

SENATE BILL 471

M3

(3lr1785)

ENROLLED BILL

— Education, Energy, and the Environment/Environment and Transportation —

Introduced by **Senator Elfreth**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 ~~Water Pollution Control~~ **Sediment Control Plans, Discharge Permits** ~~Permits~~
3 **for Stormwater Associated With Construction Activity, and Notice and**
4 **Comment Requirements**

5 FOR the purpose of requiring the Department of the Environment to review and update
6 specifications for sediment control plans in a certain manner on or before a certain
7 date and periodically thereafter; prohibiting the Department ~~of the Environment~~
8 from authorizing the discharge of stormwater associated with construction activity
9 under a general discharge permit ~~and requiring the Department to instead require~~
10 ~~an individual discharge permit under~~ unless certain circumstances requirements are
11 satisfied; ~~prohibiting a certain permit holder from causing, allowing, or failing to~~
12 ~~control the runoff of soil or other pollutants from a construction site or causing~~
13 ~~erosion into certain waters of the State~~; authorizing requiring the Department to
14 take certain ~~enforcement~~ public notice and comment actions if a person ~~has~~
15 ~~unlawfully engaged in construction activity without a discharge permit or without~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



~~coverage under a general discharge permit~~ makes a certain request; and generally relating to sediment control plans, permits for stormwater discharges associated with construction activity, and notice and comment requirements.

BY repealing and reenacting, with amendments,

Article – Environment

Section 4–105(a)

Annotated Code of Maryland

(2013 Replacement Volume and 2022 Supplement)

BY repealing and reenacting, without amendments,

Article – Environment

Section 9–301(a) and (d)

Annotated Code of Maryland

(2014 Replacement Volume and 2022 Supplement)

BY adding to

Article – Environment

Section 9–323.1

Annotated Code of Maryland

(2014 Replacement Volume and 2022 Supplement)

~~BY repealing and reenacting, with amendments,~~

~~Article – Environment~~

~~Section 9–342~~

~~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

4–105.

(a) (1) (i) In this section, “construction” means land clearing, grubbing, topsoil stripping, soil movement, grading, cutting and filling, transporting, or otherwise disturbing land for any purpose.

(ii) “Construction” includes land disturbing activities for the purpose of:

1. Constructing buildings;

2. Mining minerals;

3. Developing golf courses; and

1 4. Constructing roads and installing utilities.

2 (2) (i) Before any person begins any construction, the appropriate
3 approval authority shall first receive, review, and approve the proposed earth change and
4 the sediment control plan.

5 (ii) Except as provided in subsection (b) of this section, the approval
6 authority is:

7 1. The appropriate soil conservation district;

8 2. A municipal corporation in Montgomery County that is
9 designated by a soil conservation district under paragraph (6) of this subsection;

10 3. Any municipality not within a soil conservation district;

11 4. If a State or federal unit undertakes any construction, the
12 Department or the Department's designee;

13 5. For abandoned mine reclamation projects conducted by
14 the Department pursuant to Title 15, Subtitles 5, 6, and 11 of this article, the Department;
15 or

16 6. For large redevelopment sites, the Department.

17 (iii) Criteria used by the Department or the Department's designee
18 for review and approvals under subparagraph (ii)4 of this paragraph:

19 1. Shall meet or exceed current Maryland standards and
20 specifications for soil erosion and sediment control; or

21 2. If alternative standards are applied, shall be reviewed and
22 approved by the Department.

23 (3) A person may not begin or perform any construction unless the person:

24 (i) Obtains an approved sediment control plan;

25 (ii) Implements the measures contained in the approved sediment
26 control plan;

27 (iii) Conducts the construction as specified in the sequence of
28 construction contained in the approved sediment control plan;

29 (iv) Maintains the provisions of the approved sediment control plan;
30 and

1 (v) Implements any sediment control measures reasonably
2 necessary to control sediment runoff.

3 (4) In consultation with the person responsible for performing the
4 construction, the Department, jurisdictions delegated enforcement authority under §
5 4–103(e)(2) of this subtitle, or the appropriate approval agency may require modifications
6 to an approved sediment control plan if the approved plan is not adequate to control
7 sediment or erosion.

8 (5) A person performing construction that proposes a major change to an
9 approved sediment control plan shall submit the proposed change to the appropriate
10 approval authority for review and approval.

