

**2023-03-07 Written Testimony of Eric W Lundy SB 54**

Uploaded by: Eric Lundy

Position: FAV



# HERITAGE

## MEMORIAL CEMETERY, LLC

---

May 7, 2023

Written Testimony of Eric W. Lundy, Managing Member, Heritage Memorial Cemetery LLC

Senators:

Thank you for your attention to my testimony regarding SB 543 by Senators Ellis and Guzzone

When legislation is passed, most of the time it serves the public and private interests well. Unfortunately, on occasion, legislation does not always account for the unique characteristics of a particular business. For most unique businesses, Maryland legislation crafts exceptions that are appropriate to those businesses. On reviewing the legislation affected by the three proposals in this bill, it is apparent that three additional exceptions need to be added to account for the unique characteristics of a cemetery operations.

The first section allows an exception from the sediment control provisions because the provisions governing the limitation that permits be required for disturbance of greater than 5000 square feet require a permit. The 5,000 square foot limitation is cumulative. In the digging of a grave, approximately 14 square feet of earth are disturbed. Therefore when about 357 graves have been opened, the limitation is met and because the statute is read to make the limitation cumulative, each and every grave opened after the 357<sup>th</sup> grave is in violation of the statute. Those government organizations charged with enforcing the provisions have no discretion in the statute to waive that requirement. The options for government are to either ignore the statute contrary to their mandate or enforce the statute by issuing a stop work order and charging the cemetery with a fine.

A cemetery is unique in that after the burial, the site is restored and vegetation is again established on the grounds. It is not at all like a housing development or even a single house on a one acre lot. Charles County asserts this limitation repeatedly on Heritage Memorial Cemetery LLC (Heritage). To force the governmental unit to ignore the statute would be wrong, Just as it is wrong to prevent cemetery from continuing to bury those who seek its services to bury their loved ones. After all, the cemetery I represent in Charles County has been granted a special exception by the Charles County Commissioners beginning in 1977 to operate as such and therefore should be able to operate without the constant threat of stop work orders and being fined for doing their operational services. This legislation seeks to correct that legislative oversight that is a unique characteristic of a cemetery and places an exception in the law to reflect that reality.

The second provision of the legislation also seeks an exception because the entire parcel of land of the cemetery is permitted to have burials, then should a tree need to be removed to allow a burial, it is untenable that trees not be removed for that purpose. After all, in the case of a gravel

www.heritagecemetery.com • info@heritagecemetery.com  
13472 Poplar Hill Road • Waldorf, MD 20601 • Phone (301) 932-5888

*A Family Owned Perpetual Care Cemetery*

pit for example, the idea that gravel could be removed without removing a tree is laughable. The statutes governing gravel pits for example, recognize that obvious fact therefore legislative accommodations have been made. We believe that it is appropriate to exempt cemeteries for the forestry restrictions as well. After all, if a cemetery were developed on open farmland, there would never be an issue of tree removal. There is in fact a cemetery that has been developed in Charles county on farmland that does not have that forestry limitation present.

This legislation has been narrowly drafted to exempt only unique operations of cemeteries. It is not a blanket allowance for every kind and description of activity of cemeteries in general.

When asked to meet by video call on Monday May, 5th with the Maryland department of the Environment at 5:30 PM there were four persons from the department on the video call as well as a representative of Senator Ellis's office. The meeting was apparently called to find out what my position was on the bill as I was instrumental in requesting its submission. I learned many disturbing things in the meeting.

First, to my point at the beginning of this testimony, the idea that the statute that requires a permit when disturbing greater than 5,000 square feet was of no concern to the panel. The panel appeared completely indifferent that for each additional burial past the disturbance of 5,000 Square Feet was of no concern to them. It did not seem to matter to any of them that for each additional burial I was violating the statute. They seemed so unconcerned that they proposed that they and Senator Ellis should meet to work out some kind of arrangement with county officials. Clearly, any arrangement would be contrary to the statute in question and therefore for a government agency to basically state with a wink and a nod that the statutory language can be circumvented simply by some kind of "agreement" is clearly outside of their own mandate and statutory authority. That would leave me in the uncertain position that any agreement would never be in writing (it of necessity would not be in writing because it violates the statute) and it would be changeable at the whim of any county official not a party to the meeting. That would leave me no certainty of the decision.

