Remand Permit Comments

Regarding

General Permit for Stormwater Associated with Industrial Activities

State Discharge Permit Application No. 20-SW

NPDES Permit No. MDR00000

January 9, 2025

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Substantive or representative comments from all commenters have been included in this document. They have been segregated and organized by topic, and annotated to indicate the source of the comment. The full response to these comments is in a separate Response to Comments document.

1. COMMENT CATEGORY – General Comments to Improve Permit

Comment 1 - MDE did receive a robust group of emailed general comments improving the permit.

"*Absence of Meaningful Pollution Limits*: The permit lacks substantive pollution limits in line with the Chesapeake Bay Blueprint and Maryland's water quality standards, failing to address issues such as sediment loads, toxic metals, and nitrogen that threaten the health of Maryland waters.

Failure to Learn from Past Mistakes: The new permit repeats the shortcomings of its predecessor, allowing existing facilities to sidestep necessary requirements for treating or filtering runoff, a critical method to control stormwater pollution.

Continued Threat to Public Health: Industrial stormwater runoff, laden with toxic substances, poses serious health risks to nearby communities, especially those already burdened with pollution. The release of a permit that may exacerbate these threats is deeply concerning. In light of these issues, I implore the State of Maryland to strengthen Discharge Permit No. 20-SW through collaboration with environmental organizations, community stakeholders, and experts to ensure that the revised permit establishes robust monitoring, incorporates meaningful pollution limits, considers climate change impacts, and prioritizes the well-being of all communities, especially those disproportionately affected. The health of our waterways, the vitality of our communities, and the overall well-being of Maryland residents hinge on a robust and effective stormwater permitting process. I urge you to take immediate action to address these critical flaws and work towards a more sustainable and protective stormwater management framework for the State of Maryland.

It's time to toughen up the permits coming from industrial sites. Fresh water, clean water is too precocious a natural resource to knowingly "mess up" when we have a choice. Does that choice cost a little more in terms of money? Yes. Does that cost make all life on Earth a lot more stable? Yes. To me, there's only one "right" choice: have industry invest the money to make sure pollution from their industry/factory is not going into the water that ultimately supports us all. Without being made to/and held accountable to follow standards industry simply won't--that's the way human nature works.

So, please, make the permits for industrial stormwater pollution.

You know all the flaws in the permit being considered.

These flaws must be addressed before Discharge Permit No. 20-SW is finalized or Maryland's waterways and communities will be at risk. This is not the time to go backwards on environmental justice and to ignore climate science.

Most of us moved to be in the watersheds and near the rivers to be a part of nature and enjoy it's benefits. Toxic pollution deny us those opportunities.

As a resident of Annapolis, and a citizen who enjoys kayaking, swimming and stand Up Paddle boarding, I am concerned about the health of our waterways and the health of the people who swim in them.

I live along the Patuxent watershed and am very concerned about our waterways.

I am submitting comments to address deficiencies in the language of Discharge Permit 20-SW.

At a time when our water quality is under increased threat due to climate change, I am disappointed to see MDE proposing changes to weaken the industrial stormwater permit. New leadership at MDE under Governor Moore promised improved enforcement, but it can't do so with weakened regulations.

There is nothing more important to a resilient community than clean water. Those who create pollutants in the manufacturing process should be responsible for cleaning them out of the water in our waterways.

We're running out of time to fix things for future generations before it's too late. PLEASE amend the industrial stormwater general permit to address environmental justice and climate issues now!

I am writing to voice my concern over the stormwater runoff from industrial sites and the inadequacies of Discharge Permit No. 20-SW to protect Maryland’s most precious resource – the Chesapeake Bay watershed. As a resident along the Gunpowder River, I have seen first-hand the damage of stormwater runoff to our rivers and the Bay.

I am urging MDE to heed the warnings and concerns of numerous environment organizations. It should be clear that MDE is not acting in the best interest of the State nor its residents when it finds itself on the side of limiting industrial responsibility to protecting our environment over the voices of Chesapeake Bay Foundation, Blue Water Baltimore, Gunpowder Riverkeepers, and Waterkeepers Chesapeake (to name a few). Please work with these knowledgeable experts of environmental protection to develop a new discharge plan that protects our most precious resource.

The discharge from industrial sites and increased development in the Bay's watershed stand as the primary culprits in the demise of our waterway's health. This not only poses a severe threat to water health, leading to the end of entire fish species and adversely affecting other wildlife, but it also directly undermines our economic stability. The escalating runoff and sediment in the water translate to a decline in crab and fish populations, subsequently resulting in a reduction of job opportunities and financial resources for our state. This runoff from industrial sites also directly impacts our drinking water, which already ranks among the lowest in the country. The current permits in place are proving ineffective in safeguarding our communities, wildlife, and essential resources. We urge you to collaborate with local groups to amend the permits appropriately, addressing these critical issues.

I am asking you to revise Maryland's Industrial Stormwater Permitting process, specifically Discharge Permit No. 20-SW. The current permit presents several alarming issues that demand immediate attention and revision.

I live on the Gunpowder River and have spent many hours all my life enjoying the beauty of our waterways. Please spend some thoughtful moments thinking about ecology rather then industry. Our natural world needs your help. The discharge from industrial sites and increased development in the Bay's watershed stand as the primary culprits in the demise of our waterway's health. Our waterways are not healthy. I have watched the Gunpowder

become a dirty river full of runoff. It saddens me and I do not want to swim or play in the mess that is in the river.

We need to protect our waterways, which are hugely important for our health. The science is clear: Pollution from industry harms Marylanders.

I am concerned about pollution and runoff from regional industrial sites. Recently I learned that my community's water was contaminated with PFAS (EPA/USGS study location Takoma Park, MD). A closer look needs to be taken to consider the great number of facilities and waterways to ensure healthy communities associated with Discharge Permit No. 20-SW. Further, the climate and environmental justice previsions in this permit are not sufficient and some permit provisions weaken environmental quality standards.

Please "be a good ancestor" and protect Maryland's environment and all the life that depends on it: The General Permit for Discharges from Stormwater Associated with Industrial Activities (Discharge Permit No. 20-SW) contains major flaws that put Maryland’s communities at risk. The permit does not adequately protect the Chesapeake Bay and its tributaries from stormwater runoff pollution, take increased rainfall from climate change into account, or protect overburdened communities from the impacts of stormwater pollution.

Wow!!

Along with Waterkeepers Chesapeake, I urge you to re-write Discharge Permit No.20-SW to correct: weak environmental justice provisions added in the final permit the final permit’s reliance on outdated rainfall data no-exposure requirements were weakened in the final permit.

Please consider the health and quality of life of your fellow Marylanders, and act for the greater good going forward.

I stand with Blue Water Baltimore and other environmental groups who have challenged and commented on MDE's weak and backward-trending new form of industrial stormwater permit. You know you can do better, for all of Maryland, so let's recognize current conditions, look forward, and adopt a new form of permit that improves the situation and decreases pollution from these industrial sites into our waterways.

I realize the following letter has been written by an environmental group that I support and agree with and I cannot improve on its content. But, be assured my family and I agree with it 100%.

It time to STRENGTHEN the Discharge Permit 20-SW.

This is so important!

Maryland has a new opportunity to create a permit that protects our waterways and some of our most vulnerable community members.

The General Permit for Discharges from Stormwater Associated with Industrial Activities (Discharge Permit No. 20-SW) contains major flaws that put Maryland’s communities at risk. The permit does not adequately protect the Chesapeake Bay and its tributaries from stormwater runoff pollution, take increased rainfall from climate change into account, or protect overburdened communities from the impacts of stormwater pollution.

In 2022, the Chesapeake Bay Foundation, Chesapeake Legal Alliance, Blue Water Baltimore, Gunpowder Riverkeeper, Environmental Integrity Project (EIP), Waterkeepers Chesapeake, and the Potomac Riverkeeper Network challenged Maryland’s new industrial stormwater general permit in Baltimore County Circuit Court on the grounds that it failed to protect Maryland’s waters and communities as required by law.

Having lived all my life on the shores of the Severn and Patuxent Rivers, I am all too aware of the inadequacy of stormwater management on both, as on all Maryland's waterways. Despite Bernie Fowler's years of wade-ins to draw official attention to the state of the Patuxent, its condition has not improved in my nearly 50 years of observation. Enough already! I endorse the content of the following letter.

The below statement is one that I strongly agree with. I am a school teacher and my students are very aware of the need to protect our state's resources, and especially the Bay. After conducting research, several of them identified runoff as the biggest risk to the Bay. Please consider the remarks below in considering your decision about the Discharge Permit.

At a minimum the above suggested changes should be added. We have lived in Maryland for 59 years. The State continues to give the easy way out to the polluters and hamstring efforts to clean up the Chesapeake Bay above a Drating. Please Mr Hlavinka and Governor Moore, try harder and do better than your predecessors.

Future generations will judge you on the actions you take today.

My concerns are also those of my extended family, most of whom live in Maryland. My Granddaughter, especially, deserves to enjoy the beauty and resources provided by the Chesapeake Bay, the main reason I have been a member of the CBF for decades. Thank for the opportunity to petition for support of the Foundation's concerns.

These companies must take responsibility for their activities and pay the cost up front so the public will not be burdened with a much greater task and cost later. Please don't do what we did with development earlier.

Knowing that you care deeply about water quality, I assume you will be doing what you can to protect the Bay and its tributaries. Thank you!

I am writing to express my serious concerns as a Maryland resident in Halethorpe, Baltimore County, about the General Permit for Discharges from Stormwater Associated with Industrial Activities (Discharge Permit No. 20-SW). This permit has far-reaching implications for our state, and it is alarming for both my local community and the greater Maryland area.

Inadequate Protection of Chesapeake Bay: The current permit fails to provide sufficient protection for the Chesapeake Bay and its tributaries from stormwater runoff pollution, despite the clear and growing threat.

RUNOFF FROM URBANIZED AREAS IS ONE OF THE FEW POLLUTION SOURCES TO CHESAPEAKE BAY THAT ARE INCREASING. THIS DUE TO BOTH WATERSHED POPULATION GROWTH AND CLIMATE CHANGE. EFFECTIVE AND ENFORCEABLE PERMIT CONDITIONS ARE CRITICAL TO ADDRESSING THIS.

The permit does not adequately protect the Chesapeake Bay and its tributaries from stormwater runoff pollution, take increased rainfall from climate change into account, or protect overburdened communities from the impacts of stormwater pollution.

The State of Maryland must do a much better job of preventing pollution of our waterways by industries discharging stormwater. Maryland needs to strenghten and enforce its permit requirements for such discharges.

Remember, leave no one behind and people and the environment before profits.

What's in your Maryland crab, your oysters, your fish? Think pollutants get washed "away"?

I am writing to urge you to strengthen the General Permit for Discharges from Stormwater Associated with Industrial Activities (Discharge Permit No. 20-SW). Please ensure that the

permit contains language that will protect the Chesapeake Bay and its tributaries from polluted stormwater run-off."[1]

2. COMMENT CATEGORY – No Exposure – Part 1. F.

Grouping – No Exposure Requirements for Smaller Facilities

Comment 2 - "A. No Exposure Certification (Part I.F) 20-SW allows a discharger that would otherwise need permit coverage to certify that it meets the requirements for a no exposure exclusion. A discharger that meets the strict requirements for no exposure signs under penalty of law that there are "no discharges of stormwater contaminated by exposure to industrial activities or materials from the industrial facility or site identified in this document (except as allowed under 40 CFR 122.26(g)(2))." Form MDE/WMA/PER.067 (12/10/2020), p. 2. If the facility is five acres or more, if operations are in the Base Flood Elevation (BFE), or if operations are in a census tract with an EJScore equal to or greater than 0.76, the owner must also have a professional sign-off on the no exposure certification (NEC). Smaller facilities are required to provide photos to support an NEC claim. MAMSA is aware that MDE received comments during the 2021 public comment period suggesting a NEC should be filed every year (versus every five years), that a public complaint regarding a facility with an NEC should result in an unannounced MDE visit, and that new certifications should not be allowed unless the facility can show it is retaining all stormwater on-site and not discharging at all. MAMSA is surprised there are any concerns regarding NECs. To submit an NEC, a discharger must show that it has covered all industrial materials and activities with a storm-resistant shelter to prevent exposure to precipitation. A discharger who spends time and money to cover its industrial materials and activities is taking a positive step for water quality by eliminating the potential that any runoff from the site is impacted by industrial chemicals and materials. EPA recognizes this environmental benefit in 40 C.F.R. §122.26(g), which states that "Discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is "no exposure" of industrial materials and activities to rain, snow, snowmelt and/or runoff." MDE's 20-SW NEC approach is consistent with EPA's federal regulations, including the five-year effective period. In addition, MDE has the authority to conduct an unannounced site inspection if there is any question about the legitimacy of an NEC submittal. The current NEC form states that "I understand that I must allow the NPDES permitting authority, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available on request." Form MDE/WMA/PER.067 (12/10/2020), p. 2. NECs are beneficial to permittees and to the environment. We should be encouraging all industrial stormwater permittees to submit NEC documentation. MAMSA supports the current permit conditions, including the additional flexibility for smaller facilities, and requests that MDE keep the text as-is when acting on the Limited Remand."[2]

[1] Compilation of comments from 599 emailed comments received during the comment period.
[2] Lisa M. Ochsenhirt AquaLaw PLC Attorney on behalf of the Maryland Municipal Stormwater Association (MAMSA).

Comment 3 - "20-SW allows a discharger that would otherwise need permit coverage to certify that it meets the requirements for a no exposure exclusion. A discharger that meets the strict requirements for no exposure signs under penalty of law that there are "no discharges of stormwater contaminated by exposure to industrial activities or materials from the industrial facility or site identified in this document (except as allowed under 40 CFR 122.26(g)(2))." Form MDE/WMA/PER.067 (12/10/2020), p. 2. If the facility is five acres or more, if operations are in the Base Flood Elevation (BFE), or if operations are in a census tract with an EJScore equal to or greater than 0.76, the owner must also have a professional sign-off on the no exposure certification (NEC). Smaller facilities are required to provide photos to support an NEC claim. MAMWA is aware that MDE received comments during the 2021 public comment period suggesting a NEC should be filed every year (versus every five years), that a public complaint regarding a facility with an NEC should result in an unannounced MDE visit, and that new certifications should not be allowed unless the facility can show it is retaining all stormwater on-site and not discharging at all. MAMWA is surprised there are any concerns regarding NECs. To submit an NEC, a discharger must show that it has covered all industrial materials and activities with a storm-resistant shelter to prevent exposure to precipitation. A discharger who spends time and money to cover its industrial materials and activities is taking a positive step for water quality by eliminating the potential that any runoff from the site is impacted by industrial chemicals and materials. EPA recognizes this environmental benefit in 40 C.F.R. §122.26(g), which states that "Discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is "no exposure" of industrial materials and activities to rain, snow, snowmelt and/or runoff." MDE's 20-SW NEC approach is consistent with EPA's federal regulations, including the five-year effective period. In addition, MDE has the authority to conduct an unannounced site inspection if there is any question about the legitimacy of an NEC submittal. The current NEC form states that "I understand that I must allow the NPDES permitting authority, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available on request." Form MDE/WMA/PER.067 (12/10/2020), p. 2. NECs are beneficial to permittees and to the environment. We should be encouraging all industrial stormwater permittees to submit NEC documentation. MAMWA supports the current permit conditions, including the additional flexibility for smaller facilities, and requests that MDE keep the text as-is when acting on the Limited Remand."[3]

Comment 4 - "We expect our industrial neighbors to share in stewardship of the land and waterways impacted by their commercial activities. The Permit we discuss today is one way they can demonstrate their commitment. We request that the "no exposure" provision be removed from the permit and the requirement for 3rd Party Verification be restored. The consequences of error and cost of remediation are too great to bypass this safe guard."[4]

Comment 5 - "As a citizen, I am having difficulty with a facility having the option, to be excluded from requirements put in place to protect the health of individuals and the environment,

[3] Lisa M. Ochsenhirt AquaLaw PLC Attorney on behalf of the Maryland Association of Municipal Wastewater Agencies (MAMWA).
[4] Marian Dombroski for the Friends of Quincy Run Watershed.

or an industry that self regulates and I fully, support the recommendations that have been put forward regarding
" No exposure certification"."[5]

Comment 6 - "The current permit weakens the previous permit's no exposure permitting exception that required a third-party engineer to verify that stormwater discharged from the facility would not be exposed to pollutants. For a majority of facilities, the current permit allows submission of photo documentation as verification.
THIRD PARTY and UNSITE VERIFICATIONS are ESSENTIAL.
The new permit should require a third-party engineer to verify that stormwater discharged from the facility was not exposed to pollutants.
Regarding the no exposure permitting exception, the current permit weakens the previous permit that required a thirdparty engineer to verify that stormwater discharged from the facility would not be exposed to pollutants. For a majority of facilities, the current permit allows submission of photo documentation as verification.
No Exposure Permitting Exception: The permit's handling of the no exposure permitting exception is also alarming. Instead of requiring a third-party engineer to verify that stormwater discharged from a facility is not exposed to pollutants, it allows for the submission of photo documentation in most cases. This relaxed approach is a cause for significant concern, affecting businesses and communities statewide." [6]

Comment 7 - "We request that the third-party verification for no exposure be restored. The consequences of error and the cost of remediation are too great to bypass this safeguard."[7]

Comment 8 - " we request that the MDE restore the draft permit's third- party certification system for verifying any proposal for excluding coverage via the no-exposure certification basically back to what it was originally proposed and then not what was in the final. I think that's more protective."[8]

Comment 9 - "III. The Protection of Water Quality and Community Health Demands Stronger - Not Weaker - Certifications of "No Exposure" and Related Permit Improvements
While most attention is paid to the strength of the terms and conditions of this (and any) permit, it is also critically important to ensure that the scope of the permit is adequate. This means several things. First and foremost, it means restricting the ability of potential permittees to exclude themselves from coverage under the permit. In this case, that means strengthening, or at least not weakening, the "No Exposure certification" provisions of the permit. Separately, advocates have long been concerned that the Department has not committed enough resources to detecting unpermitted facilities and compelling them to seek coverage. If neither of these issues are addressed, even a strong permit will fail to achieve the ultimate

[5] Sharon Boies, Columbia, MD
[6] Compilation of comments from 599 emailed comments received during the comment period.
[7] Marian Dombroski, Friends of Quincy Run Watershed & Friends of Lower Beaver Dam Creek at 9-28-23 public hearing.
[8] Patrick De Armey, Chesapeake Legal Alliance attorney on behalf of the Gunpowder Riverkeeper & Blue Water Baltimore at 9-28-23 public hearing.

aim of reducing exposure of Maryland waterways and communities to toxic industrial runoff as far too many facilities will be operating completely outside the regulatory system.