11 (6) A soil conservation district may delegate approval authority under
12 paragraph (2) of this subsection to a municipal corporation in Montgomery County that:

13 (i) Has its own sediment control review provisions that are at least
14 as stringent as the provisions of the grading and sediment control plan of the soil
15 conservation district;

16 (ii) Issues sediment control permits; and

17 (iii) Meets the necessary performance standards established by
18 written agreement between the district and the municipal corporation.

19 **(7) (I) ON OR BEFORE DECEMBER 1, ~~2024~~ 2025, AND EVERY 5**
20 **YEARS THEREAFTER, THE DEPARTMENT SHALL REVIEW AND UPDATE THE**
21 **SPECIFICATIONS FOR SEDIMENT CONTROL PLANS.**

22 **(II) IN REVIEWING AND UPDATING THE SPECIFICATIONS FOR**
23 **SEDIMENT CONTROL PLANS UNDER THIS PARAGRAPH, THE DEPARTMENT SHALL:**

24 **1. REVISE WATER QUANTITY CONTROL STANDARDS**
25 **USING THE MOST RECENT PRECIPITATION DATA AVAILABLE;**

26 **2. AS NECESSARY, ENSURE THAT ANY UPDATES AND**
27 **REVISIONS ARE DESIGNED TO PROTECT THE WATERS OF THE STATE FROM**
28 **POLLUTION; ~~AND~~**

29 **3. ENSURE THAT ANY UPDATES AND REVISIONS ARE NOT**
30 **APPLIED RETROACTIVELY TO PROJECTS WITH APPROVED SEDIMENT CONTROL**
31 **PLANS, IF:**

1 A. THE SEDIMENT CONTROL PLAN HAS NOT YET
 2 EXPIRED;

3 B. CONSTRUCTION CONTRACTS HAVE BEEN AWARDED,
 4 IF APPLICABLE; AND

5 C. CONSTRUCTION ACTIVITIES HAVE COMMENCED; AND

6 ~~3.~~ 4. CONSULT WITH EROSION AND SEDIMENT CONTROL
 7 EXPERTS FROM THE FOLLOWING GROUPS AND STAKEHOLDERS REGARDING
 8 PROPOSED UPDATES TO SEDIMENT CONTROL REGULATIONS:

9 A. AN ACADEMIC INSTITUTION;

10 B. A WATERSHED PROTECTION ORGANIZATION;

11 C. THE MARYLAND ASSOCIATION OF COUNTIES;

12 D. THE MARYLAND MUNICIPAL LEAGUE;

13 E. A PRIVATE SECTOR ORGANIZATION WITH DESIGN AND
 14 CONSTRUCTION EXPERIENCE; AND

15 F. THE MARYLAND ASSOCIATION OF SOIL
 16 CONSERVATION DISTRICTS.

17 (III) BEFORE THE DEPARTMENT FINALIZES AN UPDATE TO THE
 18 SPECIFICATIONS OF SEDIMENT CONTROL PLANS IN ACCORDANCE WITH THIS
 19 PARAGRAPH, THE DEPARTMENT SHALL REPORT TO THE GENERAL ASSEMBLY, IN
 20 ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, ON THE
 21 PROPOSED UPDATE.

22 9-301.

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

24 (d) “Discharge permit” means a permit issued by the Department for the
 25 discharge of any pollutant or combination of pollutants into the waters of this State.

26 9-323.1.

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

~~(2) "AREA OF DISTURBANCE" MEANS THE CUMULATIVE TOTAL AREA OF DISTURBANCE RESULTING FROM ALL CONSTRUCTION ACTIVITY CONDUCTED UNDER A COMMON PLAN OF DEVELOPMENT.~~

~~(3) "CONSTRUCTION SITE" INCLUDES MULTIPLE SITES UNDER A COMMON PLAN OF DEVELOPMENT.~~

~~(4) "CRITICAL AREA BUFFER" MEANS THE AREA AT LEAST 100 FEET WIDE LOCATED DIRECTLY ADJACENT TO THE TIDAL WATERS, TIDAL WETLANDS, AND TRIBUTARY STREAMS OF THE STATE, IDENTIFIED IN ACCORDANCE WITH TITLE 8, SUBTITLE 18 OF THE NATURAL RESOURCES ARTICLE.~~

