

THE COURT OF APPEALS—ANNAPOLIS, MARYLAND 21404

October 17, 1972

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SUPREME COURT, U.S.

Michael Rodak, Esq.
Clerk
SUPREME COURT OF THE UNITED STATES
One First Street, N. E.
Washington, D. C. 20543

72-527

RE: Potomac Sand and Gravel Company v.
Governor of Maryland et al.
No. 35(Adv.), September Term, 1972

Dear Mr. Rodak:

We are transmitting herewith a certified copy of the above entitled record as requested by James J. Doyle, Jr., attorney for the appellant.

Please acknowledge copy of this letter and return to us. Thank you.

Very truly yours,

James H. Norris, Jr.
Clerk

JHNjr/h
cc: James J. Doyle, Jr., Esq.

JH *JD*

No. 35-1472 T

October 17, 1972

Michael Rodak, Esq.
Clerk
SUPREME COURT OF THE UNITED STATES
One First Street, N. E.
Washington, D. C. 20543

RE: Potomac Sand and Gravel Company v.
Governor of Maryland et al.
No. 35(Adv.), September Term, 1972

Dear Mr. Rodak:

We are transmitting herewith a certified copy of the above entitled record as requested by James J. Doyle, Jr., attorney for the appellant.

Please acknowledge copy of this letter and return to us. Thank you.

Very truly yours,

James H. Norris, Jr.
Clerk

JHNjr/h
cc: James J. Doyle, Jr., Esq.

SHERBOW, SHEA & DOYLE

ATTORNEYS AT LAW
TWENTY-SEVENTH FLOOR
10 LIGHT STREET

BALTIMORE, MARYLAND 21202

AREA CODE 301
685-6517
TELEX
8-7681

JOSEPH SHERBOW
THEODORE SHERBOW
EDWARD F. SHEA, JR.
JAMES J. DOYLE, JR.
WILLIAM A. AGEE
ROBERT W. KERNAN

ALAN B. LIPSON
JOHN B. JASKE

FILED

September 26, 1972

SEP 28 1972

James H. Norris Jr., Clerk
Court of Appeals
of Maryland

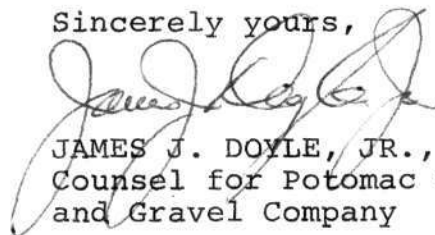
Mr. James H. Norris, Jr., Clerk
Court of Appeals of Maryland
Court of Appeals Building
Annapolis, Maryland 21404

Re: Potomac Sand and Gravel Company v.
Governor of Maryland, et al
September Term, 1972, No. 35 (Adv.)

Dear Mr. Norris:

Pursuant to Rule 21 of the Rules of the Supreme Court of the United States, Potomac Sand and Gravel Company requests that you certify and transmit to the Clerk, Supreme Court of the United States, Supreme Court Building, One First Street, N. E., Washington, D. C. 20543, a copy of the printed record extract in this case together with a certified copy of the proceedings in the Court of Appeals which include a per curiam decision filed July 6, 1972 and a mandate.

Sincerely yours,



JAMES J. DOYLE, JR.,
Counsel for Potomac Sand
and Gravel Company

JJD:mt

cc: Henry R. Lord, Esquire
Attorney for all Respondents

10/17/72
Billed 12.00
Sent record to
U.S. S.C. as above
request.
me

POTOMAC SAND AND GRAVEL
COMPANY

v.

GOVERNOR OF MARYLAND et al.

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In The
Court of Appeals
of Maryland

No. 35(Adv.)

September Term, 1972

I N D E X

	<u>Page</u>
Docket Entries.....	1
Joint Record Extract.....	2
Motion to Advance.....	3
Petition for Leave to Appear as Amicus Curiae... 7	7
Order granting Petition.....	16
Order Restraining Appellees.....	18
Opinion.....	20
Motion to Stay Issuance of Mandate etc.....	47
Answer.....	51
Mandate.....	58
Certification.....	59

POTOMAC SAND AND GRAVEL
COMPANY

v.

