

Chapter 22

(House Bill 649)

AN ACT concerning

Environment – Discharge Permits – Inspections and Administrative Continuations

FOR the purpose of ~~limiting the period of time for which the Department of the Environment may administratively continue certain water pollution discharge permits;~~ establishing inspection and reporting requirements for certain permit holders; ~~requiring the Department of the Environment to notify certain Senators and Delegates about the noncompliance of a certain permit holder~~ *maintain on its website a list of certain noncompliant permit holders and provide certain Senators and Delegates with a link to the list;* establishing administrative penalties for certain permit holders determined to be in significant noncompliance of certain State or federal water quality standards, effluent limitations, or other requirements; requiring the Department to clear a certain backlog of administratively continued permits on or before a certain date; and generally relating to water pollution discharge permits.

BY repealing and reenacting, ~~with~~ without amendments,
 Article – Environment
 Section 9–328
 Annotated Code of Maryland
 (2014 Replacement Volume and 2021 Supplement)

BY adding to
 Article – Environment
 Section 9–328.1
 Annotated Code of Maryland
 (2014 Replacement Volume and 2021 Supplement)

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

Article – Environment

9–328.

(a) (1) Unless it is renewed for another term, a discharge permit expires on the expiration date the Department sets at issuance or renewal.

(2) The Department may not issue a discharge permit for a term longer than 5 years.

(b) Before a discharge permit expires, the Department may renew the discharge permit for another term:

(1) After administrative review in accordance with the rules and regulations that the Department adopts;

(2) After notice and opportunity for public hearing on the subject;

(3) On the condition that the discharge meets or will meet:

(i) Any applicable State or federal water quality standards or effluent limitations; and

(ii) Any applicable requirement of this subtitle; and

(4) If the permit holder pays all application and permit fees assessed by the Department under this subtitle.

~~(c) (1) ON OR AFTER JULY 1, 2022, THE DEPARTMENT MAY NOT ADMINISTRATIVELY CONTINUE A DISCHARGE PERMIT FOR A PERIOD LONGER THAN 3 YEARS.~~

~~(2) ON OR AFTER JANUARY 1, 2027, THE DEPARTMENT MAY NOT ADMINISTRATIVELY CONTINUE A DISCHARGE PERMIT FOR A PERIOD LONGER THAN 1 YEAR.~~

~~(D)~~ Administrative review proceedings under this section shall be completed at least 60 days before the expiration date of the permit.

9-328.1.

(A) (1) IN THIS SECTION, “ADMINISTRATIVELY CONTINUED PERMIT” MEANS A DISCHARGE PERMIT THAT HAS BEEN ADMINISTRATIVELY CONTINUED UNDER DEPARTMENT REGULATIONS IN ACCORDANCE WITH 40 C.F.R. § 122.6(D).

(2) “ADMINISTRATIVELY CONTINUED PERMIT” DOES NOT INCLUDE A DISCHARGE PERMIT THAT HAS BEEN CONTINUED BEYOND ITS ORIGINAL EXPIRATION DATE DUE TO AN ENFORCEMENT ACTION TAKEN DURING THE PERMIT TERM.

(B) (1) TO ENSURE COMPLIANCE WITH THE TERMS OF A DISCHARGE PERMIT, ~~AT LEAST ONCE PER MONTH~~ THE DEPARTMENT SHALL ~~INSPECT THE OPERATIONS OF:~~ CONDUCT INSPECTIONS IN ACCORDANCE WITH THIS SUBSECTION.

~~(1) EACH PERMIT HOLDER OPERATING UNDER AN ADMINISTRATIVELY CONTINUED PERMIT; AND~~

~~(2) EACH PERMIT HOLDER THAT THE DEPARTMENT HAS DETERMINED TO BE IN SIGNIFICANT NONCOMPLIANCE OF AN APPLICABLE STATE OR FEDERAL WATER QUALITY STANDARD, EFFLUENT LIMITATION, OR OTHER APPLICABLE REQUIREMENT OF THE DEPARTMENT OR THE U.S. ENVIRONMENTAL PROTECTION AGENCY.~~

(2) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, AND SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, BEGINNING JULY 1, 2022, AT LEAST ONCE PER MONTH THE DEPARTMENT SHALL INSPECT EACH FACILITY OR SITE THAT THE DEPARTMENT OR THE U.S. ENVIRONMENTAL PROTECTION AGENCY HAS DETERMINED TO BE IN SIGNIFICANT NONCOMPLIANCE WITH AN APPLICABLE STATE OR FEDERAL WATER QUALITY STANDARD, EFFLUENT LIMITATION, OR OTHER APPLICABLE REQUIREMENT OF THE DEPARTMENT OR THE U.S. ENVIRONMENTAL PROTECTION AGENCY.

