

Chapter 123

(Senate Bill 407)

AN ACT concerning

**Drinking Water – ~~Innovative~~ Indirect Potable Reuse Pilot Program –
Establishment**

FOR the purpose of establishing the ~~Innovative~~ Indirect Potable Reuse Pilot Program in the Department of the Environment for the purpose of authorizing the regulated use of reclaimed water as a source for certain drinking water facilities; providing for the issuance of potable reuse permits under the Pilot Program; applying certain public participation requirements to potable reuse permits; authorizing the Department to renew a potable reuse permit on or after a certain date under certain circumstances; and generally relating to the establishment of the ~~Innovative~~ Indirect Potable Reuse Pilot Program.

BY repealing and reenacting, with amendments,
Article – Environment
Section 1–601(a)
Annotated Code of Maryland
(2013 Replacement Volume and 2022 Supplement)

BY repealing and reenacting, without amendments,
Article – Environment
Section 9–301(a) and (f) and 9–401(l)
Annotated Code of Maryland
(2014 Replacement Volume and 2022 Supplement)

BY adding to
Article – Environment
Section 9–303.2 and 9–303.3
Annotated Code of Maryland
(2014 Replacement Volume and 2022 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Environment

1–601.

(a) Permits issued by the Department under the following sections shall be issued in accordance with this subtitle:

(1) Air quality control permits to construct subject to § 2–404 of this article;

(2) Permits to install, materially alter, or materially extend landfill systems, incinerators for public use, or rubble landfills subject to § 9–209 of this article;

(3) Permits to discharge pollutants to waters of the State issued pursuant to § 9–323 of this article;

(4) Permits to install, materially alter, or materially extend a structure used for storage or distribution of any type of sewage sludge issued, renewed, or amended pursuant to § 9–234.1 or § 9–238 of this article;

(5) Permits to own, operate, establish, or maintain a controlled hazardous substance facility issued pursuant to § 7–232 of this article;

(6) Permits to own, operate, or maintain a hazardous material facility issued pursuant to § 7–103 of this article; [and]

(7) Permits to own, operate, establish, or maintain a low-level nuclear waste facility issued pursuant to § 7–233 of this article; AND

(8) POTABLE REUSE PERMITS ISSUED IN ACCORDANCE WITH § 9–303.2 OF THIS ARTICLE.

9–301.

(a) In this subtitle the following words have the meanings indicated.

(f) “Reclaimed water” means sewage that:

(1) Has been treated to a high quality suitable for various reuses; and

(2) Has a concentration of less than:

(i) 3 fecal coliform colonies per 100 milliliters;

(ii) 10 milligrams per liter of 5-day biological oxygen demand; and

(iii) 10 milligrams per liter of total suspended solids.

9–303.2.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “DRINKING WATER TREATMENT FACILITY” MEANS A FACILITY THAT IS USED TO TREAT WATER IN A PUBLIC WATER SYSTEM.

(3) “ENVIRONMENTAL BUFFER” MEANS A RESERVOIR, BASIN, ~~CONFINED AQUIFER~~, OR SIMILAR AREA ABOVE GROUND, THE PURPOSE OF WHICH IS TO STORE OR IMPOUND SOURCE WATER FOR A DRINKING WATER TREATMENT FACILITY.

(4) “PFAS” MEANS PER- AND POLYFLUOROALKYL SUBSTANCES.

(5) “PILOT PROGRAM” MEANS THE ~~INNOVATIVE~~ INDIRECT POTABLE REUSE PILOT PROGRAM.

(6) “POTABLE REUSE PERMIT” MEANS A PERMIT ISSUED BY THE DEPARTMENT TO AUTHORIZE AND REGULATE A PROCESS TO USE RECLAIMED WATER AS A SOURCE FOR A DRINKING WATER TREATMENT FACILITY.

(7) “PUBLIC WATER SYSTEM” HAS THE MEANING STATED IN § 9-401 OF THIS TITLE.

(B) THERE IS AN ~~INNOVATIVE~~ INDIRECT POTABLE REUSE PILOT PROGRAM IN THE DEPARTMENT.

(C) THE PURPOSE OF THE PILOT PROGRAM IS TO AUTHORIZE THE REGULATED USE OF RECLAIMED WATER AS A SOURCE FOR DRINKING WATER TREATMENT FACILITIES.