Last year, the Department weakened the final version of the 20SW Permit by proposing to allow facilities to exclude themselves from coverage of the Permit without the submission of documentation from an independent third party engineer or other such professional, as was required in the expired 12SW permit and included in the draft version of the 20SW permit. The Department's document describing its responses to comments received in the comment period disclosed each of the changes it made to the draft permit. One such change was to establish this new process by which industrial facilities meeting certain criteria would be able to submit a "No Exposure certification" without an actual certification from an independent third party. Thus, under the final permit only facilities located in a floodplain or in areas with an "Environmental Justice Score greater than 0.76" would be required to have a professional certify that there is no potential for stormwater to be exposed to certain pollutants on site. In other words, the Department is proposing to allow most industrial facilities that would otherwise be subject to the permit to self-certify their eligibility for exclusion from the terms of the Permit, without securing the opinion of a third party engineer or other relevant professional.

For the reasons described below this not only constitutes an inappropriate and arguably illegal weakening of the permit, it is incompatible with numerous recommendations to improve protections for the most vulnerable Maryland communities and waterways, which are disproportionately impacted by industrial runoff."[9]

Comment 10 - "No Exposure in the Prior Permit and Calls for Improvement

In July 2020, prior to the public comment period,a number of our organizations sent a letter to the Department that included a section of recommendations on improving the No Exposure certification process. This specific section of the comments on No Exposure certification included a "strong recommendation" that the permit, at a minimum, should retain the third party verification "to avoid self-certification and the potential for impermissible self-regulation." (Emphasis added). …"[10]

Comment 11 - "I also believe that rigorous compliance, including third-party certification to verify any proposal for exclusion of coverage via the no-exposure certification, has also been voiced today."[11]

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[9] Meg Parish, Environmental Integrity Project Attorney collective comments of Blue Water Baltimore, Chesapeake Bay Foundation, Chesapeake Legal Alliance, the Environmental Integrity Project, Gunpowder Riverkeeper, Potomac Riverkeeper Network, Waterkeepers Chesapeake, ShoreRivers, Nature Forward, Friends of Lower Beaverdam Creek, Rock Creek Conservancy, Maryland League of Conservation Voters, Billy Friebele, Anacostia Riverkeeper, Maryland Conservation Council, and Indivisible Howard County Environmental Action.

[9] Patrick De Armey, Chesapeake Legal Alliance attorney on behalf of the Gunpowder Riverkeeper & Blue Water Baltimore at 9-28-23 public hearing.

[10] Meg Parish, Environmental Integrity Project Attorney collective comments of Blue Water Baltimore, Chesapeake Bay Foundation, Chesapeake Legal Alliance, the Environmental Integrity Project, Gunpowder Riverkeeper, Potomac Riverkeeper Network, Waterkeepers Chesapeake, ShoreRivers, Nature Forward, Friends of Lower Beaverdam Creek, Rock Creek Conservancy, Maryland League of Conservation Voters, Billy Friebele, Anacostia Riverkeeper, Maryland Conservation Council, and Indivisible Howard County Environmental Action.

[11] Theaux Le Gardeur, the Gunpowder Riverkeeper at 9-28-23 public hearing.

Comment 12 - "Long before the Department issued a draft of the 20SW permit, experts and advocates had called for a stronger approach to the No Exposure provision and, more broadly, to ensure that a greater percentage of industrial runoff in Maryland is controlled by our water pollution control laws. For example, the National Academy of Sciences expert panel investigating the past federal regulatory regime for controlling industrial stormwater specifically singled out Maryland's approach to requiring third party engineer verification of a No Exposure request. In other words, a preeminent body of scientists, engineers, and industrial stormwater experts had determined that the very approach to vetting permittees seeking exclusion from this regulatory program that other state permitting agencies should be emulating is the same one that the Department is now seeking to eliminate.

…

As the Department is aware, the concept of a "general permit to discharge" is not well understood by the public, in large part because it is not site-specific. It is thus unsurprising that the comments submitted to the Department during the comment period consisted predominantly of submittals from either public interest advocacy organizations representing the public's broader interests in health, safety, justice, and environmental quality or from the regulated sector. Nevertheless, of the few comments sent by individual Marylanders, one of the only issues discussed pertained to the No Exposure certification and, specifically, the need to strengthen this provision of the permit. One individual indeed recommended revocation of the No Exposure certification for facilities found to be in noncompliance and suggested making facilities with a past record of noncompliance ineligible for future certification, which the commenter suggested should be renewed annually.

However, rather than strengthening the draft permit to require the commenter's inclusion of additional photographic evidence in support of a certification request, the Department weakened the permit from the draft to the final version by waiving third party verification for many facilities and allowing for the submission of only photographic evidence instead. A review of the response to comments document shows no comments at all urging the Department to repeal the independent verification (which, again, was something the National Academy lauded Maryland for). The Department's decision thus represents an unexplained inconsistency with its prior standard and was announced with no reasoned explanation in support of it or even a reference to a recommendation made by an interested party. The Department simply made a decision on a whim, reversing a prior standard that was not only reasonable, but explicitly held out as an exemplar by the foremost experts on industrial stormwater.

…

We strongly urge the Department, under its new leadership and consistent with its new priorities, to introduce major changes through the Permit and outside of it to protect the health of urban communities and waterways. Specifically, the Department should, at a minimum, restore the previous requirement of independent third party verification of all no exposure certification requests.

Part I.F	At a minimum, restore the previous requirement of independent third party verification of all no exposure certification requests.

„[12]

Comment 13 - " The letter also went well beyond that minimum suggestion and recommended that "MDE should not allow any new certifications unless the applicant demonstrates that all stormwater is retained on-site; otherwise, this certification is not taking into consideration the potential for discharge of pollutants from deposition or run-on." After all, the National Stormwater Quality Database shows that the concentrations of toxic contaminants are highly elevated in many urban areas, meaning that it is extraordinarily unlikely (essentially impossible) that a 20SW permittee with a "No Exposure" certification would actually be discharging no pollution.

…

Additionally, the Department should require a minimum set of controls and permit requirements for facilities that are able to verify no exposure of contaminants associated with their on-site industrial activities to recognize the independent validity of state law and its prohibition on the discharge of any pollutants without treatment. Such requirements could include benchmark monitoring for nitrogen and sediment.

Part I.F	Require a minimum set of controls and permit requirements for facilities that are able to verify no exposure of contaminants *associated with their on-site industrial activities* to recognize the independent validity of state law and its prohibition on the discharge of any pollutants without treatment. Such requirements could include benchmark monitoring for nitrogen and sediment.

„[13]

Grouping – No Exposure in Floodplain

Comment 14 - "MAMSA questions whether operations would be in a BFE rather than within, for instance, a regulated floodplain for which there is an established BFE. MDE could consider clarifying by revising this phrase to read: "if operations are within a Special Flood Hazard Area (SFHA)."[14]

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[12] Meg Parish, Environmental Integrity Project Attorney collective comments of Blue Water Baltimore, Chesapeake Bay Foundation, Chesapeake Legal Alliance, the Environmental Integrity Project, Gunpowder Riverkeeper, Potomac Riverkeeper Network, Waterkeepers Chesapeake, ShoreRivers, Nature Forward, Friends of Lower Beaverdam Creek, Rock Creek Conservancy, Maryland League of Conservation Voters, Billy Friebele, Anacostia Riverkeeper, Maryland Conservation Council, and Indivisible Howard County Environmental Action.

[13] Meg Parish, Environmental Integrity Project Attorney collective comments of Blue Water Baltimore, Chesapeake Bay Foundation, Chesapeake Legal Alliance, the Environmental Integrity Project, Gunpowder Riverkeeper, Potomac Riverkeeper Network, Waterkeepers Chesapeake, ShoreRivers, Nature Forward, Friends of Lower Beaverdam Creek, Rock Creek Conservancy, Maryland League of Conservation Voters, Billy Friebele, Anacostia Riverkeeper, Maryland Conservation Council, and Indivisible Howard County Environmental Action.

[14] Lisa M. Ochsenhirt AquaLaw PLC Attorney on behalf of the Maryland Municipal Stormwater Association (MAMSA).

Grouping – No Exposure in EJ Area

Comment 15 - "II. Permit Exemption Process and Part I. F. No Exposure Certification
The previous version of this permit, the 12-SW, contained a "no exposure" provision requiring permittees seeking exemption from permit requirements to obtain a third-party engineer's verification confirming that pollutants on site would not be exposed to stormwater before exemption would be granted by the Department. In the final version of the Permit, the Department allows most facilities to submit photo documentation as verification instead. This allows permittees to self-certify their exemptions from the permit without proper oversight and verification. This makes the permit weaker and is particularly problematic for communities overburdened by industrial facilities that may be granted an exemption from permit requirements. The Department must restore the original requirement for a third-party engineer verification."[15]

Comment 16 - "II. Permit Exemption Process and Part I. F. No Exposure Certification
The previous version of this permit, the 12-SW, contained a "no exposure" provision requiring permittees seeking exemption from permit requirements to obtain a third-party engineer's verification confirming that pollutants on site would not be exposed to stormwater before exemption would be granted by the Department. In the final version of the Permit, the Department allows most facilities to submit photo documentation as verification instead. This allows permittees to self-certify their exemptions from the permit without proper oversight and verification. This makes the permit weaker and is particularly problematic for communities overburdened by industrial facilities that may be granted an exemption from permit requirements. The Department must restore the original requirement for a third-party engineer verification."[16]

Comment 17 - "Implicit in each of these highlighted comments and questions, which were the product of nationally recognized industrial stormwater experts' review of the 20SW and thousands of hours of research and analysis by water pollution control advocates, is that the No Exposure standard of the 12SW was only the starting point that ought to have been built upon and expanded in the 20SW. That we see not a strengthening, but a critical weakening of that provision in the 20SW, is a sure sign that we will not only fail to bring likely hundreds of industrial sites within the scope of permit coverage but may indeed allow even more facilities to escape coverage. This is simply incompatible with the Department's recent pledges to enhance environmental justice and its responsibility to protect water quality and public health in Maryland.

….

Any action to weaken the No Exposure certification requirement - or even to merely maintain the status quo - flies in the face of broader efforts to reduce community exposure to urban toxic runoff. In fact, the Biden Administration, which, like the Moore Administration, has indicated its desire to make the promotion of environmental justice a top priority, released a report in 2022 detailing EPA's legal tools to advance environmental justice. Among the tools discussed was the Agency's "residual designation authority" allowing for the

[15] Daniel C. Smith, Friends of Lower Beaverdam Creek President.
[16] Marian Dombroski for the Friends of Quincy Run Watershed.

extension of Clean Water Act permit coverage over additional commercial, industrial, and institutional sites in order to protect water quality. EPA has moved forward in recent years on such residual designation actions to bring more sources of contaminated runoff within our permit system for the purpose of protecting urban waters in places like Boston and Los Angeles. Notably, EPA has received a petition to do the same in Baltimore.

With broad discretion under federal and state law and a mandate to advance environmental justice, all momentum is supposed to be pointed in the direction of greater protections for urban communities. And yet, with this Permit, the Department is proposing to move in the very opposite direction; this includes not only ignoring the rampant problem of facilities evading permit coverage but also making it easier for those industrial facilities that are already subject to a permit to excuse themselves from regulatory obligations based on a legal fiction and not grounded on sound science. "[17]

Grouping – No Exposure Requires Guidance

Comment 18 - "The comments submitted to the Department also included letters from nationally recognized stormwater engineers. Dr. Richard Horner, one of the National Academy report contributors, for example, noted that the draft 20SW "provides no guidance to assist the applicant in preparing the [No Exposure] verification." Dr. Horner suggested that "[t]he provision should be upgraded to specify the conditions for a comprehensive verification. It should designate the industrial materials, activities, and equipment to be considered in evaluating exposure." Dr. Horner further queried the status of "materials or products exposed to precipitation or runoff during loading and unloading or transporting activities" and whether there are "particulate matter deposits or other visible residuals from roof stacks or vents not otherwise regulated (i.e., under an air quality control permit) and evident in the stormwater outflow?" How does the Department explain the weakening of the No Exposure provision of the permit without any evidence of support for doing so in the record, while simultaneously ignoring the legitimate suggestions of one of the nation's foremost stormwater experts? Where is the reasoned elaboration associated with the change - and lack thereof - in the 20SW's No Exposure section?"[18]

Comment 19 - "Another expert reviewing the 20SW draft permit, Dr. Robert Roseen, also noted that there are "no provisions for No Exposure Certifications that would require certification of treatment prior to discharge to groundwater." This is yet another important acknowledgement of another instance in which the 20SW might not adequately address the additional requirements of

[17] Meg Parish, Environmental Integrity Project Attorney collective comments of Blue Water Baltimore, Chesapeake Bay Foundation, Chesapeake Legal Alliance, the Environmental Integrity Project, Gunpowder Riverkeeper, Potomac Riverkeeper Network, Waterkeepers Chesapeake, ShoreRivers, Nature Forward, Friends of Lower Beaverdam Creek, Rock Creek Conservancy, Maryland League of Conservation Voters, Billy Friebele, Anacostia Riverkeeper, Maryland Conservation Council, and Indivisible Howard County Environmental Action.

[18] Meg Parish, Environmental Integrity Project Attorney collective comments of Blue Water Baltimore, Chesapeake Bay Foundation, Chesapeake Legal Alliance, the Environmental Integrity Project, Gunpowder Riverkeeper, Potomac Riverkeeper Network, Waterkeepers Chesapeake, ShoreRivers, Nature Forward, Friends of Lower Beaverdam Creek, Rock Creek Conservancy, Maryland League of Conservation Voters, Billy Friebele, Anacostia Riverkeeper, Maryland Conservation Council, and Indivisible Howard County Environmental Action.

state law and further endanger public health and water quality. Once again, none of these experts' recommendations were heeded by the Department."[19]

Grouping – No Exposure Sites Shouldn't Be Required to Resubmit

Comment 20 - "First, the Exposure Certification from an existing facility that operated pursuant to the renewed permit should not need to be re-submitted after five years unless the operations at the permitted facility have changed. The 20-SW, like all general stormwater discharge permits issued by MDE, is authorized pursuant to both Maryland laws and regulations and pursuant to the provisions of the Federal Clean Water Act (CWA), 33 U.S.C. 1251 et seq, and its implementing regulations in 40 CFR Parts 122, 123, 124 and 125. 20-SW Draft, pg. 1. Many sources permitted by the 20-SW were permitted under the 12-SW and earlier versions of the general industrial discharge permit. The Department only has the authority to add conditions to the renewal of such coverage if there has been a change in the permitted operation, a change in the law, or a change in regulation. 40 CFR 122.62(a); COMAR 26.08.04.02; COMAR 26.08.04.10; See, Cinque v. Montgomery County Planning Bd., 173 Md. App. 349, 362 (2007) ("Because an agency may grant reconsideration based only on a legally recognized ground, it follows that an agency may not reconsider and reverse a decision based on a 'mere change of mind.'") In order for the Department to change the permit conditions which previously covered operations must satisfy, it must base that change (and added permit condition) on a "legally recognized ground" like a change in law, a change in regulation, or a change in the facility's operation. See, 40 CFR 122.62(a). Maryland regulations incorporate this requirement in the "Requirements for the Issuance and Reissuance of Discharge Permits" which direct that the "Department shall issue or reissue a discharge permit upon a determination that…the provisions of existing discharge permits, as issued, and any outstanding administrative orders affecting the applicant or his affiliate have been or are being complied with by the applicant and his affiliate." COMAR 26.08.04.02(A)(3).

