

Testimony on Senate Bill 0969 – Stream and Watershed Restoration – Stream Restoration Contractor Licensing and Chesapeake and Atlantic Coastal Bays Restoration and Funding (Whole Watershed Act)

Hearing Date - March 5, 2024

Dear Members of the Education, Energy, and the Environment Committee,

I urge you to consider these amendment topics for SB 969. I would like to generally comment that the Whole Watershed Act is just restating how TMDLs are done in Maryland, on an 8-digit watershed. There is nothing new here – TMDLs must focus on the whole watershed, which this Bill does not. If you focus on the whole watershed, then make sure the sources of the impairment are dealt with, whether with non-point source controls, BMPs, stormwater retention practices, and the reduction of road salts and fertilizers.

Instead of the pilot projects, the funding should be spent on a careful review and documentation of the hundreds of projects already completed (or underway) that have been done in every type of land use affected by all of the sources and causes of impairments.

- 1) Replace the term “Stream restoration” with “**Stream Re-engineering**” to more accurately reflect the practice.

“Stream Restoration” is an industry intended to play on the words used in the primary objective of the Clean Water Act - “to **restore** and maintain the chemical, physical, and biological integrity of the nation's waters.” There are many types of activities that can be considered as stream restoration including stormwater BMP and small-scale stabilization projects. However, we have seen more large-scale stream restoration projects, including those proposed as part of “mitigation banks” that required the wholesale re-engineering of the streams including denuding the landscape of trees and other vegetation, recreating the stream banks and stream bottoms, and altering the riparian zone.

- 2) **Licensing Process.** Do not allow a company or organization with a single person with stream restoration contractor licensing to be able to share that certification status with other individuals within that company or organization.

Licensing gives a political validation and legitimacy of an industry that it doesn't currently have, which is increasingly under fire in the scientific community for questionable practices of the industry – not just a few bad actors doing bad work. A licensing process and board for stream restoration contractors is proposed, but all this will do is legitimize this industry and all they do while allowing a single licensed contractor in an organization to supervise low level technicians who will be classified as licensed based on the organization's license. This will hurt small

business operators who will not have the army of newly licensed stream restoration contractors (merely because one person in the organization is licensed). It is a deceptive practice to allow unqualified staff to have the same certification status as those that are certified themselves. Perhaps they are apprentices, but only if they have basic minimum qualifications and will be pursuing certification themselves. This needs to be worked out.

3) **Measure and report on progress and success.** In all stream restoration projects, clearly indicate the very specific goals and objectives, the specific measurable indicators, and how monitoring will be used to measure progress and success of the projects. Each project should clearly identify the true main achievable goals and whether it is biological/ecological uplift and/or sediment and nutrient reduction.

The presumed success of these wholesale stream restoration efforts has been debunked repeatedly when at closer scrutiny, monitoring data does not support the findings of success and/or the goals and objectives were so shrouded in bureaucratic terms success would be automatic even before the project was completed. Therefore, we need to create public confidence by clearly indicating goals and objectives, how monitoring and assessment of progress and success will be done, and the primary measurable indicators used to determine that progress or success. The difficulty stream restoration practices face was recently discussed by the Chesapeake Research Consortium's Scientific and Technical Advisory Committee (STAC).

4) **Enabling Legislation Should be Documented.** Each stream restoration project should clearly indicate the enabling legislation down to the specific line in the text, whether it is Maryland's COMAR or federal legislation like the CWA. This way the public will know exactly under what authority the proposed project is being conducted under.

5) **Monitoring and Assessment approaches should be clearly documents in each project proposed.** Each project should specify before and after, and control and impact (upstream/downstream) monitoring approach and explain how project success will be determined including all proposed timelines. All previous and relevant monitoring that was done should also be clearly documented.

6) **Specific and measurable Indicators along with the acceptable and unacceptable ranges for meeting or failing the goals and objectives should be documented for each project.**

Each project should indicate the measurable endpoints, also known as indicators, which will be used to assess progress and/or success of the project. If biological or ecological, they must use instream measurements of biological community health in those projects, at a minimum, including fish and benthic macroinvertebrates using the field methods adopted by the Maryland Biological

Stream Survey. Indicators for sediment and water quality (e.g., nutrients) must be collected per Maryland Department of Environment requirements.

7) Establish a Scientific and Technical Advisory Committee. Similar to the Chesapeake Research Consortium's Scientific and Technical Advisory Committee (STAC), some type of broader oversight is needed that will address the issues raised in these comments. The STAC had a 3-day workshop last year on "The State of the Science and Practice of Stream Restoration in the Chesapeake: Lessons Learned to Inform Better Implementation, Assessment and Outcomes". We need better implementation, assessment, and outcomes and to be able to do a much better job communicating these topics to the public.

8) Each project should include a public statement on how the proposed project will fulfil any and all credits for any regulatory agency requirements.

The regulatory agencies for which this work is being done must support a better job of explaining the purpose of these projects. Each project should clearly indicate whether it is being conducted for regulatory credits, and which ones, or for some other purpose. The subject regulatory agencies (State and Federal) could put together a short statement describing all the various types of credits available for conducting stream restoration projects. This will be a major help with transparency for the public, project accountability, and public understanding of the importance of various projects and ensure projects are being done for the right purpose.

Please make the process for written, and other, testimony more easily understandable, transparent, accessible and available to the general public. The instructions provided are cryptic and limiting, especially to those submitting testimony for the first time. Testimony should be easier, not more difficult.

Sincerely,

Wayne Davis

Jessup, Maryland