

# **WKC SB471\_Construction Stormwater Testimony.pdf**

Uploaded by: Alexander Villazon

Position: FAV



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February 23, 2023

**FAVORABLE Report – SENATE BILL 0471: Water Pollution Control - Discharge Permits - Stormwater Associated With Construction Activity**

Dear Chairperson and Members of the Committee,

We are writing in strong support of **SB0471** on behalf of Waterkeepers Chesapeake, a coalition of seventeen Waterkeepers, Riverkeepers, and Coastkeepers working to make the waters of the Chesapeake and Coastal Bays swimmable and fishable. As we at Waterkeepers work to protect and maintain the ability of the public to safely enjoy the waters of our State, we are concerned about the damage that sediment runoff from construction sites causes to our waterways. This type of polluted runoff is a fast growing source of water pollution in our region due to over development, weak regulations, outdated infrastructure, and increasing frequency and severity of storms due to climate change. When construction projects occur, activities such as grading and demolition create pollutants that runoff through stormwater from the site and harm our waterways—sediment being the main pollutant of concern and a major contributor to water quality concerns.

**SB0471** is important in helping prevent this source of pollution as the current general permit does not typically provide much protection on its own. In addition, the bill will establish a new mandatory penalty for construction without a permit and make it a violation to have construction pollution runoff from the site, holding developers liable for the damage caused. Maryland's discharge permits are to ensure our environment and public health are adequately considered and protected from unregulated polluting activities. Unfortunately, there are instances where bad actors have broken the law and begun construction projects with no permit whatsoever. Maryland must set a standard

and demonstrate that unpermitted construction activity will not be acceptable. As our state's Department of the Environment has stated, maintaining runoff from construction activities is critical in achieving Maryland's goals for reducing the levels of nutrients and sediment in the Chesapeake Bay.

When construction sites lack adequate monitoring and strict enforcement, development activities can cause enormous damage to our waterways and neighboring communities. If polluted construction runoff management practices are not regularly inspected and enforced long after construction is complete their ability to function properly cannot be guaranteed. Too many Maryland communities have experienced damage to their property from flooding and sediment runoff from nearby poorly planned, regulated and maintained developments. **SB0471** would be a positive step in helping Maryland meet its 2025 Chesapeake Bay restoration goals. Our northern neighbor Pennsylvania already requires individual permits for construction projects taking place in designated healthy watersheds and Maryland should not fall far behind in enacting similar protections for our waterways. Therefore, we believe these requirements would properly be carried out under **SB0471** in order to establish a more rigorous review to ensure appropriate construction stormwater runoff management to better protect all Marylanders' health and safe access to our waterways.

For these reasons stated above, we urge the Committee to adopt a **FAVORABLE** report on **SB0471**.

Alexander Villazon  
Climate & Justice Legal Fellow  
Waterkeepers Chesapeake

**SB 471 - FAV - MML.pdf**

Uploaded by: Angelica Bailey

Position: FAV



Maryland Municipal League  
*The Association of Maryland's Cities and Towns*

TESTIMONY

February 23, 2023

**Committee:** Education, Energy, and the Environment

**Bill:** SB 471 – Water Pollution Control - Discharge Permits - Stormwater Associated With Construction Activity

**Position:** Support

**Reason for Position:**

The Maryland Municipal League supports SB 471, which creates a new stormwater permit for stream restoration in specific circumstances, effectively shifting the cost and responsibility for stream restoration from a local government to the polluter/developer. The permit holder would be responsible for runoff and erosion from the construction site, with fair but significant penalties for failing to do so. The bill also enables local governments to order the permit holder to remediate their violations.

Local governments are eligible permit applicants and would have to follow these stricter standards, which could increase costs. However, the estimated costs are not significant, and municipalities feel a slight increase is a fair tradeoff to hold the perpetrators of construction-related runoff and erosion responsible for restoration.

For these reasons, the League respectfully requests that this committee provide SB 471 with a favorable report.

**FOR MORE INFORMATION CONTACT:**

Theresa Kuhns	Chief Executive Officer
Angelica Bailey Thupari, Esq.	Director, Advocacy & Public Affairs
Bill Jorch	Director, Public Policy
Justin Fiore	Deputy Director, Advocacy & Public Affairs

1212 West Street, Annapolis, Maryland 21401

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**SB0471-EEE\_MACo\_SUP.pdf**

Uploaded by: Dominic Butchko

Position: FAV



## **Senate Bill 471**

### *Water Pollution Control - Discharge Permits - Stormwater Associated With Construction Activity*

MACo Position: **SUPPORT**

To: Education, Energy, and the Environment  
Committee

Date: February 23, 2023

From: Dominic J. Butchko

The Maryland Association of Counties (MACo) **SUPPORTS** SB 471. This bill would, among other things, give counties additional tools to prevent excess soil erosion from construction projects, saving taxpayers money on expensive stream restoration and preventing damage to many of Maryland's waterways.

