

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	03/31/2014	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 4/18/2014

2. COMAR Codification

Title	Subtitle	Chapter	Regulation
26	08	02	.09, 26.08.04.01

3. Name of Promulgating Authority

Department of the Environment

4. Name of Regulations Coordinator	Telephone Number
Renee D Matthews	410-537-3567

Mailing Address

1800 Washington Blvd

City	State	Zip Code
Baltimore	MD	21230

Email
rmatthews@mde.state.md.us

5. Name of Person to Call About this Document	Telephone No.
Michael Eisner	410-537-3771

Email Address
mike.eisner@maryland.gov

6. Check applicable items:
 New Regulations

X- Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: 03/13/14.

X- Repeal of Existing Regulations

Recodification

Incorporation by Reference of Documents Requiring DSD Approval

Reproposal of Substantively Different Text:

: Md. R

(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes **X-** No

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Paul DeSantis, Assistant Attorney General, (telephone #410-537-3352) on 2/21/14. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Robert M. Summers, Ph.D.

Title

Secretary

Date

3/13/14

Telephone No.

410-537-3084

DEPARTMENT OF THE ENVIRONMENT

Subtitle 08 WATER POLLUTION

26.08.02 .09, 26.08.04.01

Authority: 26.08.02 Water Quality Authority: Environment Article, §§9-303.1,9-313-9-316, 9-319, 9-320-9-325, 9-327, and 9-328, Annotated Code of Maryland 26.08.04

Permits Authority: Environment Article, §§ 1-601 – 1-606, 9-313, 315, 9-323 – 9-328, and 9-330, Annotated Code of Maryland

Notice of Proposed Action

□

The Secretary of the Environment proposes to to adopt new Regulation .09.A.(5) under COMAR 26.08.02 and repeal Regulation .01.B(6) under COMAR 26.08.04.

Statement of Purpose

The purpose of this action is to allow the land application of food processing wastewater wastewater to be exempted from obtaining a State discharge permit if the wastewater meets the requirements of a soil conditioner by MDAs State Chemist’s. MDE will retain it’s authority to require a discharge permit even if the wastewater meets the requirements of a soil conditioner if the land applied wastewater could cause or increase the discharge of pollutants into the waters of the State.

MDE and MDA have regulatory authority for the land application of nutrient containing wastewater. MDE regulations require a discharge permit for land application of wastewater which includes food processing. MDE regulations currently require a permit for offal, which is a type of food processing wastewater. MDE already has broad authority to require permits for land application of wastewater, including offal. MDA’s State Chemist Office authorizes the land application of certain categories of nutrient containing wastewater as a soil conditioner, including food processing wastewater. This proposed action will eliminate the regulatory language that redundantly singles out offal as requiring a discharge permit, and will create a narrow exemption, eliminating the need for a discharge permit to cover the subject wastewater when it meets the requirements of a soil conditioner by MDA.

This action is directed to businesses that generate food processing wastewater, if the wastewater is intended to be managed by land application. These generally include small scale, value added on farm production of food products, or small scale food processing operations. These include, but are not limited to: milk product processing (ex. ice cream, yogurt, cheese), beer, wine, and whiskey making, and on-farm ‘small scale’ poultry and rabbit growing and processing operations. The number of these types of small food processing operations is increasing.

MDE’s proposed regulation changes will support multiple agency regulations to promote production and marketing of food products, including value added on farm production

and marketing. These agencies are MDA, DHMH and USDA. Maryland’s “Mobile Farmers Market License” also promotes on farm value added production and marketing of food products.

These proposed regulation changes will lower the cost of operation, reduce reporting requirements and expedite approval for land applying food processing operations wastewater. Environmental protection will not be compromised because the land application of food processing wastewater approved as a soil conditioner requires compliance with nutrient management regulations and best management practices that are functionally equivalent to those in a discharge permit. However, MDE will retain its authority to require a discharge permit even if the wastewater is approved as a soil conditioner if the land applied wastewater could cause or increase the discharge of pollutants into the waters of the State.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

Currently land applied wastewater must obtain a MDE issued State discharge permit. Costs to obtain the permit include an application fee, public participation advertisement fee, and in some cases wastewater quality testing. It may take up to 9 months to issue a new discharge permit. Permits are valid for 5 years. Compliance costs include an annual fee and typically wastewater testing. Permits must be renewed every 5 years. The renewal process will typically have the same costs as the initial permit issuance. It may take up to 14 months to reissue the permit.