A general permit like the 20-SW is akin to an individual permit, where for there to be a change in a permit condition or requirement for the treatment of a discharge, there needs to be a change in the industrial activity. The requirement in the 20-SW Draft that a facility which had submitted and obtained a no exposure certification under the 12-SW needs to submit a new certification under the 20-SW exceeds the Department's authority. The Department provides no factual or legal support for requiring what effectively is a renewal of the certification."[20]

Grouping – New No Exposure Sites Shouldn't Be Allowed

[19] Meg Parish, Environmental Integrity Project Attorney collective comments of Blue Water Baltimore, Chesapeake Bay Foundation, Chesapeake Legal Alliance, the Environmental Integrity Project, Gunpowder Riverkeeper, Potomac Riverkeeper Network, Waterkeepers Chesapeake, ShoreRivers, Nature Forward, Friends of Lower Beaverdam Creek, Rock Creek Conservancy, Maryland League of Conservation Voters, Billy Friebele, Anacostia Riverkeeper, Maryland Conservation Council, and Indivisible Howard County Environmental Action.
[20] Rich & Henderson, P.C. ("R&H") Comments on the Limited Remand of the 20-SW.

Comment 21 - "In our other comments, some of our organizations and others further expanded upon some of the pre-comment period recommendations regarding the No Exposure certification and the associated problem of unpermitted industrial discharges. For example, in addition to urging the Department to retain the requirement for third party oversight for No Exposure applications, we also recommended that the Department "deny a 'No Exposure' certification to any new sources from newly established facilities, thus providing an incentive to fully retain stormwater and/or pre-treat runoff as a state-based new source performance standard built into the process of establishing new facilities with industrial stormwater discharges." This would have been a forward thinking but relatively low-burden condition given that it would only affect new facilities, not any of the large number of existing ones.

Additionally, we noted the seemingly obvious but underappreciated fact that "it is physically impossible and fundamentally inconsistent with the Bay TMDL and Maryland's Water Pollution Control Subtitle to establish a presumption that stormwater pollution will not be discharged from a site [per a No Exposure certification] without full retention of stormwater onsite." This is because, as the Department has emphasized previously, pollutants not associated with industrial activities most certainly also constitute regulable discharges from industrial sites, particularly as it relates to nutrient and sediment pollution.

For example, in Maryland's Phase I Watershed Implementation Plan (WIP) submitted to the U.S. Environmental Protection Agency as required under the Total Maximum Daily Load for the Chesapeake Bay, industrial stormwater permit holders were included as part of a broader "urban regulated" sector. When the Department subsequently released the 12SW general permit in 2013, it included a special condition to restore 20 percent of previously untreated impervious surfaces for certain permittees that met specified criteria having nothing to do with industrial category or the types of pollutants generated onsite. While all permittees covered by the 12SW permit were subject to specific controls and effluent limitations, it was the 20 percent impervious surface restoration standard that was specifically designed to achieve the wasteload allocation for the "urban regulated" sector in the Phase II WIP to control nitrogen, phosphorus, and sediment. The Department calculated the aggregate reductions in nitrogen and phosphorus for all industrial stormwater dischargers to achieve by 2025 as 86,846 pounds per year and 5,713 pounds per year, respectively, based on average nutrient removal efficiencies and event mean concentrations developed from monitoring data (2.0 mg/l N; 0.27 mg/l P).

In sum, the Department determined that to meet the overall 21 percent reduction in nitrogen from "Regulated Stormwater" the state would need to "retrofit" at least 28 percent of impervious surface area from this sector each permit cycle. Importantly, the Department selected the applicable permittees to be subject to this special condition based only on the extent of impervious surface (and location) but not based on the nature of the industrial activities or pollutants at the site. This makes logical sense because many pollutants (e.g., nitrogen and sediment) are understood to be discharged by all industrial sites (and in fact all impervious surfaces) and caused by factors not related to industrial classification (e.g., deposition, scour, passive leaching of non-industrial chemicals, generation and conveyance of high velocity flows).

Thus, it is inconsistent with science, the WIP, and the state's water pollution control laws to allow any facility to exempt itself from this state-issued permit based on any federally

designed "No Exposure" template. Rather, we would suggest the Department take heed of the National Academy of Science's recommendations that regulatory agencies avail themselves of the opportunity to develop regulatory tiers based on risk. No industrial facility should be fully exempt from the permit, as would be allowable under the "No Exposure" certification. Instead, some facilities that are able to prove their own industrial pollutants are not exposed to the elements could be subjected to lesser obligations reflective of the presence of fewer (but not "no") contaminants, which might include nitrogen, phosphorus, and sediment or other pollutants discharged from the site largely as the result of passive conveyance. Notably, even passive conveyance of pollutants can have a substantial deleterious effect on surrounding residential communities (e.g., flooding, toxic contaminant exposure of children). Such discharges certainly warrant at least some government response to correct past injustices (e.g., redlining).

…

Finally, consistent with 40 CFR 122.4(i) and Appendix S of the Bay TMDL, the Department should prohibit no exposure certification for any new source constructed after the effective date of the 20SW.

…

Part I.F	Prohibit no exposure certification for any new source constructed after the effective date of the 20SW in order to comply with 40 CFR 122.4(i) and the Bay TMDL.

"[21]

Grouping - No Exposure Eligibility for Transportation Operations

Comment 22 - " Also, Maryland is unique in making permittees ineligible for a "No Exposure Certification" if any material handling equipment is present at the facility and exposed to precipitation. The equivalent federal form indicates eligibility for "adequately maintained vehicles." While the equivalent Maryland form ("NO EXPOSURE CERTIFICATION for Exclusion from NPDES Stormwater Permitting," dated 12/10/2020) specifies at the top of page 1 that a "stormwater resilient shelter is not required for…adequately maintained vehicles used in material handling," the Part C - Exposure Checklist contradicts this by indicating that if any "material handling equipment" is exposed to precipitation, it is not eligible for a no exposure exclusion. This eligibility limitation effectively ensures that all 20-SW facilities would be ineligible for "No Exposure Certification." To be consistent with equivalent federal and other state no exposure programs, this form should be modified to allow for facilities with "adequately maintained vehicles" that are periodically exposed to precipitation to be eligible for a no exposure certification."[22]

[21] Meg Parish, Environmental Integrity Project Attorney collective comments of Blue Water Baltimore, Chesapeake Bay Foundation, Chesapeake Legal Alliance, the Environmental Integrity Project, Gunpowder Riverkeeper, Potomac Riverkeeper Network, Waterkeepers Chesapeake, ShoreRivers, Nature Forward, Friends of Lower Beaverdam Creek, Rock Creek Conservancy, Maryland League of Conservation Voters, Billy Friebele, Anacostia Riverkeeper, Maryland Conservation Council, and Indivisible Howard County Environmental Action.
[22] Rich & Henderson, P.C. ("R&H") Comments on the Limited Remand of the 20-SW.

3. COMMENT CATEGORY – Environmental Justice.

Comment 23 - "III. Impacts of the Proposed Permit on Residents of Curtis Bay
Curtis Bay is a highly industrialized neighborhood in Baltimore City and Anne Arundel County where 51.92 percent of the residents live in poverty and 53.65 percent are minority. Data from MDE's EJ Screening Tool shows that Curtis Bay has an overall EJ score of 100%; is in the 100th percentile for Overburdened Exposure; and the 99.93rd percentile for Overburdened Environmental Pollution. The neighborhood is also in the 90.57th percentile for asthma emergency room discharges; 87.90th percentile for low infant birthrates; and 88.38th percentile for myocardial infarction discharges.

Figure 1: Source: EJ Screening Tool

Residents of Curtis Bay, like other EJ communities, would benefit from stronger protections against industrial stormwater pollution for the following reasons: (1) Curtis Bay is surrounded by facilities that currently qualify for the 20-SW permit but would not be included under the EJ provision; (2) residents of Curtis Bay experience cumulative impacts from air and water pollution; and (3) many facilities in and around Curtis Bay handle materials containing harmful chemicals but have histories of noncompliance."[23]

Comment 24 - "URGENT and Unacceptable: Environmental Justice Denied! The Discharge Permit No. 20-SW falls short with weak provisions, poor requirements for industrial runoff, and outdated data. We need action NOW! Don't turn a blind eye to the toxic runoff plaguing Baltimore and the Gunpowder, Bush, Bird, and Middle River watersheds. Dangerous substances like mercury, PFAS, and heavy metals threaten residents' health. We demand

[23] Kathleen Gagnon, UMD's Francis King Carey School of Law student attorney.

justice for those hit hardest! Climate change is continuing to exacerbate these problems (RIGHT NOW NOT BY 2050) as heavy rainfall will frequent more harsh than ever! DOES MARYLAND TRULY LEAVE NO ONE BEHIND??!!! \

Maryland's general permit regulating industrial stormwater (Discharge Permit 20-SW) singlehandedly regulates pollution from nearly 300 facilities in the Baltimore region, where residents are consistently hardest hit by the compounding factors of climate change, systemic disinvestment, and toxic contamination. There are over 100 industrial sites in the Gunpowder, Bush, Bird, and Middle River watersheds. All of these sites cumulatively impact downstream, underserved communities and ultimately the Chesapeake Bay. Overall, this permit governs more than 1,400 Maryland industrial facilities. The pollution coming off of these industrial sites include toxic substances like mercury, PFAS, and heavy metals that can have serious health impacts.

The current permit's environmental justice provisions are insufficient to address the significant environmental justice harms caused by industrial stormwater pollution. The provision addressing environmental justice only requires some companies who monitor their pollution to prepare an annual report concerning how the facility is managing its stormwater and any pollutants that are on site. In many cases there is no requirement to submit the report to MDE. The permit should be strengthened so all facilities located in environmental justice areas monitor their pollution and submit an annual report and facilities who are already violating the law get stricter requirements.

Just documenting your pollution is not a pass to continue.

Disproportionate Impact on Environmental Justice Communities: The permit inadequately addresses environmental justice concerns, with facilities in impoverished communities of color facing increased risks. The lack of additional pollution limits or stringent inspection requirements further compounds the environmental injustices these communities face.

The current permit provision addressing environmental justice only requires some companies who monitor their pollution to prepare an annual report concerning how the facility is managing its stormwater and any pollutants that are on site. In many cases there is no requirement to submit the report to MDE. The permit should be strengthened so all facilities located in environmental justice areas monitor their pollution and submit annual report and facilities who are already violating the law get stricter requirements.

The environmental justice provisions are too weak. Reports should be mandated to be submitted to the MDE by all facilities located in sensitive areas.

The new permit should be strengthened so all facilities must monitor their pollution and submit an annual report, and facilities who are already violating the law get stricter requirements.

Environmental Justice Shortcomings: The existing provision on environmental justice is deeply flawed. It only requires some companies to prepare annual reports on their stormwater management and pollution control, with no requirement for submission to the Maryland Department of the Environment (MDE). This is especially concerning for overburdened communities and communities across our state.

MANY CASES THERE IS NO REQUIREMENT TO EVEN SUBMIT THAT REPORT TO MDE. THEREFORE MDE CANNOT EVEN EVALUATE THE ADEQUACY OF WHAT A FACILITY IS DOING , LET ALONE ENFORCE EFFECTIVE CONDITIONS.

Not only does it contains major flaws that put Maryland's communities at risk, much of the damage impacts disadvantaged communities."[24]

Comment 25 - " I. Maryland's Environmental Justice Policy Maryland's 2022 Environmental Justice Implementation Plan sets out seven main objectives:

- Provide equitable environmental protections and benefits to all communities through enhanced communication and outreach; particularly to those that have been overburdened and underserved by strengthening communities with EJ concerns understanding of environmental decisions, including permitting, regulation and, where practicable, enforcement. At the same time understanding and accommodating the individual opportunities and challenges of each community.
- Ensure overburdened and underserved communities are provided with the opportunity to engage in meaningful involvement in MDE's decision making process.
- Enhance direct lines of communication between MDE and the community through a redesign of a user focused website and resources.
- Identify disproportionately impacted areas for targeting compliance assistance and enforcement efforts using the MDE EJ Screening Tool.
- Review and respond to existing inequities associated with facilities in communities with EJ concerns; increase compliance in areas disproportionately impacted by health and environmental factors to prevent and reduce burdens on those communities; and
- Focus and prioritize infrastructure financing and grants in communities with EJ concerns. (MARYLAND DEP'T OF ENV'T, ENVIRONMENTAL JUSTICE AND POLICY IMPLEMENTATION PLAN (2022), https://mde.maryland.gov/Environmental_Justice/PublishingImages/Pages/Landing%20Page/Environmental%20Justice%20Policy%20and%20Implementation%20Plan%202022.pdf. MDE's specific EJ policy statement provides "MDE is committed to the goal of achieving environmental equity for all Maryland residents" and that "it is the policy of MDE to implement environmental laws and programs wherever possible in a manner that reduces existing inequities and avoids the creation of additional inequities in communities with EJ concerns.")

The Department's 20-SW general permit does not adequately reflect these objectives. Although the State promises to "review and respond to existing inequities associated with facilities in communities with EJ concerns" by "increase[ing] compliance in areas disproportionately impacted by health and environmental factors to prevent and reduce burdens on those communities," the new permit's EJ component will not respond to existing inequities, increase compliance, or reduce pollution in EJ communities."[25]

Comment 26 - "I. Strengthen the Permit's Environmental Justice Provisions By Adding New Requirements for Permittees in Areas with a Maryland EJScore of .76 or above

The Permit's environmental justice provisions, found in Part V.A.2.b, the "Comprehensive Site Compliance Evaluation" section, are insufficient to address the significant environmental justice harms caused by industrial stormwater pollution. The Permit's Annual Comprehensive Site Compliance Evaluation reporting provision only applies to a minority

[24] Compilation of comments from 599 emailed comments received during the comment period.
[25] Kathleen Gagnon, UMD's Francis King Carey School of Law student attorney.

of the facilities in census tracts with a Maryland EJScore of .76 or above (approximately 40 facilities were identified by MDE). Even when they do apply, they fail to include any substantive monitoring or compliance requirements - they are simply a requirement to submit an existing compliance evaluation. Maryland law defines environmental justice as "equal protection from environmental and public health hazards for all people regardless of race, income, culture, and social status." As a recipient of federal funding, the Department is bound to comply with Executive Order 14008, which requires consideration of environmental justice issues in decision making, and Title VI of the Civil Rights Act of 1964, which prohibits agencies receiving federal funds from discriminating on the basis of race, color, and national origin. The Department's 2022 EJ Policy and Implementation Plan ("Department EJ Policy") acknowledges that "[n]ational studies show that [EJ] Communities bear a disproportionate share of the negative environmental consequences resulting from industrial activities." This is certainly true for the facilities covered under the Permit. The Center for Progressive Reform and Environmental Integrity Project's 2017 analysis found that many of the industrial facilities covered under the Permit are clustered in and around low-income neighborhoods. Of 300 facilities in Baltimore City and Baltimore County, 40% were located in overburdened census tracts. In Baltimore City, 69% of facilities were in overburdened tracts. Eight facilities were located in the top 10 percent of census tracts most burdened by environmental justice factors. Commenters further found that census tracts with a large number of industrial facilities were flagged in the EPA environmental justice data screening tool as having an extremely elevated risk of exposure to environmental threats. The disproportionate proximity of lower income communities and communities of color to industrial facilities is not by chance, but the result of structural racism and discriminatory housing and zoning practices. Along similar lines, attached is a Geospatial Analysis of Industrial Property Proximity to Residential Property in Baltimore City showing the close proximity of many residences to industrial facilities like those covered under the Permit. The high concentration of polluting facilities in these communities also contributes to growing health disparities. For example, residents of South Baltimore, an area of significant industrial activity, experience higher rates of asthma emergency room visits and hospitalizations, cancer, and heart attacks compared to the state, on average. To protect these overburdened communities, the Department's EJ Policy states that it will "increase compliance in areas disproportionately impacted by health and environmental factors to prevent and reduce burdens on those communities." To do this and protect environmental justice communities and their waters, this permit should add the following provisions to Part V.A.2.b of the Permit. These requirements would apply to all permitted facilities in census tracts with a Maryland EJScore of .76 or above:
[MDE Note: *Rationalle for each is broken out and organized with similar comments below*]"[26]

[26] Meg Parish, Environmental Integrity Project Attorney collective comments of Blue Water Baltimore, Chesapeake Bay Foundation, Chesapeake Legal Alliance, the Environmental Integrity Project, Gunpowder Riverkeeper, Potomac Riverkeeper Network, Waterkeepers Chesapeake, ShoreRivers, Nature Forward, Friends of Lower Beaverdam Creek, Rock Creek Conservancy, Maryland League of Conservation Voters, Billy Friebele, Anacostia Riverkeeper, Maryland Conservation Council, and Indivisible Howard County Environmental Action.

Grouping – Need to Expand the EJ Areas of Concern

Comment 27 - "Today, we urge MDE to use this remand as an opportunity to increase compliance in areas disproportionately impacted by health and environmental factors to prevent and reduce burdens on those communities as MDE's environmental justice policy directs. Environmental justice is a pivotal component of the Clean Water Act. It is a matter I am personally extremely passionate about as it finally acknowledges systemically marginalized peoples that are disproportionately burdened by negative environmental and health effects of pollution exposure. A lack of attention to principles of environmental justice threatens communities of people who are subject to burdens such as poverty, educational level barriers, and racial, ethnic, or religious discrimination. These people are much more vulnerable to adverse health risk, in addition to being systemically discriminated against in medical treatment to manage unpredictable health complications. Many of these communities are not educated on the reality of the toxic contamination issues in their area and are overwhelmed with more visible, pressing issues and are, therefore, left unprotected by both State and local authorities. We know that industrial stormwater poses serious risk for disadvantaged communities. As seen in the 2017 study of Baltimore County by the Center of Progressive Reform and the Environmental Integrity Project, many of the environmental facilities covered under the Maryland permit are, in fact, clustered in and around environmental justice neighborhoods, contributing to health disparities such as higher rates of asthma, emergency room visits and hospitalizations, cancer, and heart attacks. The permit on remand inadequately addressed environmental justice concerns in two key areas. The annual comprehensive site compliance evaluation reporting provision only applies to a minority of the facilities in Census tracks with a score of .76 or above on Maryland's Environmental Justice Screen."[27]

Comment 28 - "1. Widening the Scope of the Permit's EJ Provision would help protect residents of Curtis Bay.