Counties play an outsized role in development and environmental protection. Local jurisdictions set regulations for construction, approving and holding accountable nearly all construction projects. One of the biggest challenges in construction is managing soil run-off. Naturally, when building a structure, soil is disturbed. If not properly mitigated, this soil ends up flowing into our streams and wreaking havoc. In many circumstances, developers comply with plans to mitigate excess soil runoff, but these plans are minimal. As long as developers are complying with plans to mitigate soil runoff, regardless of if those plans are effective, the developer is not held accountable for any necessary stream restoration. This system has largely shifted the burden of eventual stream restoration projects onto counties and thus taxpayers.

SB 471 places more responsibility on developers to mitigate against negative environmental impacts from their projects. This bill allows counties to issue stop-work orders to force immediate remediation and mitigation, and hold developers financially responsible for the cost of any necessary stream restoration. This legislation is modeled from similar policy in Anne Arundel County which has served to see construction projects become less damaging to the environment.

SB 471 realigns incentives in a commonsense way for both counties and developers to ensure construction projects are less damaging to the environment. Developers should pay the cost of necessary remediation and mitigation, not taxpayers. For these reasons, MACo **SUPPORTS** SB 471 and urges a **FAVORABLE** report.

**SB 471 - CLA - Favorable.pdf**

Uploaded by: Evan Isaacson

Position: FAV





## Support for Senate Bill 471

Dear Chairman Feldman and Members of the Committee:

The Chesapeake Legal Alliance strongly supports SB 471 because the status quo has resulted in widespread noncompliance with erosion and sediment control and stormwater management laws in Maryland and devastating effects on our streams, communities, and the Chesapeake and Atlantic Coastal Bays. SB 471 does not create any new prohibitions or restrictions, but merely improves protections for streams, communities, and property owners that are otherwise impacted by inadequate construction stormwater controls.

Over three decades ago Congress declared that runoff from construction sites, like other industrial activities, had to be adequately regulated if the goals of the Clean Water Act were ever to be realized. After all, according to the U.S. EPA, just one acre of construction can result in 35–45 **tons** of sediment runoff per year. Even just a short burst of rain “can contribute more sediment to streams than would be deposited naturally *over several decades.*”

Yet, more than 35 years after Congress amended the Act to direct that this pollution be controlled, Maryland still implements a Clean Water Act permitting approach that amounts to little more than a rubber stamp. The Maryland Department of the Environment’s construction stormwater general permit allows construction sites to obtain Clean Water Act approval from the State with little or no meaningful MDE review or public involvement. Even Pennsylvania requires that construction sites receive enhanced Clean Water Act permit review for more sensitive sites.

If the present system resulted in few ill effects, there would be no need for this bill. But that is far from the situation we have today. Like many of our peers, the Chesapeake Legal Alliance is inundated with requests for assistance in dealing with the environmental and property damage caused by inadequate controls installed at construction sites. MDE’s recent Annual Report on Environmental Violations showed that in just one year, and for only half of Maryland’s counties and nine of its municipalities, there were **9,726 violations** of erosion and sediment control laws noted by inspectors and another **1,816 complaints** filed by residents. Again, this is only for a few jurisdictions and does not include thousands more complaints that were never filed due to a lack of time or ability of residents to understand the process for filing complaints.

If enacted, SB 471 will accomplish the following:

1. ***Ensure that Our Most Sensitive Sites Receive Greater Protections.*** In a perfect world, each application for Clean Water Act approval of a construction site would be carefully and closely reviewed with site-specific controls imposed by an MDE engineer. Such a situation is presently infeasible with given resources. This bill only seeks enhanced review of **large** construction sites **that are also** situated in sensitive environmental areas – a small fraction of construction projects in Maryland. For major construction sites over 10 acres in size that are

also built within floodplains, the Critical Area buffer, or alongside our highest quality streams, the bill merely requires the applicant to work with an MDE permit writer to establish appropriate controls that actually protect water quality and surrounding properties. The bill ***does not prohibit construction*** in these areas or add new restrictions. It merely ensures – for a few dozen sites each year – that the permit be written to carefully consider which pollution controls are necessary to avoid harm to the surrounding waters and properties.

