

MEMORANDUM

TO: Christophe A.G. Tulou, Secretary

FROM: Mary L. McKenzie, Acting Director

SUBJECT: Department Policy Regarding Use of Penalty Monies

DATE: September 15, 1997

On February 17, 1993 former Secretary, Edwin H. Clark II, executed a Department Policy regarding the use of fines and penalty monies (copy attached). I would like to bring to your attention the fact the 7 Del. C., Chapter 91, Section 9113 of the Delaware Hazardous Substance Cleanup Act (HSCA) states as follows:

- (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 taxes assessed pursuant to Section 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.
- (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 the State matching funds required under the CERCLA.

The HSCA is very specific as to how monies shall be deposited into and expended from the Fund. It appears that former Secretary Clark’s policy on the use of penalty monies conflicts with the aforementioned provisions of the HSCA.

Christophe A.G. Tulou, Secretary
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I am therefore requesting that the monies associated with the HSCA programs be handled in accordance with the HSCA and be exempted from the referenced departmental policy.

Please contact me if you would like to discuss this matter in further detail.

MLMcK:SNW/mlb
SNW93024

Enclosure

pc: Robert S. Kuehl
N.V. Raman
Stephen N. Williams