

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of the Environment**
(DLS Control No. 14-067)

Overview and Legal and Fiscal Impact

These regulations alter the applicability of a specified general discharge permit to apply to dewatering, hydrostatic testing, and groundwater remediation activities. The regulations expand the eligible discharge categories under the general permit to include specified activities.

The regulations present no legal issue of concern.

Special fund revenues to the Maryland Department of the Environment's Clean Water Fund decrease, likely minimally in fiscal 2015, but potentially by between \$20,000 and \$60,000 on an annual basis by fiscal 2019, as the department collects fewer fees from general discharge permit holders than from individual discharge permit holders.

Regulations of COMAR Affected

Department of the Environment:

Water Pollution: Permits:

General Discharge Permits: COMAR 26.08.04.09

Fees for General Discharge Permits: COMAR 26.08.04.09-1

Legal Analysis

Background

A person must hold a discharge permit issued by the department before constructing, installing, modifying, extending, altering, or operating an industrial, commercial, or recreational facility or disposal system, a State-owned treatment facility, or any other outlet or establishment if the operation could cause or increase the discharge of pollutants into the waters of the State. The department issues individual discharge permits, as well as a general permit for other specified activities. The department may also require by regulation a discharge permit for any other activity. Application fees and annual permit fees vary depending on the volume of discharge, and they are paid into the Maryland Clean Water Fund.

Summary of Regulations

The regulations makes corresponding changes to COMAR 26.08.04.09K, which relates to general discharge permits, and COMAR 26.08.04.09-1G, which relates to fees for general discharge permits, to apply to dewatering, hydrostatic testing, and groundwater remediation activities. Section .09K expands the eligible discharge categories under the general permit to

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specifically include, among other things, extracted water from an aquifer test, wastewater from construction dewatering, and foundation drainage that has been treated for contaminants.

Legal Issue

The regulations present no legal issue of concern.

Statutory Authority and Legislative Intent

The department cites §§ 1-601 through 1-606, 9-313, 9-315, 9-323 through 9-328, and 9-330 of the Environment Article as authority for the regulations. Specifically, § 9-323 requires a person to hold a discharge permit issued by the department before constructing, installing, modifying, extending, altering, or operating an industrial, commercial, or recreational facility or disposal system, a State-owned treatment facility, or any other outlet or establishment, if the operation could cause or increase the discharge of pollutants into the waters of the State. Additionally, the section authorizes the department to require by regulation a discharge permit for any other activity. Sections 9-324 through 9-328 and 9-330 set forth additional provisions relating to discharge permits, including provisions relating to conditions on permits, refusal of permits, the term and renewal of discharge permits, and the revocation of discharge permits. This authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections

The department has agreed that corrections to the COMAR codification reference on the transmittal document, the Notice of Proposed Action, and Statement of Purpose are needed to more accurately reference the changes to COMAR 26.08.04.09K and COMAR 26.08.04.09-1G.

Fiscal Analysis

Special fund revenues to the Maryland Department of the Environment's Clean Water Fund decrease, likely minimally in fiscal 2015, but potentially by between \$20,000 and \$60,000 on an annual basis by fiscal 2019, as the department collects fewer fees from general discharge permit holders than from individual discharge permit holders.

Agency Estimate of Projected Fiscal Impact

The department advises that expenditures may decrease minimally as the regulations reduce the amount of time needed for permit issuance. The Department of Legislative Services generally disagrees. Although the issuance of general permits instead of individual permits is likely to slightly increase departmental efficiency, it is unclear whether such efficiency impacts department finances, as opposed to merely operations.

More significantly, the department does not address the impact that the regulations have on special fund permit fee revenues. Individual water pollution discharge permit fees are generally higher than general discharge permit fees. The department has confirmed that there are about two dozen such individual permittees currently, and the maximum permit term is five years. While a reliable estimate cannot be made without additional information regarding the

amount, duration, and expiration date of each individual permittee, a rough estimate of the permit fee revenue loss can be made based on the current number of permittees and using several assumptions regarding the average distribution among the fee classes and of permit durations. Under such data and assumptions, the average annual revenue loss is likely to be between \$20,000 and \$60,000 annually once all current individual permits expire and transition to the general permit in accordance with the regulations; the impact in fiscal 2015 and the following several years is likely to be significantly less as only a fraction of individual discharge permits expire each year and are issued a general permit under the regulations.

Impact on Budget

There is no impact on the State operating or capital budget in fiscal 2015, and there is not likely to be any material impact in any fiscal year given the estimated revenue loss, the average annual income to the Clean Water Fund (more than \$2 million), and the gradual nature of the transition under the regulations.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

Contact Information

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