GOVERNOR OF MARYLAND
et al.

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In The
Court of Appeals
of Maryland

No. 35(Adv.)
September Term, 1972

DOCKET ENTRIES

Appeal from the Circuit Court for Anne Arundel County.
Filed: April 5, 1972.
April 6, 1972: Motion to advance case for argument
filed by appellant.
April 6, 1972: Motion granted, etc.
April 20, 1972: Petition for leave to appear as
amicus curiae filed by Maryland Conservation
Council et al.
April 21, 1972: Petition granted.
June 29, 1972: Order of Court filed restraining
appellees from enforcing Ch. 792 until further
order of this Court.
July 6, 1972: Decree affirmed, the appellant to pay
the costs. Per Curiam filed.
July 17, 1972: Motion to stay issuance of mandate
etc. filed.
July 25, 1972: Answer to above motion filed.
July 26, 1972: Motion denied.

STATE OF MARYLAND, ss:

I, JAMES H. NORRIS, JR., Clerk of the Court of Appeals of Maryland, the highest Court of said State, with final jurisdiction on appeals from the trial courts therein, do hereby certify that the foregoing are full and true copies of the documents, originals of which are on file in the office of said Clerk in the appeal of Potomac Sand and Gravel Company v. Governor of Maryland et al., No. 35 (Adv.), September Term, 1972.

1. Docket Entries of the Court of Appeals.
2. Joint Record Extract filed April 27, 1972.
3. Motion to advance case for argument filed April 6, 1972, with Order thereon.
4. Petition for leave to appear as amicus curiae filed April 20, 1972.
5. Order of Court filed granting above petition on April 21, 1972.
6. Order of Court of June 29, 1972 restraining appellees etc.
7. Opinion of the Court of Appeals dated July 6, 1972.
8. Motion to stay issuance of mandate filed July 17, 1972 with Order thereon.
9. Answer to above motion filed July 25, 1972.
10. Mandate of Court of Appeals dated August 7, 1972.

IN TESTIMONY WHEREOF, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals of Maryland this seventeenth day of October, 1972.

Clerk
Court of Appeals of Maryland



July 27, 1972

No 35, 1972

James J. Doyle, Jr., Esq.
SHERBOW, SHEA & DOYLE
10 Light Street, 27th Floor
Baltimore, Maryland 21202

RE: Potomac Sand and Gravel Company v.
Governor of Maryland et al.
No. 35 - September Term, 1972

Dear Mr. Doyle:

The Court has considered the motion to stay issuance of mandate, etc. filed on July 17, 1972, together with the answer thereto filed on July 25 and has denied the motion to stay the issuance of mandate on July 26, 1972.

Very truly yours,

James H. Norris, Jr.
Clerk

JHNjr/h
cc: Henry R. Lord, Esq.
Deputy Attorney General

Motion Denied This 26th day
of July, 1972.

Delbert A. Bunker
Not. by Cl. of Sup.

POTOMAC SAND AND GRAVEL COMPANY : IN THE
Appellant : COURT OF APPEALS
v. : OF
GOVERNOR OF MARYLAND, et al : MARYLAND
Appellees : September Term, 1972
No. 35 (ADV.)

FILED

JUL 17 1972

James H. Norris Jr., Clerk
Court of Appeals
of Maryland

MOTION TO STAY ISSUANCE OF MANDATE,
TO RESTRAIN APPELLEES AND THEIR AGENTS,
SERVANTS AND EMPLOYEES FROM ENFORCING CHAPTER 792
OF THE LAWS OF MARYLAND, 1971, AND TO
OBTAIN EXTENSION OF JUNE 29, 1972
ORDER OF THIS COURT ALLOWING FOR
CONTINUATION OF DREDGING OPERATIONS
WITHIN PRESCRIBED LIMITS, ALL OF
SAID RELIEF BEING REQUESTED PENDING
REVIEW OF JUDGMENT BY THE SUPREME COURT
OF THE UNITED STATES

Potomac Sand and Gravel Company, Appellant, by James J. Doyle, Jr., one of its attorneys, moves, pursuant to Maryland Rules 855 and 876b, for an order staying issuance of the mandate, restraining Appellees and their agents, servants and employees from enforcing Chapter 792 of the Laws of Maryland, 1971, and extending the June 29, 1972 order of this Court allowing Appellants to continue dredging operations within prescribed limits, all of said relief being requested pending review of the judgment by the Supreme Court of the United States. The grounds of the motion are as follows:

1. Appellant intends to file a timely appeal from the per curiam decision of this Court filed on July 6, 1972, to the Supreme Court of the United States.