(II) IF A FACILITY OR SITE IS DETERMINED TO BE IN SIGNIFICANT NONCOMPLIANCE SOLELY DUE TO THE FAILURE TO REPORT ANY REQUIRED INFORMATION TO THE DEPARTMENT OR THE U.S. ENVIRONMENTAL PROTECTION AGENCY, THE DEPARTMENT MAY:

1. DELAY INSPECTIONS UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH BY 1 MONTH WHILE THE DEPARTMENT REVIEWS THE COMPLIANCE STATUS OF THE FACILITY OR SITE THROUGH CORRESPONDENCE WITH THE OWNER OR OPERATOR OF THE FACILITY OR SITE OR OTHER APPROPRIATE METHODS; AND

2. BEGIN MONTHLY INSPECTIONS IN ACCORDANCE WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH IF, AFTER THE PERIOD SPECIFIED IN ITEM 1 OF THIS SUBPARAGRAPH, THE OWNER OR OPERATOR OF THE FACILITY OR SITE HAS NOT PROVIDED THE INFORMATION NECESSARY FOR THE DEPARTMENT TO DETERMINE THE COMPLIANCE STATUS OF THE FACILITY OR SITE.

(3) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH AND SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, BEGINNING JULY 1, 2023, AT LEAST ONCE EVERY 90 DAYS, THE DEPARTMENT SHALL INSPECT EACH FACILITY OR SITE THAT HAS BEEN OPERATING UNDER AN ADMINISTRATIVELY CONTINUED PERMIT FOR LONGER THAN 365 DAYS.

(II) THE DEPARTMENT IS NOT REQUIRED TO INSPECT THE OPERATIONS OF A FACILITY OR SITE OPERATING A GENERAL PERMIT THAT HAS

BEEN ADMINISTRATIVELY CONTINUED, UNLESS THE DEPARTMENT OR THE U.S. ENVIRONMENTAL PROTECTION AGENCY HAS DETERMINED THE FACILITY OR SITE TO BE IN SIGNIFICANT NONCOMPLIANCE AS SPECIFIED UNDER PARAGRAPH (2) OF THIS SUBSECTION.

(4) INSPECTIONS REQUIRED UNDER THIS SUBSECTION MAY BE CONDUCTED BY MEANS OTHER THAN AN IN-PERSON INSPECTION OF THE FACILITY OR SITE IF THE PRESENCE OF THE INSPECTOR WOULD RESULT IN AN UNREASONABLE RISK TO HEALTH, SAFETY, OR WELFARE.

(c) (1) THIS SUBSECTION APPLIES TO A PERMIT HOLDER THAT:

~~(I) IS~~ IS DETERMINED BY THE DEPARTMENT OR THE U.S. ENVIRONMENTAL PROTECTION AGENCY TO BE IN SIGNIFICANT NONCOMPLIANCE OF AN APPLICABLE STATE OR FEDERAL WATER QUALITY STANDARD, EFFLUENT LIMITATION, OR OTHER APPLICABLE REQUIREMENT OF THE DEPARTMENT OR THE U.S. ENVIRONMENTAL PROTECTION AGENCY TWO OR MORE TIMES IN A YEAR;

~~(II) REPORTS EXCEEDING EFFLUENT LIMITATIONS FOR TWO OR MORE PARAMETERS REQUIRED TO BE MONITORED UNDER THE DISCHARGE PERMIT;~~
~~OR~~

~~(III) REPORTS EXCEEDING, BY 200% OR MORE, EFFLUENT LIMITATIONS FOR ANY SINGLE PARAMETER REQUIRED TO BE MONITORED UNDER THE DISCHARGE PERMIT.~~

(2) THE DEPARTMENT SHALL REQUIRE A PERMIT HOLDER SPECIFIED UNDER PARAGRAPH (1) OF THIS SUBSECTION TO SUBMIT A WRITTEN REPORT TO THE DEPARTMENT DETAILING:

(i) HOW VIOLATIONS REPORTED BY THE PERMIT HOLDER OR NOTED BY THE DEPARTMENT WILL BE ADDRESSED; AND

(ii) THE TIMELINE FOR ADDRESSING THE VIOLATIONS.