Second, a member of the group stated that they were unaware of ANY OTHER CEMETERY in Maryland that had its operations stopped with multiple "Stop Work Orders" on issues revolving around burials or cemetery operations. What that means to me is that Charles County had singled out Heritage Memorial Cemetery LLC for constant review. Why is as yet unclear to me. It also means that the Maryland Department of the Environment has neglected the limitations of the statute STATEWIDE. It is charged with enforcement and apparently has not known nor acted through any investigation of the operations of any cemetery OTHER THAN Heritage Memorial Cemetery LLC in the state.

Then it appeared to me the most senior member of the group and others also affirmed that they were opposed to the legislation on the grounds that if an exception were granted, then possibly other groups with unique characteristics adversely affected by the lack of a particular exemption would then seek to also have remedial legislation passed. It seems to me that the function of the administrative agency in government is not to opine on POLICY. It is the province of the legislature to define policy, not the agency that may be tasked to enforce yet another exception.

You will note that there are 14 listed exceptions in the statute already. So apparently, other groups have already been recognized as worthy of statutory exceptions. Maryland Department of the Environment just does not want it for Charles County and now specifically for Heritage Memorial Cemetery.

I am always available to discuss this issue and perhaps lend more clarification to any issues herein presented. Thank you for your attention to this written testimony.

Sincerely,



Eric W. Lundy  
Managing Member  
Heritage Memorial Cemetery LLC

**MDE SB0543 Oppose.pdf**

Uploaded by: Tyler Abbott

Position: UNF



**The Maryland Department of the Environment  
Secretary Serena McIlwain**

***Senate Bill 543***

***Charles County - Cemeteries - Sediment Control, Stormwater Management, and  
Forest Conservation***

**Position:** OPPOSE  
**Committee:** Education, Energy, and the Environment  
**Date:** March 08, 2023  
**From:** Gabrielle Leach

---

The Maryland Department of the Environment (MDE) **OPPOSES** Senate Bill 543. Senate Bill 543 would provide an exemption for cemeteries located in Charles County from the requirement to obtain and implement an approved erosion and sediment control plan and an approved stormwater management plan. Cemeteries in Charles County would also be exempt from Forest Conservation requirements in the Natural Resources Article. While MDE is opposed to the legislation, the Department is committed to working with the Senator and affected parties to try and help resolve this issues given rise to the bill.

**Water Protection Concerns:** Charles County is home to approximately 41 Tier II high quality waters. The erosion and sediment control plan and the stormwater management plan provide some assurance that harmful stormwater discharges to those high quality waters will be prevented. These plans prevent harmful discharges from occurring. There is a greater likelihood that downstream impacts will occur if an approved plan is not implemented. .

**Removes Certainty Over Erosion and Sediment Prevention Actions:** Exemption from the approved stormwater management plan, prior to issuance of a grading permit, does not exempt the property owner from the requirement to prevent off-site stormwater impacts or from meeting the requirements of the General NPDES Permit for Stormwater Associated with Construction Activity (14-GP). The approved stormwater management plan provides a clear path towards prevention of unmanaged, off-site stormwater runoff. Without the plan, the site owner and the public are left to judge whether the requirements have been met. An approved erosion and sediment control plan is required to obtain coverage under the 14-GP. Senate Bill 543 would result in an inconsistency and without proper stormwater management, downstream flooding, erosion, and stormwater pollution can occur.

**Increased Coordination Necessary:** Senate Bill 543 will require MDE to modify regulations and model ordinances and provide education and outreach to Charles County and the Charles County Soil Conservation District. This bill would likely result in additional necessary coordination when a cemetery property is discharging stormwater runoff, is not in compliance with a NPDES discharge permit, or is impacting downstream properties.

For the reasons detailed above, MDE urges a **UNFAVORABLE** report for Senate Bill 543.