

Chapter 149

(House Bill 966)

AN ACT concerning

Natural Resources – Restricted Waters for Shellfish Harvesting – ~~Method of Testing~~

FOR the purpose of requiring the Department of the Environment ~~to use a certain test to detect Escherichia coli (E. coli)~~, in determining whether to restrict, or lift any restrictions on, an area for the catching or storing of shellfish to use certain tests for certain purposes; requiring the Department, on or before a certain date, to reconsider the designation of certain restricted waters in accordance with certain testing requirements; and generally relating to methods of testing to determine restricted waters for shellfish harvesting.

BY repealing and reenacting, with amendments,
Article – Natural Resources
Section 4-742
Annotated Code of Maryland
(2005 Replacement Volume and 2010 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Natural Resources

4-742.

(a) (1) If the Department of the Environment determines by appropriate investigation that any area of waters of the State devoted to the production or storage of shellfish is polluted so that shellfish produced or stored in the area are a hazard to public health, it shall restrict the area for the catching or storing of shellfish.

(2) If the Department of the Environment finds it necessary to restrict an area of water for the taking and storing of shellfish because of the proximity of the area to the point of discharge of a sewage treatment plant or a point of overflow of a sewage pumping station, the Department of the Environment may increase or decrease the size of a restricted area in relation to the operational effectiveness of the sewage treatment plant or sewage pumping station.

~~(3) THE DEPARTMENT OF THE ENVIRONMENT SHALL USE THE MOST RELIABLE AVAILABLE TEST TO DETECT ESCHERICHIA COLI (E. COLI) IN~~
IN DETERMINING WHETHER TO RESTRICT, OR LIFT ANY RESTRICTIONS ON, AN

AREA FOR THE CATCHING OR STORING OF SHELLFISH, THE DEPARTMENT OF THE ENVIRONMENT SHALL USE THE MOST RELIABLE AVAILABLE TESTS TO:

(I) DETERMINE WHETHER A SHELLFISH PRODUCTION AREA POSES A RISK TO CONSUMER HEALTH; AND

(II) RULE OUT CONTAMINANTS THAT DO NOT POSE A RISK TO CONSUMER HEALTH, INCLUDING BACTERIA FROM VEGETATION.

(b) (1) The action of the Department of the Environment to restrict an area of water becomes effective immediately upon giving formal notice of the action to the Department. Notice also shall be given the appropriate governing body and the committee of oystermen of any county affected by the restriction.

(2) The Natural Resources Police Force shall patrol the area to warn watermen until public notice is given in newspapers of general circulation in each of the counties whose watermen work the restricted area normally. No arrests may be made until the next workday following the day the notice appeared unless the watermen fail to heed a warning of the officers.

(3) (i) If the Department of the Environment closes any area to the catching of shellfish under this section, in addition to the notice required in paragraph (1) of this subsection, the Department of Natural Resources shall mark the area so that the area can be seen from the water.

(ii) The Department of Natural Resources shall adopt rules and regulations to provide for the marking in a plain and visibly obvious fashion of any area that is closed to the catching of shellfish because of pollution. Even in the absence of such marking devices, a person may not catch shellfish in a restricted area as designated by the Department of the Environment if notice has been given to the appropriate governing body and the committee of watermen of any county affected by the restriction.

(c) (1) After establishing a restriction, the Department of the Environment shall test the water in the restricted area or inspect the source of pollution of the water at least twice monthly, or more frequently if requested by the appropriate governing body of any county affected by the restriction. A copy of the report of analysis of every test and inspection shall be filed promptly with the appropriate governing body of every county affected by the restriction.

(2) Updated charts of the Chesapeake Bay and its tributaries showing all polluted areas shall be filed promptly with the appropriate governing body and oystermen's committee of every tidewater county. Copies of these charts shall be filed also with the Fisheries Administration and the Natural Resources Police.

(d) Whenever samples of water and shellfish of a restricted area indicate that the shellfish and water again comply with standards for harvesting shellfish, the restrictions promptly shall be lifted.

(e) The Secretary of the Department of the Environment may delegate authority to impose restrictions, or remove restrictions no longer required. These actions, however, shall be reported and consented to by the Secretary.

(f) Each violation of this section constitutes a separate offense punishable as provided by the provisions of this title.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) On or before December 31, 2011, in accordance with the testing requirements established in § 4-742 of the Natural Resources Article, as enacted by Section 1 of this Act, the Department of the Environment shall reconsider the designation of waters of the State that are currently restricted from shellfish harvesting.

(b) When reconsidering the designation of waters of the State under subsection (a) of this section, the Department of the Environment shall prioritize the reconsideration of areas where there are existing or pending shellfish leases or aquaculture permits.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ June 1, 2011.

Approved by the Governor, April 12, 2011.