The Department may allocate, as necessary or desirable, any funds received to conservation districts, counties or municipalities for the purpose of effectuating this chapter.

(b) The conservation districts, counties and municipalities shall have authority to adopt a fee system to help fund program implementation. That fee system shall be implemented by the designated plan approval agency to fund overall program management, plan review, construction review, enforcement needs and maintenance responsibilities. In those situations where the Department becomes the designated plan approval agency, the Department may assess a plan review and inspection fee. That fee shall not exceed $80 per disturbed acre per project. There shall be no duplication of fees by the various implementing agencies for an individual land disturbing activity and the fee schedule shall be based upon the costs to the Department, conservation districts, counties or municipalities to implement and administer the program. In addition, the Department of Transportation is authorized to act as the designated plan approval agency in those situations where a public utility engages in land-disturbing activity for which a permit is required because of a project initiated by the Department of Transportation, subject to the following provisions:

(1) If the land-disturbing activity takes place on an existing right-of-way of the Department of Transportation, that Department is permitted to assess and collect a fee for this purpose which shall not exceed $125 per acre, with a $250 minimum.

(2) If the land-disturbing activity takes place adjacent to but not upon an existing right-of-way of the Department of Transportation, the fee contemplated by paragraph (b)(1) of this section is waived.

(c) Authority is also granted to the Department, conservation districts, counties or municipalities to establish a stormwater utility as an alternative to total funding under the fee system. The stormwater utility shall be developed for the designated watersheds and may fund such activities as long range watershed master planning, watershed retrofitting, and facility maintenance. This fee system shall be reasonable and equitable so that each contributor of runoff to the system, including state agencies, shall pay to the extent to which runoff is contributed. Criteria for the implementation of the stormwater utility shall be established in regulations promulgated under this chapter. The implementation of a stormwater utility will necessitate the development of a local utility ordinance prior to its implementation.

(61 Del. Laws, c. 522 § 1; 67 Del. Laws, c. 234 § 1; 70 Del. Laws, c. 177 § 1.)

§ 4006 State management program.

(a) The Department shall, in cooperation with appropriate state and federal agencies, conservation districts, other governmental subdivisions of the State, and the regulated community develop a state stormwater management program. This program shall take into consideration both quantity and quality of water, and shall be integrated with, and made a part of the amended state erosion and sediment control program to create a sediment and stormwater program.

(b) In carrying out this chapter, the Department shall have the authority to:

(1) Provide technical and other assistance to districts, counties, municipalities and state agencies in implementing this chapter;

(2) Develop and publish, as regulation components, minimum standards, guidelines and criteria for delegation of sediment and stormwater program components, and model sediment and stormwater ordinances for use by districts, counties and municipalities;

(3) Review the implementation of all components of the statewide sediment and stormwater program that have been delegated to either the conservation districts, counties, municipalities or other state agencies in reviews to be accomplished at least once every 5 years;

(4) Require that appropriate sediment and stormwater management provisions be included in all new erosion and sediment control plans developed pursuant to this chapter;

(5) Cooperate with appropriate agencies of the United States or other states or any interstate agency with respect to sediment control and stormwater management;

(6) Conduct studies and research regarding the causes, effects and hazards of stormwater and methods to control stormwater runoff;

(7) Conduct and supervise educational programs with respect to sediment control and stormwater management;

(8) Require the submission to the Department of records and periodic reports by conservation districts, tax ditch organization, county and municipal agencies as may be necessary to carry out this chapter;

(9) Review and approve designated watersheds for the purpose of this chapter;

(10) Establish a maximum life of 5 years for the validation of approved plans. The regulations shall specify variances which expand this time limitation in specific situation; and

(11) Establish a means of communication, such as a newsletter, so that information regarding program development and implementation can be distributed to interested individuals.

(c) The Department shall develop such regulations in conjunction with and with substantial concurrence of a regulatory advisory committee, appointed by the Secretary, which shall include representatives of the regulated community and others affected by this chapter. The Secretary shall appoint only 1 representative of the Department to the regulatory advisory committee and no legal representatives of any of those serving on the committee shall be entitled to be a member of the committee. The recommendations of this committee shall be presented at all public workshops and hearings related to the adoption of the regulations implementing this chapter. Prior to final

promulgation of regulations under this chapter, the Secretary shall explain, in writing, any differences between the advisory committee recommendations and the final regulations. The regulations may include, but are not limited to, the following items:

(1) Criteria for the delegation of program elements;

(2) Types of activities consistent with the provisions of this chapter that require a sediment and stormwater management permit;

(3) Waivers, exemptions and variances;

(4) Sediment and stormwater plan approval fees and performance bonds;

(5) Criteria for distribution of funds collected by sediment and stormwater plan approval fees;

(6) Criteria for implementation of a stormwater runoff utility;

(7) Specific design criteria and minimum standards, and specifications, provided that any design criteria, standards and specifications adopted shall be technologically feasible and uniformly capable of being satisfied;

(8) Permit application and approval requirements;

(9) Criteria for approval of designated watersheds;

(10) Criteria regarding attendance and completion of departmental sponsored or approved training courses in sediment and stormwater control that will be required of certified construction reviewers and responsible personnel;

(11) Construction review; and

(12) Maintenance requirements for sediment control during construction and stormwater management structures after construction is completed.

(d)(1) The Department may adopt, amend, modify or repeal rules and regulations after public hearing to effectuate the policy and purposes of this chapter. The conduct of all hearings conducted pursuant to this chapter and the promulgation process shall be in accordance with the relevant provisions of Chapter 60 of this title, and all other provisions of Delaware law. Notwithstanding the foregoing or any other provision of Delaware law, the Department and any other approval authority shall, for purposes of approval, after June 24, 2016, review required applications for land disturbing activities using the guidelines set forth herein until such time that the Department adopts new regulations which become final pursuant to the requirements of this chapter. The guidelines to be used are as follows:

a. The Resource Protections Event Volume (RPv) is equal to a runoff volume generated by a 2.7" storm event. Treatment of a 1-inch runoff from a RPv event with best management practices (BMPs) as set forth in the April 2016 Post Construction Stormwater Management BMP Standards and Specifications or functional equivalents is required. If additional measures are necessary to manage the remainder of runoff from the RPv to achieve the predevelopment runoff rate from the RPv, then additional BMPs shall be utilized to achieve the predevelopment runoff rate and shall be considered sufficient for purposes of obtaining plan approval.

b. Runoff rates for the 10-year and 100-years storm events shall be managed in accordance with the referenced BMPs, exclusive of volume requirements.

(2) In lieu of satisfying the guidelines in paragraphs (d)(1)a. and (d)(1)b. of this section, nothing shall preclude an applicant from utilizing in whole or in part the 2016 emergency regulations and guidelines prior to the adoption of the referenced new regulations.

(3) The guidelines cited in paragraphs (d)(1)a. and (d)(1)b. of this section shall be included in the new regulations which are to be adopted.

(e) A regulation promulgated by the Department under this chapter that provides for the use of a standard plan in lieu of a detailed sediment and stormwater management plan shall provide that an agricultural structure construction project with a total land disturbance of 10 acres or less is entitled to a standard plan.

(f) Notwithstanding subsections (a) through (c) of this section, in developing a state stormwater management program the Department may not promulgate a regulation that relies on a stormwater runoff volume reduction approach.

(g) A regulation promulgated by the Department under this chapter shall comply with the Regulatory Flexibility Act, Chapter 104 of Title 29, and shall include both a regulatory impact statement under § 10404A of Title 29 and a regulatory flexibility analysis under § 10404B of Title 29, even if such a statement or analysis would otherwise not be required by § 10404A(b)(1) or § 10404B(b)(1) of Title 29.

(61 Del. Laws, c. 522 § 1; 67 Del. Laws, c. 234 § 1; 80 Del. Laws, c. 274 §§ 3, 4.)

§ 4007 Local sediment and stormwater programs.

(a) Pursuant to regulations promulgated by the Department, each conservation district, county, municipality or state agency may adopt, and submit to the Department for approval, 1 or more components of a sediment and stormwater program for the area within its jurisdiction.

(b) Requests for delegation of program elements shall be submitted within 6 months of the promulgation of state regulations, and by January 1 of subsequent years if delegation is desired at a future date. The Secretary shall grant or deny such a request on or before April 1 of the year for which delegation is sought.

(c) Delegation, once applied for, shall become effective on July 1 and shall not exceed 3 years, at which time delegation renewal is required.

(d) A district, county, municipality or state agency may develop the program in cooperation with any other governmental subdivisions.

(e) Initial consideration regarding delegation of program elements shall be given to the conservation districts, since the conservation districts, having unique capabilities and areawide responsibilities, are in an ideal position to coordinate and implement local sediment and stormwater programs.

(61 Del. Laws, c. 522 § 1; 67 Del. Laws, c. 234 § 1.)

§ 4008 Interim program.

(a) Prior to July 1, 1991, requirements for sediment control shall be as provided in existing erosion and sediment control regulations promulgated September 26, 1980. Also, until July 1, 1991, any state or locally developed regulation or criterion for stormwater management shall remain in effect at the discretion of the implementing authority.

(b) Projects approved prior to July 1, 1991, but which are under construction after July 1, 1991, shall be subject to the penalty provisions contained in § 4015 of this title.

(61 Del. Laws, c. 522 § 1; 67 Del. Laws, c. 234 § 1.)

§ 4009 Failure of conservation districts, counties, municipalities or state agencies to implement delegated program elements.

(a) If, at any time, the Department finds that a conservation district, county, municipality or state agency has failed to implement program elements that the Department has delegated, the Department shall provide written notice of violation to the conservation district, county, municipality or state agency.

(b) Within 60 days of receipt of the notice of violation, the conservation district, county, municipality or state agency shall report to the Department the action which it has taken to comply with the requirements set forth in the violation notice.

(c) If after 120 days of receipt of the notice of violation, the conservation district, county, municipality or state agency has failed to comply satisfactorily with requirements set forth in the notice of violation, the Department may suspend or revoke the delegated authority.

(d) If at any time, a program element delegation is being considered for suspension or revocation, an opportunity for a hearing before the Secretary or the Secretary's designee shall be provided prior to such suspension or revocation.

(61 Del. Laws, c. 522 § 1; 67 Del. Laws, c. 234 § 1; 70 Del. Laws, c. 186 § 1.)

§ 4010 State and federal projects.

After July 1, 1991, a state or federal agency may not undertake any land clearing, soil movement, or construction activity unless the agency has submitted a sediment and stormwater management plan to the Department and received its approval. The only variation to this requirement shall be when delegation of the plan approval process has been granted by the Department to a specific state or federal agency.

(61 Del. Laws, c. 522 § 1; 67 Del. Laws, c. 234 § 1.)

§ 4011 Designated watersheds or subwatersheds.

(a) Watersheds or subwatersheds approved as designated watersheds or subwatersheds by the Department shall have the regulatory requirements clearly specified through a watershed approach to nonpoint pollution control or flood control. The watershed approach shall result in a specific plan, developed or approved by the Department, for the designated watershed or subwatershed that contains the following information:

(1) Stormwater quantity or quality problem identification;

(2) The overall needs of the watershed, not just the additional impacts of new development activities;

(3) Alternative approaches to address the existing and future problems;

(4) A defined approach which includes the overall costs and benefits;

(5) A schedule for implementation;

(6) Funding sources and amounts; and

(7) A public hearing process prior to departmental approval.

(b) Upon approval of the designated watershed or subwatershed plan, all projects undertaken in that watershed or subwatershed shall have stormwater requirements placed upon them that are consistent with the designated watershed or subwatershed plan.

(67 Del. Laws, c. 234 § 1.)

§ 4012 Construction review and enforcement.

(a) With respect to approved sediment and stormwater plans, the agency responsible for construction review during and after construction completion shall ensure that periodic reviews are undertaken, implementation is accomplished in accordance with the approved plans, and the required measures are functioning in an effective manner. Notice of such right of construction review shall be included in the sediment and stormwater management plan certification. The agency responsible for construction review may, in addition to local enforcement options, refer a site violation to the Department for additional action.

(b) Referral of a site violation to the Department may initiate a departmental construction review of the site to verify site conditions. That construction review may result in the following actions:

(1) Notification through appropriate means to the person engaged in a land disturbing activity and the contractor to comply with the approved plan within a specified time frame.

(2) Notification of plan inadequacy, with a time frame for the person engaged in a land disturbing activity to submit a revised sediment and stormwater plan to the appropriate plan approval agency and to receive its approval with respect thereto.

(c) Failure of the person engaged in the land disturbing activity or the contractor to comply with departmental requirements may result in the following actions in addition to other penalties as provided in this chapter.

(1) The Department shall have the power to issue a cease and desist order to any person violating any provision of this chapter by ordering such person to cease and desist from any site work activity other than those actions necessary to achieve compliance with any administrative order.

(2) The Department may request that the appropriate plan approval agency refrain from issuing any further building or grading permits to the person having outstanding violations until those violations have been remedied.

(61 Del. Laws, c. 522 § 1; 66 Del. Laws, c. 202 § 1; 67 Del. Laws, c. 234 § 1.)

§ 4013 Approval of certified construction reviewers.

(a) Based on criteria established by the Department through regulation and any additional criteria established by the agency implementing the plan review and construction elements of the sediment and stormwater program, the person engaged in a land disturbing activity may be required to provide for construction review by a certified construction reviewer.

(b) Individuals functioning as certified construction reviewers must attend and pass a departmental sponsored or approved construction review training course. The Department will establish, through regulation, the length of time for which the certification will last and procedure for renewal. The construction reviewers shall also function under the direction of a registered professional engineer licensed to practice engineering in the State.

(c) The responsibility of the certified construction reviewer will be to ensure the adequacy of construction pursuant to the approved sediment and stormwater management plan.

(d) The certified construction reviewer shall be responsible for the following items:

(1) Provision of a construction review of active construction sites on at least a weekly basis, as determined on a case-by-case basis by the plan review and construction review agencies, or as required by regulations promulgated pursuant to this chapter;

(2) Within 5 calendar days, informing the person engaged in the land disturbing activity, and the contractor, by a written construction review report of any violations of the approved plan or inadequacies of the plan. The plan approval agency shall be informed, if the approved plan is inadequate, within 5 working days. In addition, the appropriate construction review agency shall receive copies of all construction review reports; and

(3) Referral of the project to the Department for appropriate enforcement action if the person engaged in the land disturbing activity fails to address the items contained in the written construction review report. Verbal notice shall be made to the Department within 2 working days and written notice shall be provided to the Department within 5 working days.

(e) If the Secretary or the Secretary's designee determines that a certified construction reviewer is not providing adequate site control or is not referring problem situations to the Department, the Secretary or the Secretary's designee may suspend or revoke the certification of the construction reviewer.

(f) In any situation where a certified construction reviewer's approval is being suspended or revoked, an opportunity for hearing before the Secretary or the Secretary's designee shall be provided. During any suspension or revocation, the certified construction reviewer shall not be allowed to provide construction reviews pursuant to this chapter.

(g) The failure to assign a departmental approved certified construction reviewer to a land disturbing activity, when required by the approved plan, will place that project in violation of this chapter and result in appropriate administrative and/or enforcement action.

(67 Del. Laws, c. 234 § 1; 70 Del. Laws, c. 186 § 1.)

§ 4014 Training of responsible personnel.

After July 1, 1991, any applicant seeking sediment and stormwater plan approval shall certify to the appropriate approval agency that all responsible personnel involved in the construction project will have a certificate of attendance at a departmentally sponsored or approved training course for the control of sediment and stormwater before initiation of any land disturbing activity. The certificate of attendance shall be valid until the Department notifies the individual or announces in local newspapers that recertification is required due to a change in course content.

(67 Del. Laws, c. 234 § 1.)

§ 4015 Penalties.

(a) Any person who violates any rule, regulation, order, condition imposed in an approved plan or other provision of this chapter shall be fined not less than $200 or more than $2,000 for each offense. Each day that the violation continues shall constitute a separate offense. The Justice of the Peace Courts shall have jurisdiction of offenses brought under this subsection.

(b) Any person who intentionally, knowingly, and after written notice to comply, violates or refuses to comply with any notice issued pursuant to § 4012 of this title shall be fined not less than $500 or more than $10,000 for each offense. Each day the violation continues shall constitute a separate offense. The Superior Court shall have jurisdiction of offenses brought under this subsection.

(61 Del. Laws, c. 522 § 1; 66 Del. Laws, c. 196 §§ 1, 2; 67 Del. Laws, c. 234 § 1; 69 Del. Laws, c. 349 § 1.)

§ 4016 Injunctions.

The Court of Chancery shall have jurisdiction to enjoin violations of this chapter. The appropriate program element authority, the Department or any aggrieved person who suffers damage or is likely to suffer damage because of a violation or threatened violation of this chapter may apply to the Chancery Court for injunctive relief. Among any other appropriate forms of relief, the Chancery Court may direct

the violator to restore the affected land or water impacted area to its original condition.

(61 Del. Laws, c. 522 § 1; 67 Del. Laws, c. 234 § 1.)

§ 4017 .

Part IV
Agricultural and Soil Conservation; Drainage and Reclamation of Lowlands
Chapter 41
DRAINAGE OF LANDS AND MANAGEMENT OF WATERS; TAX DITCHES
Subchapter I
General Provisions

§ 4101 Declaration of policy.

It is declared that the drainage and the prevention of flooding of lands and the management of water for resource conservation shall be considered a public benefit and conducive to the public health, safety and welfare.

(48 Del. Laws, c. 151 § 1; 7 Del. C. 1953 § 4101; 50 Del. Laws, c. 276 § 1; 70 Del. Laws, c. 246 §§ 2, 3.)

§ 4102 Purpose.

It is the purpose of this chapter in carrying out the policy declared in § 4101 of this title to provide a basis for a uniform system for establishing, financing, administering, maintaining and dissolving tax ditch organizations in the State under the supervision of the Department of Natural Resources and Environmental Control to the end that the conservation and management of the soil, water, wildlife, forest and other resources of the State may be accomplished in a workable and practicable manner.

(48 Del. Laws, c. 151 § 2; 7 Del. C. 1953 § 4102; 57 Del. Laws, c. 739 § 180; 70 Del. Laws, c. 246 §§ 4, 5.)

§ 4103 Definitions.

For the purposes of this chapter, unless otherwise specifically defined, or another intention clearly appears, or the context requires a different meaning:

(1) "Benefits" include, but shall not be limited to, the privilege of participating in a cooperative system for the management of water from one's lands by a tax ditch formed under this chapter.

(2) "Drainage" means water management, by drainage areas or watersheds, to safely remove or control both excess, surface flood waters and damaging, excess subsurface waters.

(3) "Landowner" or "owner" means that person or group of persons in whom the entire title to a certain tract of land is vested.

(4) "Taxable" means any person entitled to vote under this chapter.

(5) "Flooding" means the occurrence of damaging, excess surface water. The occurrence of surface water for beneficial uses is a component of water management, not flooding.

(6) "Water management" means the removal, storage, or application of water by intentional means, including but not limited to management methods using drains, channels, culverts, structures for water level control and dams.

(48 Del. Laws, c. 151 § 3; 7 Del. C. 1953 § 4103; 50 Del. Laws, c. 276 § 2; 70 Del. Laws, c. 246 §§ 6, 7.)

§ 4104 Application; effect on previously established drainage organizations and on earlier drainage laws.

(a) Any landowner or owners in an area served by a drainage organization established prior to June 1, 1951, under any other law of this State, or any landowner or owners who desire their lands to be drained or protected from flooding may, at any time, petition for the establishment of a tax ditch under this chapter.

(b) In those cases, when an existing drainage organization becomes a tax ditch under this chapter, the present assets or liabilities of said existing drainage organization may be transferred to the tax ditch provided that such assets or liabilities are declared by the tax ditch commissioners in their report, and that the transfer of such assets or liabilities is approved by the affected taxables either by a referendum held by board of ditch commissioners pursuant to § 4132 of this title or by a signed statement pursuant to § 4135 of this title.

(c) Article 2, Chapter 65, and Article 1, Chapter 105, of the 1935 Revised Code of Delaware shall remain in effect and shall apply to drainage organizations established thereunder prior to June 1, 1951, unless such drainage organizations reform or reorganize under this chapter.

(48 Del. Laws, c. 151 §§ 7, 69, 75; 7 Del. C. 1953 § 4104; 50 Del. Laws, c. 276 § 3; 56 Del. Laws, c. 312 § 1.)

§ 4105 Limitation of easement or right-of-way.

(a) Once a tax ditch has been constructed, any right-of-way for the construction and major maintenance of the tax ditch — provided such has been created pursuant to this chapter — and including tax ditches where rights-of-way were previously defined as "adequate" or "sufficient" — unless previously modified by a change to the court order, shall have the maximum extent defined as follows:

(1) Tax ditches with a designed 0'-4' bottom width — 80' from top of bank and to include the cross-section of the ditch; or the existing construction right-of-way, whichever is less.

(2) Tax ditches with a designed 4'-10' bottom width — 120' from top of bank and to include the cross-section of the ditch; or the

existing construction right-of-way whichever is less.

(3) Tax ditches with a designed bottom width greater than 10' — existing construction and major maintenance right-of-way as filed in the original court order.

(b) No change to the minor maintenance right-of-way is necessary provided such has been otherwise created pursuant to this chapter.

(c) The reference point for all tax ditch rights-of-way that are established or modified as a result of 76 Del. Laws, c. 389 or future actions is the nearest top of ditch bank. The "top of ditch bank" is the point where the side slope of the ditch intersects the existing grade of the adjacent land. For ditch sections that have been piped, the point of references shall be the centerline of the pipe.

(d) An additional deferment of the timeline for the recordation process for certifying rights-of-way as set forth in amendments contained in § 4195(b) of this title and as extended by SCR No. 27 of the 144th General Assembly shall be granted until January 13, 2009.

(e) For purposes of this chapter:

(1) "Construction and major maintenance right-of-way" means the right-of-way created by this chapter for the purpose of construction/reconstruction of the tax ditch, to allow for the piling of debris and to allow spoil to be leveled as part of the construction operations and major maintenance activities including "dipping out" and/or disposal of spoils.

(2) "Minor maintenance right-of-way" means the right-of-way created under this chapter for the purpose of maintenance activities that include but are not limited to inspection, mowing, use of specialized equipment for vegetative management (i.e. herbicide applications), removal of debris and obstructions, pipe repairs and installation of crossings for access.

(76 Del. Laws, c. 389 § 1.)

Subchapter II

Boards of Ditch Commissioners

§ 4106 Ditch commissioners; membership; qualifications; term; vacancies; secretary.

(a) A board of ditch commissioners, consisting of 3 ditch commissioners and 3 alternate ditch commissioners, is continued for each county within the State. Upon the expiration of the terms of office of the present and all future commissioners, the resident judge for each county shall appoint ditch commissioners and alternate ditch commissioners, who may be selected from lists of 10 or more names submitted by the supervisors of the soil conservation district within the county. Each ditch commissioner and alternate ditch commissioner shall be a resident landowner of the county from which the commissioner is appointed, shall have some knowledge of water management including flood and drainage problems and their impacts to natural resources and shall be familiar with farming and with land values within such county.

(b) The term of office for each ditch commissioner shall be 3 years. The term of office for the alternate ditch commissioners shall be 1 year each. A ditch commissioner or alternate ditch commissioner may be reappointed to succeed himself or herself. All appointments shall be effective as of August 1 of each year.

(c) In the case of the death, resignation or removal from office of a ditch commissioner, the vacancy shall be filled by the appointment of 1 of the alternate ditch commissioners to serve for the remainder of the term of the vacating ditch commissioner.

(d) Except in the case of death or removal from office, a ditch commissioner shall hold office until his or her successor has been appointed.

(e) The Division of Watershed Stewardship shall serve as secretary, without voting authority, for each of the county boards of ditch commissioners.

(48 Del. Laws, c. 151 § 4; 7 Del. C. 1953 § 4106; 50 Del. Laws, c. 276 § 4; 59 Del. Laws, c. 560 § 2; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 246 § 8; 76 Del. Laws, c. 213 § 1; 77 Del. Laws, c. 430 § 6.)

§ 4107 Disqualification of members.

In those cases where any member of the board of ditch commissioners owns lands within the boundary of a proposed tax ditch, such member shall not serve as a member of said board on that particular tax ditch and an alternate ditch commissioner shall serve in the member's stead.

(48 Del. Laws, c. 151 § 4; 7 Del. C. 1953 § 4107; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 246 § 9.)

§ 4108 Chairperson; quorum; voting.

A chairperson of each board of ditch commissioners shall be designated by the members thereof and such designation may be changed from time to time. A majority of the ditch commissioners of each board shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination.

(48 Del. Laws, c. 151 § 4; 7 Del. C. 1953 § 4108; 70 Del. Laws, c. 186 § 1.)

§ 4109 Compensation; expenses and reimbursement.

(a) The ditch commissioners shall be entitled to receive reimbursement for their expenses necessarily incurred in the discharge of their duty at a per diem rate set by the Secretary of the Department of Natural Resources and Environmental Control, not to exceed $50, plus

mileage reimbursement at the rate established in § 7102 of Title 29, as amended. The ditch commissioners shall be reimbursed for said expenses by the landowners petitioning to have a tax ditch formed. Such reimbursement shall be made from funds deposited in advance by the petitioners at the time the petition is filed or from the first moneys collected by the tax ditch after it is organized, the manner to be decided by the county soil conservation district pursuant to § 4120 of this title.

(b) Ditch commissioners will be reimbursed for their expenses incurred in the discharge of their duties in connection with the formation of a tax ditch after the ditch order has become effective, or at such time as the Superior Court issues an order denying the petition for the formation of the tax ditch.

(48 Del. Laws, c. 151 §§ 4, 5; 7 Del. C. 1953 § 4109; 50 Del. Laws, c. 276 § 5; 57 Del. Laws, c. 739 § 181; 64 Del. Laws, c. 136 § 1.)

§ 4110 Employment of qualified personnel.

The Department of Natural Resources and Environmental Control shall employ personnel, including a Registered Professional Engineer, authorized to practice engineering in this State under Chapter 28 of Title 24, who is qualified by experience in hydraulic engineering, drainage and soil work, to assist it in carrying out its functions under this chapter and to perform related duties within the Division of Watershed Stewardship.

(48 Del. Laws, c. 151 § 6; 7 Del. C. 1953 § 4110; 58 Del. Laws, c. 312 § 2; 57 Del. Laws, c. 739 § 182; 59 Del. Laws, c. 560 § 1; 77 Del. Laws, c. 430 § 7.)

§ 4111 Employment of personnel; purchase of supplies and equipment.

The Department may employ such personnel and obtain by purchase or otherwise such supplies and equipment as are necessary to carry out this chapter.

(48 Del. Laws, c. 151 § 6; 7 Del. C. 1953 § 4111.)

Subchapter III

Formation of Tax Ditch; Procedure

§ 4116 Nature of a tax ditch.

A tax ditch organized under this chapter shall constitute a governmental subdivision of this State and a public body, corporate and politic, exercising public powers.

(48 Del. Laws, c. 151 § 43; 7 Del. C. 1953 § 4116.)

§ 4117 Petition for formation of a tax ditch; assistance of Division of Watershed Stewardship.

(a) Whenever 1 or more of the owners of any lands desire their lands to be drained or protected from flooding, or the waters of their lands to be managed they may present a petition for the formation of a tax ditch to the Superior Court of the county in which all or the major portion of the area involved is located, through the board of supervisors of the soil conservation district of the county.

(b) The services of the Division of Watershed Stewardship shall be available to assist the landowners in the preparation of such petitions.

(48 Del. Laws, c. 151 § 7; 7 Del. C. 1953 § 4117; 50 Del. Laws, c. 276 § 8; 59 Del. Laws, c. 560 § 2; 70 Del. Laws, c. 246 §§ 10, 11; 77 Del. Laws, c. 430 §§ 8, 9.)

§ 4118 Form of petition.

A petition for the formation of a tax ditch shall be in the following form:

PETITION

To the Superior Court of _____ County through the Board of Supervisors of the Soil Conservation District of _____ County:

Whereas the undersigned (is) (are) the owner(s) of certain lands subject to overflow or in need of water management situated in _____ Hundred(s) _____ County (Counties), and the State of Delaware, said lands being more particularly described as follows

; and

Whereas the draining and the prevention of flooding of said lands, and/or the management of water for resource conservation on said lands would be a public benefit and conducive to the public health, safety and welfare; and

Whereas the undersigned desire that a Tax Ditch be formed under the provisions of Chapter 41, Title 7 of the Delaware Code, said Tax Ditch to be known as _____ Tax Ditch;

The undersigned therefore request the Soil Conservation District of _____ County to make the investigation required under the above cited chapter and, if the findings thereon be favorable, to file this petition in the office of the Prothonotary of _____ County so that the Superior Court of said County may take the necessary steps required by law to issue an order establishing _____ Ditch.

Dated this _____ day of _____, _____ at _____, Delaware.
date month year

(Space for Signatures)

(48 Del. Laws, c. 151 § 8; 7 Del. C. 1953 § 4118; 70 Del. Laws, c. 246 §§ 12, 13.)

§ 4119 Name of tax ditch.

The name of any tax ditch established under this chapter shall not be the same as the name of any existing drainage organization within the same county.

(48 Del. Laws, c. 151 § 71; 7 Del. C. 1953 § 4119.)

§ 4120 Deposit upon filing of petitions for tax ditch.

(a) The county soil conservation district shall require that a specified sum be deposited with it by the petitioners before the petition is filed in the office of the prothonotary to cover filing fees, mailing and other necessary expenses. The amount of the deposit shall be determined by the county soil conservation district and may vary according to the size of the area involved, the complexity of the problem, and other pertinent factors. If the original deposit is not sufficient, the district shall require an additional deposit as soon as the need for such becomes evident.

(b) The district shall keep an account of such deposits and shall return any unused portion thereof to the petitioners upon completion of final action by the Superior Court. When such action is favorable, the petitioners shall be repaid, out of the first moneys collected by the tax ditch, all expenses of formation charged to them by the county soil conservation district.

(c) From the funds deposited with it pursuant to this section, the county soil conservation district shall pay filing fees, mailing and other necessary expenses incurred in the investigation and formation of a tax ditch.

(48 Del. Laws, c. 151 §§ 14, 15; 7 Del. C. 1953 § 4120.)

§ 4121 Duties of county soil conservation district upon receipt of petition.

The board of supervisors of the county soil conservation district shall, upon receipt of a petition for the formation of a tax ditch, determine whether the petition is in the form set forth in § 4118 of this title and has been properly executed. If the petition is in the prescribed form and has been properly executed, the board shall immediately notify the Division of Watershed Stewardship, and by virtue of such action shall have made available to it the services of the Department of Natural Resources and Environmental Control to assist it with the investigation concerning the possible formation of the tax ditch.

(48 Del. Laws, c. 151 § 9; 7 Del. C. 1953 § 4121; 57 Del. Laws, c. 739 § 183; 59 Del. Laws, c. 560 § 2; 70 Del. Laws, c. 246 § 14; 77 Del. Laws, c. 430 § 10.)

§ 4122 Investigation; hearing.

The county soil conservation district shall cause an investigation to be made by the Division of Watershed Stewardship in order to ascertain the general location and approximate watershed boundaries of the proposed tax ditch, and to obtain other information to assist the district to determine whether the formation of the tax ditch is practicable and feasible and is in the interest of the public health, safety and welfare. The district may hold such hearings as it deems necessary in order to assist it in making such determination.

(48 Del. Laws, c. 151 § 10; 7 Del. C. 1953 § 4122; 50 Del. Laws, c. 276 § 7; 59 Del. Laws, c. 560 § 2; 77 Del. Laws, c. 430 § 11.)

§ 4123 Report of investigation by Division of Watershed Stewardship.

The Division of Watershed Stewardship shall make a formal report of its investigation to the county soil conservation district together with its recommendations.

(48 Del. Laws, c. 151 § 11; 7 Del. C. 1953 § 4123; 57 Del. Laws, c. 739 § 184; 59 Del. Laws, c. 560 § 2; 70 Del. Laws, c. 246 § 15; 77 Del. Laws, c. 430 § 12.)

§ 4124 Determination by county soil conservation district.

The county soil conservation district shall, upon the basis of the information obtained under this chapter, determine whether the formation of the proposed tax ditch is practicable and feasible and is in the interest of the public health, safety and welfare.

(48 Del. Laws, c. 151 § 12; 7 Del. C. 1953 § 4124.)

§ 4125 Filing of petition and report; action by district when formation is found to be not practicable and feasible.

(a) If the county soil conservation district determines that the formation of the proposed tax ditch is practicable, feasible and in the interest of the public health, safety and welfare, it shall file the petition in the office of the prothonotary of the county in which all or the major portion of the land involved is located, together with the report of the Division of Watershed Stewardship and such other relevant information as the district deems appropriate.

(b) Where the county soil conservation district determines that the formation of the proposed tax ditch is not practicable and feasible or is not in the interest of the public health, safety and welfare, it shall so notify all of the petitioners involved, and a new petition for the formation of that tax ditch may not be refiled for a period of 1 year from the date of said notice.

(48 Del. Laws, c. 151 § 13; 7 Del. C. 1953 § 4125; 50 Del. Laws, c. 276 § 8; 59 Del. Laws, c. 560 § 2; 70 Del. Laws, c. 246 § 16; 77 Del. Laws, c. 430 § 13.)

§ 4126 Determinations to be made by board of ditch commissioners.

(a) Upon the filing of a petition for the formation of a tax ditch in the office of the prothonotary of a county, the board of ditch commissioners of such county, acting as officers of the Court, shall, at the direction of the resident judge thereof, go upon the lands that may be included in the tax ditch and determine the approximate sizes, grades and locations of the required drainage ditches; the approximate sizes, locations and specifications for required dikes, levees, structures and other necessary works of improvement; the location of public roads and railroads, and public utility installations within the proposed tax ditch; the exterior boundaries of the tax ditch; the approximate boundaries of each farm, parcel or piece of land within the tax ditch; the location and extent of needed permanent rights-of-way; the estimated total cost of all required tax ditch works of improvement; the damages to lands, if any, which will result from the construction of the tax ditch; and an equitable basis, considering relative benefits to each landowner, for the distribution of costs. The board of ditch commissioners shall obtain from the county soil conservation district such assistance and information as is needed in making the required determinations.

(b) When all of the landowners involved, with the approval of the board of ditch commissioners and with the cooperation of the county soil conservation district and the Division of Watershed Stewardship:

(1) Jointly make the determinations regularly assigned to the board of ditch commissioners in subsection (a) of this section and in § 4127 of this title, and

(2) Prepare the assessment list required by § 4129 of this title, and

(3) Supply any additional data necessary to complete the report of the board of ditch commissioners required by § 4130 of this title, and

(4) Personally sign a statement to the effect that they approve the formation of the tax ditch,

the board of ditch commissioners shall prepare their report from said determinations and such data without going upon the lands involved.

(48 Del. Laws, c. 151 § 16; 7 Del. C. 1953 § 4126; 50 Del. Laws, c. 276 § 9; 59 Del. Laws, c. 560 § 2; 70 Del. Laws, c. 246 §§ 17-22; 77 Del. Laws, c. 430 § 14.)

§ 4127 Existing works of improvement; compensation for work done thereon.

The board of ditch commissioners may deem adequate any works of improvement already constructed, including but not limited to ditches and structures and may incorporate these in the tax ditch, and may allow a fair compensation to landowners for work previously done by them on such works of improvement.

(48 Del. Laws, c. 151 § 17; 7 Del. C. 1953 § 4127; 50 Del. Laws, c. 276 § 10.)

§ 4128 Factors in determination of cost.

(a) In determining the total cost of the proposed tax ditch works of improvement, the board of ditch commissioners shall include, among other things, the estimated costs of construction, the estimated cost of forming the tax ditch, the amount of damages, if any, awarded to landowners and the amount of compensation, if any, to be paid to landowners for works of improvement previously constructed and deemed adequate under § 4127 of this title.

(b) The estimated cost of interest which will develop if the tax ditch borrows money to finance construction and the estimated cost of annual maintenance shall not be included in the total cost of the proposed tax ditch works of improvement.

(48 Del. Laws, c. 151 § 18; 7 Del. C. 1953 § 4128; 50 Del. Laws, c. 276 § 11.)

§ 4129 Assessment list.

After determining the basis for distribution of costs among the landowners, the board of ditch commissioners shall prepare an assessment list which shall show the names of all owners of property, wholly or partly within the watershed of the proposed tax ditch, together with addresses and descriptions of those properties as currently recorded by the board of assessment of the county. The list shall also show, for each property, that portion, expressed in acres, which is within the watershed or drainage area. The cost-sharing or assessment base, expressed in dollars, for each of said properties shall also be shown. The sum of the individual property assessment bases shall be termed the total assessment base which in all cases shall be equal to or greater than the total cost of the proposed tax ditch works of improvement. The assessment list, as modified by the ditch order, described in § 4137 of this title, shall be the basis for all taxes levied under this chapter.

(48 Del. Laws, c. 151 § 19; 7 Del. C. 1953 § 4129; 50 Del. Laws, c. 276 § 12.)

§ 4130 Proposed report of board of ditch commissioners.

The board of ditch commissioners, with the assistance of the Division of Watershed Stewardship, shall prepare a proposed report containing the following determinations and information:

(1) The name of the proposed tax ditch;

(2) The hundred and the county in which the proposed tax ditch is situated;

(3) A map, drawing or aerial photograph, to a suitable scale, on which the following is shown:

a. The main ditch, all prongs, all subprongs and other divisions of the proposed tax ditch;

b. All dikes, levees, structures and other works of improvement of the proposed tax ditch;

c. All railroads, public highways and all public utility installations near the points where such reach, cross or pass close to any part of the proposed tax ditch;

d. The exterior boundaries of the tax ditch;

e. The approximate boundaries of each farm, parcel or piece of land within the proposed tax ditch, together with the identification of each farm, parcel or piece of land by name or code number;

f. The location and extent of rights-of-way, including overhead and underground clearances where necessary, assigned to the tax ditch for construction and maintenance operations;

(4) The estimated total cost of the proposed tax ditch works of improvement;

(5) The assessment list required under § 4129 of this title;

(6) Factors which influenced the determination of relative benefits and the basis for distribution of costs among the landowners, and other pertinent information;

(7) The names of all landowners awarded damages or to be paid compensation for works of improvement previously constructed and deemed adequate under § 4127 of this title; and the amount of damages or compensation to which each such landowner is entitled; and factors which influenced the determination of the damages awarded and compensation to be paid;

(8) The number of ditch managers, not less than 2 nor more than 5, required to conduct the business affairs of the proposed tax ditch;

(9) In the case of a previously existent drainage organization, the amount of present assets to be turned over to, or liabilities to be assumed by the proposed tax ditch.

(48 Del. Laws, c. 151 § 20; 7 Del. C. 1953 § 4130; 50 Del. Laws, c. 276 § 13; 56 Del. Laws, c. 312 § 3; 59 Del. Laws, c. 560 § 2; 70 Del. Laws, c. 246 §§ 23, 24; 77 Del. Laws, c. 430 § 15.)

§ 4131 Notice of hearing on establishment of tax ditch.

Upon completion of the proposed report required by § 4130 of this title, the board of ditch commissioners shall notify all owners of property, wholly or partly within the watershed of the proposed tax ditch, of a hearing concerning the establishment of said tax ditch to be held in the county in which all or the major portion of the lands involved is located. The notice shall be mailed by 1st-class mail at least 20 days prior to the hearing and shall designate the time and place thereof. It shall also state that the purpose of the hearing is to consider the formation of a tax ditch which may affect the lands of the person notified and to hold a referendum among the affected landowners concerning the establishment of a tax ditch. In addition, the notice shall state the place where a copy of the above proposed report of the board of ditch commissioners will be open to inspection for at least 5 days, excepting Saturday and Sunday, prior to the hearing date.

(48 Del. Laws, c. 151 § 21; 7 Del. C. 1953 § 4131; 50 Del. Laws, c. 276 § 14; 70 Del. Laws, c. 246 §§ 25-27.)

§ 4132 Hearing; adoption of proposed report; right to adjourn hearing; referendum.

At the time and place designated in the notice, the board of ditch commissioners, with the assistance of the Division of Watershed Stewardship, shall hold a hearing at which all persons interested shall have an opportunity to express their opinions on and objections to the proposed report required by § 4130 of this title. The board of ditch commissioners shall make such changes in the proposed report as it deems warranted from evidence presented at the hearing, and shall then adopt the report and declare it final. If, however, as a result of the hearing, the board of ditch commissioners deems it advisable, it may adjourn the hearing in order to enable it to reexamine and modify its report in the light of the opinions and objections expressed at the hearing. The hearing may be adjourned to a fixed future date with no additional notification required or adjourned to an unspecified future date for which the notification and display procedures of § 4131 of this title will again apply. At the conclusion of the hearing, a referendum shall be held under the supervision of the board of ditch commissioners and the Division of Watershed Stewardship. The referendum shall afford each landowner the opportunity to cast a ballot for or against the formation of the proposed tax ditch in accordance with the final report of the board of ditch commissioners. Each landowner shall be entitled to the same number of votes as the number of dollars shown as the assessment base for the lands by the board of ditch commissioners.

(48 Del. Laws, c. 151 § 22; 7 Del. C. 1953 § 4132; 50 Del. Laws, c. 276 § 15; 59 Del. Laws, c. 560 § 2; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 246 §§ 28, 29; 77 Del. Laws, c. 430 § 16.)

§ 4133 Contents of report; filing.

After holding the hearing and supervising the referendum provided for in § 4132 of this title, the board of ditch commissioners shall file the original and 2 copies of its final report in the office of the prothonotary of the county in which all or the major portion of the lands involved is located, and shall attach to the report a certificate stating the results of the referendum and the place where and the time when it was held. The board of ditch commissioners shall also prepare and attach to the report a statement showing:

(1) Whether the board of ditch commissioners has fully discharged the duties assigned to it as prescribed by law;

(2) Whether the proposed tax ditch is practicable and feasible and in the interest of the public health, safety and welfare;

(3) Whether in laying out the tax ditch, the lands of every landowner assessed are directly or indirectly affected by some part of the proposed tax ditch;

(4) Any objections made to the report of the board of ditch commissioners which did not warrant further changes in the report and the reasons therefor;

(5) Whether, in the opinion of the board of ditch commissioners, the benefits that will result from the construction of the proposed tax ditch will exceed the total cost;

(6) Any other recommendations or information which the board of ditch commissioners deems pertinent.

(48 Del. Laws, c. 151 § 23; 7 Del. C. 1953 § 4133; 50 Del. Laws, c. 276 § 16; 70 Del. Laws, c. 246 §§ 30, 31.)

§ 4134 Signing of commissioners' report; dissent.

The report of the board of ditch commissioners, including the statement required by § 4133 of this title, shall be signed by all of the commissioners concurring therein. Any ditch commissioner who dissents therefrom shall attach to the report the reasons for his or her dissent.

(48 Del. Laws, c. 151 § 24; 7 Del. C. 1953 § 4134; 70 Del. Laws, c. 186 § 1.)

§ 4135 Waiving of commissioners' hearing and referendum.

In those cases, when all of the landowners involved, indicate by signed statement that they are familiar with the report of the board of ditch commissioners and that they favor the formation of the tax ditch, the board of ditch commissioners shall not hold a hearing and referendum, pursuant to § 4132 of this title, nor shall they give notice thereof as pursuant to § 4131 of this title, but they shall prepare the statement required and file their report, pursuant to § 4133 of this title, without a certificate of referendum.

(48 Del. Laws, c. 151 § 25; 7 Del. C. 1953 § 4135; 50 Del. Laws, c. 276 § 17.)

§ 4136 Action by Superior Court; notice of final hearing.

(a) After the report and statement of the board of ditch commissioners have been filed in the office of the prothonotary of the appropriate county, they shall be carefully reviewed by the Superior Court of the county.

(b) If the report of a majority of the board of ditch commissioners is opposed to the formation of the proposed tax ditch, or if the certificate stating the results of the referendum shows that a majority of all votes cast were opposed to the formation of the tax ditch, or if such report shows that the total cost of the construction of the tax ditch will exceed the benefits that will result therefrom, then the Superior Court shall issue an order denying the petition for the formation of the tax ditch.

(c) If the report of a majority of the board of ditch commissioners is in favor of the formation of the proposed tax ditch, and if the statement attached to said report indicates that the total benefits that will result from the tax ditch will exceed the total cost of the proposed tax ditch works of improvement, and if the certificate stating the results of the referendum shows that a majority of all votes cast were in favor of the formation of the tax ditch, then the Superior Court shall set a date for the final hearing on the petition and shall direct the prothonotary to give notice of the hearing by publication in a newspaper of general circulation in each county in which any of the lands involved are located and by posting a written or printed notice on the door of the courthouse of each such county, such publication and posting to be made not less than 15 days before the time of the final hearing. Notice of the final hearing shall also be given to landowners involved by first-class mail. This notice shall be mailed not less than 15 days before the time of the hearing. From the time the report of the board of ditch commissioners is filed in the office of the prothonotary of the appropriate county it shall be open to inspection by any interested person.

(d) In those cases, when all of the landowners involved have indicated by signed statement that they are familiar with the report of the board of ditch commissioners and that they favor the formation of the tax ditch, and if the report of a majority of the board of ditch commissioners is in favor of the formation of the proposed tax ditch, and if the statement attached to the report indicates that the total benefits that will result from the tax ditch will exceed the total cost of the proposed tax ditch works of improvement, then the Superior Court shall not hold a final hearing, nor give notice thereof, but shall confirm the report and issue an order granting the petition for the formation of the proposed tax ditch, the order to become effective immediately, and to be known as the ditch order. The confirmed report shall be considered a part of the ditch order.

(48 Del. Laws, c. 151 § 26; 7 Del. C. 1953 § 4136; 50 Del. Laws, c. 276 § 18; 67 Del. Laws, c. 188 § 1; 70 Del. Laws, c. 246 §§ 32, 33.)

§ 4137 Final hearing; ditch order.

At least 10 days prior to the date set for the final hearing before the Superior Court, any interested person may file an objection in writing to the report of the board of ditch commissioners. The Superior Court shall review the report of the board of ditch commissioners and any objections filed thereto, and make, in consultation with the ditch commissioners, such changes as are necessary to render substantial and equal justice to all interested persons. Damages to any 1 landowner shall not be grounds for denying the petition, but may be used to adjust the assessment base of that property or the damages to be paid to that landowner and shall be considered as part of the total cost of the proposed tax ditch. If the conditions set forth in § 4136(c) of this title, still exist after the objections have been considered and the necessary changes have been made in the report of the board of ditch commissioners, the Superior Court shall confirm the report and issue an order granting the petition for the formation of the proposed tax ditch, said order to be known as the ditch order. The confirmed report shall be considered a part of said ditch order. If no objections are presented at the final hearing before the Superior Court the ditch order shall become effective when issued.

(48 Del. Laws, c. 151 § 27; 7 Del. C. 1953 § 4137; 50 Del. Laws, c. 276 § 19; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 246 §§ 34-36.)

§ 4138 Right to jury trial; procedure.

When objections to the report of the board of ditch commissioners are filed in writing with the Superior Court and when the party filing feels aggrieved by the report of the board of ditch commissioners, such party may apply to the Superior Court, within 30 days after the issuance of the ditch order, for an order in the nature of a writ of inquiry to ascertain by the verdict of a jury at the bar of the Court, the full and true value of the relative benefits, damages, injury or loss which will result to the lands of such person from the construction of the proposed tax ditch.

(48 Del. Laws, c. 151 § 28; 7 Del. C. 1953 § 4138; 50 Del. Laws, c. 276 § 20.)

§ 4139 Defense of contested ditch orders; Attorney General.

If the ditch order is contested, the board of ditch commissioners shall defend the order, and in conducting its defense, the board shall be represented by the Attorney General of the State.

(48 Del. Laws, c. 151 § 29; 7 Del. C. 1953 § 4139.)

§ 4140 Notice of final action on ditch order.

When the ditch order has become effective because no objection has been filed, or because the right to appeal therefrom has expired, the prothonotary shall notify the Division of Watershed Stewardship and the appropriate county soil conservation district accordingly, and shall forward 2 certified copies of the ditch order to the Division of Watershed Stewardship.

(48 Del. Laws, c. 151 § 30; 7 Del. C. 1953 § 4140; 50 Del. Laws, c. 276 § 21; 59 Del. Laws, c. 560 § 2; 77 Del. Laws, c. 430 § 17.)

§ 4141 Permanent court record.

The ditch order, together with any amendment thereto, shall be a permanent court record and shall be kept in the office of the prothonotary of the county wherein it was issued and copies of the ditch order shall be recorded in a Tax Ditch Volume in the office of the recorder of deeds in the county where the tax ditch is located. A filing fee for all new tax ditch orders shall be charged by the office of the recorder of deeds after the effective date of this legislation. It shall not be removed from that office except in cases where an emergency so requires. The prothonotary shall make such docket entries of proceedings as directed by rule of court.

(48 Del. Laws, c. 151 § 31; 7 Del. C. 1953 § 4141; 50 Del. Laws, c. 276 § 22; 74 Del. Laws, c. 386 § 1.)

§ 4142 Employment of private engineer by landowners.

If the board of supervisors of the county soil conservation district in which all or the major portion of the area involved is located determines that the formation of a tax ditch is practicable and feasible and is in the interest of the public health, safety and welfare, the interested landowner or owners may at any time thereafter employ at their expense engineering personnel of their selection to assist the Division of Watershed Stewardship.

(48 Del. Laws, c. 151 § 32; 7 Del. C. 1953 § 4142; 59 Del. Laws, c. 560 § 2; 70 Del. Laws, c. 246 § 37; 77 Del. Laws, c. 430 § 18.)

§ 4143 Exclusive procedure for determination of damages.

The determination, assessment or award of damages or other compensation to be paid to any landowner in connection with the formation of a tax ditch shall be made under and in accordance with this chapter. Chapter 61 of Title 10 shall not be applicable to proceedings to organize a tax ditch under this chapter.

(7 Del. C. 1953 § 4143.)

Subchapter IV

Powers of Tax Ditch

§ 4151 Meeting to organize tax ditch; notice.

(a) The Division of Watershed Stewardship, at its earliest convenience after the ditch order becomes final, shall call a meeting of the taxables for the purpose of organizing the proposed tax ditch, including the election of ditch managers, as called for in the ditch order, and a secretary-treasurer; the formulation of a plan for constructing, financing, administering and maintaining the proposed tax ditch; and for levying taxes to cover the costs of construction and maintenance.

(b) The Division of Watershed Stewardship shall send a notice to every taxable, by first-class mail to that landowner's address as currently recorded by the board of assessment of the county, at least 10 days prior to that meeting, stating the time, place and object of the meeting.

(c) A notice of the meeting shall be sent to the chairperson of the board of supervisors of the county soil conservation district.

(48 Del. Laws, c. 151 § 33; 7 Del. C. 1953 § 4151; 50 Del. Laws, c. 276 § 23; 59 Del. Laws, c. 560 § 2; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 430 § 19.)

§ 4152 Distribution of ditch order and this chapter; filing of assessment list.

(a) At the organization meeting of the tax ditch, the Division of Watershed Stewardship shall deliver to the managers, when elected, a certified copy of the ditch order and a copy of this chapter, together with all effective amendments thereto.

(b) The Division of Watershed Stewardship shall deliver a copy of the assessment list prepared under § 4129 of this title, as modified by the ditch order, to the board of assessment of the county, making such changes in the names of the owners thereon as are warranted by transfers, to new owners, of lands assessed.

(48 Del. Laws, c. 151 § 34; 7 Del. C. 1953 § 4152; 50 Del. Laws, c. 276 § 24; 59 Del. Laws, c. 560 § 2; 70 Del. Laws, c. 246 § 38; 77 Del. Laws, c. 430 § 20.)

§ 4153 Representation at meeting.

In addition to the Division of Watershed Stewardship, the county soil conservation district may be represented at the organization meeting by 1 member of the board of district supervisors.

(48 Del. Laws, c. 151 § 35; 7 Del. C. 1953 § 4153; 59 Del. Laws, c. 560 § 2; 77 Del. Laws, c. 430 § 21.)

§ 4154 Voting rights.

At all meetings, each landowner shall be entitled to the same number of votes as the number of dollars assessed against the land of such owner in the ditch order. In the event that any lands are held by tenants in common or joint tenants, each such tenant in common or joint tenant shall be entitled to the same number of votes as his or her fractional share of the total number of dollars assessed against said lands. In the case of lands held by a husband and wife as tenants by the entirety, either the husband or wife may vote all the dollars assessed against their lands.

(48 Del. Laws, c. 151 § 36; 7 Del. C. 1953 § 4154; 70 Del. Laws, c. 186 § 1.)

§ 4155 Voting by proxy.

Any person entitled to vote pursuant to § 4154 of this title may authorize another landowner within the tax ditch to cast his or her votes in that person's stead by executing a proxy. The proxy shall be signed, dated and notarized.

(48 Del. Laws, c. 151 § 37; 7 Del. C. 1953 § 4155; 70 Del. Laws, c. 186 § 1.)

§ 4156 Election of ditch managers and a secretary-treasurer; terms of office; vacancies.

(a) At the first meeting the taxables shall elect from their group the number of ditch managers specified in the ditch order, and a secretary-treasurer.

(b) The term of office of each ditch manager and of the secretary-treasurer shall be 1 year. If the ditch managers and secretary-treasurer first elected are elected prior to July 1 of any year, the time elapsing between said election and the first annual January meeting provided for in § 4159 of this title shall be deemed to constitute the first year of their terms of office. However, if the ditch managers and secretary-treasurer first elected are elected on or after July 1 of any year, their terms of office shall not be deemed to begin until the said first annual January meeting, although they shall assume the duties and responsibilities of their respective offices immediately upon election.

(c) In the event that any tax ditch officer dies, resigns, ceases to be 1 of the taxables, or is removed from office, the remaining ditch officers shall within 60 days, appoint a taxable to serve the remainder of the term of such officer. However, except in the case of death or removal from office, each tax ditch officer shall continue to serve until a successor has been appointed.

(48 Del. Laws, c. 151 § 38; 7 Del. C. 1953 § 4156; 50 Del. Laws, c. 276 § 25; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 246 § 39.)

§ 4157 Chairperson of ditch managers; duties.

Immediately after they are elected, the ditch managers shall designate 1 of their number to serve as chairperson. The chairperson shall call meetings of the ditch managers and taxables and shall preside thereat.

(48 Del. Laws, c. 151 § 39; 7 Del. C. 1953 § 4157; 70 Del. Laws, c. 186 § 1.)

§ 4158 Compensation of ditch managers and secretary-treasurer.

Tax ditch managers and the secretary-treasurer may be entitled to receive compensation at a rate to be determined by a majority of the eligible votes of those taxables present at the first meeting provided for in § 4159 of this title. The rate of compensation for the tax ditch managers and secretary-treasurer may be revised only at a regular annual meeting of the taxables.

(48 Del. Laws, c. 151 § 40; 7 Del. C. 1953 § 4158.)

§ 4159 Annual and other meetings of taxables; notice of meetings.

At the first meeting the taxables shall set a date for the regular annual meeting. This date may not be changed except by action of a majority of the taxables present at a regular annual meeting. The chairperson of the ditch managers may call special meetings at such times as the circumstances warrant. At least 10 days' notice of all meetings shall be given by the ditch managers using either of the following methods:

(1) By publishing in a newspaper of general circulation in the area of a tax ditch, and by posting at 5 conspicuous places in or near the area of said tax ditch, a notice stating the time, place and object of the meeting; or

(2) By mailing to each affected taxable at the address currently shown on the records of the board of assessment of the county, a notice stating the time, place and object of the meeting.

(48 Del. Laws, c. 151 § 41; 7 Del. C. 1953 § 4159; 50 Del. Laws, c. 276 § 26; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 246 § 40.)

§ 4160 Meetings of ditch managers; quorum.

The ditch managers shall meet as often as necessary to properly conduct the business of the tax ditch. At such meetings a majority of the ditch managers shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination.

(48 Del. Laws, c. 151 § 42; 7 Del. C. 1953 § 4160.)

§ 4161 Powers of a tax ditch.

A tax ditch organized under this chapter, being a governmental subdivision of this State and a public body, corporate and politic may exercise public powers and, in addition to such other powers as usually pertain to corporations, may:

(1) Levy taxes;

(2) Sue and be sued in the name of the tax ditch, and suits against the tax ditch shall be governed by subchapter I of Chapter 40 of Title 10;

(3) Make and execute contracts and other instruments necessary or convenient to the exercise of its powers;

(4) Borrow money for the purpose of constructing, maintaining and administering the tax ditch;

(5) Acquire, by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property, real or personal, or any rights or interests therein;

(6) Cooperate, or enter into agreements with the state or federal governments or any agency or subdivision thereof;

(7) Exercise the power of eminent domain, in accordance with the condemnation procedure prescribed in Chapter 61 of Title 10, with respect to lands outside the boundaries of the tax ditch which are needed for right-of-way or outlet purposes;

(8) Accept contributions from landowners assessed in the tax ditch, and disburse such funds for the purposes of performing certain operations, such as, but not limited to, additional clearing or the installation of structures, which operations are authorized in the tax ditch order, but which are not included in the original estimated construction requirements and costs;

(9) Call upon the Division of Watershed Stewardship for assistance with administrative and operations problems of the tax ditch;

(10) After initial construction has been completed, and with the prior approval of the Department of Natural Resources and Environmental Control, and with written consent of more than one half of the landowners involved, owning more than 1/2 of the drainage area assessed:

a. Transfer to the Department of Natural Resources and Environmental Control:

1. The responsibility for certain specified responsibilities for maintenance of the tax ditch;

2. All rights-of-way assigned by court order to the tax ditch for construction and maintenance operations;

3. Any and all powers possessed by the tax ditch, or the managers thereof, related to obstruction of, or damage to said tax ditch, or to the addition of territory to a tax ditch, or to the alteration of a tax ditch.

b. Discontinue annual and other meetings of taxables and of tax ditch managers, except that when maintenance has been transferred to the Department of Natural Resources and Environmental Control, that body shall call a meeting of the taxables upon a written request from at least 3 of such taxables.

c. Discontinue tax ditch managers and secretary-treasurer as long as no meetings are being held.

(48 Del. Laws, c. 151 § 43; 7 Del. C. 1953 § 4161; 50 Del. Laws, c. 276 § 27; 55 Del. Laws, c. 461; 57 Del. Laws, c. 739 §§ 185-187; 59 Del. Laws, c. 560 § 2; 70 Del. Laws, c. 246 § 41; 77 Del. Laws, c. 430 § 22.)

§ 4162 Duties of ditch managers.

In addition to the duties specified in other sections of this chapter, the ditch managers shall:

(1) Determine from the taxables the desired program of operations;

(2) Determine the amount of taxes to be levied to carry out such desired program;

(3) Secure specific authority for borrowing money, in the name of the tax ditch, by a majority vote of the taxables present at a duly called meeting of the tax ditch;

(4) At the first meeting, or within 30 days thereafter, prepare, with the assistance of the Division of Watershed Stewardship, a comprehensive plan for carrying out the desired program, which plan shall include provisions for levying taxes and for financing the program;

(5) Execute warrants, with the assistance of the Division of Watershed Stewardship, to the receiver of taxes and county treasurer authorizing and requesting the collection of all tax ditch taxes other than maintenance taxes;

(6) Execute a warrant, with the assistance of the Division of Watershed Stewardship, to the receiver of taxes and county treasurer authorizing and requesting the annual collection of a tax in the amount of 2 percent of the total assessment base, or in the amount of 2 percent of the total benefits for tax ditches previously formed under the original provisions of this chapter, said warrant to be marked plainly as being for annual maintenance taxes, and to be issued simultaneously with the issuance of the first warrant for the collection of taxes for construction purposes;

(7) Make a report, at the annual meeting, of their activities during the year preceding such annual meeting;

(8) Provide for construction work on the tax ditch;

(9) Provide for adequate maintenance of the tax ditch.

(48 Del. Laws, c. 151 § 47; 7 Del. C. 1953 § 4162; 50 Del. Laws, c. 276 § 28; 59 Del. Laws, c. 560 § 2; 77 Del. Laws, c. 430 § 23.)

§ 4163 Duties of secretary-treasurer of tax ditch.

In addition to any powers and duties set forth elsewhere in this chapter, the secretary-treasurer of the tax ditch shall:

(1) Keep accurate minutes of all meetings of the ditch managers and taxables, and such minutes shall be a part of the permanent records of the tax ditch;

(2) Prepare a complete financial statement at the end of each calendar year, including therein an itemized report of all funds received, all funds expended, all funds due from taxes not yet collected and all sums due and owing by the tax ditch, and this statement and the records of the secretary-treasurer shall be audited annually by 2 qualified persons and shall become part of the permanent records of the tax ditch;

(3) Provide for the safekeeping of any funds of the tax ditch which are placed in his or her custody;

(4) Attend all meetings of the ditch managers and taxables.

(48 Del. Laws, c. 151 § 52; 7 Del. C. 1953 § 4163; 70 Del. Laws, c. 186 § 1.)

§ 4164 Bond of secretary-treasurer.

The secretary-treasurer shall, before assuming the duties of his or her office and within 15 days after his or her election, furnish a bond in favor of the tax ditch, in an amount satisfactory to the ditch managers and with a surety to be approved by the ditch managers, conditioned for the faithful performance of his or her duties and for the payment to his or her successor of all tax ditch funds. If any person elected secretary-treasurer neglects or refuses to give bond as aforesaid within the time specified, his or her right to hold such office shall be terminated, and the ditch managers shall call a special meeting of the taxables to elect a new secretary-treasurer who shall give bond and security as provided in this section.

(48 Del. Laws, c. 151 § 53; 7 Del. C. 1953 § 4164; 58 Del. Laws, c. 240 § 4; 70 Del. Laws, c. 186 § 1.)

§ 4165 Failure of ditch officer to perform duties; remedy; removal.

If any officer of a tax ditch fails to perform the duties imposed on him or her by this chapter, any taxable may petition the Superior Court from which the ditch order was issued and request an order directing said officer to carry out his or her duties, and upon his or her failure to comply with the order within the time stated therein, the taxable may further petition the Superior Court for the removal of the officer.

(48 Del. Laws, c. 151 § 63; 7 Del. C. 1953 § 4165; 70 Del. Laws, c. 186 § 1.)

§ 4166 Signatures on instruments issued by tax ditch.

Any note, bond, warrant or other instrument issued by a tax ditch pursuant to this chapter shall be signed by the chairperson of the ditch managers and the chairperson's signature shall be attested by the secretary-treasurer of the tax ditch.

(48 Del. Laws, c. 151 § 44; 7 Del. C. 1953 § 4166; 70 Del. Laws, c. 186 § 1.)

§ 4167 Liability of tax ditch officers.

No ditch manager or other officer of a tax ditch shall be held personally liable for the obligations of the tax ditch. The tax ditch shall indemnify the ditch managers or other officers in accordance with § 4003 of Title 10 for all tort claims.

(48 Del. Laws, c. 151 § 45; 7 Del. C. 1953 § 4167; 70 Del. Laws, c. 246 § 42.)

§ 4168 Limitation on borrowing power of tax ditch.

A tax ditch may borrow money pursuant to this chapter with the consent of a majority of the votes cast at a meeting duly called under § 4159 of this title. No tax ditch shall borrow money in excess of 90 percent of the total assessment base established by the ditch order.

(48 Del. Laws, c. 151 § 46; 7 Del. C. 1953 § 4168; 50 Del. Laws, c. 276 § 29.)

Subchapter V

Taxation

§ 4171 Duties of board of assessment; assessment book; assistance by Division of Watershed Stewardship.

(a) For tax ditches formed under this chapter, the board of assessment of the county shall transcribe the information shown on the assessment list delivered to it pursuant to § 4162(4) of this title into a special assessment book and it shall keep the same as part of the permanent records of its office. It shall also change the name of the owner shown therein from time to time as such changes are warranted by transfers of the lands assessed, to new owners.

(b) The Division of Watershed Stewardship shall assist the various boards of assessment of all 3 counties, upon request, to make such changes in their special ditch assessment books as are warranted by transfers of properties listed therein.

(48 Del. Laws, c. 151 § 48; 7 Del. C. 1953 § 4171; 49 Del. Laws, c. 220 § 2; 50 Del. Laws, c. 276 § 30; 59 Del. Laws, c. 560 § 2; 77 Del. Laws, c. 430 §§ 24, 25.)

§ 4172 Method of determining tax.

In determining the amount of any taxes to be levied against each owner's lands under this chapter, the ditch managers shall determine the same in accordance with the ratio which exists between the assessment base for each property and the total assessment base for the tax ditch.

(48 Del. Laws, c. 151 § 49; 7 Del. C. 1953 § 4172; 50 Del. Laws, c. 276 § 31.)

§ 4173 Warrants by ditch companies for collection of taxes.

Each ditch company organized under the laws in effect prior to June 1, 1951, in each year after its assessment has been made and its tax rate fixed, shall execute its warrant with a duplicate of the assessment list to the receiver of taxes and county treasurer, which warrant shall be delivered not later than May 1 in each year.

(43 Del. Laws, c. 219 § 1; 7 Del. C. 1953 § 4173.)

§ 4174 Warrants by tax ditches for collection of taxes.

(a) For tax ditches formed under this chapter, warrants authorizing and requesting the collection of ditch taxes executed to the receiver of taxes and county treasurer shall be signed by the chairpersons of the ditch managers and the secretary-treasurer or the tax ditch and shall contain the following information:

(1) The name of tax ditch;
(2) The location by county and hundred;
(3) The date said warrant is delivered to the receiver of taxes and county treasurer;
(4) The date that tax ditch assessment list was filed with county assessor;
(5) Total of that assessment list;
(6) Tax rate based on that assessment list;
(7) Total tax to be collected;
(8) Method of payment, if by installments;
(9) Statement as to whether the warrant is for construction, special or maintenance taxes;
(10) Amount and terms of loans, if any, secured by said tax warrant;
(11) Person to be paid directly by receiver of taxes and county treasurer and amounts to be paid to him or her.

(b) When a tax ditch includes 2 or more counties, separate tax warrants shall be executed by the ditch managers to each receiver of taxes and county treasurer thereof.

(48 Del. Laws, c. 151 § 50; 7 Del. C. 1953 § 4174; 70 Del. Laws, c. 186 § 1.)

§ 4175 Collection and disposition of taxes levied by ditch company.

All taxes levied by ditch companies organized under the laws in effect prior to June 1, 1951, shall be collected by the receiver of taxes and county treasurer in the county wherein the district of such ditch company is situated, within a period of 90 days from the date of the warrant referred to in § 4173 of this title, in the same manner as provided by law for the collection of taxes for other purposes. The money collected, with respect to each ditch company, shall be deposited by the receiver of taxes and county treasurer in a bank in 1 or more accounts as the receiver of taxes and county treasurer shall determine. But records shall be kept by the receiver of taxes and county treasurer shall keep records which list separately each ditch company and each deposit made by each ditch company. The moneys so collected and deposited shall be withdrawn from the accounts only upon warrants drawn by the proper officer of the respective ditch companies.

(43 Del. Laws, c. 219 § 1; 7 Del. C. 1953 § 4175; 50 Del. Laws, c. 78 § 1; 59 Del. Laws, c. 39 §§ 1, 2; 70 Del. Laws, c. 186 § 1.)

§ 4176 Duties of receiver of taxes and county treasurer.

All taxes levied by any tax ditch organized under this chapter shall be collected by the receiver of taxes and county treasurer in the county or counties wherein the lands taxed are located. The receiver of taxes and county treasurer shall accept tax warrants in proper form from such tax ditches, shall refer to tax ditch assessment lists on file with the board of assessment of the county and shall collect such taxes warranted annually, pursuant to the terms of the warrants in the same manner as provided by law for the collection of county taxes, and money so collected shall be paid during the months of November, January and July to the receiver designated in the tax warrants. Warrants received not later than May 1 of each year, by the receiver of taxes and county treasurer, shall be processed to be collected during that same year. Tax warrants marked plainly as being for annual maintenance taxes shall be filed by the receiver of taxes and county treasurer in a special binder and the same shall be maintained as part of the permanent records of that office. Such annual maintenance taxes shall be deemed to have been levied by the tax ditch as of April 30 of each year, except the year in which the original or a revised maintenance tax warrant is delivered to the receiver of taxes and county treasurer, in which case the levy shall be effective from and after the date of the delivery of such warrant. Annual maintenance taxes, once warranted, shall be collected yearly by the receiver of taxes and county treasurer, except that an annual maintenance tax shall not be collected during any tax year when another warrant, whether for construction taxes or special taxes, for an identical portion of the tax ditch is in effect and is being collected. The receiver of taxes and county treasurer shall accept original tax warrants for annual maintenance taxes signed by the chairperson of the ditch managers and attested by the secretary-treasurer of the tax ditch. Such warrants may not be withdrawn and may not be revised except with the consent of the county soil conservation district, pursuant to § 4181 of this title.

(48 Del. Laws, c. 151 § 51; 7 Del. C. 1953 § 4176; 50 Del. Laws, c. 276 § 32; 65 Del. Laws, c. 307 § 1; 70 Del. Laws, c. 186 § 1.)

§ 4177 Installment payment of taxes for construction; lien; amount of first installment.

(a) The ditch managers may order the tax levied for the cost of construction to be paid in annual installments and shall designate the method of payment on the tax warrant when it is forwarded to the appropriate receiver of taxes and county treasurer.

(b) In the event that the ditch managers order the tax levied for the cost of construction to be paid in annual installments, the entire tax shall, nevertheless, constitute a present lien on the lands against which it is levied, and the amount of the first installment shall not be less than the sum of all payments for damages and compensation as set forth in the ditch order, plus the costs and expenses incurred in the formation of a tax ditch.

(48 Del. Laws, c. 151 § 54; 7 Del. C. 1953 § 4177.)

§ 4178 Taxes as security for loans; notation on tax warrant.

A tax ditch may secure the payment of any loan made to it by entering on the tax warrant provided for in § 4162(5) of this title, a statement setting forth the fact that the taxes shown on the tax warrants have been pledged to secure the payment of a certain designated loan and, if a loan is so secured, by reciting the amount and terms of the loan and from whom it is being obtained, and by directing the receiver of taxes and county treasurer to pay any such taxes collected by him or her directly to the creditor until the loan is repaid. Such warrant may not be withdrawn and may not be altered or cancelled without the written consent of the creditor until the loan is repaid.

(48 Del. Laws, c. 151 § 55; 7 Del. C. 1953 § 4178; 70 Del. Laws, c. 186 § 1.)

§ 4179 Special tax.

A special tax to raise the funds necessary to carry into effect any of the provisions of this chapter and not otherwise provided for herein, may be levied by the ditch managers in the same manner as provided in this chapter for levying taxes for original construction.

(48 Del. Laws, c. 151 § 56; 7 Del. C. 1953 § 4179.)

§ 4180 Lien of taxes; enforcement.

All taxes levied under this chapter shall constitute a first and paramount lien against the lands to which they apply from and after the date of such levy, subject only to the lien for state and county taxes, which lien may be enforced by sale or otherwise in the same manner as the lien for the county taxes. All such taxes shall be collected by the appropriate receiver of taxes and county treasurer as provided in § 4176 of this title. Penalties for failure to make payment by the due date shall apply to taxes levied under this chapter in the same manner and amount as in the case of county taxes, and funds so received shall be credited to the tax ditch.

(48 Del. Laws, c. 151 § 57; 7 Del. C. 1953 § 4180.)

§ 4181 Adjustment of maintenance tax.

When in the opinion of the ditch managers the amount of the tax levied to defray the cost of annual maintenance is either insufficient or excessive, they may raise or lower the same for the current and succeeding years with the consent of the county soil conservation district, acting upon the advice of the Division of Watershed Stewardship. If the annual maintenance tax is so raised or lowered, it shall be apportioned to each landowner in accordance with § 4172 of this title and a new maintenance tax warrant shall be delivered to the appropriate receiver of taxes and county treasurer.

(48 Del. Laws, c. 151 § 58; 7 Del. C. 1953 § 4181; 59 Del. Laws, c. 560 § 2; 77 Del. Laws, c. 430 § 26.)

§ 4182 Limitation on liability of landowner for taxes.

No landowner shall be liable in any manner for any taxes levied by the tax ditch against the lands of another owner.

(48 Del. Laws, c. 151 § 59; 7 Del. C. 1953 § 4182.)

Subchapter VI

General Provisions

§ 4185 Payment of damages and compensation.

The damages and compensation awarded by the terms of the ditch order shall be paid to the person entitled thereto out of the first funds available to the tax ditch under this chapter, and no construction shall commence until said damages and compensation have been paid.

(48 Del. Laws, c. 151 § 60; 7 Del. C. 1953 § 4185.)

§ 4186 Obstruction of or damage to tax ditch; civil and criminal liability.

(a) If any person wilfully or negligently obstructs or damages any part of a tax ditch, and upon request of the ditch managers fails to remove the obstruction or to repair the damage at the person's own expense, the ditch managers shall see that the obstruction is removed and that the damage is repaired.

(b) The person so obstructing or damaging the tax ditch shall be liable for all loss or injury caused thereby and the expenses or charges for remedying the same, and said loss or injury, expenses or charges may be sued for and recovered by the ditch managers in the name of

the tax ditch before any justice of the peace in the county where the obstruction or damage occurred.

(c) Whoever wilfully obstructs or damages any part of a tax ditch, as specified in subsection (a) of this section, or wilfully interferes in any way with tax ditch operations as provided for in this chapter or in a ditch order made pursuant to this chapter, shall be fined not more than $100.

(d) As of July 17, 2008, if a permanent structure, whether existing or approved for construction, including but not limited to any residential, agricultural, or commercial structure, or any associated permanent accessory structure or septic system, driveway or parking area associated therewith still are found to be within a tax ditch right-of-way; that structure is exempt from the provisions of this chapter as a "legal nonconforming use".

(48 Del. Laws, c. 151 § 61; 17 Del. C. 1953 § 4186; 50 Del. Laws, c. 276 § 33; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 246 § 43; 76 Del. Laws, c. 389 § 2.)

§ 4187 Right of entry upon lands.

The Division of Watershed Stewardship, engineering personnel hired under § 4142 of this title, the soil conservation district supervisors, the Department of Natural Resources and Environmental Control, the ditch commissioners, the ditch managers, or any of their employees or agents, may enter upon any lands within the tax ditch at all reasonable times in order to carry out the purpose of this chapter.

(48 Del. Laws, c. 151 § 62; 7 Del. C. 1953 § 4187; 57 Del. Laws, c. 739 § 188; 59 Del. Laws, c. 560 § 2; 70 Del. Laws, c. 246 § 44; 77 Del. Laws, c. 430 § 27.)

§ 4188 Addition of territory to a tax ditch.

(a) Any landowner who desires his or her lands to be included within a tax ditch formed under this chapter, may present a petition for an amendment to the existing ditch order to include such lands, to the Superior Court of the county which issued said ditch order through the board of supervisors of the soil conservation district of the same county, and the procedure shall be substantially the same as method in § 4189(3) of this title, for amending a ditch order, except that, in addition to establishing an assessment base which will be the basis for all future ditch taxes, for each parcel of land being included within the tax ditch, a special assessment, based generally on the approximate total amount of taxes that would have been levied against such parcels of land since the tax ditch was formed, had such lands been within the original boundaries of said tax ditch and other considerations, shall be determined by the board of ditch commissioners and payment thereof prescribed in their report to the Superior Court.

(b) In those cases when any landowner, directly or indirectly, alters lands to utilize any part of a tax ditch to benefit land which is not within the original boundary of the tax ditch as established in the ditch order and which was not assessed as part of the tax ditch, or which was not assessed to the prong or part of the tax ditch utilized by the alteration, and when the landowner or owners have not secured an amendment to the ditch order in accordance with the procedure set forth in subsection (a) of this section, it shall be assumed that such landowner accepts the liability for payment of a special assessment and costs incurred in processing an amendment to the ditch order, in addition to all future ditch taxes, and it shall be the duty of the ditch managers in the name of the tax ditch to present a petition for an amendment to the existing ditch order to include such lands, in the same manner as set forth in subsection (a) of this section and the procedure shall be the same as outlined in that subsection, except that estimated costs of processing the amendment shall be added to the special assessment which will be established by the board of ditch commissioners.

(c) In those cases when any landowner desires his or her lands to be included within a tax ditch and when agreement can be reached on the part of the landowner and the tax ditch managers as to the special assessment to be paid and the assessment base to be established as the basis for all future ditch taxes, then method (1) or method (2) of § 4189 of this title may be used to add the additional territory to the tax ditch.

(48 Del. Laws, c. 151 § 64; 7 Del. C. 1953 § 4188; 50 Del. Laws, c. 276 § 34; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 246 § 45.)

§ 4189 Alteration of tax ditches; amendments to ditch orders.

If it becomes necessary to change any part of a tax ditch, such changes may be made in one of the following ways:

(1) The desired or required changes, justified in writing and including any necessary maps or drawings, shall be presented by the tax ditch managers to the taxables at a regularly called tax ditch meeting. If a majority vote of the taxables present favors the changes, and providing that such changes do not include any relocations of works of improvement, or of the construction area, or of the maintenance right-of-way on the lands of any owner without the owner's consent, the tax ditch managers shall present 3 copies of their request for the changes, including the written justification and any necessary maps or drawings, and also including the results of the referendum, to the Division of Watershed Stewardship for its approval. Should that approval be given, the change shall be effective at once, and the Division of Watershed Stewardship shall file the original request with supporting papers in the office of the prothonotary of the proper county, and return 1 copy to the tax ditch. Whenever changes are made which affect the tax ditch assessment list, the Division of Watershed Stewardship shall notify the board of assessment of the proper county of such changes.

(2)a. When all landowners affected consent to changes of any part of a tax ditch, including the assessment list, they shall enter into a written agreement to make such changes and present 3 copies of such agreement, together with any necessary maps or drawings, to the Division of Watershed Stewardship for its approval. Should that approval be given, the change shall be effective at once, and the Division of Watershed Stewardship shall file the original request with supporting papers in the office of the prothonotary of the proper county, and return 1 copy to the tax ditch. Whenever changes are made which affect the tax ditch assessment list, the Division of

Watershed Stewardship shall notify the board of assessment of the proper county of such changes.

b. The Division of Watershed Stewardship shall be responsible for assuring that any change to a court order to a tax ditch or right-of-way pursuant to this chapter shall be recorded in the prothonotary's office. The landowner of any property upon which a change to a court order has been made to any tax ditch or right-of-way pursuant to this chapter shall be responsible for assuring that such change is filed with the recorder of deeds in the county or counties where the parcel subject to the right-of-way is located.

(3) Any landowner within the boundaries of a tax ditch, or the tax ditch managers in the name of said tax ditch, may, at any time, petition for the amendments of the ditch order that created the tax ditch. Such petition shall list the changes that are desired and shall be presented to the Superior Court that issued the tax ditch order through the board of supervisors of the soil conservation district of the same county. That board of supervisors shall require and handle a deposit from the petitioners in accordance with § 4120 of this title, so far as that section is applicable. As soon as the deposit is received, the board of supervisors shall file the petition in the office of the prothonotary of the proper county without further investigation. Upon the filing of a petition for amendments to a ditch order in the office of the prothonotary of a county, the board of ditch commissioners of such county, shall, at the direction of the resident judge thereof, go upon the lands of the tax ditch watershed, if necessary, review the existing ditch order, consider the changes requested and make determinations regarding these. The board of ditch commissioners shall obtain from the county soil conservation district such assistance and information as may be required. The board of ditch commissioners, with the assistance of the Division of Watershed Stewardship, shall prepare a special proposed report in the nature of 1 or more proposed amendments to the existing ditch order, together with any maps or drawings deemed necessary. Upon completion of that report, they shall give notice, and hold a hearing and referendum in accordance with §§ 4131 and 4132 of this title so far as these are applicable. After holding the hearing and supervising the referendum, the board of ditch commissioners shall file the original and 2 copies of its report in the office of the prothonotary of the county in which all the major portion of the tax ditch is located and shall attach to the report a certificate showing the results of the referendum and the place where, and the time when, it was held. The board of ditch commissioners shall also prepare and attach to the report a statement showing:

a. The board of ditch commissioners has fully discharged the duties assigned to it as prescribed by law.

b. Any objections made to the report of the board of ditch commissioners which did not warrant further changes in the report and the reasons therefor.

c. Any other recommendations or information which the board of ditch commissioners deems advisable including their determination as to whether the petitioners or the tax ditch are liable for the costs of this action.

Action by the Superior Court shall follow §§ 4136, 4137, 4138, 4139, 4140, 4141 of this title so far as these sections are applicable.

(48 Del. Laws, c. 151 § 65; 7 Del. C. 1953 § 4189; 50 Del. Laws, c. 276 § 35; 57 Del. Laws, c. 739 § 189; 59 Del. Laws, c. 560 § 2; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 246 §§ 46-50; 76 Del. Laws, c. 389 § 3; 77 Del. Laws, c. 430 § 28.)

§ 4190 Bridges and culverts.

If any public road crossed by any part of a tax ditch will be benefited so that the public should construct and maintain a bridge or culvert at such crossing, the board of ditch commissioners shall so state in their report and upon establishment of the tax ditch such bridges or culverts shall be constructed and maintained at the public charge from funds provided for that purpose.

(48 Del. Laws, c. 151 § 66; 7 Del. C. 1953 § 4190.)

§ 4191 Ditches near highways.

The Department of Transportation shall maintain the highway drainage system insofar as is possible in such manner as to prevent silt from such system from obstructing any part of a tax ditch. If silt enters from the highway system and obstructs a tax ditch the Department of Transportation shall remove the same within a reasonable time after being given notice of such obstruction by the ditch managers.

(48 Del. Laws, c. 151 § 67; 7 Del. C. 1953 § 4191; 60 Del. Laws, c. 503 § 21.)

§ 4192 Dissolution of tax ditch.

After a duly called meeting of the taxables at which a majority of all eligible votes have been cast in favor of dissolving a tax ditch, created under this chapter, the ditch managers shall prepare a petition requesting such dissolution to the Superior Court through the appropriate county soil conservation district. If the tax ditch has operated for at least 10 years, and if said district is of the opinion that the dissolution of such tax ditch is in the public interest, it shall file the petition therefor, together with the recommendations of said district in the office of the prothonotary of the county in which the original ditch order was issued. After a petition for dissolution has been so filed, the Superior Court shall issue an order dissolving the tax ditch. No such order of dissolution shall be issued unless and until all obligations of the tax ditch have been paid in full and all commitments of the tax ditch have been fulfilled.

(48 Del. Laws, c. 151 § 68; 7 Del. C. 1953 § 4192.)

§ 4193 Ditches in Kent County; transfer by Department of Transportation to tax ditch.

If any landowners in Kent County establish a tax ditch under this chapter, the Department of Transportation shall transfer to the tax ditch all its right, title and interest in and to any existing ditch or ditches, within the boundaries of the new tax ditch, which have previously been transferred to the Department under § 28 of Chapter 105 of the 1935 Revised Code of Delaware, and the Department shall delegate to the new tax ditch all its powers and duties in connection with the existing ditch or ditches.

(48 Del. Laws, c. 151 § 70; 7 Del. C. 1953 § 4193; 60 Del. Laws, c. 503 § 21.)

§ 4194 Appropriations to Department of Natural Resources and Environmental Control.

An appropriation to the Department of Natural Resources and Environmental Control for purposes of planning, designing and constructing tax ditches/public group ditches shall be included in the annual appropriation bill (budget bill) of the General Assembly.

(48 Del. Laws, c. 151 § 74; 7 Del. C. 1953 § 4194; 57 Del. Laws, c. 739 § 190; 67 Del. Laws, c. 359 § 1.)

§ 4195 Notice of right-of-way, or assessment.

(a) The Department of Natural Resources and Environmental Control shall certify and file with the prothonotary of each county a list of all parcels by county tax parcel numbers and all owners of said parcels of real property located in that county which are subject to any portion of a right-of-way or assessment as part of a tax ditch created by this chapter. The list shall be in alphabetical order by owner. The Department shall also certify and similarly file a list of any changes of parcel numbers subject to such right-of-way or assessment annually. Additionally, the Department shall certify and similarly file a list of any addition or deletion of a parcel or parcels subject to a right-of-way or assessment immediately upon making any such addition or deletion.

(b) No later than 180 days after complying with subsection (a) of this section the Department shall certify and file with the prothonotary of each county a list of all parcels by county tax parcel numbers and all owners of said parcels listed in alphabetical order and designating which parcels are subject to a right-of-way and assessment, and which parcels are subject only to an assessment.

(c) The certified list submitted pursuant to subsection (a) or (b) of this section shall be confirmed by order of the Resident Judge of Superior Court for each county, which order shall:

(1) State the name of the tax ditch;

(2) State the owner's name or names and that owner's county tax parcel number for each parcel subject to the right-of-way and assessment and each parcel subject to an assessment only; and

(3) Direct that the order be recorded in the Office of the Recorder of Deeds in and for that county.

(d) There shall be no charge or fee to file the list required by subsection (a) of this section.

(e) There shall be no charge or fee to record the order pursuant to this subsection.

(75 Del. Laws, c. 321 § 1.)

Part IV
Agricultural and Soil Conservation; Drainage and Reclamation of Lowlands
Chapter 42
DAM SAFETY

§ 4201 Purpose.

It is the purpose of this chapter to provide for the proper design, construction, operation, maintenance and inspection of dams in the interest of public health, safety, and welfare, in order to reduce the risk of failure of dams and to prevent injuries to persons, damage to downstream property and loss of reservoir storage.

(74 Del. Laws, c. 392 § 1.)

§ 4202 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

(1) "Dam" shall mean any artificial barrier, including appurtenant works, with the ability to impound or divert water, wastewater, or liquid-borne materials.

(2) "Department" shall mean the Department of Natural Resources and Environmental Control.

(3) "Emergency action plan" shall mean a plan prepared by the dam owner and approved by the Department which identifies emergency conditions at a dam and specifies preplanned actions to minimize loss of life and property damage in the event of a potential dam failure.

(4) "High hazard potential dam" shall mean any dam whose failure or misoperation will cause probable loss of human life.

(5) "Low hazard potential dam" shall mean any dam whose failure or misoperation is unlikely to cause loss of human life but may cause minor economic and/or environmental losses.

(6) "Maximum storage elevation" shall mean the elevation of the lowest point of the top of dam independent of low points caused by partial failure or collapse.

(7) "Owner" shall include any of the following who own, control, operate, maintain, manage, or propose to construct, reconstruct, enlarge, repair, alter, remove or abandon a dam or reservoir: the State and its departments, institutions, agencies and political subdivisions; every municipal or quasi-municipal corporation; every public utility; every district; every person; the duly authorized agents, lessees, or trustees of any of the foregoing; and receivers or trustees appointed by any court for any of the foregoing.

(8) "Person" shall mean any person, firm, association, organization, partnership, business trust, corporation or company.

(9) "Reservoir" shall mean any basin that contains or will contain impounded water, wastewater, or liquid-borne materials by virtue of its having been impounded by a dam.

(10) "Secretary" shall mean the Secretary of the Department of Natural Resources and Environmental Control.

(11) "Significant hazard potential dam" shall mean any dam whose failure or misoperation will cause possible loss of human life, economic loss, environmental damage, disruption of lifeline facilities, or can impact other concerns.

(12) "State" shall mean the State of Delaware.

(13) "Supervising engineer" shall mean the design engineer who is responsible for conducting dam construction quality assurance inspections in order to certify the construction has been completed in accordance with the approved plans and specifications.

(74 Del. Laws, c. 392 § 1.)

§ 4203 Application.

(a) This chapter shall apply to any dam which is owned by the State or any county in the State, or any municipality or any quasi-governmental agency of the State that is 25 feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier or from the lowest elevation of the outside limit of the barrier, or if it is not across a stream channel or watercourse, measured at maximum water storage elevation; or any dam having an impounding capacity, at maximum storage elevation, of 50 acre-feet or more; or any dam that is deemed by the Secretary to be a significant or high hazard potential structure due to its location or other physical characteristics.

(b) This chapter shall not apply to any dam that is not in excess of 6 feet in height regardless of storage capacity, or any dam having a storage capacity at maximum water storage elevation not greater than 15 acre-feet regardless of height, or any low hazard potential dam constructed prior to the effective date of this legislation, unless deemed by the Secretary to be a significant or high hazard potential structure due to its location or other physical characteristics.

(c) This chapter shall not apply to any private owner of a dam unless such owner executes a document with the Department requesting such coverage.

(74 Del. Laws, c. 392 § 1.)

§ 4204 Construction of dams.

(a) No owner shall begin the construction of any dam to which this chapter applies without written approval from the Department. Owners intending to construct any dam to which this chapter applies shall file with the Department a preliminary application which shall include a dam break analysis, the dam height, the maximum impounding capacity, purpose, location and determination of hazard class, and other information required by the Department. If on the basis of this information it is the opinion of the Department that the proposed dam is exempt from the provisions of this chapter, it shall notify the owner that no approval from the Department is required. If on the basis of the submitted information it is the opinion of the Department that the proposed dam is not exempt, the Department shall notify the owner that construction shall not be commenced until a full application has been filed by the owner and such application approved in accordance with §§ 4206 and 4209 of this title. The Department shall require emergency action plans and operation and maintenance plans for high or significant hazard potential dams, and may also require of owners so notified the filing of any additional information it deems necessary, including, but not limited to, streamflow and rainfall data, maps, plans, and specifications. Every owner applying for approval of a dam subject to the provisions of this chapter shall also file with the Department a Certificate from a qualified professional engineer, licensed in the State. The Certificate should state that the engineer is qualified and responsible for the design of the dam; that the design is safe and adequate; and that the engineer shall be responsible for construction quality assurance to certify that the construction has been completed in accordance with the approved plans.

(b) The Department shall send a copy of each completed application to the Delaware Emergency Management Agency and other state, federal and local agencies it considers appropriate for review and comment.

(c) Upon receipt of a full application in proper form, the Secretary shall give notice in the form of an advertisement in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State:

(1) The fact that the application has been received;

(2) A brief description of the nature of the application;

(3) The place at which a copy of the application may be inspected; and

(4) Procedures to request a public hearing.

The Secretary shall hold a public hearing on an application, if the Secretary receives a request from any party whose interests are substantially affected by the proposed application, as determined by the Secretary, if such request is received within 21 calendar days of the public notice. Such notice shall also be sent by mail to any person who has requested such notification from the Department and provides a name and address.

(74 Del. Laws, c. 392 § 1; 70 Del. Laws, c. 186 § 1.)

§ 4205 Repair, alteration, or removal of dams.

(a) Before commencing the repair, alteration or removal of any dam to which this chapter applies, application shall be made by the owner for written approval by the Department, except as otherwise provided by this chapter. The application shall state the name and address of the owner, shall adequately detail the changes it proposes to affect, impacts or modifications to plans of operation and maintenance and emergency action plans, and shall be accompanied by maps, plans, and specifications setting forth such details and dimensions as the Department requires. The Department may waive the requirements of this section for the repair or alteration of a dam if the proposed action is determined to be minor as defined by the Department by regulation. The application shall give such other information concerning the dam and reservoir required by the Department, such information concerning the safety of any change as it may require, and shall state the proposed time of commencement and completion of the work. When the Department determines an application has been completed it may be referred by the Department for agency review and report, as provided by § 4204 of this title in the case of original construction. The application for repair, alteration or removal of the dam shall be subject to the public notice requirements.

(b) Upon receipt of a full application in proper form, the Secretary shall give notice in the form of an advertisement in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general circulation throughout the State:

(1) The fact that the application has been received;

(2) A brief description of the nature of the application;

(3) The place at which a copy of the application may be inspected; and

(4) Procedures to request a public hearing.

The Secretary shall hold a public hearing on an application, if the Secretary receives a request from any party whose interests are substantially affected by the proposed application, as determined by the Secretary, if such request is received within 21 calendar days of the public notice. Such notice shall also be sent by mail to any person who has requested such notification from the Department and provides a name and address.

(c) When repairs are necessary to safeguard life and property they may be started immediately, but the Department shall be notified as soon as practical but no longer than 24 hours after such repairs have commenced. The owner shall be required to submit as-built plans and certification from a professional engineer, licensed in Delaware, demonstrating that the repairs comply with this chapter.

(74 Del. Laws, c. 392 § 1; 70 Del. Laws, c. 186 § 1.)

§ 4206 Actions by the Department upon applications.

(a) Public notice of application shall consist of an advertisement in a newspaper of general circulation in the county in which the activity

is proposed and in a daily newspaper of general circulation throughout the State to include the fact that the application has been received, a brief description of the nature of the application and the place at which a copy of the application may be inspected:

(b) Following the receipt of requested comments the Department shall approve, disapprove, or approve subject to conditions necessary to ensure safety all applications pursuant to this chapter.

(c) A defective application shall not be rejected but notice of the defects shall be sent to the owner. If the owner fails to file a perfected application within 30 days of the date of the notice the original shall be canceled unless further time is allowed.

(d) If the Department disapproves an application, 1 copy shall be returned with a statement of its objections. If an application is approved, the approval shall be attached thereto, and a copy returned. Approval shall be granted under terms, conditions, and limitations which the Department deems necessary to safeguard life and property.

(e) Construction shall be commenced within 2 years after the date of approval of the application and completed within 5 years of commencement of construction or the approval is void. The Department upon written application and good cause shown may extend the time for commencing construction or for completing the construction. Notice by registered or certified mail shall be given the Department at least 10 days before construction is commenced.

(74 Del. Laws, c. 392 § 1.)

§ 4207 Fees.

(a) The Department may establish an application fee not to exceed $500.

(b) Any fees collected under this chapter are hereby appropriated to the Department to carry out the purposes of this chapter. The Secretary shall report through the annual budget process the receipt, proposed use and disbursement of these funds.

(74 Del. Laws, c. 392 § 1.)

§ 4208 Rules.

The Secretary shall develop and adopt regulations and standards in conjunction with a regulatory advisory committee, appointed by the Secretary, which include public and private dam owners, as well as appropriate state and federal agencies, conservation districts, and other governmental subdivisions of the State. Dam safety regulations and standards shall include but not be limited to definitions, permit-by-rule, general requirements and prohibitions, application procedures, dam classification, design criteria, construction requirements, operation and maintenance requirements and inspection requirements.

(74 Del. Laws, c. 392 § 1.)

§ 4209 Supervision by qualified engineers; reports and modifications during work.

(a) Any project for which the Department's approval is required under §§ 4204, 4205 and 4206 of this title and any project undertaken pursuant to an order of the Department issued pursuant to this chapter or § 4212 of this title shall be designed and the construction supervised by a licensed professional engineer in the State with related experience in dam design and construction.

(b) During the construction, enlargement, repair, alteration, or removal of any dam to which this chapter applies, the Department may require such progress reports from the supervising engineer responsible for design and construction quality assurance, as it deems necessary.

(c) If, based on inspection reports, construction inspections or other information, the Department finds that the work is not in compliance with the provisions of the approval and the approved plans and specifications, it shall give written notice to the person who received the approval and to the person in charge of construction of the dam. The notice shall state the particulars in which compliance has not been made, and shall order immediate compliance with the terms of approval, and the approved plans and specifications. The Department may order that no further construction work be undertaken until such compliance has been effected and approved by the Department. A failure to comply with the approval and the approved plans and specifications shall render the approval revocable unless compliance is made after notice as provided in this chapter.

(74 Del. Laws, c. 392 § 1.)

§ 4210 Notice of completion; certification of final approval.

(a) Within 7 days of completion of construction, reconstruction, enlargement, repair, alteration or removal of any dam to which this chapter applies, notice of completion shall be given to the Department. Within 60 days thereafter supplementary drawings or descriptive matter showing or describing the dam as actually constructed in compliance with the approval and the approved plans and specifications shall be filed with the Department in such detail as the Department may require.

(b) Upon completion of the project, the supervising engineers, having inspected the work during construction and upon finding that the work has been done as required and that the dam is safe, shall file with the Department a certificate and as-built plans demonstrating that the work has been completed in accordance with the approved design plans, specifications, and other requirements. After review of the supervising engineer's certificate and as-built plans, unless the Department has reason to believe that the dam is unsafe or is not in compliance with any applicable rule or law, the Department shall grant final approval of the work in accordance with the certificate, subject to such terms as it deems necessary for the protection of life and property.

(c) Pending issuance of the Department's final approval, the dam shall not be filled except on written consent of the Department, subject to conditions it may impose.

(74 Del. Laws, c. 392 § 1.)

§ 4211 Operation and maintenance of dams.

The Department shall require that dam owners and operators develop, use and update as necessary an operation and maintenance plan which provides guidance and instruction to personnel for the proper operation and maintenance of any reservoir or dam to which this chapter applies to safeguard life and property. The operation and maintenance plan shall be subject to the approval of the Department and may be reviewed, modified or amended by the Department as deemed necessary to safeguard life and property. The Secretary may adopt, amend, modify or repeal standards for the maintenance and operation of dams as may be necessary for the purposes of this section. The Department may vary the standards applicable to the various dams giving due consideration to the type and location of the structure, the hazards to which it may be exposed, and the peril of life and property in the event of a failure or misoperation of the dam.

(74 Del. Laws, c. 392 § 1.)

§ 4212 Inspection of dams.

The Department shall require regular inspection of any dam to which this chapter applies to safeguard life and property. The Secretary may adopt, amend, modify or repeal standards for the inspection of dams as may be necessary for the purposes of this section. The Department may vary the standards applicable to the various dams giving due consideration to the type and location of the structure, the hazards to which it may be exposed, and the peril of life and property in the event that a dam fails to perform its function. The Department shall inform the Delaware Emergency Management Agency of any dam presenting a risk of peril of life and property in the event that the dam fails.

(74 Del. Laws, c. 392 § 1.)

§ 4213 Appeals.

(a) Except as otherwise provided in this chapter, any action or determination by the Department under this chapter shall be subject to appeal to the Environmental Appeals Board in accordance with the provisions of § 6008 of this title.

(b) Appeals of decisions by the Environmental Appeals Board shall be conducted pursuant to § 6009 of this title.

(74 Del. Laws, c. 392 § 1.)

§ 4214 Investigations by the Department.

The Department shall make investigations and assemble such data as it deems necessary for a proper review and study of the design and construction of any dams, reservoirs and appurtenances to which this chapter applies, and for such purposes the Department or its agents may enter upon private property. The Department may employ or make such agreements with geologists, engineers, or other expert consultants and such assistants, as it deems necessary to carry out the provisions of this chapter.

(74 Del. Laws, c. 392 § 1.)

§ 4215 Liability for damages.

No action shall be brought against the State, the Department, or any agent of the Department or any employee of the State or the Department for damages sustained through the partial or total failure of any dam, misoperation or its maintenance by reason of any supervision or other action taken pursuant to or under this chapter. Nothing in this chapter shall relieve an owner or operator of a dam from the legal duties, obligations and liabilities arising from such ownership and operation.

(74 Del. Laws, c. 392 § 1.)

§ 4216 Enforcement procedures.

(a) Any person who violates any rule, regulation, order, or condition imposed in an approved document or other provision of this chapter shall be fined not less than $200 or more than $2000 for each offense. Each day that the violation continues shall constitute a separate offense. The Justice of the Peace Courts shall have jurisdiction of offenses brought under this subsection.

(b) Any person who intentionally, knowingly, and after written notice to comply, violates any rule, regulation, order, or condition imposed in an approved document or other provision of this chapter shall be fined not less than $500 or more than $10,000 for each offense. Each day the violation continues shall constitute a separate offense. The Superior Court shall have jurisdiction over offenses brought under this subsection.

(74 Del. Laws, c. 392 § 1.)

§ 4217 Rights of investigation, entry, access, inspection and protective action.

(a) The Department shall have the right to direct the conduct of such investigations as it may reasonably deem necessary to carry out its duties prescribed in this chapter and the Department shall have the right to conduct such investigations, and for the purpose of inspections the employees of the Department and agents of the Department have the right to enter at reasonable times on any property, public or private, for the purpose of investigating the condition, construction or operation of any dam or associated equipment facility or property, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the construction or operation of any dam. No person shall refuse entry or access to any authorized representative of the Department who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any representative

while in the process of carrying out that representative's official duties.

(b) Notwithstanding any other provisions of this chapter, the Department, upon receipt of information that any dam may present an imminent and substantial hazard to the public health, safety or welfare, may take such actions as it determines to be necessary to protect the public health, safety or welfare. The Department may direct the owner or custodian of the dam to take such actions as are necessary to prevent, eliminate or reduce the hazard. In the event the owner or custodian fails to take such actions, the Department shall have the right to take all appropriate or necessary action including, but not limited to, breaching or draining. The Department may initiate legal proceedings to recover the emergency costs from the dam owner.

(74 Del. Laws, c. 392 § 1; 70 Del. Laws, c. 186 § 1.)

Part IV
Agricultural and Soil Conservation; Drainage and Reclamation of Lowlands
Chapter 43
DREDGING AND MANAGEMENT OF LAGOONS
Subchapter I
General Provisions

§ 4301 Declaration of policy.

It is declared that the removal of accumulated sediment from artificially constructed lagoons and the management of such lagoons for navigational improvement shall be considered a public benefit and conducive to the public health, safety and welfare.

(73 Del. Laws, c. 389 § 1.)

§ 4302 Purpose.

It is the purpose of this chapter in carrying out the policy declared in § 4301 of this title to provide a basis for a uniform system for establishing, financing, administering, maintaining and dissolving lagoon organizations in the State under the supervision of the Department of Natural Resources and Environment Control to the end that the improvement and management of these waterways may be accomplished in a workable and practicable manner.

(73 Del. Laws, c. 389 § 1.)

§ 4303 Definitions.

For the purposes of this chapter, unless otherwise specifically defined, or another intention clearly appears, or the context requires a different meaning:

(1) "Benefits" include, but shall not be limited to, the privilege of participating in a cooperative system for the management of water and sediment from one's lands by a tax lagoon formed under this chapter.

(2) "Dredging" means water and sediment management by lagoon areas to safely remove accumulated sediment.

(3) "Lagoon" means a manmade body of water constructed for the purpose of residential housing and mooring of recreational boats and directly connected to tidal waters.

(4) "Landowner" or "owner" means that person or group of persons in whom the entire title to a certain tract of land is vested.

(5) "Sediment management" means the removal, storage or application of sediment or earth by intentional means, including but not limited to the dredging thereof of subaqueous lands.

(6) "Taxable" means any person entitled to vote under this chapter.

(7) "Water management" means the improvement of water by intentional means for the purpose of navigation.

(73 Del. Laws, c. 389 § 1.)

Subchapter II
Boards of Lagoon Management Commissioners

§ 4304 Lagoon management commissioners; membership; qualifications; term; vacancies; secretary.

(a) A board of lagoon management commissioners consisting of 3 lagoon management commissioners and 3 alternate lagoon management commissioners is continued for each county within the State. Upon the expiration of the terms of office of the present and all future management commissioners, the resident judge for each county shall appoint lagoon management commissioners and alternate lagoon management commissioners, who may be selected from lists of 10 or more names submitted by the Division of Watershed Stewardship. Each lagoon management commissioner and alternate lagoon management commissioner shall be a resident landowner of the county from which that lagoon management commissioner or alternate is appointed, shall have some knowledge of lagoon management, such as sedimentation problems and its impact on navigation, and shall be familiar with land values within such county.

(b) The term of office for each lagoon management commissioner shall be 3 years. The term of office for the alternate lagoon management commissioners shall be 1 year each. A lagoon management commissioner or alternate lagoon management commissioner may be reappointed to successive terms of office. All appointments shall be effective as of August 1 of each year.

(c) In the case of the death, resignation or removal from office of a lagoon management commissioner, the vacancy shall be filled by the appointment of one of the alternate lagoon management commissioners to serve for the remainder of the term of the vacating lagoon management commissioner.

(d) Except in the case of death or removal from office, a lagoon management commissioner shall hold office until a successor has been

appointed.

(e) The Division of Watershed Stewardship shall serve as secretary, without voting authority, for each of the county boards of lagoon management commissioners.

(73 Del. Laws, c. 389 § 1; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 213 § 2; 77 Del. Laws, c. 430 § 29.)

§ 4305 Disqualification of members.

In those cases where any member of the board of lagoon management commissioners owns lands within the boundary of a proposed tax lagoon, such member shall not serve as a member of said board on that particular tax lagoon, and an alternate lagoon management commissioner shall serve in the member's stead.

(73 Del. Laws, c. 389 § 1.)

§ 4306 Chairperson; quorum; voting.

A chairperson of each board of lagoon management commissioners shall be designated by the members thereof and such designation may be changed from time to time. A majority of the lagoon management commissioners of each board shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination.

(73 Del. Laws, c. 389 § 1; 70 Del. Laws, c. 186 § 1.)

§ 4307 Compensation; expenses and reimbursement.

(a) The lagoon management commissioners shall be entitled to receive reimbursement for their expenses necessarily incurred in the discharge of their duty at a per diem rate set by the Secretary of the Department of Natural Resources and Environmental Control, not to exceed $50, plus mileage reimbursement at the rate established in § 7102 of Title 29, as amended. The lagoon management commissioners shall be reimbursed for said expenses by the landowners petitioning to have a tax lagoon formed. Such reimbursement shall be made from funds deposited in advance by the petitioners at the time the petition is filed or from the first moneys collected by the tax lagoon after it is organized, the manner to be decided by the Division of Watershed Stewardship.

(b) Lagoon management commissioners will be reimbursed for their expenses incurred in the discharge of their duties in connection with the formation of a tax lagoon after the lagoon order has become effective, or at such time as the Superior Court issues an order denying the petition for the formation of the tax lagoon.

(73 Del. Laws, c. 389 § 1; 77 Del. Laws, c. 430 § 30.)

§ 4308 Employment of qualified personnel.

The Department of Natural Resources and Environmental Control shall employ personnel qualified by experience in structural engineering, bulk heading, dredging and soil work to assist it in carrying out its functions under this chapter and to perform related duties within the Division of Watershed Stewardship.

(73 Del. Laws, c. 389 § 1; 77 Del. Laws, c. 430 § 31.)

§ 4309 Employment of personnel; purchase of supplies and equipment.

The Department may employ such personnel and obtain by purchase or otherwise such supplies and equipment as are necessary to carry out this chapter.

(73 Del. Laws, c. 389 § 1.)

Subchapter III

Formation of Tax Lagoon; Procedure

§ 4310 Nature of a tax lagoon.

A tax lagoon organized under this chapter shall constitute a governmental subdivision of this State and a public body, corporate and politic, exercising public powers.

(73 Del. Laws, c. 389 § 1.)

§ 4311 Petition for formation of a tax lagoon; assistance by Division of Watershed Stewardship.

(a) Whenever 1 or more of the owners of any lands desire their lagoons to be dredged or managed, they may present a petition for the formation of a tax lagoon to the Superior Court of the county in which all or the major portion of the area involved is located through the Division of Watershed Stewardship.

(b) The services of the Division of Watershed Stewardship shall be available to assist the landowners in the preparation of such petitions.

(73 Del. Laws, c. 389 § 1; 77 Del. Laws, c. 430 §§ 32, 33.)

§ 4312 Form of petition.

A petition for the formation of a tax lagoon shall be in the following form:

PETITION

To the Superior Court of _____ County through the Division of Watershed Stewardship:

Whereas the undersigned (is)(are) the owner(s) of subaqueous lands within lagoon areas subject to sedimentation or in need of water management situated in _____ Hundred(s) _____ County (Counties), and the State of Delaware, said lands being more particularly described as follows _____

_____

_____

_____; and

Whereas the dredging and the prevention of sedimentation of said subaqueous lands within lagoons would be a public benefit and conducive to the public health, safety and welfare; and

Whereas the undersigned desire that a tax lagoon be formed under the provisions of Chapter 43 of Title 7 of the Delaware Code, said tax lagoon to be known as _____ Tax Lagoon;

The undersigned therefore request the Division of Watershed Stewardship to make the investigation required under the above cited chapter and, if the findings thereon be favorable, to file this petition in the office of the Prothonotary of _____ County so that the Superior Court of said county may take the necessary steps required by law to issue an order establishing _____ Tax Lagoon.

Dated this _____ day of _____, _____, at _____, Delaware.

date month year

(Space for Signatures)

(73 Del. Laws, c. 389 § 1; 77 Del. Laws, c. 430 § 34.)

§ 4313 Name of tax lagoon.

The name of any tax lagoon established under this chapter shall not be the same as the name of any existing tax lagoon management organization within the same county.

(73 Del. Laws, c. 389 § 1.)

§ 4314 Deposit upon filing of petitions for tax lagoon.

(a) The Division of Watershed Stewardship shall require that a specified sum be deposited with it by the petitioners before the petition is filed in the office of the prothonotary to cover filing fees, mailing and other necessary expenses. The amount of the deposit shall be determined by the Division of Watershed Stewardship and may vary according to the size of the area involved, the complexity of the problem, and other pertinent factors. If the original deposit is not sufficient, the Division of Watershed Stewardship shall require an additional deposit as soon as the need for such becomes evident.

(b) The Division of Watershed Stewardship shall keep an account of such deposits and shall return any unused portion thereof to the petitioners upon completion of final action by the Superior Court. When such action is favorable, the petitioners shall be repaid out of the first moneys collected by the tax lagoon all expenses of formation charged to them by the Division of Watershed Stewardship.

(c) From the funds deposited with it pursuant to this section, the Division of Watershed Stewardship shall pay filing fees, mailing and other necessary expenses incurred in the investigation and formation of a tax lagoon.

(73 Del. Laws, c. 389 § 1; 77 Del. Laws, c. 430 § 35.)

§ 4315 Duties of the Division of Watershed Stewardship upon receipt of petition.

The board of supervisors of the county soil conservation district, upon receipt of a petition for the formation of a tax lagoon, shall determine whether the petition is in the form set forth in § 4312 of this title and has been properly executed. If the petition is in the prescribed form and has been properly executed, the board shall immediately notify the Division of Watershed Stewardship and by virtue of such action shall have made available to it the services of the Department of Natural Resources and Environmental Control to assist it with the investigation concerning the possible formation of the tax lagoon.

(73 Del. Laws, c. 389 § 1; 77 Del. Laws, c. 430 § 36.)

§ 4316 Investigation; hearing.

The Division of Watershed Stewardship shall cause an investigation to be made in order to ascertain the general location and approximate boundaries of the proposed tax lagoon and to obtain other information to determine whether the formation of the tax lagoon is practicable and feasible and is in the interest of the public health, safety and welfare. The Division of Watershed Stewardship may hold such hearings as it deems necessary in order to assist it in making such determination.

(73 Del. Laws, c. 389 § 1; 77 Del. Laws, c. 430 § 37.)

§ 4317 Filing of petition and report; action by district when formation is found to be not practicable and feasible.

(a) If the Division of Watershed Stewardship determines that the formation of the proposed tax lagoon is practicable, feasible and in the interest of the public health, safety and welfare, it shall file the petition in the office of the prothonotary of the county in which all or the

major portion of the land involved is located.

(b) Where the Division of Watershed Stewardship determines that the formation of the proposed tax lagoon is not practicable and feasible or is not in the interest of the public health, safety and welfare, it shall so notify all of the petitioners involved, and a new petition for the formation of that tax lagoon may not be refiled for a period of 1 year from the date of said notice.

(73 Del. Laws, c. 389 § 1; 77 Del. Laws, c. 430 § 38.)

§ 4318 Determinations to be made by board of lagoon management commissioners.

(a) Upon the filing of a petition for the formation of a tax lagoon in the office of the prothonotary of a county, the board of lagoon management commissioners of such county, acting as officers of the court, shall, at the direction of the resident judge thereof, go upon the lands that may be included in the tax lagoon and determine the approximate dimensions and volume of the required dredging; the approximate sizes, locations and specifications for required disposal facilities and other necessary works of improvement; the location of public roads and railroads and public utility installations within the proposed tax lagoon; the exterior boundaries of the tax lagoon; the approximate boundaries of each parcel or piece of land within the tax lagoon; the location and extent of needed permanent rights-of-way; the estimated total cost of all required tax lagoon works of improvement; the damages to lands, if any, which will result from the dredging of the tax lagoon; and an equitable basis, considering relative benefits to each landowner, for the distribution of costs. The board of lagoon management commissioners shall obtain from the Division of Watershed Stewardship such assistance and information as is needed in making the required determinations.

(b) When all of the landowners involved, with the approval of the board of lagoon management commissioners and with the cooperation of the Division of Watershed Stewardship:

(1) Jointly make the determinations regularly assigned to the lagoon management commissioners in subsection (a) of this section and in § 4319 of this title;

(2) Prepare the assessment list required by § 4321 of this title;

(3) Supply any additional data necessary to complete the report of the board of lagoon management commissioners required by § 4322 of this title; and

(4) Personally sign a statement to the effect that they approve the formation of the tax lagoon;

The board of lagoon management commissioners shall prepare their report from said determinations and such data without going upon the lands involved.

(73 Del. Laws, c. 389 § 1; 77 Del. Laws, c. 430 § 39.)

§ 4319 Existing works of improvement; compensation for work done thereon.

The board of lagoon management commissioners may deem adequate any works of improvement already performed, including but not limited to dredging, and may allow a fair compensation to landowners for work previously done by them on such works of improvement.

(73 Del. Laws, c. 389 § 1.)

§ 4320 Factors in determination of cost.

(a) In determining the total cost of the proposed tax lagoon works of improvement, the board of lagoon management commissioners shall include, among other things, the estimated costs of dredging, the estimated cost of forming the tax lagoon, the amount of damages, if any, awarded to landowners, and the amount of compensation, if any, to be paid to landowners for works of improvement previously performed and deemed adequate under § 4319 of this title.

(b) The estimated cost of interest which will develop if the tax lagoon borrows money to finance the dredging of the lagoon shall not be included in the total cost of the proposed tax lagoon works of improvement.

(73 Del. Laws, c. 389 § 1.)

§ 4321 Assessment list.

After determining the basis for distribution of costs among the landowners, the board of lagoon management commissioners shall prepare an assessment list which shall show the names of all owners of property whom it deems will benefit from the proposed tax lagoon, together with addresses and descriptions of those properties as currently recorded by the board of assessment of the county. The list shall also show if the properties are located on the tax lagoon. The cost-sharing or assessment base, expressed in dollars, for each of said properties shall also be shown. The sum of the individual property assessment bases shall be termed the total assessment base, which in all cases shall be equal to or greater than the total cost of the proposed tax lagoon works of improvement. The assessment list, as modified by the lagoon order described in § 4329 of this title, shall be the basis for all taxes levied under this chapter.

(73 Del. Laws, c. 389 § 1.)

§ 4322 Proposed report of board of lagoon management commissioners.

The board of lagoon management commissioners, with the assistance of the Division of Watershed Stewardship, shall prepare a proposed report containing the following determinations and information:

(1) The name of the proposed tax lagoon;

(2) The hundred and the county in which the proposed tax lagoon is situated;

(3) A map, drawing or aerial photograph, to a suitable scale, on which the following is shown:

a. The main lagoon, all prongs, all subprongs and other divisions of the proposed tax lagoon;

b. All dikes, levees, structures and other works of improvement of the proposed tax lagoon;

c. All railroads, public highways and public utility installations near the points where such reach, cross or pass close to any part of the proposed tax lagoon;

d. The exterior boundaries of the tax lagoon;

e. The approximate boundaries of each parcel or piece of land within the proposed tax lagoon, together with the identification of each parcel or piece of land by name or code number; and

f. The location and extent of rights-of-way, including overhead and underground clearances where necessary, assigned to the tax lagoon for dredging operations;

(4) The estimated total cost of the proposed tax lagoon works of improvement;

(5) The assessment list required under § 4321 of this title;

(6) Factors which influenced the determination of relative benefits and the basis for distribution of costs among the landowners, and other pertinent information;

(7) The names of all landowners awarded damages or to be paid compensation for works of improvement previously constructed and deemed adequate under § 4319 of this title, the amount of damages or compensation to which each such landowner is entitled, and factors which influenced the determination of the damages awarded and compensation to be paid; and

(8) The number of lagoon managers, not less than 2 nor more than 5, required to conduct the business affairs of the proposed tax lagoon.

(73 Del. Laws, c. 389 § 1; 77 Del. Laws, c. 430 § 40.)

§ 4323 Notice of hearing on establishment of tax lagoon.

Upon completion of the proposed report required by § 4322 of this title, the board of lagoon management commissioners shall notify all owners of property in the proposed tax lagoon area of a hearing concerning the establishment of said tax lagoon to be held in the county in which all or the major portion of the lands involved is located. The notice shall be mailed by first class mail at least 20 days prior to the hearing and shall designate the time and place thereof. It shall also state that the purpose of the hearing is to consider the formation of a tax lagoon which may affect the lands of the person notified and to hold a referendum among the affected landowners concerning the establishment of a tax lagoon. In addition, the notice shall state the place where a copy of the above proposed report of the board of lagoon management commissioners will be open to inspection for at least 5 days, excepting Saturday and Sunday, prior to the hearing date.

(73 Del. Laws, c. 389 § 1.)

§ 4324 Hearing; adoption of proposed report; right to adjourn hearing; referendum.

At the time and place designated in the notice, the board of lagoon management commissioners, with the assistance of the Division of Watershed Stewardship, shall hold a hearing at which all persons interested shall have an opportunity to express their opinions on and objections to the proposed report required by § 4322 of this title. The board of lagoon management commissioners shall make such changes in the proposed report as it deems warranted from evidence presented at the hearing, and shall then adopt the report and declare it final. If, however, as a result of the hearing, the board of lagoon management commissioners deems it advisable, it may adjourn the hearing in order to enable it to reexamine and modify its report in the light of the opinions and objections expressed at the hearing. The hearing may be adjourned to a fixed future date with no additional notification required or adjourned to an unspecified future date for which the notification and display procedures of § 4323 of this title will again apply. At the conclusion of the hearing, a referendum shall be held under the supervision of the board of lagoon management commissioners and the Division of Watershed Stewardship. The referendum shall afford each landowner the opportunity to cast a ballot for or against the formation of the proposed tax lagoon in accordance with the final report of the board of lagoon management commissioners. Each landowner shall be entitled to the same number of votes as the number of dollars shown as the assessment base for the lands by the board of lagoon management commissioners. A referendum to approve a proposed tax lagoon shall be adopted only if passed by a three-fourths majority.

(73 Del. Laws, c. 389 § 1; 77 Del. Laws, c. 430 § 41.)

§ 4325 Contents of report; filing.

After holding the hearing and supervising the referendum provided for in § 4324 of this title, the board of lagoon management commissioners shall file the original and 2 copies of its final report in the office of the prothonotary of the county in which all or the major portion of the lands involved is located and shall attach to the report a certificate stating the results of the referendum and the place where and the time when it was held. The board of lagoon management commissioners shall also prepare and attach to the report a statement showing:

(1) Whether the board of lagoon management commissioners has fully discharged the duties assigned to it as prescribed by law;

(2) Whether the proposed tax lagoon is practicable and feasible and in the interest of the public health, safety and welfare;

(3) Whether in laying out the tax lagoon, the lands of every landowner assessed are directly or indirectly affected by some part of the proposed tax lagoon;

(4) Any objections made to the report of the board of lagoon management commissioners which did not warrant further changes in the

report and the reasons therefor;

(5) Whether, in the opinion of the board of lagoon management commissioners, the benefits that will result from the construction of the proposed tax lagoon will exceed the total cost; and

(6) Any other recommendations or information which the board of lagoon management commissioners deems pertinent.

(73 Del. Laws, c. 389 § 1.)

§ 4326 Signing of lagoon management commissioners' report; dissent.

The report of the board of lagoon management commissioners, including the statement required by § 4325 of this title, shall be signed by all of the lagoon management commissioners concurring therein. Any lagoon management commissioner who dissents therefrom shall attach to the report the reasons for that commissioner's dissent.

(73 Del. Laws, c. 389 § 1; 70 Del. Laws, c. 186 § 1.)

§ 4327 Waiving of lagoon management commissioners' hearing and referendum.

In those cases when all of the landowners involved indicate by signed statement that they are familiar with the report of the board of lagoon management commissioners and that they favor the formation of the tax lagoon, the board of lagoon management commissioners shall not hold a hearing and referendum pursuant to § 4324 of this title, nor shall they give notice thereof as pursuant to § 4323 of this title, but they shall prepare the statement required and file their report, pursuant to § 4325 of this title, without a certificate of referendum.

(73 Del. Laws, c. 389 § 1.)

§ 4328 Action by Superior Court; notice of final hearing.

(a) After the report and statement of the board of lagoon management commissioners have been filed in the office of the prothonotary of the appropriate county, they shall be carefully reviewed by the Superior Court of the county.

(b) If the report of a majority of the board of lagoon management commissioners is opposed to the formation of the proposed tax lagoon, or if the certificate stating the results of the referendum shows that a majority of all votes cast were opposed to the formation of the tax lagoon, or if such report shows that the total cost of the construction of the tax lagoon will exceed the benefits that will result therefrom, then the Superior Court shall issue an order denying the petition for the formation of the tax lagoon.

(c) If the report of a majority of the board of lagoon management commissioners is in favor of the formation of the proposed tax lagoon, and if the statement attached to said report indicates that the total benefits that will result from the tax lagoon will exceed the total cost of the proposed tax lagoon works of improvement, and if the certificate stating the results of the referendum shows that a 3/4 majority of all votes cast were in favor of the formation of the tax lagoon, then the Superior Court shall set a date for the final hearing on the petition and shall direct the prothonotary to give notice of the hearing by publication in a newspaper of general circulation in each county in which any of the lands involved are located and by posting a written or printed notice on the door of the courthouse of each such county, such publication and posting to be made not less than 15 days before the time of the final hearing. Notice of the final hearing shall also be given to landowners involved by first class mail. This notice shall be mailed not less than 15 days before the time of the hearing. From the time the report of the board of lagoon management commissioners is filed in the office of the prothonotary of the appropriate county it shall be open to inspection by any interested person.

(d) In those cases when all of the landowners involved have indicated by signed statement that they are familiar with the report of the board of lagoon management commissioners and that they favor the formation of the tax lagoon, and if the report of a majority of the board of lagoon management commissioners is in favor of the formation of the proposed tax lagoon, and if the statement attached to the report indicates that the total benefits that will result from the tax lagoon will exceed the total cost of the proposed tax lagoon works of improvement, then the Superior Court shall not hold a final hearing, nor give notice thereof, but shall confirm the report and issue an order granting the petition for the formation of the proposed tax lagoon, the order to become effective immediately and to be known as the lagoon order. The confirmed report shall be considered a part of the lagoon order.

(73 Del. Laws, c. 389 § 1.)

§ 4329 Final hearing; lagoon order.

At least 10 days prior to the date set for the final hearing before the Superior Court, any interested person may file an objection in writing to the report of the board of lagoon management commissioners. The Superior Court shall review the report of the board of lagoon management commissioners and any objections filed thereto, and make, in consultation with the lagoon management commissioners, such changes as are necessary to render substantial and equal justice to all interested persons. Damages to any 1 landowner shall not be grounds for denying the petition, but may be used to adjust the assessment base of that property or the damages to be paid to that landowner and shall be considered as part of the total cost of the proposed tax lagoon. If the conditions set forth in § 4328(c) of this title still exist after the objections have been considered and the necessary changes have been made in the report of the board of lagoon management commissioners, the Superior Court shall confirm the report and issue an order granting the petition for the formation of the proposed tax lagoon, said order to be known as the lagoon order. The confirmed report shall be considered a part of said lagoon order. If no objections are presented at the final hearing before the Superior Court the lagoon order shall become effective when issued.

(73 Del. Laws, c. 389 § 1.)

§ 4330 Right to jury trial; procedure.

When objections to the report of the board of lagoon management commissioners are filed in writing with the Superior Court and when the party filing feels aggrieved by the report of the board of lagoon management commissioners, such party may apply to the Superior Court, within 30 days after the issuance of the lagoon order, for an order in the nature of a writ of inquiry to ascertain by the verdict of a jury at the bar of the Court, the full and true value of the relative benefits, damages, injury or loss which will result to the lands of such person from the improvements to the proposed tax lagoon.

(73 Del. Laws, c. 389 § 1.)

§ 4331 Defense of contested lagoon orders; Attorney General.

If the lagoon order is contested, the board of lagoon management commissioners shall defend the order, and in conducting its defense, the board shall be represented by the Attorney General of the State.

(73 Del. Laws, c. 389 § 1.)

§ 4332 Notice of final action on lagoon order.

When the lagoon order has become effective because no objection has been filed or because the right to appeal therefrom has expired, the prothonotary shall notify the Division of Watershed Stewardship and shall forward 2 certified copies of the lagoon order to the Division of Watershed Stewardship.

(73 Del. Laws, c. 389 § 1; 77 Del. Laws, c. 430 § 42.)

§ 4333 Permanent court record.

The lagoon order, together with any amendment thereto, shall be a permanent court record and shall be kept in the office of the prothonotary of the county wherein it was issued. It shall not be removed from that office except in cases where an emergency so requires. The prothonotary shall make such docket entries of proceedings as directed by rule of court.

(73 Del. Laws, c. 389 § 1.)

§ 4334 Employment of private engineer by landowners.

If the board of supervisors of the county soil conservation district in which all or the major portion of the area involved is located determines that the formation of a tax lagoon is practicable and feasible and is in the interest of the public health, safety and welfare, the interested landowner or owners may at any time thereafter employ at their expense engineering personnel of their selection to assist the Division of Watershed Stewardship.

(73 Del. Laws, c. 389 § 1; 77 Del. Laws, c. 430 § 43.)

§ 4335 Exclusive procedure for determination of damages.

The determination, assessment or award of damages or other compensation to be paid to any landowner in connection with the formation of a tax lagoon shall be made under and in accordance with this chapter. Chapter 61 of Title 10 shall not be applicable to proceedings to organize a tax lagoon under this chapter.

(73 Del. Laws, c. 389 § 1.)

Subchapter IV

Powers of Tax Lagoon

§ 4341 Meeting to organize tax lagoon; notice.