Only requiring facilities with an EJ Score greater than or equal to .76 to submit annual Comprehensive Site Compliance Evaluations leave would leave Curtis Bay vulnerable to industrial stormwater pollution because it is a narrow threshold that does not cover neighboring facilities.

Directly north of Curtis Bay sits Wagner's Point, a neighborhood whose last remaining residents were evacuated by Baltimore City in 2000 due to environmental concerns (See generally, Brenda Bratton Bloom, How Close to Justice? A Case Study of the Relocation of Residents from Fairfield and Wagner's Point, PROQUEST (2022)). Now uninhabited, Wagner's Point has an EJ Score of 0%. Many facilities that fall under the 20-SW permit or that have applied for the permit are in Wagner's Point:

- Baltimore Harbor Tunnel Maintenance
- Bay Town Painting, Inc.
- Amports Atlantic Terminal
- AMSA #83 (W)
- Curtis Creek Processing Facility & Transfer Station
- Dana Container Inc.

[27] Morgan Taradash, EJ legal fellow, on behalf of the Potomac Riverkeeper Network at 9-28-23 public hearing.

- Fleet Properties, LLC
- Industrial Container Serves – Maryland, LLC
- Maryland Chemical Co Inc
- USALCO LLC
- Reconserve of MD DBA Dext Company

Out of these facilities, those that would be required to submit Benchmark reports under the 20-SW general permit have histories of noncompliance. For instance, Dana Container Inc., which specializes in hauling bulk liquid chemicals, failed to report twice in the last twelve quarters; US ALCO, LLC, which manufactures aluminum sulfate, sodium aluminate, polyaluminum chloride, aluminum chlorohydrate, and aluminum chloride; failed to report for seven out of the last twelve quarters; and Reconserve of MD, which supplies bakery products and animal feed, failed to report their DMRs for five out of the last twelve quarters. (U.S. Env't Protection Agency, Enforcement and Compliance History Online, https://echo.epa.gov/facilities/facility-search/results.)

Although the EJ Screening Tool shows that these facilities are located in a non-EJ community, their stormwater management practices will have direct results on Curtis Bay residents due to their close proximity and shared bodies of water, including the Bay and its tributaries. This problem illustrates the need for improvement in how the 20-SW permitting process accounts for disproportionate impacts to EJ communities."[28]

Comment 29 - "Part V.A.2.b. of the 20-SW general permit requires facilities with an EJ Score of 0.76 or greater that are required to report Benchmarks to submit annual Comprehensive Site Compliance Evaluations using NetDMR. This provision was added to address EJ concerns, but the provision is insufficient for three reasons analyzed in this comment:

1. The <=.76 EJ Score threshold is too narrow because the bright-line standard does not cover every facility that impacts communities with high EJ Scores.

…

Only requiring facilities with an EJ Score greater than or equal to .76 to submit annual Comprehensive Site Compliance Evaluations is insufficient because the narrow threshold does not cover neighboring facilities that impact the same waters that flow through EJ communities. Instead, MDE should widen the threshold to include facilities adjacent to communities that are underserved and overburdened (Under Maryland state law, an "underserved" community is defined as "any census tract in which, according to the most recent U.S. census bureau survey: (I) at least 25% of the residents qualify as low-income; (II) at least 50% of the residents identify as nonwhite; or (III) at least 15% of the residents have limited English proficiency." State law defines "overburdened" as "any census tract in which three or more environmental health indicators are above the 75th percentile statewide." https://mde.maryland.gov/Environmental_Justice/Pages/EJ-Screening-Tool.aspx).

Maryland's Environmental Justice Implementation Plan begins with the objective to "provide equitable protections and benefits to all communities through enhanced communication and outreach[,] particularly to those that have been overburdened and underserved[.]" This includes "identify[ing] disproportionately impacted areas[,]" but does not define what

[28] Kathleen Gagnon, UMD's Francis King Carey School of Law student attorney.

constitutes disproportionate impacts. Disproportionate environmental impacts can be defined as "environmental effects on a group of people based on inequitable exposure to environmental factors that systematically affect one group more harshly or negatively than others. These effects are typically associated with race, ethnicity, and socioeconomic status as predicting factors for increased geographical distribution of the resulting environmental burdens."
(http://www.depgreenport.state.pa.us/elibrary/GetDocument?docId=5600403&DocName=ENVIRONMENTAL%20JUSTICE%20POLICY.PDF%20%20%3cspan%20style%3D%22color:green%3b%22%3eCOMMENTS%20DUE%20OCTOBER%2029%2c%202023%3c/span%3e%20%3cspan%20style%3D%22color:blue%3b%22%3e%28NEW%29%3c/span%3e). Since facilities adjacent to EJ communities are likely to contribute disproportionate environmental impacts through their industrial stormwater discharge, they should be included in the general permit's EJ provision.

Expanding the scope of the Permit's EJ provision would align with the State's EJ policy and would help protect communities from disproportionate impacts of industrial stormwater pollution. To further strengthen these protections, MDE should address the cumulative impacts of several permitted facilities on EJ communities.

…

Strengthening the 20-SW general permit's EJ provision would align with Maryland's EJ policy and help protect EJ communities. MDE should strengthen the Permit by:

…

(1) Widening the Permit's scope to include facilities adjacent to EJ communities."[29]

Grouping – Require Additional Restoration

Comment 30 - "In addition, we would ask that in these EJ areas each facility, regardless of size, be required to adjust 20 percent of the site's impervious surface with runoff controls or their equivalent."[30]

Comment 31 - "c) Require that every facility, regardless of size, restore twenty percent of the site's impervious surface with runoff controls or their equivalent

The previous 12SW permit's requirement that permittees of more than 5 acres within the Chesapeake Bay watershed must restore 20% of the unrestored impervious surface over the five-year period covered by their permits was one of the most effective ways of reducing stormwater pollution and reducing the cumulative impacts of aggregate point sources in the Chesapeake. However, many industrial stormwater permittees in areas with a Maryland EJ score of .76 or above are on lots smaller than five acres. Given the significant health and environmental justice impacts of industrial runoff, it is inappropriate to effectively treat facilities of less than five acres as de minimis contributors of pollution, especially those in these already-overburdened EJ areas. Requiring that these smaller facilities also restore 20% of the unrestored impervious surface over the five-year period will contribute to long-term improvements in water quality. We request new language that requires that every permitted facility located in census tracts with an index score of

[29] Kathleen Gagnon, UMD's Francis King Carey School of Law student attorney.
[30] Meg Parish, Environmental Integrity Project attorney representing Potomac Riverkeeper Network and Waterkeepers Chesapeake at 9-28-23 public hearing.

.76 or above on Maryland's EJ Score, regardless of size, restore twenty percent of the site's impervious surface with runoff controls or their equivalent unless they have already been required to do so in the previous permit term.

…

Part V.A.2.b	Require that every permitted facility located in census tracts with an index score of .76 or above on Maryland's EJ Score, regardless of size, restore twenty percent of the site's impervious surface with runoff controls or their equivalent unless they have already been required to do so in the previous permit term

"[31]

Comment 32 - "just to go back to the comments regarding the 20 percent restoration requirement, I think we would request that, again, MDE, regardless of the size of the facility, either require that 20 percent impervious surface requirement or require the right runoff controls that would be at equivalent to restoring 20 percent of those sites' impervious surface, just because we've, you know, through the investigations identified that that requirement is very helpful in terms of reducing the amount of runoff that comes off the sites and thereby reducing the amount of pollution into these overburdened communities."[32]

Grouping – Transparency Alternatives

Comment 33 - "B. Comprehensive Site Compliance Evaluation (Part V.A.2.b)

20-SW mandates that each permittee conduct a comprehensive site compliance evaluation once a year and detail the evaluation in a report. If the permittee's EJScore is equal to or greater than 0.76 and if the permittee is required to report benchmarks, the permittee must submit the evaluation to MDE using NetDMR. As a commenter below explained, when a 20-SW facility discharges to a municipal separate storm sewer system (MS4), the report includes information that could be useful to the MS4 as it implements an Illicit Discharge Detection and Elimination (IDDE) program. Outfall screenings and IDDE investigations take substantial time and resources. Having access to these reports would improve the efficiency and effectiveness of MS4 IDDE programs. For this reason, MAMSA requests that MDE revise 20-SW to require that all permittees submit the Annual Site Compliance Evaluation Report for posting on the Open MDE website (https://mde.maryland.gov/Pages/Open-MDE.aspx)."[33]

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[31] Meg Parish, Environmental Integrity Project Attorney collective comments of Blue Water Baltimore, Chesapeake Bay Foundation, Chesapeake Legal Alliance, the Environmental Integrity Project, Gunpowder Riverkeeper, Potomac Riverkeeper Network, Waterkeepers Chesapeake, ShoreRivers, Nature Forward, Friends of Lower Beaverdam Creek, Rock Creek Conservancy, Maryland League of Conservation Voters, Billy Friebele, Anacostia Riverkeeper, Maryland Conservation Council, and Indivisible Howard County Environmental Action.

[32] Patrick De Armey, Chesapeake Legal Alliance attorney on behalf of the Gunpowder Riverkeeper & Blue Water Baltimore at 9-28-23 public hearing.

[33] Lisa M. Ochsenhirt AquaLaw PLC Attorney on behalf of the Maryland Municipal Stormwater Association (MAMSA).

Comment 34 - "d) Improve community accountability
As noted, the existing industrial stormwater permittees collectively have an abysmal compliance history. More often than not, those facilities' neighbors are the ones who pay the price for this pervasive and continuous state of noncompliance. Additionally, the application of 20SW permit coverage to a specific facility does not require public notice or provide an opportunity for public comment and engagement. The 20SW Permit should therefore, at a minimum, require that information be posted so that these neighbors have basic tools to protect their community. We ask that the 20SW require that every covered facility located in census tracts with an index score of .76 or above on Maryland's EJ Score post a sign that is visible from a public road with the name of the facility, permit number, a description of the purpose of the industrial stormwater permit, and a MDE phone number and email to contact for complaints.
…

Part V.A.2.b	Require every permitted facility located in census tracts with an index score of .76 or above on Maryland's EJ Score to post a sign that is visible from a public road with the name of the facility, permit number, a description of the purpose of the industrial stormwater permit, and a MDE phone number and email to contact for complaints.

"[34]

Comment 35 - "Obtaining a permit and compliance shouldn't be voluntary, this is a must, and there should be consequences for failing to do so. Repeat violators, should not be allowed to continue business as usual.
…
Although reporting possible violations shouldn't be left up to citizens, There should be large signs that are easy to read from the nearest public, road with information on who a citizen should contact at MDE, on an anonymous basis if desired, to report any concerns."[35]

Comment 36 - "And, finally, as a basic step for the community, we would ask that the permit require every covered facility to post a sign, the name of the facility, permit number, a description of the purpose of the industrial stormwater permit, and an MDE phone number and email that folks in that community can contact for complaints, with a commitment by MDE to return those calls within a certain amount of time."[36]

[34] Meg Parish, Environmental Integrity Project Attorney collective comments of Blue Water Baltimore, Chesapeake Bay Foundation, Chesapeake Legal Alliance, the Environmental Integrity Project, Gunpowder Riverkeeper, Potomac Riverkeeper Network, Waterkeepers Chesapeake, ShoreRivers, Nature Forward, Friends of Lower Beaverdam Creek, Rock Creek Conservancy, Maryland League of Conservation Voters, Billy Friebele, Anacostia Riverkeeper, Maryland Conservation Council, and Indivisible Howard County Environmental Action.
[35] Sharon Boies, Columbia, MD
[36] Meg Parish, Environmental Integrity Project attorney representing Potomac Riverkeeper Network and Waterkeepers Chesapeake at 9-28-23 public hearing.

Grouping – Increase Monitoring and/or Benchmarks for All Faciliies

Comment 37 - "We would further ask that in these EJ areas facilities be required to do additional monitoring for pollutants potentially contributing to an impairment unless that the impairment is completely unrelated to stormwater."[37]

Comment 38 - "MDE's 2022 EJ policy and implementation plan acknowledges that national studies show that environmental justice communities bear a disproportionate share of the negative environmental consequences resulting from industrial activities. And, then, in that 2022 EJ policy, MDE has committed to increased compliance in areas disproportionately impacted by health and environmental factors to prevent and reduce burdens on those communities. The 20-SW industrial stormwater permit is an opportunity to do that, and we ask that MDE seize this opportunity and become a national leader on environmental justice.

As my colleagues have noted, the new 20-SW permit's current provisions are insufficient to protect waters and communities in EJ areas from the significant harms caused by industrial stormwater pollution. The new annual compliance monitoring -- or report provision only applies to approximately 40 facilities in these areas and fails to include any substantive monitoring or compliance requirements for the other facilities.

Instead, we would ask that MDE include -- and I'm just going to speak about some of the provisions that we would like to see in this revised permit. Other provisions include the cumulative impacts analyses discussed by my colleagues. One key provision would be enforceable benchmark monitoring for every covered facility in these EJ areas for pH, sediment, total suspended solids, and total organic carbon, without an allowance to discontinue monitoring during the term of the permit and with an accelerated aim process.

This would be a basic step that would bring this permit up to the minimal Clean Water Act required sort of level of the national multisector general permit or MSGP. That permit requires universal benchmark monitoring for all facilities covered under the permit. Here, I know we are only looking at these EJ areas, but particularly in those EJ areas, we need to have that minimum benchmark monitoring. We need to actually know what these facilities are discharging and polluting to our waterways. Taking this basic step would, per that 2022 EJ policy, increase compliance in areas disproportionately impacted by health and environmental factors."[38]

Comment 39 - "..we would like to raise as a concern provisions in Part V.A.2.B, comprehensive site compliance evaluation. The concern there is that provision does not apply to most facilities that are located in environmental justice communities. They do not include substantive monitoring or compliance requirements, and our concern is that this provision will, as a result, be largely ineffective."[39]

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[37] Meg Parish, Environmental Integrity Project attorney representing Potomac Riverkeeper Network and Waterkeepers Chesapeake at 9-28-23 public hearing.
[38] Meg Parish, Environmental Integrity Project attorney representing Potomac Riverkeeper Network and Waterkeepers Chesapeake at 9-28-23 public hearing.
[39] Matt Stegman, Chesapeake Bay Foundation Network attorney at 9-28-23 public hearing.

Comment 40 - "Second, the environmental justice provisions in the final permit fail to include any substantive monitoring or compliance requirements. Right now, MDE has an opportunity to strengthen its environmental justice protections in industrial stormwater pollution permits and to advance the Governor Moore Administration stated commitment to environmental justice. For facilities in census tracts with a score of .76 or above, overburdened communities identified under the Maryland Environmental Justice Screen, this permit should include identification of specific industries and facilities with high pollution impacts, enforceable benchmark monitoring for every covered facility, rather than only some, and requirement of individual permit coverage for facilities that have been in significant and repeated noncompliance within the previous five years. Here, we ask MDE to recognize the importance of environmental justice in Maryland's new industrial stormwater general permit as an essential component of the commitment Maryland has made to environmental justice."[40]

Comment 41 - "a) Enforceable benchmark monitoring for every covered facility for pH, sediment (TSS), total organic carbon (TOC) and other pollutants

One of the key requirements in the Permit is that runoff be controlled using structural and/or non-structural control measures "to minimize onsite erosion and sedimentation, and the resulting discharge of pollutants," and "divert, infiltrate, reuse, contain, or otherwise reduce stormwater runoff, to minimize pollutants in your discharges." Permit III.B.1.b.v-vi. As MDE acknowledges, benchmarks are one of only two ways to determine whether a permittee's stormwater management plan is actually working.

When is a permittee in compliance or non-compliance with the "management of runoff" [requirement] and how is this measured? Compliance with the "management of runoff" condition, like other conditions is site-specific. The operator is required to implement sector-specific best management practices and other mitigation actions that effectively reduce the exposure of stormwater contaminants as well as any migration of contaminants. Exceeding benchmarks or evidence of pollutants in visual monitoring indicates that this "management of runoff" condition has not been met and the implementation of corrective actions (i.e., additional or alternative best management practices) is required. And, if benchmarks and visual monitoring requirements are met, the permittee is in compliance.

Department Response to Comments16 at p. 43-44 (emphasis added). Visual monitoring is inadequate for many stormwater pollutants, including most toxic metals since they do not significantly change the visual appearance of the water. Without benchmarks then, there is no way of enforcing the permit requirements to manage runoff and not to cause or contribute to an exceedance of water quality standards. Federal regulations require that permits include monitoring to "assure compliance with permit limitations." Generally, "an NPDES permit is unlawful if a permittee is not required to effectively monitor its permit compliance." This makes sense - "[e]nforcing compliance with a permit is the key to an effective NPDES program.

