

# 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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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 5, 2023

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

19 BY repealing and reenacting, with amendments,

20 Article – Environment

21 Section 4-105(a)

22 Annotated Code of Maryland

23 (2013 Replacement Volume and 2022 Supplement)

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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.



1 BY repealing and reenacting, without amendments,  
 2 Article – Environment  
 3 Section 9–301(a) and (d)  
 4 Annotated Code of Maryland  
 5 (2014 Replacement Volume and 2022 Supplement)

6 BY adding to  
 7 Article – Environment  
 8 Section 9–323.1  
 9 Annotated Code of Maryland  
 10 (2014 Replacement Volume and 2022 Supplement)

11 ~~BY repealing and reenacting, with amendments,~~  
 12 ~~Article – Environment~~  
 13 ~~Section 9–342~~  
 14 ~~Annotated Code of Maryland~~  
 15 ~~(2014 Replacement Volume and 2022 Supplement)~~

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

18 **Article – Environment**

19 4–105.

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

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

- 25 1. Constructing buildings;
- 26 2. Mining minerals;
- 27 3. Developing golf courses; and
- 28 4. Constructing roads and installing utilities.

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

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

1           1.     The appropriate soil conservation district;

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

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

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

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

10          6.     For large redevelopment sites, the Department.

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

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

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

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

18           (i)    Obtains an approved sediment control plan;

19           (ii)   Implements the measures contained in the approved sediment  
20 control plan;

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

23           (iv)   Maintains the provisions of the approved sediment control plan;  
24 and

25           (v)    Implements any sediment control measures reasonably  
26 necessary to control sediment runoff.

27          (4)    In consultation with the person responsible for performing the  
28 construction, the Department, jurisdictions delegated enforcement authority under §  
29 4-103(e)(2) of this subtitle, or the appropriate approval agency may require modifications  
30 to an approved sediment control plan if the approved plan is not adequate to control  
31 sediment or erosion.

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

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

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

9                   (ii) Issues sediment control permits; and

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

12           **(7) (I) ON OR BEFORE DECEMBER 1, 2024, AND EVERY 5 YEARS**  
13 **THEREAFTER, THE DEPARTMENT SHALL REVIEW AND UPDATE THE SPECIFICATIONS**  
14 **FOR SEDIMENT CONTROL PLANS.**

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

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

19                           **2. AS NECESSARY, ENSURE THAT ANY UPDATES AND**  
20 **REVISIONS ARE DESIGNED TO PROTECT THE WATERS OF THE STATE FROM**  
21 **POLLUTION; AND**

22                           **3. CONSULT WITH EROSION AND SEDIMENT CONTROL**  
23 **EXPERTS FROM THE FOLLOWING GROUPS AND STAKEHOLDERS REGARDING**  
24 **PROPOSED UPDATES TO SEDIMENT CONTROL REGULATIONS:**

25                                   **A. AN ACADEMIC INSTITUTION;**

26                                   **B. A WATERSHED PROTECTION ORGANIZATION;**

27                                   **C. THE MARYLAND ASSOCIATION OF COUNTIES;**

28                                   **D. THE MARYLAND MUNICIPAL LEAGUE;**

29                                   **E. A PRIVATE SECTOR ORGANIZATION WITH DESIGN AND**  
30 **CONSTRUCTION EXPERIENCE; AND**

1 F. THE MARYLAND ASSOCIATION OF SOIL  
 2 CONSERVATION DISTRICTS.

3 (III) BEFORE THE DEPARTMENT FINALIZES AN UPDATE TO THE  
 4 SPECIFICATIONS OF SEDIMENT CONTROL PLANS IN ACCORDANCE WITH THIS  
 5 PARAGRAPH, THE DEPARTMENT SHALL REPORT TO THE GENERAL ASSEMBLY, IN  
 6 ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, ON THE  
 7 PROPOSED UPDATE.

8 9-301.

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

10 (d) "Discharge permit" means a permit issued by the Department for the  
 11 discharge of any pollutant or combination of pollutants into the waters of this State.