The proposed action will have economic impacts on State agencies, the regulated community, trade groups and the public. There will be significant cost and time saving benefits to the regulated community. State agencies impacted will be MDE and MDA. There will be a moderate decrease in MDE workload, and a minimal increase in MDA workload. There may be minimal benefits to electrical and plumbing service providers. The public will benefit from the opportunity to buy locally produced high quality food products. Coordination between MDEs Water Management Administration’s Wastewater Permits Program and MDAs State Chemist Office will be ongoing.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(E-)	Minimal
B. On other State agencies:	(E+)	Minimal
C. On local governments:	NONE	
	Benefit (+)	Magnitude

Cost (-)

D. On regulated industries or trade groups:	(+)	Moderate
E. On other industries or trade groups:	(-)	Minimal
F. Direct and indirect effects on public:	(+)	Minimal

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. Under existing MDE regulations, a State discharge permit is required for “wastewater effluents disposed of by means of spray or other land treatment or application systems.” Based on this, food processing wastewater that is land applied requires a discharge permit. These regulation changes allow continued approval of land applied food processing wastewater as a soil conditioner by MDAs State Chemist Office and provides an opportunity for exemption from additional authorization by a State discharge permit. These changes will reduce MDE permit workload for land applied food processing wastewater. However, MDE will retain authority to require a State discharge permit if such operations could cause or increase the discharge of pollutants into the waters of the State

B. MDA has authority to approve the land application of food processing wastewater as a soil conditioner. There may be a small increase in MDA's workload from coordination with MDE on this exemption.

C. Maryland County Environmental Health Departments have inquiries of permitting requirements for management of food processing wastewater and typically contacts MDE. There is no anticipated change to them.

D. The regulated community includes small scale, family farm food processing operations, and small scale food product manufacturing. These operations will benefit, if MDE exempts them from discharge permit requirements.

Discharge permits have associated application and annual fees, as well as operation and monitoring requirements, which may include testing of wastewater quality prior to discharge. There are no fees for MDA approval of wastewater as a soil conditioner. Approving the land application of wastewater as a soil conditioner will cost less, be faster and have less reporting requirements than with approval via a discharge permit. These are significant benefits to this regulated community.

E. Equipment needed may include plumbing and electrical for wastewater collection, treatment, storage and land application. Since MDE permit requirements and MDA soil conditioner requirements are similar, there are minimal anticipated benefits to other industries.

F. . The Maryland public benefits by opportunities to buy high quality, locally produced food products. These actions contribute to the economic vitality of Maryland’s family farms and contributes to protecting our rural landscape.

These benefits to the public will be coupled with environmental protection because MDE's wastewater permit requirements and MDA's soil conditioner requirements are functionally similar.

Economic Impact on Small Businesses

The proposed action has a meaningful economic impact on small business. An analysis of this economic impact follows.

The proposed action will have positive benefits to small businesses that do food processing. The business community that may benefit are family owned farms and small scale food manufacturing operations. On farm, value added food production can be an important component in maintaining the economic viability of family farms.

MDA's approval process for land applying food processing wastewater and compost operations wastewater as a Soil Conditioner is simpler, quicker, and there aren't fees for application and approval. There are costs to issue, comply with and renew a discharge permit. The approval time for a discharge permit is typically longer than soil conditioner approval and there are more reporting requirements for a discharge permit compared to a soil conditioner. An analysis of the economic impact on food processing and compost processing operations follows.

Discharge permits have associated application and annual fees, as well as operation and monitoring requirements, which may include testing of wastewater quality prior to discharge. In addition, all discharge permits have public participation requirements that provide the public opportunities to request both informational meetings and formal hearings. Advertisements are placed in a local newspaper informing the public of these opportunities for participation. In all cases, the applicant bears the cost of the newspaper ads. The permit application fee for such operations will typically be \$100. This fee increases based on volume of discharge. Newspaper advertisement for the public participation process typically ranges from \$300 to \$2200 dollars. Estimated costs for these operations will be typically be at the low end of this range. Annual fees will typically be \$100. This fee increases based on volume of discharge. It may take up to 9 months to issue the permit.

Since 2010, MDA sponsored seminars have trained 276 Maryland farmers to slaughter and process their poultry and rabbits. Forty-four of these are currently in operation and have slaughtered in Maryland approximately 62,000 animals per year. The average value added income for these farmers is \$4900 per year. MDA has seen increased interest in this program and this trend is expected to continue. In addition, interest in on farm value added food processing operations (ex. ice cream, yogurt and cheese) is increasing.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michael Eisner, Geologist, Maryland Department of the Environment, 1800 Washington Boulevard, or call 410-537-3771, or email to mike.eisner@maryland.gov, or fax to 410-537-3163. Comments will be accepted through June 16, 2014. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 2014

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

No

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

General Funds

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

G. Small Business Worksheet:

1a. The intended beneficiaries are small businesses that do food processing such as wine and beer makers. Other beneficiaries are family farms that do on farm food processing, such as making cheese and ice cream

Are these intended beneficiaries primarily households or businesses?