(a) The Division of Watershed Stewardship, at its earliest convenience after the lagoon order becomes final, shall call a meeting of the taxables for the purpose of organizing the proposed tax lagoon, including the election of lagoon managers, as called for in the lagoon order, and a secretary-treasurer; the formulation of a plan for dredging the proposed tax lagoon; and levying taxes to cover the costs of construction and maintenance.

(b) The Division of Watershed Stewardship shall send a notice to every taxable by first class mail to that landowner's address as currently recorded by the board of assessment of the county at least 10 days prior to that meeting stating the time, place and object of the meeting.

(c) A notice of the meeting shall be sent to the chairperson of the board of supervisors of the county soil conservation district.

(73 Del. Laws, c. 389 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 430 § 44.)

§ 4342 Distribution of lagoon order and this chapter; filing of assessment list.

(a) At the organization meeting of the tax lagoon, the Division of Watershed Stewardship shall deliver to the managers, when elected, a certified copy of the lagoon order and a copy of this chapter, together with all effective amendments thereto.

(b) The Division of Watershed Stewardship shall deliver a copy of the assessment list prepared under § 4321 of this title, as modified by the lagoon order, to the board of assessment of the county, making such changes in the names of the owners thereon as are warranted by transfers to new owners of lands assessed.

(73 Del. Laws, c. 389 § 1; 77 Del. Laws, c. 430 § 45.)

§ 4343 Voting rights.

At all meetings, each landowner shall be entitled to the same number of votes as the number of dollars assessed against the land of such owner in the lagoon order. In the event that any lands are held by tenants in common or joint tenants, each such tenant in common or joint tenant shall be entitled to the same number of votes as the tenant's fractional share of the total number of dollars assessed against said lands. In the case of lands held by a husband and wife as tenants by the entirety, either the husband or wife may vote all the dollars assessed against their lands.

(73 Del. Laws, c. 389 § 1; 70 Del. Laws, c. 186 § 1.)

§ 4344 Voting by proxy.

Any person entitled to vote pursuant to § 4343 of this title may authorize another landowner within the tax lagoon to cast the authorizing landowner's votes in that landowner's stead by executing a proxy. The proxy shall be signed, dated and notarized.

(73 Del. Laws, c. 389 § 1; 70 Del. Laws, c. 186 § 1.)

§ 4345 Election of lagoon managers and a secretary-treasurer; terms of office; vacancies.

(a) At the first meeting the taxables shall elect from their group the number of lagoon managers specified in the lagoon order, and a secretary-treasurer.

(b) The term of office of each lagoon manager and of the secretary-treasurer shall be 1 year. If the lagoon managers and secretary-treasurer first elected are elected prior to July 1 of any year, the time elapsing between said election and the first annual January meeting provided for in § 4348 of this title shall be deemed to constitute the first year of their terms of office. However, if the lagoon managers and secretary-treasurer first elected are elected on or after July 1 of any year, their terms of office shall not be deemed to begin until the said first annual January meeting, although they shall assume the duties and responsibilities of their respective offices immediately upon election.

(c) In the event that any tax lagoon officer dies, resigns, ceases to be 1 of the taxables, or is removed from office, the remaining lagoon officers shall, within 60 days, appoint a taxable to serve the remainder of the term of such officer. However, except in the case of death or removal from office, each tax lagoon officer shall continue to serve until a successor has been appointed.

(73 Del. Laws, c. 389 § 1.)

§ 4346 Chairperson of lagoon managers; duties.

Immediately after they are elected, the lagoon managers shall designate 1 of their number to serve as chairperson. The chairperson shall call meetings of the lagoon managers and taxables and shall preside thereat.

(73 Del. Laws, c. 389 § 1; 70 Del. Laws, c. 186 § 1.)

§ 4347 Compensation of lagoon managers and secretary-treasurer.

Tax lagoon managers and the secretary-treasurer may be entitled to receive compensation at a rate to be determined by a majority of the eligible votes of those taxables present at the first meeting provided for in § 4348 of this title. The rate of compensation for the tax lagoon managers and secretary-treasurer may be revised only at a regular annual meeting of the taxables.

(73 Del. Laws, c. 389 § 1.)

§ 4348 Annual and other meetings of taxables; notice of meetings.

At the first meeting the taxables shall set a date for the regular annual meeting. This date may not be changed except by action of a majority of the taxables present at a regular annual meeting. The chairperson of the lagoon managers may call special meetings at such times as the circumstances warrant. At least 10 days' notice of all meetings shall be given by the lagoon managers using either of the following methods:

(1) By publishing in a newspaper of general circulation in the area of a tax lagoon, and by posting at 5 conspicuous places in or near the area of said tax lagoon, a notice stating the time, place and object of the meeting; or

(2) By mailing to each affected taxable at the address currently shown on the records of the board of assessment of the county a notice stating the time, place and object of the meeting.

(73 Del. Laws, c. 389 § 1.)

§ 4349 Meetings of lagoon managers; quorum.

The lagoon managers shall meet as often as necessary to properly conduct the business of the tax lagoon. At such meetings a majority of the lagoon managers shall constitute a quorum, and the concurrence of a majority in any matter within their duties shall be required for its determination.

(73 Del. Laws, c. 389 § 1.)

§ 4350 Powers of a tax lagoon.

A tax lagoon organized under this chapter, being a governmental subdivision of this State and a public body, corporate and politic, may exercise public powers, and in addition to such other powers as usually pertain to corporations, may:

(1) Levy taxes;

(2) Sue and be sued in the name of the tax lagoon; and suits against the tax lagoon shall be governed by subchapter I of Chapter 40 of Title 10;

(3) Make and execute contracts and other instruments necessary or convenient to the exercise of its powers;

(4) Borrow money for the purpose of dredging management and administering the tax lagoon;

(5) Acquire, by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property, real or personal, or any rights or interests therein;

(6) Cooperate or enter into agreements with the state or federal governments or any agency or subdivision thereof;

(7) Exercise the power of eminent domain in accordance with the condemnation procedure prescribed in Chapter 61 of Title 10 with respect to lands outside the boundaries of the tax lagoon which are needed for right-of-way or outlet purposes;

(8) Accept contributions from landowners assessed in the tax lagoon and disburse such funds for the purposes of performing certain operations, such as, but not limited to, dredging, which operations are authorized in the tax lagoon order but which are not included in the original estimated costs; and

(9) Call upon the Division of Watershed Stewardship for assistance with administrative and operations problems of the tax lagoon.

(73 Del. Laws, c. 389 § 1; 77 Del. Laws, c. 430 § 46.)

§ 4351 Duties of lagoon managers.

In addition to the duties specified in other sections of this chapter, the lagoon managers shall:

(1) Determine from the taxables the desired program of operations;

(2) Determine the amount of taxes to be levied to carry out such desired program;

(3) Secure specific authority for borrowing money in the name of the tax lagoon by a majority vote of the taxables present at a duly called meeting of the tax lagoon;

(4) At the first meeting, or within 30 days thereafter, prepare, with the assistance of the Division of Watershed Stewardship, a comprehensive plan for carrying out the desired program, which plan shall include provisions for levying taxes and for financing the program;

(5) Execute warrants, with the assistance of the Division of Watershed Stewardship, to the receiver of taxes and county treasurer authorizing and requesting the collection of all tax lagoon taxes other than maintenance taxes;

(6) Execute a warrant, with the assistance of the Division of Watershed Stewardship, to the receiver of taxes and county treasurer authorizing and requesting the annual collection of a tax in the amount of 2 percent of the total assessment base or in the amount of 2 percent of the total benefits for tax lagoons previously formed under the original provisions of this chapter, said warrant to be marked plainly as being for annual maintenance taxes and to be issued simultaneously with the issuance of the first warrant for the collection of taxes for construction purposes;

(7) Make a report, at the annual meeting, of their activities during the year preceding such annual meeting;

(8) Provide for work on the tax lagoon; and

(9) Provide for adequate maintenance of the tax lagoon.

(73 Del. Laws, c. 389 § 1; 77 Del. Laws, c. 430 § 47.)

§ 4352 Duties of secretary-treasurer of tax lagoon.

In addition to any powers and duties set forth elsewhere in this chapter, the secretary-treasurer of the tax lagoon shall:

(1) Keep accurate minutes of all meetings of the lagoon managers and taxables; and such minutes shall be a part of the permanent records of the tax lagoon;

(2) Prepare a complete financial statement at the end of each calendar year, including therein an itemized report of all funds received, all funds expended, all funds due from taxes not yet collected, and all sums due and owing by the tax lagoon; and this statement and the records of the secretary-treasurer shall be audited annually by 2 qualified persons and shall become part of the permanent records of the tax lagoon;

(3) Provide for the safekeeping of any funds of the tax lagoon which are placed in the secretary-treasurer's custody; and

(4) Attend all meetings of the lagoon managers and taxables.

(73 Del. Laws, c. 389 § 1; 70 Del. Laws, c. 186 § 1.)

§ 4353 Bond of secretary-treasurer.

The secretary-treasurer shall, before assuming the duties of office and within 15 days after election, furnish a bond in favor of the tax lagoon, in an amount satisfactory to the lagoon managers and with a surety to be approved by the lagoon managers, conditioned on the faithful performance of duties and for the payment to the secretary-treasurer's successor of all tax lagoon funds. If any person elected secretary-treasurer neglects or refuses to give bond as aforesaid within the time specified, such person's right to hold such office shall be terminated, and the lagoon managers shall call a special meeting of the taxables to elect a new secretary-treasurer who shall give bond and security as provided in this section.

(73 Del. Laws, c. 389 § 1; 70 Del. Laws, c. 186 § 1.)

§ 4354 Failure of lagoon officer to perform duties; remedy; removal.

If any officer of a tax lagoon fails to perform the duties imposed on such officer by this chapter, any taxable may petition the Superior Court from which the lagoon order was issued and request an order directing said officer to carry out the duties of such office, and upon failure to comply with the order within the time stated therein, the taxable may further petition the Superior Court for the removal of the officer.

(73 Del. Laws, c. 389 § 1; 70 Del. Laws, c. 186 § 1.)

§ 4355 Signatures on instruments issued by tax lagoon.

Any note, bond, warrant or other instrument issued by a tax lagoon pursuant to this chapter shall be signed by the chairperson of the lagoon managers, and the chairperson's signature shall be attested by the secretary-treasurer of the tax lagoon.

(73 Del. Laws, c. 389 § 1; 70 Del. Laws, c. 186 § 1.)

§ 4356 Liability of tax lagoon officers.

No lagoon manager or other officer of a tax lagoon shall be held personally liable for the obligations of the tax lagoon. The tax lagoon shall indemnify the lagoon managers or other officers in accordance with § 4003 of Title 10 for all tort claims.

(73 Del. Laws, c. 389 § 1.)

§ 4357 Limitation on borrowing power of tax lagoon.

A tax lagoon may borrow money pursuant to this chapter with the consent of a majority of the votes cast at a meeting duly called under § 4348 of this title. No tax lagoon shall borrow money in excess of 90 percent of the total assessment base established by the lagoon order.

(73 Del. Laws, c. 389 § 1.)

Subchapter V

Taxation

§ 4361 Duties of board of assessment; assessment book; assistance by Division of Watershed Stewardship.

(a) For tax lagoons formed under this chapter, the board of assessment of the county shall transcribe the information shown on the assessment list delivered to it pursuant to § 4351(4) of this title into a special assessment book, and it shall keep the same as part of the permanent records of its office. It shall also change the name of the owner shown therein from time to time as such changes are warranted by transfers of the lands assessed to new owners.

(b) The Division of Watershed Stewardship shall assist the various boards of assessment of all 3 counties, upon request, to make such changes in their special lagoon assessment books as are warranted by transfers of properties listed therein.

(73 Del. Laws, c. 389 § 1; 77 Del. Laws, c. 430 §§ 48, 49.)

§ 4362 Method of determining tax.

In determining the amount of any taxes to be levied against each owner's lands under this chapter, the lagoon managers shall determine the same in accordance with the ratio which exists between the assessment base for each property and the total assessment base for the tax lagoon.

(73 Del. Laws, c. 389 § 1.)

§ 4363 Warrants by tax lagoons for collection of taxes.

(a) For tax lagoons formed under this chapter, warrants authorizing and requesting the collection of lagoon taxes executed to the receiver of taxes and county treasurer shall be signed by the chairpersons of the lagoon managers and the secretary-treasurer of the tax lagoon and shall contain the following information:

(1) The name of the tax lagoon;
(2) The location by county and hundred;
(3) The date said warrant is delivered to the receiver of taxes and county treasurer;
(4) The date that the tax lagoon assessment list was filed with the county assessor;
(5) Total of that assessment list;
(6) Tax rate based on that assessment list;
(7) Total tax to be collected;
(8) Method of payment, if by installments;
(9) Statement as to whether the warrant is for construction, special or maintenance taxes;
(10) Amount and terms of loans, if any, secured by said tax warrant; and
(11) Person to be paid directly by receiver of taxes and county treasurer and amounts to be paid to such person.

(b) When a tax lagoon includes 2 or more counties, separate tax warrants shall be executed by the lagoon managers to each receiver of taxes and county treasurer thereof.

(73 Del. Laws, c. 389 § 1; 70 Del. Laws, c. 186 § 1.)

§ 4364 Warrants by tax lagoons for collection of taxes — Duties of receiver of taxes and county treasurer.

All taxes levied by any tax lagoon organized under this chapter shall be collected by the receiver of taxes and county treasurer in the county or counties wherein the lands taxed are located. The receiver of taxes and county treasurer shall accept tax warrants in proper form from such tax lagoons, shall refer to tax lagoon assessment lists on file with the board of assessment of the county, and shall collect such taxes warranted annually, pursuant to the terms of the warrants, in the same manner as provided by law for the collection of county taxes, and money so collected shall be paid during the months of November, January and July to the receiver designated in the tax warrants. Warrants received not later than May 1 of each year by the receiver of taxes and county treasurer shall be processed to be collected during that same year. Tax warrants marked plainly as being for annual maintenance taxes shall be filed by the receiver of taxes and county treasurer in a special binder, and the same shall be maintained as part of the permanent records of that office. Such annual maintenance taxes shall be deemed to have been levied by the tax lagoon as of April 30 of each year, except the year in which the original or a revised maintenance tax warrant is delivered to the receiver of taxes and county treasurer, in which case the levy shall be effective from and after the date of the delivery of such warrant. Annual maintenance taxes, once warranted, shall be collected yearly by the receiver of taxes and county treasurer, except that an annual maintenance tax shall not be collected during any tax year when another warrant, whether for construction taxes or special taxes, for an identical portion of the tax lagoon is in effect and is being collected. The receiver of taxes and county treasurer shall accept original tax warrants for annual maintenance taxes signed by the chairperson of the lagoon managers and attested by the secretary-treasurer of the tax lagoon. Such warrants may not be withdrawn and may not be revised except with the consent of the county soil conservation district, pursuant to § 4369 of this title.

(73 Del. Laws, c. 389 § 1; 70 Del. Laws, c. 186 § 1.)

§ 4365 Installment payment of taxes for construction; lien; amount of first installment.

(a) The lagoon managers may order the tax levied for the cost of dredging to be paid in annual installments and shall designate the method of payment on the tax warrant when it is forwarded to the appropriate receiver of taxes and county treasurer.

(b) In the event that the lagoon managers order the tax levied for the cost of construction to be paid in annual installments, the entire tax shall, nevertheless, constitute a present lien on the lands against which it is levied, and the amount of the first installment shall not be less than the sum of all payments for damages and compensation as set forth in the lagoon order, plus the costs and expenses incurred in the formation of a tax lagoon.

(73 Del. Laws, c. 389 § 1.)

§ 4366 Taxes as security for loans; notation on tax warrant.

A tax lagoon may secure the payment of any loan made to it by entering on the tax warrant provided for in § 4351(5) of this title a statement setting forth the fact that the taxes shown on the tax warrants have been pledged to secure the payment of a certain designated loan, and if a loan is so secured, by reciting the amount and terms of the loan and from whom it is being obtained, and by directing the receiver of taxes and county treasurer to pay any such taxes collected directly to the creditor until the loan is repaid. Such warrant may not be withdrawn and may not be altered or cancelled without the written consent of the creditor until the loan is repaid.

(73 Del. Laws, c. 389 § 1; 70 Del. Laws, c. 186 § 1.)

§ 4367 Special tax.

A special tax to raise the funds necessary to carry into effect any of the provisions of this chapter and not otherwise provided for herein may be levied by the lagoon managers in the same manner as provided in this chapter for levying taxes for original dredging.

(73 Del. Laws, c. 389 § 1.)

§ 4368 Lien of taxes; enforcement.

All taxes levied under this chapter shall constitute a first and paramount lien against the lands to which they apply from and after the date of such levy, subject only to the lien for state and county taxes, which lien may be enforced by sale or otherwise in the same manner as the lien for the county taxes. All such taxes shall be collected by the appropriate receiver of taxes and county treasurer as provided in § 4364 of this title. Penalties for failure to make payment by the due date shall apply to taxes levied under this chapter in the same manner and amount as in the case of county taxes, and funds so received shall be credited to the tax lagoon.

(73 Del. Laws, c. 389 § 1.)

§ 4369 Adjustment of maintenance tax.

When in the opinion of the lagoon managers the amount of the tax levied to defray the cost of maintenance is either insufficient or excessive, they may raise or lower the same for the current and succeeding years with the consent of the Division of Watershed Stewardship. If the annual maintenance tax is so raised or lowered, it shall be apportioned to each landowner in accordance with § 4362 of this title and a new maintenance tax warrant shall be delivered to the appropriate receiver of taxes and county treasurer.

(73 Del. Laws, c. 389 § 1; 77 Del. Laws, c. 430 § 50.)

§ 4370 Limitation on liability of landowner for taxes.

No landowner shall be liable in any manner for any taxes levied by the tax lagoon against the lands of another owner.
(73 Del. Laws, c. 389 § 1.)

Subchapter VI

General Provisions

§ 4381 Payment of damages and compensation.

The damages and compensation awarded by the terms of the tax lagoon order shall be paid to the person entitled thereto out of the first funds available to the tax lagoon under this chapter, and no construction shall commence until said damages and compensation have been paid.
(73 Del. Laws, c. 389 § 1.)

§ 4382 Obstruction of or damage to tax lagoon; civil and criminal liability.

(a) If any person wilfully or negligently obstructs or damages any part of a tax lagoon and upon request of the lagoon managers fails to remove the obstruction or to repair the damage at the person's own expense, the lagoon managers shall see that the obstruction is removed and that the damage is repaired.
(b) The person so obstructing or damaging the tax lagoon shall be liable for all loss or injury caused thereby and the expenses or charges for remedying the same, and said loss or injury, expenses or charges may be sued for and recovered by the lagoon managers in the name of the tax lagoon before any justice of the peace in the county where the obstruction or damage occurred.
(c) Whoever wilfully obstructs or damages any part of a tax lagoon, as specified in subsection (a) of this section, or wilfully interferes in any way with tax lagoon operations as provided for in this chapter or in a tax lagoon order made pursuant to this chapter shall be fined not more than $100.
(73 Del. Laws, c. 389 § 1.)

§ 4383 Right of entry upon lands.

The Division of Watershed Stewardship, engineering personnel hired under § 4334 of this title, the Department of Natural Resources and Environmental Control, the lagoon management commissioners, the lagoon managers, or any of their employees or agents may enter upon any lands within the tax lagoon at all reasonable times in order to carry out the purpose of this chapter.
(73 Del. Laws, c. 389 § 1; 77 Del. Laws, c. 430 § 52.)

§ 4384 Addition of territory to a tax lagoon.

(a) Any landowner who desires that landowner's own lands to be included within a tax lagoon formed under this chapter may present a petition for an amendment to the existing lagoon order to include such lands to the Superior Court of the county which issued said lagoon order through the board of supervisors of the soil conservation district of the same county, and the procedure shall be substantially the same as the method in § 4385(3) of this title for amending a lagoon order, except that in addition to establishing an assessment base which will be the basis for all future lagoon taxes, for each parcel of land being included within the tax lagoon, a special assessment, based generally on the approximate total amount of taxes that would have been levied against such parcels of land since the tax lagoon was formed had such lands been within the original boundaries of said tax lagoon and other considerations, shall be determined by the board of lagoon commissioners and payment thereof prescribed in their report to the Superior Court.
(b) In those cases when any landowner, directly or indirectly, alters lands to utilize any part of a tax lagoon to benefit land which is not within the original boundary of the tax lagoon as established in the lagoon order and which was not assessed as part of the tax lagoon, or which was not assessed to the prong or part of the tax lagoon utilized by the alteration, and when the landowner or owners have not secured an amendment to the lagoon order in accordance with the procedure set forth in subsection (a) of this section, it shall be assumed that such landowner accepts the liability for payment of a special assessment and costs incurred in processing an amendment to the lagoon order, in addition to all future lagoon taxes, and it shall be the duty of the lagoon managers in the name of the tax lagoon to present a petition for an amendment to the existing lagoon order to include such lands, in the same manner as set forth in subsection (a) of this section, and the procedure shall be the same as outlined in that subsection, except that estimated costs of processing the amendment shall be added to the special assessment, which will be established by the board of lagoon management commissioners.
(c) In those cases when any landowner desires that landowner's own lands to be included within a tax lagoon and when agreement can be reached on the part of the landowner and the tax lagoon managers as to the special assessment to be paid and the assessment base to be established as the basis for all future lagoon taxes, then § 4385(1) or (2) of this title may be used to add the additional territory to the tax lagoon.
(73 Del. Laws, c. 389 § 1; 70 Del. Laws, c. 186 § 1.)

§ 4385 Alteration of tax lagoons; amendments to lagoon orders.

If it becomes necessary to change any part of a tax lagoon, such changes may be made in one of the following ways:

(1) The desired or required changes, justified in writing and including any necessary maps or drawings, shall be presented by the tax lagoon managers to the taxables at a regularly called tax lagoon meeting. If a majority vote of the taxables present favors the changes, and providing that such changes do not include any relocations of works of improvement, or of the dredge area, or of the maintenance right-of-way on the lands of any owner without the owner's consent, the tax lagoon managers shall present 3 copies of their request for the changes, including the written justification and any necessary maps or drawings, and also including the results of the referendum, to the Division of Watershed Stewardship for its approval. Should that approval be given, the change shall be effective at once, and the Division of Watershed Stewardship shall file the original request with supporting papers in the office of the prothonotary of the proper county and return 1 copy to the tax lagoon. Whenever changes are made which affect the tax lagoon assessment list, the Division of Watershed Stewardship shall notify the board of assessment of the proper county of such changes.

(2) When all landowners affected consent to changes of any part of a tax lagoon, including the assessment list, they shall enter into a written agreement to make such changes and present 3 copies of such agreement, together with any necessary maps or drawings, to the Division of Watershed Stewardship for its approval. Should that approval be given, the change shall be effective at once, and the Division of Watershed Stewardship shall file the original request with supporting papers in the office of the prothonotary of the proper county and return 1 copy to the tax lagoon. Whenever changes are made which affect the tax lagoon assessment list, the Division of Watershed Stewardship shall notify the board of assessment of the proper county of such changes.

(3) Any landowner within the boundaries of a tax lagoon or the tax lagoon managers in the name of said tax lagoon may, at any time, petition for the amendments of the lagoon order that created the tax lagoon. Such petition shall list the changes that are desired and shall be presented to the Superior Court that issued the tax lagoon order through the board of supervisors of the soil conservation district of the same county. That board of supervisors shall require and handle a deposit from the petitioners in accordance with § 4314 of this title, so far as that section is applicable. As soon as the deposit is received, the board of supervisors shall file the petition in the office of the prothonotary of the proper county without further investigation. Upon the filing of a petition for amendments to a lagoon order in the office of the prothonotary of a county, the board of lagoon management commissioners of such county shall, at the direction of the resident judge thereof, go upon the lands of the tax lagoon watershed, if necessary, review the existing lagoon order, consider the changes requested, and make determinations regarding these. The board of lagoon management commissioners shall obtain from the Division of Watershed Stewardship such assistance and information as may be required. The board of lagoon management commissioners, with the assistance of the Division of Watershed Stewardship, shall prepare a special proposed report in the nature of 1 or more proposed amendments to the existing lagoon order, together with any maps or drawings deemed necessary. Upon completion of that report, they shall give notice and hold a hearing and referendum in accordance with §§ 4323 and 4324 of this title, so far as these are applicable. After holding the hearing and supervising the referendum, the board of lagoon management commissioners shall file the original and 2 copies of its report in the office of the prothonotary of the county in which all the major portion of the tax lagoon is located and shall attach to the report a certificate showing the results of the referendum and the place where and the time when it was held. The board of lagoon management commissioners shall also prepare and attach to the report a statement showing:

a. The board of lagoon management commissioners has fully discharged the duties assigned to it as prescribed by law;

b. Any objections made to the report of the board of lagoon management commissioners which did not warrant further changes in the report and the reasons therefor; and

c. Any other recommendations or information which the board of lagoon management commissioners deems advisable, including their determination as to whether the petitioners or the tax lagoon are liable for the costs of this action.

Action by the Superior Court shall follow §§ 4328, 4329, 4330, 4331, 4332 and 4333 of this title, so far as these sections are applicable.

(73 Del. Laws, c. 389 § 1; 77 Del. Laws, c. 430 § 51.)

§ 4386 Lagoons near highways.

The Department of Transportation shall maintain the highway drainage system insofar as is possible in such manner as to prevent silt from such system from obstructing any part of a tax lagoon. If silt enters from the highway system and obstructs a tax lagoon, the Department of Transportation shall remove the same within a reasonable time after being given notice of such obstruction by the lagoon managers.

(73 Del. Laws, c. 389 § 1.)

§ 4387 Dissolution of tax lagoon.

After a duly called meeting of the taxables at which a majority of all eligible votes have been cast in favor of dissolving a tax lagoon created under this chapter, the lagoon managers shall prepare a petition requesting such dissolution to the Superior Court through the Division of Watershed Stewardship. If the tax lagoon has operated for at least 10 years and if the Division of Watershed Stewardship is of the opinion that the dissolution of such tax lagoon is in the public interest, it shall file the petition therefor, together with the recommendations of the Division of Watershed Stewardship in the office of the prothonotary of the county in which the original lagoon order was issued. After a petition for dissolution has been so filed, the Superior Court shall issue an order dissolving the tax lagoon. No such order of dissolution shall be issued unless and until all obligations of the tax lagoon have been paid in full and all commitments of the tax lagoon have been fulfilled.

(73 Del. Laws, c. 389 § 1; 77 Del. Laws, c. 430 § 53.)

§ 4388 Appropriations to Department of Natural Resources and Environmental Control.

An appropriation to the Department of Natural Resources and Environmental Control for purposes of planning, designing and constructing tax lagoons shall be included in the annual appropriation bill (budget bill) of the General Assembly.

(73 Del. Laws, c. 389 § 1.)

§ 4389 Notice of right-of-way, or assessment.

(a) The Department of Natural Resources and Environmental Control shall certify and file with the prothonotary of each county a list of all parcels with county tax parcel numbers and all owners of said parcels of real property located in that county which are subject to any portion of a right-of-way or assessment as part of a tax lagoon created by this chapter. The list shall be in alphabetical order by owner. The Department shall also certify and similarly file a list of any change of parcel numbers subject to such a right-of-way or assessment annually. Additionally, the Department shall certify and similarly file a list of any addition or deletion of a parcel or parcels subject to a right-of-way or assessment immediately upon making any such addition or deletion.

(b) No later than 180 days after complying with subsection (a) of this section the Department shall certify and file with the prothonotary of each county a list of all parcels with county tax parcel numbers and all owners of said parcels listed in alphabetical order and designating which parcels are subject to a right-of-way and assessment and which parcels are subject only to an assessment.

(c) The certified list submitted pursuant to subsection (a) or (b) of this section shall be confirmed by order of the Resident Judge of Superior Court for each county, which order shall:

(1) State the name of the tax lagoon;

(2) State the owner's name(s) and that owner's county tax parcel number for each parcel subject to the right-of-way and assessment and each parcel subject to an assessment only; and

(3) Direct that the order be recorded in the Office of the Recorder of Deeds in and for that county.

(d) There shall be no charge or fee to file the list required by subsection (a) of this section.

(e) There shall be no charge or fee to record the order pursuant to this subsection.

(75 Del. Laws, c. 321 § 2.)

Part IV
Agricultural and Soil Conservation; Drainage and Reclamation of Lowlands
Chapter 44
FLOOD MITIGATION STANDARDS

§ 4401 Purpose.

It is the purpose of this chapter to: promote the public health, safety and general welfare, and to: protect human life, health and welfare; encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future; minimize flooding of water supply and sanitary sewage disposal systems; maintain natural drainage; reduce financial burdens imposed on the State, local community, its governmental units and its residents, by discouraging unwise design and construction of development in areas subject to flooding; minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public; minimize prolonged business interruptions; minimize damage to public facilities and other utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges; reinforce that those who build in and occupy special flood hazard areas should assume responsibility for their actions; minimize the impact of development on adjacent properties within and near flood prone areas; provide that the flood storage and conveyance functions of the floodplain are maintained; minimize the impact of development on the natural and beneficial functions of the floodplain; prevent floodplain uses that are either hazardous or environmentally incompatible; and improve drainage standards to reduce threats to community welfare.

(78 Del. Laws, c. 183 § 1.)

§ 4402 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

(1) "Department" shall mean the Department of Natural Resources and Environmental Control.

(2) "Federal Emergency Management Agency" ("FEMA"): the federal agency with the overall responsibility for administering the National Flood Insurance Program.

(3) "Flood" or "flooding": a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters, and/or the unusual and rapid accumulation or runoff of surface waters from any source.

(4) "Secretary" shall mean the Secretary of the Department of Natural Resources and Environmental Control.

(5) "State" shall mean the State of Delaware.

(78 Del. Laws, c. 183 § 1.)

§ 4403 Rules.

The Secretary shall, by May 17, 2012, develop guidance and minimum standards for improved floodplain management and drainage within the state after consultation with a Floodplain and Drainage Advisory Committee (Committee) appointed by the Secretary, to include public and private interests, as well as appropriate state, federal and municipal agencies, and governmental subdivisions of the State. Floodplain and drainage standards shall include, but not be limited to definitions, general requirements and criteria for consideration by local governments within the State. The Committee will consider nationally recognized standards and best practices. The Committee may also evaluate the capacity of local governments to implement standards and may make recommendations to the Secretary as appropriate, including, but not limited to the development of model ordinances. The Committee shall also examine the adequacy of existing requirements, policies and practices associated with notification to prospective property purchasers of existing flooding or drainage issues. Prior to finalizing such standards the Department shall offer an opportunity for the public to comment on the proposed standards and will consider all relevant comments.

The Committee shall consist of the following members:

(1) One member of the Senate appointed by the President Pro Tempore of the Senate and 1 member of the House of Representatives appointed by the Speaker of the House of Representatives;

(2) One member of the Delaware Farm Bureau appointed by the President of the Delaware Farm Bureau;

(3) One representative of the Delaware Association of Conservation Districts, appointed by the President of the Delaware Association of Conservation Districts;

(4) One representative of the Delaware State Bar Association Real and Personal Property Section, appointed by the President of the Delaware State Bar Association;

(5) One representative of the Delaware Association of Realtors, appointed by the President of the Delaware Association of Realtors;

(6) One representative from the Federal Emergency Management Agency National Flood Insurance Program;

(7) One representative from the Delaware Hazard Mitigation Council appointed by the Director of the Delaware Emergency Management Agency.

(8) One representative of the Home Builders Association of Delaware appointed by the President of the Home Builders Association of

Delaware.

(9) Three representatives of the Delaware League of Local Governments appointed by the President of the Delaware League of Local Governments.

(10) One representative of the Sussex County Association of Towns.

(11) One representative of the Committee of 100 appointed by the President of the Committee of 100.

(12) One representative of the Delaware Insurance Commissioner's Office appointed by the Delaware Insurance Commissioner.

(13) One representative of the American Council of Engineering Companies appointed by the President of the American Council of Engineering Companies.

(14) One representative of the Delaware Department of Transportation appointed by the Secretary of the Department of Transportation.

(15) Three representatives of the Delaware Association of Counties, 1 from each county, appointed by the President of the Delaware Association of Counties.

(16) Two representatives of the Division of Watershed Stewardship, appointed by the Secretary of the Department of Natural Resources and Environmental Control (DNREC).

The Chair of the Committee shall be selected by the Secretary of the Department of Natural Resources and Environmental Control. The Committee shall organize and hold its first meeting by September 16, 2011, and shall be staffed by DNREC.

(78 Del. Laws, c. 183 § 1.)

§ 4404 Review of standards.

(a) Within 6 months of the adoption of minimum standards, the 3 county governments and all municipal governments as appropriate shall review and prepare comments regarding their individual codes and ordinances to determine if they are consistent with the minimum standards. Such review and comments shall identify areas where existing requirements meet or exceed these recommendations and standards, do not comply with the standards or are functionally equivalent.

(b) The review and comments from local governments will also identify areas where implementation of these standards would represent a hardship to the local government, and what impediments to adoption of these standards have been identified. The Committee shall develop the framework for conducting such a review and Department of Natural Resources and Environmental Control (DNREC) shall provide technical assistance to local governments in conducting such analysis when requested.

(c) DNREC shall compile the results of the review, develop a draft report, reconvene the Committee to review the draft report and solicit feedback and deliver the final report to the General Assembly no later than March 15, 2013.

(78 Del. Laws, c. 183 § 1.)

Part V
Public Lands, Parks and Memorials
Chapter 45
PUBLIC LANDS

§ 4501 Land warrants.

All general warrants for locating vacant land without specification, which were not located by survey prior to January 23, 1843, are vacated and void; and all warrants for locating land issued by any recorder since January 11, 1798, are illegal and void.

(Code 1935 § 11; 7 Del. C. 1953 § 4501.)

§ 4502 Cessions of public land to United States.

All cessions of public land, which have been made to the United States for public purposes, are recognized and ratified according to the terms thereof.

(Code 1935 § 14; 7 Del. C. 1953 § 4504.)

§ 4503 Location and payment for grants of public lands.

All grants of public land made shall be located and paid for within 1 year from the grant, or they shall be void.

(Code 1935 § 15; 7 Del. C. 1953 § 4505.)

§ 4504 Supervision and control of public lands by Department of Natural Resources and Environmental Control; public beaches; penalty.

(a) The public lands of this State, as ascertained in regard to location, surveyed and plotted under the supervision and direction of the Public Lands Commission, created in accordance with Chapter 5, Volume 27, Laws of Delaware, shall be under the supervision and control of the Department of Natural Resources and Environmental Control which Department may care for the public lands. All powers given to said Public Lands Commission shall be exercised by the Department of Natural Resources and Environmental Control.

(b) It shall be unlawful to place, dump or throw rubbish, garbage, refuse, trash or other debris of any kind within any public beach of this State, except in such receptacles as are provided for such purpose. Whoever violates this provision shall be fined not less than $50 nor more than $100, together with costs of prosecution, and in default of payment of the fine and costs shall be subject to § 4105 of Title 11.

All law-enforcement agencies, to include Environmental Protection Officers of the Department of Natural Resources and Environmental Control, shall have equal authority to enforce this section. Justices of the peace shall have jurisdiction of offenses under this section.

(36 Del. Laws, c. 2 § 1; Code 1935 § 5742; 7 Del. C. 1953 § 4506; 57 Del. Laws, c. 617; 59 Del. Laws, c. 417 § 1.)

§ 4505 Survey of public lands.

The Department of Natural Resources and Environmental Control may survey such of the public lands that have not been surveyed, plotted and recorded in the office of the recorder of deeds in the county in which any such lands may lie; and may survey and lay off such public highways through any such lands as it deems advisable and for the public good.

(36 Del. Laws, c. 2 § 2; Code 1935 § 5743; 7 Del. C. 1953 § 4507; 57 Del. Laws, c. 617.)

§ 4506 Sale of public lands and products.

(a) The Department of Natural Resources and Environmental Control may supervise the sale of any material, product or thing which grows or may be grown upon any public lands; divide the public lands into tracts of 50 acres, or less; and sell such tracts, or any part thereof, as deemed advisable to sell.

(b) Any public land sold shall be sold only at public auction after at least 10 days prior public notice. Such public notice shall be given in all 3 counties of this State. Notice in each county shall be given in the same manner required for county tax sales in each respective county, including publication and posting of handbills. Any land so sold shall be sold only to the highest bidder at the sale for the amount of that highest bid.

(36 Del. Laws, c. 2 § 2; Code 1935 § 5743; 7 Del. C. 1953 § 4508; 50 Del. Laws, c. 644; 57 Del. Laws, c. 617.)

§ 4507 Delivery of deeds; restrictions therein.

The Department of Natural Resources and Environmental Control, together with the Governor of this State, may execute and deliver a good and sufficient deed to any part of the public lands of this State, and may place upon the sale of such lands a restriction requiring the expenditure by any person purchasing the same of a certain amount of money upon any tract sold to them, or may require any other conditions which the Department of Natural Resources and Environmental Control deems advisable for the public good.

(36 Del. Laws, c. 2 § 4; Code 1935 § 5745; 7 Del. C. 1953 § 4509; 57 Del. Laws, c. 617.)

§ 4508 Forfeiture of public lands to State.

Whoever purchases any of the public lands under any restriction or condition imposed by the Department of Natural Resources and

Environmental Control, and fails for a period of 5 years to comply with the restrictions or conditions mentioned in the deed of grant from the Department, forfeits such lands to the State, and the title to such lands shall thereafter rest in the State.

(36 Del. Laws, c. 2 § 4; Code 1935 § 5745; 7 Del. C. 1953 § 4510; 57 Del. Laws, c. 617.)

§ 4509 Improvement of public lands.

(a) The Department of Natural Resources and Environmental Control may make improvements to and on any public lands of this State and may expend any sums appropriated therefor on such lands.

(b) The Department of Natural Resources and Environmental Control may lease or grant concessions for any such improvements.

(c) All funds collected from such rentals or concessions shall be treated in the same manner as income received from public lands as provided in § 4515 of this title.

(Code 1935 § 5746B; 46 Del. Laws, c. 233 § 1; 7 Del. C. 1953 § 4511; 57 Del. Laws, c. 617.)

§ 4510 Lease of public lands; forfeiture of lease.

The Department of Natural Resources and Environmental Control together with the Governor of this State, may execute and deliver, in proper form, a lease of any part of the public lands of this State, which public lands are under the supervision and control of the Department of Natural Resources and Environmental Control by virtue of this chapter. The demise and lease of such lands may be upon such conditions and for such rentals as the Department of Natural Resources and Environmental Control deems advisable for the public good. Whoever leases any of the lands under any restrictions or conditions of the Department of Natural Resources and Environmental Control and fails to comply with the restrictions or conditions mentioned in the lease from the Department forfeits the leasehold interest granted by the lease.

(Code 1935 § 5746A; 45 Del. Laws, c. 272 § 1; 7 Del. C. 1953 § 4512; 57 Del. Laws, c. 617.)

§ 4511 Lease of mineral rights in public lands; utility rights.

The power granted to the Department of Natural Resources and Environmental Control to lease the public lands shall include the right of the Department, together with the Governor of this State, to execute and deliver, in proper form, a lease for the exclusive right of mining, exploring by geophysical and other methods, and operating for and producing therefrom, oil, gas, casing head gas, casing head gasoline, laying pipelines, telephone and telegraph lines and building tanks, power stations, gasoline plants, ponds and roadways, and the exclusive right of injecting water, brine and other fluids into the subsurface strata of the public lands so demised.

(Code 1935 § 5746A; 45 Del. Laws, c. 272 § 1; 7 Del. C. 1953 § 4513; 57 Del. Laws, c. 617.)

§ 4512 Rent from lease of public lands.

All funds received as rent in connection with the leasing of public lands under §§ 4510 and 4511 of this title shall be payable to the State Treasurer and kept by him or her in a special account known as the "Department of Natural Resources and Environmental Control Public Lands Account," and such funds shall not become a part of the General Fund of the State except as hereinafter provided. The Department may expend money payable out of the special account for the protection, improvement or restoration of lands demised or of lands adjacent to any public lands demised. Any balance remaining from the rentals of any public land in the special account and unencumbered at the end of any fiscal year reverts to the General Fund. Such funds shall not be encumbered for any purpose whatsoever except for the purposes hereinabove provided.

(Code 1935 § 5746A; 45 Del. Laws, c. 272 § 1; 7 Del. C. 1953 § 4514; 57 Del. Laws, c. 617; 70 Del. Laws, c. 186 § 1.)

§ 4513 Prohibitions against leasing of oyster beds.

Nothing in this chapter shall be construed as authorizing or empowering the Department of Natural Resources and Environmental Control to lease any land which is used as an oyster plantation, oyster bed or oyster bottom, nor shall the Department demise any land, the use of which would affect any adjacent oyster plantation, bed or bottom in the planting, propagation, catching or taking of oysters.

(Code 1935 § 5746A; 45 Del. Laws, c. 272 § 1; 7 Del. C. 1953 § 4515; 57 Del. Laws, c. 617.)

§ 4514 Highways through public lands.

The Department of Natural Resources and Environmental Control may construct any roads leading to or through any public lands which are under the supervision and control of the Department; may make plans and specifications for the construction of such roads and secure bids for the construction of the same; may enter into contracts for the construction of such roads as are deemed wise; and may pay the costs of the plans, specifications and construction work incident to the building of such roads out of any moneys to the credit of the Department in the State Treasury.

(36 Del. Laws, c. 2 § 3; Code 1935 § 5744; 7 Del. C. 1953 § 4516; 57 Del. Laws, c. 617.)

§ 4515 Credit of moneys for Department of Natural Resources and Environmental Control.

In order that the Department of Natural Resources and Environmental Control may carry out this chapter, all moneys, other than appropriated by the General Assembly, realized from the care and supervision of public lands of this State shall be deposited with the State Treasurer for the use of the Department in carrying out this chapter.

(36 Del. Laws, c. 2 § 5; Code 1935 § 5746; 7 Del. C. 1953 § 4517; 57 Del. Laws, c. 617.)

§ 4516 Public money expended for roads.

No public money shall be expended under this chapter on any roads leading to or through any public lands of this State with privately owned lands abutting thereon unless and until the owners of the abutting lands have reached or entered into an agreement with the Department as to whether or not a contribution toward the cost of such roads shall be made by said owner of such lands.

(36 Del. Laws, c. 2 § 5; Code 1935 § 5746; 7 Del. C. 1953 § 4518.)

§ 4517 Power of Department of Natural Resources and Environmental Control.

(a) Nothing contained in this chapter shall prohibit or limit in any way the power and authority granted unto the Department of Natural Resources and Environmental Control to develop, establish and maintain state parks on the public lands of the State in Sussex County bordering on the Atlantic Ocean as such power and authority is set forth in Chapter 47 of this title.

(b) Anything contained in this chapter to the contrary notwithstanding, the Department of Natural Resources and Environmental Control shall not convey, lease or extend or renew any lease of lands upon which the Department of Natural Resources and Environmental Control has established a state park, except with the approval of the Department of Natural Resources and Environmental Control.

(Code 1935 § 5746A; 47 Del. Laws, c. 287 § 1; 7 Del. C. 1953 § 4519; 57 Del. Laws, c. 617; 57 Del. Laws, c. 739 § 121.)

§ 4518 Sale of public lands.

(a) All lands to which this State directly or indirectly holds title, whether legal, equitable or both, shall be deemed public lands within the meaning of this chapter, except lands purchased or held by the State Housing Department for improvement and/or redevelopment and resale.

(b) The State Highway Department shall not exercise any power vested in it by this chapter over public lands which are under the supervision and control of any other agency of this State, without first obtaining the consent of such agency, any other section of this chapter to the contrary notwithstanding, except that nothing in this section shall affect the power of condemnation held by the State Highway Department. Except as limited by subsection (c) of this section, every agency of this State may exercise as before its authority over public lands under its supervision and control.

(c) Nothing in this section shall be construed to prohibit the Division of Highways and Transportation, its successor or successors from selling, transferring, conveying, trading or leasing lands which it no longer needs for highway purposes as is provided in §§ 137, 175 and 608(g) [repealed] of Title 17.

(d) No public lands, except as hereinabove set forth and except lands or buildings for which title is held by a reorganized school district, shall be transferred or conveyed to or otherwise placed under the control of any person or persons, state, county, or municipality or any governmental agency, whether foreign or domestic, having the power to sell or lease such lands unless the General Assembly specifically approves the same and unless done in conformity with the requirements of this chapter.

(7 Del. C. 1953 § 4520; 57 Del. Laws, c. 332 § 1; 58 Del. Laws, c. 246; 63 Del. Laws, c. 209 § 1.)

§ 4519 Title or interest in public lands obtainable only by deed, conveyance or written instrument.

No title or other interest in real property belonging to the State shall be acquired by adverse possession, presumed grant or any means other than by a deed or conveyance or other written instrument of transfer executed by a duly authorized official of the State pursuant to state law.

(63 Del. Laws, c. 401 § 1.)

§ 4520 Liability for costs and expenses incurred by State in defeating claims to public lands.

(a) Any person who asserts a claim to any interest in any part of the public lands of the State for which a plot or description has been recorded with the Recorder of Deeds in and for the county in which the lands are situate shall, if the State is successful in defeating such claim or any part thereof through any judicial proceeding, be liable for all costs and expenses of the State incurred in defeating the claim or any part thereof, including, without limitation, investigative costs, administrative costs, salaries of state employees, surveying costs, engineering costs, title search fees, attorneys' fees of privately retained counsel and attorneys of the Department of Justice, consultant fees and contract costs; provided however, that such cost and expense recovery should not be provided if the claim has substantial merit.

(b) For purposes of this section, the term "person" shall include any individual, group of individuals, firm, association, partnership, company, corporation, joint-venture, trust, estate or other legal entity. Any liability for costs and expenses imposed under this section on any corporation shall also be imposed jointly and severally on the officers and directors of such corporation in their individual capacities.

(c) In order to recover costs and expenses under this section, the State shall, within 45 days of the entry of the final order or judgment, file a petition with the court which exercised jurisdiction over the matter, which petition shall set forth a statement of the costs and expenses incurred by the State.

(66 Del. Laws, c. 239 § 1.)

§ 4521 Zoning and use.

Notwithstanding any provision of this chapter to the contrary, no state park, or any part thereof, open space as defined in § 7504 of this title, or other area acquired primarily for recreational use, shall be rezoned, neither shall there be a change in the use of any such lands requiring a variance or subdivision approval, except upon 45 days prior notice to all elected members of the General Assembly in whose

district such lands, or any part thereof, lie.

(72 Del. Laws, c. 156 § 3.)

Part V
Public Lands, Parks and Memorials
Chapter 47
STATE PARKS
Subchapter I
General Provisions

§ 4701 Powers and duties.

(a) The Department of Natural Resources and Environmental Control may:

(1) Select and acquire by gift, devise, bequest, purchase, and through the exercise of the power of eminent domain, such lands as are desirable to be utilized chiefly for recreation, and to develop and maintain such areas;

(2) Expend for such acquisition, development and maintenance, such funds as are appropriated for such purposes, or received as earnings from the operation of such areas, or received from any other source;

(3) Employ such administrative and technical assistance as is, in the opinion of the Department necessary in order to plan, develop and maintain the areas which it administers;

(4) Make and enforce regulations relating to the protection, care and use of the areas it administers;

(5)(A) Establish and collect such user charges, which shall approximate and reasonably reflect all costs necessary to defray the expenses of the Department for the use of the facilities and services it provides in areas it administers. The Department shall, in addition, establish and impose a schedule of fees for entrance to state parks and for surf fishing vehicles and snowmobiles on said lands, with the concurrence and approval of the General Assembly. The Secretary of the Department of Natural Resources and Environmental Control shall establish the period and areas on which park fees and user charges shall be imposed. The Secretary shall annually prepare a schedule of park entrance and surf fishing vehicle and snowmobile fees pursuant to this section and submit the same as part of the Department's annual operating budget proposal. All of the fees collected pursuant to this section shall be deposited in the General Fund of this State and designated solely for park operations and maintenance; provided, however, that no fee shall be imposed on any recognized veteran's service organization for the use of any state park or portion thereof for purposes of patriotic or memorial services, provided that advance written notification of not less than 15 days is given to the agency and does not conflict with other previously scheduled activities within the park;

(B)(i) Delaware residents who are 62 years of age or older and who own a motor vehicle validly registered in Delaware may pay an annual fee of not less than 1/2 of the annual fee established for Delaware residents pursuant to paragraph (a)(5)(A) of this section for each such registered motor vehicle which shall permit such vehicle entrance to any state park or recreation area during the calendar year for which the fee was paid. Persons who are 62 years of age or older and who own a motor vehicle validly registered in another state may pay an annual fee of not less than 1/2 of the annual fee established for out-of-state registered vehicles pursuant to paragraph (a)(5)(A) of this section for each such registered motor vehicle which shall permit the vehicle entrance to any state park or recreation area during the calendar year for which the fee was paid. Each applicant under this paragraph shall furnish proof of age, vehicle ownership and vehicle registration at the time such application is made. Annual permits issued under this paragraph will be valid for any day excluding holidays. No annual permit issued under this paragraph will be honored on any day unless the owner of the vehicle for which such permit is issued is the operator of the vehicle at the time of entrance to the state park or recreation area to which admission is sought. All the fees collected under the authority of this section shall be deposited in the General Fund, and designated solely for park operations and maintenance;

(ii) A Delaware resident who is 65 years of age or older may pay a 1-time fee of $45, which will permit the resident to enter any state park or recreation area for the lifetime of the resident, so long as the resident is the operator of or a passenger in a Delaware-registered vehicle at the time of entrance to the state park or recreation area to which admission is sought. An applicant for a lifetime permit must furnish proof of age and Delaware residency at the time application for the permit is made. All fees collected under the authority of this paragraph must be deposited in the General Fund and designated solely for park operations and maintenance.

(C) Delaware residents who are disabled, and who hold a valid and current Gold Access Passport Card, as issued by the National Park Service of the United States Department of the Interior, shall be exempted from the annual or daily entrance fees required by this section;

(D) Any resident who has served honorably for 90 or more consecutive days on active duty in the armed forces of the United States, including service as member of the Delaware National Guard, in military actions in Southwest Asia associated with Operation Iraqi Freedom or Operation Enduring Freedom may, for the first 12 months following the date the resident was honorably discharged or removed from active status, receive a pass granting the resident free admission to any state park in this State without

charge;

(E) Any resident, who does not qualify for free admission pursuant to paragraph (a)(5)(D) of this section, who has honorably served or is honorably serving in the armed forces of the United States, including service as a member of the Delaware National Guard, and who owns a motor vehicle validly registered in Delaware may pay an annual fee of 1/2 of the annual fee established for Delaware residents pursuant to paragraph (a)(5)(A) of this section for each such registered motor vehicle which shall permit such vehicle entrance to any state park or recreation area during the calendar year for which the fee was paid. Each applicant under this paragraph shall furnish proof of service in the armed forces of the United States, vehicle ownership and vehicle registration at the time such application is made. All the fees collected under the authority of this paragraph shall be designated solely for park operations and maintenance.

(F) A resident who is an active Delaware volunteer firefighter, an active Delaware volunteer emergency medical technician (EMT), or a life-member of a Delaware volunteer fire department is entitled to receive annually, without charge, a surf fishing vehicle permit. A firefighter, EMT, or life-member who volunteers in Delaware but lives out of state is entitled to receive annually, at the Delaware resident rate, a surf fishing vehicle permit.

(i) "Active Delaware volunteer firefighter" means a person who is a member of a Delaware volunteer fire department and who responds to at least 20% of the department's annual alarms and/or crew calls as a nonpaid firefighter.

(ii) "Active volunteer emergency medical technician" or "EMT" means a person who is a member of a Delaware volunteer fire department or a Delaware volunteer ambulance company and who responds to at least 20% of the department's or company's annual emergency medical service calls as a nonpaid EMT, EMT-C, or EMT-P, as described in § 9701(11), (12), and (13) respectively of Title 16.

(iii) "Life-member of a Delaware volunteer fire department" means a person who is a member of a Delaware volunteer fire department and who has been awarded life membership status by that department.

(iv) To qualify without charge for a surf fishing vehicle permit pursuant to this paragraph, the firefighter, EMT, or life-member must submit annually to the Department an original letter on official fire department or ambulance company letterhead, signed by the fire department's or ambulance company's president and authenticated by the president of the Delaware Volunteer Firefighter's Association. The letter must explain how the person qualifies for a surf fishing vehicle permit under this paragraph.

(v) One surf fishing vehicle permit may be issued annually to a vehicle registered to the qualifying active Delaware Volunteer Firefighter, active emergency medical technician (EMT), or life member in accordance with procedures established by the Department.

(G)(i) The Department is authorized to administer a program for the issuance of numbered surf fishing and state park specialty vehicle plates. A state park specialty vehicle plate shall serve as an annual permit. The Department will establish fees, rules and regulations for the purchase, replacement, transfer, renewal, nonrenewal and forfeiture of such plates managed through this voluntary program. The Department may charge a fee for surf fishing and state park specialty vehicle plates not to exceed $500 per plate or may auction surf fishing and state park specialty plates pursuant to paragraph (a)(5)(G)(ii) of this section in which case the amount charged shall be based upon interest and demand for such plates as determined by auction.

(ii) The Secretary is hereby authorized to establish, implement and manage an auction program to sell surf fishing and state park specialty vehicle plates as provided for in paragraph (a)(5)(G)(i) of this section. Any auction of such vehicle plates shall be conducted in accordance with accepted auction practices and shall require valid vehicle registration as proof of eligibility, limit individuals to acquiring 1 vehicle plate per licensed vehicle, and ensure that the highest bid from an eligible individual is the successful bid. Vehicle plates numbered 1 through 200 shall be limited to vehicles registered in Delaware;

(6) Make on its own motion or in cooperation with other agencies of the State, studies of the recreational facilities now available in the State, and of the recreational needs of the State, and determine what areas not now available for public recreation should be acquired;

(7) Enter into agreements with proper persons or corporations for periods not to exceed 25 years for operation of services on the areas it administers;

(8) Employ and fix the salaries of such personnel as it deems proper for the enforcement of its rules and regulations. Enforcement personnel may arrest with a warrant for any violation of the Department of Natural Resources and Environmental Control rules and regulations, or without a warrant for any such violation committed in their presence. Enforcement personnel, with respect to the enforcement of the Department of Natural Resources and Environmental Control rules and regulations, shall have all the powers of investigation, detention and arrest conferred by law on peace officers or constables;

(9) Grant, with the written approval of the Cabinet Committee on State Planning Issues, easements, for either private or public purpose over or under any public lands which it administers, for the purpose of transmission lines, such as: Telephone and telegraph lines, electric power lines, gas pipelines, and water and sewage pipelines and appurtenances. The term of any such easement together with the amount of any fee charged therefor shall be determined by the Department of Natural Resources and Environmental Control acting with approval of the Cabinet Committee on State Planning Issues, and any funds received for the grant of such easements shall be deposited by the Department of Natural Resources and Environmental Control with the State Treasurer;

(10) Select and obtain, by lease or agreement with the owners thereof and upon such terms and conditions as the Department of Natural Resources and Environmental Control, with the approval of the Cabinet Committee on State Planning Issues, shall determine,

such lands as the Department of Natural Resources and Environmental Control deems appropriate and desirable for park and recreation use and purposes, and to improve, develop, operate and maintain such lands for such purposes. The Department of Natural Resources and Environmental Control may only exercise the powers granted in this paragraph by lease or agreement entered into with the federal government or with a municipality, agency or political subdivision of this State; and

(11) Enter into an agreement with the Barcroft Company of Lewes, Delaware, for a period not to exceed 25 years, for the use of land presently leased to Barcroft, as well as an adjoining triangular-shaped property containing approximately .76 of an acre; provided, however, that the funds received from such agreement shall be appropriated to the Department of Natural Resources and Environmental Control to be used to rebuild and maintain, for the use of the public, a fishing pier located in the breakwater at Cape Henlopen State Park.

(b) The Department of Natural Resources and Environmental Control may establish state parks on any or all portions of state lands in Sussex County bordering on the Atlantic Ocean which have been or may hereafter be acquired and may administer them directly.

(c) The Department of Natural Resources and Environmental Control shall plan, develop and maintain all areas entrusted to its administration as to preserve in every reasonable degree the scenic, historic, scientific, prehistoric and wildlife values of such areas.

(d) All state parks and other areas acquired primarily for recreational use shall, from the date of their establishment as such, come under the jurisdiction of the Department of Natural Resources and Environmental Control and shall be closed to hunting, except in areas designated by the Department of Natural Resources and Environmental Control for such purpose.

(e) The Department of Natural Resources and Environmental Control shall establish an advance reservation system to allow disabled persons to reserve accessible campsites for the disabled at state parks.

(41 Del. Laws, c. 259 § 2; 7 Del. C. 1953 c. 4703; 53 Del. Laws, c. 111; 56 Del. Laws, c. 86; 56 Del. Laws, c. 102; 56 Del. Laws, c. 407; 57 Del. Laws, c. 578; 57 Del. Laws, c. 734; 57 Del. Laws, c. 739 § 124; 60 Del. Laws, c. 243 § 1; 61 Del. Laws, c. 299 § 1; 61 Del. Laws, c. 389 §§ 1-4; 62 Del. Laws, c. 1 § 1; 62 Del. Laws, c. 44 §§ 1, 2; 63 Del. Laws, c. 191 § 4(i); 66 Del. Laws, c. 138 § 1; 68 Del. Laws, c. 86 §§ 1, 2; 69 Del. Laws, c. 85 § 1; 72 Del. Laws, c. 260 § 1; 72 Del. Laws, c. 381 § 1; 74 Del. Laws, c. 290 § 1; 74 Del. Laws, c. 291 § 2; 78 Del. Laws, c. 266 § 13; 78 Del. Laws, c. 300 § 1; 78 Del. Laws, c. 362 § 1; 79 Del. Laws, c. 30 § 1; 79 Del. Laws, c. 443 § 1.)

§ 4702 Violations of rules and regulations; penalties.

(a) Any person convicted of violating any rule or regulation promulgated by the Department of Natural Resources and Environmental Control pursuant to this chapter shall be:

(1) Fined not less than $50 nor more than $100, plus the costs of prosecution and court costs, for any rule or regulation designated by the Department of Natural Resources and Environmental Control as a class D environmental violation. Any person convicted of a class D environmental violation within 5 years of a prior conviction for a class D environmental violation shall be fined not less than $100 nor more than $500, plus the costs of prosecution and court costs.

(2) Fined not less than $50 nor more than $250, plus the costs of prosecution and court costs, or imprisoned not more than 10 days, or both, for any rule or regulation designated by the Department of Natural Resources and Environmental Control as an unclassified misdemeanor.

(3) Fined under subsection (k) of this section for parking violations contained in subsection (k) of this section.

(b) If an offense designated as a class D environmental violation or an unclassified misdemeanor under subsection (a) of this section involves the failure to acquire a surf fishing vehicle permit or failure to pay an entrance fee required under this chapter, the violator shall be assessed the cost of the permit, or fee, in addition to the fines and costs imposed under subsection (a) of this section.

(c) In addition to any fines, costs, or imprisonment imposed under subsection (a) of this section, any person who is convicted of any offense involving damaging, destroying, or removing state park property shall be required to make restitution to the Department of Natural Resources and Environmental Control for replacement or restoration of such property. Furthermore, in lieu of, or in addition to any fines, costs, or imprisonment imposed under subsection (a) of this section or any restitution imposed under this subsection, the Court may order violators convicted of any offense involving damaging, destroying, or removing state park property to perform work projects in state parks.

(d) Any fine imposed for any violation pursuant to this chapter shall not be suspended to any amount less than the minimum prescribed fine.

(e) Any conviction of a class D environmental violation, for a first offense, shall not be reported on criminal history records provided by the State Bureau of Identification for employment purposes under § 8513(c) of Title 11. This provision shall not apply to a subsequent conviction of a class D environmental violation within 5 years, and any such subsequent conviction shall be reported on a criminal history record provided by the State Bureau of Identification for employment purposes under § 8513(c) of Title 11.

(f) This section shall not be construed as authorizing the Department of Natural Resources and Environmental Control to change any penalty for violating any rule or regulation of the Department of Natural Resources and Environmental Control.

(g) All rules and regulations of the Department of Natural Resources and Environmental Control promulgated pursuant to this chapter shall have the effect of law and shall be published in at least 2 newspapers of general circulation in the territory to be affected, at least 30 days prior to the time the rule or regulation becomes effective, except in case of an emergency when the Department of Natural Resources and Environmental Control shall give such advance notice as it deems necessary or desirable.

(h) The Justice of the Peace Court shall have jurisdiction over violations of the rules and regulations of the Department of Natural Resources and Environmental Control promulgated pursuant to this chapter with the condition that any person arrested for such violation shall either be taken before the closest available justice of the peace in the county where such violation is alleged to have occurred or be

provided a voluntary assessment form in accordance with § 1311 of this title.

(i) Notwithstanding subsection (h) of this section, an arresting officer may issue a summons to any person arrested for any violation delineated in this chapter to have said person appear at a subsequent date at the Justice of the Peace Court which is the nearest available Justice of the Peace Court to the place of the arrest, during the regularly scheduled hours of said Court. For the purpose of this section, the summons for later appearance shall be sufficient to grant jurisdiction over the offense to the said nearest available justice of the peace.

(j) For the purpose of this section, a justice of the peace is available when he or she is present at court.

(k) Notwithstanding subsection (h) of this section, a summons in the appropriate form to be adopted by the Department of Natural Resources and Environmental Control may be attached to an unattended vehicle found in violation of any rule or regulation for parking in state parks by an authorized officer.

(1) The Department of Natural Resources and Environmental Control may adopt a schedule of civil penalties, between a minimum of $10 and a maximum of $25, for all violations delineated by its rules and regulations for parking in state parks. No court costs or other administrative fee shall be assessed if a civil penalty is paid by voluntary assessment.

(2) Any violation of this subsection shall be subject to a civil penalty only. Such violations shall not be classified as a criminal offense and shall not qualify as a prior conviction for purposes of § 4218(c)(1)f. of Title 11, whether or not such violation occurred prior to July 10, 2006.

(3) The process for disposition of a summons attached to an unattended vehicle shall be as follows:

a. Payment by voluntary assessment. — An owner or operator shall pay the amount on the summons to the voluntary assessment center listed on the summons, which center may be either a voluntary assessment center established by the Department of Natural Resources and Environmental Control or the Justice of the Peace Court Voluntary Assessment Center. In lieu of payment, an owner or operator may notify the applicable voluntary assessment center, within the time period specified on the summons, that the owner or operator requests a hearing in the Justice of the Peace Court. No court costs or other administrative fee shall be assessed if a civil penalty is paid by voluntary assessment. The penalty assessment pursuant to the Delaware Victim Compensation law, Chapter 90 of Title 11, shall not be assessed on civil penalties pursuant to this subsection. Moneys received either through voluntary assessment or after a hearing shall be disbursed in accordance with § 1307 of this title.

b. Presumptions. —

1. If any vehicle found to be in violation of this subsection is unattended at the time the violation is discovered and the identity of the operator is not otherwise apparent, the person in whose name such vehicle is registered as the owner shall be held responsible for such violation, unless the owner can furnish evidence that the vehicle was, at the time of the violation, in the care, custody, or control of another person. Such presumption shall be rebutted if the owner does 1 of the following:

A. Furnishes to the voluntary assessment center, prior to the due date, 1 of the following: I. An affidavit stating that the owner was not the operator of the vehicle at the time of the alleged violation and provides the name and address of the person or company who leased, rented, or otherwise had the care, custody, or control of the vehicle. II. A certified copy of a police report showing that the vehicle or license plate or plates thereof had been reported to the police as stolen prior to the time of the alleged violation.

B. Provides proof in court that the owner was not the operator of the vehicle at the time of the alleged violation.

2. A summons may be issued by the prosecuting agency to a person identified by affidavit or evidence in Court as the actual operator of the vehicle shown to have violated this subsection. There shall be a presumption that the person so identified was the driver. The presumption may be rebutted as described in this subsection.

c. Procedure for contesting. —

1. A request for a hearing must be made no later than the due date indicated on the summons, which date shall not be sooner than 20 days from the date the summons was issued.

2. The voluntary assessment center shall notify the Justice of the Peace Court when a hearing is requested. Such notification shall be in accordance with policies and procedures developed by the Justice of the Peace Court.

d. Failure to pay or contest the violation. —

1. The Justice of the Peace Court may, upon motion, enter a default judgment against an owner or operator who does 1 of the following:

A. Fails to respond to the summons on or before the due date in any of the manners permitted by this section.

B. Requests a hearing and fails to appear.

2. When the default judgment is sought under paragraph (k)(3)d.1.A. of this section, no default judgment shall be entered until notice by first class mail is sent by the Justice of the Peace Court to such owner or operator providing the owner or operator with 10 days to pay the civil penalty to the Justice of the Peace Court or request a hearing to contest the charge. The applicable city county, or State agency may seek execution on any judgment entered by the Justice of the Peace Court.

e. Referral to the Division of Motor Vehicles. — In addition, the voluntary assessment center or Justice of the Peace Court may forward to the Division of Motor Vehicles the name and address of any owner or operator who fails to respond to the summons in a timely manner, who requests a hearing and fails to appear, or who is found responsible and fails to pay in accordance with the order of the Court. The Division of Motor Vehicles may refuse to register or deny the renewal of the registration of any of the vehicles of

such owner or operator.

(4) After payment of a civil penalty pursuant to this subsection is received by the Department of Natural Resources and Environmental Control or a Justice of the Peace Court, the Department or the Court shall mail a receipt indicating the payment of such civil penalty if the person paying such civil penalty makes a written request for a receipt and encloses a self-addressed envelope with proper postage affixed thereon.

(5) Any violation of this subsection shall be subject to a civil penalty only. Such violation shall not be classified as a criminal offense and shall not qualify as a prior conviction for purposes of § 4218(c)(1)f. of Title 11, whether or not such violation occurred prior to July 10, 2006.

(41 Del. Laws, c. 259 § 3; 7 Del. C. 1953 § 4705; 56 Del. Laws, c. 85; 57 Del. Laws, c. 739 § 125; 62 Del. Laws, c. 213 § 2; 63 Del. Laws, c. 304 §§ 1-4; 68 Del. Laws, c. 182; 69 Del. Laws, c. 394 §§ 1-4; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 405 §§ 1-6; 76 Del. Laws, c. 403 § 1; 80 Del. Laws, c. 161 § 1.)

§ 4703 Fort Delaware State Park.

(a) Pea Patch Island is declared to be a state park under the name of Fort Delaware State Park.

(b) The Department of Natural Resources and Environmental Control shall repair Fort Delaware and shall thereafter maintain the same in a condition fit for visitation by the general public, and shall arrange and provide transportation facilities for such purpose.

(c) The Department of Natural Resources and Environmental Control shall establish and collect reasonable fees and charges for transportation to the said park and visitation therein; all such fees and charges received by the said Department of Natural Resources and Environmental Control and any other funds received by it, except state appropriations, for the support of Fort Delaware State Park shall be paid to the State Treasurer, who shall retain the same in a special fund, to be expended upon proper vouchers of the Department of Natural Resources and Environmental Control only for the purpose of carrying out this section.

(d) The officers of the Fort Delaware Society are named as an advisory board to the Department of Natural Resources and Environmental Control to make such recommendations for the care and maintenance of Fort Delaware State Park as they see fit.

(48 Del. Laws, c. 373 §§ 1, 2; 7 Del. C. 1953 § 4723; 50 Del. Laws, c. 402 § 1; 57 Del. Laws, c. 739 § 127.)

§ 4704 Trap Pond Project.

The Department of Natural Resources and Environmental Control shall supervise and maintain the area known as the Trap Pond Project, located in Sussex County, consisting of approximately 1,000 acres, as a state park.

(48 Del. Laws, c. 360 §§ 1, 2; 7 Del. C. 1953 § 4724; 57 Del. Laws, c. 739 § 128.)

§ 4705 Licensing agents; service charge; regulations.

(a) The Department may authorize as many qualified persons as licensing agents as it deems necessary to effectuate the efficient distribution of state park permits.

(b) Licensing agents may add a service charge to the required fee for a state park permit, provided the service charge does not exceed $0.50 cents for an annual permit or daily permit book or $0.75 cents for a surf fishing vehicle permit. Such service charges, if imposed, shall be posted by the licensing agent and shall be clearly visible to prospective purchasers.

(c) The Secretary may adopt, amend, modify or repeal rules and regulations to effectuate the policy and purpose of this section.

(71 Del. Laws, c. 443 § 5.)

§ 4706 Zoning and use.

Notwithstanding any provision of this chapter to the contrary, no state park, or any part thereof, or other area acquired primarily for recreational use, shall be rezoned, neither shall there be a change in the use of any such lands requiring a variance or subdivision approval, except upon 45 days prior notice to all elected members of the General Assembly in whose district such lands, or any part thereof, lie.

(72 Del. Laws, c. 156 § 1.)

Subchapter II

The Fort DuPont Redevelopment and Preservation Act

§ 4730 Short title.

This subchapter shall be known, and may be cited, as "The Fort DuPont Redevelopment and Preservation Act."

(79 Del. Laws, c. 361 § 1.)

§ 4731 Declaration of purpose.

The General Assembly declares the following to be the policy and purpose of this subchapter:

(1) The Fort DuPont Complex, located along the Delaware River adjacent to Delaware City, is currently underutilized but has enormous potential as a sustainable, mixed-use community;

(2) To preserve and protect the historical and recreational amenities within the Fort DuPont Complex and to expand economic

opportunities therein, additional capital will be required to improve infrastructure, renovate certain historic structures, and make additional improvements to said Complex;

(3) Redevelopment and renovation of the Fort DuPont Complex is both desirable and necessary, provided that:

a. The Fort DuPont Complex will remain a public destination, with its historic, natural, and recreational resources maintained for public enjoyment;

b. Fort DuPont's National Register status (where applicable) will be maintained, and historic building and landscape resources will be rehabilitated and reused to the extent possible;

c. Redevelopment and infill will be concentrated within several defined areas, and will be complementary to existing historic buildings and landscapes;

d. Fort DuPont and Delaware City will grow together as "one city" with strong physical and visual connections and complementary land uses;

e. Diverse land and building uses will be supported at Fort DuPont to achieve a shared vision for a "live-work-learn-play-and-visit" community; and

f. Community engagement will continue to be a key component for ongoing planning for Fort DuPont's future.

(4) In light of the foregoing, it is in the best interest of the State to enable the creation of an entity to manage, oversee, and implement the redevelopment and preservation of the Fort DuPont Complex in accordance with the Redevelopment Plan and the provisions of this subchapter.

(79 Del. Laws, c. 361 § 1.)

§ 4732 Definitions.

When used in this subchapter:

(1) "Board" means the Board of Directors of the Fort DuPont Redevelopment and Preservation Corporation.

(2) "Corporation" means the Fort DuPont Redevelopment and Preservation Corporation to be established pursuant to § 4733 of this title.

(3) "Council" means the Advisory Council of the Fort DuPont Redevelopment and Preservation Corporation.

(4) "Department" means the Department of Natural Resources and Environmental Control.

(5) "Fort DuPont Complex" or "Fort DuPont" means such real property, as well as such facilities, personal property, buildings, and fixtures located thereon, owned by the State along the Delaware River bounded by the Chesapeake and Delaware Canal on the south, and a branch canal, currently separating it from Delaware City, on the north, which includes the Fort DuPont State Park, the Governor Bacon Health Center, and surrounding lands, tax parcel numbers 1202300020, 1202300021, 1203000001, and 1203000002.

(6) "Redevelopment plan" means the draft master plan for the redevelopment of the Fort DuPont complex dated October 2013, as may be amended from time to time by the Board, which is intended to guide the redevelopment of the Fort DuPont Complex.

(79 Del. Laws, c. 361 § 1.)

§ 4733 Fort DuPont Redevelopment and Preservation Corporation.

(a) There shall be established within the Department a body corporate and politic, with corporate succession, constituting a public instrumentality of the State, and created for the purpose of exercising essential governmental functions, which is to be known as the Fort DuPont Redevelopment and Preservation Corporation. The Corporation shall be a membership corporation with the Department as the sole member and shall have a certificate of incorporation and bylaws consistent with this subchapter. The Secretary of the Department is hereby authorized to file a certificate of incorporation with the Secretary of State pursuant to Chapter 1 of Title 8. The certificate of incorporation of the Corporation shall provide for approval of the Delaware General Assembly in order to amend the certificate of incorporation or to effect a merger or dissolution of the Corporation.

(b) The powers and management of the Corporation shall be vested in a board of directors consisting of 11 members. Each member shall have general expertise relevant to the implementation of the Redevelopment Plan, which may include expertise in the fields of land use, historic preservation, economic development (including without limitation real estate, redevelopment, and real estate financing), environmental protection, parks and recreation, and tourism. The Board shall be comprised of the following members:

(1) One director appointed by the Governor to serve as Chair, who shall serve at the pleasure of the Governor;

(2) The Secretary of the Department of Natural Resources and Environmental Control;

(3) The Controller General;

(4) The Secretary of the Department of Health and Social Services;

(5) The Secretary of State;

(6) The Director of the Office of Management and Budget;

(7) The Director of the Office of State Planning Coordination; and

(8) Four directors appointed by the Mayor of the City of Delaware City and approved by City Council of Delaware City (2 for an initial term of 1 year, with the remaining directors serving initial terms of 2 years and 3 years, respectively), who shall be appointed within 30 days after the filing of the certificate of incorporation. Following the initial appointment terms, subsequent directors appointed hereunder shall serve 3-year terms.

Any person serving as a director of the Corporation pursuant to paragraphs (b)(2) through (7) of this section may appoint a designee to serve in his or her stead.

(c) All vacancies in Board membership shall be filled by the appointing authority that previously appointed such member. Any vacancy created by the resignation or early departure of a director shall be filled by the appointing authority for the remainder of the unexpired term.

(d) Six directors shall constitute a quorum of the Board, and all action by the Board shall require the affirmative vote of a majority of the directors present and voting.

(e) The Board shall adopt bylaws that provide for operating procedures such as election of officers, conflicts of interest, appointment of committees, conduct of meetings, and other matters that will promote the efficient operation of the Board in the performance of its duties under this subchapter.

(79 Del. Laws, c. 361 § 1; 70 Del. Laws, c. 186 § 1.)

§ 4734 Advisory Council.

(a) The Council of the Corporation shall be established to assist and provide advice to the Board in carrying out its purposes under this subchapter. The Council shall act in a purely advisory capacity, and shall assist the Corporation in fulfilling its purposes and obligations hereunder as directed by the Board or the executive director. Such assistance may include but not be limited to:

(1) Developing plans to implement recommendations from the redevelopment plan and tracking ongoing implementation efforts;

(2) Reviewing and providing recommendations on proposals for the purchase, sale, lease or disposition of lands or buildings;

(3) Providing guidance on updates to the redevelopment plan upon request by the Board or the executive director;

(4) Providing recommendations on infrastructure improvement plans, budgets, or any other matters referred by the Board or the executive director;

(5) Recommending rules, regulations and policies to the Board; and

(6) Such other responsibilities and powers consistent with the Council's role as an advisory body as shall be determined from time to time.

(b) The Advisory Council shall be comprised of 13 members, none of whom shall be members of the Board of Directors, and such members shall be appointed as follows:

(1) A chair to be appointed by the Governor for a term of 3 years and who shall be eligible for re-appointment for terms of 3 years.

(2) Eight additional members appointed by the Governor who, to the extent possible, shall have expertise in 1 or more of the fields or areas set forth in § 4733(b) of this title;

(3) Four members appointed by the Mayor of the City of Delaware City and approved by the City Council of Delaware City. Appointments by Delaware City shall represent the interests of Delaware City and the Delaware Bayshore.

(c) Members of the Advisory Council shall serve for terms of 3 years each; provided, however, that the terms of the initial members shall be staggered as follows:

(1) Three initial members appointed by the Governor and 1 initial member appointed by Delaware City shall serve terms of 3 years each;

(2) Three initial members appointed by the Governor and 1 initial member appointed by Delaware City shall serve terms of 2 years each; and

(3) The remaining initial members shall serve terms of 1 year each.

(d) Each appointing authority shall appoint members of the Advisory Council no later than 60 days following the date of the filing of the certificate of incorporation of the Corporation.

(79 Del. Laws, c. 361 § 1.)

§ 4735 Powers of the Corporation.

The Corporation shall have on July 23, 2014, and upon its creation as provided for herein the powers listed in this section. The Corporation shall be empowered, without limitation and notwithstanding any other laws to:

(1) Adopt bylaws, rules, regulations, and procedures;

(2) Act generally in a planning and development capacity, and in connection therewith, to hold, own, preserve, develop, improve, construct, rent, lease, sell, or otherwise acquire or dispose of any real property, including without limitation any real property comprising the Fort DuPont Complex or any portion thereof transferred to the Corporation;

(3) Employ an executive director and such deputies and assistants as may be necessary or desirable, and to retain by contract such legal counsel, engineers, advisors, and other providers of professional services;

(4) Borrow moneys or accept contributions, grants, or other financial assistance from the federal government, the State, any locality or political subdivision, any agency or instrumentality thereof, or any source, public or private, for or in aid of any project of the Corporation, and to these ends, to comply with such conditions and enter into such mortgages, trust indentures, leases, or other contracts and agreements as may be necessary or desirable;

(5) Have and exercise any and all powers available to a corporation organized pursuant to Chapter 1 of Title 8, the Delaware General Corporation Law;

(6) Take such other lawful actions that are consistent with the purposes of this subchapter as may be necessary or desirable to oversee,

manage, and implement the redevelopment and preservation of the Fort DuPont Complex in accordance with the redevelopment plan and the provisions of this subchapter; and

(7) Recover costs for the use of, or the benefit derived from, the services or facilities provided, owned, operated, or financed by the Corporation benefiting property within the Fort DuPont Complex.

(79 Del. Laws, c. 361 § 1.)

§ 4736 Powers and duties of executive director.

An executive director shall be selected by a majority vote of the Board. The executive director shall exercise such powers and duties relating to the Corporation as may be delegated to him or her by the Board. Compensation of the executive director shall be established by the Board, and the executive director shall serve at the pleasure of the Board.

(79 Del. Laws, c. 361 § 1; 70 Del. Laws, c. 186 § 1.)

§ 4737 Initial duties of Corporation.

On or before June 30, 2015, the Corporation shall, at a minimum:

(1) Select and hire a qualified executive director;

(2) Perform or have performed such tests, studies, examinations, and evaluations upon the lands of the Fort DuPont Complex as may be desirable or necessary to permit such property to be transferred to the Corporation and to evaluate economic development opportunities and the historical and other resources to be preserved; and

(3) To develop such feasibility, sales, and marketing plans as may be required to preserve and redevelop the Fort DuPont Complex in accordance with this subchapter.

(79 Del. Laws, c. 361 § 1.)

§ 4738 Liberal construction of subchapter.

This subchapter, being necessary for the prosperity and welfare of the State and its citizens, shall be liberally construed to effect the purposes hereof.

(79 Del. Laws, c. 361 § 1.)

Part V
Public Lands, Parks and Memorials
Chapter 49
MAINTENANCE AND CONSTRUCTION OF MEMORIALS IN THE TOWN OF LEWES

§ 4901 Properties under jurisdiction of Department of State.

The Department of State shall have the full and complete care and supervision of the DeVries Monument, at Lewes, Delaware, the Zwaanendael Museum, at Lewes, Delaware, and such other buildings, memorials or parks as come under the jurisdiction of the Department of State. The Department of State shall keep the property in its custody in proper condition at all times; and shall cause reasonable and necessary repairs to be made.

(Code 1935 § 6225; 45 Del. Laws, c. 295 § 2; 7 Del. C. 1953 § 4902; 57 Del. Laws, c. 608 § 2B.)

§ 4902 Memorial to sailors.

(a) The Department of State may have constructed in the Town of Lewes a memorial to sailors which may be either a building, monument, park or other appropriate construction, and which shall be given an official name by the Department of State, when it is completed.

(b) The Department of State may prepare plans, specifications and drawings and employ such needed assistants as are necessary, including an architect or architects; advertise for bids; require bidders to give proper bonds; reject any and all bids for reasons deemed sufficient to said Department of State; enter into agreements and contracts necessary to carry on the work of constructing the proposed memorial including contracts for services, labor and materials needful or proper for the purposes aforesaid or any of them; call upon any other department or agency of the state government for advice and assistance in planning the proposed memorial and to further the work of construction when necessary plans have been completed.

(Code 1935 § 6226; 45 Del. Laws, c. 295 § 3; 7 Del. C. 1953 § 4903; 57 Del. Laws, c. 608 § 2B; 70 Del. Laws, c. 186 § 1.)

§ 4903 Funds and appropriations; expenditures.

Any funds received from other than state appropriations may be paid to the Secretary of Finance who shall keep the same in a separate fund or account, and such funds shall be used only for the purpose of carrying out this chapter.

(Code 1935 § 6227; 45 Del. Laws, c. 295 § 4; 7 Del. C. 1953 § 4904; 57 Del. Laws, c. 608 §§ 2A, 2C.)

Part V
Public Lands, Parks and Memorials
Chapter 51
UNKNOWN SAILORS' CEMETERY

§ 5101 Memorial cemetery.

The public lands hereinafter described are set aside and designated as a memorial cemetery for the burial of sailors and shall be maintained solely for that purpose. The cemetery shall be known as the Unknown Sailors' Cemetery and shall include the following described lands:

Beginning at a point on the north edge of the State Highway leading from the Town of Lewes towards the old Henlopen Lighthouse Reservation, said point being 171 feet east from the lines of Lewes Coast Guard Station and corner for lands in possession of Louis L. Paynter, and thence running along and with one line of said lands 577 feet to a point at high water mark on Delaware Bay, thence along the high water mark of said Bay southeast 350 feet to a point corner for land leased to the Lewes Fertilizer Company, now in possession of Smith Meal Company, thence along and with one line of said lands southwest 568 feet to a point in the north edge of the above described highway, thence along and with the north edge of said Highway 385 feet home to the place of beginning.

(42 Del. Laws, c. 2 § 1; 7 Del. C. 1953 § 5101.)

§ 5102 Agency in charge of cemetery; powers.

The Delaware Society for the Preservation of Antiquities, a corporation of the State, is the state agency or authority of the State designated to carry out this chapter. The Society shall provide for the care and maintenance and the reconstruction and restoration of the Unknown Sailors' Cemetery, and may make application to any federal department, board or agency for the performance of any necessary work and may accept any grant which is available to it as such state agency or to the State for the purpose of the reconstruction and restoration of the cemetery.

(42 Del. Laws, c. 2 § 2; 7 Del. C. 1953 § 5102.)

Part VI
Archaeological and Geological Resources
Chapter 53
ARCHAEOLOGICAL RESOURCES IN THE STATE
Subchapter I
General Provisions

§ 5301 Duties of the Department of State.

The duties of the Department of State relative to archaeology within the State are as follows:

(1) To sponsor, engage in and direct archaeological research in this State and to encourage and coordinate archaeological research undertaken by any archaeological society, institution, agency or association of the State;

(2) To encourage cooperation among State agencies in the preservation, protection and excavation of archaeological resources which have or may come into the custody of any other agency of this State;

(3) To protect and encourage the preservation of archaeological resources located on privately owned lands in this State;

(4) To recover and preserve archaeological resources discovered during the course of any public construction in this State, when deemed appropriate by the Director of the Division of Historical and Cultural Affairs of the Department of State, and when the discovery is not subject to federal laws or other state laws that may require an archaeological investigation be conducted;

(5) To cooperate with and assist the University of Delaware and other public institutions of this State in the preservation and protection of archaeological resources;

(6) To furnish materials and objects to the Delaware State Museum, and/or other museums in the State, suitable for demonstrating and interpreting the State's history and heritage;

(7) To furnish exhibits and/or other materials to public and private schools of this State, and to assist in the instruction of students on the State's history and heritage, and the discipline of archaeology;

(8) To cooperate with similar agencies and institutions of other states and the federal government for the general purpose of preserving archaeological resources of this State, and to ensure that all such activity of agencies and institutions is in the best interest of the State;

(9) To publish or otherwise disseminate information resulting from archaeological research conducted in this State;

(10) To enforce the laws regulating archaeological resources situated on state-owned or state-controlled lands, including subaqueous lands.

(75 Del. Laws, c. 153 § 2.)

§ 5302 Rules, regulations and guidelines.

The Division of Historical and Cultural Affairs, with the approval of the Department of State, may formulate and adopt such rules, regulations, standards and guidelines as it deems necessary for the effective execution of its purposes under this chapter.

(75 Del. Laws, c. 153 § 2.)

Subchapter II
Archaeological Resources in or on State Lands

§ 5303 Purposes.

(a) The General Assembly finds that:

(1) Archaeological resources in or on state lands are an integral and irreplaceable part of the State's heritage;

(2) Archaeological resources are valued as nonrenewable resources that provide educational, scientific, social and economic benefits for all citizens;

(3) These resources are increasingly endangered because of their commercial attractiveness and the effects of natural forces and human intervention;

(4) Existing state laws do not provide adequate protection to prevent the loss and destruction of these archaeological resources resulting from such causes; and

(5) There is a wealth of archaeological information which has been legally obtained by private individuals for noncommercial purposes and which could voluntarily be made available to professional archaeological institutions to further the educational, scientific, social and economic benefits for all citizens.

(b) The purpose of this subchapter is to secure, for the present and future benefit of the people of Delaware, the protection of

archaeological resources which are in or on state lands, including subaqueous lands, to increase awareness and encourage meaningful stewardship of the State's archaeological heritage, and to foster increased cooperation and exchange of information among governmental authorities, the professional archaeological community, and private individuals having collections of archaeological resources and data.

(75 Del. Laws, c. 153 § 2.)

§ 5304 Definitions.

(a) "Abandoned shipwreck" means any shipwreck to which title has been voluntarily given up by the owner or by the owner not taking action after a wreck incident to claim title.

(b) "Archaeological investigation" means any surface collection, subsurface tests, excavation, or other activity that results in the disturbance or removal of archaeological resources.

(c) "Archaeological resource" means any artifact or material remains of past human life or activities which are at least 50 years old and are of archaeological interest, including but not limited to pottery, basketry, whole or fragmentary tools, implements, containers, weapons, weapon projectiles, by-products resulting from manufacture or use of human-made or natural materials, surface or subsurface structures or portions thereof, earthworks, fortifications, ceremonial structures or objects, cooking pits, refuse pits, hearths, kilns, post molds, middens, and shipwrecks; the site, location, or context in which such artifacts or material remains are situated; and any portion or piece of any of the foregoing.

(d) "Department" means the Department of State.

(e) "Director" means the Director of the Division of Historical and Cultural Affairs of the Department of State.

(f) "Division" means the Division of Historical and Cultural Affairs of the Department of State.

(g) "Embedded" means firmly affixed in the subaqueous lands such that the use of tools of excavation is required in order to move bottom sediments to gain access to a shipwreck, its cargo and any part thereof, or to any other archaeological resource.

(h) "Historic shipwreck" means a shipwreck that is listed in or eligible for listing in the National Register of Historic Places.

(i) "National Register of Historic Places" means the nation's official list of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture maintained by the United States National Park Service, Department of the Interior.

(j) "Of archaeological interest" means capable of providing scientific or humanistic understandings of past human behavior, cultural adaptation, and related topics through the application of scientific or scholarly techniques such as controlled observation, contextual measurement, controlled collection, analysis, interpretation and explanation.

(k) "Ordinary high water mark" means, for nontidal waters, the line at which the presence and action of water are so continuous in all ordinary years so as to leave a distinct mark on a bank either by erosion or destruction of terrestrial (nonaquatic) vegetation, or that can be determined by other physical or biological means.

(l) "Person" means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer or employee, agent, department, or instrumentality of the United States or of any state or political subdivision thereof.

(m) "Qualified person" means a person meeting the United States Secretary of the Interior's Professional Qualification Standards for Archeology (48 FR 44716; 36 CFR Part 61), as determined by the Director.

(n) "Secretary" means the Secretary of State.

(o) "Shipwreck" means a vessel or wreck, its cargo and other contents.

(p) "State lands" means any lands owned or controlled by the State of Delaware, including subaqueous lands.

(q) "Subaqueous lands" means submerged lands and tidelands.

(r) "Submerged lands" means:

(1) Lands lying below the line of mean low tide in the beds of all tidal waters within the boundaries of the State;

(2) Lands lying below the plane of the ordinary high water mark of nontidal rivers, streams, lakes, ponds, bays and inlets within the boundaries of the State as established by law; and

(3) Specific manmade lakes or ponds as designated by the Secretary of the Department of Natural Resources and Environmental Control.

(s) "Terrestrial lands" means lands owned or controlled by the State lying above the line of mean low tide.

(t) "Tidelands" means lands lying between the line of mean high water and the line of mean low water.

(75 Del. Laws, c. 153 § 2.)

§ 5305 Authority to enhance, preserve and protect archaeological resources.

(a) The title to all archaeological resources in or on State lands, including those in or on subaqueous lands, is hereby declared to be under the exclusive domain and control of the State. Further, as provided for under the Abandoned Shipwreck Act (Pub. L. 100-298; 43 U.S.C. §§ 2101-2106), and Guidelines therefore (55 FR 50115, 55 FR 51528), 56 FR 7875:

(1) The State has title to all shipwrecks embedded in subaqueous lands of this State; and

(2) The State has title to every shipwreck located on the State's subaqueous lands, if the shipwreck is listed in or determined eligible for listing in the National Register of Historic Places (16 U.S.C. § 470a; [former] 33 CFR Part 63 [repealed]; 36 CFR Part 60).

(b) The State's authority to enhance, preserve and protect archaeological resources in or on state lands is vested solely in the Department.

(c) Notwithstanding the jurisdictional provisions of § 7203 of this title, the Department is the custodian of archaeological resources in or on the State's subaqueous lands, including but not limited to shipwrecks to which the State has title under § 5305(a) of this title.

(75 Del. Laws, c. 153 § 2.)

§ 5306 Jurisdiction and inter-agency cooperation.

(a) When an archaeological resource is located within the jurisdiction of another state agency, the Division shall coordinate the review and evaluation of permit applications issued pursuant to § 5309 of this title to ensure conformance with all applicable laws and regulations.

(b) Any agency whose activities may affect state-owned shipwrecks shall consult with the Division, provide the Division the opportunity to review and comment on the proposed activity, and take into account the effects of the activity on such resources. This review will not substitute for consultation under Section 106 of the National Historic Preservation Act [16 U.S.C. § 470f] or Section 307 of the Coastal Zone Management Act [16 U.S.C. § 1456], if applicable.

(c) The Division may enter into agreements with state land managing agencies for the purposes of enhancing, preserving, protecting and promoting good stewardship of archaeological resources located in or on State lands managed by those agencies.

(d) All state land managing agencies shall cooperate with the Division in implementing the provisions of this chapter.

(e) All state and local law-enforcement agencies and officers are hereby empowered to, and shall assist the Division in carrying out its duties under this chapter.

(75 Del. Laws, c. 153 § 2.)

§ 5307 Restriction or closure of public access.

(a) The Division may temporarily restrict or close public access to any archaeological resource and its surrounding location or context in or on State lands, including subaqueous lands, and including public beaches notwithstanding the jurisdictional provisions of § 6803 of this title, whenever:

(1) In the judgment of the Director a condition constituting an imminent threat to an archaeological resource exists, which may cause harm to the qualities that make the resource of archaeological interest. Such threats may be due to the effects of natural forces or human intervention;

(2) The Director finds that an archaeological investigation is needed to determine if a resource is of archaeological interest; and/or

(3) The Director has issued a permit for archaeological investigation of an archaeological resource under § 5309 of this title, or the Division is conducting an archaeological investigation of an archaeological resource.

(b) The Director shall consult with the state land managing agency with jurisdiction over the lands in or on which the archaeological resource is located to define: the area to be restricted or closed; the anticipated period of the restriction or closure; how the restriction or closure will be posted to provide public notice; how the restriction or closure will be monitored or enforced; and, if the restriction or closure occurs pursuant to paragraph (a)(1) of this section, the steps that the Director and the other state land managing agency must take to alleviate the threat to the archaeological resource.

(c) The period of a restriction or closure under this section may not exceed 90 days, unless occurring pursuant to paragraph (a)(3) of this section, in which case the period of the restriction or closure is the term of the permit. The Director may, with the approval of the Secretary of State, extend a period of restriction or closure.

(1) The Director shall first consult with the state land managing agency in or on which the archaeological resource is located, as to the need for extending the period; and

(2) When occurring pursuant to paragraph (a)(1) of this section, the Director shall hold a public hearing; the Director shall take into account the comments provided at the public hearing, and within 15 days notify local governments and the public of the Director's decision on whether or not to extend the restriction or closure of access. The Director shall publish that decision in a daily newspaper of statewide circulation and in a newspaper of general circulation in the county in which the restriction or closure will occur.

(d) The Director may, with the approval of the Secretary of State, indefinitely restrict access to and recovery of certain shipwrecks to which the State holds title or terrestrial sites in or on state lands that have particular archaeological and/or environmental values.

(e) The Director may permit public access to certain shipwrecks to which the State holds title with appropriate restrictions to protect their archaeological and/or environmental values.

(f) Any person whose interest is substantially affected may appeal a decision of the Division made pursuant to this subsection regarding access to an archaeological resource. The appeal must be made to the Secretary, and filed with the Secretary within 60 days from the issuance of the Division's decision. The appeal must be conducted in accordance with the Administrative Procedures Act, § 10101 et seq. of Title 29. If an appellant exhausts all administrative remedies, the appellant is entitled to judicial review in accordance with subchapter V of the Administrative Procedures Act [§ 10141 et seq. of Title 29].

(75 Del. Laws, c. 153 § 2; 70 Del. Laws, c. 186 § 1.)

§ 5308 Permit required.

No person may excavate, collect, salvage, recover, remove, damage, or otherwise alter or deface any archaeological resource or its surrounding location or context, located in or on state lands, including subaqueous lands, without first having obtained a permit from the Division.

(39 Del. Laws, c. 11 § 2; 7 Del. C. 1953 § 5302; 64 Del. Laws, c. 138 §§ 4-6; 69 Del. Laws, c. 430 § 2; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 153 § 2.)

§ 5309 Permit application.

(a) Any qualified person may apply to the Division for a permit to conduct archaeological investigations on state lands. The application must contain information that the Division considers necessary, including information concerning the time, scope, location, specific purpose of the proposed work, and proposed disposition of recovered materials and associated records.

(b) The Division shall issue a permit pursuant to an application under subsection (a) of this section if the Division finds that:

(1) The applicant is qualified to carry out the permitted activity;

(2) The proposed activity is undertaken for the purpose of furthering archaeological knowledge in the public interest;

(3) The archaeological resources which are excavated or removed from state lands, including subaqueous lands, will remain the property of the State. Those resources and copies of associated archaeological records and data will be preserved by a qualified university, museum, or other scientific or educational institution, except as may be provided for under a shipwreck management program established pursuant to § 5316 of this title;

(4) The activity pursuant to the permit is not inconsistent with any management plan applicable to the state lands concerned; and

(5) The proposed activity will not interfere with archaeological investigations being conducted or planned by the Division.

(c) A permit may contain any terms, conditions, or limitations which the Division considers necessary to achieve the intent of the chapter in the best interest of the State. A permit must identify the person responsible for carrying out the archaeological investigation. The Division may set reasonable permit fees that approximate and reasonably reflect the costs necessary to defray the expenses of the Division for its services. Any fees collected by the Division under this section are hereby appropriated to the Division to carry out the purposes of this chapter.

(d) The Division may renew a permit upon or prior to expiration, upon such terms as the applicant and the Division may mutually agree. Holders of permits are responsible for obtaining permission of any federal agencies having jurisdiction, including but not limited to the United States Coast Guard, the United States Department of the Navy and the United States Army Corps of Engineers, and of state agencies having jurisdiction, including but not limited to the Department of Natural Resources and Environmental Control, prior to conducting any archaeological investigation on subaqueous or terrestrial state lands.

(e) The Division may suspend a permit issued under this chapter upon the determination that the permit holder has violated any provision of § 5312(a), (b), (c) or (d) of this title. The Division may revoke a permit upon the assessment of a civil penalty under § 5312(e) of this title against the permit holder, or upon the permit holder's conviction under § 5312(f) of this title. The Division may suspend or revoke a permit if the permit holder has not substantially commenced or is not diligently pursuing the archaeological investigation.

(f) Any permit applicant or permit holder may appeal the denial, suspension, or revocation of a permit by the Division. An appeal must be made to the Secretary and filed with the Secretary within 60 days from the issuance of the Division's decision. The appeal must be conducted in accordance with the Administrative Procedures Act, § 10101 et seq. of Title 29. If an appellant exhausts all administrative remedies, the appellant is entitled to judicial review in accordance with subchapter V of the Administrative Procedures Act [§ 10141 et seq. of Title 29].

(75 Del. Laws, c. 153 § 2.)

§ 5310 Qualified repositories.

The University of Delaware and the Division of Historical and Cultural Affairs are designated as properly qualified repositories within the meaning of this chapter.

(39 Del. Laws, c. 11 § 2; 48 Del. Laws, c. 219 § 1; 7 Del. C. 1953 § 5303; 64 Del. Laws, c. 138 § 7; 75 Del. Laws, c. 153 § 2.)

§ 5311 Repository of artifacts or material remains.

All artifacts or material remains found in or on state lands, including subaqueous lands, and related records resulting from research, surveys and excavation conducted under a permit must be deposited for permanent preservation in either the University of Delaware Department of Anthropology or the Division of Historical and Cultural Affairs, or in a qualified repository approved by the Director, except as may be provided for under a shipwreck management program established pursuant to § 5316 of this title.

(39 Del. Laws, c. 11 § 3; 43 Del. Laws, c. 194 § 1; 48 Del. Laws, c. 219 § 2; 7 Del. C. 1953 § 5304; 64 Del. Laws, c. 138 §§ 8-11; 75 Del. Laws, c. 153 § 2.)

§ 5312 Prohibited acts, criminal and civil penalties.

(a) A person may not excavate, collect, salvage, recover, remove, damage, or otherwise alter or deface any archaeological resource, or its surrounding location or context, located on State lands, including subaqueous lands, unless such activity is pursuant to a permit issued under § 5309 of this title.

(b) A person may not sell, transfer, exchange, transport, purchase, receive or offer to sell, transfer, exchange, transport, purchase or receive any archaeological resource as defined in § 5303 of this title, unless the Division specifically allows for such activity under a permit issued pursuant to § 5309 of this title and/or as may be provided for under a shipwreck management program established pursuant to § 5316 of this title.

(c) A person may not possess, use, or employ on lands owned or controlled by the State, including subaqueous lands, tools or devices

designed, modified or commonly used for the excavation, collection, salvage, recovery or removal of archaeological resources or otherwise designed or modified for activities prohibited by this chapter, excluding individuals permitted or authorized to possess such tools and devices in accordance with the requirements of this chapter.

(d) A person may not knowingly make a false statement, representation or certification in any application for permits granted under this chapter.

(e) Whoever violates or counsels, procures, solicits, or employs another to violate:

(1) Any prohibition contained in this chapter;

(2) Any condition or limitation in a permit issued pursuant to this chapter; or

(3) Any rule or regulation promulgated under this chapter

shall, upon conviction, be sentenced to pay a fine of not less than $1000 but not exceeding $10,000, or to imprisonment of up to 30 days, or both. Each day of excavation, alteration, destruction, injury or other violation is considered a separate offense and is punishable as such. Unauthorized tools or devices seized from violators of subsection (c) of this section may be ordered forfeited to the State without compensation. Further, restitution may be ordered to compensate the State for the cost of remedying or remediating any violation of this chapter. The Superior Court has jurisdiction of offenses under this chapter.

(f) Whoever violates or counsels, procures, solicits or employs another person to violate:

(1) Any prohibition contained in this chapter;

(2) Any condition or limitation in a permit issued pursuant to this chapter; or

(3) Any rule or regulation promulgated hereunder

shall be assessed a civil penalty of not less than $1000 but not exceeding $10,000. The Superior Court shall have jurisdiction of a violation in which a civil penalty is sought.

(g) Any expenses or civil penalties collected by the Division under this section may be allocated to the Division, subject to the approval of the Department, to carry out the purposes of this chapter.

(39 Del. Laws, c. 11 §§ 1, 5; 7 Del. C. 1953 §§ 5301, 5306; 64 Del. Laws, c. 138 §§ 2, 3, 14; 69 Del. Laws, c. 430 §§ 1, 3-5; 75 Del. Laws, c. 153 § 2.)

§ 5313 Exemptions.

(a) The provisions of §§ 5308, 5309, and 5312(c) of this title do not apply to activities of State agencies which are:

(1) Already subject to federal laws or regulations relating to archaeological resources, or

(2) Not intended as archaeological activities, such as, but not limited to, surveying, environmental remediation, soil testing, construction, or property maintenance. State agencies are encouraged to advise the Division of any archaeological resources found during the course of such activities, pursuant to the letter or spirit of § 5306 of this title.

(b) This chapter does not apply to public use areas on lands along the Atlantic coast from Cape Henlopen south to the state line, situated between the mean low water line and the base of the primary dune, unless otherwise restricted or closed by the Director under the authority of § 5307 of this title.

(69 Del. Laws, c. 430 § 6; 75 Del. Laws, c. 153 § 2.)

§ 5314 Confidentiality.

If the Director has reason to believe that disclosure of the exact location or nature of an archaeological resource would lead to vandalism, pilferage, damage, or otherwise pose a risk of harm to the resource or to the site at which the resource is located, regardless of ownership of the property, the Director may:

(1) Elect not to disclose such information to the public;

(2) Provide the public with only general information about the resource and/or its location, when notifying the public of a restriction or closure of access to a state archaeological resource under § 5307 of this title, or under provisions applicable to shipwrecks to which the State has title.

(75 Del. Laws, c. 153 § 2.)

§ 5315 Cooperation with private individuals.

(a) The Division shall take any action necessary and consistent with the purposes of the chapter to foster and improve the communication, cooperation, and exchange of information between the Division and:

(1) Private individuals having collections of archaeological resources and data which were obtained through legal means;

(2) Professional archaeologists and associations of professional archaeologists concerned with the archaeological resources of Delaware and of the United States.

(b) In order to protect and preserve archaeological resources which are found on privately owned lands in this State, it is a declaration and statement of legislative intent that archaeological excavations on privately owned lands are discouraged, except in accordance with and pursuant to the spirit and policy of this chapter; and persons having knowledge of the location of archaeological resources in Delaware are encouraged to communicate such information to the Director or to the Chairperson of the Department of Anthropology of the University of Delaware.

(39 Del. Laws, c. 11 § 4; 43 Del. Laws, c. 194 § 2; 48 Del. Laws, c. 219 § 3; 7 Del. C. 1953 § 5305; 64 Del. Laws, c. 138 §§ 12, 13; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 153 § 2.)

§ 5316 Shipwreck Management Program.

The Division may establish a Shipwreck Management Program, in cooperation with other state and federal agencies experienced in the management of subaqueous lands and resources, to encourage the identification, protection, and, where appropriate, the recovery and disposition of abandoned shipwrecks embedded in or located on state-owned or state-controlled subaqueous lands. The Division is authorized to establish a professional staff for the purpose of implementing the Program.

(75 Del. Laws, c. 153 § 2.)

Part VI
Archaeological and Geological Resources
Chapter 54
UNMARKED HUMAN BURIALS AND HUMAN SKELETAL REMAINS

§ 5401 Purpose.

The purpose of this subchapter is:

(1) To help provide adequate protection for unmarked human burials and human skeletal remains found anywhere within the State, including subaqueous lands, but excluding those found anywhere on federal land;

(2) To provide adequate protection for unmarked human burials and human skeletal remains not within the jurisdiction of the Medical Examiner that are encountered during archaeological excavation, construction or other ground disturbing activities;

(3) To provide for adequate skeletal analysis of remains removed or excavated from unmarked human burials;

(4) To provide for the dignified and respectful reinterment or other disposition of Native American skeletal remains.

(66 Del. Laws, c. 38 § 1; 75 Del. Laws, c. 153 §§ 4, 5.)

§ 5402 Definitions.

As used in this subchapter:

(1) "Committee" shall mean a body consisting of the Chief of the Nanticoke Indian Tribe, 2 members appointed by the Chief, the Director of the Division of Historical and Cultural Affairs of the Department of State and 2 members appointed by the Director and a seventh member from the private sector appointed by the Governor. The Committee members shall be residents of the State and shall serve 1-year, renewable terms.

(2) "Director" shall mean Director of the Division of Historical and Cultural Affairs, Department of State.

(3) "Human skeletal remains" or "remains" shall mean any part of the body of a deceased human being in any stage of decomposition.

(4) "Medical Examiner" shall be as defined in Chapter 47 of Title 29.

(5) "Professional archaeologist" shall mean a person having:

a. A graduate degree in archaeology, anthropology, history or another related field with a specialization in archaeology;

b. A minimum of 1 year's experience in conducting basic archaeological field research, including the excavation and removal of human skeletal remains; and

c. Designed and executed an archaeological study and presented written results and interpretations of such study.

(6) "Skeletal analyst" shall mean any person having:

a. A graduate degree in a field involving the study of the human skeleton such as skeletal biology, forensic osteology or other relevant aspects of physical anthropology or medicine;

b. A minimum of 1 year's experience in conducting laboratory reconstruction and analysis of skeletal remains, including the differentiation of the physical characteristics denoting cultural or biological affinity; and

c. Designed and executed a skeletal analysis and presented the written results and interpretations of such analysis.

(7) "Unmarked human burial" shall mean any interment of human skeletal remains for which there exists no grave marker or any other historical documentation providing information as to the identity of the deceased.

(66 Del. Laws, c. 38 § 1; 75 Del. Laws, c. 153 § 4.)

§ 5403 Discovery of remains and notification of authorities.

(a) Any person knowing or having reasonable grounds to believe that unmarked human burials or human skeletal remains are being encountered shall notify immediately the Medical Examiner or the Director.

(b) When unmarked burials or human skeletal remains are encountered as a result of construction or agricultural activities, said activity shall cease immediately upon discovery and the Medical Examiner or the Director notified of the discovery.

(c) Human burials or human skeletal remains which are encountered by a professional archaeologist as a result of survey or excavations must be reported to the Director. Excavation and other activities may resume after approval is provided by the Director. The treatment, analysis and disposition of the remains shall conform to the provisions of this subchapter.

(d) The director shall notify the Chief Medical Examiner, Department of Health and Social Services, of any reported human skeletal remains discovered by a professional archaeologist.

(66 Del. Laws, c. 38 § 1; 75 Del. Laws, c. 153 § 4.)

§ 5404 Jurisdiction over remains.

(a) Subsequent to notification of the discovery of an unmarked human burial or human skeletal remains, the Medical Examiner shall certify in writing to the Director, as soon as possible, whether the remains come under the Medical Examiner's jurisdiction.

(b) If the Medical Examiner determines that the remains come under the Medical Examiner's jurisdiction, the Medical Examiner will

immediately proceed with an investigation pursuant to Chapter 47 of Title 29.

(c) All those remains determined to be not within the jurisdiction of the Medical Examiner shall be within the jurisdiction of the Director.

(66 Del. Laws, c. 38 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 153 § 4.)

§ 5405 Archaeological investigation of human skeletal remains.

All excavations not under the jurisdiction of the Medical Examiner shall be either conducted by, or under the supervision of, a professional archaeologist and shall be subject to permission from the landowner. All permissible excavations shall be conducted in accordance with the regulations promulgated for this subchapter.

(66 Del. Laws, c. 38 § 1; 75 Del. Laws, c. 153 § 4.)

§ 5406 Consultation, analysis and disposition.

(a) The Committee shall be notified of all skeletal remains determined to be Native American within 5 days of discovery. Within 60 days of notification, the Director shall provide the Committee with a written plan for the treatment and ultimate disposition of the Native American skeletal remains.

(b) The Director shall publish notice of all excavations of human skeletal remains other than Native American, at least once per week for 2 successive weeks in a newspaper of general circulation in the county where the burials or skeletal remains were situated, in an effort to determine the identity or next-of-kin or both of the deceased. Treatment and ultimate disposition of the skeletal remains shall be subject to the written permission of the next-of-kin who notify the Director within 30 days of the last published notice. The Director shall provide next-of-kin with a written plan for treatment and ultimate disposition of human skeletal remains.

(c) All skeletal analysis conducted pursuant to this subchapter shall be undertaken only by a skeletal analyst as defined in § 5402(6) of this title.

(d) Any previously excavated skeletal remains of Native Americans of the State which are on display or remain uncovered as of June 5, 1987, shall be reinterred within 1 year. Treatment and disposition of all Native American remains discovered after enactment shall be determined by the Committee or, if direct descent can be determined, by the next-of-kin. In any event, Native American skeletal remains discovered after enactment shall be reinterred within 90 days unless an extension is granted by the Committee. Ultimate disposition of all non-Native American remains shall be determined by the next-of-kin, if known. If next-of-kin are unknown, disposition shall be determined by the Director. All costs associated with reinterment of human skeletal remains must be borne by the next-of-kin, if known.

(e) Any state agency which is responsible, either directly or indirectly, for the unearthing of human remains deemed to be the responsibility of the Division of Historical and Cultural Affairs shall be responsible for the cost of reinterment of those remains.

(66 Del. Laws, c. 38 § 1; 68 Del. Laws, c. 290 § 84; 75 Del. Laws, c. 153 §§ 4, 7.)

§ 5407 Prohibited acts.

No person, unless acting pursuant to Chapter 47 of Title 29, shall:

(1) Knowingly acquire any human skeletal remains removed from unmarked burials in Delaware, except in accordance with this subchapter.

(2) Knowingly sell any human skeletal remains acquired from unmarked burials in Delaware.

(3) Knowingly exhibit human skeletal remains.

(66 Del. Laws, c. 38 § 1; 75 Del. Laws, c. 153 § 4.)

§ 5408 Exceptions.

(a) Human skeletal remains acquired from commercial biological supply houses or through medical means are not subject to this subchapter.

(b) Human skeletal remains determined to be within the jurisdiction of the Medical Examiner are not subject to the prohibitions contained in this subchapter.

(c) Human skeletal remains acquired through archaeological excavations under the supervision of a professional archaeologist are not subject to the prohibitions as provided in § 5407(1) of this title.

(66 Del. Laws, c. 38 § 1; 75 Del. Laws, c. 153 §§ 4, 8.)

§ 5409 Criminal penalties.

Any person who violates § 5407 of this title shall upon conviction be sentenced to pay a fine of not less than $1,000 nor more than $10,000 or be imprisoned not more than 2 years or both. The Superior Court shall have jurisdiction of offenses under this chapter.

(66 Del. Laws, c. 38 § 1; 75 Del. Laws, c. 153 §§ 4, 6, 9.)

§ 5410 Rules, regulations, standards, and guidelines.

The Division of Historical and Cultural Affairs may, with the approval of the Department of State, formulate and adopt such rules, regulations, standards and guidelines as it considers necessary for the effective execution of its purposes under this chapter.

(75 Del. Laws, c. 153 § 10.)

Part VI
Archaeological and Geological Resources
Chapter 55
GEOLOGICAL SURVEY

§ 5501 Delaware Geological Survey; purposes.

The Delaware Geological Survey shall have the following purposes and objectives:

(1) The systematic investigation of the geologic structure of the State, the nature and composition of the igneous, sedimentary and metamorphic rocks, their areal extent and thickness, and other features that may lead to a better understanding of the geology of the State;

(2) The systematic exploration and examination of all minerals, rock materials, water and other earth resources which are, or may become in the foreseeable future, of importance to the economic development of the State, or to the defense of the State or the United States;

(3) The examination of the physiographic features of the State, with special reference to their practical bearing upon the State's economic life;

(4) The preparation of reports, with necessary illustrations and maps, which shall embrace both a general and detailed description of the geology and earth resources of the State;

(5) The preparation of the special geologic maps to illustrate the earth resources of the State;

(6) The consideration of such other scientific questions in the field of geology, as is deemed of value to the people of the State;

(7) The recommendation and preliminary drafting of such new state laws as are deemed advisable or necessary for regulating the optimum utilization and equitable administration of the State's geological resources.

(48 Del. Laws, c. 173 § 3; 7 Del. C. 1953 § 5502; 66 Del. Laws, c. 154 § 1.)

§ 5502 Management of Delaware Geological Survey.

The University of Delaware shall have general charge of the Survey and shall direct its operations.

(48 Del. Laws, c. 173 § 2; 7 Del. C. 1953 § 5503; 55 Del. Laws, c. 442 § 6.)

§ 5503 Superintendent; appointment; qualifications; compensation.

The University shall appoint as superintendent of the Survey a State Geologist and shall determine his or her compensation. The State Geologist shall be a member of the technical or professional staff of the University of Delaware, and 1/2 of his or her salary shall be paid from appropriations to the Survey and the other 1/2 shall be paid by the University of Delaware out of its instructional budget.

(48 Del. Laws, c. 173 § 2; 7 Del. C. 1953 § 5504; 70 Del. Laws, c. 186 § 1.)

§ 5504 Assistants and employees.

The University of Delaware shall appoint such assistants and employees as are necessary to carry out the purposes of this chapter and shall determine the compensation of such persons.

(48 Del. Laws, c. 173 § 2; 7 Del. C. 1953 § 5505.)

§ 5505 Responsibilities and duties of State Geologist.

The State Geologist and the Acting State Geologist shall have the following responsibilities and duties:

(1) The State Geologist or the Acting State Geologist shall hereby be required to evaluate all activities related to oil, gas and geothermal energy exploration or development on land or water within the State and report his or her findings and recommendations promptly to the appropriate and affected agencies and officials of the State. In order to receive and consider the report of the State Geologist, any agency or official of the State approached to allow, permit or otherwise provide for such activities shall promptly notify the State Geologist, providing details of the contact and requesting a report and recommendations.

(2) The Delaware Geological Survey may receive by appropriation or transfer funds for cooperative programs with its counterpart federal agencies, including the United States Geological Survey, the United States Bureau of Mines and the United States Minerals Management Service and shall be the only agency of the State to enter into agreements with those federal agencies.

(3) The State Geologist shall serve as the representative of the State to the River Master of the Delaware River in accordance with the Supreme Court Decree of 1954 [New Jersey v. New York, 347 U.S. 995, 74 S. Ct. 842; 98 L. Ed. 1127 (1954)].

(4) The State Geologist or the Acting State Geologist shall prepare reports to the General Assembly showing the progress and conditions of the Survey together with such other information as it deems necessary and useful. Any reports, maps or other literature prepared and printed by the Survey shall be distributed or sold as the interest of the State and of science demand. All material collected after having served the purposes of the Survey shall be distributed to the educational institutions of the State or the whole or part of such material shall be put on public exhibition.

(5) Responsibility for matters relating to water quality, geologic hazards, seismicity and cartographic information.

(48 Del. Laws, c. 173 § 4; 7 Del. C. 1953 § 5506; 55 Del. Laws, c. 442 § 7; 66 Del. Laws, c. 154 § 2; 70 Del. Laws, c. 186 § 1.)

Part VI
Archaeological and Geological Resources
Chapter 57
DISASTER RELIEF AND ASSISTANCE

§ 5701 Declaration of policy and intent.

(a) It is the policy and purpose of the State to obtain from the federal government all available relief and assistance to alleviate suffering and damage resulting from major disasters, such as flood, storm, hurricane, fire, drought or other catastrophe, in any part of the State, and to repair or restore essential public facilities that have been damaged or destroyed by a major disaster, and, to that end, to cooperate fully with the federal government and its agencies.

(b) It is the policy and purpose of the State to obtain from the federal government all available assistance for the improvement and maintenance of the natural resources of the State, and to that end, to cooperate fully with the federal government and its agencies.

(7 Del. C. 1953 § 5701; 53 Del. Laws, c. 345; 54 Del. Laws, c. 152 §§ 1, 2.)

§ 5702 Authority of Governor or designated representative to act for State.

(a) The Governor, or such officer, agency or department of the State as shall be designated in writing by the Governor to act as the State's representative, may enter into such agreements with the federal government, or an agency thereof, as the Governor or such designated representative shall deem necessary to obtain available aid, assistance and relief from the federal government, or its agencies, and do all other acts or things necessary or convenient to obtain such aid and assistance or to carry out the powers expressly granted by this chapter and to effectuate its purpose, including the power to act in the acquisition of lands or interests in lands privately owned.

(b) Neither the Governor nor such designated representative shall commit the State to any financial obligation except to the extent of available appropriations; provided, however, that any such agreement authorized by subsection (a) of this section may specify:

(1) That the State will agree to hold and save the United States and its agents free from any claim for damages which may arise out of the performance of such works and projects to be undertaken by the federal government or its agencies pursuant to any such agreement, other than claims arising from the tortious acts of agents or employees of the federal government;

(2) That the State will furnish or provide, free of cost to the United States, all lands, easements, rights-of-way, and other areas or interests in land within this State required for or in connection with the performance of the work or project to be undertaken by the federal government, or its agencies, in respect of such agreement, and for the maintenance thereafter of such work or project; and

(3) That the State will furnish or provide free of cost to the United States such things as may be required by the federal government in connection with the improvement or maintenance thereof.

(7 Del. C. 1953 § 5702; 53 Del. Laws, c. 345; 54 Del. Laws, c. 152 §§ 3-5.)

§ 5703 Costs and expense; fund to be charged.

Such sums as may be required, whether in payment of the costs of necessary legal proceedings, as compensation to property owners, or in furtherance of any agreement authorized by § 5702 of this title, shall be charged against any special or emergency appropriation made by the General Assembly in connection with the work or project which is the subject matter of the agreement with the federal government or its agencies.

(7 Del. C. 1953 § 5703; 53 Del. Laws, c. 345.)

§ 5704 Powers of Governor and Secretary of State.

(a) The Governor and the Secretary of State may do all things necessary and proper to provide for disaster recovery and rehabilitation.

(b) The Governor may receive and disburse on vouchers signed by the Secretary of State, sums of money from the United States federal government for disaster recovery and rehabilitation.

(7 Del. C. 1953 § 5704; 53 Del. Laws, c. 342 §§ 3, 4.)

Part VI
Archaeological and Geological Resources
Chapter 59
PUBLIC RECREATION ON PRIVATE LANDS

§ 5901 Purpose.

The purpose of this chapter is to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes, whether such persons entered upon the land of the owner with or without consent of the owner.

(7 Del. C. 1953 § 5901; 55 Del. Laws, c. 449; 67 Del. Laws, c. 107 § 1.)

§ 5902 Definitions.

As used in this chapter:

(1) "Charge" means the admission price or fee asked in return for invitation or permission to enter or go upon the land.

(2) "Land" means land, roads, water, watercourses, private ways and buildings, structures, and machinery or equipment when attached to the realty.

(3) "Owner" means the possessor of a fee interest, tenant, lessee, occupant or person in control of the premises.

(4) "Recreational purpose" includes, but is not limited to, any of the following, or any combination thereof: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, nature study, water skiing, winter sports, and viewing or enjoying historical, archaeological, scenic or scientific sites.

(7 Del. C. 1953 § 5902; 55 Del. Laws, c. 449.)

§ 5903 Limitation on duty of owner.

Except as specifically recognized by or provided in § 5906 of this title, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational purposes, or to give any warning of a dangerous condition, use, structure or activity on such premises to persons entering for such purposes. The limitation of duty of the owner granted by this section applies whether such persons entered upon the land of the owner with or without consent of the owner.

(7 Del. C. 1953 § 5903; 55 Del. Laws, c. 449; 67 Del. Laws, c. 107 § 2.)

§ 5904 Use of land without charge; limits of liability.

(a) Except as specifically recognized by or provided in § 5906 of this title, an owner of land who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby:

(1) Extend any assurance that the premises are safe for any purpose;

(2) Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed;

(3) Assume responsibility, or incur liability, for any injury to person or property caused by an act of omission of such persons.

(b) The limits of liability of an owner as set forth under this section shall apply whether the person entered upon the land of the owner with or without consent of the owner.

(7 Del. C. 1953 § 5904; 55 Del. Laws, c. 449; 67 Del. Laws, c. 107 § 3.)

§ 5905 Written waivers.

Unless otherwise agreed in writing, §§ 5903 and 5904 of this title shall be applicable to the duties and liability of an owner of land leased to the State, or any subdivision thereof, for recreational purposes.

(7 Del. C. 1953 § 5905; 55 Del. Laws, c. 449.)

§ 5906 Limitations on exemption from liability.

Nothing in this chapter limits in any way any liability which otherwise exists:

(1) For wilful or malicious failure to guard or warn against a dangerous condition, use, structure or activity;

(2) For injury suffered in any case where the owner of land charges the person or persons who enter or go on the land for the recreational use thereof, except that in the case of land leased to the State or a subdivision thereof, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this section.

(7 Del. C. 1953 § 5906; 55 Del. Laws, c. 449.)

§ 5907 Exemptions.

Nothing in this chapter shall be construed to:

(1) Create a duty of care, or ground of liability, for injury to persons or property;

(2) Relieve any person using the land of another for recreational purposes from any obligation which he or she may have in the

absence of this chapter to exercise care in his or her use of such land and in his or her activities thereon, or from the legal consequences of failure to employ such care.

(7 Del. C. 1953 § 5907; 55 Del. Laws, c. 449; 70 Del. Laws, c. 186 § 1.)

Part VII
Natural Resources
Chapter 60
ENVIRONMENTAL CONTROL

Subchapter I

General Provisions

§ 6001 Findings, policy and purpose.

(a) Findings. — The General Assembly hereby makes the following findings concerning the development, utilization and control of the land, water, underwater and air resources of the State:

(1) The development, utilization and control of the land, water, underwater and air resources of the State are vital to the people in order to assure adequate supplies for domestic, industrial, power, agricultural, recreational and other beneficial uses;

(2) The development and utilization of the land, water, underwater and air resources must be regulated to ensure that the land, water, underwater and air resources of the State are employed for beneficial uses and not wasted;

(3) The regulation of the development and utilization of the land, water, underwater and air resources of the State is essential to protect beneficial uses and to assure adequate resources for the future;

(4) The land, water, underwater and air resources of the State must be protected and conserved to assure continued availability for public recreational purposes and for the conservation of wildlife and aquatic life;

(5) The land, water, underwater and air resources of the State must be protected from pollution in the interest of the health and safety of the public;

(6) The land, water, underwater and air resources of the State can best be utilized, conserved and protected if utilization thereof is restricted to beneficial uses and controlled by a state agency responsible for proper development and utilization of the land, water, underwater and air resources of the State;

(7) Planning for the development and utilization of the land, water, underwater and air resources is essential in view of population growth and the expanding economic activity within the State.

(b) Policy. — In view of the rapid growth of population, agriculture, industry and other economic activities, the land, water and air resources of the State must be protected, conserved and controlled to assure their reasonable and beneficial use in the interest of the people of the State. Therefore, it is the policy of this State that:

(1) The development, utilization and control of all the land, water, underwater and air resources shall be directed to make the maximum contribution to the public benefit; and

(2) The State, in the exercise of its sovereign power, acting through the Department should control the development and use of the land, water, underwater and air resources of the State so as to effectuate full utilization, conservation and protection of the water and air resources of the State.

(c) Purpose. — It is the purpose of this chapter to effectuate state policy by providing for:

(1) A program for the management of the land, water, underwater and air resources of the State so directed as to make the maximum contribution to the interests of the people of this State;

(2) A program for the control of pollution of the land, water, underwater and air resources of the State to protect the public health, safety and welfare;

(3) A program for the protection and conservation of the land, water, underwater and air resources of the State, for public recreational purposes, and for the conservation of wildlife and aquatic life;

(4) A program for conducting and fostering research and development in order to encourage maximum utilization of the land, water, underwater and air resources of the State;

(5) A program for cooperating with federal, interstate, state, local governmental agencies and utilities in the development and utilization of land, water, underwater and air resources;

(6) A program for improved solid waste storage, collection, transportation, processing and disposal by providing that such activities may henceforth be conducted only in an environmentally acceptable manner pursuant to a permit obtained from the Department.

(7 Del. C. 1953 § 6001; 59 Del. Laws, c. 212 § 1.)

Subchapter II

Powers and Duties of Secretary and Department

§ 6002 Definitions.

The following words and phrases shall have the meaning ascribed to them in this chapter unless the context clearly indicates otherwise:

(1) "Activity" means construction, or operation, or use of any facility, property, or device.

(2) "Air contaminant" means particulate matter, dust, fumes, gas, mist, smoke or vapor or any combination thereof, exclusive of uncombined water.

(3) "Air pollution" means the presence in the outdoor atmosphere of 1 or more air contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant or animal life or to property, or which unreasonably interferes with the enjoyment of life and property within the jurisdiction of this State, excluding all aspects of employer-employee relationships as to health and safety hazards.

(4) "At cost" means the expense to the government to conduct tests and analyses. No added service fee, or other fees and charges, may be included in this cost.

(5) "Board" means the Environmental Appeals Board.

(6) "Boat docking facility" shall mean a place where vessels may be secured to a fixed or floating structure or to the shoreline or shoreline structure.

(7) "Borrow pit" means any excavation into the subsurface for the purpose of extraction of earth products with the exception of excavation for utility or road construction, agricultural or highway drainage, or dredging operations under the jurisdiction of the U.S. Army Corps of Engineers.

(8) "Categorical pretreatment standard" means a pretreatment standard which applies to industrial users in a specific industrial subcategory.

(9) "Commercial landfill" means a waste disposal facility available for use by the general public and which accepts waste for disposal for profit.

(10) "Debris disposal area" means an excavation, pit or depression into which land clearing debris, along with small amounts of construction or demolition waste incidental to construction, has been placed and which is not a permitted or approved waste management facility.

(11) "Dedicated pumpout facility" means a semi-permanent connection made to a vessel for the purpose of removing sewage from the vessel on a continuous basis or automatic intermittent basis to an approved disposal facility.

(12) "Delineation" shall mean the process of defining and/or mapping a boundary that approximates the areas that contribute water to a particular water source used as a public water supply.

(13) "Department" means the Department of Natural Resources and Environmental Control.

(14) "Direct vessel sewage pumpout connection" shall mean a semipermanent connection made to a vessel for the purpose of removing vessel sewage from the vessel holding tank or head on a continuous or automatic intermittent basis to an approved sewage disposal facility.

