

Title 26 Department of The Environment
Subtitle 08 Water

26.08.01.01

.01 Definitions.

A. General.

(1) The following definitions describe the meaning of terms used in the water quality and water pollution control regulations of the Department of the Environment (COMAR 26.08.01—26.08.04).

(2) The terms "discharge", "discharge permit", "disposal system", "effluent limitation", "industrial user", "national pollutant discharge elimination system", "person", "pollutant", "pollution", "publicly owned treatment works", and "waters of this State" are defined in the Environment Article, §§1-101, 9-101, and 9-301, Annotated Code of Maryland. The definitions for these terms are provided below as a convenience, but persons affected by the Department's water quality and water pollution control regulations should be aware that these definitions are subject to amendment by the General Assembly.

B. Terms Defined.

(1) "Acute toxicity" means the capacity or potential of a substance to cause the onset of deleterious effects in living organisms over a short-term exposure as determined by the Department.

(2) "Administrative order" means a written notification issued by the Department under State law and regulations, and requiring correction of a water pollution condition or compliance with provisions of pertinent law and regulations.

(3) "Advanced waste treatment" means treatment of wastes or wastewaters to:

(a) Reduce the level of specific constituents which are not sufficiently controlled by best available technology (BAT) for industrial discharges or by secondary treatment for municipal discharges; or

(b) Reduce organic oxygen demand beyond the level attainable by BAT or secondary treatment to comply with waste load allocations in water quality limited waters.

(4) "Affiliate" means a person who wholly or partially owns a controlling interest in, controls, or operates the applicant, or who is wholly or partially owned, controlled, or operated by the applicant.

(5) "Alternate effluent limitations" means all effluent limitations or standards of performance for the control of the thermal component of any discharges which are established under the Environment Article, Title 9, Subtitle 3, Annotated Code of Maryland, and COMAR 26.08.03.03.

(5-1) "Animal feeding operation (AFO)" means a feedlot or facility where:

(a) Non-aquatic animals are confined, fed, and maintained for at least 45 days in any 12-month period; and

(b) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(5-2) Animal Waste.

(a) "Animal waste" means liquid or solid waste, or both, from animal feeding, milking, holding, or other animal operations.

(b) "Animal waste" includes manure, poultry litter, offal, and process wastewater generated by an AFO.

(6) "Aquifer" means any formation of soil, sand, rock, gravel, limestone, sandstone, or other material, or any crevice from which underground water is or may be produced.

(7) "Average ebb tidal excursion" means the average velocity (feet/second) of the ebb tide passing through the cross section of the receiving waters at the point of discharge, multiplied by the duration of the tide (slack before ebb to slack before flood). The average velocity shall be determined from measurement of transect velocities at three neap tides with low fresh water input and three spring tides with high fresh water input.

(8) "Balanced indigenous community" means a biotic community typically characterized by diversity, the capacity to sustain itself through cyclic seasonal changes, presence of necessary food chain species, and by a lack of domination by pollution-tolerant species. This community may include historically non-native species introduced in connection with a program of wildlife management and species whose presence or abundance results from substantial, irreversible environmental modifications. Normally, however, this community does not include species whose presence or abundance is attributable to:

(a) The introduction of pollutants that will be eliminated by compliance by all sources with effluent limitations; and

(b) Alternate effluent limitations imposed under COMAR 26.08.03.03.

(9) "Base flow" means the discharge entering stream channels from ground water or other delayed sources; that is, stream flow periods not affected by recent rainfall.

(9-1) "Benthos" means a group of organisms, often invertebrates that live in or on the bottom in aquatic habitats.

(10) "Best available technology (BAT)" means, for discharges from industrial facilities, the best existing wastewater treatment technology economically achievable within an industrial category. BAT is equivalent to the EPA effluent limitation guidelines in the Federal Act for best available technology economically achievable and best conventional pollutant control technology (BCT). For discharges from all sewage treatment facilities, BAT means the secondary treatment levels specified by the Department in discharge permits.

(11) "Biocide residual" means the level remaining in an effluent of a chemical substance added as part of the treatment process for the purpose of controlling bacteria, fungi, algae, or other microorganisms. This term includes chlorine and ozone.

(11-1) "Certification of conformance" means a certification by a dry manure chicken (other than laying hens) AFO that:

(a) The AFO has, and is implementing:

(i) A current nutrient management plan; and

(ii) A current soil conservation and water quality plan (conservation plan);

(b) The AFO's NMP and conservation plan are consistent with the requirements of COMAR 26.08.03.09C(5)(b) and incorporates all buffers, setbacks, and storage requirements otherwise applicable to MAFOs as required in the general permit for animal feeding operations issued under COMAR 26.08.04.09N in effect at the time of the certification;

(c) The AFO agrees to allow the Department the access necessary to confirm conformance; and

(d) The AFO agrees to provide researchers authorized by the Maryland Department of Agriculture (MDA) and the Department the same access otherwise applicable to MAFOs as required in the general permit for animal feeding operations issued under COMAR 26.08.04.09N in effect at the time of the certification.

(11-2) "Chesapeake Bay" means all tidally-influenced waters within the Chesapeake Bay watershed.

(11-3) "Chesapeake Bay program segment" means a segment or segments of the Chesapeake Bay mainstem or its tidal tributaries the boundaries of which are defined by a set of georeferenced points.

(11-4) "Chlorophyll a" means one of three green pigments in plant cells, used as a measure of productivity in aquatic environments. Elevated levels of nutrients are usually reflected in corresponding elevations in chlorophyll a.

(12) "Chronic toxicity" means the capacity or potential of a substance to cause deleterious effects in living organisms over a long-term exposure as determined by the Department.

(12-1) "Coal remining" means a coal mining operation which begins after January 2, 1995 at a site on which coal mining was conducted before August 3, 1977, the effective date of the federal Surface Mining Control and Reclamation Act of 1977.

(13) "Coliform organisms" means all of the aerobic and facultative anaerobic, gram-negative, non-spore-forming, rod-shaped bacteria that ferment lactose broth with gas formation within 48 hours at 35°C.

(13-1) "Comprehensive nutrient management plan (CNMP)" means a nutrient management and conservation plan that is developed in accordance with the Natural Resources Conservation Service (NRCS) planning policy and meets NRCS technical standards.

(13-2) "Concentrated animal feeding operation (CAFO)" means:

(a) A medium AFO or large AFO, based upon the size categories established in Table 1 of COMAR 26.08.03.09A, that discharges or proposes to discharge, as defined by the Federal Act, to surface waters of this State;

(b) A small AFO designated a CAFO by the Department in accordance with COMAR 26.08.03.09B; or

(c) An AFO designated as a CAFO by the Regional Administrator (RA) of the EPA in accordance with the Federal Act.

(14) "Control" means the possession of the power to direct or cause the direction of the management policies of a person.

(15) "Criteria" means elements of State water quality standards expressed as constituent concentrations, levels, or narrative statements representing a quality of water that supports a particular use.

(16) "Critical periods" means that time of the year during which sensitive life stages or densities of representative important species (RIS) are present in the plant intake or receiving waters.

(17) "Department" means the Department of the Environment.

(18) "Design stream flow" means the minimum 7 consecutive day average stream discharge having a recurrence interval of 10 years.

(19) "Designated use" means those uses specified in the State's water quality standards for each water body or segment whether or not the uses are being attained.

(20) "Discharge" means:

(a) The addition, introduction, leaking, spilling, or emitting of any pollutant to waters of this State; or

(b) The placing of a pollutant in a location where the pollutant is likely to pollute.

(21) "Discharge permit" means a permit issued by the Department for the discharge of any pollutant or combination of pollutants into the waters of this State.

(22) "Disposal system" means a system for disposing of wastes by surface, above surface, or underground methods. Disposal system includes a treatment works and a disposal well.

(22-1) "Dissolved oxygen" means gaseous oxygen that is dissolved in the water.

(23) "Effluent" means the outflow of treated or untreated waste from an industrial process, holding tank, pond, sewer, or other point source into the waters of this State.

(24) "Effluent limitation" means any restriction or prohibition that:

(a) Is established under federal law or a law of this State;

(b) Specifies quantities, rates or concentrations of chemical, physical, biological, or other constituents that are discharged into the waters of this State;

(c) Includes:

(i) Parameters for the discharge of toxic and nontoxic substances, and

(ii) Standards of performance for new sources.

(25) "Effluent limited waters" means waters of this State which the Department has identified as those in which BAT for industrial discharges and secondary treatment for sewage discharges is sufficiently stringent to maintain applicable water quality standards.

(26) "Emergency conditions" means those circumstances resulting from a permittee's actions, or lack of actions, which the Department determines constitute a present or imminent danger to the public health, welfare, or the environment.

(27) "Entrainment" means the incorporation of organisms into the cooling water flow.

(28) "EPA" means the United States Environmental Protection Agency, or its successor.

(28-1) "Epifauna" means organisms that live upon aquatic substrates.

(29) "Estuary" means a semi-enclosed coastal body of water having a free connection with the open sea and within which the seawater is measurably diluted with fresh water deriving from land drainage.

(30) "Eutrophication" or "eutrophic" means:

- (a) The excessive enrichment of the waters of this State by the discharge to or addition of nutrients; or
- (b) The degradation of water quality or undesirable ecological changes as indicated by excessive rooted or dispersed plant growth, loss of water clarity, or nuisance conditions.

(31) "Existing use" means those uses actually attained in the water body after November 27, 1975, whether or not the uses are included in the water quality standards.

(32) "Fecal coliform" means the portion of the coliform bacteria group which is present in the gut or the feces of warm-blooded animals. It generally includes organisms which are capable of producing gas from lactose broth in a suitable culture medium within 24 hours at 44.5° +/-0.5°C.

(33) "Federal Act" means the Federal Water Pollution Control Act (33 U.S.C. §1251 et seq.), its amendments, and all regulations and rules adopted under the Act.

(34) "Fish" means any of numerous cold-blooded aquatic vertebrates of the Superclass Pisces, characteristically having fins, gills and a streamlined body. Fish includes:

- (a) Any of the Class Osteichthyes having a bony skeleton;
- (b) Any of the Class Chondrichthyes, having a cartilaginous skeleton (sharks, rays, and skates); and
- (c) Any of the Class Agnatha which lack jaws (lampreys and hagfishes).

(35) "General permit" is a discharge permit issued to a class of dischargers.

(36) "Ground water" means underground water in a zone of saturation.

(37) "Impingement" means the blocking of larger organisms by a structure in the cooling water intake system.

(38) "Includes" or "including" means includes or including by way of illustration and not by way of limitation.

(39) "Industrial user" means:

- (a) A person who is engaged in manufacturing, fabricating, or assembling goods; or
- (b) A member of any class of significant producers of pollutants identified under regulations adopted by:
 - (i) The Department, or
 - (ii) The Administrator of the United States Environmental Protection Agency.

(40) "Industrial waste" means any liquid, gaseous, solid, or other waste substance, or combination thereof, resulting from:

- (a) Any process of industry, manufacturing, trade or business; or
- (b) The development of any natural resource, including agriculture.

(40-1) "Infauna" means organisms that live within the sediment in aquatic substrates.

(41) "Interference" means:

(a) An inhibition or disruption of a POTW, its treatment processes or operations, or its sludge generation processes or utilization which causes a violation of any requirement of the POTW's discharge permit or which prevents sewage sludge utilization by the POTW in accordance with the following statutory provisions and regulations or permits issued under them:

(i) Section 405 of the Clean Water Act;

(ii) The Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA) and any State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SWDA);

(iii) The Clean Air Act; and

(iv) The Toxic Substances Control Act.

(b) Damage to sewer systems and threats to POTW worker and public health, safety, and comfort.

(42) "Intermittent stream" means a stream that does not have flowing surface water during dry periods of the year, but may have groundwater-based surface flow at other times.

(42-1) "Maryland animal feeding operation (MAFO)" means an AFO that is not a CAFO and is:

(a) A large AFO according to Table 1 of COMAR 26.08.03.09A;

(b) A medium AFO according to Table 1 of COMAR 26.08.03.09A, designated a MAFO in accordance with COMAR 26.08.03.09C(2); or

(c) A chicken (other than laying hens) AFO with dry manure handling and at least 75,000 square feet total house capacity:

(i) That has not submitted to the Department a certification of conformance required under COMAR 26.08.03.09F; or

(ii) For which the certification of conformance has been rejected in accordance with that regulation.

(43) "Material balance" means an inventory accounting system for determining quantities of materials on hand, used in process, converted to product, lost to the environment, or contained in waste matter generated, stored, discharged, or otherwise processed.

(43-1) "Mean low water" means the average of all the low water heights observed over the National Tidal Datum Epoch.

(43-2) "Mesohaline" means tidal waters with salinities from 5 to less than 18 parts per thousand.

(43-3) "Minimum level" means the lowest concentration of a substance as determined by the Department that generally can be quantified within specified limits of interlaboratory precision and accuracy under routine laboratory operating conditions in the matrix of concern.

(44) "Mixing zone" means an area contiguous to a discharge where surface water quality or ground water quality does not have to meet:

(a) All water quality criteria; or

(b) All requirements otherwise applicable to the natural water.

(45) "National Pollutant Discharge Elimination System (NPDES)" means the national system for issuing permits as designated by the Federal Act.

(46) "National pretreatment requirements" means any general pretreatment regulation established by EPA in accordance with the Federal Act.

(47) "National pretreatment standard" means a pollutant discharge limit that:

(a) Applies to industrial users of publicly owned treatment works; and

(b) Is promulgated by EPA under the Federal Act.

(48) "NPDES application" means the current revised EPA standard national forms for applying for an NPDES permit.

(49) "NPDES permit" means the permit issued under the Federal Act.

