

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 607

(Delegate Love)

Environment and Transportation

Rules

**Sediment Control Plans, Discharge Permits for Stormwater Associated With
Construction Activity, and Notice and Comment Requirements**

This bill requires the Maryland Department of the Environment (MDE) to review and update the specifications for sediment control plans by December 1, 2025, and every five years thereafter. When conducting the review and updates, MDE must (1) meet specified requirements; (2) consult with specified groups and stakeholders; and (3) ensure that any updates and revisions are not applied retroactively under specified circumstances. By November 1, 2023, MDE must report to the General Assembly on its plans for reviewing and updating the specifications. The bill also establishes enhanced public comment requirements for construction activities located in certain sensitive areas, such as the Critical Area Buffer and specified areas identified by the Federal Emergency Management Agency (FEMA).

Fiscal Summary

State Effect: Known MDE general fund expenditures increase by \$83,303 in FY 2024, and by at least \$100,000 annually thereafter, for staff. MDE incurs potentially significant additional costs beginning in FY 2024 to review and update the specifications; MDE intends to apply for federal grants to cover those costs, but if federal grants are not obtained, additional general funds are needed. Other potential effects on State agencies, as permit holders, are discussed below.

Local Effect: Local government expenditures may increase for enforcement. The potential effects on local governments, as permit holders, are discussed below. Local revenues are not directly affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Specifications for Sediment Control Plans

By December 1, 2025, and every five years thereafter, MDE must review and update the specifications for sediment control plans. In reviewing and updating the specifications, MDE must (1) revise water quantity control standards using the most recent precipitation data available; (2) as necessary, ensure that any updates and revisions are designed to protect the waters of the State from pollution; (3) ensure that any updates and revisions are not applied retroactively to projects with approved sediment control plans if the sediment control plan has not yet expired, construction contracts have been awarded (if applicable), and construction activities have commenced; and (4) consult with specified groups and stakeholders. Before finalizing an update to the specifications, MDE must report to the General Assembly on the proposed update.

By November 1, 2023, MDE must report to the General Assembly on its plans for reviewing and updating the specifications.

Enhanced Public Notice and Comment Requirements for Stormwater Permits

MDE is prohibited from authorizing the discharge of stormwater associated with construction activity under a general discharge permit for a construction site with a total proposed disturbed area of five acres or more until specified enhanced public notice and comment requirements are met. These enhanced requirements must be followed if any portion of the area of disturbance is located in (1) a watershed or catchment that drains to a receiving water designated as high quality under MDE regulations; (2) the Critical Area Buffer; or (3) an area identified by FEMA as having a 1% chance of annual flooding.

If MDE receives a written request within the public notice period of an affected general discharge permit, MDE must extend the public notice period to 60 days to provide the requestor an opportunity to comment on the potential impact of inadequate construction site controls on waters of the State. MDE must promptly (1) acknowledge receipt of the written request; (2) notify the permit applicant and include details regarding potential inadequacies of proposed construction site controls; (3) request an electronic copy of the approved sediment control plan from the permit applicant and provide a copy to the requestor; and (4) notify the permit applicant if any updates to the sediment control plan are required prior to final authorization of the general discharge permit.

These provisions do not apply to construction activity that (1) does not result in the establishment of any permanent residential, commercial, or industrial building or (2) is

solely intended to restore natural resources, reduce water pollution, or improve water quality.

Current Law:

Federal Clean Water Act and the National Pollutant Discharge Elimination System

The federal Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States. The National Pollutant Discharge Elimination System (NPDES), a component of CWA, is a permit program that addresses water pollution by regulating point sources that discharge pollutants to U.S. waters. In Maryland, the federal Environmental Protection Agency delegates authority to issue NPDES permits to MDE. MDE's Water and Science Administration and Land and Materials Administration issue discharge permits to protect Maryland's water resources by controlling industrial and municipal wastewater discharges. Surface water discharges are regulated through combined State and federal permits under NPDES. Groundwater discharges are regulated through State-issued groundwater discharge permits.

Discharge Permits for Construction Activities

Any construction project that disturbs one or more acres of earth must apply for either a general or individual permit for stormwater discharge associated with construction activity and obtain coverage under the permit before beginning earth disturbance or any part of the project. These discharge permits are types of NPDES permits. A notice of intent (NOI) is one of the first steps in acquiring a construction general permit for stormwater discharge. However, prior to submitting an NOI, a final erosion and sediment control plan must be submitted to the appropriate approval authority (such as the Soil Conservation District). Applications fees are required for certain projects and are calculated based on the total disturbed acreage. A permitting authority may require any construction site to apply for an individual permit rather than using the general permit, but according to MDE, individual projects are rarely used. When they are, they are most often used for very large projects or projects located in sensitive watersheds.

Maryland's High Quality Waters (Tier II) and the Critical Area Buffer

Tier II, high quality waters are those that have an existing water quality that is significantly better than the minimum requirements, as specified in water quality standards.