The intended beneficiaries are businesses, including farms that have small scale food processing operations.

1b. N/A

1c. Food processing and food manufacturing operations.

How will businesses be impacted?

Businesses will be able to receive authorization to manage its process wastewater, faster and at less cost.

Are these Maryland establishments' disproportionately small businesses?

Yes.

If so, how will these Maryland small businesses be affected?

The small business will be able to receive authorization to manage its process wastewater, faster and at less cost.

Can you identify or estimate the present number of small businesses affected?

Currently about 65.

Can you estimate the present total payroll or total employment of small businesses affected?

No

Describe how Maryland establishments may be adversely affected.

Businesses that do food processing will not be adversely affected by this proposal.

Will Maryland small businesses bear a disproportionate financial burden or suffer

consequences that affect their ability to compete?

No. This proposal will decrease costs of operation for small businesses.

Can you estimate the possible number of Maryland small businesses adversely affected? (Note that small business compliance costs in the area of regulation are the sum of out-of-pocket (cash) costs plus time costs — usually expressed as payroll, akin to calculations for legislative fiscal notes. Precise compliance costs may be difficult to estimate, but the general nature of procedures that Businesses must accomplish to comply can be described.)

Businesses will not be adversely affected.

2b. On farm, value added food production can be an important component in maintaining the economic viability of family farms, and our rural landscape. This proposal will benefit these types of small businesses, and may support the vitality of farming in Maryland.

Will Maryland small businesses share proportionately or disproportionately in these gains?

This regulation change as proposed is directed to benefit small business.

Can you estimate the possible number of Maryland small businesses positively affected? Currently about 65.

3. No

4. This proposal is narrowly written to benefit small business. Growth in small scale food processing, including on farm food production, is projected to increase. Therefore the benefits to small business will increase over time, along with benefits of value added on farm food production. There will be minimal increase of workload to the Maryland Department of Agriculture (MDA), but significant benefit to the small scale food producers. The MDA supports this proposal.

Attached Document:

Title 26 Department of Environment

Subtitle 08 Water Pollution

Chapter 02 Water Quality

Authority: Environment Article, §§9-303.1, 9-313—9-316, 9-319, 9-320—9-325, 9-327, and 9-328, Annotated Code of Maryland

.09 Water Quality Standards.

A. Discharge Approval Required.

(1) - (4) (text unchanged)

(5) The land application of food processing wastewater is exempt from the requirement to obtain a State discharge permit if the wastewater meets the Maryland Department of Agriculture (MDA) State Chemist Office requirements for registration as a soil conditioner, subject to the following conditions and exceptions:

(a) MDA notifies the Department that a determination has been made that the wastewater meets the requirements for registration as a soil conditioner. If the Department has not responded within 45 days of the notification, the determination made by MDA shall be considered accepted and the applicant shall be exempt from obtaining a State discharge permit. If the Department verifies or rejects MDA's State Chemist determination within 45 days of the notification, the Department may still require a State discharge permit;

(b) The applicant continues to perform any necessary actions to ensure that the wastewater meets the requirements for registration as a Soil Conditioner, and complies with the Code of Maryland Regulations (COMAR)

15.20.04 to 15.20.08, which includes the applicant's obligation to obtain and comply with a Nutrient Management Plan governing the application of the wastewater;

(c) Department representatives upon presentation of credentials are allowed at reasonable times to enter premises to inspect any wastewater collection, treatment, land application records and practices, and food processing operation records;

(d) An application for renewal of the exemption set forth herein must be submitted to MDA within 5 years of the exemption date from obtaining a State discharge permit. The requirements of COMAR 26.08.02.09.A(5) apply for the renewal process;

(e) The Department may at any time choose to revoke a permit exemption provided under this section.

Chapter 04 Permits

Authority: Environment Article, §§1-601—1-606, 9-313, 9-315, 9-323—9-328, and 9-330; Annotated Code of Maryland

.01 Discharge Permits Required.

A. (text unchanged)

B. Activities for Which Discharge Permits Are Required. A person may not commit any of the following acts except as authorized by a discharge permit issued by the Department:

(1) - (5) (text unchanged)

[(6) Land apply offal.]