(50) "Natural" or "naturally occurring", when used to describe water quality, means:

(a) Those water quality values which exist unaffected by, or unaffected as a consequence of, any water use;

(b) Those water quality values which exist unaffected by the discharge, or direct or indirect deposit, of any solid, liquid, or gaseous substance; or

(c) Any other water quality values which represent conditions which the Department by its regulations defines as natural. For the purposes of this definition, the following conditions shall be considered as natural:

(i) Infestations of water milfoil, *myriophyllum spicatum*,

(ii) Infestations of water chestnut, *trapa natans*,

(iii) The presence of sea lettuce, *ulva lactuca*, and

(iv) The presence of sea nettles, *aurelia* sp.

(51) "Natural trout waters" means waters capable of supporting self-sustaining trout populations, including propagation, and their associated food organisms.

(52) "New source" means any source, the construction of which is commenced after the publication by the EPA of proposed regulations prescribing a standard of performance which will be applicable to the source if the standard is promulgated.

(53) "Nontidal water" means water not subject to regular and periodic tidal action (generally freshwater).

(53-1) "Nutrient management plan (NMP)" means a plan written by a nutrient management planner certified by the Maryland Department of Agriculture (MDA) that meets all requirements of COMAR 15.20.07 and 15.20.08 and any other requirements specified by the Department in a discharge permit issued pursuant to this subtitle.

(53-2) Offal.

(a) "Offal" means the refuse from slaughtered or salvageable dead animals, crustaceans, or any other animal form.

(b) "Offal" includes heads, feet, viscera, hair, blood, feathers, bones, scales, or oils.

(54) "Oil" means any of a number of unctuous combustible substances which are liquid at ambient temperature and atmospheric pressure, or easily liquefiable on warming and soluble in ether, and which include fuel oil, gasoline, kerosene, lubricating oil, other petroleum products, oil bearing sludge, oil refuse, oil mixed with ballast or bilge water, and oil mixed with wastes.

(54-1) "Oligohaline" means tidal waters with salinities from 0.5 to less than 5 parts per thousand.

(55) "Operator" means that person or those persons with responsibility for the management and performance of each facility.

(55-1) "Opportunistic species" means an organism that tolerates or thrives in a disturbed environment, or both, and has a competitive edge in some situations.

(56) "Other aquatic life" means all organisms, other than fish, which grow in, live in, or frequent water.

(57) "Other waste" means garbage, refuse, wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, and all discarded substances other than sewage or industrial waste.

(58) "Pass through" means discharge of pollutants through the POTW into waters of the State in quantities or concentrations which cause a violation of any requirement of the POTW's discharge permit.

(58-1) "Percent-light-through-water (PLW)" means the amount of light reaching just above the canopy of underwater bay grasses, expressed as a fraction of the light at the water surface.

(59) "Permeability of an aquifer" means the volume of water at the prevailing kinematic viscosity that will move in unit time under a unit hydraulic gradient through a unit area measured at right angle to the direction of flow.

(60) "Permit" means written authorization issued by the Department under pertinent law and regulations and describing required performance for specific activities and operations.

(61) "Permittee" means the person holding a permit issued by the Department.

(62) "Person" means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind, and any partnership, firm, association, corporation or other entity. Person includes the federal government, this State, any county, municipal corporation, or other political subdivision of this State or any of their units.

(63) "Person in charge" means the person designated by an operator or permittee as the one with direct supervisory responsibility for an activity or operation at a facility.

(64) "Point of discharge" means that location in or adjacent to a body of water at which any liquid, solid, or gaseous substances are discharged or deposited.

(65) "Point source" means any discernible, confined and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, large animal feeding operation, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be, discharged.

(66) "Pollutant" means:

(a) Any waste or wastewater that is discharged from:

(i) Any publicly owned treatment works, or

(ii) An industrial source; or

(b) Any other liquid, gaseous, solid, or other substances which will pollute any waters of this State.

(67) "Pollution" means any contamination or other alteration of the physical, chemical, or biological properties of any waters of this State, including a change in temperature, taste, color, turbidity, or odor of the waters or the discharge or deposit of any organic matter, harmful organism, or liquid, gaseous, solid, radioactive, or other substance into any waters of this State that will render the waters harmful, or detrimental, to:

(a) Public health, safety, or welfare;

(b) Domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses;

(c) Livestock, wild animals, birds; or

(d) Fish or other aquatic life.

(67-1) "Polyhaline" means tidal waters with salinities from 18 to 30 parts per thousand. These areas are typically in the lower portion of an estuary, where the ocean and estuary meet.

(67-2) "Preexisting discharge" means any discharge which existed at the time of application for a coal remining discharge permit.

(68) "Pretreatment" means a reduction in the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in a wastewater before discharging to or otherwise introducing pollutants into a POTW.

(69) "Pretreatment requirements" means any:

(a) Federal pretreatment requirements and federal pretreatment standards;

(b) Pretreatment regulations developed in accordance with Environment Article, §9-319(a), Annotated Code of Maryland;

(c) Pretreatment requirements listed within the delegation document issued by the Department approving a pretreatment program developed by owners of a POTW;

(d) Pretreatment requirements developed by owners of POTWs in accordance with approved pretreatment programs; or

(e) Pretreatment requirements established in a permit or agreement between a POTW and an industrial user issued in accordance with an approved pretreatment program.

(70) "Propagation" means the continuance of species by generation of successive production in the natural environment, as opposed to the maintenance of species by artificial culture and stocking.

(71) "Publicly owned treatment works (POTW)" means a facility that is:

(a) Owned by this State or a political subdivision, municipal corporation, or other public entity; and

(b) Used for the treatment of pollutants.

(72) "Public water supply" means any water of this State with the designated use of public water supply and which is suitable for human consumption when treated to meet the requirements of COMAR 26.04.01.

(72-1) "Pycnocline" means the portion of the water column where density changes rapidly because of salinity, temperature, or both. In an estuary the pycnocline is the zone separating deep, cooler, more saline waters from the less saline, warmer, surface waters. The upper and lower boundaries of a pycnocline are defined by a change in density per unit of depth. The upper pycnocline is the shallowest occurrence of a density gradient of 0.1 kg/m^4 or greater and the lower pycnocline depth is the deepest occurrence of a density gradient of 0.2 kg/m^4 .

(73) "Receiving water" means the surface waters of this State into which waters or wastewaters are or may be discharged.

(74) "Recreational trout waters" means cold or warm waters capable of holding or supporting adult trout for put-and-take fishing, usually seasonal.

(75) "Refuse Act" means §13 of the River and Harbor Act of March 3, 1899.

(76) "Refuse Act application" means the application for a permit under the Refuse Act.

(77) "Refuse Act permit" means any permit issued under the Refuse Act.

(78) "Regular or periodic tidal action" means the rise and fall of the sea produced by the gravitational attraction of the sun and moon unaffected by wind or any other circumstances.

(78-1) "Remined area" means only that area of any coal remining operation on which coal mining was conducted before August 3, 1977.

(78-2) "Restoration variance" means a temporary exception to the water quality standards allowing nonattainment of designated uses granted in situations where no enforcement action will be taken if the nonattainment is due to the existence of one or more of the justifications in 40 CFR §131.10(g). Restoration variances will be reviewed every 3 years at a minimum as required by the Clean Water Act and EPA regulations.

(79) "Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with effluent limitations or water quality standards as specified by an order or permit requirement of the Department.

(79-1) "Secchi disk" means a device for measuring water clarity that consists of a circular weighted disk painted in flat black and white in alternating quarters that is suspended on an incremented rope or line.

(79-2) "Secchi depth" means the depth at which a Secchi disk is just visible when viewed vertically from a shaded perspective. The measure is taken by lowering the device to a depth below which it can be seen and then raising it until it is just visible.

(80) "Secondary treatment" means the treatment of sewage to produce effluent equal to or better than the following quality:

(a) Five-day biochemical oxygen demand:

(i) 30 milligrams/liter—average for a 30-day period,

(ii) 45 milligrams/liter—average for a 7-day period;

(b) Total suspended solids:

(i) 30 milligrams/liter—average for a 30-day period,

(ii) 45 milligrams/liter—average for a 7-day period;

(c) Bacterial control: As required to meet water quality standards.

(81) "Sewage" means the water-carried domestic waste from residences, buildings, industrial establishments, or other places.

(81-1) Sewerage System.

(a) "Sewerage system" means:

(i) The channels used or intended to be used to collect and dispose of sewage; and

(ii) A structure or appurtenance used or intended to be used to collect or prepare sewage for discharge into a treatment works or the waters of the State.

(b) "Sewerage system" includes a sewer of any size.

(c) "Sewerage system" does not include the plumbing system inside a building served by the sewerage system.

(82) "Shellfish harvesting waters" means waters that are actual or potential areas for the harvesting of shellfish including oysters, softshell clams, and brackish water clams.

(83) "Sludge" means the settleable solids that are:

(a) Naturally present in waters and wastewaters; or

(b) Derived from nonsettleable matter by chemical coagulation and precipitation or by biological flocculation and precipitation.

(83-1) "Soil conservation and water quality plan (conservation plan)" means a plan that is developed by a soil conservation district, MDA, a Natural Resources Conservation Service (NRCS) planner, or a technical service provider certified by the NRCS that addresses the following minimum elements:

(a) Storage for animal manure and litter, including any need for additional storage or manure transfer;

(b) Stabilized surfaces in heavy use areas;

(c) Diversion of storm water away from the production area;

(d) Maintenance of vegetation around the production area;

(e) Construction and maintenance of filter strip or strips or water control structures between the production area and surface water; and

(f) Mortality management.

(84) "Source" means any building, structure, facility, or installation from which there is, or may be, a discharge of pollutants.

(85) "Spill (spilling)" means any loss of control or release of oil or other hazardous substance that moves or is capable of moving into the aquatic environment.

(86) "Standard of performance" means a standard for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives as established by the State or the Environmental Protection Agency.

(87) "State" means the State of Maryland.

(88) "Stream flow" means the nontidal water movement that occurs in a natural channel.

(89) "Sub-basin" means one of the 20 watershed areas delineated by the Department and comprising, in sum total, the surface waters of the State.

(89-1) "Submerged aquatic vegetation (SAV; underwater bay grass)" means rooted vascular plants that generally grow beneath the water surface, but may have leaves that extend to, and grow on, the surface of the water.

(89-2) "Subpycnocline" means waters that occur below the lower level of the pycnocline.

(90) "Surface waters" means all waters of this State which are not ground waters.

(91) "Thermal barrier" means a pattern of artificially created temperature change and distribution.

(91-1) "Tidal fresh" means tidal waters with salinities from 0 to less than 0.5 parts per thousand.

(92) "Tidal water" means water subject to regular or periodic tidal action.

(93) "Toxic substance" means any liquid, gaseous, or solid substance in a concentration which, when applied to, discharged to, or deposited in the waters of this State, may, in the judgment of the Department, exert a detrimental effect on humans or on the propagation, cultivation, or conservation of terrestrial or aquatic life.

(94) "Transmissivity of an aquifer" means the rate at which water of the prevailing kinematic viscosity is transmitted through a unit width of the aquifer under a unit hydraulic gradient.

(95) "Treatment works" means any plant or other works used for the purpose of treating, or stabilizing, wastes.

(96) "Vessel" means every watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the waters of this State.

(97) "Waste load allocation" means the identification and allotment by the Department of quantities of residual wastes which may be discharged from point sources. This allotment shall include:

(a) Limits on the quantities of wastes which may be discharged;

(b) Consideration of seasonal variations;

(c) A margin of safety; and

(d) The contribution of non-point sources.

(98) "Waste" means industrial waste and all other liquid, gaseous, solid, or other substances which will pollute any waters of this State.

(99) "Wastewater" means any:

(a) Liquid waste substance derived from industrial, commercial, municipal, residential, agricultural, recreational, or other operations or establishments; and

(b) Other liquid waste substance containing liquid, gaseous, or solid matter and having characteristics which will pollute any waters of the State.

(100) "Water" means the liquid substance which is derived from a ground water source, a surface source, or any combination of these sources, and which will be discharged, without change in quality, into the waters of this State, with the exception of storm water runoff.

(100-1) "Water clarity" means a relative measure of the ability of water to transmit light, expressed as a percentage of light penetrating the water in terms of expected Secchi depth for the defined waterbody.

(100-2) "Water quality criteria" means the numeric threshold or narrative description of a water quality parameter that would be expected to support and protect a particular designated use.

(101) "Water quality limited waters" means shellfish waters and other waters of this State for which BAT for industrial discharges and secondary treatment for sewage discharges is not sufficiently stringent to maintain applicable water quality standards.

(102) "Watercourse" means a specific body or channel of water which is part of the waters of this State.

(103) "Waters of this State" includes:

(a) Both surface and underground waters within the boundaries of this State subject to its jurisdiction, including that part of the Atlantic Ocean within the boundaries of this State, the Chesapeake Bay and its tributaries, and all ponds, lake, rivers, streams, tidal and nontidal wetlands, public ditches, tax ditches, and public drainage systems within this State, other those designed and used to collect, convey, or dispose of sanitary sewage;

(b) The flood plain of free-flowing waters determined by the Department of Natural Resources on the basis of the 100-year flood frequency.

26.08.03.01

.01 Effluent Limitations.

A. Prohibited Discharges. The following discharges to the waters of this State are prohibited:

(1) The discharge of any waters in excess of 10,000 gallons per day, as a monthly average, or the discharge of any wastes or waste waters regardless of volume, unless:

(a) Authorized by a discharge permit, or

(b) Subject to control or modification required by a schedule of compliance established by this State;

- (2) The discharge of any pollutant in toxic amounts including:
 - (a) Substances which accumulate to toxic amounts during the expected life of organisms in the surface water, or
 - (b) Substances which produce deleterious behavioral effects on the organisms;
- (3) The discharge of any radiological, chemical, or biological warfare agent;
- (4) The discharge of any high level radioactive waste;
- (5) Any discharge which would substantially impair anchorage and navigation;
- (6) Any discharge to which the Administrator of the Environmental Protection Agency has objected in writing under the Federal Act;
- (7) Any discharge which is in conflict with a plan approved by this State;
- (8) The discharge of sewage from vessels while moored, berthed, or docked in waters of this State except through a federally and State-approved marine sanitation device;
- (9) The discharge of sewage or other wastes from vessels to the waters of Deep Creek Lake in Garrett County, Maryland; and
- (10) The discharge of sewage from vessels to the waters of this State, designated as restricted zones. These zones shall be designated:
 - (a) Wherever greater environmental protection and enhancement is required, and
 - (b) According to the procedures outlined in the Federal Act.