(15) "Discharge or indirect discharge" means the discharge or the introduction of pollutants from any nondomestic source into a POTW.

(16) "Domestic wastewater" means the liquid and water-borne human and/or household type waste derived from residential, industrial, institutional or commercial sources.

(17) "Dump station" means a type of pumpout facility that receives vessel sewage from portable marine sanitation devices and delivers that sewage to an approved sewage disposal facility.

(18) "Earth products" means any solid material, aggregate or substance of commercial value, whether consolidated or loose, found in natural deposits on or in the earth, including, but not limited to clay, silt, diatomaceous earth, sand, gravel, stone, metallic ores, shale and soil.

(19) "Environmental release" means any spillage, leakage, emission, discharge or delivery into the air or waters or on or into the lands of this State of any sewage of 10,000 gallons or more oil, industrial waste, liquid waste, hydrocarbon chemical, hazardous substance, hazardous waste, restricted chemical material, vessel discharge, air contaminant, pollutant, regulated biological substance or other wastes reportable pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. § 9601 et seq.], as amended, or regulations enacted pursuant to § 6028 of this title.

(20) "Excellent ground-water recharge potential area" shall mean any area where soils and sedimentary deposits of the most coarse grained nature have the best ability to transmit water vertically through the unsaturated zone to the water table as mapped by the methods described in the Delaware Geological Survey Open File Report No. 34, "Methodology For Mapping Ground-Water Recharge Areas in Delaware's Coastal Plain" (August 1991), and as depicted on a series of maps prepared by the Delaware Geological Survey. An excellent ground-water recharge potential area shall constitute a critical area as defined under Chapter 92 of Title 29.

(21) "Garbage" shall mean any putrescible solid and semisolid animal and/or vegetable wastes resulting from the production, handling, preparation, cooking, serving or consumption of food or food materials.

(22) "Graywater" means galley, bath and shower water.

(23) "Ground water" means any water naturally found under the surface of the earth.

(24) "Hydrocarbon chemical" means any compound composed of carbon and hydrogen.

(25) "Incinerator," "incinerator structure or facility," and "waste incinerator" include any structure or facility operated for the combustion (oxidation) of solid waste, even if the by-products of the operation include useful products such as steam and electricity. "Incinerator" shall not include:

a. Crematoriums;

b. The disposal of the bodies of animals through incineration;

c. The burning of poultry waste or poultry manure at the same site where the waste or manure was generated, which shall include the burning of poultry waste or poultry manure generated upon an adjacent farm;

d. The disposal of all materials used in the discovery, development, and manufacture of veterinary products, medicines and vaccines; or

e. The disposition of mortalities from poultry operations in facilities approved by the Delaware Department of Natural Resources and Environmental Control which comply with United States Department of Agricultural Natural Resources Conservation Service Interim Conservation Practice Standard Incinerator 769 or any successor standard.

(26) "Industrial user" means a source of indirect discharge. The term "industrial user" shall include, but not be limited to, the original source of the indirect discharge as well as the owners or operators of any intervening connections, other than those owned or operated by the receiving POTW, which convey the indirect discharge to the POTW.

(27) "Industrial waste" means any water-borne liquid, gaseous, solid or other waste substance or a combination thereof resulting from any process of industry, manufacturing, trade or business, or from the development of any agricultural or natural resource.

(28) "Liquid waste" means any industrial waste or sewage or other wastes or any combination thereof which may potentially alter the chemical, physical or biological integrity of water from its natural state.

(29) "Liquid waste hauler" means any person who engages in the removal of liquid wastes from septic tanks, cesspools, seepage pits, holding tanks or other such devices and conveys such liquid waste to a location removed from the point of acceptance.

(30) "Liquid waste treatment plant operator" means any person who has direct responsibility for the operation of a liquid waste treatment plant.

(31) "Live-aboard vessel" shall mean:

a. A vessel used principally as a residence;

b. A vessel used as a place of business, professional or other commercial enterprise and, if used as a means of transportation, said transportation use is a secondary or subsidiary use; this definition shall not include commercial fishing boats which do not fall under paragraph (31)a. of this section; or

c. Any other floating structure used for the purposes stated under paragraph (31)a. or b. of this section.

(32) "Marinas" are those facilities adjacent to the water which provide for mooring, berthing, or storage of boats, and which include any or all of the related ancillary structures and functions of marinas, such as docks, piers, boat storage areas, boat ramps, anchorages, breakwaters, channels, moorings, basins, boat repair services, boat sales, sales of supplies which are normally associated with boating such as fuel, bait and tackle, boat rentals and parking areas for users of the marina.

(33) "Marine Sanitation Device (MSD)" includes any equipment on board a vessel which is designed to receive, retain, treat or discharge sewage, and any process to treat such sewage. Marine sanitation devices are classified as:

a. "Type I marine sanitation device" means a device that produces an effluent having a fecal coliform bacteria count not greater than 1,000 per 100 milliliters and no visible floating solids.

b. "Type II marine sanitation device" means a device that produces an effluent having a fecal coliform bacteria count of not greater than 200 per 100 milliliters and suspended solids not greater than 150 milligrams per liter.

c. "Type III marine sanitation device" means a device that is certified to a no-discharge standard. Type III devices include recirculating and incinerating MSDs and holding tanks.

(34) "Oil" means oil of any kind and in any form, including but not limited to, petroleum products, sludge, oil refuse, oil mixed with other wastes and all other liquid hydrocarbons regardless of specific gravity.

(35) "Open dump" means any facility or site where solid waste is disposed which is not a sanitary landfill and which is not a facility for disposal for hazardous waste.

(36) "Other wastes" means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime cinders, ashes, offal, oil, tar, dye-stuffs, acids, chemicals and all discarded substances other than sewage or industrial wastes.

(37) "Persons" means any individual, trust, firm, joint stock company, federal agency, partnership, corporation (including a government corporation), association, state, municipality, commission, political subdivision of a state or any interstate body.

(38) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, hydrocarbons, oil, and product chemicals, and industrial, municipal and agricultural waste discharged into water.

(39) "POTW pretreatment program" means a program administered by a POTW for the purpose of enforcing pretreatment standards in accordance with the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. and regulations promulgated thereunder.

(40) "Pretreatment standard" means any pollutant discharge limit promulgated by the Administrator of the United States Environmental Protection Agency in accordance with § 307(b) and (c) of the Federal Water Pollution Control Act, as amended, 33

U.S.C. § 1317(b) and (c), or by the Secretary, which applies to industrial users.

(41) "Public drinking water system" shall mean a community, noncommunity or non-transient non-community water system which provides piped water to the public for human consumption. The system must have at least 15 service connections or regularly serve at least 25 individuals daily for at least 60 days.

(42) "Publicly owned treatment works" or "POTW" means either:

a. A treatment works which is owned by a city, town, county, district or other public body created by or pursuant to the laws of the State; or

b. Any such public body which has jurisdiction over the discharges to such treatment works.

(43) "Pumpout facility" means a mechanical device which is temporarily connected to a vessel for the purpose of removing sewage from a vessel to an approved sewage disposal facility.

(44) "Refuse" means any putrescible or nonputrescible solid waste, except human excreta, but including garbage, rubbish, ashes, street cleanings, dead animals, offal and solid agricultural, commercial, industrial, hazardous and institutional wastes and construction wastes resulting from the operation of a contractor.

(45) "Restricted chemical material" means:

a. Any halogenated hydrocarbon chemical (aliphatic or aromatic) including but not limited to trichloroethane, tetrachloroethylene, methylene chloride, halogenated benzenes and carbon tetrachloride; or

b. Any aromatic hydrocarbon chemical including, but not limited to, benzene, toluene and naphthalene; or

c. Any halogenated phenol derivative in which a hydroxide group and 2 or more halogen atoms are substituted onto aromatic carbons of a benzene ring including, but not limited to, trichlorophenol and pentachlorophenol; or

d. Similar materials including but not limited to acrolein, acrylonitrile or benzidene.

(46) "Rubbish" means any nonputrescible solid waste, excluding ashes, such as cardboard, paper, plastic, metal or glass food containers, rags, waste metal, yard clippings, small pieces of wood, excelsior, rubber, leather, crockery and other waste materials.

(47) "Sanitary landfill" means a facility for the disposal of solid waste which meets the criteria promulgated under § 6010(g)(1) of this title.

(48) "Secretary" means the Secretary of the Department of Natural Resources and Environmental Control or the Secretary's duly authorized designee.

(49) "Sewage" means water-carried human or animal wastes from septic tanks, water closets, residences, buildings, industrial establishments, or other places, together with such ground water infiltration, subsurface water, admixtures of industrial wastes or other wastes as may be present.

(50) "Sewage system" means any part of a wastewater disposal system including, but not limited to, all toilets, urinals, piping, drains, sewers, septic tanks, distribution boxes, absorption fields, seepage pits, cesspools and dry wells.

(51) "Sewage system cleanser" means: (i) Any solid or liquid material intended or used primarily for the purpose of cleaning, treating or unclogging any part of a sewage system, or (ii) any solid or liquid material intended or used primarily for the purpose of continuously or automatically deodorizing or disinfecting any part of a sewage system including, but not limited to, solid cakes or devices placed in plumbing fixtures. Excluded from this definition are products intended or used primarily in the manual surface cleaning, scouring, treating, deodorizing or disinfecting, of common plumbing fixtures.

(52) "Slip" means a place where a boat may be secured to a fixed or floating structure, including, but not limited to a dock, pier, mooring or anchorage. Slips may be wet (in the water) or dry (in a rack or other device on land).

(53) "Solid waste" means any garbage, refuse, refuse-derived fuel, demolition and construction waste wood, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under this chapter, as amended, or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954 [42 U.S.C. § 2011 et seq.], as amended. By-products of a uniform and known composition produced as a result of a production process are not solid wastes when incinerated onsite. All incinerators under state permit as of March 1, 2000, and renewal permit applications for these incinerators shall not come under the provisions of this section and § 6003 of this title.

(54) "Source water" shall mean any aquifer or surface water body from which water is taken either periodically or continuously by a public drinking water system for drinking or food-processing purposes.

(55) "Source water assessment" shall mean the identification and evaluation of the sources of water within the State that are used by public drinking water systems in an effort to determine the susceptibility of those sources to contamination.

(56) "Source water assessment area" shall mean the delineated area which contributes water to a public water supply system. This is called a wellhead protection area for a well and a watershed or basin for a surface water intake. A source water assessment area shall constitute a critical area as defined under Chapter 92 of Title 29.

(57) "Source water assessment plan" shall mean the October 1999 U.S. EPA-approved plan for evaluating the sources of public drinking water in Delaware for their vulnerability and susceptibility to contamination.

(58) "Source Water Protection Citizens Technical Advisory Committee" shall mean a group to advise the Secretary of the Department of Natural Resources and Environmental Control, including, but not limited to, representatives of the following organizations or municipalities: DNREC, Department of Health and Social Services, Department of Agriculture, the Delaware Nature Society, the Delaware Public Health Association, the American Association of Retired Persons, the United States Geological Survey, the Christina River Conservancy, the Water Resources Agency of the University of Delaware, the Council of Farm Organizations, the Delaware Rural Water Association, the League of Women Voters, the Friends of Herring Creek, the Civic League of New Castle County, the Delaware Geological Survey, the Committee of 100, the City of Dover, the City of Lewes, the New Castle County Department of Land Use, Kent County Levy Court, Sussex County Council, the League of Local Governments, the Sussex County Association of Towns, the Homebuilders Association of Delaware, the Commercial Industrial Realty Council, and the Delaware Association of Professional Engineers; and public water suppliers.

(59) "Surface water" means water occurring generally on the surface of the earth.

(60) "Treatment works" means any device and system used in the storage, treatment, recycling and reclamation of municipal sewage, or industrial wastes of a liquid nature, or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power and other equipment, and their appurtenances, extensions, improvements, remodeling, additions and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities and improvements to exclude or minimize inflow and infiltration.

(61) "Variance" means a permitted deviation from an established rule or regulation, or plan, or standard or procedure.

(62) "Vessel" shall mean and include every description of watercraft, boat, houseboat or other form of artificial contrivance used, or capable of being used, whether or not capable of self-propulsion, for navigation on the waters of the State.

(63) "Vessel discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping.

(64) "Vessel sewage" shall mean human body wastes and wastes from toilets and other receptacles intended to receive or retain human body wastes.

(65) "Vessel sewage pumpout station" shall mean a mechanical device which is temporarily connected to a vessel for the purpose of removing vessel sewage from its holding tank or head to an approved sewage disposal facility.

(66) "Water facility" means any well, dam, reservoir, surface water intake or waterway obstruction.

(67) "Water pollution" means the human-made or human-induced alteration of the chemical, physical, biological or radiological integrity of water.

(68) "Water supply system" means all plants, systems, facilities or properties used or useful, or having the present capacity for future use, in connection with the supply or distribution of water, and any integral part thereof, including water distribution systems, mains, laterals, pumping stations, stand pipes, filtration plants, purification plants, hydrants, meters, valves and equipment, appurtenances and all properties, rights, easements and franchises relating thereto and deemed necessary or convenient by the authority for the operation thereof. Except as otherwise provided in this chapter, the term "water supply system" shall not mean a dam, reservoir, surface water intake, water obstruction or well.

(69) "Water utility" shall mean any person or entity operating within this State any water service, system, plant or equipment for public use.

(70) "Water well contractor" means any person engaged in the business of contracting for the construction of water wells and/or installation of pumping equipment in or for wells.

(71) "Well" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed when the intended use of such excavation is for the location, testing, acquisition or artificial recharge of underground water, and where the depth is greater than the diameter or width.

(72) "Wellhead protection area" shall mean the surface and subsurface area surrounding a water well or wellfield supplying a public water system through which contaminants are likely to reach such a well or wellfield. A Wellhead Protection Area shall constitute a critical area as defined under Chapter 92 of Title 29.

(73) "Wellhead protection plan" shall mean the March 1990 U.S. EPA-approved plan for protecting the quality of drinking water derived from public water supply wells in Delaware.

(7 Del. C. 1953 § 6002; 59 Del. Laws, c. 212 § 1; 61 Del. Laws, c. 315 § 1; 62 Del. Laws, c. 412 §§ 1, 2; 62 Del. Laws, c. 414 § 3; 63 Del. Laws, c. 248 § 1; 64 Del. Laws, c. 146 § 4; 64 Del. Laws, c. 370 § 1; 64 Del. Laws, c. 479 §§ 4, 5; 65 Del. Laws, c. 144 § 1; 66 Del. Laws, c. 275 § 1; 67 Del. Laws, c. 353 § 2; 68 Del. Laws, c. 124 § 3; 68 Del. Laws, c. 137 §§ 1, 2; 68 Del. Laws, c. 403 §§ 1, 2; 69 Del. Laws, c. 302 § 6; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 418 § 1; 72 Del. Laws, c. 289 §§ 1, 6, 7; 73 Del. Laws, c. 67 § 1; 73 Del. Laws, c. 117 § 1.)

§ 6003 Permit — Required.

(a) No person shall, without first having obtained a permit from the Secretary, undertake any activity:

(1) In a way which may cause or contribute to the discharge of an air contaminant; or

(2) In a way which may cause or contribute to discharge of a pollutant into any surface or ground water; or

(3) In a way which may cause or contribute to withdrawal of ground water or surface water or both; or

(4) In a way which may cause or contribute to the collection, transportation, storage, processing or disposal of solid wastes, regardless of the geographic origin or source of such solid wastes; or

(5) To construct, maintain or operate a pipeline system including any appurtenances such as a storage tank or pump station; or

(6) To construct any water facility; or

(7) To plan or construct any highway corridor which may cause or contribute to the discharge of an air contaminant or discharge of pollutants into any surface or ground water.

(b) No person shall, without first having obtained a permit from the Secretary, construct, install, replace, modify or use any equipment or device or other article:

(1) Which may cause or contribute to the discharge of an air contaminant; or

(2) Which may cause or contribute to the discharge of a pollutant into any surface or ground water; or

(3) Which is intended to prevent or control the emission of air contaminants into the atmosphere or pollutants into surface or ground waters; or

(4) Which is intended to withdraw ground water or surface water for treatment and supply; or

(5) For disposal of solid waste.

(c) The Secretary shall grant or deny a permit required by subsection (a) or (b) of this section in accordance with duly promulgated regulations and:

(1) No permit may be granted unless the county or municipality having jurisdiction has first approved the activity by zoning procedures provided by law; and

(2) No permit may be granted to any incinerator unless:

a. The property on which the incinerator is or would be located is within an area which is zoned for heavy industrial activity and shall be subject to such process rules, regulations or ordinances as the county, municipality or other government entity shall require by law, such as a conditional use, so that conditions may be applied regarding the health, safety and welfare of the citizens within the jurisdiction; and

b. Every point on the property boundary line of the property on which the incinerator is or would be located is:

1. At least 3 miles from every point on the property boundary line of any residence;

2. At least 3 miles from every point on the property boundary line of any residential community; and

3. At least 3 miles from every point on the property boundary line of any church, school, park, or hospital.

(d) A county which requests authority to administer a system for granting or denying a septic tank permit, and which satisfies the Secretary that it has the capability, including but not limited to regulations and enforcement authority, may be authorized by the Secretary, for a term stated, to administer such a system for him or her within that county. In the event of such authorization, an applicant for a septic tank permit in that county shall not be bound by subsections (a) and (b) of this section.

(e) The Secretary may, after public hearings, publish a list of activities which do not require a permit.

(f) The Secretary may establish fees for permits issued pursuant to this section with the concurrence and approval of the General Assembly. The Secretary shall annually prepare a schedule of fees for permits issued pursuant to this section and submit the same as part of the Department's annual operating budget proposal.

(g) No county, municipality or other governmental entity shall issue any building, placement, storage or occupancy permit or license until the property owner has obtained from the Department any necessary permits for underground discharge of wastewater and withdrawal of groundwater.

(h) The Secretary may reduce the amount of any fee charged for any permit or license issued pursuant to the provisions of this title for particular types of permits or classes or categories of permittees.

(i) No county, municipality or other governmental entity shall issue any building, placement, storage or occupancy permit or license to any person intending to operate an incinerator unless:

(1) The property on which the incinerator is or would be located is within an area which is zoned for heavy industrial activity and shall be subject to such process rules, regulations or ordinances as the county, municipality or other government entity shall require by law, such as a conditional use, so that conditions may be applied regarding the health, safety and welfare of the citizens within the jurisdiction; and

(2) Every point on the property boundary line of the property on which the incinerator is or would be located is:

a. At least 3 miles from every point on the property boundary line of any residence;

b. At least 3 miles from every point on the property boundary line of any residential community; and

c. At least 3 miles from every point on the property boundary line of any church, school, park or hospital.

(7 Del. C. 1953 § 6003; 59 Del. Laws, c. 212 § 1; 65 Del. Laws, c. 344 § 1; 68 Del. Laws, c. 86 § 3; 68 Del. Laws, c. 89; 68 Del. Laws, c. 348 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 289 §§ 2-5.)

§ 6004 Permit — Application; hearing.

(a) Any person desiring to obtain a permit required by § 6003 of this title or a variance or an application to establish a redemption center or a certificate of public convenience and necessity required by subchapter V of this chapter shall submit an application therefor in such form and accompanied by such plans, specifications and other information as required by applicable statute or regulation.

(b) Except as otherwise provided in subsection (c) of this section, upon receipt of an application in proper form, the Secretary shall advertise in a newspaper of general circulation in the county in which the activity is proposed and in a daily newspaper of general

circulation throughout the State:

(1) The fact that the application has been received;

(2) A brief description of the nature of the application; and

(3) The place at which a copy of the application may be inspected.

The Secretary shall hold a public hearing on an application, if he or she receives a meritorious request for a hearing within a reasonable time as stated in the advertisement. A public hearing may be held on any application if the Secretary deems it to be in the best interest of the State to do so. Such notice shall also be sent by mail to any person who has requested such notification from the Department by providing the name and mailing address. The reasonable time stated shall be 15 days, unless federal law requires a longer time, in which case the longer time shall be stated. A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the permit's probable impact. The applicant shall be responsible for the cost of any such advertisements and notices made by the Department as required by this section, not to exceed $500.

(c) The advertisement and notice requirements set forth in subsection (b) of this section may not apply to a permit application received by the Department whenever the subject matter of said application relates to the following:

(1) Air quality control permit applications for open burning, or for the construction or operation of emission control equipment on an existing gasoline dispensing facility, a delivery vessel or a dry cleaning facility;

(2) Water quality control permit applications for a sewage system for 3 or fewer families, a municipal or publicly owned or operated sewage collection system that does not have a pump or lift station, or, a commercial septic system that is used to treat and dispose of 500 gallons or less per day of domestic wastewater only;

(3) Water well construction permit applications for any well from which the Department determines that the withdrawal under normal operations will not exceed 1,000,000 gallons per day.

The Secretary may act without public notice on any permit application that is specified in this subsection.

(d) Advertisements required under subsection (b) of this section may be placed by persons desiring to obtain a permit under § 6003 of this title, provided the advertisement meets the requirements contained in subsection (b) of this section and any additional requirements as may be specified by the Department.

(7 Del. C. 1953 § 6004; 59 Del. Laws, c. 212 § 1; 59 Del. Laws, c. 537 § 1; 61 Del. Laws, c. 503 § 3; 64 Del. Laws, c. 146 §§ 1-3; 64 Del. Laws, c. 472 § 1; 68 Del. Laws, c. 124 § 4; 70 Del. Laws, c. 53 § 1; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 117 § 2; 78 Del. Laws, c. 185 § 1.)

§ 6005 Enforcement; civil and administrative penalties; expenses.

(a) The Secretary shall enforce this chapter.

(b) Whoever violates this chapter or any rule or regulation duly promulgated thereunder, or any condition of a permit issued pursuant to § 6003 of this title, or any order of the Secretary, shall be punishable as follows:

(1) If the violation has been completed, by a civil penalty imposed by Superior Court of not less than $1,000 nor more than $10,000 for each completed violation. Each day of continued violation shall be considered as a separate violation. The Superior Court shall have jurisdiction of a violation in which a civil penalty is sought. If the violation has been completed and there is a substantial likelihood that it will reoccur, the Secretary may also seek a permanent or preliminary injunction or temporary restraining order in the Court of Chancery.

(2) If the violation is continuing, the Secretary may seek a monetary penalty as provided in paragraph (b)(1) of this section. If the violation is continuing or is threatening to begin, the Secretary may also seek a temporary restraining order or permanent injunction in the Court of Chancery. In his or her discretion, the Secretary may endeavor by conciliation to obtain compliance with all requirements of this chapter. Conciliation shall be giving written notice to the responsible party:

a. Specifying the complaint;

b. Proposing a reasonable time for its correction;

c. Advising that a hearing on the complaint may be had if requested by a date stated in the notice; and

d. Notifying that a proposed correction date will be ordered unless a hearing is requested.

If no hearing is requested on or before the date stated in the notice, the Secretary may order that the correction be fully implemented by the proposed date or may, on his or her own initiative, convene a hearing, in which the Secretary shall publicly hear and consider any relevant submission from the responsible party as provided in § 6006 of this title.

(3) In his or her discretion, the Secretary may impose an administrative penalty of not more than $10,000 for each day of violation. Prior to assessment of an administrative penalty, written notice of the Secretary's proposal to impose such penalty shall be given to the violator, and the violator shall have 30 days from receipt of said notice to request a public hearing. Any public hearing, if requested, right of appeal and judicial appeal shall be conducted pursuant to §§ 6006-6009 of this title. Assessment of an administrative penalty shall be determined by the nature, circumstances, extent and gravity of the violation, or violations, ability of violator to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation and such other matters as justice may require. Simultaneous violations of more than 1 pollutant or air contaminant parameter or of any other limitation or standard imposed under this chapter shall be treated as a single violation for each day. In the event of nonpayment of the administrative penalty after all legal appeals have been exhausted, a civil action may be brought by the Secretary in Superior Court for collection of the administrative penalty, including interest, attorneys' fees and costs, and the validity, amount and appropriateness of such administrative

penalty shall not be subject to review.

(c)(1) Whenever the Secretary determines that any person has violated this chapter, or a rule, or regulation, or condition of a permit issued pursuant to § 6003 of this title, or an order of the Secretary, said person shall be liable for all expenses incurred by the Department:

a. In abating the violation; or

b. Controlling a pollution incident related to the violation; or

c. Cleanup and restoration of the environment; or

d. The costs incurred by the Department in recovering such expenses.

Such expenses shall include, but not be limited to, the costs of investigation, legal fees and assistance, public hearings, materials, equipment, human resources, contractual assistance and appropriate salary and overtime pay for all state employees involved in the effort notwithstanding merit system laws, regulations or rules to the contrary. The Secretary shall submit a detailed billing of expenses to the liable person.

(2) In the event the liable person desires to challenge the detailed billing submitted by the Secretary, such person shall, within 20 days of receipt of the detailed billing request an administrative hearing before the Secretary. Testimony at the administrative hearing shall be under oath and shall be restricted to issues relating to:

a. The finding of violation; and

b. The billing of expenses submitted by the Secretary.

A verbatim transcript of testimony at the hearing shall be prepared and shall, along with the exhibits and other documents introduced by the Secretary or other party, constitute the record. The Secretary shall make findings of fact based on the record, and enter an order which shall contain reasons supporting the decision. An appeal of the decision of the Secretary may be perfected to Superior Court within 30 days of the decision of the Secretary. In lieu of holding an administrative hearing on the detailed billing, or in the event a liable person fails or refuses to pay any of the expenses listed in the detailed billing, the Secretary may seek to compel payment through the initiation of a civil action in any court of competent jurisdiction within the State of Delaware. This subsection shall not be affected by the appeal provisions of § 6008 of this title.

(d) Any expenses or 75 percent of civil or administrative penalties collected by the Department under this section are hereby appropriated to the Department to carry out the purposes of this chapter; however any expenditure or transfer must be approved by the Director of the Office of Management and Budget and the Controller General. The Department shall submit quarterly reports on the progress of the expenditures and/or projects. All expenditures must be recommended by the Department and approved by the Secretary. All penalty funds will be deposited in the Penalty Fund Account. All of the penalty fund expenditures made by the Department of Natural Resources and Environmental Control shall be reported annually to the Joint Finance Committee in the Department's annual budget presentation. Included in this presentation shall be an explanation of the process used to select the recipients of penalty fund money.

(e) Penalties or fines created by this section may be tripled with respect to any person or entity that was designated a chronic violator pursuant to § 7904 of this title at the time that the act leading to the penalty or fine occurred.

(7 Del. C. 1953 § 6005; 59 Del. Laws, c. 212 § 1; 59 Del. Laws, c. 537 §§ 2, 3; 66 Del. Laws, c. 163 §§ 1, 2; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 318 § 2; 74 Del. Laws, c. 37 § 1; 74 Del. Laws, c. 203 § 1; 75 Del. Laws, c. 88 § 21(4); 75 Del. Laws, c. 357 § 1; 78 Del. Laws, c. 177 § 18.)

§ 6006 Public hearings.

Any public hearing held by the Secretary concerning any regulation or plan, permit application, alleged violation or variance request shall be conducted as follows:

(1) For any hearing on an application for a permit or an alleged violation or variance request, notification shall be served upon the applicant or alleged violator as summonses are served or by registered or certified mail not less than 20 days before the time of said hearing. Not less than 20 days' notice shall also be published in a newspaper of general circulation in the county in which the activity is proposed or the alleged violation has occurred and in a daily newspaper of general circulation throughout the State.

(2) For a hearing on a regulation or plan proposed for adoption, notification shall be published in a newspaper of general circulation in each county and in a newspaper of general circulation in the State. Such notification shall include:

a. A brief description of the regulation or plan;

b. Time and place of hearing; and

c. Time and place where copies of the proposed regulation may be obtained and a copy of the plan is available for public scrutiny.

Such notice shall also be sent to any persons who have requested such notification from the Department by providing the name and mailing address.

(3) The permit applicant or the alleged violator or party requesting a variance may appear personally or by counsel at the hearing and produce any competent evidence in his or her behalf. The Secretary or his or her duly authorized designee may administer oaths, examine witnesses and issue, in the name of the department, notices of hearings or subpoenas requiring the testimony of witnesses and production of books, records or other documents relevant to any matter involved in such hearing; and subpoenas shall also be issued at the request of the applicant or alleged violator or party requesting a variance. In case of contumacy or refusal to obey a notice of hearing or subpoena under this section, the Superior Court in the county in which the hearing is held shall have jurisdiction upon application of the Secretary, to issue an order requiring such person to appear and testify or produce evidence as the case may require.

(4) A record from which a verbatim transcript can be prepared shall be made of all hearings and shall, also with the exhibits and other documents introduced by the Secretary or other party, constitute the record. The expense of preparing any transcript shall be borne by the person requesting it. The Secretary shall make findings of fact based on the record. The Secretary shall then enter an order that will best further the purpose of this chapter, and the order shall include reasons. The Secretary shall promptly give written notice to the persons affected by such order.

(5) The Secretary may establish a fee schedule for applications and hearings, and may collect from the applicant or from a violator finally adjudged guilty, the necessary expenses of the Department for conducting the hearing, or a reasonable fee for processing an application, or both. Any fees collected under this chapter are hereby appropriated to the Department to carry out the purposes of this chapter. The Secretary shall report through the annual budget process the receipt, proposed use and disbursement of these funds.

(7 Del. C. 1953 § 6006; 59 Del. Laws, c. 212 § 1; 63 Del. Laws, c. 322 § 105(a); 64 Del. Laws, c. 62 § 1; 68 Del. Laws, c. 148 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6007 Establishment of Environmental Appeals Board.

(a) There is hereby created an Environmental Appeals Board which shall consist of 7 Delaware residents, appointed by the Governor with the advice and consent of the Senate. The Chairperson shall be appointed by the Governor and serve at the Governor's pleasure. Each county shall be represented by 2 members. Registered members of either major political party shall not exceed the other major political party by more than 1. The term of each member appointed shall be 3 years. Vacancies in Board membership shall be filled by the Governor for the remainder of the unexpired term.

(b) The Board is a quasi-judicial review board which is constituted in order to hear appeals of decisions of the Secretary. The Board or its designee may issue subpoenas by certified mail for witnesses or evidence, administer oaths to witnesses and conduct prehearing conferences for the simplification of issues by consent, for the disposal of procedural requests or disputes and to regulate and expedite the course of the hearing.

(c) A simple majority of the Board shall constitute a quorum. A simple majority of those members of the Board present shall be required to override the decision of the Secretary. The Board shall schedule, but not necessarily conduct, a hearing within 30 days following the receipt of the appeal. In any event, the Board shall conduct, but not necessarily complete, the hearing within 180 days following the receipt of the appeal unless the parties agree otherwise. The Board may verbally announce the decision at the conclusion of the hearing. A written decision shall be mailed to the parties by certified mail within 90 days after the completion of the hearing. If the Board fails to conduct the hearing or to issue the written opinion as required, the decision of the Secretary shall be a final decision for the purposes of appeal.

(d) Any member of the Board with a personal or private financial interest in the outcome of an appeal before the Board shall disqualify himself or herself from any consideration of that matter and shall inform the Chairperson who shall note such interest on the record of the hearing.

(e) Each Board member shall be compensated for such reasonable expenses as travel and meals for each meeting and hearing attended.

(f) The Environmental Appeals Board shall adopt such rules and regulations as are necessary to provide procedures to implement the terms of §§ 6007-6009 of this title, which shall apply to appeals to the Environmental Appeals Board. Prior to adopting any such rules and regulations, the Board shall designate a day, time and place for a public hearing on such proposed rules or for any amendments to existing or proposed rules and regulations. The Board shall give 20 days' notice of such hearing by publication in a newspaper of general circulation in the State and shall make copies of such proposed regulations available to the public upon request. The public hearing on such regulations shall be consistent with the provisions of Chapter 101 of Title 29.

(g) In any appeal to the Board there shall be required a reasonable fee, as established by the General Assembly, to cover such costs as are incurred during the appeal. The fees charged by the Environmental Appeals Board shall be deposited in a special account in the name of the Environmental Appeals Board and shall be used solely for the costs and expenses of that Board in holding its hearings and proceedings.

(7 Del. C. 1953 § 6007; 59 Del. Laws, c. 212 § 1; 60 Del. Laws, c. 201 § 1; 68 Del. Laws, c. 86 § 4; 68 Del. Laws, c. 148 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6008 Appeals to Board.

(a) Any person whose interest is substantially affected by any action of the Secretary may appeal to the Environmental Appeals Board within 20 days after receipt of the Secretary's decision or publication of the decision. The Board shall conduct a public hearing for all appeals in accordance with Chapter 101 of Title 29. Deliberations of the Board may be conducted in executive session. Each member who votes shall indicate the nature of his or her vote in the written decision.

(b) Whenever a final decision of the Secretary concerning any case decision, including but not limited to any permit or enforcement action is appealed, the Board shall hold a public hearing in accordance with Chapter 101 of Title 29. The record before the Board shall include the entire record before the Secretary. All parties to the appeal may appear personally or by counsel at the hearing and may produce any competent evidence in their behalf. The Board may exclude any evidence which is plainly irrelevant, immaterial, insubstantial, cumulative or unduly repetitive, and may limit unduly repetitive proof, rebuttal and cross-examination. The burden of proof is upon the appellant to show that the Secretary's decision is not supported by the evidence on the record before the Board. The Board may affirm, reverse or remand with instructions any appeal of a case decision of the Secretary.

(c) Appeals of regulations shall be on the record before the Secretary. The Board may hear new evidence if it is relevant to or clarifies those issues in the record before the Secretary. The Board may exclude any new evidence which is plainly irrelevant, immaterial,

insubstantial, cumulative or unduly repetitive. Regulations will be presumed valid, and the burden will be upon the appellant to show that the regulations are arbitrary and capricious, or adopted without a reasonable basis in the record. The Board shall take due account of the Secretary's experience and specialized competence and of the purposes of this chapter in making its determination. The board may affirm, reverse or remand any appeal of regulations promulgated by the Secretary.

(d) The decision of the Board shall be signed by all members who were present at the hearing.

(e) There shall be no appeal of a decision by the Secretary to deny a permit on any matter involving state-owned land including subaqueous lands, except an appeal shall lie on the sole ground that the decision was discriminatory in that the applicant, whose circumstances are like and similar to those of other applicants, was not afforded like and similar treatment.

(f) No appeal shall operate to stay automatically any action of the Secretary, but upon application, and for good cause, the Secretary or the Court of Chancery may stay the action pending disposition of the appeal.

(g) At any time after the appeal to the Board, the parties may, by stipulation, proceed directly to Superior Court, in which case the Court may affirm, reverse or remand the Secretary's decision based on the record before the Secretary and the Board and whatever other evidence the parties may submit by stipulation. The standard of review for such an appeal shall be governed by subsections (b) and (c) of this section.

(h) In those circumstances in which the Board concludes that an immediate and expedited review of a decision of the Secretary is appropriate or necessary, the Board may hold a public hearing on the appeal at the earliest possible time and issue a decision on such appeal. In such a case, the notice requirements of this section and Chapter 101 of Title 29 do not apply, and the Board shall give advance notice of the hearing only to the extent reasonably possible.

(7 Del. C. 1953 § 6008; 59 Del. Laws, c. 212 § 1; 59 Del. Laws, c. 537 § 4; 67 Del. Laws, c. 377 § 1; 68 Del. Laws, c. 148 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6009 Appeal from the Board's decision.

(a) Any person or persons, jointly or severally, or any taxpayer, or any officer, department, board or bureau of the State, aggrieved by any decision of the Board, may appeal to the Superior Court in and for the county in which the activity in question is wholly or principally located by filing a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Any such appeal shall be perfected within 30 days of the receipt of the written opinion of the Board.

(b) The Court may affirm, reverse or modify the Board's decision. The Board's findings of fact shall not be set aside unless the Court determines that the records contain no substantial evidence that would reasonably support the findings. If the Court finds that additional evidence should be taken, the Court may remand the case to the Board for completion of the record.

(c) No appeal shall operate to stay automatically any action of the Secretary, but upon application, and for good cause, the Board or the Court of Chancery may stay the action pending disposition of the appeal.

(7 Del. C. 1953 § 6009; 59 Del. Laws, c. 212 § 1; 59 Del. Laws, c. 537 §§ 5, 6; 68 Del. Laws, c. 148 § 1.)

§ 6010 Rules and regulations; plans.

(a) The Secretary may adopt, amend, modify or repeal rules or regulations, or plans, after public hearing, to effectuate the policy and purposes of this chapter. No such rule or regulation shall extend, modify or conflict with any law of this State or the reasonable implications thereof.

(b) The Secretary shall formulate, amend, adopt and implement, after a public hearing, a statewide comprehensive water plan for the immediate and long-range development and use of the water resources of the State.

(c) The Secretary may formulate, amend, adopt and implement, after public hearing, a statewide air resources management plan to achieve the purpose of this chapter and comply with applicable federal laws and regulations. Any implementation plan in effect at the time of enactment of this chapter shall continue to be in effect unless amended or repealed by the Secretary.

(d) The Secretary may formulate, amend, adopt and implement, after public hearing, a statewide water pollution management plan to achieve the purposes of this chapter and comply with applicable federal laws and regulations. Any implementation plan in effect at the time of the enactment of this chapter shall continue to be in effect unless amended or repealed by the Secretary.

(e) The Secretary shall formulate, amend, develop and implement, after public hearing, a State solid waste plan in accordance with the requirements of subtitle D of the Resource Conservation and Recovery Act of 1976 (P.L. 94-580) as amended [42 U.S.C. § 6941 et seq.], and any regulations thereunder, hereafter referred to as RCRA: Provided, however, that such plan shall be formulated in coordination with the Delaware Solid Waste Authority and shall include provisions of the statewide solid waste management plan adopted by the Delaware Solid Waste Authority pursuant to § 6403(j) of this title which reflect the applicable functions and activities of the Delaware Solid Waste Authority under Chapter 64 of this title.

(f) The Secretary:

(1) Shall approve the allocation and use of water in the State on the basis of equitable apportionment;

(2) Shall approve all new plans and designs of all impounding water facilities by any state, county, municipal, public or private water user within the State pursuant to subchapter V of this chapter; and

(3) May require reports from all Delaware water users as to a description of their water facilities, and past and present records of water use.

(g)(1) The Secretary, after notice and public hearing, shall promulgate regulations containing criteria for determining which facilities

shall be classified as sanitary landfills and which shall be classified as open dumps within the meaning of this chapter. At a minimum such criteria shall provide that a facility may be classified as a sanitary landfill and not an open dump only if there is no reasonable probability of adverse effects on health or the environment from disposal of solid waste at such facility. Such regulations may provide for the classification of the types of sanitary landfills.

(2) On the date as determined under paragraph (g)(3) of this section below, the open dumping of solid waste or hazardous waste and the establishment of new open dumps is prohibited and all solid waste, including solid waste originating in other states but not including hazardous waste, shall be utilized for resource recovery or disposed of in sanitary landfills, within the meaning of this chapter, or otherwise disposed of in an environmentally sound manner, except in the case of any practice or disposal of solid waste under a timetable or schedule for compliance established under paragraph (g)(5) of this section below.

(3) Except as provided in paragraphs (g)(4) and (5) of this section below, the prohibition contained in paragraph (g)(2) of this section above shall take effect on the date of promulgation of regulations containing criteria under paragraph (g)(1) of this section or on the date of approval of the state solid waste plan under § 4007 of RCRA [42 U.S.C. § 6947], whichever is later.

(4) To assist in the formulation of the state solid waste plan, the Secretary, utilizing the criteria adopted pursuant to paragraph (g)(1) of this section above, shall develop and publish an inventory of all disposal facilities or sites in Delaware which are open dumps within the meaning of this chapter. With respect to any active disposal facilities or sites the Secretary shall coordinate the development of the inventory with the Delaware Solid Waste Authority. Prior to publication of the inventory the Secretary shall provide written notice of the proposed open dump designation to the owner and operator of the disposal facility or site which notice shall contain a detailed statement of deficiencies under the criteria adopted pursuant to paragraph (g)(1) of this section above. Upon receipt of notification the owner or operator shall, within 30 days, be entitled to request a public hearing before the Secretary pursuant to § 6006 of this title to challenge the designation; otherwise, the designation shall become a final decision of the Secretary. With 60 days of publication of the open dump inventory, the owner or operator of a disposal facility or site may apply to the Secretary for a timetable or schedule for compliance or closure under paragraph (g)(5) of this section below. During the pendency of any such application and prior to final action and disposition thereon the prohibition set forth in paragraph (g)(3) of this section above shall not apply with respect to that site. Upon application by the owner or operator, a site or facility may be removed from the open dump inventory after a determination by the Secretary that the basis upon which the site was designated as an open dump no longer exists. Any such application to remove a site or facility from the inventory shall be advertised in accordance with § 6004(b) of this title.

(5) All existing disposal facilities or sites for solid waste which are open dumps listed in the inventory under paragraph (g)(4) of this section shall comply with such measures as may be required by the Secretary, consistent with the requirements of RCRA [42 U.S.C. § 6901 et seq.], for closure or upgrading. The Secretary shall establish a timetable or schedule for compliance for such practice or disposal of solid waste which specifies a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with the prohibition on open dumping of solid waste within a reasonable time (not to exceed 5 years) from the date of publication of criteria under paragraph (g)(1) of this section.

(h)(1) Subject to subsection (f) of this section, the Secretary shall establish procedures for the issuance of water allocation permits which shall be granted concurrently with any license or permit to construct, extend or operate an irrigation well or surface water intake on any farm or farmland in the State. A water allocation permit issued pursuant to this subsection shall reserve the right of the person to whom the permit is issued to utilize up to 20 acre-inches per year, but not more than 10 acre-inches per month.

(2) For the purposes of this subsection:

a. An "acre-inch" of water is the amount of water required to cover 1 acre of land to a depth of 1 inch and is equal in volume to 27,154 gallons of water.

b. An "irrigation well" is an agricultural well which is used exclusively for the watering of lands or crops other than household lawns and gardens.

(i) The Secretary shall waive the requirements of § 6004(b) of this title for irrigation wells if:

(1) The permit application is submitted between and April 1 and October 1, inclusive;

(2) The permit application is to replace an existing irrigation well;

(3) The existing well has a valid allocation permit; and

(4) The replacement well will not exceed allocation permitted amounts.

(j) An emergency circumstance is deemed to exist if a well will replace an existing well and if the Department of Agriculture and/or the Department of Natural Resources and Environmental Control determines that the lack of water or delay in obtaining water poses an immediate and significant danger to the health or welfare of persons or their property, or if 1 or both of the Departments have determined that other exceptional circumstances exist. Verbal approval must be given for the installation of a well if an emergency circumstance exists, provided that:

(1) Within 72 hours after the verbal issuance of a permit number under emergency circumstances, the applicant submits to the Department a well permit application and well completion report, which must include the permit number.

(2) All wells constructed under emergency circumstances must be constructed in conformance with all applicable regulations and officially established policies.

(k) If an emergency circumstance exists when State offices are closed, a well may be constructed, providing that it replaces an existing

well and that the Department is notified verbally on the first working day following such action. A well permit application, including the well permit number, the appropriate application fee, and a well completion report must be submitted within 72 hours after notification.

(l) The following persons shall serve on an advisory committee that oversees the agriculture irrigation well procedures:

(1) The Secretary of Agriculture, or the Secretary's designee;

(2) The Secretary of the Department of Natural Resources and Environmental Control, or the Secretary's designee;

(3) One person to represent the Delaware Farm Bureau;

(4) One person to represent the Fruit and Vegetable Growers Association of Delaware;

(5) One person who is an irrigation dealer;

(6) One person who is a commercial irrigation well driller;

(7) One person from the University of Delaware Water Resources Agency; and

(8) One person from the Delaware Geological Survey.

The Secretary of Agriculture and the Secretary of the Department of Natural Resources and Environmental Control shall determine that the committee members meet the above descriptions. The Secretary of Agriculture, or the Secretary's designee, shall serve as the chairperson of the advisory oversight committee.

(7 Del. C. 1953 § 6010; 59 Del. Laws, c. 212 § 1; 60 Del. Laws, c. 288 § 2; 63 Del. Laws, c. 248 §§ 2-4; 67 Del. Laws, c. 344 § 4; 68 Del. Laws, c. 124 § 5; 73 Del. Laws, c. 191 § 1; 78 Del. Laws, c. 185 § 2.)

§ 6011 Variance.

(a) The Secretary may, upon application of a person (except an application concerning (1) a source of water or a sewerage facility for 3 or fewer families or (2) open burning, on which the Secretary may act without public notification), grant a variance to that person from any rule or regulation promulgated pursuant to this chapter after following the notice and hearing procedure set forth in § 6004 of this title.

(b) The variance may be granted if the Secretary finds that:

(1) Good faith efforts have been made to comply with this chapter;

(2) The person applying is unable to comply with this chapter because the necessary technology or other alternative methods of control are not available or have not been available for a sufficient period of time or the financial cost of compliance by using available technology is disproportionately high with respect to the benefits which continued operation would bestow on the lives, health, safety and welfare of the occupants of this State and the effects of the variance would not substantially and adversely affect the policy and purposes of this chapter;

(3) Any available alternative operating procedure or interim control measures are being or will be used to reduce the impact of such source on the lives, health, safety and/or welfare of the occupants of this State; and

(4) The continued operation of such source is necessary to national security or to the lives, health, safety or welfare of the occupants of this State.

(c) The Secretary shall publish his or her decision, except a decision involving (1) a source of water or a sewerage facility for 3 or fewer families or (2) open burning, and the nature of the variance, if granted, and the conditions under which it was granted. The variance may be made effective immediately upon publication.

(d) Any party may appeal a decision of the Secretary on a variance request to the Environmental Appeals Board under § 6008 of this title within 15 days after the Secretary publishes his or her decision.

(e) No variance can be in effect longer than 1 year but may be renewed after another hearing pursuant to this section.

(f) The granting of a variance shall not in any way limit any right to proceed against the holder for any violation of the variance. This chapter, or any rule, or regulation, which is not incorporated in the variance provisions, shall remain in full effect.

(g) Notwithstanding other provisions of this section, the Secretary is not authorized to approve requests for fundamentally different factor variances from categorical pretreatment standards promulgated by the Administrator of the United States Environmental Protection Agency pursuant to § 307(b) or (c) of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1317(b) or (c). The Secretary is authorized to accept and review such variance requests, and, upon review, deny such request or recommend that the Administrator of the United States Environmental Protection Agency approve such a variance request.

(7 Del. C. 1953 § 6011; 59 Del. Laws, c. 212 § 1; 59 Del. Laws, c. 537 §§ 8, 9; 62 Del. Laws, c. 414 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6012 Temporary emergency variances.

(a) Notwithstanding § 6011 of this title, other than subsection (g) of that section, the Secretary may grant a variance to any rules or regulations promulgated pursuant to this chapter, for a period not to exceed 60 days. The request for a temporary emergency variance shall be submitted in writing, setting forth the reasons for the request.

(b) A temporary emergency variance may be granted only after a finding of fact by the Secretary that:

(1) Severe hardship would be caused by the time period involved in obtaining variances pursuant to § 6011 of this title;

(2) The emergency was of such an unforeseeable nature so as to preclude, because of time limitations, an application under § 6011 of this title;

(3) The conditions set forth in § 6011(b)(1)-(4) of this title are satisfied.

(c) Temporary emergency variances granted pursuant to this section may not be extended more than once.

(d) The granting of any temporary emergency variance shall be published within 5 days of the granting of said variance.
(7 Del. C. 1953 § 6012; 59 Del. Laws, c. 212 § 1; 59 Del. Laws, c. 537 § 10; 62 Del. Laws, c. 414 § 2.)

§ 6013 Criminal penalties.

(a) Any person who wilfully or negligently:

(1) Violates § 6003 of this title, or violates any condition or limitation included in a permit issued pursuant to § 6003 of this title, or any variance condition or limitation, or any rule or regulation, or any order of the Secretary; or

(2) Violates any requirements of a statute or regulation respecting monitoring, recording and reporting of a pollutant or air contaminant discharge; or

(3) Violates a pretreatment standard or toxic effluent standard with respect to introductions of pollutants into publicly owned treatment works

shall be punished by a fine of not less than $2,500 nor more than $25,000 for each day of such violation.

(b) Any person who intentionally, knowingly, or recklessly:

(1) Makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under this chapter, or under any permit, rule, regulation or order issued under this chapter; or

(2) Who falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained under this chapter,

shall upon conviction be punished by a fine of not less than $500 nor more than $10,000 or by imprisonment for not more than 6 months, or both.

(c) Any person who intentionally or knowingly:

(1) Violates § 6003 of this title, or violates any condition or limitation included in a permit issued pursuant to § 6003 of this title, or any variance condition or limitation, or any rule or regulation, or any order of the Secretary; or

(2) Violates any requirements of a statute or regulation respecting monitoring, recording and reporting of a pollutant or air contaminant discharge; or

(3) Violates a pretreatment standard or toxic effluent standard with respect to introductions of pollutants into publicly owned treatment works,

and who causes serious physical injury to another person or serious harm to the environment as one result of such conduct, shall be guilty of a class D felony and shall, upon conviction, be sentenced in compliance with the sentencing guidelines established for class D felonies in § 4205 of Title 11.

(d) Any person:

(1) Who intentionally or knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under this chapter, or under any permit, rule, regulation or order issued under this chapter; or

(2) Who falsifies, tampers with or intentionally or knowingly causes to be rendered inaccurate any monitoring device or method required to be maintained under this chapter,

and who causes serious physical injury to another person or serious harm to the environment as 1 result of such conduct, shall be guilty of a class D felony and shall, upon conviction, be sentenced in compliance with the sentencing guidelines established for class D felonies in § 4205 of Title 11.

(e) Any officer of any corporation, manager of any limited liability company, or general partner of any limited partnership conducting business in the State who intentionally or knowingly authorizes or directs said business entity or its employees or agents to:

(1) Falsify or conceal any material fact required to be disclosed to the Department;

(2) Destroy, conceal or alter any records that the corporation is required by this title, the Department's regulations, or an order of the Department to maintain; or

(3) Commit any act in violation of this title or rules promulgated by the Department;

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

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

(g) The Superior Court shall have exclusive jurisdiction over prosecutions brought pursuant to subsections (a)-(e) of this section. Prosecutions pursuant to subsection (h) of this section may be brought in the jurisdiction of the Courts of the Justices of the Peace.

(h) Whoever violates this chapter, or any rule or regulation promulgated thereunder, or any rule or regulation in effect as of July 26, 1974, or any permit condition, or any order of the Secretary, shall:

(1) For the first conviction, be fined not less than $100 nor more than $500 for each day of violation;

(2) For a subsequent conviction for the same offense within a 10-year period, be fined not less than $500 nor more than $1,500 for each day of violation; and

(3) In addition to the penalties provided in paragraphs (h)(1) and (h)(2) of this section, if the offense involves the failure to acquire a permit as required under this chapter, the offender shall be assessed the cost of the permit, plus a 25 percent surcharge, in addition to the fine.

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

(j) The terms "intentionally," "knowingly," "recklessly," "negligently," and "serious physical injury," as used in this section, shall have the meanings assigned to them by Chapter 2 of Title 11.

(k) The term "serious harm to the environment" shall mean damage to the air, water or soil which has or will, beyond a reasonable doubt, cause serious physical injury to any persons working at the facility in question or persons within the State.

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

(1) An occupation, a business or a profession; or

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

The defendant may establish an affirmative defense under this subsection by a preponderance of the evidence. The provisions of this subsection are subject to the restrictions enumerated at § 453 of Title 11.

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

(7 Del. C. 1953 § 6013; 59 Del. Laws, c. 212 § 1; 59 Del. Laws, c. 537 §§ 11-13; 69 Del. Laws, c. 366 § 1; 71 Del. Laws, c. 140 § 1; 74 Del. Laws, c. 170 §§ 2, 3; 75 Del. Laws, c. 275 §§ 1-5; 76 Del. Laws, c. 403 §§ 2, 3.)

§ 6014 Regulatory and compliance information, facility performance and public information.

(a) The Department shall develop an Environmental Information System that will include general information about facilities and sites under the Department's regulatory jurisdiction as defined by Chapters 40, 60, 62, 63, 66, 70, 72, 74, 77, 78, and 91 of this title and Chapter 63 of Title 16. The Environmental Information System shall include information on all such facilities and sites related to permitting requirements, emissions and discharge monitoring and reporting data, compliance inspections, violations and enforcement actions. The System shall provide the public with information that indicates when a facility has been inspected, what violations are detected, when the facility comes into compliance, and any enforcement action that results from violations at the facility.

(b) The Secretary shall create or contract with a third party to create a central unified notification system to notify the public in a timely manner of environmental releases. That system shall be designed in a such a manner as to ensure the notification, within 12 hours after the Department is informed of an environmental release, of:

(1) The State Representative and State Senator in whose district the release occurred;

(2) Any community or civic group the majority of whose membership lives within 5 miles of the reporting facility that has identified itself to the Department as an entity wishing to receive notice pursuant to this subsection; and

(3) Any individual who lives within 5 miles of the reporting facility and who has identified himself or herself to the Department as a person wishing to receive notice pursuant to this subsection.

(c) The facility from which an environmental release has occurred shall pay to the Department the cost of the Department's notification under subsection (b) of this section. Such cost shall include a prorated share of the annual fixed costs incurred by the Department for the maintenance of the notification system created pursuant to subsection (b) of this section, and a prorated share of the initial development costs of the notification system to be equally distributed over the first 5 years of the system's existence, both to be determined in the sole discretion of the Department. The facility shall make payment under this subsection within 30 days of receiving written notice of the amount of payment due. Failure to make payment pursuant to this subsection in a timely fashion shall constitute a violation punishable under § 6005 of this title. For purposes of this section facility shall mean any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), wastewater treatment plant, pit, pond, lagoon, impoundment, landfill, storage container, or any site or area where an environmental release has occurred.

(d) Any records, reports or information obtained pursuant to this chapter and any permits, permit applications and related documentation shall be available to the public for inspection and copying; provided, that upon a showing satisfactory to the Secretary by any person that such records, reports, permits, permit applications, documentation or information, or any part thereof (other than effluent data) would, if made public, divulge methods or processes entitled to protection as trade secrets of such person, the Secretary shall consider, treat and protect such record, report or information, or part thereof, as confidential; provided further, however:

(1) That any such record, report or information accorded confidential treatment may be disclosed or transmitted to other officers, employees or authorized representatives of this State or of the United States concerned with carrying out this chapter or when relevant in any proceeding to effectuate the purpose of this chapter; and

(2) That any report environmental release, air contaminant or water pollutant emissions may be made available to the public as reported and as correlated with any applicable emission standards or limitations.

(7 Del. C. 1953 § 6014; 59 Del. Laws, c. 212 § 1; 59 Del. Laws, c. 537 § 14; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 117 § 4.)

§ 6015 Interference with Department personnel.

No person shall obstruct, hinder, delay or interfere with, by force or otherwise, the performance by Department personnel of any duty under this chapter, or any rule or regulation or order or permit or decision promulgated or issued thereunder.

(7 Del. C. 1953 § 6015; 59 Del. Laws, c. 212 § 1.)

§ 6016 Departmental investigations; witnesses; oaths; attendance.

In furtherance of the policy and purposes of this chapter, the Secretary may make or cause to be made any investigation or study which is, in his or her opinion, necessary for the purpose of enforcing this chapter. For such purposes the investigative officer designated by the Secretary may subpoena witnesses and the production of documents and compel their testimony. Testimony received at a Departmental investigation shall be under oath and open to the public. Findings of these investigations or studies shall be made public.

(7 Del. C. 1953 § 6016; 59 Del. Laws, c. 212 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6017 Sealing noncomplying equipment.

(a) The Department may seal, after consultation with the Attorney General, any source required to have a permit which is installed, altered, used or operated without such a permit or which is in violation of a cease and desist order.

(b) If the equipment is sealed, no person shall tamper with or remove the seal from any equipment so sealed. Violation of this provision shall make the violator upon conviction liable to punishment as provided in § 6005 of this title.

(c) A seal may be removed from equipment only upon receipt of written authorization from the Department. The Department shall order removal of the seal after the reason(s) which caused the sealing has been corrected.

(7 Del. C. 1953 § 6017; 59 Del. Laws, c. 212 § 1.)

§ 6018 Cease and desist order.

The Secretary shall have the power to issue an order to any person violating any rule, regulation or order or permit condition or provision of this chapter to cease and desist from such violation; provided, that any cease and desist order issued pursuant to this section shall expire (1) after 30 days of its issuance, or (2) upon withdrawal of said order by the Secretary, or (3) when the order is suspended by an injunction, whichever occurs first.

(7 Del. C. 1953 § 6018; 59 Del. Laws, c. 212 § 1.)

§ 6019 Voluntary compliance.

Nothing in this chapter shall prevent the Department from making efforts to obtain voluntary compliance by way of warning, notice or other educational means; this section does not, however, require that such voluntary methods be used before proceeding by way of compulsory enforcement.

(7 Del. C. 1953 § 6019; 59 Del. Laws, c. 212 § 1.)

§ 6020 Liberal construction.

This chapter, being necessary for the welfare of the State and its inhabitants, shall be liberally construed in order to preserve the land, air and water resources of the State.

(7 Del. C. 1953 § 6020; 59 Del. Laws, c. 212 § 1.)

§ 6021 Federal aid; other funds.

The Department may cooperate with and receive moneys from the federal government, any state or local government or any industry or other source. Such moneys received are appropriated and made available for the study and preservation of land, water and air resources.

(7 Del. C. 1953 § 6021; 59 Del. Laws, c. 212 § 1.)

§ 6022 Temporary limits and procedures for hazardous operations.

Where no rule or regulation has been promulgated which sets specific limits for the use, emission or discharge, or operating procedure for hazardous operations, the Secretary may set temporary limits or operating procedure; provided, that the temporary limits or orders shall not be effective for more than 6 months unless adopted into permanent rules and regulations within that period. The affected parties shall be given a hearing before the Department within 30 days, if requested, on any action taken under this section.

(7 Del. C. 1953 § 6022; 59 Del. Laws, c. 212 § 1.)

§ 6023 Licensing of water well contractors, pump installer contractors, drillers, drivers, pump installers, septic tank installers, liquid waste treatment plant operators and liquid waste haulers.

(a) No person shall:

(1) Engage in the drilling, boring, coring, driving, digging, construction, installation, removal or repair of a water well or water test well; or

(2) Install, maintain or repair pumping equipment in or from a well without a license issued by the Department, except (i) as, or under the supervision of, a licensed plumber, or (ii) an agricultural well on land owned or leased by the person installing, maintaining or repairing the pumping equipment. For the purpose of this paragraph "agricultural well" shall mean a well used for irrigation of crops, for

the watering of livestock or poultry, for aquaculture uses, or for other on-farm purposes where the water is not to be used for human consumption or to service a residential dwelling.

(b) No person shall engaged in the construction, repair, installation or replacement of a septic tank system or any part thereof except as or under the supervision of a licensed septic tank installer.

(c) No person shall operate any liquid waste treatment system without a duly licensed liquid waste treatment plant operator.

(d) No person shall haul, convey or transport any liquid waste in any container without a license issued by the Department.

(e) Any person requiring a license for any activity specified in subsections (a)-(d) of this section shall file an application with the Secretary in such form and accompanied by such information as the Secretary may require by regulation.

(f) The Secretary shall have the exclusive power to grant or deny any license required under subsections (a), (b), (c) and (d) of this section. The Secretary shall adopt regulations setting forth requirements, including an acceptable performance or an examination for obtaining and retaining any such license.

(7 Del. C. 1953 § 6023; 59 Del. Laws, c. 212 § 1; 59 Del. Laws, c. 537 § 15; 60 Del. Laws, c. 288 § 3; 64 Del. Laws, c. 472 § 2; 71 Del. Laws, c. 187 § 1.)

§ 6024 Right of entry.

The Secretary, or the Secretary's duly authorized designee, in regulating water pollution, air pollution, solid waste disposal or any other matter over which he or she has jurisdiction pursuant to this chapter, may enter, at reasonable times, upon any private or public property for the purpose of determining whether a violation exists of a statute or regulation enforceable by him or her, upon given verbal notice, and after presenting official identification to the owner, occupant, custodian or agent of said property.

(7 Del. C. 1953 § 6024; 59 Del. Laws, c. 212 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6025 Solid waste.

(a) The Secretary shall have exclusive authority to effectuate the purposes of this chapter concerning solid waste, set forth in § 6001(c)(6) of this title notwithstanding any authority heretofore conferred upon or exercised by any other state agency, but any regulations heretofore duly adopted by any other state agency shall remain in effect and be enforceable by the Secretary unless repealed, amended or modified by the Secretary. Chapter 64 of this title shall not be interpreted to be in conflict with either the purposes of this chapter concerning solid waste as set forth in § 6001(c)(6) of this title, or any regulation promulgated thereunder.

(b) No person shall cause or contribute to the disposal or discharge of solid waste anywhere in the State including any surface or ground water, except:

(1) Through municipal or private solid waste collection systems which have received a permit from the Department; or

(2) In solid waste disposal facilities which have received a permit from the Department; or

(3) In containers specially provided for solid waste collection by any state or municipal agency or private or public group, organization, agency or company which has received a permit from the Department.

(c) Any person charged with violation of subsection (b) of this section, upon conviction, shall be fined not less than $500 nor more than $1500 for each violation and there shall be no suspension of the fine. Each day of continued violation or part thereof shall be considered as a separate offense. The court shall, in addition to levying the fine, order the person convicted to remove or cause to be removed any improperly disposed solid waste. In addition to the fine, the sentencing judge may order community service directed to the removal of solid waste illegally disposed of in the State, and may order restitution for costs incurred in remediation of the solid waste illegally disposed of in the State. The Courts of the Justices of the Peace shall have jurisdiction of offenses under this section.

(d) In the event a motor vehicle is used during or in aid of the disposal or discharge of solid waste in violation of subsection (b) of this section, and the identity of the offender is not otherwise apparent, there shall be a rebuttable presumption that the registered owner of the motor vehicle caused or contributed to such disposal or discharge. The rebuttable presumption set forth in this section shall not apply to operators of buses carrying 9 or more persons.

(e) Any person, who causes or contributes to the disposal or discharge of solid waste anywhere in the State including any surface or ground water, except:

(1) Through municipal or private solid waste collection systems which have received a permit from the Department; or

(2) In solid waste disposal facilities which have received a permit from the Department; or

(3) In containers specially provided for solid waste collection by any state or municipal agency or private or public group, organization, agency or company which has received a permit from the Department,

shall be civilly liable to the owner or person in possession of the real property upon which the solid waste is disposed or discharged, for any property damage sustained, for costs incurred by the owner or person in possession for clean up and proper disposal of the solid waste, and for reasonable attorneys' fees. This cause of action is in addition to any other causes of action, rights and/or remedies the owner or person in possession may have.

(7 Del. C. 1953 § 6025; 59 Del. Laws, c. 212 § 1; 59 Del. Laws, c. 537 §§ 16, 17; 60 Del. Laws, c. 288 § 4; 76 Del. Laws, c. 403 §§ 4-7.)

§ 6026 License fees.

(a)(1) The Secretary may establish fees, subject to approval by the General Assembly, for granting any license to any percolation tester,

system designer, site evaluator, system inspector, well water contractor, pump installer contractor, well driver, well driller, pump installer, septic tank system installer, liquid waste hauler and liquid waste treatment plant operator.

(2) Notwithstanding any other provisions of law to the contrary, the General Assembly hereby authorizes and approves the following schedule of license fees to be imposed by the Department effective July 1, 2003: Percolation Tester, $40 annual fee; System Designer, $40 annual fee; Site Evaluator, $40 annual fee; System Inspector, $40 annual fee; Septic Tank System Installer, $40 annual fee; and Liquid Waste Hauler; $40 annual fee.

(3) Any fees collected under this subsection are hereby appropriated to the Department to carry out the purposes of this chapter.

(b) The Secretary may establish fees for conveyance of oil and hazardous substance through pipeline after holding public hearings on such a fee schedule.

(c) Any fee collected under this subsection is hereby appropriated to the Department to carry out the purposes of this chapter.

(7 Del. C. 1953 § 6026; 59 Del. Laws, c. 212 § 1; 60 Del. Laws, c. 288 § 5; 64 Del. Laws, c. 472 § 3; 74 Del. Laws, c. 139 § 1.)

§ 6027 Change of authority.

The word "Secretary" shall be substituted wherever the words "Water and Air Resources Commission" or "Commission" appear in the Delaware Code and any authority vested in the "Water and Air Resources Commission" or "Commission" is hereby delegated to the Secretary without qualification.

(7 Del. C. 1953 § 6027; 59 Del. Laws, c. 212 § 1.)

§ 6028 Report of discharge of pollutant or air contaminant.

(a) Any person who causes or contributes to an environmental release or to the discharge of an air contaminant into the air, or a pollutant, including petroleum substances, into surface water, groundwater or on land, or disposal of solid waste in excess of any reportable quantity specified under either regulations implementing § 102 of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended [42 U.S.C. § 9602], § 311 of the Clean Water Act of 1980, as amended [33 U.S.C. § 1321], or Department regulations, whichever restriction is most stringent, shall report such an incident to the Department as soon as the person has knowledge of said environmental release or discharge and activating their emergency site plan if appropriate unless circumstances exist which make such notification impossible. Such initial notification shall be made in person or by telephone to a number specifically assigned by the Department for this purpose and shall include, to the maximum extent practicable, the following information:

(1) The facility name and location of release;

(2) The chemical name or identity of any substance involved in the release;

(3) An indication of whether the substance is an extremely hazardous substance;

(4) An estimate of the quantity of any such substance that was released into the environment;

(5) The time and duration of the release;

(6) The medium or media into which the release occurred;

(7) Any known or anticipated acute or chronic health risks associated with the emergency and, where appropriate, advice regarding medical attention necessary for exposed individuals;

(8) Proper precautions to take as a result of the release, including evacuation (unless such information is readily available to the community emergency coordination pursuant to the emergency plan);

(9) The names and telephone number of the person or persons to be contacted for further information; and

(10) Such other information as the Department may require.

This information shall be made available to the public by posting on the Department's internet web site no later than 1 business day after the release is reported. Discharges in compliance with a validly issued state permit or in compliance with other state and federal regulations are exempt from the reporting requirement.

(b) The Department shall adopt regulations revising the list, referred to in subsection (a) of this section, of pollutants environmental releases or air contaminants and their reportable quantities which are to be reported to the Department.

(c) The reporting requirements under this section are in addition to and not in lieu of, any other discharge reporting requirements found in any other state, federal, county or local government permits, regulations or ordinances.

(d) At the Department's discretion, the Department may require said person to file a written report with the Department describing in detail the facts and circumstances of the discharge and measures proposed to prevent such discharge from occurring in the future.

(e) Discharges of an air contaminant or pollutant (including petroleum substances) that are wholly contained within a building are exempt from the reporting requirements.

(f) Any person who violates this section or any rule or regulation duly promulgated hereunder shall be punishable in accordance with the enforcement provisions of this chapter.

(7 Del. C. 1953 § 6028; 59 Del. Laws, c. 212 § 1; 59 Del. Laws, c. 537 § 18; 65 Del. Laws, c. 507 § 1; 66 Del. Laws, c. 221 § 1; 67 Del. Laws, c. 288 § 1; 73 Del. Laws, c. 117 § 3.)

§ 6029 Limitations on scope of chapter.

This chapter shall not apply to or change the existing law in respect to:

(1) The landowner's right to place a dam across a gully on his or her property or across a stream that originates on that landowner's

property where provision is made for continued established average minimum flow occurring for 7 consecutive days within the lowest flow year of record; or

(2) The right to build and maintain a dam or construct a pond and divert water from any stream on any stream having a minimum flow of not more than 1/2 million gallons of water per day, and utilize up to 360 acre inches of the impounded water per year so long as such action does not affect the established average minimum flow in the stream below the dam at any time; or

(3) Ponds not larger than 60,000 square feet constructed for purposes of conservation, recreation, propagation and protection of fish and wildlife, watering of stock or fire protection; or

(4) Linear water and wastewater utility projects that have a maximum width of disturbance of 30 feet or less and with a maximum total disturbance of 1 acre or less are: (i) subject to Erosion and Sediment Control regulations adopted by the Department, and (ii) exempt from Stormwater Management regulation adopted by the Department. For the purposes of this section "erosion and sediment control" means the control of solid material, both mineral and organic, during a land disturbing activity, to prevent its transport out of the disturbed area by means of wind, water, gravity, or ice. For the purposes of this section "stormwater management" means:

a. For water quantity control, a system of vegetative, structural, and other measurers that controls the volume and rate of Stormwater runoff which may be caused by land disturbing activities upon the land; and

b. For water quality control, a system of vegetative, structural, and other measures that controls adverse effects on water quality that may be caused by land disturbing activities upon the land.

(7 Del. C. 1953 § 6029; 59 Del. Laws, c. 212 § 1; 70 Del. Laws, c. 186 § 1; 80 Del. Laws, c. 392 § 2.)

§ 6030 Approval of water use.

No increase in the amount of water used shall be made by a user without prior approval of the Department.

(7 Del. C. 1953 § 6030; 59 Del. Laws, c. 212 § 1.)

§ 6031 Obligation of recipients of water allocations.

(a) The Secretary shall, when the use of water pursuant to an allocation granted under § 6010(f) of this title causes the depletion or exhaustion of an existing use of water, require as a condition of such allocation that the recipient of such allocation take 1 or more of the following actions:

(1) To provide free of charge to the affected person a complete water supply connection to a water supply distribution system and to provide water to the affected person for a term of 3 years in an amount not to exceed 100,000 gallons per year. Water used by the affected person which exceeds 100,000 gallons per year shall be paid for by the affected person on a quarterly basis at the rates established by the Public Service Commission as applicable to the supply of public water in the area in question; and/or

(2) To provide free of charge to the affected person an alternative source of water supply at least equal in quality and quantity to that existing at the time of the granting of the allocation.

(b) The Secretary shall, when an allocation granted pursuant to § 6010(f) of this title causes the depletion or exhaustion of an existing use of water, require as a condition of such allocation that the person receiving such allocation provide free of charge to the affected person an interim water supply which is adequate to meet such person's need. The Secretary shall determine the level of interim water supply sufficient to meet the needs of the affected person and shall further determine the dates on which the interim water supply will commence and terminate.

(c) The Secretary shall, upon receipt of a verified petition setting forth factual allegations that an allocation granted pursuant to § 6010(f) of this title caused the depletion or exhaustion of petitioner's existing use of water, schedule and conduct a hearing to consider the petition. Prior to a hearing under this subsection the Secretary shall give at least 20 days' notification of the date of the hearing to the petitioner and the person granted the allocation. The petitioner or the person granted the allocation may appear personally or by counsel at the hearing and produce any competent evidence. The Secretary or the Secretary's designee may administer oaths, examine witnesses and issue in the name of the Department subpoenae when requested by a petitioner or a person granted an allocation. A verbatim transcript of testimony at the hearing shall be prepared and shall, along with the exhibits and other documents introduced into evidence, constitute the record. The Secretary or the Secretary's designee shall make findings of fact based on the record and issue an order to effectuate such findings and further the purposes of this subsection. Any person whose interest is substantially affected by any order of the Secretary may appeal to the Environmental Appeals Board as provided in § 6008 of this title.

(61 Del. Laws, c. 123 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6032 Licensing of site evaluators, percolation testers and on-site system designers and contractors.

(a) No person shall conduct percolation tests or soil evaluations or design, inspect or install on-site wastewater treatment and disposal systems without first having obtained a license from the Secretary. As a prerequisite of licensing, the Secretary may require the person to demonstrate familiarity with test procedures and applicable regulations, and to sign a statement under penalty of perjury that he or she will abide by all statutes and regulations governing the design, inspection and installation of on-site wastewater treatment and disposal systems. In addition, the Secretary may require each licensee or class of licensees to show proof of surety to cover liability for such risks and in such amounts as the Secretary may establish by regulation after public notice in accordance with § 6006 of this title.

(b) Any license by the Secretary shall be for a fixed term not to exceed 3 years and shall be renewable upon application.

(c) The Secretary shall adopt such other regulations after public notice and hearing in accordance with § 6006 of this title as necessary to

accomplish the purposes of this title.

(d) The license requirements shall not apply in a county which has been delegated authority to issue septic tank permits pursuant to § 6003(d) of this title.

(61 Del. Laws, c. 264 § 1; 65 Del. Laws, c. 361 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 139 § 2.)

§ 6033 Pretreatment program.

(a) The Secretary shall develop, implement and enforce, and may amend, modify and repeal, a state pretreatment program in compliance with the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. and regulations promulgated thereunder. In addition to any other authority which the Secretary may exercise for this purpose under this chapter or other chapters of this Code, the Secretary may:

(1) Require any POTW to develop, submit for approval to the Secretary, administer and enforce a POTW pretreatment program;

(2) Review, approve and deny requests for approval of POTW pretreatment programs submitted by a POTW to the Secretary;

(3) Require any POTW, whether or not such POTW is required to develop and enforce a POTW pretreatment program, to develop, submit for approval to the Secretary and enforce specific limits on or prohibitions against discharges of pollutants by industrial users of such POTW to prevent interference with such POTW;

(4) Incorporate conditions into new or existing permits issued to POTWs, such as, but not limited to, compliance schedules, modification clauses, the elements of an approved pretreatment program and specific limits on or prohibitions against discharges by industrial users into such POTW;

(5) Review, approve and deny requests from POTWs required to develop POTW programs to modify categorical pretreatment standards to reflect removals achieved by such POTW;

(6) Require any POTW or industrial user to submit reports, monitor activities and maintain records to assure compliance with this section and regulations hereunder;

(7) Require compliance by industrial users with pretreatment standards, and discharge limits and prohibitions;

(8) Adopt, amend, modify or repeal rules or regulations to effectuate this section and comply with federal laws and regulations respecting pretreatment. Such rules and regulations shall be adopted, after public hearing, in accordance with § 6010 of this title; provided, however, that the Secretary may incorporate into state regulations without a public hearing a categorical pretreatment standard which has previously been promulgated by regulation by the Administrator of the United States Environmental Protection Agency. Prior to incorporating any such categorical pretreatment standard without a public hearing, the Secretary shall comply with §§ 10115, 10116 and 10118 of Title 29.

(b) The Secretary may seek any relief authorized by this chapter against any industrial user even if a POTW has acted or will act to seek such relief.

(62 Del. Laws, c. 414 § 4.)

§ 6034 Sewage system cleansers and additives.

(a) No person shall distribute, sell, offer or expose for sale in this State any sewage system cleanser or additive containing any restricted chemical materials in excess of 1 part per hundred by weight. The penalty for an initial violation of this subsection shall be a formal written warning by the Secretary for the first offense; and for any subsequent violation a fine of $500 shall be imposed.

(b) No person shall use, introduce or apply, or cause any other person to use, introduce or apply in any sewage system, surface waters or groundwaters in this State any sewage system cleanser or additive containing any restricted chemical material or any combination thereof, in excess of 1 part per hundred. The penalty for violating this subsection shall be a fine of $100 for the first offense and $1,000 for each subsequent offense.

(c) No person shall serve water, or a product containing water, to the public from a well ordered closed due to the presence of restricted chemical materials. The penalty for each such violation shall be a fine of not less than $1,000 nor more than $10,000. Any subsequent violation of this subsection by a violator shall result in the closing of the facility until a new and safe source of water is found and is operative in the facility.

(d) The Courts of the Justices of the Peace shall have jurisdiction over offenses under this section.

(e) The Secretary, with assistance from the Division of Public Health, shall:

(1) Conduct a public education program by utilizing mass-media instruments within 90 days of July 17, 1984;

(2) Thereafter, conduct random spot checks in appropriate business concerns to insure that no restricted chemical materials are on sale; and

(3) Take appropriate enforcement action for violations of the sale or use of restricted chemical materials as provided in subsections (a) and (b) of this section.

(64 Del. Laws, c. 370 § 2.)

§ 6035 Vessel sewage discharge.

(a) Marina owners/operators for marinas that are located in whole or in part on tidal waters of the State, and that provide dockage for vessels with a portable toilet or toilets or Type III marine sanitation device or devices (MSD), shall provide convenient access, as determined by the Department, to an approved, fully operable and well maintained pumpout facility or facilities and/or dump station or stations for the removal of sewage from said vessels to a Department approved sewage disposal system.

(b)(1) Owners/operators may agree to pool resources for a single pumpout dump station with Departmental approval based on criteria of number and class of vessels, marina locations, cost per pumpout use, and ultimate method of sewage treatment and disposal (i.e. septic system or waste water treatment facility).

(2) The owner/operator of any boat docking facility that is located in whole or in part on tidal waters of the State, and that provides dockage for a live-aboard vessel or vessels with a Type III marine sanitation device or devices, shall install and maintain at all times, in a fully operable condition, an approved dedicated pumpout facility at each live-aboard vessel slip for the purpose of removing sewage from the live-abroad vessel on a continuous or automatic, intermittent basis to a Department approved sewage disposal system.

(3) Any discharge, by any means, of untreated or inadequately treated vessel sewage into or upon the waters of any marina, boat docking facility or tidal water of the State is prohibited.

(4) All vessels while on waters of the State shall comply with 33 U.S.C. § 1322, as amended February 4, 1987.

(5) The Secretary shall have authority to adopt reasonable rules and regulations to implement this section.

(66 Del. Laws, c. 275 § 2; 68 Del. Laws, c. 137 § 3; 68 Del. Laws, c. 403 §§ 3-6.)

§ 6036 Projects of state significance.

The Department shall adopt objective standards and criteria to identify "projects of state significance" which standards and criteria shall be used by the Department in evaluating projects in the State requiring the review or approval of the Department. The process to be followed by the Department in the adoption of said objective standards and criteria shall include the following:

(1) In making the determination of whether any proposed project is a project of state significance, the Department shall consider, without limitation, the following factors:

a. Environmental impact, including, without limitation, probable air, land and water pollution likely to be generated by the proposed use under normal operating conditions and as the result of mechanical malfunction and human error; likely destruction of wetlands and flora and fauna; impact and effect of site preparation and facility operations on land erosion, drainage of the area in question, especially as it relates to flood control, and the quality and quantity of surface and ground water resources, such as the use of water for processing, cooling, effluent removal and other purposes; and the likelihood of generation of glare, heat, noise, vibration, radiation, electromagnetic interference and obnoxious odors.

b. Economic effect, including, without limitation, the number of jobs created and the income which will be generated by the wages and salaries of these jobs in relation to the amount of land required, and the amount of tax revenues potentially accruing to state and local government.

c. Effect on neighboring land uses including, without limitation, effect on public access to all state surface waters, effect on recreational areas and effect on adjacent residential and agricultural areas.

(2) The Secretary shall further elaborate on the definition of "heavy industry" in accordance with § 7005(c) of this title. The Secretary shall delineate "heavy industry of state significance" as part of this process, which shall be a subcategory of projects of state significance. Heavy industry uses of any kind, including heavy industry of state significance, not in operation on June 28, 1971, shall be prohibited in the coastal zone and no permits may be issued therefor.

(3) All agencies of state government shall assist the Department in developing objective standards and criteria to identify projects of state significance and shall provide such information as the Department requests. The Department shall develop regulations specifying the objective standards and criteria which are to be used to identify projects of state significance and shall make such regulations available for public review no later than 9 months after the effective date of this legislation. The Department shall hold a public hearing on said regulations and shall announce such hearing by publication in a newspaper of general circulation in each county of the State. The Department shall adopt regulations specifying the objective standards and criteria for identifying projects of state significance, with exception of heavy industry of state significance, no later than 13 months after the effective date of this legislation. The Department shall submit to the State Coastal Zone Industrial Control Board standards and criteria for identifying heavy industry of state significance for adoption no later than 11 months after the effective date of this legislation. The State Coastal Zone Industrial Control Board shall adopt said standards and criteria no later than 13 months after the effective date of this legislation.

(67 Del. Laws, c. 253 § 2.)

§ 6037 Obligation of persons who contaminate drinking water supplies.

(a)(1) The Secretary shall develop and publish the necessary forms to be used by any person who believes his or her drinking water supply has been contaminated to petition for an alternative water supply, said petition will include, at a minimum, the following:

a. Well information including a valid DNREC well permit number, or other certified documentation as to how and when the well or other water intake was constructed; and

b. The contaminant and its concentration in the form of a signed analytical report from a certified drinking water laboratory which identifies the sample, the contaminant, its concentration and the analytical method detection limit; and

c. The date the sample was collected, the name of the person collecting the sample, a description of the sample container, and the preservation techniques used, if any.

(2) The form shall be notarized and certified as being true and factual by the petitioner. Failure to provide all relevant information, or providing false information, will be grounds to reject a petition.

(b) Upon the Secretary's receipt of a certified petition that sets forth allegations that a discharge of a substance into a drinking water supply has affected a petitioner's use of an existing drinking supply well or other drinking water intake through any activity, the Secretary shall notify all potentially responsible parties who shall be given 30 days in which to either respond to the petition, propose remedial action or request a hearing on the merits of the petition.

(c) After evaluating all available information in his or her possession, the Secretary will issue an order either verifying or rejecting the contentions contained in the petition. The Secretary's decision to verify the petition and grant relief must be based on findings of fact contained in the certified petition and other scientifically conclusive evidence in his or her possession, which at a minimum establishes that:

(1) A state or federal drinking water standard has been exceeded; and

(2) A source, due to its nature, proximity, and hydrogeologic connection to the affected water supply is the likely cause of the contamination provided that the activity does not contain a valid state or federal permit with which the permittee has fully complied and provided that the permit did not anticipate the contamination of the drinking water supply.

(d) Upon verification of a petition as set forth in subsection (c) of this section, the Secretary shall require that if any activity results in the contamination of an existing drinking water supply by contaminants other than bacteria, viruses, nitrate or pesticides, which have been applied according to the manufacturer's instructions, then the person(s) who is responsible for the contamination shall complete 1 of the following activities which is deemed to be the most cost effective:

(1) Provide at no cost to each person who has had his or her existing drinking water supply contaminated, the installation of an alternative water supply of at least equal quantity and quality to said person's water supply that existed on the date the water supply was contaminated; or

(2) Provide at no cost to each person who has had his or her existing drinking water supply contaminated, a complete water supply connection to a water supply distribution system, and provide water to said person for a term of up to 3 years in an amount not to exceed 100,000 gallons per year. Said 3-year term shall commence on the first day water is supplied to said person by the person who contaminated the drinking water supply. Water used by said person that exceeds 100,000 gallons per year shall be paid by said person at a rate that is established by the appropriate rate setting body taking into consideration the rate charged for the supply of public water in the water supply area before it was contaminated, or the rate charged in a similar area; or

(3) Provide at no cost the treatment system necessary to maintain the water supply as an adequate drinking water supply and provide the costs of operation and maintenance of the system for a period of 3 years.

(e) In addition to the provisions of subsection (d) of this section, the Secretary may require that the person who has caused the contamination of a person's drinking water supply by contaminates other than bacteria, viruses, nitrate or pesticides, shall provide at no cost to each person who has had his or her drinking water supply contaminated an interim water supply that is of a quality and quantity to meet said person's needs as shall be determined by the Secretary on a case-by-case basis. In addition, the Secretary shall determine the dates on which the interim water supply shall commence and be terminated.

(f) Any affected party may appeal a decision by the Secretary concerning a replacement water supply petition to the Environmental Appeals Board in accordance with § 6008 of this title.

(g) Any hearing that may be conducted pursuant to the provisions of this section shall be done according to procedures as set forth in § 6006 of this title.

(h) For the purposes of this section, "contamination" means the human alteration of the chemical, physical, biological or radiological integrity of water which violates federal or state drinking water standards.

(67 Del. Laws, c. 406 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6037B Recreational water.

(a) The Secretary shall provide for the sanitary control of natural swimming and bathing places.

(b) The Secretary shall consult with the Director of the Division of Public Health prior to making any recommendations on swimming or bathing conditions that pose a significant risk to the public health.

(69 Del. Laws, c. 302 § 8.)

§ 6038 Borrow pits.

(a) The Secretary shall develop, implement and enforce, and may amend, modify and repeal, after notice and public hearing, a program to protect the waters of the State from adverse environmental impacts relating to the operation of borrow pits. In addition to any other authority which the Secretary may exercise for the purpose under this chapter or other chapters of the Delaware Code, the Secretary may:

(1) Require borrow pit owners/operators to obtain operating permits from the Department of Natural Resources and Environmental Control;

(2) Require reclamation of abandoned pits by owners/operators;

(3) Require borrow pit owners/operators to secure the borrow pit premises from illegal dumping, disposal of wastes or vandalism; and

(4) Adopt, amend, modify or repeal rules or regulations to effectuate this section.

(b) Fees may be collected or charged for permits to be issued under this section in an amount determined by the issuing authority, which fee shall not exceed the sum of $80 per disturbed acre, per year, per project.

(c) The Secretary may delegate all or part of the program to any county having rules or regulations governing borrow pits which, upon a

finding by the Secretary, are at least equivalent to state requirements.

(67 Del. Laws, c. 353 § 1.)

§ 6039 Debris disposal area remediation.

(a) The Secretary may develop, implement and administer a program for the identification, investigation, assessment, mitigation and remediation of debris disposal areas created as part of the construction of residential or subdivision developments. Any person who caused or contributed to the creation or use of a debris disposal area on or after December 8, 1988, shall be subject to enforcement for illegal disposal and may be required by order from the Department to remove and properly dispose of such material. The Department is authorized to develop policies, procedures and guidelines and may establish, amend, modify and repeal, after notice and public hearing, such regulations as may be necessary to effectuate the purposes of this section. The Department may establish an application fee not to exceed $250 for homeowners to participate in the remediation program. The money generated by this application fee shall be placed in the "Debris Disposal Area Remediation Account." This account shall only be used to offset costs of this program. Homeowners who wish to excavate and remove buried debris from their own residential property or homeowners who have already excavated and removed buried debris from their own residential property are eligible for reimbursement of the cost of remediation up to a maximum reimbursement of $10,000, provided that:

(1) The cost was incurred on or after December 8, 1988;

(2) The disposal areas were created as part of the construction of residential or subdivision developments in accordance with this section; and

(3) Satisfactory documentation of the work and expenses incurred are provided.

(b) The Department shall report the findings from the study and the evaluation and make recommendations to the Governor and the General Assembly no later than March 15, 1999.

(c) There shall be established within the Department an account to be known as the "Debris Disposal Area Remediation Account." All funds made available to the Department in accordance with the provisions of subsection (b) of this section shall be placed in the Debris Disposal Area Remediation Account to be used by the Department or its agents to carry out the purposes of this section. The Department may establish presumptive remedies to address the remediation of debris disposal areas. These funds shall be used for the purpose of identifying, investigating, assessing, mitigating or remediating debris disposal areas and associated effects as determined by the Department. Notwithstanding any other provision to the contrary, up to $7,500 per site may also be used to cover any secondary damage that may occur to existing structures or property as the result of the remediation, which, if applicable, shall be in addition to the maximum reimbursement amount established in subsection (a) of this section.

(d) The Department may use funds from the Debris Disposal Area Remediation Account to identify, investigate, assess, mitigate or remediate any debris disposal area constructed, used or filled subsequent to December 8, 1988, if the party responsible for the area does not respond as required to any order issued by the Secretary, and if such site presents an imminent threat to human health, safety or the environment as determined by the Department. In addition to the assessment of any penalty as provided in § 6005(a) and (b) of this title, any person who fails to comply with any order issued by the Secretary to identify, investigate, assess, mitigate or remediate any debris disposal area may be liable for all costs incurred by the Department to do so as provided in § 6005 (c) of this title.

(e) Except to the extent provided herein, no provision contained in this section shall relieve any party from compliance with or liability under any other environmental statute, including, but not limited to, Chapters 60, 62, 63, 66, 74 and 77 of Title 7.

(71 Del. Laws, c. 418 § 2; 72 Del. Laws, c. 318 §§ 1, 2; 73 Del. Laws, c. 212 § 1.)

§ 6040 Requirement for scrap tire piles; enforcement.

(a) The following definitions shall apply to this section:

(1) "Operator" means any person or entity who has or had a contractual or other responsibility for security, maintenance, sales or operations of a scrap tire pile or of any real property on which a scrap tire pile is located, at any time after July 20, 1999; provided that this definition does not include a person or entity whose only ownership interest is as a mortgagee.

(2) "Owner" means any person or entity who has or had legal or equitable ownership interest in a scrap tire pile, or in any real property on which a scrap tire pile is located, at any time after July 20, 1999.

(3) "Scrap tire" means:

a. A tire that is no longer prudent or practical for vehicular use; or

b. A tire that has not been used on a vehicle for more than 6 months after the last date it was used on a vehicle.

(4) "Scrap tire pile" means an accumulation of 100 or more scrap tires, whether or not they are lying 1 upon another, that:

a. Has been accumulated or located in the same general vicinity, or accumulated or located on a parcel of real property; and

b. Is not enclosed by a building.

(5) "Tire" means a covering fitting around the rim of a vehicular wheel to absorb shocks, usually of reinforced rubber or a rubberized compound, and pressurized with air or by a pneumatic inner tube, and typically weighing approximately 25 pounds. Included in this meaning is any substantial portion of such covering, and any weight tires including truck tires.

(b) The Secretary shall, after notice and public hearing, promulgate regulations to establish standards for storage of scrap tires. Such standards shall include:

(1) A limit on the number of scrap tires that may be stored at any given location;
(2) A limit on the length of time that scrap tires may be stored at a given location;
(3) Appropriate mosquito control methods to be employed at scrap tire piles; and
(4) Proper methods for managing scrap tire piles.
(72 Del. Laws, c. 205 § 1; 75 Del. Laws, c. 346 §§ 1-6.)

§ 6041 Scrap Tire Management Fund.

(a) There shall be established in the State Treasury and in the accounting system of the State a special fund to be known as the Scrap Tire Management Fund ("the Fund").

(b) The following moneys shall be deposited into the Fund:

(1) All fees collected by the State pursuant to § 2910 of Title 30;

(2) The State Treasurer shall credit to the Scrap Tire Management Fund such amount of interest as determined by this paragraph upon such Fund. On the last day of each month, the State Treasurer shall credit the Fund with interest on the average balance in the Fund for the preceding month. The interest to be paid to the Fund shall be that proportionate share, during such preceding month, of interest to the State as the Fund's and the State's average balance is to the total State's average balance; and

(3) Any other money appropriated or transferred to the account by the General Assembly.

(c) Money in the Fund may be used by the Secretary only to carry out the purposes of this section, including but not limited to the following activities.

(1) Conducting a comprehensive inventory of scrap tire piles in the State.

(2) Developing and implementing a scrap tire pile registration program.

(3) Implementing a program to clean up the scrap tire piles in existence in Delaware on June 30, 2006.

(4) Providing for state matching funds for the cleanup of scrap tire piles that have been registered in accordance with the scrap tire pile registration program referenced in paragraph (c)(2) of this section. For each registered scrap tire pile, the Fund shall cover 90% of the cost of cleaning up the pile. The owner and operator shall pay 10% of the cost of cleaning up the pile, unless they satisfactorily demonstrate the inability to pay that cost.

(5) Paying the total cost of cleaning up scrap tire piles located on abandoned properties and on estate properties where the inheritors do not register the scrap tire piles in accordance with the scrap tire pile registration program referenced in paragraph (c)(2) of this section. For such abandoned and estate properties, the Department shall place liens on the properties in order to recoup the entire cleanup cost upon sale of the properties.

(6) Payment to the Division of Revenue for the costs of administering § 2910 of Title 30.

(d) No greater than 15% of the moneys deposited into the Fund shall be used for administering this section without approval of the Joint Finance Committee.

(e) Prior to January 1, 2009, the Department shall prepare and submit to the Governor and the General Assembly a joint report on the progress made toward cleaning up the scrap tire piles in the State. Such report shall include recommendations for extension, modification, or termination of the Scrap Tire Management Fund and § 2910 of Title 30.

(74 Del. Laws, c. 203 § 2; 75 Del. Laws, c. 88 § 21(4); 75 Del. Laws, c. 346 § 7.)

§ 6042 Civil and administrative penalties; Community Environmental Project Fund.

(a) There is hereby established a Community Environmental Project Fund, referred to herein as the "Fund." The Fund shall be held as a separate account within the Department and may be invested by the State Treasurer in securities consistent with investment policies established by the Cash Management Policy Board.

(b) The Fund shall consist of 25 percent of all civil or administrative penalties collected by the Department pursuant to § 4015, § 6005, § 6617, § 7011, § 7214, § 7906, § 9109, or § 9111 of this title. Twenty-five percent of such civil and administrative penalties are hereby appropriated to the Fund, subject to the requirements of this section.

(c) Moneys shall be expended from the Fund only for Community Environmental Projects, referred to herein as "Projects." As used herein the term "Community Environmental Project" means a project that is undertaken for the purpose of effecting pollution elimination, minimization, or abatement, or improving conditions within the environment so as to eliminate or minimize risks to human health, or enhancement of natural resources for the purposes of improving indigenous habitats or the recreational opportunities of the citizens of the Delaware. The Secretary may, by regulation, provide for further definition of such Projects.

(d) The Secretary, after consultation with the Community Involvement Advisory Council, shall give priority to Community Environmental Projects which benefit communities that are most impacted by specific infraction(s) or violation(s). Specifically, the Secretary, at his or her discretion, shall determine whether a proposed Project is located within the watershed or airshed adversely affected by a violation or infraction as part of the evaluation process. The Secretary shall ensure that records identify the location of each civil or administrative penalty. No provision of this section shall be construed to require the Department to expend funds from the Fund in the absence of a suitable Project within the community where the violation or infraction occurred. The Secretary may also determine that the requirements of this subsection cannot practicably be met with respect to expenditures from the Fund associated with a penalty from a facility or location because such amount is insufficient or too large to be an appropriate expenditure. The expenditure of funds required

under this subsection may be waived by the Secretary, with the concurrence of the Director of the Office of Management and Budget and Controller General.

(e) In the event that the requirements of this section conflict with applicable federal or State of Delaware requirements pertaining to the establishment and collection of penalties or other assessments by the Department, such requirements shall take precedence over the conflicting requirements of this section.

(f) The Department shall submit quarterly reports on the progress of the expenditures and/or projects conducted with the Community Environmental Project Fund to the Governor and members of the General Assembly. All of the expenditures made by or on behalf of the Fund, together with an explanation the process utilized for selecting and prioritizing Projects, shall be reported annually to the Joint Finance Committee in the Department's budget presentation.

(74 Del. Laws, c. 203 § 2; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 88 § 21(4); 75 Del. Laws, c. 346 § 7; 78 Del. Laws, c. 193 § 1.)

Subchapter II-A

Regional Greenhouse Gas Initiative and CO2 Emission Trading Program

§ 6043 Findings, purpose, and definitions.

(a) Findings. — The General Assembly hereby makes the following findings concerning the development, utilization and control of the air resources of the State related to impacts of carbon dioxide (CO2) emissions:

(1) There is growing scientific consensus that the increased anthropogenic emissions of greenhouse gases are enhancing the natural greenhouse effect and causing changes in the Earth's climate.

(2) Climate change poses serious potential risks to human health and terrestrial and aquatic ecosystems globally, regionally and in the State.

(3) CO2 is an air contaminant as defined in § 6002 of this title.

(4) It is in the interest of the State to protect human health and terrestrial and aquatic ecosystems by taking actions to stabilize and to limit the CO2 contributions from the State.

(5) A CO2 reduction program focusing on fossil fuel-fired electricity generation, and the development of a CO2 allowance trading program, will create a strong incentive for the creation and deployment of more efficient fuel-burning technologies, renewable resources and end-use efficiency resources, which will lead to lower dependence on imported fossil fuels.

(6) Given the absence of federal action to protect the nation, a number of states, including Delaware, are taking actions regionally to reduce power sector CO2 emissions.

(7) The State of Delaware is a signatory state to the Regional Greenhouse Gas Initiative ("RGGI"), a cooperative effort on the part of mid-Atlantic and northeastern states to curtail CO2 emissions from power plants.

(8) The Memorandum of Understanding ("MOU") signed by the Governors of participating RGGI states requires each participating state to promulgate regulations to establish a cap-and-trade program for CO2 with the goal of stabilizing CO2 emissions at current levels through 2015 and reducing by 10 percent such emissions by 2019.

(9) The MOU sets an initial emissions cap of 7,559,787 short tons of CO2 for Delaware and further requires a minimum of 25 percent of Delaware's allocation of CO2 allowances under the cap-and-trade program to be used for public benefit purposes. The cap and Delaware's allocation may be adjusted in the future.

(10) Implementation of a CO2 reduction program on a large scale, such as regionally, or nationally, is important so as to maximize our efficient use of energy and our contribution to lowering CO2 emissions while minimizing impacts on electric system reliability and unnecessary costs to Delaware power consumers. Further, costs of the CO2 cap and trade program are anticipated to be less burdensome if the program is implemented, to the extent possible and practicable, on a regional level.

(11) Pursuant to Senate Concurrent Resolution 28 of the 144th General Assembly, a stakeholder workgroup was convened to study the RGGI MOU, analyze the actions of other RGGI states, and consider and recommend the best course of action for Delaware, noting particularly the quantity of CO2 allowances to be auctioned and the potential for the use of any revenue to further the goals of the Sustainable Energy Utility or such other goals the workgroup considered consistent with the RGGI MOU.

(b) Definitions. — For purposes of this chapter, the following terms shall have the meaning set out herein.

(1) "CO2 allowance" shall mean a limited authorization to emit up to 1 ton of CO2.

(2) "Public benefit purpose" shall mean purposes including the promotion of energy efficiency, the mitigation of electricity ratepayer impacts attributable to RGGI, the promotion of distributed renewable or non-carbon-emitting energy technologies, the stimulation and reward of investment in the development of innovative carbon emissions abatement technologies with significant carbon reduction potential, and funding of the administration of the Program established by this chapter.

(3) "Regional Greenhouse Gas Initiative" or "RGGI" shall the mean Regional Greenhouse Gas Initiative as established by the MOU signed by Delaware and other states calling for the development of a program to reduce CO2 emissions from energy generating facilities utilizing fossil fuels.

(76 Del. Laws, c. 262 § 1.)

§ 6044 Regional Greenhouse Gas Initiative.

(a) The General Assembly explicitly authorizes and sanctions the prior and ongoing participation of the Secretary of the Department of Natural Resources and Environmental Control, and the Chair of the Public Service Commission, and their duly authorized representatives, as part of their official duties, to implement and participate in the Regional Greenhouse Gas Initiative (RGGI).

(b) Representatives of the RGGI states have formed a nonprofit corporation called "RGGI Inc." to assist in the development of the regional program for reducing CO2 emissions. The General Assembly explicitly authorizes and sanctions the prior and ongoing participation in RGGI Inc. by the Secretary of the Department of Natural Resources and Environmental Control, and the Chair of the Public Service Commission, and their duly authorized representatives, as part of their official duties. The State may contract with RGGI Inc, pay dues to RGGI Inc, and transfer funds to RGGI Inc. to facilitate implementation of the RGGI program.

(c) The Secretary of the Department of Natural Resources and Environmental Control is herein authorized to promulgate regulations to implement the RGGI cap and trade program consistent with the RGGI Memorandum of Understanding, as amended.

(d) No person that is required by regulation to hold CO2 allowances shall operate in Delaware unless it holds CO2 allowances as required by the regulations implementing the RGGI Program.

(e) The Secretary shall enforce the provisions of this subchapter.

(76 Del. Laws, c. 262 § 1.)

§ 6045 Auction of allowances.

(a) The Secretary of the Department of Natural Resources and Environmental Control is hereby authorized to establish, implement and manage an auction program to sell CO2 allowances into a market based trading program consistent with the RGGI Memorandum of Understanding (MOU) and this statute. The Secretary shall make every effort to participate in a regional allowance auction with other RGGI states but may conduct a Delaware-only auction if such individual auction is found to be in the best interests of Delaware electric ratepayers, as determined by the Secretary, and after consultation with the Delaware Public Service Commission.

(b) The Secretary need not establish, implement or manage the elements of the allowance auction program by regulation. However, the Secretary shall publish the elements of the auction program in the Delaware Register of Regulations no less than 60 days prior to Delaware's participation in its first auction. The Secretary may modify the auction program as the Secretary deems necessary, but substantive modifications shall also be published in the Delaware Register of Regulations.

(c) Any auction of Delaware CO2 allowances shall be conducted in accordance with accepted auction practices and principles and shall seek to maximize the efficacy of the RGGI program, minimize program costs to consumers and provide a liquid, transparent market for CO2 allowances.

(d) Beginning with 2009 CO2 allowances, the Secretary shall auction 60% of allowances available to Delaware and allocate 40% to generators in proportion to their average annual emissions from 2000-2002. The percentage of allowances auctioned by the Secretary shall increase by 8% per year, such that 100% of Delaware's allowances for 2014 shall be auctioned.

(76 Del. Laws, c. 262 § 1.)

§ 6046 Auction revenue.

(a) All proceeds associated with the auction of CO2 allowances shall be directed to public benefit purposes as defined herein.

(b) The Secretary shall hold any and all auction proceeds in an interest bearing account with all interest directed to the account to carry out the purposes set forth herein.

(c) The Secretary shall direct auction proceeds to the following uses:

(1) Sixty-five percent of the CO2 allowance proceeds shall be directed to the Sustainable Energy Utility (SEU), established in § 8059 of Title 29. The SEU shall apply these funds to further the goals and activities of the SEU including, but not limited to, the promotion of energy conservation, energy efficiency, renewable energy, and energy financing pursuant to § 8059(f)(3) of Title 29.

(2) A total of 15% of the CO2 allowance proceeds shall be directed to low-income consumers, of which 10% shall be directed to the federally funded and state-administered Weatherization Assistance Program (WAP), and up to 5% shall be directed to the federally funded and state-administered fuel assistance (Low Income Home Energy Assistance Program or LIHEAP) programs. Participants in the LIHEAP program funded pursuant to this section shall also participate in the WAP program within 2 years of receiving assistance through LIHEAP, subject to funding availability. These programs are administered by the Division for State Service Centers in the Delaware Department of Health and Social Services.

(3) Percentage allocations of funds to the SEU and low-income consumers may be reviewed and adjusted annually by a committee comprised of the Secretary of the Department of Natural Resources and Environmental Control (DNREC), who shall serve as committee chair, the Chair of the Board of the SEU, and the program managers of the state WAP and LIHEAP.

(4) Ten percent of CO2 allowance proceeds shall be directed to Greenhouse Gas Reduction Projects, selected by the Secretary following a periodic competitive proposal process. The Secretary shall utilize an advisory body composed of electric generators, environmental advocates, legislators and such others as the Secretary may find useful in developing guidelines for the proposal process and in soliciting and ranking of projects. Projects must result in quantifiable and verifiable reductions in Greenhouse gas emissions in Delaware not otherwise required by federal or state law and not receiving funding from any other state sources.

(5) The Secretary shall use up to 10% of CO2 allowance proceeds as detailed in subsection (d) of this section. Expenses for running the RGGI program shall be met first, prior to distribution of funds as outlined above.

(d) The Secretary of DNREC shall use annual auction proceeds to implement the cap-and-trade program, monitor emissions, allowances and offsets, and pay any expenses associated with the program including, but not limited to, expenses related to auctioning and tracking of allowances. This may include contracting with RGGI Inc., paying of dues to RGGI Inc., or transferring funds to RGGI Inc. should DNREC determine it appropriate for RGGI Inc. to undertake any action related to implementation of the program. Any auction proceeds directed to the Secretary of DNREC may also be used to fund climate change activities designed to reduce greenhouse gas emissions from all sectors of Delaware's economy and to maintain a public information program to educate Delawareans about the impacts of climate change on Delaware, and for any administrative costs associated with support of the SEU not otherwise provided for under § 8059 of Title 29.

(76 Del. Laws, c. 262 § 1; 78 Del. Laws, c. 290 § 176; 79 Del. Laws, c. 395 § 1.)

§ 6047 Federal preemption.

Should a national cap and trade program essentially equivalent to the requirements of Regional Greenhouse Gas Initiative (RGGI) be promulgated by the federal government, Delaware may transition into the federal program and suspend or amend its regulations accordingly, provided that any unspent funds remaining with the Sustainable Energy Utility or Department of Natural Resources and Environmental Control following cessation or suspension of the RGGI program shall be used in accordance with their initial purpose. Delaware's program shall not be abandoned until the national program is fully implemented and Delaware's regulations are amended to transition to the national program.

(76 Del. Laws, c. 262 § 1.)

Subchapter III

Solid Waste Recycling

§ 6051 Findings; intent.

In furtherance of the determination long established in § 6450 of this title that "the reduction of solid waste disposal and recovery of usable materials from solid waste are matters of extreme importance in minimizing the environmental impact of solid waste disposal through landfilling" and that it "is in the public interest to develop a comprehensive statewide system of recycling and resource recovery which maximizes the quantity of solid waste materials which can be recovered, reused or converted to beneficial use" the General Assembly hereby makes the following findings and declares the following intent with respect to the establishment of this subchapter. In order to establish a comprehensive statewide system of recycling, wherein recycling is maximized and the necessary economies of scale are realized, every residence and business must have access to recycling programs that are both convenient and cost effective. It is the intent of the General Assembly, in full recognition that the establishment of a comprehensive statewide recycling program has long been sought, that said program shall be accomplished by modification of the existing beverage container law and the establishment of universal recycling inclusive of the prescribed recycling programs, requirements and goals that follow. As such, liberal interpretation in favor of accomplishing the stated goals and objectives shall be exercised.

(77 Del. Laws, c. 275 § 1.)

§ 6052 Definitions.

Notwithstanding any definitions in Chapter 60 or 64 of this title to the contrary, the following words and phrases shall have the meaning ascribed to them in this subchapter unless the context clearly indicates otherwise.

(1) "Authority" means the Delaware Solid Waste Authority.

(2) "Beverage" means any mineral waters (but not including naturally sparkling mineral waters), soda waters or any other carbonated beverage not containing alcohol that is commonly known as a "soft drink" and any beer, ale or other malt beverage containing alcohol.

(3) "Beverage container" means any airtight nonaluminous container containing less than 2 quarts of a beverage under pressure of carbonation.

(4) "Dealer" means any person who engages in the sale of beverages in beverage containers to a consumer and shall include groups of retailers or retail chains.

(5) "Multi-family" means 3 or more attached structures, such as condominiums or apartments, generally intended for occupancy by individuals or families and where centralized community trash disposal and collection services are typically provided.

(6) "Municipal solid waste" means wastes such as durable goods, nondurable goods, containers and packaging, food scraps, organic yard waste and miscellaneous inorganic waste from residential (i.e. household), commercial, institutional and industrial sources such as appliances, automobile tires, old newspapers, clothing, disposal tableware, office and classroom paper, wood pallets, and cafeteria wastes. Municipal solid waste does not include solid wastes from other sources such as construction and demolition debris, auto bodies, municipal sludges, combustion ash and industrial process wastes.

(7) "On-premises sales" means sales transactions in which beverages are purchased by a consumer for immediate consumption within the area under the control of the dealer.

(8) "Organic yard waste" means plant material resulting from lawn maintenance and other horticultural gardening and landscaping activities and includes grass, leaves, prunings, brush, shrubs, garden material, Christmas trees and tree limbs up to 4 inches in diameter.

(9) "Recyclable material" or "recyclables" means any material or group of materials that can be collected and sold or used for recycling.

(10) "Recycling" means the process by which solid wastes are separated for use as raw materials, products or replacement of products, including the reuse of organic yard waste, but does not include the incineration of materials for energy.

(11) "Residential waste" means the solid waste generated in occupied single-family and multi-family structures. Also referred to as "household waste".

(12) "Single-family" means either a detached structure (i.e. a house) surrounded by open space or attached structures, such as town or row homes, generally intended for occupancy by a family and where individual trash collection services are typically provided for each structure.

(13) "Single stream" means a system in which all fibers (including but not limited to paper, cardboard, etc.) and containers (including but not limited to plastic, glass and metal) are commingled for collection into 1 container instead of being sorted into separate commodities and multiple containers.

(14) "Source-separated" means recyclable materials, including single stream recyclables, are segregated at the point of generation and kept apart from the waste stream by the generator thereof for the purpose of collection and recycling.

(61 Del. Laws, c. 503 § 1; 63 Del. Laws, c. 385 § 1; 67 Del. Laws, c. 341 § 1; 71 Del. Laws, c. 74 § 2; 77 Del. Laws, c. 275 § 1.)

§ 6053 Universal recycling.

The goal of universal recycling is to create an economy of scale wherein a dramatic increase in Delaware's diversion of recyclables occurs in the most cost effective manner achievable while simultaneously creating job opportunities and significantly reducing Delaware's rate of waste disposal.

Universal recycling shall be implemented in accordance with the following provisions:

(1) Effective no later than September 15, 2011, the Authority shall cease providing curbside recycling services, including yard waste collection, and all persons providing solid waste collection services in the State shall also provide:

a. Single-stream curbside recycling collection services to all of their Delaware single-family residential customers, including delivery of a container for the purpose of storage and collection of recyclables that is adequately sized for the customers use such that recycling is encouraged and disposal of recyclables is discouraged; and the recyclables collection service shall be provided at a frequency of not less than once every other week.

b. Source-separated recycling collection services to dealers who provide on-premise sales, including delivery of a recyclables container that is adequately sized for the premise being served and a frequency of recyclables collection that shall preclude the recycling containers from overflowing and otherwise causing a nuisance.

c. All single-family residential and on-premise sales customers with a single charge for the collection of waste and recyclables on their "waste services" bill that is inclusive of the combined waste and recycling collection service costs. Local governments that do not presently bill separately for the costs of waste collection are exempt from this requirement.

d. Notification to all customers that the single-stream recycling service will be provided and instructions on participation prior to September 15, 2011.

(2) Effective no later than January 1, 2013, all persons providing solid waste collection services in the State shall provide:

a. Single-stream recycling collection services to all of their Delaware multi-family residential customers, including providing the multi-family complex with an appropriately sized and centrally located recyclables collection container or containers for the complex being served and ideally in the same proximity as the complex's waste disposal containers. Local governments may require multi-family complex owners to provide their own recyclable collection containers consistent with local requirements.

b. Notification to the multi-family complex management that the single-stream recycling service, including instructions on participation, will be provided.

c. A frequency of recyclables collection that shall preclude the recycling containers from overflowing and otherwise causing a nuisance.

d. Written justification to the Department for not providing multi-family recycling collection services where the physical constraints of the site prevent the placement of both trash and recycling containers. Exclusion from multi-family recycling is subject to Department review and approval.

(3) Owners of multi-family complexes must, at least once per calendar year, provide residents with instructions on participating in the complex's recycling program.

(4) The Recycling Public Advisory Council shall issue a report to the Governor and the General Assembly no later than November 1, 2012, with recommendations regarding the implementation of universal recycling in the commercial sector. It is the express requirement of this legislation that universal recycling be adopted by the commercial sector and that all commercial businesses actively participate in a comprehensive recycling program no later than January 1, 2014.

(5) Persons who choose to transport and deliver the solid waste and recyclables they generated on their own property for proper disposal or to a recycling facility of their choice respectively shall not be affected by this subchapter and may continue in this practice.

(6) Nothing shall impair the ownership of recyclable materials by the generator unless and until such materials are placed at curbside or similar location for collection and recycling, and nothing in this chapter shall be construed to prevent any person from collecting, transporting, processing, and marketing recyclable materials in competition with other persons in the same business, including the Authority, provided that the requirements of this subchapter are satisfied.

(7) Persons engaging in the collection, transportation, processing, or marketing of source separated recyclable materials shall conduct such activities in a manner that the source separated recyclable materials enter the marketplace and are otherwise not disposed via a landfill or by incineration.

(77 Del. Laws, c. 275 § 1.)

§ 6054 Delaware Recycling Fund.

(a) There shall be established in the State Treasury and in the accounting system of the State a special fund to be known as the Delaware Recycling Fund ("the Fund").

(b) The following revenue shall be deposited into the Fund:

(1) As specified in § 2912 of Title 30, the recycling fee on the sale of beverage containers;

(2) On the last day of each month, the State Treasurer shall credit the Fund with interest on the average balance in the Fund for the preceding month. The interest to be paid to the Fund shall be that proportionate share, during such preceding month, of interest to the State as the Fund's and the State's average balance is to the total State's average balance;

(3) Any other revenue appropriated or transferred to the account by the General Assembly; and

(4) Repayment of low interest loans.

(c) The Fund shall be used by the Secretary for the exclusive purpose of funding specific activities designed to enhance the State's recycling rate and the diversion of recyclables that would otherwise be land disposed. The Fund may be expended only:

(1) To fund the Recycling Grants and Low Interest Loan Program referenced in § 6055 of this title. Annual funding for the Recycling Grants and Low Interest Loan Program shall be dependent on revenue generated by the Fund;

(2) To pay the limited and reasonable cost of the Department and the Recycling Public Advisory Council to study, evaluate and report on the status and potential for recycling various components of the solid waste stream, with emphasis on those aspects of municipal solid waste and commercial waste necessary to achieve the diversion goals established in § 6056 of this title;

(3) To pay the Department's limited and reasonable costs for administering this subchapter. No greater than 10% of the revenue deposited into the Fund shall be used by the Department for administering this subchapter without approval of the Joint Finance Committee and shall include but not be limited to: promoting the Recycling Grants and Low Interest Loan Program, universal recycling, zero waste principles, development of reporting requirements and related recycling initiatives; and

(4) To pay the Division of Revenue for the costs of administering § 2912 of Title 30.

(d) The Department shall commence the Recycling Grants and Low Interest Loan Program in calendar year 2011 and offer the Program at least annually thereafter until 2014.

(e) The revenue from the Fund and its disbursement via the Recycling Grants and Low Interest Loan Program shall be subject to audit and the recipient of any such funding shall agree to the audit and cooperate with the auditor as a condition of receiving funding.

(f) No expenditures shall be made from the Fund for any grants or loans pursuant to § 6055 of this title without the approval by the Controller General and Director of the Office of Management and Budget of a plan for revenues and expenditures for the period between December 1, 2010, and September 15, 2011.

(77 Del. Laws, c. 275 § 1.)

§ 6055 Recycling Grants and Low Interest Loan Program.

(a) There is hereby established a competitive Recycling Grants and Low Interest Loan Program (the "Program") to assist persons engaged in the business of collecting, transporting, processing, or marketing recyclable materials with the implementation of:

(1) Source-separated recyclables collection and processing programs with emphasis on start-up costs for residential single-stream recyclables collection; and

(2) Start-up costs for initiatives which result in the recycling of solid waste materials which would otherwise be land disposed, with emphasis on commercial waste.

The Program shall be administered by the Department, and moneys from the Program shall be paid based on approved grant and loan moneys. The Department shall be entitled to disburse grant and loan monies for the documented costs of implementing the collection or processing of recyclable materials. The Department shall be entitled to adopt guidelines and procedures for administering the Program and determining eligibility for receipt of funding pursuant to § 6054 of this title. Such procedures shall include provisions for repayment of loans to the Department and may include a rebate program for costs based on, including but not limited to, a prorated share of household customers in a recycling program that may have been in existence prior to creation of this law. The Department shall solicit the commentary of the grant eligible stakeholders during development of the grant guidelines and procedures. The Program shall be funded by monies made available under the provisions of § 6054 of this title.

(b) The Recycling Public Advisory Council, after the receipt of comments by grant and loan eligible stakeholders, shall make recommendations annually to the Department regarding the programmatic priorities for awarding Program funds under this subchapter. The

Recycling Public Advisory Council shall provide recommendations regarding the categories and priorities for grants and loans that reflect an informed and representative view of the most urgent and important areas where grant funding will provide the most benefit to the State balancing current needs with those of future generations.

(c) The Department shall review all grant and loan applications and award grants and loans taking into consideration the Recycling Public Advisory Council recommendations. In those cases where the Department's funding decisions differ significantly from the Recycling Public Advisory Council recommendations, the Department shall report to the Recycling Public Advisory Council the justification for such differences.

(d) Any person providing solid waste collection services that is a recipient of a grant or low interest loan from the Delaware Recycling Fund shall not, as a result of implementation of universal recycling, increase rates charged for solid waste collection between such time as they make application for the grant until March 15, 2013.

(77 Del. Laws, c. 275 § 1.)

§ 6056 Adopting diversion goals and reporting requirements.

It is the intent of the General Assembly that implementation of the requirements of this subchapter reduce the amount of nonhazardous solid waste currently deposited in landfills in this State by maximizing the recovery of recyclable materials. In order to do so, it will be necessary for the State to embrace the Zero Waste Principles of designing and managing products and processes to systematically avoid and eliminate the volume and toxicity of waste and materials, conserve and recover all resources, and not incinerate or bury them. In that spirit, the following Interim Waste Diversion Goals are established with the understanding that as more data and information regarding the implementation of universal recycling become available, the goals leading up to January 1, 2020, may be modified by the Department as circumstances dictate; however, the January 1, 2020, goals may not be modified without the approval of the General Assembly:

(1) In order to effectively measure the diversion rates being achieved, all persons, including persons who collect, process or market recyclables, with the exception of those specified in § 6053(5) of this title, must report to the Department on a calendar year basis, no later than February 15 of the following year, the type and quantity of recyclables managed, the method of recycling collection used (single or multiple streams), and the location of the recycling facilities used pursuant to reporting guidance developed by the Department and the Recycling Public Advisory Council. Said reporting guidance shall be developed pursuant to the solicitation of stakeholders responsible for reporting, shall take into account the need for confidentiality of the information reported and shall be finalized no later than December 1, 2010. The first recycling report shall cover calendar year 2011 and shall be due no later than February 15, 2012.

(2) In order to ensure that the waste diversion goals specified in Table 1 of this section above are achieved by the dates specified, the Department, in cooperation with the Recycling Public Advisory Council [RPAC], shall assess progress and recommend to the Governor and General Assembly any additional mechanisms necessary including but not limited to: which waste streams must be diverted from disposal; the parties responsible for ensuring the identified waste streams are diverted from disposal; the date by which the diverted waste streams must be diverted from disposal; implementation of Pay As You Throw; Extended Producer Responsibility; incentive based recycling; waste bans and related requirements. Such assessment shall be completed, inclusive of any draft legislation determined necessary, and submitted to the General Assembly no later than November 1, 2014, as part of the RPAC annual report.

(77 Del. Laws, c. 275 § 1.)

§ 6057 Beverage containers — Findings, intent, prohibitions.

(a) The General Assembly hereby finds that beverage containers are a valuable recyclable material and a major source of nondegradable litter in this State and that the collection and disposal of this litter and solid waste constitutes a great financial burden for the citizens of this State; and that, in addition to this unnecessary expenditure of tax moneys, such litter unreasonably interferes with the enjoyment of life and property by our citizens; and that the practice of littering and disposal of a recyclable material is not compatible with previously adopted policies of the State in regard to proper use and protection of our natural resources.

(b) It is the intent of the General Assembly to increase recycling significantly, inclusive of beverage containers, thereby conserving valuable natural resources, removing the blight of litter on the landscape of the State caused by the disposal of beverage containers and other packaging, and reduce the increasing costs of litter collection and disposal.

(c) Prohibitions. — No beverage shall be sold or offered for sale in this State:

(1) In containers connected to each other with plastic rings or similar devices which are not classified by the Department as biodegradable, photodegradable or recyclable.

(2) In a beverage container which is not recyclable or refillable.

(61 Del. Laws, c. 503 § 1; 64 Del. Laws, c. 57 § 1; 67 Del. Laws, c. 341 § 2; 77 Del. Laws, c. 275 § 1.)

§ 6058 Establishment, composition and responsibility of the Recycling Public Advisory Council.

(a) There is hereby established a Recycling Public Advisory Council (the "Council"). The Council shall be composed of 16 members who shall be appointed by the Governor as follows:

(1) One member from the Department;

(2) One member from the Authority;

(3) One member representing county governments, with such member being recommended by the Delaware Association of Counties;

(4) One member representing municipal governments, with such member being recommended by the Delaware League of Local

Governments;

(5) One member representing the recycling industry;

(6) One member representing the waste hauling industry;

(7) Two members, 1 representing the soft drink industry and 1 representing the alcohol beverage industry, representing the beverage industry;

(8) One member representing the Delaware State Chamber of Commerce;

(9) One member representing the Delaware restaurant industry; and

(10) Five members representing community-based or public-interest groups.

(11) One member representing the Delaware Food Industry Council.

(b) Members of the Council, except for those appointed pursuant to paragraphs (a)(1) and (2) of this section above, shall serve for terms up to 3 years and may not serve more than 2 consecutive terms but may again serve after 1 year off of the Council. Members shall be appointed for staggered terms so that no more than 5 appointments shall expire in any 1 calendar year. Members may be reimbursed for travel to and from meetings. The Governor shall appoint a Chairman from among the 16 members. Actions of the Council shall be approved by a majority vote of the Council. At least 9 members of the Council shall constitute a quorum. The Council may adopt bylaws as it deems appropriate to serve the purposes of this subchapter.

(c) The Recycling Public Advisory Council shall:

(1) Advise the Department and the Authority on all aspects of recycling;

(2) Advise the Department in developing criteria for the Recycling Grants and Low Interest Loan Program and selection of applications as well as provide an annual assessment of the revenue needed to satisfy the grant requirements;

(3) Maintain, in conjunction with the Department and the Authority, a methodology for measuring recycling rates;

(4) Provide advice and recommendations regarding the recycling outreach and education programs conducted by the Authority and/or the Department;

(5) Report to the Governor and the General Assembly annually by November 1 of each year on the status of recycling activities in Delaware. Said report shall include, but not be limited to the following:

a. Status of attainment of the recycling goals specified in § 6056 of this title;

b. An accounting of the recycling grants and loan program and any recommendations for future funding of the grants and loan program;

c. An assessment of the activities of both the Department and the Authority in achieving the recycling goals specified in § 6056 of this title;

d. An objective, auditable accounting of recycling rates for total solid waste, municipal solid waste, and residential solid waste;

e. Such other recommendations as the Council shall deem appropriate; and

f. Use the definitions of "recycling" and "municipal solid waste" as stated by the United States Environmental Protection Agency in its document EPA530-R-97-011 dated September 1997. The Council shall be able to adopt changes to these definitions.

(d) The Department, in concert with the Authority and the Council, shall:

(1) Monitor the State's recycling initiatives and measure Delaware's achievements toward attainment of the recycling goals specified in § 6056 of this title;

(2) Design and implement public educational efforts aimed at increasing public awareness of recycling opportunities;

(3) Provide technical assistance to local entities to assist them in increasing their recycling rates; and

(4) Provide administrative support to the Council.

(77 Del. Laws, c. 275 § 1.)

§ 6059 Enforcement, civil and administrative penalties.

(a) Whoever violates this subchapter, or any rule or regulation promulgated there under, or any order of the Secretary, shall:

(1) For the first conviction, be fined not less than $100 nor more than $500 for each day of violation;

(2) For each subsequent conviction for the same offense within a 10-year period, be fined not less than $500 nor more than $1,500 for each day of violation;

(3) In the Secretary's discretion, the Secretary may endeavor by conciliation to obtain compliance with all requirements of this subchapter. Conciliation shall be giving written notice to the responsible party:

a. Specifying the complaint;

b. Proposing a reasonable time for its correction;

c. Advising that a hearing on the complaint may be had if requested by a date stated in the notice; and

d. Notifying that a proposed correction date will be ordered unless a hearing is requested.

If no hearing is requested on or before the date stated in the notice, the Secretary may order that the correction be fully implemented by the proposed date or may, on the Secretary's own initiative, convene a hearing, in which the Secretary shall publicly hear and consider any relevant submission from the responsible party as provided in § 6006 of this title.

(b) Any person whose interest is substantially affected by any action of the Secretary may appeal to the Environmental Appeals Board, in accordance with § 6008 of this title.

(61 Del. Laws, c. 503 § 1; 68 Del. Laws, c. 146 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 275 § 1.)

Subchapter IV

Ocean Dumping

§ 6070 Title.

This subchapter shall be known as the "Solid Waste Dumping Elimination Act."

(67 Del. Laws, c. 135 § 1; 68 Del. Laws, c. 121 § 1.)

§ 6071 Purpose.

The General Assembly finds that historically millions of tons of solid wastes have been disposed of in the ocean and waters of the State, that these wastes are not land disposed in recognition of the threat posed by the presence of contaminants, by the lack of knowledge or appreciation of the harm such wastes can cause to the marine environment, or that it is cheaper to dispose of such wastes in the ocean or other waters of the State. Therefore, it is the intent of the General Assembly to prohibit the disposal of solid wastes in the ocean and other waters of the State.

(67 Del. Laws, c. 135 § 1; 68 Del. Laws, c. 121 § 1.)

§ 6072 Definitions.

The following words and phrases shall have the meanings ascribed to them in this subchapter unless the context clearly indicates otherwise:

(1) "Inland bays" shall mean the Rehoboth Bay, Indian River Bay, Indian River and Little Assawoman Bay.

(2) "Waters of exceptional recreational or ecological significance" shall mean waters designated by the State which are important, unique or sensitive from a recreational and/or ecological perspective, but which may or may not have excellent water quality. Such waters shall normally have regional significance with respect to recreational use (fishing, swimming and boating), or have significant or widespread riverine, riparian or wetland natural areas.

(68 Del. Laws, c. 121 § 1.)

§ 6073 Prevention.

The provisions of any other law, rule or regulation to the contrary notwithstanding, all disposal of solid wastes into the ocean waters of the State, the Delaware Bay, the inland bays and waters of exceptional recreational or ecological significance is hereby prohibited.

(67 Del. Laws, c. 135 § 1; 68 Del. Laws, c. 121 § 1.)

§ 6074 Penalties.

(a) Whoever negligently violates § 6073 of this title shall be fined not less than $2,500 nor more than $25,000 per day of violation, or be imprisoned for not more than 1 year, or both. If a conviction of a person is for a violation committed after a prior conviction of such person under this section, punishment shall be by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment of not more than 2 years, or both.

