

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 956

(Senator Hester)

Education, Energy, and the Environment

Environment and Transportation

Environment - Water Pollution Control - Protecting State Waters From PFAS
Pollution (Protecting State Waters From PFAS Pollution Act)

This bill requires the Maryland Department of the Environment (MDE), in collaboration with publicly owned treatment works (POTWs) and specified “significant industrial users” in the State, to (1) by October 1, 2024, identify the significant industrial users that currently and intentionally use “PFAS chemicals”; (2) by June 1, 2025, develop PFAS action levels for addressing PFAS contamination from industrial discharge for pretreatment permits; and (3) by September 1, 2025, develop specified mitigation plans for addressing PFAS contamination from industrial discharge for pretreatment permits. In addition, MDE must (1) by January 1, 2025, develop PFAS monitoring and testing protocols for significant industrial users in accordance with guidance from the U.S. Environmental Protection Agency (EPA) and (2) by December 1, 2025, update the department’s PFAS Action Plan with an evaluation of PFAS disposal methods and the progress made on the bill’s requirements. The bill also establishes measurement, reporting, implementation, and PFAS storage and disposal requirements for specified significant industrial users. Federal, State, and local governments are excluded from the bill’s definition of “significant industrial users.” **The bill takes effect July 1, 2024.**

Fiscal Summary

State Effect: MDE can implement the bill with existing budgeted resources. The application of existing penalty provisions to violations of the bill is not anticipated to materially affect State finances.

Local Effect: The bill is not anticipated to materially affect local finances. Affected locally owned POTWs can likely collaborate with MDE as necessary with existing resources.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Definitions

The bill establishes several definitions applicable to new Part VII of Title 9 of the Environment Article (Protecting State Waters from PFAS Pollution). Several of the most pertinent definitions are listed below.

“Significant industrial user” means an industrial user that:

- is subject to categorical pretreatment standards under [40 C.F.R. Part 403.6](#);
- discharges an average of 25,000 gallons per day or more of processed wastewater to a POTW, not including sanitary, noncontact cooling, and boiler blowdown wastewater;
- contributes processed wastewater that makes up 5% or more of the average dry-weather hydraulic or organic capacity of the POTW; *or*
- is designated as a significant industrial user by the POTW on the basis that the industrial user has a reasonable potential for adversely affecting the wastewater treatment plant’s operations and sewer system or violated a pretreatment standard or requirement.

“Significant industrial user” does not include the federal, State, and local governments.

“Pretreatment permit” means a document issued by MDE or MDE’s designee that authorizes a significant industrial user to introduce industrial wastes into a POTW in compliance with the pretreatment requirements under COMAR 26.08.01.01B(69).

“PFAS chemicals” means a class of fluorinated organic chemicals that contain at least one fully fluorinated carbon atom, including perfluoroalkyl and polyfluoroalkyl substances.

Applicability

The bill applies to a significant industrial user (as defined by the bill) that has a pretreatment permit and is currently and intentionally using PFAS.

Mitigation Plans

The mitigation plans developed pursuant to the bill must include strategies and options for reducing the presence of PFAS in industrial discharge, including (1) substituting or eliminating products containing PFAS; (2) taking precautions to avoid accidental discharges; (3) decontaminating or replacing equipment contaminated with PFAS; or (4) using any other method MDE determines is necessary for the reduction or elimination of PFAS in water.

New Responsibilities for Affected Significant Industrial Users

A significant industrial user must (1) by September 1, 2025, measure the levels of PFAS in its industrial wastewater, using methods approved by MDE, and report the levels of PFAS in the industrial wastewater in a manner approved by MDE and (2) by July 1, 2026, implement measures to reduce PFAS from water discharged to a POTW.

A significant industrial user must safely store PFAS that were captured after reducing PFAS from water in accordance with the bill's requirements. A significant industrial user may dispose of stored PFAS using safe disposal systems or technologies approved by MDE.

A significant industrial user must provide documentation of PFAS storage or reuse on request to any State or local government entity and report the storage or disposal of PFAS chemicals under 40 C.F.R. Part 372 (Toxic Chemical Release Reporting).

Current Law:

Federal Clean Water Act and the National Pollutant Discharge Elimination System

The federal Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States. The National Pollutant Discharge Elimination System (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. The national pretreatment program is a component of NPDES; under the program, EPA and authorized NPDES state pretreatment programs approve local municipalities to perform permitting, administrative, and enforcement tasks for discharges into the municipalities' POTW. The national pretreatment program is designed to protect POTW infrastructure and reduce conventional and toxic pollutant levels discharged by industries and other nondomestic wastewater sources into municipal sewer systems and the environment.