2. ***Create a Level Playing Field Via Adequate Penalties for Evading Clean Water Laws.*** The bedrock of the Clean Water Act and Maryland’s state water pollution control laws – like so many other environmental, public health, and planning laws – is a permitting system. One can reasonably debate what should or should not be in a permit. However, all responsible businesses understand they have licensing and permitting obligations. By all accounts this is not a problem for the vast majority of site operators. However, a small number of bad actors try to evade the law by operating completely outside of the entire statutory and regulatory system. It is one thing to violate a condition of a permit, but it is an entirely different and far worse problem to try to avoid getting a permit at all. For these violations, the penalty must be steep enough to deter anyone from seeking to gain an unfair business advantage with the potential to create substantial harms to the public. The bill would create a series of clear consequences for evading clean water permitting, including a stop work order, a directive to seek an individual permit from MDE, and automatic penalties of not less than \$25,000 per acre, plus any administrative or judicial order deemed necessary to remediate the harm done.
3. ***Clarifying the Common Sense Proposition that it is Not Lawful to Allow Massive Quantities of Pollution into Public Waters.*** Most would be surprised to learn that when a torrent of pollution flows off site, dumping massive quantities of mud and myriad pollutants onto neighboring property, down a municipal storm drain, or into the nearby stream, the consequence is essentially nothing. If a massive pollution event is even detected by authorities at all, the likely consequence is not a penalty, not a stop work order, not an administrative or judicial order to remedy the harm done, nothing more than merely a request to fix the clearly inadequate pollution controls on site. Without any sort of penalty or any significant consequence – and with a low likelihood of detection in the first place – there is simply no incentive at all for operators to keep the pollution safely on site, while the harm to Marylanders and their waters of failing to do so is rampant and severe. Currently, it is not in the business interest of most construction site operators to keep pollution on site, and it will remain this way without any economic incentive or deterrence built into the law.

This bill simply seeks to rectify this woefully inadequate system of pollution control. Knowing that operators will have to clean up and pay for the harm they cause will incentivize them to pay closer attention to the pollution controls being installed and maintained. This is just common sense and good public policy, consistent with the rules in place already for some jurisdictions. Moreover, by preventing pollution events from happening in the first place the bill would protect state investments and reduce the burden on taxpayers and the public who currently spend hundreds of millions of dollars each year to dredge mud and sediment flowing into waterways, clean and maintain municipal storm sewer systems, and reduce sediment pollution as part of the Bay restoration effort.

For these reasons, the Chesapeake Legal Alliance **strongly supports SB 471** and urges a favorable report. For more information, contact Evan Isaacson at [evan@chesapeakelegal.org](mailto:evan@chesapeakelegal.org).

**SB 471\_CBF\_FAV.pdf**

Uploaded by: Matt Stegman

Position: FAV



# CHESAPEAKE BAY FOUNDATION

Environmental Protection and Restoration  
Environmental Education

## Senate Bill 471

Water Pollution Control – Discharge Permits –  
Stormwater Associated with Construction Activity

Date: February 23, 2023  
To: Education, Energy & the  
Environment Committee

Position: Support  
From: Erik Fisher, AICP, MD Land Use Planner

Chesapeake Bay Foundation (CBF) **SUPPORTS** SB 471, which provides for better management of stormwater on construction sites. If adopted, this bill would provide new tools for state and local environmental managers to control stormwater and, if necessary, stop excess pollution from reaching local waterways.

**Stormwater pollution from developed and developing areas is the fastest growing source of pollution to local waterways and the Chesapeake Bay.** According to the Chesapeake Bay Program, construction sites are the highest loading source of nutrients and sediment to waterways on a per-acre basis. Open ground – where tree removal and grading have removed root mass and exposed bare soil – requires special care to keep pollutants onsite. When basic controls fail due to site-specific conditions, intensifying rainfall, or other factors, a site can load years or even a decade's worth of pollutants into a waterway in days. Better managing these sites is a pressing challenge: Maryland's Phase III Watershed Implementation Plan states that, by 2025, stormwater will become a larger source of pollution to the Bay than wastewater.

**SB 471 provides more tools to environmental managers that can improve stormwater management and reduce pollution.** Construction sites that contain or could impact sensitive environmental features require management specific to those features. Nevertheless, Maryland's current regulations largely prescribe a "one-size-fits-all" set of practices. As an example, the primary strategies required in MDE's *Construction Stormwater Antidegradation Checklist – Version 1.1* only apply to the 100-foot stream buffer – an area generally already protected by most local ordinances. SB 471 offers a more complete solution, providing for the issuance of individual discharge permits for construction sites in floodplains, along shorelines, and those draining to Maryland's highest quality creeks and streams. Individual permits allow environmental managers to tailor erosion and sediment control practices more specifically to the scale, scope, and layout of the project, as well as the features and assimilative capacity of nearby waterways.

SB 471 also provides a clear performance standard for stopping sediment loss, empowering environmental managers to respond when basic controls fail. The state must equip frontline inspectors and regulators to handle the consequences of intensifying rainfall events associated with a warmer and wetter climate.

**CBF urges the Committee's FAVORABLE report on SB 471.**

For more information, please contact Matt Stegman, Maryland Staff Attorney, at [mstegman@cbf.org](mailto:mstegman@cbf.org).

Maryland Office • Philip Merrill Environmental Center • 6 Herndon Avenue • Annapolis • Maryland • 21403

The Chesapeake Bay Foundation (CBF) is a non-profit environmental education and advocacy organization dedicated to the restoration and protection of the Chesapeake Bay. With over 300,000 members and e-subscribers, including over 109,000 in Maryland alone, CBF works to educate the public and to protect the interest of the Chesapeake and its resources.

