

# SENATE BILL 471

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CF HB 607

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By: **Senator Elfreth**

Introduced and read first time: February 3, 2023

Assigned to: Education, Energy, and the Environment

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## A BILL ENTITLED

1 AN ACT concerning

2 **Water Pollution Control – Discharge Permits – Stormwater Associated With**  
3 **Construction Activity**

4 FOR the purpose of prohibiting the Department of the Environment from authorizing the  
5 discharge of stormwater associated with construction activity under a general  
6 discharge permit and requiring the Department to instead require an individual  
7 discharge permit under certain circumstances; prohibiting a certain permit holder  
8 from causing, allowing, or failing to control the runoff of soil or other pollutants from  
9 a construction site or causing erosion into certain waters of the State; authorizing  
10 the Department to take certain enforcement actions if a person has unlawfully  
11 engaged in construction activity without a discharge permit or without coverage  
12 under a general discharge permit; and generally relating to permits for stormwater  
13 discharges associated with construction activity.

14 BY repealing and reenacting, without amendments,  
15 Article – Environment  
16 Section 9–301(a) and (d)  
17 Annotated Code of Maryland  
18 (2014 Replacement Volume and 2022 Supplement)

19 BY adding to  
20 Article – Environment  
21 Section 9–323.1  
22 Annotated Code of Maryland  
23 (2014 Replacement Volume and 2022 Supplement)

24 BY repealing and reenacting, with amendments,  
25 Article – Environment  
26 Section 9–342  
27 Annotated Code of Maryland  
28 (2014 Replacement Volume and 2022 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
2 That the Laws of Maryland read as follows:

3 **Article – Environment**

4 9–301.

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

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

8 **9–323.1.**

9 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**  
10 **INDICATED.**

11 **(2) “AREA OF DISTURBANCE” MEANS THE CUMULATIVE TOTAL AREA**  
12 **OF DISTURBANCE RESULTING FROM ALL CONSTRUCTION ACTIVITY CONDUCTED**  
13 **UNDER A COMMON PLAN OF DEVELOPMENT.**

14 **(3) “CONSTRUCTION SITE” INCLUDES MULTIPLE SITES UNDER A**  
15 **COMMON PLAN OF DEVELOPMENT.**

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

20 **(5) “PERMIT HOLDER” MEANS A PERSON:**

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

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

26 **(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,**  
27 **THE DEPARTMENT MAY NOT AUTHORIZE THE DISCHARGE OF STORMWATER**  
28 **ASSOCIATED WITH CONSTRUCTION ACTIVITY UNDER A GENERAL DISCHARGE**  
29 **PERMIT AND SHALL INSTEAD REQUIRE AN INDIVIDUAL DISCHARGE PERMIT IF:**

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

4                   **1. A WATERSHED OR CATCHMENT THAT DRAINS TO A**  
5 **RECEIVING WATER DESIGNATED AS HIGH QUALITY UNDER DEPARTMENT**  
6 **REGULATIONS;**

7                   **2. THE CRITICAL AREA BUFFER; OR**

8                   **3. A FLOODPLAIN; OR**

9                   **(II) THE PERMIT APPLICANT HAS:**

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

14                   **2. UNLAWFULLY BEGUN CONSTRUCTION ACTIVITY**  
15 **WITHOUT A DISCHARGE PERMIT OR WITHOUT COVERAGE UNDER A GENERAL**  
16 **DISCHARGE PERMIT.**

17                   **(2) THIS SUBSECTION DOES NOT APPLY TO CONSTRUCTION ACTIVITY**  
18 **THAT:**

19                   **(I) DOES NOT RESULT IN THE ESTABLISHMENT OF ANY**  
20 **PERMANENT RESIDENTIAL, COMMERCIAL, OR INDUSTRIAL BUILDING; AND**

21                   **(II) IS SOLELY INTENDED TO RESTORE NATURAL RESOURCES,**  
22 **REDUCE WATER POLLUTION, OR IMPROVE WATER QUALITY.**

23                   **(3) THE PERMIT APPLICANT IS RESPONSIBLE FOR PROVIDING TO THE**  
24 **DEPARTMENT ALL INFORMATION NECESSARY TO DETERMINE WHETHER AN**  
25 **INDIVIDUAL DISCHARGE PERMIT IS REQUIRED UNDER THIS SUBSECTION.**

26                   **(C) (1) A PERMIT HOLDER MAY NOT:**

27                   **(I) CAUSE, ALLOW, OR FAIL TO CONTROL RUNOFF OF SOIL OR**  
28 **OTHER POLLUTANTS FROM A CONSTRUCTION SITE; OR**

29                   **(II) CAUSE EROSION INTO WATERS OF THE STATE LOCATED**  
30 **WITHIN 500 FEET OF A CONSTRUCTION SITE.**

