



Opposition to House Bill 395

Dear Chairman Korman and Members of the Committee:

The Chesapeake Legal Alliance provides the following information about House Bill 395 as the committee considers this concerning legislation.

First and foremost, it is important to understand that this bill does not solve the problem that it is intended to address. As we understand it, the problem is that individuals seeking to construct a new facility associated with a new or expanded animal feeding operation (e.g., a poultry house) after July 1, 2025, were unable to receive the Clean Water Act discharge permits needed to proceed. This bill would repeal language in section 9-323(a)(2) of the Environment Article, while not repealing or in any way amending the language in 9-323(a)(1). Paragraph (a)(1) would still contain the general rule that “[a] person shall hold a discharge permit by the Department before the person may construct...” Without additional language to specifically exempt a particular class of permit – like animal feeding operations – they would still be subject to this same prohibition if the bill, as introduced, became law.

The language that this bill would repeal in (a)(2) was codified following the 2019 legislative session in order to clarify that (a)(1) applied to facilities such as animal feeding operations even if they are covered by what is known as a general permit and not issued a site-specific individual permit. Once again, this was not a new requirement, as the generally applicable requirement (a)(1) is nearly a half century old. The 2019 law merely resolved what had apparently been administrative confusion that resulted in some operations flipping the legal process on its head and proceeding to construction without coverage under the Animal Feeding Operations, while others received that permit coverage first, as the law intends, before moving to construction. All facilities should operate on the same financial and regulatory playing field, certainly within a given industry, but also across all industries.

If the bill, as introduced, were to become law it could have significant unintended consequences for Maryland’s Clean Water Act permitting regime. For decades, Maryland’s permitting system – consistent with other states (including Delaware) – has required a Clean Water Act-regulated facility to obtain a permit to discharge pollution into Maryland waters before it starts to construct that pollution source. The reasons for this policy are obvious. What regulator would want to tell a facility that has spent tens of thousands (or millions) of dollars to build a facility that they cannot use? And if the regulator did uphold the law, the facility would have wasted substantial capital on a worthless asset. Under this policy, either the public, or a private business, loses – clearly not a good way to run a regulatory system or a business. That is why the law is set up the way it is and why it needs to remain as it is.

If the bill passes in its current form, the Maryland Department of the Environment will be forced to decide whether to ignore the law (the prohibition in section 9-323(a)(1) of the Environment Article) or they will establish the precedent that any facility in any industry is entitled to this special – and unlawful – dispensation. Once again, this is not an appropriate way to operate a regulatory program.

Finally, it is worth noting that what happened in 2025 should not ever happen again, rendering this bill moot. Not only has the industry's concern been fully recognized by this committee and the Department of the Environment, with pledges to ensure the general permit is not allowed to "expire" (administratively continue in permitting terms), but importantly – there is another obvious solution already provided under current law and regulatory practice. The Department of the Environment has authority to provide alternate permit coverage after a general permit lapses via an individual discharge permit, which could include the same terms as would exist in the general permit. This would ensure that permit approvals continue as if the permit never expired. Individual permits for animal feeding operations are contemplated in Maryland's regulations and are in effect in nearly half of states.

For these and many other reasons we oppose House Bill 395, but are happy to serve as a resource in searching for an appropriate solution to the problem.

For more information, you may reach Evan Isaacson at evan@chesapeakelegal.org.