# **Arundel Rivers Group Sign on FAV SB471.pdf**

Uploaded by: Matthew Johnston

Position: FAV



Baltimore Jewish Council  
An agency of The Associated

## Testimony in SUPPORT of Senate Bill 471 – Water Pollution Control – Discharge Permits – Stormwater Associated with Construction Activity

Education, Energy, and the Environment Committee

February 23, 2023

Dear Chair Feldman and Members of the Committee,

The **undersigned organizations** write today in **SUPPORT** of SB471. This legislation addresses perhaps the most visible form of pollution that our organizations, our supporters, members of this committee, and residents across Maryland see on a regular basis: sediment pollution running off of construction sites. Unfortunately, it is also a form of pollution that has been difficult to curb due to the lack of an adequate deterrent and standards for inspecting pollution complaints.

According to the U.S. EPA, sediment runoff from construction sites can be 1,000 to 2,000 times greater than runoff from forested lands. Even just a short burst of rain “can contribute more sediment to streams than would be deposited naturally over several decades.”<sup>i</sup> These quick bursts of mud-filled water can destroy a stream and aquatic ecosystem. The cost to repair the damaged streams or dredge the sediment-filled creeks is currently passed along to taxpayers.

At a time when Maryland is seeking to achieve its 2025 Chesapeake Bay restoration goals, we must act to protect our most vulnerable waterways from construction-related pollution. With this bill, State and local authorities will finally have the tools they need to prevent pollution before it occurs and hold polluters accountable when prevention measures fail. Specifically, this bill will:

1. **Clarify that a construction site may not cause sediment pollution or erosion downstream.** The bill makes it illegal to cause, or fail to control runoff of sediment or other pollutants from a construction site, or cause erosion into Waters of the State downstream of the site.

Sediment is one of the most common pollutants in rivers, streams, lakes and reservoirs. In fact, many of the waters in the Chesapeake Bay are listed on the EPA 303(d) impaired waterway list

for sediment pollution. Construction sites often require significant disturbance of land, which can result in concentrated sediment leaving sites and entering downstream waterways. When excess sediment enters our waterways, it clouds our streams and rivers. This prevents natural vegetation from growing and can be detrimental to animals by disturbing the food chain, destroying habitat, and smothering oyster beds and spawning grounds. Additionally, nutrients can be transported by sediment, triggering algal blooms that are further detrimental to our water quality.

**2. Give inspectors the tools they need to investigate downstream waters following pollution complaints and hold polluters responsible for damage caused to downstream properties and resources.**

Current law does not specifically prohibit the runoff of sediment from a construction site or erosion in a downstream channel. This disconnect between the purpose of the law - to protect our waterways - and the plain language leaves our State and local sediment and erosion control inspectors with little authority to investigate pollution downstream of a site and hold permittees liable for the damages.

All too often, when a pollution complaint is investigated, a permittee is required to restore the construction site to the measures in the approved erosion and sediment control plan even if the evidence of pollution or downstream erosion makes it clear that those measures were inadequate. This bill will give inspectors the authority they need to require changes to erosion and sediment control plans in order to prevent additional pollution and erosion. It will also give the State and local governments the authority to require corrective actions to remediate any damage caused by pollution or erosion.

This approach has precedent in Anne Arundel County Code and processes. It is illegal to cause offsite sediment deposition or erosion in Anne Arundel County, and the County can seek remediation of offsite damages caused by such pollution. Inspectors now monitor downstream of each construction outfall to determine if sediment is piling up or eroding after rain events and pollution complaints. When such damage is found during an inspection, work is often halted on the construction site until the damage is addressed and the source of the pollution is corrected with more rigorous controls.

**3. Require rigorous grading permit reviews for construction projects seeking to disturb more than 10 acres of land in and near specific, vulnerable natural resources.**

This bill will only address major construction sites over 10 acres in size built within floodplains, the Critical Area buffer, or alongside our highest quality streams. This is to ensure that these sensitive and vulnerable lands are better protected and that large construction permits within them receive an enhanced review by our State. The bill does not prohibit construction in these areas, it simply ensures that these larger construction projects more accurately apply pollution controls to avoid environmental harm.

**4. Establish deterrent penalties for undertaking construction activities without a permit.**

Permits are tools to ensure our environment and public health are adequately considered and protected from certain activities. While the majority of construction activity is covered under approved permits, there are instances in our state where bad actors have evaded the law and implemented construction activity with no permit whatsoever. In instances such as this, it is vital that our state sets a precedent that unpermitted construction activity will not be acceptable. This

bill will set a new penalty for unpermitted grading activities of no less than \$25,000 per acre, plus penalties assessed by administrative or judicial order to remediate any harm caused by the unpermitted activity.

This bill will result in better protections for our most sensitive lands and waterways. For these reasons, we urge a favorable report on SB471.