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

4           **(3) FOLLOWING INSPECTION OR OTHERWISE ON THE COLLECTION OF**  
5 **EVIDENCE OF A VIOLATION OF PARAGRAPH (1) OF THIS SUBSECTION, THE**  
6 **DEPARTMENT OR AN ENFORCEMENT UNIT, OFFICER, OR OFFICIAL OF A LOCAL**  
7 **GOVERNMENT WITH DELEGATED AUTHORITY MAY ORDER THE PERMIT HOLDER TO**  
8 **REMEDiate ANY DAMAGE CAUSED BY THE VIOLATION.**

9           **(D) IF THE DEPARTMENT DETERMINES THAT A PERSON HAS UNLAWFULLY**  
10 **ENGAGED IN CONSTRUCTION ACTIVITY WITHOUT A DISCHARGE PERMIT OR**  
11 **WITHOUT COVERAGE UNDER A GENERAL DISCHARGE PERMIT, THE DEPARTMENT**  
12 **SHALL:**

13           **(1) ORDER THE PERSON TO IMMEDIATELY CEASE ALL**  
14 **CONSTRUCTION ACTIVITY;**

15           **(2) NOTIFY THE PERSON OF THE REQUIREMENT TO OBTAIN A**  
16 **DISCHARGE PERMIT IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION; AND**

17           **(3) COMMENCE AN ENFORCEMENT ACTION AGAINST THE PERSON TO:**

18           **(I) IMPOSE CIVIL OR ADMINISTRATIVE PENALTIES IN**  
19 **ACCORDANCE WITH § 9-342 OF THIS SUBTITLE; AND**

20           **(II) SEEK ANY INJUNCTIVE RELIEF THE DEPARTMENT**  
21 **DETERMINES NECESSARY TO MITIGATE HARM TO THE ENVIRONMENT OR**  
22 **SURROUNDING PROPERTY OWNERS.**

23 9-342.

24           **(a) (1) In addition to being subject to an injunctive action under this subtitle,**  
25 **a person who violates any provision of this subtitle or of any rule, regulation, order, or**  
26 **permit adopted or issued under this subtitle is liable to a civil penalty [not exceeding**  
27 **\$10,000], to be collected in a civil action brought by the Department.**

28           **(2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, A**  
29 **CIVIL PENALTY IMPOSED UNDER THIS SUBSECTION MAY NOT EXCEED \$10,000 PER**  
30 **VIOLATION.**

31           **(3) FOR A VIOLATION OF § 9-323.1(D) OF THIS SUBTITLE, THE CIVIL**  
32 **PENALTY IMPOSED UNDER THIS SUBSECTION:**

1                   **(I) SHALL BE ASSESSED ON THE BASIS OF THE ACREAGE OF**  
2 **LAND DISTURBED BY CONSTRUCTION ACTIVITY THAT WAS NOT AUTHORIZED UNDER**  
3 **A DISCHARGE PERMIT; AND**

4                   **(II) MAY NOT BE LESS THAN \$25,000 PER ACRE OF LAND**  
5 **UNLAWFULLY DISTURBED.**

6                   **(4)** Each day a violation occurs is a separate violation under this  
7 subsection.

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

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

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

16                   (ii) Assessed with consideration given to:

17                                 1. The willfulness of the violation, the extent to which the  
18 existence of the violation was known to but uncorrected by the violator, and the extent to  
19 which the violator exercised reasonable care;

20                                 2. Any actual harm to the environment or to human health,  
21 including injury to or impairment of the use of the waters of this State or the natural  
22 resources of this State;

23                                 3. The cost of cleanup and the cost of restoration of natural  
24 resources;

25                                 4. The nature and degree of injury to or interference with  
26 general welfare, health, and property;

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

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

1                                 7.       The degree of hazard posed by the particular pollutant or  
2 pollutants involved; and

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

5                                 (3)       **THE PENALTY IMPOSED ON A PERSON UNDER THIS SUBSECTION  
6 FOR A VIOLATION OF § 9-323.1(D) OF THIS SUBTITLE:**

7   **(I)       SHALL BE ASSESSED ON THE BASIS OF THE ACREAGE OF  
8 LAND DISTURBED BY CONSTRUCTION ACTIVITY THAT WAS NOT AUTHORIZED UNDER  
9 A DISCHARGE PERMIT; AND**

10                                        **(II)       MAY NOT BE LESS THAN \$25,000 PER ACRE OF LAND  
11 UNLAWFULLY DISTURBED.**

12                                        (4)       Each day a violation occurs is a separate violation under this  
13 subsection.

14                                        **[(4)] (5)**       Any penalty imposed under this subsection is payable to this  
15 State and collectible in any manner provided at law for the collection of debts.

16                                        **[(5)] (6)**       If any person who is liable to pay a penalty imposed under this  
17 subsection fails to pay it after demand, the amount, together with interest and any costs  
18 that may accrue, shall be:

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

21                                        (ii)       Recorded in the office of the clerk of court for the county in which  
22 the property is located.

23                                        **[(6)] (7)**       Any penalty collected under this subsection shall be placed in a  
24 special fund to be used for monitoring and surveillance by the Department to assure and  
25 maintain an adequate record of any violations, including discharge of waste material and  
26 other pollutants into the waters of this State or into the environment.

27                                        SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
28 October 1, 2023.