

Department of Legislative Services

Maryland General Assembly

2022 Session

FISCAL AND POLICY NOTE

Enrolled - Revised

House Bill 649

(Delegate Love, *et al.*)

Environment and Transportation

Education, Health, and Environmental Affairs

**Environment - Discharge Permits - Inspections and Administrative
Continuations**

This bill requires the Maryland Department of the Environment (MDE) to clear the backlog of administratively continued permits by December 31, 2026, as specified. The bill also establishes (1) inspection requirements for MDE with respect to certain facilities and sites operating under administratively continued permits and those in significant noncompliance, as specified, and (2) a reporting requirement and administrative penalty provisions for permittees operating in violation of specified laws and/or permit requirements. The bill also requires MDE to (1) assess the number of additional employees needed to clear the backlog of administratively continued permits and process discharge permit renewals in a timely manner; (2) report on the findings of the assessment; (3) request position identification numbers (PINs) for necessary staff, as specified; and (4) report related information to the Governor and the General Assembly by December 31, 2025, and annually thereafter, as specified. **The bill takes effect July 1, 2022.**

Fiscal Summary

State Effect: General fund expenditures increase significantly (likely by millions of dollars annually) beginning in FY 2023. Special fund revenues increase beginning as early as FY 2023 due to the bill's administrative penalty provisions. The bill may also affect State agencies as permit holders, as discussed below.

Local Effect: The bill may affect local governments as permit holders, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “Administratively continued permit” means a discharge permit that has been administratively continued pursuant to MDE regulations in accordance with 40 C.F.R. § 122.6, which governs the continuation of expiring permits under the National Pollutant Discharge Elimination System (NPDES). 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.

Reporting, Staffing, and Clearing Backlog of Administratively Continued Discharge Permits

By October 1, 2022, MDE must report to the Governor and the General Assembly on the number of additional employees necessary to (1) clear the backlog of administratively continued discharged permits and (2) process discharge permit renewals in a timely manner. By December 31, 2022, MDE must request PINs for at least half of the additional employees identified in that report, and by December 31, 2023, MDE must request PINs for the full number of additional employees identified in the report.

By December 31, 2026, MDE must clear the backlog of administratively continued discharge permits.

By December 31, 2025, and annually thereafter, MDE must report to the Governor and the General Assembly on (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 necessary for the subsequent fiscal year that MDE needs to ensure that any discharge permits that have been continued or expired for more than 365 days are renewed in a timely manner.

Inspection and Penalty Provisions

To ensure compliance with the terms of a discharge permit, MDE must conduct inspections in accordance with the bill. Inspections do not need to be in person if the presence of an inspector would result in an unreasonable risk to health, safety, or welfare.

Beginning July 1, 2022, at least once per month, MDE must inspect each facility or site that is determined by MDE or the U.S. Environmental Protection Agency (EPA) to be in significant noncompliance with an applicable State or federal water quality standard, effluent limitation, or other applicable requirement of MDE or EPA. However, if a facility or site is determined to be in significant noncompliance solely due to a failure to report required information to MDE or EPA, MDE may (1) delay the required inspection by one month while MDE reviews the compliance status of the facility or site, as specified,

and (2) begin monthly inspections if, after one month, the owner or operator of the facility or site has not provided the information necessary for MDE to determine the compliance status of the facility or site.

Beginning July 1, 2023, at least once every 90 days, MDE must inspect each facility or site that has been operating under an administratively continued permit for more than 365 days. However, MDE is not required to inspect a facility or site operating a general permit that has been administratively continued unless MDE or EPA has determined the facility or site to be in significant noncompliance.

If a permittee remains in significant noncompliance for the same underlying condition after two consecutive months of inspections, the permit holder is subject to an administrative penalty that ranges from \$250 to \$10,000 depending on (1) the daily discharge volume of the facility and (2) the number of consecutive inspections during which the condition is observed. These administrative penalties are in addition to any other civil or criminal penalties under Title 9, Subtitle 3 of the Environment Article, which governs Water Pollution Control. Pursuant to current law, any administrative penalty assessed pursuant to the bill's provisions is paid into MDE's Clean Water Fund.

Mandatory Report for Certain Permittees and Related List and Notifications

Additionally, the bill establishes a new reporting requirement for a permittee that MDE or EPA determines to be in significant noncompliance of applicable State or federal requirements at least two times in a year. For any such permittee, MDE must require the permittee to submit a written report to MDE that details how the violations will be addressed and the timeline for addressing the violations. In addition, MDE must (1) maintain a list on its website of permit holders determined to be in significant noncompliance, sorted by county, and (2) provide each Senator and Delegate a link to the list by monthly email.

Current Law:

Federal Clean Water Act and the Administrative Continuations of Discharge Permits

The federal Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States. NPDES, a component of CWA, is a permit program that addresses water pollution by regulating point sources that discharge pollutants to U.S. waters. In Maryland, EPA delegates authority to issue NPDES permits to MDE.

Federal regulations (40 C.F.R. § 122.6(d)) establish the terms for continuing an expired discharger permit and specify that when an EPA-issued permit expires, the conditions of

the expired permit continue in force until the effective date of a permit if (1) the permittee has submitted a complete and timely application for a new permit and (2) the regional administrator, through no fault of the permittee, does not issue a new permit before expiration of the prior permit, as specified. However, an EPA-issued permit only continues in force beyond its expiration date in a state where the state is the permitting authority (as in Maryland's case) *if* state law allows for the continuation. Maryland regulations (COMAR 26.08.04.06) establish the terms and approvals for a discharge permit and allow for the administrative continuation of a discharge permit if a timely and complete reapplication has been submitted and MDE (through no fault of the permittee) is unable to issue a new permit, as specified. Permits may not be issued for a term longer than five years.