B. The following areas of the waters of the State are designated as no discharge zones, where the discharge of sewage from vessels is prohibited:

- (1) The Herring Bay no discharge zone which encompasses all tidal waters of Herring Bay and its tributaries westerly of a line beginning at a point at or near Holland Point defined by Lat. 38° 43' 34.9" N., Long 76° 31' 37.3" W., then running approximately 352° (true) to a point at or near Crab Pile A defined by Lat. 38° 46' 33.0" N., Long. 76° 32' 10.1" W., then running approximately 354° (true) to a point at or near the north shore of Parker Creek defined by Lat. 38° 46' 39.1" N., Long. 76° 32' 10.8" W; and
- (2) The Northern Coastal Bays no discharge zone which encompasses all the tidal waters of Ocean City Inlet, Sinepuxent Bay, Isle of Wight Bay, Assowoman Bay, and their tributaries, upstream (West) of a line beginning at a point at or near the east end of the north Ocean City Inlet jetty, defined by Lat. 38° 19' 27.0" N., Long. 75° 05' 5.5" W., then running approximately 248° (true) to a point at or near the east end of the south Ocean City Inlet jetty, defined by Lat. 38° 19' 20.7" N., Long. 75° 05' 24.8" W., and north of a line across the north end of Sinepuxent Bay beginning at a point at or near the southeast entrance of the Ocean City commercial fish harbor (Swordfish Basin) defined by Lat. 38° 19' 37.0" N., Long. 75° 6' 6.0" W., then running approximately 110° (true) to a point at or near the shore at the northwest tip of Assateague Island defined by Lat. 38° 19' 32.0" N., Long. 75° 05' 49.0" W., and south of the Maryland-Delaware line beginning at a point at or near the east side of Assowoman Bay defined by Lat. 38° 27' 4.5" N., Long. 75° 04' 11.2" W., then running approximately 270° (true) to a point at or near the west side of Assowoman Bay defined by Lat. 38° 27' 4.4" N., Long. 75° 05' 09.3" W.

C. Controlled Discharges.

(1) Discharge Permitted. The discharge of waters, wastes, or wastewaters to the waters of this State is permitted if:

(a) The discharge does not contravene the surface water quality standards established by this State to protect legitimate beneficial water uses;

(b) The discharge complies with the discharge permit requirements for:

(i) Effluent limitations,

(ii) Schedules of compliance, and

(iii) The use of the best available technology;

(c) The discharge is authorized by a discharge permit subject to conditions and restrictions imposed in the permit; or

(d) The discharge is:

(i) Dredge spoil resulting from an effluent returning to the waters of this State from an approved dredge spoils disposal area,

(ii) Material excavated from the sediments underlying surface waters and placed in another part of the water, or

(iii) Material placed in suspension in the water as part of a dredging or construction project authorized by the Department.

(2) Best Available Technology.

(a) Before establishing effluent limitations for any point source, the Department shall give careful consideration to necessary and practicable effluent limitations to achieve compliance with surface water quality standards (COMAR 26.08.02.01-.08) or ground water quality standards (COMAR 26.08.02.09). This consideration shall include:

(i) Information provided as part of the discharge permit application;

(ii) Information available from discharge permit monitoring reports; and

(iii) Any other information provided by the applicant or required by the Department.

(b) Best available technology shall be required as the minimum for all permitted discharges. If it is determined that compliance with the established water quality standards will not be achieved through BAT, additional treatment shall be:

(i) Required; and

(ii) Based on waste load allocation.

(3) Nutrient Control. This State recognizes that certain surface waters of this State are eutrophic or are approaching eutrophic conditions. All discharges to these surface waters shall be treated as necessary to reduce eutrophic effects. This State shall require that wastewaters containing nutrients which cause or contribute to eutrophication be:

(a) Given advanced waste treatment before discharge;

- (b) Disposed of by spray irrigation on land; or
- (c) Disposed of by other practicable procedures which will avoid direct discharge to surface waters.
- (4) Use of Material Balance.
 - (a) The Department may require that the operator of the facility involved conduct a material balance with the accuracy and precision necessary to account for environmentally significant losses of material in any instance when:
 - (i) Pollution of the waters of this State is likely to occur as a result of discharge or loss of toxic substances; or
 - (ii) The Department determines the need for materials control to prevent water pollution.
 - (b) If a material balance is required, the Department shall review and approve:
 - (i) The procedure to be used;
 - (ii) The frequency of the determinations;
 - (iii) The units of measurements;
 - (iv) The methods of calculations, management, and record; and
 - (v) Any other specific requirements considered necessary.
 - (c) Information developed by the operator of a facility as a consequence of making a material balance shall be made available to the Department of the Environment on demand.

26.08.03.09

.09 Animal Feeding Operations.

A. Animal Feeding Operation Size Categories.

- (1) A large, medium, or small AFO is an AFO housing the number of animals or with the total house capacity identified in the column labeled large, medium, or small, respectively, in Table 1.
- (2) The number of animals or, for dry manure chicken operations, house capacity shall be based on:
 - (a) The total at the site; or
 - (b) For adjacent sites involving any common ownership or operation, the combined total of all sites where the production, manure management, or storage operations are collectively owned or managed.
- (3) Table 1. Small, Medium, and Large AFO Size Categories.

Animal Type	Size Category – Number of Animals or Total House Capacity (square feet)		
	Large – greater than or equal to	Medium	Small – less than
Cattle (includes heifers)	1,000 animals	300—999 animals	300 animals

Animal Type	Size Category – Number of Animals or Total House Capacity (square feet)		
	Large – greater than or equal to	Medium	Small – less than
Dairy cattle	700 animals	200—699 animals	200 animals
Horses	500 animals	150—499 animals	150 animals
Veal	1,000 animals	300—999 animals	300 animals
Swine greater than 55 pounds	2,500 animals	750—2,499 animals	750 animals
Swine less than 55 pounds	10,000 animals	3,000—9,999 animals	3,000 animals
Sheep/lambs	10,000 animals	3,000—9,999 animals	3,000 animals
Ducks with liquid manure handling	5,000 animals	1,500—4,999 animals	1,500 animals
Chickens with liquid manure handling	30,000 animals	9,000—29,999 animals	9,000 animals
Ducks with dry manure handling	30,000 animals	10,000—29,999 animals	10,000 animals
Laying hens with dry manure handling	82,000 animals	25,000—81,999 animals	25,000 animals
Chickens (other than laying hens) with dry manure handling	125,000 animals or 100,000 square feet	37,500—124,999 animals and less than 100,000 square feet	37,500 animals
Turkeys	55,000 animals	16,500—54,999 animals	16,500 animals

B. Concentrated Animal Feeding Operations.

(1) For AFOs that are defined or designated as CAFOs under the federal regulations, at 40 CFR 122.23, as amended, the requirements of the federal regulations applicable to concentrated animal feeding operations at 40 CFR Parts 122 and 412, as amended, are incorporated by reference with the following changes:

(a) The terms "Director" and "State Director" mean the Secretary of the Environment or the Secretary of the Environment's designee;

(b) The size threshold for defining a large dry manure chicken (other than laying hens) AFO is 125,000 chickens or a total house capacity of greater than or equal to 100,000 square feet;

(c) An AFO that is a large or medium CAFO under federal regulations is also subject to the permit requirements for a CAFO under Maryland regulations only if it discharges or proposes to discharge;

(d) An AFO that is a large CAFO under federal regulations that does not discharge or propose to discharge is subject to the requirements for a MAFO under the Maryland regulations.

(2) The Department may designate a small AFO as a CAFO after a site inspection, if:

(a) Animal waste comes into contact with surface water; or

(b) Animals come into contact with surface water and the AFO is not using best management practices designed and approved by the soil conservation district (SCD) to limit animal access to surface water.

(3) A CAFO shall obtain permit coverage under the general discharge permit issued by the Department under COMAR 26.08.04.09N unless the Department, in its discretion, notifies the discharger that a separate discharge permit is required.

C. Maryland Animal Feeding Operations.

(1) A MAFO shall obtain permit coverage under the general discharge permit issued by the Department under COMAR 26.08.04.09N, unless the Department, in its discretion, notifies the discharger that a separate discharge permit is required.

(2) The Department may designate as a MAFO a small or medium AFO if the Department determines that the type or location of animal waste storage or animal access to surface water is likely to cause a discharge of pollutants to ground or surface waters of this State.

(3) A permitted MAFO upon closure of the facility shall maintain permit coverage until all animals and animal waste that were present while the operation was a MAFO are removed from the site.

(4) The deadline for a MAFO to submit an application for an individual permit or an NOI for a general discharge permit shall be in accordance with the schedules for NOIs specified in the general permit for AFOs issued under COMAR 26.08.04.09N.

(5) Effluent Limitations for MAFOs.

(a) MAFO permits shall at a minimum include requirements and schedules for development, submission to the Department, and implementation of a complete and current NMP and conservation plan.

(b) The terms of the NMP shall be consistent with the terms of the conservation plan and, together with the conservation plan, shall:

(i) Take into account all animal waste from the management of animals or their manure and associated waste nutrients; and

(ii) Ensure that appropriate manure management measures are used to store, stockpile, and handle manure and animal waste to minimize the potential for nutrient loss or runoff.

(c) Except for storm water that comes into contact with animal waste that is land applied in accordance with a NMP, discharge of animal waste to surface waters of this State is prohibited.

(6) A facility's status as a MAFO does not require, and the permit authorization for a MAFO does not confer, NPDES discharge permit authorization under the Federal Act.

D. The Department may require an AFO owned or operated outside of Maryland to obtain a discharge permit if all or a significant part of its operation, whether waste storage, waste application, or confinement of animals, is conducted in Maryland.

E. An AFO, regardless of size, that utilizes a spray irrigation system for wastewater application shall be regulated under either a general or individual discharge permit.

F. Certification of Conformance.

(1) A chicken (other than laying hens) AFO with dry manure and a total house size capacity of 75,000 square feet or greater that is not otherwise categorized as a CAFO or MAFO, shall submit to the Department a certification of conformance within the time period specified in the general permit for AFOs issued under COMAR 26.08.04.09N.

(2) The Department may designate a facility a MAFO before or after the submittal of a certification of conformance if the Department determines that the facility is a MAFO under this regulation.

(3) Failure to submit the required certification shall result in the automatic designation of the facility as a MAFO, and the facility shall be subject to enforcement and penalty for operating without a State discharge permit from the effective date of this regulation or the date the facility began operating, whichever occurs later.

(4) A certification of conformance may be rejected after notice to the AFO if the Department determines that any of the following have occurred:

(a) False or inaccurate information was contained in the certification;

(b) Conditions or specifications included in the required NMP or conservation plan have been or are about to be violated;

(c) Substantial deviation from the required plans has occurred;

(d) The AFO has failed to permit an authorized representative of the Department, upon presentation of proper credentials, to:

(i) Enter at any reasonable time upon the AFO's premises where a pollutant source is located, pertinent operations are conducted, or records related to the required plans are maintained;

(ii) Access and copy any records related to the required plans;

(iii) Inspect facilities to ensure compliance with the conditions of the certification;

(iv) Inspect any monitoring equipment or method required in the plans; or

(v) Sample any discharge or pollutants;

(e) Any State or federal water quality stream standard or effluent standard has been or is threatened to be violated; or

(f) Any other good cause exists for rejecting the certification.

26.08.04.01

.01 Discharge Permits Required.

A. Issuance of Discharge Permits. The Department shall issue State discharge permits or NPDES permits in accordance with provisions and conditions of COMAR 26.08.01—26.08.04 and 26.08.08, to satisfy the regulatory requirements of the National Pollutant Discharge Elimination System (NPDES), established under the Federal Act.

B. Activities for Which Discharge Permits Are Required. A person may not commit any of the following acts except as authorized by a discharge permit issued by the Department:

(1) Discharge into the waters of the State any waters in excess of 10,000 gallons per day, as a monthly average, whether the waters are derived from a ground water source, or from a surface water source, or from any other source, with the exception of storm water runoff that is not regulated under the Federal Act.

(2) Except as provided in COMAR 26.08.02.09A(3) and Regulation .08 of this chapter, discharge into the waters of this State any waste or wastewater regardless of volume.

(3) Construct, install, modify, extend, alter, or operate any system for the disposal of waste or wastewater into the waters of the State, or a system which may result in a discharge into these waters, regardless of quality or volume, with the exception of storm water runoff that is not regulated under the Federal Act.

(4) Increase or otherwise modify in volume, temperature, or concentration, any existing waste or wastewater in excess of the discharges authorized by any existing discharge permit. To the extent that the modification is in excess of limits specified in a discharge permit, the permittee shall report the change to the Department within 1 week of the commencement of the modification. This report shall include information on what, how, and why modifications were made and whether they will be temporary or permanent.

(5) Construct, install, or operate any industrial, commercial, or other establishment or any extension or modification or addition to them, including the construction or use of any new discharge outlet, the construction, installation, or operation of which would cause an increase in the discharge of waste or wastewater into the waters of the State or otherwise alter the physical, chemical, or biological properties of any waters of the State in any manner not lawfully authorized.

(6) Land apply offal.

26.08.04.01-1

.01-1 Discharge Permit Application.

A. Application Required.

(1) Persons engaged or planning to engage in activities requiring a discharge permit shall file a complete application:

(a) Not less than 180 days in advance of the date on which the discharge permit is desired to commence the activities; and

(b) In sufficient time before the commencement of activities to ensure compliance with provisions of appropriate State and federal laws and regulations.

