



POTOMAC  
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**Testimony in Support of SB0653**  
**Standing - Environmental and Natural Resources Protection Proceedings**  
**(Clean Water Justice Act of 2024)**  
**Senate Energy, Education, and Environment Committee 2/27/2024**

FAVORABLE

February 26, 2024

Chair Feldman and Committee Members,

I would like to provide an example of a pollution investigation I worked on in October of 2018. The community downstream of a basalt mining company in the Upper Potomac had been concerned for many years about the green film of pollution in Miney Branch, a tributary of the Monacy River.



This photo shows the thick green stormwater from an 800 acre basalt mining operation before it is discharged into Miney Branch.



Potomac Riverkeeper Network is the trade name of Potomac Riverkeeper, Inc.  
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This photo shows a close up of the stormwater pond.



This photo shows the permitted discharge to Miney Branch. The Rock path is supposed to allow for solids to settle out before entering the receiving stream.



This photo shows the discharge from the stormwater pond alongside Miney Branch. The day of this inspection was preceded by several inches of rain. This section of the Miney branch only flows during a rain event and is considered an ephemeral stream.

In 2023, the supreme court of the United States decided the case of Sackett vs. EPA, and took this opportunity to roll back the definition of waters of the United States – the jurisdictional groundwater of the CWA. As a result, more than half of the wetlands and waterways in Maryland are no longer protected under federal law. This also means that if you discharge/dump pollution into a water that is not a water of the United States, or “WOTUS”, then you do not need a permit and it is no longer illegal to discharge such pollutants.

Miney branch is an example of a stream that may not be protected as a federal WOTUS.



This photo is of the permitted discharge outlet from the stormwater pond. You can see the milky white pollution entering the stream.



This is the pollution downstream at a sportsmans club where the patrons enjoy fishing, except when it rains and the stormwater pond discharges into Miney Branch.

The result of this investigation was a Notice of Intent to file a Clean Water Act Lawsuit using the citizens provision. This part of the CWA allows organizations like ours and the public to protect communities from the pollution impacting their river; however, if the receiving waterbody is not considered a WOTUS, then a timely legal battle would commence or be thrown out all together. This pollution case occurred 5 years before the Sackett vs. EPA decision and so our claim was recognized and the industry decided to work with us and put in a \$250,000 sand filtration system that reduced the turbidity pollution by 85%.

These pollution cases occur every year in some part of the Upper Potomac and if this case were today, the industry could easily have decided to fight us on whether we had a reliable claim of pollution impacting a WOTUS to use the CWA.

Maryland has a strong definition of waters of the state, and it remains illegal under Maryland state law to discharge pollution or fill these waterways. But without the extension of federal level to these state waters, we lost the right to enforce that law in court.

The Clean Water Justice Act will fix this harm and allow the communities that I see many times a year harmed by illegal water pollution to enforce state law and stop illegal water pollution, just as they have always been able to do under federal law. This bill is modeled off of the “citizen suit provision” of the Clean Water Act, something that we didn’t have under Maryland law; and allows all of us, community groups, ordinary Marylanders who are harmed by pollution to enforce the law and protect themselves from illegal pollution.

Thank you for your consideration, and I look to the committee to give SB653 a favorable report.

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