



February 23, 2023

The Honorable Brian J. Feldman, Chair
Education, Energy, and the Environment Committee
Miller Senate Office Building, 2 West
Annapolis, Maryland 21401

Re: Senate Bill 471 - Water Pollution Control – Discharge Permits – Stormwater Associated with Construction Activity

Dear Chair Feldman and Members of the Committee:

The Maryland Department of the Environment (MDE or the Department) has reviewed Senate Bill 471 and would like to provide the following information. MDE has met with the sponsor of this legislation and is working on amendments to address our concerns.

Senate Bill 471 proposes to restrict the Department's authorization for stormwater discharges under the General Permit for Stormwater Discharges Associated with Construction Activity (General Permit). Instead, the permittee would need to apply for an Individual Discharge Permit for Stormwater Discharges Associated with Construction Activity (Individual Permit). Additionally, for any construction begun without authorization under the Permit, the bill would mandate enforcement by the Department and impose a new method for penalty assessment based on disturbed acreage.

The construction general permit (20CP) recently underwent a significant revision which included two public comment periods and a public hearing. The final permit was issued on December 27, 2022 with an effective date of April 1, 2023. The revised permit includes specific, enhanced requirements for projects located in Tier II high quality watersheds, which includes an antidegradation review and if necessary a social and economic justification for the project. The revised permit recognizes that vegetated stream buffers are important filters to protect water quality for all streams. The new permit requires permittees to provide and maintain a Stream Protection Zone, made up of either a natural vegetated buffer or a natural vegetated buffer with additional erosion and sediment controls. The revised permit also increases inspection frequency in Tier II areas. Also, the Department sought comment on revising the 14 day public notice period to begin only after we receive a complete application submission, which includes an approved Erosion and Sediment Control plan, a signed Stormwater Pollution Prevention Plans, and completed anti-degradation documentation. All of these documents will be available for inspection by the public during the public notice and review period of the application.

Senate Bill 471 requires an individual permit for larger projects located in sensitive areas, yet the permit was recently revised and addressed these specific concerns by including special environmental protections in these areas as well as providing for a more robust public comment and increased oversight.

The Department has found concerns with SB 471 as stated below.

- This would substantially increase the workload for the Department and for the construction industry.

- Currently, registrations under the General Permit take 45-days or less to issue. Individual permits take approximately 1 year to issue, from the date a complete application is received. In addition any modification of the individual permit takes 6 to 9 months.
- A fee structure does not exist for this type of individual permit, so a commensurate fee structure would need to be developed to cover the processing costs. It would be significantly more costly than the current General Permit fees, due to the increase in resources for the Department that must be calculated and additionally.
- Turnaround times would need to be addressed as well, since the sheer number of permits may dictate that certain years the Department could have larger workloads. The 1 year turnaround is based on an even load of permit applicants.

An additional concern for the Department is a specific phrase in the bill since permits are typically for the operator of a site, “cumulative total area of disturbance resulting from all construction activity conducted under a common plan of development.” There are often multiple contractors involved in the development of a site, i.e. the common plan. Currently each individual contractor receives coverage under the general permit. Under this bill, each contractor would need to receive an individual permit. For instance, a contractor installing the sewer lines for a multi-acre housing development would need an individual permit, in addition to the contractor constructing the housing unit, the contractor paving the roads and sidewalks, etc. The Department has had up to 70 operators within one common plan.

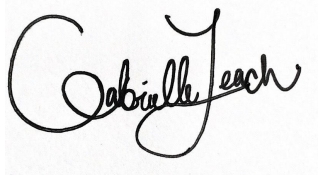
It is unclear how permit transfers would be affected by this bill. Transfers are relatively common for the General Permit for Stormwater Associated with Construction Activities. If general permit coverage was transferred to a permittee that had compliance issues at a different, unrelated site, in theory under this bill that would require individual permit. It is unclear how that situation would be handled under this bill.

The Department is concerned that prohibition of the discharge of soil or other pollutants, even if the site is in compliance with an approved sediment control plan, is not achievable. Controls are designed to minimize sediment discharges for storms of certain sizes, not stop it all together. This will create a situation where more sites will be in noncompliance despite following all of the requirements in existing sediment control and construction stormwater approvals and practices.

According to MDE’s Environmental Tracking System, in the calendar year 2022, MDE performed 1,855 inspections for NPDES Construction Stormwater. Of these inspections, the Department found some type of noncompliance at 237 sites. Of the 237 sites with noncompliance, approximately 138 had more than one inspection with noncompliance which could be an indicator of Significant Non-Compliance (SNC). Additionally, the section of the bill dealing with applicants that have had two or more instances of SNC in the past 365 days is not limited to construction stormwater discharges, but also captures all discharge permits (groundwater as well as NPDES). Many local governments and the state government may have instances of SNC at wastewater treatment plants which would cause all applications for those entities to require individual permits. For instance, Baltimore City has SNC for two of their wastewater treatment plants. Therefore, any construction stormwater permit Baltimore City applies for would need to be an individual permit due to the non-compliance issues at the wastewater treatment plants. It is difficult to determine how many applications are from entities that have two or more SNC findings in the past 365 days. Departmental data is organized around sites and not applicants.

Thank you for considering the Department’s information regarding this legislation. We will continue to monitor SB 471 during the Committee’s deliberations, and I am available to answer any questions you may have. Please feel free to contact me at 410-260-6301 or by e-mail at gabrielle.leach@maryland.gov.

Sincerely,

A handwritten signature in black ink that reads "Gabrielle Leach". The signature is written in a cursive style with a large initial 'G' and 'L'.

Gabrielle Leach
Deputy Director
Legislative and Intergovernmental Relations

Cc: The Honorable Sarah Elfret
Lee Currey, Director, Water and Science Administration