



Maryland

Department of the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

Ben Grumbles, Secretary
Horacio Tablada, Deputy Secretary

March 11, 2020

The Honorable Paul G. Pinsky, Chair
Education, Health, and Environmental Affairs Committee
2 West, Miller Senate Office Building
Annapolis, MD 21401

Re: Senate Bill 841 – Water Pollution Control - Discharge Permits - Industrial Poultry Operations

Dear Chair Pinsky and Members of the Committee:

The Maryland Department of the Environment (MDE) has reviewed Senate Bill 841 entitled *Water Pollution Control - Discharge Permits - Industrial Poultry Operations*. We would like to express our concerns and provide additional information regarding this proposed legislation.

Senate Bill 841 would define an industrial poultry operation to mean an animal feeding operation (AFO) that produces 300,000 or more broiler chickens per year, including poultry operations located within 3 miles of each other and under common ownership or control. Beginning October 1, 2020, the proposed legislation would prohibit MDE from issuing a discharge permit to a person for a new industrial poultry operation, or for extending or expanding an industrial poultry operation that was in operation on or before September 30, 2020. The types of discharge permits covered under the prohibition include a General Discharge Permit for Stormwater Associated with Construction Activity (Construction Activity Permit), a General Discharge Permit for Animal Feeding Operations (AFO Permit), or an individual National Pollutant Discharge Elimination System Permit (individual NPDES permit).

MDE's AFO Program issues an AFO Permit to regulate the discharges of animal waste and process wastewater from AFOs to waters of the State. Construction of a new AFO, or an expanding existing AFO, which will ultimately lead to the disturbance of one or more acres of land is required to obtain coverage under a Construction Activity Permit. MDE's Wastewater Permit Program issues a Construction Activity Permit to ensure that sediment and stormwater discharges from grading and construction activities are minimized, and that the construction activities satisfy State and federal water quality standards. Alternatively, at its discretion, MDE may also issue an individual NPDES permit to industrial facilities, such as AFOs, that discharge wastewater or stormwater to surface waters of the State in lieu of requiring the facility to be registered under the corresponding Construction Activity Permit or AFO Permit.

As written, the proposed legislation's meaning of "extending or expanding" is unclear. If "extending" is meant to provide another qualifier relating to the size of a poultry AFO, like "expanding," then MDE would be able to renew the AFO Permit coverage of existing poultry AFOs that meet the definition of an industrial poultry operation, so long as these operations do not seek to increase their broiler chicken production. However, if "extending" means extending the term of permit coverage of an existing poultry AFO, including under future AFO permits, then every poultry AFO that meets the definition of industrial poultry operation would only be able to operate for the remainder of its current permit term, and MDE would be prohibited from renewing its permit coverage. MDE expects to issue a new AFO Permit this year.

For the purpose of determining whether an AFO is a CAFO or MAFO, in addition to other regulatory considerations, the operation is classified by size category based upon the number of animals housed on-site.

For a poultry AFO, the number of chickens housed on-site per flock is used to categorize the operation's size, not the number of chickens produced per year. There are typically multiple flocks per year, but the number of flocks per year varies across operations and from year to year. MDE expects the majority of new and existing poultry AFOs would be considered industrial poultry operations under the proposed legislation.

Senate Bill 841 would require MDE to amend the application requirements for discharge permits to add requirements that will provide MDE with the relevant information needed to enforce the proposed industrial poultry operation restrictions. When a person submits a Notice of Intent (NOI) and required plans to apply for initial, renewed, or modified AFO Permit coverage for a poultry AFO, the person provides a 5-year *projection* of the type of chickens that will be produced at the operation to account for poultry litter generation and management, and the number of chickens to be produced *per flock* and *not per year*. Although an NOI and required plans for an operation may indicate that the operator plans to grow broiler chickens, a poultry AFO may grow different types of chickens (like roasters) within a permit cycle or year. Therefore, it would be difficult for MDE to determine when processing an application for AFO Permit coverage whether the operation meets the definition of an industrial poultry operation.

Existing federal and State regulatory requirements for the Construction Activity Permit have no relationship to the number of broiler chickens that the final constructed facilities may produce or house. The existing required discharge permit conditions are structured to be fully protective of the environment under both State and federal rules without restricting the type of activity that will occur once construction has ceased. Once operational, the facility is covered by the AFO permit, which properly considers and implements appropriate environmental restrictions based upon the size of planned facility operations. The applicant for a Construction Activity Permit is typically only in charge of the construction and is not the owner or operator of a new or existing poultry AFO. As a result, the person responsible for controlling stormwater discharges during the construction of the facility, thus the appropriate individual to apply for a Construction Activity Permit, may not be the appropriate or legally responsible party regarding a proposed facility's chicken production, or able to reliably determine whether the owner of the facility owns another poultry AFO within 3 miles or if said operations together would produce at least 300,000 broiler chickens per year.

Finally, the proposed legislation would require MDE to modify the forthcoming renewal of the AFO Permit. The AFO Permit has a 5-year term and the 2014 AFO Permit expired on November 30, 2019. The U.S. Environmental Protection Agency (EPA) has already approved MDE's 2019 draft AFO Permit. MDE is currently reviewing public comments on the draft AFO Permit and will issue the new permit this year. Under the proposed legislation, MDE would have to modify the draft AFO Permit to include the prohibition on coverage for a new or expanding or extending industrial poultry operation, obtain EPA's approval for the permit modification, and if these additions to the permit constitute a major modification, MDE must undertake another public participation process.

Thank you for your consideration. We will continue to monitor Senate Bill 841 during the Committee's deliberations, and I am available to answer any questions you may have. Please feel free to contact me at 410-260-6301 or by e-mail at tyler.abbott@maryland.gov.

Sincerely,



Tyler Abbott

cc: The Honorable Clarence K. Lam
Ms. Kaley Laleker, Director, Land and Materials Administration
Mr. Lee Currey, Director, Water and Science Administration