



THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

February 23, 2022

**Sponsor Testimony for HB 649 –
Environment - Discharge Permits - Inspections and Administrative Continuation**

Chair Barve, Vice Chair Stein, Members of the Environment and Transportation Committee:

HB 649 seeks to ensure that the Maryland Department of the Environment (MDE) is adequately enforcing water permits so that Marylanders have safe drinking water. Currently, due to significant understaffing and underfunding, MDE extends numerous, expired water pollution control permits, allowing companies to continue discharging more pollution into our waterways.

The Context

Expired water pollution discharge permits, issued and “administratively continued” by MDE, have become known as *Zombie Permits*.¹ These resurrected “zombies” do not require any updates to incorporate recent pollution-control technology, as mandated every five years by the federal Clean Water Act². Due to inadequate monitoring, many plants and facilities operating with *Zombie Permits* are spewing pollutants into our water, threatening our health, our rivers and streams, and our beloved Chesapeake Bay.

HB 649 would put a stop to these violations and add oversight by limiting the amount of time MDE can administratively extend water pollution discharge permits, establishing inspection and reporting requirements for certain permit holders, instituting specific monetary penalties for those in noncompliance, and requiring MDE to clear its *Zombie Permit* backlog.

Below I describe the issues, the problems those issues have caused, and how HB 649 is part of the solution.

The Issues

MDE’s Water Supply Program – the program whose responsibility is to ensure we have safe drinking water – is critically understaffed and underfunded. The Environmental Protection Agency (EPA) commissioned a report “Analysis of Maryland’s Drinking Water Program Resources and

¹ The problems with *Zombie Permits* have been well known for years. Del. Mary Lehman tried to address this issue in 2020 with HB 1297, which unfortunately ran out of time due to Covid cutting our session short.

Needs” (the Cadmus Report). Released in May 2021, the report found that **MDE needed approximately “187% more FTE [full-time employees] than currently staffed, and 93% more funding than currently available to effectively implement the program and ensure safe drinking water for the public.”**²

Because they are understaffed and underfunded, the staff that are there are overloaded. The current employee has a caseload of 240 inspections; contrast that with the nationwide average of 67.

Not surprisingly, these inspections aren’t getting done. This means that when discharge permits expire, MDE has been administratively continuing them, allowing entities to continue to operate and discharge into our waterways without adequate inspection to ensure that the discharge is not endangering our health. Some entities have not had an inspection for years, operating continually without oversight. According to a December 2021 report, **42% of pollution control permits for municipal sewage plants, factory wastewater treatment facilities and other pollution sources (198 or 466 total) are Zombies.**³

The Problems

Story after story has come to light about the problems with the lack of inspection and Zombie Permits. Most of what has been found has been by nonprofit groups – not by MDE:

- Valley Proteins, a chicken rendering plant in Dorchester County, had been operating on a Zombie Permit since their discharge permit expired in 2006. On December 10, 2021, members of ShoreRivers, an environmental nonprofit group, observed brown discharge flowing through a stream near the plant. They sent drone footage to MDE, which then sent an inspector to the plant, who noticed an illegal discharge to a holding pond. This plant has a history of similar violations; and yet, they were operating for 15 years on a Zombie Permit. The plant is now closed until they can come into compliance.⁴
- Another nonprofit group found an illegal discharge from a vinegar factory in Baltimore. That discharge killed at least 160 fish in the Jones Falls River. Again, a nonprofit group sent footage to MDE. MDE inspectors came and found the plant’s dechlorination system was not working. A follow-up inspection additionally found high acidic discharge.⁵
- A sewage spill in St. George Creek in St. Mary’s County contaminated oysters, sickening 20 people who ate them. Even though the spill was reported, it took MDE two weeks to raise an alert about contamination – and only after there were reports of people getting sick in Northern Virginia, where oysters from the same river were served.⁶

² https://www.marylandattorneygeneral.gov/news%20documents/120121_MDE_Water_Supply_Program.pdf

³ <https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-1118-mde-zombies-20220118-tvvwpaoayrgn5doogxp4kni44m-story.html>

⁴ https://digitaledition.baltimoresun.com/infinity/article_share.aspx?guid=c9169400-34a8-4f27-8535-ca71987f0e68

⁵ <https://www.baltimoresun.com/news/environment/bs-md-jones-falls-fish-kill-fleischmanns-vinegar-plant-20210916-dih6afktnfhgbfdc3wchd7kn7q-story.html>

⁶ <https://www.baltimoresun.com/news/environment/bs-md-oysters-sewage-contamination-20211123-r664qpuqsvb3db5x63deerid5i-story.html>;
https://www.bayjournal.com/news/fisheries/dozens-fall-ill-after-eating-md-oysters-from-creek-state-failed-to-close/article_17178138-522d-11ec-94cb-63376a5bf461.html

- Inspections at poultry operations have fallen 40% since 2013, and even though 84% of the farms inspected between 2017 and 2020 had violated their water pollution control permits, only 2 were assessed fines.⁷
- There are only 3 inspectors who oversee concentrated animal feeding operations (CAFOs), while there are 553 permitted animal feeding operations in the state.⁸
- Blue Water Baltimore, a nonprofit, sued Baltimore City over two wastewater treatment plants – Back River and Patapsco – for endangering our waterways and drinking water. Both plants had violated their permits over 130 times, each between January 2017 and September 2021. The Attorney General has now filed suit as a result of these clean water act violations. Once again, it was a nonprofit that found the violations and reported them to MDE.⁹

And these are just the ones that have been found.

What HB 649 Does

HB 649 does four things:

1. It requires monthly inspections of facilities that have administratively extended permits and are in significant noncompliance with their permits;
2. If significant noncompliance continues after the third monthly inspection, and a plan to correct the noncompliance has not been identified, then mandatory fines will be applied.
3. MDE is directed to report on the number of employees necessary to clear the backlog of zombie permits and timely process discharge permits, then request that number of employees.
4. MDE must clear the backlog of zombie permits within three years, and then is prohibited from allowing permits to be extended for more than a year past the expiration date.

With this legislation, MDE will be required to restrict Zombie Permits, conduct more inspections, and levy fines. Mandating escalating fines will ensure compliance before our jurisdictions have to spend time and money in litigation.

HB 649 will go a long way towards identifying and remedying unsafe water issues before they cause danger to our drinking water.

For the foregoing reasons, I respectfully request a favorable report on HB 649.

⁷ <https://www.baltimoresun.com/news/environment/bs-md-general-assembly-hearing-mde-staffing-problems-20220118-z75ionbmqjcu3oodn4mtptz2ci-story.html>; <https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-1118-mde-zombies-20220118-tvwwpaoayrqn5doogxp4kni44m-story.html>

⁸ <https://wtop.com/maryland/2022/01/maryland-lawmakers-press-environment-secretary-on-staffing-enforcement-shortfalls/>

⁹ <https://thedailyrecord.com/2022/01/21/maryland-files-lawsuit-over-pollution-at-baltimore-wastewater-plants/>