

HOUSE BILL 649

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2lr1564
CF SB 492

By: **Delegates Love, Boyce, Guyton, Lehman, Ruth, Stein, and Stewart**

Introduced and read first time: January 31, 2022

Assigned to: Environment and Transportation

Committee Report: Favorable with amendments

House action: Adopted with floor amendments

Read second time: March 13, 2022

CHAPTER _____

1 AN ACT concerning

2 **Environment – Discharge Permits – Inspections and Administrative**
3 **Continuations**

4 FOR the purpose of ~~limiting the period of time for which the Department of the~~
5 ~~Environment may administratively continue certain water pollution discharge~~
6 ~~permits~~; establishing inspection and reporting requirements for certain permit
7 holders; requiring the Department to notify certain Senators and Delegates about
8 the noncompliance of a certain permit holder; establishing administrative penalties
9 for certain permit holders determined to be in significant noncompliance of certain
10 State or federal water quality standards, effluent limitations, or other requirements;
11 requiring the Department to clear a certain backlog of administratively continued
12 permits on or before a certain date; and generally relating to water pollution
13 discharge permits.

14 BY repealing and reenacting, ~~with~~ without amendments,
15 Article – Environment
16 Section 9–328
17 Annotated Code of Maryland
18 (2014 Replacement Volume and 2021 Supplement)

19 BY adding to
20 Article – Environment
21 Section 9–328.1
22 Annotated Code of Maryland
23 (2014 Replacement Volume and 2021 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



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

3 **Article – Environment**

4 9–328.

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

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

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

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

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

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

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

17 (ii) Any applicable requirement of this subtitle; and

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

20 (c) ~~(1) ON OR AFTER JULY 1, 2022, THE DEPARTMENT MAY NOT~~
21 ~~ADMINISTRATIVELY CONTINUE A DISCHARGE PERMIT FOR A PERIOD LONGER THAN~~
22 ~~3 YEARS.~~

23 ~~(2) ON OR AFTER JANUARY 1, 2027, THE DEPARTMENT MAY NOT~~
24 ~~ADMINISTRATIVELY CONTINUE A DISCHARGE PERMIT FOR A PERIOD LONGER THAN~~
25 ~~1 YEAR.~~

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

28 **9–328.1.**

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

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

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

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

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

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

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

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

35 2. BEGIN MONTHLY INSPECTIONS IN ACCORDANCE
36 WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH IF, AFTER THE PERIOD SPECIFIED IN

1 ITEM 1 OF THIS SUBPARAGRAPH, THE OWNER OR OPERATOR OF THE FACILITY OR
2 SITE HAS NOT PROVIDED THE INFORMATION NECESSARY FOR THE DEPARTMENT TO
3 DETERMINE THE COMPLIANCE STATUS OF THE FACILITY OR SITE.

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

9 (II) THE DEPARTMENT IS NOT REQUIRED TO INSPECT THE
10 OPERATIONS OF A FACILITY OR SITE OPERATING A GENERAL PERMIT THAT HAS
11 BEEN ADMINISTRATIVELY CONTINUED, UNLESS THE DEPARTMENT OR THE U.S.
12 ENVIRONMENTAL PROTECTION AGENCY HAS DETERMINED THE FACILITY OR SITE
13 TO BE IN SIGNIFICANT NONCOMPLIANCE AS SPECIFIED UNDER PARAGRAPH (2) OF
14 THIS SUBSECTION.

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

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

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

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

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

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

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

1 (II) THE TIMELINE FOR ADDRESSING THE VIOLATIONS.

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

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

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

13 1. \$250 WHEN THE CONDITION IS OBSERVED ON THE
14 THIRD CONSECUTIVE INSPECTION;

15 2. \$500 WHEN THE CONDITION IS OBSERVED ON THE
16 FOURTH CONSECUTIVE INSPECTION; AND

17 3. \$2,500 WHEN THE CONDITION IS OBSERVED ON THE
18 FIFTH CONSECUTIVE INSPECTION OR ANY SUBSEQUENT CONSECUTIVE INSPECTION;
19 AND

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

23 1. \$1,000 WHEN THE CONDITION IS OBSERVED ON THE
24 THIRD CONSECUTIVE INSPECTION;

25 2. \$5,000 WHEN THE CONDITION IS OBSERVED ON THE
26 FOURTH CONSECUTIVE INSPECTION; AND

27 3. \$10,000 WHEN THE CONDITION IS OBSERVED ON THE
28 FIFTH CONSECUTIVE INSPECTION OR ANY SUBSEQUENT CONSECUTIVE INSPECTION.

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

SECTION 2. AND BE IT FURTHER ENACTED, That:

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

~~(b) Subject to subsection (c) 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 ~~(c)~~ (b) of this section; and

(ii) process discharge permit renewals in a timely manner, ~~as required by § 9–328(c) 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.

~~(d)~~ (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.