(b) Whoever knowingly violates § 6073 of this title shall be fined not less than $5,000 nor more than $50,000 per day of violation, or be imprisoned for no more than 3 years, or both. If a conviction of a person is for a violation committed after a prior conviction of such person under this section, punishment shall be by a fine of not less than $10,000 nor more than $100,000 per day of violation, or by imprisonment of not more than 6 years, or both.

(c) The Superior Court shall have jurisdiction over violations of § 6073 of this title.

(d) There shall be no suspension of any fines required under the provisions of this section.

(67 Del. Laws, c. 135 § 1; 68 Del. Laws, c. 121 § 1.)

Subchapter V

Water Utilities

§ 6075 Nonutility wells and permits for nonutility wells within a service territory served by a water utility under a certificate of public convenience and necessity.

(a) The Department may not withhold a permit for a potable water well within the service territory served by a water utility under a certificate of public convenience and necessity, or require an applicant for a potable water well permit in an area served by a water utility to utilize the services of the utility, unless:

(1) The Delaware Geological Survey or the Department of Health and Social Services certifies that the ground water supply is inadequate or unsuitable for the intended use for which the permit is being sought;

(2) The water utility demonstrates to the satisfaction of the Department that it can provide service of equal or better quality at lower cost; or

(3) The permit applicant is a resident of a municipality, a county water district authority, or a recorded development where public water is available.

(b) Notwithstanding paragraphs (a)(2) and (3) of this section, following the issuance of a certificate of public convenience and necessity to a water utility, the Department shall not withhold a potable water well permit from any person seeking to construct or extend a well on a farm, farmland or the lands of any existing mobile home community, or an addition, modification or extension of that mobile home community, which as of April 11, 2000, self-supplied potable water under existing permits in an area served by a water utility, nor shall it require that the person utilize the services of the utility. However, this subsection shall not authorize or require the issuance of a potable well permit that would enable a person or entity to act as a water utility without a duly issued certificate of public convenience and necessity.

(c) Notwithstanding any other provision of this section, following the issuance of a certificate of public convenience and necessity to a water utility, the Department shall not withhold a nonpotable water well permit from any person seeking to construct or extend a nonpotable water well in an area serviced by a water utility, subject to the provisions of subsection (d) of this section.

(d) Following the issuance of a nonpotable water well permit in an area for which a certificate of public convenience and necessity has been issued, the Secretary shall send a copy of the permit, with conditions, to the water utility providing water to that area. This notification requirement shall not apply to permits issued for monitor, observation, recovery and dewatering wells. All nonpotable water well permits issued in such an area shall include the following conditions:

(1) Water taken from the well is not to be used for human consumption;

(2) The well shall not, at anytime, be interconnected with any portion of any building's plumbing and/or any water utility's service connection;

(3) Representatives of the Secretary and the water utility that services the certificated area may inspect the well at any reasonable time to insure that there are not interconnections; and

(4) That the permit is subject to revocation upon any violation of its permit conditions, and upon revocation, the Secretary shall order that the well will be abandoned.

(e) The Secretary may enforce this section under § 6005 of this title. Violations of this section may be sanctioned under the provisions of §§ 6005 and 6013 of this title.

(72 Del. Laws, c. 402 § 2.)

§ 6076 Transfer of jurisdiction for certificates of public convenience and necessity for water utilities to the Public Service Commission.

On and after July 1, 2001, the Department and Secretary shall no longer have jurisdiction to issue certificates of public convenience and necessity to water utilities. On such date, the jurisdiction to issue certificates of public convenience and necessity shall be vested in the Public Service Commission. On such date, the Public Service Commission shall also be vested with the jurisdiction, to the extent described in Chapter 1 of Title 26, to issue, suspend and revoke certificates issued to water utilities. The process of reviewing requests for certificates, however, shall include coordination and cooperation by the Commission with the Department of Natural Resources and Environmental Control and the Division of Public Health.

(72 Del. Laws, c. 402 § 3.)

§§ 6077 -6080. Issuance of certificate; limitations; powers of the Public Service Commission with respect to water utilities; public hearings; rules for conduct; application fee.

(Repealed by 72 Del. Laws, c. 402 § 1, effective July 1, 2001.)

Subchapter VI

Source Water Protection

§ 6081 Reporting on source water protection.

(a) The Secretary shall prepare, periodically, a report to the Governor and General Assembly, beginning in 2003, of the potential threats, including contaminants currently not regulated, to public drinking water systems. The report shall identify actions that the Secretary proposes to control these threats.

(b) The Secretary shall periodically prepare a report to the respective counties and municipalities, beginning in 2003, that denotes the availability of source water assessments completed by the Department. The Secretary shall also report on the status of the Ground-Water Recharge Potential Mapping Project.

(73 Del. Laws, c. 67 § 2; 70 Del. Laws, c. 186 § 1.)

§ 6082 Adoption of source water assessment, wellhead protection, and excellent ground-water recharge potential areas by counties and municipalities.

(a) By December 31, 2004, the Department shall develop a guidance manual, in conjunction with and with the substantial concurrence of the Source Water Protection Citizens Technical Advisory Committee, for desirable land uses within source water assessment areas that promote the long-term protection of public drinking water supplies, consistent with "Shaping Delaware's Future: Managing Growth in 21st Century Delaware, Strategies for State Policies and Spending" (December 1999).

(b) The counties and municipalities with populations of 2,000 persons or more, with the assistance of the Department, shall adopt as part of the update and implementation of the 2007 Comprehensive Land Use Plans, the overlay maps delineating, as critical areas, source water assessment, wellhead protection and excellent ground-water recharge potential areas. Furthermore, the counties and municipalities shall adopt, by December 31, 2007, regulations governing the use of land within those critical areas designed to protect those critical areas from activities and substances that may harm water quality and subtract from overall water quantity.

(c) Municipalities with populations of less than 2,000 persons, with the assistance of the Department, may adopt by ordinance the overlay maps delineating, as critical areas, source water assessment, wellhead protection, and excellent ground-water recharge potential areas. Furthermore, the ordinance shall include regulations governing the use of land within those critical areas designed to protect those critical areas from activities and substances that may harm water quality and subtract from overall water quantity. Counties and municipalities of more than 2,000 persons that have previously adopted ordinances that include the Department's overlay maps and regulations that protect public water supplies and are consistent with minimum standards identified in the guidance manual shall be exempt from the provisions of this subsection.

(d) The Department shall make source water assessment areas available to the public as they are completed, with all systems to be completed by 2003.

(e) The Department may, when based on sound science and factual information, revise and update the overlay maps of source water assessment areas.

(f) Counties and municipalities with populations of 2,000 persons or more shall update their overlay maps in accordance with changes made by the Department with respect to source water assessment, wellhead protection and excellent ground-water recharge potential areas.

(g) Municipalities with populations of less than 2,000 persons may update their overlay maps in accordance with changes made by the Department with respect to source water assessment, wellhead protection, and excellent ground-water recharge potential areas.

(73 Del. Laws, c. 67 § 2; 70 Del. Laws, c. 186 § 1.)

§ 6083 Adoption of source water assessment, wellhead protection and excellent ground-water recharge potential areas by the Governor's Cabinet Committee on State Planning Issues.

The Department shall make source water assessment, wellhead protection and excellent ground-water recharge potential area delineations available for maps developed as part of "Shaping Delaware's Future: Managing Growth in 21st Century Delaware, Strategies for State Policies and Spending" (December 1999)

(73 Del. Laws, c. 67 § 2; 70 Del. Laws, c. 186 § 1.)

§ 6084 Source Water Protection Citizen and Technical Advisory Committee.

The Secretary shall consult a citizen and technical advisory committee, as established by the Delaware Source Water Assessment Plan, on matters related to the implementation of the Source Water Assessment Plan and the requirements of this statute.

(73 Del. Laws, c. 67 § 2; 70 Del. Laws, c. 186 § 1.)

Subchapter VII

Labeling of Plastic Products

§ 6090 Findings; intent.

(a) The General Assembly finds that:

(1) Recycling of waste materials is preferable to incinerating or landfilling those materials because recycling conserves valuable resources, saves energy in the manufacturing process and extends the life of disposal facilities;

(2) Increased recycling is necessary in Delaware to meet the EPA's national goal of a 25% reduction of the solid waste stream;

(3) Plastics have been shown to be recyclable;

(4) One of the barriers to increased recycling of plastics is the necessity of keeping the various types of plastic separate, based on the resin from which they are made; and

(5) The Society of the Plastics Industry, Inc., has devised a coding system that can be used to label plastic containers so as to identify the type of resin from which they are made.

(b) It is the intent of the General Assembly to facilitate the recycling of plastic containers by requiring that these containers be labeled according to resin type.

(68 Del. Laws, c. 174 § 1.)

§ 6091 Definitions.

As used in this subchapter, unless otherwise indicated:

(1) "Container" means a "rigid plastic container" or a "plastic bottle" as those terms are defined in this section.

(2) "Department" means the Department of Natural Resources and Environmental Control.

(3) "Label" means a molded, imprinted or raised symbol on or near the bottom of a rigid plastic container or plastic bottle.

(4) "Person" means any individual, trust, firm, joint stock company, federal agency, partnership, corporation (including a government corporation), association, state, municipality, commission, political subdivision of a state or any interstate body.

(5) "Plastic" means any material made of polymeric organic compounds and additives that can be shaped by flow.

(6) "Plastic bottle" means a plastic container intended for single use that has a neck that is smaller than the body of the container; accepts a screw-type cap, snap cap or other closure; and has a capacity of 16 fluid ounces or more, but less than 5 gallons.

(7) "Rigid plastic container" means any formed or molded container, other than a bottle, intended for single use, composed predominantly of plastic resin and having a relatively inflexible finite shape or form with a capacity of 8 ounces or more but less than 5 gallons.

(8) "Secretary" means the Secretary of the Department of Natural Resources and Environmental Control.

(68 Del. Laws, c. 174 § 1.)

§ 6092 Labeling.

(a) On or after July 1, 1992, no person shall distribute, sell or offer for sale in this State any plastic bottle or rigid plastic container unless such container is labeled with a code identifying the appropriate resin type used to produce the structure of the container. The code shall consist of a number placed within 3 triangulated arrows and a letter placed below the triangle of arrows. The triangulated arrows shall be equilateral, formed by 3 arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The pointer (arrowhead) of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle, formed by the 3 arrows curved at their midpoints, shall depict a clockwise path around the code number. The numbers and letters used shall be as follows:

1PETE (polyethylene threphthalate)
2HDPE (high density polyethylene)
3V (vinyl)
4LDPE (low density polyethylene)
5PP (polypropylene)
6PS (polystyrene)
7Other

(b) The Department shall maintain a list of the label codes provided in subsection (a) of this section and shall provide a copy of the list to any person upon request.

(c) The provisions of this section and any rules or regulations adopted hereunder shall be interpreted to conform with nationwide plastics industry standards.

(68 Del. Laws, c. 174 § 1.)

§ 6093 Penalty; enforcement.

(a) Any person who violates this subchapter or any rule or regulation duly promulgated thereunder or any order of the Secretary issued pursuant to this subchapter shall be punishable as follows:

(1) If a violation has been completed, by a civil penalty imposed by the Justice of the Peace Court of not less than $250 nor more than $1,000 for each completed violation. The Secretary may also seek a permanent or preliminary injunction or temporary restraining order in the Court of Chancery.

(2) If a violation is continuing, the Secretary may seek a monetary penalty as provided in paragraph (a)(1) of this section. If a violation is continuing or is threatened, the Secretary may also seek a temporary restraining order or permanent injunction in the Court of Chancery.

(b) The Secretary shall have the authority to enforce this subchapter.

(68 Del. Laws, c. 174 § 1.)

Subchapter VIII

Clean Air Act Title V Operating Permit Program

§ 6095 Applicability.

This subchapter shall apply to all sources required to obtain a Title V Operating Permit pursuant to the federal Clean Air Act Amendments of 1990. Such sources shall include, but not be limited to, the following:

(1) Sulfuric acid plants; municipal incinerators; fossil-fuel burners; petroleum storage and transfer units with a total storage capacity

exceeding 300,000 barrels; petroleum refineries; sulfur recovery plants; chemical process plants;

(2) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control or common ownership consistent with the requirements of 40 C.F.R. Part 70, that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to Title I, § 112(b) of the Clean Air Act Amendments of 1990, Public Law 101-549, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Department may establish by regulation;

(3) A source that directly emits or has the potential to emit, 100 tpy or more of any air pollutant, including any major source of fugitive emissions of any such pollutant, as the Department may establish by regulation;

(4) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe," and sources subject to the requirements for preconstruction review; except that the references in this paragraph to 100, 50, and 25 tpy of nitrogen oxides shall not apply with respect to any source for which the Department has made a finding, pursuant to regulations, that requirements under this section do not apply;

(5) For areas within the northeast transport region, sources with the potential to emit 50 tpy or more of volatile organic compounds; or

(6) Any other sources designated by the Department or mandated for designation by the United States Environmental Protection Agency.

(69 Del. Laws, c. 121 § 1.)

§ 6096 Title V account.

The Secretary shall establish a separate account entitled the "Clean Air Act Title V Operating Permit Program Account," hereinafter the "Account." All fees collected under this subchapter shall be deposited into this account and utilized solely to cover all direct and indirect costs required to support the Title V Operating Permit Program, hereinafter "Program." Any civil or administrative penalties or costs recovered as a result of a violation of a Title V permit shall be used to further the goals and purposes of the Department to promote clean air for the citizens of Delaware.

(69 Del. Laws, c. 121 § 1.)

§ 6097 Fees.

(a) The Department shall collect an annual fee from sources that are required to obtain a Title V Operating Permit pursuant to the Title V Program and from sources who voluntarily limit their potential to emit to below Title V applicability thresholds as set forth in § 6095 of this title (i.e., a synthetic minor facility). The annual fees shall be utilized solely to pay for all direct and indirect costs required to develop, administer and implement the Program.

(b) The fee schedule must result in the collection and retention of revenues sufficient to cover the permit program costs. These costs include, but are not limited to, the costs of the following activities, as they relate to the operating permit program for stationary sources: preparing generally applicable regulations or guidance documents regarding the permit program or its implementation or enforcement; reviewing and acting on any application for a permit, permit revision or permit renewal, including the development of an applicable requirement as part of the processing of a permit or permit revision or renewal; general administrative costs of implementing the permit program, including the supporting and tracking of data; implementing and enforcing the terms of any Title V Operating Permit (not including any court costs or other costs associated with an enforcement action), including adequate resources to determine which sources are subject to the program; emissions and ambient monitoring; modeling; preparing inventories and tracking emissions; and supporting the ombudsman established pursuant to the Small Business Stationary Source Technical and Environmental Compliance Program ("SBTCP") to assist sources covered by the SBTCP in determining and meeting their obligations under the Title V Operating Permit Program.

(c) The Department shall collect annual fees, payable annually or in quarterly installments, during calendar years 2015, 2016, and 2017, from each source that is required to pay the annual fee as set forth in subsection (a) of this section. The Title V Operating Permit Program Advisory Committee may review and recommend modifications to the 2017 fee schedule should measurable operating efficiencies be gained through ongoing Title V Operating Permit Program improvement initiatives. The annual fee for each subject source will be determined by the sum of 2 component fees: a base fee and a user fee. For sources that are identified in the 2011 Delaware Point Source Emission Inventory of Estimated Actual Air Contaminants or sources that have applied for a Title V Operating Permit or synthetic minor facility permit by December 31, 2014, the base fee and the user fee shall be calculated as set forth in subsections (d) and (e) of this section. For all other sources the base fee and user fee shall be calculated as set forth in subsection (f) of this section.

(d)(1) The base fee relates to services that are common to all sources subject to the program. These services include activities such as permit issuance and renewals; stationary source regulation development; ambient monitoring; emission inventory; control strategy development; and development, administration and implementation of 2 additional programs: the Small Business Stationary Source Technical and Environmental Compliance Program and a portion of the accidental release prevention program.

(2) In calendar years 2015, 2016, and 2017, the Department will place each subject source into 1 of the following 11 categories:

Category A	Greater than 6,000 hours will pay $ 277,020
Category B	from 5,001 to 6,000 hours will pay $ 108,300
Category C	from 4,001 to 5,000 hours will pay $ 93,480

Category D from 3,001 to 4,000 hours will pay $ 80,940
Category E from 2,001 to 3,000 hours will pay $ 57,000
Category F from 1,501 to 2,000 hours will pay $ 42,180
Category G from 1,001 to 1,500 hours will pay $ 28,500
Category H from 667 to 1,000 hours will pay $ 18,240
Category I from 334 to 666 hours will pay $ 9,120
Category J from 0 to 333 hours will pay $ 5,700
Category K New sources that have applied for a permit after January 1, 2014, will pay $ 6,840.

(3) The Department's category determination pursuant to paragraph (d)(2) of this section shall be based upon 5 years' data of engineering, compliance, and enforcement hours expended for each facility from 2009 to 2013. The Department will continue to track the actual hours spent processing Title V permits and performing other related services under the Title V program. This information may be used in the evaluations of the Title V program associated with the expiration of this statute on December 31, 2017.

(e)(1) The user fee relates to activities not identified in subsection (d) of this section for the Program, such as: development, administration, and implementation of a compliance and enforcement program; implementation and enforcement of the terms of any Title V Operating Permit or synthetic minor permit; permit revisions or amendments, including the development of an applicable requirement as part of the processing of the permit issuance, revision or amendment; the supporting and tracking of data; modeling; and adequate resources to determine which sources are subject to the Program. Such fees shall be based on the emissions of each air contaminant, in whole tons and in the aggregate, excluding carbon monoxide (CO) and particulate matter less than 2.5 microns (PM2.5), as listed in the 2011 Delaware Point Source Emission Inventory of Estimated Actual Air Contaminants.

(2) In calendar years 2015, 2016, and 2017, the Department will place each subject source into 1 of the following 10 categories:

Category 1 Greater than 2,000 tons will pay $ 350,000
Category 2 from 1,001 to 2,000 tons will pay $ 100,000
Category 3 from 501 to 1,000 tons will pay $ 60,000
Category 4 from 201 to 500 tons will pay $ 28,000
Category 5 from 101 to 200 tons will pay $ 12,000
Category 6 from 51 to 100 tons will pay $ 9,000
Category 7 from 26 to 50 tons will pay $ 6,000
Category 8 from 6 to 25 tons will pay $ 4,100
Category 9 from 0 to 5 tons will pay $ 3,950
Category 10 New sources that have applied for a permit after January 1, 2014, will pay $ 6,000.

(f) Sources not included in the 2011 Delaware Point Source Emission Inventory of Estimated Actual Regulated Air Contaminants or sources that have not applied for a Title V Operating Permit or synthetic minor facility permit by December 31, 2014, shall be assessed a base fee that is consistent with the categories and amounts specified in subsection (d) of this section. The estimated hours on which the base fee assessment is calculated shall include an evaluation of specific regulatory applicability to the source. This shall include, but is not limited to, the following: new source review; new source performance standards; toxic requirements, to include maximum achievable control technology and National Emission Standards for Hazardous Air Pollutants; and continuous emission monitoring requirements. Such sources shall also be assessed a user fee based upon allowable emissions specified in its permit that is consistent with the categories and amounts specified in subsection (e) of this section.

(g)(1) In calendar years 2015, 2016, 2017, 2018, 2019, and 2020, the Department will grant sources with an active Title V or synthetic minor permit on or before December 31, 2014, and without delinquent accounts, annual user fee credits. The credit shall be determined by the categorical status of a qualifying facility in calendar year 2014. User fee credits for 2015, 2016, and 2017 will be calculated as a percentage of the total Program annual fee reduction amount of $300,000. Eligible facilities will be granted the following fee credit percentages by category established under paragraph (e)(2) of this section:

Category 1 Will receive a credit of 26.25% of $300,000
Category 2 Will receive a credit of 7.50% of $300,000
Category 3 Will receive a credit of 4.50% of $300,000
Category 4 Will receive a credit of 2.10% of $300,000
Category 5 Will receive a credit of 0.90% of $300,000
Category 6 Will receive a credit of 0.68% of $300,000
Category 7 Will receive a credit of 0.45% of $300,000
Category 8 Will receive a credit of 0.30% of $300,000
Category 9 Will receive a credit of 0.30% of $300,000
Category 10 Will receive a credit of 0%.

(2) The 2018, 2019, and 2020 total Program annual fee reduction amount will be reviewed and adjusted by the Title V Operating

Permit Program Advisory Committee as part of the 2018 through 2020 fee negotiation cycle. Fee reduction credit will be terminated on December 31, 2020.

(h) These fees may be increased on an annual basis by no more than the Federal Consumer Price Index for the previous calendar year. Any increases in fees are subject to review and approval by the committee established pursuant to § 6099 of this title. After December 31, 2017, no fees shall be collected pursuant to this section unless authorized by a further act of the General Assembly. The Department shall consult with the Title V Operating Permit Program Advisory Committee prior to any proposed increase to the complement of full-time equivalent employees funded in whole or in part by the Program.

(i) Annual fees must be paid in full by the end of each calendar year 2015, 2016, and 2017. Any delinquent subject source shall be subject to a 2% compounding monthly interest rate for each month overdue. Each source is required to pay its annual fee. The Department has the authority to revoke a Title V permit on the sole basis that the annual fee has not been paid. Sources that have not paid their annual fee may be given notice that their Title V permit will be revoked for nonpayment of the fee. No permit shall be revoked without 60 days written notice or prior to 3 months past the due date for the fee. Cancellation of the permit shall not relieve the source of the obligation to pay the last year's fee. The Department shall track payment records of overdue and delinquent sources and shall document actions taken to recover delinquent fees. The Department shall include a detailed summary of delinquent facilities in the Title V Annual Status report, including the amount owed and the documented action taken by the Department to collect such fees.

(j) In determining the amount of tons of actual emissions, the Department shall not be required to include any amount of air contaminant emitted by any source in excess of 4,000 tons per year of that air contaminant. The determination of common control or common ownership shall be consistent with the requirements of 40 C.F.R. Part 70.

(k) Any funds collected under this section shall be deposited in the account as described in § 6096 of this title, shall be interest earning, and shall be used solely to develop, administer and implement the Program. The Secretary shall cause an audit of the fiscal affairs to be made annually and shall furnish a copy of such audit report together with such additional information or data with respect to the affairs as the Secretary may deem desirable to the Title V Operating Permit Program Advisory Committee.

(l) The Department will continue to track for each source the actual hours spent processing Title V permits and performing other related services under the Title V program and shall, as part of the annual fee assessment, provide each source with the number of said hours expended during the preceding year. The Division of Air Quality will develop, by May 1 of each year, the overall program costs, the fees collected, current staffing levels, program accomplishments, and each subject source's total hours for the preceding calendar year in report form and present this report at an annual meeting with the Title V Operating Permit Program Advisory Committee. The Division of Air Quality shall publish a notice announcing the availability of the report in a paper of general circulation throughout the State. Additionally, the Division shall mail a copy of said notice to the personnel on the Division of Air Quality's mailing lists.

(m)(1) The Title V Operating Permit Program Advisory Committee shall be assembled by the Division of Air Quality to aid in the development of a management system review performed by an independent third party of the Title V air permitting scope, funding, and revenue generation process. The goal of this review will be to enhance the Division of Air Quality's existing performance initiatives to ensure that the Division of Air Quality is properly focused on the efficient and effective use of annual fees collected from affected facilities in order to sustain the requirements of the Title V Program, as well as by deploying manpower resources and technologies to optimize services, and to ensure the development of a fair, balanced, and sustainable Title V revenue generation program. The Title V Operating Permit Program Advisory Committee shall also review the proposal and scope of work and participate in the selection of the independent third party performing the review.

(2) In performing the management system review, the independent third party will:

a. Seek input from affected stakeholders;

b. Review the Department's Title V requirements and funding allocation processes;

c. Review and adhere to EPA guidance and memoranda related to annual fees;

d. Ensure that the Title V Program has the necessary resources and procedures to fulfill its mission; and

e. Recommend any technological adaptations to ensure that the Department's Title V process is "right-sized" for the future.

(3) The independent third party shall issue a report, objectives of which shall include:

a. How the Division of Air Quality can build upon the strength of the value stream mapping process, which is presently incorporated into the non-Title V construction and operating permit processes.

b. How the Division of Air Quality can optimize the Title V permit processing, public hearing, regulation development, air monitoring, and reporting processes.

c. How the Division of Air Quality can optimize staff levels to ensure that a viable and responsive work force is adequately trained and utilized considering employee turnover and new employee replacement hiring.

d. How the Division of Air Quality can improve the emissions inventory process to help develop a timely, sustainable, and just annual fee collection system for future years.

(4) The Division of Air Quality will begin the process to hire the independent third party to conduct the management system review by September 1, 2014. The management system review shall be targeted for completion by December 31, 2015. Study results and recommendations shall be incorporated into the next cycle of annual fee legislation development. This 1-time management system review is to be funded by the existing annual fee balance with a total cost not to exceed $100,000.

(69 Del. Laws, c. 121 § 1; 70 Del. Laws, c. 8 §§ 1, 2; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 214 § 1; 73 Del. Laws, c. 318 § 1; 73 Del. Laws, c. 381 § 1; 75 Del. Laws, c. 172 §§ 1-5; 76 Del. Laws, c. 73 § 1; 76 Del. Laws, c. 312 §§ 1-7; 77 Del. Laws, c. 430 §§ 54, 55; 78 Del. Laws, c. 110 §§ 1-15; 79 Del. Laws, c. 430 § 1.)

§ 6098 Application shield.

Except for sources required to have a permit before construction or modification under the applicable requirements of this subchapter, if an applicant has submitted a timely and complete application for a permit required by this title (including renewals), but final action has not been taken on such application, the source's failure to have a permit shall not be a violation of this subchapter, unless the delay in final action was due to the failure of the applicant to timely submit information required or requested to process the application.

(72 Del. Laws, c. 214 § 3; 79 Del. Laws, c. 430 § 2.)

§ 6099 Title V Operating Permit Program Advisory Committee.

There shall be established a "Title V Operating Permit Program Advisory Committee," hereinafter referred to as "Committee." The Committee members shall be appointed by the Governor and shall include, but not be limited to, the Secretary of the Department of Natural Resources and Environmental Control, or the Secretary's duly appointed designee; the Director of the Division of Air Quality, or the Director's duly appointed designee; 2 members who will represent stationary sources; 1 to be a member of the Chemical Industry Council; a member of the Delaware State Chamber of Commerce; a member representing a public utility; 2 members of a nationally affiliated or state environmental advocacy group; and the chairpersons of the House and the Senate Natural Resource Committees. The Secretary of the Department of Natural Resources and Environmental Control shall serve as the Chair of this Committee. The Committee shall provide the Governor and the General Assembly with a report on or before February 1 of each year, for the previous calendar year, identifying the amounts and sources of fees collected pursuant to § 6097 of this title, the expenditures made by the Department to implement the Program, information regarding the performance of the Program, whether the fees collected by § 6097 of this title are adequate to ensure the effective implementation of the Program, and recommendations to remedy or improve any deficiencies or elements of the Program.

(69 Del. Laws, c. 121 § 1; 70 Del. Laws, c. 8 § 3; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 214 §§ 2, 4; 73 Del. Laws, c. 381 § 2; 76 Del. Laws, c. 312 § 8; 77 Del. Laws, c. 430 § 56; 78 Del. Laws, c. 110 § 16.)

Subchapter IX

Recycling and Waste Reduction

§ 6099A At-store recycling program [Effective until Dec. 2, 2017; see subsection (i) of this section]

(a) For purposes of this subchapter, the following definitions shall apply:

(1) "Manufacturer" means the producer of a plastic carryout bag sold to a store.

(2) "Plastic carryout bag" means a plastic carryout bag provided by a store to a customer at the point of sale.

(3) "Reusable bag" means either of the following:

a. A bag made of cloth or other fabric that has handles and is designed and manufactured to be used repeatedly.

b. A durable plastic bag with handles that is at least 2.25 mils thick and is designed and manufactured to be used repeatedly.

(4) "Store" means a retail establishment, excluding a restaurant, engaged in the business of selling or exchanging goods and/or services for cash, barter or any form of consideration on the assumption that the purchaser of such goods and/or services has acquired the goods and/or services for ultimate consumption or use and not resale that provides plastic carryout bags to its customers in conjunction with the sale of such goods and/or services and that meets either of the following requirements:

a. Has at least 7,000 square feet of retail sales space, or

b. Has 3 or more stores or retail locations, each having at least 3,000 square feet of retail sales space, in the State.

(b) The store shall establish an at-store recycling program pursuant to this section that permits a customer of the store to return clean plastic carryout bags to the store.

(c) A retail establishment that does not meet the definition of a store, as defined herein, and that provides plastic carryout bags to customers at the point of sale may adopt a similar at-store recycling program, as specified in this section.

(d) An at-store recycling program provided by a store shall include all of the following:

(1) By August 1, 2010, all plastic carryout bags provided by the store to a customer shall have printed or displayed on the bag, in a manner conspicuously visible to a consumer, the words "PLEASE RETURN THIS BAG TO A PARTICIPATING STORE FOR RECYCLING", or a similar message encouraging the reuse or recycling of plastic carryout bags.

(2) A plastic carryout bag collection bin shall be placed at each store and shall be visible, easily accessible to the consumer, and clearly marked that the collection bin is available for the purpose of collecting and recycling plastic carryout bags.

(3) All plastic carryout bags collected by the store shall be collected and recycled in a manner consistent with the intent of this section. In no instance shall a store permit collected plastic carryout bags to be disposed of or to further any act other than the recycling of such bags.

(4) The store shall maintain records describing the collection and recycling of plastic carryout bags collected by such store and shall make the records available to the Department of Natural Resources and Environmental Control (DNREC), upon request, to demonstrate

compliance with this section.

(5) The store shall make reusable bags available to customers within the store, which bags may be purchased by such customer and used in lieu of using a plastic carryout bag or paper bag. This subsection is not applicable to a retail establishment specified pursuant to subsection (c) of this section above.

(e) The manufacturer of a plastic carryout bag shall provide educational materials to all stores required to comply with this section to encourage the reduction, reuse, and recycling of plastic carryout bags and the stores shall place such materials in a conspicuous location, visible to the customers of such store.

(f)(1) Unless expressly authorized by this section, a county, city, or other public agency shall not adopt, implement, or enforce an ordinance, resolution, regulation, or rule to do any of the following:

a. Require a store that is in compliance with this section to collect, transport, or recycle plastic carryout bags.

b. Impose a plastic carryout bag fee upon a store that is in compliance with this section.

c. Impose auditing or reporting requirements upon a store that are in addition to those set forth in paragraph (d)(4) of this section.

(2) This section does not prohibit the adoption, implementation, or enforcement of any county, city or other local ordinance, resolution, regulation, or rule governing curbside or drop off recycling programs operated by, or pursuant to a contract with, a county, city, or other public agency, including any action relating to fees for these programs.

(3) This section does not affect any contract, franchise, permit, license, or other arrangement regarding the collection or recycling of solid waste or household hazardous waste.

(g)(1) A violation of this section, with such determination thereof being made by DNREC, shall result in civil liability or administrative penalty in an amount up to $500 for the first violation, up to $1,000 for the second violation, and up to $2,000 for the third, and each subsequent, violation.

(2) Any civil penalties collected in accordance with paragraph (g)(1) of this section shall be paid to DNREC. The penalties collected pursuant to this section by DNREC shall be expended by DNREC, upon appropriation by the General Assembly, to assist in funding enforcement and furtherance of the intent of this section.

(h) This subchapter shall become effective on December 1, 2009.

(i) This section shall remain in effect through and including December 1, 2017, unless later enacted legislation extends such date.

(77 Del. Laws, c. 198 § 1; 79 Del. Laws, c. 385 § 1.)

Part VII
Natural Resources
Chapter 61
MINERALS IN SUBMERGED LANDS

§ 6101 Definitions.

This chapter shall apply to all lands located within the boundaries of this State, except that sections relating to fees, royalties or rights to lease shall be applicable only to lands owned by this State. Unless the context requires otherwise:

(1) "Filled lands" includes tide and submerged lands reclaimed artificially through raising such lands above the highest probable elevation of the tides to form dry land, by placement of a fill or deposit of earth, rock, sand or other solid imperishable material.

(2) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in subdivision (5) of this section, including condensate originally in the gaseous phase in the reservoir.

(3) "Lease" means a mineral lease issued pursuant to this chapter.

(4) "Mineral" means any natural inorganic substance with definite chemical and physical properties which is present in, or at the bottom of a body of water, or anywhere within the earth's crust.

(5) "Oil" means crude petroleum oil and all other hydrocarbons, regardless of gravity, which are produced in liquid form by ordinary production methods, but does not include liquid hydrocarbons that were originally in a gaseous phase in the reservoir.

(6) "Person" in addition to the meanings set forth in § 302 of Title 1, includes quasi-public corporations, political subdivisions and governmental agencies and instrumentalities.

(7) "Secretary" means the Secretary of the Department of Natural Resources and Environmental Control, or, if so designated pursuant to § 6140 of this title, the State Geologist.

(8) "Structure" means any construction works, including but not limited to derricks, pipelines, lines for the transmission and distribution of electricity, telephone lines, wharves, piers, slips, warehouses and units designed to act as groins, jetties, seawalls, breakwaters or bulkheads.

(9) "Submerged lands" means lands lying below the line of mean low tide in the beds of all tidal waters within the boundaries of this State established before or after July 1, 1966.

(10) "Tidelands" means lands lying between the line of mean high water and the line of mean low water.

(7 Del. C. 1953 § 6401; 55 Del. Laws, c. 442 § 1; 57 Del. Laws, c. 283 § 1; 59 Del. Laws, c. 212 § 1; 65 Del. Laws, c. 508 § 1.)

§ 6102 Jurisdiction to lease.

(a) The Secretary and the Governor have exclusive jurisdiction to lease for mineral exploration and exploitation all ungranted submerged tidelands owned by this State, whether within or beyond the boundaries of this State, acquired by this State before or after July 1, 1966:

(1) By quitclaim, cession, grant, contract or otherwise, or

(2) By any other means.

(b) All jurisdiction and authority to lease for mineral exploration or exploitation remaining in the State over submerged lands as to which grants have been or may be made is vested in the Secretary and the Governor.

(c) The Secretary shall administer and control all lands described in subsection (a) of this section, and may lease such lands and tidelands and dispose of oil, gas, sulphur and other minerals under such lands and tidelands in the manner prescribed by this chapter.

(d) Notwithstanding any other provisions of this chapter, the Secretary may not permit any interference, other than temporary interference, with the surface of the Atlantic shore. It may, however, grant easements for mineral exploration and exploitation underlying that part of the surface of the Atlantic shore owned by the State at such times and at such places as the Secretary finds necessary to permit the extraction and transportation of oil, gas, sulphur or other minerals from state, federal or private lands; and in addition the Secretary may issue oil and gas leases underlying the Atlantic shore under the same terms and conditions as provided in this chapter.

(e) The Secretary shall have no authority to lease lands administered by the Department of Natural Resources and Environmental Control.

(7 Del. C. 1953 § 6402; 55 Del. Laws, c. 442 § 1; 57 Del. Laws, c. 739 § 212; 59 Del. Laws, c. 212 § 1; 65 Del. Laws, c. 508 § 1.)

§ 6103 Surveys.

(a) The Secretary, upon application by any person, may permit geological, geophysical and seismic surveys, including the taking of cores and other samples, or the tide and submerged lands of this State. Such permits shall be nonexclusive and shall not give any preferential rights to any oil, gas and sulphur or other mineral lease. After consultation with those agencies of the State having an interest in the possible effects of the leasing, the Secretary shall include such rules and regulations in the permit as it deems necessary to protect the fish, game, wildlife and natural resources of the State. The Secretary may grant permission for the taking of cores and other samples.

(b) Each application under this section shall contain the following information:

(1) A description of areas where the applicant proposes to conduct a survey;

(2) The name and address of the applicant; and

(3) Such other relevant information as the Secretary requires.

(7 Del. C. 1953 § 6403; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1.)

§ 6104 Permits for surveys.

(a) Upon compliance of an applicant with § 6103 of this title, the Secretary may issue to the applicant a permit to conduct a geological, geophysical and seismic survey, including the taking of cores and other samples, in areas of the tide and submerged lands of this State described on the permit. The Secretary may prohibit such surveys on any area if it determines that a lease, if applied for, should not be granted as to such areas. The Secretary shall include in a permit conditions and payment proper to safeguard the interests of the State.

(b) Permits issued under this section shall be valid for not more than 2 years, but may be renewed for like periods upon application to the Secretary and upon showing due compliance with applicable laws and regulations.

(c) The Secretary shall require the permittee to provide the Department of Natural Resources and Environmental Control with complete information with respect to the area or areas of proposed operations, type of exploration and a schedule showing the period or periods during which such explorations will be conducted. Such information shall be treated as confidential unless released by the permittee.

(7 Del. C. 1953 § 6404; 55 Del. Laws, c. 442 § 1; 57 Del. Laws, c. 739 § 213; 59 Del. Laws, c. 212 § 1.)

§ 6105 Filing of records of drilling; confidential nature of records.

(a) Records of drilling conducted by a permittee under § 6104 of this title shall be retained by the permittee and be made available to the Secretary and the State Geologist upon their request. Any such records which the permittee is required to make available to the Secretary or the State Geologist shall be for the confidential use of the Secretary and the State Geologist and shall not be open to inspection by any other person or agency without the written consent of the permittee.

(b) The Secretary may require, as a condition to the issuance of any lease under this chapter, that the lessee make available to the Secretary or the State Geologist upon request, all factual and physical exploration results, logs and records resulting from the operations under the lease. Any such factual or physical exploration results, logs or records which the lessee is required to make available to the Secretary or the State Geologist shall not be open to inspection by any other person or agency without the written consent of the lessee.

(7 Del. C. 1953 § 6405; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1; 65 Del. Laws, c. 508 § 1.)

§ 6106 Unlawful disclosure of information; penalties; jurisdiction of offenses.

(a) The Secretary, or any person performing any function or work assigned to him or her by the Secretary, shall not disclose to any person who is not an employee of the Secretary or to any person who is not performing any function or work assigned to him or her by the Secretary, any information obtained from the inspection of such factual or physical exploration results, logs or records, or to use such information for purposes other than the administration of the functions, responsibilities and duties vested in the Secretary by law, except upon the written consent of the permittee or lessee making such information available to the Secretary.

(b) Whoever violates this section shall be fined not less than $25 nor more than $100, or imprisoned for not more than 30 days, or both.

(c) The Superior Court shall have jurisdiction of offenses under this section.

(7 Del. C. 1953 § 6406; 55 Del. Laws, c. 442 § 1; 57 Del. Laws, c. 283 § 2; 59 Del. Laws, c. 212 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6107 Public hearings; notice.

(a) Before offering tide and submerged lands for leasing under this chapter, or whenever any person files a written application with the Secretary requesting that lands be offered for leasing under this chapter, accompanying the same with the required fee, the Secretary shall hold a public hearing as provided in this section.

(b) Before granting a lease or inviting bids on any tide and submerged lands, the Secretary shall cause written notice describing the area under consideration and other pertinent information to be transmitted to:

(1) State Highway Department;

(2) Cabinet Committee on State Planning Issues;

(3) Department of Natural Resources and Environmental Control;

(4) Department of Health and Social Services;

(5) State Geologist;

(6) The applicant, if any, requesting the hearing;

(7) Prospective applicants or bidders, by publication in 2 or more publications of general circulation in the oil and gas industry; and

(8) The public, by publication of the notice once each week for not less than 2 weeks in a newspaper of general circulation throughout the State and in addition in a newspaper of general circulation in the county in which the lands lie or the county or counties contiguous to the area under consideration for bidding.

(c) The notice shall set forth the place of hearing and shall set its time at not less than 20 days following the date of the last newspaper publication.

(d) The Secretary may appoint 1 of his or her employees to conduct hearings authorized under this section. An officer or employee of each interested State agency, board or commission named in subsection (b) of this section may question any witnesses appearing before the Secretary or the Secretary's representative, and any interested person may offer evidence and otherwise be heard.

(7 Del. C. 1953 § 6407; 55 Del. Laws, c. 442 § 1; 57 Del. Laws, c. 739 § 214; 59 Del. Laws, c. 212 § 1; 63 Del. Laws, c. 191 § 4(i); 65 Del. Laws, c. 508 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6108 Determination of whether lease is in the public interest.

After the public hearing the Secretary shall determine whether an invitation for bidding to lease the area under consideration would be in the public interest. In such determination the Secretary shall consider whether a lease or leases of the area under consideration would:

(1) Be detrimental to the health, safety or welfare of persons residing in, owning real property or working in the neighborhood of such areas;

(2) Interfere with the residential or recreation areas to an extent that would render such areas unfit for recreational or residential uses or unfit for park purposes;

(3) Destroy, impair or interfere with the esthetic and scenic values of the Delaware coast, or other affected area;

(4) Create any air, water and other pollution;

(5) Substantially endanger marine life or wildlife;

(6) Substantially interfere with commerce or navigation; and

(7) Protect state lands from drainage of oil, gas or other minerals or objectionable substances.

(7 Del. C. 1953 § 6408; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1.)

§ 6109 Maximum area.

The maximum area which shall be included in any single lease to any person shall be 6 square miles or 3,840 acres.

(7 Del. C. 1953 § 6409; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1.)

§ 6110 Form of lease or permit.

(a) The language of §§ 6111 and 6117 of this title shall be incorporated substantially into every lease.

(b) The language of § 6113 of this title shall be incorporated substantially into every permit.

(c) Every lease, and every permit, shall contain those provisions selected by the Secretary after consultation with interested agencies, boards and commissions.

(7 Del. C. 1953 § 6410; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1.)

§ 6111 Exclusive right to drill and remove minerals.

The lease shall grant the exclusive right to drill for and produce all oil, gas, sulphur and other mineral deposits in the leased land and be for a primary term of 10 years and for so long thereafter as oil, gas, sulphur or other minerals are produced in paying quantities from the leased land, or lessee is diligently conducting producing, drilling, deepening, repairing, redrilling or other necessary lease or well maintenance operations on the leased land, or is excused from conducting such operations under the terms of the lease.

(7 Del. C. 1953 § 6411; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1.)

§ 6112 Royalty.

The Secretary shall specify in the notice described by § 6107 of this title and in the lease the rate of royalty paid under such lease which royalty shall not be less than 12 1/2 percent of gross production, or the value thereof, produced and saved from the leased lands and not used by lessee for operations thereon or for injection therein. Such royalty shall, at the Secretary's option, be paid in kind or in value, and be computed after an allowance for the actual cost of oil treatment or dehydration of not to exceed $0.05 cents per barrel or royalty oil so treated or dehydrated.

(7 Del. C. 1953 § 6412; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1.)

§ 6113 Lien on production.

The State shall have alien upon all production for unpaid royalties.

(7 Del. C. 1953 § 6413; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1.)

§ 6114 Rental for leased land.

The Secretary shall specify a rental payable annually in advance of not less than $0.25 for each acre of land subject to the lease at the rental date. After production has been established, rent paid shall be deducted from any royalty due under the terms of a lease during the year for which such rent has been paid.

(7 Del. C. 1953 § 6414; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1.)

§ 6115 Bonds.

Sufficient bonding or insurance requirements, as determined by the Secretary shall be specified to secure to the State performance and the faithful compliance by the lessee with the terms of the lease, and further to secure adjacent landowners and the public generally as to all proper claims for damages arising from operations thereunder.

(7 Del. C. 1953 § 6415; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1.)

§ 6116 Cessation of production.

In the event production on the leasehold shall cease at any time or from time to time, after the expiration of the primary term of the lease, the lease shall nevertheless continue in full force and effect if the lessee shall, within 6 months after the cessation of production or within such longer period of time as the Secretary may authorize, commence and thereafter prosecute with reasonable diligence drilling, deepening, repairing, redrilling or other operations for the restoration of production of oil, gas, sulphur or other minerals from the leased lands.

(7 Del. C. 1953 § 6416; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1.)

§ 6117 Slant and adjacent drilling.

Unless otherwise determined by the Secretary, each well drilled pursuant to the terms of the lease may be drilled or slant drilled to and into the subsurface of the tide or submerged lands covered by the lease from upland or littoral drill sites owned or controlled by the State or owned by or available to the lessee, or from drill sites located upon any lands filled before or after July 1, 1966, whether contiguous or noncontiguous to the littoral lands or uplands, or from any pier constructed before or after July 1, 1966, owned by or available to the lessee and available for such purpose, or from platforms or other fixed or floating fixtures in, on or over the submerged lands covered by the lease, or otherwise available to the lessee.

(7 Del. C. 1953 § 6417; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1.)

§ 6118 Restoration of visible lands to original condition.

Upon any partial or total termination, surrender or forfeiture of its permit or lease, the Secretary may require that the permittee or lessee, within a reasonable time, restore that portion of the premises that is visible at extreme low tide, to substantially its original condition.

(7 Del. C. 1953 § 6418; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1.)

§ 6119 Pollution and contamination prohibited.

(a) Avoidable pollution or avoidable contamination of the ocean and of the waters covering submerged lands, avoidable pollution or avoidable contamination of the beaches or land underlying the ocean or waters covering submerged lands, or any substantial impairment of and interference with the enjoyment and use thereof, including but not limited to bathing, boating, fishing, fish and wildlife production, and navigation, shall be prohibited and the lessee shall exercise a high degree of care to provide that no oil, tar, residuary product of oil or any refuse of any kind from any well or works shall be permitted to be deposited on or pass into the waters of the ocean, any bay or inlet thereof, or any other waters covering submerged lands; provided, however, that this section does not apply to the deposit on, or passing into, such water or waters not containing any hydrocarbons or vegetable or animal matter.

(b) For the purposes of this section, "avoidable pollution" or "avoidable contamination" means pollution or contamination arising from:

(1) The acts or omissions of the lessee or its officers, employees or agents; or

(2) Events that could have been prevented by the lessee or its officers, employees or agents through the exercise of a high degree of care.

(7 Del. C. 1953 § 6419; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1.)

§ 6120 Extension of lease where permits required.

If the lessee, as disclosed by information submitted with his or her bid, proposes to drill 1 or more wells from filled lands, whether contiguous or noncontiguous to the littoral lands or uplands, or from any pier or from platforms or other fixed or floating structures to be constructed for such purpose, and if permission from any federal or state agency is legally required in order to construct any such filled lands or structures, the lessee shall be allowed a reasonable time following the execution of the lease within which to secure the necessary permission from such federal and state agencies as shall be legally required, and, upon the securing of such permission, a further reasonable time, determined with regard to the nature of the filled lands or structure or structures to be constructed, within which to commence operations for the drilling of such well or wells, and if necessary, the drilling term provided for in § 6121 of this title shall be extended by the Secretary to the date to which the time to commence operations for the drilling of such well or wells has been extended.

(7 Del. C. 1953 § 6420; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6121 Commencing of operations for drilling.

Subject to the lessee's right to surrender, the lessee shall commence operations for the drilling of a well within 5 years from date of the lease and commence production within 3 years of discovery of oil, gas, sulphur or other minerals in paying quantities, unless the Secretary shall have, for cause, granted an extension of time for such act. In addition, the lease shall have such exploratory, drilling and producing requirements as the Secretary deems necessary to encourage the exercise of due diligence on the part of the lessee.

(7 Del. C. 1953 § 6421; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1.)

§ 6122 Nonconflicting uses.

The State reserves the right to permit reasonable nonconflicting use (including seismic surveys but excluding core hole drilling of lands under lease) so long as:

(1) Such uses do not unreasonably impair or interfere with operations of the lessee; and

(2) Requirement is made that the permittee indemnify the lessee against any damage caused by such use.

(7 Del. C. 1953 § 6422; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1.)

§ 6123 Assignability of lease.

No permit, easement or lease, or any portion thereof shall be assignable without the prior written consent of the Secretary.

(7 Del. C. 1953 § 6423; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1.)

§ 6124 Protection against drainage.

The lessee shall at all times proceed with due diligence to protect the leasehold from drainage by wells on land not owned by the State.

(7 Del. C. 1953 § 6424; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1.)

§ 6125 Surrender by lessee.

The lessee may at any time file with the Secretary a written surrender of all rights under the lease or any portion thereof or any separate or distinct zone or geological horizon or any portion thereof. Such surrender shall be effective as of the date of its filing subject to the continuing obligation of the lessee to pay all rentals and royalties theretofore accrued and to place all wells on the lands or in the zone or horizons surrendered in condition for suspension or abandonment in accordance with the applicable lease terms, regulations and law. Thereupon the lessee shall be released from all obligations under such lease with respect to the lands, zones or horizons surrendered, but no such surrender shall release such lessee from any liability for breach of any monetary obligation of the lease with respect to which such lessee is in default at the time of the filing of such surrender.

(7 Del. C. 1953 § 6425; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1.)

§ 6126 Cancellation of lease; judicial proceedings.

The Secretary may cancel any lease upon which oil, gas, sulphur or other minerals have not been discovered in paying quantities, upon failure of the lessee after 30 days' written notice and demand for performance, to exercise due diligence and care in the prosecution of the prospecting of development or work in accordance with the terms of the lease. After discovery of oil, gas, sulphur or other minerals in paying quantities on lands subject to any lease, such lease may be forfeited and cancelled only by appropriate judicial proceedings upon failure of the lessee after 90 days' written notice and demand for performance, to comply with any of the provisions of the lease or of laws or regulations applicable thereto and in force at the date of the invitation for bids in pursuance of which the lease was awarded; provided, however, that in the event of any such cancellation, the lessee shall have the right to retain under such lease any and all drilling or producing wells as to which no default exists, together with a parcel of land surrounding each such well and such rights-of-way through the leased lands as may be reasonably necessary to enable such lessee to drill and operate such retained well or wells. In the event of the cancellation of any lease, the lessee shall have a reasonable time within which to remove all property, equipment and facilities owned or used by the lessee in connection with operations under the lease.

(7 Del. C. 1953 § 6426; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1.)

§ 6127 Lease shall conform to all laws, rules and regulations.

It shall be a continuing condition of any lease that the lessee shall conform to all applicable laws of the State and all duly promulgated rules and regulations pursuant thereto in effect at the date of the invitation for bids in pursuance of which the lease was awarded. Periodic mutual negotiations between lessee and lessor may be carried out to make conditions, rules and regulations current as warranted by changes in environment or operational methods.

(7 Del. C. 1953 § 6427; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1.)

§ 6128 Notice of offer to lease; bid award; fee.

(a) The Secretary may offer to lease tide and submerged lands by publication of a notice of his or her intention to do so, once each week for not less than 2 weeks in 2 or more newspapers of general circulation in this State, 1 of which is published or has general circulation in the county in which the lands lie or the county contiguous thereto. The notice shall describe the lands so offered, and shall specify the rate of royalty and the rental, the manner in which bids may be filed with the Secretary, the amount of the deposit that must accompany each bid, and the time and place for filing bids, which time shall not be less than 30 days after the date of last publication of such notice. Further, the notice shall state that the lease will be awarded to the bidder offering the highest cash bonus, that the form of lease, conditions for bidding and bid form may be obtained from the Secretary upon request, and that the lease is subject to prior approval by the United States Defense Department.

(b) Each bid shall be enclosed in a sealed envelope, shall be on the form provided by the Secretary and shall be accompanied by duplicate lease forms executed by the bidder, and by a certified or cashier's check or checks payable to the State in the amount fixed by the Secretary which sum shall be deposited as evidence of good faith and, except in the case of the successful bidder, shall be returned to the bidder promptly. If the successful bidder fails to pay the balance of the cash bonus bid and the annual rental for the first year within 15 days after the award of the lease, or fails to post any bond required by the lease or the regulations in effect at the date of the invitation for bids within the time prescribed, the amount of the deposit shall be forfeited to the State.

(c) At the time and place specified in the notice the Secretary shall publicly open the sealed bids and shall within 30 days reject all bids or award the lease for each parcel to a responsible bidder who, in addition to complying with all of the conditions for bidding, offers the highest cash bonus. The Secretary may reject any or all bids.

(d) Following the award of the lease, the payment by the successful bidder of the balance of the cash bonus, the annual rental for the first year, and the fees specified in this section, and the posting of any required bonds, the Secretary and the Governor shall execute the lease in duplicate on behalf of the State and transmit 1 counterpart thereof to the lessee. The lease shall become effective as of the date of such execution.

(e) The Secretary shall prescribe a reasonable fee to cover the procedures under this section, which shall be paid by the successful bidder.

(7 Del. C. 1953 § 6428; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6129 Execution of lease.

All leases and other instruments required in carrying out this chapter shall be executed by the Secretary and the Governor. All bonds, contracts and other instruments required by this chapter for the protection of the interests of this State and its political subdivisions, persons and property therein, shall be executed and delivered to the Secretary.

(7 Del. C. 1953 § 6429; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1; 65 Del. Laws, c. 508 § 1.)

§ 6130 Proceeds to General Fund.

The proceeds from all leases under this chapter, including rents and royalties, after payment of the necessary expenses incurred by the Secretary in carrying out this chapter, shall be turned over to the Secretary of Finance and deposited by him or her in the General Fund of the State.

(7 Del. C. 1953 § 6430; 55 Del. Laws, c. 442 § 1; 57 Del. Laws, c. 739 § 215; 59 Del. Laws, c. 212 § 1; 65 Del. Laws, c. 508 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6131 Discriminatory bidding requirements prohibited.

In leasing tide and submerged lands, the Secretary may not discriminate between bidders by requiring drilling from:

(1) Upland or littoral drill sites;

(2) Sites on filled land, whether contiguous or noncontiguous to the littoral lands or uplands; or

(3) Any pier, platform or other fixed or floating structure in, on or over tide and submerged lands with respect to which this State or any other owner thereof has consented to use.

(7 Del. C. 1953 § 6431; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1.)

§ 6132 Retention or protection of fill.

Under a lease entered into by the Secretary pursuant to this chapter, the fill constituting filled lands may be retained in place or protected by bulkheads, seawalls, revetments or similar enclosures and may be placed at any location approved by the Secretary in consultation with interested agencies, boards and commissions.

(7 Del. C. 1953 § 6432; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1; 65 Del. Laws, c. 508 § 1.)

§ 6133 Interest leaseable.

Any interest in lands, or lands in fee simple, acquired by the Secretary by purchase, donation, lease, condemnation or otherwise, may be made available to any lessee of the State for the purposes contained in this chapter and upon such terms and conditions as may be determined by the Secretary.

(7 Del. C. 1953 § 6433; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1; 65 Del. Laws, c. 508 § 1.)

§ 6134 Joint exploration.

For the purpose of properly conserving the natural resources of any single oil, gas or other mineral, pool or field lessees under this chapter and their representatives may unite with each other jointly or separately, or jointly or separately with others owning or operating lands not belonging to the State, in collectively adopting and operating under a cooperative or unit plan of development or operation of the pool or field, whenever it is determined by the Secretary to be necessary or advisable in the public interest. The Secretary may, with the consent of the holders of the leases involved, establish, alter, change and revoke any drilling and production requirements of such leases, and make such regulations with reference to such leases, with like consent on the part of the lessees, in connection with the institution and operation of any such cooperative or unit plan, as the Secretary deems necessary or proper to secure the proper protection of the interests of the State.

(7 Del. C. 1953 § 6434; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1; 65 Del. Laws, c. 508 § 1.)

§ 6135 Sulphur.

This chapter applies equally to the exploration and leasing of tide and submerged lands for the production of sulphur, save and except that the royalty for sulphur produced under this chapter shall not be less than $1.00 per long ton.

(7 Del. C. 1953 § 6435; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1; 65 Del. Laws, c. 508 § 1.)

§ 6136 Jurisdiction over matters affecting health and safety.

This chapter does not deprive this State or any agency or instrumentality thereof of its jurisdiction over matters affecting the public health and safety, including but not limited to the control of air and water pollution.

(7 Del. C. 1953 § 6436; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1; 65 Del. Laws, c. 508 § 1.)

§ 6137 No permit or lease to violators of this chapter.

No permit or lease shall be granted to any person then in violation of any law or regulation applicable to this chapter.

(7 Del. C. 1953 § 6437; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1; 65 Del. Laws, c. 508 § 1.)

§ 6138 Rules, regulations, orders.

In addition to and not in lieu of any other powers granted under this chapter, the Secretary may promulgate reasonable rules, regulations and orders necessary to regulate geological, geophysical and seismic surveys on, and operations to remove oil, gas, sulphur and other minerals from the tide and submerged lands of this State under this chapter.

(7 Del. C. 1953 § 6438; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1; 65 Del. Laws, c. 508 § 1.)

§ 6139 Federal approval.

All leases and permits granted pursuant to this chapter shall be subject to prior approval by the Department of Defense of the United States and shall be subject to any restriction or limitation imposed by the Department of Defense.

(7 Del. C. 1953 § 6439; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1; 65 Del. Laws, c. 508 § 1.)

§ 6140 Delegation of authority.

The Secretary may, from time to time, delegate the State Geologist, with his or her consent, to act in the Secretary's behalf under this chapter. When so designated, the State Geologist shall have all the duties and powers of the Secretary under this chapter.

(7 Del. C. 1953 § 6440; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1; 65 Del. Laws, c. 508 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6141 Existing rights.

This chapter shall not change the law of this State relating to existing property, riparian or other rights of this State or other persons in submerged, tideland or filled lands.

(7 Del. C. 1953 § 6461; 55 Del. Laws, c. 442 § 1; 59 Del. Laws, c. 212 § 1; 65 Del. Laws, c. 508 § 1.)

§ 6142 Violations; enforcement; civil and criminal penalties.

(a) The Secretary shall enforce this chapter.

(b) Whoever violates this chapter, or any rule, or regulation, or condition of a lease or permit issued pursuant to authority granted in this chapter or an order of the Secretary shall be punishable as follows:

(1) If the violation has been completed, by a civil penalty of not less than $1,000 nor more than $10,000 for each completed violation. Each day of continued violation shall be considered as a separate violation. The Superior Court shall have jurisdiction of a violation in which a civil penalty is sought.

(2) If the violation is continuing or threatening to begin, the Secretary may, in addition to seeking a monetary penalty as provided in paragraph (b)(1) of this section, seek a temporary restraining order, a temporary injunction or permanent injunction in the Court of Chancery.

(c) Whoever violates this chapter, or any rule, or regulation promulgated thereunder or any rule or regulation in effect at the time of the enactment of this chapter or any lease or permit condition, or any order of the Secretary, shall be punished by a criminal penalty of not less than $50 nor more than $500 for each violation. Each day of violation shall be considered as a separate violation. The Courts of the Justice of the Peace shall have jurisdiction of offenses under this subsection.

(d) 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 chapter, or under any lease or permit, rule, regulation or order issued under this chapter, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall upon conviction be punished by a fine of not less than $500 nor more than $5,000 or by imprisonment for not more than 6 months, or both. The Superior Court shall have jurisdiction of offenses under this subsection.

(59 Del. Laws, c. 527 § 1; 65 Del. Laws, c. 508 § 1.)

§ 6143 Cease and desist order.

The Secretary shall have the power to issue an order to any person violating any rule, or regulation, or permit condition, or lease condition, or provision of this chapter, to cease and desist from such violation. Any cease and desist order issued pursuant to this section shall expire (1) after 30 days of its issuance, or (2) upon withdrawal of said order by the Secretary, or (3) when the order is superseded by an injunction, whichever occurs first.

(59 Del. Laws, c. 527 § 1; 65 Del. Laws, c. 508 § 1.)

§§ 6144 -6150. [Reserved.]

§§ 6151 -6159. [Reserved.]

§ 6160 [Reserved.]

§§ 6161 -6163. [Reserved.]

Part VII
Natural Resources
Chapter 62
OIL POLLUTION LIABILITY

§ 6201 Findings; purpose.

(a) The General Assembly finds and declares that the highest and best uses of the seacoast of the State are as a source of public and private recreation and solace from the pressures of an industrialized society and as a source of public use and private commerce in fishing, crabbing and gathering other marine life used and useful in food production and other commercial activities.

(b) The General Assembly further finds and declares that the preservation of these uses is a matter of the highest urgency and priority and that such uses can only be served effectively by maintaining the coastal waters, estuaries, tidal flats, beaches and public lands adjoining the seacoast in as close to a pristine condition as possible, taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interest with the least possible conflicts in such diverse uses.

(c) The General Assembly further finds and declares that the transfer of oil, petroleum products and their by-products between vessels and vessels and onshore facilities and vessels within the jurisdiction of the State and state waters is a hazardous undertaking; that spills, discharges and escape of oil, petroleum products and their by-products occurring as a result of procedures involved in the transfer and storage of such products pose threats of great danger and damage to the marine, estuarine and adjacent terrestrial environment of the State; to owners and users of shorefront property; to public and private recreation; to citizens of the State and other interests deriving livelihood from marine related activities; and to the beauty of the Delaware coast; that such hazards have frequently occurred in the past, are occurring now and present future threats of potentially catastrophic proportions, all of which are expressly declared to be inimical to the paramount interests of the State as herein set forth and that such state interests outweigh any restrictions or burdens imposed by the General Assembly upon those engaged in transferring oil, petroleum products and their by-products and related activities.

(d) The General Assembly intends by the enactment of this legislation to exercise the police power of the State through the Department of Natural Resources and Environmental Control by conferring upon said Department the exclusive power to deal with the hazards and threats of danger and damage posed by such transfers and related activities; to require the prompt containment and removal of pollution occasioned thereby; to provide procedures whereby persons suffering damage from such occurrences may be promptly made whole; and to guarantee that all persons using the waters of the State for the transportation or transfer of oil, petroleum products and their by-products meet minimum requirements of financial responsibility.

(e) The General Assembly further finds and declares that the preservation of the public uses referred to herein is of grave public interest and concern to the State in promoting its general welfare, preventing disease, promoting health and providing for the public safety, and that the State's interest in such preservation outweighs any burdens of absolute liability imposed by the General Assembly upon those engaged in transferring oil, petroleum products and their by-products and related activities.

(61 Del. Laws, c. 127 § 1.)

§ 6202 Definitions.

The following words and phrases shall have the meanings ascribed to them in this chapter unless the context clearly indicates otherwise:

(1) "Claim" shall mean a demand in writing for damages.

(2) "Claimant" shall mean anyone who asserts a claim.

(3) "Cleanup costs" shall mean costs of reasonable measures taken, after an incident has occurred, to prevent, minimize or mitigate further oil pollution from that incident.

(4) "Discharge" shall mean any emission, intentional or unintentional, and shall include spilling, leaking, pumping, pouring, emptying or dumping.

(5) "Facility" shall mean a structure or group of structures (other than a vessel or vessels) including trucks, pipelines, bulk storage tanks and tank cars, used for the purpose of transporting, producing, processing, storing, transferring or handling oil.

(6) "Guarantor" shall mean the person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator.

(7) "Incident" shall mean any occurrence or series of occurrences, involving 1 or more vessels, facilities or any combination thereof, which causes or poses any threat of oil pollution in or upon the waters and lands of the State.

(8) "Offshore facility" means any facility of any kind located in, on, or under any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

(9) "Oil" shall mean oil of any kind or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include any substance which is specifically listed or designated as a hazardous substance under § 101(14)(A)-(F) of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601) and which is

subject to the provisions of that Act (42 U.S.C. § 9601 et seq.) enacted as of June 6, 2013.

(10) "Oil pollution" shall mean any discharge of oil that results in a film on, emulsion in or sludge beneath the waters of the State or its shoreline.

(11) "Operator" shall mean:

a. In the case of a vessel, a charterer by demise or any other person who is responsible for the operation, manning, victualing and supplying of the vessel; or

b. In the case of a facility, any person responsible for the operation of the facility by agreement with the owner.

(12) "Owner" shall mean any person holding title to, or, in the absence of title, any other indicia of ownership of a vessel or facility, but does not include a person having only a security interest in, or security title to, a vessel or facility, under a contract of conditional sale, an equipment trust, a chattel or corporate mortgage, a lease which is the functional equivalent of an extension of credit or any similar instrument.

(13) "Person" shall mean an individual, firm, corporation, association or partnership.

(14) "Person in charge" shall mean the individual immediately responsible for the operation of a vessel or facility.

(15) "Refinery" shall mean a terminal which receives crude oil for the purpose of refinement.

(16) "Secretary" shall mean the Secretary of the Department of Natural Resources and Environmental Control.

(17) "Terminal" shall mean a facility, located within the boundaries of the State which receives oil in bulk directly from any vessel, offshore production facility, offshore port facility or onshore pipeline.

(18) "Vessel" shall mean every description of watercraft or other artificial contrivance used, or capable of being used, as a means of water transportation.

(19) "Waters of the State" shall mean those waters within the boundaries of the State as defined in § 201 of Title 29, including those waters of the territorial sea which are in direct contact with the coast of Delaware and extending from the line of ordinary low water seaward for a distance of 3 geographical miles.

(61 Del. Laws, c. 127 § 1; 79 Del. Laws, c. 38 § 1.)

§ 6203 Pollution of waters and lands prohibited.

The discharge of oil which causes an incident is prohibited.

(61 Del. Laws, c. 127 § 1.)

§ 6204 Removal of illegal discharge.

Any person determined by the Secretary to be responsible for causing an incident shall immediately undertake to remove such oil pollution to the Secretary's satisfaction. If the person responsible fails immediately to undertake to remove the oil pollution to the Secretary's satisfaction, the Secretary may undertake the removal of such oil pollution and may retain agents and contractors for such purpose who shall operate under the direction of the Secretary. The Secretary may authorize a third person, affected by such oil pollution, to expend funds to remove said oil pollution at the expense of the person responsible for same. All moneys expended by the Secretary under this section and recovered under § 6205 of this title are hereby appropriated to the Department of Natural Resources and Environmental Control to carry out the purposes of this chapter.

(61 Del. Laws, c. 127 § 1.)

§ 6205 Enforcement.

(a) Any person who violates a provision of this chapter or any rule or regulation promulgated thereunder shall be liable in any court of competent jurisdiction for a civil penalty of not less than $1,000 nor more than $10,000 for each day of violation. Any civil penalties collected under this section are hereby appropriated to the Department to carry out the purposes of this chapter.

(b) The Secretary may seek appropriate relief, including injunctive relief, in any court of competent jurisdiction to prohibit and prevent such violation or violations from continuing.

(c) The Secretary may also bring an action in any court of competent jurisdiction for the collection of expenses incurred by the Department resulting from the violation of this chapter or any rule or regulation promulgated thereunder.

(61 Del. Laws, c. 127 § 1; 65 Del. Laws, c. 319 § 1.)

§ 6206 Service of process on owners or operators of vessels or facilities who are nonresidents or corporations not incorporated in Delaware.

(a) Any nonresident who, either in person or through others, owns or operates a vessel or facility in or upon the lands or waters of this State or any nonresident who, either in person or through others, owns or operates a vessel or facility outside the State, which while located outside the State causes an incident in or upon the lands or waters of the State shall be deemed thereby to have submitted himself or herself to the jurisdiction of the courts of this State and to have appointed and constituted the Secretary of State of this State or the Secretary's designee as his or her agent for the acceptance of legal process in any action under this chapter. The force, validity and effect of service of process under this subsection as well as the procedure for effectuating said service shall be governed in all respects by § 3104 of Title 10.

(b) Any corporation, not incorporated in this State, which itself or through others owns or operates a vessel or facility in or upon the lands or waters of this State or any such corporation which itself or through others owns or operates a vessel or facility outside the State

which, while outside the State, causes an incident in or upon the lands or waters of this State, shall be deemed thereby to have sufficient contacts with this State to have submitted itself to the jurisdiction of the courts of this State. The force, validity and effect of service of process under this subsection as well as the procedure for effectuating said service shall be governed in all respects by § 3111 of Title 10.

(61 Del. Laws, c. 127 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6207 Damages; claimants.

(a) In addition to all necessary costs of investigation and prosecution claims for damages for economic loss, arising out of or directly resulting from oil pollution, may be asserted for:

(1) Cleanup costs;

(2) Injury to, or destruction of, real or personal property;

(3) Loss of use of real or personal property;

(4) Injury to, or destruction of, natural resources;

(5) Loss of use of natural resources;

(6) Loss of profits or impairment of earning capacity due to injury or destruction of real or personal property or natural resources; and

(7) Loss of tax revenue for a period of 1 year due to injury to real or personal property.

(b) A claim authorized by subsection (a) of this section may be asserted:

(1) Under any items, by the Attorney General on behalf of the State, its citizens or subdivisions; however, the right of any claimant or claimants to proceed in their own behalf shall not be impaired;

(2) Under paragraph (a)(1) of this section, by any claimant;

(3) Under paragraphs (a)(2), (3) and (5) of this section, by any claimant, if the property involved is owned or leased, or the natural resource involved is utilized, by the claimant;

(4) Under paragraph (a)(4) of this section, by the Governor, as trustee for natural resources over which the State has sovereign rights;

(5) Under paragraph (a)(6) of this section, by any claimant, if the claimant derives at least 15 percent of his or her income from activities which utilize the property or natural resource;

(6) Under paragraph (a)(7) of this section, by the State or political subdivision thereof.

(61 Del. Laws, c. 127 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6208 Liability.

(a) Subject to subsection (b) of this section, the owner and operator of a vessel or of a facility, which is the source of, or poses a threat of, oil pollution, shall be jointly, severally and strictly liable for all damages for which a claim may be asserted under § 6207 of this title.

(b) There shall be no liability under subsection (a) of this section:

(1) To the extent that the incident is caused by an act of war, hostilities, civil war or insurrection, or by a natural phenomenon of an unforeseen, exceptional, inevitable and irresistible character;

(2) As to a particular claimant, where the incident or the economic loss is caused by the gross negligence or wilful misconduct of that claimant.

(c) In addition to the damages for which claims may be asserted under § 6207 of this title, the owner, operator or guarantor shall be liable to the claimant for such interest as may be awarded in the discretion of the court as well as court costs and attorneys' fees.

(d) Nothing in this chapter shall bar a cause of action that an owner or operator, subject to liability under subsection (a) of this section, or a guarantor has or would have, by reason of subrogation or otherwise, against any person or governmental entity other than the State and its agencies or subdivisions.

(61 Del. Laws, c. 127 § 1; 79 Del. Laws, c. 38 § 2.)

§ 6209 Financial responsibility.

(a) The owner or operator of a vessel or offshore facility shall establish and maintain evidence of financial responsibility by obtaining a Certificate of Financial Responsibility issued by the United States Coast Guard pursuant to the requirements of the Oil Pollution Act of 1990 (OPA), 33 U.S.C. § 2701, et seq., and regulations promulgated thereunder, enacted as of June 6, 2013. An owner or operator of a vessel or offshore facility that is not required by OPA to establish and maintain such evidence of financial responsibility shall be exempt from the requirements of this subsection, and from subsections (b) and (c) of this section.

(b) The master or operator of any vessel or offshore facility subject to this chapter shall have in his or her possession at all times certification that the financial responsibility provisions of this section have been complied with. Pilots of vessels holding a license issued by the State shall demand that such certification of financial responsibility be produced before providing any pilot service to said vessel.

(c) The owner or operator of any vessel or offshore facility subject to this chapter who, upon request, does not produce a COFR issued by the United States Coast Guard pursuant to OPA shall be punished by a fine of not less than $5,000 nor more than $15,000 for each such violation.

(d) Any claim authorized by § 6207 of this title may be asserted directly against any guarantor providing evidence of financial responsibility as required by the United States Coast Guard pursuant to OPA. In defending such claim, the guarantor shall be entitled to invoke all rights and defenses which would be available to the owner or operator under this title. He or she shall also be entitled to invoke the defense that the incident was caused by the wilful misconduct of the owner or operator, but shall not be entitled to invoke any other

defense which he or she might have been entitled to invoke in proceedings brought by the owner or operator against him or her.

(61 Del. Laws, c. 127 § 1; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 38 § 3.)

§ 6210 Notification; designation; advertisement.

(a) The person in charge of a vessel or facility, which is subject to this chapter, as soon as he or she has knowledge of an incident in which the vessel or facility is involved, shall immediately notify the Secretary of the incident.

(b)(1) When the Secretary receives information, pursuant to subsection (a) of this section or otherwise, of an incident which involves oil pollution, the Secretary shall, where possible, designate the source or sources of the oil pollution and shall immediately notify the owner and operator of such source, and the guarantor, of that designation as well as the Attorney General of the State.

(2) When a source designated under paragraph (b)(1) of this section is a vessel or a facility, and the owner, operator or guarantor fails to inform the Secretary, within 5 days after receiving notification of the designation, of his or her denial of such designation, such owner, operator or guarantor, in accordance with regulations promulgated by the Secretary, shall advertise the designation and the procedures by which claims may be presented to him or her. If advertisement is not otherwise made in accordance with this paragraph, the Secretary shall, at the expense of the owner, operator or guarantor involved, advertise the designation and the procedures by which claims may be presented to that owner, operator or guarantor.

(c) Advertisement under subsection (b) of this section shall commence no later than 15 days from the date of the designation made thereunder to continue for a period of no less than 30 days.

(61 Del. Laws, c. 127 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6211 Claims settlement.

(a) Except as provided in subsection (b) of this section, all claims shall be presented to the owner, operator or guarantor.

(b) In the case of a claim presented in accordance with subsection (a) of this section, and in which:

(1) The person to whom the claim is presented denies all liability for the claim, for any reason; or

(2) The claim is not settled by any person by payment to the claimant within 60 days of the date upon which the claim was presented, or advertising was commenced pursuant to § 6210(b)(2) of this title, whichever is later,

the claimant may elect to commence an action in Superior Court against the owner, operator or guarantor.

(c)(1) In any action brought against an owner, operator or guarantor, both the plaintiff and defendant shall serve a copy of the complaint and all subsequent pleadings therein upon the Attorney General and Secretary at the same time those pleadings are served upon the opposing parties.

(2) The Attorney General may intervene in the action as a matter of right.

(3) In any action to which the Secretary is a party, if the owner, operator or guarantor admits liability under this chapter, the Secretary upon his or her motion shall be dismissed therefrom.

(d) No claim may be presented, nor may an action be commenced for damages recoverable under this chapter, unless that claim is presented to, or that action is commenced against, the owner, operator or guarantor, as to their respective liabilities, within 3 years from the date of discovery of the economic loss for which a claim may be asserted under § 6207(a) of this title or within 6 years of the date of the incident which resulted in that loss, whichever is earlier.

(61 Del. Laws, c. 127 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6212 Adjudication by Secretary.

In lieu of any action under § 6211(a) or (b) of this title, the claimant may elect to submit his or her claim to the Secretary for adjudication, that election to be irrevocable and exclusive.

(61 Del. Laws, c. 127 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6213 Appeal to Board.

Any person whose interest is substantially affected by the adjudication of the Secretary under § 6212 of this title may appeal to the Environmental Appeals Board within 20 days after the Secretary has announced his or her decision. The Board may affirm, modify or reverse the decision of the Secretary. If the decision of the Secretary is overruled or modified by the Board, then the Board shall state reasons for its decision. No decision of the Board shall be valid unless signed by a minimum of 5 members.

(61 Del. Laws, c. 127 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6214 Appeal from Board.

(a) Any person or persons, jointly or severally, aggrieved by any decision of the Board, may appeal to the Superior Court in and for the county in which the incident in question wholly or principally occurred by filing a petition, duly verified, setting forth the grounds of the appeal. Any such appeal shall be perfected within 30 days of the receipt of the written decision of the Board.

(b) The Court may affirm, reverse or modify the Board's decision. The Board's findings of fact shall not be set aside unless the Court determines that the record contains no substantial evidence that would reasonably support the findings. If the Court finds that additional evidence should be taken, the Court may remand the case to the Board for completion of the record.

(61 Del. Laws, c. 127 § 1.)

§ 6215 Subrogation.

Any person or governmental entity who shall pay compensation to any claimant for an economic loss, compensable under § 6207(a) of this title, shall be subrogated to all rights, claims and causes of action which that claimant has under this chapter.

(61 Del. Laws, c. 127 § 1.)

§ 6216 Rules and regulations.

The Secretary may, after public hearing in accordance with § 6006 of this title, adopt, amend, modify or repeal rules or regulations to effectuate the policies and purposes of this chapter.

(61 Del. Laws, c. 127 § 1.)

Part VII
Natural Resources
Chapter 63
HAZARDOUS WASTE MANAGEMENT
Subchapter I
Hazardous Waste

§ 6301 Findings; purpose.

(a) The General Assembly finds that:

(1) Continuing technological progress, increases in the amounts of manufacture and the abatement of air and water pollution have resulted in ever-increasing quantities of hazardous wastes;

(2) The public health and safety and the environment are threatened where hazardous wastes are not managed in an environmentally sound manner and where there are no commercial hazardous waste management facilities available;

(3) The knowledge and technology necessary to alleviate adverse health, environmental and aesthetic impacts resulting from current hazardous waste management and disposal practices are believed to be generally available at costs within the financial capability of those who generate such wastes, but that such knowledge and technology are not widely used;

(4) The problem of managing hazardous wastes has become a matter of statewide concern.

(b) Therefore, it is hereby declared that the purposes of this chapter are:

(1) To protect the public health and safety, the health of organisms and the environment from the effects of the improper, inadequate or unsound management of hazardous wastes;

(2) To establish a program of regulation over the storage, transportation, treatment and disposal of hazardous wastes; and

(3) To assure the safe and adequate management of hazardous wastes within this State.

(62 Del. Laws, c. 412 § 3; 66 Del. Laws, c. 364 § 1.)

§ 6302 Definitions.

The following words and phrases shall have the meaning ascribed to them in this chapter unless the context clearly indicates otherwise:

(1) "Activity" means construction, operation or use of any facility, site, property or device.

(2) "Commission" means the Commission on the Transportation of Hazardous Materials.

(3) "Department" means the Department of Natural Resources and Environmental Control of the State.

(4) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous waste into or on any land, water or into the air so that such hazardous waste or any constituent thereof may enter the environment to be emitted into the air, or discharged into any water, including groundwaters, or any other management of hazardous wastes in which the handler voluntarily relinquishes control of the waste in a manner inconsistent with the requirements of this chapter and the regulations promulgated thereunder.

(5) "Division" means the Division of Waste and Hazardous Substances.

(6) "Generation" means the act or process of producing hazardous waste materials.

(7) "Hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous waste.

(8) "Hazardous wastes" means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical or chemical characteristics may cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating irreversible illness, or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed.

(9) "Manifest" means the form used for identifying the quantity, composition, origin, routing and destination of hazardous waste during its transport.

(10) "Person" means an individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state or any interstate body.

(11) "Secretary" means the Secretary of the Department of Natural Resources and Environmental Control, or his or her duly authorized designee.

(12) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Chapter 60 of this title, as amended, or source, special nuclear or by-product material as defined by the Atomic Energy Act

of 1954 [42 U.S.C. 2011 et seq.], as amended.

(13) "Storage" means the containment of hazardous wastes, either on a temporary basis or for a period of years, in such manner as not to constitute disposal of such hazardous wastes.

(14) "Transfer facility" means any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(15) "Transport" means the movement of wastes from the point of generation to the point of storage, treatment or disposal.

(16) "Treatment" means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste, so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable to recovery, amenable to storage or reduced in volume.

(17) "Treatment facility" means a location at which waste is subjected to treatment and may include a facility upon premises where hazardous waste has been generated.

(62 Del. Laws, c. 412 § 3; 63 Del. Laws, c. 164 § 1; 65 Del. Laws, c. 430 § 1; 66 Del. Laws, c. 140 § 1; 66 Del. Laws, c. 364 § 2; 67 Del. Laws, c. 140 §§ 1, 2; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 240 § 1; 77 Del. Laws, c. 430 § 59; 78 Del. Laws, c. 127 § 11.)

§ 6303 Hazardous waste management plan.

(a) The Department is authorized to study and investigate the problems of hazardous waste control and management in Delaware, and shall develop and publish after public hearing a statewide hazardous waste management plan, which shall include, but not be limited to:

(1) A description of the sources of hazardous waste generation within the State, including the types and quantities of such wastes, and the location of hazardous waste generators, disposal facilities and storage sites;

(2) A description of current hazardous waste management practices and costs, including treatment and disposal, within the State;

(3) An informational reporting system of hazardous waste quantities generated and disposed of in the State;

(4) Criteria for the siting of hazardous waste disposal facilities;

(5) Information on methods of reuse, recycling and reduction of hazardous wastes, including the feasibility of establishing facilities, institutions or requirements for the purpose of encouraging the reuse, recycling, reduction and utilization of hazardous wastes for useful purposes.

(b) In carrying out any studies or investigations under this section, the Department shall seek the cooperation and advice of the Delaware Solid Waste Authority.

(62 Del. Laws, c. 412 § 3.)

§ 6304 Prohibitions; records.

(a) No person shall generate, store, transport, treat or dispose of hazardous wastes in this State without reporting such activity to the Department as required by this chapter and regulations promulgated hereunder.

(b) No person shall generate, store, treat, transport or dispose of hazardous wastes within this State except in compliance with this chapter and regulations hereunder.

(c) Information obtained by the Department under § 6305(a)(10) of this title or pursuant to any other provisions of this chapter shall be available to the public as provided in Chapter 100 of Title 29, unless the Department certifies such information to be proprietary. The Department may make such certification where any person shows to the satisfaction of the Department that the information, or parts thereof, if made public, would divulge methods, processes or activities entitled to protection as trade secrets. Nothing in this subsection shall be construed as limiting the disclosure of information by the Department to any officer, employee or authorized representative of the state or federal government concerned with effecting this chapter or the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, as amended from time to time [42 U.S.C. § 6901 et seq.]. Prior to disclosure of proprietary information to an authorized representative who is not an officer or employee of the state or federal government, the person providing the proprietary information may require the representative to sign an agreement prohibiting disclosure of such information to anyone not authorized by this chapter or the terms of the agreement. Such agreement shall not preclude disclosure by the representative to any state or federal government officer or employee concerned with effecting this chapter or Pub. L. 94-580, as amended.

(d) It shall be unlawful for any person to destroy, alter or conceal any records maintained and in existence as of July 11, 1980, with respect to any generation, treatment, disposal, storage or transportation of hazardous waste during or subsequent to any such operation. This requirement applies equally to facilities and sites closed prior to July 11, 1980. The Secretary shall prescribe by regulation terms and conditions upon which records shall be kept, including the period of retention.

(e) The Secretary shall issue such orders as may be necessary to carry out his or her duties under this chapter.

(f) Except with respect to its powers as set forth in the Hazardous Materials Transportation Act, §§ 8223-8230 of Title 29, the Commission shall serve in an advisory capacity to the Secretary and may consider all matters relating to the implementation of this chapter and regulations promulgated thereunder.

(g) No person shall transport or deliver hazardous waste to any facility operated by or on behalf of the Delaware Solid Waste Authority, except to the extent authorized by the Authority with respect to small quantity source separated designated materials which are delivered to recycling centers for disposal in an authorized manner.

(62 Del. Laws, c. 412 § 3; 63 Del. Laws, c. 372 § 1; 67 Del. Laws, c. 432 § 6; 70 Del. Laws, c. 186 § 1.)

§ 6305 Regulations.

(a) The Secretary shall, after notice and public hearing, promulgate and revise as appropriate:

(1)a. Criteria, consistent with those promulgated by the United States Environmental Protection Agency under § 3001 of the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580 [42 U.S.C. § 6921], for identifying the characteristics of hazardous waste and for listing hazardous waste; and

b. Regulations identifying the characteristics of hazardous waste and listing particular hazardous wastes (within the meaning of paragraph (8) of § 6302 of this title based on the criteria promulgated in paragraph (a)(1)a. of this section;

(2) Regulations for the transport, storage, treatment and disposal of hazardous waste, including regulations regarding contingency plans for effective action to minimize unanticipated damage from the transport, treatment, storage or disposal of such hazardous waste and regulations prescribing conditions and time periods upon which generators may accumulate hazardous wastes on site without a permit and such other regulations as are necessary to assure that substances identified or listed under paragraph (a)(1) of this section which pass through a sewer system to a publicly owned treatment works are adequately controlled to protect human health and the environment;

(3) Regulations setting forth requirements for approval or permit applications and specifying the terms and conditions, including duration and schedules of compliance, under which the Department shall issue, modify, review, suspend, revoke or deny such approvals or permits as may be required by this chapter and regulations providing that permits issued after November 8, 1984, or regulations which, in the case of interim status facilities under § 6307(g) of this title, require corrective action both on site and beyond the facility boundary, if necessary to protect human health and the environment, for releases of hazardous waste or constituents from any solid waste management unit at a facility seeking a permit under this chapter, regardless of when the waste was placed in the unit. Such permits shall contain schedules of compliance for corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing the corrective action, and, in addition, regulations relating to qualifying for and termination of interim status under § 6307(g) of this title;

(4) Regulations establishing standards and procedures for the safe operation and maintenance of hazardous waste transfer, treatment, storage and disposal facilities or sites, including requirements for closing, long-term care and termination of transfer, treatment, storage and disposal facilities or sites and regulations regarding the prohibition of disposal of nonhazardous liquids in hazardous waste disposal facilities except upon such terms and conditions as the Secretary may prescribe. The Secretary may, where appropriate, establish separate standards for new and existing sites. Requirements may be adopted under this paragraph applicable to facilities and sites closed prior to July 11, 1980, which requirements shall be applicable to former and present owners and operators, as may be deemed appropriate;

(5) Regulations specifying those hazardous wastes which are not compatible, and which may not be stored or disposed of together without appropriate prior treatment to make them compatible;

(6) Regulations establishing procedures and requirements for the reporting of the generation, storage, transportation, treatment or disposal of hazardous wastes;

(7) Regulations establishing standards and procedures for the training of personnel engaged in treatment, storage or disposal activities at hazardous waste sites or facilities;

(8) Regulations establishing procedures and requirements for the use of a manifest during the transport of hazardous wastes and during such other phases of hazardous waste management as the Secretary deems necessary;

(9) Regulations which may provide for a reasonable schedule of fees for payment to the Department by hazardous waste transporters and owners of treatment, storage or disposal facilities or sites to defray the cost of administering this chapter. Any fees collected under this paragraph shall be appropriated to the Department for purposes of administering this chapter. Such regulations shall not provide for any annual fee under this paragraph in excess of $10,000 or in the case of small business concerns, any annual fee under this paragraph in excess of $500;

(10) Regulations which prescribe:

a. The establishment and maintenance of such records, including period of retention;

b. The making of such reports;

c. The taking of such samples and the performing of such tests or analyses;

d. The installing, calibrating, using and maintaining of such monitoring equipment or methods; and

e. The providing of such other information as may be necessary to achieve the purposes of this chapter;

(11) Regulations setting forth criteria regarding the level of financial responsibility required for hazardous waste management facilities and criteria pertaining to appropriate measures for preventing damage to public health, safety and the environment under § 6307(h)(2) of this title and regulations requiring evidence of financial responsibility to assure adequate resources for corrective action both on and off site;

(12) Regulations regarding the reuse, recycling and reduction of hazardous waste including regulations prohibiting the use of waste oil or other materials contaminated with hazardous waste as a dust suppressant and regulations pertaining to fuel containing hazardous waste and all persons who produce, burn, distribute and market fuel containing hazardous waste;

(13) Regulations, applicable to generators of hazardous waste, as may be necessary to protect human health and the environment, including regulations on recordkeeping practices to identify the types, quantities and constituents of hazardous waste generated and the

disposition of those wastes; regulations on use of appropriate containers for hazardous waste; regulations regarding the furnishing of information of the chemical composition of hazardous waste to persons involved in the management of such hazardous waste; regulations on the use of a manifest system by generators; regulations on submission of reports to the Secretary regarding quantities and disposition of hazardous waste generated during a particular period;

(14) Regulations regarding pre-operation review and inspection of hazardous waste management facilities;

(15) Regulations regarding location, design, construction and remedial action standards for hazardous waste management facilities;

(16) Regulations regarding such public notice and hearing requirements and other related matters as may be deemed necessary to maintain equivalence of the State's program under the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580 [42 U.S.C. § 6901 et seq.], including requirements for public notice of draft permits, for public comment periods and requests for hearings and for informal hearings.

(b) In complying with this section, the Secretary may consider the variations within the State in geology, population density and such other facts as may be relevant to the management of hazardous wastes.

(c) The Secretary, in consultation with the Commission and after notice and public hearings, shall issue regulations for the transportation, containerization and labeling of hazardous wastes. Such regulations shall be consistent with and no more stringent than applicable rules or regulations issued by the United States Environmental Protection Agency and Department of Transportation, and consistent with and no more stringent than any other regulations issued pursuant to this chapter and the Hazardous Materials Transportation Act of 1979, §§ 8223-8230 of Title 29.

(62 Del. Laws, c. 412 § 3; 63 Del. Laws, c. 164 § 2; 64 Del. Laws, c. 164 §§ 1-4; 65 Del. Laws, c. 320 §§ 1-5; 65 Del. Laws, c. 483 § 1; 65 Del. Laws, c. 516 § 1; 66 Del. Laws, c. 364 § 3.)

§ 6306 Generation and transportation of hazardous waste.

(a) Within 90 days of the effective date of regulations promulgated under this chapter setting forth criteria for identifying the characteristics of hazardous wastes and listing hazardous wastes, any person generating or transporting hazardous waste within this State shall submit to the Department a description of the source of the hazardous wastes, including the types and quantities thereof, and the location of the generating facility, as well as the storage and disposal sites.

(b) Any person generating hazardous waste shall comply with all requirements, as set forth in regulations under this chapter, respecting accurate identification through labeling practices of any containers used for the storage, transport or disposal of such hazardous wastes.

(c) Any person generating or transporting hazardous waste shall, in accordance with duly promulgated regulations, use a manifest system to assure that all hazardous waste generated is designated for treatment, storage or disposal in facilities (other than facilities on the premises where the waste is generated) for which a permit has been issued pursuant to this chapter or pursuant to the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580, as amended) [42 U.S.C. § 6901 et seq.].

(d) Any person generating any solid waste shall be responsible for any testing necessary to determine whether any material generated by them is a hazardous waste according to Department approved testing procedures.

(e) This chapter and regulations applicable to transporters of hazardous waste shall apply equally to those persons transporting hazardous wastes generated by others and to those transporting hazardous wastes they have generated themselves, or combinations thereof, as well as to persons transporting hazardous waste into, through or out of the State.

(f) Any person transporting hazardous waste must report a hazardous waste discharge to appropriate officials and clean up any hazardous waste discharge that occurs during transportation or take such other action as may be required or approved by appropriate officials so that the discharge no longer presents a hazard to human health or the environment.

(g) Any person transporting hazardous waste who owns, operates or utilizes a hazardous waste transfer facility for storage of in-transport hazardous waste shall do so in accordance with the Delaware Regulations Governing Hazardous Wastes.

(62 Del. Laws, c. 412 § 3; 64 Del. Laws, c. 162 § 5; 66 Del. Laws, c. 140 § 2; 66 Del. Laws, c. 364 §§ 4, 5; 70 Del. Laws, c. 240 §§ 2, 3.)

§ 6307 Hazardous waste treatment, disposal and storage facilities and sites.

(a) Within 90 days of the effective date of regulations promulgated under this chapter setting forth criteria for identifying the characteristics of hazardous wastes and listing hazardous wastes, any person owning or operating, substantially altering or constructing a hazardous waste treatment, storage or disposal facility or site shall report such activity to the Department, together with a description of the facility, the types and quantities of any solid and hazardous wastes treated, stored or disposed of, the location of the facility, the storage or disposal capacity of the facility and the source of the wastes treated, stored or disposed of.

(b) Beginning 180 days after the effective date of regulations adopted for this purpose, no person shall construct, substantially alter, own or operate any hazardous waste treatment, storage or disposal facility or site, nor shall any person store, treat or dispose of any hazardous waste without first obtaining a permit from the Secretary for such facility, site or activity, except that generators may accumulate hazardous wastes on site without a permit for such periods and upon such conditions as the Secretary may by regulation prescribe.

(c) Any person desiring to obtain a permit required under this section shall submit an application therefor in such form and accompanied by such plans, specifications and other information as required by applicable statute or regulation, including the requirements of subsection (h) of this section.

(d) Permits issued under this section shall be issued under such terms and conditions as the Secretary may prescribe by regulations

promulgated under the authority of § 6305 of this title.

(e) Operating permits shall be issued for a period of time as prescribed by regulations and may be revoked by the Secretary for failure to comply with the requirements of this chapter and regulations thereunder.

(f) Any permit issued under this section may be revoked by the Secretary at any time when the permittee fails to comply with the terms and conditions of the permit, provided, that no permit shall be revoked until the Secretary has provided the permittee with the opportunity for an adequate hearing, and with written notice of the intent of the Secretary to revoke the permit and the reasons for such revocation. Any appeal from an order of the Secretary revoking any permit shall not operate to stay the revocation.

(g) Any person who:

(1) Owns or operates a facility required to have a permit under this section which facility is in existence on the effective date of regulations under § 6305(a) of this title or which is in existence on the effective date of statutory or regulatory changes under this chapter that render the facility subject to the requirement to have a permit under this chapter;

(2) Has complied with the requirements of subsection (a) of this section; and

(3) Has made an application for a permit under this section

shall be treated as having been issued such permit until such time as final administrative disposition of such application is made, unless the Secretary or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application.

(h) No permit shall be issued to operate any hazardous waste treatment, storage or disposal facility or site except as provided in subsection (g) of this section, unless that facility or site submits to the Department the following:

(1) Evidence of financial responsibility including liability insurance in such form and amount as the Department may determine pursuant to duly promulgated regulations, to be necessary to insure that during operation or upon abandonment, cessation or interruption of the operation of the facility or site, all appropriate measures are taken to remedy or prevent present and future damage to the public health and safety to the environment.

(2) Evidence that the personnel engaged in the treatment, disposal or storage of hazardous wastes have met such qualifications as to training as the Department may prescribe pursuant to § 6305(a)(7) of this title.

(i) Any person acquiring rights of ownership, possession or operation in a facility or site granted a permit under this section for the disposal, storage or treatment of hazardous waste at any time after the site or facility has been granted a permit or has begun to accept such waste shall, in addition to the original permittee, be subject to all requirements of the permit approved for the site or the facility, including the requirements of subsection (j) of this section. Upon acquisition of the rights, and application to the Department, the Department shall issue a new permit if the previous permittee is no longer connected with the operation of the site or facility and if the proposed permittee meets all requirements of the applicable statutes and regulations.

(j) The owner or operator of a permitted facility or site must conduct such maintenance, monitoring and surveillance during operation, upon closure, abandonment, cessation or interruption of the operation of the facility or site, as the Secretary deems necessary to protect the public health and to prevent or control air, land, water or groundwater pollution.

(62 Del. Laws, c. 412 § 3; 64 Del. Laws, c. 162 §§ 6-9; 65 Del. Laws, c. 320 § 6.)

§ 6308 Imminent hazards.

Notwithstanding any other provision of this chapter, the Secretary, upon receipt of information that the storage, transportation, treatment or disposal of any hazardous waste may present an imminent and substantial hazard to the health of persons or to the environment, may take such action as he or she determines to be necessary to protect the health of such persons or the environment. The action the Secretary may take includes, but is not limited to:

(1) Issuing an order directing the operator of the treatment, storage or disposal facility or site, or the custodian of such hazardous waste, to take such steps as are necessary to prevent the act or eliminate the practice which constitutes such hazard. Such action may include, with respect to a facility or site, permanent or temporary cessation of operation;

(2) Issuing an order directing the persons who previously owned or operated a treatment, storage or disposal facility or site which constitutes such hazard and who are determined by the Secretary to be responsible for activities causing the hazard, to take such steps as are necessary to prevent or eliminate the hazard;

(3) Enforcement action pursuant to § 6309 of this title;

(4) Directing Department personnel to undertake emergency cleanup and remedial measures. The Secretary may recover the costs of such measures from the responsible party;

(5)a. A Hazardous Waste/Groundwater Cleanup Revolving Fund is hereby established for the purpose of providing the funds to expeditiously undertake the investigation of and conduct necessary remedial measures to mitigate instances of groundwater contamination or accidents which may pose a significant threat to human health and/or the environment.

b. All revenues recovered under this section shall be retained by the Department of Natural Resources and Environmental Control and placed in the Hazardous Waste/Groundwater Cleanup Revolving Fund. Expenditures from this Fund shall be controlled by the Appropriated Special Funds portion of the annual Budget Act.

c. In the event that the revolving fund is expended and the Department requires additional funding to address hazardous waste/groundwater contamination incidents which may pose significant threats to human health and/or the environment, the

Secretary may petition the Secretary of Public Safety for additional funds under § 8232 of Title 29 (hazardous substance spill cleanup).

d. The Secretary of the Department of Natural Resources and Environmental Control must report annually to the Governor and the General Assembly on or before July 1 all expenditures from this Fund, receipts collected, ongoing litigation and its current balance.

e. The General Fund start-up moneys shall be a continuing appropriation until June 30, 1990. The Department may request additional funding for this purpose during the normal budgetary process when they project that the initial balance cannot be maintained due to protracted litigations.

(62 Del. Laws, c. 412 § 3; 64 Del. Laws, c. 123 § 1; 65 Del. Laws, c. 47 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6309 Enforcement.

(a)(1) Whenever on the basis of any information the Secretary determines that any person is in violation of any requirement of this chapter, any condition or limitation in a transfer facility approval or permit or variance issued thereunder or any rule or regulation, the Secretary shall give notice to the violator of his or her failure to comply with such requirement. If such violation extends beyond the thirtieth day after the Secretary's notification, the Secretary may issue an order requiring compliance within a specified time period.

(2) If such violator fails to take corrective action within the time specified in the order, he or she shall be liable for a civil penalty of not more than $25,000 for each day of continued noncompliance and the Secretary may suspend or revoke any transfer facility approval or permit issued to the violator.

(3) Any order or any suspension or revocation of a transfer facility approval or permit shall become final unless, no later than 30 days after the order or notice of the suspension or revocation is served, the person or persons named therein request a public hearing. Upon such request, the Secretary shall conduct a public hearing in accordance with § 6312 of this title. In connection with any proceeding under this paragraph the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents, and may promulgate rules for discovery procedures.

(4) Any order issued under this section shall state with reasonable specificity the nature of the violation and specify a time for compliance and assess a penalty, if any, which the Secretary determines is reasonable taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.

(b) In lieu of the compliance order procedures in subsection (a) of this section, any person who violates a provision of this chapter, any condition or limitation in a transfer facility approval or permit issued pursuant to this chapter, any variance condition or limitation, any rule or regulation or any order of the Secretary shall be liable for a civil penalty of not less than $1,000 nor more than $25,000 for each day of violation. The Superior Court shall have jurisdiction of offenses under this subsection.

(c) If the violation is threatened or continuing or if there is a substantial likelihood that it will reoccur, or if the Department receives information that the generation, storage, transportation, treatment or disposal of a hazardous waste presents an imminent and substantial hazard to public health or to the environment, the Secretary may, in addition to or in lieu of any other remedy provided in this chapter, seek a temporary restraining order or a preliminary or permanent injunction in the Court of Chancery.

(d) In any action brought under subsection (c) of this section, in addition to any equitable relief granted by the Court of Chancery, the Court may, in the exercise of its ancillary jurisdiction, impose a civil penalty as provided for in subsection (b) of this section.

(e) In any civil action brought in the Court of Chancery pursuant to this section in which a temporary restraining order, a preliminary injunction or a permanent injunction is sought, upon a showing by the Secretary that a person has engaged in the acts or practices to be enjoined or restrained, a permanent or preliminary injunction, restraining order or other order may be granted.

(f) Any person who, with criminal negligence with respect to the following: violates any provision of or fails to perform any duty imposed by this chapter, or who violates any provisions of or fails to perform any duty imposed by a rule, regulation, order or any facility permit adopted or issued under this chapter, is guilty of a misdemeanor and on conviction is subject to a fine not exceeding $10,000, or imprisonment not exceeding 6 months, or both. The Superior Court shall have jurisdiction of offenses under this subsection.

(g) Any person who knowingly, with respect to the following: violates any provision of or fails to perform any duty imposed by this chapter, or who violates any provision of or fails to perform any duty imposed by a rule, regulation, order or any facility permit adopted or issued under this chapter, is guilty, if such violation causes the release of hazardous waste into the environment, of a misdemeanor and on conviction is subject to a fine not exceeding $25,000, or imprisonment for not more than 1 year, or both. The Superior Court shall have jurisdiction of offenses under this subsection.

(h) Any person who knowingly commits any of the following offenses is guilty of a felony and on conviction is subject to a fine not exceeding $50,000, or imprisonment not exceeding 2 years, or both:

(1) Dumping, discharging, abandoning or disposing into the environment, a hazardous waste in any place other than an authorized hazardous waste facility for which a current facility permit is in effect;

(2) Transporting for treatment, storage or disposal a hazardous waste to any place other than an authorized hazardous waste facility for which a current facility permit is in effect; or

(3) Authorizing, directing or participating in any offense listed in this subsection.

(i) Any person who knowingly with respect to the following: transports, treats, stores, exports or otherwise disposes of a hazardous waste in a manner that would constitute a violation under subsection (h) of this section and who knows at that time that the violation places

another person in imminent danger of death or serious bodily injury is guilty of a felony and on conviction is subject to a fine not exceeding $100,000, or imprisonment not exceeding 5 years, or both. For purposes of this subsection, in determination whether a person's state of mind is knowing and whether a person knew that the violation or conduct placed another person in imminent danger of death or serious bodily injury, the criteria provided under § 3008(f) of the Resource Conservation and Recovery Act (42 U.S.C. § 6928(f) as amended in P.L. 99-499) shall apply.

(j) Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan, manifest, label or other document filed or required to be maintained under this chapter, or under any transfer facility approval or permit, regulation or order issued under this chapter, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall upon conviction be punished by a fine of not less than $500 nor more than $25,000, or by imprisonment for not more than 1 year, or both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than 2 years, or by both. The Superior Court shall have jurisdiction of offenses under this subsection.

(k) The terms used in this section which pertain to criminal violations shall have the same meanings as such terms are defined in Title 11. No person shall be prosecuted for criminal violations under this section if such person is exercising a right of appeal under this chapter with respect to a requirement which serves as the basis for the violation.

(l) Each day of violation as specified in any action pursuant to the above subsections shall constitute a separate violation.

(m) Whenever on the basis of any information the Secretary determines that there is or has been a release of hazardous waste into the environment from any facility, the Secretary may issue an order requiring corrective action or such other response measure (including corrective action beyond the facility boundary) as the Secretary deems necessary to protect human health or the environment or the Secretary may commence a civil action in the Superior Court or the Court of Chancery for appropriate relief, including a temporary or permanent injunction. Any order issued under this subsection may include a suspension or revocation of authorization to operate under this chapter, shall state with reasonable specificity the nature of the required corrective action or other response measure, and shall specify a time for compliance. If any person named in an order fails to comply with the order, the Secretary may assess, and such person shall be liable to the Department for, civil penalty in an amount not to exceed $25,000 for each day of noncompliance with the order.

(n) Any expenses or civil penalties collected by the Department under this section are hereby appropriated to the Department to carry out the purposes of this chapter.

(62 Del. Laws, c. 412 § 3; 64 Del. Laws, c. 162 § 10; 65 Del. Laws, c. 320 §§ 7, 8; 66 Del. Laws, c. 364 §§ 6-8; 69 Del. Laws, c. 366 §§ 2, 3; 70 Del. Laws, c. 186 § 1.)

Subchapter II

Miscellaneous Provisions

§ 6310 Inspections; right of entry.

(a) For the purpose of developing or enforcing any regulation, permit or other requirement authorized by this chapter, any duly authorized employee of the Department may, upon presentation of appropriate credentials at any reasonable time:

(1) Enter any place or conveyance where hazardous wastes are generated, stored, transported, treated or disposed of;

(2) Inspect and obtain samples from any person of any such wastes and samples of any containers or labeling for such wastes, and prior to leaving the premises, give to the owner, operator or agent in charge a receipt describing the sample obtained, and if requested, a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator or agent in charge;

(3) Inspect and copy any records, reports, information or test results relating to the purposes of this chapter.

(b) Upon any refusal of entry, inspection, sampling or copying pursuant to this section, a duly authorized employee of the Department may apply for and obtain a warrant to allow such entry, inspection, sampling or copying in the manner established by the rules and law of criminal procedure.

(c) No duly authorized employee of the Department who enters upon premises, vehicles or equipment for purposes set forth in subsection (a) of this section shall have a cause of action against the owner, operator or occupier thereof for any injuries or damages sustained by such person while on the premises, vehicles or equipment unless such injuries or damages were intentional on the part of the owner, operator or occupier or were caused by the willful or wanton disregard of the rights of others.

(62 Del. Laws, c. 412 § 3.)

§ 6311 Service of process on owners or operators who are nonresidents or corporations not incorporated in Delaware.

(a) Any nonresident person who, either in person or through others, owns or operates a facility or conducts an activity subject to this chapter or any nonresident who, either in person or through others, owns or operates a facility or conducts an activity outside the State, which while located outside the State causes or contributes to the discharge or disposal of hazardous wastes or substances into or upon the lands, air, surface water or groundwaters of the State shall be deemed thereby to have submitted himself or herself to the jurisdiction of the

courts of this State and to have appointed and constituted the Secretary of State of this State or the Secretary's designee as the Secretary's agent for the acceptance of legal process in any action under this chapter. The force, validity and effect of service of process under this subsection as well as the procedure for effectuating said service shall be governed in all respects by § 3104 of Title 10.

(b) Any corporation, not incorporated in this State, which itself or through others owns or operates a facility or conducts an activity subject to this chapter or any such corporation which itself or through others owns or operates a facility or conducts an activity outside the State, which while located outside the State causes or contributes to the discharge or disposal of hazardous wastes or substances into or upon the lands, air, surface water or groundwater of the State, shall be deemed thereby to have sufficient contacts with this State to have submitted itself to the jurisdiction of the courts of this State. The force, validity and effect of service of process under this subsection as well as the procedure for effectuating said service shall be governed in all respects by § 3111 of Title 10.

(62 Del. Laws, c. 412 § 3; 70 Del. Laws, c. 186 § 1.)

§ 6312 Public hearings.

Public hearings shall be held on any application for or draft of, any permit or transfer facility approval, or modification thereof, or any regulation, variance request, permit revocation or appeal to the Environmental Appeals Board in accordance with §§ 6004 and 6006 of this title, except where the Secretary has adopted additional notice and hearing requirements by regulation.

(62 Del. Laws, c. 412 § 3; 64 Del. Laws, c. 162 § 11; 66 Del. Laws, c. 364 § 9.)

§ 6313 Appeals.

(a) Any person whose interest is substantially affected by any action of the Secretary may appeal to the Environmental Appeals Board in accordance with § 6008 of this title.

(b) Any person, a party to an appeal before the Board, substantially affected by a decision of the Board may appeal to the Superior Court in accordance with § 6009 of this title.

(62 Del. Laws, c. 412 § 3.)

§ 6314 Variances.

Variances and temporary emergency variances may be granted by the Secretary from any regulation, transfer facility approval or permit condition adopted pursuant to this chapter in accordance with §§ 6011 and 6012 of this title, except that no temporary emergency variance or variance shall be granted which would be inconsistent with the requirements of § 3006(b) or (c) of the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580 [42 U.S.C. § 6926(b) or (c)] (or regulations promulgated thereunder) requiring equivalence or substantial equivalence of state programs for authorization or interim authorization whichever the case may be.

(62 Del. Laws, c. 412 § 3; 63 Del. Laws, c. 164 § 3; 64 Del. Laws, c. 162 § 12; 66 Del. Laws, c. 364 § 10.)

§ 6315 Interference with Department personnel.

No person shall obstruct, hinder, delay or interfere with, by force or otherwise, the performance by Department personnel of any duty under this chapter, or any regulation, order, permit or decision promulgated or issued thereunder.

(62 Del. Laws, c. 412 § 3.)

§ 6316 Funds; charges.

(a) The Department may cooperate with and receive moneys from the federal government, and any state or local government, or other appropriate source in carrying out its duties under this chapter.

(b) Any charges encountered by the Department as a direct result of the public notice and hearing requirements of this chapter and the regulations established thereunder are directly billable to the person conducting or applying to conduct a hazardous waste management activity.

(62 Del. Laws, c. 412 § 3; 66 Del. Laws, c. 364 § 11.)

§ 6317 Interstate cooperation.

The General Assembly encourages cooperative activities by the Department and the Commission with other states, interstate or regional organizations, and the federal government for the improved management of hazardous wastes; for improved, and so far as practicable, uniform state laws relating to the management of hazardous wastes; and compacts between this and other states for the improved management of hazardous wastes.

(62 Del. Laws, c. 412 § 3.)

§ 6318 Direct action against guarantor.

(a) In any case where the owner or operator is in bankruptcy, reorganization or arrangement pursuant to the Federal Bankruptcy Code or where (with reasonable diligence) jurisdiction in any state court or any federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the

guarantor if an action had been brought against the guarantor by the owner or operator.

(b) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this chapter. Nothing in this subsection shall be construed to limit any other state or federal statutory, contractual or common-law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under § 107 or 111 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§ 9607 or 9611) or other applicable law.

(c) For the purpose of this section, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this chapter.

(65 Del. Laws, c. 320 § 9.)

§ 6319 Waste-end assessments for persons generating, storing, treating and disposing of hazardous wastes.

(a) The Secretary is hereby authorized to impose and collect waste-end assessments in accordance with this section but in no case shall any person pay an annual assessment amount of less than $50 or more than $40,000 regardless of the number of facilities where hazardous waste is generated, treated, stored or disposed.

(b) The provisions of this section relating to paying an assessment apply to every person who is engaged in the generation, storage, treatment or disposal of a hazardous waste within this State and who is regulated by the Department under this chapter or any regulations promulgated thereunder.

(c) The information reporting requirements imposed under this section, as set forth in the form prescribed by the Department, shall, beginning January 1, 1996, be reported to the Department annually, due March 1, for the preceding calendar year.

(d) The annual assessment payments shall be paid to the Department October 1 of each year, the first of said assessment payments to be due October 1, 1987, in accordance with the Department fee regulations. The assessments paid to the Department under this section are hereby appropriated to the Division of Waste and Hazardous Substances and shall be used to carry out the purposes of this chapter.

(e) If any person fails or refuses to pay the Department any assessment or fails or refuses to file the written information with the Department pursuant to the requirements of this section, the Department may estimate the amount of said person's assessment on the basis of any information known by the Department. The Department may then add to the said person's estimated unpaid annual assessment a penalty in an amount equal to 15 percent of the estimated unpaid annual assessment. This penalty shall be in addition to, and not in lieu of, any other applicable penalties.

(f) For persons engaged in the generation of a hazardous waste, the annual assessment to be paid to the Department for hazardous waste generated after October 1, 1986, shall be calculated as follows:

(1) $21 per ton of hazardous waste generated that was disposed of into or on any land;

(2) $16 per ton of hazardous waste generated that was treated or disposed of, exclusive of land disposal and incineration, at a facility located off the site from where the hazardous waste was generated;

(3) $4.00 per ton of hazardous waste generated that was incinerated;

(4) For purposes of this subsection, the meaning of the phrase "generation of a hazardous waste" does not include the retrieval or creation of hazardous waste, which must be disposed of due to remediation of an inactive hazardous waste disposal site;

(5) Notwithstanding any provision of this subsection to the contrary, no assessment shall be imposed under this section for activities which the Department determines are for the resource recovery of any hazardous waste.

(g) For owners or operators of hazardous waste storage, treatment or disposal facilities regulated under this chapter, the annual assessment that is to be paid to the Department for hazardous waste that is stored, treated or disposed of after October 1, 1986, shall be calculated as follows:

(1) No assessment shall be imposed under this subsection for the disposal of hazardous waste where said hazardous waste was generated by a person subject to an assessment under subsection (f) of this section;

(2) $21 per ton of hazardous waste that was disposed of into or on any land;

(3) $16 per ton of hazardous waste that was stored, treated or disposed of, exclusive of land disposal, at any facility located off-site from where the hazardous waste was generated;

(4) Notwithstanding any provision of this subsection to the contrary, no assessment shall be imposed under this section for activities which the Department determines are for the resource recovery of any hazardous waste.

(h) The owner or operator of a hazardous waste transfer facility shall be assessed an annual fee, as established by the Department and approved by the General Assembly, for all waste stored at the facility not subject to the assessment provisions of this section. The timing of the assessment, payment and penalties shall be consistent with the requirements of this section.

(i) When calculating the amount of hazardous waste that is to be subject to any assessment under this section, if the person responsible for the assessment is involved with more than 1 type of hazardous waste being generated, treated, stored or disposed of, then the total amount of all the hazardous wastes being generated, treated, stored or disposed of by said person at any 1 site, shall be used to calculate the amount of the assessment.

(j) All of the requirements under this section that apply to persons who generate, treat, store or dispose of hazardous waste are in addition to and not in lieu of any other fees or requirements that must be complied with by said persons under any other statute, regulation,

ordinance or permit condition.

(k) The Superior Court of the State shall have jurisdiction over actions to collect assessments and penalties under this section.

(65 Del. Laws, c. 516 § 2; 68 Del. Laws, c. 86 §§ 5-7; 70 Del. Laws, c. 240 § 4; 70 Del. Laws, c. 324 § 1; 77 Del. Laws, c. 430 § 60; 78 Del. Laws, c. 127 § 12.)

Part VII
Natural Resources
Chapter 64
DELAWARE SOLID WASTE AUTHORITY
Subchapter I
General Provisions

§ 6401 Findings; policy; purpose.

(a) Findings. — The General Assembly finds and declares:

(1) That the people of the State have the right to a clean and wholesome environment;

(2) That prevailing solid waste disposal practices generally, throughout the State, result in unnecessary environmental damage, substantially degrade surface and groundwater, waste valuable land and other resources and constitute a continuing hazard to the health and welfare of the people of the State;

(3) That local governments responsible for waste disposal services are becoming hard pressed to provide adequate services at reasonable costs, without damage or hazard to the environment and the loss of useful resources;

(4) That as a result of inadequate solid waste collection and disposal systems rural areas of the State are particularly subjected to esthetic degradation because of litter;

(5) That locally organized voluntary recycling programs have shown that solid wastes produced in the State contain recoverable resources;

(6) That technology and methods now exist to dispose of solid wastes and recover resources with commensurate environmental benefits;

(7) That coordinated large-scale processing of solid wastes may be necessary in order to achieve maximum environmental and economic benefits for the people of the State;

(8) That the amounts of solid waste being produced within the State are adequate to sustain such large-scale processing;

(9) That the geography and population density of the State are such as to enable and facilitate the effective and economic regional accumulation of solid wastes;

(10) That the development of systems and facilities and the use of the technology necessary to initiate large-scale processing of solid wastes have become logical and necessary functions to be assumed by state government;

(11) That the provision of solid waste disposal services to local governments at reasonable cost, through the use of state governmental powers and capabilities, would supply valuable assistance to such local governments; and

(12) That, because of the foregoing, the provision of statutory authorization for the necessary state structure, which can take initiative and appropriate action to provide the necessary systems, facilities, technology and services for solid waste management and resources recovery is a matter of important public interest and that it is the purpose and intent of the General Assembly to be and remain cognizant not only of its responsibility to authorize and establish accomplishment of solid waste management and resources recovery, but also of its responsibility to monitor and supervise the activities and operations of the state Authority created by this chapter, and the exercise of the powers conferred upon such Authority by virtue of this chapter.

(b) Policy. — The General Assembly declares the following to be the policies of the State:

(1) That maximum resources recovery from solid waste and maximum recycling and reuse of such resources in order to protect, preserve and enhance the environment of the State shall be considered environmental goals of the State;

(2) That solid waste disposal and resources recovery facilities and projects are to be implemented either by the State or under state auspices, in furtherance of these goals;

(3) That appropriate governmental structure, processes and support are to be provided so that effective state systems and facilities for solid waste management and large-scale resources recovery may be developed, financed, planned, designed, constructed and operated for the benefit of the people, municipalities and counties of the State;

(4) That private industry is to be utilized to the maximum extent feasible to perform planning, design, management, collection, construction, operation, manufacturing and marketing functions related to solid waste disposal and resources recovery, and to assist in the development of industrial enterprises based upon resources recovery, recycling and reuse;

(5) That long-term negotiated contracts between the State and persons and business entities may be utilized as an incentive for the development of industrial and commercial enterprise based on resources recovery within the State;

(6) That solid waste collection and disposal services shall be provided for municipal and regional authorities and persons in the State, at reasonable cost, by state systems and facilities where such services are considered necessary and desirable in accordance with the statewide solid waste management plan and that any revenues received from the payment of the costs of such services otherwise from the

operation of state systems and facilities shall be redistributed to the users of such services provided that the Authority has determined that all contractual obligations related to such systems and facilities have been met and that such revenues are surplus and not needed to provide necessary support for such systems and facilities;

(7) That provision shall be made for planning, research and development, and appropriate innovation in the design, management and operation of the State's systems and facilities for solid waste management, in order to permit continuing improvement and provide adequate incentives and processes for lowering operation and other costs;

(8) That the Authority established pursuant to this chapter shall have responsibility for implementing solid waste disposal and resources recovery systems and facilities and solid waste management services where necessary and desirable throughout the State in accordance with a state solid waste management plan and applicable statutes and regulations;

(9) That infectious waste be disposed of by the Authority on a statewide basis in accordance with applicable statutes, regulations and inspection procedures approved by the Department of Health and Social Services and issued by the Department of Natural Resources and Environmental Control to assure adequate and proper disposal in a manner to protect the public health and welfare;

(10) That actions and activities performed or carried out by the Authority or its contractors in accordance with this chapter shall be in conformity with the state solid waste management plan;

(11) That these policies and purposes are hereby declared to be in the public interest and this chapter to be necessary and for the public benefit, as a matter of legislative determination.

(c) Purpose. — The General Assembly declares the following to be the purpose of this chapter:

(1) That a statewide comprehensive program for management, storage, collection, transportation, utilization, processing and disposal of solid waste be established.

(2) That a program for the maximum recovery and reuse of materials and energy resources derived from solid wastes be established.

(3) That a program for protecting the land, air, surface and groundwater resources of the State from depletion and degradation caused by improper disposal of solid waste be established.

(4) That a program in cooperation with the United States Environmental Protection Agency, or other federal and state agencies, for the demonstration of systems and techniques of materials recovery, market development and reuse be established.

(5) That a statewide program for disposal of infectious waste, giving special attention to the management and operation of an infectious waste facility, be established.

(6) That a statewide solid waste management plan be developed and implemented by the Authority.

(60 Del. Laws, c. 288 § 1; 67 Del. Laws, c. 136 §§ 1, 2.)

§ 6402 Definitions.

The following terms shall have the meanings ascribed to them in this chapter:

(1) "Authority" means the Delaware Solid Waste Authority.

(2) "Costs" means the cost or fair market value or value, as determined by the Authority, of construction, real property, property rights, utility extensions, disposal facilities, access roads, easements, franchises, financing charges, interest, labor, materials, machinery and equipment, engineering and legal services, plans, specifications, surveys, cost estimates, studies, transportation and other expenses necessary or incidental to the design, development, construction, financing, management and operation and maintenance of a waste management project, and such other costs or expenses of the Authority as may be necessary or incidental to the purposes of the Authority, including administrative and operating costs, research and development and operating capital, including fees, charges, loans, insurance and the expense of purchasing real and personal property, including waste management projects.

(3) "Department" means the Department of Natural Resources and Environmental Control.

(4) "Facility" means any solid waste disposal site, system or process and the operation thereof, including but not limited to personnel, equipment and buildings.

(5) "Groundwater" means any water naturally found under the surface of the earth.

(6) "Industrial solid waste" means solid waste produced by or resulting from industrial applications, processes or operations.

(7) "Infectious waste" means those wastes which may cause human disease and may reasonably be suspected of harboring human pathogenic organisms, or may pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed. Types of wastes designated as infectious include, but are not necessarily limited to, the following:

a. Biological wastes which shall include, but not be limited to:

1. Animal tissue, bedding and other waste from animals known or suspected to be infected with a pathogen which also causes human disease, provided that prevailing evidence indicates that such tissue, bedding or other waste may act as a vehicle of transmission to humans.

2. "Biological liquid wastes" which shall mean blood and blood products, excretions, exudates, secretions, suctionings and other body fluids including liquid wastes from renal dialysis.

3. "Cultures and stocks of etiologic agents and associated biological wastes" which shall mean, but is not limited to, specimen cultures, cultures and stocks of etiologic agents and wastes from production of biologicals and serums.

4. Human dialysis waste materials including blood lines and dialysate membranes.

5. "Laboratory wastes" which shall mean those wastes which have come in contact with pathogenic organisms and blood or body fluids. Such wastes include, but are not limited to, disposable materials, culture dishes, devices used to transfer, inoculate and mix cultures, paper and cloth which have come in contact with specimens or cultures which have not been sterilized or rendered noninfectious; or laboratory wastes, including cultures of etiologic agents, which pose a substantial threat to health due to their volume and virulence.

6. "Pathological wastes" which shall mean all human tissues and anatomical remains, including human fetal remains, which emanate from surgery, obstetrical procedures, autopsy and laboratory procedures.

b. "Discarded biologicals" which shall mean serums and vaccines produced by pharmaceutical companies for human or veterinary use. These products may be discarded because of a bad manufacturing lot (i.e., off-specification material that does not pass quality control or that is recalled), out-dating or removal of the product from the market or other reasons. Because of the possible presence of etiologic agents in these products, the discarded material constitutes infectious waste.

c. "Other infectious wastes" which shall mean any residue or contaminated soil, water or other debris resulting from the cleanup of a spill of any infectious waste.

d. "Sharps" which shall mean any discarded article that may cause puncture or cuts. Such wastes include but are not limited to, needles, intravenous infravenous tubing with needles attached, scalpel blades, glassware and syringes that have been removed from their original sterile containers.

(8) "Infectious waste generator" means hospitals, inpatient or outpatient clinics, laboratories, medical offices, dental offices, nursing homes and inpatient residential facilities serving persons with diseases which may be transmitted through contact with infectious wastes as well as veterinarian facilities and research laboratories operating within the State.

(9) "Municipality" or "municipalities" means a county, city, town or other public body of the State.

(10) "Person" means any individual, partnership, corporation, association, institution, cooperative enterprise, municipality, commission, political subdivision or other duly established legal entity.

(11) "Resources recovery" means the recovery of energy and materials from solid wastes in a saleable form which will allow their reuse in specific market applications.

(12) "Resources recovery systems" means systems specifically designed for recycling solid wastes into energy and materials.

(13) "Revenues" means all revenues to the Authority including but not limited to those generated through user charges and the sale of recycling products through resources recovery systems and facilities.

(14) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under § 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880) [33 U.S.C. § 1342], or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923) [42 U.S.C. § 2014].

(15) "Solid waste management services" means services including but not limited to the collection, transportation, storage, transfer, processing, recycling or disposal of solid wastes.

(16) "Surface water" means water occurring generally on the surface of the earth.

(17) "Users" means any person who delivers and/or deposits solid waste at a facility for subsequent processing, disposal or recycling.

(18) "Volume reduction" means a system or process for physically or chemically reducing the volume of solid wastes.

(60 Del. Laws, c. 288 § 1; 60 Del. Laws, c. 558 § 6; 61 Del. Laws, c. 132 §§ 1, 2; 63 Del. Laws, c. 372 § 2; 67 Del. Laws, c. 136 §§ 3, 4.)

§ 6403 Establishment, composition, etc., of Authority.

(a) There is hereby established and created a statewide solid waste authority, a body politic and corporate constituting a public instrumentality of the State established and created for the performance of an essential public and governmental function, to be known as the Delaware Solid Waste Authority. The Authority shall consist of 7 directors, all of whom shall be residents of and qualified to vote in the State. The Governor shall appoint the directors with the advice and consent of the Senate. The Governor shall designate a director as chairperson, and such director shall serve at the pleasure of the Governor. There shall be at least 1 director from each of 3 counties and the City of Wilmington. Authority directors registered in either major political party shall not exceed the other major political party by more than 1. The terms of the original directors, excluding the chairperson, shall be as follows: Two directors shall serve for 1 year; 2 directors shall serve for 2 years; and 2 directors shall serve for 3 years. Upon the expiration of the terms of the original directors, excluding the chairperson, the term of each director appointed thereafter shall be 3 years.

(b) In the event of the death of a director, permanent disability of a director, resignation of a director or failure of a director to perform his or her duties, the Governor shall appoint an interim director to serve for a period not to exceed 6 months, unless such interim director shall be confirmed by the Senate, in which case the interim director shall complete the term of the replaced director. If an interim director is not confirmed by the Senate within 6 months of the date of appointment, the position of director shall remain vacant until such time that an interim director is confirmed by the Senate, or a director is selected to serve a new term. Except as otherwise set forth herein the appointment of interim directors shall be subject to all other requirements regarding appointments of directors.

(c) For purposes of conducting business of the Authority, 5 directors shall constitute a quorum. A majority vote of members constituting the quorum shall be required for action on any matter before the Authority. All votes on matters before the Authority shall be conducted at meetings open to the public, and such meetings shall be timely noticed through statewide newspaper advertisement. Nothing herein shall prevent the directors of the Authority from meeting at executive sessions which are closed to the public for purposes of discussing Authority matters.

(d) Each director shall be entitled to reimbursement for actual and necessary expenses incurred during the performance of official duties.

(e) The Authority may delegate to 1 or more of its directors, the manager, or its agents, such powers and duties as it may deem necessary and proper in conformity with this chapter.

(f) The chairperson shall, with the approval of the directors, select a manager of the Authority who shall be an employee of the Authority .

(g) Subject to § 6409 of this title, the Authority shall continue until its existence shall be terminated by law, in which case all of its rights and properties shall pass to and be vested in the State.

(h) The Authority may adopt procedural rules to implement this section.

(i) The Authority may, after notice and public hearing, adopt rules and regulations governing the use and/or operation of facilities under its jurisdiction and control.

(j) The Authority shall, after notice and public hearing, adopt a statewide solid waste management plan, and amend such plan as necessary.

(k) The Authority may, after notice and public hearing, adopt fee schedules, user charges and/or other charges for the use and/or operation of facilities under its jurisdiction and control.

(l) The Authority may, after notice and public hearing, adopt rules and regulations to effectuate the powers, policies, purposes and functions set forth in this chapter.

