



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.