

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 928 (Senator Pinsky)
Education, Health, and Environmental Affairs

**Environment – Concentrated Animal Feeding Operation Construction or
Expansion – Manure Transport Plan Requirement**

This bill prohibits the Maryland Department of the Environment (MDE), beginning October 1, 2021, from approving coverage under a concentrated animal feeding operation (CAFO) discharge permit for the construction of a new CAFO or the expansion of an existing CAFO in a county where more than 30% of acres tested under the Phosphorus Management Tool (PMT) have a phosphorus fertility index value of 150 or more, except under specified conditions. A permit may be approved if the permit applicant submits a plan to transport all of the manure produced by the CAFO (1) into a county where less than 30% of acres tested under the PMT have a phosphorus fertility index value of 150 or more or (2) to an organics recycling facility. The bill establishes related requirements for MDE. If the owner or operator of the CAFO fails to comply with the plan, MDE must suspend coverage of the CAFO under the CAFO discharge permit for at least one year.

Fiscal Summary

State Effect: MDE can implement the bill with existing budgeted resources. Special/general/reimbursable fund expenditures for the Maryland Department of Agriculture's (MDA) manure transport program may increase beginning in FY 2021. Special fund revenues may be affected to the extent the bill results in additional contributions by poultry producers into the Poultry Litter Transportation Fund.

Local Effect: The bill is not anticipated to directly affect local finances or operations.

Small Business Effect: Meaningful.

Analysis

Bill Summary: MDE must (1) incorporate the terms of a manure transport plan into the CAFO discharge permit for an affected CAFO; (2) make compliance with the manure transport plan a condition of coverage under the CAFO discharge permit; and (3) monitor the implementation of the manure transport plan to ensure compliance.

Current Law:

Concentrated Animal Feeding Operations

CAFOs are regulated by MDE under department regulations and a General Discharge Permit (GD Permit), which are designed to control nutrients from Maryland's largest agricultural animal operations. The GD Permit serves as both a State and federal permit. A person must have coverage under a CAFO discharge permit before beginning construction on any part of a new CAFO.

An "animal feeding operation" (AFO) is defined as a feedlot or facility where (1) nonaquatic animals are confined, fed, and maintained for at least 45 days in any 12-month period and (2) crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

AFOs are categorized as small, medium, or large based on threshold amounts of animals (varying based on animal type) and/or housing capacity, and the size category of an AFO is a factor in determining whether an AFO is considered a CAFO.

In general, a CAFO is a medium or large AFO that discharges or proposes to discharge pollutants including, but not limited to, manure, poultry litter, or process wastewater to surface waters of the State (including contact of confined animals with surface water). Small AFOs that discharge pollutants can also be designated a CAFO by MDE based on a site inspection. MDE regulations require a CAFO to obtain permit coverage under a general discharge permit issued by the department unless the department notifies the discharger that a separate discharge permit is required.

The current GD Permit expired November 30, 2019, and MDE is in the process of developing a new five-year GD Permit. MDE published related regulations in Volume 46, Issue 20 of the *Maryland Register* on September 27, 2019, but those regulations are currently on hold by the Joint Committee on Administrative, Executive, and Legislative Review.

Phosphorous Management Tool

PMT regulations took effect June 8, 2015, and include a multi-year process for farmers to transition to the use of PMT for fields with high soil phosphorus levels. MDA anticipates that PMT will be fully implemented by July 1, 2022. PMT is an updated environmental risk assessment tool that uses the best available science to identify the potential risk of phosphorus loss from farm fields and prevent the additional buildup of phosphorus in soils that are already saturated. The regulations require submittal of soil phosphorus levels to MDA.

A January 2020 MDA update on PMT implementation indicates that soil test data results have been submitted for approximately 1.1 million acres (88%) of regulated Maryland farmland. The program continues to target farms that have not submitted soils data for audits and inspections. Current data indicates that approximately 20% of farm fields tested have soil phosphorus levels that will require the use of PMT.

Maryland Department of Agriculture's Manure Transport Program

MDA's manure transport program, which was founded in 1999, provides funds for farmers to transport poultry litter and livestock manure to other farms or facilities where it can be used in accordance with an approved nutrient management plan. Poultry companies voluntarily pay part of the cost of transporting poultry litter generated by their growers. This amount is based on the square footage of their poultry houses in Maryland. Livestock manure transport (nonpoultry manure) is funded entirely by the State. Farms impacted by PMT receive priority funding under the manure transport program.

MDA advises that during fiscal 2019, the manure transport program moved 249,840 tons of manure, which included 66,511 tons of poultry litter and 183,329 tons of nonpoultry manure. The manure transport program pays 87.5% of costs to transport dairy manure; in fiscal 2019, the State paid \$426,032 to transport dairy manure. The total cost of transporting poultry litter in fiscal 2019 was \$1.0 million, of which the State paid \$644,447. Since the program began, poultry companies have contributed \$6.87 million, and the State has contributed \$10.76 million.

State Fiscal Effect: MDA's manure transport program is funded through a combination of general, special, and reimbursable funds. Because the bill may result in manure (both poultry and livestock manure) being transported further distances, expenditures for the manure transport program may increase beginning as early as fiscal 2021. However, a specific estimate of any such increase cannot be reliably estimated at this time. To the extent the bill results in additional contributions by poultry producers into the MDA's Poultry Litter Transportation Fund, special fund revenues also increase.

MDA advises that it must hire one nutrient management specialist to provide additional oversight to affected farms that must transport manure and litter under the bill and to monitor counties that are identified as having 30% or more of their soils with a phosphorus fertility index of 150 or more. Since MDA already monitors manure and litter transportation and implementation of PMT, and because the bill's primary enforcement and oversight duties fall on MDE, the Department of Legislative Services disagrees.

Small Business Effect: The bill may result in a significant increase in start-up, manure transport, and other operational costs for any CAFO that must develop a manure transport plan, transport manure farther distances, or pay to have the material transported to and processed at an organics recycling facility. Affected CAFOs may also incur additional costs to purchase fertilizer if they are unable to use manure on their fields. A portion of the increase in manure transport costs may be offset by funding from MDA's manure transport program. If farms are unable to comply with the bill, they will be unable to expand their operations. Without discharge permit coverage, a CAFO is unable to legally operate.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Baltimore City; Prince George's County; Maryland Association of Counties; Maryland Department of Agriculture; Maryland Department of the Environment; Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2020
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