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Environmental Organizations File Lawsuits Against Flawed Maryland Industrial Stormwater Permit

Deficient permit will not protect waterways and fails to address environmental justice issues

(ANNAPOLIS, MD)--As a result of major flaws in the Maryland Department of the Environment's (MDE) final Industrial Stormwater General Permit, the Chesapeake Bay Foundation, Blue Water Baltimore and Gunpowder Riverkeeper, as well as the Potomac Riverkeeper Network and Waterkeepers Chesapeake on Friday filed three separate suits against MDE in Baltimore County Circuit Court.

Blue Water Baltimore and the Gunpowder Riverkeeper are being represented by Chesapeake Legal Alliance in their lawsuit. Environmental Integrity Project is representing Potomac Riverkeeper Network and Waterkeepers Chesapeake. Chesapeake Bay Foundation is representing itself.

Stormwater pollution is continuing to increase. It is now Maryland's second leading source of pollution damaging local rivers, streams, and the Chesapeake Bay. With climate change quickly increasing the amount and intensity of rainfall in Maryland, the runoff of toxic stormwater will continue to increase.

Unless the court acts, MDE's deficient industrial stormwater permit will take effect Feb. 1.

The general permit governs how industrial facilities that are not required to have an individual discharge permit control runoff into local streams and rivers from their properties. These facilities include scrap yards, coal handling facilities, and landfills. The last such general permit was issued in 2014 and expired in 2018.

"This proposed permit fails to incorporate new science on how climate change affects how much pollution runs off the land and how it harms water quality in a warmer bay. High concentrations of industrial facilities in certain urban areas combine many pollutants into a small space preventing those urban waters from reaching water quality standards," said CBF's

Maryland Executive Director Josh Kurtz. “This permit will continue a legacy of disproportionate harm to underserved communities. Throughout Maryland, people depend on fishing for food as well as recreation and inspiration. While Maryland has benefitted from its industrial past, those facilities must reduce the pollution that washes off into the Bay during storm events and be accountable to the public.”

The following are major flaws in the permit:

- MDE will allow most permit holders not to conduct any sampling or monitoring at all, allowing these permittees to potentially pollute Maryland waters and harm environmental justice communities with no consequences.
- The permit contains no real pollution limits that are consistent with the Chesapeake Bay Blueprint, efforts to restore other local waterways throughout Maryland, or to meet even Maryland’s outdated water quality standards. For instance, the permit contains no real limits for the big sediment loads and toxic metals in stormwater that can make Maryland waters unfit for fish and recreation. The Permit also doesn’t limit nitrogen, which is harming the Chesapeake Bay.
- The permit doesn’t reflect the water quality standards needed in 2022 to protect Maryland waters. MDE has still not finalized its 2019 triennial review of water quality standards, which tracks changes in water quality in Maryland waterways. The 2016 version was the last review formally approved by EPA in 2018.
- The permit fails to consider the impact of climate change despite new rainfall data demonstrating that storms have become more frequent and intense. Instead, the department is relying on outdated precipitation data to inform storm design standards.
- Maryland’s records for the last permit show stormwater with extremely high levels of pollutants like nitrogen, lead, copper, and aluminum. Maryland also hasn’t shown its last permit improved waterways affected by stormwater pollution. This permit doesn’t address those failures. Instead, this permit is even more lax in some ways than the previous one.
- The new permit allows existing facilities to avoid new requirements to treat or filter runoff from 20 percent of their impervious surface area, limiting one of the primary methods to control stormwater pollution in the last permit. Even under the last permit, about 28 percent of industrial permittees failed to meet the requirement by the Jan. 1, 2019 deadline.
- Scrap metal yards and landfills should be required to obtain individual permits outside of the industrial general permit purview. The facilities pose significant risks to waterways due to the presence of toxic contaminants such as aluminum, cadmium, copper, lead, and zinc.
- The new permit fails to address environmental justice concerns. Many of the industrial facilities governed by this permit are clustered in poor communities of

color already burdened by pollution. While the permit recognizes that industrial stormwater pollution harms these environmental justice communities and their water the most, the permit does not include any real requirements to protect them. The permit does not include additional pollution limits for environmental justice areas or make commitments to do more inspections there. The only thing that the permit does is require some permittees in Maryland's environmental justice areas to submit annual reports to the state, rather than keep them on site. This is not a significant improvement since many other states require all permittees to submit their annual reports to the state.

"Baltimore residents have suffered the unequal environmental and health impacts of living near toxic industrial facilities for far too long," said Alice Volpitta, Baltimore Harbor Waterkeeper with Blue Water Baltimore. "We are taking action today not only for the streams and rivers that must be protected from excessive pollution, but on behalf of the people in Baltimore who are living on the frontlines of this issue every day."

The previous industrial stormwater permit failed to achieve the state's primary objective to reduce pollution loads from stormwater. The Chesapeake Accountability Project, through a public information request, found widespread noncompliance under the previous permit from 2017 to 2020. Only 24 percent of MDE inspections—475 of 1,979—found industrial facilities following permit requirements with about two-thirds being noncompliant. MDE only took six formal enforcement actions in response.

"The new Industrial Stormwater permit could exacerbate historic impairments for total suspended solids, and metals such as copper, nickel and mercury resulting in continued fish consumption advisories in the Bird, Bush, Gunpowder and Middle rivers." said Theaux Le Gardeur, the Gunpowder Riverkeeper. "If left unchecked, the new permit will harm these waters, the health of the fish downstream of these facilities, and contribute to increased health risks to subsistence fishers and their families. The importance of these waterways, which support seasonal migratory fish, crab spawning habitat, bay grasses, and serve as a nursery ground for 26 species of Chesapeake Bay finfish, points to the need for a stronger, not weaker permit."

"Industrial stormwater is a serious threat to water quality in the Potomac watershed and the Chesapeake Bay," said Nancy Stoner, President of Potomac Riverkeeper Network. "This permit does not do nearly enough to address that threat, or to meet Maryland's obligations to cleaning up the Bay and keeping our rivers safe."

"The pollution coming off of these industrial sites include toxic substances like mercury, PFAS, and heavy metals that can have serious health impacts on nearby communities that are often the most overburdened with pollution," said Robin Broder, Deputy Director of Waterkeepers Chesapeake. "It's baffling why Maryland would release a permit that will harm some of our most vulnerable community members, especially when we all know that increasing rainfall

volumes due to climate change will super-charge stormwater runoff, making proper regulation critical for protecting public health.”

Rather than strengthening the last weak permit, MDE instead put forth the same unenforceable policy that will continue to impact vulnerable communities the most. Maryland leaders have, in recent years, put an emphasis on correcting this legacy of pollution through environmental justice. However, this permit favors polluters over the communities they harm.

"Unlike the pollution that comes out of pipes at factories or wastewater treatments, toxins from industrial stormwater runs directly off of these facilities, flowing untreated into the surrounding neighborhoods before washing through storm drains into the nearest waterway" said Patrick DeArme, attorney with the Chesapeake Legal Alliance. "This is why it is critical to strengthen the protections in this permit."

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