In these overburdened EJ areas, ensuring compliance with the "management of runoff" provision is needed in order to, per the Department's EJ Policy, "increase compliance in areas disproportionately impacted by health and environmental factors to prevent and reduce burdens on those communities." To assure compliance with this permit limitation, the

[40] Morgan Taradash, EJ legal fellow, on behalf of the Potomac Riverkeeper Network at 9-28-23 public hearing.

Permit should add quarterly benchmarks for pH, sediment (TSS), total organic carbon (TOC), and any pollutants in the runoff discharging into waters impaired for that pollutant for every permittee in areas with a Maryland EJScore of .76 and above.

Adding these universal quarterly benchmarks in these vulnerable EJ areas would also be a step in partially rectifying one of the Permit's most glaring flaws - that the Permit is weaker than its federal counterpart, EPA's Multi-Sector General Permit (MSGP) industrial stormwater general permit, because the Permit lacks universal benchmarks for pH, sediment (TSS), and total organic carbon (TOC).

We further request that these benchmarks apply throughout the permit term, since they are a key tool needed to "increase compliance in areas disproportionately impacted by health and environmental factors to prevent and reduce burdens on those communities," as MDE's 2022 EJ Policy directs.

…

Part V.A.2.b	Benchmark monitoring for every permitted facility in for pH, sediment (TSS), total organic carbon (TOC) and other pollutants in census tracts with a Maryland EJScore of .76 or above

"[41]

Grouping – Require Individual Permits

Comment 42 - "The Department's Response to Comments document indicates the intent to address environmental justice concerns through the comprehensive site compliance evaluation provision, which requires a limited number of facilities with benchmark monitoring requirements located in environmental justice communities to submit their annual comprehensive site compliance evaluations to the Department. This provision does not require enough of permitted facilities considering Cheverly, Maryland has a Maryland Environmental Justice Screen (EJ Screen) score ranging up to the 74.9th percentile with industrial facilities clustered throughout the Lower Beaverdam Creek watershed. These facilities include Joseph Smith and Sons Scrapyard and the World Recycling Company. Both facilities are sources of pollutants that negatively impact Lower Beaverdam Creek. The World Recycling Company's defunct Cheverly location is currently the subject of a civil complaint filed by the Maryland Attorney General for accumulated solid waste and open dumping contributing to pollution of State waters, including Lower Beaverdam Creek.

Specifically, PCBs were the subject of a 2020 study by the Department to identify sources of PCBs in Lower Beaverdam Creek. Findings from the investigation "suggest" that PCB transport occurs during storm events though suspended sediment as well as during baseflow conditions. Two potential points sources of PCBs were identified, including the Joseph Smith and Sons Recycling facility that is a known source of legacy pollution according to

[41] Meg Parish, Environmental Integrity Project Attorney collective comments of Blue Water Baltimore, Chesapeake Bay Foundation, Chesapeake Legal Alliance, the Environmental Integrity Project, Gunpowder Riverkeeper, Potomac Riverkeeper Network, Waterkeepers Chesapeake, ShoreRivers, Nature Forward, Friends of Lower Beaverdam Creek, Rock Creek Conservancy, Maryland League of Conservation Voters, Billy Friebele, Anacostia Riverkeeper, Maryland Conservation Council, and Indivisible Howard County Environmental Action.

Department studies. Other industrial facilities confirmed to be sources of PCB pollution were the World Recycling Company and the Landover Metro Station . The environmental burden of this legacy pollution must also be considered by the Department when evaluating permit coverage applications and these facilities must be barred from coverage by the general permit.

The Bay Journal reported on U.S. Fish and Wildlife Service research findings confirming Lower Beaverdam Creek as a major source of PCB contamination in the Anacostia River amounting to 75% of the contamination despite representing only about 15% of the river's flow. Specifically, the area of Lower Beaverdam Creek flowing through the Joseph Smith and Sons property contained highly contaminated fish and soil sampling revealed PCBs in 11 places on the premises. Failure to address these upstream sources of pollutants hinder efforts to remediate and restore contaminated land surrounding Lower Beaverdam Creek and polluted runoff will further contribute to poor water quality.

To truly advance environmental justice efforts the Department must bar non-compliant industrial facilities from gaining coverage under the general permit and require them to apply for individual coverage with benchmark monitoring requirements to better protect water quality in the receiving water bodies near the facilities. For example, considering the history of legacy pollution and non-compliance of the Joseph Smith & Son's Scrapyard, the facility should not be authorized for general permit coverage but should instead be required to comply with an individual permit with specific limits for the harmful pollutants known to be discharged from the facility."[42]

Comment 43 - "Specifically to increase compliance, we would ask that the permit's sort of coverage requirements within these EJ areas be narrowed so that individual permit coverage would be required for facilities that have been in significant noncompliance with the previous permit within the last five years. One of the key problems with the industrial stormwater permitting regime in Maryland is the high rate of noncompliance and that the State -- that folks seem to be able to not file their DMRs, to not file their annual reports, to just sort of go on and go on, you know, that have, you know, inadequate SWPPPs and just continue on without any consequences.

Those folks do not -- should not be allowed to be under this general permit anymore. They need their own individual permit with provisions that are tailored to get them into compliance and to protect our waters from their pollution."[43]

Comment 44 - "require individual permit coverage for facilities found to pose a hazard or contribute significant amounts of pollution"[44]

Comment 45 - "I. Environmental Justice and Part V. A. 2.b. Comprehensive Site Compliance Evaluation

The Department's Response to Comments document indicates the intent to address environmental justice concerns through the comprehensive site compliance evaluation

[42] Daniel C. Smith, Friends of Lower Beaverdam Creek President
[43] Meg Parish, Environmental Integrity Project attorney representing Potomac Riverkeeper Network and Waterkeepers Chesapeake at 9-28-23 public hearing.
[44] Alex Villizon with Waterkeepers Chesapeake at 9-28-23 public hearing.

provision, which requires a limited number of facilities with benchmark monitoring requirements located in environmental justice communities to submit their annual comprehensive site compliance evaluations to the Department. This provision does not require enough of permitted facilities considering that my watershed includes large parts of Cheverly, MD (which has a Maryland Environmental Justice Screen (EJ Screen) score of .761) and Bladensburg, MD (with an EJ score of .99). Industrial facilities are clustered throughout the watershed. As property has a low economic value and is in close proximity to the District and major transportation arteries, the property is much sought after by industrial properties seeking undervalued property upon which to locate their operations. These facilities seldom become good neighbors to our adjacent residential areas. During their development activities they often seek and receive relief from certain permit requirements to the detriment of our natural resources and our health.

To truly advance environmental justice efforts the Department must bar non-compliant industrial facilities from gaining coverage under the general permit and require them to apply for individual coverage with benchmark monitoring requirements to better protect water quality in the receiving water bodies near the facilities. For example, considering the history of legacy pollution and noncompliance of several facilities in Prince George's County, industrial operations should not be authorized for general permit coverage but should instead be required to comply with an individual permit with specific limits for the harmful pollutants known to be discharged from the facility. The Department must consider the cumulative impacts upon communities before allowing permittees to discharge pursuant to the 20-SW permit."[45]

Comment 46 - "…MDE can then use this information in the upcoming 2026 industrial stormwater general permit to do the following:

a) Exclude facilities found to pose a hazard or contribute significant amounts of pollution from coverage under the industrial stormwater general permit."[46]

Comment 47 - "MDE should revise its rule to require that polluting industries explain how their stormwater will not contribute to the pollution load that these communities already face."[47]

Grouping – Require More Frequent Monitoring and Reporting

Comment 48 - "I think that if we're looking at a more protective permit, there's certainly an opportunity for MDE to require the following. And I think, you know, starting with substantive enhanced monitoring that increases compliance as directed by MDE's 2022 EJ policy, is relevant with this matter."[48]

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[45] Marian Dombroski for the Friends of Quincy Run Watershed.
[46] Meg Parish, Environmental Integrity Project Attorney collective comments of Blue Water Baltimore, Chesapeake Bay Foundation, Chesapeake Legal Alliance, the Environmental Integrity Project, Gunpowder Riverkeeper, Potomac Riverkeeper Network, Waterkeepers Chesapeake, ShoreRivers, Nature Forward, Friends of Lower Beaverdam Creek, Rock Creek Conservancy, Maryland League of Conservation Voters, Billy Friebele, Anacostia Riverkeeper, Maryland Conservation Council, and Indivisible Howard County Environmental Action.
[47] Kathleen Gagnon, UMD's Francis King Carey School of Law student attorney at 9-28-23 public hearing.
[48] Theaux Le Gardeur, the Gunpowder Riverkeeper at 9-28-23 public hearing.

Comment 49 - "So monitoring, yes. You know, if you don't know, you can't react. You can only be in a reactive stance, not in a proactive stance."[49]

Comment 50 - "II. Issues with the 20-SW General Permit

Part V.A.2.b. of the 20-SW general permit requires facilities with an EJ Score of 0.76 or greater that are required to report Benchmarks to submit annual Comprehensive Site Compliance Evaluations using NetDMR. This provision was added to address EJ concerns, but the provision is insufficient for three reasons analyzed in this comment:

…

3. The EJ provision lacks strict monitoring and reporting requirements that would adequately protect EJ communities, especially considering historical issues with noncompliance and lax enforcement.

…

The 20-SW general permit is insufficient to protect EJ communities considering the legacy of noncompliance and lax enforcement in Maryland. MDE should strengthen the permit's monitoring and reporting requirements, as well as its enforcement protocols, to ensure compliance with the 20-SW permit.

In 2022, the Chesapeake Accountability Project published a report finding "rampant noncompliance with Maryland's industrial stormwater general permit." (https://mdewin64.mde.state.md.us/EJ/.) The organization reviewed inspections conducted by the Water and Science Administration's (WSA) between January 1, 2017, and December 1, 2020, and found that out of 1,979 inspections, only 24 percent of the inspections found the industrial facility to be in compliance. Additionally, nearly half of the facilities were repeat offenders: 55 facilities were "found to be in noncompliance five or more times in the three-year timeframe," and 185 inspections required "corrective action" or additional investigation. Despite data on noncompliance, the study found that formal enforcement actions against the industrial stormwater permitted facilities were rare: WSA performed only 14 formal enforcement actions against the delinquent facilities during the three year period.

This report raises EJ concerns because two out of the three counties with the largest concentration of repeat offenders were Baltimore County, and Baltimore City; two counties with the highest percentage of Black residents in the State. If MDE is not strengthening reporting and monitoring requirements, and is not improving enforcement, the State is failing in its commitment to review and respond to existing inequities in association with facilities in EJ communities. (See MARYLAND DEP'T OF ENV'T, ENVIRONMENTAL JUSTICE AND POLICY IMPLEMENTATION PLAN (2022), https://mde.maryland.gov/Environmental_Justice/PublishingImages/Pages/Landing%20Page/Environmental%20Justice%20Policy%20and%20Implementation%20Plan%202022.pdf.) To avoid noncompliance in DJ communities, MDE should require facilities in or adjacent to EJ communities to regularly monitor stormwater discharges and submit frequent, third-party verified reports to the Agency.

[49] Theaux Le Gardeur, the Gunpowder Riverkeeper at 9-28-23 public hearing.

Below is an example of an EJ community that experiences the harmful effects of industrial stormwater discharge and would benefit if MDE strengthened the 20-SW general permit's EJ provision.

…

(4) Require all permitted facilities to conduct frequent monitoring and reporting to ensure compliance with the permit."[50]

4. COMMENT CATEGORY – Cumulative Impacts.

Comment 51 - "I have been researching environmental justice issues in Baltimore, specifically cumulative impacts in Curtis Bay. According to Maryland's EJ screening tool, Curtis Bay has an EJScore in the hundredth percentile, is in the 75th to 100th percentile for overburdened communities, and the same percentile for overburdened pollution exposure. The same neighborhood has water bodies that are contaminated with PCBs, pesticides, and metals. Industrial stormwater contributes to the pollution these communities are exposed to, and the agency must revise its rule to account for the adverse cumulative impacts these pollution sources have on EJ communities, including Curtis Bay."[51]

Comment 52 - "What we would recommend is that MDE complete a cumulative impacts analysis to determine if facilities in vulnerable communities pose a public health hazard and include a mechanism for the denial of facility coverage and modifications or increase facility monitoring."[52]

Comment 53 - "In an analysis conducted by the Center for Progressive Reform and Environmental Integrity Project, it was found that many industrial facilities covered under the current permit are clustered in and around low- income neighborhoods. In fact, in Baltimore City, 69 percent of facilities were in overburdened tracts.

This disproportionality was further highlighted by the EPA Environmental Justice Data Screening tool as having an extremely elevated risk of exposure to environmental threats. This burden that has been placed on environmental justice communities is no coincidence but the result of structural racism and discriminatory housing and zoning practices. The culmination of injustices has left these communities facing health disparities, such as significantly higher rates of asthma, cancer, and heart attacks compared to the State on average.

Respectfully, the current permit's environmental justice provisions fail to address the gravity of the environmental justice harms caused by industrial stormwater pollution. Of the approximately 40 facilities identified by MDE, the final permit's annual comprehensive site compliance evaluation provision only applies to a minority of the facilities in census tracts with a score of .76 or above on Maryland's EJSCREEN and fails to include any substantive monitoring or compliance requirements.

We ask that in order for environmental justice communities to be protected you require this permit to include additional provisions for area -- for facilities in areas with an index score

[50] Kathleen Gagnon, UMD's Francis King Carey School of Law student attorney.
[51] Kathleen Gagnon, UMD's Francis King Carey School of Law student attorney at 9-28-23 public hearing.
[52] Matt Stegman, Chesapeake Bay Foundation Network attorney at 9-28-23 public hearing.

of .76 or above on Maryland's EJSCREEN. A major step towards this would be requiring a cumulative impact analysis to determine whether stormwater from industrial facilities in these communities, including unpermitted facilities, pose a public health hazard to vulnerable Marylanders and identifies specific industries of facilities with high pollution impacts before any authorizations of coverage are granted to facilities in census tracts with a score of .76 or above on Maryland's EJSCREEN."[53]

Comment 54 - "We've been collecting water quality readings from the streams and rivers in the Patapsco and Back River watersheds for over 10 years at this point. One of the measurements that we take of water health to see how sick or healthy our streams are is conductivity-specific conductance. It's a measurement of how much stuff is in the water, for a lack of a better word.

So a lot of people think of it as saltiness, how much salt is in the water. And, typically, that is a really good measurement. Conductivitiy can help me measure how much road salt has been applied and how that's impacting the local waterways, but it's not just road salt. It's in everything, everything that contributes to that electrical conductance in the water, so that's why I say "stuff." It's salts in the chemical term of the word, not just NaCl.

So in a normal ecosystem, when it rains, the conductivity of a stream decreases, it drops, it plummets. And that's because a lot of fresh rainwater is coming in, it's flushing out the contaminants from the stream. If you use like an automated sampler -- by the way, I'm using all 10 minutes -- so if you use an automated sampler, you can actually trigger it to start collecting a storm sample based on the conductivity of the sample. You know, it's very predictable that conductivity would drop when it starts raining.

In Baltimore, it's the exact opposite. In Baltimore, when it starts raining, the conductivity shoots up because everything on land is getting dragged into the stream. It's like that in most urban centers, I imagine. You know, I don't do water quality monitoring in these other areas, but I imagine it's that same way.

And, so, for years and years, we've been trying to kind of grapple with this issue of, well, how do we heal our stream, because when we score the health of our streams, conductivity consistently drags down the score. And conductivity is important because that governs what can live in your steam. So how do we fix that issue?

And some folks are saying, well, you know, it's salt intrusion into the groundwater, and that's why we're seeing high conductivity levels. Not just when it rains, but even when it hasn't rained in Baltimore, we see sky- high conductivity levels. But it's not just the salt; it's from the industrial sites, too. And this is something that we actually can get a handle on. This is something that we can affect, that we can help heal because we are slowing poisoning our streams."[54]

Comment 55 - "II. Issues with the 20-SW General Permit

Part V.A.2.b. of the 20-SW general permit requires facilities with an EJ Score of 0.76 or greater that are required to report Benchmarks to submit annual Comprehensive Site Compliance

[53] Alex Villizon with Waterkeepers Chesapeake at 9-28-23 public hearing.
[54] Alice Volpita, Baltimore Harbor Waterkeeper with Blue Water Baltimore at 9-28-23 public hearing.

Evaluations using NetDMR. This provision was added to address EJ concerns, but the provision is insufficient for three reasons analyzed in this comment:

…

2. The EJ provision does not account for cumulative impacts experienced by EJ communities.

….

In addition to widening the scope of the Permit's EJ provision, MDE should require facilities to include a cumulative impact analysis in the permit application process because cumulative impacts cause communities to become overburdened. Cumulative impacts can be defined as: Two or more individual effects of pollutants or emissions which together are considerable (5 "Considerable" should be defined as (a) physical changes or effects caused by a project that can contribute incrementally to cumulative effects and are significant, even if individual changes resulting from a project are limited; or (b) imminent and substantial endangerment to human health and the environment. See University of Maryland Environmental Law Clinic, Whitepaper on Maryland Department of Environment's Air Regulations: Recommendations for Updates to Fugitive Dust, Air Toxics, and Transparency Regulations (2023), at Appendix A.) or which compound or increase other environmental impacts.

a. The individual effects may result from a single project or a number of separate projects.

b. The cumulative impact from several projects is the [pollution or] emissions result when added to other closely related past, present, and reasonably foreseeable or probable future projects.