(m) The Authority may, after notice and public hearing, adopt rules and regulations governing the composition, quality, quantity and delivery of source separated recyclable materials to recycling centers.

(60 Del. Laws, c. 288 § 1; 60 Del. Laws, c. 558 §§ 1-3; 61 Del. Laws, c. 132 §§ 3, 4; 64 Del. Laws, c. 343 § 5(a); 67 Del. Laws, c. 432 § 2; 70 Del. Laws, c. 186 § 1.)

§ 6404 Functions of Authority.

The functions of the Authority shall include, but not be limited to the following:

(1) The planning, design, construction, financing, management, ownership, operation and maintenance of solid waste disposal, volume reduction and resources recovery facilities and all related solid waste reception, transfer, storage, transportation and wastehandling and general support facilities considered by the Authority to be necessary, desirable, convenient or appropriate in carrying out the statewide solid waste management plan and in establishing, managing and operating solid waste disposal and resources recovery systems and their component waste-processing facilities and equipment;

(2) The provision of solid waste management services to municipalities, regions and persons within the State by receiving solid wastes at Authority facilities, pursuant to contracts between the Authority and such agencies, municipalities, persons, regions and business entities; the recovery of material and energy resources and resource values from such solid wastes; and the production from such services and resources recovery operations of revenues sufficient to provide for the support of the Authority and its operations on a self-sustaining basis, with due allowance for the redistribution of any surplus revenues to reduce the costs of Authority services to the users thereof;

(3) The utilization, through contractual arrangements, of private industry for implementation of some or all of the requirements of the state solid waste management plan and for such other activities as may be considered necessary, desirable or convenient by the Authority;

(4) Assistance with the coordination of efforts directed toward source separation for recycling purposes;

(5) Assistance in the development of industries and commercial enterprises within the State based upon resources recovery, recycling and reuse. These objectives shall be considered to be operating responsibilities of the Authority, in accordance with the state solid waste management plan, and are to be considered in all respects public purposes. It is the intention of this chapter that the Authority shall be granted all powers necessary to fulfill these purposes and to carry out its assigned responsibilities and that this chapter, itself, is to be construed liberally in furtherance of this intention; and

(6) The development, implementation and supervision of a program requiring all persons who haul, convey or transport any solid waste in any container to obtain a license from the Authority. The Authority may enter into an administrative agreement with any county, municipality or other political subdivision under which agreement the licensing program referenced herein may be conducted by the county, municipality or other political subdivision pursuant to such rules and regulations adopted by the Authority which are applicable to the licensing program.

(60 Del. Laws, c. 288 § 1; 61 Del. Laws, c. 132 § 5.)

§ 6405 Manager and staff.

(a) The manager of the Authority shall be a resident of the State, a registered professional engineer in the State and have obtained at least a masters degree in either civil, mechanical or chemical engineering from an accredited college or university. The manager shall have at least 10 years' engineering experience including at least 3 years' experience in the field of solid waste management.

(b) The manager shall be a member and chief executive of the staff Authority.

(c) All members of the staff shall be employees of the Authority and, except for the manager, the manager's chief administrative aide and engineers who have graduated from an engineering curriculum of 4 years or more, be covered by the state merit system as classified employees.

(d) The manager shall be responsible for developing and recommending an organizational structure for implementing the functions undertaken by the Authority. The manager shall be responsible for recommending to the Authority persons to be hired as staff members. The Authority shall approve all hirings and organizational structures.

(e) All members of the staff shall be included under and subject to Chapter 55 of Title 29.

(60 Del. Laws, c. 288 § 1; 60 Del. Laws, c. 558 § 4; 63 Del. Laws, c. 372 §§ 3, 4; 70 Del. Laws, c. 186 § 1.)

§ 6406 Powers of Authority.

(a) The Authority shall have the power to:

(1) Approve and adopt an organizational structure to implement this chapter.

(2) Employ a staff to carry out the functions of the Authority.

(3) Establish offices where necessary in the State.

(4) Retain by contract legal counsel, auditors, engineers, private consultants, advisors or other contractual services required by the Authority.

(5) Sue and be sued.

(6) Have a seal and alter it at pleasure.

(7) Conduct such hearings, examinations and investigations as may be necessary and appropriate to the conduct of its operations and the fulfillment of its responsibilities.

(8) To procure and keep in force adequate insurance or otherwise provide for the adequate protection of its property, as well as to indemnify and save harmless it and its officers, agents or employees against loss or liability with respect to any risk to which it or they may be exposed in carrying out any function of the Authority.

(9) To design, construct, own and operate facilities.

(10) Obtain access to public records and apply for the process of subpoena if necessary to produce books, papers, records and other data.

(11) Charge reasonable fees for services it performs and waive, suspend, reduce or otherwise modify such fees when it is deemed appropriate to do so.

(12) Purchase, manage, lease or rent such real and personal property as it may deem necessary, convenient or desirable.

(13) Otherwise, do all things necessary for the performance of its duties, the fulfillment of its obligations, the conduct of its operations and the conduct of a comprehensive program for solid waste disposal and resources recovery, and for solid waste management services, in accordance with the state solid waste management plan, applicable statutes and regulations and the requirements of this chapter.

(14) Assume through contract or otherwise, any existing contract, grant or property right, or interest held by any person, partnership, corporation, municipality, county, state agency, federal agency or other legal entity, pertaining to solid waste storage, collection, transportation, treatment, processing, disposal, recycling, reuse or any other use.

(15) Determine the location and character of any project to be developed under this chapter, subject to the requirements of the statewide solid waste management plan, including the location of recycling centers, without the need to obtain land use approval.

(16) Purchase, receive by gift or otherwise, lease, exchange or otherwise acquire and construct, reconstruct, improve, maintain, equip and furnish such waste management projects as are called for by the state solid waste management plan.

(17) Sell or lease to any person, all or any portion of a waste management project, for such consideration and upon such terms as the Authority may determine to be reasonable.

(18) Mortgage or otherwise encumber all or any portion of a project whenever, in the opinion of the Authority, such action is deemed to be in furtherance of the purposes of this chapter.

(19) Grant options to purchase, or to renew a lease for, any Authority waste management project on such terms as the Authority may determine to be reasonable.

(20) Acquire, by purchase, gift, transfer or by condemnation for public purposes, and manage and operate, hold and dispose of real property and, subject to agreements with lessors or lessees, develop or alter such property by making improvements and betterments with the purpose of enhancing the value and the usefulness of such property.

(21) Make plans, surveys, studies and investigations necessary or desirable, in conformity with the state plan and with due consideration for local or regional plans, to carry out authority functions with respect to the acquisition, use and development of real property and the design and construction of systems and facilities.

(22) Make short and long range plans, consistent with the state solid waste management plan, for the storage, collection, transportation or processing and disposal of solid wastes and recovered resources by the authority-owned facilities.

(23) Design or provide for the design of solid waste management facilities including design for the alteration, reconstruction, improvement, enlargement or extension of existing facilities.

(24) Construct, erect, build, acquire, alter, reconstruct, improve, enlarge or extend waste management projects including provision for

the inspection and supervision thereof and the engineering, architectural, legal, fiscal and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures and any other actions incidental thereto.

(25) Own, operate and maintain solid waste management projects and make provision for their management and for the manufacturing, processing and transportation operations necessary to derive recovered resources from solid waste, and contracting for the sale of such.

(26) Enter upon lands and waters, as may be necessary, to make surveys, soundings, borings and examinations in order to accomplish the purposes of this chapter.

(27) Contract with municipal, county and regional authorities, state agencies and persons to provide waste management services in accordance with this chapter and to plan, design, construct, manage, operate and maintain solid waste disposal and processing facilities on their behalf.

(28) Design and construct improvements or alterations on properties which it owns or which it operates by contract on behalf of municipal or regional authorities.

(29) Contract for services in the performance of architectural and engineering design, the supervision of design and construction, system management and facility management, for such professional or technical services as are required, and for such other professional or technical services as may require either prequalification of a contractor or the submission by any person, firm or consortium or association of persons or firms of a proposal in response to an official request for proposal or similar written communication of the Authority, whenever such services are, in the discretion of the Authority, deemed necessary, desirable or convenient in carrying out the purposes of the Authority.

(30) Contract for the construction of solid waste facilities with individuals or firms, or consortiums of such individuals or firms, pursuant to applicable provisions of this chapter, the requirements of applicable regulations and the state plan and in accordance with such specifications, terms and conditions as the Authority may deem necessary or advisable.

(31) Control, through regulation or otherwise, the collection, transportation, storage and disposal of solid waste, including the diversion of solid waste within specified geographic areas to facilities owned, operated or controlled by the Authority; provided, however, that such power shall not extend to the collection, transportation, transfer and storage of hazardous wastes as defined in § 6302(8) of this title, except to the extent that the Authority engages in activities authorized under § 6452(8) of this title.

(32) Issue bonds or notes in anticipation of the issuance of bonds, or otherwise, to finance any of the purposes of this chapter, lend the proceeds of such obligations to any person to effectuate any of the purposes of this chapter, contract with any person in any manner deemed advisable by the Authority to secure the payment of such obligations and to pledge such contracts as security for the payment of such obligations.

(b) Any contract for construction valued at over $25,000 shall be let by the Authority pursuant to the process of open or competitive bidding, provided, the Authority shall have power to determine the format, contents and scope of any contract for a solid waste management project, the conditions under which bidding shall take place and the schedule and stipulations for a contract award. The Authority shall also have power to select the contractor deemed to have submitted the most responsive bid, price and other factors considered, when, in the judgment of the Authority, such award is in the best interests of the State. The Authority may in its discretion negotiate and enter into a contract or contracts with a single source when it is desirable to do so.

(60 Del. Laws, c. 288 § 1; 61 Del. Laws, c. 132 §§ 6, 7; 63 Del. Laws, c. 372 § 5; 67 Del. Laws, c. 432 §§ 3, 4.)

§ 6407 Funds and transfers of interests.

(a) The Authority shall have the power to:

(1) Accept gifts, grants or loans of funds, property or service from any source, public or private, and comply, subject to this chapter, with the terms and conditions thereof;

(2) Receive funds from the sale of general bonds, revenue bonds or other obligations of municipal, county or regional authorities and from the sale of general bonds, revenue bonds or other obligations of the Authority;

(3) Receive funds or revenues from the sale of products, materials, fuels and energy in any form derived from the processing of solid waste by systems, facilities and equipment under its jurisdiction, and receive revenues in the form of rents, user fees, user charges, licensing fees and other charges paid by units or agencies of state and local government, and by persons and organizations, to compensate the Authority for the use of its facilities or the performance of its services;

(4) Apply for and accept from a federal agency loans or grants for use in carrying out its purposes and enter into agreements with such agency respecting any such loans or grants;

(5) Make loans to any municipal or regional authority or to any person for the planning, design, acquisition, construction, reconstruction, improvement, equipping and furnishing of a solid waste management project, which loans shall be secured by loan agreements, contracts or any other instruments or agreements with respect to the use of fees and charges, upon such terms and conditions as the Authority shall determine reasonable in connection with such loans, including provisions for the establishment and maintenance of reserve funds, and in the exercise of powers granted in this section in connection with the project for any such municipal or regional authority or person, to require the inclusion in any contract, loan agreement or other instrument, of such provisions for the construction, use, operation and maintenance and payment of operating and other costs of a project as the Authority may deem necessary or desirable and, in connection with the making of such loans, the Authority may purchase, acquire and take assignments and the notes and bonds of municipal or regional authorities and persons and receive other forms of security and evidences of indebtedness, and in furtherance of the

purposes of this chapter and to assure the payment of the principal and interest of such loans, and in order to assure the payment of the principal and interest on bonds or notes of the Authority issued to provide funding for such loans, may attach, seize, purchase, acquire, accept or take title to any project by conveyance, and may sell, lease or rent any such project for a use specified in this chapter. Any municipality is hereby authorized to issue general obligation bonds, to which the full faith and credit of such municipality are pledged, to the Authority in an amount determined by such municipality without regard to any debt or other limit provided in any charter, special act or general act pertaining to such municipality. Such bonds may be issued and delivered upon negotiation with the Authority and the consideration therefor may be the provision by the Authority of solid waste and disposal resources recovery facilities for the use and benefit of such municipality. Such bonds may be pledged by the Authority as security for bonds issued by the Authority to provide such facilities for the benefit of such municipalities. Any municipality shall also have the power to unconditionally guarantee the punctual payment of the principal of and interest on any bonds of the Authority, including the satisfaction of mandatory sinking fund requirements as provided in any resolution, trust indenture or other documents securing such bonds. Any guarantee of bonds of the Authority made pursuant to this section shall be evidenced by endorsement thereof on such bonds executed in the name of the municipality and on its behalf by such officer thereof as may be designated in the resolution authorizing such guarantee, and such municipality shall thereupon and thereafter be obligated to pay the principal of and interest on said bonds in the same manner and to the same extent as in the case of bonds issued by it. The obligations imposed by such guarantee shall not be subject to any limitation respecting the incurrence of debt or the issuance of obligations of such municipality contained in any charter, special act or general act;

(6) Establish payment schedules and make payments for the delivery of source separated recyclable materials to recycling centers, and create, through funding, incentives for the delivery of source separated recyclable materials to recycling centers by community groups under programs authorized by the Authority.

(b) The directors of the Authority may by resolution, in accordance with the provisions and stipulations of this chapter and the Authority's general and other bond resolutions, authorize both segregation of such authority revenues as may at any time be adjudged by said directors to be surplus to the needs of the Authority to meet its contractual and other obligations and to provide for its operations or other business purposes, and the equitable redistribution of such segregated surplus revenues to some or all of the users of the system in accordance with applicable provisions of the state solid waste management plan.

(c) All state funds previously appropriated to and for the use of the Department regarding the Delaware Reclamation Project are transferred to the Authority for the same purposes.

(d) All federal grant money previously received by and for the use of the Department regarding the Delaware Reclamation Project are transferred to the Authority for the same purposes.

(e) All contractual rights and obligations heretofore vested in or applying to the Department relating directly to the Delaware Reclamation Project are transferred to and assumed by the Authority.

(60 Del. Laws, c. 288 § 1; 60 Del. Laws, c. 558 § 5; 61 Del. Laws, c. 132 § 8; 63 Del. Laws, c. 80 § 45; 67 Del. Laws, c. 432 § 5.)

§ 6408 Private contractors.

The Authority may utilize private industry, by contract, to carry out the business, design, operating, management, marketing, planning and research and development functions of the Authority, or the Authority may determine that it is in the public interest to adopt another course of action. The Authority is hereby empowered to enter into long-term contracts with persons for the performance of any such functions of the Authority which, in the opinion of the authority, can desirably and conveniently be carried out by a person under contract provided any such contract shall contain such terms and conditions as will enable the Authority to retain overall supervision and control of the business, design, operating, management, transportation, marketing, planning and research and development functions to be carried out or to be performed by such persons pursuant to such contract. Such contracts may be entered into either on a negotiated or an open-bid basis, and the Authority in its discretion may select the type of contract it deems most prudent to utilize, considering the scope of work, the management complexities associated therewith, the extent of current and future technological development requirements and the best interests of the State. In exercising the contracting authorities set forth in this section, the Authority shall not give any preference to public versus private parties. Notwithstanding any provision of § 5103 of Title 25 (Landlord-Tenant Code) to the contrary, with respect to any long-term contract pursuant to which a private entity owns or operates a solid waste disposal, transfer station and electric and steam generating facility for the purpose of providing solid waste disposal services to the Authority, Chapters 51 through 70 of Title 25 (Landlord-Tenant Code) shall not determine the legal rights, remedies or obligations of the parties and beneficiaries to any rental or leasing agreement with respect to such facility.

(60 Del. Laws, c. 288 § 1; 61 Del. Laws, c. 132 § 9; 64 Del. Laws, c. 343 § 5(b).)

§ 6409 Covenant with bondholders.

The State covenants and agrees with the holders of any bonds, other securities or obligations or contractual obligations of the Authority, assumed, issued or incurred by it and as security for which there may or may not be pledged the fees and revenues of any part thereof of any facility or other project that the State will not, so long as any of such bonds, other obligations or contractual obligations remain outstanding and unpaid, diminish or impair the power of the Authority to establish, levy and collect fees and other charges in connection therewith and that the State will not, so long as any of such bonds, other obligations or contractual obligations remain outstanding and unpaid, terminate the Authority or authorize any other authority or facility to undertake or assume the functions of the Authority, unless

adequate provision shall be made by law for the protection of those advancing money or providing services with respect to such obligations.

(60 Del. Laws, c. 288 § 1; 63 Del. Laws, c. 372 § 6; 64 Del. Laws, c. 343 § 5(b).)

§ 6410 Securities investments.

Notwithstanding the fact that the bonds may be payable from a special fund, if they are otherwise of such form and character as to be negotiable instruments under the terms of the Uniform Commercial Code, the bonds shall be and are hereby made negotiable instruments and securities within the meaning of and for all the purposes of the Uniform Commercial Code. All banks, bankers, trust companies, savings banks, building and loan associations, saving and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business and all administrators, executors, guardians, trustees and other fiduciaries and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations may properly and legally invest any funds, including capital, belonging to them or within their control; and said obligations are hereby made securities which may properly and legally be deposited with and shall be received by the Authority for any purpose for which the deposit of bonds or other obligations is now or may hereafter be authorized.

(60 Del. Laws, c. 288 § 1; 61 Del. Laws, c. 132 § 10.)

§ 6411 Tax status.

The powers and functions exercised by the Authority under this chapter and any amendments hereof or supplements hereto are and will be in all respects for the benefit of the people of the State, and for the protection of their health and welfare. To this end, the Authority shall be regarded as performing essential governmental functions in exercising such powers and functions and in carrying out this chapter and of any law relating thereto, and shall not be required to pay any taxes or assessments of any character, levied either by the State or a political subdivision thereof, upon any of the property used by it for such purposes, or any income or revenue therefrom, including any profit from a sale or exchange. The bonds or other securities or obligations issued by the Authority, their transfer and the interest paid thereon or income therefrom, including any profit from a sale or exchange, shall at all times be free from taxation by State or any subdivision thereof. The Authority may enter into agreements with any person, other than a municipality, leasing a project from the Authority or operating or managing the project providing for the making of payments in lieu of taxes to any municipality within which the project is located of an amount which may be equal to the taxes on real and personal property which such person would have been required to pay had it been the owner of such property during the period for which such payment is made or such lesser amount as shall be agreed upon by such person and the Authority.

(60 Del. Laws, c. 288 § 1; 61 Del. Laws, c. 132 § 11.)

§ 6412 Judicial review.

Judicial proceedings to review any rule, regulation or other action of the Authority or to determine the meaning or effect thereof, may be brought in the Superior Court of this State, provided such review is requested within 30 days from the date of the promulgation of the rule or regulation or other action of the Authority.

(60 Del. Laws, c. 288 § 1.)

§ 6413 No pledge of credit; exception.

The Authority shall have no power to pledge the credit or to create any debt or liability of the State, or of any other agency or of any political subdivision, except that bonds, loan agreements or service agreements, all of which may be supported by the full faith and credit of a municipality, may be pledged as security for bonds or other obligations of the Authority.

(60 Del. Laws, c. 288 § 1; 61 Del. Laws, c. 132 § 12.)

§ 6414 Local cooperation.

All municipalities, political subdivisions and every department, agency or public body of the State is hereby authorized and empowered to cooperate with, aid and assist the Authority in effectuating this chapter and of any amendment hereof or supplement hereto, without regard to any law, public or private, or charter, regulating the issuance of debt or other obligations or governing the issuance of bonds.

(60 Del. Laws, c. 288 § 1; 61 Del. Laws, c. 132 § 13.)

§ 6415 Depositaries.

All banks, bankers, trust companies, savings banks and other persons carrying on a banking business under the laws of the State are authorized to give security for the safekeeping and prompt payment of moneys of the Authority deposited by it with them, in such manner and form as may be required by and as may be approved by the Authority, which security may consist of a good and sufficient undertaking with such sureties as may be approved by the Authority, or may consist of the deposit with the Authority or other depositary approved by the Authority as collateral of such securities as the Authority may approve.

(60 Del. Laws, c. 288 § 1.)

§ 6416 Reports and audits.

(a) The Authority shall make annual reports to the Governor, and the General Assembly of the State, setting forth in detail its operations and transactions, and may make such additional reports from time to time to the Governor and General Assembly as it may deem desirable.

(b) The Authority shall, at least annually, cause an independent audit of its fiscal affairs to be made and shall furnish a copy of such audit report together with such additional information or data with respect to its affairs as it may deem desirable to the Governor and General Assembly of the State.

(60 Del. Laws, c. 288 § 1.)

§ 6417 Sanctions.

(a) Any person who violates a regulation or a license condition, or who violates § 6428 of this title, shall be subject to the following sanctions:

(1) If the violation is of a regulation or license condition promulgated or imposed under §§ 6401-6429 of this title and the violation has been completed, a civil penalty of not less than $100 and not more than $5,000 shall be assessed. If a violation continues for a number of days, each day of such violation shall be considered a separate violation. Jurisdiction of lawsuits under this subsection shall be in any Court of Common Pleas.

(2) If the violation is of a regulation or license condition promulgated or imposed under § 6430 or § 6431 of this title and the violation has been completed, a civil penalty of not less than $1,000 and not more than $10,000 shall be assessed. If a violation continues for a number of days, each day of such violation shall be considered a separate violation. Jurisdiction of lawsuits under this subsection shall be in any Superior Court.

(3) If the violation is continuous, or there is a substantial likelihood that it will reoccur, the Authority may seek a temporary restraining order, preliminary injunction or permanent injunction in the Court of Chancery.

(b) Any person who violates a regulation or license condition, or who violates § 6428 of this title, shall be subject to revocation of such license and/or suspension of such license for such period as determined by the Authority and the assessment of an administrative penalty of not less than $500 and not more than $2,500 for each violation. If a violation continues for a number of days, each day of such violation shall be considered a separate violation. The procedure to be followed regarding any revocation or suspension of license and assessment of an administrative penalty shall be as follows:

(1) The Authority shall notify the alleged violator of the alleged violation by registered mail at least 20 days in advance of the time set for hearing on the violation;

(2) A hearing shall be held on the violation at which time the manager of the Authority shall present evidence in support of the alleged violation;

(3) The alleged violator may appear personally or by counsel at the hearing and produce any competent evidence in his or her behalf;

(4) Upon request of the manager or an alleged violator the Chairperson of the Authority shall issue subpoenae requiring the testimony of witnesses and production of books, records or other documents relevant to any matter involved in such hearing. In case of contumacy or refusal to obey a subpoena issued under this paragraph, the Superior Court in the county in which the hearing is held shall have jurisdiction upon application of the Chairperson to issue an order requiring such person to appear and testify or produce books, records or other documents requested;

(5) All testimony at the hearing shall be taken under oath. The Chairperson shall administer oaths and all directors shall be entitled to examine witnesses. A verbatim transcript of testimony at the hearing shall be prepared and shall, along with the exhibits introduced into evidence, constitute the record;

(6) Decisions regarding revocation or suspension of a license or assessment of an administrative penalty shall be made by majority vote of directors constituting the quorum. In the event the directors render a decision revoking or suspending a license or assessing an administrative penalty the Chairperson shall make findings of fact based on the record supporting the decision, and state the reasons for rendering the decision. Any director who takes exception to the decision may submit a dissenting opinion which shall set forth the reasons for such exception. Dissenting opinions shall be attached to and constitute a part of the decision of the Authority. Deliberations on decisions regarding revocations or suspensions of licenses or assessments of administrative penalties shall be held in executive sessions which shall be closed to the public. In the event a decision is rendered revoking or suspending a license, the Authority may impose conditions for reapplication for a license or for continued operation of the violator under the license;

(7) The Authority shall notify the alleged violator by registered mail of any decision reached under this subsection;

(8) In the event of nonpayment of the administrative penalty after all legal appeals have been exhausted, a civil action may be brought by the Authority through its legal counsel in Superior Court for collection of the administrative penalty, including interest, attorney's fees and costs, and the validity, amount and appropriateness of such administrative penalty shall not be subject to review.

(c) Any person whose license is revoked or suspended or who is assessed an administrative penalty may appeal the decision of the Authority to the Superior Court in and for the county in which the hearing was held. Such appeals shall be made within 30 days of the date of receipt of notification of the Authority's decision. Appeals shall be on the record. If the Court finds that additional evidence should be taken, the Court may remand the matter to the Authority for completion of the record. No appeal shall operate to stay automatically any decision of the Authority, but upon application and for good cause, the Authority or the Superior Court may stay the decision pending disposition of the appeal.

(d) The Authority, through its legal counsel, shall be entitled to take direct legal action pursuant to subsection (a) of this section without resort to conciliation or administrative remedies. The Authority may delegate to its manager the authority to file suit on behalf of the Authority.

(60 Del. Laws, c. 558 § 7; 65 Del. Laws, c. 344 § 3; 67 Del. Laws, c. 136 §§ 5-7; 70 Del. Laws, c. 186 § 1.)

§ 6418 Bonds of Authority.

(a) The Authority shall have the power and is hereby authorized from time to time to issue its negotiable bonds for any of its corporate purposes, including incidental expenses in connection therewith, and to secure the payment of the same by a lien or pledge covering all or part of its property, contracts, earnings or revenues. The Authority shall have power, from time to time whenever it deems refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured, or be subject to redemption, and may issue bonds partly to refund bonds then outstanding and partly for any of its corporate purposes. Refunding bonds may be issued in amounts sufficient to provide:

(1) The principal amount of the obligations being refunded;

(2) Any applicable redemption premiums thereon;

(3) Unpaid interest on such obligations to the date of delivery of the refunding bonds, and interest to accrue on such obligations being refunded from the date of delivery of the refunding bonds to the first or any subsequently available redemption date or dates selected by the Authority; and

(4) Any expenses, including bond discount, deemed by the Authority to be necessary for the issuance of the refunding bonds.

The proceeds of the sale of any refunding bonds shall be applied as follows, either: (1) To the immediate payment and retirement of the obligations being refunded; or (2) if not required for the immediate payment of the obligations being refunded, such proceeds shall be deposited in trust to provide for the payment and retirement of the obligations being refunded, but provisions may be made for the pledging and disposition of any amount in excess of the amounts required for such purposes, including, without limitation, provision for the pledging of any such excess amounts to the payment of the principal of and interest on any portion of such refunding bonds or series of such refunding bonds issued for the purpose of providing amounts in addition to the principal amount and premium payable with respect to the outstanding obligations to be refunded.

(b) The bonds shall be authorized by resolution of the Authority and shall bear such date or dates, mature at such time or times not exceeding 40 years from their respective dates, bear interest at a rate or rates per annum as may be determined by the Authority, be in such denominations, be in such form either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America, at such place or places and be subject to such terms of redemption, as such resolution or resolutions may provide. Bonds of the Authority shall be sold either at public or private sale at such place and interest rates as may be determined by the Authority.

(c) Any resolution or resolutions authorizing any bonds or any trust indenture securing any issue of bonds may contain provisions, which shall be a part of the contract with the holders of the bonds thereby authorized, as to:

(1) Pledging all or any part of the moneys, earnings, income and revenues derived from all or any part of the properties of the Authority to secure the payment of the bonds or of any issue of the bonds subject to such agreements with bondholders as may then exist;

(2) The rates, rentals, fees and other charges to be fixed and collected and the amounts to be raised in each year thereby, and the use and disposition of the earnings and other revenues;

(3) The setting aside of reserves and the creation of sinking funds and the regulation and disposition thereof;

(4) Limitations on the right of the Authority to restrict and regulate the use of the properties in connection with which such bonds are issued;

(5) Limitations on the purposes to which and the manner in which the proceeds of sale of any issue of bonds may be applied;

(6) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, the refunding of outstanding or other bonds;

(7) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto and the manner in which such consent may be given;

(8) The creation of special funds into which any earnings or revenues of the Authority may be deposited;

(9) The terms and provisions of any mortgage or trust deed or indenture securing the bonds or under which bonds may be issued;

(10) Vesting in a trustee or trustees such properties, rights, powers and duties in trust as the Authority may determine which may include any or all of the rights, powers and duties of the trustee appointed by the bondholders pursuant to § 6419 of this title, and limiting or abrogating the right of the bondholders to appoint a trustee under such section or limiting the rights, duties and powers of such trustee;

(11) Defining the acts or omissions to act which shall constitute a default in the obligations and duties of the Authority to the bondholders and providing the rights and remedies of the bondholders in the event of such default, including as a matter of right the appointment of a receiver; provided, however, that such rights and remedies shall not be inconsistent with the general laws of this State and other provisions of this chapter;

(12) Limitations on the power of the Authority to sell or otherwise dispose of its properties;

(13) Any other matters, of like or different character, which in any way affect the security or protection of the bonds;

(14) Limitations on the amount of moneys derived from the properties to be expended for operating, administrative or other expenses of the Authority;

(15) The protection and enforcement of the rights and remedies of the bondholders;

(16) The obligations of the Authority in relation to the construction, maintenance, operation, repairs and insurance of the properties,

the safeguarding and application of all moneys and as to the requirements for the supervision and approval of consulting engineers in connection with construction, reconstruction and operation;

(17) The payment of the proceeds of bonds and revenues of the properties to a trustee or other depository, and for the method of disbursement thereof with such safeguards and restrictions as the Authority may determine;

(18) Any other matter or course of conduct which by recital in the resolution or resolutions is declared to further secure the payment of the principal of or interest on the bonds.

(d) It is the intention of the General Assembly that any pledge of earnings, revenues or other moneys made by the Authority shall be valid and binding from the time when the pledge is made; that the earnings, revenues or other moneys so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act; and that the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(e) Neither the directors of the Authority nor any person executing the bonds or other obligations shall be liable personally on the bonds or other obligations or be subject to any personal liability or accountability by reason of the issuance thereof.

(f) The Authority shall have power out of any funds available therefor to purchase (as distinguished from the power of redemption hereinabove provided) any bonds issued by it or which may be assumed by such Authority at a price of not more than the principal amount thereof and accrued interest, and all such bonds shall be cancelled.

(g) In the discretion of the Authority, the bonds may be secured by a trust indenture by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the construction, maintenance, operation, repair and insurance of the properties, and the custody, safeguarding and application of all moneys, and may provide that the properties shall be constructed and paid for under the supervision and approval of consulting engineers. The Authority may provide by such trust indenture for the payment of the proceeds of the bonds and the revenues of the properties to the trustee under such trust indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out such trust indenture may be treated as a part of the cost of maintenance, operation and repair of the properties. If the bonds shall be secured by a trust indenture, the bondholders shall have no authority to appoint a separate trustee to represent them. Notwithstanding any other provisions of this chapter, any resolution or resolutions authorizing bonds or notes of the Authority shall contain a covenant by the Authority that it will at all times maintain rates, fees, rentals and/or other charges sufficient to pay, and that any contracts entered into by the Authority for the receipt and treatment and/or disposal of solid wastes shall contain rates, fees, rentals or other charges sufficient to pay, the cost of operation and maintenance of the properties, the principal of and interest on any obligations issued pursuant to such resolution or resolutions as the same severally become due and payable and to maintain any reserves or other funds required by the terms of such resolution or resolutions.

(61 Del. Laws, c. 132 § 14.)

§ 6419 Remedies of bondholders.

(a) In the event that the Authority shall default in the payment of principal of or interest on any issue of bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of 30 days, or in the event that the Authority shall fail or refuse to comply with this chapter, or shall default in any agreement made with the holders of any issue of bonds, the trustee appointed by the Authority or if none has been appointed, the trustee who may be appointed by the holders of 25 percent in aggregate principal amount of the bonds of such issue then outstanding by instrument or instruments filed in the office of the Recorder of Deeds of the county in which the project is located and proved or acknowledged in the same manner as a deed to be recorded, shall represent the holders of such bonds for the purposes herein provided.

(b) Such trustee may, and upon written request of the holders of 25 percent in principal amount of such bonds then outstanding shall, in the trustee's name:

(1) By mandamus or other suit, action or proceeding at law or in equity enforce all rights of the bondholders, including the right to require the Authority to collect revenues, rates, rentals, fees and other charges adequate to carry out any agreement as to, or pledge of such revenues, rates, rentals, fees and other charges and to require the Authority to carry out any other agreements with the holders of such bonds and to perform its duties under this title;

(2) Bring suit upon such bonds;

(3) By action or suit in equity, require the Authority to account as if it were the trustee of an express trust for the holders of such bonds;

(4) By action or suit in equity, enjoin any acts or things which may be unlawful or in violation of the rights of the holders of such bonds;

(5) Declare all such bonds due and payable, and if all defaults shall be made good, then with the consent of the holders of 25 percent of the principal amount of such bonds then outstanding, to annul such declaration and its consequences.

(c) Any suit, action or proceeding by the trustee on behalf of bondholders shall be heard or maintained in a court of competent

jurisdiction.

(d) Before declaring the principal of all such bonds due and payable the trustee shall first give 30 days' notice in writing to the Authority.

(e) Any such trustee, whether or not the issue of bonds represented by such trustee has been declared due and payable, shall be entitled as of right to the appointment of a receiver of any part or parts of the properties the revenues of which are pledged for the security of the bonds of such issue and such receiver may enter and take possession of such part or parts of the properties and subject to any pledge or agreement with bondholders shall take possession of all moneys and other property derived from such part or parts of the properties and proceed with any construction thereon or the acquisition of any property, real or personal, in connection therewith which the Authority is under obligation to do, and to operate, maintain and reconstruct such part or parts of the properties and collect and receive all revenues thereafter arising therefrom subject to any pledge thereof or agreement with bondholders relating thereto and perform the public duties and carry out the agreements and obligations of the Authority under the direction of the court. In any suit, action or proceeding by the trustee the fees, counsel fees and expenses of the trustee and of the receiver, if any, shall constitute taxable disbursements and all costs and disbursements allowed by the court shall be a first charge on any revenues derived from the properties.

(f) Such trustees shall in addition to the foregoing have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incident to the general representation of bondholders in the enforcement and protection of their rights.

(61 Del. Laws, c. 132 § 15; 70 Del. Laws, c. 186 § 1.)

§ 6420 Contracts.

(a) The Authority and any municipality may enter into a contract or contracts providing for or relating to the collection or treatment and disposal of garbage, solid wastes and refuse originating in the municipality and the cost and expense of such collection or treatment and disposal.

(b) Any such contract may provide for the payment to the Authority by such municipality annually or otherwise of such sum or sums of money, computed as said contract or contracts may provide, and the sum or sums so payable may include provisions for all or any part or a share of the amounts necessary:

(1) To pay or provide for the expenses of operation and maintenance of the garbage and solid wastes disposal system, including, without limitation, any processing fees or other payments required to be paid to a private entity under a service agreement for a solid waste disposal, transfer station and electric and steam generating facility, insurance, extensions, betterments and replacements and the principal and interest on any bonds;

(2) To provide for any deficits resulting from failure to receive sums payable to the Authority by such municipality, and any other municipality, or any person, or from any other cause; and

(3) To maintain such reserves or sinking funds for any of the foregoing as may be required by the terms of any contract of the Authority or as may be deemed necessary or desirable by the Authority.

(c) Any such contract may provide that the sum or sums so payable to the Authority shall be in lieu of all or any part of the service charges which would otherwise be charged and collected by the Authority with regard to persons or real property within such municipality.

(d) Any such contract may also provide for the financing and payment of expenses to be incurred by the Authority and determined by it to be necessary for its purposes prior to the placing in operation of the garbage and solid wastes disposal system and may also provide for the payment by such municipality to the Authority for application to such expenses or indebtedness therefor such sum or sums of money, not in the aggregate exceeding an amount stated or otherwise limited in any such contract plus interest thereon, as such contract may provide and as the governing body of said municipality shall, by virtue of its authorization of and entry into any such contract, determine to be necessary for the purposes of the Authority.

(e) Any such contract may be made with or without consideration and for a specified or an unlimited time and on any terms and conditions which may be approved by such municipality and which may be agreed to by the Authority in conformity with its contracts with the holders of any bonds, and shall be valid whether or not an appropriation with respect thereto is made by such municipality prior to authorization or execution thereof. Subject to any such contracts with the holders of bonds, such municipality is hereby authorized and directed to do and perform any and all acts or things necessary, convenient or desirable to carry out and perform every such contract and to provide for the payment or discharge of any obligation thereunder in the same manner as other obligations of such municipality and, in accordance with any such contract, to waive, modify, suspend or reduce the service charges which would otherwise be charged and collected by the Authority with regard to persons or real property within such municipality.

(f) Nothing in this section shall prevent the Authority from collecting additional fees and charges from the owners or occupants of all parcels of real estate served by it within such municipality if for any reason such additional fees or charges shall be necessary in order for the Authority to pay all operating expenses, debt service and other payments required pursuant to contracts with bondholders; or to pay all processing fees or other payments required pursuant to service agreements with private entities owning or operating solid waste disposal, transfer station and electric and steam generating facilities; and notwithstanding such contracts with such municipalities, the Authority shall at all times have power and be obligated to collect sufficient additional fees and charges whenever necessary to pay all operating costs, debt service and all other payments required by contracts with bondholders and whenever necessary to pay all processing fees or other payments required pursuant to service agreements with private entities owning or operating solid waste disposal, transfer station and electric and steam generating facilities.

(g) Nothing in this section shall be deemed to imply or direct that any contracts referred to aforesaid must provide for both the collection and disposal of garbage and solid wastes and such Authority may, by the agreement and parallel ordinances, and such municipality may, by ordinance, engage in either collection of solid wastes or disposal of solid wastes or both. All such contracts shall be full faith and credit obligations of the municipality and shall not be subject to any law regulating the issuance of debt or the making of contracts or other related matter.

(61 Del. Laws, c. 132 § 16; 63 Del. Laws, c. 372 § 7; 64 Del. Laws, c. 343 §§ 5(d), (e).)

§ 6421 Public bodies to pay service charges.

Each county, city, town or other public body shall promptly pay to the Authority all service charges and other moneys which the Authority may charge to it, as owner or occupant of any facility, and shall provide for the payment thereof in the same manner as other obligations of such county, city, town or other public body.

(61 Del. Laws, c. 132 § 17.)

§ 6422 Powers respecting garbage and solid wastes disposal limited after creation of Authority; use of services.

(a) The Authority by regulation may provide that no municipality shall have power to engage in, grant any license or permit for or enter into any contract for the collection or treatment and disposal of garbage, refuse and solid wastes; and no such municipality or any person, firm, corporation or association shall engage in any activities within such municipality which would be competitive with the purposes of the Authority as provided in this chapter; provided, however, that the prohibitions aforesaid shall not be applicable to that activity in which the Authority shall determine not to engage.

(b) It is hereby determined and declared that it is necessary for the health and welfare of the inhabitants of the State that the facilities and services of the Authority shall be used by the owners or occupants of all lands, buildings and premises within the State, and the Authority may by regulation require the owners or occupants of all lands, buildings and premises therein to use the services and facilities of the Authority under such rules and regulations as the Authority shall fix and establish. This section shall not be construed, however, to affect or impair any contract entered into prior to July 12, 1977.

(61 Del. Laws, c. 132 § 18; 63 Del. Laws, c. 372 § 8.)

§ 6423 Construction of chapter.

This chapter and the regulations promulgated thereunder shall be construed liberally to effectuate the legislative intent and as complete authority for the performance of each and every act and thing herein authorized.

(61 Del. Laws, c. 132 § 19.)

§ 6424 Cooperation with United States.

The Authority shall adopt all necessary regulations, rules, procedures and plans to comply with the objectives of the Resource Conservation and Recovery Act of 1976 [42 U.S.C. § 6901 et seq.] and the Solid Waste Disposal Act of the United States P.L. 89-272 and may make application to the United States for financial assistance to develop and implement the purposes of this chapter.

(61 Del. Laws, c. 132 § 20.)

§ 6425 Conflict of interest.

No director shall be entitled to vote on any matter before the Authority if such director knowingly has a financial interest in the outcome of such matter. In the event a director knowingly has a financial interest such director shall indicate to the chairperson the nature of the interest and the chairperson shall note for the record that the director did not vote by reason of conflict of interest. In situations in which a director or directors do not vote by reason of conflict of interest, the matter pending before the Authority shall be decided on the basis of a majority vote of the remaining directors present who do not have a conflict of interest. A director or directors having a conflict of interest as set forth herein shall be counted for purposes of establishing a quorum provided such director or directors are present at the meeting. The fact that a director or directors have not voted by reason of conflict of interest shall in no way affect the validity of an act or actions taken regarding the matter before the Authority.

(61 Del. Laws, c. 132 § 21; 70 Del. Laws, c. 186 § 1.)

§ 6426 Indemnification of directors.

(a) The State shall indemnify a director who is a party or is threatened to be made a party to any suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he or she is or was a director of the Authority, against expenses, including attorney's fees, judgments, fines and amounts paid in connection with such action, suit or proceeding, if such director acted in good faith and in a manner such director believed to be in the best interests of the Authority, and, with respect to a criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful.

(b) Any indemnification under this section shall be made only as authorized in the specific case upon a determination that indemnification of the director is proper in the circumstances because the director has met the applicable standard of conduct set forth in subsection (a) of this section. Such a determination shall be made by the Attorney General or the Attorney General's designee within 15 days of the date of receipt of a request for such a determination. In the event the Attorney General fails to make the determination within

the time frame specified, the requested indemnification hereunder shall be deemed as granted.

(c) Expenses incurred in defending any suit or proceeding referred to herein may be paid in advance of the final disposition of such suit or proceeding upon submission of documentation to the directors regarding the validity of such expenses.

(d) No payment under this section shall be made unless the director seeking such payment shall agree that the State be subrogated, to the extent of such payment, to all rights of recovery of such director, and shall agree to execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the State effectively to bring suit in the name of the State.

(e) Any eligible director seeking indemnification under this section shall file a written request for determination with the Attorney General setting forth in full the circumstances supporting the claim for indemnification.

(f) The indemnification provided in this section shall apply only to acts and/or omissions occurring subsequent to January 1, 1977. In the event expenses covered by the indemnity set forth in this section are payable under a valid and enforceable commercial insurance policy maintained by and/or for the benefit of the directors, this indemnity shall not apply to expenses subject to recovery pursuant to such insurance coverage.

(61 Del. Laws, c. 115 § 1; 67 Del. Laws, c. 136 § 8; 70 Del. Laws, c. 186 § 1.)

§ 6427 Industrial solid waste.

(a) The Authority may determine to accept or to cease accepting industrial solid waste at any 1 or more of its facilities.

(b) The Authority shall develop criteria, to be approved by the Department, for determining whether industrial solid wastes or special solid wastes are acceptable for disposal at the Authority's facilities. The Authority may require, from any person seeking to dispose of industrial solid waste or special solid waste at any of its facilities, any evidence the Authority deems necessary to determine whether the industrial solid waste or special solid waste meets the criteria developed pursuant to this subsection.

(c) The manager, or the manager's designee, may elect not to accept any particular industrial solid waste or type of industrial solid waste if the manager, or the manager's designee, determines that such waste or the quantity thereof will have an adverse effect on the facility or the operation of the facility, if an effective means of risk and cost allocation cannot be achieved, or for such other reasons as the Authority may identify in the statewide solid waste management plan.

(d) In addition to other fees and charges that it imposes, the Authority may impose an industrial solid waste disposal surcharge to compensate the Authority for the risks associated with accepting industrial solid waste, specifically or by classes, and for the additional costs, including administrative expenses and overhead, associated with such disposal. The industrial solid waste disposal surcharge shall be set by the manager, or the manager's designee, without notice and public hearing thereon, and may be done on a case-by-case basis. In setting such surcharge the manager shall take into consideration the volume of waste to be disposed of, the degree of risk associated with such disposal, the additional administrative expenses and overhead incurred by the Authority and any other relevant factors.

(e) Any person causing or allowing industrial solid waste to be delivered to a facility operated by or on behalf of the Authority shall be deemed to have agreed to indemnify and hold harmless the Authority from any liability arising from the disposal of such industrial solid waste and to have agreed to reimburse the Authority for any costs reasonably incurred to protect against or reduce any risk resulting therefrom; provided, however, such person, if such person has not caused or allowed the delivery of hazardous waste, hazardous materials or toxic substances, shall not be liable under this subsection to the Authority for harm or damage caused by the negligence of the Authority.

(f)(1) Any person seeking to have industrial solid waste disposed of at a facility operated by or on behalf of the Authority, who is aggrieved by a determination of the manager, or the manager's designee, under this section, with regard to such effort, may seek review thereof by the directors of the Authority by filing a request for review with the manager within 15 days of learning of such determination.

(2) At least 15 days' notice of the time set forth for hearing by the directors of the request for review shall be sent by registered mail to the person filing the request for review who bears the burden of proof in such proceeding.

(3) The person filing for the request for review may appear personally or by counsel at the hearing and produce any competent evidence in his or her behalf.

(4) Upon request of the manager or the person filing the request for review, the chairperson of the Authority shall issue subpoenae requiring the testimony of witnesses and production of books, records or other documents relevant to any matter involved in such hearing. In case of contumacy or refusal to obey a subpoena issued under this paragraph, the Superior Court in the county in which the hearing is held shall have jurisdiction upon application of the chair to issue an order requiring such person to appear and testify or produce books, records or other documents requested.

(5) All testimony at the hearing shall be taken under oath. The Chairperson shall administer oaths and all directors shall be entitled to examine witnesses.

(6) The hearing may be held as part of a regular meeting or at a special meeting of the Authority. Deliberations on requests for review under this section shall be held in executive sessions which shall be closed to the public.

(7) The decision of the directors of the Authority shall be in writing and shall be sent to the person filing the request for review by registered mail.

(63 Del. Laws, c. 372 § 9; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 243 § 1.)

§ 6428 Deposit of solid waste generated outside State prohibited.

Any provision of this chapter to the contrary notwithstanding, solid waste including infectious waste, generated outside the State shall not be delivered to a facility operated by, or on behalf of, or under contract with the Authority. However, recyclable materials generated outside the State may be delivered for recycling to a recycling center or facility operated by, on behalf of, or under contract with the Authority. This section does not limit the Authority's power under this chapter to promulgate regulations further limiting the delivery of solid waste to its facilities based upon the hazardous, explosive, toxic, pathological, infectious or radioactive properties of the waste, or by reason of its other physical properties, chemical composition or quantity which may have an adverse effect on the Authority's facilities.

(65 Del. Laws, c. 344 § 2; 67 Del. Laws, c. 136 § 11; 73 Del. Laws, c. 184 § 1.)

§ 6429 Material and energy recovery facility for Kent County and Sussex County.

(a) The Authority is directed to study, finance, design, develop, implement and operate a material and energy recovery facility at either or both of the sites where it now owns and operates landfills in Kent County and Sussex County or at such other site as it may select in accordance with this chapter to serve Kent County and Sussex County.

(b) The Authority shall file a report with the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives on or before May 1 in each year commencing with 1989 on the status of its efforts to develop a material and energy recovery facility to serve Kent County and Sussex County.

(66 Del. Laws, c. 272 § 2.)

§ 6430 Collection and transportation of infectious waste.

(a) Any person who collects or transports infectious waste from an infectious waste generator shall obtain from the Authority a license specifically for collection or transportation of infectious waste in the State.

(b) The Authority may, after public notice and hearing, adopt rules and regulations governing the licensing of infectious waste collectors and transporters.

(c) The Authority may, after public notice and hearing, adopt rules and regulations for the tracking of infectious waste generated by infectious waste generators, by requiring infectious waste generators and transporters to file with the Authority a copy of any infectious waste tracking form or manifest that may be required under laws or regulations of the State.

(67 Del. Laws, c. 136 § 9.)

§ 6431 Infectious waste disposal.

(a) It is hereby determined and declared that it is necessary for the health and welfare of the inhabitants of the State that the facilities and services of the Authority shall be used by all infectious waste generators within the State for the disposal of all infectious waste generated within the State, and the Authority may by regulation require all infectious waste generators, collectors and transporters therein to use the services and facilities of the Authority under such rules and regulations as the Authority shall fix and establish for the disposal of infectious waste; provided, however, that the infectious waste generators with on-site incineration for the disposal of infectious waste as of July 1, 1989, may continue to use such on-site incineration for the disposal of infectious waste generated on-site. The Authority, after public notice and hearing, may adopt rules and regulations requiring such infectious waste generators to report not less often than annually on the quantity and types of infectious waste incinerated on-site. This section shall not be construed, however, to affect or impair any contract entered into prior to July 1, 1989.

(b) The Authority is directed to study, finance, design, develop, implement and operate, or cause the same to occur, an infectious waste incineration facility at the sites where it now owns and operates landfills in New Castle County, Kent County or Sussex County, or where it now owns and operates the Delaware Reclamation Project in New Castle County, or at such other site as it may select in accordance with this chapter. The Authority is hereby authorized to dispose of ash from any such infectious waste incineration facility in the Authority's landfills, subject to regulations promulgated by the Department of Natural Resources and Environmental Control.

(67 Del. Laws, c. 136 § 10.)

§ 6432 Environmental study to be conducted before site selection and construction of any proposed resource recovery facility or any proposed waste incinerator; copies to be filed with the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives.

Notwithstanding any provision of this title to the contrary, the Authority shall conduct an environmental study, focusing upon the dangers and costs of any proposed resource recovery facility or any proposed waste incinerator, including the potential of same upon air, water, and soil quality, and the Authority shall file copies of any such environmental study with the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives, before proceeding with site selection and construction of any proposed resource recovery facility or any proposed waste incinerator.

(69 Del. Laws, c. 269 § 1.)

§§ 6433 -6449. [Reserved.]

Subchapter II

Recycling and Waste Reduction

§ 6450 Findings; policy; purpose.

The General Assembly hereby makes the following findings and declares the following policies and purposes with respect to the recycling and reduction of solid waste materials. It is determined that the reduction of solid waste disposal and recovery of usable materials from solid waste are matters of extreme importance in minimizing the environmental impact of solid waste disposal through landfilling. It is in the public interest to develop a comprehensive statewide system of recycling and resource recovery which maximizes the quantity of solid waste materials which can be recovered, reused or converted to beneficial use. The statewide system should utilize existing and new resource recovery facilities such as reclamation projects and waste-to-energy projects while establishing and developing a statewide source separation program through use of recycling centers. In addition to maximizing the recovery and reuse of materials from solid waste through use of large scale projects, it is a state goal to provide an opportunity for source separated recycling to every person in the State. In order to accomplish the goals and objectives of statewide recycling and waste reduction, it is determined that the Authority develop a comprehensive program incorporating long range planning, project development, public education and promotion, information gathering, and marketing. It is further determined that the Authority, in developing a statewide comprehensive recycling and waste reduction program, consider measures to remove from the solid waste stream through source separation materials harmful to the environment which cannot be readily or effectively recycled so that such materials can be separately disposed in an authorized manner. These findings, policies and purposes are declared to be in the public interest and these provisions are considered necessary and for the public benefit as a matter of legislative determination, and liberal interpretation in favor of accomplishing the stated goals and objectives shall be provided.

(67 Del. Laws, c. 432 § 1.)

§ 6451 Definitions.

The following terms shall have the meanings ascribed to them in this subchapter:

(1) "Organic yard waste" means plant material resulting from lawn maintenance and other horticultural gardening and landscaping activities and includes grass, leaves, prunings, brush, shrubs, garden material, Christmas trees and tree limbs up to 4 inches in diameter.

(2) "Recyclable material" means any material or group of materials that can be collected and sold or used for beneficial purposes or separated from the waste stream and disposed separately in an authorized manner to reduce environmental impacts.

(3) "Recycling" means the process by which solid waste and other discarded materials are transformed into usable materials or disposed separately in an authorized manner to reduce adverse environmental impacts.

(4) "Recycling center" means any solid waste management facility designed and operated by or on behalf of the Authority for the purpose of receiving recyclable materials. The construction and operation of recycling centers shall not require any municipal or state agency approval and no permit or license fee or any other form of assessment shall be made with respect to the construction and operation of recycling centers.

(5) "Source separation" or "source separated" means the process by which recyclable materials are segregated and kept apart from the waste stream by the generator thereof for the purpose of collection, disposition, recycling or resources recovery.

(6) "Waste reduction" means the efforts exercised by generators of useless discarded materials to avoid or minimize usage of such materials.

(67 Del. Laws, c. 432 § 1; 77 Del. Laws, c. 275 § 2.)

§ 6452 Statewide recycling and waste reduction plan.

The Authority shall, pursuant to the provisions of § 6403(j) of this title, incorporate into the statewide solid waste management plan, to the extent deemed necessary, provisions for:

(1) The long term planning of a coordinated program of source separation of recyclable materials and utilization of large scale resources recovery projects;

(2) The establishment of recycling centers to receive and handle source separated recyclable materials;

(3) The development of a marketing program for the state, national or international sale of recovered materials;

(4) The development of an informational program and establishment of specifications and requirements for delivery of source separated recyclable materials to recycling centers to assure marketability of recovered materials;

(5) The development of a program for cooperation with the private sector to further the purposes and objectives of source separated recycling and waste reduction;

(6) The development of a program of coordination and cooperation with public interest groups and municipalities to further statewide recycling and waste reduction;

(7) The development of a program of public education and promotion for statewide recycling and waste reduction;

(8) The development of a program to source separate materials from the solid waste stream which are harmful to the environment including but not limited to used oil and filters, batteries, household hazardous wastes, electronic wastes, etc., as long as economically sustainable in the judgment of the Authority for purposes of separate authorized disposal;

(9) The development of a system of registration and information gathering regarding the nature and extent of recycling and waste reduction undertaken throughout the State;

(10) The development of incentive programs to encourage local and statewide recycling and waste reduction;

(11) The implementation of a source-separated recycling system that balances the need for drop-off recycling centers with public and private sector implementation and expansion of curbside recycling programs except where a municipal government implements curbside recycling within its jurisdiction, the Authority may, after consultation with the local municipality, remove the drop off sites located within the same jurisdiction with the goal of maintaining at least one existing drop-off recycling center in each municipality until January 1, 2014; and

(12) Providing at no cost to those persons required to provide curbside recycling services pursuant to § 6053 of this title the Authority's unneeded wheeled recycling carts on the basis determined by the Authority for the purpose of minimizing the costs associated with the implementation of universal recycling when the Authority ceases providing curbside recycling services in accordance with § 6053(1) of this title.

(67 Del. Laws, c. 432 § 1; 77 Del. Laws, c. 275 § 3.)

§ 6453 Recyclable materials.

(a) The Authority shall consider, as part of its source separated recycling and waste reduction program, recovery and use of the following materials:

(1) Newsprint.
(2) Computer paper.
(3) White paper.
(4) Corrugated and other cardboard.
(5) Plastics.
(6) Ferrous metals.
(7) Nonferrous metals.
(8) White goods.
(9) Organic yard waste.
(10) Used motor oil.
(11) Asphalt.
(12) Batteries.
(13) Household paint, solvent, pesticide and insecticide containers.

(b) The Authority may adopt regulations describing recyclable materials and adding other materials to the list of recyclable materials.

(67 Del. Laws, c. 432 § 1.)

§ 6454 Recycling centers.

Implementation of efficient and cost-effective recycling programs will require that Delaware have access to facilities capable of processing source separated recyclables. Where the private sector has developed extensive recyclables processing capability and where unique programs that provide incentives to the general public to recycle that are not available to Delaware residents, the Department and the Authority shall encourage and work with the private sector to establish private facilities for recyclables and recycling incentive programs in Delaware. The Authority shall accept recyclables from municipalities and nonmunicipal persons at no cost under such contractual terms and conditions as mutually agreed. Additional materials may be accepted at the source separated recycling center subject to the approval of the Authority. The Authority shall receive recyclable materials for transfer to the processing facility at locations designated by the Authority. It shall be the responsibility of the Authority to ensure that processing and/or transfer facilities for managing source separated collected recyclables are in operation in each County. It shall also be the responsibility of the Authority to transport or arrange for the transport of source separated recyclables from the Authority's transfer stations or landfills to a processing facility.

(67 Del. Laws, c. 432 § 1; 77 Del. Laws, c. 275 § 4.)

§ 6455 Public education and promotion of recycling, composting and other waste reduction programs.

The Authority, in cooperation and consultation with the Department, shall initiate and conduct public outreach and education programs on the cessation of its curbside recycling program and modification to its drop off and organic yard waste programs, as well as continuing education on the purposes and value of source separated recycling and resource recovery. The intent of these educational programs shall be to maximize the diversion and recovery of recyclable materials and organic yard waste, whether it was generated by the commercial or residential sector. Such program may be conducted in conjunction with similar efforts of private industry, municipalities, public interest groups, the Department and the Recycling Public Advisory Council. The program may include the use of public advertising.

(67 Del. Laws, c. 432 § 1; 77 Del. Laws, c. 275 § 5.)

§ 6456 Registration of recycling and resource recovery facilities.

Any person engaged in recycling or resources recovery of source separated solid waste generated in the State shall file with the Authority an annual registration statement containing such information as specified in regulations adopted by the Authority. No fee shall be charged as part of the requirement for filing a registration statement.

(67 Del. Laws, c. 432 § 1.)

§ 6457 Funding.

Except as specifically provided otherwise for the operation of recycling centers under § 6454 of this title, the costs of implementing programs related to recycling and waste reduction may be funded to the fullest extent authorized for other Authority activities under the provisions of this subchapter.

(67 Del. Laws, c. 432 § 1.)

§ 6458 Marketing of recyclable materials.

The Authority shall be entitled to obtain, develop, create and promote state, national and international markets for usable materials recovered from recycling and resources recovery activities. The Authority shall seek to obtain the best available pricing for recovered materials, with due consideration to other pertinent factors, under short or long term arrangements as deemed appropriate by the Authority. The Authority shall be entitled to offer incentives to develop markets for recovered materials.

(67 Del. Laws, c. 432 § 1.)

§ 6459 Annual report.

The Authority's annual report submitted under § 6416 of this title shall set forth its operations and transactions involving recycling and waste reduction, and shall include information pertaining to the advice, assistance, and cooperative efforts extended by the Department of Natural Resources and Environmental Control to the Authority regarding the recycling and waste reduction program. The Authority shall also include in the independent audit of its fiscal affairs those matters related to its activities involving recycling and waste reduction.

(67 Del. Laws, c. 432 § 1.)

§ 6460 Energy resource recovery study — Kent and Sussex Counties.

In addition to the requirements of § 6429 of this title, the Authority is directed to undertake a feasibility analysis of establishing separate material and energy recovery facilities to Kent County and Sussex County independently. Such analysis shall include consideration of the availability of solid waste material, the market for recovered materials and energy, the effect of other recycling and waste reduction measures, general project economics and environmental impacts. The Authority shall not be entitled to proceed with a material and energy recovery facility under the provisions of § 6429 of this title until such time that the feasibility study required hereunder is filed with the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives. Such feasibility analysis shall be completed and filed no later than January 15, 1991.

(67 Del. Laws, c. 432 § 1.)

Part VII
Natural Resources
Chapter 65
DELAWARE RIVER BASIN COMPACT
Subchapter I
Delaware River Basin Compact

§ 6501 Delaware River Basin Compact.

The Delaware River Basin Compact is entered into and enacted into law; subject to the execution by the Governor as provided in the Compact and in accordance with its terms. The Compact is as follows:

DELAWARE RIVER BASIN COMPACT

WHEREAS, the signatory parties recognize the water and related sources of the Delaware basin as regional assets vested with local, state and national interests, for which they have a joint responsibility; and

WHEREAS, the conservation, utilization, development, management and control of the water and related resources of the Delaware River Basin under a comprehensive multi-purpose plan will bring the greatest benefits and produce the most efficient service in the public welfare; and

WHEREAS, such a comprehensive plan administered by a basin-wide agency will provide effective flood damage reduction; conservation and development of ground and surface water supply for municipal, industrial and agricultural uses; development of recreational facilities in relation to reservoirs, lakes and streams; propagation of fish and game; promotion of related forestry, soil conservation and watershed projects; protection and aid to fisheries dependent upon water resources, development of hydroelectric power potentialities; improved navigation; control of the movement of salt water; abatement and control of stream pollution; and regulation of stream flows toward the attainment of these goals; and

WHEREAS, decisions of the United States Supreme Court relating to the waters of the basin have confirmed the interstate regional character of the water resources of the Delaware River Basin, and the United States Corps of Engineers has in a prior report on the Delaware River Basin (House Document 179, 73d Cong. 2nd Sess.) officially recognized the need for an interstate agency and the economies that can result from unified development and control of the water resources of the basin; and

WHEREAS, the water resources of the basin are presently subject to the duplicating, overlapping and uncoordinated administration of some 43 state agencies, 14 interstate agencies and 19 federal agencies which exercise a multiplicity of powers and duties resulting in a splintering of authority and responsibilities; and

WHEREAS, the joint advisory body known as the Interstate Commission on the Delaware River Basin (INCODEL), created by the respective commissions or committee on Interstate Cooperation of the States of Delaware, New Jersey, New York and Pennsylvania, has on the basis of its extensive investigations, surveys and studies concluded that regional development of the Delaware River Basin is feasible, advisable and urgently needed; and has recommended that an interstate compact with federal participation be consummated to this end; and

WHEREAS, the Congress of the United States and the executive branch of the government have recognized the national interest in the Delaware River Basin by authorizing and directing the Corps of Engineers, U.S. Department of the Army, to make a comprehensive survey and report on the water and related resources of the Delaware River Basin, enlisting the technical aid and planning participation of many federal, state and municipal agencies dealing with the waters of the basin, and in particular the federal departments of Agriculture, Commerce, Health, Education and Welfare, Interior, and Federal Power Commission; and

WHEREAS, some 22,000,000 people of the United States at present live and work in the region of the Delaware River Basin and its environs, and the government, employment, industry and economic development of the entire region and the health, safety and general welfare of its population are and will continue to be vitally affected by the use, conservation, management and control of the water and related resources of the Delaware River Basin; and

WHEREAS, demands upon the waters and related resources of the basin are expected to mount rapidly because of the anticipated increase in the population of the region projected to reach 30,000,000 by 1980 and 40,000,000 by 2010, and because of the anticipated increase in industrial growth projected to double by 1980; and

WHEREAS, water resources planning and development is technical, complex and expensive, and has often required 15 to 20 years from the conception to the completion of a large dam and reservoir; and

WHEREAS, the public interest requires that facilities must be ready and operative when needed, to avoid the catastrophe of unexpected floods or prolonged drought, and for other purposes; and

WHEREAS, the Delaware River Basin Advisory Committee, a temporary body constituted by the governors of the 4 basin states and the mayors of the cities of New York and Philadelphia, has prepared a draft of an interstate-federal compact for the creation of a basin agency, and the signatory parties desire to effectuate the purposes thereof; now therefore

The states of Delaware, New Jersey and New York and the Commonwealth of Pennsylvania, and the United States of America hereby solemnly covenant and agree with each other, upon the enactment of concurrent legislation by the Congress of the United States and by the respective state legislatures, having the same effect as this Part to the following Compact:

ARTICLE 1

SHORT TITLE, DEFINITIONS, PURPOSE AND LIMITATIONS

Section 1.1 SHORT TITLE. This act shall be known and may be cited as the Delaware River Basin Compact.

1.2 DEFINITIONS. For the purposes of this compact, and of any supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

(a) "Basin" shall mean the area of drainage into the Delaware River and its tributaries, including Delaware Bay;

(b) "Commission" shall mean the Delaware River Basin Commission created and constituted by this compact;

(c) "Compact" shall mean Part 1 of this act;

(d) "Cost" shall mean direct and indirect expenditures, commitment, and net induced adverse effects, whether or not compensated for, used or incurred in connection with the establishment, acquisition, construction, maintenance and operation of a project;

(e) "Facility" shall mean any real or personal property, within or without the basin, and improvements thereof or thereon, and any and all rights of way, water, water rights, plants, structures, machinery and equipment, acquired, constructed, operated or maintained for the beneficial use of water resources or related land uses including, without limiting the generality of the foregoing, any and all things and appurtenances necessary, useful or convenient for the control, collection, storage, withdrawal, diversion, release, treatment, transmission, sale or exchange of water; or for navigation thereon, or the development and use of hydroelectric energy and power, and public recreational facilities; or the propagation of fish and wildlife; or to conserve and protect the water resources of the basin or any existing or future water supply source, or to facilitate any other uses of any of them;

(f) "Federal government" shall mean the government of the United States of America, and any appropriate branch, department, bureau or division thereof, as the case may be;

(g) "Project" shall mean any work, service or activity which is separately planned, financed, or identified by the commission, or any separate facility undertaken or to be undertaken within a specified area, for the conservation, utilization, control, development or management of water resources which can be established and utilized independently or as an addition to an existing facility, and can be considered as a separate entity for purposes of evaluation;

(h) "Signatory party" shall mean a state or commonwealth party to this compact, and the federal government;

(i) "Water resources" shall include water and related natural resources, in, on, under, or above the ground, including related uses of land, which are subject to beneficial use, ownership or control.

1.3 PURPOSE AND FINDINGS. The legislative bodies of the respective signatory parties hereby find and declare:

(a) The water resources of the basin are affected with a local, state, regional and national interest and their planning, conservation, utilization, development, management and control, under appropriate arrangements for intergovernmental cooperation, are public purposes of the respective signatory parties.

(b) The water resources of the basin are subject to the sovereign right and responsibility of the signatory parties, and it is the purpose of this compact to provide for a joint exercise of such powers and sovereignty in the common interests of the people of the region.

(c) The water resources of the basin are functionally inter-related, and the uses of these resources are interdependent. A single administrative agency is therefore essential for effective and economical direction, supervision and coordination of efforts and programs of federal, state and local governments and of private enterprise.

(d) The water resources of the Delaware River Basin, if properly planned and utilized, are ample to meet all presently projected demands, including existing and added diversions in future years; and ever increasing economies and efficiencies in the use and reuse of water resources can be brought about by comprehensive planning, programming and management.

(e) In general, the purposes of this compact are to promote interstate comity; to remove causes of present and future controversy; to make secure and protect present developments within the states; to encourage and provide for the planning, conservation, utilization, development, management and control of the water resources of the basin; to provide for cooperative planning and action by the signatory parties with respect to such water resources; and to apply the principle of equal and uniform treatment to all water users who are similarly situated and to all users of related facilities, without regard to established political boundaries.

1.4 POWERS OF CONGRESS: WITHDRAWAL. Nothing in this compact shall be construed to relinquish the functions, powers or duties of the Congress of the United States with respect to the control of any navigable waters within the basin, nor shall any provision hereof be construed in derogation of any of the constitutional powers of the Congress to regulate commerce among the states and with foreign nations. The power and right of the Congress to withdraw the federal government as a party to this compact or to revise or modify the terms, conditions and provisions under which it may remain a party by amendment, repeal or modification of any federal statute applicable thereto is recognized by the signatory parties.

1.5 EXISTING AGENCIES: CONSTRUCTION. It is the purpose of the signatory parties to preserve and utilize the functions, powers and duties of existing offices and agencies of government to the extent not inconsistent with this compact, and the commission is authorized and directed to utilize and employ such offices and agencies for the purpose of this compact to the fullest extent it finds feasible and advantageous.

1.6 DURATION OF COMPACT.

(a) The duration of this compact shall be for an initial period of 100 years from its effective date, and it shall be continued for additional periods of 100 years if not later than 20 years nor sooner than 25 years prior to the termination of the initial period or any succeeding period none of the signatory states, by authority of an act of its legislature, notifies the commission of intention to terminate the compact at the end of the then current 100 years period.

(b) In the event that this compact should be terminated by operation of paragraph (a) above, the commission shall be dissolved, its assets and liabilities transferred, and its corporate affairs wound up, in such manner as may be provided by act of the Congress.

ARTICLE 2

ORGANIZATION AND AREA

Section 2.1 COMMISSION CREATED. The Delaware River Basin Commission is hereby created as a body politic and corporate, with succession for the duration of this compact, as an agency and instrumentality of the governments of the respective signatory parties.

2.2 COMMISSION MEMBERSHIP. The Commission shall consist of the governors of the signatory states, ex-officio, and 1 commissioner to be appointed by the President of the United States to serve during the term of office of the President.

2.3 ALTERNATES. Each member of the commission shall appoint an alternate to act in his place and stead, with authority to attend all meetings of the commission and with power to vote in the absence of the member. Unless otherwise provided by law of the signatory party for which he is appointed, each alternate shall serve during the term of the member appointing him, subject to removal at the pleasure of the member. In the event of a vacancy in the office of alternate, it shall be filled in the same manner as an original appointment for the unexpired term only.

2.4 COMPENSATION. Members of the commission and alternates shall serve without compensation but may be reimbursed for necessary expenses incurred in and incident to the performance of their duties.

2.5 VOTING POWER. Each member shall be entitled to 1 vote on all matters which may come before the commission. No action of the commission shall be taken at any meeting unless a majority of the membership shall vote in favor thereof.

2.6 ORGANIZATION AND PROCEDURE. The commission shall provide for its own organization and procedure, and shall adopt rules and regulations governing its meetings and transactions. It shall organize annually by the election of a chairman and vice-chairman from among its members. It shall provide by its rules for the appointment by each member in his discretion of an advisor to serve without compensation, who may attend all meetings of the commission and its committees.

2.7 JURISDICTION OF THE COMMISSION. The commission shall have, exercise and discharge its functions, powers and duties within the limits of the basin, except that it may in its discretion act outside the basin whenever such action may be necessary or convenient to effectuate its powers or duties within the basin, or to sell or dispose of water, hydroelectric power or other water resources within or without the basin. The commission shall exercise such power outside the basin only upon the consent of the state in which it proposes to act.

ARTICLE 3

POWERS AND DUTIES OF THE COMMISSION

Section 3.1 PURPOSE AND POLICY. The commission shall develop and effectuate plans, policies and projects relating to the water resources of the basin. It shall adopt and promote uniform and coordinated policies for water conservation, control, use and management in the basin. It shall encourage the planning, development and financing of water resources projects according to such plans and policies.

3.2 COMPREHENSIVE PLAN, PROGRAM AND BUDGETS. The commission shall, in accordance with Article 13 of this compact, formulate and adopt:

(a) A comprehensive plan, after consultation with water users and interested public bodies; for the immediate and long range development and uses of the water resources of the basin;

(b) A water resources program, based upon the comprehensive plan, which shall include a systematic presentation of the quantity and quality of water resources needs of the area to be served for such reasonably foreseeable period as the commission may determine, balanced by existing and proposed projects required to satisfy such needs, including all public and private projects affecting the basin, together with a separate statement of the projects proposed to be undertaken by the commission during such period; and

(c) An annual current expense budget, and an annual capital budget consistent with the water resources program covering the commission's projects and facilities for the budget period.

3.3 ALLOCATIONS, DIVERSIONS AND RELEASES. The commission shall have the power from time to time as need appears, in accordance with the doctrine of equitable apportionment, to allocate the waters of the basin to and among the states signatory to this compact and to and among their respective political subdivisions, and to impose conditions, obligations and release requirements related thereto, subject to the following limitations:

(a) The commission, without the unanimous consent of the parties to the United States Supreme Court decree in New Jersey v. New York, 74 S. Ct. 842, 347 U.S. 995, 98 L. Ed. 2d 1127 (1954), shall not impair, diminish or otherwise adversely affect the diversions, compensating releases, rights, conditions, obligations, and provisions for the administration thereof as provided in said decree; provided, however, that after consultation with the river master under said decree the commission may find and declare a state of emergency resulting from a drought or catastrophe and it may thereupon by unanimous consent of its members authorize and direct an increase or decrease in any allocation or diversion permitted or releases required by the decree, in such manner and for such limited time as may be

necessary to meet such an emergency condition.

(b) No allocation of waters hereafter made pursuant to this section shall constitute a prior appropriation of the waters of the basin or confer any superiority of right in respect to the use of those waters, nor shall any such action be deemed to constitute an apportionment of the waters of the basin among the parties hereto; provided that this paragraph shall not be deemed to limit or restrict the power of the commission to enter into covenants with respect to water supply, with a duration not exceeding the life of this compact, as it may deem necessary for the benefit or development of the water resources of the basin.

(c) Any proper party deeming itself aggrieved by action of the commission with respect to an out-of-basin diversion or compensating releases in connection therewith, notwithstanding the powers delegated to the commission by this compact may invoke the original jurisdiction of the United States Supreme Court within 1 year after such action for an adjudication and determination thereof de novo. Any other action of the commission pursuant to this section shall be subject to judicial review in any court of competent jurisdiction.

3.4 SUPREME COURT DECREE: WAIVERS. Each of the signatory states and their respective political subdivisions, in consideration of like action by the others, and in recognition of reciprocal benefits, hereby waives and relinquishes for the duration of this compact any right, privilege or power it may have to apply for any modification of the terms of the decree of the United States Supreme Court in New Jersey v. New York, 74 S. Ct. 842, 347 U.S. 995, 98 L. Ed. 2d 1127 (1954) which would increase or decrease the diversions authorized or increase or decrease the releases required thereunder, except that a proceeding to modify such decree to increase diversions or compensating releases in connection with such increased diversions may be prosecuted by a proper party to effectuate rights, powers, duties and obligations under Section 3.3 of this compact, and except as may be required to effectuate the provisions of paragraph 111B3 and VB of said decree.

3.5 SUPREME COURT DECREE: SPECIFIC LIMITATIONS ON COMMISSION. Except as specifically provided in Sections 3.3 and 3.4 of this article, nothing in this compact shall be construed in any way to impair, diminish or otherwise adversely affect the rights, powers, privileges, conditions and obligations contained in the decree of the United States Supreme Court in New Jersey v. New York, 74 S. Ct. 842, 347 U.S. 995, 98 L. Ed. 2d 1127 (1954). To this end, and without limitation thereto, the commission shall not:

(a) Acquire, construct or operate any project or facility or make any order or take any action which would impede or interfere with the rights, powers, privileges, conditions or obligations contained on said decree;

(b) Impose or collect any fee, charge or assessment with respect to diversions of waters of the basin permitted by said decree;

(c) Exercise any jurisdiction, except upon consent of all the parties to said decree, over the planning, design, construction, operation or control of any projects, structures or facilities constructed or used in connection with withdrawals, diversions and releases of waters of the basin authorized by said decree or of the withdrawals, diversions or releases to be made thereunder; or

(d) Serve as river master under said decree, except upon consent of all the parties thereto.

3.6 GENERAL POWERS: The commission may:

(a) Plan, design, acquire, construct, reconstruct, complete, own, improve, extend, develop, operate and maintain any and all projects, facilities, properties, activities and services, determined by the commission to be necessary, convenient or useful for the purposes of this compact;

(b) Establish standards of planning, design and operation of all projects and facilities in the basin which affect its water resources, including without limitation thereto water and waste treatment plants, stream and lake recreational facilities, trunk mains for water distribution, local flood protection works, small watershed management programs, and ground water recharging operations;

(c) Conduct and sponsor research on water resources, their planning, use, conservation, management, development, control and protection, and the capacity, adaptability and best utility of each facility thereof, and collect, compile, correlate, analyze, report and interpret data on water resources and uses in the basin, including without limitation thereto the relation of water to other resources, industrial water technology, ground water movement, relation between water price and water demand, and general hydrological conditions;

(d) Compile and coordinate systematic stream stage and ground water level forecasting data, and publicize such information when and as needed for water uses, flood warning, quality maintenance or other purposes;

(e) Conduct such special ground water investigation, tests, and operations and compile such data relating thereto as may be required to formulate and administer the comprehensive plan;

(f) Prepare, publish and disseminate information and reports with respect to the water problems of the basin and for the presentation of the needs, resources and policies of the basin to executive and legislative branches of the signatory parties;

(g) Negotiate for such loans, grants, services or other aids as may be lawfully available from public or private sources to finance or assist in effectuating any of the purposes of this compact; and to receive and accept such aid upon such terms and conditions, and subject to such provisions for repayment as may be required by federal or state law or as the commission may deem necessary or desirable;

(h) Exercise such other and different powers as may be delegated to it by this compact or otherwise pursuant to law, and have and exercise all powers necessary or convenient to carry out its express powers or which may be reasonably implied therefrom.

3.7 RATES AND CHARGES. The commission may from time to time after public notice and hearing fix, alter and revise rates, rentals, charges and tolls and classifications thereof, for the use of facilities which it may own or operate and for products and services rendered thereby, without regulation or control by any department, office or agency of any signatory party.

3.8 REFERRAL AND REVIEW. No project having a substantial effect on the water resources of the basin shall hereafter be undertaken

by any person, corporation or governmental authority unless it shall have been first submitted to and approved by the commission, subject to the provisions of Sections 3.3 and 3.5. The Commission shall approve a project whenever it finds and determines that such project would not substantially impair or conflict with the comprehensive plan and may modify and approve as modified, or may disapprove any such project whenever it finds and determines that the project would substantially impair or conflict with such plan. The Commission shall provide by regulation for the procedure of submission, review and consideration of projects, and for its determinations pursuant to this section. Any determination of the Commission hereunder shall be subject to judicial review in any court of competent jurisdiction.

3.9 COORDINATION AND COOPERATION. The Commission shall promote and aid the coordination of the activities and programs of federal, state, municipal and private agencies concerned with water resources administration in the basin. To this end, but without limitation thereto, the Commission may:

(a) Advise, consult, contract, financially assist, or otherwise, cooperate with any and all such agencies;

(b) Employ any other agency or instrumentality of any of the signatory parties or of any political subdivision thereof, in the design, construction, operation and maintenance of structures, and the installation and management of river control systems, or for any other purpose;

(c) Develop and adopt plans and specifications for particular water resources projects and facilities which so far as consistent with the comprehensive plan incorporate any separate plans of other public and private organizations operating in the basin, and permit the decentralized administration thereof;

(d) Qualify as a sponsoring agency under any federal legislation heretofore or hereafter enacted to provide financial or other assistance for the planning, conservation, utilization, development, management or control of water resources.

3.10 ADVISORY COMMITTEES. The Commission may constitute and empower advisory committees, which may be comprised of representatives of the public and of federal, state, county and municipal governments, water resources agencies, water-using industries, water-interest groups, labor and agriculture.

ARTICLE 4

WATER SUPPLY

Section 4.1 GENERALLY. The Commission shall have power to develop, implement and effectuate plans and projects for the use of the waters of the basin for domestic, municipal, agricultural and industrial water supply. To this end, without limitation thereto, it may provide for, construct, acquire, operate and maintain dams, reservoirs and other facilities for utilization of surface and ground water resources, and all related structures, appurtenances and equipment on the river and its tributaries and at such off-river sites as it may find appropriate, and may regulate and control the use thereof.

4.2 STORAGE AND RELEASE OF WATERS.

(a) The Commission shall have power to acquire, operate and control projects and facilities for the storage and release of waters, for the regulation of flows and supplies of surface and ground waters of the basin, for the protection of public health, stream quality control, economic development, improvement of fisheries, recreation, dilution and abatement of pollution, the prevention of undue salinity and other purposes.

(b) No signatory party shall permit any augmentation of flow to be diminished by the diversion of any water of the basin during any period in which waters are being released from storage under the direction of the Commission for the purpose of augmenting such flow, except in cases where such diversion is duly authorized by this compact, or by the Commission pursuant thereto, or by the judgment, order or decree of a court of competent jurisdiction.

4.3 ASSESSABLE IMPROVEMENTS. The Commission may undertake to provide stream regulation in the main stream or any tributary in the basin and may assess on an annual basis or otherwise the cost thereof upon water users or any classification of them specially benefited thereby to a measurable extent, provided that no such assessment shall exceed the actual benefit to any water user. Any such assessment shall follow the procedure prescribed by law for local improvement assessments and shall be subject to judicial review in any court of competent jurisdiction.

4.4 COORDINATION. Prior to entering upon the execution of any project authorized by this article, the Commission shall review and consider all existing rights, plans and programs of the signatory parties, their political subdivisions, private parties, and water users which are pertinent to such project, and shall hold a public hearing on each proposed project.

4.5 ADDITIONAL POWERS. In connection with any project authorized by this article, the Commission shall have power to provide storage, treatment, pumping and transmission facilities, but nothing herein shall be construed to authorize the Commission to engage in the business of distributing water.

ARTICLE 5

POLLUTION CONTROL

Section 5.1 GENERAL POWERS. The Commission may undertake investigations and survey, and acquire, construct, operate and maintain projects and facilities to control potential pollution and abate or dilute existing pollution of the water resources of the basin. It may invoke as complainant the power and jurisdiction of water pollution abatement agencies of the signatory parties.

5.2 POLICY AND STANDARDS. The Commission may assume jurisdiction to control future pollution and abate existing pollution in the waters of the basin, whenever it determines after investigation and public hearing upon due notice that the effectuation of the comprehensive plan so requires. The standard of such control shall be that pollution by sewage or industrial or other waste originating

within a signatory state shall not injuriously affect waters of the basin as contemplated by the comprehensive plan. The Commission after such public hearing, may classify the waters of the basin and establish standards of treatment of sewage, industrial or other waste, according to such classes including allowance for the variable factors of surface and ground waters, such as size of the stream, flow, movement, location, character, self-purifications, and usage of the waters affected. After such investigation, notice and hearing the commission may adopt and from time to time amend and repeal rules, regulations and standards to control such future pollution and abate existing pollution, and to require such treatment of sewage, industrial or other waste within a time reasonable for the construction of the necessary works as may be required to protect the public health or to preserve the waters of the basin for uses in accordance with the comprehensive plan.

5.3 COOPERATIVE LEGISLATION AND ADMINISTRATION. Each of the signatory parties covenants and agrees to prohibit and control pollution of the waters of the basin according to the requirements of this compact and to cooperate faithfully in the control of future pollution in and abatement of existing pollution from the rivers, streams, and waters in the basin which flow through, under, into or border upon any of such signatory states, and in order to effect such object, agrees to enact any necessary legislation to enable each such party to place and maintain the waters of said basin in a satisfactory condition, available for safe and satisfactory use as public and industrial water supplies after reasonable treatment, suitable for recreational usage, capable of maintaining fish and other aquatic life, free from unsightly or malodorous nuisances due to floating solids or sludge deposits and adaptable to such other uses as may be provided by the comprehensive plan.

5.4 ENFORCEMENT. The Commission may, after investigation and hearing, issue an order or orders upon any person or public or private corporation or other entity, to cease the discharge of sewage, industrial or other waste into waters of the basin which it determines to be in violation of such rules and regulations as it shall have adopted for the prevention and abatement of pollution. Any such order or orders may prescribe the date, including a reasonable time for the construction of any necessary works, on or before which such discharge shall be wholly or partially discontinued, modified or treated, or otherwise conformed to the requirements of such rules and regulations. Such order shall be reviewable in any court of competent jurisdiction. The courts of the signatory parties shall have jurisdiction to enforce against any person, public or private corporation, or other entity, any and all provisions of this Article or of any such order. The Commission may bring an action in its own name in any such court of competent jurisdiction to compel compliance with any provision of this Article, or any rule or regulation issued pursuant thereto or of any such order, according to the practice and procedure of the court.

5.5 FURTHER JURISDICTION. Nothing in this compact shall be construed to repeal, modify or qualify the authority of any signatory party to enact any legislation or enforce any additional conditions and restrictions to lessen or prevent the pollution of waters within its jurisdiction.

ARTICLE 6

FLOOD PROTECTION

Section 6.1 GENERAL POWERS. The Commission may plan, design, construct and operate and maintain projects and facilities, as it may deem necessary or desirable for flood damage reduction. It shall have power to operate such facilities and to store and release waters on the Delaware River and its tributaries and elsewhere within the basin, in such manner, at such times, and under such regulations as the Commission may deem appropriate to meet flood conditions as they may arise.

6.2 FLOOD PLAIN ZONING.

(a) The Commission shall have power to adopt, amend and repeal recommended standards, in the manner provided by this section, relating to the nature and extent of the uses of land in areas subject to flooding by waters of the Delaware River and its tributaries. Such standards shall not be deemed to impair or restrict the power of the signatory parties or their political subdivisions to adopt zoning and other land use regulations not inconsistent therewith.

(b) The Commission may study and determine the nature and extent of the flood plains of the Delaware River and its tributaries. Upon the basis of such studies, it may establish encroachment lines and delineate the areas subject to flood, including a classification of land with reference to relative risk of flood and the establishment of standards for flood plain use which will safeguard the public health, safety and property. Prior to the adoption of any standards delineating such area or defining such use, the commission shall hold public hearings, in the manner provided by Article 14, with respect to the substance of such standards. At or before such public hearings the proposed standards shall be available, and all interested persons shall be given an opportunity to be heard thereon at the hearing. Upon the adoption and promulgation of such standards, the commission may enter into agreements to provide technical and financial aid to any municipal corporation for the administration and enforcement of any local land use ordinances or regulations giving effect to such standards.

6.3 FLOOD LANDS ACQUISITION. The Commission shall have power to acquire the fee or any lesser interest in lands and improvements thereon within the area of a flood plain for the purpose of restricting the use of such property so as to minimize the flood hazard, converting property to uses appropriate to flood plain conditions, or preventing unwarranted constrictions that reduce the ability of the river channel to carry flood water. Any such action shall be in accord with the standards adopted and promulgated pursuant to Section 6.2.

6.4 FLOOD AND STREAM STAGE WARNINGS AND POSTING. The Commission may cause lands particularly subject to flood to be posted with flood hazard warnings, and may from time to time cause flood advisory notices to be published and circulated as conditions may warrant.

ARTICLE 7

WATERSHED MANAGEMENT

Section 7.1 WATERSHEDS GENERALLY. The Commission shall promote sound practices of watershed management in the basin, including projects and facilities to retard run-off and waterflow and prevent soil erosion.

7.2 SOIL CONSERVATION AND FORESTRY. The Commission may acquire, sponsor or operate facilities and projects to encourage soil conservation, prevent and control erosion, and to promote land reclamation and sound forestry practices.

7.3 FISH AND WILDLIFE. The Commission may acquire, sponsor or operate projects and facilities for the maintenance and improvement of fish and wildlife habitats related to the water resources of the basin.

7.4 COOPERATIVE PLANNING AND OPERATION.

(a) The Commission shall cooperate with the appropriate agencies of the signatory parties and with other public and private agencies in the planning and effectuation of a coordinated program of facilities and projects authorized by this article.

(b) The Commission shall not operate any such project or facility unless it has first found and determined that no other suitable unit or agency of government is available to operate the same upon reasonable conditions, in accordance with the intent and purpose expressed in Section 1.5 of this compact.

ARTICLE 8

RECREATION

Section 8.1 DEVELOPMENT. The Commission shall provide for the development of water related public sports and recreational facilities. The Commission on its own account or in cooperation with a signatory party, political subdivision or any agency thereof, may provide for the construction, maintenance and administration of such facilities, subject to the provisions of Section 8.2 hereof.

8.2 COOPERATIVE PLANNING AND OPERATION.

(a) The Commission shall cooperate with the appropriate agencies of the signatory parties and with other public and private agencies in the planning and effectuation of a coordinated program of facilities and projects authorized by this article.

(b) The Commission shall not operate any such project or facility unless it has first found and determined that no other suitable unit or agency of government is available to operate the same upon reasonable conditions, in accordance with the intent and purpose expressed in Section 1.5 of this compact.

8.3 OPERATION AND MAINTENANCE. The Commission, within limits prescribed by this article, shall:

(a) Encourage activities of other public agencies having water-related recreational interests and assist in the coordination thereof;

(b) Recommend standards for the development and administration of water related recreational facilities;

(c) Provide for the administration, operation and maintenance of recreational facilities owned or controlled by the Commission and for the letting and supervision of private concessions in accordance with this article.

8.4 CONCESSIONS. The Commission shall after notice and public hearing provide by regulation for the award of contracts for private concessions in connection with recreational facilities, including any renewal or extension thereof, upon sealed competitive bids after public advertisement therefor.

ARTICLE 9

HYDROELECTRIC POWER

Section 9.1 DEVELOPMENT. The waters of the Delaware River and its tributaries may be impounded and used by or under authority of the Commission for the generation of hydroelectric power and hydroelectric energy, in accordance with the comprehensive plan.

9.2 POWER GENERATION. The Commission may develop and operate, or authorize to be developed and operated, dams and related facilities and appurtenances for the purpose of generating hydroelectric power and hydroelectric energy.

9.3 TRANSMISSION. The Commission may provide facilities for the transmission of hydroelectric power and hydroelectric energy produced by it where such facilities are not otherwise available upon reasonable terms, for the purpose of wholesale marketing of power and nothing herein shall be construed to authorize the Commission to engage in the business of direct sale to consumers.

9.4 DEVELOPMENT CONTRACTS. The Commission may after public notice and hearing enter into contracts on reasonable terms, consideration and duration under which public utilities or public agencies may develop hydroelectric power and hydroelectric energy through the use of dams, related facilities and appurtenances.

9.5 RATES AND CHARGES. Rates and charges fixed by the Commission for power which is produced by its facilities shall be reasonable, nondiscriminatory, and just.

ARTICLE 10

REGULATION OF WITHDRAWALS AND DIVERSIONS

Section 10.1 POWER OF REGULATION. The Commission may regulate and control withdrawals and diversions from surface waters and ground waters of the basin, as provided by this article. The Commission may enter into agreements with the signatory parties relating to the exercise of such power of regulation or control and may delegate to any of them such powers of the Commission as it may deem necessary or desirable.

10.2 DETERMINATION OF PROTECTED AREAS. The Commission may from time to time after public hearing upon due notice determine and delineate such areas within the basin wherein the demand upon supply made by water users have developed or threatened to develop to such a degree as to create a water shortage or to impair or conflict with the requirements or effectuation of the comprehensive plan, and only such areas may be designated as "protected areas." The Commission, whenever it determines that such shortage no longer

exists, shall terminate the protected status of such area and shall give public notice of such termination.

10.3 WITHDRAWAL PERMITS. In any protected areas so determined and delineated, no person, firm, corporation or other entity shall divert or withdraw water for domestic, municipal, agricultural or industrial uses in excess of such quantities as the Commission may prescribe by general regulation, except (i) pursuant to a permit granted under this article, or (ii) pursuant to a permit or approval heretofore granted under the laws of any of the signatory states.

10.4 EMERGENCY. In the event of a drought or other condition which may cause an actual and immediate shortage of available water supply within the basin, or within any part thereof, the Commission may, after public hearing, determine and delineate the area of such shortage and declare a water supply emergency therein. For the duration of such emergency as determined by the Commission no person, firm, corporation or other public or private entity shall divert or withdraw water for any purpose, in excess of such quantities as the Commission may prescribe by general regulation or authorize by special permit granted hereunder.

10.5 STANDARDS. Permits shall be granted, modified or denied as the case may be so as to avoid such depletion of the natural stream flows and ground waters in the protected area or in an emergency area as will adversely affect the comprehensive plan or the just and equitable interests and rights of other lawful users of the same source, giving due regard to the need to balance and reconcile alternative and conflicting uses in the event of an actual or threatened shortage of water of the quality required.

10.6 JUDICIAL REVIEW. The determinations and delineations of the Commission pursuant to Section 10.2 and the granting, modification or denial of permits pursuant to Sections 10.3 through 10.5 shall be subject to judicial review in any court of competent jurisdiction.

10.7 MAINTENANCE OF RECORDS. Each state shall provide for the maintenance and preservation of such records of authorized diversions and withdrawals, and annual volume thereof as the Commission shall prescribe. Such records and supplementary reports shall be furnished to the Commission at its request.

10.8 EXISTING STATE SYSTEMS. Whenever the Commission finds it necessary or desirable to exercise the powers conferred by this article any diversion or withdrawal permits authorized or issued under the laws of any of the signatory states shall be superseded to the extent of any conflict with the control and regulation exercised by the Commission.

ARTICLE 11

INTERGOVERNMENTAL RELATIONS

Section 11.1 FEDERAL AGENCIES AND PROJECTS. For the purposes of avoiding conflicts of jurisdiction and of giving full effect to the Commission as a regional agency of the signatory parties, the following rules shall govern federal projects affecting the water resources of the basin, subject in each case to the provisions of Section 1.4 of this compact:

(a) The planning of all projects related to powers delegated to the Commission by this compact shall be undertaken in consultation with the Commission;

(b) No expenditure or commitment shall be made for or on account of the construction, acquisition or operation of any project or facility nor shall it be deemed authorized, unless it shall have first been included by the Commission in the comprehensive plan;

(c) Each federal agency otherwise authorized by law to plan, design, construct, operate or maintain any project or facility in or for the basin shall continue to have, exercise and discharge such authority except as specifically provided by this section.

11.2 STATE AND LOCAL AGENCIES AND PROJECTS. For the purpose of avoiding conflicts of jurisdiction and giving full effect to the Commission as a regional agency of the signatory parties, the following rules shall govern projects of the signatory states, their political subdivisions and public corporations affecting water resources of the basin:

(a) The planning of all projects relating to powers delegated to the Commission by this compact shall be undertaken in consultation with the Commission;

(b) No expenditure or commitment shall be made for or on account of the construction, acquisition or operation of any project or facility unless it shall have first been included by the Commission in the comprehensive plan;

(c) Each state and local agency otherwise authorized by law to plan, design, construct, operate or maintain any project or facility in or for the basin shall continue to have, exercise and discharge such authority, except as specifically provided by this section.

11.3 RESERVED TAXING POWERS OF STATES. Each of the signatory parties reserves the right to levy, assess and collect fees, charges and taxes on or measured by the withdrawal or diversion of waters of the basin for use within the jurisdictions of the respective signatory parties.

11.4 PROJECT COSTS AND EVALUATION STANDARDS. The Commission shall establish uniform standards and procedures for the evaluation, determination of benefits, and cost allocations of projects affecting the basin, and for the determination of project priorities, pursuant to the requirements of the comprehensive plan and its water resources program. The Commission shall develop equitable cost sharing and reimbursement formulas for the signatory parties including:

(a) Uniform and consistent procedures for the allocation of project costs among purposes included in multiple-purpose programs;

(b) Contracts and arrangements for sharing financial responsibility among and with signatory parties, public bodies, groups and private enterprise, and for the supervision of their performance;

(c) Establishment and supervision of a system of accounts for reimbursable purposes and directing the payments and charges to be made from such accounts;

(d) Determining the basis and apportioning amounts (i) of reimbursable revenues to be paid signatory parties or their political

subdivisions, and (ii) of payments in lieu of taxes to any of them.

11.5 COOPERATIVE SERVICES. The Commission shall furnish technical services, advice and consultation to authorized agencies of the signatory parties with respect to the water resources of the basin, and each of the signatory parties pledges itself to provide technical and administrative services to the Commission upon request, within the limits of available appropriations and to cooperate generally with the Commission for the purposes of this compact, and the cost of such services may be reimbursable whenever the parties deem appropriate.

ARTICLE 12

CAPITAL FINANCING

Section 12.1 BORROWING POWER. The Commission may borrow money for any of the purposes of this compact, and may issue its negotiable bonds and other evidences of indebtedness in respect thereto. All such bonds and evidences of indebtedness shall be payable solely out of the properties and revenues of the Commission without recourse to taxation. The bonds and other obligations of the Commission, except as may be otherwise provided in the indenture under which they were issued, shall be direct and general obligations of the Commission and the full faith and credit of the Commission are hereby pledged for the prompt payment of the debt service thereon and for the fulfillment of all other undertakings of the Commission assumed by it to or for the benefit of the holders thereof.

12.2 FUNDS AND EXPENSES. The purpose of this compact shall include without limitation thereto all costs of any project or facility or any part thereof, including interest during a period of construction and a reasonable time thereafter and any incidental expenses (legal, engineering, fiscal, financial consultant and other expenses) connected with issuing and disposing of the bonds; all amounts required for the creation of an operating fund, construction fund, reserve fund, sinking fund, or other special funds; all other expenses connected with the planning, design, acquisition, construction, completion, improvement or reconstruction of any facility or any part thereof; and reimbursement of advances by the Commission or by others for such purposes and for working capital.

12.3 CREDIT EXCLUDED: OFFICERS, STATE AND MUNICIPAL. The Commission shall have no power to pledge the credit of any signatory party, or of any county or municipality, or to impose any obligation for payment of the bonds upon any signatory party or any county or municipality. Neither the commissioners nor any person executing the bonds shall be liable personally on the bonds of the Commission or be subject to any personal liability or accountability by reason of the issuance thereof.

12.4 FUNDING AND REFUNDING. Whenever the Commission deems it expedient, it may fund and refund its bonds and other obligations whether or not such bonds and obligations have matured. It may provide for the issuance, sale or exchange of refunding bonds for the purpose of redeeming or retiring any bonds (including the payment of any premium, duplicate interest or cash adjustment required in connection therewith) issued by the Commission or issued by any other issuing body, the proceeds of the sale of which have been applied to any facility acquired by the Commission or which are payable out of the revenues of any facility acquired by the Commission. Bonds may be issued partly to refund bonds and other obligations then outstanding, and partly for any other purpose of the Commission. All provisions of this compact applicable to the issuance of bonds are applicable to refunding bonds and to the issuance, sale or exchange thereof.

12.5 BONDS, AUTHORIZATION GENERALLY. Bonds and other indebtedness of the Commission shall be authorized by resolution of the Commission. The validity of the authorization and issuance of any bonds by the Commission shall not be dependent upon nor affected in any way by: (i) the disposition of bond proceeds by the Commission or by contract, commitment or action taken with respect to such proceeds; or (ii) the failure to complete any part of the project for which bonds are authorized to be issued. The Commission may issue bonds in 1 or more series and may provide for 1 or more consolidated bond issues, in such principal amounts and with such terms and provisions as the Commission may deem necessary. The bonds may be secured by a pledge of all or any part of the property, revenues and franchises under its control. Bonds may be issued by the Commission in such amount, with such maturities and in such denominations and form or forms, whether coupon or registered, as to both principal and interest, as may be determined by the Commission. The Commission may provide for redemption of bonds prior to maturity on such notice and at such time or times and with such redemption provisions, including premiums, as the Commission may determine.

12.6 BONDS: RESOLUTIONS AND INDENTURES GENERALLY. The Commission may determine and enter into indentures providing for the principal amount, date or dates, maturities, interest rate, denominations, form, registration, transfer, interchange and other provisions of the bonds and coupons and the terms and conditions upon which the same shall be executed, issued, secured, sold, paid, redeemed, funded and refunded. The resolution of the Commission authorizing any bond or any indenture so authorized under which the bonds are issued may include all such covenants and other provisions other than any restriction on the regulatory powers vested in the Commission by this compact as the Commission may deem necessary or desirable for the issue, payment, security, protection or marketing of the bonds, including without limitation covenants and other provisions as to the rates or amounts of fees, rents and other charges to be charged or made for use of the facilities; the use, pledge, custody, securing, application and disposition of such revenues, of the proceeds of the bonds, and of any other moneys of the Commission; the operation, maintenance, repair and reconstruction of the facilities and the amounts which may be expended therefor; the sale, lease or other disposition of the facilities; the insuring of the facilities and of the revenues derived therefrom; the construction or other acquisition of other facilities; the issuance of additional bonds or other indebtedness; the rights of the bondholders and of any trustee for the bondholders upon default by the Commission or otherwise; and the modification of the provisions of the indenture and of the bonds. Reference on the face of the bonds to such resolution or indenture by its date of adoption or the apparent date on the face thereof is sufficient to incorporate all of the provisions thereof and of this compact into the body of the bonds and their appurtenant coupons. Each taker and subsequent holder of the bonds or coupons, whether the coupons are attached to or detached from the bonds, has recourse to all of the provisions of the indenture and of this compact and is bound thereby.

12.7 MAXIMUM MATURITY. No bond by its terms shall mature in more than 50 years from its own date and in the event any authorized issue is divided into 2 or more series or divisions, the maximum maturity date hereby authorized shall be calculated from the date on the face of each bond separately, irrespective of the fact that different dates may be prescribed for the bonds of each separate series or division of any authorized issue.

12.8 TAX EXEMPTION. All bonds issued by the Commission under the provisions of this compact and the interest thereof shall at all times be free and exempt from all taxation by or under authority of any of the signatory parties; except for transfer, inheritance and estate taxes.

12.9 INTEREST. Bonds shall bear interest at a rate determined by the Commission, payable annually or semi-annually.

12.10 PLACE OF PAYMENT. The Commission may provide for the payment of the principal and interest of bonds at any place or places within or without the signatory states, and in any specified lawful coin or currency of the United States of America.

12.11 EXECUTION. The Commission may provide for the execution and authentication of bonds by the manual, lithographed or printed facsimile signature of officers of the Commission, and by additional authentication by a trustee or fiscal agent appointed by the Commission. If any of the officers whose signatures or counter signatures appear upon the bonds or coupons cease to be officers before the delivery of the bonds or coupons, their signatures or counter signatures are nevertheless valid and of the same force and effect as if the officers had remained in office until the delivery of the bonds and coupons.

12.12 HOLDING OWN BONDS. The Commission shall have power out of any funds available therefor to purchase its bonds and may hold, cancel or resell such bonds.

12.13 SALE. The Commission may fix terms and conditions for the sale or other disposition of any authorized issue of bonds. The Commission may sell bonds at less than their par or face value but no issue of bonds may be sold at an aggregate price below the par or face value thereof if such sale would result in a net interest cost to the Commission calculated upon the entire issue so sold of more than 6 percent per annum payable semi-annually, according to standard tables of bonds values. All bonds issued and sold for cash pursuant to this act shall be sold on sealed proposals to the highest bidder. Prior to such sale, the Commission shall advertise for bids by publication of a notice of sale not less than 10 days prior to the date of sale, at least once in a newspaper of general circulation printed and published in New York City carrying municipal bond notices and devoted primarily to financial news. The Commission may reject any and all bids submitted and may thereafter sell the bonds so advertised for sale at private sale to any financially responsible bidder under such terms and conditions as it deems most advantageous to the public interest, but the bonds shall not be sold at a net interest cost calculated upon the entire issue so advertised, greater than the lowest bid which was rejected. In the event the Commission desires to issue its bonds in exchange for an existing facility or portion thereof, or in exchange for bonds secured by the revenue of an existing facility, it may exchange such bonds for the existing facility or portion thereof or for the bonds so secured, plus an additional amount of cash, without advertising such bonds for sale.

12.14 NEGOTIABILITY. All bonds issued under the provisions of this compact are negotiable instruments, except when registered in the name of a registered owner.

12.15 LEGAL INVESTMENTS. Bonds of the Commission shall be legal investments for savings banks, fiduciaries and public funds in each of the signatory states.

12.16 VALIDATION PROCEEDINGS. Prior to the issuance of any bonds, the Commission may institute a special proceeding to determine the legality of proceedings to issue the bonds and their validity under the laws of any of the signatory parties. Such proceeding shall be instituted and prosecuted in rem and the judgment rendered therein shall be conclusive against all persons whomsoever and against each of the signatory parties.

12.17 RECORDING. No indenture need be recorded or filed in any public office, other than the office of the Commission. The pledge of revenues provided in any indenture shall take effect forthwith as provided therein and irrespective of the date of receipt of such revenues by the Commission or the indenture trustee. Such pledge shall be effective as provided in the indenture without physical delivery of the revenues to the Commission or to the indenture trustee.

12.18 PLEDGED REVENUES. Bond redemption and interest payments shall, to the extent provided in the resolution or indenture, constitute a first, direct and exclusive charge and lien on all such rates, rents, tolls, fees and charges and other revenues and interest thereon received from the use and operation of the facility, and on any sinking or other funds created therefrom. All such rates, rents, tolls, fees, charges and other revenues, together with interest thereon, shall constitute a trust fund for the security and payment of such bonds and except as and to the extent provided in the indenture with respect to the payment therefrom of expenses for other purposes including administration, operation, maintenance, improvements or extension of the facilities or other purposes shall not be used or pledged for any other purpose so long as such bonds, or any of them are outstanding and unpaid.

12.19 REMEDIES. The holder of any bond may for the equal benefit and protection of all holders of bonds similarly situated: (a) by mandamus or other appropriate proceedings require and compel the performance of any of the duties imposed upon the Commission or assumed by it, its officers, agents or employees under the provisions of any indenture, in connection with the acquisition, construction, operation, maintenance, repair, reconstruction or insurance of the facilities, or in connection with the collection, deposit, investment, application and disbursement of the rates, rents, tolls, fees, charges and other revenues derived from the operation and use of the facilities, or in connection with the deposit, investment and disbursement of the proceeds received from the sale of bonds; or (b) by action or suit in a court of competent jurisdiction of any signatory party require the Commission to account as if it were the trustee of an express trust, or

enjoin any acts or things which may be unlawful or in violation of the rights of the holders of the bonds. The enumeration of such rights and remedies does not, however, exclude the exercise or prosecution of any other rights or remedies available to the holders of bonds.

12.20 CAPITAL FINANCING BY SIGNATORY PARTIES: GUARANTEES.

(a) The signatory parties will provide such capital funds required for projects of the Commission as may be authorized by their respective statutes in accordance with a cost sharing plan prepared pursuant to Article 11 of this compact; but nothing in this section shall be deemed to impose any mandatory obligation on any of the signatory parties other than such obligations as may be assumed by a signatory part in connection with a specific project or facility.

(b) Bonds of the Commission, notwithstanding any other provision of this compact, may be executed and delivered to any duly authorized agency of any of the signatory parties without public offering and may be sold and resold with or without the guarantee of such signatory party, subject to and in accordance with the constitutions of the respective signatory parties.

(c) The Commission may receive and accept, and the signatory parties may make loans, grants, appropriations, advances and payments of reimbursable or nonreimbursable funds or property in any form for the capital or operating purposes of the Commission.

ARTICLE 13

PLAN, PROGRAM AND BUDGETS

Section 13.1 COMPREHENSIVE PLAN. The Commission shall develop and adopt, and may from time to time review and revise a comprehensive plan for the immediate and long range development and use of the water resources of the basin. The plan shall include all public and private projects and facilities which are required, in the judgment of the Commission, for the optimum planning, development, conservation, utilization, management and control of water resources of the basin to meet present and future needs; provided that the plan shall include any projects required to conform with any present or future decree or judgment of any court of competent jurisdiction. The Commission may adopt a comprehensive plan or any revision thereof in such part or parts as it may deem appropriate, provided that before the adoption of the plan or any part or revision thereof the Commission shall consult with water users and interested public bodies and public utilities and shall consider and give due regard to the findings and recommendations of the various agencies of the signatory parties and their political subdivisions. The Commission shall conduct public hearings with respect to the comprehensive plan prior to the adoption of the plan or any part or revision thereof.

13.2 WATER RESOURCES PROGRAM. The Commission shall annually adopt a water resources program, based upon the comprehensive plan, consisting of the projects and facilities which the Commission proposes to be undertaken by the Commission and by other authorized governmental and private agencies, organizations and persons during the ensuing six years or such other reasonably foreseeable period as the Commission may determine. The water resources program shall include a systematic presentation of:

1) the quantity and quality of water resources needs for such period;

2) the existing and proposed projects and facilities required to satisfy such needs, including all public and private projects to be anticipated;

3) a separate statement of the projects proposed to be undertaken by the Commission during such period.

13.3 ANNUAL CURRENT EXPENSE AND CAPITAL BUDGETS.

(a) The Commission shall annually adopt a capital budget including all capital projects it proposes to undertake or continue during the budget period containing a statement of the estimated cost of each project and the method of financing thereof.

(b) The Commission shall annually adopt a current expense budget for each fiscal year. Such budget shall include the Commission's estimated expenses for administration, operation, maintenance and repairs, including a separate statement thereof for each project, together with its cost allocation. The total of such expenses shall be balanced by the Commission's estimated revenues from all sources, including the cost allocations undertaken by any of the signatory parties in connection with any project. Following the adoption of the annual current expense budget by the Commission, the executive director of the Commission shall:

1) certify to the respective signatory parties the amounts due in accordance with existing cost sharing established for each project; and

2) transmit certified copies of such budget to the principal budget officer of the respective signatory parties at such time and in such manner as may be required under their respective budgetary procedures. The amount required to balance the current expense budget in addition to the aggregate amount of item 1) above and all other revenues available to the Commission shall be apportioned equitably among the signatory parties by unanimous vote of the Commission, and the amount of such apportionment to each signatory party shall be certified together with the budget.

(c) The respective signatory parties covenant and agree to include the amounts so apportioned for the support of the current expense budget in their respective budgets next to be adopted, subject to such review and approval as may be required by their respective budgetary processes. Such amounts shall be due and payable to the Commission in quarterly installments during its fiscal year, provided that the Commission may draw upon its working capital to finance its current expense budget pending remittances by the signatory parties.

ARTICLE 14

GENERAL PROVISIONS

14.1 AUXILIARY POWERS OF COMMISSION, FUNCTIONS OF COMMISSIONERS.

(a) The Commission, for the purposes of this compact, may:

1) Adopt and use a corporate seal, enter into contracts, sue and be sued in all courts of competent jurisdiction;

2) Receive and accept such payments, appropriations, grants, gifts, loans, advances and other funds, properties and services as may be transferred or made available to it by any signatory party or by any other public or private corporation or individual, and enter into agreements to make reimbursement for all or part thereof;

3) Provide for, acquire and adopt detailed engineering, administrative, financial and operating plans and specifications to effectuate, maintain or develop any facility or project;

4) Control and regulate the use of facilities owned or operated by the commission;

5) Acquire, own, operate, maintain, control, sell and convey real and personal property and any interest therein by contract, purchase, lease, license, mortgage or otherwise as it may deem necessary for any project or facility, including any and all appurtenances thereto necessary, useful or convenient for such ownership, operation, control, maintenance or conveyance;

6) Have and exercise all corporate powers essential to the declared objects and purposes of the commission.

(b) The commissioners, subject to the provisions of this compact, shall:

1) Serve as the governing body of the Commission, and exercise and discharge its powers and duties except as otherwise provided by or pursuant to this compact;

2) Determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid subject to any provisions of law specifically applicable to agencies or instrumentalities created by compact;

3) Provide for the internal organization and administration of the commission;

4) Appoint the principal officers of the Commission and delegate to and allocate among them administrative functions, powers and duties;

5) Create and abolish offices, employments and positions as it deems necessary for the purposes of the Commission, and subject to the provisions of this article, fix and provide for the qualifications, appointment, removal, term, tenure, compensation, pension and retirement rights of its officers and employees;

6) Let and execute contracts to carry out the powers of the Commission.

14.2 REGULATIONS: ENFORCEMENT. The Commission may:

(a) Make and enforce reasonable rules and regulations for the effectuation, application and enforcement of this compact; and it may adopt and enforce practices and schedules for or in connection with the use, maintenance and administration of projects and facilities it may own or operate and any product or service rendered thereby; provided that any rule or regulation, other than 1 which deals solely with the internal management of the Commission, shall be adopted only after public hearing and shall not be effective unless and until filed in accordance with the law of the respective signatory parties applicable to administrative rules and regulations generally; and

(b) Designate any officer, agent or employee of the Commission to be an investigator or watchman and such person shall be vested with the powers of a peace officer of the state in which he is duly assigned to perform his duties.

14.3 TAX EXEMPTION. The Commission, its property, functions, and activities shall be exempt from taxation by or under the authority of any of the signatory parties or any political subdivision thereof; provided that in lieu of property taxes the Commission shall, as to specific projects, make payments to local taxing districts in annual amounts which shall equal the taxes lawfully assessed upon property for the tax year next prior to its acquisition by the Commission for a period of ten years. The nature and amount of such payments shall be reviewed by the Commission at the end of 10 years, and from time to time thereafter, upon reasonable notice and opportunity to be heard to the affected taxing district, and the payments may be thereupon terminated or continued in such reasonable amount as may be necessary or desirable to take into account hardships incurred and benefits received by the taxing jurisdiction which are attributable to the project.

14.4 MEETINGS: PUBLIC HEARING: RECORDS, MINUTES.

(a) All meetings of the Commission shall be open to the public.

(b) The Commission shall conduct at least 1 public hearing prior to the adoption of the comprehensive plan, water resources program, annual capital and current expense budgets, the letting of any contract for the sale or other disposition by the Commission of hydroelectric energy or water resources to any person, corporation or entity, and in all other cases, wherein this compact requires a public hearing. Such hearing shall be held upon at least 10 days public notice given by posting at the offices of the Commission. The Commission shall also provide forthwith for distribution of such notice to the press and by the mailing of a copy thereof to any person who shall request such notices.

(c) The minutes of the Commission shall be a public record open to inspection at its offices during regular business hours.

14.5 OFFICERS GENERALLY.

(a) The officers of the Commission shall consist of an executive director and such additional officers, deputies and assistants as the Commission may determine. The executive director shall be appointed and may be removed by the affirmative vote of a majority of the full membership of the Commission. All other officers and employees shall be appointed by the executive director under such rules of procedure as the Commission may determine.

(b) In the appointment and promotion of officers and employees for the Commission, no political, racial, religious or residence test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be solely on the basis of merit and fitness. Any officer or employee of the Commission who is found by the Commission to be guilty of a violation of this section shall be

removed from office by the Commission.

14.6 OATH OF OFFICE. An oath of office in such form as the Commission shall prescribe shall be taken, subscribed and filed with the Commission by the executive director and by each officer appointed by him not later than 15 days after the appointment.

14.7 BOND. Each officer shall give such bond and in such form and amount as the Commission may require for which the commission may pay the premium.

14.8 PROHIBITED ACTIVITIES.

(a) No commissioner, officer or employee shall:

1) be financially interested, either directly or indirectly, in any contract, sale, purchase, lease or transfer of real or personal property to which the Commission is a party;

2) solicit or accept money or any other thing of value in addition to the compensation or expenses paid him by the Commission for services performed within the scope of his official duties;

3) offer money or any thing of value for or in consideration of obtaining an appointment, promotion or privilege in his employment with the Commission.

(b) Any officer or employee who shall willfully violate any of the provisions of this section shall forfeit his office or employment.

(c) Any contract or agreement knowingly made in contravention of this section is void.

(d) Officers and employees of the Commission shall be subject in addition to the provisions of this section to such criminal and civil sanctions for misconduct in office as may be imposed by federal law and the law of the signatory state in which such misconduct occurs.

14.9 PURCHASING. Contracts for the construction, reconstruction or improvement of any facility when the expenditure required exceeds $10,000 and contracts for the purchase of services, supplies, equipment and materials when the expenditure required exceeds $2,500 shall be advertised and let upon sealed bids to the lowest responsible bidder. Notice requesting such bids shall be published in a manner reasonably likely to attract prospective bidders, which publication shall be made at least 10 days before bids are received and in at least 2 newspapers of general circulation in the basin. The Commission may reject any and all bids and readvertise in its discretion. If after rejecting bids the Commission determines and resolves that in its opinion the supplies, equipment and materials may be purchased at a lower price in the open market, the Commission may give each responsible bidder an opportunity to negotiate a price and may proceed to purchase the supplies, equipment and materials in the open market at a negotiated price which is lower than the lowest rejected bid of a responsible bidder, without further observance of the provisions requiring bids or notice. The Commission shall adopt rules and regulations to provide for purchasing from the lowest responsible bidder when sealed bids, notice and publications are not required by this section. The Commission may suspend and waive the provisions of this section requiring competitive bids whenever:

1) the purchase is to be made from or the contract to be made with the federal or any state government or any agency or political subdivision thereof or pursuant to any open end bulk purchase contract of any of them;

2) the public exigency requires the immediate delivery of the articles or performance of the service;

3) only 1 source of supply is available;

4) the equipment to be purchased is of a technical nature and the procurement thereof without advertising is necessary in order to assure standardization of equipment and interchangeability of parts in the public interest; or

5) services are to be provided of a specialized or professional nature.

14.10 INSURANCE. The Commission may self-insure or purchase insurance and pay the premiums therefor against loss or damage to any of its properties; against liability for injury to persons or property; and against loss of revenue from any cause whatsoever. Such insurance coverage shall be in such form and amount as the Commission may determine, subject to the requirements of any agreement arising out of the issuance of bonds by the Commission.

14.11 ANNUAL INDEPENDENT AUDIT.

(a) As soon as practical after the closing of the fiscal year, an audit shall be made of the financial accounts of the Commission. The audit shall be made by qualified certified public accountants selected by the Commission, who have no personal interest direct or indirect in the financial affairs of the Commission or any of its officers or employees. The report of audit shall be prepared in accordance with accepted accounting practices and shall be filed with the chairman and such other offices as the Commission shall direct. Copies of the report shall be distributed to each commissioner and shall be made available for public distribution.

(b) Each signatory party by its duly authorized officers shall be entitled to examine and audit at any time all of the books, documents, records, files and accounts and all other papers, things or property of the Commission. The representatives of the signatory parties shall have access to all books, documents, records, accounts, reports, files and all other papers, things or property belonging to or in use by the Commission and necessary to facilitate the audit and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents and custodians.

(c) The financial transactions of the Commission shall be subject to audit by the general accounting office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the comptroller general of the United States. The audit shall be conducted at the place or places where the accounts of the Commission are kept.

(d) Any officer or employee who shall refuse to give all required assistance and information to the accountants selected by the Commission or to the authorized officers of any signatory party or who shall refuse to submit to them for examination such books,

documents, records, files, accounts, papers, things or property as may be requested shall forfeit his office.

14.12 REPORTS. The Commission shall make and publish an annual report to the legislative bodies of the signatory parties and to the public reporting on its programs, operations and finances. It may also prepare, publish and distribute such other public reports and informational materials as it may deem necessary or desirable.

14.13 GRANTS, LOANS OR PAYMENTS BY STATES OR POLITICAL SUBDIVISIONS.

(a) Any or all of the signatory parties or any political subdivision thereof may:

1) Appropriate to the Commission such funds as may be necessary to pay preliminary expenses such as the expenses incurred in the making of borings, and other studies of subsurface conditions, in the preparation of contracts for the sale of water and in the preparation of detailed plans and estimates required for the financing of a project;

2) Advance to the Commission, either as grants or loans, such funds as may be necessary or convenient to finance the operation and managements of or construction by the Commission of any facility or project;

3) Make payments to the Commission for benefits received or to be received from the operation of any of the projects or facilities of the Commission.

(b) Any funds which may be loaned to the Commission either by a signatory party or a political subdivision thereof shall be repaid by the Commission through the issuance of bonds or out of other income of the Commission, such repayment to be made within such period and upon such terms as may be agreed upon between the Commission and the signatory party or political subdivision making the loan.

14.14 CONDEMNATION PROCEEDINGS.

(a) The Commission shall have the power to acquire by condemnation the fee or any lesser interest in lands, lands lying under water, development rights in land, riparian rights, water rights, waters and other real or personal property within the basin for any project or facility authorized pursuant to this compact. This grant of power of eminent domain includes but is not limited to the power to condemn for the purposes of this compact any property already devoted to a public use, by whomsoever owned or held, other than property of a signatory party and any property held, constructed, operated or maintained in connection with a diversion authorized by a United States Supreme Court decree. Any condemnation of any property or franchises owned or used by a municipal or privately owned public utility, unless the affected public utility facility is to be relocated or replaced, shall be subject to the authority of such state board, Commission or other body as may have regulatory jurisdiction over such public utility.

(b) Such power of condemnation shall be exercised in accordance with the provisions of any federal law applicable to the Commission; provided that if there is no such applicable federal law, condemnation proceeding shall be in accordance with the provisions of such general state condemnation law as may be in force in the signatory state in which the property is located.

(c) Any award or compensation for the taking of property pursuant to this article shall be paid by the Commission, and none of the signatory parties nor any other agency, instrumentality or political subdivision thereof shall be liable for such award or compensation.

14.15 CONVEYANCE OF LANDS AND RELOCATION OF PUBLIC FACILITIES.

(a) The respective officers, agencies, departments, Commissions or bodies having jurisdiction and control over real and personal property by the signatory parties are authorized and empowered to transfer and convey in accordance with the laws of the respective parties to the Commission any such property as may be necessary or convenient to the effectuation of the authorized purposes of the Commission.

(b) Each political subdivision of each of the signatory parties is authorized and empowered, notwithstanding any contrary provision of law, to grant and convey to the Commission, upon the Commission's request, any real property or any interest therein owned by such political subdivision including lands lying under water and lands already devoted to public use which may be necessary or convenient to the effectuation of the authorized purposes of the Commission.

(c) Any highway, public utility or other public facility which will be dislocated by reason of a project deemed necessary by the Commission to effectuate the authorized purposes of this compact shall be relocated and the cost thereof shall be paid in accordance with the law of the state in which the facility is located; provided that the cost of such relocation payable by the Commission shall not in any event exceed the expenditure required to serve the public convenience and necessity.

14.16 RIGHTS OF WAY. Permission is hereby granted to the Commission to locate, construct and maintain any aqueducts, lines, pipes, conduits and auxiliary facilities authorized to be acquired, constructed, owned, operated or maintained by the commission in, over, under or across any streets and highways now or hereafter owned, opened or dedicated to or for public use, subject to such reasonable conditions as the highway department of the signatory party may require.

14.17 PENAL SANCTION. Any person, association or corporation who violates or attempts or conspires to violate any provision of this compact or any rule, regulation or order of the Commission duly made, promulgated or issued pursuant to the compact in addition to any other remedy, penalty or consequence provided by law shall be punishable as may be provided by statute of any of the signatory parties within which the offense is committed; provided that in the absence of such provision any such person, association or corporation shall be liable to a penalty of not less than $50 nor more than $1000 for each such offense to be fixed by the court which the Commission may recover in its own name in any court of competent jurisdiction, and in a summary proceeding where available under the practice and procedure of such court. For the purposes of this section in the event of a continuing offense each day of such violation, attempt or conspiracy shall constitute a separate offense.

14.18 TORT LIABILITY. The Commission shall be responsible for claims arising out of the negligent acts or omission of its officers,

agents and employees only to the extent and subject to the procedures prescribed by law generally with respect to officers, agents and employees of the government of the United States.

14.19 EFFECT ON RIPARIAN RIGHTS. Nothing contained in this compact shall be construed as affecting or intending to affect or in any way to interfere with the law of the respective signatory parties relating to riparian rights.

14.20 AMENDMENTS AND SUPPLEMENTS. Amendments and supplements to this compact to implement the purposes thereof may be adopted by legislative action of any of the signatory parties concurred in by all of the others.

14.21 CONSTRUCTION AND SEVERABILITY. The provisions of this act and of agreements thereunder shall be severable and if any phrase, clause, sentence or provision of this compact or such agreement is declared to be unconstitutional or the applicability thereof to any signatory party, agency or person is held invalid, the constitutionality of the remainder of this compact or such agreement and the applicability thereof to any other signatory party, agency, person or circumstance shall not be affected thereby. It is the legislative intent that the provisions of this compact be reasonably and liberally construed.

14.22 EFFECTIVE DATE: EXECUTION. This compact shall become binding and effective thirty days after the enactment of concurring legislation by the federal government, the states of Delaware, New Jersey and New York, and the Commonwealth of Pennsylvania. The compact shall be signed and sealed in six duplicate original copies by the respective chief executives of the signatory parties. One such copy shall be filed with the Secretary of State of each of the signatory parties or in accordance with the laws of the state in which the filing is made, and 1 copy shall be filed and retained in the Archives of the Commission upon its organization. The signatures shall be affixed and attested under the following form:

IN WITNESS WHEREOF, and in evidence of the adoption and enactment into law of this compact by the Congress and legislatures, respectively, of the signatory parties, the President of the United States and the respective Governors do hereby, in accordance with authority conferred by law, sign this compact in six duplicate original copies, as attested by the respective Secretaries of State, and have caused the seals of the United States and of the respective states to be hereunto affixed this..... day of..... [year].....

(7 Del. C. 1953 § 6501; 53 Del. Laws, c. 71; 55 Del. Laws, c. 442 § 25; 63 Del. Laws, c. 370 § 1; 70 Del. Laws, c. 186 § 1.)

Subchapter II

Effectuation

§ 6511 Compact; actions by Governor.

The Governor may act to effectuate the Compact and the initial organization and operation of the Commission thereunder.

(7 Del. C. 1953 § 6512; 53 Del. Laws, c. 71; 55 Del. Laws, c. 442 § 2.)

Part VII
Natural Resources
Chapter 66
WETLANDS

§ 6601 Short title.

This chapter shall be known and may be cited as "The Wetlands Act."

(7 Del. C. 1953 § 6601; 59 Del. Laws, c. 213 § 1.)

§ 6602 Purpose.

It is declared that much of the wetlands of this State have been lost or despoiled by unregulated dredging, dumping, filling and like activities and that the remaining wetlands of this State are in jeopardy of being lost or despoiled by these and other activities; that such loss or despoliation will adversely affect, if not entirely eliminate, the value of such wetlands as sources of nutrients to finfish, crustacea and shellfish of significant economic value; that such loss or despoliation will destroy such wetlands as habitats for plants and animals of significant economic and ecological value and will eliminate or substantially reduce marine commerce, recreation and aesthetic enjoyment; that such loss or despoliation will, in most cases, disturb the natural ability of wetlands to reduce flood damage and adversely affect the public health and welfare; that such loss or despoliation will substantially reduce the capacity of such wetlands to absorb silt and will thus result in the increased silting of channels and harbor areas to the detriment of free navigation. It is hereby determined that the coastal areas of Delaware are the most critical areas for the present and future quality of life in the State and that the preservation of the coastal wetlands is crucial to the protection of the natural environment of these coastal areas. Therefore, it is declared to be the public policy of this State to preserve and protect the productive public and private wetlands and to prevent their despoliation and destruction consistent with the historic right of private ownership of lands.

(7 Del. C. 1953 § 6602; 59 Del. Laws, c. 213 § 1.)

§ 6603 Definitions.

(a) "Activity" means any dredging, draining, filling, bulkheading, construction of any kind, including but not limited to, construction of a pier, jetty, breakwater, boat ramp, or mining, drilling or excavation.

(b) "Authorized activity" includes any activity allowed after receipt of a permit from the Department.

(c) "Board" means the Environmental Appeals Board.

(d) "Department" means the Department of Natural Resources and Environmental Control.

(e) "Person" means any individual, group of individuals, contractor, supplier, installer, user, owner, partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, administrative agency, public or quasi-public corporation or body, or any other legal entity, or its legal representative, agent or assignee.

(f) "Preexisting use" means any use of land, or water, or subaqueous lands, or of a structure or any combination of these which was lawfully in existence prior to and in active use on July 17, 1973, or any temporary or seasonal use in active use for 10 consecutive weeks within the last 12 months previous to July 17, 1973.

(g) "Secretary" means the Secretary of the Department of Natural Resources and Environmental Control.

