



The Maryland Department of the Environment
Secretary Serena McIlwain

HB0624

Environment - Suppliers of Water - Notification Requirements

Position: Support with Amendments

Committee: Environment & Transportation

Date: March 23, 2023

From: Gabrielle Leach

The Maryland Department of the Environment (MDE or the Department) **SUPPORTS** House Bill 624 **WITH AMENDMENTS**. This bill would change public notification requirements and add certain requirements that are specific to E. coli. House Bill 624 would do the following:

- Amends the acceptable means of notification to add the following methods: text message, robocall, or “any other means acceptable to the Department.”
- Requires a supplier of water that serves at least 3,300 customers to issue notification through at least three (3) of the approved methods (radio, TV, newspaper, written notice, text message, robocall, or any other means approved by the Department).
- Suppliers of water that serve less than 3,300 may only use one of the approved methods of notification.
- Requires each supplier of water to notify the Department and the Maryland Department of Emergency Management (MDEM) if there is a positive test for E. coli in the system; and
- Upon receipt of notice, the supplier of water shall immediately begin preparations for issuing a boil water advisory.

MDE has been working with the sponsor on the following amendments to ensure consistency with federal requirements.

Proposed Amendments:

1. On the House side, MDE had asked that systems that served over 3,300 or greater only be subject to the “at least three means of notification.” The purpose of the amendment was so that smaller systems (such as a gas station) would only have to use one method of notification as required under federal law. However, as the bill was amended, smaller public water systems could use any of the seven listed notice methods, including text messages or robocalls, as their sole method of notification. This would conflict with the federal Safe Drinking Water Act as robocalls and text messages are not permissible forms of notification. See, e.g., 40 CFR § 141.203(a) (listing Tier II situations), (c) (minimum notification methods for Tier II violations); 40 CFR § 141.204(c) (minimum notification methods for Tier III violations). The Bill could be amended to address these issues and clarify that federal standards continue to apply by amending subsection (c) to provide that Envir. § 9-410 establishes minimum notification requirements that the Department may exceed.

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- a. Amendment:
 - i. (c) By rule or regulation, the Secretary shall adopt ~~notice~~ requirements to meet **OR EXCEED** the requirements of this section.
 - ii. The amendment could also include the words “and ensure conformity with the Safe Drinking Water Act” or something similar at the end of the sentence to address any concerns that the Department may establish requirements that exceed federal standards. This would be an improvement to existing law and protect the State’s primacy under the Safe Drinking Water Act.

2. HB0624 does not address enforcement gaps in existing law that exempt violations of public notice requirements from civil penalties. See, e.g., Envir. § 9-413(a) (imposing civil penalties for “willful” violations of Envir. § 9-412(a)(4) or (5)) As such, violations of Envir. § 9-410 and any rule that is not a primary drinking water regulation—including any rule to implement the Bill’s provisions—are not subject to civil penalties.
 - a. Amendment:
 - i. On page 1, after line 21, insert:
“BY repealing and reenacting, with amendments, Article - Environment Section 9-413(a) Annotated Code of Maryland (2014 Replacement Volume and 2022 Supplement)”.
 - ii. On page 4, after line 16, insert:
“9-413. (a) A person who willfully violates § 9-412(a)(4) or (5) of ANY PROVISION OF THIS SUBTITLE OR ANY ORDER, REGULATION, OR PLAN ADOPTED OR ISSUED UNDER this subtitle is subject to a civil penalty of up to \$5,000 for each day on which the violation exists.”.

3. A drinking water MCL violation for E. coli is based upon a two-sample set (initial and confirmed sample results) collected from a water distribution system, but the violation may be based on two E coli detections, or a combination of E. coli and total coliform detections. As currently written, the bill would only require notification to MDE and MDEM for E coli MCL violations that are based on two E coli detections, not on MCL violations that involve one total coliform detection and one E. coli detection. Furthermore, the term “in the system” is vague and could be interpreted as something other than, “in the distribution system,” which we believe is the intent.
 - a. Amendment: Each supplier of water is required to notify the Department and the Maryland Department of Emergency Management (MDEM) if there is a **confirmed** positive test for E. coli **or total coliform-positive repeat sample following an E. coli-positive routine sample** in the **distribution** system.

4. The Bill’s requirement to track 3-methods of notification for all violations, even when limited to systems serving more than 3,300 people, would include monitoring and reporting violations; this would be highly impactful. Violations for exceeding the maximum contaminant level for any chronic contaminant require public notification within 30 days; as such, notification by two additional

methods is not warranted. Violations for monitoring or reporting require public notification within one year; as such, notification by two additional methods is not warranted. Conversely, acute violations with a significant and immediate impact on human health (including E. coli, nitrates, and treatment technique violations for exceeding turbidity standards), require public notification within 24 hours. As such, 3-methods of public notification for the acute violations would improve timely critical notifications and protect public health while minimizing workload for both the Department and small water systems for less critical violations.

- a. Amendment: **Community water systems serving more than 3,300 customers must provide 3-methods of notification for acute (Tier 1) violations that have significant potential to affect human health, including E. coli, nitrates, and treatment technique violations for exceeding turbidity standards.**

For the reasons detailed above, MDE urges a **FAVORABLE WITH AMENDMENTS** report for HB 624.