According to Cornell Law School's Legal Information Institute, POTW means a treatment works, as that term is defined by section 112(5) of CWA, which is owned by a municipality, a state, an intermunicipal or interstate agency, or any department, agency, or instrumentality of the federal government. This definition includes any intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment. The wastewater treated by these facilities is generated by industrial, commercial, and domestic sources.

Federal regulations (40 C.F.R. § 122.41) specify conditions applicable to all NPDES permits, which must be incorporated into the permit, either expressly or by reference. Further, the permittee must comply with all permit conditions; any noncompliance constitutes a violation of CWA.

State Permitting for Wastewater Discharges

MDE's Water and Science Administration and Land and Materials Administration 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.

Statute explicitly authorizes MDE, by rule, regulation, order, permit, or otherwise, to require the owner or operator of any source of a discharge of pollutants or of any source that is an industrial user of a POTW, to (1) keep records; (2) make reports; (3) install, calibrate, use, and maintain monitoring equipment or methods, including where appropriate, biological monitoring materials; (4) to sample discharges in accordance with the methods, at the locations, at the intervals, and in the manner MDE requires; and (5) to provide MDE with any information MDE reasonably requires regarding the discharge of pollutants into waters of the State or the introduction of pollutants into POTW.

"Industrial user" means (1) a person who is engaged in manufacturing, fabricating, or assembling goods or (2) a member of any class of significant producers of pollutants identified by rules or regulations adopted by the Secretary of the Environment or EPA. Federal, State, and local governments are not excluded from the definition of "industrial user" under State water pollution control laws. Whether a user is a significant industrial user depends on the type of wastewater and the volume of wastewater being discharged by a user.

Under State regulations (COMAR 26.08.08), certain POTWs must develop and implement a pretreatment program in accordance with pretreatment requirements. New and existing industrial users that discharge industrial waste to POTWs are regulated by the State and POTW owners under authority delegated by the State. A person is prohibited from

introducing industrial wastes into a POTW unless in compliance with pretreatment requirements.

Various enforcement provisions apply to violations of Title 9, Subtitle 3 of the Environment Article (Water Pollution Control). In addition to being subject to an injunctive action, a violator is subject to a maximum penalty of \$10,000 to be collected in a civil action brought by MDE; each day a violation occurs is a separate violation. MDE may also impose a maximum administrative penalty of \$10,000 per violation and \$100,000 total; each day a violation occurs is a separate violation, and administrative penalties must be assessed with consideration given to specified factors. Criminal (misdemeanor) penalties may also be imposed, with a maximum fine of \$25,000 and/or imprisonment for up to one year for a first offense and a maximum fine of \$50,000 and/or imprisonment for up to two years for a subsequent offense. Each day on which a violation occurs is a separate violation. Additional criminal penalties apply for knowingly making false statements in required documents and for other specified actions.

Maryland's PFAS Action Plan

The George “Walter” Taylor Act, Chapters 138 and 139 of 2022, required MDE and the Maryland Department of Health to prepare a PFAS Action Plan that identifies strategies, actions, and funding alternatives to meet several specified objectives. MDE submitted the required [PFAS Action Plan](#) in December 2023. Among other things, the plan addresses minimizing future releases of PFAS chemicals, including from municipal wastewater treatment plants, landfills, and industrial facilities.

Relevant Recent Federal Action

On December 5, 2022, EPA issued a [memo](#) addressing PFAS discharges in NPDES permits through the pretreatment and monitoring programs. The memo also provides guidance for addressing sewage sludge PFAS contamination. The memo recommends that states use the most current sampling and analysis methods in state NPDES programs to identify known or suspected sources of PFAS and to take actions using pretreatment and permitting authorities, such as imposing technology-based limits on sources of PFAS discharges.

Small Business Effect: Any small businesses that are significant industrial users are required to meet the bill’s requirements for PFAS measurement, reduction, and storage/disposal. Among other things, expenditures may include testing and purchasing additional equipment for treatment and storage. MDE notes, however, that most significant industrial users in the State are not considered small businesses.

For water quality testing laboratories that are small businesses, the bill could potentially result in a meaningful increase in business.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 1153 (Delegate Love, *et al.*) - Environment and Transportation.

Information Source(s): Maryland Department of the Environment; Maryland Department of Agriculture; Judiciary (Administrative Office of the Courts); Maryland Environmental Service; Northeast Maryland Waste Disposal Authority; Harford County; cities of College Park and Frostburg; Maryland Association of Counties; Maryland Municipal League; Washington Suburban Sanitary Commission; U.S. Environmental Protection Agency; Cornell Law Legal Information Institute; Department of Legislative Services

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