

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 198 (Delegate R. Long)
Environment and Transportation

**Wastewater Treatment Plants – Water Quality Testing and Sewage Overflow
and Pipeline Breakage Notification (Environmental Accountability Act of 2023)**

This bill requires, beginning July 1, 2023, an independent third party to oversee all water quality testing conducted at a wastewater treatment plant (WWTP) that (1) falsifies or inaccurately reports water quality results to the Maryland Department of the Environment (MDE) or (2) is experiencing catastrophic or continuing mechanical failure of operational equipment. The bill establishes provisions governing the selection and duties of an independent third party. It also establishes new notice requirements for an owner or operator of a WWTP relating to sewage overflows and pipeline breakages. **The bill takes effect June 1, 2023.**

Fiscal Summary

State Effect: General fund expenditures for MDE increase, likely significantly, beginning as early as FY 2023. State expenditures (multiple fund types) may increase, potentially significantly, beginning as early as FY 2023, for any State agencies that own/operate affected WWTPs. State revenues are not directly affected.

Local Effect: Local expenditures may increase, potentially significantly, beginning as early as FY 2023, for any local governments that own/operate affected WWTPs. Local revenues are not directly affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The independent third party must be selected by MDE and have all State and federal certifications that MDE deems necessary. The independent third party must (1) verify laboratory results for all water quality tests conducted at an affected WWTP and (2) implement procedures and protocols at the WWTP to test for and prevent the discharge of midge larvae. Each laboratory report must be posted on the WWTP's website as soon as practicable.

In addition to existing notification requirements, the owner or operator of a WWTP must immediately post a notification of any sewage overflow on the WWTP's website and notify local news media about the overflow and potential health risks as soon as practicable. Further, on notification of a break in a sewage pipeline, the owner or operator of a WWTP must, as soon as practicable, notify local news media and each State legislator representing the area in which a discharge will occur of the break in the sewage pipeline and potential health risks.

Current Law:

Discharge Permits Issued by the Maryland Department of the Environment

A person must generally hold an MDE discharge permit before constructing, installing, modifying, extending, altering, or operating a system, facility, outlet, or establishment if its operation could cause or increase the discharge of pollutants into the waters of the State. This permitting requirement applies to (1) an industrial, commercial, or recreation facility or disposal system; (2) a State-owned treatment facility; or (3) any other outlet or establishment. Further, a person must hold a concentrated animal feeding operation (CAFO) discharge permit before beginning construction on any part of a new CAFO. MDE has broad authority to require a discharge permit for any other activity by rule or regulation.

Required Notification of Sewer Overflows and Treatment Plant Bypasses

The owner or operator of any sanitary sewer system, combined sewer system, or WWTP must report any sewer overflow or treatment plant bypass that results in the direct or potential discharge of raw or diluted sewage into the surface waters or groundwaters of the State to MDE. The report must be made as soon as practicable, but no later than 24 hours after becoming aware of the event. Within five calendar days, the owner or operator must provide MDE with a written report of the incident.

Pursuant to Chapter 310 of 2019, MDE, in coordination with the Maryland Department of Health (MDH), local health departments (LHDs), and local environmental health directors, must develop procedures for requiring the owner or operator of any sanitary sewer system,

combined sewer system, or WWTP to provide public notification of a sewer overflow or treatment plant bypass. These procedures must require that the notification:

- be posted on the MDE, MDH, and LHD websites;
- be posted at the location of the overflow or bypass in Spanish and English;
- be posted on any social media websites on which an LHD regularly posts information; and
- be provided within a reasonable time to the appropriate downstream jurisdictions and county governments, affected State parks, the Department of Natural Resources (DNR), and any other affected local, State, or federal land manager.

Mandatory Tests of Water and Wastewater

MDE and DNR must each make any water or wastewater test that is considered necessary to determine the adequacy of performance of a water supply system, sewerage system, or industrial WWTP.

State/Local/Small Business Effect:

Maryland Department of the Environment Administrative Costs

MDE advises that general fund expenditures for the department increase by \$466,288 in fiscal 2024 and by at least \$423,865 annually thereafter to hire five full-time employees (two administrators, one natural resources planner, one program manager, and one administrative aide) to (1) develop and implement approval procedures and verify qualifications for independent third-party monitors; (2) track water quality information; (3) manage procurements and billing of the independent third-party monitors; and (4) generally implement the bill. In addition to those staffing costs, MDE estimates significant annual costs to hire an independent third-party monitor to be on site at any affected WWTP to verify all water tests, verify laboratory results, and implement the required procedures and protocols; for example, MDE advises that annual costs to hire an independent third-party monitor for a large WWTP likely totals approximately \$520,000 annually (assuming 100 hours per week at an estimated cost of \$100 per hour), while annual costs for a smaller plant are likely in the \$50,000 to \$100,000 range.

MDE notes, and the Department of Legislative Services (DLS) concurs, that it is unclear whether MDE or the affected WWTP owner/operator is responsible for paying for the independent third-party monitoring and additional water quality testing. In addition, due to several other unknown factors, including the number of WWTPs that may be affected, DLS advises that the number of additional staff MDE may need cannot be determined without actual experience under the bill. Accordingly, a reliable estimate of the increase in MDE's

general fund expenditures cannot be made at this time; however, DLS anticipates that general fund expenditures for MDE increase, likely significantly, as early as fiscal 2023.

For context, MDE notes that, according to the U.S. Environmental Protection Agency's Enforcement and Compliance History Online database, there are 254 facilities in the State that likely have some type of wastewater treatment.

Effect on Owners and Operators of Affected Wastewater Treatment Plants

To the extent that a WWTP triggers the bill's enhanced monitoring and water quality testing requirements, costs for the owner/operator could increase significantly beginning as early as fiscal 2023. Affected owners/operators could include State agencies, local governments, and, potentially, small businesses. As noted above, MDE estimates that the cost to hire an independent third-party monitor to be on site at an affected WWTP is roughly \$520,000 annually for a large WWTP (assuming 100 hours per week at an estimated cost of \$100 per hour), and likely \$50,000 to \$100,000 annually for a smaller WWTP. However, DLS notes that actual costs incurred by WWTP owners/operators depend on several unknown factors, such as:

- the party responsible for paying for the enhanced oversight and water quality testing, as discussed above;
- the length of time that the required oversight continues;
- at what point a WWTP is determined to have triggered the requirement to have an independent third-party monitor;
- what constitutes "continuing" mechanical failure of operational equipment under the bill;
- the number and cost of any additional water quality tests that may need to be undertaken;
- the extent to which procedures and protocols relating to the discharge of midge larvae must be implemented; and
- the size of an affected WWTP.

Other Small Business Effects

For water quality testing laboratories that are small businesses, the bill could potentially result in a meaningful increase in business, depending on the length of enhanced water quality testing and the number of affected facilities. Similarly, the bill could create an increase in the demand for an entity that qualifies as an independent third party and is selected by MDE to conduct the required oversight. An affected independent third party could be a small business.

Additional Information

Prior Introductions: Similar legislation has been introduced in the last three years. See HB 654 of 2022.

Designated Cross File: None.

Information Source(s): Maryland Environmental Service; Caroline, Howard, and Prince George's counties; Maryland Association of Counties; City of Annapolis; Maryland Municipal League; Maryland Department of the Environment; Department of Natural Resources; Department of Public Safety and Correctional Services; U.S. Environmental Protection Agency; Department of Legislative Services

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