~~(3) THE DEPARTMENT SHALL NOTIFY THE SENATOR AND DELEGATE REPRESENTING THE JURISDICTION IN WHICH A PERMIT HOLDER IS IN SIGNIFICANT NONCOMPLIANCE UNDER PARAGRAPH (1) OF THIS SUBSECTION ABOUT THE NONCOMPLIANCE BY E-MAIL AND CERTIFIED MAIL.~~

(3) (1) THE DEPARTMENT SHALL MAINTAIN ON ITS WEBSITE A LIST OF PERMIT HOLDERS DETERMINED TO BE IN SIGNIFICANT NONCOMPLIANCE UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(II) THE LIST SHALL BE SORTED BY COUNTY.

(III) THE DEPARTMENT SHALL PROVIDE EACH SENATOR AND DELEGATE A LINK TO THE LIST BY MONTHLY E-MAIL.

(D) (1) IF A PERMIT HOLDER REMAINS IN SIGNIFICANT NONCOMPLIANCE FOR THE SAME UNDERLYING CONDITION AFTER 2 CONSECUTIVE MONTHS OF INSPECTIONS CONDUCTED UNDER SUBSECTION ~~(B)(2)~~ (B) OF THIS SECTION, THE PERMIT HOLDER SHALL BE SUBJECT TO AN ADMINISTRATIVE PENALTY OF:

(I) FOR A PERMIT HOLDER ~~CLASSIFIED BY THE DEPARTMENT AS A MINOR FACILITY~~ FOR A FACILITY THAT DISCHARGES LESS THAN 500,000 GALLONS PER DAY:

1. \$250 WHEN THE CONDITION IS OBSERVED ON THE THIRD CONSECUTIVE INSPECTION;

2. \$500 WHEN THE CONDITION IS OBSERVED ON THE FOURTH CONSECUTIVE INSPECTION; AND

3. \$2,500 WHEN THE CONDITION IS OBSERVED ON THE FIFTH CONSECUTIVE INSPECTION OR ANY SUBSEQUENT CONSECUTIVE INSPECTION; AND

(II) FOR A PERMIT HOLDER ~~CLASSIFIED BY THE DEPARTMENT AS A MAJOR FACILITY~~ FOR A FACILITY THAT DISCHARGES 500,000 GALLONS OR MORE PER DAY:

1. \$1,000 WHEN THE CONDITION IS OBSERVED ON THE THIRD CONSECUTIVE INSPECTION;

2. \$5,000 WHEN THE CONDITION IS OBSERVED ON THE FOURTH CONSECUTIVE INSPECTION; AND

3. \$10,000 WHEN THE CONDITION IS OBSERVED ON THE FIFTH CONSECUTIVE INSPECTION OR ANY SUBSEQUENT CONSECUTIVE INSPECTION.

(2) THE PENALTIES PROVIDED UNDER THIS SUBSECTION ARE IN ADDITION TO ANY OTHER CIVIL OR CRIMINAL PENALTIES PROVIDED UNDER THIS SUBTITLE.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) In this section, “Department” means the Department of the Environment.

~~(b) Subject to subsection (e) of this section, this Act shall be interpreted to apply only prospectively to discharge permits issued, renewed, or administratively continued on or after the effective date of this Act.~~

~~(c) On or before December 31, 2026, the Department shall clear the backlog of administratively continued discharge permits existing on the effective date of this Act.~~

~~(d)~~ (c) (1) On or before ~~December 31, 2023~~ October 1, 2022, the Department shall report to the Governor and, in accordance with § 2-1257 of the State Government Article, the General Assembly on the number of additional employees necessary to:

(i) clear the backlog of administratively continued discharge permits, as required by subsection ~~(e)~~ (b) of this section; and

(ii) process discharge permit renewals in a timely manner, ~~as required by § 9-328(e) of the Environment Article, as enacted by Section 1 of this Act.~~

(2) The Department shall request:

(i) on or before December 31, ~~2024~~ 2022, Position Identification Numbers (PINs) for at least half of the additional employees identified in the report required under paragraph (1) of this subsection; and

(ii) on or before December 31, ~~2025~~ 2023, PINs for the full number of additional employees identified in the report required under paragraph (1) of this subsection.

~~(e)~~ (d) On or before December 31, 2025, and each year thereafter, the Department shall report to the Governor and, in accordance with § 2-1257 of the State Government Article, the General Assembly on ~~the progress toward meeting the requirements of this section:~~

(1) the number of facilities or sites subject to discharge permits that were administratively continued or expired at the end of the prior fiscal year, by census tract; and

(2) the number of additional positions for the subsequent fiscal year that the Department needs to ensure that any discharge permits that have been continued or expired for more than 365 days are renewed in a timely manner.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2022.

Enacted under Article II, § 17(b) of the Maryland Constitution, April 9, 2022.