

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of the Environment**
(DLS Control No. 14-055)

Overview and Legal and Fiscal Impact

These regulations create an exemption from State discharge permit requirements for the land application of food processing wastewater or offal. To qualify for the exemption, the wastewater must meet the requirements of a soil conditioner set by the State Chemist of the Maryland Department of Agriculture (MDA). The Maryland Department of the Environment (MDE) may revoke an exemption at any time if a person fails to comply with conditions governing the exemption.

The regulations present no legal issues of concern.

There is no material fiscal impact on State or local agencies.

Regulations of COMAR Affected

Department of the Environment:

Water Pollution: Water Quality: COMAR 26.08.02.09

Permits: COMAR 26.08.04.01

Legal Analysis

Background

In accordance with the National Pollution Discharge Elimination Permit System, the department's regulations require a discharge permit for the land application of wastewater, including food processing wastewater called "offal." MDA also has regulatory authority over the land application of some categories of wastewater. The State Chemist of MDA allows certain categories of nutrient containing wastewater, including offal, to be used as a soil conditioner for the purpose of encouraging crop production. The registration of soil conditioners is regulated under Title 15, Subtitle 18 of COMAR. The application of soil conditioners to agricultural land is regulated under Title 15, Subtitle 20 of COMAR.

The department states that these regulations eliminate language that redundantly singles out offal as requiring a discharge permit, while creating a narrow exemption from the permit requirements for offal that meets MDA's requirements for a soil conditioner. This action is directed at small-scale, farm-based food processing operations, such as milk product processing (*e.g.*, ice cream, yogurt, and cheese making); beer, wine, and whiskey making; and on-farm poultry and rabbit butchering. The Maryland Agricultural & Resource-Based Industry

Development Corporation is encouraging farmers to pursue such value-added activities, and MDA reports that the number of these small-scale food processing operations is increasing.

Summary of Regulations

The regulations create an exemption from State discharge permit requirements for the land application of food processing wastewater that meets the State Chemist Office's requirements for registration as a soil conditioner. The exemption is subject to the following conditions: (1) the department must receive notice from MDA that the wastewater meets the requirements for registration as a soil conditioner; (2) the applicant for the permit exemption must comply with MDA regulations governing the use of soil conditioners, including the obligation to obtain and comply with a Nutrient Management Plan; and (3) the applicant must allow the department reasonable access to the premises to inspect any wastewater collection, treatment, land application records and practices, and food processing operation records. A permit exemption granted under the regulations must be renewed every five years, and MDE may deny or revoke a permit exemption at any time.

Legal Issue

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites §§ 1-601 through 1-606, 9-303.1, 9-313 through 9-316, 9-319 through 9-328, and 9-330 as authority for the regulations. Sections 9-325 through 9-328 and 9-330 contain the most relevant statements of the department's authority to establish and modify permit requirements for wastewater discharges. Section 9-325(a) authorizes the department to adopt regulations that "relate to application for, issuance of, revocation of, or modification of discharge permits." Section 9-326 authorizes the department to make permit determinations contingent on any conditions the department considers necessary, such as requiring a permit holder to grant the department access to records and premises for inspection purposes. Sections 9-327 and 9-328 govern the refusal of an application for a discharge permit and the term and renewal of a discharge permit. Section 9-330 authorizes the department to revoke a discharge permit for "good cause." Also relevant is § 9-303.1, which requires the department to encourage the use of reclaimed water as an alternative to discharging wastewater effluent into the waters of the State. Specifically, subsection (b)(1) of this section authorizes the use of reclaimed water to irrigate farmland.

The other sections relate more generally to the departments permit authority and its authority to regulate water quality and effluents. Sections 1-601 through 1-606 govern the permitting process and judicial review of permit determinations. Sections 9-313 through 9-316 authorize the department to adopt regulations, including procedural regulations, to carry out State laws relating to water pollution control. Under § 9-316(b), the department must hold a public hearing before adopting regulations relating to water pollution control. Sections 9-319 through 9-320 contain miscellaneous provisions relating to the department's water pollution control activities, including the authority to administer and enforce relevant laws and regulations. Sections 9-322 through 9-324 prohibit discharges of pollutants into waters of the state except in compliance with the department's rules and permit requirements.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

The department has submitted revised language for Section (e) of COMAR 26.08.02.09. The revised language clarifies the department's authority to deny an application for a permit exemption during the 45-day application period. Additionally, the department has stated that it will schedule a public hearing on the regulations to comply with § 9-316(b) of the Environment Article. MDE will update the notice of the proposed regulations to include the public hearing date.

Fiscal Analysis

There is no material fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulations result in a moderate decrease in its workload and a minimal increase in the workload of MDA. The Department of Legislative Services concurs and notes that the department's fee revenues are not anticipated to be materially affected.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have a meaningful economic impact on small businesses in the State as a result of the reduction in permitting-related time and costs and the potential additional flexibility to dispose of specified wastes through land application. The Department of Legislative Services concurs.

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