

Department of Legislative Services

Maryland General Assembly

2020 Session

FISCAL AND POLICY NOTE

First Reader

House Bill 1312

(Delegate Stewart, *et al.*)

Environment and Transportation

Water Pollution Control - Discharge Permits - Industrial Poultry Operations

This bill prohibits the Maryland Department of the Environment (MDE) from issuing a “discharge permit” to a person for (1) a new “industrial poultry operation” or (2) the purpose of extending or expanding any industrial poultry operation in operation on or before September 30, 2020. An “industrial poultry operation” is an animal feeding operation (AFO) that produces 300,000 or more broiler chickens annually and includes two or more poultry operations that are under common ownership or control if the distance between the two operations is within three miles.

Fiscal Summary

State Effect: MDE’s workload increases to implement the bill’s permitting restrictions, but can likely be handled with existing budgeted resources. Potential minimal decrease in special fund revenues from discharge permit fees; the effect is more significant if the prohibition relating to “extending” an industrial poultry operation means a ban on renewing or increasing the term of such a permit, as discussed below.

Local Effect: None.

Small Business Effect: Meaningful.

Analysis

Bill Summary: A “discharge permit” includes a general discharge permit for stormwater associated with construction activity, a general discharge permit for AFOs, or an individual National Pollutant Discharge Elimination System (NPDES) permit.

Current Law:

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. CWA prohibits any person from discharging pollutants through a point source into a water of the United States unless the person has an NPDES permit. The permit contains limits on what can be discharged, monitoring and reporting requirements, and other provisions to ensure that the discharge does not hurt water quality or public health. In essence, the permit translates general requirements of CWA into specific provisions tailored to the operations of each person discharging pollutants. MDE has been delegated the authority to enforce NPDES permitting activity in the State. AFO discharge permits and general discharge permits for stormwater associated with construction activity are both types of discharge permits issued pursuant to NPDES.

General Discharge Permit for Animal Feeding Operations and Concentrated Animal Feeding Operations

All concentrated animal feeding operations (CAFOs) in Maryland must have a discharge permit. Additionally, AFOs are generally subject to wastewater discharge permits, depending on the size of the facility and whether the facility discharges to waters of the State. CAFOs and some AFOs are regulated by MDE under department regulations and a general discharge permit, which are designed to control nutrients from Maryland's largest agricultural animal operations. The general discharge permit serves as both a State and federal permit. A person must have coverage under an AFO discharge permit before beginning construction on any part of a new CAFO and certain AFOs.

An AFO is defined as a feedlot or facility where (1) nonaquatic animals are confined, fed, and maintained for at least 45 days in any 12-month period and (2) crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

AFOs are categorized as small, medium, or large based on threshold amounts of animals (varying based on animal type) and/or housing capacity, and the size category of an AFO is a factor in determining whether an AFO is considered a CAFO.

In general, a CAFO is a medium or large AFO that discharges or proposes to discharge pollutants including, but not limited to, manure, poultry litter, or process wastewater to surface waters of the State (including contact of confined animals with surface water). Small AFOs that discharge pollutants can also be designated a CAFO by MDE based on a

site inspection. MDE regulations require a CAFO to obtain permit coverage under a general discharge permit issued by the department unless the department notifies the discharger that a separate discharge permit is required.

The current general discharge permit expired November 30, 2019, and MDE is in the process of developing a new five-year general discharge permit. MDE published related regulations in Volume 46, Issue 20 of the *Maryland Register* on September 27, 2019, but those regulations are currently on hold by the Joint Committee on Administrative, Executive, and Legislative Review.

General Discharge Permit for Stormwater Associated with Construction Activity

Any construction project that disturbs one or more acres of earth must apply for either a general or individual permit for stormwater discharge associated with construction activity and obtain coverage under the permit before beginning earth disturbance or any part of the project. A notice of intent (NOI) is one of the first steps in acquiring a construction general permit for stormwater discharge. However, prior to submitting a NOI, a final erosion and sediment control plan must be submitted to the appropriate approval authority (such as the Soil Conservation District). Applications fees are required for certain projects and are calculated based on the total disturbed acreage.

State Fiscal Effect: MDE’s permitting workload increases to determine whether applications for various discharge permits are for new, extended, or expanded industrial poultry operations and whether MDE is prohibited from issuing such a permit under the bill. However, it is assumed that this impact is small enough to be absorbable within existing budgeted resources.

MDE assumes, and the Department of Legislative Services anticipates, that any decrease in special fund revenues from foregone discharge permit fees are minimal. MDE does not anticipate that a significant number of new industrial poultry operations would otherwise be applying for a discharge permit under current law. However, this analysis assumes that “extending” any industrial poultry operation means increasing the operation’s size or number of broiler chickens. If “extending” instead means that MDE is prohibited from renewing or extending the term of the permit coverage beyond the current term, the bill has a potentially significant impact on special fund revenues from discharge permit fees.

Small Business Effect: There is a meaningful negative impact on affected farms, some of which may be small businesses. Under the bill, an existing industrial poultry operation is unable to expand or extend its operation since affected farms cannot legally operate without discharge permit coverage. Further, the bill prohibits MDE from issuing any new industrial poultry operation discharge permits, so no new industrial poultry operations can enter the market in Maryland. The Maryland Department of Agriculture advises that the bill’s

changes could lead to a gradual decline in the poultry industry on the Eastern Shore, which would not only have effects on affected poultry operations, but also on grain farmers and other small businesses that rely on the poultry industry for business.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 841 (Senator Lam, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland Department of Agriculture; Maryland Department of the Environment; Department of Legislative Services

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