(h) "Wetlands" shall mean those lands above the mean low water elevation including any bank, marsh, swamp, meadow, flat or other low land subject to tidal action in the State along the Delaware Bay and Delaware River, Indian River Bay, Rehoboth Bay, Little and Big Assawoman Bays, the coastal inland waterways, or along any inlet, estuary or tributary waterway or any portion thereof, including those areas which are now or in this century have been connected to tidal waters, whose surface is at or below an elevation of 2 feet above local mean high water, and upon which may grow or is capable of growing any but not necessarily all of the following plants:

Eelgrass (Zostera marina), Widgeon Grass (Ruppia maritima), Sago Pondweed (Potamogeton pectinatus), Saltmarsh Cordgrass (Spartina alterniflora), Saltmarsh Grass (Spartina cynosuroides), Saltmarsh Hay (Spartina patens), Spike Grass (Distichlis spicata), Black Grass (Juncus gerardii), Switch Grass (Panicum virgatum), Three Square Rush (Scirpus americanus), Sea Lavender (Limonium carolinianum), Seaside Goldenrod (Solidago sempervirens), Seablite (Suaeda maritima), Sea Blite (Suaeda linearis), Perennial Glasswort (Salicornia virginica), Dwarf Glasswort (Salicornia bigelovii), Samphire (Salicornia europaea), Marsh Aster (Aster tenuifolius), Saltmarsh Fleabane (Pluchea purpurascens var. succulenta), Mock Bishop's Weed (Ptilimnium capillaceum), Seaside Plantain (Plantago oliganthus), Orach (Atriplex patula var. hastata), Marsh Elder (Iva frutescens var. oraria), Groundsel Bush (Baccharis halimifolia), Bladderwrack (Fucus vesiculosus), Swamp Rose Mallow, Seaside Hollyhock or March Mallow (Hibiscus palustris), Torrey Rush (Scirpus torreyi), Narrow-leaved Cattail (Typha angustifolia), and Broad-leaved Cattail (T. latifolia) and those lands not currently used for agricultural purposes containing 400 acres or more of contiguous nontidal swamp, bog, muck or marsh exclusive of narrow stream valleys where fresh water stands most, if not all, of the time due to high water table, which contribute significantly to ground water recharge, and which would require intensive artificial drainage using equipment such as pumping stations, drain fields or ditches for the production of agricultural crops.

(7 Del. C. 1953 § 6603; 59 Del. Laws, c. 213 § 1; 64 Del. Laws, c. 293 § 1.)

§ 6604 Permit required.

(a) Any activity in the wetlands requires a permit from the Department except the activity or activities exempted by this chapter and no permit may be granted unless the county or municipality having jurisdiction has first approved the activity in question by zoning procedures provided by law.

(b) The Secretary shall consider the following factors prior to issuance of any permit:

(1) Environmental impact, including but not limited to, likely destruction of wetlands and flora and fauna; impact of the site preparation on tidal ebb and flow and the otherwise normal drainage of the area in question, especially as it relates to flood control; impact of the site preparation and proposed activity on land erosion; effect of site preparation and proposed activity on the quality and quantity of tidal waters, surface, ground and subsurface water resources and other resources;

(2) Aesthetic effect, such as the impact on scenic beauty of the surrounding area;

(3) The number and type of public and private supporting facilities required and the impact of such facilities on all factors listed in this subsection;

(4) Effect on neighboring land uses, including but not limited to, public access to tidal waters, recreational areas and effect on adjacent residential and agricultural areas;

(5) State, county and municipal comprehensive plans for the development and/or conservation of their areas of jurisdiction;

(6) Economic effect, including the number of jobs created and the income which will be generated by the wages and salaries of the jobs in relation to the amount of land required, and the amount of tax revenues potentially accruing to the state, county and local governments.

(c) The Secretary may require a bond in an amount and with surety and conditions sufficient to secure compliance with the conditions and limitations, if any, set forth in the permit. The particular amount and the particular conditions of the bond required shall be consistent with and in furtherance of the purposes of this chapter. The Secretary shall state for the record, the basis for the bonding requirements imposed with each permit granted. In the event of a breach of any condition of any such bond, the Attorney General may institute an action in Superior Court upon such bond and prosecute the same to judgment and execution.

(7 Del. C. 1953 § 6604; 59 Del. Laws, c. 213 § 1.)

§ 6605 Preexisting use.

Any expansion or extension of a preexisting use requires a permit and no permit may be granted under this chapter unless the county or municipality having jurisdiction has first approved the use in question by zoning procedures provided by law.

(7 Del. C. 1953 § 6605; 59 Del. Laws, c. 213 § 1.)

§ 6606 Exemptions.

Any of the following activities are exempt from permit requirements: Mosquito control activities authorized by the Department; construction of directional aids to navigation; duck blinds; foot bridges; the placing of boundary stakes; wildlife nesting structures; grazing of domestic animals; haying; hunting; fishing and trapping.

(7 Del. C. 1953 § 6606; 59 Del. Laws, c. 213 § 1.)

§ 6607 Procedures; regulations; application fees.

(a) The Secretary shall administer this chapter.

(b) The Secretary shall inventory, as promptly as he or she is able, all wetlands within the State and prepare suitable maps. Such maps shall be filed with the Secretary of State and made available for public inspection at the offices of the Department. On completion of a wetlands boundary map for an area, the Secretary shall propose that wetlands within the area be designated as such in accordance with the map. Wetlands designation on the maps shall be conclusive for the purpose of this chapter upon adoption by the Secretary, subject to the outcome of any appeals taken under this section, and subsection (e) of this section. After such designation, the 2-foot elevation above local mean high water specified in § 6603 of this title shall not apply to any land outside the designated area.

(c) The Secretary shall adopt a wetlands designation or any other regulation only after holding a public hearing in accordance with § 6609 of this title.

(d) The Secretary shall, in furtherance of the purpose of this chapter, adopt regulations:

(1) Setting forth procedures, including provision for fees, which shall govern the processing of permit applications and the conduct of hearings;

(2) Elaborating standards consistent with § 6604 of this title by which each permit application will be reviewed and acted upon;

(3) Controlling or prohibiting activities on lands designated or proposed for designation as wetlands, which regulations may vary from area to area according to the ecological value of the subject wetlands and the threat to the health and welfare of the people of this State which their alteration would pose.

(4) Any fees collected under this chapter are hereby appropriated to the Department to carry out the purposes of this chapter. The Secretary shall report through the annual budget process the receipt, proposed use and disbursement of these funds.

(e) If an on-site evaluation by the Department establishes that an error exists in a wetlands map that has been adopted by the Department,

the wetlands map containing the error may be corrected by the Department after the Department documents, in writing, the results of the on-site evaluation, and the Department gives the public notice of any proposed correction. For purposes of this subsection, the term "public notice" shall consist of having notice of the proposed correction, the name of the property owner, location of the property in issue and a description of the error, published in a daily newspaper of general circulation throughout the State and a newspaper of general circulation in the county in which the activity is proposed. Such notice shall be published at least 20 days in advance of any correction to a map by the Department. If the Department determines that it has received a meritorious objection to any proposed correction set forth in a public notice, the Department shall hold a public hearing in accordance with the procedures set forth in § 6609 of this title. Any Department correction made to an adopted wetlands map shall be filed with the Secretary of State and made available for public inspection at the offices of the Department.

(f) The Secretary may waive any provision of the regulations adopted pursuant to this chapter when warranted under the following circumstances:

(1) Life-threatening emergencies.

(2) Actions required for public safety for which sufficient time is not available to follow the regulations.

(3) When imminent or catastrophic damage or loss of major infrastructure is likely if all provisions of the regulations are adhered to.

(4) Where the authority of the Department under this chapter overlaps with another statute, including but not limited to shellfish grounds (Chapter 19 of this title), beach preservation (Chapter 68 of this title) or subaqueous lands (Chapter 72 of this title) provided that the following criteria are met:

a. If, in the opinion of the Secretary, equal environmental impact review and regulation of the activity would be provided by either statute; and

b. Waiver of these regulations would not be contrary to the purposes of this chapter.

(g) The Secretary may issue an after-the-fact permit, letter of authorization or waiver in those cases where an activity has occurred without first obtaining the required permit, letter of authorization or waiver. The determination of whether or not to issue an after-the-fact permit, letter of authorization or waiver shall be consistent with the purposes and provisions of this chapter. The applicant receiving the after-the-fact permit, letter of authorization, or waiver will be responsible for paying any associated processing fee and the Secretary may assess a penalty in accordance with § 6005 of this title.

(7 Del. C. 1953 § 6607; 59 Del. Laws, c. 213 § 1; 63 Del. Laws, c. 322 § 105(b); 64 Del. Laws, c. 61 §§ 1, 2; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 183 § 2; 79 Del. Laws, c. 147 § 2.)

§ 6608 Permit applications.

(a) Any person desiring to obtain a permit required by § 6604 of this title shall submit an application in such form and accompanied by such plans, specifications and other information as required by applicable regulations.

(b) Upon receipt of an application in proper form, the Secretary shall advertise in a daily newspaper of statewide circulation and in a newspaper of general circulation in the county in which the activity is proposed:

(1) The fact that the application has been received; and

(2) A brief description of the nature of the application.

The Secretary may hold a public hearing with respect to any application if it is deemed to be in the best public interest. The Secretary shall hold a public hearing if he or she receives a written meritorious objection within 20 days of advertisement. A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and a reasoned statement of the permit's probable impact.

(7 Del. C. 1953 § 6608; 59 Del. Laws, c. 213 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6609 Public hearings.

Any public hearing held by the Secretary or the Board concerning a regulation, permit application or alleged violation or appeal shall be conducted as follows:

(1) Notification shall be served upon the applicant, alleged violator, or appellant as summonses are served by registered or certified mail not less than 20 days before the time of said hearing. Not less than 20 days' notice shall also be published in a daily newspaper of general circulation throughout the State and a newspaper of general circulation in the county in which the activity is proposed. Such notice shall also be sent by mail simultaneously to persons who have listed their names and addresses with the Secretary to be notified. Such notice shall also be sent by mail simultaneously to all adjoining property owners. Notice shall outline the area concerned, activity involved, and the location where the application for a permit or other pertinent material is available for inspection.

(2) The permit applicant, alleged violator, or appellant may appear personally or by counsel at the hearing and produce any competent evidence in his or her behalf. The Secretary or the Secretary's duly authorized designee or the Board or its duly authorized designee may administer oaths, examine witnesses and issue, in the name of the Department or the Board, notices of hearings or subpoenae requiring the testimony of witnesses and the production of books, records or other documents relevant to any matter involved in such a hearing; and subpoenae shall also be issued at the request of the applicant or alleged violator. In case of contumacy or refusal to obey a notice of hearing or subpoena under this section, the Superior Court in the county in which the hearing is held shall have jurisdiction, upon application of the Secretary or the Chairperson of the Board, to issue an order requiring such person to appear and testify or produce evidence as the case may require.

(3) A verbatim transcript of testimony at the hearing shall be prepared and shall, along with the exhibits and other documents introduced by the Secretary or other party, constitute the record.

The Secretary or the Secretary's duly authorized designee or the Board or its duly authorized designee shall make findings of fact based on the record. The Secretary or the Board shall then enter such order as will best further the purpose of this chapter, and shall state reasons. The Secretary or the Board shall promptly give written notice to the persons affected by such order.

(7 Del. C. 1953 § 6609; 59 Del. Laws, c. 213 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6610 Appeal to Board.

Any person whose interest is substantially affected by any action of the Secretary may appeal to the Environmental Appeals Board within 20 days after the Secretary has announced the decision.

(7 Del. C. 1953 § 6611; 59 Del. Laws, c. 213 § 1; 64 Del. Laws, c. 293 § 2.)

§ 6611 [Reserved.]

§ 6612 Appeal from Board's decision.

(a) Any person or persons, jointly or severally affected by any decision or nondecision of the Board, or any taxpayer, or any officer, department, board or bureau of the State, may appeal to the Superior Court in and for the county in which the use in question is wholly or principally located by filing a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Any such appeal shall be perfected within 30 days of the decision of the Board.

(b) The Court may affirm, reverse or modify the Board's decision. The Board's findings of fact shall not be set aside unless the Court determines that the record contains no substantial evidence that would reasonably support the findings. If the Court finds that additional evidence should be taken, the Court may remand the cause to the Board for completion of the record.

(7 Del. C. 1953 § 6612; 59 Del. Laws, c. 213 § 1.)

§ 6613 Taking without just compensation.

If the Superior Court finds that the action appealed from constitutes a taking without just compensation, it shall invalidate the order and grant appropriate relief, unless the Secretary at this stage, consents to the reversal or modification of his or her decision. However, the Secretary may, through negotiation or condemnation proceedings under Chapter 61 of Title 10, acquire the fee simple or any lesser interest, including but not limited to, a perpetual negative easement or other interest which assures that the affected land shall not thereafter be altered, dredged, dumped upon, filled or otherwise altered subject to any reasonable reservations to the landowner as the Secretary may have stipulated to prior to assessment of damages. A decision of the Superior Court that the action appealed from constitutes a taking without just compensation shall not become effective for 2 years of the date of decision and shall not become effective at all if within that period the Secretary has initiated action to acquire fee simple or any lesser interest in the wetlands in question. A finding of the Superior Court that the denial of a permit or the restrictions imposed by a granted permit constitutes a taking without just compensation shall not affect any land other than that of the petitioning landowner. If the Secretary has not initiated action to acquire fee simple or any lesser interest in the wetlands in question within 2 years from the date of a final court ruling, the permit must be granted as applied.

(7 Del. C. 1953 § 6613; 59 Del. Laws, c. 213 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6614 Cease and desist orders.

The Secretary shall have the power to issue an order to any person violating any rule, regulation or order or permit condition or provision of this chapter to cease and desist from such violation. Any cease and desist order issued pursuant to this section shall expire (1) after 30 days of its issuance, or (2) upon withdrawal of said order by the Secretary, or (3) when the order is suspended by an injunction, whichever occurs first.

(7 Del. C. 1953 § 6614; 59 Del. Laws, c. 213 § 1.)

§ 6615 Injunction.

Action for injunctive relief may be brought by the Secretary to prevent a violation of this chapter or a permit condition. The Court of Chancery may, at its discretion, require bond in the appropriate amount.

(7 Del. C. 1953 § 6615; 59 Del. Laws, c. 213 § 1.)

§ 6616 Right of entry.

The Secretary or the Secretary's duly authorized designee, in regulating any activity over which he or she has jurisdiction pursuant to this chapter, may enter, at reasonable times, upon any private or public property for the purpose of determining whether a violation exists of a statute or regulation enforceable by him or her, upon giving written notice, and after presenting official identification to the owner, occupant, custodian or agent of said property.

(7 Del. C. 1953 § 6616; 59 Del. Laws, c. 213 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6617 Penalties.

(a) Whoever violates this chapter or any rule or regulation duly promulgated thereunder, or any condition of a permit issued pursuant to §

6604 of this title, or any order of the Secretary, shall be subject to enforcement in accordance with § 6005 or § 6013, or both, of this title.

(b)-(d) [Repealed.]

(7 Del. C. 1953 § 6617; 59 Del. Laws, c. 213 § 1; 63 Del. Laws, c. 249 § 1; 79 Del. Laws, c. 147 § 3; 80 Del. Laws, c. 391 § 1.)

§ 6618 Inconsistent laws superseded; all other laws unimpaired.

All laws or ordinances inconsistent with any provision of this chapter are hereby superseded to the extent of the inconsistency; provided, that present and future zoning powers of all counties and municipalities, to the extent that said powers are not inconsistent with this chapter, shall not hereby be impaired; and provided, that a permit granted under this chapter shall not authorize an activity in contravention of county or municipal zoning regulations.

(7 Del. C. 1953 § 6618; 59 Del. Laws, c. 213 § 1.)

§ 6619 Liberal construction.

This chapter, being necessary for the welfare of the State and its inhabitants, shall be liberally construed in order to preserve the wetlands of the State.

(7 Del. C. 1953 § 6619; 59 Del. Laws, c. 213 § 1.)

§ 6620 Federal aid; other funds.

The Department may cooperate with and receive moneys from the federal government, state or local government or any industry or other source. Such moneys received are appropriated and made available for the study and preservation of the wetlands.

(7 Del. C. 1953 § 6620; 59 Del. Laws, c. 213 § 1.)

Part VII
Natural Resources
Chapter 66A
NONTIDAL WETLAND STANDARDS

§ 6601A Purpose.

It is the purpose of this chapter to promote public health, safety, and general welfare through the conservation and restoration of nontidal wetlands, which provide significant public value and critical ecological functions through the mitigation and prevention of flood damage, provision of wildlife habitat, removal of pollutants from water resources, and reduction in costs for governments, residents, and businesses that result when wetlands are degraded.

(79 Del. Laws, c. 147 § 1.)

§ 6602A Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

(1) "Department" shall mean the Department of Natural Resources and Environmental Control.

(2) "Secretary" shall mean the Secretary of the Department of Natural Resources and Environmental Control.

(79 Del. Laws, c. 147 § 1.)

§ 6603A Wetlands Advisory Committee.

(a) The Secretary shall, by January 31, 2015, and through consultation with a Wetland Advisory Committee (Committee) established under this section, develop wetland protection priorities for the State of Delaware and recommend for consideration by the General Assembly a comprehensive approach for improving nontidal wetland conservation, restoration, and education within the State.

(b) The Committee shall consider nationally recognized best practices and standards, as well as actions that surrounding states have implemented in the way of incentive programs, policies, and assumption of regulatory roles. The Committee shall also evaluate the permitting process for activities regulated by state and federal agencies with the goals of reducing duplication, providing efficient 1-stop permitting, and improving the State's ability to account accurately for cumulative and individual impacts.

(c) The Committee shall consist of the following members:

(1) One member of the Delaware Farm Bureau appointed by the President of the Delaware Farm Bureau;

(2) One representative of the Delaware State Bar Association Real and Personal Property Section, appointed by the President of the Delaware State Bar Association;

(3) One representative of the Delaware Association of Realtors, appointed by the President of the Delaware Association of Realtors;

(4) One representative from the U.S. Army Corps of Engineers Philadelphia District Regulatory Branch;

(5) One representative of the Home Builders Association of Delaware appointed by the President of the Home Builders Association of Delaware.

(6) One representative of the Delaware League of Local Governments from each county, appointed by the President of the Delaware League of Local Governments from each county.

(7) One representative of the Committee of 100 appointed by the President of the Committee of 100.

(8) Two representatives of Delaware environmental organizations selected by the Secretary.

(9) Two representatives from outdoor recreation and wildlife conservation organizations selected by the Secretary.

(10) One representative of the Delaware Department of Transportation appointed by the Secretary of the Department of Transportation.

(11) One representative of the Delaware Department of Agriculture appointed by the Secretary of Agriculture.

(12) One representative of the Delaware Forestry Association.

(13) One representative of each of the three County government planning agencies, as an employee of these agencies.

(14) One representative of Delaware Chapter of the American Council of Engineering Companies (ACEC).

(15) Two representatives of the Department of Natural Resources and Environmental Control appointed by the Secretary.

(16) Two members of the Delaware Senate appointed by the President Pro Tempore and 2 members of the Delaware House of Representatives, appointed by the Speaker of the House, 1 from each major political party of each governing body.

(17) One representative of the U.S. Department of Agriculture Farm Service Agency appointed by the State Executive Director.

(18) One representative of the U.S. Department of Agriculture Natural Resources Conservation Service appointed by the State Conservationist.

(d) The Chair of the Committee shall be selected by the Secretary. The Committee shall organize and hold its first meeting by September 29, 2013, and shall be staffed by DNREC.

(e) The DNREC shall compile the results of the Committee recommendations, develop a draft report, and reconvene the Committee to

review the draft report and solicit feedback before finalizing the report of recommendations. The Secretary shall deliver an interim report of the work of the Committee to the General Assembly no later than May 1, 2014, and deliver the final report of recommendations no later than December 31, 2014.

(79 Del. Laws, c. 147 § 1.)

Part VII
Natural Resources
Chapter 67
MOTOR VEHICLE EMISSIONS

§ 6701 Emission standards required for inspection.

Any motor vehicle which is subject to inspection by the Division of Motor Vehicles, or any other duly authorized body, shall, as a condition of compliance with the inspection, pass such tests as may be required to demonstrate that the motor vehicle complies with any standards and requirements, rules or regulations for the control of air contaminants established by the Department of Natural Resources and Environmental Control which are applicable to such motor vehicle.

(7 Del. C. 1953 § 6701; 57 Del. Laws, c. 733.)

§ 6702 Violations.

Any person who operates a motor vehicle, or owns a motor vehicle which he or she permits to be operated, upon the public highways of the State, which emits smoke and other air contaminants in excess of standards, rules or regulations adopted by the Department, shall be fined not less than $50, nor more than $100, which may be enforced in accordance with Title 21.

(7 Del. C. 1953 § 6702; 57 Del. Laws, c. 733; 70 Del. Laws, c. 186 § 1.)

§ 6703 Standards for vehicle emissions.

The Department shall have the power to formulate and promulgate, amend and repeal codes, rules and regulations establishing standards and requirements for the control of air contaminants from motor vehicles.

(7 Del. C. 1953 § 6703; 57 Del. Laws, c. 733.)

§ 6704 Applications of standards.

Any code, rule or regulation establishing standards and requirements for the control of air contaminants from motor vehicles shall be applicable to such classification of motor vehicles as the Department shall determine to be necessary to carry out the purpose of this chapter, and shall apply to such motor vehicles not earlier than 180 days from the date of adoption.

(7 Del. C. 1953 § 6704; 57 Del. Laws, c. 733.)

§ 6705 Application consistent with federal law.

Such codes, rules and regulations shall establish standards and requirements for the control of air contaminants from motor vehicles manufactured with air pollution control devices, systems or engine modifications consistent with the requirements of the "National Emission Standards Act" [42 U.S.C. § 7521 et seq.] and any amendments and supplements thereto.

(7 Del. C. 1953 § 6705; 57 Del. Laws, c. 733.)

§ 6706 Standards attainable by properly functioning vehicles.

Such codes, rules and regulations shall establish standards and requirements for the control of air contaminants which can reasonably be attained by properly functioning motor vehicles without the addition of any pollution control devices, systems, or engine modifications; provided such vehicles were not manufactured with pollution control devices, systems, or engine modifications in accordance with the "National Emission Standards Act" [42 U.S.C. § 7521 et seq.].

(7 Del. C. 1953 § 6706; 57 Del. Laws, c. 733.)

§ 6707 Formulation of rules and regulations.

All codes, rules and regulations shall be formulated and promulgated in the manner provided in Chapter 60 of this title.

(7 Del. C. 1953 § 6707; 57 Del. Laws, c. 733.)

§ 6708 Implementation; Department's standards.

The Division of Motor Vehicles, after consultation with the Department of Natural Resources and Environmental Control, shall institute such testing procedures recommended by Department of Natural Resources and Environmental Control to effectively demonstrate that the emissions from motor vehicles passing through the inspection lanes are in accordance with the standards, codes, rules or regulations of the Department of Natural Resources and Environmental Control.

(7 Del. C. 1953 § 6708; 57 Del. Laws, c. 733.)

§ 6709 Permits for operation of motor vehicles during testing.

The Department of Natural Resources shall issue permits to all certified repair technicians to conduct on-board diagnostic testing of vehicles that are not in compliance with § 2115 of Title 21. The Department may recover costs reasonably related to the issuance of such permits.

(77 Del. Laws, c. 293 § 2.)

Part VII
Natural Resources
Chapter 68
BEACH PRESERVATION

§ 6801 Purposes.

Beaches of the Atlantic Ocean and Delaware Bay shoreline of Delaware are hereby declared to be valuable natural features which furnish recreational opportunity and provide storm protection for persons and property, as well as being an important economic resource for the people of the State. Beach erosion and shoreline migration occur due to the influence of waves, currents, tides, storms and rising sea level. These natural forces have created, and will continue to alter, the beaches of the State. Development and habitation of beaches must be done with due consideration given to the natural forces impacting upon them and the dynamic nature of those natural features. The purposes of this chapter are to enhance, preserve and protect the public and private beaches of the State, to mitigate beach erosion, to create civil and criminal remedies for acts destructive of beaches, to prescribe the penalties for such acts and to vest in the Department of Natural Resources and Environmental Control ("the Department") the authority to adopt such rules and regulations it deems necessary to effectuate the purposes of this chapter.

(7 Del. C. 1953 § 6801; 58 Del. Laws, c. 566 § 2; 64 Del. Laws, c. 361 § 1.)

§ 6802 Definitions.

For purposes of this chapter:

(1) A "beach" is that area from the Delaware/Maryland line at Fenwick Island to the Old Marina Canal immediately north of Pickering Beach, which extends from the mean high water line of the Atlantic Ocean and Delaware Bay landward 1,000 feet and seaward 2,500 feet, respectively.

(2) "Beach erosion" or "erosion" is the wearing away of a beach by water or the elements.

(3) "Beach preservation," "beach erosion control" or "erosion control" is the protection and control of the beach by the conduct and regulation of work and activities likely to affect the physical condition of the beach or shore, and includes, but is not limited to, erosion control, hurricane protection, coastal flood control, shoreline and offshore rehabilitation.

(4) "Building line" means a line generally paralleling the coast, seaward of which construction of any kind shall be prohibited without a permit or letter of approval from the Department. The building line shall be set forth on maps prepared by the Department with reference to a vertical datum commonly used by land surveyors, the Delaware State Plane Coordinate System and topographical surveys. Within the corporate limits of Rehoboth Beach and Bethany Beach, in commercial areas containing boardwalks and where no natural dune exists, the building line shall be along the westerly edge of the boardwalk. In those cases where the mapped building line either transects or is landward of lots that, in turn, are landward of lots with existing habitable structures, the building line will not be used to modify either location or dimension of buildings on the more landward lot. On those ocean and Delaware Bay front lots, where existing buildings are either partially or completely seaward of the building line, the Department is directed to consider beach nourishment work that has enhanced the beach and dune when determining the location and size of reconstruction of those existing buildings if they are destroyed by acts of God or other accidental events. Furthermore, in any such case, property owners shall be permitted to rebuild in the same footprint where federal or state agencies have constructed and continue to maintain a beach and dune that conforms to coastal engineering standards of storm protection.

(5) "Construction" includes any work or activity which is likely to have a material physical effect on existing coastal conditions or natural shore and inlet processes.

(6) "Department" means the Department of Natural Resources and Environmental Control.

(7) "Emergency" means any unusual incident resulting from natural or unnatural causes which endangers the health, safety or resources of the general public, including damages or erosion of any shoreline resulting from a hurricane, storm or any such natural disturbance.

(8) "Person" means any individual, partnership, corporation, association, institution, cooperative enterprise, municipality, commission, political subdivision or duly established legal entity.

(9) "Private beach" means any beach which is not a public beach as defined in this chapter.

(10) "Public beach" means any beach owned in fee simple by the federal or state government or any county, city, town or municipality, or any beach for which the State has obtained an easement or agreement for public use.

(11) "Regulated area" is the specific area within the defined beach that the Department is directed to regulate construction to preserve dunes and to reduce property damage. The regulated area shall be from the seaward edge of the beach to the landward edge of the third buildable lot in from the mean high water line.

(12) "Substantial damage" means the damage or destruction of any structure by an act of God to the extent that, in the judgment of the Department, 75% or more of the original structure, or if a building, more than 50% of the original foundation pilings, are unsuitable for

incorporation into reconstruction of the structure.

(7 Del. C. 1953 § 6802; 58 Del. Laws, c. 566 § 2; 64 Del. Laws, c. 361 § 1; 70 Del. Laws, c. 380 § 1; 75 Del. Laws, c. 435 §§ 1-4.)

§ 6803 Authority to enhance, preserve and protect beaches.

(a) Authority to enhance, preserve, and protect public and private beaches within the State is vested solely in the Department, except as pertains to archaeological resources on beaches, which are regulated by the Department of State, Division of Historical and Cultural Affairs pursuant to Chapter 53 of this title.

(b) The Department shall prevent and repair damages from erosion of public beaches. To this end, the Department shall, when it deems necessary, provide, construct, reconstruct and maintain groins, jetties, banks, dikes, dunes, bulkheads, seawalls, breakwaters and other facilities or make any other repairs or take any other measures along or upon any public beach or shoreline area in this State. All structures, devices and facilities existing now or in the future which are devoted to the enhancement, preservation and protection of beaches shall be under the sole jurisdiction, management and control of the Department.

(c) The Secretary of the Department shall promulgate rules and regulations to effectuate the purposes of this chapter.

(d) Any person or persons, jointly or severally, or any taxpayer, or any officer, department, board or bureau of the State, aggrieved by any decision of the Secretary, may appeal as provided by law to the Superior Court in and for the county in which the activity in question is wholly or principally located by filing a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Any such appeal shall be on the record and shall be perfected within 30 days of the receipt of the decision of the Secretary.

(e) The Court may affirm, reverse or modify the Secretary's decision. The Secretary's findings of fact shall not be set aside unless the Court determines that the record contains no substantial evidence that would reasonably support the findings. If the Court finds that additional evidence should be taken, the Court may remand the case to the Secretary for completion of the record.

(7 Del. C. 1953 § 6803; 58 Del. Laws, c. 566 § 2; 62 Del. Laws, c. 211 § 1; 64 Del. Laws, c. 361 § 1; 75 Del. Laws, c. 153 § 11.)

§ 6804 Privately owned beaches.

The authority of the Department to prevent and repair damages from erosion shall extend to privately owned beaches whenever, in the judgment of the Governor, a dangerous condition constituting an emergency exists in a location specified by the Governor. Before taking any action with respect to a privately owned beach, the Department shall, whenever practicable, give reasonable notice to the owner thereof that a condition of potential emergency must be corrected, and wait a reasonable period of time for the owner to correct the matter. If the owner does not correct the matter, the Department shall do so. The owner shall be liable for all expenses incurred by the Department in correcting a condition of potential emergency.

(64 Del. Laws, c. 361 § 1.)

§ 6805 Permits required.

(a) No person shall, without first having obtained a permit or letter of approval from the Department, undertake any activity:

(1) To construct, modify, or reconstruct any structure or facility on any beach seaward of the building line.

(2) To alter, dig, mine, move, remove or deposit any substantial amount of beach or other materials, or cause the significant removal of vegetation, on any beach seaward of the building line which may affect the enhancement, preservation or protection of beaches.

(b) No dune buggy, truck, automobile, motorized bicycle, mechanized vehicle or machine shall be operated on any beach owned in fee simple by the State except in areas designated for such use and then only in accordance with rules and regulations promulgated by the Department. Vehicles utilized for emergency or health and safety measures are excepted from this subsection.

(c) Construction activities landward of the building line on any beach, including construction of any structure or the alteration, digging, mining, moving, removal or deposition of any substantial amount of beach or other materials, shall be permitted only under a letter of approval from the Department.

(d) The Department shall grant or deny a permit or letter of approval required by subsections (a) and (c) of this section in accordance with duly promulgated regulations. If any structure proposed to be built seaward of the building line could reasonably be reduced in size or otherwise altered in order to eliminate or diminish the amount of encroachment over the building line, the Department shall require such reduction or alteration as a condition of granting the permit or letter of approval. Notwithstanding any provision of this section or regulations adopted by the Department, no property owner shall be prevented within the regulated area from repairing, modifying, modernizing, updating, or improving their existing structure, or, by performing such actions, be required to relocate or reduce in size so long as these repairs, modifications, or improvements are within the existing structure's foot print.

(64 Del. Laws, c. 361 § 1; 70 Del. Laws, c. 398 § 1; 75 Del. Laws, c. 435 §§ 5, 6; 76 Del. Laws, c. 236 § 1.)

§ 6806 Cease and desist orders.

The Secretary of the Department shall have the power to issue a cease and desist order to any person violating this chapter or rule or regulation promulgated pursuant thereto. Any such cease and desist order shall expire (1) after 30 days from the date of its issuance, or (2) upon withdrawal of said order by the Secretary, or (3) when the order is superseded by injunction, whichever occurs first.

(7 Del. C. 1953 § 6804; 58 Del. Laws, c. 566 § 2; 64 Del. Laws, c. 361 § 1.)

§ 6807 Penalties.

(a) Whoever, without authority from the Department, alters, moves or carries away any substantial amount of beach material (including, but not limited to, sand or pebbles), or alters, damages or destroys any groin, jetty, bank, dike, dune, bulkhead, seawall, breakwater or any other facility, improvement or structure installed or maintained by the Department for the enhancement, preservation or protection of the beach, shall be liable for a civil penalty imposed by the Court of Common Pleas of not less than $200 nor more than $5,000 for each completed violation. If the violation has been completed and there is a substantial likelihood that it will recur or if it is a continuing violation, the Department may also seek a permanent or preliminary injunction or temporary restraining order in the Court of Chancery.

(b) Any coastal structure erected, or excavation created, in violation of this chapter is hereby declared to be a public nuisance, and such structure shall be forthwith removed or such excavation refilled after written notice by the Department directing such removal or filling. In the event the structure is not removed or the excavation refilled as directed within a reasonable time, the Department may remove such structure or fill such excavation at its own expense. The person who erected the structure or created the excavation declared to be a public nuisance shall be liable for all expenses incurred by the Department in removing the structure or filling the excavation. The Secretary shall submit a detailed billing for the costs involved in abating the public nuisance to the person responsible. In the event that said billing is not paid by the person responsible within 30 days, the Department may file suit in the appropriate court seeking to compel payment.

(c) Any person who:

(1) Violates any condition or limitation in a permit issued pursuant to this chapter;

(2) Engages in any activity prohibited by this chapter; or

(3) Violates any regulation duly promulgated according to this chapter,

shall upon conviction be fined not less than $200 nor more than $5,000, or imprisoned for not more than 2 years, or both, and in addition, shall reimburse the Department for its reasonable expenditures in remedying damage created.

(d) For the purposes of subsection (c) of this section, each and every day that a permit condition or limitation is violated, an activity engaged in which is prohibited by this chapter or a regulation violated is deemed a separate offense.

(e) Any expenses or civil penalties collected by the Department under this section are hereby appropriated to the Department to carry out the purposes of this chapter.

(7 Del. C. 1953 § 6805; 58 Del. Laws, c. 566 § 2; 64 Del. Laws, c. 361 § 1.)

§ 6808 Beach Preservation Fund.

(a) A special fund is created in the State Treasury to be known as the "Beach Preservation Fund," hereafter referred to in this chapter as "the Fund."

(b) The Fund may be used as necessary to effectuate the purposes of this chapter.

(c) The balance of the Fund shall be at least $1,000,000 at the beginning of each fiscal year after July 22, 1972. Such sums as are necessary to restore the Beach Preservation Fund to a balance of at least $1,000,000 shall be appropriated annually from the General Fund or borrowed annually after fiscal year 1973 by the issuance of bonds or bond anticipation notes upon the full faith and credit of the State as may be authorized within the annual capital improvement program. Such bonds and notes shall be issued in accordance with Chapter 74 of Title 29. For purposes of identification, the bonds issued pursuant to such authorization may be known, styled or referred to as "beach preservation bonds."

(7 Del. C. 1953 § 6806; 58 Del. Laws, c. 566 § 2; 64 Del. Laws, c. 361 § 1.)

§ 6809 Federal aid; other funds.

The Department may cooperate with and receive moneys from the federal government or any industry or other source. Such moneys received are hereby appropriated and made available for study and action directed at beach preservation.

(7 Del. C. 1953 § 6807; 58 Del. Laws, c. 566 § 2; 64 Del. Laws, c. 361 § 1.)

§ 6810 Eminent domain.

(a) The Secretary may, through negotiation or condemnation proceedings under Chapter 61 of Title 10, acquire the fee simple or any lesser interests in land whenever 2/3 or more of the property owners of property included in the project area along a private beach, as defined by the Department, have agreed to allow the Department to undertake any or all necessary works to protect, and enhance the beaches, and allow free public access to the beach; provided, however, that the agreeing property owners own at least two-thirds of the property included in the project area.

(b) The Secretary may include the costs of obtaining any such fee simple or lesser interests including but not limited to attorney's fees, appraisal costs, surveying charges, title search and land acquisition costs in the total project costs.

(c) Notwithstanding the provisions of subsection (a) of this section, the Secretary may undertake any or all necessary works to restore private beaches as designated by the Department, whenever 2/3 or more of the property owners in the project area along the private beach have petitioned the Department to undertake the work. The public will maintain rights on the beach landward to the dune vegetation line or the structure line, whichever is further seaward, in the area of any publicly financed project for the purposes of navigation, fishing, swimming and sunbathing. Privately financed projects may be included in a public project when the Department determines that their inclusion will enhance the public project.

(59 Del. Laws, c. 254 § 1; 64 Del. Laws, c. 361 § 1; 68 Del. Laws, c. 280 § 1.)

§ 6811 Inconsistent laws or ordinances superseded.

All laws or ordinances inconsistent with this chapter are hereby superseded to the extent of the inconsistency.
(7 Del. C. 1953 § 6808; 58 Del. Laws, c. 566 § 2; 64 Del. Laws, c. 361 § 1.)

§ 6812 Short title.

This chapter may be known, styled or referred to as the "Beach Preservation Act."
(7 Del. C. 1953 § 6809; 58 Del. Laws, c. 566 § 10; 64 Del. Laws, c. 361 § 1.)

Part VII
Natural Resources
Chapter 69
CONSERVATION EASEMENTS

§ 6901 Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural, scenic or open-space values of real property, assuring its availability for agricultural, forest, recreational or open-space use, protecting natural resources, fish and wildlife habitat, rare species and natural communities maintaining or enhancing air or water quality or preserving the historical, architectural, archaeological or cultural aspects of real property.

(2) "Holder" means:

a. A governmental body empowered to hold an interest in real property under the laws of this State or of the United States; and

b. A charitable corporation, charitable association or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic or open-space values of real property, assuring the availability of real property for agricultural, forest, recreational or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological or cultural aspects of real property.

(3) "Third-party right of enforcement" shall mean a right provided in a conservation easement to enforce any of its terms and which is granted to a governmental body, charitable corporation, charitable association or charitable trust which, although eligible to be a holder, is not a holder.

(70 Del. Laws, c. 552 § 1.)

§ 6902 Creation, conveyance, acceptance and duration.

(a) Except as otherwise provided in this chapter, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated or otherwise altered or affected in the same manner as other easements.

(b) No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of that acceptance.

(c) Except as provided in § 6903(b) of this title, a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.

(d) An interest in real property in existence at the time a conservation easement is created is not impaired by it, unless the owner of the interest is a party to the conservation easement or consents to it.

(70 Del. Laws, c. 552 § 1.)

§ 6903 Judicial actions.

(a) An action affecting a conservation easement may be brought by:

(1) An owner of an interest in the real property burdened by the easement;

(2) A holder of the easement;

(3) A person having a third-party right of enforcement; or

(4) A person authorized by other law.

(b) This chapter does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

(70 Del. Laws, c. 552 § 1.)

§ 6904 Validity.

A conservation easement is valid even though:

(1) It is not appurtenant to an interest in real property;

(2) It can be or has been assigned to another holder;

(3) It is not of a character that has been recognized traditionally at common law;

(4) It imposes a negative burden;

(5) It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

(6) The benefit does not touch or concern real property; or

(7) There is no privity of estate or of contract.

(70 Del. Laws, c. 552 § 1.)

§ 6905 Applicability.

(a) This chapter applies to any interest created after July 18, 1996, which complies with this chapter, whether or not such interest is designated as a conservation easement, covenant, equitable servitude, restriction, easement or otherwise.

(b) This chapter applies to any interest created before July 18, 1996, if it would have been enforceable had it been created after July 18, 1996, unless such retroactive application contravenes the constitution or laws of this State or the United States.

(c) This chapter does not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement or otherwise that is enforceable under other law of this State.

(70 Del. Laws, c. 552 § 1.)

§ 6906 .

Part VII
Natural Resources
Chapter 70
COASTAL ZONE ACT

§ 7001 Purpose.

It is hereby determined that the coastal areas of Delaware are the most critical areas for the future of the State in terms of the quality of life in the State. It is, therefore, the declared public policy of the State to control the location, extent and type of industrial development in Delaware's coastal areas. In so doing, the State can better protect the natural environment of its bay and coastal areas and safeguard their use primarily for recreation and tourism. Specifically, this chapter seeks to prohibit entirely the construction of new heavy industry in its coastal areas, which industry is determined to be incompatible with the protection of that natural environment in those areas. While it is the declared public policy of the State to encourage the introduction of new industry into Delaware, the protection of the environment, natural beauty and recreation potential of the State is also of great concern. In order to strike the correct balance between these 2 policies, careful planning based on a thorough understanding of Delaware's potential and the State's needs is required. Therefore, control of industrial development other than that of heavy industry in the coastal zone of Delaware through a permit system at the state level is called for. It is further determined that offshore bulk product transfer facilities represent a significant danger of pollution to the coastal zone and generate pressure for the construction of industrial plants in the coastal zone, which construction is declared to be against public policy. For these reasons, prohibition against bulk product transfer facilities in the coastal zone is deemed imperative.

(7 Del. C. 1953 § 7001; 58 Del. Laws, c. 175; 70 Del. Laws, c. 186 § 1.)

§ 7002 Definitions.

(a) "Board" shall mean the Coastal Zone Industrial Control Board.

(b) "Bulk product transfer facility" means any port or dock facility, whether an artificial island or attached to shore by any means, for the transfer of bulk quantities of any substance from vessel to onshore facility or vice versa. Not included in this definition is a docking facility or pier for a single industrial or manufacturing facility for which a permit is granted or which is a nonconforming use. Likewise, docking facilities for the Port of Wilmington are not included in this definition.

(c) "Environmental impact statement" means a detailed description as prescribed by the Department of Natural Resources and Environmental Control of the effect of the proposed use on the immediate and surrounding environment and natural resources such as water quality, fisheries, wildlife and the aesthetics of the region.

(d) "Heavy industry use" means a use characteristically involving more than 20 acres, and characteristically employing some but not necessarily all of such equipment such as, but not limited to, smokestacks, tanks, distillation or reaction columns, chemical processing equipment, scrubbing towers, pickling equipment and waste-treatment lagoons; which industry, although conceivably operable without polluting the environment, has the potential to pollute when equipment malfunctions or human error occurs. Examples of heavy industry are oil refineries, basic steel manufacturing plants, basic cellulosic pulp-paper mills, and chemical plants such as petrochemical complexes. An incinerator structure or facility which, including the incinerator, contains 5,000 square feet or more, whether public or private, is "heavy industry" for purpose of this chapter. Generic examples of uses not included in the definition of "heavy industry" are such uses as garment factories, automobile assembly plants and jewelry and leather goods manufacturing establishments, and on-shore facilities, less than 20 acres in size, consisting of warehouses, equipment repair and maintenance structures, open storage areas, office and communications buildings, helipads, parking space and other service or supply structures required for the transfer of materials and workers in support of off-shore research, exploration and development operations; provided, however, that on-shore facilities shall not include tank farms or storage tanks.

(e) "Manufacturing" means the mechanical or chemical transformation of organic or inorganic substances into new products, characteristically using power-driven machines and materials handling equipment, and including establishments engaged in assembling component parts of manufactured products, provided the new product is not a structure or other fixed improvement.

(f) "Nonconforming use" means a use, whether of land or of a structure, which does not comply with the applicable use provisions in this chapter where such use was lawfully in existence and in active use prior to June 28, 1971.

(g) "Person" shall include, but not be limited to, any individual, group of individuals, contractor, supplier, installer, user, owner, partnership, firm, company, corporation, association, joint-stock company, trust, estate, political subdivision, administrative agency, public or quasi-public corporation or body, or any other legal entity, or its legal representative, agent or assignee.

(h) "The coastal zone" is defined as all that area of the State, whether land, water or subaqueous land between the territorial limits of Delaware in the Delaware River, Delaware Bay and Atlantic Ocean, and a line formed by certain Delaware highways and roads as follows:

Beginning at the Delaware-Pennsylvania line at a place where said line intersects U.S. Route 13; thence southward along the said U.S. Route 13 until it intersects the right-of-way of U.S. Route I-495; thence along said I-495 right-of-way until the said I-495 right-of-way intersects Delaware Route 9 south of Wilmington; thence along said Delaware Route 9 to the point of its intersection with Delaware Route

273; thence along said Delaware Route 273 to U.S. 13; thence along U.S. 13 to Maintenance Road 409; thence along Maintenance Road 409 to Delaware Road 71; thence along Delaware Road 71 to its intersection with Delaware Road 54; thence along Delaware Road 54 to Delaware Road 896; thence along Delaware Road 896 to Maintenance Road 396; thence along Maintenance Road 396 to Maintenance Road 398; thence along Maintenance Road 398 to the Maryland state line; thence southward along the Maryland state line to Maintenance Road 433; thence along Maintenance Road 433 to Maintenance Road 63; thence along Maintenance Road 63 to Maintenance Road 412; thence along Maintenance Road 412 to U.S. 13; thence along U.S. 13 to Delaware 299 at Odessa; thence along Delaware Route 299 to its intersection with Delaware Route 9; thence along Delaware Route 9 to U.S. 113; thence along U.S. Route 113 to Maintenance Road 8A; thence along Maintenance Road 8A to Maintenance Road 7 to the point of its intersection with Delaware Route 14; thence along Delaware Route 14 to Delaware Route 24; thence along Delaware Route 24 to Maintenance Road 331; thence along Maintenance Road 331 to Maintenance Road 334; thence along Maintenance Road 334 to Delaware Route 26; thence along Delaware Route 26 to Maintenance Road 365; thence along Maintenance Road 365 to Maintenance Road 84; thence along Maintenance Road 84 to Maintenance Road 384; thence along Maintenance Road 384 to Maintenance Road 382A; thence along Maintenance Road 382A to Maintenance Road 389; thence along Maintenance Road 389 to Maintenance Road 58; thence along Maintenance Road 58 to Maintenance Road 395; thence along Maintenance Road 395 to the Maryland state line.

(7 Del. C. 1953 § 7002; 58 Del. Laws, c. 175; 61 Del. Laws, c. 116 § 88(a); 62 Del. Laws, c. 119 §§ 1, 2; 63 Del. Laws, c. 191 § 1(a); 71 Del. Laws, c. 348 § 1.)

§ 7003 Uses absolutely prohibited in the coastal zone.

Heavy industry uses of any kind not in operation on June 28, 1971, are prohibited in the coastal zone and no permits may be issued therefor. In addition, offshore gas, liquid or solid bulk product transfer facilities which are not in operation on June 28, 1971, are prohibited in the coastal zone, and no permit may be issued therefor. Provided, that this section shall not apply to public sewage treatment or recycling plants. A basic steel manufacturing plant in operation on June 28, 1971, may continue as a heavy industry use in the coastal zone notwithstanding any temporary discontinuance of operations after said date, provided that said discontinuance does not exceed 2 years. An incinerator is neither "public sewage treatment" nor a "recycling plant" for the purpose of this chapter.

(7 Del. C. 1953 § 7003; 58 Del. Laws, c. 175; 64 Del. Laws, c. 240 § 6; 66 Del. Laws, c. 256 § 1; 71 Del. Laws, c. 348 § 2.)

§ 7004 Uses allowed by permit only; nonconforming uses.

(a) Except for heavy industry uses, as defined in § 7002 of this title, manufacturing uses not in existence and in active use on June 28, 1971, are allowed in the coastal zone by permit only, as provided for under this section. Any nonconforming use in existence and in active use on June 28, 1971, shall not be prohibited by this chapter and all expansion or extension of nonconforming uses, as defined herein, and all expansion or extension of uses for which a permit is issued pursuant to this chapter, are likewise allowed only by permit. Provided, that no permit may be granted under this chapter unless the county or municipality having jurisdiction has first approved the use in question by zoning procedures provided by law.

(b) In passing on permit requests, the Secretary of the Department of Natural Resources and Environmental Control and the State Coastal Zone Industrial Control Board shall consider the following factors:

(1) Environmental impact, including but not limited to, probable air and water pollution likely to be generated by the proposed use under normal operating conditions as well as during mechanical malfunction and human error; likely destruction of wetlands and flora and fauna; impact of site preparation on drainage of the area in question, especially as it relates to flood control; impact of site preparation and facility operations on land erosion; effect of site preparation and facility operations on the quality and quantity of surface, ground and subsurface water resources, such as the use of water for processing, cooling, effluent removal, and other purposes; in addition, but not limited to, likelihood of generation of glare, heat, noise, vibration, radiation, electromagnetic interference and obnoxious odors.

(2) Economic effect, including the number of jobs created and the income which will be generated by the wages and salaries of these jobs in relation to the amount of land required, and the amount of tax revenues potentially accruing to state and local government.

(3) Aesthetic effect, such as impact on scenic beauty of the surrounding area.

(4) Number and type of supporting facilities required and the impact of such facilities on all factors listed in this subsection.

(5) Effect on neighboring land uses including, but not limited to, effect on public access to tidal waters, effect on recreational areas and effect on adjacent residential and agricultural areas.

(6) County and municipal comprehensive plans for the development and/or conservation of their areas of jurisdiction.

(7 Del. C. 1953 § 7004; 58 Del. Laws, c. 175; 61 Del. Laws, c. 116 § 88(c); 63 Del. Laws, c. 191 §§ 1(a), (b); 68 Del. Laws, c. 347 § 1.)

§ 7005 Administration of this chapter.

(a) The Department of Natural Resources and Environmental Control shall administer this chapter. All requests for permits for manufacturing land uses and for the expansion or extension of nonconforming uses as herein defined in the coastal zone shall be directed to the Secretary of the Department of Natural Resources and Environmental Control. Such requests must be in writing and must include:

(1)a. Evidence of approval by the appropriate county or municipal zoning authorities;

b. A detailed description of the proposed construction and operation of the use; and

c. An environmental impact statement.

(2) The Secretary of the Department of Natural Resources and Environmental Control shall hold a public hearing and may request further information of the applicant. The Secretary of the Department of Natural Resources and Environmental Control shall first determine whether the proposed use is, according to this chapter and regulations issued pursuant thereto:

a. A heavy industry use under § 7003 of this title;

b. A use allowable only by permit under § 7004 of this title; or

c. A use requiring no action under this chapter.

The Secretary of the Department of Natural Resources and Environmental Control shall then, if he or she determines that § 7004 of this title applies, reply to the request for a permit within 90 days of receipt of the said request for permit, either granting the request, denying same, or granting the request but requiring modifications; the Secretary shall state the reasons for his or her decision.

(b) The Secretary of the Department of Natural Resources and Environmental Control may issue regulations including, but not limited to, regulations governing disposition of permit requests, and setting forth procedures for hearings before himself or herself and the Board. Provided, that all such regulations shall be subject to approval by the Board.

(c) The Secretary of the Department of Natural Resources and Environmental Control shall develop and propose a comprehensive plan and guidelines for the State Coastal Zone Industrial Control Board concerning types of manufacturing uses deemed acceptable in the coastal zone and regulations for the further elaboration of the definition of "heavy industry" in a manner consistent with the purposes and provisions of this chapter. Such plan and guidelines shall become binding regulations upon adoption by the Board after public hearing. The Board may alter said regulations at any time after a public hearing. Provided, that any such regulations shall be consistent with §§ 7003 and 7004 of this title.

(d) The Department of Natural Resources and Environmental Control and all agencies of state government shall assist the State Coastal Zone Industrial Control Board in developing policies and procedures, and shall provide the Board with such information as it shall require.

(e) The Secretary shall annually prepare a schedule of fees for permits issued pursuant to this section and submit the same as part of the Department's annual operating budget proposal.

(7 Del. C. 1953 § 7005; 58 Del. Laws, c. 175; 61 Del. Laws, c. 116 §§ 88(a), (c); 63 Del. Laws, c. 191 §§ 1(a), (b); 68 Del. Laws, c. 86 § 8; 70 Del. Laws, c. 186 § 1.)

§ 7006 State Coastal Zone Industrial Control Board created; composition; conflict of interest; quorum.

There is hereby created a State Coastal Zone Industrial Control Board, which shall have 9 voting members. Five of these shall be regular members appointed by the Governor and confirmed by the Senate. No more than 2 of the regular members shall be affiliated with the same political party. At least 1 regular member shall be a resident of New Castle County, 1 a resident of Kent County and 1 a resident of Sussex County, provided that no more than 2 residents of any county shall serve on the Board at the same time. The additional 4 members shall be the Director of the Delaware Economic Development Office, and the chairpersons of the planning commissions of each county, who shall be ex officio voting members. The term of 1 appointed regular member shall be for 1 year; 1 for 2 years; 1 for 3 years; 1 for 4 years; and the chairperson, to be designated as such by the Governor, and serve at the Governor's pleasure. Thereafter, all regular members shall be appointed for 5-year terms. The members shall receive no compensation except for expenses. Any member of the Board with a conflict of interest in a matter in question shall disqualify himself or herself from consideration of that matter. A majority of the total membership of the Board less those disqualifying themselves shall constitute a quorum. A majority of the total membership of the Board shall be necessary to make a final decision on a permit request.

(7 Del. C. 1953 § 7006; 58 Del. Laws, c. 175; 63 Del. Laws, c. 191 §§ 1(c), (d); 69 Del. Laws, c. 458 § 1; 70 Del. Laws, c. 186 § 1.)

§ 7007 Appeals to State Coastal Zone Industrial Control Board.

(a) The State Coastal Zone Industrial Control Board shall have the power to hear appeals from decisions of the Secretary of the Department of Natural Resources and Environmental Control made under § 7005 of this title. The Board may affirm or reverse the decision of the Secretary of the Department of Natural Resources and Environmental Control with respect to applicability of any provisions of this chapter to a proposed use; it may modify any permit granted by the Secretary of the Department of Natural Resources and Environmental Control, grant a permit denied by the Secretary, deny a permit or confirm the Secretary's grant of a permit. Provided, however, that the Board may grant no permit for uses prohibited in § 7003 herein.

(b) Any person aggrieved by a final decision of the Secretary of the Department of Natural Resources and Environmental Control under § 7005(a) of this title may appeal same under this section. Appellants must file notice of appeal with the State Coastal Zone Industrial Control Board within 14 days following announcement by the Secretary of the Department of Natural Resources and Environmental Control of his or her decision. The State Coastal Zone Industrial Control Board must hold a hearing and render its decision in the form of a final order within 60 days following receipt of the appeal notification.

(c) Whenever a decision of the Secretary of the Department of Natural Resources and Environmental Control concerning a permit request is appealed, the Board shall hold a public hearing at which the appellant may be represented by counsel. All proceedings in such a hearing shall be made a matter of record and a transcript or recording of all proceedings kept, and the public may attend and be heard.

(d) The Board shall publicly announce by publication in at least 1 newspaper of daily publication in the county in which the site designated in the request is wholly or principally located and in at least 1 newspaper of daily publication and general circulation throughout the State the time, location and subject of all hearings under this section at least 10 days prior thereto.

(7 Del. C. 1953 § 7007; 58 Del. Laws, c. 175; 61 Del. Laws, c. 116 § 88(c); 63 Del. Laws, c. 191 §§ 1(a), (b); 70 Del. Laws, c. 186 § 1.)

§ 7008 Appeals to Superior Court.

Any person aggrieved by a final order of the State Coastal Zone Industrial Control Board under § 7007 of this title may appeal the Board's decision to Superior Court in and for the county of the location of the land in question. Likewise, the Secretary of the Department of Natural Resources and Environmental Control may appeal from any modification by the Board of his or her ruling. The appeal shall be commenced by filing notice thereof with Superior Court not more than 20 days following announcement of the Board's decision. The Court may affirm the Board's order in its entirety, modify same or reverse said order. In either case, the appeal shall be based on the record of proceedings before the Board, the only issue being whether the Board abused its discretion in applying standards set forth by this chapter and regulations issued pursuant thereto to the facts of the particular case. The Superior Court may by rule prescribe procedure by which it will receive, hear and make disposition of appeals under this chapter. Provided, that no appeal under this chapter shall stay any cease and desist order or injunction issued pursuant to this chapter.

(7 Del. C. 1953 § 7008; 58 Del. Laws, c. 175; 61 Del. Laws, c. 116 § 88(c); 63 Del. Laws, c. 191 §§ 1(a), (b); 70 Del. Laws, c. 186 § 1.)

§ 7009 Condemnation.

If Superior Court rules that a permit's denial, or restrictions imposed by a granted permit, or the operation of § 7003 or § 7004 of this title, is an unconstitutional taking without just compensation, the Secretary of the State Department of Natural Resources and Environmental Control may, through negotiation or condemnation proceedings under Chapter 61 of Title 10, acquire the fee simple or any lesser interests in the land. If the Secretary does not use this authority to acquire the fee simple or any lesser interests in the land within 5 years from the date of the Court's ruling, the permit must be granted as applied for.

(7 Del. C. 1953 § 7009; 58 Del. Laws, c. 175.)

§ 7010 Cease and desist orders.

The Attorney General shall have the power to issue a cease and desist order to any person violating any provision of this chapter ordering such person to cease and desist from such violation. Provided, that any cease and desist order issued pursuant to this section shall expire (1) after 30 days of its issuance, or (2) upon withdrawal of said order by the Attorney General, or (3) when the order is superseded by an injunction, whichever occurs first.

(7 Del. C. 1953 § 7010; 58 Del. Laws, c. 175.)

§ 7011 Penalties.

Any person who violates this chapter shall be fined not more than $50,000 for each offense. The continuance of an activity prohibited by this chapter during any part of a day shall constitute a separate offense. Superior Court shall have exclusive original jurisdiction over offenses under this chapter.

(7 Del. C. 1953 § 7011; 58 Del. Laws, c. 175.)

§ 7012 Injunctions.

The Court of Chancery shall have jurisdiction to enjoin violations of this chapter.

(7 Del. C. 1953 § 7012; 58 Del. Laws, c. 175.)

§ 7013 Inconsistent laws superseded; all other laws unimpaired; certain uses not authorized.

All laws or ordinances inconsistent with any provision of this chapter are hereby superseded to the extent of the inconsistency. Provided, that present and future zoning powers of all counties and municipalities, to the extent that said powers are not inconsistent with this chapter, shall not hereby be impaired; and provided that a permit granted under this chapter shall not authorize a use in contravention of county or municipal zoning regulations.

(7 Del. C. 1953 § 7013; 58 Del. Laws, c. 175.)

Part VII
Natural Resources
Chapter 71
NOISE CONTROL AND ABATEMENT
Subchapter I
Nonvehicle Provisions

§ 7101 Declaration of purpose.

(a) The General Assembly finds and determines that the people of this State are entitled to and should be ensured an environment free from noise which unnecessarily degrades the quality of their life; that the levels of noise often reach such a degree as to endanger the health, safety and welfare, jeopardize the value of property and erode the integrity of the environment of the people of this State.

(b) The General Assembly also finds that a substantial body of science and technology exists by which noise may be substantially abated; and that the dangers of excessive noise can be abated by the adoption and enforcement of noise standards embodied in regulations based upon these scientific and technological findings.

(c) The General Assembly also finds that the problem of combating noise involves a high degree of cooperation on the part of various state agencies and departments; this chapter makes specific provisions for such inter-agency cooperation.

(60 Del. Laws, c. 648 § 1; 63 Del. Laws, c. 369 § 1.)

§ 7102 Short title.

This chapter shall be known and may be cited as the "Delaware Noise Control Act".

(60 Del. Laws, c. 648 § 1; 63 Del. Laws, c. 369 § 1.)

§ 7103 Definitions.

(a) "Committee" shall mean the Noise Advisory Committee created under this chapter.

(b) "Farming operations" shall mean any activity which is involved in the production of agriculture, livestock, dairy or poultry products for sale.

(c) "Farm vehicle" shall mean a wheeled device used for transportation in farming operations.

(d) "Manufacturer" shall mean any person employing 5 or more employees and who is licensed as a manufacturer by the Department of Finance in accordance with Chapter 27 of Title 30.

(e) "Motor vehicle" shall mean any vehicle defined as a motor vehicle in accordance with § 101 of Title 21.

(f) "Noise" shall mean any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans, excluding all aspects of noise regulated by the federal Occupational Safety and Health Act (OSHA).

(g) "Noise disturbance" means any sound which:

(1) Endangers or injures the safety or health of humans or animals; or

(2) Annoys or disturbs a reasonable person of normal sensitivities; or

(3) Jeopardizes the value of property and erodes the integrity of the environment.

(h) "Person" shall mean any corporation, company, association, society, firm, partnership and any joint stock company, as well as individuals, and shall also include the State and all of its political subdivisions, agencies and instrumentalities as well as any department, board or agency of the government of the United States.

(i) "Secretary" shall mean the Secretary of the Department of Natural Resources and Environmental Control.

(60 Del. Laws, c. 648 § 1; 63 Del. Laws, c. 369 § 1.)

§ 7104 Noise and noise disturbance prohibited.

(a) No person shall, without first having obtained a variance or a temporary emergency variance from the Department of Natural Resources and Environmental Control, undertake any activity which in any way may cause or contribute to the creation of noise or a noise disturbance.

(b) No person shall, without having first obtained a variance or a temporary emergency variance from the Department of Natural Resources and Environmental Control, construct, install, replace, modify or use any equipment, machinery, motor vehicle, device or other article which in any way may cause or contribute to the creation of noise or a noise disturbance.

(60 Del. Laws, c. 648 § 1; 63 Del. Laws, c. 369 § 1.)

§ 7105 Administration of chapter; applicability of subchapter.

(a) The Secretary of the Department of Natural Resources and Environmental Control or the Secretary's duly authorized designee shall exercise general supervision over the administration of this chapter and, in conjunction with the various law-enforcement agencies of this

State, the enforcement of this chapter, and shall have jurisdiction over noise emanating from motor vehicles to the extent of approving standards, codes and regulations proposed by the Secretary of the Department of Safety and Homeland Security.

(b) The Secretary of the Department of Safety and Homeland Security shall exercise general supervision over the administration and enforcement of this chapter with regard to noise emanating from motor vehicles.

(c) This subchapter shall not apply to noise caused or created by the work of any public service company incident to the repair or maintenance of its equipment or facilities which may have been damaged or destroyed as the result of any emergency situation including but not limited to acts of God, accidents and explosions.

(60 Del. Laws, c. 648 § 1; 63 Del. Laws, c. 369 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 110 § 138.)

§ 7106 Powers and duties of Department of Natural Resources and Environmental Control.

The Department of Natural Resources and Environmental Control shall have the power and its duty shall be to:

(1) Adopt standards, rules and regulations, after public hearing, for the prevention, control, reduction and abatement of noise pollution, applicable throughout the State or to such parts or regions thereof specifically designated in such regulations. The procedure for public hearings shall conform to the procedure described in § 6006(2) of this title; such rules and regulations, however, shall not purport to exercise jurisdiction over any person or activity not included or affected by this subchapter;

(2) Cooperate with all other state departments, divisions and agencies in the formulation and preparation of rules and regulations for the control of noise;

(3) Enter into agreements with any other state department in order to effectuate this chapter;

(4) Enforce this chapter, and all regulations, codes and rules, promulgated pursuant thereto, except those provisions of this chapter pertaining to motor vehicles;

(5) In conjunction with the various law-enforcement agencies of this State, receive or initiate complaints of noise and institute legal proceedings for the prevention of noise and for the recovery of penalties, in accordance with this chapter;

(6) Keep records of violations cited, enforcement procedures initiated and completed in accordance with this section.

(60 Del. Laws, c. 648 § 1; 63 Del. Laws, c. 369 § 1.)

§ 7107 Authority of Department of Natural Resources and Environmental Control.

The Department of Natural Resources and Environmental Control shall have the authority to:

(1) Conduct and supervise research programs for the purpose of determining the causes, effects and hazards of noise;

(2) Conduct and supervise statewide programs of noise control education, including the preparation and distribution of information relating to noise control;

(3) Enter and inspect any building or place, except private residences, for the purpose of investigating an actual or suspected source of noise and ascertaining compliance or noncompliance of any statute, rule or regulation of the Department. Any information relating to secret processes or methods of manufacture or production obtained in the course of such inspection, investigation or determination shall be kept confidential and shall not be admissible in evidence in any court or in any other proceedings except to the extent herein provided. If tests of any type are made for the purpose of determining whether or not a violation has occurred, or for any other purpose in connection with such entry and inspection, a duplicate of the results of the tests shall be furnished promptly to the person suspected of violating the statute, code or regulation;

(4) With the approval of the Governor, cooperate with and receive money from the federal government, the state government or any county or municipal government or from private sources for the study and control of noise; and

(5) Review and approve any plan to construct any highway corridor, the construction or operation of which may in the opinion of the Department cause or contribute to an amount of noise deemed excessive by the Department.

(63 Del. Laws, c. 369 § 1.)

§ 7108 Enforcement; investigations; injunctive relief.

(a) The Department of Natural Resources and Environmental Control shall enforce this chapter and any duly promulgated rules and regulations. All law-enforcement agencies of this State, including but not limited to police forces of the counties and incorporated cities and towns, may also enforce this chapter and any duly promulgated rules and regulations.

(b) Whenever the Department of Natural Resources and Environmental Control or any law-enforcement agency within this State has cause to believe based upon observation or a complaint that any person is violating this chapter, or any rules or regulations promulgated in accordance with this chapter, the Department or law-enforcement agency is authorized to conduct an investigation in connection therewith.

(c) If upon investigation the Department of Natural Resources and Environmental Control or any law-enforcement officer of this State discovers a condition which is in violation of any provision of this chapter or any rule or regulation promulgated pursuant thereto, the Department or law-enforcement officer shall be authorized to order such violation to cease and may take such reasonable steps as are necessary to enforce such an order. The order shall state why a violation exists and shall provide a reasonably specified time within which the violation must cease.

(d) The person responsible for the violation shall make the corrections necessary to comply with the requirements of this chapter or any rule or regulation promulgated pursuant thereto within the time specified in the order.

(e) Nothing herein shall be deemed to prevent the Department of Natural Resources and Environmental Control or any other law-

enforcement agency of this State from prosecuting any violation of this chapter or any rule or regulation promulgated pursuant thereto, notwithstanding that such violation is corrected in accordance with the above order.

(f) In his or her discretion, the Secretary of the Department of Natural Resources and Environmental Control may endeavor by conciliation to obtain compliance with all requirements of this chapter or any rule or regulation promulgated pursuant thereto. Conciliation shall be attempted by giving written notice to the responsible party which:

(1) Specifies the violation;

(2) Proposes a reasonable time for its correction; and

(3) Advises that a cease and desist order may be issued or other action taken unless the violation is corrected.

(g) If a violation is threatening to begin, or is continuing, or if there is a substantial likelihood that it will reoccur, or if the Department of Natural Resources and Environmental Control receives information that a noise disturbance presents an imminent or substantial hazard to public health or to the environment, the Secretary of the Department of Natural Resources and Environmental Control may, in addition to or in lieu of any other remedy provided for in this chapter, seek a temporary restraining order or a preliminary or permanent injunction in the Court of Chancery.

(h) Whoever violates this chapter or any rule or regulation duly promulgated thereunder, or any variance or temporary emergency variance issued pursuant to this section or § 7109 of this title or any cease and desist order of the Secretary, shall be punished by a fine of not less than $25 nor more than $500 for each violation. Each day of violation shall be considered as a separate violation. Any court of competent jurisdiction shall have jurisdiction of offenses under this subsection.

(i) Any person who willfully or negligently violates this chapter or any rule or regulation duly promulgated thereunder, or any variance or temporary emergency variance or any cease and desist order of the Secretary shall be punished by a penalty of not less than $500 nor more than $3,000 for each day of such violation. The Superior Court shall have jurisdiction of offenses under this subsection.

(j) It shall be a misdemeanor for any person to obstruct, hinder, delay or interfere with, by force or otherwise, the performance by personnel of the Department of Natural Resources and Environmental Control or any other enforcement personnel of any duty under this chapter, or any rule or regulation or order or permit or decision promulgated or issued thereunder.

(60 Del. Laws, c. 648 § 1; 63 Del. Laws, c. 369 § 1; 70 Del. Laws, c. 186 § 1.)

§ 7109 Variance.

(a) Any person who owns or operates any stationary noise source may apply to the Secretary of the Department of Natural Resources and Environmental Control for a variance or a partial variance from 1 or more of the rules or regulations promulgated pursuant to this chapter. Applicants for a variance shall supply information including, but not limited to:

(1) Information on the nature and location of the facility or process for which such application is made.

(2) The reason for which the variance is required, including the economic and technical justifications.

(3) The nature and intensity of noise that will occur during the period of the variance.

(4) A description of interim noise control measures to be taken by the applicant to minimize noise and the impacts occurring therefrom.

(5) A specific schedule of the best practical noise control measures, if any, which might be taken to bring the source into compliance with those regulations from which a variance is sought, and a statement of the length of time during which it is estimated that it will be necessary for the variance to continue.

(6) Any other relevant information the Department may require in order to make a determination regarding the application.

(b) Failure to supply the information required shall be cause for rejection of the application unless the applicant supplies the needed information within 30 days of the written request by the Department for such information.

(c) No variance shall be approved unless the Secretary finds that:

(1) Noise levels occurring during the period of the variance will not constitute a danger to the public health; and

(2) Compliance with this chapter and any duly promulgated rules or regulations would impose an arbitrary or unreasonable hardship upon the applicant without a commensurate benefit to the public.

(d) In determining whether to grant a variance, the Secretary shall consider:

(1) The character and degree of injury to, or interference with, the health and welfare of people or the reasonable use of property which is caused or threatened to be caused by the noise during the variance period.

(2) The social and economic value of the activity for which the variance is sought.

(3) The ability of the applicant to apply best practical noise control measures, as defined in duly promulgated regulations.

(e) Following receipt and review of an application for a variance, and after publishing notice once a week for 2 weeks in a newspaper of general circulation in the county wherein the variance is proposed, the Department shall, if necessary, fix a date, time and location for a hearing on such application in accordance with § 6004 of this title. Costs of newspaper advertising are to be paid by the applicant.

(f) Within 10 days of the receipt of the record of a hearing on a variance application, or within 10 days of receipt of an application on which no hearing is held, the Department shall issue its determination regarding such application and provide a copy to affected parties. All such decisions shall briefly set forth the reasons for the decision.

(g) The Department may, in its discretion, limit the duration of any variance granted. Any person holding a variance and needing an extension of time may apply for a new variance under this chapter and any duly promulgated rules and regulations for a period not to

exceed 1 year. Any such application shall include a certification of compliance with any condition imposed under the previous variance.

(h) The Department may attach to any variance any reasonable conditions it deems necessary and desirable, including, but not limited to:

(1) Requirements for the best practical noise control measures to be taken by the owner or operator of the source to minimize noise during the period of the variance.

(2) Requirements for periodic reports submitted by the applicant relating to noise, to compliance with any other conditions under which the variance was granted or to any other information the Department deems necessary.

(i) A variance may include a compliance schedule and requirements for periodic reporting of increments of achievement of compliance.

(63 Del. Laws, c. 369 § 1.)

§ 7110 Temporary emergency variance.

(a) A temporary emergency variance may be granted by the Department:

(1) If a severe hardship would be caused by the time period involved in obtaining a full variance.

(2) If the emergency is of an unforeseen nature so as to preclude a full variance because of time limitations.

(3) If all conditions comply with those required for a full variance.

(4) For a period not to exceed 60 days, not to be extended more than once.

(b) The granting of any temporary emergency variance shall be published within 5 days of the granting in a newspaper of general circulation once a week for 2 weeks in the county where the applicant resides.

(63 Del. Laws, c. 369 § 1.)

§ 7111 Testimony at hearings.

Testimony taken at any hearing shall be under oath and recorded stenographically, but the parties shall not be bound by the strict rules of evidence prevailing in the courts of law and equity. True copies of any transcript and of any other record made of or at such hearings shall be furnished to any party thereto upon request, and at such party's expense. Applicants shall pay for any and all stenographer's fees and, if requested, copies of the transcript.

(60 Del. Laws, c. 648 § 1; 63 Del. Laws, c. 369 § 1; 70 Del. Laws, c. 186 § 1.)

§ 7112 Conduct of hearings.

Any administrative or nonjudicial hearings required by this chapter shall be held before the Secretary of the Department of Natural Resources and Environmental Control or before members of the Department designated by the Secretary. The Secretary, or persons designated by the Secretary to hear the case, shall have the power to subpoena witnesses and compel their attendance, administer oaths and require the production for examination of any books or papers relating to any matter under investigation in any such hearing. The respondent to a complaint made by it, or to it, pursuant to this chapter, shall subpoena and compel the attendance of such witnesses as the respondent may designate and require the production for examination of any books or papers relating to any matter under investigation in any such hearing.

(60 Del. Laws, c. 648 § 1; 63 Del. Laws, c. 369 § 1; 70 Del. Laws, c. 186 § 1.)

§ 7113 Appeals of final orders.

(a) Any person or persons who jointly or severally are substantially affected and aggrieved by any final order or variance of the Department, or any taxpayer, or any officer, department, board or bureau of the State may appeal that order to the State Environmental Appeals Board and to the Superior Court as provided in §§ 6008 and 6009 of this title except that the word "variance" shall be substituted for the word "permit" in § 6008(b) and (c) of this title.

(b) No appeal shall operate to stay automatically any action of the Secretary, but upon application, and for good cause, the Secretary or the Court of Chancery may stay the action pending disposition of the appeal.

(60 Del. Laws, c. 648 § 1; 63 Del. Laws, c. 369 § 1.)

Subchapter II

Motor Vehicles

§ 7120 Powers and duties of Department of Safety and Homeland Security.

(a) The Department of Safety and Homeland Security, after consideration with the Secretary of the Department of Transportation and upon approval of the Secretary of the Department of Natural Resources and Environmental Control, shall have the power and its duty shall be to:

(1) Adopt regulations, after public hearing, establishing the standards, test procedures and instrumentation to be utilized in the control of noise from motor vehicles;

(2) Adopt regulations, after public hearing, necessary for the inspection of motor vehicles, including noise control and abatement equipment to assure compliance with the noise standards promulgated by the Department.

(b) For any public hearings required by this subchapter, the procedure shall conform to the procedure established in § 6006 of this title.

(60 Del. Laws, c. 648 § 1; 63 Del. Laws, c. 369 § 1; 74 Del. Laws, c. 110 § 138.)

§ 7121 Motor vehicle noise inspection.

Any motor vehicle which is subject to inspection by the Division of Motor Vehicles or any other duly authorized body shall, as a condition of compliance with said inspection, pass such tests as may be required to demonstrate that the motor vehicle is in compliance with all state and federal standards and requirements for the control of noise which are applicable to such motor vehicles.

(60 Del. Laws, c. 648 § 1; 63 Del. Laws, c. 369 § 1.)

§ 7122 Motor vehicle violations; enforcement.

Any person who operates a motor vehicle or owns a motor vehicle which he or she permits to be operated upon public highways of this State which generates noise in excess of standards adopted by the Department of Safety and Homeland Security shall be fined not less than $25 nor more than $1,000, which shall be enforced in accordance with Chapter 7 of Title 21.

(60 Del. Laws, c. 648 § 1; 63 Del. Laws, c. 369 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 110 § 138.)

§ 7123 Liberal interpretation.

The powers, duties and functions vested in any state department under this chapter shall not be construed to limit in any manner the powers, duties and functions vested therein or in any person under any other provision of law, or any civil or criminal remedies now or hereafter available to any person related to community noise control.

(60 Del. Laws, c. 648 § 1; 63 Del. Laws, c. 369 § 1.)

§ 7124 Other ordinances or remedies.

(a) No existing civil or criminal remedy now or hereafter available to any person shall be superseded by this chapter or any rule or regulation promulgated pursuant thereto.

(b) No ordinances or resolutions of any governing body of a municipality or county or board of health which establish specific standards for the level or duration of community noise equivalent to or more stringent than those provided by this chapter or any rule or regulation promulgated pursuant thereto shall be superseded. Nothing in this chapter or in any rule or regulation promulgated pursuant thereto shall preclude the right of any governing body of a municipality or the Department of Health and Social Services to adopt ordinances, resolutions or regulations which establish specific standards for the level or duration of community noise equivalent to or more stringent than this chapter or any rule or regulation promulgated pursuant thereto.

(60 Del. Laws, c. 648 § 1; 63 Del. Laws, c. 369 § 1; 70 Del. Laws, c. 149 § 3.)

§ 7125 Exemptions.

(a) All farm vehicles are exempted from this chapter while engaged in farming operations.

(b) Sirens operated to summon volunteer firefighters to alarms and sirens used to summon ambulance crews to service calls are exempted from this chapter.

(60 Del. Laws, c. 648 § 1; 63 Del. Laws, c. 369 § 1; 70 Del. Laws, c. 186 § 1.)

Part VII
Natural Resources
Chapter 71A
REGULATION OF OUTDOOR LIGHTING

§ 7101A Definitions.

In this chapter:

(1) "Cutoff luminaire" means a luminaire in which 2.5% or less of the lamp lumens are emitted above a horizontal plane through the luminaire's lowest part and 10% or less of the lamp lumens are emitted at a vertical angle 80 degrees above the luminaire's lowest point.

(2) "Light pollution" means the night sky glow caused by the scattering of artificial light in the atmosphere.

(3) "Lumen" means a standard measure of luminous flux representing the quantity of visible light output.

(4) "Luminaire" means a complete lighting unit, often referred to as a "light fixture". A luminaire consists of the lamp, optical reflector and housing, and electrical components for safely starting and operating the lamp.

(5) "Outdoor lighting fixture" means any type of fixed or movable lighting equipment that is designed or used for illumination outdoors. The term includes billboard lighting, street lights, searchlights and other lighting used for advertising purposes, and area lighting. The term does not include lighting equipment that is required by law to be installed on motor vehicles or lighting required for the safe operation of aircraft.

(6) "State funds" means:

a. Money appropriated by the legislature; or

b. Bond revenues of the State.

(75 Del. Laws, c. 202 § 1.)

§ 7102A Standards for state-funded outdoor lighting fixtures.

(a) An outdoor lighting fixture may be designed, installed or replaced using state funds only if:

(1) The new or replacement outdoor lighting fixture is a cutoff luminaire if the rated output of the outdoor lighting fixture is greater than 1,800 lumens;

(2) The minimum illuminance adequate for the intended purpose is used with consideration given to nationally recognized standards;

(3) For lighting of a designated highway of the state highway system, the Department of Transportation determines that the purpose of the outdoor lighting fixture cannot be achieved by the installation of reflective road markers, lines, warning or information signs, or other effective passive methods; and

(4) Full consideration has been given to the Department of Transportation's Traffic Lighting Policy, energy conservation, reducing glare, minimizing light pollution, and preserving the natural night environment.

(b) For purposes of paragraph (a)(4) of this section, "energy conservation" means reducing energy costs and resources used and includes using a light with lower wattage or a timer switch.

(c) Subsection (a) of this section does not apply if:

(1) A federal law, rule, or regulation preempts state law;

(2) The outdoor lighting fixture is used on a temporary basis because emergency personnel require additional illumination for emergency procedures;

(3) The outdoor lighting fixture is used on a temporary basis for nighttime work;

(4) Special events or situations require additional illumination;

(5) The outdoor lighting fixture is used solely to enhance the aesthetic beauty of an object;

(6) A compelling safety interest exists that cannot be addressed by another method;

(7) The new or replacement outdoor lighting fixture is to be installed and operated on roadways and supporting interchanges that are classified by the Department of Transportation's Functional Classification Maps as interstate or other freeway/expressways within the urbanized boundaries and other principal arterials that are designed to interstate or freeway/expressway standards in nonurbanized areas; or

(8) As to maintenance of existing lighting systems, the change to a cutoff luminaire would require the redesign and reconstruction of the system to compensate for the different lighting characteristics of these fixtures.

(d) Special events or situations that may require additional illumination include sporting events and illumination of monuments, historic structures, or flags. Illumination for special events or situations must be installed to shield the outdoor lighting fixtures from direct view and to minimize upward lighting and light pollution.

(75 Del. Laws, c. 202 § 1; 77 Del. Laws, c. 278 § 1.)

Part VII
Natural Resources
Chapter 72
SUBAQUEOUS LANDS

§ 7201 Purposes.

Subaqueous lands within the boundaries of Delaware constitute an important resource of the State and require protection against uses or changes which may impair the public interest in the use of tidal or nontidal waters. The purposes of this chapter are to empower the Secretary to deal with or to dispose of interest in public subaqueous lands and to place reasonable limits on the use and development of private subaqueous lands, in order to protect the public interest by employing orderly procedures for granting interests in public subaqueous land and for issuing permits for uses of or changes in private subaqueous lands. To this end, this chapter empowers the Secretary to adopt rules and regulations to effectuate the purposes of the chapter, to apply to the courts for aid in enforcing this statute and the rules and regulations adopted pursuant hereto, and to convey interests in subaqueous lands belonging to the State.

(65 Del. Laws, c. 508 § 2; 68 Del. Laws, c. 76 § 1; 72 Del. Laws, c. 474 § 3.)

§ 7202 Definitions.

(a) "Department" means the Department of Natural Resources and Environmental Control.

(b) "Maintenance" means the actions required to return a channel, bridge, culvert, stormwater basin or water control structure to its full operational condition or to prevent a decline in its utility. These actions shall not change the purpose, scope or capacity of the channel, bridge, culvert, stormwater basin or water control structure.

(c) "Ordinary high water mark" means, for nontidal waters, the line at which the presence and action of water are so continuous in all ordinary years so as to leave a distinct mark on a bank either by erosion or destruction of terrestrial (nonaquatic) vegetation, or that can be determined by other physical or biological means.

(d) "Reconstruction" means the rebuilding of a channel, bridge, culvert, stormwater basin or water control structure that requires significant renovation or repair of their major structural features. This rebuilding shall be characterized by a replacement or major restorative effort similar to the degree required in the original design and construction of the channel, bridge, culvert, stormwater basin or water control structure. This rebuilding shall not change the purpose, scope or capacity of the channel, bridge, culvert, stormwater basin or water control structure.

(e) "Retrofitting" means a change in design, construction or materials to an existing bridge, culvert, stormwater basin or water control structure in order to incorporate later improvements or to reflect new standards, criteria or needs not considered in the original design and construction.

(f) "Secretary" means the Secretary of the Department of Natural Resources and Environmental Control.

(g) "Subaqueous lands" means submerged lands and tidelands.

(h) "Submerged lands" means:

(1) Lands lying below the line of mean low tide in the beds of all tidal waters within the boundaries of the State;

(2) Lands lying below the plane of the ordinary high water mark of nontidal rivers, streams, lakes, ponds, bays and inlets within the boundaries of the State as established by law; and

(3) Specific manmade lakes or ponds as designated by the Secretary.

(i) "Tidelands" means lands lying between the line of mean high water and the line of mean low water.

(65 Del. Laws, c. 508 § 2; 68 Del. Laws, c. 76 § 2; 68 Del. Laws, c. 268 § 1; 72 Del. Laws, c. 474 § 1.)

§ 7203 Jurisdiction.

(a) The Secretary shall have jurisdiction over any project involving ungranted subaqueous lands owned by the State, and shall have jurisdiction and authority to convey a fee simple of lesser interest or to grant an easement with respect to all projects involving these lands. All jurisdiction and authority remaining in the State as to subaqueous lands for which leases have been made or may be made is invested in the Secretary.

(b) Owners of private subaqueous lands must obtain a permit from the Department before making any use of such lands which may contribute to the pollution of public waters, infringe upon the rights of the public, infringe upon the rights of other private owners or make connection with public subaqueous lands.

(65 Del. Laws, c. 508 § 2; 68 Del. Laws, c. 76 § 3.)

§ 7204 Ejectment of trespassers.

The Department may eject from any subaqueous lands owned by the State any person, firm or corporation trespassing upon any such lands, including the fixed mooring of floating structures, through appropriate action in the courts of this State.

(65 Del. Laws, c. 508 § 2.)

§ 7205 Permits required.

(a) No person shall deposit material upon or remove or extract materials from, or construct, modify, repair or reconstruct, or occupy any structure or facility upon submerged lands or tidelands without first having obtained a permit, lease or letter of approval from the Department. Such permit, lease or letter of approval, if granted, may include reasonable conditions required in the judgment of the Department to protect the interests of the public. The Department may adopt regulations setting fees for such permits. If it is determined that granting the permit, lease or approval will result in loss to the public of a substantial resource, the permittee may be required to take measures which will offset or mitigate the loss. This section shall not apply to any repairs or structural replacements which are above the mean low tide and which do not increase any dimensions or change the use of the structure.

(b) The Secretary shall annually prepare a schedule of fees for permits issued pursuant to this section and submit the same as part of the Department's annual operating budget proposal.

(c) The Secretary may waive any provision of the regulations adopted pursuant to this chapter when warranted under the following circumstances:

(1) Life-threatening emergencies.

(2) Actions required for public safety for which sufficient time is not available to follow the regulations.

(3) When imminent or catastrophic damage or loss of major infrastructure is likely if all provisions of the regulations are adhered to.

(4) Where the authority of the Department under this chapter overlaps with another statute, including but not limited to shellfish grounds (Chapter 19 of this title), wetlands (Chapter 66 of this title) or beach preservation (Chapter 68 of this title) provided that the following criteria are met:

a. If, in the opinion of the Secretary, equal environmental impact review and regulation of the activity would be provided by either statute; and

b. Waiver of these regulations would not be contrary to the purposes of this chapter.

(d) The Secretary may issue an after-the-fact permit, lease, letter of approval or waiver in those cases where an activity has occurred without first obtaining the required permit, lease, letter of approval or waiver. The determination of whether or not to issue an after-the-fact permit, lease, letter of approval or waiver shall be consistent with the purposes and provisions of this chapter. The applicant receiving the after-the-fact permit, lease, letter of approval, or waiver will be responsible for paying any associated processing fee and lease fee and the Secretary may assess a penalty in accordance with § 6005 of this title.

(65 Del. Laws, c. 508 § 2; 68 Del. Laws, c. 86 § 9; 78 Del. Laws, c. 183 § 3; 79 Del. Laws, c. 147 § 3.)

§ 7206 Easements and transfers of title.

(a) Pursuant to this chapter, the Secretary shall have exclusive jurisdiction and authority over all projects to convey a fee simple or lesser interest or to grant easements with respect to subaqueous lands belonging to the State. All jurisdiction and authority to convey a fee simple or lesser interest or to grant easements over subaqueous lands as to which grants have been made or may be made is vested in the Secretary. All leases for shellfish grounds shall be made pursuant to Chapter 19 of this title.

(b) All members of the General Assembly shall be given 2 weeks' notice of intent to convey any interest in subaqueous lands.

(65 Del. Laws, c. 508 § 2; 68 Del. Laws, c. 76 § 4.)

§ 7207 Application.

(a) Each applicant for a lease, permit or grant, pursuant to this chapter, shall file with the Secretary a request stating in detail the type of lease, permit or grant desired, showing the location of the area and containing specifications for any proposed construction.

(b) The Secretary may require such additional information as will enable him or her to consider the application properly. He or she may require an environmental assessment to be provided if he or she determines that the proposed use or activity may have a substantial adverse effect upon the environment.

(c) The Secretary may request of any state agency a report or recommendation concerning any application before the Department.

(d) Upon receipt of an application in proper form, the Secretary shall advertise in a daily newspaper of statewide circulation and in a newspaper of general circulation in the county in which the activity is proposed:

(1) The fact that the application has been received;

(2) A brief description of the nature of the application; and

(3) A statement that a public hearing may be requested by any interested person who offers a meritorious objection to the application.

(e) If the Secretary decides that an objection is not meritorious, he or she shall then provide a written response so stating his or her reasons.

(65 Del. Laws, c. 508 § 2; 70 Del. Laws, c. 186 § 1.)

§ 7208 Hearing.

(a) A public hearing shall be held:

(1) If a grant or lease for a period of time in excess of 20 years is sought; or

(2) If the Secretary determines that a public hearing is in the public interest; or

(3) If a written meritorious objection to the application is received within 20 days of the advertisement of the public notice for the

application. A public hearing request shall be deemed meritorious if it exhibits a familiarity with the application and provides a reasoned statement of the action's probable impact.

(b) Notice of the public hearing shall be sent to the applicant, to immediately adjacent property owners and to any interested person who requests it, and such notice shall be published in the same manner as the application.

(c) The Secretary shall make a written statement of reasons to be placed with the application if a public hearing is not held.

(65 Del. Laws, c. 508 § 2; 69 Del. Laws, c. 50 § 1; 72 Del. Laws, c. 474 § 2.)

§ 7209 Published notice.

(a) The published notice shall contain a general description of the location of the property and a statement of the nature of the lease, permit or grant sought to be acquired.

(b) If the advertisement is also used to provide notice of a public hearing, it shall also give the time, date and place of the hearing, which shall occur not less than 20 days following the publication of the advertisement.

(65 Del. Laws, c. 508 § 2.)

§ 7210 Appeals to Environmental Appeals Board.

Any person whose interest is substantially affected by any action of the Secretary or of the Department taken pursuant to this chapter, may appeal to the Environmental Appeals Board as established by § 6007 of this title within 20 days after the announcement of the decision. Such appeal shall be governed by §§ 6008 and 6009 of this title. There shall be no appeal of a decision by the Secretary to deny a permit on any matter involving state-owned subaqueous lands.

(65 Del. Laws, c. 508 § 2; 68 Del. Laws, c. 76 § 5.)

§ 7211 Costs, deposits and fees.

(a) All costs for the proceedings under this chapter shall be assessed against the applicant.

(b) The Secretary may require a deposit at the time of the application or at any other time to insure the payment of the costs.

(c) All costs and deposits and all fees collected under this chapter are hereby appropriated to the Department to carry out the purposes of this chapter.

(65 Del. Laws, c. 508 § 2.)

§ 7212 Rules; delegation.

The Secretary may after public hearing, adopt, amend, modify or repeal rules or regulations to effectuate the policy and purposes of this chapter. The Secretary may delegate his or her powers or duties under this chapter, except the power to convey or to lease or grant easements in subaqueous lands.

(65 Del. Laws, c. 508 § 2; 70 Del. Laws, c. 186 § 1.)

§ 7213 Existing rights.

This chapter shall not change the law of this State relating to existing property, riparian or other rights of this State or other persons in submerged, tidelands or filled lands.

(65 Del. Laws, c. 508 § 2.)

§ 7214 Violations; enforcement; civil and criminal penalties.

(a) Whoever violates this chapter or any rule or regulation duly promulgated, or any condition of a permit issued pursuant to § 7205 of this title, or any order of the Secretary, shall be subject to enforcement in accordance with § 6005 or § 6013, or both, of this title.

(b)-(d) [Repealed.]

(65 Del. Laws, c. 508 § 2; 79 Del. Laws, c. 147 § 3; 80 Del. Laws, c. 391 § 2.)

§ 7215 Cease and desist order.

The Secretary shall have the power to issue an order to any person violating any rule or regulation or permit condition or lease condition or provision of this chapter to cease and desist from such violation. Any cease and desist order issued pursuant to this section shall expire:

(1) After 30 days of its issuance;

(2) Upon withdrawal of said order by the Secretary; or

(3) When the order is superseded by an injunction, whichever occurs first.

(65 Del. Laws, c. 508 § 2.)

§ 7216 Interference with Department personnel.

No person shall obstruct, hinder, delay or interfere with, by force or otherwise, the performance by Department personnel of any duty under this chapter, or any rule or regulation or order or permit or decision, promulgated or issued thereunder.

(65 Del. Laws, c. 508 § 2.)

§ 7217 Special exemptions.

(a) This chapter shall not apply to any work performed by any state, county, municipal government or conservation district, or their

designated contractor, when that work occurs in nontidal submerged lands in the Delaware Atlantic Coastal Plain Province with a contributing drainage area of less than 800 acres.

(b) This chapter shall not apply to maintenance, reconstruction or retrofitting work performed by or with the assistance of any state, county, municipal government or conservation district when that work occurs in any nontidal submerged lands. Such maintenance, reconstruction or retrofitting work shall comply with the standards and specifications associated with best management practices in the Delaware Erosion and Sediment Control Handbook, 1989 or as revised (68 Del. Laws, c. 268, § 2).

(c) This chapter shall not apply to any work in agricultural drainage ditches created from nonsubaqueous lands that are designed according to reasonable drainage standards, when performed by or with the assistance of any state, county, municipal government or conservation district.

(d) This chapter shall not apply to ponds constructed in uplands when those ponds are constructed by or with the assistance of any state, county, municipal government or conservation district.

(e) This chapter shall not apply to stormwater ponds that are permitted in accordance with Chapter 40 of this title or to farm ponds or other ponds whose only source of hydrology is groundwater.

(f) The lease provisions of this chapter shall not apply to any wastewater conveyance or treatment works system owned or operated by the State or any county or municipal government with the State.

(g) This chapter shall not apply to subaqueous archaeological resources and unmarked human burials and human skeletal remains, which are regulated by the Department of State, Division of Historical and Cultural Affairs pursuant to Chapters 53 and 54 of this title.

(68 Del. Laws, c. 268 § 2; 72 Del. Laws, c. 474 § 4; 75 Del. Laws, c. 153 § 12.)

Part VII
Natural Resources
Chapter 73
NATURAL AREAS PRESERVATION SYSTEM

§ 7301 Statement of policy.

(a) Because of the continuing growth of the population and the development of the economy of the State, it is necessary and desirable that areas of unusual natural significance be set aside and preserved for the benefit of present and future generations before they have been destroyed, for once destroyed they cannot be wholly restored. Such areas are irreplaceable as laboratories for scientific research, as reservoirs of natural materials — not all of the uses of which are now known, as habitats for plant and animal species and biotic communities whose diversity enriches the meaning and enjoyment of human life, as living museums where people may observe natural biotic and environmental systems of the earth and the interdependence of all forms of life, and as reminders of the vital dependence of the health of the human community upon the health of the natural communities of which it is an inseparable part.

(b) It is essential to the people of the State that they retain the opportunities to maintain close contact with such living communities and environmental systems of the earth and to benefit from the scientific, educational, esthetic, recreational and cultural values they possess. It is therefore the public policy of the State that a registry of such areas be established and maintained by the Department of Natural Resources and Environmental Control, that such areas be acquired and preserved by the State, and that other agencies, organizations and individuals, both public and private, be encouraged to set aside such areas for the common benefit of the people of present and future generations.

(61 Del. Laws, c. 212 § 2.)

§ 7302 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

(1) "Articles of dedication" shall mean the writing by which any estate, interest or right in an area is formally dedicated as permitted by § 7306 of this title.

(2) "Council" shall mean the Delaware Natural Areas Advisory Council.

(3) "Dedicate" and "dedication" shall mean the transfer to the Department of Natural Resources and Environmental Control, for and on behalf of the State, of an estate, interest or right in an area in any manner permitted by § 7306 of this title.

(4) "Department" shall mean the Department of Natural Resources and Environmental Control.

(5) "Natural area" shall mean an area of land or water, or of both land and water, whether in public or private ownership, which either retains or has reestablished its natural character (although it need not be undisturbed), or has unusual flora or fauna, or has biotic, geological, scenic or archaeological features of scientific or educational value.

(6) "Nature preserve" shall mean a natural area, any estate, interest or right in which has been formally dedicated under this chapter.

(7) "Secretary" shall mean the Secretary of the Department of Natural Resources and Environmental Control.

(8) "System" shall mean the nature preserves held under this chapter.

(61 Del. Laws, c. 212 § 2.)

§ 7303 Statement of purpose.

In order to secure for the people of the State of present and future generations the benefits of an enduring resource of areas having 1 or more of the characteristics referred to in § 7302(5) of this title, the State, acting through the Department, shall acquire and hold in trust for the benefit of the people an adequate system of nature preserves for the following uses and purposes:

(1) For scientific research in such fields as ecology, taxonomy, genetics, forestry, pharmacology, agriculture, soil science, geology, conservation, archaeology and other subjects;

(2) For the teaching of biology, natural history, ecology, geology, conservation and other subjects;

(3) As habitats for plant and animal species and communities and other natural objects;

(4) As reservoirs of natural materials;

(5) As places of natural interest and beauty;

(6) As living illustrations of our natural heritage wherein one may observe and experience natural biotic and environmental systems of the earth and their processes;

(7) To promote understanding and appreciation of the scientific, educational, esthetic, recreational and cultural values of such areas by the people of the State;

(8) For the preservation and protection of nature preserves against modification or encroachment resulting from occupation, development or other use which would destroy their natural or esthetic conditions.

In order to give recognition to natural areas, the Department shall establish and maintain a registry of natural areas of unusual

significance, but no area so registered shall be a nature preserve unless and until it shall have been dedicated as provided for in § 7306 of this title.

(61 Del. Laws, c. 212 § 2.)

§ 7304 Designation of Office of Nature Preserves.

There is hereby designated within the Department an Office of Nature Preserves, which shall administer for the Department this chapter.

(61 Del. Laws, c. 212 § 2.)

§ 7305 Delaware Natural Areas Advisory Council.

(a) There is hereby created a Delaware Natural Areas Advisory Council to advise the Secretary of the Department on the administration of nature preserves and the preservation of natural areas.

(b) The Council shall have 8 members. The Secretary of the Department of Natural Resources and Environmental Control shall be an ex officio member of the Council, with a voice in its deliberations, but without the power to vote. The other members, appointed by the Governor of the State, with the advice and consent of the Senate, shall be persons who have been active or have demonstrated an interest in preserving natural areas, and shall include members of public and private educational organizations, conservation organizations, industry leaders active in environmental matters, sport hunting organizations, and sport fishing organizations and shall not include more than 4 persons who belong to the same political party. Council members shall serve for a period of 4 years, except that members initially appointed to the Council shall serve as follows: Two members shall serve for 1 year; 2 members shall serve for 2 years; 2 members shall serve for 3 years; and, 2 persons shall serve for 4 years.

(c) The Department shall furnish clerical, technical, legal and other services required by the Council in the performance of its official duties.

(d) Members of the Council shall receive no compensation but may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties. The Council shall hold at least 1 regular meeting in each quarter of each calendar year and shall keep a record of its proceedings, which shall be open to the public for inspection.

(e) The Council shall:

(1) Review and make recommendations on the Department's criteria for acquisition and dedication of nature preserves;

(2) Review and make recommendations regarding inventories and registries of natural areas and nature preserves;

(3) Review and make recommendations on departmental plans for the selection of particular natural areas for state acquisition;

(4) Advise the Secretary on policies, rules and regulations governing the management, protection and use of nature preserves;

(5) Recommend the extent and type of visitation and use to be permitted within each nature preserve;

(6) Advise and consult with the Secretary and departmental employees on preservation matters;

(7) Advise and consult regarding any change from dedicated status of a nature preserve;

(8) Within 10 days of receiving plans from the Department for the selection of particular natural areas for state acquisition, issue written notice to adjacent landowners that such areas are being considered for state acquisition.

(61 Del. Laws, c. 212 § 2; 63 Del. Laws, c. 240 § 1.)

§ 7306 Dedication process.

(a) The Department is authorized and empowered, for and on behalf of the State, to acquire nature preserves by gift, devise, purchase, exchange or any other method of acquiring real property or any estate, interest or right therein, provided that such acquisition shall not be made through the exercise of the power of eminent domain, and further provided that any interest owned by the State or by any subdivision thereof may be dedicated only by voluntary act of the agency having jurisdiction thereof. The Department may acquire the fee simple interest in an area or any 1 or more lesser estates, interests and rights therein, including (without limitation upon the generality of the foregoing by reason of specification) a leasehold estate, an easement either appurtenant or in gross and either granting the State specified rights of use or denying to the grantor specified rights of use or both, a license, a covenant, and other contractual rights. A nature preserve may be acquired voluntarily for such consideration as the Department deems advisable or without consideration.

(b) The Secretary of the Department, upon the advice and concurrence of the Council, shall accept natural areas by articles of dedication or gift. A nature preserve is established when articles of dedication have been filed by or at the direction of the owner of land, or a governmental agency having ownership or control thereof, in the office of the county recorder of the county in which the land is located.

(c) Articles of dedication shall be executed by the owner of the land in the same manner and with the same effect as a conveyance of an interest in land and shall be irrevocable except as provided in this section. The county recorder may not accept articles of dedication for recording unless they contain terms restricting the use of the land which adequately provide for its preservation and protection against modification or encroachment resulting from occupation, development or other use which would destroy its natural or esthetic conditions for 1 or more of the uses and purposes set forth in this section.

(d) Articles of dedication may contain provisions for the management, custody and transfer of land, provisions defining the rights of the owner or operating agency and the Department, and such other provisions as may be necessary or advisable to carry out the uses and purposes for which the land is dedicated. They may contain conditions under which the owner and the Department may agree to rescind the articles.

(e) The Department may make or accept amendments of any articles of dedication upon terms and conditions that will not destroy the

natural or esthetic condition of a preserve. If the fee simple interest in the area is not held by the State, no amendment shall be made without the written consent of the owner. Each amendment shall be recorded in the same manner as the articles of dedication.

(61 Del. Laws, c. 212 § 2.)

§ 7307 Additional powers and duties of Department.

In furtherance of the purposes of this chapter and in implementation of the powers and duties elsewhere provided in this chapter, the Department shall have the following additional powers and duties:

(1) To formulate policies for the selection, acquisition, use, management and protection of nature preserves;

(2) To formulate policies for the selection of areas suitable for registration under this chapter;

(3) To formulate policies for the dedication of areas as nature preserves;

(4) To determine, supervise and control the management of nature preserves and to make, publish and amend from time to time rules and regulations necessary or advisable for the use and protection of nature preserves;

(5) To encourage and recommend the dedication of areas as nature preserves;

(6) To make surveys and maintain registries and records of unique natural areas within the State;

(7) To carry on interpretive programs and publish and disseminate information pertaining to nature preserves and other areas within the State; and

(8) To promote and assist in the establishment, restoration and protection of, and advise in the management of, natural areas and other areas of educational or scientific value and otherwise to foster and aid in the establishment, restoration and preservation of natural conditions within the State elsewhere than in the system.

(61 Del. Laws, c. 212 § 2.)

§ 7308 Change in status from that of dedicated nature preserve.

Nature preserves dedicated under § 7306 of this title are to be held in trust, for the uses and purposes set forth for the benefit of the people of the State of present and future generations. They shall be managed and protected in the manner approved by, and subject to, the rules and regulations established by the Department. They shall not be taken for any other use except another public use after a finding by the Department of the existence of an imperative and unavoidable public necessity for such other public use and with the approval of the Governor after consultation with the Advisory Council, and by act of the General Assembly not less than 6 months from the date of the Governor's approval. Except as may otherwise be provided by the articles of dedication, the Department may grant, upon such terms and conditions as it may determine, an estate, interest or right in, or dispose of, a nature preserve, but only after a finding by the Department of the existence of an imperative and unavoidable public necessity for such grant of disposition, and with the approval of the Governor after consultation with the Advisory Council, and by act of the General Assembly not less than 6 months from the date of the Governor's approval.

(61 Del. Laws, c. 212 § 2.)

§ 7309 Public participation.

Before the Department makes any finding of the existence of an imperative and unavoidable public necessity, or grants any estate, interest or right in a nature preserve or disposes of a nature preserve or of any estate, interest or right therein, as provided in § 7308 of this title, it shall give notice of such proposed action and an opportunity for any person to be heard at a public hearing in the county in which the preserve is located. The public hearing shall be published at least once in newspapers with a statewide circulation and general circulation in the county in which the nature preserve is located. The notice shall set forth the substance of the proposed action and describe, with or without legal description, the nature preserve affected, and shall specify a place and time not less than 30 days after such publication for a public hearing before the Department on such proposed action. All persons desiring to be heard shall have a reasonable opportunity to be heard prior to action by the Department on such proposal.

(61 Del. Laws, c. 212 § 2.)

§ 7310 Enforcement.

Enforcement of this chapter, including enforcement of the articles of dedication, shall be the responsibility of the Department.

(61 Del. Laws, c. 212 § 2.)

§ 7311 Transfer of natural areas.

All units, departments, agencies and instrumentalities of the State, including (without limitation upon the generality of the foregoing by reason of specification) counties, municipalities, schools, colleges and universities, are empowered and urged to dedicate as nature preserves suitable areas or portions of areas within their jurisdiction.

(61 Del. Laws, c. 212 § 2.)

§ 7312 Additional protection unimpaired.

Nothing contained in this chapter shall be construed as interfering with the purposes stated in the establishment of or pertaining to any state or local park, preserve, wildlife refuge or other area or the proper management and development thereof, except that any agency administering an area dedicated as a nature preserve under this chapter shall be responsible for preserving the character of the area in

accordance with the articles of dedication and the applicable rules and regulations with respect thereto established by the Department from time to time. Neither the dedication of an area as a nature preserve nor any action taken by the Department under any of the provisions of this chapter shall void or replace any protective status under law which the area would have were it not a nature preserve, and the protective provisions of this chapter shall be supplemental thereto.

(61 Del. Laws, c. 212 § 2.)

Part VII
Natural Resources
Chapter 74
DELAWARE UNDERGROUND STORAGE TANK ACT
Subchapter I
General Provisions

§ 7401 Declaration of purpose.

The General Assembly finds and declares that the storage of petroleum products and other hazardous liquids in underground storage tanks is emerging as a major cause of groundwater contamination in the State; that the State's groundwater resources are vital to the population and economy of the State; that millions of gallons of gasoline and other hazardous substances are stored in underground storage tanks; that leaks of stored substances are occurring in a significant number of these tanks due to corrosion, structural defect and improper installation; that leaks are often difficult to detect early because of insufficient product inventory or other control systems; that it is necessary to provide for more stringent control of the installation, operation, retrofitting and abandonment of underground storage tanks to prevent leaks, and where leaks should occur, detect them at the earliest possible stage and thus minimize further degradation of groundwater; and that responsible parties should be required and encouraged to remediate, take corrective action, and clean up released regulated substances, and contaminated soils and groundwater, on or about the facilities with which they are associated; and that the costs of such remediation and clean up should be fairly apportioned if more than 1 responsible party is liable.

(65 Del. Laws, c. 161 § 1; 79 Del. Laws, c. 440 § 1.)

§ 7402 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Abandoned storage system" means a storage system which:

a. Is not intended to be returned to service;

b. Has been out of service for over 3 years; or

c. Has been rendered permanently unfit for use.

(2) "Ancillary equipment" means any device including, but not limited to, such devices as piping, fittings, flanges, valves and pumps, that are used to distribute, meter or control the flow of petroleum or hazardous substances from an underground storage tank.

(3) "Corrective action" means the sequence of actions, or process, that includes confirming a release, site assessment, interim remedial action, remedial action, monitoring, and termination of remedial action.

(4) "Department" means the Department of Natural Resources and Environmental Control.

(5) "Existing tank" means a tank for which installation began prior to July 12, 1985.

(6) "Facility" means any location or part thereof that contains or had previously contained 1 or more underground storage tanks.

(7) "Fiduciary" means:

a. A person acting for the benefit of another party as a bona fide:

1. Trustee, executor, administrator, custodian, guardian of estates or guardian ad litem, receiver, conservator, committee of estates of incapacitated persons, or personal representative;

2. Trustee (including a successor to a trustee) under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender; or

3. Representative in any other capacity that the Administrator, after providing public notice, determines to be similar to the capacities described in paragraphs (7)a.1. and 2. of this section above.

b. "Fiduciary" does not mean:

1. A person that is acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, 1 or more estate plans or because of the incapacity of a natural person; or

2. A person that acquires ownership or control of a facility with the objective purpose of avoiding liability of the person or of any other person.

(8) "Fiduciary capacity" means the capacity of a person in holding title to a facility, or otherwise having control of or an interest in the facility, pursuant to the exercise of the responsibilities of the person as a fiduciary.

(9) "Foreclosure" or "foreclose" means:

a. Acquiring, and to acquire, a facility through:

1. Purchase at sale under a judgment or decree, power of sale, or nonjudicial foreclosure sale;
2. A deed in lieu of foreclosure, or similar conveyance from a trustee; or
3. Repossession.

b. If the facility was security for an extension of credit previously contracted:
1. Conveyance pursuant to an extension of credit previously contracted, including the termination of a lease agreement; or
2. Any other formal or informal manner by which the person acquires, for subsequent disposition, title to or possession of a facility in order to protect the security interest of the person.

(10) "Fund" means the Delaware Underground Petroleum Storage Tank Response Fund.

(11) "Heating fuels" means a type of fuel oil that is 1 of 8 technical grades. These grades are: No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, No. 6 residual and substitutes such as kerosene or diesel when used for heating purposes.

(12) "Lender" means:

a. An insured depository institution (as defined in the Federal Deposit Insurance Act, 12 U.S.C. § 1813(c)(2)) or an insured credit union (as defined in the Federal Credit Union Act, 12 U.S.C. § 1752(7)) authorized by law to do business in this State;

b. A bank or association chartered under the Farm Credit Act of 1971 (12 U.S.C. § 2001 et seq., as amended) authorized by law to do business in this State;

c. A leasing or trust company that is an affiliate of an insured depository institution authorized to do business in this State;

d. Any person (including a successor or assignee of any such person) that makes a bona fide extension of credit to or takes or acquires a security interest from a nonaffiliated person;

e. Any legal entity authorized, to buy or sell loans or interests in loans in a bona fide manner in this State;

f. A person that insures or guarantees against a default in the repayment of an extension of credit, or acts as a surety with respect to an extension of credit, to a nonaffiliated person; and

g. A person that provides title insurance and that acquires a facility as a result of assignment or conveyance in the course of underwriting claims and claims settlement.

(13) "New tank" or "facility" means a tank or facility for which the installation began on or after July 12, 1985.

(14) "Operator" means any person in control of, or having responsibility for, the daily operation of the underground storage tank system.

(15) "Out of service" means a storage system which:

a. Is not in use; that is, which does not have regulated substances added to or withdrawn from the storage system; and

b. Is intended to be placed in service.

(16) "Owner" means:

a. In the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use or dispensing of regulated substances; and

b. In the case of any underground storage tank in use before November 8, 1984, but no longer in service on November 8, 1984, any person who owned such tank immediately before the discontinuation of its use.

c. "Owner" does not mean any person who, without participating in the management of an underground storage tank system, and without otherwise being engaged in petroleum production, refining, or marketing, holds indicia of ownership in an underground storage tank system primarily to protect the person's security interest in it or is a fiduciary which has a legal title to or manages any property for purposes of administering an estate or trust of which such property is part. In the case of foreclosure, such person shall not be deemed the owner of the underground storage system if the person:

1. Provides notification to the Department, using a form provided by the Department, within 30 days of the filing of the complaint for foreclosure, for any real property known by the person to contain an underground storage tank, or for any real property which contains a registered underground storage tank. This notification is required for in-service or out-of-service underground storage tanks; and

2. Empties all known and registered underground storage tanks, located on the foreclosed real property, of regulated substances, within 60 days after confirmation of foreclosure. This emptying is not required if an operator undertakes operational responsibility for the foreclosed real property during this 60-day period. An underground storage tank is empty when all regulated substances have been removed using commonly employed practices, so that no more than 1 inch or 2.5 centimeters of residue, or 0.3 percent by weight of the total capacity of the underground storage tank system, remains in the underground storage tank system.

d. For purposes of this paragraph (16):

1. The term "participate in management" means actually participating in the management or operational affairs of an underground storage tank or facility, but does not include merely having the capacity to influence, or the unexercised right to control, an underground storage tank or facility operations.

2. A person that is a lender or fiduciary and that holds indicia of ownership primarily to protect a security interest in an underground storage tank or facility shall be considered to participate in management only if, while the borrower is still in possession of the underground storage tank or facility encumbered by the security interest, the person:

A. Exercises decision-making control over the environmental compliance related to the underground storage tank or facility, such that the person has undertaken responsibility for the hazardous substance handling or disposal practices related to the underground storage tank or facility; or

B. Exercises control at a level comparable to that of a manager of the underground storage tank or facility, such that the person has assumed or manifested responsibility for the overall management of the underground storage tank or facility encompassing day-to-day decision making with respect to environmental compliance, or over all or substantially all of the operational functions (as distinguished from financial or administrative functions) of the underground storage tank or facility other than the function of environmental compliance;

3. The term "participate in management" does not include performing an act or failing to act prior to the time at which a security interest is created in an underground storage tank or facility.

4. The term "participate in management" does not include:

A. Holding a security interest or abandoning or releasing a security interest;

B. Including in the terms of an extension of credit, or in a contract or security agreement relating to the extension, a covenant, warranty, or other term or condition that relates to environmental compliance;

C. Monitoring or enforcing the terms and conditions of the extension of credit or security interest;

D. Monitoring or undertaking 1 or more inspections of the underground storage tank or facility;

E. Requiring a corrective action or other lawful means of addressing the release or threatened release of a hazardous substance in connection with the underground storage tank or facility prior to, during, or on the expiration of the term of the extension of credit;

F. Providing financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of the underground storage tank or facility;

G. Restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of the extension of credit or security interest, exercising forbearance;

H. Exercising other remedies that may be available under applicable law for the breach of a term or condition of the extension of credit or security agreement; or

I. Conducting a corrective action, if the actions do not rise to the level of participating in management (within the meaning of paragraphs (16)d.1. and (16)d.2. of this section).

5. A person who is a lender that did not otherwise participate in the management of a facility as provided in paragraphs (16)d.3. and (16)d.4. of this section shall not be considered to have participated in management, notwithstanding that the person:

A. Forecloses on the property; and

B. After foreclosure, sells, re-leases (in the case of a lease finance transaction), or liquidates the property, maintains business activities, winds up operations, or undertakes corrective actions of this chapter.

e. A fiduciary as described in this section shall not be liable in its personal capacity under this chapter for:

1. Undertaking or directing another person to undertake any other lawful means of addressing a hazardous substance in connection with the facility;

2. Terminating the fiduciary relationship;

3. Including in the terms of the fiduciary agreement a covenant, warranty, or other term or condition that relates to compliance with an environmental law, or monitoring, modifying or enforcing the term or condition;

4. Monitoring or undertaking 1 or more inspections of the facility;

5. Providing financial or other advice or counseling to other parties to the fiduciary relationship, including the settlor or beneficiary;

6. Restructuring, renegotiating, or otherwise altering the terms and conditions of the fiduciary relationship;

7. Administering, as a fiduciary, a facility that was contaminated before the fiduciary relationship began; or

8. Declining to take any of the actions described in paragraphs (16)e.2. through 7. of this section.

f. The liability of a fiduciary under any provision of this chapter for the release or threatened release of a regulated substance at, from, or in connection with a facility held in a fiduciary capacity shall not exceed the assets held in the fiduciary capacity; provided, however, that this limitation shall not apply to the extent that a person is liable under this chapter independently of the person's ownership of a facility as a fiduciary or actions taken in a fiduciary capacity.

g. The exclusion from liability contained in paragraph (16)c. of this section does not limit liability pertaining to the release or threatened release of a regulated substance if negligence of a fiduciary causes a release.

h. Nothing contained in paragraph (16)c. of this section:

1. Affects the rights or immunities or other defenses that are available under this chapter or other law that is applicable to a person subject to this paragraph; or

2. Creates any liability for a person or a private right of action against a fiduciary or any other person.

i. Nothing in paragraph (16)c. of this section applies to a person if the person:

1. Acts in a capacity other than that of a fiduciary or in a beneficiary capacity, and in that capacity, directly or indirectly benefits from a trust or fiduciary relationship; or

2. Is a beneficiary and a fiduciary with respect to the same fiduciary estate and, as a fiduciary, receives benefits that exceed customary or reasonable compensation, and incidental benefits, permitted under other applicable law.

j. Paragraph (16)c. of this section does not preclude a claim under this chapter against:

1. The assets of the estate or trust administered by the fiduciary; or

2. Nonemployee agent or independent contractor retained by a fiduciary.

(17) "Person" means any individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity and the United States government.

(18) "Regulated substance" means:

a. Any substance defined in § 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601(14)); but not including any substances regulated as a hazardous waste under subtitle C of the Resource Conservation and Recovery Act of 1976 as amended [42 U.S.C. § 6921 et seq.];

b. Petroleum, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60° Fahrenheit and 14.7 pounds per square inch absolute).

(19) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing into groundwater, surface water or soils.

(20) "Removal" means the process of removing and disposing of an underground storage tank system, through the use of prescribed techniques for the purging of residues and vapors and removal of the vessel from the ground.

(21) "Responsible party" means any person who:

a. Owns or has a legal or equitable interest in a facility or an underground storage tank;

b. Operates or otherwise controls activities at a facility;

c. At the time of storage of regulated substances in an underground storage tank, operated or otherwise controlled activities at the facility or underground storage tank, or owned or held a legal or equitable interest therein;

d. Arranged for or agreed to the placement of an underground storage tank system by contract, agreement or otherwise;

e. Caused or contributed to a release from an underground storage tank system; or

f. Caused a release as a result of transfer of a regulated substance to or from an underground storage tank system.

(22) "Retrofit" means modification or correction of an underground storage tank system to meet standards contained in regulations promulgated under this chapter through such means as replacement of valves, fill pipes, vents and liquid level monitoring systems, and the installation of overfill protection, transfer spill protection, leak detection and cathodic protection devices; but the term does not include the process of relining an underground tank through application of such materials as epoxy resins, nor does the term include the process of conducting a tightness test to establish the integrity of the tank.

(23) "Secretary" means the Secretary of the Department of Natural Resources and Environmental Control or a duly authorized designee.

(24) "Security interest" means an interest in a petroleum UST or UST system or in a facility or property on which a petroleum UST or UST system is located, created or established for the purpose of securing a loan or other obligation. Security interests include but are not limited to mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, and assignments, if the transaction creates or establishes an interest in an UST or UST system or in the facility or property on which the UST or UST system is located, for the purpose of securing a loan or other obligation.

(25) "State" means the State of Delaware.

(26) "Underground storage tank" means a containment vessel, including underground pipes connected thereto, which is used to contain an accumulation of regulated substances, and the volume of which, including the volume of the underground pipes connected thereto, is 10 per centum or more beneath the surface of the ground. Such term does not include any:

a. Septic tank;

b. Pipeline facility (including gathering lines) regulated under:

1. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1671 et seq.) [transferred to Title 49, Chapter 601 of the United States Code];

2. The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001 et seq.) [transferred to Title 49, Chapter 601 of the United States Code]; or

3. Any intrastate agreement comparable to those acts set forth in paragraphs (26)b.1. and 2. of this section;

c. Surface impoundment, pit, pound, lagoon;

d. Storm water wastewater collection system;

e. Flow-through process tank;

f. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

g. Storage tank situated in an underground area (such as basement, cellar, mineworking drift, shaft or tunnel) if the storage tank is situated upon or above the surface of the floor.

(27) "Underground storage tank system" means an underground storage tank and its associated ancillary equipment and containment system, if any.

(28) "Used-oil" means a petroleum-based synthetic oil used as an engine lubricant, engine oil, motor oil or lubricating oil for use in an internal combustion engine, or a lubricant for motor vehicle transmissions, gears or axles which through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

(65 Del. Laws, c. 161 § 1; 66 Del. Laws, c. 187 § 1; 66 Del. Laws, c. 425 § 1; 68 Del. Laws, c. 363 §§ 1-4; 69 Del. Laws, c. 330 §§ 1, 2; 79 Del. Laws, c. 440 §§ 2-4.)

§ 7403 Referenced standards.

The Department shall use the recommendations and standard procedures of the following organizations in developing the regulations required by this chapter:

(1) National Fire Protection Association (N.F.P.A.);

(2) American Petroleum Institute (A.P.I.);

(3) National Association of Corrosion Engineers (N.A.C.E.);

(4) Underwriters Laboratories (U.L.); and

(5) American Society for Testing and Materials (A.S.T.M.).

Underground storage tanks installed after the enactment of this chapter shall be in accordance with the appropriate standards cited herein and the regulations promulgated by the Department.

(65 Del. Laws, c. 161 § 1.)

§ 7404 Exemptions.

The following classes of tanks are exempt from this chapter with the exception of the application of §§ 7406 and 7409 of this title:

(1) Agricultural and residential tanks of 1,100 gallons or less used for storing motor fuel for noncommercial purposes; and

(2) Tanks containing heating fuels of 1,100 gallons or less which are used for consumptive purposes on the premises where stored.

(65 Del. Laws, c. 161 § 1; 66 Del. Laws, c. 187 § 2; 66 Del. Laws, c. 425 § 2.)

§ 7405 Registration by owner.

(a) Underground storage tank owners shall register the following on forms provided by the Department:

(1) Within 60 days after July 12, 1985, all new underground storage facilities used for storing regulated substances, at least 10 days prior to installation. Notice shall specify the date of installation, location, type of construction, size of tanks to be installed and the type of substance to be stored.

(2) All existing underground storage facilities, used for storing regulated substances, within 180 days of July 12, 1985; provided, however, that existing heating fuel tanks of greater than 1,100 gallon capacity shall be registered within 180 days of July 20, 1988. Notice shall specify, to the extent known, the location, size, type of construction and age of tanks, and the type of substance stored.

(3) All abandoned or nonoperational underground storage tanks taken out of service after January 1, 1974. All underground storage tanks covered by this paragraph must be registered within 9 months of July 12, 1985 (unless the owner knows the tank was subsequently removed from the ground); provided, however, that abandoned or nonoperational heating fuel tanks of greater than 1,100 gallons capacity shall be registered within 180 days of July 20, 1988. Notice shall specify, to the extent known, the date taken out of operation, the location, size, type of construction and age of tank, and type of substance stored, and quantity of regulated substances left stored in such tank on the date taken out of operation.

(b) Within 30 days of July 12, 1985, the Department shall prescribe the form of the notice and the information to be included in the notification under paragraphs (a)(2) and (3) of this section.

(65 Del. Laws, c. 161 § 1; 66 Del. Laws, c. 425 §§ 3, 4.)

§ 7406 Release of substances prohibited; correction of substance release; Department intervention.

(a) No person shall knowingly allow a release from an underground storage tank to continue without taking immediate steps to report the release to the Department.

(b) Responsible parties shall take measures for the prompt control, containment, and removal of the released regulated substances to the satisfaction of the Department.

(c) The Department may assume control of any release situation when it is determined that responsible parties are not responding promptly. However, all liability will remain with the responsible party.

(d) Responsible parties are liable for remediation and corrective action pursuant to subsections (b) and (c) of this section, and the regulations promulgated under this chapter. This remedial liability has attached and shall continue to attach at any time prior to January 1, 2016, and survives subsequent to that date.

(e) Responsible parties who own, owned, operate, or operated, a facility or an underground storage tank located at a facility, on or after

January 1, 2016, shall be liable for remediation and corrective action, in accordance with this chapter and the regulations promulgated under it, for all released regulated substances on or under the facility, or on or under other real property but which originated or emanated from the facility, regardless of whether any responsible party proximately caused any release or not, and regardless of when and how the regulated substances were released. The ownership or operational association with the facility establishes the nexus for liability under this section to attach to these responsible parties.

(1) A responsible party is not liable under this section for remediation and corrective action of and for regulated substances only if the responsible party can establish that the release of the regulated substances was caused solely by:

a. An act of God;

b. An act of war; or

c. An act or omission of a third party other than:

1. An employee or agent of the responsible party; or

2. Any person whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the responsible party, but not including a contractual relationship in connection with the sale or transfer of the facility by or from the responsible party to a third party.

3. This defense applies only when the responsible party asserting the defense has exercised due care with respect to the facility, the foreseeable acts or omissions of the third party, and the foreseeable consequences of those acts or omissions; notwithstanding the foregoing, where the contractual relationship arises in connection with the sale or transfer of the facility by or from the responsible party to a third party, the defense applies if the responsible party asserting the defense has exercised due care with respect to the facility during the period of ownership or operation of the facility by the responsible party, and with respect to the foreseeable acts or omissions of the third party based on the responsible party's knowledge and information at the time of the sale or transfer of the facility.

(2) A responsible party is not liable under this section for remediation and corrective action of and for regulated substances which were released before the time period when the responsible party owned or operated the facility and/or underground storage tank, only if the responsible party had no knowledge or reason to know, at the commencement of the ownership or operation, of any prior release. This paragraph (e)(2) is limited as follows:

a. To establish that the responsible party had no reason to know of any prior release, the responsible party must demonstrate that on or before the date on which the responsible party acquired or began operations at the facility, the responsible party carried out all appropriate inquiries, as provided in paragraph (e)(2)b. of this section, into the previous ownership and operation of the facility in accordance with generally accepted good commercial and customary standards and practices.

b. The procedures of the American Society for Testing and Materials ("ASTM"), including the documents known as "Standard E1527-05" and "Standard E1527-13," entitled "Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process," or the procedures in 40 C.F.R. § 312.20, shall satisfy the requirements of all appropriate inquiries in paragraph (e)(2)a. of this section, but the Secretary may, by regulation, update or augment these 2 alternative methods of satisfying all appropriate inquiries, and may add additional methods of satisfying the requirements of all appropriate inquiries.

c. Notwithstanding this paragraph (e)(2), if the responsible party obtained actual knowledge of any current or prior release or threatened release of regulated substances at the facility when the responsible party owned or operated the facility and then subsequently transferred ownership or operation of the facility to another person without disclosing this knowledge, the responsible party shall be treated as liable under this subsection (e) and no defense under this paragraph (e)(2) shall be available to the responsible party.

d. Nothing in this subsection (e) shall affect or diminish the liability under this chapter of a responsible party who, by any act or omission, caused or contributed to the release of regulated substances which is the subject of the action relating to the underground storage tank or facility.

(f) Subsections (g), (h), (i), and (j) of this section apply to each and every responsible party, regardless of whether the remedial liability arose or attached, before or after January 1, 2016.

(g) The remedial liability of responsible parties is strict liability, joint and several.

(h) The remedial liability of responsible parties includes a right of contribution. In resolving contribution claims, the Superior Court may allocate costs among the responsible parties using such principles of fairness and justice as the Superior Court deems appropriate.

(i) The Department may assume control of any release situation when responsible parties are not responding promptly or effectively for the control, containment, and removal of released regulated substances. Control of any release situation by the Department includes without limitation the entry by the Department upon the facility and any other real property, public or private, on or under which the released regulated substances are present, to install water treatment on contaminated drinking water systems, vent indoor air contaminants, remove and remediate regulated substances and substrate from the subsurface, remove or close in place leaking underground storage tanks, investigate the extent of the release through environmental sampling, undertake corrective action, and take any other such action to control, contain, and remove the released regulated substances. The Department, its contractors and agents, shall not be deemed to be responsible parties based on any actions they may take in assuming control of a release situation.