(2) Permittees holding an active discharge permit shall file an updated application not less than 180 days in advance of the expiration date on that discharge permit.

(3) Permittees no longer engaging in activities requiring a discharge permit shall notify the Department of the change in status of their facility within 30 days of ceasing the actions requiring a discharge permit.

B. Requirements.

(1) Applications shall be made on the appropriate State discharge or NPDES application forms.

(2) The following information shall be submitted with the completed application:

(a) Name of any affiliate;

(b) Permit numbers for any State discharge or NPDES permits presently held by the applicant or his affiliate;

(c) Identification of administrative complaints or orders, if any, against the operation of the applicant or his affiliate; and

(d) The location of all sites involved in the storage of solid or liquid waste and the ultimate disposal sites of solid or liquid waste from any treatment system.

(3) If the discharge is from a new facility, preliminary plans and specifications, sufficiently adequate in scope and form to enable the Department to evaluate the proposed facility, shall be submitted with the application.

(4) The Department may require that an applicant for a discharge permit provide additional reports, specifications, plans, or other information on the existing or proposed pollution control program, including a material balance if considered necessary.

(5) Required Signatures. The application for a State discharge or NPDES permit shall be signed by a responsible official, as follows:

(a) For a corporation, by a responsible corporate officer such as:

(i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or

(ii) The manager of one or more manufacturing, production, or operating facilities employing more than 250 individuals or having gross annual sales or expenditures exceeding \$25 million, in second-quarter 1980 dollars, if authority to sign documents has been assigned or delegated to the manager according to corporate procedures;

(b) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively;

(c) For a municipal, State, or other public agency, by either a principal executive officer, ranking elected official, or other duly authorized employee; or

(d) For a federal agency, by a principal executive officer that includes:

(i) The chief executive officer of the agency, or

(ii) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency such as a regional administrator of the EPA.

C. Application Fee. Each application shall be accompanied by a fee in the amount established by the Department in Regulation .11 of this chapter. The Department shall inform the applicant of the applicable fee which shall be paid by check or money order, made payable to the Department.

D. Receipt of Application. Upon receipt of an application, the Department shall:

(1) Notify the applicant that:

(a) The application has been received,

(b) The applicant is responsible for the cost of the public notice required under the provisions of this chapter and for transcripts from any informational meetings or public hearings,

(c) The applicant or the applicant's representative may be required to attend all public informational meetings and public hearings,

(d) Failure to pay the costs of public notification or failure to attend the public informational meetings or public hearings may result in the Department not approving the applicant's permit; and

(2) Publish according to §E of this regulation a notice of application that includes the following:

- (a) The name of the applicant,
- (b) The type of permit applied for,
- (c) The type of proposed discharge,
- (d) The volume of the proposed discharge,
- (e) The location of the proposed discharge,
- (f) A statement that persons may review and copy the application or related material and the procedure for doing so,
- (g) A statement that the Department shall hold an informational meeting, if a person makes a written request within 10 working days of the publication of the notice, and the procedure for requesting an informational meeting, and
- (h) Other information the Department determines is necessary for adequate public notification.

E. Public Notice and Access to Information and Confidential Information.

- (1) The applicant shall pay the cost of all public notice required by this chapter.
- (2) When this chapter requires publication of public notice, the Department shall publish or shall require the applicant to publish the notice at least once a week for 2 consecutive weeks in a daily or weekly newspaper of general circulation in the geographical area in which the proposed discharge is to be located.
- (3) The Department may post or require the applicant to post the notice at the site of the proposed discharge or at public facilities in the geographical area of the proposed discharge.
- (4) The Department shall maintain lists of persons, government agencies, and other concerned groups to which notice is sent concerning discharge permits.
- (5) The Department shall provide notice of an informational meeting or a public hearing by mail to each person requesting the meeting or hearing or to the person's authorized representatives.
- (6) The Department shall ensure that any State discharge or NPDES permit application and its supporting information, including any public comment concerning the application, shall be available to the public for inspection and copying.
- (7) The Department shall provide facilities for the inspection of the State discharge or NPDES permit application and its supporting information and ensure that State employees respond to requests for inspection promptly without undue requirements or restrictions. The Department shall either:
 - (a) Ensure that a machine or device for the copying of papers and documents is available for a reasonable fee; or
 - (b) Otherwise provide for, or coordinate with, copying facilities or services so that requests for copies of nonconfidential documents may be responded to promptly.
- (8) Protection of Information.

(a) Except for effluent data, the Department shall protect any information contained in an NPDES application, or other records, reports, or plans, as confidential upon a showing by a person that the information, if made public, would divulge methods or processes entitled to protection as the person's trade secrets.

(b) If the information being considered for confidential treatment is contained in an NPDES application, the Department shall forward this information to the EPA for concurrence in any determination of confidentiality.

(c) If the EPA determines that some or all of the information being considered for confidential treatment does not merit this protection, and communicates to the Department that it is the EPA decision not to concur in the withholding of the information, the Department shall:

(i) Notify the applicant of EPA's decision; and

(ii) After ascertaining that the applicant has exhausted or waived the EPA appeal process concerning confidentiality of business information, make available to the public, upon request, that information determined not to constitute trade secrets.

(9) Any information accorded confidential status, whether or not contained in an NPDES application, shall be disclosed, upon request, to an authorized EPA representative, who shall maintain the disclosed information as confidential.

26.08.04.01-2

.01-2 Discharge Permit Application Processing.

A. Informational Meetings.

(1) Upon written request by a person within 10 working days of the publication of a notice of application for a discharge permit, the Department shall hold an informational meeting to discuss the application.

(2) The Department also may hold an informational meeting or meetings at the Department's discretion.

(3) The informational meeting may be cancelled if all persons who made timely written requests withdraw their requests before the meeting.

(4) The Department may require the applicant to attend all informational meetings and present information concerning the application.

(5) If an informational meeting is required, the Department shall publish or require the applicant to publish notice of the informational meeting, unless the notice of application contained a notice of the informational meeting. This notice shall:

(a) Conform to the requirements of Regulation .01-1E of this chapter; and

(b) Contain:

(i) The information required under Regulation .01D of this chapter,

(ii) The date, time, and location of the informational meeting, and

(iii) Other information the Department determines to be necessary for adequate public notice.

(6) When the notice of the informational meeting also contains a notice of public hearing, the first notice of public hearing shall be given at least 30 days before the hearing.

B. Tentative Determination.

(1) Preparation of Tentative Determination and Fact Sheet.

(a) After the Department receives the discharge permit application, the Department shall prepare a tentative determination, which shall include:

(i) The name of the applicant;

(ii) A proposal to issue or not issue the permit;

(iii) The type, volume, and location of the proposed discharge;

(iv) Proposed permit limitations and conditions;

(v) A brief explanation of the Department's tentative decision;

(vi) If applicable, a proposed schedule of compliance;

(vii) A brief summary, if appropriate, concerning the development of a site-specific criterion, use of a biological or chemical translator for derivation of permit limits, or a temporary permit modification; and

(viii) Other information the Department considers necessary.

(b) When the tentative determination is to issue a discharge permit, the tentative determination shall include a draft permit, which shall be available to the public for inspection and copying.

(c) The Department shall prepare a fact sheet as required by the Federal Act for all proposed permits for major facilities.

(2) Publication of Notice of Tentative Determination.

(a) The Department shall publish or require the applicant to publish the notice of tentative determination according to Regulation .01-1E of this chapter.

(b) The notice of tentative determination shall include:

(i) The information in §B(1)(a) of this regulation;

(ii) The procedures for a person to review and copy the tentative determination, draft permit, or related material;

(iii) A statement allowing 30 days for public comment to the notice of tentative determination before the issuance of the final determination and the procedures for offering public comment;

(iv) A statement that the Department shall hold a public hearing when a written request for a public hearing is made within 20 days of the publication of the notice of tentative determination and the procedure for making a written request for a public hearing; and

(v) Other information the Department considers necessary to ensure adequate public notice.

(c) When the notice of tentative determination also includes a notice of public hearing, the first notice of public hearing shall be given at least 30 days before the hearing.

(3) Mailing List for the Notice of Tentative Determination and Fact Sheet.

(a) The notice of tentative determination shall be mailed to any other state whose waters may be affected by the issuance of a permit, so that the affected state may submit written comments to the Department and to the EPA.

(b) The notice of tentative determination and, if prepared, a fact sheet, shall be mailed, unless waived, to the appropriate district engineer of the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service.

(c) Upon written request by a person, the Department shall add the name of that person to a mailing list to receive a copy of the notice of tentative determination and fact sheet, if prepared, for a specific NPDES permit application.

(4) Obligation of Discharger to Notify Department. A person who desires to apply for a site-specific criterion, biological translator, or chemical translator shall notify the Department before the later of the end of the comment period established:

(a) In the notice of tentative determination; or

(b) For the public hearing.

(5) Public Hearing.

(a) The Department shall schedule a public hearing on the tentative determination when a written request for a public hearing is made within 20 calendar days of the publication of the notice of tentative determination.

(b) The Department may schedule a public hearing on a State discharge or NPDES permit at the Department's discretion.

(c) The public hearing may be cancelled if all persons who made timely written requests withdraw the requests before the hearing.

(d) The applicant, if requested by the Department, shall provide information concerning the application.

(e) If the Department requires the applicant to attend the public hearing, failure of the applicant to attend the hearing and present information may result in the Department not issuing the permit.

(f) A person shall be given an opportunity to present information at the public hearing concerning the tentative determination.

(g) The Department shall accept written comments for 5 calendar days after the date of the public hearing.

(h) The applicant shall be responsible for the cost of preparing and obtaining a transcript of public hearings.

(6) Notice of Public Hearing.

(a) If a public hearing is scheduled, a notice of the hearing shall be published according to Regulation .01-1E of this chapter. The first notice shall give a minimum of 30 days notice before the hearing.

(b) The notice of public hearing shall include:

- (i) The name of the applicant;
 - (ii) The type of discharge permit to be discussed at the public hearing, including the volume of the proposed discharge;
 - (iii) The location of the proposed discharge;
 - (iv) A brief description of the proposed permit conditions and limitations, proposed schedule of compliance, and any proposed special conditions including procedures for obtaining access to or copies of the tentative determination;
 - (v) Information concerning the date, time, and location of the public hearing; and
 - (vi) Other information the Department determines to be necessary for adequate public notification.
- (c) The Department shall provide the applicant with a copy of the notice of public hearing.

26.08.04.01-3

.01-3 Discharge Permit Issuance and Contested Case Hearings.

A. Final Determination.

(1) If the Department is not required to prepare a final determination, the tentative determination shall be a final decision by the Department and a permit may be issued.

(2) The Department shall prepare a final determination if:

(a) Written comments adverse to the tentative determination are received by the Department within 30 days after publication of the notice of tentative determination;

(b) Comments adverse to the tentative determination were received in writing at, or within 5 days after, a public hearing held according to Regulation .01-2B(5) of this chapter;

(c) Comments adverse to the tentative determination were received orally at the public hearing conducted under this section and the Department prepared a transcript of the comments made at the hearing; or

(d) The final determination is substantively different from the tentative determination and all persons who may be aggrieved by the final determination have not waived, in writing, their right to request a contested case hearing.

(3) Those persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Department's tentative determination is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments and documents supporting their position by the close of the public comment period, including any public hearing, as established by this chapter.

(4) Supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials.

(5) Those offering comments shall make supporting materials not already included in the administrative record available by submitting a complete copy of all supporting materials at the time they submit their comments, or, if this submission is not practical, as determined solely by the Department, comments shall identify the location of the supporting materials.

(6) The final determination shall include:

- (a) The name of the applicant;
- (b) The type of discharge;
- (c) The location of the discharge;
- (d) The volume of the discharge;
- (e) A statement of the Department's final determination and a brief explanation of the Department's decision;
- (f) The permit limitations and conditions; and
- (g) A schedule of compliance, if applicable.

(7) The final determination shall be available to the public for inspection and copying according to Regulation .01-1E of this chapter.

B. Notice of Final Determination.

(1) When the Department is required to prepare a final determination under §A of this regulation, a notice of final determination shall be published according to Regulation .01-1E of this chapter.

(2) The notice of final determination shall be published in the same newspapers as the notice of hearing.

(3) The notice of final determination shall include:

(a) The information contained in the final determination required by §A(3)(a)----(e) of this regulation, and any limitations, change in permit conditions, or schedule of compliance;

(b) A statement that the notice of final determination is available for inspection and copying;

(c) The procedure for inspection and copying of the final determination;

(d) A statement that a person may request a contested case hearing to appeal a final determination if the person makes factual allegations with sufficient particularity to demonstrate that the person is aggrieved by the final determination and the final determination is:

(i) Legally inconsistent with any provisions of law applicable to the final determination being challenged, or

(ii) Based upon an incorrect determination of a relevant and material fact;

(e) A statement that a person requesting a contested case hearing shall submit a written request for adjudication within 15 days after publication of the notice of final determination;

(f) The procedure for requesting a contested case hearing; and

(g) Other information the Department determines to be necessary for adequate public notification.

C. Request for Contested Case Hearing.

(1) A person may not request a contested case hearing based on, or in a contested case hearing may not challenge, a facility's compliance with zoning and land use requirements or conformity with a county plan issued under Environment Article, Title 9, Subtitle 5, Annotated Code of Maryland. This regulation does not prevent a party from contesting the compliance of the facility with zoning and land use or county plan requirements in any proceeding brought in accordance with or under any applicable local laws.

(2) A person requesting a contested case hearing to appeal a final determination shall:

(a) Submit a written request in the manner specified in the notice of final determination within 15 days after publication of the notice of final determination; and

(b) Provide documentation that the requirements of §A of this regulation were met.

