



Testimony in SUPPORT of House Bill 607 – Water Pollution Control – Discharge Permits – Stormwater Associated with Construction Activity

Environment and Transportation Committee

February 22, 2023

Dear Chair Barve and Members of the Committee,

The **undersigned organizations** write today in **SUPPORT** of HB 607. This legislation addresses perhaps the most visible form of pollution that our organizations, our supporters, members of this committee, and residents across Maryland see on a regular basis: sediment pollution running off of construction sites. Unfortunately, it is also a form of pollution that has been difficult to curb due to the lack of an adequate deterrent and standards for inspecting pollution complaints.

According to the U.S. EPA, sediment runoff from construction sites can be 1,000 to 2,000 times greater than runoff from forested lands. Even just a short burst of rain “can contribute more sediment to streams than would be deposited naturally over several decades.”ⁱ These quick bursts of mud-filled water can destroy a stream and aquatic ecosystem. The cost to repair the damaged streams or dredge the sediment-filled creeks is currently passed along to taxpayers.

At a time when Maryland is seeking to achieve its 2025 Chesapeake Bay restoration goals, we must act to protect our most vulnerable waterways from construction-related pollution. With this bill, State and local authorities will finally have the tools they need to prevent pollution before it occurs and hold polluters accountable when prevention measures fail. Specifically, this bill will:

1. **Clarify that a construction site may not cause sediment pollution or erosion downstream.** The bill makes it illegal to cause, or fail to control runoff of sediment or other pollutants from a construction site, or cause erosion into Waters of the State downstream of the site.

Sediment is one of the most common pollutants in rivers, streams, lakes and reservoirs. In fact, many of the waters in the Chesapeake Bay are listed on the EPA 303(d) impaired waterway list for sediment pollution. Construction sites often require significant disturbance of land, which can

result in concentrated sediment leaving sites and entering downstream waterways. When excess sediment enters our waterways, it clouds our streams and rivers. This prevents natural vegetation from growing and can be detrimental to animals by disturbing the food chain, destroying habitat, and smothering oyster beds and spawning grounds. Additionally, nutrients can be transported by sediment, triggering algal blooms that are further detrimental to our water quality.

2. Give inspectors the tools they need to investigate downstream waters following pollution complaints and hold polluters responsible for damage caused to downstream properties and resources.

Current law does not specifically prohibit the runoff of sediment from a construction site or erosion in a downstream channel. This disconnect between the purpose of the law - to protect our waterways - and the plain language leaves our State and local sediment and erosion control inspectors with little authority to investigate pollution downstream of a site and hold permittees liable for the damages.

All too often, when a pollution complaint is investigated, a permittee is required to restore the construction site to the measures in the approved erosion and sediment control plan even if the evidence of pollution or downstream erosion makes it clear that those measures were inadequate. This bill will give inspectors the authority they need to require changes to erosion and sediment control plans in order to prevent additional pollution and erosion. It will also give the State and local governments the authority to require corrective actions to remediate any damage caused by pollution or erosion.

This approach has precedent in Anne Arundel County Code and processes. It is illegal to cause offsite sediment deposition or erosion in Anne Arundel County, and the County can seek remediation of offsite damages caused by such pollution. Inspectors now monitor downstream of each construction outfall to determine if sediment is piling up or eroding after rain events and pollution complaints. When such damage is found during an inspection, work is often halted on the construction site until the damage is addressed and the source of the pollution is corrected with more rigorous controls.

3. Require rigorous grading permit reviews for construction projects seeking to disturb more than 10 acres of land in and near specific, vulnerable natural resources.

This bill will only address major construction sites over 10 acres in size built within floodplains, the Critical Area buffer, or alongside our highest quality streams. This is to ensure that these sensitive and vulnerable lands are better protected and that large construction permits within them receive an enhanced review by our State. The bill does not prohibit construction in these areas, it simply ensures that these larger construction projects more accurately apply pollution controls to avoid environmental harm.

4. Establish deterrent penalties for undertaking construction activities without a permit.

Permits are tools to ensure our environment and public health are adequately considered and protected from certain activities. While the majority of construction activity is covered under approved permits, there are instances in our state where bad actors have evaded the law and implemented construction activity with no permit whatsoever. In instances such as this, it is vital that our state sets a precedent that unpermitted construction activity will not be acceptable. This bill will set a new penalty for unpermitted grading activities of no less than \$25,000 per acre, plus

penalties assessed by administrative or judicial order to remediate any harm caused by the unpermitted activity.

This bill will result in better protections for our most sensitive lands and waterways. For these reasons, we urge a favorable report on HB 607.

Sincerely,

Arundel Rivers Federation
Assateague Coastal Trust
Audubon Mid-Atlantic
Baltimore Jewish Council
Beaverdam Creek Watershed Watch Group
Blue Water Baltimore
Center for Progressive Reform
Chesapeake Legal Alliance
Interfaith Partners for the Chesapeake
Maryland Campaign for Environmental Human Rights
Maryland Legislative Coalition
ShoreRivers
Sierra Club Maryland Chapter
Southern Maryland Audubon Society
Upper Potomac Riverkeeper

ⁱ Stormwater Phase II Final Rule: Construction Site Runoff Control Minimum Control Measure. US EPA. 2018. pg. 2. available at: [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.epa.gov/sites/default/files/2018-12/documents/epa_stormwater_phase_ii_final_rule_factsheet_2.6_construction_runoff_12-04-18.pdf](https://www.epa.gov/sites/default/files/2018-12/documents/epa_stormwater_phase_ii_final_rule_factsheet_2.6_construction_runoff_12-04-18.pdf).