Sincerely,

Arundel Rivers Federation  
Assateague Coastal Trust  
Audubon Mid-Atlantic  
Baltimore Jewish Council  
Beaverdam Creek Watershed Watch Group  
Blue Water Baltimore  
Center for Progressive Reform  
Chesapeake Legal Alliance  
Interfaith Partners for the Chesapeake  
Maryland Campaign for Environmental Human Rights  
Maryland Legislative Coalition  
Mountain Maryland Movement  
Potomac Conservancy  
Rock Creek Conservancy  
ShoreRivers  
Sierra Club Maryland Chapter  
Southern Maryland Audubon Society  
Upper Potomac Riverkeeper

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<sup>i</sup> Stormwater Phase II Final Rule: Construction Site Runoff Control Minimum Control Measure. US EPA. 2018. pg. 2. available at: [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.epa.gov/sites/default/files/2018-12/documents/epa\\_stormwater\\_phase\\_ii\\_final\\_rule\\_factsheet\\_2.6\\_construction\\_runoff\\_12-04-18.pdf](chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.epa.gov/sites/default/files/2018-12/documents/epa_stormwater_phase_ii_final_rule_factsheet_2.6_construction_runoff_12-04-18.pdf).



# **Construction Stormwater Presentation for Hearing\_S**

Uploaded by: Matthew Johnston

Position: FAV



**Matt Johnston**  
**Executive Director**

**Photos and Videos of Construction Stormwater  
Impacts**

**Testimony in SUPPORT of SB 471**

**Energy, Education, and the Environment Committee**  
**February 23, 2023**



# Anne Arundel County

Courtesy of: Arundel Rivers Federation



# Anne Arundel County

Courtesy of: Arundel Rivers Federation



# Anne Arundel County

Courtesy of: Arundel Rivers Federation



# Prince George's County

Courtesy of: Waterkeepers Chesapeake and  
Chesapeake Legal Alliance



# Baltimore City

Courtesy of: Blue Water Baltimore

# Baltimore City

Courtesy of: Blue Water Baltimore





# Baltimore County

Courtesy of: Waterkeepers Chesapeake and  
Chesapeake Legal Alliance



# Montgomery County

Courtesy of: Frank Sanford





# St. Mary's County

Courtesy of: Waterkeepers Chesapeake and  
Chesapeake Legal Alliance



# Dorchester County

Courtesy of: Shore Rivers



# Dorchester County

Courtesy of: Shore Rivers



# Queen Anne's County

Courtesy of: Shore Rivers

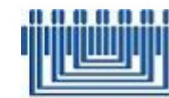
# Worcester County

Courtesy of: Waterkeepers Chesapeake and  
Chesapeake Legal Alliance



# Organizations in SUPPORT of HB 607 via joint written testimony

- Arundel Rivers Federation
- Assateague Coastal Trust
- Audubon Mid-Atlantic
- Baltimore Jewish Council
- Beaverdam Creek Watershed Watch Group
- Blue Water Baltimore
- Center for Progressive Reform
- Chesapeake Legal Alliance
- Interfaith Partners for the Chesapeake
- Maryland Campaign for Environmental Human Rights
- Maryland Legislative Coalition
- Mountain Maryland Movement
- Potomac Conservancy
- Rock Creek Conservancy
- ShoreRivers
- Sierra Club Maryland Chapter
- Southern Maryland Audubon Society
- Upper Potomac Riverkeeper





**Elfreth\_FAV\_SB471.docx (1).pdf**

Uploaded by: Sarah Elfreth

Position: FAV

SENATOR SARAH ELFRETH  
*Legislative District 30*  
Anne Arundel County



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Budget and Taxation Committee

*Subcommittees*

Capital Budget

Pensions

Chair, Public Safety,  
Transportation, and Environment

Joint Committee on the Chesapeake and  
Atlantic Coastal Bays Critical Area

Chair, Joint Subcommittee on  
Program Open Space/Agricultural  
Land Preservation

THE SENATE OF MARYLAND  
ANNAPOLIS, MARYLAND 21401

February 23, 2023

**Testimony in Favor of SB0471**  
**Water Pollution Control - Discharge Permits - Stormwater Associated With Construction Activity**

Chairman Feldman, Vice-Chair Kagan, & members of the Education, Energy, & the Environment Committee:

I respectfully request a favorable report of Senate Bill 471 to better protect our waterways from sediment runoff and undue erosion.

According to the EPA, sediment runoff from construction sites is typically 10 – 20 times greater than agricultural lands, and 1,000-2,000 times greater than forested lands. Even a short burst of rain “can contribute more sediment to streams than would be deposited naturally over several decades.” These quick but meaningful storm events create mud-filled water running off a construction site that can destroy a stream and aquatic ecosystem. The cost to repair the damaged streams or dredge the sediment-filled creeks or fight the sediment levels in the Chesapeake Bay is currently borne by the taxpayers to the tune of hundreds of millions of dollars.