(3) A request for a contested case hearing shall include:

(a) The name, address, and telephone number of the person filing the request;

(b) The particular factual allegations which demonstrate that the:

(i) Person is aggrieved by the final determination, and

(ii) Final determination is legally inconsistent with any provisions of law applicable to the final determination being challenged or is based on an incorrect determination of a relevant and material fact.

(4) The request for a contested case hearing shall be processed and the hearing conducted in accordance with the provisions of State Government Article, Title 10, Subtitle 2, and Environment Article, Title 1, Subtitle 6, Annotated Code of Maryland.

26.08.04.02

.02 Requirements for the Issuance and Reissuance of Discharge Permits.

A. General. The Department shall issue or reissue a discharge permit upon a determination that:

(1) The discharge or proposed discharge specified in the application is or will be in compliance with all applicable requirements of:

(a) Effluent limitations,

(b) Surface and ground water quality standards,

(c) The Federal Act,

(d) State law or regulation,

(e) Best available technology, and

(f) Federal effluent guidelines;

(2) The discharge or proposed discharge from publicly owned treatment works (POTW) or other sewage treatment works, and the sewerage systems, including the pumping stations, which serve the POTW or other treatment works, are in compliance with:

- (a) The continuing planning process required under §303(e) of the Federal Act; and
- (b) The approved county water and sewerage plan adopted under Environment Article, Title 9, Subtitle 5, Annotated Code of Maryland;
- (3) The provisions of existing discharge permits, as issued, and any outstanding administrative orders affecting the applicant or his affiliate have been or are being complied with by the applicant and his affiliate;
- (4) Industrial waste treatment works, publicly owned treatment works, or other sewage treatment works are operated and maintained by a certified operator under the provisions of Environment Article, Title 12, Annotated Code of Maryland, and applicable regulations; and
- (5) The requirements of Regulations .01, .01-1, and .01-2 of this chapter have been met.

B. Conformance with Federal Act. In the absence of formally promulgated effluent standards and limitations under the Federal Act, the Department shall apply, in the terms and conditions of issued discharge permits, effluent limitations to achieve the purpose of the Federal Act.

C. Compliance Schedule.

- (1) The Department may impose a compliance schedule as a condition of a permit for existing discharges which do not comply with permit conditions, effluent limits, or water quality standards.
- (2) When a compliance schedule is imposed, the Department shall:
 - (a) Require the permittee to achieve compliance within:
 - (i) Applicable periods established in effluent limitations or water quality standards, or
 - (ii) In the absence of any legally applicable schedule of compliance, the shortest reasonable time consistent with the requirements of the Federal Act and State law or regulation;
 - (b) Set for each compliance schedule that is longer than 9 months, interim dates of 9 months or less for:
 - (i) Compliance with interim requirements, or
 - (ii) Submission of reports of progress toward completion of the interim requirements;
 - (c) Require the permittee to provide written notice of the permittee's compliance or noncompliance with the interim or final requirements within 14 days following each interim or final compliance date;
 - (d) Prepare and report to the EPA on the last day of February, May, August, and November, a list of all instances occurring in the quarter before the report where the permittee failed to:
 - (i) Comply with an interim or final requirement, or
 - (ii) Notify the Department of compliance or noncompliance with each interim or final requirement; and
 - (e) Make available to the public for inspection and copying, the quarterly lists reporting failure to comply with compliance schedules.
- (3) The compliance schedule may be modified according to Regulation .10D of this chapter.

.02-1 Discharge Permit Limits.

A. General.

(1) Each discharge permit, unless inappropriate, shall specify average and maximum daily quantitative limits, in terms of weight, for the discharge of pollutants in the authorized discharge.

(2) Other discharge limits, such as minimum, average, or maximum concentration limits, may be imposed.

(3) If a schedule of compliance is included as a discharge permit condition, quantitative limits shall be set for the interim period as well as for the period following the final compliance date.

B. Net Credits. The discharge permit limits for the discharge of noncontact cooling water shall be based on the water quality standard unless the discharger applies to have the permit limits based on the concentration in the intake water. A discharger may make this application if:

(1) The intake water is the receiving water;

(2) The pollutant concentration in the intake water exceeds the water quality standard;

(3) Except for the additional provisions of a compliance schedule for corrosion and erosion in § C of this regulation, the discharger demonstrates to the Department's satisfaction, using a statistically rigorous demonstration, that no significant difference exists, at the edge of the appropriate mixing zone, between the intake concentration or loading and the effluent concentration or loading of the pollutant which exceeds the water quality standard; and

(4) The discharger demonstrates to the Department's satisfaction that no other activity, condition, method of operation, or materials used or produced at the facility which results in the introduction of wastewater into the facility's discharge (including entrainment of pollutants previously discharged or disposed of by the facility), significantly contributes to the exceedance of surface water quality standards.

C. Corrosion and Erosion.

(1) Reasonable Potential. A discharger will not be found to cause, have the reasonable potential to cause, or contribute to an exceedance of a numerical water quality standard for a pollutant caused by normal corrosion and erosion from a facility's water distribution piping and appurtenances or associated with intake water from a municipal drinking water supply, if:

(a) The facility is an existing facility as of the effective date of this section;

(b) The permitted dry-weather discharge from the facility consists of a combination of drinking fountain drainage, fire protection system drainage, and interior atmosphere control equipment drainage;

(c) The total annual estimated dry-weight mass loading for the pollutant of concern of the permitted dry-weather discharge from the facility does not exceed 5 pounds;

(d) The annual average effluent concentration of the permitted dry-weather discharge at the facility does not exceed the ambient concentration of the pollutant of concern in the facility's receiving water body; and

(e) The discharger's receiving water body for the discharge is not a Use III or Use III-P water.

(2) Compliance Schedule for Noncontact Cooling Water Discharges.

(a) For purposes of this section, normal corrosion and erosion shall be determined through site-specific calculations that are performed in accordance with scientifically defensible methodology approved by the Department and are based, where appropriate, on annual average intake concentrations.

(b) In establishing discharge permit limits on the basis of either water quality standards or intake water pollutant concentrations, the Department may grant a credit for normal corrosion and erosion associated with the discharging facility's noncontact cooling water condenser tubes, if the discharger:

(i) Demonstrates that, in the absence of the pollutant corroded and eroded from the facility's piping and appurtenances or noncontact cooling water condenser tubes, the discharger would not exceed the otherwise applicable permit limit;

(ii) Demonstrates that the normal corrosion and erosion associated with the intake water used by the facility for noncontact cooling water is sufficient to cause an exceedance of the otherwise applicable permit limit; and

(iii) Has entered into a consent order requiring that, within 5 years after the promulgation of this regulation or the permit expiration date at the time of promulgation, whichever is later, sufficient noncontact cooling water condenser tubes or other piping and appurtenances for noncontact cooling water will be modified, replaced, or repaired, to consist of noneroding and noncorroding materials, until the need for the corrosion/erosion credit is eliminated.

(c) The Department may reduce or deny the credit if any other activity, condition, method of operation, or material used or produced at the facility results in the increase of the erosion and corrosion-based pollutant in the facility's discharge (including entrainment of a pollutant previously discharged or disposed of by the facility) and significantly contributes to the exceedance of the water quality standard for that pollutant in the receiving water.

D. Mixing Zones.

(1) When any effluent meets water quality criteria at the end of the discharge pipe, the Department may not require the discharger to submit mixing zone calculations.

(2) When mixing zones are used to establish discharge permit limits, the discharger, at the time of application for permit issuance or renewal, or at a later time stipulated by the Department, shall select the mixing zone technique appropriate for each discharge and submit actual mixing zone calculations. All calculations and supporting studies should be based on established criteria and protocols or otherwise performed in accordance with scientifically defensible methodology approved by the Department. Supporting documentation may include one or more of the following:

(a) Tracer studies;

(b) Receiving water and discharge flow measurements;

(c) Surface water bathymetry;

(d) Diffuser design and performance data; and

(e) Effluent modeling results.

(3) When a mixing zone has been previously used to establish permit limits, the Department may, in its discretion, waive the requirement for full mixing zone development if the discharger demonstrates that:

(a) Discharge conditions have not changed; and

(b) No surface water impacts attributable to the facility have been identified.

26.08.04.02-2

.02-2 Minimum Levels for Discharge Permit Limits.

Some permit limits expressed as concentrations of specific chemicals may be below the minimum levels for those chemicals. For these permit limits, the level of compliance shall be the minimum level.

26.08.04.03

.03 Monitoring, Recording, and Reporting for Discharge Permits.

A. Monitoring.

(1) A discharge authorized by a discharge permit shall be subject to any monitoring requirements the Department deems necessary, including:

(a) The installation, use, and maintenance of monitoring equipment or methods; and

(b) When appropriate, biological monitoring methods.

(2) Each permit shall specify the sampling and analysis requirements, including the frequency and type of sampling and analysis.

(3) Each permittee shall submit the name and address of the laboratory performing analyses within 30 days of the issuance of the State discharge or NPDES permit. If the permittee changes laboratories during the operating permit, the Department shall be notified within 30 days in writing.

B. Record Keeping.

(1) The permittee shall retain for a minimum of 3 years any records of monitoring activities and results including all:

(a) Raw data and original strip chart recordings;

(b) Calibration and maintenance records; and

(c) Reports.

(2) This period of retention shall be extended during the course of unresolved litigation regarding the discharge of pollutants, or when requested by the Department.

(3) All records of monitoring shall include for all samples:

(a) The date, exact place, time, and method of sampling;

(b) The dates of analyses;

(c) Who performed the analyses;

(d) The analytical techniques and methods used; and

(e) The results of the analyses.

C. Reporting.

(1) The permittee shall submit the monitoring results to the Department on the proper discharge monitoring report form.

(2) The report shall be submitted in the time frame required by each permit.

(3) The reporting period may not be less than once per year.

(4) Measurements below the minimum level may be reported as BML (below minimum level).

26.08.04.06

.06 Term and Approval of Discharge Permit.

A. Term of Permit.

(1) The term of each discharge permit shall be for a maximum of 5 years, unless the permit is previously amended, suspended, or revoked.

(2) Each discharge permit shall specify the expiration date.

(3) If a timely and complete reapplication has been submitted and the Department, through no fault of the permittee, is unable to issue a new permit, the terms and conditions of the existing discharge permit shall continue and remain fully effective and enforceable.

B. Permittee Responsibility for Continuing Pollution Control. The issuance of a discharge permit by the Department does not relieve the permittee from the continuing responsibility for:

(1) The successful treatment and disposal of wastewater and other waste; and

(2) Compliance with applicable provisions of State and federal law and regulations.

26.08.04.07

.07 Administration of Federal NPDES Program by the State.

A. The Department shall administer the National Pollutant Discharge Elimination System (NPDES) program as part of its own discharge permit system.

B. This administration shall be in accordance with:

(1) Environment Article, Title 9, Annotated Code of Maryland;

(2) This chapter; and

(3) The Federal Act.

26.08.04.08

.08 General Discharge Permit Program.

A. Purpose.

- (1) General permits are discharge permits issued to classes of discharges.
- (2) The Department intends to regulate certain classes of discharges through the issuance of general permits.
- (3) All discharges within the described class are permitted, subject to the specific conditions contained in the general permit.
- (4) Only those classes of discharges considered appropriate by the Department for regulation by this mechanism will be covered by a general permit.
- (5) All other dischargers are subject to the requirements of a separate discharge permit issued under Regulations .01 ---- .07 of this chapter and COMAR 26.08.08.

B. Classes of Discharges Eligible for Regulation under General Permits.

- (1) For the purpose of this section, the term "landfill" includes sanitary landfills as defined in COMAR 26.04.07 as well as any land containment or land disposal facility for industrial, commercial, or residential solid waste, whether publicly or privately owned or operated, or both.
- (2) The following classes of discharges may be regulated through the General Permit Program:
 - (a) Storm water discharges;
 - (b) Landfills or sludge-handling facilities designed to achieve natural attenuation of leachate, with no discharge to surface waters other than storm water runoff regulated under §B(2)(a) of this regulation;
 - (c) Individual on-lot domestic waste subsurface disposal systems permitted by the Department under Environment Article, Title 9, Subtitle 5, Annotated Code of Maryland, and COMAR 26.04.02;
 - (d) Municipal separate storm sewers;
 - (e) Ground water heat pumps discharging to waters of this State;
 - (f) Other categories of discharges as established under this regulation.

C. Permit Provisions. The Department shall prepare a draft permit for each specific class of dischargers under consideration for regulation according to the General Permit Program. The draft permit shall contain those general and special conditions and, if appropriate, monitoring and reporting requirements considered necessary by the Department to protect public health and the environment.

D. Permit Coverage. Unless specifically indicated otherwise, a general permit issued under this regulation shall authorize all discharges satisfying the class description. The Department, at its discretion, may notify a discharger and require issuance of a separate State discharge permit under Regulations .01 ----.07 of this chapter and COMAR 26.08.08.

E. Permit Duration. A general permit issued under this regulation shall be valid for a period not to exceed 5 years, and shall be renewed at the discretion of the Department according to G----K of this regulation.

F. Discharges Authorized Under a General Permit. The requirements of G-----J of this regulation do not apply to the discharges authorized under a general permit, only to the issuance of the general permit itself.

G. Draft Permits and Tentative Determinations.

(1) The Department shall prepare a draft permit and a tentative determination for a specific class of dischargers to be regulated under the General Permit Program.

(2) A fact sheet shall also be prepared describing the class of dischargers to be regulated, outlining the proposed permit conditions and limitations, and specifying the procedures for a person to review and copy the tentative determination, draft permit, and related materials.

(3) The tentative determination shall include:

- (a) A statement that the Department proposes to issue a general permit for a certain class of discharges;
- (b) The procedures for a person to review and copy the tentative determination, draft permit, or related material;
- (c) A brief explanation of the Department's tentative decision;
- (d) Proposed permit limitations and conditions; and
- (e) If applicable, a proposed schedule of compliance.

