

US EPA ARCHIVE DOCUMENT

Delaware Code Annotated,  
7 DC, Sections 6003 - 6010(f)(1),  
Main Volume, undated

(23) "Variance" means a permitted deviation from an established rule or regulation, or plan, or standard or procedure.

(24) "Water facility" means any reservoir, dam, waterway obstruction or well, or appurtenances needed for withdrawal, treatment, storage and supply of water.

(25) "Water pollution" means the man-made or man-induced alteration of the chemical, physical, biological or radiological integrity of water.

(26) "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. (7 Del. C. 1953, § 6002; 59 Del. Laws, c. 212, § 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; 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 subsections (a) or (b) of this section in accordance with duly promulgated regulations and no permit

may be granted unless the county or municipality having jurisdiction has first approved the activity by zoning procedures provided by law.

(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 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. (7 Del. C. 1953, § 6003; 59 Del. Laws, c. 212, § 1.)

#### **§ 6004. Same — Application; hearing.**

(a) Any person desiring to obtain a permit required by § 6003 of this title or a variance 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) Upon receipt of an application in proper form (except an application concerning a source of water or a sewerage system for 3 or fewer families or open burning, on which the Secretary may act without public notification), 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 may not hold a public hearing on the application unless he receives, within a reasonable time stated in the advertisement, a public hearing request which he deems meritorious. 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. (7 Del. C. 1953, § 6004; 59 Del. Laws, c. 212, § 1.)

#### **§ 6005. Enforcement; civil penalties.**

(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. 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 (1) of this subsection. 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 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 (i) specifying the complaint, (ii) proposing a reasonable time for its correction, (iii) advising that a hearing on the complaint may be had if requested by a date stated in the notice, and (iv) 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 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. (7 Del. C. 1953, § 6005; 59 Del. Laws, c. 212, § 1.)

### § 6006. Public hearings.

Any public hearing held by the Secretary or the Board concerning any regulation, permit application, alleged violation, or variance request shall be conducted as follows:

(1) For any hearing on an application 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 (i) a brief description of the regulation or plan, (ii) time and place of hearing and (iii) 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 may appear personally or by counsel at the hearing and produce any competent evidence in his behalf. The Secretary 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 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 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 Chairman of the Board, to issue an order requiring such person to appear and testify or produce evidence as the case may require.

(4) 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 Board or its duly authorized designee shall make findings of fact based on the record. The Secretary or the 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.

(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. (7 Del. C. 1953, § 6006; 59 Del. Laws, c. 212, § 1.)

#### **§ 6007. Environmental Appeals Board created; composition; quorum.**

(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 Chairman shall be appointed by the Governor and serve at his 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 terms of the original members shall be as follows: 2 members shall serve for 1 year, 2 for 2 years and 2 for 3 years. When the term of each original member expires, the term of each member appointed thereafter shall be 3 year terms.

(b) Vacancies in Board membership shall be filled by the Governor for the remainder of the unexpired term.

(c) A simple majority of the Board shall constitute a quorum. A simple majority of the Board shall be required for overriding the decision of the Secretary. If the Board fails to act on any appeal within 90 days following the receipt of the appeal, the decision of the Secretary shall be considered as affirmed by the Board.

(d) Any member of the Board with a personal or private interest in a matter in question shall disqualify himself from any consideration of that matter.

(e) Each Board member shall be compensated for such reasonable expenses as travel and meals for each meeting and hearing attended. (7 Del. C. 1953, § 6007; 59 Del. Laws, c. 212, § 1.)

#### § 6008. Appeal 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 the Secretary has announced the decision. The Board may affirm, modify or reverse the decision of the Secretary.

(b) Whenever a decision of the Secretary concerning a permit is appealed, the Board shall hold a public hearing in accordance with § 6006.

(c) If the Secretary is overruled by the Board, then the Board shall state reasons for its decision.

(d) No decision of the Board shall be valid unless signed by a minimum of 5 members.

(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. (7 Del. C. 1953, § 6008; 59 Del. Laws, c. 212, § 1.)

#### § 6009. Appeal from Board's decision.

(a) Any person or persons jointly or severally aggrieved by any decision 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 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 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.

(c) No appeal shall operate to stay automatically any action, but upon application, and for good cause, the Secretary or the Superior Court may stay the action pending disposition of the appeal. (7 Del. C. 1953, § 6009; 59 Del. Laws, c. 212, § 1.)

**Revisor's note.** — This section as originally enacted contained a subsection (d) that read as follows: "This section shall take effect immediately upon its enactment. The stay in a then pending appeal under the provisions of Chapter 60, T. 7 of the Delaware Code, as existed prior to the effective date of this Chapter shall terminate thirty days after the effective date of this Chapter unless:

"(i) a party to the appeal shall have made an application for continuance of the stay to the Secretary or the Superior Court prior to the expiration of such thirty day period, and

"(ii) the Secretary or the Superior Court shall grant a stay in accordance with subsection (c) of this section." This section was enacted July 17, 1973.

### § 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.

(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 comprehensive solid waste management plan for the State.

(f) The Secretary:

(1) Shall approve the allocation and use of water in the State on the basis of equitable apportionment;



**Revisor's note.**

Section 7 of 59 Del. Laws, c. 537, repealed subsection (d), which is set out in the Revisor's note in the original.

**Effect of amendment.** — 59 Del. Laws, c. 537, effective July 26, 1974, in the first sentence of subsection (a), deleted "aggrieved by any decision of the Board" following "jointly or severally" and inserted "aggrieved by any decision of the Board" following "the State." The act also, in subsection (c), inserted "of the Secretary" and substituted "Board or the Court of Chancery" for "Secretary or the Superior Court."

As the rest of the section was not affected by the amendment, it is not set out in this Supplement.

**Delegation of legislative authority to Secretary held constitutionally valid.** — The safeguards of subsection (a) of this section and §§ 6004, 6008(a) and 6011(b) of this title provide a sufficient deterrent and remedy to protect against arbitrary action by the Secretary, and therefore, there is no constitutional infirmity on the ground of invalid delegation of legislative authority. *Hindt v. State*, Del. Supr., 421 A.2d 1325 (1980).

## § 6010. Rules and regulations; plans.

(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, 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.

(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 with 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 (3) 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 (5) below.

(3) Except as provided in paragraphs (4) and (5) below, the prohibition contained in paragraph (2) above shall take effect on the date of promulgation of regulations containing criteria under paragraph (1) or on the date of approval of the state solid waste plan under § 4007 of RCRA, whichever is later.

(4) To assist in the formulation of the state solid waste plan, the Secretary, utilizing the criteria adopted pursuant to paragraph (1) above, shall