



# Maryland

## Department of the Environment

Larry Hogan, Governor  
Boyd K. Rutherford, Lt. Governor

Ben Grumbles, Secretary  
Horacio Tablada, Deputy Secretary

March 4, 2020

The Honorable Kumar P. Barve  
Environment and Transportation Committee  
Room 251, House Office Building  
Annapolis, Maryland 21401

**Re: HB 1297: Individual Surface Water Discharge Permits- Study and Permit Decisions  
(Zombie Permit Elimination Act)**

Dear Chairman Barve and Members of the Committee:

The Maryland Department of the Environment (MDE or Department) has reviewed House Bill 1297, entitled *Individual Surface Water Discharge Permits- Study and Permit Decisions (Zombie Permit Elimination Act)* and would like to offer a letter of concern regarding this legislation.

Permits colloquially described as “zombies” pertain to permits that have been administratively extended by the agency as they undergo the renewal process. HB 1297 proposes a study of ways to remedy the permitting backlog to be submitted to the Governor and General Assembly by July 1, 2021 and the bill imposes time limits for MDE to approve or deny individual surface water discharge permits while the study is being completed.

MDE staff works diligently to review and process permit applications and clear the Department’s backlog of permits. Administrative continuance of permits that have expired is a necessity to protect public health and the environment while MDE works to reissue these permits with the most protective standards available. The permitting process for individual surface water discharge permits in Maryland is extensively regulated and complex. It requires, for example, adequate time to allow the public to comment; the permittee to respond to comments; and the Department to synthesize comments and technical analyses and make a final determination. Each permit issued must have a developed scientific rationale and administrative record to support the decision to impose conditions and requirements. Without a sufficient record, these decisions will be vulnerable to legal challenges by the public or the permittee which will involve further resources and generate greater consternation.

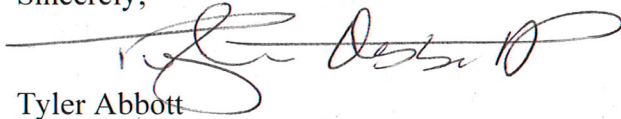
The intent of HB1297 is to speed up the permitting process but it would be at the risk of making premature and ill-formed determinations, which would likely cause the opposite outcome. In particular, subsection (d)(2) states a requirement to “...issue a decision on a permit application for renewal of an individual surface water discharge permit within 180 days of the end of the term of the permit that the applicant is renewing, the Department shall, within 5 business days, approve or deny the application in accordance with this subsection.” This requirement is not consistent with federal procedures and could present legal concerns. The public process must be

afforded thorough consideration of all the available facts regarding the proposed permit, and MDE acknowledges that Departmental review and public comment processes can exceed this timeframe of 185 days. A court may potentially find that the timeframe is improper and/or arbitrarily established, which would invalidate MDE actions. The US EPA may also find that the time limit may be cause for revocation of Maryland's delegated authority. Lastly, the time limit would also lead to difficulties in consistent permitting implementation and enforcement.

The Department has already been making great strides in eliminating "zombie permits." The Department is beginning the early phases of implementation of the ELMS (EPA Lean Management System) and is simultaneously in the early phase of transitioning to a new permit tracking information system and to online permit applications for general permits. MDE anticipates this will expedite the process and result in better communication between MDE, the public and the regulated community. The Department envisions communicating permit status through posting updates on the Department's website for each permit that necessitates an administrative extension.

Thank you for your consideration. We will continue to monitor House Bill 1297 during the Committee's deliberations, and I am available to answer any questions you may have. Please feel free to contact me at 410-260-6301 or by e-mail at [tyler.abbott@maryland.gov](mailto:tyler.abbott@maryland.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Abbott", written over a horizontal line.

Tyler Abbott

cc: The Honorable Mary A. Lehman