12 **9-323.1.**

13 (A) ~~(1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS~~  
 14 ~~INDICATED.~~

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

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

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

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

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

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

30 ~~(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION~~  
 31 ~~SUBSECTION (C) OF THIS SECTION AND FOR A CONSTRUCTION SITE WITH A TOTAL~~  
 32 ~~PROPOSED DISTURBED AREA OF 5 ACRES OR MORE, THE DEPARTMENT MAY NOT~~

1 AUTHORIZE THE DISCHARGE OF STORMWATER ASSOCIATED WITH CONSTRUCTION  
 2 ACTIVITY UNDER A GENERAL DISCHARGE PERMIT ~~AND SHALL INSTEAD REQUIRE AN~~  
 3 ~~INDIVIDUAL DISCHARGE PERMIT~~ UNTIL THE REQUIREMENTS UNDER SUBSECTION  
 4 (B) OF THIS SECTION ARE SATISFIED ~~IF~~

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

8 ~~1.~~ (1) A WATERSHED OR CATCHMENT THAT DRAINS TO A  
 9 RECEIVING WATER DESIGNATED AS HIGH QUALITY UNDER DEPARTMENT  
 10 REGULATIONS;

11 ~~2.~~ (2) THE CRITICAL AREA BUFFER; OR

12 ~~3.~~ (3) A FLOODPLAIN IDENTIFIED BY THE FEDERAL  
 13 EMERGENCY MANAGEMENT AGENCY; ~~OR~~

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

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

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

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

28 (2) THE DEPARTMENT SHALL PROMPTLY:

29 (I) ACKNOWLEDGE RECEIPT OF THE WRITTEN REQUEST;

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

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

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

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

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

11                    (II) IS SOLELY INTENDED TO RESTORE NATURAL RESOURCES,  
12 REDUCE WATER POLLUTION, OR IMPROVE WATER QUALITY.

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

16                    ~~(C) (1) A PERMIT HOLDER MAY NOT:~~

17                    ~~(I) CAUSE, ALLOW, OR FAIL TO CONTROL RUNOFF OF SOIL OR~~  
18 ~~OTHER POLLUTANTS FROM A CONSTRUCTION SITE; OR~~

19                    ~~(II) CAUSE EROSION INTO WATERS OF THE STATE LOCATED~~  
20 ~~WITHIN 500 FEET OF A CONSTRUCTION SITE.~~

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

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

29                    ~~(D) IF THE DEPARTMENT DETERMINES THAT A PERSON HAS UNLAWFULLY~~  
30 ~~ENGAGED IN CONSTRUCTION ACTIVITY WITHOUT A DISCHARGE PERMIT OR~~  
31 ~~WITHOUT COVERAGE UNDER A GENERAL DISCHARGE PERMIT, THE DEPARTMENT~~  
32 ~~SHALL:~~

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

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

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

6           ~~(I) IMPOSE CIVIL OR ADMINISTRATIVE PENALTIES IN~~  
7 ~~ACCORDANCE WITH § 9-342 OF THIS SUBTITLE; AND~~

8           ~~(II) SEEK ANY INJUNCTIVE RELIEF THE DEPARTMENT~~  
9 ~~DETERMINES NECESSARY TO MITIGATE HARM TO THE ENVIRONMENT OR~~  
10 ~~SURROUNDING PROPERTY OWNERS.~~

11 ~~9-342.~~

12           ~~(a) (1) In addition to being subject to an injunctive action under this subtitle,~~  
13 ~~a person who violates any provision of this subtitle or of any rule, regulation, order, or~~  
14 ~~permit adopted or issued under this subtitle is liable to a civil penalty [not exceeding~~  
15 ~~\$10,000], to be collected in a civil action brought by the Department.~~

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

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

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

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

26           ~~(4) Each day a violation occurs is a separate violation under this~~  
27 ~~subsection.~~

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

1           ~~(4) Each day a violation occurs is a separate violation under this~~  
2 ~~subsection.~~

3           ~~[(4)] (5) Any penalty imposed under this subsection is payable to this~~  
4 ~~State and collectible in any manner provided at law for the collection of debts.~~

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

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

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

12           ~~[(6)] (7) Any penalty collected under this subsection shall be placed in a~~  
13 ~~special fund to be used for monitoring and surveillance by the Department to assure and~~  
14 ~~maintain an adequate record of any violations, including discharge of waste material and~~  
15 ~~other pollutants into the waters of this State or into the environment.~~

16           SECTION 2. AND BE IT FURTHER ENACTED, That on or before November 1,  
17 2023, the Department of the Environment shall report to the General Assembly, in  
18 accordance with § 2-1257 of the State Government Article, on the Department's plans for  
19 reviewing and updating specifications for sediment control plans.

20           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 October 1, 2023.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.