~~(5) "PERMIT HOLDER" MEANS A PERSON:~~

~~(I) HOLDING A DISCHARGE PERMIT FOR STORMWATER ASSOCIATED WITH CONSTRUCTION ACTIVITY ISSUED BY THE DEPARTMENT; OR~~

~~(II) AUTHORIZED BY THE DEPARTMENT FOR COVERAGE UNDER A GENERAL DISCHARGE PERMIT FOR STORMWATER ASSOCIATED WITH CONSTRUCTION ACTIVITY.~~

~~(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION SUBSECTION (C) OF THIS SECTION AND FOR A CONSTRUCTION SITE WITH A TOTAL PROPOSED DISTURBED AREA OF 5 ACRES OR MORE, THE DEPARTMENT MAY NOT AUTHORIZE THE DISCHARGE OF STORMWATER ASSOCIATED WITH CONSTRUCTION ACTIVITY UNDER A GENERAL DISCHARGE PERMIT AND SHALL INSTEAD REQUIRE AN INDIVIDUAL DISCHARGE PERMIT UNTIL THE REQUIREMENTS UNDER SUBSECTION (B) OF THIS SECTION ARE SATISFIED IF:~~

~~(I) FOR A CONSTRUCTION SITE WITH A PROPOSED SITE DISTURBANCE OF 10 ACRES OR MORE, IF ANY PORTION OF THE AREA OF DISTURBANCE IS LOCATED IN:~~

~~1. (1) A WATERSHED OR CATCHMENT THAT DRAINS TO A RECEIVING WATER DESIGNATED AS HIGH QUALITY UNDER DEPARTMENT REGULATIONS;~~

~~2. (2) THE CRITICAL AREA BUFFER; OR~~

~~3. (3) A FLOODPLAIN AN AREA IDENTIFIED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY AS HAVING A 1% CHANCE OF ANNUAL FLOODING; OR~~

~~(II) THE PERMIT APPLICANT HAS:~~

~~1. BEEN DETERMINED BY THE DEPARTMENT TO BE IN SIGNIFICANT NONCOMPLIANCE WITH THE TERMS OF ANY OTHER DISCHARGE PERMIT MORE THAN ONCE DURING THE 365 DAYS IMMEDIATELY PRECEDING THE DATE OF THE APPLICATION; OR~~

~~2. UNLAWFULLY BEGUN CONSTRUCTION ACTIVITY WITHOUT A DISCHARGE PERMIT OR WITHOUT COVERAGE UNDER A GENERAL DISCHARGE PERMIT.~~

(B) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, IF THE DEPARTMENT RECEIVES A WRITTEN REQUEST WITHIN THE PUBLIC NOTIFICATION PERIOD OF THE GENERAL DISCHARGE PERMIT, THE DEPARTMENT SHALL EXTEND THE PUBLIC NOTICE PERIOD TO 60 DAYS TO PROVIDE THE REQUESTOR AN OPPORTUNITY TO COMMENT ON THE POTENTIAL IMPACT OF INADEQUATE CONSTRUCTION SITE CONTROLS ON WATERS OF THE STATE.

(2) THE DEPARTMENT SHALL PROMPTLY:

(I) ACKNOWLEDGE RECEIPT OF THE WRITTEN REQUEST;

(II) NOTIFY THE APPLICANT FOR THE GENERAL DISCHARGE PERMIT OF THE WRITTEN REQUEST AND INCLUDE DETAILS REGARDING POTENTIAL INADEQUACIES OF PROPOSED CONSTRUCTION SITE CONTROLS;

(III) REQUEST AN ELECTRONIC COPY OF THE APPROVED SEDIMENT CONTROL PLAN FROM THE APPLICANT AND PROVIDE A COPY TO THE REQUESTOR; AND

(IV) NOTIFY THE APPLICANT IF ANY UPDATES TO THE SEDIMENT CONTROL PLAN ARE REQUIRED PRIOR TO FINAL AUTHORIZATION OF THE GENERAL DISCHARGE PERMIT.

~~(2)~~ (C) THIS SUBSECTION SECTION DOES NOT APPLY TO CONSTRUCTION ACTIVITY THAT:

~~(1)~~ (1) DOES NOT RESULT IN THE ESTABLISHMENT OF ANY PERMANENT RESIDENTIAL, COMMERCIAL, OR INDUSTRIAL BUILDING; AND

~~(2)~~ (2) IS SOLELY INTENDED TO RESTORE NATURAL RESOURCES, REDUCE WATER POLLUTION, OR IMPROVE WATER QUALITY.