Requiring a cumulative impact analysis will ensure permit approvals do not happen in a vacuum. While one facility with a 20-SW permit in a community may not cause that community to be overburdened, several 20-SW permitted facilities could pose problems for residents of EJ communities. Further, MDE should consider requiring a facility to apply for an individual industrial stormwater discharge permit, depending on the result of the cumulative impact analysis. However, since facilities in Maryland often fail to monitor and report on stormwater discharges, as described below, MDE should consider requiring a third-party to conduct these analyses.

…

Strengthening the 20-SW general permit's EJ provision would align with Maryland's EJ policy and help protect EJ communities. MDE should strengthen the Permit by:

…

(2) Require permit applicants to determine whether the industrial stormwater discharge will disproportionately harm the surrounding community.

(3) Require permit applicants to undertake a cumulative impact analysis to determine whether the industrial stormwater will contribute to such impacts and if it will, require that the facility seek an individual stormwater discharge permit."[55]

Comment 56 - "I. Environmental Justice and Part V. A. 2.b. Comprehensive Site Compliance Evaluation

…

In addition to PCBs, activities at multiple locations along Lower Beaverdam Creek and the Anacostia River and its tributaries have resulted in the release of hazardous substances into

[55] Kathleen Gagnon, UMD's Francis King Carey School of Law student attorney.

the assessment area, including polycyclic aromatic hydrocarbons (PAHs), pesticides, metals, volatile organic compounds (VOCs), and chlorinated volatile organic compounds (CVOCs). Further compounding Cheverly's environmental issues are effects from air pollution from industrial facilities and activities that contribute to degraded environmental conditions and public health issues. The Cheverly area, along with Curtis Bay, are the only two areas in the state where the Department and the University of Maryland are cooperating on a new targeted inspection initiative of local air monitoring to understand and reduce air pollution.

Considering the numerous environmental issues outlined above, the Department must consider the cumulative impacts upon communities before allowing permittees to discharge pursuant to the 20-SW permit. In fact, the Department's 2022 Environmental Justice Policy and Implementation Plan states that to implement the policy the Department will "review and respond to existing inequities associated with facilities in communities with EJ concerns" and "increase compliance in areas disproportionately impacted by health and environmental factors to prevent and reduce burdens on those communities. ""[56]

Comment 57 - "2) Conduct a Cumulative Impacts Analysis

In addition to these requests for changes to Part V.A.2.b of the 20SW Permit, we ask that the Department take steps now to ensure that, when drafting the 2026 industrial stormwater general permit, the permit is not contributing to disproportionate, significant cumulative impacts on already overburdened communities.

Cumulative impacts are the totality of exposures to combinations of chemical and non-chemical stressors and their effects on community health, well-being, and quality of life outcomes. In already overburdened communities like areas with a Maryland EJScore of .76 or above, disproportionate impacts can arise from unequal environmental conditions and exposure to multiple stressors. A key element of any environmental justice work is the consideration of cumulative impacts. Under the 2022 Department EJ Policy, the Department has stated that it will "assess the availability and use of tools that could be used to assess cumulative risks of MDE permitting actions to factor into future permitting decisions." The 20SW permitting process is precisely the tool to be used to reduce cumulative impacts in the very communities whose health have suffered from unmitigated and untreated urban toxic contaminants for decades.

To assess such cumulative risks, we ask that the Department conduct a cumulative impacts analysis to determine whether stormwater from industrial facilities in these communities, including unpermitted facilities, pose a public health hazard to vulnerable Marylanders and identify specific industries or facilities with high pollution impacts. …."[57]

Comment 58 - "But we can't advocate for swimmable, fishable waterways the way that we would like to. We can't recommend that people, for example, go for a swim in the Harbor right now because how could we, in good conscience, do that at this moment in time?

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[56] Daniel C. Smith, Friends of Lower Beaverdam Creek President

[57] Meg Parish, Environmental Integrity Project Attorney collective comments of Blue Water Baltimore, Chesapeake Bay Foundation, Chesapeake Legal Alliance, the Environmental Integrity Project, Gunpowder Riverkeeper, Potomac Riverkeeper Network, Waterkeepers Chesapeake, ShoreRivers, Nature Forward, Friends of Lower Beaverdam Creek, Rock Creek Conservancy, Maryland League of Conservation Voters, Billy Friebele, Anacostia Riverkeeper, Maryland Conservation Council, and Indivisible Howard County Environmental Action.

I want to be able to get there, but how can we get there right now when we know that there's over 80,000 known chemicals that are being dragged into our local waterways through this polluted stormwater runoff? And that's everything -- you know, that's all the contaminants of emerging concern that are kind of coming onto our radars now for the first time. So it's beyond the lead and the cadmium and the zinc and the things that are typically governed in these permits. It's everything that we don't even know about yet that are going to cause cancer in our children and in our grandchildren that are being dragged into our waterways slowly, poisoning those streams and slowly poisoning our children."[58]

Comment 59 - "As a citizen I have serious concerns that there is only 1 general permit for up to 1500 industrial facilities, but don't they each produce a unique set of pollutants in their stormwater runoff? Some of these pollutants are extremely toxic.
Shouldn't each facility be looked at as its own unique micro watershed?
I agree that each facility must have its own SWPPP and that plan should include that 20 percent of the facility site be converted to permeable surface, but the plan must also be designed to install BMP's that collect all stormwater runoff on site, for testing and proper mitigation of toxic and harmful pollutants before it is released off site and especially into bodies of water. SWPPP's should include frequent testing and visual monitoring to determine quantitative and qualitative success.
The plan should also include a Cumulative Impacts Analysis.
…
Unfortunately, many of these facilities are clustered near each other, and certain watersheds, and communities, have more exposure to a variety of chemicals and pollutants than others. Many of these communities have become urban heat islands, they experience air, light, and sound pollution. They shouldn't have to deal with the impacts of polluted water too."[59]

Comment 60 - "2. Residents of Curtis Bay experience cumulative impacts of industrial pollution.
Increased health risks in Curtis Bay can be traced to cumulative environmental impacts from the point source discharge facilities, significant wastewater treatment plants, and air emission facilities that surround the neighborhood. For example, there are six air emission facilities within a one-mile radius of the center of Curtis Bay that emit carbon monoxide, nitrous oxide, particulate matter, volatile organic compounds, and sulfur dioxide. 14 Due to high levels of air pollution, residents of Curtis Bay report experiencing eye-watering odors, cancer, and respiratory illnesses.15 The chart below illustrate the neighborhood's EJ Score and the characteristics associated with its status as an overburdened sensitive population.

[58] Alice Volpita, Baltimore Harbor Waterkeeper with Blue Water Baltimore at 9-28-23 public hearing.
[59] Sharon Boies, Columbia, MD

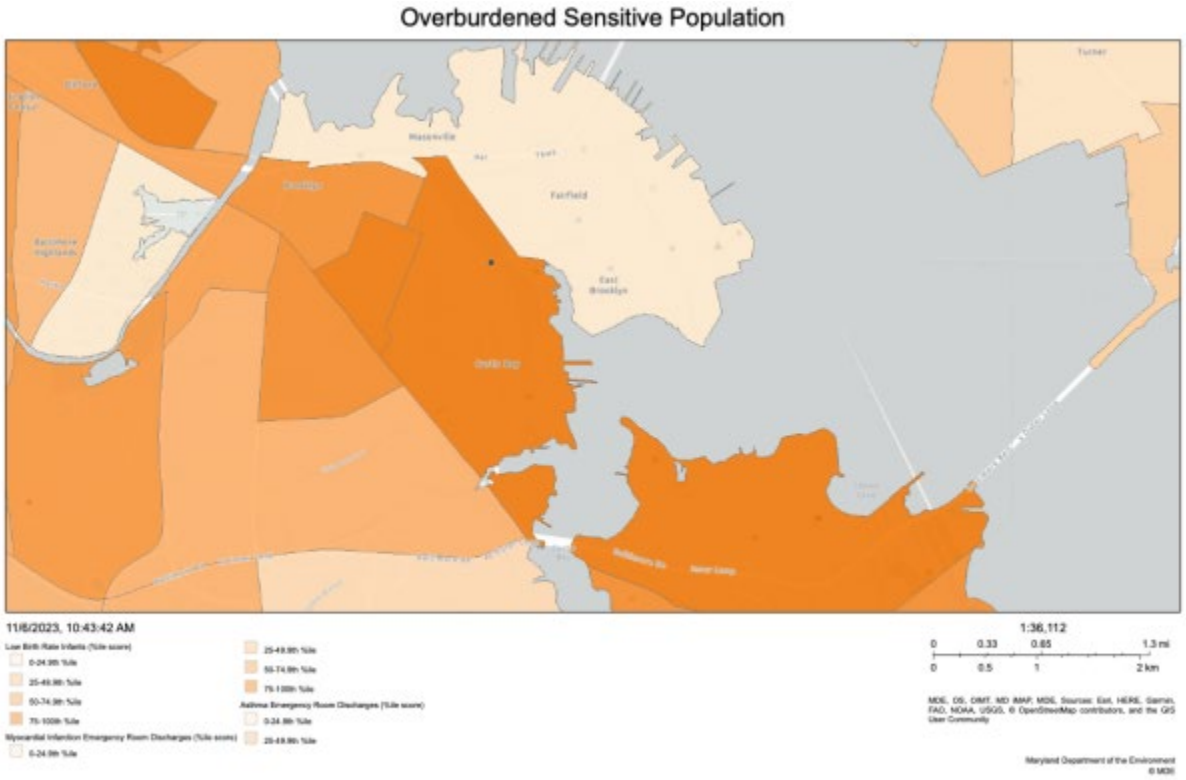

Figure 2. Source: EJ Screening Tool

MDE should strengthen the 20-SW general permit to reduce the cumulative environmental impacts faced by residents of Curtis Bay. Not only do Curtis Bay residents experience high rates of air pollution, but the neighborhood is also surrounded by impaired waters that affect the health of residents, wildlife, and the environment. These include the Baltimore Harbor, the Patapsco River, Curtis Creek, and Cabin Branch Creek. See Figure 4, below. According to permit documents for facilities discharging into these waters, the waters are impaired in the following categories: biological, metals, nutrients, PCBs, pesticides, sediments, toxics, and trash. More specifically, the streams and creeks that run through Curtis Bay lack riparian buffers and contain sulfates, chlorides, phosphorus, nitrogen, PCBs, chlordane, and sediment. (https://mdewin64.mde.state.md.us/WSA/IR-TMDL/index.html. Impaired waters affect the local fish populations and people who rely on fish for recreation and/or sustenance. MDE does not have data on fish in Curtis Creek or Cabin Branch Creek but data from the Patapsco and Baltimore Harbor show health advisories for American Eel, Blue Crab, Brown Bullhead, Channel Catfish, Large and Smallmouth Bass, Spot, Sunfish, White Perch, and White Catfish for containing PCBs. https://mdewin64.mde.state.md.us/EJ/). See below for a map of the impaired waters and the area's high concentration of wastewater facilities (According to MDE's portal for wastewater permits, 32 facilities within the 21226 area code have either applied or attained the general permit: US Coast Guard Yard; Curtis Bay Energy; Beltsville Auto Recyclers; Praxair Welding Gas and Supply Store; Key Recycling, LLCM; Baltimore City Composting/Veolia Water North America-Central, LLC; Ready Mix Concrete of Maryland, LLC; USALCO Baltimore Plant, LLC; Cianbro Corporation, Morgan's Wharf; CSX Transportation Inc., Curtis Bay Piers; Eastalco Aluminum Company, Hawkins Point Pier; FedEx Freight BMM; Fort

Armistead Road, Lot 15 Landfill; For Smallwood Road Complex; George's Welding Service Inc.; Greenwood Motorlines dba R&L Carriers; Hawkins Point Hazardous Waste Landfill; Kaufman Products, Inc.; Kemira Water Solutions, Inc., Baltimore Plant; Linde PLC; Liquid Transfer Terminals; LKQ Pick Your Part (1207); McLean Contracting Company Baltimore Yard; Old Dominion Freight Line, Inc.; Petroleum Management, Inc.; PCS Sales, Inc.; Quarantine Road Municipal Landfill; Raven Power Fort Smallwood, LLC; Republic Services, Baltimore Processing Center; WPN Recycling Company; United Road Services; and Triumvitrate Environmental (Baltimore, LLC).)

Figure 3. Source: WSA's interactive map on Water Quality Assessments and TMDLs (impaired waters appear in red)

Figure 4. Source: MDE's Wastewater Discharge Facilities Map (illustrating wastewater plants in and around Curtis Bay).

If MDE required cumulative impact assessments in the permit application process, including consideration of past, present, and future effects of the facility, many of these facilities would require individual permits. However, if MDE does not require these facilities to properly monitor and report on discharges, EJ communities will continue to be overburdened the disproportionate and cumulative impacts of industrial stormwater pollution."[60]

Comment 61 - "…c) Deny general permit coverage of facilities due to cumulative impacts. In sum, if the Department makes the changes described above, the 20SW Permit can be a key tool in implementing the Department's 2022 EJ Policy and federal equal protection requirements. As it currently stands, the Permit does little or nothing to advance environmental justice, in contravention of the Department's 2022 EJ Policy."[61]

Comment 62 - "deny general permit coverage of facilities or modifications due to cumulative impacts."[62]

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[60] Kathleen Gagnon, UMD's Francis King Carey School of Law student attorney.
[61] Meg Parish, Environmental Integrity Project Attorney collective comments of Blue Water Baltimore, Chesapeake Bay Foundation, Chesapeake Legal Alliance, the Environmental Integrity Project, Gunpowder Riverkeeper, Potomac Riverkeeper Network, Waterkeepers Chesapeake, ShoreRivers, Nature Forward, Friends of Lower Beaverdam Creek, Rock Creek Conservancy, Maryland League of Conservation Voters, Billy Friebele, Anacostia Riverkeeper, Maryland Conservation Council, and Indivisible Howard County Environmental Action.
[62] Alex Villizon with Waterkeepers Chesapeake at 9-28-23 public hearing.

Comment 63 - "(5) Require facilities to seek MDE's approval of their monitoring plans and reports."[63]

5. COMMENT CATEGORY – Climate Change Concerns.

Comment 64 - "Regarding the other sections re-opened on limited remand, Comprehensive Site Compliance Evaluation – Part V.A.2.b and Stormwater Pollution Prevention Plan (SWPPP) Requirements – Part III.C, if anything, the process governed by those sections should be simplified and further streamlined. Any additional changes to the permits based on comments for those two sections would re-open the permit and subject it to further public notice for comment, causing yet further delay in the 20-SW finalization."[64]

Comment 65 - "As it relates to the SWPPP, certainly you've heard comments today relating to factoring climate change, including enhanced environmental site design. Most people consider that swales, right? It's not hard, but it works. But for the Department to withdraw the impervious surface reduction requirement, to me, is not appropriate, not protective, not moving in a protective stance."[65]

Grouping – Incorporate More Recent Rainfall Data

Comment 66 - "Maryland has a unique opportunity to combat climate change while simultaneously protecting some of our most vulnerable communities. The ever-increasing issue of industrial stormwater pollution has been driven by increased frequency and intensity of rainfall and storms, both the results of climate change. MDE can use this permit reopening as an opportunity to incorporate more recent rainfall data in order to improve stormwater volume controls to the standard required to protect environmental justice communities."[66]

Comment 67 - "III. Climate Change and Part III. C. Stormwater Pollution Prevention Plan (SWPPP) Requirements
In the 35 years I have lived in Cheverly and worked in Bladensburg, multiple industrial facilities have moved into the area including facilities that have expanded operations or built entirely new facilities in the 100-year floodplain. As storm events continue to occur more often and the amount of rainfall increases, it is essential that industrial facilities in areas such as mine be required to implement on-site stormwater management practices capable of controlling the increased amount of industrial runoff flowing into our tributaries and the Anacostia, less than 1 mile away. Stormwater runoff is the biggest threat to stream health considering that 32% of my watershed is comprised of impervious surfaces. according to the Department's Land Restoration Program.

[63] Kathleen Gagnon, UMD's Francis King Carey School of Law student attorney.
[64] Rich & Henderson, P.C. ("R&H") Comments on the Limited Remand of the 20-SW.
[65] Theaux Le Gardeur, the Gunpowder Riverkeeper at 9-28-23 public hearing.
[66] Alex Villizon with Waterkeepers Chesapeake at 9-28-23 public hearing.

The Department must require permittees to implement best management practices that will adequately control the increased amounts of rainfall of today's storms. I have seen excessive runoff from nearby industrial sites resulting from inadequate stormwater controls and lack of green infrastructure or other features that would ameliorate the effects of polluted runoff. As storm events continue to occur more often and the amount of rainfall increases, it is essential that industrial facilities in areas such as Cheverly and Bladensburg be required to implement more on-site stormwater management practices to control the amount of industrial runoff into Quincy Run and adjacent watersheds.

Friends of Quincy Run Watershed urges the Department to use this limited remand to address the above problems with the 20-SW Permit and improve water quality throughout the state, particularly for vulnerable communities overburdened by pollution from industrial facilities and other numerous sources. Thank you for the opportunity to comment and we hope our feedback assists the Department in incorporating meaningful revisions into the Permit.

