

WILLIAM DONALD SCHAEFER, Governor

As a result of this legislation, the Department is developing two form letters that will automatically be sent to the legislators in the appropriate district when an application for a permit is received and before a permit is issued. Because this notification process will become part of the routine procedure for processing a refuse disposal permit, it is unlikely that the Department will fail to notify a legislator residing in that district. One problem arises, however, in that Senate Bill 18 also requires that the Department notify any legislator that requests such notification, but does not specify any formal mechanism for making the request. Because the request does not have to be made in writing, it is possible that a notification request could be made to any employee of the Department under any variety of circumstances and that the request not be communicated to the appropriate unit of the Department.

The State would then be liable for both civil and criminal penalties if the notification requirements were not performed. House Bill 448, which the General Assembly enacted this year and I signed into law on May 17, 1988, applies penalties under Section 9-334 through 9-342 of the Environment Article to enforce violations of the refuse disposal law. The law contains civil penalties not exceeding \$10,000 and administrative civil penalties of up to \$1,000 for each violation not to exceed \$50,000 total for any violation of the subtitle. The law also provides for criminal penalties of up to \$25,000 and/or imprisonment not exceeding one year for a first offense and a fine not exceeding \$50,000 and/or imprisonment not exceeding two years for any subsequent offense against any person (including a State agency) who "fails to perform any duty imposed by this subtitle". In addition to the Attorney General, the State's Attorney for each county and Baltimore City has the authority to bring a criminal action under Section 9-344(b) of this subtitle.

Furthermore, while failure on the part of the Department to satisfy the notification requirement does not constitute a violation on the part of the permit holder, it does raise questions as to whether the owner or operator of the refuse disposal system was operating on an invalid permit prior to the required notification and, if so, whether a court would impose a penalty under these circumstances. It is also possible that the Department may be required to suspend the permit until the notification is performed and the permit renewed.

It is important to note that the Department did not support Senate Bill 18 as written, but rather suggested technical amendments that would have placed the burden of notification on the applicant. These amendments would have conformed the notification requirements for legislators with the existing notification requirements for the public and local officials. Under current law the applicant, not the Department, is required to notify the public and local elected officials as a prerequisite to obtaining a permit for a landfill or incinerator.