(4) Public Notice of Tentative Determination.

(a) The Department shall publish a public notice of the Department's tentative determination in the Maryland Register and according to Regulation .01-1E of this chapter.

(b) The notice of tentative determination shall include:

(i) The information required in §G(2) of this regulation;

(ii) A statement that the Department shall allow 30 days for public comment to the tentative determination before the issuance of the final determination and the procedure for submitting comments;

(iii) A statement that the Department shall hold a public hearing when a written request for a public hearing is made by a person within 20 days of the publication of the notice of tentative determination and the procedure for making a written request for a public hearing; and

(iv) Other information the Department determines to be necessary for adequate public notification.

(c) If the notice of tentative determination also includes a notice of public hearing, the notice of public hearing shall be given at least 30 days before the hearing.

H. Public Hearings.

(1) The Department shall schedule a public hearing on the tentative determination when a written request for a public hearing is made within 20 calendar days of the publication of the notice of tentative determination.

(2) The Department, at its own discretion, may hold:

(a) An informational meeting or meetings; or

(b) A public hearing or hearings.

(3) The public hearing may be cancelled if all persons who made timely written request for such a meeting withdraw their requests.

(4) If a public hearing is required, the Department shall:

(a) Publish a notice of the hearing according to Regulation .01-1E of this chapter, and the first notice shall give a minimum of 30 days notice before the hearing; and

(b) Publish a notice of the public hearing that includes:

(i) The information required under §G(2) of this regulation,

(ii) The date, time, and location of the public hearing, and

(iii) Other information the Department determines to be necessary for adequate public notification.

(5) The Department shall:

(a) Give a person who attends a public hearing an opportunity to make comments concerning the issuance of a general permit; and

(b) Accept written comments on the proposal to issue a general permit for at least 5 days after a public hearing.

I. Final Determinations for General Permits.

(1) If the Department is not required to prepare a final determination, the tentative determination shall be a final decision by the Department and a permit may be issued.

(2) The Department shall prepare a final determination if:

(a) Written comments adverse to the tentative determination were received by the Department within 30 days after publication of the notice of tentative determination;

(b) Comments adverse to the tentative determination were received in writing at, or within 5 days after, a public hearing held under the provisions of §H of this regulation;

(c) Comments adverse to the tentative determination were received orally at the public hearing conducted under this section and the Department prepared a transcript of the comments made at the hearing; or

(d) The final determination is substantively different from the tentative determination and persons who may be aggrieved by the final determination have not waived, in writing, their right to request a contested case hearing.

(3) Those persons, including applicants, who believe any condition of a draft permit is inappropriate or that the Department's tentative determination is inappropriate, shall raise all reasonably ascertainable issues and submit all reasonably available arguments and documents supporting their position by the close of the public comment period, including any public hearing, as established by this chapter.

(4) Supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials.

(5) Those offering comments shall make supporting materials not already included in the administrative record available by submitting a complete copy of all supporting materials at the time they submit their comments or, if this submission is not practical, as determined solely by the Department, comments shall identify the location of the supporting materials.

(6) The final determination shall include the following:

(a) A description of the type of discharges to be included in the general permit;

(b) A statement of the Department's final determination and a brief explanation of the Department's decision;

(c) The permit limitations;

(d) The general and special permit conditions; and

(e) A schedule of compliance, if applicable.

(7) The final determination shall be available to the public for inspection and copying according to Regulation .01-1E of this chapter.

J. Notice of Final Determination.

(1) When the Department is required to prepare a final determination under §I of this regulation, a notice of final determination shall be published according to Regulation .01-1E of this chapter.

(2) The notice of final determination shall include:

(a) The information required under §I(3) (a)----(b) of this regulation, including any change in permit limitations, conditions, or schedule of compliance;

(b) A statement that the notice of final determination is available for inspection and copying;

(c) The procedure for inspecting and copying the final determination;

(d) A statement that a person may request a contested case hearing to appeal a final determination if the person makes factual allegations with sufficient particularity to demonstrate that the person is aggrieved by the final determination and the final determination is:

(i) Legally inconsistent with any provisions of law applicable to the final determination being challenged, or

(ii) Based upon an incorrect determination of a relevant and material fact;

(e) A statement that a person requesting a contested case hearing shall submit a written request for adjudication within 15 days after the publication of the notice of final determination;

(f) The procedure for requesting a contested case hearing; and

(g) Other information the Department determines to be necessary for adequate public notification.

K. Request for Contested Case Hearings for General Permits.

- (1) A person may not request a contested case hearing on an individual discharge covered under a general permit adopted under the provisions of this chapter.
- (2) A person requesting a contested case hearing to appeal the final determination of the Department to issue a general permit shall:
 - (a) Submit a written request in the manner specified in the notice of final determination within 15 days after publication of the notice of final determination; and
 - (b) Provide documentation that the requirements of §I of this regulation were met.
- (3) Requests for a contested case hearing shall include:
 - (a) The name, address, and telephone number of the person filing the request;
 - (b) The particular factual allegations which demonstrate that the person is aggrieved by the final determination and the final determination is:
 - (i) Legally inconsistent with any provisions of law applicable to the final determination being challenged; or
 - (ii) Based on an incorrect determination of a relevant and material fact.
- (4) The Department shall process requests for contested case hearings according to State Government Article, Title 10, and Environment Article, Title 1, Annotated Code of Maryland.

26.08.04.09

.09 General Discharge Permits.

A. General Discharge Permit for Storm Water Discharge Associated with Construction Activity.

- (1) Exception. Construction activity excluded under the Federal Act and regulated under COMAR 26.09.02 is not covered under this general permit.
- (2) Activities Covered. Activities covered under this general permit are new and existing storm water discharges that are composed in whole or in part of discharges associated with construction activity as regulated under the Federal Act and Environment Article, Title 4, Subtitles 1 and 2, Annotated Code of Maryland.
- (3) Need for Additional Permits. Storm water discharges which result from the completed construction authorized under this regulation may require additional authorization under other general permit regulations or an individual permit.
- (4) Application. Before the initiation of an activity covered under this permit, an applicant shall make application to the Department, including the payment of any fees.
- (5) Specific Requirements. A permittee shall comply with requirements to obtain approval for:
 - (a) Erosion and sediment control plans required under Environment Article, Title 4, Subtitle 1, Annotated Code of Maryland; and

(b) Storm water management plans required under Environment Article, Title 4, Subtitle 2, Annotated Code of Maryland.

B. General Discharge Permit for Storm Water Discharges Associated with Industrial Activity.

(1) Exceptions. The following activities are not regulated under this general permit:

(a) Industrial storm water discharges with federal effluent guideline limitations;

(b) Storm water discharges associated with industrial activity from inactive mining or inactive oil and gas operations occurring on federal lands; and

(c) Storm water discharges for which the:

(i) NPDES permit has expired, has been terminated, or has been denied; or

(ii) Department requires an individual permit or a different general permit.

(2) Activities Covered. Existing storm water discharges that are comprised in whole or in part of storm water runoff associated with industrial activity are covered.

(3) Application. After the effective date of this regulation, an applicant shall make application to the Department, including the payment of any fees, for any existing or new discharge.

(4) Specific Requirements. Storm water discharge associated with industrial activity shall comply at all times with the provisions of:

(a) Environment Article, Title 7, Subtitle 2, Annotated Code of Maryland;

(b) Environment Article, Title 9, Subtitle 3, Annotated Code of Maryland; and

(c) The Federal Act.

C. General Permits for Municipal Separate Storm Sewer Systems.

(1) Definitions. "Municipal separate storm sewer systems" means systems that convey storm water runoff from municipalities as defined in the Federal Act or as designated by the Department in accordance with the Federal Act.

(2) Required Permits. The Department shall promulgate general permits as necessary to meet the requirements of the Federal Act, including permits for:

(a) Municipal separate storm sewer systems required to be permitted under the Federal Act; and

(b) Those systems designated by the Department in accordance with the Federal Act.

D. Specific Requirements for Landfills Designed for Natural Attenuation of Leachate with No Discharge to Surface Waters other than Storm Water Run-off.

(1) Landfills designed to achieve natural attenuation of leachate shall be designed, constructed, and operated in accordance with the specific provisions included in a permit issued by the Department pursuant to Environment Article, §9-204, Annotated Code of Maryland.

(2) Storm water control systems at landfills are regulated through the general permit provisions specified in Regulation .08C(1) of this chapter.

E. Specific Requirements for Subsurface Sewage Disposal Systems.

(1) Subsurface sewage disposal systems shall include, but are not limited to, septic systems or aerated septic systems with appurtenant seepage pits or trenches, seepage pits, mound systems, or other disposal systems approved by the Department.

(2) The systems shall be designed, installed, and maintained in accordance with the specific conditions included in the permit issued pursuant to Environment Article, Title 9, Subtitle 5, Annotated Code of Maryland, and COMAR 26.04.02.

F. Ground Water Heat Pumps.

(1) Persons operating or planning to install a ground water heat pump not authorized by a separate State discharge permit shall, upon request of the Department, provide information concerning the system as installed or planned to be installed. The information shall include a map or sketch of the site, indicating the location of the source well, the discharge point or well, the well permit number or numbers, and, if appropriate, the name of the receiving streams. This information may be submitted to the Department through the local county health department.

(2) All permittees shall obtain a ground water appropriation permit from the Water Resources Administration and shall comply with all terms and conditions of that permit.

(3) All permittees shall obtain a well construction permit from the Department or, if appropriate, the responsible county agency.

G. Grading or Filling Activities Not Otherwise Regulated by the Department. If applicable, permittees shall obtain a permit or license issued pursuant to the Natural Resources Article, §§8-803, 9-202, or 9-306, Annotated Code of Maryland.

H. General Discharge Permit for Surface Coal Mines and Related Facilities.

(1) Exceptions. The following discharges are not covered under this general permit:

(a) Discharges of toxic substances which exceed State water quality criteria for toxic substances;

(b) Discharges which elevate temperature in Use III, Use III-P, Use IV, and Use IV-P streams;

(c) Discharges of acid mine drainage from mine reclamation areas;

(d) Discharges from coal mines commingled with other sources of wastewater, particularly wastes from underground mines; and

(e) Discharges from underground coal mines.

(2) Eligible Discharges. This permit covers all new and existing discharges of storm water runoff and ground water seepage to surface waters of this State from:

(a) Surface coal mines, including active mining areas, access roads, coal storage, and loading areas (tipples);

(b) Independent coal storage and loading areas (tipples);

(c) Coal preparation plants; and

(d) Reclamation areas.

I. General Discharge Permit for Seafood Processors.

(1) Exceptions. A discharge permit is not required for outdoor crab shedding operations.

(2) Eligible Discharges. This permit covers the following new and existing discharges:

(a) Wastewater from blue crab, oyster, and fish processing operations such as cleaning, preparing, and packing;

(b) Auxiliary discharges, which are limited to noncontact cooling water, ice machine drainage, steam or cooling coil condensate, and inside crab shedding tray overflow; and

(c) Storm water runoff from processing or material handling.

J. General Discharge Permit for Mineral Mines, Quarries, Borrow Pits, and Concrete and Asphalt Plants.

(1) Exceptions. This permit may not cover the following discharges:

(a) Discharges from coal mines and associated facilities as regulated under 40 CFR 434; and

(b) Discharges from industrial sand facilities as regulated by 40 CFR §436.40.

(2) Eligible Discharges. This permit covers all new and existing discharges of:

(a) Infiltrated ground water pumped from mines to surface waters;

(b) Wastewater from material processing to surface or ground waters;

(c) Storm water runoff from mine sites, concrete plants, and asphalt plants to surface waters;

(d) Wastewater from washing mixer trucks and concrete mixing equipment to surface or ground waters; and

(e) Miscellaneous wastewater from spillage at ready-mix plants to surface or ground waters.

K. General Discharge Permit for Tanks, Pipes, and Other Liquid Containment Structures at Facilities Other Than Oil Terminals.

(1) Exceptions. This permit may not cover the following discharges:

(a) Discharges of any type from oil terminals;

(b) Tank bottom wastewater discharges to ground waters of the State;

(c) Wastewater from the washing of chemical and petroleum storage tanks, pipes, and pipelines; and

(d) Wastewater discharges to ground water that, before treatment, contain concentrations of benzene, lead, or other substances in excess of toxicity characteristic leaching procedure (TCLP) concentrations as defined in COMAR 26.13.02.14.

(2) Eligible Discharges. This general permit covers all new and existing discharges of:

- (a) Treated tank bottom wastewater from storage tanks used only for gasoline, kerosene, fuel oil, no. 6 oil, or aviation fuel to surface waters;
- (b) Wastewater from the flushing or hydrostatic testing of pipes, pipelines, or tanks, or wastewater from pipeline infiltration;
- (c) Water in excess of 10,000 gallons per day as a monthly average from the overflow, flushing, or dewatering of reservoirs, tanks, or pipelines used for the storage or delivery of untreated water;
- (d) Wastewater from cleaning or dewatering of vessels or structures used to store or convey potable water;
- (e) Storm water discharges from storage tank containment structures; and
- (f) Emergency discharges of potable water.

L. General Discharge Permit for Swimming Pools and Spas.

- (1) Exceptions. This permit does not cover sanitary wastewater discharges associated with swimming pool and spa operations.
- (2) Eligible Discharges. This permit covers discharges of filter backwash, cleaning water, overflow, and drainage from lowering or emptying a public or private pool or spa to surface or ground water.