(D) (1) THE DEPARTMENT MAY REVIEW, PERMIT, AND REGULATE A PROCESS TO USE RECLAIMED WATER AS A SOURCE FOR A DRINKING WATER TREATMENT FACILITY THROUGH A POTABLE REUSE PERMIT IF:

~~(1)~~ (I) THE DEPARTMENT DETERMINES THAT THE PROCESS WILL MEET OR SURPASS SAFE DRINKING WATER STANDARDS BEFORE WATER ENTERS THE DISTRIBUTION SYSTEM;

~~(2)~~ (II) THE RECLAIMED WATER IS STORED IN AN ENVIRONMENTAL BUFFER FOR A RESIDENCE TIME OF ~~UP TO 90~~ AT LEAST 180 DAYS, ~~AS DETERMINED BY THE DEPARTMENT~~, BEFORE INTAKE INTO A DRINKING WATER TREATMENT FACILITY;

~~(3)~~ (III) THE RECLAIMED WATER MEETS THE FOLLOWING REQUIREMENTS:

~~(4)~~ 1. PRIMARY AND SECONDARY MAXIMUM CONTAMINANT LEVELS ESTABLISHED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY UNDER 40 C.F.R. §§ 141 AND 143 AND BY THE DEPARTMENT UNDER COMAR 26.04.01 BEFORE ENTERING THE ENVIRONMENTAL BUFFER AND BEFORE ENTERING THE DISTRIBUTION SYSTEM;

~~(H)~~ 2. TREATMENT FOR REMOVAL OF PATHOGENS AT THE WASTEWATER TREATMENT STAGE AND THE DRINKING WATER TREATMENT STAGE THAT MEETS OR EXCEEDS:

~~1.~~ A. 12 LOG FOR ENTERIC VIRUS REDUCTION;

~~2.~~ B. 10 LOG FOR GIARDIA CYST REDUCTION; AND

~~3.~~ C. 10 LOG CRYPTOSPORIDIUM OOCYST REDUCTION; AND

~~(HH)~~ 3. ~~MAXIMUM~~ CONTROLS FOR MAXIMUM CONCENTRATIONS OF PFAS CHEMICALS ESTABLISHED BY THE DEPARTMENT, NOTWITHSTANDING § 9-406(C) OR § 9-407(B) OF THIS TITLE, BUT NOT TO EXCEED ANY ~~MAXIMUM CONTAMINANT LEVELS~~ PRIMARY DRINKING WATER REGULATIONS ESTABLISHED BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY IN A FINAL RULEMAKING UNDER THE FEDERAL SAFE DRINKING WATER ACT;

~~(4)~~ (IV) THE RECLAIMED WATER UNDERGOES TESTING AND REPORTING TO VERIFY THAT THE REQUIREMENTS OF ~~ITEM (3) OF THIS SUBSECTION~~ ITEM (III) OF THIS PARAGRAPH ARE MET;

~~(5)~~ (V) THE PROCESS INCLUDES:

~~(H)~~ 1. REVERSE OSMOSIS; AND

~~(H)~~ 2. ULTRAVIOLET (UV) DISINFECTION ~~AT THE DRINKING WATER TREATMENT FACILITY~~;

~~(6)~~ (VI) EMERGENCY PROCEDURES ARE IN PLACE TO PROTECT AND ENSURE THE AVAILABILITY OF THE POTABLE WATER SUPPLY IF THERE IS ANY FAILURE TO MEET THE DEPARTMENT'S REQUIREMENTS;

~~(7)~~ (VII) THE APPLICANT GIVES THE DEPARTMENT THE RIGHT OF ENTRY ON THE PERMIT SITE AT ANY REASONABLE TIME TO INSPECT OR INVESTIGATE FOR A VIOLATION OR ANY POTENTIAL VIOLATION OF THE POTABLE REUSE PERMIT;

(VIII) THE APPLICANT DEMONSTRATES TO THE SATISFACTION OF THE DEPARTMENT THAT, AT ALL TIMES AND UNDER ALL OPERATING CONDITIONS, THE VOLUME OF RECLAIMED WATER ENTERING THE DRINKING WATER TREATMENT FACILITY CONTAINS NOT MORE THAN 10% BY VOLUME OF RECLAIMED WATER THAT WAS DELIVERED TO THE ENVIRONMENTAL BUFFER DURING ANY 24-HOUR PERIOD;

~~(8)~~ (IX) THE PROCESS INCLUDES APPROPRIATE RECORD-KEEPING REQUIREMENTS; AND

~~(9)~~ (X) THE PROCESS COMPLIES WITH ALL OTHER APPLICABLE STATUTORY AND REGULATORY REQUIREMENTS.