State Permitting for Wastewater Discharges

MDE's Water and Science Administration (WSA) and Land and Materials Administration (LMA) issue discharge permits to protect Maryland's water resources by controlling industrial and municipal wastewater discharges. Surface water discharges are regulated through combined State and federal permits under NPDES. Groundwater discharges are regulated through State-issued groundwater discharge permits. "Discharge permit" is defined in statute as a permit issued by MDE for the discharge of any pollutant or combination of pollutants into the waters of the State. Statute specifies that the issuance of a discharge permit is contingent on the authorization from the permittee to MDE to allow the right of entry to the permit site at any reasonable time to inspect and investigate any violation or potential violation of a permit condition.

Applicability: A person must generally hold an MDE discharge permit before constructing, installing, modifying, extending, altering, or operating a system, facility, outlet, or establishment if its operation could cause or increase the discharge of pollutants into the waters of the State. This permitting requirement applies to (1) an industrial, commercial, or recreation facility or disposal system; (2) a State-owned treatment facility; or (3) any other outlet or establishment. Further, a person must hold a concentrated animal feeding operation (CAFO) discharge permit before beginning construction on any part of a new CAFO. MDE has broad authority to require a discharge permit for any other activity by rule or regulation. Some examples of affected permits include animal feeding operations, mining sites, oil storage and handling facilities, and rubble landfills.

NPDES also regulates stormwater discharges from Municipal Separate Storm Sewer Systems (MS4s). There are 10 jurisdictions in Maryland that hold NPDES Phase I MS4 permits (Anne Arundel, Baltimore, Carroll, Charles, Frederick, Harford, Howard, Montgomery, and Prince George's counties and Baltimore City). Additionally, the State Highway Administration holds a Phase I MS4 permit.

Enforcement and Penalty Provisions: MDE has a broad range of actions it is authorized to use to enforce water pollution laws. Among other things, MDE is authorized to issue an injunction against any person who violates any provision of Title 9, Subtitle 3 of the Environment Article, which addresses water pollution control measures in the State. Additionally, civil and criminal penalties apply to a person who violates Title 9, Subtitle 3 or any rule, regulation, order, or permit adopted pursuant to Subtitle 3. Penalty revenue collected under Title 9, Subtitle 3 of the Environment Article is paid into the Clean Water Fund.

State/Local/Small Business Effect:

Maryland Department of the Environment Expenditures

MDE estimates that general fund expenditures increase by approximately \$9.0 million in fiscal 2023 to hire nearly 100 staff (regulatory and compliance engineers, geologists, environmental compliance specialists, natural resource planners, environmental program managers, administrative specialists, and Assistant Attorneys General) to conduct a substantial number of monthly inspections and enforcement actions, conduct the staffing needs assessment, process administratively continued permits, and purchase vehicles. Future year costs as estimated by MDE range from \$6.6 million in fiscal 2024 to \$7.3 million in fiscal 2027. MDE notes that alternatively, if it had additional time to solicit, select, and contract with an environmental firm, inspections could be handled contractually. However, MDE does not believe there is sufficient time to hire contractual assistance given the bill's July 1, 2022 effective date. The Department of Legislative Services is unable to independently verify MDE's estimate at this time but concurs that (1) the bill establishes significant additional work for the department and (2) MDE needs to hire a significant number of staff to implement the bill. Accordingly, while a precise estimate is not possible, it is anticipated that general fund expenditures increase by millions of dollars annually beginning in fiscal 2023.

Penalty Provisions

A permit holder may be subject to an administrative penalty under certain circumstances. Penalty revenue generated as a result of the bill is deposited into MDE's Clean Water Fund. Thus, special fund revenues for MDE increase beginning as early as fiscal 2023. However, the magnitude of any such increase cannot be reliably predicted at this time.

The application of existing civil and criminal penalty provisions to violations of the bill is not anticipated to materially affect State or local finances.

Effect on Permit Holders

The bill's impact on any entity that holds a discharge permit (which could include State agencies, local governments, and a multitude of small businesses) cannot be accurately assessed at this time but is anticipated to be primarily operational. However, expenditures for permittees may increase to (1) develop the required report describing how violations will be corrected and (2) conduct corrective actions to avoid escalating administrative penalties under the bill.

MDE notes that under the bill, processing administratively continued permits must be prioritized, which could increase the amount of time it takes for a permit applicant to obtain initial coverage under a newly sought discharge permit. Permitting delays could jeopardize funding for a planned project, increase overall project costs, and generally make project planning more difficult. On the other hand, on a longer-term basis, permitted entities may ultimately benefit from additional staff within MDE's permitting units.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 492 (Senator Pinsky, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Caroline, Howard, and Prince George's County; Maryland Association of Counties; Maryland Environmental Service; City of Havre de Grace; Maryland Municipal League; Public School Construction Program; Department of Budget and Management; Maryland Department of the Environment; Department of General Services; Department of Public Safety and Correctional Services; Maryland Department of Transportation; Department of Legislative Services

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Analysis by: Kathleen P. Kennedy

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