(j) The Department may file an action in Superior Court against any responsible party, for cost recovery and for reimbursement of funds

expended, for corrective action, in control and remediation of any release situation, and activities associated with underground storage tank removals and closures in place. Any cost recovery and reimbursement collected by the Department shall be credited to and expended by the Department for control of underground storage tank releases and to support the purposes of this chapter. A responsible party shall have an affirmative defense to a cost recovery action under this section by showing that the responsible party was responding promptly and effectively for the control, containment, and removal of released regulated substances at the time that the Department assumed control of the release situation.

(65 Del. Laws, c. 161 § 1; 79 Del. Laws, c. 440 § 5.)

§ 7407 Release detection, prevention and correction regulations.

(a) The Department, after notice and opportunity for public comment, and within 12 months after July 12, 1985, shall promulgate release detection, prevention and correction regulations applicable to underground storage tanks, as may be necessary to protect human health and the environment.

(b) In promulgating regulations under this section, the Department shall take into consideration factors which affect tank integrity, including, but not limited to, tank location, type and age, soil conditions, hydrogeology, compatibility of the stored substances and the materials of which the tank is constructed, current industry recommended practices, national consensus codes and the impact of the regulations on the regulated community. The Department shall distinguish in such standards between requirements appropriate for new tanks, for tanks in existence on the date of promulgation of the standards and for abandoned tanks. The Department shall require permits for certain classes of tanks or for tanks located in certain environmentally sensitive areas where such a permit system would lead to better management of groundwater resources.

(c) The Department's regulations shall, at a minimum, include the following provisions:

(1) A requirement that a product inventory or other such control system, adequate to identify releases from underground storage tanks, be maintained;

(2) Procedures to follow when inventory or other such control system records indicate an abnormal loss or gain which is not explainable by spillage, temperature verifications, or other known causes;

(3) A requirement that appropriate corrective action be taken in response to a release from an underground storage tank as may be necessary to protect human health and the environment;

(4) A requirement to maintain records documenting actions taken in accordance with paragraphs (c)(1)-(3) of this section;

(5) A requirement for an enforcement program; and

(6) A requirement for standards that will ensure against any future release from an underground storage tank being closed or otherwise taken out of operation.

(d) All underground storage tank system fill lines shall be clearly marked to indicate the size of the tank and the type of regulated substances stored, within 180 days of July 20, 1987; as provided in regulations established under this chapter.

(65 Del. Laws, c. 161 § 1; 66 Del. Laws, c. 425 § 5.)

§ 7408 Inspection and monitoring.

(a) For the purposes of developing or assisting in the development of any regulation or enforcing this chapter, any owner or operator of any underground storage tank, and any owner of a facility, shall, upon the request of any duly designated officer or employee of the State, furnish information relating to such tanks or contents and permit such person at all reasonable times and in accordance with § 6024 of this title, to have access to, and to copy all records relating to such tanks and to conduct such monitoring as such officer or employee deems necessary. For the purposes of developing or assisting in the development of any regulation or enforcing this chapter, such officer or employee is authorized:

(1) Designate the data which such owner or operator believes is entitled to protection under Delaware's Freedom of Information Act [Chapter 100 of Title 29]; and

(2) To inspect and obtain samples from any person of such regulated substances and to conduct monitoring of the tanks, contents or surrounding soils. Each such inspection shall be commenced and completed with reasonable promptness.

(b) In submitting data under this chapter, a person required to provide such data may:

(1) Designate the data which such owner or operator believes is entitled to protection under Delaware's Freedom of Information Act [Chapter 100 of Title 29]; and

(2) Submit such designated data separately from other data submitted under this chapter.

(c) The Department, its contractors and agents, may enter a facility, at reasonable times, upon giving the owner, operator, or real property owner, verbal notice, to investigate if a release has occurred from an underground storage tank system. This includes but is not limited to performing release detection activities as well as sampling soils and groundwater to evaluate whether a release of a regulated substance has occurred.

(d) The Department, its contractors and agents, may enter a facility, at reasonable times, upon giving the owner, operator, or real property owner, written notice, to remove regulated substances from underground storage tanks that are suspected of leaking, or that have been out of service for longer than 12 months, to perform sampling of soil and groundwater to determine the nature and extent of a confirmed release, to determine the need for corrective action, and to perform corrective action.

(e) The Department is authorized to petition the Superior Court for an order for access to real property, to investigate the possibility of underground migration of released regulated substances, from an underground storage tank or facility, to the real property, to control or contain released regulated substances that may be on the real property, and to undertake corrective action on the real property. The Superior Court shall schedule a hearing on the petition, giving due consideration to the immediacy of the facts presented in the petition. The Department shall give the owners of record of the real property notice of the hearing on the petition at least 10 days before the hearing, by hand delivery, by certified U.S. mail to the real property owner's last known address, or by leaving the notice at the real property. The notice shall be in writing and shall contain a copy of the petition, a description of the real property to be accessed, the actions proposed and expected to be taken by the Department, and the date, time and location of the hearing. For good cause shown, the Superior Court shall grant the petition and order access to the real property in furtherance of the purpose of this chapter and for protection of the environment, for specified actions and goals, and on such terms and conditions, as may be supported by the facts and circumstances presented. This section shall not be construed as impairing in any way the authority of the Department and real property owners from entering into voluntary agreements for access at any time. The liability of responsible parties for costs incurred by the Department includes costs incurred by the Department on real property covered by an order issued under this section.

(f) If the Department determines that an emergency exists that requires immediate action to protect public health, safety, welfare, or the environment, and the owner, operator, or property owner is unwilling, unavailable, or unable to take such immediate action, the Department is authorized to enter upon a facility and adjacent or related real property and take any immediate action necessary to abate the emergency.

(65 Del. Laws, c. 161 § 1; 79 Del. Laws, c. 440 § 6.)

§ 7409 Delaware Underground Petroleum Storage Tank Response Fund.

(a) The Delaware Underground Petroleum Storage Tank Response Fund is hereby established as a nonlapsing revolving fund to be used by the Department for the investigation and remediation of petroleum underground storage tank release. All expenses, costs and judgments recovered pursuant to this section, and all moneys received as reimbursement in accordance with applicable provisions of federal law, shall be and hereby are appropriated to the Fund. Interest earned on the Fund shall be credited to the Fund. No moneys shall be credited to the balance in the Fund until they have been received by the Fund. The Fund shall be established in the accounts of the State Treasurer and any funds remaining in such Fund at the end of the fiscal year shall not revert to the General Fund but shall remain in the Fund.

The Fund shall be administered by the Department of Natural Resources and Environmental Control consistent with the provisions of Subtitle I of the federal Solid Waste Disposal Act (P.L. 98-616, § 9001 et seq.) [42 U.S.C. § 6991 et seq.]. The Fund shall be maintained in a separate account. An accounting of moneys received and disbursed shall be kept, and furnished upon request to the Governor or the General Assembly.

(b) Disbursements from the Fund may be made only in accordance with regulations promulgated by the Department and for the following purposes:

(1) Costs incurred in investigation and assessment of a site otherwise eligible hereunder.

(2) Costs associated with restoration or replacement of potable water supplies.

(3) Costs incurred in taking corrective action for any release of petroleum into the environment from an underground storage tank which are in excess of the minimum financial responsibility requirement imposed up to $1,000,000 per occurrence per facility.

(4) Costs incurred in compensating third parties for bodily injury and property damage caused by release of petroleum into the environment from an underground storage tank, up to $1,000,000 per occurrence per facility.

(5) Costs incurred in taking immediate corrective action to contain or mitigate the effects of any release of petroleum into the environment from an underground storage tank if such action is necessary, in the judgment of the Department, to protect human health and the environment.

(6) Costs associated with maintenance and monitoring of contamination sites.

(7) Costs incurred in inspection and supervision of cleanup activities.

(8) The "cost share" of corrective action with respect to any release of petroleum into the environment from underground storage tanks undertaken under a cooperative agreement with the Administrator of the United States Environmental Protection Agency, as determined by the Administrator of the United States Environmental Protection Agency, § 9003(h)(7)(B) of P.L. 98-616 (as amended in 1986 by P.L. 99-499) [42 U.S.C. § 6991b(h)(7)(B)].

(c) Disbursements from the Fund may not be made for any purpose not identified in subsection (b) of this section including, but not limited to:

(1) Costs incurred in the Department's administration of the underground storage tank program.

(2) Costs incurred by the State to recover from any party costs charged to the Fund.

Such expenses will be funded by the tank registration fee established pursuant to § 7418 of this title.

(65 Del. Laws, c. 161 § 1; 66 Del. Laws, c. 187 § 3.)

§ 7410 Financial responsibility.

(a) The Department shall adopt regulations for maintaining evidence of financial responsibility by all owners and operators for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of underground storage tank systems in the following amounts:

(1) An amount of not less than $1,000,000 per occurrence for taking corrective action and for compensating third parties for bodily injury and property damage for underground storage tank systems located at petroleum marketing facilities or that handle an average of more than 10,000 gallons of regulated substance per month based on an annual throughput for the previous calendar year or that store hazardous substances, or in an amount not less than $500,000 per occurrence for all other underground storage tank systems; and

(2) An amount of not less than $1,000,000 annual aggregate for taking corrective action and for compensating third parties for bodily injury and property damage for owners and operators of 1 to 100 underground storage tank systems or an amount of not less than $2,000,000 annual aggregate for taking corrective action and for compensating third parties for bodily injury and property damage for owners and operators of more than 100 underground storage tank systems.

(b) Financial responsibility may be established in accordance with regulations promulgated by the Department and may include the following: insurance, guarantee, surety bond, irrevocable letter of credit, trust fund, or qualification as a self-insurer. In addition, local governments may establish evidence of financial responsibility by any of the following: local government bond rating test, local government financial test, local government guarantee, or local government fund. The owner and operator shall provide written notification to the Department within 30 days of any substantive change in the financial responsibility mechanism, including but not limited to cancellation, nonrenewal, substitution of alternate financial responsibility mechanism, or change in financial responsibility provider. Such written notification shall include but not be limited to the names and addresses of the providers involved, the financial responsibility mechanisms involved, and the effective date of change.

(c) Any claim arising out of conduct for which evidence of financial responsibility must be provided under this section may be asserted directly against the person guaranteeing or providing evidence of financial responsibility. In such a case, the person against whom the claim is made shall be entitled to invoke all rights and defenses which would have been available to the owner or operator had such action been brought directly against the owner or operator.

(d) This section shall not limit any other state or federal statutory, contractual or common-law liability of the guarantor for bad faith in negotiating or in failing to negotiate the settlement of any claim. This section does not diminish the liability of any person under § 107 or § 111 of the Comprehensive Environmental Response Compensation and Liability Act of 1980 (42 U.S.C. § 9607 or § 9611), or other applicable law.

(65 Del. Laws, c. 161 § 1; 66 Del. Laws, c. 187 § 5; 79 Del. Laws, c. 440 § 7.)

§ 7411 Enforcement.

(a) Whenever, on the basis of any information, the Secretary determines that any person is in violation of any requirement of this chapter, or any rule or regulation promulgated hereunder, the Secretary shall give notice to the violator of said violator's failure to comply with such requirement. If such violation extends beyond the thirtieth day after the Secretary's notification, the Department may issue an order requiring compliance within a specified time period.

(b) If such violator fails to take action to correct the violation within the time specified in the order, he or she shall be liable for a civil penalty of not more than $25,000 for each day of continued noncompliance and the Secretary may suspend or revoke any permit issued to the violator.

(c) Any order or any suspension or revocation of a permit shall become final unless, not later than 30 days after the order or notice of the suspension or revocation is served, the person or persons named therein request a public hearing. Upon such request, the Secretary shall conduct a public hearing in accordance with § 6006 of this title. In connection with any proceeding under this subsection, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents and may promulgate rules for discovery procedures.

(d) Any order issued under this section shall state with reasonable specificity the nature of the violation and specify a time for compliance and assess a penalty, if any, which the Secretary determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.

(e) In lieu of the compliance order procedure in subsection (a) of this section, any person who violates a provision of this chapter, any rule or regulation, or any order of the Secretary shall be liable for a civil penalty of not less than $1,000, nor more than $25,000 for each day of violation. The Superior Court shall have jurisdiction over offenses under this chapter.

(f) If the violation consists solely of a failure to register an underground storage tank or submit other notifications as required, the Secretary may elect to bring a civil action in the Justice of the Peace Court for a penalty not to exceed $1,000. Each day of violation shall be considered as a separate violation.

(g) Any expenses or civil penalties collected by the Department under this action shall be credited to the administration fund established under § 7418(d) of this title.

(65 Del. Laws, c. 161 § 1; 66 Del. Laws, c. 425 §§ 6, 7; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 440 § 8.)

§ 7412 Appeals.

(a) Any person whose interest is substantially affected by any action of the Secretary may appeal to the Environmental Appeals Board in accordance with § 6008 of this title.

(b) Any person or party to an appeal before the Board who is substantially affected by a decision of the Board may appeal to the Superior Court in accordance with § 6009 of this title.

(65 Del. Laws, c. 161 § 1.)

§ 7413 Variances.

Variances and temporary emergency variances may be granted by the Secretary from any regulation adopted pursuant to this chapter in accordance with §§ 6011 and 6012 of this title except that no variance or temporary emergency variance shall be granted which would be inconsistent with the no less stringent requirements of § 9004 of the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580 as amended by Pub. L. 98-616 [42 U.S.C. § 6991c] (or regulations promulgated thereunder).

(65 Del. Laws, c. 161 § 1; 69 Del. Laws, c. 330 § 3.)

§ 7414 Leaking Underground Storage Tank Committee.

There is hereby established a Leaking Underground Storage Tank Committee which shall be composed of, but not limited to, the Secretary of the Department of Natural Resources and Environmental Control, the Director of the Office of Management and Budget, the Director of the Delaware Geological Survey, the State Fire Marshal, a member of the Delaware Petroleum Council, a member of the Pennsylvania/Delaware Service Station Dealers Association, an installer of underground storage tanks, a representative of the insurance industry, the Insurance Commissioner or the Commissioner's designee, a representative of the agricultural community, a representative of the chemical industry, a representative from an environmental interest group, 2 state Senators who shall be appointed by the President Pro Tempore of the Senate and 2 state Representatives who shall be appointed by the Speaker of the House of Representatives. The Governor shall designate the Chairperson. The whole Committee shall guide development of the regulations and other requirements of this chapter.

(65 Del. Laws, c. 161 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 88 § 16(1).)

§ 7415 Implementation and reporting requirements.

The Department, in conjunction with the Delaware Geological Survey, shall conduct a study to demonstrate the feasibility of a comprehensive inventory of underground storage tanks to include new, existing and abandoned tanks. It shall be conducted within an area of the State to be designated by the Department and the Committee. The Delaware Geological Survey shall investigate the feasibility of utilizing aerial photographs and other new or advanced techniques for locating abandoned tanks. The Department shall report to the General Assembly within 6 months of the date of adoption of implementation and reporting requirements. The report shall include a critique of the management experience gained which will serve as a basis for identifying staff and automated data processing needs for a comprehensive inventory.

(65 Del. Laws, c. 161 § 1.)

§ 7416 Groundwater risk assessment.

(a) Because groundwater protection and management is an underlying issue related to leaking underground storage tanks, information on the risks to groundwater resources will be needed to facilitate implementation of the regulations.

(b) The Delaware Geological Survey shall, under the auspices and direction of the Committee, and in cooperation with the Department, examine the need for prioritizing possible leak risks. The Survey may assist the Committee by identifying areas where existing or abandoned leaking underground storage tanks would pose the most significant risk.

(65 Del. Laws, c. 161 § 1.)

§ 7417 Use of Hazardous Substance Cleanup Act funding.

The Department may use funding from the Hazardous Substance Cleanup Fund (§ 9113 of this title) to support the implementation of this chapter, including but not limited to preventing releases from underground storage tanks, removing or properly closing in place underground storage tanks that are suspected of leaking or that have been out of service for longer than 12 months, providing financial assistance to remove underground storage tanks containing heating fuel, detecting releases as early as possible, investigating the nature and extent of a release, and performing necessary corrective actions to minimize degradation of groundwater and protect human health and the environment.

(79 Del. Laws, c. 440 § 9.)

§ 7418 Tank registration fee.

(a) All owners/operators of underground storage tanks shall pay to the Department an annual per tank registration fee of $50 on or before February 1 of each calendar year. Registration fees not received by the Department by February 1 shall be subject to a late charge of $30. Payment shall be made in accordance with regulations established by the Department.

(b) Underground storage tanks owned or operated by the State, or counties or municipalities or agencies or subdivisions thereof, shall be exempt from payment of the registration fee defined in subsection (a) of this section.

(c) Underground storage tanks owned or operated by the volunteer fire companies and ambulance companies within this State shall be exempt from payment of the registration fee defined in subsection (a) of this section.

(d) The tank registration fee established in subsection (a) of this section shall be used solely for the purpose of administering the Department's programs implementing this chapter and the regulations promulgated thereunder.

(e) The tank registration fee shall be credited to a dedicated administration fund established in the accounts of the Treasurer. Any money remaining in such fund at the end of the fiscal year shall not revert to the General Fund, but shall remain in the dedicated administration

fund. The fund shall be maintained in a separate account and shall be administered by the Department. An accounting of moneys received and disbursed shall be kept, and furnished upon request to the Governor or the General Assembly.

(66 Del. Laws, c. 187 § 6; 66 Del. Laws, c. 310 § 1.)

§ 7419 Environmental liens; recovery of expenditures [For application of this section, see 79 Del. Laws, c. 69, § 5]

(a) Pursuant to the provisions of this section, all reasonable costs expended by the State related to investigating a release or suspected release of a regulated substance from an underground storage tank system including, but not limited to, performing inspections, release detection monitoring, site assessments, removal of regulated substances, removal or closure in place of any part of the underground storage tank system, actions necessary to abate an emergency situation such as installing water treatment, supplying drinking water, installing wells and venting petroleum vapors, as well as other necessary corrective actions for which a person is liable under this chapter or the regulations promulgated pursuant thereto shall constitute a lien in favor of the State upon the real property where such activities take place and which belongs to such liable party.

(b) A lien created under this section constitutes record notice and attaches to and is perfected against real property upon which any corrective action has been undertaken by the State and which is owned by a person liable under this chapter when:

(1) No less that 30 days prior to the effective date of the lien, a notice of lien is sent by the Secretary, by means of certified or registered mail, to the last known address of all record owners of the property and to all persons holding liens or security interests of record. The notice of lien shall state the amount of and basis for the lien;

(2) No less than 30 days prior to the effective date of the lien, a notice of lien is filed by the Secretary with the office of the recorder of deeds in the county in which the property is located; and

(3) Costs associated with corrective action at the property as described in subsection (a) of this section are incurred by the State.

(c) A person whose interest is substantially affected by any action of the Secretary taken pursuant to subsection (a) of this section may contest the imposition of a lien to the Environmental Appeals Board in accordance with § 6008 of this title. This section shall not preclude any equitable claims by an aggrieved person in the Court of Chancery to contest the imposition of a lien, including actions to quiet title. In any action seeking to contest or enforce a lien, the burden of establishing entitlement to such lien shall be consistent with the burden of proof applicable in an action brought by the Secretary pursuant to this chapter.

(d) A lien created under this section has priority over all other liens and encumbrances perfected after the date that the lien recorded pursuant to this section is perfected, except for liens and encumbrances which relate back to before the perfection of the lien recorded pursuant to this section.

(e) A lien created under this section continues until fully satisfied or otherwise discharged in accordance with law. The Secretary shall, on written request, make available the documentation upon which such lien is based within 10 days of such request.

(f) Upon satisfaction of the liability secured by a lien created under this section, the Secretary shall file a notice of release of lien with the office of recorder of deeds in the county in which the real property is located.

(g) No lien or obligation created under this chapter may be limited or discharged in a bankruptcy proceeding. All obligations imposed by this chapter shall constitute regulatory obligations imposed by the State.

(h) If the Secretary determines that the funds projected to be available in order to satisfy the lien provided pursuant to subsection (a) of this section will be insufficient to permit the State to recover fully its costs, the Secretary may file a petition in the Court of Chancery seeking to impose an additional lien or liens upon other real property in this State owned by the same liable person or persons as the property where the costs are incurred.

(1) A petition filed by the Secretary pursuant to this subsection shall describe with particularity the real property to which the lien will attach.

(2) Upon filing of a petition by the Secretary, the Court shall schedule a hearing to determine whether the petition should be granted. Notice of the hearing shall be provided to the Secretary, the record owner or owners of the real property which is the subject of the petition, and any person holding a lien or a perfected security interest in the property.

(i) A person whose interest is substantially affected by any action of the Secretary taken pursuant to this section, while contesting the imposition of such environmental lien in accordance with the procedures set forth herein, shall have the right to discharge said lien upon payment into the Court of Chancery or entry of security as follows:

(1) Cash deposit. — Any environmental lien filed hereunder shall, upon petition of the owner or any party in interest, be discharged as a lien against the property whenever a sum equal to the amount of the claim shall have been deposited with the Court in said proceedings for application to the payment of the amount finally determined to be due. Said petition shall include an affidavit by the owner or party in interest setting forth which parts of the claim filed hereunder are disputed and which parts are not disputed. The nondisputed part of the claim shall be paid to the Secretary before the lien against the property is discharged. If it is finally determined by the Court that the disputed portion of the claim has been grossly overstated by the affiant, the Court may, in its discretion, award damages to the Secretary against the affiant in an amount up to twice the figure stated by the affiant to be disputed.

(2) Refund of excess. — Any excess of funds paid into Court as aforesaid, over the amount of the claim or claims determined and paid therefrom, shall be refunded to the owner or party depositing same upon application.

(3) Security in lieu of cash. — In lieu of the deposit of any such sum or sums in cash, approved security may be entered in such

proceedings in an amount which the Court shall approve, which, however, shall in no event be less than the full amount of such required deposit; and the entry of such security shall entitle the owner to have such liens discharged to the same effect as though the required sums have been deposited in Court as aforesaid.

(4) Authority of Court. — The Court, upon petition filed by any party, and after notice and hearing, may upon cause shown:

a. Require the increase or decrease of any deposit or security;

b. Strike off security improperly filed;

c. Permit the substitution of security and enter an exoneration of security already given.

(j) The provisions of this section shall not apply to those classes of underground storage tanks set forth in § 7404(1) and (2) of this title.

(66 Del. Laws, c. 187 § 7; 79 Del. Laws, c. 69 § 2.)

Subchapter II

Small Retail Gasoline Station Assistance Program

§ 7420 Notification requirement for Stage 1 vapor recovery activities.

The vapor recovery permit requirements for Stage 1 vapor recovery equipment, as identified by the Department, and operation thereof required under § 6003 of this title may be suspended by the Secretary and replaced with a notification requirement in accordance with duly promulgated regulations.

(70 Del. Laws, c. 241 § 1.)

§ 7421 Legislative findings and intent.

The General Assembly finds and declares that it is in the best interests of the people of Delaware that small retail gasoline station owners and operators continue to maintain their economic viability, while taking the remedial and preventive measures necessary to protect Delaware's environment and to comply with this subchapter and other State and federal environmental protection laws. The General Assembly further finds that such station owners and operators are often unable to obtain financing for needed remedial and preventive measures in the private financing market, and accordingly it is necessary for the State to provide affordable financing if the public interest is to be protected. Therefore, there shall be established in the Department of Natural Resources and Environmental Control ("Department") a loan assistance program, the purpose of which is provide loans to small retail gasoline station owners and operators ("small stations") to carry out the following activities necessary to comply with State and federal environmental laws:

(1) Installation of air quality protection devices; and/or

(2) Replacement of existing underground storage tank systems; and/or

(3) Removal and abandonment of underground storage tank systems; and/or

(4) Installation of water quality protection devices.

(69 Del. Laws, c. 77 § 71; 70 Del. Laws, c. 241 § 2.)

§ 7422 Small Retail Gasoline Station Assistance Loan Fund; source of funds, interest rate, and capitalization.

(a) Loan proceeds and the State's expenses in administering this program shall be drawn from a special account of the Transportation Trust Fund known as the "Small Retail Gasoline Station Assistance Loan Fund," hereinafter referred to as the "Small Station Fund."

(b) Loans made from the Small Station Fund shall require interest payments at a simple interest rate which is 2% above the Federal Reserve discount rate in effect at the time the loan application is filed with the Department.

(c) The Small Station Fund account shall be capitalized in an amount not to exceed $12 million over the life of the program out of funds of the Transportation Trust Fund as authorized by Chapter 14 of Title 2.

(69 Del. Laws, c. 77 § 71; 70 Del. Laws, c. 241 § 2.)

§ 7423 Small Station Fund eligibility.

(a) Any applicant for a Small Station Fund loan must demonstrate that the applicant meets the following criteria:

(1) The loan shall be made only to small station owner/operators as defined in eligibility rules established under this section and who also qualify as a "Small Business" under rules established by the Small Business Administration, provided, however, that no loan may be provided to a small station which has a total throughput of 75,001 gallons or more of gasoline and/or special fuel (diesel) products as a monthly average for the 12 months preceding the date of application for the loan;

(2) The loan proceeds for any individual site may not exceed $100,000, and shall be used for a project approved under this section to accomplish one of the following purposes:

a. Installation of air quality protection devices; and/or

b. Replacement of existing underground storage tank systems; and/or

c. Removal and abandonment of underground storage tank systems; and/or

d. Installation of water quality protection devices;

(3) In no event shall the loan proceeds exceed 90% of the total amount required to complete the project for which the loan is made.

Applicants must also show proof of ability to repay the Small Station Fund within a time period not exceeding 7 years;

(4) The application for a loan from the Small Station Fund shall be made on or before November 15, 1997, accompanied by a nonrefundable application fee of $250, which shall immediately upon receipt be transferred to the Transportation Trust Fund. No loans shall be made after July 1, 1998;

(5) Such other criteria as may be specified pursuant to subsection (b) of this section; and

(6) The loan for the project to be provided to the small station by the Small Station Fund shall be approved by the Secretary of the Department, the Secretary of the Department of Transportation, and the Director of the Delaware Economic Development Office.

(b) Before making any loan from the Small Station Fund, the Department, in coordination with the Delaware Economic Development Office and the Department of Transportation, shall specify:

(1) Standards, consistent with subsection (a) of this section, for determining the eligibility of borrowers and the type of projects to be financed with loans from the Small Station Fund;

(2) Procedures for submitting applications for loans from the Small Station Fund and procedures for approval of such applications;

(3) Conditions for loans from the Small Station Fund consistent with the provisions of subsection (a) of this section; and

(4) Other relevant criteria, standards or procedures.

(69 Del. Laws, c. 77 § 71; 69 Del. Laws, c. 458 § 1; 70 Del. Laws, c. 241 § 2.)

§ 7424 Loan payment mechanism; prepayment and security options.

(a) Except as provided in subsection (b) of this section, small stations shall make their loan payments under this program through a surcharge of not less than $0.01 per gallon for each gallon for which fuel taxes are assessed, to be paid with the fuel tax returns filed each month by themselves or their distributors/suppliers on their behalf, pursuant to the provisions of Chapter 51 of Title 30. The surcharge is not to be treated as a fuel tax payment, and will be applied to the credit of the small station on the unpaid balance of principal and interest on the loan.

(b) In addition to the payment mechanism set forth in subsection (a) of this section, as well as other methods of secured repayment provided for pursuant to § 7422(b) of this title, small stations may also make larger loan payments through other mechanisms approved under § 7422(b) of this title, to enable the small station to prepay the loan without penalty.

(69 Del. Laws, c. 77 § 71; 70 Del. Laws, c. 241 § 2.)

Subchapter III

Contractor Certification

§ 7425 Certification of underground storage tank contractors.

(a) The Department shall adopt regulations for certification of businesses and individuals to install, retrofit, remove, abandon or reline underground storage tank systems used to store regulated substances.

(b) As a prerequisite for certification, the Department shall conduct written examinations within the State for the purpose of determining ability to perform installation, retrofit, relining, removal or abandonment of underground storage tank systems. The Department may waive the examination for persons who possess a valid certificate from another state, provided such certification is for similar work to be performed in Delaware.

(c) An underground storage tank system shall be installed, repaired, retrofitted, relined, removed or abandoned only in the presence and under the direction of an individual possessing a valid certificate issued by the Department. Certification requirements for contractors shall commence 6 months after adoption of regulations.

(d) Certification will not be required for owners of farm or residential underground storage tanks who wish to remove or abandon their own nonregulated underground storage tanks.

(e) Certification shall be valid for 2 years. The fee for certification shall be $250 for companies and $100 for on-site supervisors. Fees collected are appropriated to the Department to carry out the purposes of the Underground Storage Tank Program.

(69 Del. Laws, c. 321 § 1; 70 Del. Laws, c. 241 § 3.)

Part VII
Natural Resources
Chapter 74A
THE JEFFREY DAVIS ABOVEGROUND STORAGE TANK ACT

§ 7401A Purpose.

The General Assembly finds and declares that the containment of petrochemicals, petroleum, petroleum products, hazardous chemicals, hazardous substances, hazardous waste and similar regulated substances in aboveground storage tanks is emerging as a cause of soil, air, surface water and groundwater contamination in the State; that the State's surface water and groundwater resources are vital to the population and economy of the State; that millions of gallons of petroleum and hazardous substances are stored in aboveground storage tanks; that releases of stored, regulated substances are occurring in a significant number of these tanks due to corrosion, structural defect, inadequate maintenance and repair, or improper installation; and that it is therefore necessary to provide for more stringent control of the installation, operation, retrofitting, maintenance, repair, abandonment and/or removal of aboveground storage tanks to prevent releases, and, where releases occur, to detect and remediate them at the earliest possible stage, thus minimizing further degradation of soil, air, surface water and groundwater and promoting public safety. The Department is hereby granted the authority to and shall promulgate standards and regulations to ensure the protection of human health and the environment and to provide for best management practices for aboveground storage tanks.

(73 Del. Laws, c. 366 § 1.)

§ 7402A Definitions.

The following words, terms and phrases, when used in this chapter, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Aboveground storage tank" means a single aboveground containment vessel having a capacity of greater than 250 gallons and currently or previously having contained regulated substances on or after January 1, 1992. The term includes all ancillary aboveground pipes and dispensing systems up to the first point of isolation and all ancillary underground pipes and dispensing systems. Within this definition, the word "vessel" includes any container that can be partially visually inspected from the exterior in an underground area. The term "aboveground storage tank" does not include any of the following:

a. Septic tanks;

b. Pipeline facilities (including gathering lines) regulated under the Hazardous Liquid Pipeline Safety Act of 1979, as amended [49 U.S.C. § 60101 et seq.];

c. Surface impoundments, pits, ponds or lagoons;

d. Liquid traps or associated gathering lines directly related to oil or gas production or gathering operations;

e. Flow-through process tanks that contain a regulated substance or substances and that form an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of material during the operation of the process. Flow-through process tanks include, but are not limited to, seal tanks, surge tanks, bleed tanks, check and delay tanks, phase separator tanks or tanks in which physical or chemical change of a material is accomplished. A flow-through process tank does not include:

1. A tank that is used for the storage of material before its introduction into a production process;
2. A tank that is used for storage of products or by-products from the production process; or
3. A tank that is used only to recirculate materials;

f. Transformers, regulators and breakers used for the sole purpose of electrical power distribution and transmission; or

g. Containment vessels operated as part of a publicly owned treatment works as defined pursuant to § 6002 of this title and regulated pursuant to § 6003 of this title or used for the storage and conveyance of wastewater to a treatment plant regulated in accordance with the requirements of the Clean Water Act [33 U.S.C. § 1251 et seq.].

(2) "Department" means the Department of Natural Resources and Environmental Control.

(3) "Existing tank" means a tank for which substantial physical installation began prior to July 8, 2002. The term "substantial physical installation" includes, but is not limited to, a permit or contract for the installation.

(4) "Facility" means a location or part thereof containing or having contained 1 or more aboveground storage tanks.

(5) "Fiduciary" means:

a. A person acting for the benefit of another party as a bona fide:

1. Trustee;
2. Executor;
3. Administrator;
4. Custodian;

5. Guardian of estates or guardian ad litem;
6. Receiver;
7. Conservator;
8. Committee of estates of incapacitated persons;
9. Personal representative;
10. Trustee (including a successor to a trustee) under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender; or
11. Representative in any other capacity that the Secretary, after providing public notice, determines to be similar to the capacities described in paragraphs (5)a.1. through 10. of this section above; and

b. "Fiduciary" does not mean:
1. A person that is acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, 1 or more estate plans or because of the incapacity of a natural person; or
2. A person that acquires ownership or control of a facility with the objective purpose of avoiding liability of the person or of any other person.

(6) "Fiduciary capacity" means the capacity of a person in holding title to a facility, or otherwise having control of or an interest in the facility, pursuant to the exercise of the responsibilities of the person as a fiduciary.

(7) "Foreclosure"; "foreclose" mean, respectively:
a. Acquiring, and to acquire, a facility through:
1. Purchase at sale under a judgment or decree, power of sale, or nonjudicial foreclosure sale;
2. A deed in lieu of foreclosure, or similar conveyance from a trustee; or
3. Repossession,

b. If the facility was security for an extension of credit previously contracted:
1. Conveyance pursuant to an extension of credit previously contracted, including the termination of a lease agreement; or
2. Any other formal or informal manner by which the person acquires, for subsequent disposition, title to or possession of a facility in order to protect the security interest of the person.

(8) "Heating fuel" means a type of fuel oil that is 1 of 7 technical grades. These grades are: No. 1, No. 2, No 4-light, No. 4-heavy, No. 5-light, No. 5-heavy and No. 6 residual.

(9) "Imminent threat of a release" means the potential for a release which requires action to prevent or mitigate damage to the environment or endangerment to public health or welfare which may result from such a release.

(10) "Indicated release" means there are signs that an aboveground storage tank, or the secondary containment system are failing or could potentially fail to contain a regulated substance. Indicated releases are releases that are not observable and are not directly attributable to another source.

(11) "In-service tank" means an aboveground storage tank that:
a. Is being actively maintained or operated;
b. Contains a regulated substance or has a regulated substance regularly added to or withdrawn from the tank; or
c. Is emptied solely for the purpose of cleaning, routine maintenance or a change in product, for a time period not to exceed 180 days.

(12) "Lender" means:
a. An insured depository institution (as defined in the Federal Deposit Insurance Act at 12 U.S.C. § 1813(c)(2)) or an insured credit union (as defined in the Federal Credit Union Act at 12 U.S.C. § 1752(7)) authorized by law to do business in this State;
b. A bank or association chartered under the Farm Credit Act of 1971 (12 U.S.C. § 2001 et seq., as amended) authorized by law to do business in this State;
c. A leasing or trust company that is an affiliate of an insured depository institution authorized to do business in this State;
d. Any person (including a successor or assignee of any such person) that makes a bona fide extension of credit to or takes or acquires a security interest from a nonaffiliated person;
e. Any legal entity authorized to buy or sell loans or interests in loans in a bona fide manner in this State;
f. A person that insures or guarantees against a default in the repayment of an extension of credit, or acts as a surety with respect to an extension of credit, to a nonaffiliated person; and
g. A person that provides title insurance and that acquires a facility as a result of assignment or conveyance in the course of underwriting claims and claims settlement.

(13) "New aboveground storage tank" means a tank for which substantial physical installation began on or after July 8, 2002.

(14) "Operator" means a person operating a facility or who has operated a facility, including, but not limited to, by lease, contract or other form of authorization agreement

(15) "Orphan tank" means:

a. A tank for which the last person to operate the tank cannot be identified; or

b. A tank on property as to which the property owner can establish that the owner did not obtain and could not have obtained, through the exercise of reasonable and due diligence, knowledge of the existence of the tank prior to purchase of the property.

(16) "Out-of-service" means an aboveground storage tank that is:

a. Designated as out-of-service by the owner or operator; or

b. An empty tank except as otherwise described in paragraph (11)c. of this section.

(17) "Owner" means a person:

a. Who has or has had a legal interest in a facility or aboveground storage tank; or

b. Who has or has had an equitable interest in a facility or aboveground storage tank.

c. "Owner" does not mean any person who, without participating in the management of a facility or aboveground storage tank, holds indicia of ownership in a facility or aboveground storage tank primarily to protect the person's security interest or is a fiduciary which has a legal title to or manages any property for purposes of administering an estate or trust of which such property is part. In the case of foreclosure the person shall not be deemed the owner of the aboveground storage tank provided that the person provides notification to the Department within 30 days of the initiation of foreclosure proceedings for any property containing an aboveground storage tank, either in-service or out-of-service utilizing a form provided by the Department.

d. Participation in management.

d.1. For purposes of this paragraph (17), the term "participate in management":

A. Means actually participating in the management or operational affairs of an aboveground storage tank or facility; and

B. Does not include merely having the capacity to influence, or the unexercised right to control, an aboveground storage tank or facility operations.

2. A person that is a lender or a fiduciary and that holds indicia of ownership primarily to protect a security interest in an aboveground storage tank or facility shall be considered to participate in management only if, while the borrower is still in possession of the aboveground storage tank or facility encumbered by the security interest, the person:

A. Exercises decision making control over the environmental compliance related to the aboveground storage tank or facility, such that the person has undertaken responsibility for the regulated substance handling or disposal practices related to the aboveground storage tank or facility; or

B. Exercises control at a level comparable to that of a manager of the aboveground storage tank or facility, such that the person has assumed or manifested responsibility for the overall management of the aboveground storage tank or facility encompassing day-to-day decision making with respect to environmental compliance, or over all or substantially all of the operational functions (as distinguished from financial or administrative functions) of the aboveground storage tank or facility other than the function of environmental compliance.

3. The term "participate in management" does not include performing an act or failing to act prior to the time at which a security interest is created in an aboveground storage tank or facility; and

4. The term "participate in management" does not include:

A. Holding a security interest or abandoning or releasing a security interest;

B. Including in the terms of an extension of credit, or in a contract or security agreement relating to the extension, a covenant, warranty, or other term or condition that relates to environmental compliance;

C. Monitoring or enforcing the terms and conditions of the extension of credit or security interest;

D. Monitoring or undertaking 1 or more inspections of the aboveground storage tank or facility;

E. Requiring a corrective action or other lawful means of addressing the release or threatened release of a hazardous substance in connection with the aboveground storage tank or facility prior to, during, or on the expiration of the term of the extension of credit;

F. Providing financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of the aboveground storage tank or facility;

G. Restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of the extension of credit or security interest, exercising forbearance;

H. Exercising other remedies that may be available under applicable law for the breach of a term or condition of the extension of credit or security agreement; or

I. Conducting a corrective action, if the actions do not rise to the level of participating in management (within the meaning of paragraphs (17)d.1. and d.2. of this section).

5. A person who is a lender that did not otherwise participate in the management of a facility as provided in paragraph (17)d. of this section shall not be considered to have participated in management, notwithstanding that the person:

A. Forecloses on the property; and

B. After foreclosure, sells, re-leases (in the case of a lease finance transaction), or liquidates the property, maintains business activities, winds up operations, or undertakes corrective actions of this chapter.

e. A fiduciary as described in this section shall not be liable in its personal capacity under this chapter for:

1. Undertaking or directing another person to undertake any other lawful means of addressing a hazardous substance in connection with the facility;

2. Terminating the fiduciary relationship;

3. Including in the terms of the fiduciary agreement a covenant, warranty, or other term or condition that relates to compliance with an environmental law, or monitoring, modifying or enforcing the term or condition;

4. Monitoring or undertaking 1 or more inspections of the facility;

5. Providing financial or other advice or counseling to other parties to the fiduciary relationship, including the settlor or beneficiary;

6. Restructuring, renegotiating, or otherwise altering the terms and conditions of the fiduciary relationship;

7. Administering, as a fiduciary, a facility that was contaminated before the fiduciary relationship began; or

8. Declining to take any of the actions described in paragraphs (17)e.2.-7. of this section.

f. The liability of a fiduciary under any provision of this chapter for the release or threatened release of a regulated substance at, from, or in connection with a facility held in a fiduciary capacity shall not exceed the assets held in the fiduciary capacity; provided, however, that this limitation shall not apply to the extent that a person is liable under this chapter independently of the person's ownership of a facility as a fiduciary or actions taken in a fiduciary capacity.

g. The exclusion from liability contained in this paragraph c. of this section does not limit liability pertaining to the release or threatened release of a regulated substance if negligence of a fiduciary causes or contributes to the release or threatened release.

h. Nothing contained in this paragraph c.:

1. Affects the rights or immunities or other defenses that are available under this chapter or other law that is applicable to a person subject to this paragraph; or

2. Creates any liability for a person or a private right of action against a fiduciary or any other person.

i. Nothing in this paragraph c. applies to a person if the person:

1. Acts in a capacity other than that of a fiduciary or in a beneficiary capacity, and in that capacity, directly or indirectly benefits from a trust or fiduciary relationship; or

2. Is a beneficiary and a fiduciary with respect to the same fiduciary estate and, as a fiduciary, receives benefits that exceed customary or reasonable compensation, and incidental benefits, permitted under other applicable law.

j. This paragraph c. does not preclude a claim under this chapter against:

1. The assets of the estate or trust administered by the fiduciary; or

2. Nonemployee agent or independent contractor retained by a fiduciary.

(18) "Person" means an entity, individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, company, association, state, municipality, commission, political subdivision of a state, or any interstate body.

(19) "Release" means the spilling, leaking, discharging, leaching or disposing of a regulated substance into groundwater, surface water, soil or air that is not permitted by law, regulation or permit.

(20) "Retrofit" means to modify an aboveground storage tank to meet standards contained in regulations promulgated under this chapter.

(21) "Regulated substance" means a liquid or gas that:

a. Contains 1 percent or more of a hazardous substance as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C. § 9601(14)] and any amendments thereto;

b. Contains 0.1 percent or more of a carcinogen as defined by EPA in the Integrated Risk Information System (IRIS) April 2002 and as updated;

c. Is a petroleum product, including crude oil or any fraction thereof, which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); or

d. Is a substance determined by the Secretary through regulation to present a risk to public health or welfare or the environment if released into the environment.

(22) "Security interest" means an interest in an AST or AST system or in a facility or property on which an AST or AST system is located, created or established for the purpose of securing a loan or other obligation. Security interests include but are not limited to mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain, certain assignments, factoring agreements, accounts receivable financing arrangements, and assignments, if the transaction creates or establishes an interest in an AST or AST system or in the facility or property on which the AST or AST system is located, for the purpose of securing a loan or other obligation.

(23) "State" means the State of Delaware.

(73 Del. Laws, c. 366 § 1; 79 Del. Laws, c. 439 §§ 1-4; 80 Del. Laws, c. 306 § 1.)

§ 7403A Referenced standards.

(a) The Department shall study and consider the recommendations and standard procedures of the following organizations in developing the regulations required by this chapter:

(1) The National Fire Protection Association (NFPA);
(2) The American Petroleum Institute (API);
(3) The National Association of Corrosion Engineers (NACE);
(4) The Underwriters Laboratories (UL);
(5) The American Society for Testing and Materials (ASTM);
(6) The Petroleum Equipment Institute (PEI);
(7) The Steel Tank Institute (STI); and
(8) Any other organization that has similar standards and has been determined by the Secretary to be relevant and appropriate.

(b) Owners and installers are strictly liable for any failure to install any new aboveground storage tank in accordance with the standards of this chapter and regulations promulgated pursuant to this chapter. Aboveground storage tanks shall be installed in accordance with the standards of this chapter and regulations promulgated by the Department.

(73 Del. Laws, c. 366 § 1.)

§ 7404A Exemptions.

(a) The following classes of aboveground storage tanks are exempt from this chapter, with the exception of the application of §§ 7402A, 7406A, and 7410A of this title:

(1) Aboveground storage tanks of 1,100 gallons or less in capacity located on a farm and used solely to facilitate the production of crops, livestock or livestock products on the farm;

(2) Aboveground storage tanks used solely to store propane gas;

(3) Aboveground storage tanks of 1,100 gallons or less in capacity used solely to store heating fuel for consumptive use on the premises where stored;

(4) Aboveground storage tanks of 1,100 gallons or less in capacity used solely to store motor fuel or motor oil for noncommercial purposes;

(5) Aboveground storage tanks installed on a temporary basis, not to exceed 6 months;

(6) Aboveground storage tanks excluded by regulations promulgated pursuant to this chapter;

(7) Aboveground storage tanks regulated pursuant to Chapter 74B of this title; and

(8) Aboveground storage tanks and associated equipment regulated as a part of a process regulated pursuant to Chapter 77 of this title.

(b) All aboveground storage tanks greater than 250 gallons and less than 12,499 gallons are exempt from this chapter, with the exception of §§ 7402A, 7405A, 7406A, 7410A and 7415A of this title.

(c) All aboveground storage tanks used solely to store diesel, kerosene or heating fuel with a capacity of less than 20,000 gallons are exempt from this chapter, with the exception of §§ 7402A, 7405A, 7406A, and 7410A of this title.

(d) All aboveground storage tanks used solely to store diesel, kerosene or heating fuel with a capacity of greater than 19,999 gallons and less than 40,000 gallons are exempt from this chapter, with the exception of §§ 7402A, 7405A, 7406A, 7410A and 7415A of this title.

(73 Del. Laws, c. 366 § 1; 74 Del. Laws, c. 406 §§ 1-4; 78 Del. Laws, c. 127 § 8.)

§ 7405A Registration by owner.

The owner shall register all aboveground storage tanks with the Department on forms provided by the Department. Such registration must specify the date of tank installation, location, type of construction, type of substance to be stored, the size of the tank, the material of construction and the owner and operator's name, at a minimum. The owner must register on the following schedule:

(1) For a new aboveground storage tank, the form must be received by the Department at least 60 days prior to installation.

(2) For an existing aboveground storage tank, whether or not in service or out of service, the form must be received by the Department within 60 days of July 8, 2002.

(73 Del. Laws, c. 366 § 1.)

§ 7406A Release of substances prohibited; correction of substance release; Department intervention.

(a) All persons, including an owner and an operator, shall not cause or contribute to a release from an aboveground storage tank.

(b) All persons, including an owner and an operator, shall report to the Department a release from an aboveground storage tank in excess of the reportable quantities specified in the regulations promulgated pursuant § 6028 of this title and the Delaware Regulations Governing the Reporting of a Discharge of a Pollutant or an Air Contaminant, as amended.

(c) The owner and operator shall as soon as possible take measures for the prompt control, containment and removal of a released regulated substance to the satisfaction of the Department to achieve the purposes of this chapter. Such measures shall include, but not be limited to, soil removal, soil vapor extraction, groundwater extraction, pump and treat or bioremediation as approved by the Department.

(d) The Department may take measures for the prompt control, containment and removal of a released, regulated substance when it determines that the owner or operator is not responding promptly or appropriately. However, all liability for costs incurred by the Department, including, but not limited to, remediation costs, equipment costs, supply costs, legal costs and administrative oversight costs, remain with the owner and operator. Owners and operators shall reimburse all such costs to the Department within 90 days of receiving written notice of any amount due.

(e) Consistent with the provisions of Chapter 60 of this title, the Department may take measures for the prompt control, containment and

removal, or to otherwise address an indicated release or an imminent threat of a release of a regulated substance from an aboveground storage tank when it determines that the owner or operator is not responding promptly or appropriately in accordance with the regulations promulgated pursuant to this chapter. However, all liability incurred by the Department for remediation costs, equipment costs, supply costs, legal costs and administrative oversight costs, remain with the owner and operator. Owners and operators shall reimburse all such costs to the Department within 90 days of receiving written notice of any amount due.

(f) The Department may file an action in Superior Court against any responsible party for cost recovery and for reimbursement of funds expended, for corrective action, in control, containment, removal and remediation of any release, indicated release or imminent threat situation, and all activities associated with preventing releases from aboveground storage tanks. Any cost recovery and reimbursement collected by the Department for these activities shall be credited to and expended by the Department for control of aboveground storage tank releases and in support of the purposes of this chapter. A responsible party shall have an affirmative defense to a cost recovery action under this section by showing that the responsible party was responding promptly and effectively with respect to the control, containment, and removal of released regulated substances at the time that the Department assumed control of the release, indication of a release, or imminent threat situation.

(73 Del. Laws, c. 366 § 1; 80 Del. Laws, c. 306 § 1.)

§ 7407A Tank performance standards; release detection, prevention and correction regulations.

(a) The Department, after notice and opportunity for public comment and within 24 months after July 8, 2002, shall promulgate tank performance standards, corrective action regulations and other appropriate regulations necessary and desirable to effectuate the purposes of this chapter.

(b) The Department's standards and regulations must, at a minimum, include the following provisions:

(1) A requirement that a product inventory system or other similar control system, adequate to identify releases from aboveground storage tanks, be maintained;

(2) Procedures to follow when the product inventory system records or other similar control system records indicate an abnormal loss or gain of a regulated substance which is not explainable by spillage, temperature variations or other known causes;

(3) A requirement that appropriate corrective action be taken in response to a release from an aboveground storage tank as may be necessary to protect human health and the environment;

(4) A requirement to maintain records documenting actions taken in accordance with paragraphs (b)(1) through (3) of this section;

(5) A requirement for an enforcement program;

(6) A requirement for standards that will ensure against any future release from an aboveground storage tank being taken out of service or subsequently reintroduced into service; and

(7) A requirement for appropriate inspection, maintenance, monitoring and repair of aboveground storage tanks and associated equipment. The inspection and monitoring requirements shall require, at a minimum, an inspection report whenever a tank is emptied for maintenance or repair or removed from service. Such reports shall include, but not be limited to, the following information:

a. The structural and material thickness of the tanks;

b. The repairs needed;

c. A completion report for the repairs; and

d. For newly constructed aboveground storage tanks, a report including the welding procedures, welding certification reports, and any nondestructive testing performed on the aboveground storage tank prior to placing the tank into service.

All reports shall be submitted to the Department and shall be kept on file by the owner for the life of the aboveground storage tank. Should any aboveground storage tank have a change of ownership, all reports shall be provided to and maintained by all future owners.

(73 Del. Laws, c. 366 § 1.)

§ 7408A Inspection and monitoring.

(a) For the purpose of developing or assisting in the development of a standard or regulation or of enforcement of this chapter, an owner and operator shall, upon the request of an officer or employee of the State duly designated by the Secretary of the Department, furnish information relating to the tank and/or its contents and shall permit the designated officer or employee at all reasonable times to have access to and to copy all records relating to the tank and/or its contents and to conduct monitoring or require remediation activities, pursuant to § 7406A of this title, which the designated officer or employee deems necessary. For the purpose of developing or assisting in the development of a standard or regulation or of enforcement of this chapter, the designated officer or employee is authorized to:

(1) Enter at reasonable times the facility or other place where an aboveground storage tank or its records are located. The owner and/or operators shall permit unannounced inspections of tanks pursuant to this subsection; and

(2) Inspect and obtain samples from any person of regulated substances and to conduct monitoring of tanks, contents or surrounding soils, water and/or air. An inspection must be commenced and completed with reasonable promptness.

(b) In providing data under this chapter, a person required to provide data may:

(1) Designate the data which the owner or operator of the facility or tank believes constitutes trade secrets and commercial or financial information which the owner or operator believes is of a privileged or confidential nature, and the reasons for such belief; and

(2) Submit the designated secret, privileged or confidential data separately from other data submitted under this chapter, provided that

the secret, privileged or confidential data qualifies to be withheld as a nonpublic record in accordance with provisions and regulations of Chapter 100 of Title 29.

(73 Del. Laws, c. 366 § 1.)

§ 7409A Financial responsibility.

The Department shall promulgate regulations containing requirements for maintaining evidence of financial responsibility as deemed necessary and desirable for taking reasonable corrective action for property damage and bodily injury caused by accidental release arising from operating an aboveground storage tank. Evidence of financial responsibility may include, but not be limited to, insurance, guarantee, surety bond, letter of credit, proof of assets, or qualification as a self-insurer. In promulgating regulations under this section, the Department is authorized to specify policy or other contractual terms, conditions or defenses which are necessary or are unacceptable in establishing evidence of financial responsibility in order to effectuate the purposes of this section.

(73 Del. Laws, c. 366 § 1.)

§ 7410A Enforcement.

This chapter is subject to enforcement pursuant to Chapter 60 and § 7906 of this title.

(73 Del. Laws, c. 366 § 1.)

§ 7411A Appeals.

(a) A person whose interest is substantially affected by an action of the Department pursuant to a provision of this chapter or the regulations promulgated under this chapter may appeal to the Environmental Appeals Board in accordance with § 6008 of this title.

(b) Appeals from a decision of the Environmental Appeals Board may be taken in accordance with § 6009 of this title.

(73 Del. Laws, c. 366 § 1.)

§ 7412A Variances.

Permanent variances, temporary variances and temporary emergency variances may be granted by the Department from any regulation adopted pursuant to this chapter, in accordance with §§ 6011 and 6012 of this title.

(73 Del. Laws, c. 366 § 1.)

§ 7413A Aboveground storage tank registration fee.

(a) Owners and operators must pay to the Department an annual per-tank registration fee. The fee is effective on July 1, 2002, with 6 months of fees due by October 1, 2002, and on or before February 1 of each calendar year thereafter. The fee is based on the schedule below. A registration fee not received by the Department by October 1, 2002, or by February 1 thereafter is subject to a late charge of 10% of the total fee.

Registration Fee Schedule

Tank Size	Yearly Fee
12,499 — 39,999 gallons	$300
40,000 gallons and greater	$750

These fees shall only be changed or amended with the prior approval of the General Assembly.

(b) The aboveground storage tank registration fee established in subsection (a) of this section must be used by the Department solely for the purpose of administering Chapters 74, 74A, and 74B of this title as well as the regulations of the Department promulgated under said chapters.

(c) The aboveground storage tank registration fee established in subsection (a) of this section must be credited to a dedicated administration fund established in the accounts of the State Treasurer. Money remaining in the fund at the end of the fiscal year does not revert to the General Fund, but remains in the dedicated administration fund. The fund must be maintained in a separate interest-bearing account and be administered by the Department. An accounting of moneys received and disbursed by the fund must be provided annually to the Governor and the General Assembly.

(73 Del. Laws, c. 366 § 1; 78 Del. Laws, c. 127 § 9.)

§ 7414A Aboveground storage tank construction permit fee.

(a) The Department shall assess a 1-time construction permit fee based on the schedule below for an aboveground storage tank constructed after the effective date of the regulations promulgated pursuant to § 7407A of this chapter.

Construction Fee Schedule

Tank Size	Construction Permit Fee
12,499 — 39,999 gallons	$1,500
40,000 gallons and greater	$3,750

These fees shall only be changed or amended with the prior approval of the General Assembly.

(b) Any person required to pay a fee under Chapter 66 of Title 16 to the State Fire Marshal related to an aboveground storage tank shall receive a 10% reduction in the construction permit fee.

(c) The construction permit fee established in subsection (a) of this section must be used by the Department solely for the purpose of

administering this chapter and the regulations of the Department promulgated under this chapter.

(d) The construction permit fee established in subsection (a) of this section must be credited to a dedicated administration fund established in the accounts of the State Treasurer. Money remaining in the fund at the end of the fiscal year does not revert to the General Fund, but remains in the dedicated administration fund. The fund must be maintained in a separate interest-bearing account and be administered by the Department. An accounting of moneys received and disbursed by the fund must be provided annually to the Governor and the General Assembly.

(73 Del. Laws, c. 366 § 1.)

§ 7415A Required signage.

Every aboveground storage tank shall have prominently posted thereupon the contents of the tank and the hazards, if any, associated with the contents. If the tank is empty the signage shall so state. For the purposes of this section "prominently posted" and the requirements for labeling shall be specified in the regulations promulgated pursuant to this chapter.

(73 Del. Laws, c. 366 § 1.)

§ 7416A Environmental liens; recovery of expenditures [For application of this section, see 79 Del. Laws, c. 69, § 5]

(a) Pursuant to the provisions of this section, all reasonable costs expended by the State related to investigating a release or suspected release of a regulated substance from an aboveground storage tank including, but not limited to, performing inspections, tests and repairs, release detection monitoring, site assessments, removal of regulated substances, removal or closure in place of any part of the aboveground storage tank, actions necessary to abate an emergency situation such as installing water treatment, supplying water, installing wells, and removing contaminated media, and abating hazardous vapors, as well as other necessary corrective actions for which a person is liable under this chapter or the regulations promulgated pursuant thereto shall constitute a lien in favor of the State upon the real property where such activities take place and which belongs to such liable person.

(b) A lien created under this section constitutes record notice and attaches to and is perfected against real property upon which funds have been expended by the State pursuant to § 7406A of this title and which is owned by a person liable under this chapter when:

(1) No less that 30 days prior to the effective date of the lien, a notice of lien is sent by the Secretary, by means of certified or registered mail, to the last known address of all record owners of the property and to all persons holding liens or security interests of record. The notice of lien shall state the amount of and basis for the lien;

(2) No less than 30 days prior to the effective date of the lien, a notice of lien is filed by the Secretary with the office of the recorder of deeds in the county in which the property is located; and

(3) Costs associated with corrective action at the property as described in subsection (a) of this section are incurred by the State.

(c) A person whose interest is substantially affected by any action of the Secretary taken pursuant to subsection (a) of this section may contest the imposition of a lien to the Environmental Appeals Board in accordance with § 6008 of this title. This section shall not preclude any equitable claims by an aggrieved person in the Court of Chancery to contest the imposition of a lien, including actions to quiet title. In any action seeking to contest or enforce a lien, the burden of establishing entitlement to such lien shall be consistent with the burden of proof applicable in an action brought by the Secretary pursuant to this chapter.

(d) A lien created under this section has priority over all other liens and encumbrances perfected after the date that the lien recorded pursuant to this section is perfected, except for liens and encumbrances which relate back to before the perfection of the lien recorded pursuant to this section.

(e) A lien created under this section continues until fully satisfied or otherwise discharged in accordance with law. The Secretary shall, on written request, make available the documentation upon which such lien is based within 10 days of such request.

(f) Upon satisfaction of the liability secured by a lien created under this section, the Secretary shall file a notice of release of lien with the office of recorder of deeds in the county in which the property is located.

(g) No lien or obligation created under this chapter may be limited or discharged in a bankruptcy proceeding. All obligations imposed by this chapter shall constitute regulatory obligations imposed by the State.

(h) If the Secretary determines that the funds projected to be available in order to satisfy the lien provided pursuant to subsection (a) of this section will be insufficient to permit the State to recover fully its costs, the Secretary may file a petition in the Court of Chancery seeking to impose an additional lien or liens upon other real property in this State owned by the same liable person or persons as the property where the costs are incurred.

(1) A petition filed by the Secretary pursuant to this subsection shall describe with particularity the real property to which the lien will attach.

(2) Upon filing of a petition by the Secretary, the Court shall schedule a hearing to determine whether the petition should be granted. Notice of the hearing shall be provided to the Secretary, the record owner or owners of the real property which is the subject of the petition, and any person holding a lien or a perfected security interest in the property.

(i) A person whose interest is substantially affected by any action of the Secretary taken pursuant to this section, while contesting the imposition of such environmental lien in accordance with the procedures set forth herein, shall have the right to discharge said lien upon payment into the Court of Chancery or entry of security as follows:

(1) Cash deposit. — Any environmental lien filed hereunder shall, upon petition of the owner or any party in interest, be discharged as a lien against the property whenever a sum equal to the amount of the claim shall have been deposited with the Court in said proceedings for application to the payment of the amount finally determined to be due. Said petition shall include an affidavit by the owner or party in interest setting forth which parts of the claim filed hereunder are disputed and which parts are not disputed. The nondisputed part of the claim shall be paid to the Secretary before the lien against the property is discharged. If it is finally determined by the Court that the disputed portion of the claim has been grossly overstated by the affiant, the Court may, in its discretion, award damages to the Secretary against the affiant in an amount up to twice the figure stated by the affiant to be disputed.

(2) Refund of excess. — Any excess of funds paid into Court as aforesaid, over the amount of the claim or claims determined and paid therefrom, shall be refunded to the owner or party depositing same upon application.

(3) Security in lieu of cash. — In lieu of the deposit of any such sum or sums in cash, approved security may be entered in such proceedings in an amount which the Court shall approve, which, however, shall in no event be less than the full amount of such required deposit; and the entry of such security shall entitle the owner to have such liens discharged to the same effect as though the required sums have been deposited in Court as aforesaid.

(4) Authority of Court. — The Court, upon petition filed by any party, and after notice and hearing, may upon cause shown:

a. Require the increase or decrease of any deposit or security;

b. Strike off security improperly filed;

c. Permit the substitution of security and enter an exoneration of security already given.

(j) The provisions of this section shall not apply to those classes of aboveground storage tanks set forth in § 7404A(a)(1), (3) and (4) of this title.

(79 Del. Laws, c. 69 § 3; 79 Del. Laws, c. 439 § 5.)

§ 7417A Short title.

This chapter may be referred to as the "Jeffrey Davis Act," in memory of Jeffrey Davis.

(73 Del. Laws, c. 366 § 1; 79 Del. Laws, c. 69 § 3.)

§ 7418A Use of Hazardous Substance Cleanup Act funds.

The Department may use funding from the Hazardous Substance Cleanup Fund, as established by § 9113 of this title, to support the implementation of this chapter, including but not limited to any of the following purposes:

(1) Preventing releases from aboveground storage tanks;

(2) Rendering an aboveground tank empty if an indication of a release is found, or if the aboveground storage tank has been out-of-service for over 18 months;

(3) Performing an out-of-service site assessment if the owner or operator fails to do so;

(4) Providing financial assistance to remove aboveground storage tanks that are less than 1100 gallons that contain heating fuel and investigate releases from these tanks and conduct corrective actions as necessary; or

(5) Investigating the nature and extent of a release from any type of aboveground storage tank, and performing necessary corrective actions to minimize degradation of groundwater and to protect human health and the environment.

(80 Del. Laws, c. 306 § 1.)

Part VII
Natural Resources
Chapter 74B
BOILER SAFETY PROGRAM

§ 7401B Establishment and purpose of the Boiler Safety Program.

(a) The Boiler Safety Program is established and shall have the powers, duties and functions set forth in this chapter. The Program shall be responsible for the administrative, ministerial, budgetary, clerical and investigative functions as provided by law.

(b) The primary objective of the Boiler Safety Program is to protect the general public, especially those persons who are owners or users of objects certified by the Program, from unsafe construction, operation, maintenance and repair of boilers, pressure vessels and nuclear installations. The secondary objectives of the Program are to maintain minimum standards of inspector competency and to maintain certain standards in the delivery of services to the public. In meeting these objectives, the Program shall develop standards assuring professional competence, shall monitor complaints brought against inspectors, and shall develop rules and regulations.

(c) The mandates of this chapter shall not apply to the following:

(1) Any boiler or pressure vessel which is subject to federal inspection and control;

(2) Any pressure vessel used for the transport or storage of compressed gasses and liquids under the control or regulation of the United States Department of Transportation;

(3) Any air tank on any vehicle used for carrying passengers or freight and operated under the authority of any other state agency;

(4) Any air tank installed on the right-of-way of railroads;

(5) Any unfired pressure vessel not exceeding:

a. Five cubic feet in volume and 250 psig design pressure;

b. Three cubic in volume and 350 psig design pressure,

c. One and 1/2 cubic feet in volume and 600 psig design pressure;

d. Vessels having an inside diameter, width, height, or cross section diagonal not exceeding 6 inches with no limitation on length of vessel or pressure.

(6) Any unfired pressure vessel having an internal and/or external operating pressure not exceeding 15 psig;

(7) Any unfired pressure vessel containing water at ambient temperature with a nominal water containing capacity of 120 gallons or less, including those with air or gas cushion, the compression of which serves only as a cushion;

(8) Any water filter or softener containing water at ambient temperature when the pressure does not exceed 300 psig;

(9) Any pressure vessel under the control of the State Fire Marshal;

(10) High pressure breathing air cylinders used by emergency response organizations are exempt from inspection and certification provided they are installed, serviced, and maintained in accordance with the manufacturer's recommendations and the National Fire Prevention Association Standards, and the owner or user of this equipment shall be responsible for maintaining, testing, and servicing this equipment and shall keep all records associated with these activities as required by National Fire Protection Association Standards. The failure of any person to so install, service, test and maintain these air cylinders and to keep such records shall constitute a violation of this chapter.

(11) Any water heater, directly fired with oil, gas or electricity, which shall be equipped with American Society of Mechanical Engineers (ASME) stamped safety relief valves and which cannot exceed any of the following limitations:

a. Heat input of 200,000 Btu/hr. or 58,600 watts;

b. Water temperature of 210 degrees Fahrenheit; or

c. Nominal water capacity of 120 gallons.

(12) Any coil type hot water boiler without any steam space where water flashes into steam released through a manually operated nozzle unless 1 of the following limitations is exceeded:

a. A 3/4-inch diameter tubing or pipe size, with no drum or headers attached;

b. Nominal water containing capacity does not exceed 6 gallons;

c. Water temperature does not exceed 350 degrees Fahrenheit; or

d. Steam is not generated within the coil; and

(13) Any other exemptions promulgated in regulations supporting this chapter.

(78 Del. Laws, c. 127 § 7.)

§ 7402B Definitions.

(a) "Boiler" shall mean a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof, under pressure or vacuum for use externally to itself by the direct application of heat from the combustion of fuels, or from electricity or nuclear energy. The term "boiler" shall include fired units for heating or vaporizing liquids other than water, where these units are separate

from processing systems, and are complete within themselves.

(1) "Heating boiler" shall mean a steam boiler operating at pressures not exceeding 15 psi, or a hot water boiler operating at pressures not exceeding 160 psi and/or temperatures not exceeding 250 degrees Fahrenheit which is supplied to an external heating system.

(2) "High temperature water boiler" shall mean a water boiler operating at a pressure exceeding 160 psi and/or temperatures in excess of 250 degrees Fahrenheit.

(3) "Hot water supply boiler" shall mean a vessel used to heat water for purposes other than space heating, where the water is used external to itself, at pressures not exceeding 160 psi, and/or temperatures not exceeding 250 degrees Fahrenheit at or near the boiler outlet. American Society of Mechanical Engineers (ASME) Stamping would be "ASME Section IV, H."

(4) "Jacketed cooking kettle" shall mean a gas or electrically fired jacketed cooking kettle built and stamped "ASME Section VIII, Division 1." ASME stamping would be "U."

(5) "Pool heater" shall mean an appliance designed for heating nonpotable water stored at atmospheric pressure such as water in swimming pools, spas, hot tubs, and similar applications.

(6) "Power boiler" shall mean a vessel in which steam or other vapor is generated at a pressure of more than 15 PSIG.

(7) "Thermal fluid heater" shall mean a boiler used to heat an organic fluid for heating and or processing that does not vaporize in the process. Object is considered a boiler in the State of Delaware and is required to be built to Section I of the ASME Construction Codes and registered with the National Board. Overpressure protection will be in accordance with ASME Section I Part PVG.

(8) "Water heater" shall mean a closed vessel in which water is heated by gas, oil, electric, or some other fuel supply, and the water is used externally to itself for potable water supply, or used for potable water and space heating, operating at pressures not exceeding 160 psi and water temperatures not in excess of 210 degrees Fahrenheit. ASME Stamping would be "ASME Section IV, HLW."

(b) "Council" shall mean the Governor's Council on Boiler Safety.

(c) "Department" shall mean the Department of Natural Resources and Environmental Control.

(d) "National Board" shall mean the National Board of Boiler and Pressure Vessel Inspectors.

(e) "NBIC" shall mean the National Board Inspection Code. The manual for boiler and pressure vessel inspectors, published by the National Board of Boiler and Pressure Vessel Inspectors. The NBIC is recognized for Repairs and Alterations, and Antique (Historical) boilers only (Part 3 only).

(f) "Place of public assembly" shall mean any establishment, building, location or any portion thereof within this State intended and used for occupation by persons while employed therein for compensation of any kind, any commercial structure and/or location to which the public has access.

(g) "Pressure vessel" shall mean containers for the containment of pressure, either internal or external. The pressure may be obtained from an external source or by the application of heat from a direct or indirect source, or any combination thereof.

(h) "PSI" or "psi" shall mean pounds per square inch.

(i) "PSIG" or "psig" shall mean pounds per square inch gauge.

(j) "Secretary" shall mean the Secretary of the Department of Natural Resources and Environmental Control.

(k) "Shop review" shall mean a general survey and examination of a boiler or pressure vessel manufacturing or repair firm's facilities, methods and records. The examination is performed by a designee of the ASME, and/or the National Board.

(78 Del. Laws, c. 127 § 7.)

§ 7403B Program duties and responsibilities.

(a) Notwithstanding the provisions of § 7401B(c) of this title, the Secretary or the Secretary's designee shall have immediate access to the premises for investigation purposes in the event of an accident related to the construction, operation, maintenance or repair of a boiler, pressure vessel or nuclear installation.

(b) Notwithstanding any provision of this chapter to the contrary, any heating and hot water supply boiler located in an apartment complex or residence of 6 or less living units, or any heating or hot water supply boiler located in and used to heat a single unit, where the heat input does not exceed 100,000 Btu/hr., shall be exempt from field inspection only.

(c) The Boiler Safety Program shall have the authority to specify minimum standards for the fabrication, construction, installation, operation, inspection and repair of all boilers, pressure vessels and nuclear installations in this State.

(d) The Boiler Safety Program, with the approval of the General Assembly, shall establish appropriate fees for all activities and services provided by the Program, including, but not limited to, commissions, inspections and examinations.

(e) The Boiler Safety Program shall act as the American Society of Mechanical Engineers (ASME) and National Board designees when performing ASME shop reviews and the National Board of Boiler and Pressure Vessel Inspectors (NBBPVI) shop reviews of those manufacturers and repair companies of boilers and pressure vessels in this State.

(f) The Boiler Safety Program shall have the authority to require that all boilers and pressure vessels in this State be inspected by persons commissioned as boiler and pressure vessel inspectors in this State, and to issue a certificate of inspection for all boilers and pressure vessels that meet state installation guidelines, except those exempt under § 7401B(c) of this title and by regulation. The Program shall be responsible for inspecting uninsured boilers and pressure vessels as well as boilers and pressure vessels that the insurer has failed to inspect. The Secretary or the Secretary's designee shall have immediate access to the site of all installations for inspection purposes and in the event of an accident. Inspection requirements shall be contained in rules and regulations.

(1) All owners, users and/or contractors, who are responsible for the installation of boilers or pressure vessels in this State, shall obtain a certificate of inspection from the Boiler Safety Program prior to the operation of the boiler or pressure vessel. Notwithstanding this provision, any newly installed boiler or pressure vessel may be operated for testing necessary for issuance of a certificate of inspection.

(2) Failure to obtain the required certificate of inspection shall subject the owner, user and/or contractor to a civil penalty of not less than $1,000 for the first offense and $2,000 for a second or subsequent offense. The Justice of the Peace Courts shall have jurisdiction over all violations of this subsection.

(g) The Secretary or the Secretary's designee shall have the authority to issue a commission to an applicant as an inspector of boiler and pressure vessels who meets the following criteria:

(1) Shall file a notarized application with the Secretary or the Secretary's designee and pay the fee established by the Program;

(2) Shall obtain a passing score on the validated examination for inspector;

(3) Shall possess a valid, current commission issued by the NBBPVI; and

(4) Shall not have been the recipient of any administrative penalties regarding the applicant's inspection practices in any other jurisdiction where the applicant has held, or currently holds, a commission.

The applicant shall be responsible for providing proof of a valid commission in all state jurisdictions where the applicant holds or has held a commission as boiler inspector.

(h) All inspections of repairs and alterations shall be performed by a Delaware-commissioned inspector following the provisions of the NBIC and the Delaware rules and regulations.

(i) The Secretary shall promulgate and enforce rules and regulations, which shall be binding on all persons commissioned by the Program, including manufacturers and users of boilers and pressure vessels. The rules and regulations shall conform, insofar as possible, to the ASME Boiler and Pressure Vessel Code and the NBBPVI's Inspection Code. The rules and regulations shall further the purposes and objectives of this chapter and particularly as stated in § 7401B(b) of this title.

(j) The Secretary or the Secretary's designee shall have the authority to grant a variance, on a case by case basis, to those rules and regulations that pertain to the installation of new boilers to replace existing boilers.

(k) The Secretary or the Secretary's designee shall designate, contract, approve and arrange for the administration of all examinations. The Secretary or the Secretary's designee shall have the following powers, duties and functions relating to the administration of Delaware examinations:

(1) Deposit all fees received for testing to be used to cover the costs of all expenses directly related to the administration of examinations;

(2) Review, approve and execute all contracts for examination services;

(3) Review and approve the content and validity of any examination; and

(4) Supervise the administration and proctoring of all tests.

(l) The Secretary or the Secretary's designee shall:

(1) Have the power of a constable pursuant to § 2902(d) of Title 10, for the sole purpose of executing and serving the administrative inspection warrants, subpoenas and summons issued under the authority of this State and pursuant to the performance of their duties; and

(2) Have the power to shut down unsafe boilers or pressure vessels pursuant to this chapter.

(m) The Secretary or the Secretary's designee shall have the power to suspend or revoke a state commission for a finding of improper conduct. Where an application has been refused or rejected for a commission as inspector in this State or where a commission has been suspended for improper conduct by the Secretary's designee, the applicant may appeal to the Secretary of the Department of Natural Resources and Environmental Control.

(n) The Secretary or the Secretary's designee shall establish a process for handling citizen complaints regarding the unsafe operation of boilers and pressure vessels in this State, which process shall be promulgated in rules and regulations.

(o) All commissions issued previously by the Division of Boiler Safety shall remain valid as if they had been issued by the Program, and the Program shall have all powers and jurisdiction over such commissions the same as if the commissions had been issued by the Program in the first instance.

(78 Del. Laws, c. 127 § 7.)

§ 7404B Council on Boiler Safety.

(a) There is established the Council on Boiler Safety.

(b) The Council on Boiler Safety shall serve in an advisory capacity to the Secretary or the Secretary's designee and shall consider matters relating to the sale, operation, construction and use of boilers in this State and such other matters as may be referred to it by the Governor, or the Secretary of the Department. The Council may study, research, plan and advise the Secretary, the Secretary's designee, the Boiler Safety Program, and the Governor on matters it deems appropriate to enable the Program to function in the best possible manner.

(c) The Council on Boiler Safety shall be composed of 5 members who shall be appointed for terms of 3 years by the Governor. The Council shall be composed of 5 members; and, preferably 1 shall be a representative of a company licensed to insure boilers and pressure vessels in Delaware, another, a manufacturer who shall have been actively engaged in the manufacture of boilers, another, a user of boilers, another, a mechanical engineer and the fifth, a licensed stationary engineer.

(d) No more than 3 of the newly appointed members shall be affiliated with the same political party. Any person who declines to

announce a political affiliation shall also be eligible for appointment as a member of the Council.

(e) Members of the Council shall serve without compensation except that they may be reimbursed for reasonable and necessary expenses incident to their duties as members of the Council.

(f) A Chairperson of the Council shall be chosen by the members of the Council from among its members and shall serve in that capacity for a term of 1 year and shall be eligible for re-election.

(g) Any appointment, pursuant to this section, to replace a member whose position becomes vacant prior to the expiration of the member's term shall be filled only for the remainder of that term.

(78 Del. Laws, c. 127 § 7.)

Part VII
Natural Resources
Chapter 75
DELAWARE LAND PROTECTION ACT

§ 7501 Short title.

This chapter shall be known and may be cited as the "Delaware Land Protection Act."

(67 Del. Laws, c. 352 § 1.)

§ 7502 Declaration of policy.

The General Assembly finds that:

(1) The provision of lands for public recreation and conservation of natural resources promotes biological diversity, public health, prosperity and general welfare and is a proper responsibility of government.

(2) Lands now provided for such purposes will not be adequate to meet the needs of an expanding population in years to come.

(3) The expansion of population, while increasing the need for such lands, will continually diminish the supply and tend to increase the cost of public acquisition of lands available and appropriate for such purposes.

(4) Rapid growth and spread of urban development is encroaching upon, or eliminating, many open areas and spaces of varied size and character and many sites with important cultural and natural resources. These areas, spaces, and sites, if preserved and maintained in their present open state, constitute important physical, biological, social, aesthetic, recreational, or economic assets.

(5) The State must continue to permanently protect substantial quantities of such lands as are now available and appropriate so that they may be preserved and developed for the purposes enumerated herein.

(6) It is the public policy of the State that the permanent protection of land shall be accomplished through the voluntary acquisition of interests or rights in land, or donation of said lands, and that said acquisition or donation constitutes a public purpose for which public funds have been expended or advanced and should be continued.

(67 Del. Laws, c. 352 § 1; 80 Del. Laws, c. 354 § 1.)

§ 7503 Purpose.

(a) State agencies may permanently protect land for the following purposes, to carry out and expand on the intent of the Open Space Program:

(1) To protect and conserve all forms of natural and cultural resources.

(2) To protect and conserve the biological diversity of plants and animals and their habitat.

(3) To protect or expand existing or planned parks, forests, wildlife areas, nature preserves or other recreation, conservation, or cultural sites.

(4) To preserve sites of special natural, cultural, or geological interest.

(5) To connect existing open spaces into a cohesive system of greenways and resource areas.

(6) To provide for public outdoor recreation.

(7) To allow for water resource conservation.

(b) State agencies may permanently protect land pursuant to this chapter by the use of direct acquisition for cash, by purchase money mortgage, by installment sale, or by other methods or incentives as determined by the Secretary after consultation with the Secretary of Finance. State agencies shall not exercise the "right of eminent domain" or adopt regulations to restrict or otherwise control the development of land that is privately held and that may be eligible for permanent protection under this chapter to carry out the purposes of this chapter. Participation in the Open Space Program and all transactions to permanently protect land under this chapter shall be voluntary.

(67 Del. Laws, c. 352 § 1; 80 Del. Laws, c. 354 § 1.)

§ 7504 Definitions.

As used in this chapter:

(1) "Conservation Trust Fund" means the Delaware Land and Water Conservation Trust Fund established and maintained pursuant to subchapter II of Chapter 54 of Title 30.

(2) "Council" means the Delaware Open Space Council established pursuant to this chapter.

(3) "Cultural resource site" means land that contains at least 1 of the following:

a. Archaeological resources.

b. An area listed or eligible for listing on the National Register of Historic Places.

(4) "Department" means the Department of Natural Resources and Environmental Control.

(5) "Land" or "lands" means real property, including improvements thereon; rights of way; water, subaqueous land, and riparian rights; easements; privileges; and all other rights or interests of any kind or description in, relating to, or connected with real property or water.

(6) "Open space" or "open space land" means any land the permanent protection of which will further 1 or more purposes enumerated in § 7503(a) of this title.

(7) "Open Space Program" means the conservation program created to carry out the purposes of this chapter.

(8) "Permanent protection", "permanently protected," or "permanently protect," means the acquisition by purchase, gift, grant, bequest, devise, or otherwise of the fee or any lesser interest, development right, easement, covenant, or other contractual right in land in perpetuity necessary to achieve the purposes of this chapter.

(9) "Secretary" means the Secretary of the Department of Natural Resources and Environmental Control.

(10) "State agency" means, and shall apply exclusively to, the following units of state government which manage natural and cultural resources:

a. Department of Natural Resources and Environmental Control (Division of Parks and Recreation and Division of Fish and Wildlife).

b. Department of State (Division of Historical and Cultural Affairs).

c. Department of Agriculture (Delaware Forest Service).

(67 Del. Laws, c. 352 § 1; 72 Del. Laws, c. 489 § 94; 80 Del. Laws, c. 354 § 1.)

§ 7505 Delaware Open Space Council.

(a) There is created a Delaware Open Space Council to advise the Secretary on all matters relating to the administration, implementation, and financing of the Open Space Program; site selection; methods of protection; and interagency and intergovernmental coordination among public agencies and private land preservation organizations. The Council shall consist of the following:

(1) One member of the Senate appointed by the President Pro Tempore to serve at the pleasure of the President Pro Tempore.

(2) One member of the House of Representatives appointed by the Speaker of the House to serve at the pleasure of the Speaker of the House.

(3) Seven members appointed by the Governor to serve at the pleasure of the Governor, at least 4 of whom shall be persons who have been active or have shown an interest in preserving open space. The membership shall be representative of all counties in the State. Appointments shall be for 4-year terms, provided that the terms of newly appointed members will be staggered so that no more than 4 appointments shall expire annually. Members may be appointed for less than 4 years to ensure that members' terms expire on a staggered basis. A member appointed under this paragraph shall continue to serve beyond the expiration of the member's term until a successor is duly appointed.

(4) No more than 5 Council members of 1 political party; provided however, that failing or declining to announce one's political affiliation shall not make such person ineligible for appointment.

(d) The Department shall furnish clerical, technical, legal, and other services required by the Council in the performance of its official duties.

(e) Members of the Council shall receive no compensation but may be reimbursed for their actual and necessary expenses incurred in the performance of their official duties.

(f) For purposes of conducting business of the Council, 5 voting members shall constitute a quorum. Except as otherwise provided in this chapter, a majority vote of the members present at a meeting at which a quorum is present shall be required on any action or matter before the Council.

(g) The Council may adopt procedural rules to carry out its functions under this chapter.

(h) The Council shall hold at least 1 regularly-scheduled public meeting in each quarter of each calendar year and keep a record of its proceedings. At regularly-scheduled meetings, the Council shall conduct its affairs, review land that the state agencies bring before it for permanent protection, and make recommendations to the Secretary. Council shall conduct its proceedings in accordance with Chapter 100 of Title 29.

(b) The Secretaries of the Departments of Agriculture and State, the Director of the Delaware Economic Development Office, and the State Liaison Officer for the federal Land and Water Conservation Fund, or designees appointed by the respective Secretary, Director, or Officer, who shall be ex officio advisors to the Council without voting powers.

(c) The Governor shall appoint the chairperson of the Council.

(67 Del. Laws, c. 352 § 1; 69 Del. Laws, c. 458 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 394 §§ 1-6; 80 Del. Laws, c. 133 § 1; 80 Del. Laws, c. 354 § 1.)

§ 7506 Powers and duties of the Council.

In addition to its other powers and duties provided in this chapter, the Council shall:

(1) Advise and consult with the Secretary, Department, and State agencies on preservation matters.

(2) Advise and consult with the Secretary regarding any change from permanently protected status of open space acquired or otherwise protected under this chapter.

(3) Develop, in conjunction with the State agencies and with public input, an Open Space Program Plan ("Plan") for the Council's consideration and approval.

a. The Plan shall include the Council's and state agencies' strategies, goals, and priorities for the application of funds available for the

permanent protection of land.

b. The Plan may include analysis and discussion of various creative and innovative methods to secure the permanent protection of open space land, including:

1. Local and regional land trusts.

2. Conservation and preservation easements on a statewide basis.

3. Purchase of less than a fee simple interest in land.

4. Programs to create financial incentives for private sector contributions to establish operations and maintenance funds for open space land protected under this chapter.

5. An analysis, in conjunction with all appropriate public and private conservation entities, of the best practices for fee simple and conservation easement options for protecting forest and freshwater wetland habitats and other land eligible for permanent protection.

c. The Council and state agencies shall review the Plan every 5 years and may update the Plan as necessary.

(4) Encourage the Secretary to analyze, in conjunction with the Department of Finance, the state and local tax codes and formulate incentives to encourage landowners and developers to maintain their lands that qualify as open space in an undeveloped state or to sell or donate such lands to the State or private land preservation organizations.

(5) Encourage the Department, private land preservation organizations, and interested private sector entities to preserve and protect open space for the benefit of the citizens of this State.

(67 Del. Laws, c. 352 § 1; 69 Del. Laws, c. 458 § 1; 77 Del. Laws, c. 236 § 1; 80 Del. Laws, c. 354 § 1.)

§ 7507 State resource areas.

(67 Del. Laws, c. 352 § 1; Del. Laws, c. 354 § 1, eff Aug 3, 2016.)

§ 7507A Open space: criteria, evaluation, and permanent protection.

(a) To be eligible for permanent protection, an area of land must include or exhibit, in whole or in part, 1 or more of the following criteria:

(1) Contains rare species, as determined by on-site verification conducted with landowner permission which is provided in writing.

(2) Has significant potential to support rare species.

(3) Is a cultural resource site or near a cultural resource site.

(4) Includes or enhances important wildlife habitat or migration corridors, or potential wildlife habitat or migration corridors.

(5) Has significant forest resources.

(6) Has wetlands, floodplains, or other lands necessary for the protection of water resources.

(7) Contains significant or unique ecosystems, natural features, or geological features.

(8) Is an inholding, contiguous to or near lands that are already preserved or protected, or planned to be preserved or protected, by federal, state, local, or other conservation agencies, groups, or entities.

(9) Provides for public outdoor recreation.

(10) Allows natural systems or plants and animals to accommodate or adapt to climate change or other large-scale changes in ecosystem processes.

(11) Possesses other characteristics that would make its acquisition consistent with and promote 1 or more of the purposes of this chapter.

(b) Evaluating lands being considered for permanent protection.

(1) The state agencies shall adopt, with the input of the Council and after notice and public hearing pursuant to Chapter 101 of Title 29, guidelines to evaluate land being considered for permanent protection.

(2) The state agencies may amend the guidelines, following the procedure set forth in paragraph (b)(1) of this section.

(3) The state agencies shall use the guidelines to evaluate lands that a landowner has offered for permanent protection to ensure that the land should be permanently protected and that permanently protecting the land furthers the purposes of this chapter.

(c) Protected land maps. — The Department shall regularly update and make accessible to the public through electronic means maps of the land which is permanently protected in each of the 3 counties in this State.

(1) The protected land maps shall show the land protected by public entities and private land preservation organizations.

(2) The purpose of the protected land maps is to do all of the following:

a. Inform the public of the lands which are permanently protected by public entities and private land preservation organizations.

b. Guide the Council and state agencies in the review and evaluation of land for permanent protection.

c. Inform the public and guide the Council and state agencies about where the Council and state agencies should prioritize the use of funds available for the Open Space Program to further the purposes of this chapter.

(3) The Department shall highlight on the protected land maps only those areas of the State which are protected by public entities or that are conserved by private land preservation organizations. The Department may not highlight privately-owned land on a protected land map.

(d) Permanent protection of land. — To permanently protect land, all of the following shall occur:

(1) The Council shall do all of the following:

a. Review land that the state agencies bring before it for permanent protection.

b. Recommend to the Secretary the land that the Council determines should be permanently protected.

(2) The Secretary shall review the Council's recommendation and make a final determination whether to permanently protect the land that the Council has recommended under paragraph (d)(1)b. of this section.

(80 Del. Laws, c. 354 § 1.)

§ 7507B Access to land; limitations on use and disclosure of data.

(a) A representative of the Council or state agency may access land being considered for permanent protection to perform onsite verification to gather information about the land only after the landowner executes a written permission form granting the Council or State agency representative permission to access the land.

(b) If a representative of the Council or state agency collects data during an onsite verification of land that establishes the presence of at least 1 of the criteria listed in § 7507A(a)(1), (2), or (7) of this title during the negotiations for the permanent protection of that land, and the negotiations do not result in the permanent protection of that land, an agency or political subdivision of this State, including county and municipal governments, or person, as defined in § 302 of Title 1, may not use the data for any of the following purposes:

(1) To incorporate the data into a comprehensive plan; overlay zoning ordinance; guideline; specific or technically-based performance standard, design criterion, or mitigation requirement; or for any other restrictions on land use.

(2) To deny, delay, or recommend the denial or delay of a permit or license.

(3) To place any condition or restriction on a permit or license.

(4) To charge additional fees on a permit or license.

(c) Nothing in this chapter may be construed to prohibit the Council or state agency representative from reporting to the proper authorities any information or data obtained about the property concerning a violation of any environmental, public health, or safety laws or regulations or information that is otherwise required to be reported.

(d) Data collected under this section related to negotiations that do not result in the permanent protection of land are not public records and may not be disclosed under Chapter 100, Title 29.

(80 Del. Laws, c. 354 § 1.)

§ 7508 Land use requirements.

(67 Del. Laws, c. 352 § 1; Del. Laws, c. 354 § 1, eff Aug 3, 2016.)

§ 7509 Program administration.

(a) The Department shall administer the Open Space Program. Direct costs associated with the administration of the Open Space Program shall be paid from the Conservation Trust Fund.

(b)-(d) [Repealed.]

(e) Reporting to the Governor and General Assembly.

(1) Five years after August 3, 2016, and every 5 years thereafter through the life of the Open Space Program, the Secretary and the Council shall report to the Governor and the General Assembly on the status and accomplishments of the Open Space Program with recommendations regarding continuation of the Open Space Program.

(2) The Secretary and the Council shall file annual reports with the General Assembly detailing the accomplishments and activities of the Open Space Program.

(67 Del. Laws, c. 352 § 1; 80 Del. Laws, c. 354 § 1.)

§ 7510 Zoning and use.

Notwithstanding any provision of this chapter to the contrary, no open space or other area acquired primarily for recreational use shall be rezoned, neither shall there be a change in the use of any such lands requiring a variance or subdivision approval, except upon 45 days prior notice to all elected members of the General Assembly in whose district such lands, or any part thereof, lie.

(72 Del. Laws, c. 156 § 2.)

Part VII
Natural Resources
Chapter 76
INLAND BAYS' WATERSHED ENHANCEMENT

§ 7601 Title.

This chapter shall be known, and may be cited as "The Inland Bays' Watershed Enhancement Act."

(69 Del. Laws, c. 468 § 1.)

§ 7602 Center for the Inland Bays.

(a) The Center for the Inland Bays is hereby created as a nonprofit organization. The Center shall apply for nonprofit status under the federal Internal Revenue Code. The purpose of the Center shall be to oversee and facilitate the implementation of a long-term approach for the wise use and enhancement of the Inland Bays' Watershed.

(b) The Center shall receive federal funds for coordinating implementation of the federal Comprehensive Conservation and Management Plan (CCMP), and shall raise private grant moneys to support educational activities, restoration and land acquisition efforts.

(69 Del. Laws, c. 468 § 1.)

§ 7603 Board of Directors.

(a) The Center shall be administered by a Board of Directors which shall be no more than 14 in number and shall consist of the following members:

(1) Secretary of Delaware Department of Agriculture;
(2) Secretary of Delaware Department of Natural Resources and Environmental Control;
(3) Representative from the Sussex Conservation District;
(4) Administrator from Sussex County;
(5) Representative from Sussex County Association of Towns;
(6) Chair of the Inland Bays Scientific and Technical Advisory Committee;
(7) Chair of the Inland Bays Citizens Advisory Committee;
(8) A citizen of Sussex County designated by the President Pro Tem of the Delaware Senate;
(9) A citizen of Sussex County designated by the Speaker of the Delaware House of Representatives; and
(10) Up to 5 citizens of Sussex County elected by the voting membership of the Board of Directors.

Each member may designate an alternate in the event such member is unable to participate in any decision-making process of the Board.

(b) The United States Environmental Protection Agency and other federal agencies may serve as nonvoting, ex-officio members of the Board. In addition, the President Pro-Tem of the Delaware State Senate and the Speaker of the Delaware State House of Representatives may each designate 1 nonvoting, ex-officio member to the Board, which member shall be a resident of Sussex County.

(c) The Inland Bays Estuary Program and the Inland Bays Scientific and Technical Advisory Committee (STAC) and the Citizens Advisory Committee (CAC) shall continue to serve as formal advisory bodies to the Board.

(69 Del. Laws, c. 468 § 1; 70 Del. Laws, c. 313 § 1; 80 Del. Laws, c. 87 § 1.)

§ 7604 Duties of the Board of Directors.

(a) The Board shall be responsible for the procurement and administration of federal and private moneys secured to fulfill the responsibilities pursuant to the protection and restoration of the Inland Bays' watershed. The Board shall review and consider recommendations made by the Executive Director concerning priorities for protecting and restoring the Inland Bays' watershed and to oversee fundraising activities and the distribution of moneys received.

(b) The Board of Directors shall oversee and facilitate the implementation of the CCMP upon its adoption, tracking and monitoring its progress leading to improvements to the Inland Bays, facilitating an ongoing dialogue on issues concerning their protection, educating the public and students about how to protect the Bays and determining priorities for restoration, enhancement and land acquisition projects.

(c) Meetings of the Board of Directors shall be held at least quarterly, or as deemed necessary, and shall be open to the public and advertised according to Delaware law. Experts in various subject matters may be invited to address the Board of Directors as needed and appropriate.

(d) Staff support for the Board shall be provided by an Executive Director who will convene its meetings; develop and carry out its agreements; develop grant proposals and fundraising events to support its educational, restoration and land acquisition activities; prepare solicitations for proposals and make recommendations for the award of grants for educational and restoration projects; prepare progress reports, work plans and budgets for the Board's approval; support advisory committees; supervise staff and perform other duties as assigned by the Board.

(e) The Board shall submit a progress report annually to the General Assembly. The General Assembly may order periodic general audits

of the Center for the Inland Bays.

(69 Del. Laws, c. 468 § 1.)

Part VII
Natural Resources
Chapter 77
EXTREMELY HAZARDOUS SUBSTANCES RISK MANAGEMENT ACT

§ 7701 Short title.

This chapter shall be known and may be cited as the "Extremely Hazardous Substances Risk Management Act."

(66 Del. Laws, c. 417 § 1; 71 Del. Laws, c. 308 § 1.)

§ 7702 Findings.

(a) The General Assembly finds that a portion of Delaware's population is potentially exposed to accidental releases of extremely hazardous substances (EHS) which could cause deaths or permanent disabilities to persons experiencing short-term exposure to those substances.

(b) The General Assembly also finds that although modern technology, operating systems, inspection and monitoring programs and other safeguards cannot guarantee that catastrophic releases of EHS, generation of pressure waves or thermal exposure will not occur, a well conceived and vigorously managed risk management program can reduce the likelihood of such occurrences.

(c) The General Assembly further finds that there is a need to educate the public, the business community and every person associated with EHS about the risks of EHS, and the measures that can be taken to minimize the probability of catastrophic events associated with EHS.

(d) The Department adopted the Delaware "Regulation for the Management of Extremely Hazardous Substances" on September 25, 1989, and modified this regulation on December 18, 1995, in accordance with this chapter.

(e) The General Assembly finds that the United States Congress authorized the United States Environmental Protection Agency (EPA) and the United States Department of Labor, Occupational Safety and Health Administration (OSHA) to develop similar federal requirements in the Clean Air Act Amendments of 1990. OSHA promulgated its standard (29 CFR 1910.119) on February 24, 1992. EPA promulgated its list rule (40 CFR 9 and 68) on January 31, 1994. Additionally, EPA promulgated its Accidental Release Requirements rule (40 CFR Part 68) on June 20, 1996. The Clean Air Act Amendments of 1990 allows for the delegation of the federal EPA authority for the Accidental Release Requirement rule to a state implementing agency.

(f) The Department shall undertake the delegation of EPA's authority by the regulatory revision process enacted in this chapter. The Department shall act to maintain EPA's delegated authority once it is obtained. The Delaware "Regulation for the Management of Extremely Hazardous Substances" which became effective on September 25, 1989, and was modified on December 18, 1995, shall remain in effect until the revised regulation becomes effective on or before June 21, 1999.

(66 Del. Laws, c. 417 § 1; 71 Del. Laws, c. 308 § 1.)

§ 7703 Purpose, goal and scope.

(a) The purpose of this chapter is to protect the lives and health of citizens of the State living and working in the vicinity of facilities with extremely hazardous substances.

(b) This chapter is concerned with the prevention of sudden releases of EHS and the generation of pressure waves and thermal exposures beyond the property boundaries of the facility where they occur and the catastrophic health consequences caused by short-term exposures to such accidental releases. This chapter has the goal of prevention of such catastrophic events by requiring responsible person or persons having extremely hazardous substances on-site to take all feasible actions needed to minimize the probability of catastrophic events. It is the intent of this chapter to complement and be enforced in conjunction with other laws. The Department may, by regulation, exempt or establish a greater threshold quantity for an agriculture nutrient when exclusively used as an agricultural nutrient and held by a farmer. The Department shall, by regulation, determine whether other laws provide equal or more stringent protection according to the purpose of this chapter. In such instances, the Department may exempt a process containing an EHS from all or part of the elements of the risk management program developed under § 7709 of this title.

(c) Responsible person(s) from a regulated facility may select cost-effective methods of achieving the purpose of this chapter where a risk management program appropriate to the risk is in effect. EHS already under the jurisdiction of other laws may continue to be used subject to this chapter. Individual containers of EHS for retail sale only are not regulated by this chapter.

(66 Del. Laws, c. 417 § 1; 71 Del. Laws, c. 308 § 1.)

§ 7704 Policy and general duty.

(a) The General Assembly believes that every person in control of or associated with an EHS is responsible for operating in a manner consistent with the purpose of this chapter. It is their obligation to develop and implement a risk management program that anticipates and minimizes the chances of catastrophic events. The facility risk management plan and the risk management program implementation shall be subject to review by the Department. It shall be the objective of the regulations and programs established under this chapter to prevent

accidental releases and to minimize the consequences of any such release of any substance listed pursuant to § 7707 of this title or any other extremely hazardous substance. Every person in control of or associated with any such substance that is produced, processed, handled or stored has a general duty to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur.

(b) Nothing in this chapter shall be interpreted, construed, implied or applied to create any liability or basis for suit for compensation for bodily injury or any other injury or property damages to any person that may result from accidental releases of such substances.

(66 Del. Laws, c. 417 § 1; 71 Del. Laws, c. 308 § 1.)

§ 7705 Definitions.

As used in this chapter:

(1) "A catastrophic event" means a sudden release of a sufficient quantity of an EHS, a pressure wave or a thermal exposure beyond the property boundaries of a facility which may cause death or permanent disability to a person because of a single short-term exposure. In this definition, an accidental fire at a nonregulated facility is excluded from consideration as a catastrophic event creating EHS.

(2) "Actual quantity" (AQ) means the sum of all the physical quantities of a specific EHS in whatever form at the maximum design capacity of the facility.

(3) "A substance hazard index" (SHI) means a calculated number which relates the relative danger of a substance considering substance toxicity and ability to disperse in the atmosphere as specified in § 7707 of this title.

(4) "Department" means the Department of Natural Resources and Environmental Control.

(5) "EPA" means the United States Environmental Protection Agency.

(6) "Extremely hazardous substance" (EHS) means a substance in the form of a gas, liquid, solid, vapor, powder, aerosol or mixture of these states which is listed pursuant to § 7707 of this title, or any other chemical which may as a result of short-term exposures because of releases to the environment cause public death, injury, or property damage due to their toxicity, reactivity, volatility or corrosivity.

(7) "Extremely hazardous substance list" (EHSL) means a compilation of EHS that meets the criteria set forth in § 7707 of this title.

(8) "Facility" means an area bounded by a property line where a person has EHS present, or the sum of adjacent such areas separated by less than 100 meters under common management control.

(9) "Inspection notes" means handwritten statements or descriptions made during an inspection used to aid memory when preparing the inspection report.

(10) "OSHA" means the United States Department of Labor, Occupational Safety and Health Administration.

(11) "Person" means a natural person, partnership, limited partnership, trust, estate, corporation, custodian, association nominee or any other individual entity in its own or any representative capacity.

(12) "Release" means the introduction of an EHS into the atmosphere that, by means of atmospheric dispersion under average atmospheric conditions for Delaware, will cause an EHS to be conveyed outside of a facility or the generation of a pressure wave or a thermal exposure beyond the facility's boundary.

(13) "Responsible person(s)" means:

a. For a corporation: a president, vice-president, secretary or treasurer of the corporation or any other person who performs similar policy or decision making functions for the corporation, or a duly authorized representative of such person approved in advance by the Department (which may be the "contact person" as indicated in the RMP),

b. For a partnership, limited partnership or sole proprietorship: a general partner or the proprietor, respectively, or the delegation of authority to a representative approved in advance by the Department (which may be the "contact person" as indicated in the RMP), or

c. For a municipality, state, federal or other public agency: either a principal executive officer, a ranking elected official or a duly authorized representative of such person approved by the Department (which may be the "contact person" as indicated in the RMP).

(14) A "risk management plan" ("RMP") is information which shall be submitted by each EPA regulated facility in a method and format to a central point as specified by EPA prior to June 21, 1999. This information shall contain an executive summary, registration, 5-year accident history, off-site consequence analysis, prevention program summary, summary of the emergency response program and a certification statement by the facility owner or operator. For substances regulated by Delaware but not regulated by EPA, the risk management plan shall be submitted in a method and format to a central point as specified by the Department, by regulation, prior to June 21, 1999. The RMP from each facility will be made available to the Department, the State Emergency Response Commission, the Local Emergency Planning Committees, to other state agencies involved in emergency planning and preparedness and the citizens of the State.

(15) "Risk management program" means all activities intended to reduce risk, including, but not limited to, the consideration of technology, personnel and facilities, and is more fully described in § 7709 of this title.

(16) "Secretary" means the Secretary of the Department of Natural Resources and Environmental Control or the Secretary's designee.

(17) "Threshold quantity" (TQ) means the amount of EHS sufficient to cause a catastrophic event. The threshold quantity shall be calculated based on the criterion established in § 7707(b) of this title.

(18) "Unit" as used in § 7713 of this title is defined as the actual quantity of EHS on a facility within a process divided by the threshold quantity.

(66 Del. Laws, c. 417 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 308 § 1; 79 Del. Laws, c. 431 § 1.)

§ 7706 Regulations.

(a) The Secretary may adopt, amend, modify or repeal regulations, after public hearing, to effectuate the policy and purpose of this chapter. Cost effectiveness, technical feasibility, risk to public health and risk reduction effectiveness are factors that must be considered by the Department in making its findings and developing regulations. In no case shall the costs of risk management program provisions be the deciding factor if the result would jeopardize the purpose of this chapter.

(b) When developing regulations, the Department shall establish an ad hoc committee of interested persons. When establishing this committee, the Department shall solicit the involvement of interested persons such as, but not limited to, the following: Secretaries or their designees of the Department of Natural Resources and Environmental Control, the Department of Agriculture, the Department of Safety and Homeland Security and the Department of Health and Social Services; the State Fire Marshal or a designee; a member of the Delaware Chemical Industry Council; a member of the Delaware State Chamber of Commerce; a member of the Delaware City Community Awareness Emergency Response Committee; a member of the Citizens Advisory Committee to the Department of Natural Resources and Environmental Control; a member of the Delaware Petroleum Council; and citizens of the State representing public organizations with a concern for the environment. The Department Secretary (or a designated person) shall chair the committee.

(c) The regulations developed for this chapter by the Department shall be periodically reviewed.

(d) In addition, the Department shall develop cooperative agreements as needed with the Division of Public Health, the Department of Safety and Homeland Security, Office of the State Fire Marshal and any other private, public or federal agency.

(66 Del. Laws, c. 417 § 1; 71 Del. Laws, c. 308 § 1; 74 Del. Laws, c. 110 § 138.)

§ 7707 Extremely hazardous substance list (EHSL)

(a) The Department shall develop and adopt regulations for the identification of extremely hazardous substances. An EHSL shall be developed based on at least 1 of the following criteria:

(1) Extremely toxic substances — Substances are regulated because of their extreme toxicity, ability to disperse and quantity. Each substance shall be assigned a Substance Hazard Index (SHI) number to rank the risk associated with the substance. Substances with an SHI greater than or equal to 8,000 shall be regulated.

The SHI is derived as follows:

SHIEVC

ATC

Where:

ATC is the acute toxicity concentration in parts per million defined as the lowest reported concentration, based on recognized scientific protocols, that will cause death or permanent disability to humans from an exposure duration of 1 hour. Extrapolations from various sources of data are permitted using scientifically recognized methods. If toxicity data based on recognized scientific protocols are unavailable, the EHS ATC is set at 10.0 parts per million.

Where:

EVC is the equilibrium vapor concentration at 20°C. defined as the substance vapor pressure at 20°C. in millimeters of mercury multiplied by 1,000,000 divided by 760. For powders, solids or aerosols, the substance vapor pressure is replaced by the maximum substance concentration that can be conveyed in air after a settling distance of 100 meters from the point of emission.

(2) Explosive substances — Substances are regulated because of their extreme reactivity, instability or explosiveness and creation of associated pressure waves, either inside of confined spaces or in the open atmosphere.

(3) Flammable and combustible substances — Substances are regulated because of their ability to ignite and burn rapidly, thus creating the possibility of high thermal exposure. Industry standards such as National Fire Protection Association, NFPA 30 may be used as a basis for defining compliance with the terms and conditions of this chapter.

(4) In developing the EHSL to undertake and maintain the delegation of EPA's authority, the Department shall, by regulation, consider each of the following criterion:

a. The severity of any acute adverse health effects associated with accidental releases of the substance;

b. The likelihood of accidental releases of the substance; and

c. The potential magnitude of human exposure to the accidental releases of the substance.

(b) The Department shall develop and adopt regulations which determine the TQ of each EHS. In developing the TQ for each regulated substance, the Department shall consider the following:

(1) For extremely toxic substances — The Department shall identify the TQ of EHS that require registration and regulation. For a given EHS, the threshold quantity shall be calculated based on commonly recognized atmospheric modeling procedures and mortality/exposure probabilities calculated for an average individual.

(2) For extremely explosive substances — The threshold quantity shall be calculated based on commonly recognized procedures to predict the potential impact of a given substance.

(3) For extremely flammable substances — The threshold quantity shall be calculated based on commonly recognized procedures to predict the burning characteristics, fire size, thermal radiation generation and dissipation with distance and the consequences of a fire.

Industry standards such as National Fire Protection Association "Flammable and Combustible Liquids Code" NFPA 30 may be used as a basis for defining compliance with the terms and conditions of this chapter.

(4) In developing the threshold quantities for the EHSL to undertake and maintain the delegation of EPA's authority, the Department shall, by regulation, take into account the toxicity, reactivity, volatility, ability to disperse, combustibility or flammability of the substance and the amount of the substance which, as a result of an accidental release, is known to cause or may reasonably be anticipated to cause death, injury or serious adverse effects to human health for which the substance was listed.

(c) The Department shall have the power to amend, by regulation, the identification of EHS and the EHSL on the basis of information or scientific data that may become available to the Department.

(d) When the actual quantity of an EHS is greater than or equal to the TQ established by the Department, a responsible person or persons must:

(1) Submit the information required pursuant to § 7708 of this title.

(2) Implement a risk management program pursuant to § 7709 of this title.

(3) Pay the annual fee pursuant to § 7713 of this title.

When the actual quantity of an EHS is less than the TQ or when any other hazardous substance is present at a facility, then responsible person(s) must comply with the general duty statement pursuant to § 7704(a) of this title.

(66 Del. Laws, c. 417 § 1; 71 Del. Laws, c. 308 § 1.)

§ 7708 Risk management plan.

(a) Prior to January 1, 1999, the Department shall develop regulations and appropriate guidance to aid the regulated facilities in Delaware in complying with their obligations to submit a RMP. It is the belief of the General Assembly that the federal database of facility RMPs can and should be used to replace the previous system of state registration.

(b) The Department shall have the authority to develop its own risk management plan submission process by regulation should the federal system fail to meet the needs of the Department in carrying out this chapter. Should the Department develop its own RMP submission process, the RMP shall be submitted in a method and format to a State central point as specified by the Department prior to June 21, 1999.

(c) Each facility RMP shall be made available by the Department to the State Emergency Response Commission, the Local Emergency Planning Committees, to other state agencies involved in emergency planning and preparedness and to citizens of the State.

(71 Del. Laws, c. 308 § 1.)

§ 7709 Risk management program.

(a) The Department shall adopt, pursuant to § 7706 of this title, regulations stating the critical provisions of a risk management program. The provisions will include, but not be limited to:

(1) Design standards review.

(2) Modification control and documentation of equipment and procedural changes.

(3) Hazard review of all processes and equipment associated with EHS with an emphasis on preventing, avoiding, minimizing and containing extreme risks.

(4) Operating instructions.

(5) Maintenance and inspection procedures and requirements for all equipment in extremely hazardous substance services.

(6) Operator training program with a means of determining proficiency.

(7) Incident investigation procedures and remedial action requirement.

(8) Inspection and auditing requirements.

Compliance with each of these provisions must be documented by written records. Each of these provisions shall be updated as required.

(b) All persons with an actual quantity of an EHS that is equal to or exceeds the threshold quantity must implement a risk management program appropriate to the facility risk. Facilities built or modified on or after June 21, 1999, that have a process containing an EHS; or existing facilities implementing a new process containing an EHS; or existing facilities introducing a new EHS into an existing process, must implement a risk management program appropriate to the facility risk prior to introduction of the EHS to the process.

(c) Responsible person(s) are required to certify to the Department that a risk management program that meets Department criteria is in place at the facility. The certification statement that is part of the federal RMP facility submission may act to fulfill this requirement. The risk management program shall be available to the Department for review at each facility at scheduled inspections.

(66 Del. Laws, c. 417 § 1; 70 Del. Laws, c. 239 § 1; 71 Del. Laws, c. 308 § 1.)

§ 7710 Inspection.

(a) Inspection program components — Essential components of a facility inspection shall include at a minimum:

(1) A sampling of all required risk management program documentation;

(2) A physical inspection of equipment associated with the process containing the EHS to verify implementation of the risk management program;

(3) Evidence of the application of engineering and maintenance standards associated with EHS substances; and

(4) Sampling interviews of personnel associated with EHS to verify that the provisions of the risk management program have been

implemented.

(b) Confidential information — All documents (such as, but not limited to: inspection reports, responses to inspection reports, notices of violation, administrative orders and penalties, correspondences and facility RMPs) submitted to the Department or developed by the Department pursuant to this chapter shall be handled consistent with the Freedom of Information Act (Chapter 100 of Title 29) with the exception of the following which shall be maintained as confidential by the Department:

(1) Sections of inspection notes containing or relating to trade secrets, and/or commercial or financial information observed, viewed or obtained orally during an inspection that may result in substantial harm to a business' competitive edge.

(2) Sections of inspection notes containing the identity of persons interviewed during the inspection.

(c) Inspection schedule. — The Department shall develop and issue a phased initial inspecting program on the basis of degree of risk. Facilities with extremely hazardous substances having the highest substance hazard indexes shall be inspected before facilities with lower indexed extremely hazardous substances. Facility inspections shall continue during the regulation revision process and be an integral part of the revised regulation. The Department shall develop an inspection schedule, so that it can ensure and evaluate compliance with this title, including any regulations or requirements adopted by the Secretary in furtherance of the purposes of this title.

The Department may determine the frequency of inspection of a specific facility, based on:

(1) Risk;

(2) Compliance history;

(3) The recent occurrence of an incident involving an extremely hazardous substance; or

(4) Recent compliance with this chapter.

The Department will provide covered facility owners and/or operators with 24-hour advance notice before inspections, except:

(1) If the Department determines that an inspection without such notice is warranted by exigent circumstances and approves such inspection; or

(2) If any delay in conducting an inspection might be seriously detrimental to safety, and the Department determines that an inspection without notice is warranted.

(d) Inspection protocol. — All inspections shall be conducted by trained state personnel or representatives. All inspections shall be conducted within the limits of a thorough Risk Management Program Inspection Protocol issued by the Department and adopted after public hearing. The Protocol consists of specific questions, facility characteristics, required risk management program components, physical observations and interviews.

(e) Inspectors. — Inspections and audits are conducted by personnel duly authorized and designated for that purpose as "inspectors" by the Department. An inspector will, on request, present his or her state-issued identification card for examination at a facility being inspected, but the identification card may not be reproduced by the facility.

(f) Access to facilities and records — The Department has the right to enter any facility at any time to verify compliance with this chapter. Inspections for the purpose of document review shall be scheduled with the facility with reasonable advance notice and, when possible, mutual agreement. Inspectors shall comply with all safety regulations of the facility.

(g) A report of compliance or noncompliance — The Department shall issue an inspection report detailing the findings of compliance or noncompliance with the risk management program requirements for each inspection. This report shall contain the Department's recommendations based on inspection for potential improvements to a facility's risk management program. In the event that the Department has a finding of substantial noncompliance, the Department may issue a written notice of violation and may proceed as detailed in § 7714 of this title.

(h) Resolution of unfavorable inspection findings — Responsible person or persons of the facility shall respond to the Department's recommendations from the written inspection report within 60 days and notify the Department of any changes and additions to improve their risk management program or respond with a remediation plan and schedule for the Department's approval. Upon a finding of substantial noncompliance with the risk management program, with the risk management plan or upon a finding of failure to implement the approved remediation plan or schedule, the Department may proceed as detailed in § 7714 of this title.

(i) Written agreement — If the responsible person(s) and the Department agree on measures to correct risk management program deficiencies or omissions, the parties may enter into a written agreement.

(j) Issuance of administrative order — If, after notice to the responsible person or persons of the facility and an administrative hearing with written findings, the parties are unable to reach an agreement on improvements to the facility risk management program to bring it into compliance, the Department shall issue an administrative order requiring correction of deficiencies of the risk management program including a schedule for the corrections as detailed in § 7714 of this title.

(k) Injunctive relief — If, upon Department inspection and notice to the responsible person(s) of the facility, a functioning risk management program is lacking and a situation exists which demonstrates the purpose of this chapter is in real and imminent jeopardy, the Department may promptly seek injunctive relief in Chancery Court.

(66 Del. Laws, c. 417 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 308 § 1; 79 Del. Laws, c. 431 § 1.)

§ 7711 Notification requirements.

Construction and operating permits shall be granted by state agencies for facilities and equipment involving extremely hazardous substances regulated under this chapter only after notification by those agencies to the Department and written confirmation by any person

involved that the permit applicant has been notified of the requirements of this chapter and its regulations.

(66 Del. Laws, c. 417 § 1; 71 Del. Laws, c. 308 § 1.)

§ 7712 Information program.

(a) The Department, assisted by the Division of Public Health of the Department of Health and Social Services, the Department of Safety and Homeland Security and the Delaware Economic Development Office, shall prepare and implement an information program designed to inform the general public, local public officials and the business community about the requirements of this chapter and regulations adopted thereto, about the health risks of accidental releases of extremely hazardous substances and about means available to minimize the chances of accidental catastrophic releases of such substances.

(b) The information program shall include information about current risk management programs of industrial companies and business establishments in Delaware as well as emergency plans, public and private, to protect the public in cases of catastrophic accidental releases of extremely hazardous substances. The Department may cooperate with other groups for purposes of this program.

(66 Del. Laws, c. 417 § 1; 69 Del. Laws, c. 458 § 1; 71 Del. Laws, c. 308 § 1; 74 Del. Laws, c. 110 § 138.)

§ 7713 Fees.

(a) The Department is authorized to charge and collect fees from persons with extremely hazardous substances pursuant to §§ 7707 and 7709 of this title. Fees shall be a minimum of $500 per year for the first whole unit and $25 per year for each additional unit to a maximum of 300 units.

(b) The Department may assess a fee to cover additional actual costs to the Department for any facility whose submitted RMP or whose risk management program records that are made available during inspection are inaccurate or incomplete to the extent that the RMP and/or inspection of the facility cannot be accomplished within a reasonable time. The Department shall include documentation with the assessment of its findings or condition of the records on which the assessment is based.

(c) All fees collected under this section are hereby appropriated to the Department for its use for the purposes of this chapter.

(66 Del. Laws, c. 417 § 1; 68 Del. Laws, c. 86 § 10; 71 Del. Laws, c. 308 § 1.)

§ 7714 Violations and penalties.

(a) Whoever violates this chapter or any rule or regulation duly promulgated thereunder, shall be punishable by a civil penalty imposed by Superior Court of not less than $1,000 nor more than $10,000 per day per violation. In addition, the Secretary may seek injunctive or other relief in Chancery Court.

(b)(1) In the Secretary's discretion, the Secretary may impose an administrative penalty of up to $10,000 per day of violation whenever the Secretary determines that any person has failed to submit a complete risk management plan as required by § 7708 of this title or does not have a substantially complete risk management program in place as required by § 7709 of this title or does not comply with any provision of this chapter or rule or regulation duly promulgated thereunder. The Secretary may order those operations that present a real and imminent hazard to cease, after notification to the responsible person(s).

(2) Prior to assessment of an administrative penalty, written notice of the Secretary's proposal to impose such a penalty shall be given to the responsible person(s), and the responsible person(s) shall have 30 days from receipt of the notice to request a public hearing. Any public hearing, right of appeal and judicial appeal shall be conducted pursuant to § 7716 of this title. The amount of the administrative penalty shall be determined based on the nature, circumstances, extent and gravity of the violation or violations, and such other matters as justice may require.

(3) In the event of nonpayment of the administrative penalty after all legal appeals have been exhausted, a civil action may be brought by the Secretary in a court of competent jurisdiction for the collection of the administrative penalty, including interest, attorney's fees and costs. The validity and appropriateness of such administrative penalty shall not be subject to review.

(c) Any person who knowingly violates any applicable requirement of this chapter or of a risk management program or any person who knowingly makes a false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under this chapter, or under any rule, regulation or order issued under this chapter, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall upon conviction be subject to a criminal fine of not more than $25,000 per day per violation, or imprisonment for 1 year, or both. The Superior Court shall have jurisdiction of offenses under this subsection. The Secretary may order those operations that pose a hazard to the public to cease.

(d) Any expenses or civil or administrative penalties collected by the Department under this section are hereby appropriated to the Department to carry out the purposes of this chapter.

(66 Del. Laws, c. 417 § 1; 71 Del. Laws, c. 308 § 1; 72 Del. Laws, c. 96 § 1.)

§ 7715 Hearings.

Any public hearing held by the Secretary pursuant to this chapter shall be held in accordance with § 6006 of this title, as well as any additional notice and hearing requirements the Secretary has adopted by regulation.

(66 Del. Laws, c. 417 § 1; 71 Del. Laws, c. 308 § 1.)

§ 7716 Appeals.

(a) Any person or persons whose interest is substantially affected by any action of the Secretary may appeal to the Environmental Appeals Board in accordance with § 6008 of this title.

(b) Any person or persons, jointly or severally, or any taxpayer, or any officer, department, board or bureau of the State, aggrieved by any decision of the Environmental Appeals Board, may appeal to the Superior Court in accordance with § 6009 of this title.

(66 Del. Laws, c. 417 § 1; 71 Del. Laws, c. 308 § 1.)

§ 7717 Inconsistent laws superseded.

All laws or regulations inconsistent with any provision of this chapter are hereby superseded to the extent of the inconsistency; provided however, that rights of a person or persons to recover damages shall not be affected by this chapter.

(71 Del. Laws, c. 308 § 1.)

Part VII
Natural Resources
Chapter 78
POLLUTION PREVENTION ACT

§ 7801 Short title.

This chapter shall be known and may be cited as the "Pollution Prevention Act."

(67 Del. Laws, c. 361 § 1; 70 Del. Laws, c. 499 § 1.)

§ 7802 Findings and purpose.

(a) The General Assembly finds that:

(1) Whenever possible, the generation of waste should be reduced or eliminated as expeditiously as possible, and that waste that is generated should be recovered, reused, recycled, treated or disposed of in a manner that minimizes any present or future threats to human health or the environment;

(2) There may exist many promising technologies for the reduced generation of waste, for recovery, reuse, recycling and treatment of waste; and

(3) Financial commitments by public agencies and private industry for the expeditious development and implementation of waste reduction, recovery, reuse, recycling and treatment technologies depends upon further research as well as credible and timely demonstrations of economic viability, technical feasibility, environmental acceptability and reliability of this technology.

(b) Therefore the General Assembly declares:

(1) The purposes of this chapter are to enhance the protection of human health and the environment, and to establish a multi-media Pollution Prevention Program which will demonstrate and facilitate the potential for pollution prevention and waste minimization in Delaware through focusing on the following objectives:

a. Targeting industries and locations for technical assistance; and

b. Providing pollution prevention, education and outreach; and

(2) That it is the policy of this State, in concurrence with the Delaware Environmental Legacy Report, that waste that is generated should be, in order of priority, reduced at its source, recovered, reused, recycled, treated or disposed of so as to minimize the present and future threat to human health and the environment.

(c) It is the intent of this chapter to complement and be enforced in conjunction with other laws.

(67 Del. Laws, c. 361 § 1; 70 Del. Laws, c. 499 §§ 2, 3.)

§ 7803 Definitions.

As used in this chapter:

(1) "Department" means the Department of Natural Resources and Environmental Control.

(2) "Implementation Committee" means the Pollution Prevention Implementation Committee.

(3) "Multi-media" means all environmental media including, but not limited to, workplaces within facilities, water, land and air.

(4) "Person" means any individual, trust, firm, joint stock company, federal agency, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state or any interstate body.

(5) "Pollution Prevention" means any practice which:

a. Reduces the amount of any hazardous substance, pollutant or contaminant entering any waste stream or otherwise released into the environment (including fugitive emissions) prior to recycling, treatment or disposal; and

b. Reduces the hazards to public health and the environment associated with the release of such substances, pollutants or contaminants.

The term includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials and improvements in housekeeping, maintenance, training or inventory control.

The term "pollution prevention" does not include any practice which alters the physical, chemical or biological characteristics of the volume of a hazardous substance, pollutant or contaminant through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service.

(6) "Secretary" means the Secretary of the referenced state department or a duly authorized designee.

(7) "Trade secret" means any information concerning production processes employed or substances manufactured, processed or otherwise used within a facility which the Secretary of the Department has determined to be propriety information.

(8) "Waste" means, but is not limited to, those substances defined as such under Delaware Codes, or the regulations promulgated thereunder: air pollution as defined in § 6002 of this title; hazardous waste as defined in § 6302 of this title; industrial waste as defined in § 6002 of this title; liquid waste as defined in § 6002 of this title; other wastes as defined in § 6002 of this title; refuse as defined in § 6002 of this title; rubbish as defined in § 6002 of this title; sewage as defined in § 6002 of this title; and solid waste as defined in § 6002

of this title.

(67 Del. Laws, c. 361 § 1; 70 Del. Laws, c. 499 §§ 2, 4.)

§ 7804 Pollution Prevention Program.

(a) The Department shall establish the Implementation Committee and appoint the members thereof.

(1) The Implementation Committee shall be composed of, but not be limited to, the following individuals or their designee:

a. The Secretary of the Department;

b. The Director of the Delaware Economic Development Office;

c. The Secretary of the Department of Agriculture;

d. The Director of the Office of Management and Budget;

e. The President of the Delaware State Chamber of Commerce;

f. The Secretary of Education;

g. The General Manager of the Delaware Solid Waste Authority;

h. A representative of the League of Local Governments;

i. A representative of the Chemical Industry Council;

j. A representative of Delaware State University;

k. A representative of Delaware Technical and Community College;

l. A representative of the University of Delaware;

m. A representative from the private solid waste collection industry;

n. A representative of civic organizations; and

o. A representative of an environmental organization.

The Implementation Committee will be chaired by the Secretary of the Department and be staffed by the Department. The members of the Implementation Committee are appointed for a period of 1 1/2 years and shall meet at least monthly during this period.

(2) The Implementation Committee shall select the target industry and location for the initial technical assistance program. The Committee shall evaluate the technical assistance program 1 year after the program commences or upon completion, whichever is earlier. The Committee shall then select a second target industry or location for the technical assistance program.

(b)(1) The objectives of the Pollution Prevention Program shall be:

a. Targeting industries and locations for technical assistance; and

b. Providing pollution prevention education and outreach.

(2) These objectives shall be accomplished through implementation of, but not be limited to, the programs outlined in this section.

a. Technical assistance:

1. The Department shall create a multimedia waste reduction assistance program to provide technical assistance to targeted industries, focusing on small companies within the industry because, for the most part, they do not have the economic or technical resources necessary to acquire recommendations on how to effectively minimize their wastes. The program will be made available to other industries which request assistance. The overall objective of the multi-media opportunity audit program is to reduce or recycle, to the maximum extent practicable, all waste streams within an industry.

2. An information clearinghouse shall be established and located at the Delaware Economic Development Office. The clearinghouse will contain a database of pollution prevention technologies and case studies of technology applications.

b. Pollution prevention education and outreach:

1. The Department shall increase public awareness of the need for individual and community based pollution prevention programs by conducting educational workshops and industry seminars.

2. The Department shall produce a pollution prevention newsletter to be distributed to industry and the public.

(c) An annual report on the Pollution Prevention Program shall be provided to the Governor and the General Assembly. The report shall include an evaluation of current programs and plans for implementation of any additional programs, including information on potential benefits, who should be responsible for implementing them, how much they will cost, and how they might be financed.

(67 Del. Laws, c. 361 § 1; 69 Del. Laws, c. 67 § 2; 69 Del. Laws, c. 458 § 1; 70 Del. Laws, c. 499 §§ 3, 5, 6; 73 Del. Laws, c. 65 § 6; 75 Del. Laws, c. 88 § 16(1).)

§ 7805 Trade secret protection.

All trade secret information, written, verbal or observed, obtained pursuant to this chapter by the Department or any other state agency will be held as confidential unless such information is already a matter of public record or disclosure is required by law. Nothing in this section shall be construed as limiting the disclosure of information by the Department to any officer, employee or authorized representative of the state or federal government concerned with effecting this chapter. Prior to disclosure of trade secret information to an authorized representative who is not an officer or employee of the state or federal government, the person providing the trade secret information may require the representative to sign an agreement prohibiting disclosure of such information to anyone not authorized by this chapter or the terms of the agreement. Such agreement shall not preclude disclosure by the representative to any state or federal government officer or employee concerned with effecting this chapter. Any person who, by virtue of obtaining access to confidential trade secret information and

knowing that disclosure is prohibited, knowingly and wilfully discloses the information to any person not entitled to receive it shall be in violation of this chapter and subject to disciplinary actions provided by the Merit Rules, including dismissal.

(67 Del. Laws, c. 361 § 1.)

Part VII
Natural Resources
Chapter 79
ENVIRONMENTAL PERMIT APPLICATION BACKGROUND STATEMENT
Subchapter I
Environmental Permit Application Background Statement

§ 7901 Findings; purpose.