Our County and our state have invested heavily in projects to reduce pollution generated by storm water. FQRW and FLBC have received grants from storm water fees to implement projects and are mindful of the needs for good design, maintenance and monitoring."[67]

Comment 68 - "The permit does not account for a rapidly changing climate because it uses outdated information that does not reflect the intensity, frequency, and duration of today's storms. MDE should provide more specific guidance by updating its stormwater manual using current data to account for increased precipitation.

Outdated Standards and Failure to Address Climate Change: The permit fails to reflect the current water quality standards needed to protect Maryland waters. Additionally, it disregards the impact of climate change, relying on outdated precipitation data that does not consider the increasing frequency and intensity of storms.

The current permit provision does not provide MDE guidance to permittees concerning increased precipitation as a result of climate change. MDE should provide more specific guidance by updating its stormwater manual using current data to account for increased precipitation.

The rules should be based on up-to-date rainfall and other climate data. Older data doesn't account for the new reality of more and heavier rains. MDE should provide more specific guidance by updating its stormwater manual using current data to account for increased precipitation.

The new permit must account for a rapidly changing climate, including increased intensity, frequency, and duration of today's storms. MDE should provide more specific guidance by updating its stormwater manual using current data to account for increased precipitation.

Climate Change Uncertainty: The current permit lacks guidance from MDE to permittees regarding the impacts of increased precipitation resulting from climate change. This uncertainty could have serious implications for the well-being of communities throughout Maryland and the health of the Chesapeake Bay.

The permit must be comprehensive and effective and take into consideration in our climate change environment. changes due to global warming."[68]

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[67] Marian Dombroski for the Friends of Quincy Run Watershed.

[68] Compilation of comments from 599 emailed comments received during the comment period.

Comment 69 - "C. Stormwater Pollution Prevention Plan (SWPPP) Requirements (Part III.C) 20-SW requires that facilities "keep their SWPPP up-to-date throughout their permit coverage, such as making revisions and improvements to their stormwater management program based on new information and experiences with major storm events." MDE added this requirement between Tentative and Final Determinations to address climate change ("The permit requires Stormwater Pollution Prevention Plan (SWPPP) updates based on changes in climate (new information and experiences with major storm events).") Response to Comments, p. 4). Commenters below made numerous suggestions for additions to 20-SW to address climate change. For example, one commenter noted that "it should go without saying that stormwater BMPs must be designed to accommodate the storms of the next five years, not the storms of twenty years ago." Another commented that "A reasonable consideration of climate change involves using, or requiring the use of, updated and climate-informed precipitation data, water quality information, technology, and stormwater management methods, among other practices." MAMSA supports MDE taking thoughtful and careful steps to adopt updated precipitation data and to reconsider whether the current stormwater design standards are adequate given more frequent and extreme storm events. In addition to the Chesapeake Bay work referenced in MDE's Response to Comments, MDE is in the process of reviewing the State's current stormwater regulations with a Stakeholder Consultation Group (SCG). MAMSA is pleased to be serving as a Member of the SCG for A-StoRM (Advancing Stormwater Resiliency in Maryland). MAMSA suggests that we allow MDE and the SCG to consider and resolve these important climate-related questions before adding any new requirements to 20-SW."[69]

Comment 70 - "I would like to now specifically address some concerns with Permit Provision Part 3C, the SWPPP requirements. One issue that we have concern with, the final permit does not account for rapidly changing climate because it relies upon outdated information that is not reflective of the intensity, frequency, and duration of today's storms. We would recommend that MDE update the stormwater design manual using new rainfall data from the MidAtlantic Regional Integrated Science and Assessments tool. This data was released in 2002 [sic] following the close of the initial public comment period."[70]

Comment 71 - "II. The Permit Must Incorporate Updated Rainfall Data that Adequately Accounts for Climate Change and Provide Guidance to Permittees on Required SWPPP Updates (Part III.C.)

As discussed further below, all relevant data show that climate change is driving more intense and frequent storm events throughout the state. The 20SW permit fails to require permittees to manage the higher volumes of stormwater resulting from storms occurring today. This permit re-opening is an opportunity for the Department to use more recent rainfall data than what the current permit requirements are based upon to update the stormwater volume controls permittees must comply with pursuant to the Stormwater Design Manual. The Department also has an opportunity to better address environmental justice concerns in areas

[69] Lisa M. Ochsenhirt AquaLaw PLC Attorney on behalf of the Maryland Municipal Stormwater Association (MAMSA).
[70] Matt Stegman, Chesapeake Bay Foundation Network attorney at 9-28-23 public hearing.

with multiple industrial facilities by assessing the impact of multiple sources of pollutants before granting permit coverage.

Scientists have demonstrated that for every 1 degree C of temperature increase, the atmosphere holds 7% more moisture that, in turn, falls as more intense precipitation. A stormwater permit that is protective of human health and safety, as well as water quality standards, must reflect this reality and not assume what has worked in the past will continue to work into the future. Indeed, the National Oceanic and Atmospheric Administration ("NOAA") and academic partners throughout the Mid-Atlantic partnered with the RAND corporation to update the region's period of record to include some of the largest storm events and predict climate-fueled increases. Although the final deliverables associated with this effort were concurrent with the issuance of the 20SW permit, this limited remand gives the Department the opportunity to update the permit with this vital information.

The Mid-Atlantic Regional Integrated Sciences and Assessments ("MARISA") program was established by NOAA in September 2016. MARISA supports integrated, flexible processes for building adaptive capacity to climate variability and change in diverse Mid-Atlantic regional and subregional settings. Intensity, duration, and frequency ("IDF") curves that are commonly used in engineering practice, specifically NOAA's Atlas 14, are based on historical precipitation observations and do not account for recent and projected future changes in the region's climate. MARISA's Intensity, Duration and Frequency curve tool (hereafter referred to as "the IDF curve tool") provides users with change factors (e.g., a 20 percent increase) that could be used to scale design storm depths from Atlas 14 to account for future climate change.

The 20SW permit provision directing permittees to update their Stormwater Pollution Prevention Plans ("SWPPPs") based on new information and experiences with major storm events without any guidance from the Department will lead to inadequate stormwater control measures and result in large amounts of stormwater runoff into local waters. MARISA includes a suite of data tools the Department must utilize to update the stormwater design manual applicable to the 20SW permit, and other permits like the Municipal Separate Storm Sewer System (MS4), and provide recommendations to covered facilities on how to incorporate existing and reasonably expected future conditions into their SWPPPs.

The 20SW permit does not account for a rapidly changing climate because it relies upon outdated information that is not reflective of the intensity, frequency, and duration of today's storms. The Department must update the stormwater design manual using new rainfall data from the MARISA IDF curve tool that was released in 2022 following the close of the initial public comment period. Following the update, the Department must mandate compliance with the updated stormwater design manual requiring the minimum Environmental Site Design Volume to be designed for the 2-year, 24-hour storm and adjusted to MARISA's 15% projected increase to create a standard of 3.7 inches. The 20SW permit must also include a link or reference to the volume requirements and specify that the facilities' identified best management practices must be able to handle the designated volume of stormwater.

…

Part III.C	Include a link or reference to the stormwater design manual's updated volume requirements (designed for the 2-year, 24-hour storm and adjusted to MARISA's 15% projected increase for a standard of 3.7 inches) and specify that the facilities' identified best management practices must be able to handle the designated volume of stormwater.

"[71]

Comment 72 - "Another concern, the permit provision directing permitees to update their SWPPPs based on new information and experiences with major storm events doesn't contain any guidance from the Department. We feel that that will lead to inadequate stormwater control measures and result in large amounts of stormwater runoff into local waters.

What we would recommend here is that MDE mandate compliance with an updated design manual requiring the minimum environmental site design volume to be designed to the two-year, 24-hour storm and adjusted to MARISA's 15 percent projected increase to create a standard of 3.7 inches.

MDE should include a link or reference to the volume requirements in the manual, specify that the facilities identify best management practices, must be able to handle that designated volume of stormwater, and any exceedance of the volume requirements must trigger immediate change to the SWPPP to accommodate for that increase in volume."[72]

Grouping – Requiring SWPPP Updates Based on Recent Floods

Comment 73 - "Increasing rainfall due to climate change is supercharging the pollution coming off of industrial sites, leading to serious health impacts on nearby communities. Too often, clusters of industrial facilities are located in low-income communities of color, unjustly over burdening them with pollution. Right now, Maryland has a new opportunity to create a permit that protects our waterways and some of our most vulnerable community members."[73]

Comment 74 - "Site conditions and inadequate stormwater controls contribute to local flooding and extensive damage to our receiving waters. Quincy Run and Lower Beaver Dam Creek are both flashy urban streams and can raise five feet in half an hour in a pretty small storm event. It angers me that my local community members that -- and local community members that Quincy Run and Lower Beaver Dam Creek fail to meet standards for human contact 100 percent of the times monitored. We ask that these -- and these are point blank. These have direct confluence with the Anacostia River. We ask that the vulnerable communities, like those in my watershed,

[71] Meg Parish, Environmental Integrity Project Attorney collective comments of Blue Water Baltimore, Chesapeake Bay Foundation, Chesapeake Legal Alliance, the Environmental Integrity Project, Gunpowder Riverkeeper, Potomac Riverkeeper Network, Waterkeepers Chesapeake, ShoreRivers, Nature Forward, Friends of Lower Beaverdam Creek, Rock Creek Conservancy, Maryland League of Conservation Voters, Billy Friebele, Anacostia Riverkeeper, Maryland Conservation Council, and Indivisible Howard County Environmental Action.
[72] Matt Stegman, Chesapeake Bay Foundation Network attorney at 9-28-23 public hearing.
[73] Compilation of comments from 599 emailed comments received during the comment period.

receive relief from the cumulative impacts of water pollution. Our efforts are thwarted and dwarfed by the scale of the activities in our industrial areas. Our rivers and streams are irresistible, especially as our summer temperatures increase. Our forested areas and waterways become essential areas of refuge. In DC and my County, they have to have cooling centers, you know, so people don't die of the heat. The kids could be -- and are -- using the rivers already."[74]

Comment 75 - "Lastly, any exceedance of the volume requirements must trigger an immediate change in the SWPPP to accommodate the increase in volume.

Part III.C	Add a requirement to the Permit that any exceedance of the volume requirements must trigger an immediate change in the SWPPP to accommodate the increase in volume.

"[75]

Comment 76 - "As a general climate-related concern, we would ask that MDE address stormwater outfalls that are near tidal elevations where the high-tide events can exacerbate site flooding."[76]

Comment 77 - "Additionally, the Department must address stormwater outfalls that are near tidal elevations where high tide events could exacerbate site flooding. Some systems depend on gravity to help water move through the pipes. Flat topography can make this a difficult approach that is further compromised by flooding that causes outfalls to be partially or completely submerged. This combination can greatly prolong a flooding event and expose more industrial pollutants to discharge waters when tides fall. Coastal flooding at outfalls may drive backflow into the system, causing upland flooding through street drains and drainage ditches. The prolonged presence of saltwater can damage stormwater infrastructure. Shoreline erosion near such an outfall may further expose stormwater infrastructure to potential damage. Flooding may introduce debris that can clog storm drains, pipes, and outfalls. Storm drains covered by leaves in the early fall may cause backup flooding. More frequent, higher, and longer-lasting high-water events may drive up already high groundwater levels in some coastal facilities. This change may reduce the soil's ability to absorb stormwater, especially in areas previously designated as "no exposure", thus increasing runoff and pollution to surface waters.

NOAA has developed helpful assessment tools that the Department must recommend to covered facilities, especially those discharging into tidal waters, to address this concern. Available resources include the Quick Flood Assessment tool, which calculates current and future coastal flood frequency and impacts at user-designed thresholds, and a tool to complete

[74] Marian Dombroski, Friends of Quincy Run Watershed & Friends of Lower Beaver Dam Creek at 9-28-23 public hearing.
[75] Meg Parish, Environmental Integrity Project Attorney collective comments of Blue Water Baltimore, Chesapeake Bay Foundation, Chesapeake Legal Alliance, the Environmental Integrity Project, Gunpowder Riverkeeper, Potomac Riverkeeper Network, Waterkeepers Chesapeake, ShoreRivers, Nature Forward, Friends of Lower Beaverdam Creek, Rock Creek Conservancy, Maryland League of Conservation Voters, Billy Friebele, Anacostia Riverkeeper, Maryland Conservation Council, and Indivisible Howard County Environmental Action.
[76] Matt Stegman, Chesapeake Bay Foundation Network attorney at 9-28-23 public hearing.

detailed analysis to determine if, how, and when stormwater systems will be compromised by coastal flooding. The Department must combine these tools with outfall inspection and mapping to identify potential outfalls susceptible to tidal flooding and make clear that repairs, replacement or elevation of outfalls or the installation of one-way flapper valves may be required within SWPPPs to address flooding concerns.

…

Part III.C	Require permittees to combine NOAA's assessment tools with outfall inspection and mapping to identify potential outfalls susceptible to tidal flooding and make clear that repairs, replacement or elevation of outfalls or the installation of one-way flapper valves may be required within SWPPPs to address flooding concerns.

"[77]

Grouping – Require More Green Infrastructure

Comment 78 - "III. Climate Change and Part III. C. Stormwater Pollution Prevention Plan (SWPPP) Requirements

In the 38 years I have lived in Cheverly multiple industrial facilities have moved into the area, including facilities that have expanded operations or built entirely new facilities in the 100-year floodplain. As storm events continue to occur more often and the amount of rainfall increases, it is essential that industrial facilities in areas such as Cheverly be required to implement on-site stormwater management practices capable of controlling the increased amount of industrial runoff flowing into Lower Beaverdam Creek. Stormwater runoff is the biggest threat to stream health considering that 32% of the Lower Beaverdam Creek watershed is comprised of impervious surfaces. according to the Department's Land Restoration Program.

The Department must require permittees to implement best management practices that will adequately control the increased amounts of rainfall of today's storms. I have repeatedly seen excessive runoff from nearby industrial sites resulting from inadequate stormwater controls and lack of green infrastructure or other features that would ameliorate the effects of polluted runoff. This includes an extensive area at and downstream from the southwest corner of Sheriff Road and Cabin Branch Road. Cheverly and nearby areas are frequently impacted by stormwater flooding during heavy rain events. As storm events continue to occur more often and the amount of rainfall increases, it is essential that industrial facilities in areas such as Cheverly be required to implement more on-site stormwater management practices to control the amount of industrial runoff into Lower Beaverdam Creek.

Friends of Lower Beaverdam Creek urges the Department to use this limited remand to address the above problems with the 20-SW Permit and improve water quality throughout the state,

[77] Meg Parish, Environmental Integrity Project Attorney collective comments of Blue Water Baltimore, Chesapeake Bay Foundation, Chesapeake Legal Alliance, the Environmental Integrity Project, Gunpowder Riverkeeper, Potomac Riverkeeper Network, Waterkeepers Chesapeake, ShoreRivers, Nature Forward, Friends of Lower Beaverdam Creek, Rock Creek Conservancy, Maryland League of Conservation Voters, Billy Friebele, Anacostia Riverkeeper, Maryland Conservation Council, and Indivisible Howard County Environmental Action.

particularly for vulnerable communities overburdened by pollution from industrial facilities and other numerous sources. Thank you for the opportunity to comment and we hope our feedback assists the Department in incorporating meaningful revisions into the Permit."[78]

6. COMMENT CATEGORY – Concerns about the Permit and Enforcement.

Grouping – Increase Enforcement and Compliance Efforts

Comment 79 - "We urge the Department to take meaningful steps to address environmental concerns using its own stated Policy, including increased enforcement and compliance monitoring."[79]

Comment 80 - "I'm concerned that the industrial general stormwater permit does not provide stringent enough protection for our local waterways, nor sufficient inspection and enforcement. I believe the Department can and should do more to protect our homes and roadways from flooding and our water from polluted runoff from industrial areas."[80]

Comment 81 - "As a founding member of the Cheverly Green Infrastructure Committee, I participate in efforts to advise the Town on decisions impacting water quality and promote efforts to engage our community in activities to improve our natural areas and waterways. Through FQRW I also work with the Town of Bladensburg. Our streams are flashy and our watershed is frequently impacted by flooding due to inadequate stormwater management. The two streets which serve my property are frequently blocked by flooding and icing produced by run-off. Route 202, which is the major artery serving my town and a part of the regional transportation network, is regularly flooded by backups within the storm water system which transports runoff to Quincy Run and ultimately to the Anacostia River. Site conditions and inadequate stormwater controls contribute to local flooding and extensive damage to our receiving waters. Quincy Run often rises five feet in half an hour during minor storm events. We plan to pursue funding to correct damage to a sub-tributary of Quincy Run that threatens to undermine a local road.

I have witnessed firsthand the impacts of stormwater pollution on the Town of Cheverly where I live and recreate. I have seen excessive runoff from nearby industrial sites resulting from inadequate stormwater controls such as green infrastructure or other features that ameliorate the effects of polluted runoff. My enjoyment of Quincy Run, the abutting nature trails, and nearby natural areas is reduced due to erosion from the high volume of water and contaminants flowing into the stream after heavy rainfall. The Bladensburg Marina, where I

[78] Daniel C. Smith, Friends of Lower Beaverdam Creek President.
[79] Daniel C. Smith, Friends of Lower Beaverdam Creek President
[80] Marian Dombroski, Friends of Quincy Run Watershed & Friends of Lower Beaver Dam Creek at 9-28-23 public hearing.

work and recreate, must be dredged annually due to blockage from sediment transported during storm events.