This Committee and the General Assembly has recognized the threat of runoff and stormwater before. In 2019 we passed Senate Bill 505 to ensure that MDE effectively reports environmental violations to the State, including sediment and erosion control law violations. In 2021, we passed Senate Bill 227 to ensure that our stormwater standards keep up with the increasing amount of rain that we receive with the average storm.

This legislation goes further to protect our State and our waterways from stormwater and sediment runoff by building off of previously passed legislation.

**To provide better oversight for stormwater discharge permits in the most critical locations** this legislation will require the obtainment of an individual permit as opposed to the current system where the General Discharge Permit (GDP) is authorized. This change will allow for a more enhanced review of these large construction sites (more than 10 acres) that are also located

in a sensitive area (within floodplains, the critical area buffer, or alongside our highest quality streams).

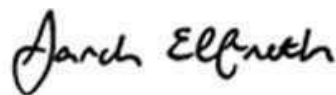
The enhanced review created through requiring an individual permit will not only be beneficial to our waterways but also to Marylanders in ensuring our most sensitive waterways have an added layer of protection. For our citizens and steadfast environmental advocates, this type of review will provide much more time for public input on the impacts of proposed development as the GDP only requires a 45 day review - and to better protect our waters this type of enhanced review will allow those required to obtain an individual permit to actually work with MDE to develop site specific controls to better mitigate runoff effects at that specific site.

**To give inspectors more tools to investigate water pollution and hold polluters more responsible for the pollution they create**, this legislation will clarify that a construction site may not cause sediment pollution or erosion downstream. This may be a surprise to members of the Committee – but this prohibition is not currently in law. This current disconnect in our law creates a situation in which our inspectors have little ability to actually connect the dots between runoff that they or our constituents see and the construction site from which it is originating.

Anne Arundel County has similar language regarding not allowing sediment runoff – and because of this the County can take a more holistic approach to inspecting and monitoring construction sites and more proactively mitigate their impact. Furthermore, this legislation as drafted will set an increased fee amount for those that unlawfully engage in construction activity without a discharge permit or without coverage under a general permit.

You will hear today from issue-area experts on what this bill will mean for Marylanders and our environment - and I am proud that this legislation is not only supported by different advocacy groups across the State as well as MACO and MML. Furthermore, we have had ongoing conversations with MDE regarding this legislation, and I believe we will find a solution to their concerns in the near future.

Sincerely,

A handwritten signature in black ink that reads "Sarah Elfreth". The signature is written in a cursive, flowing style.

Sarah Elfreth

**MBIA Letter of Opposition SB 471.pdf**

Uploaded by: Lori Graf

Position: UNF

February 23, 2023

The Honorable Brian J. Feldman  
Senate Education, Health & Environmental Affairs Committee  
Miller Senate Office Building,  
2 West Wing 11 Bladen St.,  
Annapolis, MD, 21401

**RE: MBIA Letter of Opposition SB 471 Economic Development – Regional Institution Strategic Enterprise Zone Program – Alterations and Financing**

Dear Chairman Feldman:

The Maryland Building Industry Association, representing 100,000 employees statewide, appreciates the opportunity to participate in the discussion surrounding **SB 471 Economic Development – Regional Institution Strategic Enterprise Zone Program – Alterations and Financing**. MBIA **Opposes** the Act in its current version.

This bill would require that development projects be prohibited from being authorized for a discharge permit using the Maryland General Permit under certain circumstances. This bill has a variety of unintended consequences that will increase expense for developers and the state as well as having nearly impossible requirements that no reasonable construction project could remain in compliance with for any length of time.

The Maryland General Permit is designed to apply to most projects across the state and sets a universal standard of compliance for a variety of project situations. Individual permits are meant to apply to projects that do not fit into the normal scope of a development project. While MBIA acknowledges that this is an essential service this bill dramatically expands the scope of individual permits to encompass virtually every project. The general permit is meant to have a near universal standard for what protections and regulations a development project has to adhere to. This allows consistency of process, a clear standard for regulatory compliance, and sets the standard environmental protections and requirements that regulators have deemed acceptable for development projects across the state.

This bill would make individual permits apply to any project over 10 acres that drain into a floodplain which is virtually every development project. Making these projects subject to an individual permit would force regulators to spend an enormous amount of time and energy drafting these individual permits and provides no apparent benefits or watershed protections. Individual permits are no more protective of Tier 2 watersheds than the general permit so the additional expense and time serves no apparent environmental purpose. MDE already requires a permit to impact a floodplain designed to achieve suitable outfall. There is no need for an individual permit to impose a similar restriction since a regulatory framework already exists.

It is also unclear that even if this bill was passed that it would be possible for developers to fully comply with the law. Many key terms are undefined such as “Significant non-compliance” and it is unclear when developers will be liable for the new fines outlined in the bill. Additionally, the standard of “may not allow to cause or fail to control” runoff from a project is an impossible standard to fill. All projects will have at least some runoff and this standard could potentially punish any project even when the developer is making a good faith attempt at runoff control and compliance.