1 ~~(3) THE PERMIT APPLICANT IS RESPONSIBLE FOR PROVIDING TO THE~~
2 ~~DEPARTMENT ALL INFORMATION NECESSARY TO DETERMINE WHETHER AN~~
3 ~~INDIVIDUAL DISCHARGE PERMIT IS REQUIRED UNDER THIS SUBSECTION.~~

4 ~~(c) (1) A PERMIT HOLDER MAY NOT:~~

5 ~~(i) CAUSE, ALLOW, OR FAIL TO CONTROL RUNOFF OF SOIL OR~~
6 ~~OTHER POLLUTANTS FROM A CONSTRUCTION SITE; OR~~

7 ~~(ii) CAUSE EROSION INTO WATERS OF THE STATE LOCATED~~
8 ~~WITHIN 500 FEET OF A CONSTRUCTION SITE.~~

9 ~~(2) THE APPROVAL OF A SEDIMENT CONTROL PLAN UNDER TITLE 4,~~
10 ~~SUBTITLE 1 OF THIS ARTICLE DOES NOT RELEASE A PERMIT HOLDER FROM~~
11 ~~LIABILITY FOR A VIOLATION OF PARAGRAPH (1) OF THIS SUBSECTION.~~

12 ~~(3) FOLLOWING INSPECTION OR OTHERWISE ON THE COLLECTION OF~~
13 ~~EVIDENCE OF A VIOLATION OF PARAGRAPH (1) OF THIS SUBSECTION, THE~~
14 ~~DEPARTMENT OR AN ENFORCEMENT UNIT, OFFICER, OR OFFICIAL OF A LOCAL~~
15 ~~GOVERNMENT WITH DELEGATED AUTHORITY MAY ORDER THE PERMIT HOLDER TO~~
16 ~~REMEDiate ANY DAMAGE CAUSED BY THE VIOLATION.~~

17 ~~(d) IF THE DEPARTMENT DETERMINES THAT A PERSON HAS UNLAWFULLY~~
18 ~~ENGAGED IN CONSTRUCTION ACTIVITY WITHOUT A DISCHARGE PERMIT OR~~
19 ~~WITHOUT COVERAGE UNDER A GENERAL DISCHARGE PERMIT, THE DEPARTMENT~~
20 ~~SHALL:~~

21 ~~(1) ORDER THE PERSON TO IMMEDIATELY CEASE ALL~~
22 ~~CONSTRUCTION ACTIVITY;~~

23 ~~(2) NOTIFY THE PERSON OF THE REQUIREMENT TO OBTAIN A~~
24 ~~DISCHARGE PERMIT IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION; AND~~

25 ~~(3) COMMENCE AN ENFORCEMENT ACTION AGAINST THE PERSON TO:~~

26 ~~(i) IMPOSE CIVIL OR ADMINISTRATIVE PENALTIES IN~~
27 ~~ACCORDANCE WITH § 9-342 OF THIS SUBTITLE; AND~~

28 ~~(ii) SEEK ANY INJUNCTIVE RELIEF THE DEPARTMENT~~
29 ~~DETERMINES NECESSARY TO MITIGATE HARM TO THE ENVIRONMENT OR~~
30 ~~SURROUNDING PROPERTY OWNERS.~~

31 ~~9-342.~~

1 ~~(a) (1) In addition to being subject to an injunctive action under this subtitle,~~
2 ~~a person who violates any provision of this subtitle or of any rule, regulation, order, or~~
3 ~~permit adopted or issued under this subtitle is liable to a civil penalty [not exceeding~~
4 ~~\$10,000], to be collected in a civil action brought by the Department.~~

5 ~~(2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, A~~
6 ~~CIVIL PENALTY IMPOSED UNDER THIS SUBSECTION MAY NOT EXCEED \$10,000 PER~~
7 ~~VIOLATION.~~

8 ~~(3) FOR A VIOLATION OF § 9 323.1(D) OF THIS SUBTITLE, THE CIVIL~~
9 ~~PENALTY IMPOSED UNDER THIS SUBSECTION:~~

10 ~~(I) SHALL BE ASSESSED ON THE BASIS OF THE ACREAGE OF~~
11 ~~LAND DISTURBED BY CONSTRUCTION ACTIVITY THAT WAS NOT AUTHORIZED UNDER~~
12 ~~A DISCHARGE PERMIT; AND~~

