

Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 395

(Delegate Boyce, *et al.*)

Environment and Transportation

Education, Energy, and the Environment

Water Pollution Control - Discharge Permits - Concentrated Animal Feeding
Operations

This emergency bill repeals (1) a requirement that a person hold a concentrated animal feeding operation (CAFO) discharge permit issued by the Maryland Department of the Environment (MDE) before beginning construction on any part of a new CAFO and (2) a prohibition against MDE issuing a CAFO discharge permit to a person who violates that requirement. The bill authorizes MDE – if the general discharge permit for CAFOs is administratively extended by MDE – to authorize a person to begin construction on any part of a new animal feeding operation (AFO) under an approval process established by MDE that requires the person to demonstrate compliance with specified standards.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances or operations.

Local Effect: None.

Small Business Effect: Minimal overall, but potential meaningful impact on some AFOs to the extent that construction is able to begin on a new AFO concurrent with the development of an updated AFO general discharge permit by MDE, as discussed below.

Analysis

Bill Summary: The approval process established by MDE under the bill must require a person to demonstrate compliance with (1) the requirements for coverage under the administratively extended AFO general discharge permit and (2) all other applicable laws and regulations and required construction permits.

Current Law:

Federal Clean Water Act

The federal Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States. The National Pollutant Discharge Elimination System (NPDES), a component of CWA, is a permit program that addresses water pollution by regulating point sources that discharge pollutants to U.S. waters. In Maryland, the U.S. Environmental Protection Agency delegates authority to issue NPDES permits to MDE.

State Permitting for Wastewater Discharges

In General: MDE issues discharge permits to protect Maryland's water resources by controlling industrial and municipal wastewater discharges. Surface water discharges are regulated through combined State and federal permits under NPDES. Groundwater discharges are regulated through State-issued groundwater discharge permits. "Discharge permit" is defined in statute as a permit issued by MDE for the discharge of any pollutant or combination of pollutants into the waters of the State. MDE issues both individual discharge permits and general discharge permits. An individual permit is designed for the specific needs of an individual facility, while a general permit is a generic document appropriate for a specific type of activity that has similar environmental impacts.

Applicability: 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 CAFO discharge permit before beginning construction on any part of a new CAFO, and MDE is prohibited from issuing a CAFO discharge permit to a person who violates this requirement.

Animal Feeding Operations

An "animal feeding operation" 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 the number of animals housed or the total housing capacity; a CAFO is an AFO that has certain characteristics (*i.e.*, has a certain number of animals and meets other specified criteria). In general, a CAFO is a

medium or large AFO that discharges or proposes to discharge pollutants into surface waters of the State. MDE may designate a small AFO as a CAFO after a site inspection if (1) animal waste comes into contact with surface water or (2) animals come into contact with surface water and the AFO is not using best management practices designed and approved by the soil conservation district to limit animal access to surface water.

MDE regulations generally 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 AFO general discharge permit is designed to control nutrients from Maryland's largest agricultural animal operations and serves as both a State and federal permit. The terms "CAFO general discharge permit" and "AFO general discharge permit" refer to the same permit; MDE only issues one general discharge permit for such facilities.

The most recent AFO general discharge permit expired on July 7, 2025, and MDE is in the process of establishing a new general discharge permit. MDE anticipates that the new general discharge permit will be finalized by August 2026. CAFOs that were previously covered under the expired AFO general discharge permit are operating under an administrative continuance.

Small Business Effect: Although overall, the bill is anticipated to have minimal impact on AFOs in the State, the bill may offer an opportunity for a new AFO to begin construction concurrent with the development of an updated AFO general discharge permit by MDE. This might enable a new AFO to be operation-ready sooner than under current law. MDE notes, however, that a discharge permit for construction may be needed, and that the addition of animals would likely need to wait until the AFO general discharge permit is finalized.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 371 (Senator Carozza, *et al.*) - Education, Energy, and the Environment.

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

Fiscal Note History:
jg/lgc

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