(a) The General Assembly finds that:

(1) The discharge of pollutants to Delaware's air and water, and the management and disposal of solid and hazardous wastes in Delaware's environment can create significant risks to public health and environmental quality;

(2) The protection of Delaware's coastal zone and subaqueous lands from environmental degradation is a matter of public trust as demonstrated by the enactment of the Delaware Coastal Zone Act, Chapter 70 of Title 7, and the Delaware Subaqueous Lands Act, Chapter 72 of Title 7;

(3) The public has a right to clean air and water, and otherwise to a healthy environment; and

(4) Because of the importance of these resources to the health and welfare of Delaware citizens, the State has a right and responsibility to ensure that those regulated parties obtaining permits to discharge pollutants, manage wastes, or make commercial use of the coastal zone and the State's subaqueous lands can be trusted to carry out the responsibilities and conditions of these permits.

(b) It is the purpose of this subchapter to ensure that the State has adequate information about the background of applicants or regulated parties for the purposes of processing permits and conducting other regulatory activities associated with stormwater management, NPDES, oil pollution liability, air, hazardous waste, solid waste, commercial subaqueous, wetlands, coastal zone, underground storage tank, extremely hazardous substances, hazardous substances cleanup and emergency planning and community right-to-know under the authority of Chapters 40, 60, 62, 63, 66, 70, 72, 74, 74A, 77, 78 and 91 of this title, Chapter 63 of Title 16, and § 8028 of Title 29. This includes the ability to identify applicants or regulated parties with histories of environmental violations or criminal activities and/or associations or applicants who cannot demonstrate the required responsibility, expertise or competence which is necessary for the proper operation or activity permitted by the Department.

(c) The purpose of chronic violator status is to provide a mechanism for preventing or correcting circumstances in which:

(1) One or more of the traditional enforcement tools and regulatory programs of the Department appear insufficient to conform behavior and deter future violations by the regulated party; or

(2) The regulated party appears to be treating penalties and other sanctions as merely an on-going business expense rather than as symptomatic of underlying problems and threats to the State's environment that must be addressed and corrected.

(68 Del. Laws, c. 419 § 1; 73 Del. Laws, c. 117 § 5; 78 Del. Laws, c. 177 §§ 1-3.)

§ 7902 Statement required.

(a) Applicants for, and holders of, permits to conduct stormwater management, NPDES, oil pollution liability, air, hazardous waste, solid waste, commercial subaqueous, wetlands, coastal zone, storage tank, extremely hazardous substances, hazardous substances cleanup and emergency planning and community right-to-know activities under the authority of Chapter 40, 60, 62, 63, 66, 70, 72, 74, 74A, 77, 78 or 91 of this title, Chapter 63 of Title 16, § 8028 of Title 29, shall be required by the Department to submit a statement containing the following information on an annual basis:

(1) A complete list of all current members of the board of directors, all current corporate officers, all persons owning more than 20 percent of the applicant's stock or other resources, all subsidiary companies, parent companies and companies with which the applicant's company shares 2 or more directors; provided that, for initial permit applicants that have not been declared chronic violators only, the Department shall have discretion to determine how much of this information to require, based on the likely utility of the information balanced against the burden imposed by requiring it;

(2) The names of the persons serving as the applicant's local chief operating officer with respect to each facility covered by the permit in question.

(3) A description of all notices of violation, criminal citations, arrests, convictions, or civil or administrative penalties assessed against the applicant or any other person identified under paragraph (a)(1) or (2) of this section for the violation of any environmental statute, regulation, permit, license, approval or order, regardless of the state in which it occurred, for the 5 years prior to the date of the statement;

(4) A description of the disposition of any of the items identified pursuant to paragraph (a)(3) of this section and any actions that have been taken to correct the violations that led to such enforcement of actions.

(5) A description of any felony or other criminal conviction for a crime involving harm to the environment or violation of environmental standards of any person identified in paragraph (a)(1) or (2) of this section that resulted in a fine greater than $1,000 or a

sentence longer than 7 days, regardless of whether such fine or sentence was suspended;

(6) Copies of any and all settlements of environmental claims involving the applicant, whether or not such settlements were based on agreements where the applicant did not admit liability;

(7) If the applicant has been designated as a chronic violator under § 7904 of this title, or has been found guilty, pled guilty, or pled no contest to any crime involving violation of environmental standards which resulted in serious physical injury or serious harm to the environment, a statement made under oath by the applicant's local chief operating officer with respect to the facilities covered by the permit, stating that:

a. Disclosures made by the applicant under federal and state environmental statutes and regulations during the preceding calendar year have been, to the chief operating officer's knowledge, complete and accurate; and

b. That the facility has implemented policies, programs, procedures, standards or systems reasonably designed, in light of the size, scope and nature of facility operations, to detect, deter and promptly correct any noncompliance with state environmental statutes and regulations.

The statement filed pursuant to this paragraph shall include an acknowledgement by the affiant that intentionally false statements submitted in compliance with this paragraph constitute criminal perjury as defined in §§ 1221 and 1222 of Title 11.

(8) If the applicant has been designated as a chronic violator under § 7904 of this title, a detailed written report from an independent inspector who has inspected the applicant's premises for the purpose of detecting potential safety and environmental hazards to employees and the surrounding community. The Secretary may waive the duty to submit a detailed written report upon a showing of good cause by the applicant. A showing by the applicant that the acts which caused it to be designated as a chronic violator did not jeopardize public health shall constitute "good cause" under this paragraph.

(b) Notwithstanding the above, regulated parties subject to this section shall submit the statements required by this section upon their initial permit application, or other initial request for regulatory authorization within the Department's jurisdiction, provided that:

(1) Chronic violators will be subject to the provisions of paragraphs (a)(1) through (a)(8) of this section on an annual basis as long as they are designated as chronic violators.

(2) Regulated parties that have been found guilty, pled guilty or pled no contest to any crime involving violation of environmental standards which resulted in serious physical injury or serious harm to the environment shall be subject to the provisions of paragraphs (a)(1) through (a)(7) of this section on an annual basis for a period of 5 years from the date of the finding of guilt or plea of no contest.

(3) Except where required by paragraph (b)(1) or (2) of this section, entities which have been permitted by the Department for a period of 5 years or more shall not be required to comply with paragraphs (a)(1) through (a)(8) of this section for new permits.

(c) The following terms shall have the following meanings in connection with this subchapter:

(1) The term "applicant" shall mean any regulated party who or which has applied for or requested a permit or other regulatory authorization from the Department, or is required to apply for or request a permit or other regulatory authorization from the Department.

(2) The term "Department" shall mean the Department of Natural Resources and Environmental Control, the Secretary of the Department of Natural Resources and Environmental Control, or both.

(3) The term "facility" shall mean any site or structure regulated by the Department or subject to the Department's regulatory programs .

(4) The term "independent inspector" shall mean a person or entity, approved by the Department subject to regulations that shall be promulgated by November 27, 2003, which is sufficiently knowledgeable regarding state environmental standards to inspect the facility in question, and which has received no funds (other than funds for conducting other independent inspections) from the applicant, its parents, or its subsidiaries within the 3 years prior to Department approval.

(5) The term "local chief operating officer" shall mean the person physically working within the State who has supervisory authority over all other persons at the facility subject to permitting requirement. A permitted facility in the State of Delaware must have a chief operating officer.

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

(7) The term "physically working within the State" means spending part of at least of 20% of all weekdays (other than legal holidays) physically present and working within the borders of the State.

(8) The term "regulated party" shall mean a person subject to the Department's regulatory programs.

(9) The term "regulatory program" shall mean any program for the conservation and protection of the environment and the State's natural resources, which includes without limitation:

a. Those programs established by or acting under Chapters 40, 60, 62, 63, 66, 70, 72, 74, 74A, 77, 78, and 91 of this title, Chapters 63 and 78 of Title 16 and § 8028 of Title 29;

b. The permits, rules, policies and regulations issued under said chapters; and

c. Programs administering delegated federal law under said chapters.

(10) The term "serious harm to the environment" shall mean damage to the air, water or soil which has or will, beyond a reasonable doubt, cause serious physical injury to any persons working at the facility in question or persons in the State.

(11) The term "serious physical injury" as used in this section shall have the same meaning assigned to it by Chapter 2 of Title 11.

(d) Upon request by the Department, the person signing the application and statement, described in subsection (a) of this section, shall provide the Department with information sufficient to enable a positive and accurate identification of such person, including without limitation, driver's license state and number and date of birth. If the applicant is a business entity, such person shall provide information sufficient to enable a positive identification of the entity, including without limitation, state incorporation information.

(68 Del. Laws, c. 419 § 1; 73 Del. Laws, c. 117 § 6; 74 Del. Laws, c. 37 § 2; 78 Del. Laws, c. 177 §§ 4-9.)

§ 7903 Confidential information.

(a) All information provided pursuant to § 7902 of this title shall be considered public information and shall be considered part of the public record pertaining to the permit application.

(b) Notwithstanding subsection (a) of this section, information provided in response to a request from the Department for information to enable a positive and accurate identification of the person signing the application and statement, which is ordinarily understood to constitute private and sensitive personal information, including without limitation, driver's license state and number and date of birth, shall not be made public or be deemed a public record by the Department except as may be necessary in its investigation and enforcement activities and proceedings. For other information, if the applicant can demonstrate that the information provided pursuant to § 7902 of this title is not a matter of public record at the time of the application, and that the release of such information to the public would constitute an invasion of personal privacy or would seriously affect the applicant's business or competitive situation, the Department may designate such information as confidential information.

(c) Confidential information shall not be released to the public or made part of the public record and shall only be released to law enforcement personnel performing the background investigation, authorized representatives of the office of the Attorney General, or sworn law enforcement personnel of other jurisdictions performing similar investigations on the applicant.

(68 Del. Laws, c. 419 § 1; 74 Del. Laws, c. 170 § 1; 78 Del. Laws, c. 177 §§ 10, 11.)

§ 7904 Permit modification, suspension, denial, revocation and chronic violator status.

(a) A "chronic violator" is a regulated party that has demonstrated an inability or unwillingness to comply with 1 or more of the Department's regulatory programs.

(1) The criteria for determining whether a regulated party has demonstrated such inability or unwillingness shall include whether the regulated party has engaged in a pattern of wilful neglect or reckless disregard of the permits or regulatory programs of the Department.

(2) The Department shall have discretion to commence, review and reconsider, or not, chronic violator status as to any particular regulated party at any time.

(3) Upon consideration of a person's chronic violator status in accordance with the chapter, the Secretary may seek a determination of a regulated party's status as a chronic violator, by commencing a proceeding before the Environmental Appeals Board, by the filing of an administrative complaint. The administrative complaint shall contain the factual and legal basis on which a chronic violator determination is sought, any proposed limits, requirements or restrictions sought to be imposed on a facility or regulated party, as well as any administrative penalties the complaining party seeks to impose under § 7906 of this title.

(4) The Environmental Appeals Board, as established by § 6007 of this title, is granted jurisdiction to hear and determine the issues presented in an administrative complaint from the Secretary on chronic violator status, on such notice as is legally required. The Board shall have discretion in determining the procedures for the hearing process, provided that:

a. All parties to the complaint may appear personally or by counsel before the Board;

b. The Board shall provide a reasonable opportunity for discovery of the factual and legal contentions of the parties;

c. All parties to the complaint may produce any competent evidence in their behalf, although the Board may exclude any evidence that is plainly irrelevant, immaterial, insubstantial, cumulative or unduly repetitive, and may limit unduly repetitive proof, rebuttal and cross-examination;

d. The burden is on the complaining party to prove that the regulated party is a chronic violator and that the administrative actions and penalties sought are supported by a preponderance of the evidence before the Board.

The Board's order on chronic violator status shall contain findings of fact and conclusions of law based on the record, which shall include but not be limited to: notices and other underlying procedural documents; a transcript of the hearing; documents entered at the hearing; and documents relied upon in deciding chronic violator status. Persons or facilities determined to be chronic violators may appeal the Board's decision, or any part of its order, to the Superior Court under § 6009 of this title.

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

(b) One or more of the factors to be considered in determining whether a regulated party has engaged in a pattern of wilful neglect or reckless disregard of the permits or regulatory programs of the Department shall include:

(1) The nature and extent of the harm caused or threatened;

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

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

(4) Number of violations of a similar nature;

(5) Total number of violations of all types;

(6) Economic benefit attributable to violations and noncompliance;

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

(8) The state of mind of the violator;

(9) The actions of new owners or managers, where ownership or management has changed at the facility;

(10) Actions taken or not taken to prevent, mitigate or respond to harm caused or threatened by the violation;

(11) Whether any or all of the violations were self-reported within 15 consecutive days after the date of discovery;

(12) The amount of an illegal release of a pollutant in proportion to the amount legally authorized to be released, if any;

(13) Whether the regulated party has adequately capitalized, funded or modernized its operations, maintenance, mechanical integrity efforts, training programs and or risk management reviews so that compliance with the Department's regulatory programs can be reasonably expected;

(14) Whether the regulated party has used recognized and generally accepted good engineering and other related professional practices established within the regulated party's field or industry so that compliance with the Department's regulatory programs can be reasonably expected;

(15) The size, scope and complexity of operations and the number of facilities located in the State.

(c) In addition, 1 or more of the types of violations to be considered by the Secretary shall include, but not be limited to:

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

(2) Violations resulting in criminal convictions;

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

(4) Filing false reports or inaccurate or misleading information;

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

(6) Repeatedly failing to submit required reports of regulated activity such as Discharge Monitoring Reports;

(7) Repeatedly conducting a regulated activity without a required permit or other authorization;

(8) The extent of deviation from the permit, order, or other requirement;

(9) Noncompliance with court orders including without limitation consent orders;

(10) Alleged violations that were the subject of negotiated settlements notwithstanding any general release of liability and whether such violations have been found or proved in concurrent or subsequent proceeding or public hearings; and

(11) Violations and conduct by related persons, business entities and other regulated parties including without limitation conduct and violations by common employees, managers, officers, directors, shareholders, principals, partners, and owners.

(d) The Secretary may reject any permit application or revoke any permit upon a finding that:

(1) The applicant withheld or misrepresented any of the information required to be submitted pursuant to § 7902 of this title;

(2) The applicant has operated or has been associated with any company or person who has operated a facility in a manner which casts substantial doubt on the ability or willingness of the applicant to operate the facility for which a permit is being requested in a manner that will protect the health and welfare of the citizens of Delaware;

(3) The applicant has offered, conferred or proposed to confer any benefit to an employee of the State in the expectation that such offer will result in or contribute to a positive action on the permit application; or,

(4) The applicant has been determined by the Department to be a chronic violator.

(5) The applicant or permit holder is engaged in a pattern of ongoing violations of the permit, state laws or state regulations, which presents a serious, imminent threat to public health.

The Department shall promulgate regulations or institute procedures providing for expedited hearings with respect to permits revoked under this subsection, and providing for expedited appeals of such suspensions or revocations to the Environmental Appeals Board.

(68 Del. Laws, c. 419 § 1; 73 Del. Laws, c. 117 § 7; 74 Del. Laws, c. 37 § 3; 78 Del. Laws, c. 177 §§ 12-15.)

§ 7905 Additional information; duty to cooperate.

All applicants, regulated parties and permittees have the continuing duty to provide any assistance or information requested by the Department, and to cooperate in an inquiry or investigation or hearing conducted by the Department.

(68 Del. Laws, c. 419 § 1; 78 Del. Laws, c. 177 § 16.)

§ 7906 Penalties for chronic violators.

In addition to other applicable enforcement provisions contained in relevant sections of chapters covered by § 7901(b) of this title, the Secretary is authorized to impose an administrative penalty of up to $10,000 per day for each violation against any regulated party that is determined to be a chronic violator in accordance with the provisions of § 7904(a) of this title, provided that simultaneous violations of more than 1 pollutant or air contaminant parameter or of any other limitation or standard may be treated as separately punishable violations within each day, and multiple, intermittent violations of a single pollutant or air contaminant parameter or any other limitation or standard

may be treated as separately punishable violations within each day. Any administrative penalties collected by the Department under this section are hereby appropriated pursuant and subject to the procedures and requirement of § 6005(d) of this title.

(73 Del. Laws, c. 117 § 8; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 177 § 17.)

Subchapter II

Uniform Environmental Covenants Act

§ 7907 Definitions.

As used in this subchapter:

(1) "Activity and use limitations" means restrictions or obligations with respect to real property created under this subchapter.

(2) "Common interest community" means a condominium or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay for property taxes, insurance premiums, maintenance, or improvement of other real property described in a recorded covenant that creates the common interest community.

(3) "Department" means the Department of Natural Resources and Environmental Control (DNREC).

(4) "Environmental covenant" means a servitude arising under an environmental response project that imposes activity and use limitations.

(5) "Environmental response project" means a plan or work performed for environmental remediation of real property, conducted:

a. Under a federal or state program governing environmental remediation of real property, including Chapter 91 of this title, Delaware Hazardous Substance Cleanup Act (HSCA), Chapter 74 of this title, the Delaware Underground Storage Tank Act, and Chapter 74A of this title, the Jeffrey Davis Aboveground Storage Tank Act;

b. Incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of the Department; or

c. Under a state voluntary cleanup program authorized in Chapters 60, 63, 74, 74A and 91 of this title.

(6) "Holder" means a person that is the grantee of an environmental covenant.

(7) "Owner" means a person that owns a fee simple interest in real property that is subject to an environmental covenant.

(8) "Person" means any individual, trust, firm, joint stock company, federal agency, partnership, corporation (including a government corporation or authority), limited liability company, association, state, municipality, commission, political subdivision of a state or any interstate body.

(9) "Record," when used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) "Secretary" means the Secretary of the Department of Natural Resources and Environmental Control or the Secretary's duly authorized designee.

(11) "State" means the State of Delaware, in the United States.

(75 Del. Laws, c. 206 § 1; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 440 § 10.)

§ 7908 Nature of rights; subordination of interests.

(a) The interest of a holder is an interest in real property. The rights of the Department under this subchapter or under an approved environmental covenant, other than as a holder, are not interests in real property.

(b) The Department is bound by the obligations it assumes in an environmental covenant, but the Department does not assume obligations merely by approving an environmental covenant.

(c) The following rules apply to interests in real property in existence at the time an environmental covenant is created or amended:

(1) A prior interest is not affected by an environmental covenant unless the owner of the interest is a party to the covenant or subordinates its interest to the covenant.

(2) This act does not require an owner of a prior interest to subordinate that interest to an environmental covenant or to agree to be bound by the covenant.

(3) A subordination agreement may be contained in an environmental covenant covering real property or in a separate record or, if the environmental covenant covers commonly owned property in a common interest community, in a record signed by any person authorized by the governing board of the owners' association.

(4) An agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that person's interest but does not by itself impose any affirmative obligation on the person with respect to the environmental covenant.

(75 Del. Laws, c. 206 § 1.)

§ 7909 Contents of environmental covenant.

(a) An environmental covenant must:

(1) State that the instrument is an environmental covenant executed pursuant to this subchapter.

(2) Contain a legally sufficient description of the real property subject to the covenant;

(3) Describe the activity and use limitations on the real property;

(4) Identify the holder which may be an owner or agency;

(5) Be signed by the Department, all owners of the real property subject to the covenant and the holders with the formalities for a deed; and

(6) Identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant.

(b) In addition to the information required by subsection (a) of this section, an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed it, including any:

(1) Requirements for notice following transfer of a specified interest in, or concerning proposed changes in use, applications for building permits, or proposals for any site work affecting the contamination on, the property subject to the covenant;

(2) Requirements for periodic reporting describing compliance with the covenant;

(3) Rights of access to the property granted in connection with implementation or enforcement of the covenant;

(4) A brief narrative description of the contamination and remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination;

(5) Restriction or limitation on amendment or termination of the covenant in addition to those contained in §§ 7913 and 7914 of this title; and

(6) Rights of the holder in addition to its right to enforce the covenant pursuant to § 7915(c) of this title.

The Department may refuse to sign an environmental covenant for any reason.

(75 Del. Laws, c. 206 § 1.)

§ 7910 Validity.

(a) An environmental covenant that complies with this subchapter runs with the land.

(b) An environmental covenant that is otherwise effective is valid and enforceable even if:

(1) It is not appurtenant to an interest in real property;

(2) It can be or has been assigned to a person other than the original holder;

(3) It is not of a character that has been recognized traditionally at common law;

(4) It imposes a negative burden;

(5) It imposes an affirmative obligation on any person having an interest in the real property or on the holder;

(6) The benefit or burden does not touch or concern real property;

(7) There is no privity of estate or contract;

(8) The holder dies, ceases to exist, resigns, or is replaced; or

(9) The persons identified as owner and holders in the environmental covenant are the same person.

(c) An instrument that creates activity and use limitations designed to protect human health or the environment and that was agreed to before July 21, 2005, is not invalid or unenforceable by reason of any of the limitations on enforcement of interests described in subsection (b) of this section or because it was identified as an easement, servitude, deed restriction, or other interest. This subchapter does not apply in any other respect to such an instrument.

(d) This subchapter does not invalidate or render unenforceable any interest, whether designated as an environmental covenant or other interest that is otherwise enforceable under the law of this state.

(75 Del. Laws, c. 206 § 1.)

§ 7911 Relationship to other land use law.

This subchapter does not authorize a use of real property that is otherwise prohibited by zoning or by law other than this subchapter regulating use of real property, or by a recorded instrument that has priority over the environmental covenant. An environmental covenant may prohibit or restrict uses of real property which are authorized by zoning or by law other than this subchapter.

(75 Del. Laws, c. 206 § 1.)

§ 7912 Notice.

(a) The owner or another person designated by the Department shall provide a copy of a signed environmental covenant as required by the Department to:

(1) All persons who signed the covenant;

(2) All persons holding a recorded interest in the real property subject to the covenant;

(3) All persons in possession of the real property subject to the covenant;

(4) Each municipality or other unit of local government in which real property subject to the covenant is located; and

(5) Any other persons the Department requires.

(b) Failure to provide a copy of the covenant as required by the Department does not affect the covenant's validity.

(75 Del. Laws, c. 206 § 1.)

§ 7913 Recording.

(a) An environmental covenant and any amendment or termination of the covenant must be recorded in every county in which any portion of the real property subject to the covenant is located. A recorded environmental covenant or a notice recorded pursuant to § 7914 of this title must be indexed in the grantor's index in the names of the owners of the real property subject to the covenant and in the grantee's index in the name of the holder.

(b) Except as otherwise provided in § 7908(c) of this title, an environmental covenant is subject to the laws of this state governing recording and priority of interests in real property. Recording of a covenant pursuant to the law of this state provides the same constructive notice of the covenant as the recording of a deed provides of an interest in real property.

(75 Del. Laws, c. 206 § 1.)

§ 7914 Duration.

(a) An environmental covenant is perpetual unless:

(1) Limited by its terms to a specific duration or the occurrence of a specific event;

(2) Terminated by consent pursuant to § 7915 of this title; [or]

(3) Terminated pursuant to subsection (b) of this section or

(4) Terminated or modified by judicial decree in an eminent domain proceeding, if:

a. The Department consents to the judicial action; and

b. All persons identified in § 7915(a) and (b) of this title are given notice of the pendency of the eminent domain proceeding.

(b) A judicial decree terminating an environmental covenant or reducing its burden on the real property subject to the covenant under the doctrine of changed circumstances may be rendered only after:

(1) All persons identified in § 7915(a) and (b) of this title are given notice of the pendency of the judicial proceeding in which the determination is sought; and

(2) The Department has filed a determination with the court that the intended benefits of the original covenant can no longer be realized.

(c) Notwithstanding anything to the contrary contained in this subchapter, an environmental covenant may be amended or terminated if the environmental covenant:

(1) No longer serves its intended purpose;

(2) No longer provides the intended benefits;

(3) No longer or does not provide for protection of human health or the environment; or

(4) Becomes unnecessary because of changed circumstances, including changes in law, regulation or ordinances.

Any person having an interest in real property subjected to an environmental covenant shall be entitled to apply to the Department for amendment or termination of the environmental covenant in accordance with the procedures set forth in § 6004 of this title. Any decision of the Secretary regarding an amendment or termination of an environmental covenant shall be subject to appeal in accordance with the procedures provided for appeals under subchapter II of Chapter 60 of this title. If an environmental covenant is amended or terminated the amended environmental covenant or notice of termination shall be recorded in accordance with requirements set forth in § 7913 of this title.

(d) Except as otherwise provided in subsections (a) and (b) of this section, an environmental covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, or lack of enforcement, or any similar doctrine.

(75 Del. Laws, c. 206 § 1.)

§ 7915 Amendment or termination by consent.

(a) An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by:

(1) The Department Secretary;

(2) The current owner;

(3) Each person that originally signed the covenant unless:

a. The person waived the right to consent in a signed record;

b. The person fails to respond to a notice, requesting their consent to amendment or termination, delivered by certified mail to their last known address, as obtained from the U.S. Postal Service, within 45 days after delivery of such notice; or

c. Unless a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and

(4) Except as otherwise provided in subsection (d) of this section, the holder.

(b) A person that subordinates its interest to an environmental covenant is not affected by an amendment of the covenant unless the person consents to the amendment or waives the right to consent to future amendments in a signed record.

(c) Except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

(d) Except as otherwise provided in the covenant:

(1) A holder may not assign its interest without consent of the other parties;

(2) A holder may be removed and replaced by agreement of the other parties specified in subsection (a) of this section; and

(3) A court of competent jurisdiction may fill a vacancy in the position of holder.

(75 Del. Laws, c. 206 § 1.)

§ 7916 Enforcement of environmental covenant.

(a) A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by:

(1) A party to the covenant;

(2) The Department or,

(3) Any other person to whom the covenant expressly grants power to enforce;

(4) A person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the covenant; and

(5) A municipality or other unit of local government in which the real property subject to the covenant is located.

(b) This act does not limit the regulatory authority of the Department under law other than respect to an environmental response project.

(c) A person is not subject to liability for environmental remediation solely because it has the right to enforce an environmental covenant.

(75 Del. Laws, c. 206 § 1.)

§ 7917 Registry; substitute notice.

(a) The Department shall establish and maintain a registry that contains all environmental covenants and any amendment or termination of those covenants. The registry may also contain any other information concerning environmental covenants and the real property subject to them which the Department considers appropriate. The registry is a public record for purposes of Freedom of Information Act [Chapter 100 of Title 29].

(b) After an environmental covenant or an amendment or termination of a covenant is filed in the registry pursuant to subsection (a) of this section, a notice of the covenant, amendment, or termination that complies with this section may be recorded in the land records in lieu of recording the entire covenant. Any such notice must contain:

(1) A legally sufficient description and any available street address of the real property;

(2) The name and address of the owner of the real property, the Department, and the holder if other than the Department;

(3) A statement that the covenant, amendment, or termination is available in a registry at the Department, and disclosing the method of any electronic access; and

(4) A statement that the notice is notification of an environmental covenant executed pursuant to this subchapter.

(c) A statement in executed with the same formalities as a deed in this state satisfies the requirements of subsection (b) of this section:

(1) This notice is filed in the land records of the deeds of county of jurisdiction in which the real property is located pursuant to § 7913 of this title.

(2) This notice and the covenant, amendment or termination to which it refers may impose significant obligations with respect to the property described below.

(3) A legal description of the property is attached as Exhibit A to this notice. The address of the property that is subject to the environmental covenant is [insert address of property].

(4) The name and address of the owner of the real property on the date of this notice is [insert name of current legal owner of the property and the owner's current address as shown on the tax records of the jurisdiction in which the property is located].

(5) The environmental covenant, amendment or termination was signed by [insert name and address of the Department].

(6) The environmental covenant, amendment, or termination was filed in the registry on [insert date].

(7) The full text of the covenant, amendment, or termination and any other information required by the Department is on file and available for inspection and copying in the site files by the Department of Natural Resources and Environmental Control (DNREC) at a building in which the files are maintained.

(75 Del. Laws, c. 206 § 1.)

§ 7918 Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(75 Del. Laws, c. 206 § 1.)

§ 7919 Relation to Electronic Signatures in Global and National Commerce Act.

This act modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.) but does not modify, limit, or supersede § 101 of that Act (15 U.S.C. § 7001(a)) or authorize electronic delivery of any of the notices described in § 103 of that Act (15 U.S.C. § 7003(b)).

(75 Del. Laws, c. 206 § 1.)

§ 7920 Severability.

If any provision of this subchapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this subchapter which can be given effect without the invalid provision or application, and to this end the

provisions of this subchapter are severable.

(75 Del. Laws, c. 206 § 1.)

Part VIII
Appalachian States Low-Level Radioactive Waste Compact
Chapter 80
APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMPACT

§ 8001 Governor to enter into Compact; provisions thereof.

The Governor of this State shall execute a Compact on behalf of the State with the Commonwealth of Pennsylvania, the State of West Virginia, and with any other eligible state or states as may enter into the Compact, legally joining therein the form substantially as follows:

APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMPACT

The State of Delaware hereby solemnly covenants and agrees with the Commonwealth of Pennsylvania, the State of West Virginia and any other eligible states as defined in Article 5(A) of this Compact and the United States of America, upon the enactment of concurrent legislation by the Congress of the United States and by the respective state legislatures, as follows:

PREAMBLE

Whereas, the United States Congress, by enacting the Low-Level Radioactive Waste Policy Act (42 U.S.C. §§ 2021b-2021d) has encouraged the use of interstate compacts to provide for the establishment and operation of facilities for regional management of low-level radioactive waste;

Whereas, under § 4(a)(1)(A) of the Low-Level Radioactive Waste Policy Act ([former] 42 U.S.C. § 2021d(a)(1)(A)) [see now 42 U.S.C. § 2021c], each state is responsible for providing for the capacity for disposal of low-level radioactive waste generated within its borders.

Whereas, to promote the health, safety and welfare of residents within the Commonwealth of Pennsylvania and other eligible states as defined in Article 5(A) of this Compact shall enter into a compact for the regional management and disposal of low-level radioactive waste.

Now, therefore, the Commonwealth of Pennsylvania, the State of Delaware and the State of West Virginia and other eligible states hereby agree to enter into the Appalachian States Low-Level Radioactive Waste Compact.

ARTICLE 1

DEFINITIONS

As used in this Compact, unless the context clearly indicates otherwise:

(a) "Broker" means any intermediate person who handles, treats, processes, stores, packages, ships or otherwise has responsibility for or possesses low-level waste obtained from a generator.

(b) "Carrier" means a person who transports low-level waste to a regional facility.

(c) "Commission" means the Appalachian States Low-Level Radioactive Waste Commission.

(d) "Disposal" means the isolation of low-level waste from the biosphere.

(e) "Facility" means any real or personal property, within the region, and improvements thereof or thereon, and any and all plant, structures, machinery and equipment, acquired, constructed, operated or maintained for the management or disposal of low-level waste.

(f) "Generate" means to produce low-level waste requiring disposal.

(g) "Generator" means a person whose activity results in the production of low-level waste requiring disposal.

(h) "Hazardous life" means the time required for radioactive material to decay to safe levels, as defined by the time period for the concentration of radioactive materials within a given container or package to decay to maximum permissible concentrations as defined by Federal law or by standards to be set by a host state, whichever is more restrictive.

(i) "Host state" means Pennsylvania or other party state so designated by the Commission in accordance with Article 3 of this Compact.

(j) "Institutional control period" means the time of the continued observation, monitoring and care of the regional facility following transfer of control from the operator to the custodial agency.

(k) "Low-level waste" means radioactive waste that:

(1) is neither high-level waste or transuranic waste, nor spent nuclear fuel, nor by-product material as defined in Section 11(e)(2) of the Atomic Energy Act of 1954 as amended [42 U.S.C. § 2014]; and

(2) is classified by the Federal government as low-level waste, consistent with existing law; but does not include waste generated as a result of atomic energy defense activities of the Federal government, as defined in Public Law 96-573 [42 U.S.C. §§ 2021b-2021d], or Federal research and development activities.

(l) "Management" means the reduction, collection, consolidation, storage, packaging or treatment of low-level waste.

(m) "Operator" means a person who operates a regional facility.

(n) "Party state" means any state that has become a party in accordance with Article 5 of this Compact.

(o) "Person" means an individual, corporation, partnership or other legal entity, whether public or private.

(p) "Region" means the combined geographical area within the boundaries of the party states.

(q) "Regional facility" means a facility within any party state which has been approved by the Commission for the disposal of low-level waste.

(r) "Shallow land burial" means the disposal of low-level radioactive waste directly in subsurface trenches without additional confinement in engineered structures or by proper packaging in containers as determined by the law of the host state.

(s) "Transuranic waste" means low-level waste containing radionuclides with an atomic number greater than 92 which are excluded from shallow-land burial by the Federal government.

ARTICLE 2

THE COMMISSION

(A) Creation and Organization.

(1) Creation — There is hereby created the Appalachian States Low-Level Radioactive Waste Commission. The Commission is hereby created as a body corporate and politic, with succession for the duration of this compact, as an agency and instrumentality of the governments of the respective signatory parties, but separate and distinct from the respective signatory party states. The Commission shall have central offices located in Pennsylvania.

(2) Commission Membership — The Commission shall consist of 2 voting members from each party state to be appointed according to the laws of each party state, and 2 additional voting members from each host state to be appointed according to the laws of each host state. Upon selection of the site of the regional facility, an additional voting member shall be appointed to the Commission who shall be a resident of the county or municipality where the facility is to be located. The appointing authority of each party state shall notify the Commission in writing of the identities of the members and of any alternates. An alternate may vote and act in the member's absence. No member shall have a financial interest in any industry which generates low-level radioactive waste, any low-level radioactive waste regional facility or any related industry for the duration of the member's term. No more than 1/2 the members and alternates from any party state shall have been employed by or be employed by a low-level waste generator or related industry upon appointment to or during their tenure of office; provided, that no member shall have been employed by or be employed by a regional facility operator. No member or alternate from any party state shall accept employment from any regional facility operator or brokers for at least 3 years after leaving office.

(3) Compensation — Members of the Commission and alternates shall serve without compensation from the Commission but may be reimbursed for necessary expenses incurred in and incident to the performance of their duties.

(4) Voting Power — Each Commission member is entitled to 1 vote. Unless otherwise provided in this compact, affirmative votes by a majority of a host state's members are necessary for the Commission to take any action related to the regional facility and the disposal and management of low-level waste within that host state.

(5) Organization and Procedure —

(a) The Commission shall provide for its own organization and procedures, and shall adopt by-laws not inconsistent with this compact and any rules and regulations necessary to implement this compact. It shall meet at least once a year in the county selected to host a regional facility and shall elect a chairman and vice chairman from among its members. In the absence of the chairman, the vice chairman shall serve.

(b) All meetings of the Commission shall be open to the public with at least 14 days advance notice, except that the chairman may convene an emergency meeting with less advance notice. Each municipality and county selected to host a regional facility shall be specifically notified in advance of all Commission meetings. All meetings of the Commission shall be conducted in a manner that substantially conforms to the Federal Administrative Procedure Act (5 U.S.C. Ch. 5, Subch. II, and Ch. 7). The Commission may, by a two-thirds vote, including approval of a majority of each host state's Commission members, hold an Executive Session closed to the public for the purpose of: considering or discussing legally privileged or proprietary information; to consider dismissal, disciplining of, or hearing complaints or charges brought against an employee or other public agent unless such person requests such public hearing; or to consult with its attorney regarding information or strategy in connection with specific litigation. The reason for the Executive Session must be announced at least 14 days prior to the Executive Session, except that the chairman may convene an emergency meeting with less advance notice, in which case the reason for the Executive Session must be announced at the open meeting immediately subsequent to the Executive Session. All action taken in violation of this open meeting provision shall be null and void.

(c) Detailed written minutes shall be kept of all meetings of the Commission. All decisions, files, records and data of the Commission, except for information privileged against introduction in judicial proceedings, personnel records and minutes of a properly convened Executive Session, shall be open to public inspection subject to a procedure that substantially conforms to the Freedom of Information Act (Public Law 89-554, 5 U.S.C. § 552) and applicable Pennsylvania law, and may be copied upon request and payment of fees which shall be no higher than necessary to recover copying costs.

(d) The Commission shall select an appropriate staff, including an Executive Director, to carry out the duties and functions assigned by the Commission. Notwithstanding any other provision of law, the Commission may hire and/or retain its own legal counsel.

(e) Any person aggrieved by a final decision of the Commission which adversely affects the legal rights, duties or privileges of such person, may petition a court of competent jurisdiction, within 60 days after the Commission's final decision, to obtain judicial review of said final decisions.

(f) Liabilities of the Commission shall not be deemed liabilities of the party states. Members of the Commission shall not be

personally liable for actions taken in their official capacity.

(B) Powers and Duties.

The Commission:

(a) Shall conduct research and establish regulations to promote a reasonable reduction of volume and curie content of low-level wastes generated in the region. The regulations shall be reviewed and, if necessary, revised by the Commission at least annually.

(b) Shall ensure, to the extent authorized by Federal law, that low-level wastes are safely disposed of within the region except that the Commission shall have no power or authority to license, regulate or otherwise develop a regional facility, such powers and authority being reserved for the host state(s) as permitted under the law.

(c) Shall designate as "host states" any party state which generates 25 percent or more of Pennsylvania's volume or total curie content of low-level waste generated based on a comparison of average over 3 successive years, as determined by the Commission. This determination shall be based on volume or total curie content, whichever is greater.

(d) Shall ensure, to the extent authorized by Federal law, that low-level waste packages brought into the regional facility for disposal conform to applicable state and Federal regulations. Low-level waste brokers or generators who violate these regulations will be subject to a fine or other penalty imposed by the Commission, including restricted access to a regional facility. The Commission may impose such fines and/or penalties in addition to any other penalty levied by the party states pursuant to Article 4(D).

(e) Shall establish such advisory committees as it deems necessary for the purpose of advising the Commission on matters pertaining to the management and disposal of low-level waste.

(f) May contract to accomplish its duties and effectuate its powers subject to projected available resources. No contract made by the Commission shall bind a party state.

(g) Shall prepare contingency plans for management and disposal of low-level waste in the event any regional facility should be closed or otherwise unavailable.

(h) Shall examine all records of operators of regional facilities pertaining to operating costs, profits or the assessment or collection of any charge, fee or surcharge, and may make recommendations to the host state(s) which shall review the recommendations in accordance with its (their) own sovereign laws.

(i) Shall have the power to sue and be sued subject to Article 2(A)(5)(e) and may seek to intervene in any administrative or judicial proceeding.

(j) Shall assemble and make available to the party states and to the public, information concerning low-level waste management and disposal needs, technologies and problems.

(k) Shall keep current and annual inventories of all generators by name and quantity of low-level waste generated within the region, based upon information provided by the party states. Inventory information shall include both volume in cubic feet and total curie content of the low-level waste and all available information on chemical composition and toxicity of such wastes.

(l) Shall keep an inventory of all regional facilities and specialized facilities, including, but not necessarily restricted to, information on their size, capacity, and location, as well as specific wastes capable of being managed, and the projected useful life of each regional facility.

(m) Shall make and publish an annual report to the governors of the signatory party states and to the public detailing its programs, operations and finances, including copies of the annual budget and the independent audit required by this compact.

(n) Notwithstanding any other provision of this compact to the contrary, may, with the unanimous approval of the Commission members of the host state(s), enter into temporary agreements with non-party states or other regional boards for the emergency disposal of low-level waste at the regional facility, if so authorized by law(s) of the host state(s), or other disposal facilities located in states that are not parties to this agreement.

(o) Shall promulgate regulations, pursuant to host state law, to specifically govern and define exactly what would constitute an emergency situation and exactly what restrictions and limitations would be placed on temporary agreements.

(p) Shall not accept any donations, grants, equipment, supplies, materials or services, conditional or otherwise, from any source, except from any federal agency and from party states which are certified as being legal and proper under the laws of the donating party state.

(C) Budget and Operation.

(1) Fiscal Year — The Commission shall establish a fiscal year which conforms to the fiscal year of the Commonwealth of Pennsylvania.

(2) Current Expense Budget — Upon legislative enactment of this Compact by 2 party states and each year until the regional facility becomes available, the Commission shall adopt a current expense budget for its fiscal year. The budget shall include the Commission's estimated expenses for administration. Such expenses shall be allocated to the party states according to the following formula:

Each designated initial host state will be allocated costs equal to twice the costs of the other party states, but such costs will not exceed $200,000. Each remaining party state will be allocated a cost of 1/2 the cost of the initial host state, but such costs will not exceed $100,000. The party states will include the amounts allocated above in their respective budgets, subject to such review and approval as may be required by their respective budgetary processes. Such amounts shall be due and payable to the Commission in quarterly

installments during the fiscal year.

(3) Annual Budget Request — For continued funding of its activities, the Commission shall submit an annual budget request to each party state for funding, based upon the percentage of the region's waste generated in each state in the region, as reported in the latest available annual inventory required under Article 2(B)(k). The percentage of waste shall be based on volume of waste or total curie content as determined by the Commission.

(4) Annual Report to Include Budget — The Commission shall prepare and include in the annual report a budget showing anticipated receipts and disbursements for the ensuing year.

(5) Annual Independent Audit —

(a) As soon as practicable after the closing of the fiscal year, an audit shall be made of the financial accounts of the Commission. The audit shall be made by qualified certified public accountants selected by the Commission, who have no personal direct or indirect interest in the financial affairs of the Commission or any of its officers or employees. The report of audit shall be prepared in accordance with accepted accounting practices and shall be filed with the chairman and such other officers as the Commission shall direct. Copies of the report shall be distributed to each Commission member and shall be made available for public distribution.

(b) Each signatory party by its duly authorized officers shall be entitled to examine and audit at any time all of the books, documents, records, files, and accounts and all other papers, things, or property of the Commission. The representatives of the signatory parties shall have access to all books, documents, records, accounts, reports, files and all other papers, things, or property belonging to or in use by the Commission and necessary to facilitate the audit; and, they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents and custodians.

ARTICLE 3

RIGHTS, RESPONSIBILITIES AND OBLIGATIONS OF PARTY STATES

(A) Regional Facilities.

There shall be regional facilities sufficient to dispose of the low-level waste generated within the region. Each regional facility shall be capable of disposing of such low-level waste but in the form(s) required by regulations or license conditions. Specialized facilities for particular types of low-level waste management, reduction or treatment may not be developed in any party state unless they are in accordance with the laws and regulations of such state and applicable federal laws and regulations.

(B) Equal Access to Regional Facilities.

Each party state shall have equal access as other party states to regional facilities located within the region and accepting low-level waste, provided, however, that the host state may close the regional facility located within its borders when necessary for public health and safety. However, a host state shall send notification to the Commission in writing within three 3 days of its action, and shall, within thirty 30 working days, provide in writing the reasons for the closing.

(C) Initial Host State.

Pennsylvania and party states which generated 25 percent or more of the volume or curies of low-level waste generated by Pennsylvania based on a comparison of averages over the three years 1982 through 1984 are designated as "initial host states" and are required to develop and host low-level waste sites as regional facilities. The percentage of waste from each state shall be determined by cubic foot volume or total curie content, whichever is greater.

(D) Exemption From Being Initial Host State.

Party states which generated less than 25 percent of the volume or curies of low-level waste generated by Pennsylvania based on a comparison of averages over the years 1982 through 1984 shall be exempt from initial host state responsibilities. These states shall continue to be exempt as long as they generate less than the 25 percent threshold over successive 3-year periods. Once a state generates an average of 25 percent or more of the volume or curies generated by Pennsylvania over a successive 3-year period, it shall be designated as a "host state" for a 30-year period by the Commission and shall immediately initiate development of a regional facility to be operational within five years. Such host state shall be prepared to accept at its regional facility low-level waste at least equal to that generated in the state. With Commission approval, any party state may volunteer to host a regional facility. The percentage of waste from each state shall be determined by either a cubic foot volume or total curie content, whichever is greater.

(E) Useful Life of Regional Facilities.

Pennsylvania and other host states are obligated to develop regional facilities for the duration of this compact. All regional facilities shall be designed for at least a 30-year useful life. At the end of the facility's life, normal closure and maintenance procedures shall be initiated in accordance with the applicable requirements of the host state and the Federal government. Each host state's obligation for operating regional facilities shall remain as long as the state continues to produce over a 3-year period 25 percent or more of the volume or curies of low-level waste generated by Pennsylvania.

(F) Duties of Host State.

Each host state shall:

(a) Cause a regional facility to be sited and developed on a timely basis.

(b) Ensure by law, consistent with applicable state and Federal law, the protection and preservation of public health, safety and environmental quality in the siting, design, development, licensure, or other regulation, operation, closure, decommissioning, long-term care and the institutional control period of the regional facility within the state. To the extent authorized by federal law, a host

state may adopt more stringent laws, rules or regulations than required by federal law.

(c) Ensure and maintain a manifest system which documents all waste-related activities of generators, brokers, carriers and related activities of generators, brokers, carriers and operators, and establish the chain of custody of waste from its initial generation to the end of its hazardous life. Copies of all such manifests shall be submitted to the Commission on a timely basis.

(d) Ensure that charges for disposal of low-level waste at the regional facility are sufficient to fully fund the safe disposal and perpetual care of the regional facility and that charges are assessed without discrimination as to the party state of origin.

(e) Submit an annual report to the Commission on the status of the regional facility which contains projections of the anticipated future capacity.

(f) Notify the Commission immediately if any exigency arises requiring the possible temporary or permanent closure of a regional facility within the state at a time earlier than was projected in the state's most recent annual report to the Commission.

(g) Require that the institutional control period of any disposal facility be at least as long as the hazardous life, as defined in Article 1(h), of the radioactive materials that are disposed at that facility.

(h) Prohibit the use of any shallow land burial, as defined in Article 1(r), and develop alternative means for treatment, storage and disposal of low-level waste.

(i) Establish by law, to the extent not prohibited by federal law, requirements for financial responsibility, including, but not limited to:

(i) Requirements for the purchase and maintenance of adequate insurance by generators, brokers, carriers and operators of the regional facility;

(ii) Requirements for the establishment of a long-term care fund to be funded by a fee placed on generators to pay for preventative or corrective measures of low-level waste to the regional facility; and

(iii) Any further financial responsibility requirements that shall be submitted by generators, brokers, carriers, and operators as deemed necessary by the host state.

(G) Duties of Party State.

Each party state:

(a) Shall appropriate its portion of the Commission's initial and annual budgets as set out in Article 2(C)(2) and (3).

(b) To the extent authorized by federal law shall develop and enforce procedures requiring low-level waste shipments originating within its borders and destined for a regional facility to conform to volume reduction, packaging, and transportation requirements and regulations as well as any other requirements specified by the regional facility. Such procedures shall include but are not limited to:

(i) Periodic inspections of packaging and shipping practices;

(ii) Periodic inspections of low-level waste containers while in custody of carriers; and

(iii) Appropriate enforcement actions with respect to violations.

(c) To the extent authorized by federal law, shall after receiving notification from a host state or other person that a person in a party state has violated volume reduction, packaging, shipping or transportation requirements or regulations, take appropriate action to ensure that violations do not recur. Appropriate action shall include, but is not limited to, the requirement that a bond be posted by the violator to pay the cost of repackaging at the regional facility and the requirement that future shipments be inspected. Appropriate action may also include suspension of the violator's use of the regional facility. Should such suspension be imposed, the suspension shall remain in effect until such time as the violator has, to the satisfaction of the party state imposing such suspension, complied with the appropriate requirements or regulations upon which the suspension was based and has taken appropriate action to ensure that such violation or violations do not recur.

(d) Shall maintain a registry of all generators and quantities generated within the state.

(H) Liability.

In the event of liability arising from the operation of any regional facility and during and after closure of that facility, each party state shall share in that liability in an amount equal to that state's share of the region's low-level waste disposed of at the facility. If such liability arises from negligence, malfeasance or neglect on the part of a host state or any party state, then any other host or party state(s) may make any claim allowable under law for that negligence, malfeasance or neglect. If such liability arises from a particular waste shipment or shipments to, or quantity of waste or condition at, the regional facility, then any host or party state may make any claim allowable under law for such liability. The percentage of waste shall be based on volume of waste or total curie content.

(I) Failure of Party State to Fulfill Obligations.

A party state which fails to fulfill its obligations, including timely funding of the Commission may have its privileges under the Compact suspended or its membership in the Compact revoked by the Commission and be subject to any other legal and equitable remedies available to the party states.

ARTICLE 4

PROHIBITIVE ACTS AND PENALTIES

(A) Prohibition.

It shall be unlawful for any person to dispose of low-level waste within the region except at a regional facility unless authorized by the

Commission.

(B) Waste Disposed of Within Region.

After establishment of the regional facility(s), it shall be unlawful for any person to dispose of any low-level waste within the region unless the waste was generated within the region or unless authorized to do so both by the Commission and by law of the host state in which said disposal takes place. For the purposes of this compact, waste generated within the region excludes radioactive material shipped from outside the party states to a waste management facility within the region. In determining whether to grant such authorization, the factors to be considered by the Commission shall include, but not be limited to, the following:

(a) The impact on the health, safety and environmental quality of the citizens of the party states;

(b) The impact of importing waste on the available capacity and projected life of the regional facility;

(c) The availability of a regional facility appropriate for the safe disposal of the type of low-level waste involved.

(C) Waste Generated Within Region.

Any and all low-level waste generated within the region shall be disposed of at a regional facility, except for specific cases agreed upon by the Commission, with the affirmative votes by a majority of the Commission members of the host state(s) affected by the decision.

(D) Liability.

Generators, brokers and carriers of wastes, and owners and operators of sites shall be liable for their acts, omissions, conduct, or relationships in accordance with all laws relating thereto. The party states shall impose a fine for any violation in an amount equal to the present and future costs associated with correcting any harm caused by the violation and shall assess punitive fines or penalties if it is deemed necessary. In addition, the host state shall bar any person who violates host state or federal regulations from using the regional facility until that person demonstrates to the satisfaction of the host state the ability and willingness to comply with the law.

(E) Conflict of Interest.

(1) Prohibitions —

No commissioner, officer or employee shall:

(a) Be financially interested, either directly or indirectly, in a contract, sale, purchase, lease or transfer of real or personal property to which the Commission is a party.

(b) Solicit or accept money or any other thing of value in addition to the expenses paid to him or her by the Commission for services performed within the scope of his or her official duties.

(c) Offer money or anything of value for or in consideration of obtaining an appointment, promotion or privilege in his or her employment with the Commission.

(2) Forfeiture of Office or Employment —

Any officer or employee who shall wilfully violate any of the provisions of this section shall forfeit his or her office or employment.

(3) Agreement Void —

Any contract or agreement knowingly made in contravention of this section is void.

(4) Criminal and Civil Sanctions —

Officers and employees of the Commission shall be subject, in addition to the provisions of this section, to such criminal and civil sanctions for misconduct in office as may be imposed by federal law and the law of the signatory state in which such misconduct occurs.

ARTICLE 5

ELIGIBILITY, ENTRY INTO EFFECT, CONGRESSIONAL CONSENT, WITHDRAWAL

(A) Eligibility.

Only the States of Pennsylvania, West Virginia, Delaware and Maryland are eligible to become parties to this compact.

(B) Entry into Effect.

An eligible state may become a party state by legislative enactment of this Compact or by executive order of the governor adopting this Compact; provided, however, a state becoming a party state by executive order shall cease to be a party state upon adjournment of the first general session of its legislature convened thereafter, unless the legislature shall have enacted this Compact before such adjournment.

(C) Congressional Consent.

This Compact shall take effect when it has been enacted by the legislatures of Pennsylvania and one or more eligible states. However, Article 4(B) and (C) shall not take effect until Congress has consented to this Compact. Every fifth year after such consent has been given, Congress may withdraw consent.

(D) Withdrawal.

A party state may withdraw from the Compact by repealing the enactment of this compact, but no such withdrawal shall become effective until 2 years after enactment of the repealing legislation. If the withdrawing state is a host state, any regional facility in that state shall remain available to receive low-level waste generated within the region until 5 years after the effective date of the withdrawal.

ARTICLE 6

CONSTRUCTION AND SEVERABILITY

(A) Construction.

The provisions of this compact shall be broadly construed to carry out the purpose of the compact, but the sovereign powers of a party state shall not unnecessarily be infringed.

(B) Severability.

If any part or application of this compact is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

(65 Del. Laws, c. 244 § 2; 70 Del. Laws, c. 186 § 1.)

§ 8002 Governor's representatives.

(a) The Governor shall, in accordance with this Compact, appoint 2 Commissioners familiar with the problems inherent in the disposal of low-level radioactive waste to represent the State of Delaware on the Appalachian States Low-Level Radioactive Waste Commission. The Governor shall also appoint 2 alternate Commissioners to serve in the respective place of the 2 original Commissioners, should a Commissioner be unable to attend a Commission meeting or otherwise fulfill the duties of their appointed office. The Commissioners and respective alternates shall serve 4-year terms.

(b) The Governor's representatives shall serve without compensation but shall be reimbursed for necessary expenses incurred in and incident to the performance of their duties from a fund specifically reserved for the purpose by the State.

(65 Del. Laws, c. 244 § 2; 68 Del. Laws, c. 248 §§ 1, 2.)

§ 8003 Budgetary processes.

The term "budgetary processes" in Article 2(C)(2) of the Appalachian States Low-Level Radioactive Waste Compact shall be construed to include a proposed budget presentation to the State Budget Director by the state's representatives on the Appalachian States Low-Level Radioactive Waste Commission, or the appropriate state agency, for each state fiscal year, in accordance with the rules and practices of the state governing administrative agencies. Each such budget proposal shall include a statement of moneys required to administer, manage and support the implementation of the Appalachian States Low-Level Radioactive Waste Compact during the ensuing fiscal period. The statement shall include any request for appropriation of funds by said representatives or state agency, and shall be accompanied by a tabulation of similar requests which said Commission makes or expects to make each other signatory party, and the formula or factors upon which such respective requests are based. Further, the term "budgetary processes" as applied to the State, shall not be considered complied with until it includes appropriation by the General Assembly and the signing of the appropriation into law by the Governor.

(65 Del. Laws, c. 244 § 2.)

§ 8004 Effectuation by Governor.

The Governor is authorized to take such action as may be necessary and proper in the Governor's discretion to effectuate the Appalachian States Low-Level Radioactive Waste Compact and the initial organization and continued operation of the Commission.

(65 Del. Laws, c. 244 § 2; 70 Del. Laws, c. 186 § 1.)

§ 8005 Low-level radioactive waste surcharge rebates.

Authority is given to Delaware's Appalachian States Low-Level Radioactive Waste Compact Commissioners to approve the disbursement of funds from the Low-Level Radioactive Waste Surcharge Escrow Account established by the U.S. Department of Energy. These funds can only be used to:

(1) Establish low-level radioactive waste disposal facilities;

(2) Mitigate the impact of low-level radioactive waste disposal facilities on the host state;

(3) Regulate low-level radioactive waste disposal facilities; or

(4) Ensure the decommissioning, closure and care during the period of institutional control of low-level radioactive waste disposal facilities as stipulated by the Low-Level Radioactive Waste Policy Amendments Act [42 U.S.C. § 2021b et seq.].

(67 Del. Laws, c. 375 § 1.)

Part IX
Hazardous Substance Cleanups
Chapter 91
DELAWARE HAZARDOUS SUBSTANCE CLEANUP ACT
Subchapter I
General Provisions and Enforcement

§ 9101 Short title.

This chapter shall be known and may be cited as the "Delaware Hazardous Substance Cleanup Act."

(67 Del. Laws, c. 326 § 1.)

§ 9102 Declaration of purpose; applicability.

(a) The General Assembly recognizes that large quantities of hazardous substances are and have been generated, transported, treated, and stored within the State. The General Assembly also recognizes that some hazardous substances have been stored or disposed of at facilities in the State in a manner insufficient to protect public health or welfare or the environment. The General Assembly finds that the release of a hazardous substance constitutes an imminent threat to public health or welfare or the environment of the State. The General Assembly intends by the passage of this chapter to exercise the powers of the State to require prompt containment and removal of such hazardous substances, to eliminate or minimize the risk to public health or welfare or the environment, and to provide a fund for the cleanup of the facilities affected by the release of hazardous substances.

(b) The General Assembly finds that private parties should be provided with encouragement to exercise their responsibility to clean up the facilities for which they are responsible, but that if they refuse to do so, then the State should conduct the cleanup and recover the costs thereof from the private parties.

(c) The General Assembly recognizes the need to remedy contaminated facilities and to promote opportunities and provide incentives to encourage the remedy of such facilities to yield economic revitalization and redevelopment within the State.

(d) The General Assembly finds that in order to effectuate the purposes of this chapter to remedy contamination resulting from past acts and to address more equitably the issue of who should bear the costs of remediation, § 9105 of this title shall apply to all responsible parties without regard to the date of enactment of this chapter or any amendments thereto.

(67 Del. Laws, c. 326 § 1; 70 Del. Laws, c. 218 § 1.)

§ 9103 Definitions.

As used in this chapter:

(1) "Act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

(2) "Allowable interest rate" means a rate of interest 5% over the federal reserve discount rate.

(3) "Brownfield" means real property, the expansion, redevelopment, or reuse of which may be hindered by the reasonably held belief that the real property may be environmentally contaminated.

(4) "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended.

(5) "Contractor" means any corporation, company, association, firm, partnership, society, joint-stock company, sole proprietorship or individual that contracts to perform any remedial action under the remedial standards established in this chapter.

(6) "Contractual relationship" means, but is not limited to, land contracts, deeds, easements, leases or other instruments transferring title or possession. A "contractual relationship" does not exist if the real property on which the facility concerned is located was acquired by the person after the disposal or placement of the hazardous substance on, in, or at the facility, and 1 or more of the circumstances described in paragraph (6)a., b., or c. of this section is also established by the person by a preponderance of the evidence:

a. At the time the person acquired the facility the person did not know and had no reason to know that any hazardous substance which is the subject of the release or threatened release was disposed of on, in or at the facility.

b. The person is a government entity which acquired the facility by escheat or through any other involuntary transfer or acquisition or through the exercise of eminent domain authority by purchase or condemnation.

c. The person acquired the facility by inheritance or bequest.

(7) "Department" means the Department of Natural Resources and Environmental Control.

(8) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any hazardous substance into or on any land, water or into the air so that such hazardous substance or any constituent thereof may enter the environment.

(9) "Environment" means the navigable waters, the waters of the contiguous zone, ocean waters, and any other surface water, ground

water, drinking water supply, land surface or subsurface strata or ambient air within the State.

(10) "Facility" means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, aircraft, or any site or area where a hazardous substance has been generated, manufactured, refined, transported, stored, treated, handled, recycled, released, disposed of, placed or otherwise come to be located.

(11) "Fiduciary" means:

a. A person acting for the benefit of another party as a bona fide:

1. Trustee;

2. Executor;

3. Administrator;

4. Custodian;

5. Guardian of estates or guardian ad litem;

6. Receiver;

7. Conservator;

8. Committee of estates of incapacitated persons;

9. Personal representative;

10. Trustee (including a successor to a trustee) under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender; or

11. Representative in any other capacity that the Secretary, after providing public notice, determines to be similar to the capacities described in paragraphs (11)a.1.-10. of this section above; and

b. "Fiduciary" does not mean:

1. A person that is acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, 1 or more estate plans or because of the incapacity of a natural person; or

2. A person that acquires ownership or control of a facility with the objective purpose of avoiding liability of the person or of any other person.

(12) "Fiduciary capacity" means the capacity of a person in holding title to a facility, or otherwise having control of or an interest in the facility, pursuant to the exercise of the responsibilities of the person as a fiduciary.

(13) "Foreclosure"; "foreclose" mean, respectively:

a. Acquiring, and to acquire, a facility through:

1. Purchase at sale under a judgment or decree, power of sale, or nonjudicial foreclosure sale;

2. A deed in lieu of foreclosure, or similar conveyance from a trustee; or

3. Repossession,

b. If the facility was security for an extension of credit previously contracted;

1. Conveyance pursuant to an extension of credit previously contracted, including the termination of a lease agreement; or

2. Any other formal or informal manner by which the person acquires, for subsequent disposition, title to or possession of a facility in order to protect the security interest of the person.

(14) "Fund" means the Hazardous Substance Cleanup Fund created pursuant to § 9113 of this title.

(15) "Hazardous substance" means:

a. Any hazardous waste as defined in Chapter 63 of this title or any hazardous waste designated by regulation promulgated pursuant to Chapter 63 of this title;

b. Any hazardous substance as defined in CERCLA; or

c. Any substance determined by the Secretary through regulation to present a risk to public health or welfare or the environment if released into the environment.

(16) "Imminent threat of release" means potential for a release which requires action to prevent or mitigate damage to the environment or endangerment to public health or welfare which may result from such a release.

(17) "Lender" means:

a. An insured depository institution (as defined in the Federal Deposit Insurance Act at 12 U.S.C. § 1813(c)(2)) or an insured credit union (as defined in the Federal Credit Union Act at 12 U.S.C. § 1752(7)) authorized by law to do business in this State;

b. A bank or association chartered under the Farm Credit Act of 1971 (12 U.S.C. § 2001 et seq., as amended) authorized by law to do business in this State;

c. A leasing or trust company that is an affiliate of an insured depository institution authorized to do business in this State;

d. Any person (including a successor or assignee of any such person) that makes a bona fide extension of credit to or takes or acquires a security interest from a nonaffiliated person;

e. Any legally recognized person authorized, to buy or sell loans or interests in loans in a bona fide manner in this State;

f. A person that insures or guarantees against a default in the repayment of an extension of credit, or acts as a surety with respect to an extension of credit, to a nonaffiliated person; and

g. A person that provides title insurance and that acquires a facility as a result of assignment or conveyance in the course of underwriting claims and claims settlement.

(18) "Natural resources" means land, fish, wildlife, biota, air, water, groundwater, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by Delaware, the United States, any foreign government, any local government, or any Indian tribe.

(19) "Operable unit" means any subdivision of a facility in terms of area or environmental media or any other manner approved by the Secretary.

(20) "Owner or operator" means:

a. Any person owning or operating a facility.

b. Any person who owned, operated, or otherwise controlled activities at a facility.

c. The term "owner or operator" does not include an agency of the State or unit of local government that acquired title or control involuntarily through bankruptcy, tax delinquency, abandonment or other circumstances.

d. The term "control" does not include regulation of the activity by a federal, state or local government agency.

e. The term "owner or operator" does not include a person, who, without participating in the management of a facility, holds indicia of ownership primarily to protect that person's security interest in the facility.

f. The term "owner or operator" does not include a person who, without acquiring legal title, conducts or directs activities in connection with the actual or potential acquisition or evaluation of a facility, including due diligence, site inspections, site assessments, or other pre-closing activities in connection with the acquisition of a facility.

(21) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, school district, conservation district, federal government agency, Indian tribe or interstate body.

(22) "Plan of remedial action" means a detailed plan describing cleanup actions and related information for the containment or permanent removal and disposal of hazardous substances from a facility.

(23) "Potentially responsible party" means any person identified pursuant to § 9105(a)(1) through (6) of this title as a person liable with respect to a facility.

(24) "Prospective purchaser" means a person (or a tenant of a person) that acquires or intends to acquire ownership of a facility after the date of the enactment of this subdivision and that establishes each of the following:

a. All disposal of hazardous substances at the facility occurred before the person acquired the facility.

b. Inquiries.

1. The person made all appropriate inquiries into the previous ownership and uses of the facility in accordance with standards and practices in accordance with paragraphs (24)b.2. and 3. of this section.

2. The standards and practices referred to in § 9105(c)(2)b.1. and 2. of this title, shall be considered to satisfy the requirements of this subsection.

3. In the case of property in residential or other similar use at the time of purchase by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subsection.

c. Notices. The person provides all legally required notices with respect to the discovery or release of any hazardous substance or substances at the facility.

(25) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment (including the abandonment or discarding of barrels, containers and other closed receptacles containing any hazardous substance or pollutant or contaminant), but excludes:

a. Any release which results in exposure to a person solely within the workplace, with respect to a claim which such person may assert against an employer provided, however, that this exclusion does not apply to any such release which also results in exposure to the environment;

b. Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine;

c. The appropriate application of fertilizer and pesticide;

d. Any discharges in compliance with state permits issued in conformance with this title and federally permitted releases under CERCLA.

(26) "Remedial action" means the containment, contaminant mass or toxicity reduction, isolation, treatment, removal, cleanup or monitoring of hazardous substances released into the environment, or the taking of such other actions as may be necessary to prevent, minimize or mitigate harm or risk of harm to the public health or welfare or the environment which may result from a release or an imminent threat of a release of hazardous substances.

(27) "Remedy" means any action, response or expenditure consistent with the purposes of this chapter to identify, minimize or eliminate any imminent threat posed by any hazardous substances to public health or welfare or the environment including preparation of

any plans, conducting of any studies and any investigative, oversight of remedy or monitoring activities with respect to any release or imminent threat of release of a hazardous substance and any health assessments, risk assessments or health effect studies or natural resource damage assessments conducted in order to determine the risk or potential risk to public health or welfare or the environment.

(28) "Secretary" means Secretary of the Department or the Secretary's designee.

(29) "Security interest" includes a right under a mortgage, deed of trust, assignment, judgment, lien, pledge, security agreement, factoring agreement, or lease and any other right accruing to a person to secure the repayment of money, the performance of a duty, or any other obligation by a nonaffiliated person.

(30) "Site assessment" means the assessment of a facility and/or property to determine whether hazardous substances have entered the environment.

(67 Del. Laws, c. 326 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 218 §§ 2-10; 73 Del. Laws, c. 183 § 2; 74 Del. Laws, c. 185 §§ 2, 3; 74 Del. Laws, c. 409 §§ 6, 7; 76 Del. Laws, c. 220 § 3; 79 Del. Laws, c. 441 § 1; 80 Del. Laws, c. 359 § 1.)

§ 9104 Secretary's powers and duties.

(a) The Secretary may exercise the following powers in addition to any other powers granted by law:

(1) The Secretary shall take any actions necessary to carry out the provisions of this chapter, including but not limited to adoption of emergency or interim regulations, when immediate promulgation of regulations is necessary to implement this chapter prior to the adoption of final regulations.

(2) The Secretary shall, after notice and public hearing, promulgate and revise such regulations as deemed necessary for the implementation, administration and enforcement of this chapter. Such regulations may include provisions waiving or limiting the applicability of this chapter which the Secretary determines to be adequately regulated by state or federal statute or regulation.

(3) The Secretary may, after notice and public hearing, exempt certain facilities or properties or classes of facilities or properties from the provisions of this chapter upon finding that these facilities or properties do not pose an imminent threat to public health or welfare or the environment.

(4) The Secretary shall plan, study or conduct, or order a potentially responsible party to plan, study or conduct, appropriate actions to remedy a release or imminent threat of release.

(b) The Secretary shall implement all provisions of this chapter to the maximum extent practicable, including conducting investigations and remedies when appropriate. The Secretary shall, after notice and public hearing, promulgate and revise as appropriate, regulations to:

(1) Establish criteria for determining a priority list among facilities. These criteria shall assure that facilities are ranked by a system that objectively assesses the relative degree of risk to public health or welfare or the environment caused by releases from such facilities.

(2) Establish procedures:

a. For identifying facilities with a release or imminent threat of release;

b. For conducting site assessments, preliminary site evaluations and comprehensive site investigations;

c. For identifying potentially responsible parties;

d. For notifying a person of liability as a potentially responsible party;

e. For determining the appropriate type of settlement agreement that may be entered into by potentially responsible parties or any person who agrees to perform a remedy;

f. For providing potentially responsible parties or any other person with a reasonable opportunity to enter into a settlement agreement for a remedy by which potentially responsible parties or any other person may propose 1 or more remedial alternatives;

g. For identifying cleanup levels based on site specific risks;

h. For public notice and an opportunity for public comment on the proposed plan of remedial action and proposed consent decrees;

i. For conducting a remedy;

j. For public participation in the decision for a remedy at a facility;

k. For granting or denying a certificate of completion of remedy;

l. For placing a notice in the records of the real property pursuant to § 9115 of this title;

m. For managing the Fund established pursuant to § 9113 of this title;

n. For assessing natural resource damages;

o. For providing criteria governing public funding of remedial costs when the Secretary enters into a settlement agreement that requires the Secretary to provide a specified amount of money from the Fund;

p. For certifying part or all of a parcel of real property as a brownfield;

q. For listing of Brownfield, or potential Brownfield, sites on a Brownfield redevelopment database;

r. To certify and decertify contractors to conduct remedial action. As a prerequisite for certification, the Department shall conduct written examinations, or other qualification criteria as deemed appropriate by the Department, within the State for the purpose of determining ability to conduct a remedial action. The Department may waive the examination for persons who possess a valid certificate from another state, provided such certification is for similar work to be performed in Delaware. A remedial action shall be conducted under the direction and supervision of an individual possessing a valid certificate issued by the Department. Certification requirements for contractors shall commence 6 months after adoption of regulations. Certification shall be valid for 2 years. The fees

for certification required pursuant to this chapter shall be established by the Department in its rules and regulations. The fees may be adjusted periodically but shall approximate and reasonably reflect all costs necessary to defray the expenses incurred by the Department in operating the certification program.

(3) Establish deadlines for negotiation processes with potentially responsible parties for an agreement providing for a voluntary remedy pursuant to § 9107 of this title, and for initiating an investigation and remedying releases at or from a facility by potentially responsible parties.

(c)(1) The Secretary shall, as part of the budget submittal, submit an annual report to the Governor and the General Assembly of the State, setting forth in detail progress on remedies and may submit such additional reports from time to time to the Governor and General Assembly as deemed desirable by the Secretary.

(2) The Secretary shall prepare an annual budget for the proposed use of the Fund and cause an audit of the fiscal affairs to be made annually and shall, as part of the budget submittal, furnish a copy of such audit report together with such additional information or data with respect to the affairs as he or she may deem desirable to the Governor and General Assembly of the State.

(3) The Secretary shall, as part of the budget submittal, provide 5-year projections of costs and revenues associated with the Fund, and the amount of the obligated and unobligated balance in the Fund.

(67 Del. Laws, c. 326 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 218 §§ 11-13; 73 Del. Laws, c. 183 § 3; 74 Del. Laws, c. 185 § 7; 76 Del. Laws, c. 220 § 2.)

§ 9105 Standard of liability.

(a) The following persons are liable with respect to a facility from which there is or has been a release or imminent threat of release, except as provided in subsection (c) of this section:

(1) Any person who owned or operated the facility at any time.

(2) Any person who owned or possessed a hazardous substance and who by contract, agreement or otherwise arranged for disposal or treatment of a hazardous substance at the facility.

(3) Any person who arranged with a transporter for transport, disposal or treatment of a hazardous substance to the facility.

(4) Any person who generated, disposed of or treated a hazardous substance at the facility.

(5) Any person who accepted any hazardous substance for transport to the facility, when the facility was selected by the transporter.

(6) Any person who is responsible in any other manner for a release or imminent threat of release.

(b) Each person who is liable under this section is strictly liable, jointly and severally, for all costs associated with a release from a facility and for all natural resource damages resulting from the release. The Secretary may recover all costs and damages from all responsible parties. The amounts recoverable in an action under this chapter shall include interest on the amounts recoverable through regulations developed pursuant to §§ 9104 and 9109 of this title. Such interest shall accrue from the date the expenditure was incurred. The rate of interest on the outstanding unpaid balance of the amounts recoverable under this section shall be at the established allowable interest rate.

(c) The following persons are not liable under this section:

(1) Any person who can establish that the release or imminent threat of release for which the person would be otherwise liable was caused solely by:

a. An act of God;

b. An act of war; or

c. An act or omission of a third party other than:

1. An employee or agent of the person asserting the defense; or

2. Any person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly with the person asserting this defense to liability. This defense applies only when the person asserting the defense has exercised due care with respect to the hazardous substance, the foreseeable acts or omissions of the third party, and the foreseeable consequences of those acts or omissions.

(2) Any person who is an operator, past operator, owner, or past owner of a facility and who can establish that at the time the facility was acquired or operated by the person, the person had no knowledge or reason to know of any release or imminent threat of release. This paragraph (c)(2) is limited as follows:

a. Reason to know. —

To establish that the person had no reason to know of the matter described in § 9103(6)a. of this title the person must demonstrate that on or before the date on which the person acquired the facility, the person carried out all appropriate inquiries, as provided in paragraph (c)(2)b. of this section below, into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices.

b. All appropriate inquiry.

1. With respect to property purchased on or after May 31, 1997, the procedures of the American Society for Testing and Materials ("ASTM"), including the documents known as "Standard E1527-97" and "Standards E1527-00," entitled "Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process," or any other procedure the Secretary may adopt by regulation, shall satisfy the requirements in paragraph (c)(2)a. of this section.

2. With respect to property purchased before May 31, 1997, in making a determination with respect to a person described in paragraph (c)(2)a. of this section, the following factors shall be taken into account:

A. Any specialized knowledge or experience on the part of the person;

B. The relationship of the purchase price to the value of the property, if the property was not contaminated;

C. Commonly known or reasonably ascertainable information about the property;

D. The obviousness of the presence or likely presence of contamination at the property; and

E. The ability of the person to detect the contamination by appropriate inspection.

3. In the case of property for residential use or other similar use purchased by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of paragraph (c)(2)a. of this section.

c. Nothing in this subsection shall diminish the liability of any previous owner or operator of such facility who would otherwise be liable under this chapter.

d. Notwithstanding this subsection, if the person obtained actual knowledge of the release or threatened release of a hazardous substance at such facility when the person owned the real property and then subsequently transferred ownership of the property to another person without disclosing such knowledge, such person shall be treated as liable under subsection (a) of this section and no defense under this subsection shall be available to such person.

e. Nothing in this subsection shall affect the liability under this chapter of a person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance which is the subject of the action relating to the facility.

(3) A person who acquires, for subsequent disposition, title to, or possession of, a property to protect a security interest held by the person and does not participate in management of the property; or a fiduciary which has a legal title to or manages any property for purposes of administering an estate or trust of which such property is part; provided, however, that this exemption shall not relieve a person from liability under this section where such liability is based on conduct entirely independent from that covered by this exemption. This paragraph (c)(3) is further limited as follows:

a. The term "participate in management" as used in this section:

1. Means actually participating in the management or operational affairs of a facility and does not include merely having the capacity to influence, or the unexercised right to control, facility operations.

2. A person that is a lender or fiduciary that holds indicia of ownership primarily to protect a security interest in a property shall be considered to participate in management only if, while the borrower is still in possession of the property encumbered by the security interest, the person:

A. Exercises decision-making control over the environmental compliance related to the facility, such that the person has undertaken responsibility for the hazardous substance handling or disposal practices related to the facility; or

B. Exercises control at a level comparable to that of a manager of the facility, such that the person has assumed or manifested responsibility: I. For the overall management of the facility encompassing day-to-day decision-making with respect to environmental compliance; or II. Over all or substantially all of the operational functions, as distinguished from financial or administrative functions, of the facility other than the function of environmental compliance.

3. The term "participate in management" does not include performing an act or failing to act prior to the time at which a security interest is created in a property; and, provided the actions do not rise to the level of participating in management (within the meaning of paragraphs (c)(3)a.1. and 2. of this section above), does not include:

A. Holding a security interest or abandoning or releasing a security interest;

B. Including in the terms of an extension of credit, or in a contract or security agreement relating to the extension, a covenant, warranty, or other term or condition that relates to environmental compliance;

C. Monitoring or enforcing the terms and conditions of the extension of credit or security interest;

D. Monitoring or undertaking 1 or more inspections of the facility;

E. Requiring a remedy or other lawful means of addressing the release or threatened release of a hazardous substance in connection with the facility prior to, during, or on the expiration of the term of the extension of credit;

F. Providing financial or other advice or counseling in an effort to mitigate, prevent, or cure default or diminution in the value of the facility;

G. Restructuring, renegotiating, or otherwise agreeing to alter the terms and conditions of the extension of credit or security interest, exercising forbearance;

H. Exercising other remedies that may be available under applicable law for the breach of a term or condition of the extension of credit or security agreement; or

I. Conducting a remedy under this chapter or otherwise under the direction of the Department.

4. A person who is a lender that did not otherwise participate in the management of a facility as provided in paragraph (c)(3)a.2. of this section shall not be considered to have participated in management, notwithstanding that the person forecloses on the property and, after foreclosure, sells, re-leases (in the case of a lease finance transaction), or liquidates the property, maintains business activities, winds up operations, or undertakes a remedy under § 9107 of this title with respect to the facility,

or takes any other measure to preserve, protect, or prepare the facility prior to sale or disposition, if the person seeks to sell, release (in the case of a lease finance transaction), or otherwise divest the person of the facility at the earliest practicable, commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

b. A fiduciary as described in this paragraph (c)(3) shall not be liable in its personal capacity under this chapter for:

1. Undertaking or directing another person to undertake a remedy or any other lawful means of addressing a hazardous substance in connection with the facility;

2. Terminating the fiduciary relationship;

3. Including in the terms of the fiduciary agreement a covenant, warranty, or other term or condition that relates to compliance with an environmental law, or monitoring, modifying or enforcing the term or condition;

4. Monitoring or undertaking 1 or more inspections of the facility;

5. Providing financial or other advice or counseling to other parties to the fiduciary relationship, including the settlor or beneficiary;

6. Restructuring, renegotiating, or otherwise altering the terms and conditions of the fiduciary relationship;

7. Administering, as a fiduciary, a facility that was contaminated before the fiduciary relationship began; or

8. Declining to take any of the actions described in paragraphs (c)(3)b.2.-7. of this section.

c. The liability of a fiduciary under any provision of this chapter for the release or threatened release of a hazardous substance at, from, or in connection with a facility held in a fiduciary capacity shall not exceed the assets held in the fiduciary capacity; provided, however, that this limitation shall not apply to the extent that a person is liable under this chapter independently of the person's ownership of a facility as a fiduciary or actions taken in a fiduciary capacity.

d. The exclusion from liability contained in this paragraph (c)(3) does not limit liability pertaining to the release or threatened release of a hazardous substance if negligence of a fiduciary causes or contributes to the release or threatened release.

e. Nothing contained in this paragraph (c)(3):

1. Affects the rights or immunities or other defenses that are available under this chapter or other law that is applicable to a person subject to this paragraph; or

2. Creates any liability for a person or a private right of action against a fiduciary or any other person.

f. Nothing in this paragraph (c)(3) applies to a person if the person:

1. Acts in a capacity other than that of a fiduciary or in a beneficiary capacity, and in that capacity, directly or indirectly benefits from a trust or fiduciary relationship; or

2. Is a beneficiary and a fiduciary with respect to the same fiduciary estate and, as a fiduciary, receives benefits that exceed customary or reasonable compensation, and incidental benefits, permitted under other applicable law.

g. This paragraph (c)(3) does not preclude a claim under this chapter against:

1. The assets of the estate or trust administered by the fiduciary; or

2. Nonemployee agent or independent contractor retained by a fiduciary.

(4) Prospective purchaser agreements.

a. Notwithstanding paragraph (c)(5) of this section, a prospective purchaser whose potential liability for a release or threatened release is based solely on the purchaser's being considered to be an owner or operator of a facility shall not be liable as long as the prospective purchaser, with or without the participation of the seller of the property, enters into a prospective purchaser agreement in which the parties responsible for completing a site investigation and any subsequent remediation are identified and paragraph (c)(4)b. of this section is met. Such prospective purchaser agreements shall:

1. Define the scope of and financial responsibility for the environmental work to be performed pursuant to the agreement;

2. Define the amount, if any, of assistance to be provided by the Department; and

3. Define the scope of any lien to be secured.

b. Requirements for operation under a prospective purchaser agreement.

1. The person shall exercise appropriate care with respect to hazardous substance or substances found at the facility by:

A. As a prospective purchaser (i.e. prior to acquisition of the property): I. Not causing a new release of hazardous substances; and II. Not taking any action to exacerbate or contribute to an existing release.

B. As owner after acquisition of the property, unless specifically addressed in a prospective purchaser agreement with the Department, by: I. Stopping or mitigating any on-going release; II. Preventing any threatened future release; and III. Preventing or limiting exposure (human, environmental, or natural resource) to any previously released hazardous substance or substances.

2. The person shall provide cooperation, assistance, and access to persons that are authorized to oversee remedies or natural resource restoration at a facility (including the cooperation and access necessary for the installation, integrity, operation and maintenance of any complete or partial remedies or natural resource restoration at the facility).

3. The person shall:

A. Be in compliance with any land use restrictions established or relied on in connection with the remedy at a facility;

and

B. Not impede the effectiveness or integrity of any institutional control employed at the facility in connection with a remedy.

4. The person shall comply with any request for information or administrative subpoena issued by the Secretary under this chapter.

5. The person shall not be affiliated with any other person that is potentially liable pursuant to § 9105(a) of this title, for response costs at a facility through:

A. Any direct or indirect familial relationship, to include spouse, domestic partner, parent, grandparent, brother, sister, son, son-in-law, daughter, daughter-in-law, grandson, granddaughter, step-parent, the parent, son or daughter of a son or daughter of the person's spouse or domestic partner, nephew, niece, aunt, uncle, brother-in-law, sister-in-law, grandparent-in-law or any relative or friend living in the person's household; or

B. Any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by the instruments by which title to the facility is conveyed or financed or by a contract for the sale of goods or services); or

C. The result of a reorganization of a business entity that was potentially liable.

c. Lien.

1. If there are unrecovered remedial costs incurred by the State at a facility for which an owner of the facility is not liable by reason of paragraph (c)(4)a. of this section, the State may by agreement with the owner, obtain from the owner a lien on this or on any other property or other assurance of payment satisfactory to the Secretary, for all or any portion of the unrecovered remedial costs.

2. A lien under this subsection:

A. Shall be in an amount not to exceed the unrecovered remedial costs incurred by the State;

B. Shall be subject to the requirements of paragraph (c)(4)a. of this section; and

C. Shall not exceed the value added to the worth of the property by the remedial action.

(5) Contiguous properties.

a. Not considered to be an owner or operator.

1. A person that owns real property that is contiguous to or otherwise similarly situated with respect to, and that is or may be contaminated by a release or threatened release of a hazardous substance from, real property that is not owned by that person shall not be considered to be an owner or operator of a facility under this paragraph (c)(5)a.1. or paragraph (c)(5)a.2. of this section solely by reason of said release if:

A. The person did not cause, contribute or consent to the release or threatened release;

B. The person is not: I. Potentially liable, or affiliated with any other person that is potentially liable, for costs at a facility through any direct or indirect familial relationship or any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by a contract for the sale of goods or services); or II. The result of a reorganization of a business entity that was potentially liable;

C. The person takes reasonable steps to: I. Not cause a release of hazardous substances on their property; and II. Not take any action to exacerbate or contribute to contamination migrating onto their property.

D. The person provides reasonable cooperation, assistance and access to persons that are authorized to conduct a remedy or natural resource restoration at the facility from which there has been a release or threatened release (including the cooperation and access necessary for the installation, integrity, operation and maintenance of any complete or partial remedy or natural resource restoration at the facility);

E. The person: I. Is in compliance with any land use restrictions established or relied on in connection with the remedy at the facility; and II. Does not impede the effectiveness or integrity of any institutional control employed in connection with a remedy;

F. The person is in compliance with any written request for information related to the property or contamination or administrative subpoena issued by the Secretary or a court pursuant to this chapter;

G. The person provides all legally required notices with respect to the discovery or release of any hazardous substances at the facility; and

H. At the time at which the person acquired the property, the person conducted all appropriate inquiry within the meaning of paragraph (c)(2)b. of this section with respect to the property.

2. To qualify as a person described in paragraph (c)(5)a.1. of this section, a person must establish by a preponderance of the evidence that the conditions in paragraph (c)(5)a.1.A. through H. of this section have been met.

3. Any person that does not qualify as a person described in this paragraph because the person had, or had reason to have, knowledge specified in paragraph (c)(5)a.1.H. of this section at the time of acquisition of the real property may qualify as a prospective purchaser under § 9103 of this title if the person is otherwise described in that section.

b. With respect to a person described in this paragraph, nothing in this subsection:

1. Limits any defense to liability that may be available to the person under any other provision of law; or

2. Imposes liability on the person that is not otherwise imposed by paragraph (c)(5)a. of this section.

c. The Secretary shall, upon written request:

1. Issue an assurance in writing that no enforcement action under this chapter will be initiated against a person described in paragraph (c)(5)a. of this section; and

2. Grant a person described in paragraph (c)(5)a. of this section protection against a cost recovery or contribution action under § 9107(c) of this title.

(d) A person who expends moneys performing a remedy or any remedial action under this chapter or reimbursing the State for any remedial action may bring an action against any responsible party as defined in subsection (a) of this section who has not entered into a settlement agreement with the Secretary. In an action authorized by this section, the person bringing the action shall be entitled to reimbursement for the costs incurred which are consistent with this chapter and contribution for moneys expended to reimburse the State for its expenses.

(e) Where the Secretary has issued a certification of completion of remedy pursuant to § 9108 of this title with respect to a remedy performed at a facility, any person who owns, operates or otherwise controls activities at the facility after the date of issuance of the certification shall not, by virtue of that later ownership, operation or control, be liable for the release or imminent threat of release addressed in the certification, or for any future release or imminent threat of release attributable to conditions existing prior to the issuance of the certification, provided such person does not interfere or permit any interference with any aspect of the remedy addressed by the certification of completion of remedy.

(f) The exemption contained in subsection (e) of this section shall also apply to any person who, in connection with the sale, lease, acquisition or transfer of a facility, enters into a settlement agreement with the Secretary for a remedy at the facility; provided, that the remedy is satisfactorily conducted and the Department issues a certification of completion of remedy. The Secretary, in the settlement agreement, may place conditions or limitations on the scope of the exemption granted under this subsection.

(67 Del. Laws, c. 326 § 1; 70 Del. Laws, c. 218 §§ 14, 15; 74 Del. Laws, c. 185 §§ 4-6; 79 Del. Laws, c. 441 § 1.)

§ 9106 Investigation and access.

(a)(1) If there is a reasonable basis to believe there was a release or is an imminent threat of release, the Secretary may require information or documents relevant to the release or imminent threat of release from any person who may have information pertinent to:

a. The identification, nature and volume of materials generated, treated, stored, transported to or disposed of at a facility, and the dates thereof;

b. The extent of a release or imminent threat of release from a facility;

c. The identity of potentially responsible parties;

d. The financial ability of a potentially responsible party to perform a remedy.

(2) The Secretary or his or her authorized employees or agents may enter, at reasonable times, upon any real property, public or private, to conduct sampling, inspection, examination, and investigation evaluating the release or imminent threat of release to determine the need for a remedy or to execute the remedy upon given verbal notice, and after presenting official identification to the owner or operator. The Secretary or other authorized person gaining access under this section, if requested in advance, shall split a sample with the operator, or person in charge of the facility. If any analysis is made of the samples, a copy of the results of the analysis may be furnished to the owner, operator, or person in charge.

(b) If the Secretary determines that:

(1) An emergency exists that requires immediate action to protect public health or welfare or the environment; and

(2) The operator is unwilling or unable to take such immediate action, the Secretary, or his or her authorized employees or agents, without court order, may enter upon a facility and take any immediate action necessary to abate the emergency notwithstanding the provisions of § 9107(e) of this title.

(67 Del. Laws, c. 326 § 1; 70 Del. Laws, c. 218 § 16.)

§ 9107 Remedies.

(a)(1) When the Secretary or his or her designee has determined that a release or imminent threat of a release of a hazardous substance as defined herein will require a remedy, the Secretary shall, within 20 days of such determination, provide public notice of that fact. The Secretary shall likewise provide public notice within 20 days after entering into negotiations for a voluntary cleanup settlement agreement with any person that agrees to perform a remedy. Such public notice shall be published in a newspaper of general circulation in the county in which the facility is located. Such notice shall also be provided to:

a. All elected members of the General Assembly in whose district such facility or any part thereof lies;

b. If the facility or any part thereof is located within the boundaries of any municipality, then such notice shall also be given to the governing body of all municipalities in which the facility or any part thereof lies;

c. In the event the facility or any part thereof is not located within the boundaries of a municipality, then such notice shall also be given to the governing body of the county in which the facility or any part thereof lies; and

d. The governing body of any civic, neighborhood or similar association in which the facility or any part thereof lies, provided

that such association makes itself known to the Department and provides a legal mailing address.

(2) When the Secretary has reason to believe that a release or imminent threat of release will require a remedy, the Secretary shall notify the potentially responsible party with respect to the release or imminent threat of release, and provide the person with an opportunity to enter into a settlement agreement providing for a remedy consistent with regulations developed pursuant to § 9104 of this title. The Secretary may provide any person who has knowledge of a release of a hazardous substance at a facility and agrees to perform a remedy with an opportunity to enter into a settlement agreement providing for a remedy consistent with regulations developed pursuant to § 9104 of this title.

(b) The settlement agreement providing for a remedy may be in the form of a consent decree, administrative order of consent, memorandum of agreement or any other form of agreement consistent with regulations developed pursuant to § 9104 of this title. When a settlement agreement is entered into in the form of a consent decree pursuant to this chapter, it shall be filed with the Superior Court. The Secretary shall allow at least 20 days for public comment before the proposed consent decree is entered. If the Secretary deems it appropriate to effectuate the purposes of this chapter, the Secretary may choose to resolve a person's liability with the State under this section through use of settlement agreements entered into pursuant to CERCLA.

(c) A person who has resolved his or her liability to the State under this section is not liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other potentially responsible parties, but it reduces the total potential liability of others to the State by the amount of the settlement exclusive of § 9109 of this title.

(d) The Secretary may enter into a settlement agreement that requires the Secretary to provide a specified amount of money from the Fund to help defray the costs of implementing the remedy. These funds may be provided only in circumstances where the Secretary finds it would expedite or enhance remediation or achieve equity with respect to the payment of remedial costs. The Secretary may recover the amount of public funding provided under this section from a potentially responsible party who has not entered into a settlement agreement under this section or fulfilled all obligations under the agreement. For purposes of such a cost recovery, the public funding shall be considered as remedial costs paid by the Secretary.

(e) Before conducting a remedial action, the Secretary shall:

(1) Propose a plan of remedial action based on any investigation or study conducted by or for the Secretary, the potentially responsible party, or others;

(2) Provide public notice of the proposed plan of remedial action and an opportunity to comment on the plan as well as the investigation upon which the plan of remedial action is based;

(3) Prepare a final plan of remedial action with due consideration of the comments received and any other study or investigation conducted by or for the Secretary.

(f) The proposed and final plan of remedial action and the basis for it, as well as all comments received by the Secretary, constitute the remedial decision record of the Secretary. The Secretary shall maintain a remedial decision record for a period that the Secretary deems appropriate based upon the remedy being implemented and the future use of the facility.

(g) Where the Secretary has developed a remedial decision record for a remedy and the Secretary has conducted the remedy in accordance with the record, in any action brought to recover costs, the plan of remedial action shall be presumed reasonable and necessary unless demonstrated to be arbitrary and capricious by clear and convincing evidence.

(67 Del. Laws, c. 326 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 218 §§ 17-23; 72 Del. Laws, c. 322 §§ 1, 2.)

§ 9108 Certification of completion of remedy.

(a) Upon completion of a remedy at a facility, or an operable unit thereof, the Department may issue, or the owners, parties to the settlement agreement or parties responding to an order, may apply for a certification of completion of remedy from the Secretary pursuant to regulations promulgated under § 9104 of this title. For the purposes of this section, the Secretary may consider a remedy complete when the remedial action is operational and functional; provided, however, that the Secretary may place conditions or limitations in the certification of completion of remedy which identify those portions of the final plan of remedial action, including but not limited to operation and maintenance, and compliance monitoring, which must continue to be performed, and which provide for the performance of additional remedies in the event that the remedial goals contained in the final plan of remedial action are not achieved as required by the plan and the regulations promulgated under § 9104 of this title.

(b) The Secretary shall grant or deny an application for a certification of completion of remedy within 180 days of the application with stated reasons.

(67 Del. Laws, c. 326 § 1; 70 Del. Laws, c. 218 § 24; 74 Del. Laws, c. 409 § 5; 80 Del. Laws, c. 359 § 2.)

§ 9109 Enforcement.

(a) Whenever, in the opinion of the Secretary, a person:

(1) Is a potentially responsible party; and

(2) Has been notified of such person's potential liability pursuant to §§ 9104 and 9105 of this title; and

(3) Has not submitted a proposed settlement or has submitted a proposed settlement and the Secretary has rejected the proposal, the Secretary may seek to have the potentially responsible party perform a remedy at a facility by giving written notice to the person;

a. Specifying the basis of the person's liability under this chapter for a remedy at the facility;

b. Identifying the remedy to be performed by the person at the facility, and the timeframe for its completion;

c. Advising that a public hearing, conducted pursuant to §§ 6004 and 6006 of this title, on the person's alleged liability, and the remedy to be performed and the timeframe for its completion, under this chapter may be had if requested within 30 days of the notice; and

d. Notifying that the proposed remedy, and the timeframe for its completion, will be ordered unless a public hearing is requested.

(b) Whenever the Secretary determines that there exists an imminent danger that requires immediate remedy to protect public health or welfare or the environment, the Secretary may seek such injunctive relief or issue an order without prior notice or opportunity to submit a proposed settlement agreement.

(c) To enforce the order, the Secretary may bring an action in the Court of Chancery against any potentially responsible party who without sufficient cause, fails to comply with an order issued under subsection (a) or (b) of this section.

(d) The Secretary may bring an action in the Superior Court to recover from any potentially responsible party all natural resource damages resulting from a release.

(e) The Secretary may bring an action in the Superior Court against any potentially responsible party to collect remedial costs incurred by the Secretary, or for a party's refusal to comply, without sufficient cause, with an order issued under subsection (a) or (b) of this section.

(f) The Secretary may issue an order as the Secretary deems appropriate to any person who fails to provide the required information or documents under § 9106(a)(1) of this title, who fails to provide access under § 9106(a)(2) of this title, or who fails to report a release as required by the regulations promulgated pursuant to this chapter.

(g) The Secretary may bring an action in Superior Court to enforce any order issued by the Secretary under subsection (f) of this section. Any person refusing to comply, without sufficient cause, with such an order shall be liable pursuant to paragraph (h)(2) of this section.

(h) In any action brought under subsection (e) of this section for a refusal to comply with an order, the person found responsible shall be liable for payment of:

(1) An amount at least equal to, but not greater than 3 times the amount of, any remedial costs incurred by the State as a result of the person's refusal to comply; and

(2) A civil penalty of up to $10,000 per day for each day the person refuses to comply. For purposes of determining a civil penalty, the period of noncompliance shall be deemed to commence on the day of the Secretary's decision and continue until full compliance with the terms of the order is achieved.

(67 Del. Laws, c. 326 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 218 §§ 25, 26; 79 Del. Laws, c. 441 § 1.)

§ 9110 Public hearings — Violations.

(a) Any hearing involving allegations of violations of this chapter held by the Secretary shall be conducted as follows:

(1) For any hearing on an alleged violation, notification shall be served upon the alleged violator as summonses are served or by registered or certified mail not less than 20 days before the time of said hearing. Not less than 20 days notice of the hearing shall also be published in a newspaper of general circulation in the county in which the activity is proposed or the alleged violation has occurred and in a daily newspaper of general circulation throughout the State.

(2) The alleged violator may appear personally or by counsel at the hearing and produce any competent evidence in his or her behalf. The Secretary or the Environmental Appeals Board or its duly authorized designee may administer oaths, examine witnesses and issue, in the name of the Department or the Environmental Appeals Board, notices of hearings or subpoenae requiring the testimony of witnesses and production of books, records or other documents relevant to any matter involved in such hearing; and subpoenae shall also be issued at the request of the alleged violator. In case of contumacy or refusal to obey a notice of hearing or subpoena under this section, the Superior Court in the county in which the hearing is held shall have jurisdiction upon application of the Secretary or the Chairperson of the Environmental Appeals Board to issue an order requiring such person to appear and testify or produce evidence as the case may require.

(3) A record from which a verbatim transcript can be prepared shall be made of all hearings and shall, along with the exhibits and other documents introduced by the Secretary or other party, constitute the record. The expense of preparing any transcript shall be borne by the person requesting it. The Secretary or the Environmental Appeals Board or its duly authorized designee shall make findings of fact based on the record. The Secretary or the Environmental Appeals Board shall then enter an order that will best further the purpose of this chapter, and the order shall include reasons. The Secretary shall promptly give written notice to the persons affected by such order.

(4) The Secretary may collect, from a violator finally adjudged liable, the necessary expenses of the Department for conducting the hearing. Any moneys collected under this section shall be deposited in the Fund pursuant to § 9113 of this title.

(b)(1) Any person or persons, aggrieved by any decision of the Secretary rendered pursuant to this chapter, may appeal the decision to the Environmental Appeals Board in accordance with § 6008 of this title.

(2) Any person who is substantially affected by a decision of the Environmental Appeals Board may appeal to the Superior Court in accordance with § 6009 of this title.

(3) No appeal shall operate to stay automatically any action of the Secretary, but upon application, and for good cause, the Secretary or the Superior Court may stay the action pending disposition of the appeal.

(c) The decisions of the Secretary issued pursuant to the provisions of this section are reviewable only as provided in subsection (b) of this section.

(67 Del. Laws, c. 326 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 218 § 27.)

§ 9111 Fraud.

(a) If a potentially responsible party commits fraud on the Secretary or another potentially responsible party in a proposed settlement agreement or in an application for a certification of completion of remedy, then any limitation on liability otherwise provided herein shall be void, and any injured person, including the Secretary, may recover actual damages sustained as well as a civil penalty of up to $10,000 for each fraudulent act.

(b) The Secretary may bring an action in the Superior Court to establish and collect a civil penalty for which a person is liable for fraud under this chapter.

(67 Del. Laws, c. 326 § 1; 70 Del. Laws, c. 218 § 28.)

§ 9112 Public hearings — Rule making, settlement agreements and remedial actions.

Public hearings shall be held on regulations developed pursuant to this chapter, and, if the Secretary receives a meritorious request for a public hearing from any person on the proposed consent decree and the proposed plan of remedial action in accordance with §§ 6004 and 6006 of this title, as well as any additional notice and hearing requirements the Secretary has adopted by regulation.

(67 Del. Laws, c. 326 § 1; 70 Del. Laws, c. 218 § 29.)

§ 9113 Hazardous Substance Cleanup Fund.

(a) There shall be established in the State Treasury and in the accounting system of the State a special fund to be known as the Hazardous Substance Cleanup Fund ("The Fund").

(b) The following moneys shall be deposited into the Fund:

(1) All the taxes assessed pursuant to § 9114 of this title;

(2) All remedial costs recovered pursuant to this chapter;

(3) Penalties collected or recovered pursuant to this chapter;

(4) Penalties collected or recovered pursuant to this chapter, not to include penalties assessed on any gross receipts tax surcharge provided by this chapter;

(5) The State Treasurer shall credit to the Hazardous Substance Cleanup Fund such amount of interest as determined by this paragraph upon such Fund. On or before the last day of each month, the State Treasurer shall credit the Fund with interest on the average balance in the Fund for the preceding month. The interest to be paid to the Fund shall be that proportionate share, during such preceding month, of interest to the State as the Fund's and the State's average balance is to the total State's average balance. The Fund's average balance shall be determined by averaging, in each instance, the balances at the beginning of each month and the balances at the end of that month; and

(6) Any other money appropriated or transferred to the account by the General Assembly.

(c) Money in the Fund may be used by the Secretary only to carry out the purposes of this chapter, including, but not limited to, the following activities:

(1) Implementing the hazardous substance cleanup program required under this chapter.

(2) Providing a remedy with respect to releases or imminent threats of release of a hazardous substance at or from facilities.

(3) Providing for state matching funds required under the CERCLA, as well as future operations and maintenance costs for facilities at which a state match is required.

(4) Reimbursing, or directly paying, any person for reasonable remedial costs incurred with the prior authorization of the Secretary in responding to a hazardous substance remedy, including remedies of releases from underground storage tanks, pursuant to authorization of the Secretary. Direct payments may be made to the certified environmental consultant who performed the remedial work provided that the brownfield developer acknowledge and sign the remedial work invoice.

(5) Conducting emergency response actions pursuant to §§ 9106, 6308 and 7406 of this title.

(6) Providing low interest loans to parties with an executed settlement agreement with the Department.

(7) Payment to the Division of Revenue for the costs of administering § 9114 of this title.

(8) Provide for a remedy, or for reimbursement of allowable costs, for certified brownfields.

(d) No greater than 15 percent of the moneys deposited into the Fund shall be used for administering this chapter without approval of the Joint Finance Committee.

(e) Any expenditures of moneys from the Fund on sites not budgeted for under § 9104(c)(2) of this title must be approved by the Speaker of the House and the President Pro Tempore of the Senate.

(67 Del. Laws, c. 326 § 1; 69 Del. Laws, c. 458 § 1; 70 Del. Laws, c. 218 § 30; 74 Del. Laws, c. 409 § 8; 77 Del. Laws, c. 81 § 3; 77 Del. Laws, c. 83 §§ 21, 25; 78 Del. Laws, c. 73 § 2; 78 Del. Laws, c. 218 § 3; 79 Del. Laws, c. 441 § 1; 80 Del. Laws, c. 359 § 3.)

§ 9114 Tax assessment.

(a) With regard to gross receipts received after December 31, 1990, and before July 1, 1993, there shall be added to the tax provided in §§ 2902(c)(3) and 2905(b)(1) of Title 30 an additional tax of .6% on all taxable gross receipts determined under §§ 2902 and 2905 of Title 30 derived from the sale of petroleum or petroleum products. With regard to gross receipts received after June 30, 1993, and before January 1, 2022, the rate of additional tax under this subsection shall be increased to 0.9%. For purposes of the additional tax imposed by this

section, gross receipts, as defined in Chapter 29 of Title 30, that are received after June 30, 2007, shall not include gross receipts from a sale of petroleum or petroleum products by a wholesaler, as defined in Chapter 29 of Title 30, if:

(1) The petroleum or petroleum products were sold to the wholesaler by a person who is licensed under Chapter 29 of Title 30; and

(2) The gross receipts from the sale described in paragraph (a)(1) of this section were gross receipts defined in Chapter 29 of Title 30 with respect to the seller.

For purposes of this section and Chapter 29 of Title 30, exclusions from the gross receipts tax shall first be computed by including in said exclusions, to the extent possible, receipts deriving from sales not subject to the tax provided in this section.

(b) The surcharge provided by this section shall be remitted to the Division of Revenue on forms issued by the Director of Revenue and subject to such regulations and requirements as shall be prescribed by the Director of Revenue. The Director of Revenue shall deposit the additional tax provided in this section to the credit of the special fund described in § 9113 of this title.

(c) Each wholesaler or importer may list, as a separate line item on an invoice, the amount of the fees due under this section.

(d) Notwithstanding the provisions of subsection (a) of this section, with regard to gross receipts received after June 30, 1991, for purposes only of this section but not for other taxes applied against gross receipts on petroleum products in Chapter 29 of Title 30, the term "petroleum or petroleum products" shall not include crude oil.

(67 Del. Laws, c. 326 § 1; 68 Del. Laws, c. 183 § 1; 68 Del. Laws, c. 393 § 1; 69 Del. Laws, c. 135 §§ 1, 2; 69 Del. Laws, c. 289 § 15; 72 Del. Laws, c. 353 § 1; 76 Del. Laws, c. 135 § 1; 77 Del. Laws, c. 83 §§ 22, 25; 78 Del. Laws, c. 73 § 3; 78 Del. Laws, c. 94 §§ 3, 4.)

§ 9115 Notice in property records.

(a) Pursuant to § 9104(b)(2) of this title, when a release of a hazardous substance that has been determined by the Secretary to be a threat to public health or the environment has occurred at a facility or property on which the facility is located, the owner of the property shall place a notice in the records of real property kept by the Recorder of Deeds of the county in which the property is located. The notice shall:

(1) Identify the facility;

(2) Identify the owner of the facility and the person causing the notice to appear;

(3) State that a release occurred at or from the facility;

(4) State the date the release occurred; and

(5) Direct further inquiries to the Secretary.

(b) Any certification of completion of remedy issued in accordance with § 9108 of this title shall be promptly filed by the owner with the records of real property kept by the recorder of deeds of the county in which the facility is located and shall identify the facility, the owner of the facility, and the date of issuance of the certification of completion.

(67 Del. Laws, c. 326 § 1; 70 Del. Laws, c. 218 § 31.)

§ 9116 Confidentiality of proprietary information.

Information obtained by the Secretary under this chapter shall be available to the public as provided in Chapter 100 of Title 29, unless the Secretary certifies such information to be proprietary. The Secretary may make such certification where any person shows to the satisfaction of the Secretary that the information, or parts thereof, if made public, would divulge methods, processes or activities entitled to protection as trade secrets or as confidential financial or commercial information. Nothing in this section shall be construed as limiting the disclosure of information by the Secretary to any officer, employee or authorized representative of the state or federal government to effectuate the purposes of this chapter. Furthermore, nothing in this section shall prevent the Secretary from including in the remedial decision record information concerning the cost of the remedy or the manner in which it is performed. Prior to disclosure of information certified by the Secretary to be proprietary to an authorized representative who is not an officer or employee of the state or federal government, the person providing the proprietary information may require the representative to sign an agreement prohibiting disclosure of such information to anyone not authorized by this chapter or the terms of the agreement. Such agreement shall not preclude disclosure by the representative to any state or federal government officer or employee concerned with effecting this chapter.

(67 Del. Laws, c. 326 § 1; 70 Del. Laws, c. 218 § 32.)

§ 9117 Environmental liens [For application of this section, see 79 Del. Laws, c. 69, § 5]

(a) Pursuant to the provisions of this section, all reasonable costs related to any remedy undertaken by the State for which a person is liable under this chapter or the regulations promulgated pursuant thereto shall constitute a lien in favor of the State upon the real property where such remedy takes place and which belongs to such liable person.

(b) A lien created under this section constitutes record notice and attaches to and is perfected against real property upon which a remedy has been undertaken by the State and which is owned by a person liable under this chapter when:

(1) No less that 30 days prior to the effective date of the lien, a notice of lien is sent by the Secretary, by means of certified or registered mail, to the last known address of all record owners of the property and to all persons holding liens or security interests of record. The notice of lien shall state the amount of and basis for the lien;

(2) No less than 30 days prior to the effective date of the lien, a notice of lien is filed by the Secretary with the office of the recorder of deeds in the county in which the property is located; and

(3) Costs associated with any remedy at the property are incurred by the State.

(c) A person whose interest is substantially affected by any action of the Secretary taken pursuant to subsection (a) of this section may

contest the imposition of a lien to the Environmental Appeals Board in accordance with § 6008 of this title. This section shall not preclude any equitable claims by an aggrieved person in the Court of Chancery to contest the imposition of a lien, including actions to quiet title. In any action seeking to contest or enforce a lien, the burden of establishing entitlement to such lien shall be consistent with the burden of proof applicable in an action brought by the Secretary pursuant to this chapter.

(d) A lien created under this section has priority over all other liens and encumbrances perfected after the date that the lien recorded pursuant to this section is perfected, except for liens and encumbrances which relate back to before the perfection of the lien recorded pursuant to this section.

(e) A lien created under this section continues until fully satisfied or otherwise discharged in accordance with law. The Secretary shall, on written request, make available the documentation upon which such lien is based within 10 days of such request.

(f) Upon satisfaction of the liability secured by a lien created under this section, the Secretary shall file a notice of release of lien with the office of recorder of deeds in the county in which the real property is located.

(g) No lien or obligation created under this chapter may be limited or discharged in a bankruptcy proceeding. All obligations imposed by this chapter shall constitute regulatory obligations imposed by the State.

(h) If the Secretary determines that the funds projected to be available in order to satisfy the lien provided pursuant to subsection (a) of this section will be insufficient to permit the State to recover fully its costs, the Secretary may file a petition in the Court of Chancery seeking to impose an additional lien or liens upon other real property in this State owned by the same liable person or persons as the property where the costs are incurred.

(1) A petition filed by the Secretary pursuant to this subsection shall describe with particularity the real property to which the requested lien will attach.

(2) Upon filing of a petition by the Secretary, the Court shall schedule a hearing to determine whether the petition should be granted. Notice of the hearing shall be provided to the Secretary, the record owner or owners of the real property which is the subject of the petition, and any person holding a lien or a perfected security interest in the property.

(i) A person whose interest is substantially affected by any action of the Secretary taken pursuant to this section, while contesting the imposition of such environmental lien in accordance with the procedures set forth herein, shall have the right to discharge said lien upon payment into the Court of Chancery or entry of security as follows:

(1) Cash deposit. — Any environmental lien filed hereunder shall, upon petition of the owner or any party in interest, be discharged as a lien against the property whenever a sum equal to the amount of the claim shall have been deposited with the Court in said proceedings for application to the payment of the amount finally determined to be due. Said petition shall include an affidavit by the owner or party in interest setting forth which parts of the claim filed hereunder are disputed and which parts are not disputed. The nondisputed part of the claim shall be paid to the Secretary before the lien against the property is discharged. If it is finally determined by the Court that the disputed portion of the claim has been grossly overstated by the affiant, the Court may, in its discretion, award damages to the Secretary against the affiant in an amount up to twice the figure stated by the affiant to be disputed.

(2) Refund of excess. — Any excess of funds paid into Court as aforesaid, over the amount of the claim or claims determined and paid therefrom, shall be refunded to the owner or party depositing same upon application.

(3) Security in lieu of cash. — In lieu of the deposit of any such sum or sums in cash, approved security may be entered in such proceedings in an amount which the Court shall approve, which, however, shall in no event be less than the full amount of such required deposit; and the entry of such security shall entitle the owner to have such liens discharged to the same effect as though the required sums have been deposited in Court as aforesaid.

(4) Authority of Court. — The Court, upon petition filed by any party, and after notice and hearing, may upon cause shown:

a. Require the increase or decrease of any deposit or security;

b. Strike off security improperly filed;

c. Permit the substitution of security and enter an exoneration of security already given.

(67 Del. Laws, c. 326 § 1; 79 Del. Laws, c. 69 § 1.)

§ 9118 Cease and desist orders.

The Secretary shall have the power to issue a cease and desist order to any person violating any provision of this chapter ordering such person to cease and desist from such violation, provided that any cease and desist order issued pursuant to this section shall expire:

(1) After 30 days of its issuance; or

(2) Upon withdrawal of said order by the Secretary; or

(3) When the order is superseded by an injunction.

(67 Del. Laws, c. 326 § 1.)

§ 9119 Injunctions.

The Court of Chancery shall have jurisdiction to enjoin violations of this chapter.

(67 Del. Laws, c. 326 § 1.)

§ 9120 Inconsistent laws or ordinances superseded.

All laws or ordinances inconsistent with any provisions of this chapter are hereby superseded to the extent of the inconsistency.
(67 Del. Laws, c. 326 § 1.)

Subchapter II

Brownfields Development Program

§ 9121 Short title.

This subchapter shall be known, and may be cited, as the "Brownfields Development Program."
(74 Del. Laws, c. 409 § 4.)

§ 9122 Declaration of purposes.

(a) In addition to the provisions of the foregoing subchapter I of this chapter, this subchapter is intended to implement a Brownfields Development Program, supplementing the powers and duties of the Secretary as set forth in § 9104 of this title.

(b) The General Assembly recognizes that:

(1) There are brownfield sites throughout the State;

(2) The underutilization of brownfields in the State operates to the economic detriment of the citizens of the State, because the underutilization of these sites limits employment opportunities and needlessly uses valuable "greenfield" resources; and

(3) There is a need to establish a program to effectively investigate, remediate, and redevelop these sites, thus returning these sites to more productive use and enhancing the economic well being of the citizens of the State.

(74 Del. Laws, c. 409 § 4.)

§ 9123 Definitions.

As used in this subchapter:

(1) "Brownfields developer" shall mean a person who, with respect to a facility:

a. Proposes to conduct investigations and/or development activity at a facility that is a certified brownfield, and seeks to enter into a Brownfields Development Agreement with the Secretary;

b. At the time of application for a Brownfields Development Agreement, is not liable for a release or imminent threat of release at the facility under § 9105(a)(1)-(6) of this title; and

c. Is not affiliated with any other person that is liable for a release or imminent threat of release at the facility, within the meaning of § 9105(c)(4)b.5. of this title.

(2) "Brownfields Development Agreement" means an agreement between the Secretary and a brownfield developer with respect to a certified brownfield that sets forth a scope and schedule of activities to assess and respond to the actual, threatened, or perceived release of hazardous substances at the facility.

(3) "Certified brownfield" means a brownfield, as defined in § 9103(3) of this title, that the Secretary has certified pursuant to the regulations governing hazardous substance cleanup.

(4) "Existing environmental condition" means all known or discovered releases of hazardous substances which are found to be, or to have been, existing at or in the vicinity of the facility prior to a person entering into a Brownfields Development Agreement with the Secretary.

(5) "Plan(s)" means any workplan or workplans as required by the Secretary for the performance of an investigation and/or remedy of a site.

(74 Del. Laws, c. 409 § 4.)

§ 9124 Secretary's powers and duties.

The Secretary may exercise the following powers in addition to any other powers granted by law:

(1) The Secretary may plan, study or conduct, or permit a brownfields developer or other persons to plan, study or conduct, appropriate actions at a certified brownfield to perform a remedy of a release, imminent threat of release, or where there may be a reasonably held perception of a release or imminent threat of a release.

(2) The Secretary shall, after notice and public hearing, promulgate and revise regulations as deemed necessary for the implementation and administration of this subchapter.

(74 Del. Laws, c. 409 § 4.)

§ 9125 Standard of liability.

(a) Notwithstanding § 9105 of this title, a brownfields developer who enters into a Brownfields Development Agreement with the Secretary is not liable with respect to the facility that is the subject of the Brownfields Development Agreement for any release or imminent threat of release of hazardous substances existing at the time the Brownfields Development Agreement is entered into, or for a remedy, or for any costs incurred by the State or any other person related to a remedy, for such a release or imminent threat of release at a facility,

provided that:

(1) The brownfields developer submits a plan or plans for approval by the Secretary to address the actual or perceived presence of hazardous substances at the facility; and

(2) Any land disturbing activity at the facility by the brownfields developer in areas affected by the release or imminent threat of release of hazardous substances is performed in accordance with a plan, or modified plan or plans, as approved by the Secretary.

(b) Notwithstanding subsection (a) of this section, above, a brownfields developer who causes any exacerbation of the existing environmental condition is responsible for entering into an agreement approved by the Secretary to mitigate any increased risk to human health or the environment or increased remedial costs at the facility caused by such exacerbation. Furthermore, the Secretary may modify the plan to address any changed circumstances in the environmental condition of the facility. If the brownfields developer fails or refuses to comply with any modified plan or plans addressing any exacerbation of the existing environmental condition, it is liable for the cost of mitigating any increased risk to the public health or the environment or increased remedial costs caused by the exacerbation of the existing environmental condition.

(c) Notwithstanding subsection (a) of this section, above, if a brownfields developer, or the developer's successors or assigns, materially disturbs or interferes with a remedy at the facility in a manner not approved of by the Secretary, including institutional controls, said person shall be liable for the reasonable costs of restoring or replacing the affected portions of the remedy, including any administrative or injunctive relief allowed by subchapter I of this chapter.

(d) The protection afforded by subsection (a) of this section shall be transferable to the successors or assigns of the brownfields developer. Any person whose interest in or connection to a facility arises solely from a contractual relationship with the brownfields developer, or the developer's successors or assigns, subsequent to the entering into of a Brownfields Development Agreement, shall not be liable for any release or threat of release, remedy, or costs associated with conditions existing prior to the entry of the Brownfields Development Agreement.

(e) Nothing in this section shall affect the liability of a brownfields developer for new releases, or imminent threat of releases of hazardous substances not part of the existing environmental conditions at a facility.

(74 Del. Laws, c. 409 § 4; 70 Del. Laws, c. 186 § 1.)

§ 9126 Public notice; public comment.

(a) The Secretary shall provide public notice within 20 days after entering into negotiations for a Brownfields Development Agreement. Such public notice shall be published in a newspaper of general circulation in the county in which the facility is located. Such notice shall also be provided to:

(1) All elected members of the General Assembly in whose district such facility or any part thereof lies;

(2) If the facility or any part thereof is located within the boundaries of any municipality, then such notice shall also be given to the governing body of all municipalities in which the facility or any part thereof lies;

(3) In the event the facility or any part thereof is not located within the boundaries of a municipality, then such notice shall also be given to the governing body of the county in which the facility or any part thereof lies; and

(4) The governing body of any civic, neighborhood or similar association in which the facility or any part thereof lies, provided that such association makes itself known to the Department and provides a legal mailing address.

(b) The Secretary shall provide public notice within 20 days after entering into a Brownfields Development Agreement. Such notice shall provide for a 20-day written comment period.

(c) Upon receiving a request following the entry of the Department into a Brownfields Development Agreement, the Secretary shall conduct a public meeting to provide the public information regarding the proposed project, in or near the area where the facility is located.

(74 Del. Laws, c. 409 § 4.)

Part IX
Hazardous Substance Cleanups
Chapter 92
TRANSFER OR CLOSURE OF CHEMICAL OR HAZARDOUS SUBSTANCE ESTABLISHMENTS [EFFECTIVE UPON PROMULGATION OF REGULATIONS BY THE SECRETARY PURSUANT TO § 9203(c) OF THIS TITLE]

§ 9201 Definitions [Effective upon promulgation of regulations by the Secretary pursuant to § 9203(c) of this title]

The following definitions apply to this chapter.

(1) "Affiliate" means an entity as defined in the regulations of the Security and Exchange Commission under the Securities and Exchange Act of 1934 [15 U.S.C. § 78a et seq.] and the Securities Act of 1933 [15 U.S.C. § 77a et seq.].

(2) "Chemical" means a "hazardous chemical" as defined in § 6302(6) of Title 16.

(3) "Department" means the Department of Natural Resources and Environmental Control.

(4) "Establishment" means any real property, any business operation, or any facility which has been required or is required to report a total of 1 million pounds or more, based on the combined maximum amounts, of any combination of chemicals listed under the Emergency Planning and Community Right-To-Know Act, § 6306 of Title 16, and/or has been or is a large quantity generator under Delaware's Regulations Governing Hazardous Waste [CDR 7-1000-1302], unless exempted by regulation adopted pursuant to this chapter.

(5) "Hazardous substance" means the term as defined in Chapter 91 of this title or in the regulations promulgated pursuant thereto.

(6) "Owner or operator" means:

a. A person owning, operating, or otherwise controlling activities at a chemical or hazardous substance establishment or part of an establishment; or

b. A person who owned, operated, or otherwise controlled activities at a chemical or hazardous substance establishment or part of an establishment.

(7) "Parcel" means piece or tract of land which contains an establishment, as defined in paragraph (4) of this section, or on which is or was located any continuous business operation which contains or contained an establishment.

(8) "Person" means any individual, entity, trust, firm, joint stock company, partnership, consortium, joint venture, commercial entity, corporation (including a government corporation or authority), limited liability company, association, federal government, federal agency, state agency, county, municipality, commission, school district, conservation district, Indian tribe, political subdivision of a state, an interstate body, or any other legal or commercial entity.

(9) "Secretary" means the Secretary of the Department of Natural Resources and Environmental Control.

(10) "Transfer of an establishment" means a transaction or proceeding through which there is a change in ownership of an establishment. Change in ownership shall include, but not be limited to, the sale or transfer of stock in a corporation or interest in a limited liability company or partnership, or merger or consolidation, resulting in a change in the person or persons holding the controlling interest in the direct owner or operator or indirect owner of the establishment, but does not mean:

a. The conveyance or extinguishment of an easement;

b. The conveyance of an establishment through a foreclosure or the conveyance of a deed in lieu of foreclosure to a lender;

c. The conveyance of a security interest;

d. A change in ownership approved by the register of wills;

e. A devolution of title to a surviving joint tenant, or to a trustee, executor, or administrator under the terms of a testamentary trust or will, or by intestate succession;

f. A corporate reorganization not substantially affecting the control, ownership or operation of the establishment;

g. The issuance of stock or other securities of an entity which owns or operates the establishment;

h. The conveyance of an interest in an establishment where the transferor or transferors is 1 or more of the following: the sibling, spouse, child, parent, grandparent, the child of a sibling, or the sibling of a parent, or a spouse of any of the foregoing, of the transferee or transferees;

i. The conveyance of an establishment to a trustee of an inter vivos trust created by the transferor or transferors solely for the benefit of 1 or more of the following: the sibling, spouse, child, parent, grandchild, the child of a sibling, or the sibling of a parent, or a spouse of any of the foregoing, of the transferor or transferors;

j. The conversion of a general or limited partnership to a limited liability company;

k. The transfer of general partnership property held in the names of all of the general partners to another general partnership which includes as general partners immediately after the transfer substantially all of the same persons that were general partners immediately prior to the transfer;

l. The transfer of general partnership property held in the names of all of the general partners to a limited liability company which includes as members immediately after the transfer substantially all of the same persons that were general partners immediately prior to the transfer; or

m. The transfer of stock, securities or other ownership interest of an entity that owns or operates the establishment to a person who is an affiliate, that directly or indirectly through 1 or more intermediates controls, or is controlled by, or under the common control with the transferee or transferees.

(76 Del. Laws, c. 220 § 1.)

§ 9202 Transfer of an establishment; filing procedures [Effective upon promulgation of regulations by the Secretary pursuant to § 9203(c) of this title]

(a) A person may not transfer an establishment except in accordance with the provisions of this chapter.

(b) Prior to the transfer of an establishment, the transferor(s) or the transferee(s) shall conduct all appropriate inquiry, pursuant to the standards set forth in the provisions and regulations pursuant to § 9105 of this title.

(c) Prior to the transfer of an establishment, the transferor(s) or the transferee(s) must submit to the Secretary and the transferor(s) and transferee(s), all documents prepared or identified pursuant to subsection (b) of this section above.

(d) Nothing contained in this chapter may be construed to enlarge, abridge, diminish or create an innocent-landowner defense pursuant to § 9105(c)(2) of this title.

(e) Failure of the Secretary to notify a party in accordance with the provisions of this chapter does not constitute a waiver and does not limit the authority of the Secretary to enforce the provisions of this chapter.

(76 Del. Laws, c. 220 § 1.)

§ 9203 Authority of the Secretary; regulations; effective date [Effective upon promulgation of regulations by the Secretary pursuant to subsection (c) of this section]

(a) The provisions of this chapter do not affect the authority of the Secretary under any other statute or regulation to issue any order to the transferor(s) or transferee(s) of an establishment.

(b) The Secretary may adopt regulations to implement the provisions of this chapter.

(c) The provisions of this chapter shall become effective upon promulgation of regulations adopted pursuant to this chapter.

(76 Del. Laws, c. 220 § 1.)

§ 9204 Enforcement [Effective upon promulgation of regulations by the Secretary pursuant to § 9203(c) of this title]

The Secretary may issue an order or file a civil action in Superior Court pursuant to § 6005 of this title against any person who fails to comply with any provision of this chapter. The Secretary may also bring an action in the Court of Chancery to enjoin the transfer of an establishment by a person who fails to comply with § 9202 of this title or to compel the establishment to provide financial assurance pursuant to § 9206 of this title.

(76 Del. Laws, c. 220 § 1.)

§ 9205 Termination of operations or filing for bankruptcy at a chemical or hazardous substance establishment; procedures [Effective upon promulgation of regulations by the Secretary pursuant to § 9203(c) of this title]

(a) Not later than the date of termination of all business or other activities at an establishment or the date of filing for liquidation under the federal Bankruptcy Code [11 U.S.C. § 101 et seq.], the owner or operator of the establishment shall file a notice with the Secretary which must include information regarding the person or persons employed by the establishment who will be responsible for providing information regarding compliance with this section.

(b) Not later than 90 days after the termination of all business or other activities at an establishment, the owner or operator of the establishment, or a trustee if the owner or operator is in bankruptcy, shall:

(1) Submit to the Secretary a list of all chemical and hazardous substances at the establishment, where they are located and how they are stored, contained, stockpiled or otherwise located. Notwithstanding the foregoing, "releases" as defined in § 9103 of this title are excluded;

(2) Submit a plan to the Secretary for the emptying, draining, removal, use, sale, recycling, or otherwise disposal of all chemicals or hazardous substances in accordance with applicable law or in accordance with any order of the Bankruptcy Court in the event of bankruptcy filing;

(3) Post warning signs with up-to-date contact information around the perimeter of any parcel where the soil is contaminated with a hazardous substance to a level that poses potential risk to human health or the environment;

(4) Submit a certification to the Secretary with regard to whether chemicals or hazardous substances identified in paragraph (b)(1) of this section have been removed from the parcel in accordance with applicable law; and

(5) Maintain personnel, utilities, security, site management and other measures necessary to stabilize and secure the site.

(c) Following receipt of the required submittals under subsection (b) of this section, the Secretary shall, within 30 days, conduct an

inspection of the parcel and/or the establishment to determine compliance with this section.

(76 Del. Laws, c. 220 § 1; 79 Del. Laws, c. 441 § 1.)

§ 9206 Financial assurance [Effective upon promulgation of regulations by the Secretary pursuant to § 9203(c) of this title]

(a) Within 60 days from the transfer of an establishment or the start up of a new establishment, the owner or operator shall provide to the Department evidence of financial assurance in accordance with the regulations promulgated pursuant to this chapter. Evidence of financial assurance must be in a sufficient form and amount necessary to insure that, upon termination, abandonment, or liquidation of all activities at the establishment that all appropriate means are taken to stabilize and secure the establishment, including but not limited to those activities as set forth in § 9205(b) of this title.

(b) The Department shall promulgate regulations containing requirements for maintaining evidence of financial assurance as deemed necessary with respect to the size of the establishment and the quantities of chemicals maintained and generated as wastes thereon, needed to stabilize and secure the facility, taking into account, and giving due credit for, financial assurance established through other Department programs. Evidence of financial assurance may include, but not be limited to, insurance, guarantee, surety bond, letter of credit, proof of assets, qualification as a self-insurer, or other agreements acceptable to the Secretary.

(c) For the purposes of this section, an owner or operator does not mean the federal government, federal or state agencies, counties or municipalities.

(76 Del. Laws, c. 220 § 1.)

§ 9207 Federal preemption.

Transferred to § 6047 of this title.