Because individual permits take longer they also bear an increased cost to developers that will be passed on to any consumers. MBIA estimates that the cost of an individual permit as opposed to a general permit development can potentially be hundreds of thousands of dollars and an additional 2 years to project completion. This drives up consumer costs during a period where Maryland faces a historic housing shortage and county governments are currently trying to incentivize more cost-effective housing. Since it is unclear what if any additional protections this bill will provide we suggest that this additional imposed expense is unnecessary. The individual permit also adds expense through increasing the amount of litigation necessary for project completion. General permit grants cannot be appealed but individual permit grants can be. This adds an additional layer of time and legal expense that will be passed on. These combined issues create massive additional expenses for consumers with no clear benefit.

For these reasons, MBIA respectfully requests the committee give this measure an unfavorable report. Thank you for your consideration.

cc: Members of the Senate Education, Health & Environmental Affairs Committee

# **SB 471 - Environment – Water Pollution Control -**

Uploaded by: Tom Ballentine

Position: UNF



February 22, 2023

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

**Unfavorable: SB 471 – Water Pollution Control – Discharge Permits – Stormwater Associated with Construction**

Dear, Chair Feldman and Committee Members:

The NAIOP Maryland Chapters representing more than 700 companies involved in all aspects of commercial, industrial, and mixed-use real estate, recommend your unfavorable report on Senate Bill 471.

**Rationale for NAIOP's Unfavorable Position**

Senate Bill 471 proposes major changes to the technical and procedural requirements for stormwater permits that apply during temporary construction activities such as clearing, grading and excavation. There are several problematic provisions in the bill:

- Page 3, lines 1-8 limit eligibility for coverage under the General Discharge Permit for Stormwater Associated with Construction Activity (Construction General Permit) expanding the instances when MDE is required to develop site-specific stormwater controls through an Individual Permit. This change will increase administrative burdens on MDE and the applicant with little or no environmental benefit. *(For discussion of differences between an Individual Permit and the General Permit, please see the next page)*
- MDE has existing authority to incrementally add requirements or convert a Construction General Permit application into an Individual Permit. The bill overrides this departmental discretion and requires Individual Permits without regard for the professional judgement of the staff.
- The recently approved Construction General Permit increases water quality protections for all projects including elevated requirements for projects in the high-quality watersheds called out in the bill. The new requirements include:
  - a site-specific Stormwater Pollution Prevention Plan (SWPPP),
  - specific measures for stream protection zones,
  - an expanded anti-degradation checklist for projects near high-quality waters, and
  - more rigorous requirements and time deadlines to take corrective action after storm events.
  - [MDE's Fact Sheet on the new Construction General Permit is linked here.](#)
- Page 3, line 26 – page 4, line 3 says a permit holder may not *cause* or *allow* runoff from a construction site. We do not see how a permit holder could comply as written. These provisions fundamentally change the meaning of discharge and run contrary to the purpose of the Construction Stormwater Permit which is to establish the conditions under which a permittee is authorized to discharge from the site. This language applies to sites covered by both the Construction General Permit and Individual Permits.
- Buildings are not located in floodplains but, on occasion, utilities or a stream crossing necessitate disturbances in the floodplain. We do not believe this should trigger an Individual Permit. Also, the bill does not specify which floodplain designation requires an Individual Permit. (e.g., 100yr)
- There is little private development in Tier II Watersheds, but page 3, lines 4-6 contain connective language that trigger the requirements of the bill if the project is in a watershed or catchment that drains to a high-quality receiving water. We do not understand the extent of this geographic area.



- There are broad rights of appeal and judicial review applied to the final approval of Individual Permits. This exposes those projects to political and legal risks. The General Permit can be appealed when its provisions are reauthorized, but not each time coverage is granted to individual projects.
- Construction General Permit coverage can be obtained in 45 days compared to an average of 6 months to develop an Individual Permit. *(Please see the Individual Permit flow chart below)*

### Discussion of Individual vs. General Permit

The Federal Clean Water Act prohibits discharge of any pollutant from construction sites that disturb one acre or more of land, unless the discharge is authorized by obtaining coverage under an NPDES permit (National Pollutant Discharge Elimination System). There are two options for obtaining authorization to discharge, coverage under the Construction General Permit and under an Individual Permit.

Most discharges associated with construction activities are covered under the Construction General Permit. General Permits are utilized by the U.S. EPA and MDE to reduce the administrative workload for applicants and the department by predetermining the permit requirements. Projects eligible for coverage under the Construction General Permit have similar characteristics and the permit applies a common set of mitigation practices and regulations to these projects. The Maryland Construction General Permit is revised every five years and has just been reissued with significant protective changes summarized above.

If MDE determines that the provisions of the General Permit will not be sufficiently protective, the staff has the authority to add requirements beyond what is in the General Permit and/or make changes to the Erosion and Sediment Control Plan. If MDE determines the General Permit Conditions cannot be sufficiently modified to address environmental impacts of an application, the department will require that an Individual Permit be written for the project.