(2) NOTWITHSTANDING SUBSECTION (D)(1)(II) OF THIS SECTION, AN APPLICANT MAY REQUEST THAT RECLAIMED WATER BE STORED IN AN ENVIRONMENTAL BUFFER FOR LESS THAN 180 DAYS, BUT NOT LESS THAN 60 DAYS, BEFORE INTAKE INTO A DRINKING WATER TREATMENT FACILITY IF:

(I) THE PROCESS RELIABLY AND CONSISTENTLY MEETS THE REQUIREMENTS OF THE POTABLE REUSE PERMIT UNDER VARYING OPERATING CONDITIONS TO THE SATISFACTION OF THE DEPARTMENT; AND

(II) THE APPLICANT DEMONSTRATES TO THE SATISFACTION OF THE DEPARTMENT THAT A LOWER RESIDENCE TIME SUFFICIENTLY PROTECTS PUBLIC HEALTH.

(E) THE DEPARTMENT MAY INCLUDE IN A POTABLE REUSE PERMIT ANY TERM, CONDITION, OR REQUIREMENT THAT THE DEPARTMENT DEEMS APPROPRIATE TO PROTECT PUBLIC HEALTH OR THE ENVIRONMENT.

(F) THE REQUIREMENTS OF A POTABLE REUSE PERMIT ARE SUPPLEMENTAL TO AND DO NOT OVERRIDE ANY OTHER STATUTE, REGULATION, PERMIT, ORDER, OR DECREE.

(G) THE PROVISIONS OF TITLE 1, SUBTITLE 6 OF THIS ARTICLE SHALL GOVERN THIS ISSUANCE OF POTABLE REUSE PERMITS.

(H) THE DEPARTMENT SHALL ACCEPT APPLICATIONS FOR POTABLE REUSE PERMITS FROM JULY 1, 2023, THROUGH JUNE 30, 2024, INCLUSIVE.

(I) A SUCCESSFUL APPLICATION FOR A POTABLE REUSE PERMIT SHALL:

(1) DEMONSTRATE TO THE SATISFACTION OF THE DEPARTMENT:

(I) THE ABILITY TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION;

(II) THE AVAILABILITY OF FUNDS TO CONSTRUCT AND OPERATE ANY NECESSARY IMPROVEMENTS;

(III) THE TECHNICAL AND ADMINISTRATIVE CAPACITY TO PERFORM THE PROCESS COVERED UNDER THE PERMIT; AND

(IV) THAT ALL NECESSARY PLANNING AND ENGINEERING DESIGN IS COMPLETE; AND

(2) INCLUDE:

(I) A COMPLETED FEASIBILITY STUDY; AND

(II) ANY ADDITIONAL INFORMATION REQUESTED BY THE DEPARTMENT.

(J) THE DEPARTMENT MAY REFUSE TO ISSUE A POTABLE REUSE PERMIT IF:

(1) THE APPLICANT FAILS TO PROVIDE ANY INFORMATION REQUESTED BY THE DEPARTMENT;

(2) THE APPLICANT FAILS OR REFUSES TO ALLOW THE DEPARTMENT TO INSPECT THE PERMIT SITE;

(3) THE DEPARTMENT FINDS THAT ISSUANCE OF THE PERMIT WOULD VIOLATE ANY STATE OR FEDERAL LAW OR ANY REGULATION ADOPTED UNDER ANY STATE OR FEDERAL LAW;

(4) THE SOURCE OF THE RECLAIMED WATER FAILS TO COMPLY WITH ANY STATE OR FEDERAL LAW, ANY REGULATION ADOPTED UNDER ANY STATE OR FEDERAL LAW, OR ANY PERMIT; OR

(5) THE APPLICANT FAILS TO DEMONSTRATE COMPLIANCE WITH THIS SECTION TO THE DEPARTMENT'S SATISFACTION.

(K) A POTABLE REUSE PERMIT SHALL BE EFFECTIVE FOR 5 YEARS FROM THE DATE OF ISSUANCE ~~OR UNTIL TERMINATION OF THE PILOT PROGRAM, WHICHEVER OCCURS FIRST.~~

(L) BEFORE A POTABLE REUSE PERMIT EXPIRES, THE DEPARTMENT MAY RENEW THE POTABLE REUSE PERMIT:

(1) AFTER ADMINISTRATIVE REVIEW IN ACCORDANCE WITH REGULATIONS THAT THE DEPARTMENT ADOPTS; AND

(2) IN ACCORDANCE WITH TITLE 1, SUBTITLE 6 OF THIS ARTICLE.