M. General Discharge Permit for Marinas.

- (1) Exceptions. This permit does not cover the following discharges:
 - (a) Storm water discharges that have shown, or may be reasonably expected to contribute to, a violation of a water quality standard;
 - (b) Storm water discharges for which the Department requires an individual permit or an alternative general permit; and
 - (c) Sanitary wastewater discharges.
- (2) Eligible Discharges.
 - (a) This permit covers the following discharges from marinas and boat maintenance facilities:
 - (i) Storm water runoff to surface waters from areas involved in boat maintenance including boat rehabilitation, mechanical repairs, painting, and fueling, and boat or equipment cleaning operations;
 - (ii) Wastewater discharges to surface or ground waters from washing of boats and boat equipment; and
 - (iii) Noncontact cooling water discharges such as from ice machines, refrigeration units, and other machinery to surface waters.
 - (b) The discharge of 10,000 gallons per day or less of noncontact cooling water to ground water does not require a permit.

N. General Discharge Permit for Animal Feeding Operations.

(1) Exceptions.

(a) In locations or circumstances in which the Department concludes in its sole discretion that this general discharge permit does not adequately protect State waters, the Department may require a person otherwise eligible for this permit to apply for and obtain an individual discharge permit.

(b) Large duck CAFOs with liquid manure handling systems are not eligible for coverage under this general permit.

(2) Eligible Discharges. This permit covers:

(a) Discharges from a CAFO;

(b) Discharges from a MAFO; and

(c) Discharges from an AFO that utilizes a spray irrigation system for application of liquid wastewater to the soil surface.

(3) Public Process for CAFOs and MAFOs.

(a) A NOI submitted by an AFO is subject to the public participation process described in this subsection.

(b) "Plan" or "required plan" in this section means a CNMP, NMP, or conservation plan.

(c) Notwithstanding Regulation .01-1E of this chapter, publication of public notices or public notification required by this regulation may be accomplished by posting on the Department's web site at www.mde.state.md.us.

(d) The Department shall notify the public upon receipt of a NOI or a required plan by posting relevant information, including but not limited to facility name, location, size, type of operation, and date and type of document received, on the Department's web site.

(e) The Department may require an applicant to place a copy of the NOI and required plans in the main branch of the public library, in the county in which the AFO is located, for the duration of any related public comment period.

(f) The Department shall make available for review and copying an applicant's NOI and required plans in accordance with Regulation .01-1E(6) and (7) of this chapter.

(g) The Department shall review the NOI and required plans and, based upon this review, determine whether they satisfy the requirements of the general permit.

(h) When additional information is necessary to complete the NOI or to clarify, modify, or supplement previously submitted material, the Department may request that information from the permit applicant.

(i) If the Department determines that the plans satisfy the requirements of the general permit, the Department shall prepare a preliminary approval identifying the terms of the plans that satisfy the general permit requirements.

(j) The Department shall publish public notice of a preliminary approval of the required plans in accordance with §N(3)(c) of this regulation. The notice shall provide for a period of 30 days for public comment and shall specify how to review and copy the preliminary approval, NOI, and the required plans. For a CAFO, the notice shall also specify the procedure for making a written request for a public hearing regarding the preliminary approval of the terms of the required plans.

(k) Public Hearing.

(i) The Department shall schedule a public hearing on the preliminary approval for a CAFO when a written request for a public hearing is made within 20 days of the publication of notice of the preliminary approval.

(ii) The Department may, at its discretion, schedule a public hearing on the preliminary approval for a MAFO or a CAFO.

(iii) A public hearing regarding the Department's preliminary approval of the required plans shall follow the same procedures as those applicable to public hearings on tentative determinations set forth in Regulation .01-2B(5) and (6) of this chapter.

(l) Final Approval of Required Plans.

(i) The Department shall prepare and provide notice of its final approval of the required plans following the same procedures as those applicable to final determinations set forth in Regulations .01-3A and B of this chapter.

(ii) Notwithstanding Regulation .08K(1) of this chapter, a person aggrieved by the Department's final approval of the required plans may request a contested case hearing.

(iii) The form and content of a request for a contested case hearing shall be consistent with Regulation .08K(2) and (3) of this chapter. A contested case hearing conducted under this paragraph shall be limited to contesting the terms of the approved plans.

(iv) When the Department grants final permit coverage to an AFO, the terms of the plans, as revised by the Department, are enforceable under the terms and conditions of the general permit.

(v) The Department shall notify the AFO owner or operator of the terms and conditions of the plans that are approved by the Department and enforceable under the permit.

(m) A MAFO that has submitted a complete NOI and all required plans may operate under the terms of the general permit pending the outcome of the public participation process and any contested case hearing, unless the Department determines that an unacceptable threat to public health, water quality, or aquatic resources may occur.

(n) Revisions to Approved Plans. The Department shall follow the public participation procedures of this subsection when an AFO proposes a revision to its approved plans that is significant, as determined by the Department, or for a CAFO as specified under the Federal Act.

(o) Interested Persons.

(i) The Department shall maintain a list of persons who have requested direct notification of an NOI and related plan submittals, either for a specific AFO or for a geographic location or area.

(ii) Upon receipt of a complete NOI or a corresponding required plan, the Department shall notify the interested persons either by electronic mail or U.S. mail that a document of potential interest has been received and that additional details may be available on the MDE web site.

(iii) The Department shall provide a copy of the public notice of the preliminary approval in §N(3)(i) of this regulation to interested persons and provide them access to a copy of the preliminary approval via electronic mail or U.S. mail or through providing a link to the Department's web site.

(iv) The Department shall also provide a copy of the notice of the preliminary approval to the persons identified in Regulation .01-2B(3)(a) and (b) of this chapter.

(p) Requests for confidential treatment of information shall be handled according to Regulation .01-1E(8) of this chapter.

(q) This subsection does not affect the authority and discretion of the Department to require an individual permit.

O. Storm Water and Hydrostatic Test Water from Oil Terminals.

(1) Exceptions. This permit does not cover discharges:

(a) Of industrial process wastewater from oil terminals or hydrostatic test water from non-oil terminals; or

(b) From oil terminals with a total aggregate tank capacity of at least 5 million gallons of oil which have marine or pipeline transfer capabilities.

(2) Eligible Discharges. This permit covers all new and existing discharges of storm water from storage tank dike and loading rack areas and hydrostatic test water from oil terminals to surface or ground waters of the State.

P. Treated Ground Water from Oil-Contaminated Ground Water Sources.

(1) Exceptions. This permit does not cover discharges of treated ground water contaminated with other volatile organic compounds or hazardous material (such as, but not limited to, TCE, TCA, DCE) other than oil.

(2) Eligible Discharges. This permit covers all new and existing discharges of treated ground water from oil-contaminated ground water sources which discharge to surface or ground waters of the State.

26.08.04.09-1

.09-1 Fees for General Discharge Permits.

A. Applicability.

(1) Intent. The Department may charge nonrefundable fees for certain general discharge permits as specified in this regulation.

(2) Exemptions. Discharges associated with the following dischargers are exempt from this regulation:

(a) Publicly owned treatment works;

(b) Other treatment works which treat only sewage; and

(c) Facilities or persons culturing or raising aquatic organisms in enclosed systems discharging less than 1,000,000 gallons per day.

B. General.

(1) Fees are based on the anticipated cost of program activities related to management of discharge to the waters of this State.

(2) Persons engaging in an activity covered under a general permit for which a fee or fees are charged shall submit a notice of intent (NOI) form requesting inclusion under the general permit, accompanied by the appropriate fees, before the initiation of the activity.

- (3) The required fees shall be submitted with the Department's approved notice of intent (NOI) forms.
- (4) The Department may refuse to complete processing on any NOI if the applicant fails or refuses to pay the application fee.
- (5) When the Department questions a fee as submitted by the applicant, the Department shall notify the applicant in writing and a meeting shall be scheduled, if necessary, to resolve the dispute.
- (6) Fees collected by the Department under this regulation shall be paid into the Clean Water Fund. The fees shall be used for activities that are related to the management of discharge to the waters of this State.
- (7) The Department may require the retroactive payment of a general permit fee if the general permit becomes effective before the adoption of a regulation supporting this fee, if the fee was specified in the general permit at the time of general permit issuance.

C. Fees for General Storm Water Discharge Permits.

(1) Storm Water Associated with Industrial Activity.

- (a) The permit fee for storm water discharges associated with industrial activity shall be either a one-time payment of \$550 or an annual payment of \$120. The \$550 fee shall be submitted with the NOI. The alternative \$120 annual payment shall be submitted with the NOI and annually by July 1 of each year.
- (b) Facilities which began operating after September 29, 1995, and were registered under the original general permit for storm water associated with industrial activity will be credited \$100 for each full calendar year they did not operate between January, 1993, and December, 1996.
- (c) The fee for facilities which begin operating after October 1, 1997, shall be prorated on a monthly basis.

(2) The application fees for storm water discharges associated with construction activity are as follows:

<i>Total Disturbed Area (Acres)</i>	<i>NOI Fee (Dollars)</i>
(a) 1 to less than 10	\$100;
(b) 10 to less than 15	\$500;
(c) 15 to less than 20	\$1,500;
(d) 20 and up	\$2,500;

D. Fee for Surface Coal Mine and Related Facilities Discharge.

(1) Annual Permit Fee.

The permittee shall pay an annual permit fee. The first annual fee shall be submitted to the Department with the NOI form. The Department will bill the permittee annually, and the fee shall be paid by the anniversary of the permit issuance each year after the first year.

(2) The annual permit fee is based on the total flow volume of effluent discharged from the facility, as determined by the storm water runoff volume calculation in §D(3) of this regulation.

<i>Average Discharge Volume (Gallons Per Day)</i>	<i>Annual Permit Fee (Dollars Per Year)</i>
Less than 1,000	\$175

1,000—5,000	\$525
5,001—50,000	\$1,100
50,001—100,000	\$2,100
100,001—250,000	\$3,100

(3) Calculation of Storm Water Runoff Volume. Storm water runoff volume is determined by the following method:

(a) Annual storm water runoff volume (gallons/day) = Annual rainfall (feet) × drainage area (square feet) × 7.48 × 0.15;

(b) Average storm water runoff volume (gallons/day) = Annual storm water runoff volume divided by 365.

(4) Alternative Storm Water Calculation. As an alternative to the method in §D(3) of this regulation, the permittee may submit a report to the Department which contains calculations of the average daily storm water runoff from the permitted facility. The Department shall make the final decision in determining the acceptability of the alternative method.

E. Fee for Discharges from Seafood Processors.

(1) Permit Fee.

(a) The permittee shall pay an annual permit fee. The first annual fee payment shall be submitted to the Department with the NOI form.

(b) The permit fee is based on the total volume of effluent discharged from the facility. The fees are:

<i>Average Daily Discharge Volume (Gallons Per Day)</i>	<i>Annual Permit Fee</i>
Less than 1,000	\$120
1,000—5,000	\$440
5,001—50,000	\$1,050
50,001—100,000	\$2,100
100,001—500,000	\$3,200

(c) The Department will bill the permittee annually, and the fee shall be paid each year by the anniversary date of the permit.

F. Fees for Discharges from Mineral Mines, Quarries, Borrow Pits, and Concrete and Asphalt Plants.

(1) Exemptions. Mineral mines, quarries, and borrow pits which discharge mining wastewater, process generated wastewater, and storm water to ground water only are exempt from the permit fee.

(2) Permit Fee.

(a) The permittee shall pay an annual permit fee. The first annual fee payment shall be submitted to the Department with the NOI form.

(b) The permit fee is based on the total volume of effluent discharged from the facility. The fees are:

<i>Average Daily Discharge Volume (Gallons Per Day)</i>	<i>Annual Permit Fee</i>
Less than 1,000	\$110
1,000—5,000	\$275
5,001—50,000	\$600
50,001—100,000	\$1175
100,001—250,000	\$1740
250,001—1,000,000	\$2300
Greater than 1,000,000	\$2875

(c) The Department will bill the permittee annually, and the fee shall be paid each year by the anniversary date of the permit.

G. Fees for Discharges from Tanks, Pipes, and Other Liquid Containment Structures at Facilities Other Than Oil Terminals.

(1) Exemptions. Discharges from tanks, pipes, and other liquid containment structures associated with drinking water supplies are exempt from the permit fee.

(2) Permit Fee.

(a) The permittee shall pay a permit fee with the NOI form and each additional year the permit is held.

(b) The discharge permit fee is based on the total volume of effluent discharged from the facility. The permit fees for the first and subsequent years are:

<i>Average Daily Discharge Volume (Gallons Per Day)</i>	<i>One Year Fee</i>	<i>Fee Each Additional Year</i>
Less than 1,000	\$175	\$100
1,000—5,000	\$250	\$100
5,000—50,000	\$325	\$100
50,001—100,000	\$500	\$400
100,001—250,000	\$950	\$400
250,001—1,000,000	\$2000	\$400
Greater than 1,000,000	\$4000	\$1000

(c) The Department will bill the permittee annually, and the fee shall be paid each year by the anniversary date of the permit.

H. Fee for Discharges from Swimming Pools and Spas; Notice of Intent (NOI) Fee. Persons seeking coverage under this general permit shall submit an NOI together with a fee of \$100 for each facility. A fee is not required with the NOI submission for the registration of pools owned by municipalities, counties, or the State. Owners of pools or spas serving individual residences are not required to submit an NOI or pay a fee.

I. Fee for Discharges from Marinas; NOI Fee.

(1) Persons seeking coverage under this general permit shall submit an NOI together with the following fee depending upon the number of slips available at the marina:

<i>Number of Slips</i>	<i>Fee</i>
200 or more slips	\$500
100 or more and fewer than 200 slips	\$400
50 or more and fewer than 100 slips	\$300
10 or more and fewer than 50 slips	\$200
fewer than 10 slips	\$100

(2) Facilities already registered under 92-GP-0001 shall pay the lesser of the above fee or a fee of \$350 before September, 1997, to register for this permit.

J. Fee for Discharges from Concentrated Animal Feeding Operations.

(1) A CAFO shall pay an annual permit fee. The first annual fee payment shall be submitted to the Department with the NOI form. The Department will bill the permittee annually, and the fee shall be paid annually not later than the anniversary of the effective date of the permit. The following permit fees shall be collected based on the size category of the facility defined in Table 1 under Regulation 26.08.03.09A(3):

<i>Size Category</i>	<i>Large</i>	<i>Medium</i>	<i>Small</i>
Annual Permit Fee	\$1200	\$600	\$120

(2) If the Department questions the fee submitted by the permittee, the Department shall follow the procedure in §B(5) of this regulation.