The Individual Permit process is show in the text box to the right. This process takes an average of 6 months vs. 45 days (or less) for coverage under the General Permit. Additionally, there are broad rights of appeal and judicial review applied to the final approval of Individual Permits. This exposes projects in that category to political and legal risks. The General Permit can be appealed when its provisions are reauthorized, but not each time coverage is granted to individual projects.

**For these reasons, NAIOP respectfully recommends your unfavorable report on Senate Bill 471.**

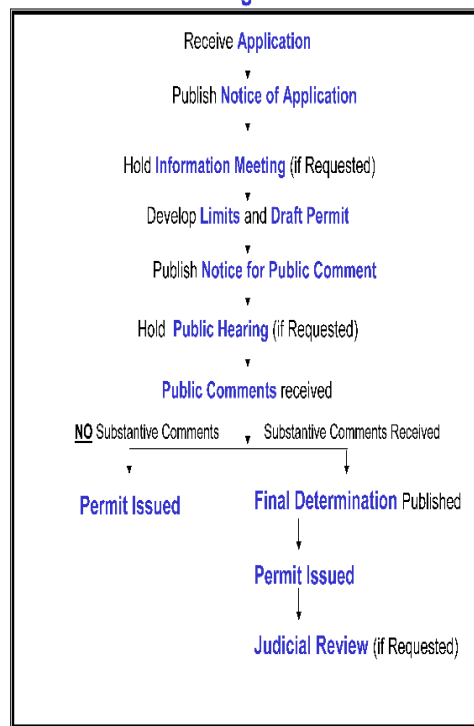
Sincerely,



Tom Ballentine, Vice President for Policy  
NAIOP Maryland Chapters -The Association for Commercial Real Estate

cc: Education, Energy and Environment Committee Members  
Nick Manis – Manis, Canning Assoc.

### Permitting Process



# **SB0471 - SHA - Discharge Permits Construction Acti**

Uploaded by: Patricia Westervelt

Position: INFO

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February 23, 2023

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

***RE: Letter of Information with Amendments – Senate Bill 471 – Water Pollution Control –  
Discharge Permits – Stormwater Associated with Construction Activity***

Dear Chair Feldman and Committee Members:

The Maryland Department of Transportation (MDOT) takes no position on Senate Bill 471 but offers the following information and amendments for the Committee’s consideration.

Senate Bill 471 would prohibit the Maryland Department of Environment (MDE) from issuing general discharge permits for the discharge of stormwater associated with construction activity for certain types of construction sites. MDE would be authorized to issue individual permits.

As Senate Bill 471 is drafted, it is unclear if the definition of “permit holder” applies to the State. Currently, MDOT State Highway Administration (SHA) is the permit holder of general discharge permits issued by MDE to regulate stormwater runoff associated with highway construction projects. Senate Bill 471 states that individual permits would be issued to individual persons and MDOT interprets this to mean individual employees within the agency will hold the permit. The MDOT respectfully requests clarification on whether Senate Bill 471 applies to State agencies.

Should Senate Bill 471 be written to apply to State agencies, MDOT respectfully requests the agencies be exempted and allow for the issuance of general permits. As written, the individual permit holder could be held liable to penalties because of potential permit violations. In addition, the timeline for issuance of individual permits is longer than for the general permits. The estimated turnaround time for a general permit is 45 days, while it is 75 days for an individual permit. These turnaround times can be extended if a public hearing is required, and that process can be extensive. This timing delay has the potential to significantly impact the delivery of transportation projects.

The Maryland Department of Transportation respectfully requests the Committee consider this information as it deliberates on Senate Bill 471.

Respectfully submitted,

Mitch Baldwin  
Acting Deputy Director  
Office of Policy and Legislative Services  
Maryland State Highway Administration  
410-310-1056

Pilar Helm  
Director  
Office of Government Affairs  
Maryland Department of Transportation  
410-865-1090

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Uploaded by: Tyler Abbott

Position: INFO



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.

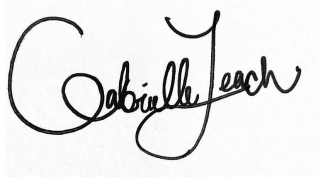
It is unclear how permit transfers would be affected by this bill. Transfers are relatively common for the General Permit for Stormwater Associated with Construction Activities. If general permit coverage was transferred to a permittee that had compliance issues at a different, unrelated site, in theory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

**\_MDE SB0471 LOI .docx.pdf**

Uploaded by: Tyler Abbott

Position: INFO





February 23, 2023

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

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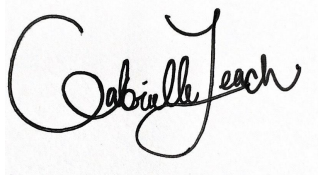
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Gabrielle Leach  
Deputy Director  
Legislative and Intergovernmental Relations

Cc: The Honorable Sara Love  
Lee Currey, Director, Water and Science Administration