(M) THE DEPARTMENT MAY REVOKE A POTABLE REUSE PERMIT ISSUED UNDER THIS SECTION IF THE DEPARTMENT FINDS THAT:

(1) THE APPLICATION INCLUDED FALSE OR INACCURATE INFORMATION;

(2) CONDITIONS OR REQUIREMENTS OF THE POTABLE REUSE PERMIT HAVE BEEN OR ARE ABOUT TO BE VIOLATED;

(3) SUBSTANTIAL DEVIATION FROM PLANS, SPECIFICATIONS, OR REQUIREMENTS HAS OCCURRED OR IS ABOUT TO OCCUR;

(4) THE DEPARTMENT IS REFUSED ENTRY TO ANY PREMISES FOR THE PURPOSE OF INSPECTING THE PROCESS TO ENSURE COMPLIANCE WITH THE POTABLE REUSE PERMIT;

(5) A CHANGE IN CONDITIONS EXISTS THAT REQUIRES THE TEMPORARY OR PERMANENT REDUCTION OR ELIMINATION OF THE USE OF RECLAIMED WATER;

(6) THERE IS ANY NONCOMPLIANCE WITH A DISCHARGE PERMIT OR A PRETREATMENT REQUIREMENT THAT MAY AFFECT THE RECLAIMED WATER IN ANY MANNER;

(7) ANY STATE OR FEDERAL WATER QUALITY STANDARD OR EFFLUENT LIMITATION HAS BEEN OR IS THREATENED TO BE VIOLATED;

(8) ANY STATE OR FEDERAL REQUIREMENT ESTABLISHED UNDER THE FEDERAL SAFE DRINKING WATER ACT, SUBTITLE 4 OF THIS TITLE, OR TITLE 12 OF THIS ARTICLE HAS BEEN OR IS THREATENED TO BE VIOLATED; OR

(9) THE RECLAIMED WATER MAY THREATEN PUBLIC HEALTH, SAFETY, COMFORT, OR THE ENVIRONMENT.

(N) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A PUBLIC WATER SYSTEM OPERATING UNDER A POTABLE REUSE PERMIT SHALL BE SUBJECT TO REQUIREMENTS FOR PUBLIC WATER SYSTEMS THAT USE SURFACE WATER UNDER COMAR 26.04.01.

~~(N)~~ (O) ON OR BEFORE DECEMBER 31, 2024, THE DEPARTMENT SHALL REPORT TO THE GOVERNOR AND, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY ON:

(1) THE STATUS OF THE PILOT PROGRAM;

(2) WHETHER THE PILOT PROGRAM SHOULD BE EXTENDED OR MADE PERMANENT; AND

(3) ANY STATUTORY OR REGULATORY CHANGES THAT THE DEPARTMENT RECOMMENDS TO PERMANENTLY AUTHORIZE THE REGULATED USE OF RECLAIMED WATER AS A SOURCE FOR DRINKING WATER TREATMENT FACILITIES, IF APPROPRIATE.

~~(O)~~ (P) THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.

9-401.

(l) (1) “Public water system” means a system that:

(i) Provides to the public water for human consumption through pipes or other constructed conveyances; and

- (ii) 1. Has at least 15 service connections; or
- 2. Regularly serves at least 25 individuals.

(2) “Public water system” includes:

(i) Any collection, treatment, storage, or distribution facility that is under the control of the operator of the system and is used primarily in connection with the system; and

(ii) Any collection or pretreatment storage facility that is not under the control of the operator of the system and is used primarily in connection with the system.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Environment

9-303.3.

(A) ON OR AFTER JULY 1, 2028, THE DEPARTMENT MAY RENEW A POTABLE REUSE PERMIT IF:

(1) THE RENEWAL OCCURS BEFORE THE POTABLE REUSE PERMIT EXPIRES; AND

(2) THE DEPARTMENT ISSUED THE ORIGINAL POTABLE REUSE PERMIT ON OR BEFORE JUNE 30, 2028.

(B) IF THE DEPARTMENT RENEWS A POTABLE REUSE PERMIT IN ACCORDANCE WITH SUBSECTION (A) OF THIS SECTION, THE DEPARTMENT SHALL RENEW THE PERMIT:

(1) AFTER ADMINISTRATIVE REVIEW IN ACCORDANCE WITH REGULATIONS THAT THE DEPARTMENT ADOPTS; AND

(2) IN ACCORDANCE WITH TITLE 1, SUBTITLE 6 OF THIS ARTICLE.

SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted. ~~It~~ Section 1 of this Act shall remain effective through June 30, 2028, and, at the end of June 30, 2028, Section 1 of this Act, with no further action required by the General Assembly, shall be abrogated and of no further force and effect.

Approved by the Governor, April 24, 2023.