

**Department of Legislative Services**  
Maryland General Assembly  
2020 Session

**FISCAL AND POLICY NOTE**  
**Third Reader**

Senate Bill 323

(Senator Simonaire)

Education, Health, and Environmental Affairs

Environment and Transportation

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**Environment – Supplemental Environmental Projects and Study on Discharge  
Permit Fees**

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This bill requires the Maryland Department of the Environment (MDE) to consider, and as appropriate and consistent with State and federal law, use “supplemental environmental projects” (SEPs) related to the purposes of the Maryland Clean Water Fund as part of a settlement or enforcement action concerning an alleged violation of the Water Pollution Control, the Sediment Control, or the Appropriation or Use of Waters, Reservoirs, and Dams subtitles of the Environment Article. The bill also requires MDE to conduct a study on discharge permit fees and report its findings to specified committees of the General Assembly by December 31, 2020.

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**Fiscal Summary**

**State Effect:** Potential minimal increase in special fund expenditures in FY 2021 to conduct the required study. Special fund expenditures may increase further depending on the extent to which the bill increases the use of SEPs. Special fund revenues from penalties assessed may decrease, as discussed below.

**Local Effect:** Local expenditures may be affected; any impact depends on the extent to which the bill increases the use of local government SEPs. Local revenues are not affected.

**Small Business Effect:** Minimal.

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## Analysis

**Bill Summary:** A “supplemental environmental project” is an environmentally beneficial project or activity that is not required by law, but that an alleged violator agrees to undertake as part of a settlement or enforcement action.

MDE must conduct a study to determine the requisite discharge permit fee levels needed to cover administrative costs associated with specified activities that generally relate to improving water quality.

### **Current Law/Background:**

#### *Maryland Clean Water Fund*

The Maryland Clean Water Fund consists of all application fees, permit fees, renewal fees, funds, and civil and administrative penalties collected under specified water pollution control laws. MDE must use the Maryland Clean Water Fund for activities that are related to:

- the identification, monitoring, and regulation of the proper discharge of effluent into State waters, including program development of these activities as provided by the State budget;
- the management, conservation, protection, and preservation of the State’s groundwater and surface water, including program development of these activities as provided by the State budget;
- correcting to the extent possible the failure to implement or maintain erosion and sediment controls;
- administration of the sediment control program;
- emergency removal of sewage sludge or mitigation of the effect of any utilization of sewage sludge that MDE finds (1) endangers public health, safety, or welfare or (2) endangers or damages natural resources;
- activities that are conducted by MDE, by a local health official, or by the local health official’s designee related to the inspection, monitoring, or enforcement of sewage sludge utilization, including program development; and
- providing supplemental inspections and monitoring of sewage sludge utilization sites by (1) contracting with a county on request of that county to provide supplemental inspections and monitoring and (2) limiting the value of services provided under the contract to no more than 45% of the generator fees for sludge utilized in that county that is generated outside of that county or service area.

In determining the use of money from the fund, priority must be given to activities relating to the water quality of the Chesapeake Bay and its tributaries. MDE is required to report to specified legislative committees by January 15 each year on the status of the Maryland Clean Water Fund, including a detailed description of all revenues and expenditures of the fund for the previous year. The most recent annual [report](#) submitted was for fiscal 2017. MDE advises that discharge permit fees fully fund these clean water activities.

#### *Penalties for Violations of Related Subtitles of the Environment Article*

If a person violates Title 9, Subtitle 3 of the Environment Article, MDE may file for injunctive relief pursuant to § 9-339 of the Environment Article and/or seek civil penalties and administrative penalties pursuant to § 9-342. Criminal penalties are also available under § 9-343 of the Environment Article. For violations of Title 4, Subtitle 1 of the Environment Article, MDE may hold the alleged violator criminally liable, civilly liable, seek an injunction, or may impose a penalty after a hearing, pursuant to § 4-116 of the Environment Article. Criminal liability includes a term of imprisonment and a fine. MDE may seek injunctive relief under § 5-513 of the Environment Article and/or civil penalties under § 5-514 of the Environment Article for violations of Title 5, Subtitle 5 of the Environment Article.

#### *Supplemental Environmental Projects*

According to MDE's fiscal 2019 Annual Enforcement and Compliance [Report](#), MDE's approach to enforcement includes the use of SEPs, which are projects specifically undertaken to improve the environment by parties who are subject to penalty actions. Under certain limited circumstances, the value of the SEP is allowed by MDE to offset a portion of the penalty.

MDE notes that that the U.S. Environmental Protection Agency (EPA) encourages the use of SEPs because SEPs (1) add value to enforcement settlements, as SEP dollars are spent directly on environmental projects; (2) require violators to go above and beyond technical compliance with minimum legal standards and thereby reach a higher level of environmental stewardship; and (3) are intended to achieve improvements to the environment that could not be accomplished with traditional penalties. Traditional penalties serve to punish current violations and deter future violations. SEPs accomplish those traditional purposes and provide a form of community service that improves the environment where the violation occurred.

MDE entered into three SEPs during fiscal 2019, with a total value of approximately \$3.6 million. These SEPs were all in the Land and Materials Administration and involved the certification of rental units as either lead free or limited lead free.

**State Expenditures:** Special fund expenditures may increase minimally in fiscal 2021 only for MDE to conduct the required study.

Current MDE and EPA policy already incorporates SEPs as one factor considered when determining an appropriate settlement penalty. The bill requires MDE to consider and use SEPs as a part of a settlement action *as appropriate and to the extent consistent with State and federal law*. Thus, it is unclear whether the bill results in an increase in the use of SEPs. However, MDE advises that SEPs require more resources than traditional enforcement measures. Accordingly, to the extent the bill results in an increase in the number of SEPs approved, special fund expenditures may increase.

**State Revenues:** In certain cases, SEPs can be the basis for a reduction in monetary penalties: to the extent the bill results in an increase in the use of SEPs, special fund revenues for the Maryland Clean Water Fund may decrease.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** None.

**Information Source(s):** Judiciary (Administrative Office of the Courts); Maryland Department of the Environment; U.S. Environmental Protection Agency; Department of Legislative Services

**Fiscal Note History:** First Reader - February 7, 2020  
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Analysis by: Kathleen P. Kennedy

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