I have been an avid rower on the Anacostia River for 18 years. I also teach rowing and water safety to children and adults at the Bladensburg Waterfront Park. I have a very strong interest in eliminating pollution from stormwater running off industrial properties to minimize threats to my health and that of the hundreds of Maryland and District of Columbia residents participating in programs in which I teacher and row. I am aware that under the Clean Water Act we have a right to swimmable and fishable rivers. I dedicate significant amounts of my time working as a volunteer to achieve this promise. Water contact is inevitable in boating and fishing. Knowing the details of water quality in my tributary and the Anacostia River is of great concern to me. The river has shown improvement in the years during which our Riverkeeper has collected this data. This encourages stewards and residents that clean water is achievable.

It angers me and my local community members that Quincy Run and Lower Beaverdam Creek, both of which receive runoff from significant industrial areas, fail to meet standards for human water contact 100% of the times we have monitored. We ask that vulnerable communities like those in my watershed receive relief from the cumulative impacts of water pollution. Our efforts are thwarted and dwarfed by the scale of activities in industrial areas. I warn people I interact with about the dangers of contact with polluted water. It is often hard to believe, due to its beauty and potential for recreation, that damage to the Anacostia River continues. Impacts of excess run-off are obvious at the Waterfront Park where I spend much of my time. The river is irresistible to those who visit it and I frequently see people swimming and wading in the river. Especially as our summer temperatures increase, our forested areas and waterways become essential areas of refuge. And yet damaging development still continues, notably large-scale projects in our numerous industrial parks. These projects are often allowed to compromise and destroy adjacent natural areas.

I have observed plumes of red sediment flowing into the Anacostia from the mouth of Quincy Run and have traced it back to its source. Often it originates from industrial properties adjacent to the stream and the River. It is common to find failing stormwater infrastructure in those areas.

I have observed the benefits of strong stormwater policies, more stringent than ours, and projects that protect water quality implemented in neighboring jurisdictions, including in the District of Columbia. I am frustrated that my state does not participate in efforts lead by the District and angered that Maryland lags behind and fails to undertake or even cooperate with such efforts. We have data showing that changes produced by the District's programs have resulted in significant water quality improvements. In order to protect and improve the rich environment here in Maryland, and the potential for recreation and improved health outcomes, it is essential that our state demands improved control of industrial stormwater runoff. We can no longer tolerate the embarrassment of our state's failure to take necessary action, as our neighbors downstream in the District take bold steps towards addressing the sources of air and water pollution.

I am concerned that the Industrial General Stormwater Permit does not provide stringent enough protections for local waterways, nor sufficient inspection and enforcement, and will therefore allow damage to continue which undermines the progress of efforts in Cheverly, Bladensburg, and the Anacostia Watershed as a whole. I believe the Maryland Department

of Environment can, and should, do more to protect our homes and roadways from flooding and our waters from polluted runoff from industrial facilities by improving the Industrial Stormwater permit. I support CBF's litigation efforts to address problems and deficiencies with the Permit. I ask our state, which benefits so directly and bears so much responsibility for the health of the Chesapeake Bay, to take a leadership role in developing and enacting strong permits and providing guidance to permittees. We must collaborate with all the Bay jurisdictions to fulfill the promise of the Clean Water Act."[81]

Comment 82 - "*Lack of Monitoring and Consequences*: The permit allows most holders to evade sampling and monitoring responsibilities, posing a significant risk of water pollution without accountability.

Inadequate Oversight and Enforcement: Historical records and noncompliance under the previous permit underscore a lack of oversight and enforcement, allowing industrial facilities to operate without adhering to necessary regulations.

I think MDE needs to inspect each facility regularly, not rely on the industrial polluter to self inspect and report once a year. Corporations see money spent on limiting pollution from their activities as money taken away from their bottom line. This is why we can not rely on them to police themselves.

I am a former MD DNR-Fisheries biologist/ecologist (35 years employee/experience.) Much of my experience involved evaluating permit conditions for their effects/implications for aquatic habitats and species. I can state with certainty that enforcement of permit conditions is always a weak link in maintaining tolerable environmental quality. Staff and budget limitations are important factors; weakness of permit conditions and requirements aggravate these problems"[82]

Comment 83 - "3. Strengthening Reporting and Monitoring in Curtis Bay would help protect residents.

Strengthening reporting and monitoring requirements under the 20-SW general permit and enforcing penalties against those that fail to report would help reduce cumulative environmental impacts in communities like Curtis Bay. Below is a list of facilities that have significantly violated their 12-SW general permits since 2015:

- Curtis Bay Energy, LP: o 01/01/2021 o 01/29/2020
- Pompeian Inc.: o 10/07/2015
- LKQ Pick Your Part (1207): o 02/16/2018
- US Coast Guard Yard: o 03/31/2023 o 01/28/2023
- Command Technology: o 03/08/2018
- Quarantine Road Municipal Landfill: o 12/20/2018 o 01/10/2019
- CSX Transportation: o 02/25/2019
- USALCO, LLC: o 01/01/2021
- Darling Ingredients, Inc.: o 01/01/2021
- Reconserve of MD dba Dext Company o 01/01/2021 o 05/05/2023
- Kemira Water Solutions, Inc. – Baltimore Plant o 01/01/2021

[81] Marian Dombroski for the Friends of Quincy Run Watershed.
[82] Compilation of comments from 599 emailed comments received during the comment period.

Despite having information available on facilities' permit violations and the contaminants these facilities handle, the WSA's interactive map on Water Quality Assessments and TMDLs reports that the sources of many of the contaminants impairing the waters are "unknown." This suggests stronger reporting and monitoring requirements are required, since many of the contaminants can be traced to facilities with 20-SW general permits.

For example, Chlordane is a banned highly toxic substance that was used as a pesticide in the United States from 1948 to 1988 and is known to cause liver disease and blood disorders, and according to the EPA, is probably a human carcinogen. Like many toxic substances, Chlordane can persist in the environment for decades, particularly in sediment in waterways. Chlordane has been traced directly to the land under the US Coast Guard Yard, which is located south of Curtis Bay, along Curtis Creek. This facility is one of the most delinquent facilities in the area: it has failed to report 8 out of the last 12 quarters and has been cited by the EPA for violating effluent limits.

Some of the contaminants could also be traced to the Quarantine Road Municipal Landfill. In 2021, Baltimore managed 414,000 tons of waste, sending 210,000 tons directly to the landfill, as well as the ash generated by the WIN Waste trash incinerator. (Jacob Wallace, Baltimore Faces Expensive Road Ahead for Collection and Disposal Infrastructure, Waste Dive (Sep. 18, 2023), https://www.wastedive.com/news/baltimore-solid-waste-plan-win-waste-quarantine-landfill-environmental-justice/693423/) As recently as 2022, MDE cited leachate seepage from the landfill. Leachate from municipal landfills can contain sulfuric acid, heavy metals, and nutrients that cause eutrophication in nearby water sources, which are all examples of contaminants currently impairing the Bay and many of its tributaries.

These examples show how it is possible to trace contaminants to their sources. If industries with 20-SW general permits were required to conduct frequent reporting and monitoring, MDE could have a better idea of where the contaminants are coming from and how they could be contained.

…

(6) Return to MDE's pre-2007 inspection and enforcement rates."[83]

Comment 84 - "IV. Concerns and Objections from a Curtis Bay Restident Melvin Foster

Melvin moved to his current residence, a townhome, at 4003 Pascal Ave., Baltimore, Maryland, 21226, when the townhomes were first built in 1997. He says that ever since he moved here, whenever there is heavy rainfall the water in Curtis Bay changes colors—it turns "brownish" and often has a distinct odor. During these storms, the streets of Curtis Bay, including Church Street, by the water tower, and by the CSX coal terminal on E. Patapsco Ave., flood and cars will get stuck and people have to wait until the water receeds or for neighbors to help push them out. He and his neighbors have tried calling 311 to request the City do something to mitigate the stormwater flooding, but even though they say they will inspect the issue, nothing ever gets done.

Of the industries in Curtis Bay, Melvin is especially concerned with the scrap metal yards and warehouses on E. Patapsco Ave, such as Beltsville Auto Recyclers and WPN Recycling Company. that discharge into Curtis Bay. He has noticed that they are not very "clean" and has seen the faciilities dumping and pouring things into the bay. Although he enjoys fishing,

[83] Kathleen Gagnon, UMD's Francis King Carey School of Law student attorney.

he has never considered fishing or crabbing in Curtis Bay because of the water pollution. Instead, he drives hours to either Susquehanna Flats, Kent Island, or the Choptank River. Melvin has said he would consider fishing in Curtis Bay if the scrap metal yards were shutdown. Alternatvely, strenghtening permits would help alieviate some of his concerns over the water pollution in his neighborhood and he would consider fishing in the area if conditions improved."[84]

Comment 85 - "My comments focus on one aspect of the proposed rules, Part V.A.2.B., the comprehensive site compliance evaluation portion of the Department's final renewal for the industrial stormwater general permit, in particular, the benchmark reporting requirement for industries with an EJScore greater than or equal to .76. This provision imposes weak reporting requirements on discharging facilities in EJ communities, many of which have a history of frequently failing to send in their monthly or quarterly pollution reporting data. Several of those delinquent facilities are located in and around Curtis Bay, including Curtis Bay Energy, Beltsville Auto Recyclers, Praxair Welding, Gas and Supply Store, the U.S. Coast Guard Yard, and others. Just for example, the U.S. Coast Guard Yard failed to report for the past five quarters. Curtis Bay Energy failed to report for 8 out of the last 12 quarters."[85]

Grouping – Exclude Coverage for Noncompliance

Comment 86 - "b) Exclude facilities that have been in significant noncompliance within the previous five years from permit coverage

Communities and their waters are only protected by the 20SW Permit's pollution controls if permitted facilities comply with the Permit's terms. Far too many permitted facilities flagrantly disregard, without significant consequences, basic requirements of the 20SW Permit, like filing Discharge Monitoring Reports ("DMRs") and compiling Annual Reports. As Chesapeake Accountability Project noted in its April 2021 comments, noncompliance from permittees covered under the previous permit is rampant in Maryland - averaging about 70% year after year, according to Department inspection reports. Enforcement of permit noncompliance is also low: the Department took only 14 formal enforcement actions against industrial stormwater permittees from 2017 to 2020, although approximately 70% of permittees overall were in noncompliance. Essentially, there are little to no consequences for industrial stormwater permittees who cannot or choose not to comply with their permit. This lack of enforcement results in unmitigated harm to communities and waterways.

The Department's failure to enforce the 20SW Permit and the rollback of some permit terms impacts those environmental justice communities where the permitted facilities are clustered. As a case study, from 2020 to 2021 a sweep of industrial stormwater permittees in Baltimore City identified clusters of noncompliant facilities in overburdened communities in West, East, and South Baltimore, totalling 37 facilities between the three areas. All of these facilities had repeated benchmark limit exceedances and permit violations and were located in overburdened areas with elevated EJ scores. Only a few of these noncompliant facilities

[84] Kathleen Gagnon, UMD's Francis King Carey School of Law student attorney.
[85] Kathleen Gagnon, UMD's Francis King Carey School of Law student attorney at 9-28-23 public hearing.

had recent enforcement actions against them and all have been allowed to operate and pollute under the terms of the Permit.

The Department can and should ramp up inspections and enforcement. It should also add protections against repeat violators into the 20SW Permit for areas with a Maryland EJScore of .76 or above. Specifically, in order to "[i]ncrease compliance in areas disproportionately impacted by health and environmental factors to prevent and reduce burdens on those communities," per MDE's 2022 EJ Policy, the 20SW Permit should include a new limitation on coverage. We request new language that coverage under the 20SW Permit is not available to facilities who: 1) have been in Significant Noncompliance22 with the 12SW or 20SW permit within the last five years; and 2) are located in census tracts with an index score of .76 or above on Maryland's EJ Score.

Given these facilities' previous noncompliance, these facilities would instead be required to apply for and obtain permits that would include more tailored water quality protections, public notice and comment requirements, and better community protection. This would have a direct positive impact on reducing burdens to the communities in Baltimore City and other urbanized areas in Maryland.

…

Part V.A.2.b	Exclude from coverage facilities that: 1) have been in Significant Noncompliance with the 20SW permit within the last five years; and 2) located in census tracts with an index score of .76 or above on Maryland's EJ Score.

"[86]

Grouping – Put Resources to Address Unpermitted Sites

Comment 87 - "b) Require permit coverage for unpermitted facilities under the permit's Sector AD, which allows the Director to require permit coverage for facilities that contribute to a violation of a water quality standard or are a significant contributor of pollutants to waters of the United States. 40 CFR 122.26(a)(9)(i)(D)."[87]

Comment 88 - "This letter followed several meetings with Department staff that included, among other comments, our concerns about the widespread problem of unpermitted industrial stormwater discharges. We pointed to the Department's previous efforts to retain contractual assistance to perform desktop analyses devoted specifically to identifying

[86] Meg Parish, Environmental Integrity Project Attorney collective comments of Blue Water Baltimore, Chesapeake Bay Foundation, Chesapeake Legal Alliance, the Environmental Integrity Project, Gunpowder Riverkeeper, Potomac Riverkeeper Network, Waterkeepers Chesapeake, ShoreRivers, Nature Forward, Friends of Lower Beaverdam Creek, Rock Creek Conservancy, Maryland League of Conservation Voters, Billy Friebele, Anacostia Riverkeeper, Maryland Conservation Council, and Indivisible Howard County Environmental Action.

[87] Meg Parish, Environmental Integrity Project Attorney collective comments of Blue Water Baltimore, Chesapeake Bay Foundation, Chesapeake Legal Alliance, the Environmental Integrity Project, Gunpowder Riverkeeper, Potomac Riverkeeper Network, Waterkeepers Chesapeake, ShoreRivers, Nature Forward, Friends of Lower Beaverdam Creek, Rock Creek Conservancy, Maryland League of Conservation Voters, Billy Friebele, Anacostia Riverkeeper, Maryland Conservation Council, and Indivisible Howard County Environmental Action.

industrial sites that - knowingly or not - were evading permit coverage, harming local communities while also creating an unfair business advantage over their law-abiding competitors.

Additionally, around the same time that the Department was preparing the renewal of this Permit, it was also preparing a rare and possibly unprecedented enforcement action against a facility with unpermitted discharges. This action resulted from a referral from some of our organizations after discovering an entire cluster of industrial facilities in one Maryland community discharging stormwater to a single stream without a permit. This action was also followed by an early collaborative action of the Moore Administration and new Attorney General Anthony Brown. On March 20, 2023, the Attorney General stated in a press release that "[i]n the communities adjacent to industrial facilities, even a small amount of stormwater runoff can be dangerous for public health and the environment." We strongly agree. We had hoped these actions and press releases would signal a sea change in the way the Department would approach the problem of unpermitted discharges moving forward. We were, needless to say, highly disappointed to review the final determination of the 20SW permit, but hope the Department will take this present opportunity to change course.

More recently in the Summer of 2023, a team of students working through the Yale Conservation Scholars program alongside staff at the Potomac Riverkeeper Network embarked on an effort to understand the extent of unpermitted industrial facilities in Maryland's portion of the Potomac watershed operating under industrial sector codes that would typically require coverage under the permit. Unsurprisingly, the team found a vast number of industrial sites that were not listed in the Department's permit database. While not every one of those sites would necessarily be required to apply for the 20SW permit under its designation criteria, many surely would and are presently evading this regulatory program. In any case, it is likely that all of these sites are, in fact, discharging pollutants to waters of the state. Notably, the team of researchers at Potomac Riverkeeper Network found that the problem of unpermitted industrial discharges was typically evident in clusters, which again emphasizes how toxic industrial runoff has a disproportionate impact on a relatively small number of communities or waterways, based on the way they are zoned and co-located with other pollution-generating sites. It may be obvious, but nevertheless worth stating here, water flows downhill and downstream, crossing census tract boundaries, zoning boundaries, and property boundaries without regard for their official status or designation. This is the pollution that Maryland law mandates be regulated and controlled. But this is far from the reality on the ground today - a reality we strongly urge the Department to change without delay.

…

We urge the Department to immediately undertake a concerted effort (i.e., with additional resources) to identify unpermitted sites that have not sought coverage under the Permit in order to increase the scope of protections of the permit and limit the prevalence of unregulated pollution in urban areas that cause impairments of urban waters, perpetuate environmental injustices, and expose fenceline community members to unnecessary health risks.

…

Part I.F	Immediately undertake a concerted effort (i.e., with additional resources) to identify unpermitted sites that have not sought coverage under the Permit in order to increase the scope of protections of the permit and limit the prevalence of unregulated pollution in urban areas that cause impairments of urban waters, perpetuate environmental injustices, and expose fenceline community members to unnecessary health risks.

"[88]

[88] Meg Parish, Environmental Integrity Project Attorney collective comments of Blue Water Baltimore, Chesapeake Bay Foundation, Chesapeake Legal Alliance, the Environmental Integrity Project, Gunpowder Riverkeeper, Potomac Riverkeeper Network, Waterkeepers Chesapeake, ShoreRivers, Nature Forward, Friends of Lower Beaverdam Creek, Rock Creek Conservancy, Maryland League of Conservation Voters, Billy Friebele, Anacostia Riverkeeper, Maryland Conservation Council, and Indivisible Howard County Environmental Action.