K. Storm Water and Hydrostatic Test Water from an Oil Terminal and Treated Ground Water NOI Fees.

(1) A person who intends to obtain coverage under the general discharge permit for storm water and hydrostatic test water from oil terminals or the general discharge permit for treated ground water from oil-contaminated ground water sources shall submit to the Department a fee of \$120 per year.

(2) The fee shall be submitted with the NOI application and every July 1 after that.

(3) Fees may be prorated on a monthly basis.

26.08.04.10

.10 Permit Review and Modification.

A. General.

(1) The Department may review or modify any State discharge permit or other written authorization describing required performance for specific activities and operations under the procedures set forth in this regulation.

(2) When a permit is modified, only the conditions subject to modification are reopened.

B. Permit Review. The Department of the Environment may review any permit which it has issued in order to determine whether the:

(1) Conditions of the permit have been complied with; and

(2) Permit should properly be modified, suspended, or revoked.

C. Minor Modification of Permits.

- (1) The Department may modify a permit to make minor modifications in the permitted activity.
- (2) A minor modification requested by a permittee shall be in writing.
- (3) Minor modifications may only:
 - (a) Correct typographical errors;
 - (b) Require more frequent monitoring or reporting by the permittee;
 - (c) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;
 - (d) Allow for a change in ownership or operational control of a facility when the Department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittees has been submitted to the Department;
 - (e) Change the construction schedule for a discharger which is a new source if the change does not affect the discharger's obligation to have all pollution control equipment installed and in operation before discharge;
 - (f) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits; or
 - (g) Incorporate conditions of a pretreatment program that has been approved in accordance with COMAR 26.08.08.

D. Major Permit Modification Request by Permittee.

- (1) A permittee may request modification of the permit by submitting a written request to the Department.
- (2) Upon receipt, the Department shall review the request and promptly notify the permittee of its decision.
- (3) If the Department decides to grant the permittee's request, permit modifications shall be processed by the Department according to Regulations .01-----.02-4 of this chapter.
- (4) The Department of the Environment, upon written request of the applicant, may revise or modify a schedule of compliance without a hearing if:
 - (a) It determines good and valid cause exists for the revision or modification, such as an act of God, materials shortage, or other event over which the permittee has no control; and
 - (b) Within 30 days following receipt of notice from the Department, the Administrator of the EPA, or his designated representative, does not object in writing.

26.08.04.10-1

.10-1 Permit Suspension and Revocation.

A. Action on Permit Violation.

(1) Under conditions other than emergency, if the Department determines that there has been a violation of any term or condition of a permit, the Department shall serve a written complaint upon the permittee specifying the nature of the violation. Subsequent to, or concurrent with, service of the complaint, the Department may exercise one of the following options, under the provisions of Environment Article, §9-335, Annotated Code of Maryland:

(a) Issue an order requiring necessary corrective action to be taken within the time prescribed in its order. A person named in the order may request in writing a hearing before the Department not later than 10 days after the date the order is served, in which case a hearing shall be scheduled within 10 days from receipt of the request. A decision shall be rendered within 10 days from the date of the hearing.

(b) Require the alleged violator to file a written report regarding the alleged violation.

(c) Require the alleged violator to appear before the Department at a time and place the Department specifies to answer the charge outlined in the complaint.

(d) Require the alleged violator to file a written report regarding the alleged violation and appear before the Department at a time and place the Department specifies to answer the charges outlined in the complaint.

(2) Every order the Department issues under this regulation shall be served on the person affected according to Environment Article, §9-336, Annotated Code of Maryland. The order shall become effective immediately according to the order's terms upon service.

(3) If the Department exercises the option provided by §A(1)(b) of this regulation, the alleged violator may request in writing a hearing before the Department not later than 10 days after the date that notice of the requirement of the written report is served.

(4) The appearance of the alleged violator before the Department under the options provided by §A(1)(c) or (d) of this regulation constitutes an administrative hearing and the party has the right of any party in a contested case provided in State Government Article, Title 10, and Environment Article, Title 1, Annotated Code of Maryland.

(5) If the Department exercises any of the options provided by §A(1)(a), (c), or (d) of this regulation, the Department shall notify the permittee of the consequences of not attending the hearing or, in the case of option §A(1)(b), not filing the written report.

(6) If the Department exercises the option provided by §A(1)(b), (c), or (d) of this regulation, it may not issue an order requiring corrective action to be taken as a result of the alleged violation before expiration of the time set for filing any report and holding any hearing required under these sections. After that, the Department may issue an order requiring necessary corrective action to be taken within the time prescribed in the order. A person is not entitled to a hearing before the Department as a result of this order.

(7) Notice of a hearing or of a requirement that a written report be filed shall be served on the alleged violator under Environment Article, 9-335 ----- 9-337, Annotated Code of Maryland, not less than 10 days before the time set for the hearing or filing of a report.

(8) Requests for hearings shall be processed and the hearings conducted according to State Government Article, Title 10, and Environment Article, Title 1, Annotated Code of Maryland, and the requirements of this chapter.

B. Administrative Action With Regard to Permit. If the permittee fails to comply with the requirements of an administrative order under §A(1) of this regulation, a permit may be modified or suspended. Modification or suspension of a permit shall be effective without stay upon receipt by the permittee of appropriate notice. Upon written request for a hearing by the permittee in accordance with the procedure specified in §A(3) of this regulation, a hearing shall be held, but the administrative action may not be stayed pending the hearing.

C. Emergency Action.

(1) The Department may summarily modify or suspend a permit when the Department finds that the protection of public health, safety, or welfare requires immediate emergency action.

(2) The emergency modification or suspension of a permit shall be effective without stay upon receipt by the permittee of appropriate notice.

(3) The Department shall notify the permittee in writing that the permit has been modified or suspended for emergency reasons. The notice shall include:

(a) The finding of necessity for suspension or modification;

(b) The reasons that support the findings;

(c) A statement that the permittee has the right to a hearing concerning the Department's action;

(d) A statement that the permittee has 10 days to request a hearing;

(e) The procedure for requesting a contested case hearing;

(f) The consequences of not requesting or not attending a hearing; and

(g) A statement that the permit suspension or modification is effective without stay upon receipt by the permittee.

D. Permit Revocation.

(1) A permit may be revoked after notice to the permittee and opportunity for a hearing, if the Department determines that any of the following have occurred:

(a) The permittee has failed to comply with the requirements of an administrative action according to §A, B, or C of this regulation;

(b) False or inaccurate information was contained in the application for the permit;

(c) Conditions or requirements of the permit have been or are about to be violated;

(d) Substantial deviation from plans, specifications, or requirements has occurred;

(e) The permittee has failed to permit an authorized representative of the Department upon presentation of proper credentials to:

(i) Enter at any reasonable time upon permittee's premise where a point source is located, pertinent operations are conducted, or records are required to be kept under terms and conditions of the permit;

(ii) Have access to and copy any records required to be kept under terms and conditions of the permit;

(iii) Inspect facilities to ensure compliance with the conditions of the permit;

(iv) Inspect any monitoring equipment or method required in the permit; or

(v) Sample any discharge or pollutants;

(f) Change in conditions exists requiring temporary or permanent reduction or elimination of the permitted operation or discharge;

(g) Any State or federal water quality stream standard or effluent standard has been or is threatened to be violated;
or

(h) Any other good cause exists for revoking the discharge permit.

(2) The permittee has the right to a hearing concerning the revocation of the permit upon a request in writing not later than 10 days after the date on which the revocation notice is served. The Department shall schedule a hearing within 10 days from receipt of the request and give a decision within 10 days from the date of the hearing.

E. The hearings in B, C, and D of this regulation shall be conducted according to State Government Article, Title 10, and Environment Article, Title 1, Annotated Code of Maryland.

26.08.04.11

.11 Discharge Permit Fees.

A. General Requirements.

(1) Fees collected by the Department under this regulation shall be paid into the Maryland Clean Water Fund. The fees shall be used for activities that are related to identifying, monitoring, and regulating the proper discharge of effluent into waters of the State including program development of these activities.

(2) Persons or facilities holding or obtaining State discharge permits, except for those in categories listed below, shall pay both an annual permit fee and an application fee, including any additional cost as required in §C(10) of this regulation:

(a) Publicly owned treatment works;

(b) Other treatment works which treat only sewage;

(c) Persons covered under a general permit as described in Regulations .08 and .09 of this chapter; or

(d) Facilities or persons culturing or raising aquatic organisms in enclosed systems discharging less than 1 million gallons per day.

(3) Both permit fees and application fees are based on the total flow of all effluents discharged from a facility except for:

(a) Uncontaminated stormwater runoff; and

(b) Thermal discharge flows which have previously been evaluated by the Department in accordance with COMAR 26.08.03.03C(2).

B. Permit Fees.

(1) The permit fee is based on the anticipated:

(a) Cost of monitoring and regulating the permitted facility; and

(b) Needs for program development activities related to management of discharge of pollution to waters of this State.

(2) The permit fee is based on the total flow volume of effluent discharged from the facility. The fees are as follows:

<i>Average Discharge Volume (gallons per day)</i>	<i>Permit Fee (per year)</i>
Less than 1,000	\$100
1,000 – 5,000	\$400
5,001 – 50,000	\$1,000
50,001 – 100,000	\$2,000
100,001 – 250,000	\$3,000
250,001 – 1,000,000	\$4,000
Greater than 1,000,000	\$5,000

(3) The Department will calculate permit fees annually and will bill the permittee. The permit fees shall be paid within 30 days of receipt of the bill, unless the permittee questions the calculations or assumptions, or both, used to arrive at the fee. In which case, the Department shall be notified in writing within 15 days of receipt of the bill, and a meeting shall be scheduled, if necessary, within 10 days to resolve the dispute.

(4) Permit fees shall be paid by July 1 of each year to cover the expenses of the ensuing fiscal year. Fees for those permits which will be in effect for less than the full fiscal year shall be prorated for the number of months of the fiscal year during which the permit is in effect.

(5) The Department may refuse to issue or renew a discharge permit or may revoke a discharge permit if the applicant fails or refuses to pay the permit fee.

C. Application Fees.

(1) An application fee shall be paid for:

(a) An application for a new discharge permit;

(b) An application to renew a discharge permit; or

(c) A request to modify a discharge permit if the modification is considered significant by the Department.

(2) The application fee is based on the cost of the permit procedure.

(3) The minimum application fee is \$50.

(4) The application fee is calculated by the following formula: Application fee = volume fee x industry factor x water use factor.

(5) Volume Fees.

(a) Volume fees are determined as follows:

<i>Average Discharge Volume (gallons per day)</i>	<i>Volume Fee (per year)</i>
Less than 1,000	\$50
1,000 – 5,000	\$100

5,001 – 50,000	\$150
50,001 – 100,000	\$200
100,001 – 250,000	\$500
250,001 – 1,000,000	\$1,000
Greater than 1,000,000	\$2,000

(b) Volume fees for permit modifications are based only on the discharge volume associated with those operations affected by the modification.

(6) Industry Factors.

(a) The industry factors are determined as follows:

<i>Industry Type</i>	<i>Industry Factor</i>
Primary industry as listed in 40 CFR Part 122, Appendix A, which is incorporated by reference	5
Non-primary industry but on the Department's major facility list	5
All Others	1

(b) Facilities which wash cars, trucks, or other vehicles are not considered to be primary industries for the purposes of §C(6).

(7) Water Use Factor.

(a) The water use factor is determined as follows:

<i>Water Use</i>	<i>Water Use Factor</i>
Process use Cooling	2.0
Once-through – no additives	0.5
Once-through – with additives	1.0
Contact	1.5
Other (includes but is not limited to boiler blowdown, cooling tower blowdown, steam condensate, sewage, and stormwater runoff)	1.0

(b) When a facility has more than one type of water use, the highest of the applicable water use factors should be used.

(8) The Department will calculate the application fee upon receipt of an application for a new permit, permit renewal, or permit modification and will bill the applicant. The application fee shall be paid within 30 days of receipt of the bill, unless the permittee questions the calculations or assumptions, or both, used to arrive at the fee. In which case, the Department shall be notified in writing within 15 days of receipt of the bill, and a meeting shall be scheduled, if necessary, within 10 days to resolve the dispute.

(9) The Department may refuse to complete processing on any new or renewed permit or on any permit modification if the applicant fails or refuses to pay the application fee.

(10) In addition to the application fee calculated in accordance with §C(4) of this regulation, the Department shall assess the applicant for any cost associated with evaluating or reviewing mixing zone studies, variance petitions, site-specific criteria studies, chemical or biological translator studies, or any other studies submitted as part of an application to determine discharge permit requirements. For the purposes of this assessment:

(a) The minimum fee for each component (for example, mixing zone, variance, etc.) will be established at \$5,000; and

(b) The Department shall:

(i) Obtain and provide to the applicant an estimate for any additional costs incurred as part of the evaluation or review,

(ii) Obtain the applicant's concurrence, and

(iii) Bill the applicant before the beginning of the evaluation or review.

D. Calculation of Stormwater Runoff Volume. Stormwater runoff volume shall be determined by the following method:

(1) Annual stormwater runoff volume = Annual rainfall (feet) x drainage area (square feet) x 7.48 x runoff coefficient;

(2) Average stormwater runoff volume = Annual stormwater runoff volume divided by 365;

(3) As an alternative to this method, the permittee may submit a report to the Department which contains calculations of the average daily stormwater runoff from the permitted facility.

E. For storm water discharges eligible for coverage under Regulation .09 of this chapter, the portion of the permit fee calculated in Regulation .11 of this chapter may not exceed \$100 per year.