Chapter 794 of 1984 identified the Critical Area as all land within 1,000 feet of the mean high-water line of tidal waters or the landward edge of tidal wetlands and all waters of and lands under the Chesapeake Bay and its tributaries. In 2002, the affected area was expanded

to include the State’s coastal bays. The Critical Area Buffer is the area of least 100 feet located directly adjacent to the State’s tidal waters, wetlands, and tributaries. The buffer services as an important protective area for aquatic resources and shoreline habitat and is, therefore, subject to more stringent requirements than the rest of the Critical Area. In general, new development activities that result in disturbance to land or natural vegetation or that involve the construction of a structure or result in new lot coverage are not permitted in the buffer.

Municipal Separate Storm Sewer System Permits

Surface water discharges in the State are regulated through combined State and federal permits under NPDES, which is a component of CWA. Among other things, NPDES regulates stormwater discharges from municipal separate storm sewer systems (MS4s). There are 10 jurisdictions in Maryland that hold NPDES Phase I MS4 permits (Anne Arundel, Baltimore, Carroll, Charles, Frederick, Harford, Howard, Montgomery, and Prince George’s counties and Baltimore City). Additionally, the State Highway Administration (SHA) holds a Phase I MS4 permit.

State Fiscal Effect:

Maryland Department of the Environment

Known Administrative Costs to Implement Enhanced Public Participation and Notice Requirements: Known MDE general fund expenditures increase by \$83,303 in fiscal 2024, which accounts for the bill’s October 1, 2023 effective date. This estimate reflects the cost of hiring one regulatory and compliance engineer to implement the changes to the public notice and participation requirements for affected general discharge permits. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$74,064
Operating Expenses	<u>9,239</u>
Known FY 2024 MDE Admin. Costs	\$83,303

Future year administrative expenditures, which range from \$99,851 in fiscal 2025 to \$114,358 by fiscal 2028, reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Additional Costs to Review and Update the Specifications for Sediment Control Plans and Potential Federal Funding: MDE expenditures also increase, potentially significantly, beginning in fiscal 2024, to review and update the specifications for sediment control plans. Exact costs are unknown but are anticipated to exceed \$500,000 in fiscal 2024, with the

need for additional permanent staff. MDE anticipates that it will have a more concrete estimate of the actual costs to review and update the specifications after it develops its plans for doing so, which must be submitted to the General Assembly by November 1, 2023.

According to MDE, reviewing and updating the specifications for sediment control plans requires significant background work, including engineering and design work, modeling, testing, and literature reviews. Additionally, when MDE updates the specifications, the Maryland Responsible Personnel Training Program (sometimes referred to as the “Green Card” program), which is an erosion and sediment control training course, must also be updated, and the 23,931 individuals who are currently certified must take a refresher course that provides outreach and information about the updated specifications.

MDE notes there are federal grant programs that may be able to fund substantial portions of the engineering, planning, research, training program updates, and other background work that must be completed as part of the review of and updates to the sediment control plan specifications. MDE intends to apply for such grant funding. To the extent that MDE successfully obtains federal grant funding, the costs discussed above – or at least a substantial portion of them – are covered with federal funds. To the extent MDE does not receive sufficient federal grant funding to cover the costs of these efforts, general funds are needed.

Impact on State Agencies as Permit Holders

The potential impact on State agencies, as permit holders, is discussed in the Additional Comments section below.

Local Fiscal Effect: Local soil conservation districts are the approving authorities for erosion and sediment control plans and for all projects other than State and federal projects. Additionally, many local jurisdictions have delegated enforcement authority to implement erosion and sediment control plans. Thus, the ongoing updates to the specifications for sediment control plans affect these entities and may result in an increase in training and enforcement costs. These impacts likely do not occur before fiscal 2026 since the first review and update must take place by December 1, 2025.

The potential impact on local government agencies, as permit holders, is discussed in the Additional Comments section below.

Small Business Effect: Small developers and engineering firms that design for erosion and sediment control are affected to the extent that MDE updates the specifications for sediment control plans. As mentioned above, any modification to the specifications will require an update to Maryland’s Responsible Personnel Training Program. According to

MDE, there are currently 23,931 people who are certified in the current program who will need to take a refresher course that provides outreach on the updated specifications.

The potential impact on small businesses, as permit holders, is discussed in the Additional Comments section below.

Additional Comments: The enhanced public notice and response requirements under the bill result in permit delays for affected construction projects. In addition, the requirements may increase overall project costs. Affected permit holders could include State agencies, local governments, and small businesses.

Additionally, the ongoing review of and updates to the specifications for sediment control plans may increase uncertainty in the permitting process and increase compliance costs for affected projects. Overall, the impacts from the ongoing updates to the specifications will depend on the actual frequency and content of any updates.

Finally, according to MDE, MS4 permittees (which include SHA and specified local governments), are required under their MS4 permits to implement the State-mandated erosion and sediment control program and must ensure that no grading permit is issued until a compliant plan is approved in accordance with the minimum specifications. Thus, ongoing updates to the specifications may affect MS4 permittees, though likely not before fiscal 2026.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 471 (Senator Elfreth) - Education, Energy, and the Environment.

Information Source(s): Baltimore, Charles, and Garrett counties; Maryland Association of Counties; Maryland Municipal League; Judiciary (Administrative Office of the Courts); Department of General Services; Department of Natural Resources; Maryland Department of Transportation; Maryland Department of the Environment; Department of Legislative Services

Fiscal Note History:
km/lgc

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