

**Department of Legislative Services**  
Maryland General Assembly  
2008 Session

**FISCAL AND POLICY NOTE**

Senate Bill 189 (Chair, Education, Health, and Environmental Affairs Committee)  
(By Request – Departmental – Environment)

Education, Health, and Environmental Affairs

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**Surface Water Discharge Permits - Contested Case Hearings - Standing**

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This departmental bill expands standing for the right to a contested case hearing on surface water discharge permits issued by the Maryland Department of the Environment. Specifically, the bill authorizes a person that meets the threshold standing requirements under federal law to request a contested case hearing on such permits.

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**Fiscal Summary**

**State Effect:** The bill's changes could be handled with existing budgeted resources. The bill's changes are not anticipated to result in a significant increase in the number of contested case hearings requested.

**Local Effect:** None.

**Small Business Effect:** MDE has determined that the bill has minimal or no impact on small business (attached). Legislative Services generally concurs with this assessment, as discussed below.

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## Analysis

**Current Law:** Under current State law, a person may request a contested case hearing to appeal a final determination with respect to surface water discharge permits if the person makes factual allegations with sufficient particularity to demonstrate that the person is aggrieved by the final determination and the final determination is legally consistent with any provisions of law applicable to the final determination being challenged or based upon an incorrect determination of a relevant and material fact.

Under Maryland common law, organizations do not have standing to assert claims unless the organization has its own interest, separate and apart from the interest of its members. In contrast, under federal law, organizations have standing to assert the interests of their members.

**Background:** According to MDE, the bill is intended to expand standing for challenges to National Pollutant Discharge Elimination System permits in response to repeated requests from citizen's groups to allow greater access to the permitting process. There is concern that State law does not define standing broadly enough, allowing MDE to use a standard less broad than the federal standard. MDE advises that Maryland cannot have a narrower standard for standing than that allowed by federal law.

MDE advises there are 569 individual surface discharge permits and 8 general permits currently in effect. Although renewal rates vary from year to year, MDE advises that, over the five-year permit term, MDE issues, on average, approximately 115 NPDES permits per year. MDE also advises that over a five-year period, an average of one contested case hearing is requested per year for such permits.

**Small Business Effect:** Permit applicants could be negatively affected to the extent the bill results in the delay or denial of a permit that otherwise would have been issued. On the other hand, other small businesses might benefit from the bill's changes. It is assumed, however, that the overall impact to Maryland small businesses would not be significant.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts), Maryland Department of the Environment, Office of Administrative Hearings, Department of Legislative Services

**Fiscal Note History:** First Reader - February 1, 2008  
mcp/jr

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Analysis by: Lesley G. Cook

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510