13 ~~(II) MAY NOT BE LESS THAN \$25,000 PER ACRE OF LAND~~
14 ~~UNLAWFULLY DISTURBED.~~

15 ~~(4) Each day a violation occurs is a separate violation under this~~
16 ~~subsection.~~

17 ~~(b) (1) In addition to any other remedies available at law or in equity and after~~
18 ~~an opportunity for a hearing which may be waived in writing by the person accused of a~~
19 ~~violation, the Department may impose a penalty for violation of any provision of this~~
20 ~~subtitle or any rule, regulation, order, or permit adopted or issued under this subtitle.~~

21 ~~(2) [The] EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS~~
22 ~~SUBSECTION, THE penalty imposed on a person under this subsection shall be:~~

23 ~~(i) Up to \$10,000 for each violation, but not exceeding \$100,000~~
24 ~~total; and~~

25 ~~(ii) Assessed with consideration given to:~~

26 ~~1. The willfulness of the violation, the extent to which the~~
27 ~~existence of the violation was known to but uncorrected by the violator, and the extent to~~
28 ~~which the violator exercised reasonable care;~~

29 ~~2. Any actual harm to the environment or to human health,~~
30 ~~including injury to or impairment of the use of the waters of this State or the natural~~
31 ~~resources of this State;~~

32 ~~3. The cost of cleanup and the cost of restoration of natural~~
33 ~~resources;~~

1 ~~4. The nature and degree of injury to or interference with~~
2 ~~general welfare, health, and property;~~

3 ~~5. The extent to which the location of the violation, including~~
4 ~~location near waters of this State or areas of human population, creates the potential for~~
5 ~~harm to the environment or to human health or safety;~~

6 ~~6. The available technology and economic reasonableness of~~
7 ~~controlling, reducing, or eliminating the violation;~~

8 ~~7. The degree of hazard posed by the particular pollutant or~~
9 ~~pollutants involved; and~~

10 ~~8. The extent to which the current violation is part of a~~
11 ~~recurrent pattern of the same or similar type of violation committed by the violator.~~

12 ~~(3) THE PENALTY IMPOSED ON A PERSON UNDER THIS SUBSECTION~~
13 ~~FOR A VIOLATION OF § 9-323.1(D) OF THIS SUBTITLE:~~

14 ~~(I) SHALL BE ASSESSED ON THE BASIS OF THE ACREAGE OF~~
15 ~~LAND DISTURBED BY CONSTRUCTION ACTIVITY THAT WAS NOT AUTHORIZED UNDER~~
16 ~~A DISCHARGE PERMIT; AND~~

17 ~~(II) MAY NOT BE LESS THAN \$25,000 PER ACRE OF LAND~~
18 ~~UNLAWFULLY DISTURBED.~~

19 ~~(4) Each day a violation occurs is a separate violation under this~~
20 ~~subsection.~~

21 ~~[(4)] (5) Any penalty imposed under this subsection is payable to this~~
22 ~~State and collectible in any manner provided at law for the collection of debts.~~

23 ~~[(5)] (6) If any person who is liable to pay a penalty imposed under this~~
24 ~~subsection fails to pay it after demand, the amount, together with interest and any costs~~
25 ~~that may accrue, shall be:~~

26 ~~(i) A lien in favor of this State on any property, real or personal, of~~
27 ~~the person; and~~

28 ~~(ii) Recorded in the office of the clerk of court for the county in which~~
29 ~~the property is located.~~

30 ~~[(6)] (7) Any penalty collected under this subsection shall be placed in a~~
31 ~~special fund to be used for monitoring and surveillance by the Department to assure and~~

1 ~~maintain an adequate record of any violations, including discharge of waste material and~~
2 ~~other pollutants into the waters of this State or into the environment.~~

3 SECTION 2. AND BE IT FURTHER ENACTED, That on or before November 1,
4 2023, the Department of the Environment shall report to the General Assembly, in
5 accordance with § 2-1257 of the State Government Article, on the Department's plans *and*
6 *resources needed* for reviewing and updating specifications for sediment control plans.

7 SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2023.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.