2. The appeal will present the following substantial constitutional questions, which are sufficiently important and debatable as to raise a reasonable prospect that at least four members of the Supreme Court of the United States would vote to review the case.

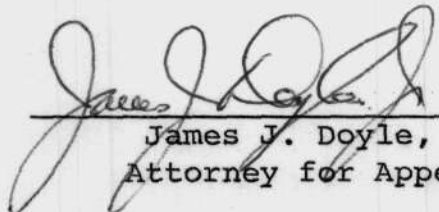
a. Chapter 792 violates Appellant's right to due process under the Fourteenth Amendment of the United States Constitution in that the restrictions imposed by it constitute an unnecessary and unreasonable application of the State's police power in view of the existence and availability of other less drastic steps by which the public welfare could be protected. Any dredging activities of Appellant are completely regulated and controlled by the provisions of the Wetlands Act (Art. 66 C, Sec. 721, Annotated Code of Maryland). Therefore, the enactment of Chapter 792 limited solely to Charles County and directed solely to Appellant's business constitutes an abuse of the State's police power and is a violation of the due process clause of the Fourteenth Amendment of the United States Constitution.

b. Chapter 792 violates Appellant's right to due process under the Fourteenth Amendment of the United States Constitution for the reason that it takes Appellant's private property for public use without compensation. This statute totally prohibits the dredging of sand and gravel in the tidal waters or marsh lands of Charles County. In so doing, it denies Appellant the only reasonable use to which it might put its land and puts an end to a legitimate business

operation which has been conducted for over sixty years. It operates solely to the detriment of Appellant and affects no other business entity in the State. It achieves no protection which existing laws do not provide and adds nothing to the public welfare. It is thus violative of the due process clause of the Fourteenth Amendment of the United States Constitution.

3. If the mandate issues and the judgment of this Court is executed, Appellant will be irreparably injured. An extended shutdown of dredging operations pending Supreme Court review would make the resumption of dredging improbable and unfeasible. In the intervening period, Appellant would be required to remove its equipment from Maryland and would lose all of its Maryland personnel, and would later be unable to resume its Maryland operations without great hardship and economic loss.

4. The balance of equities favors the relief requested. From the inception of this litigation to the present time only approximately twelve months have lapsed, and Appellant has been allowed to continue its dredging operations under Court order. Obviously, Chapter 792 does not require immediate implementation and failure to do so would not result in harm or damage to the public welfare. The advantages in allowing Appellant to continue its dredging operations under terms to be established by this Court until such time as the Supreme Court acts, clearly outweigh any advantages to be gained in ordering the immediate enforcement of the statute.


James J. Doyle, Jr.
Attorney for Appellant

POTOMAC SAND AND GRAVEL COMPANY, : IN THE
Appellant, : COURT OF APPEALS
v. : OF
GOVERNOR OF MARYLAND, et al., : MARYLAND
Appellees. : September Term, 1972
JUL 25 1972 No. 35 (Adv.)

FILED

James H. Norris Jr., Clerk
Court of Appeals
of Maryland

ANSWER TO MOTION TO STAY ISSUANCE OF MANDATE

Now come Appellees Governor of Maryland, et al. by their attorneys Francis B. Burch, Attorney General, Henry R. Lord, Deputy Attorney General, and Warren K. Rich, Assistant Attorney General, and, in answer to the Motion to Stay Issuance of Mandate filed by the Appellant, say:

1.

(a) On June 28, 1971, Appellant filed an action in the United States District Court for the District of Maryland seeking identical relief to that sought in the subject case. That action, on the motion of Appellant, was dismissed by Honorable Frank A. Kaufman on the same day it was filed for lack of jurisdiction (Civil Action No. 71-780).

(b) On June 30, 1971, Appellant filed its Bill for Declaratory Judgment and Injunctive Relief in the subject case in the Circuit Court for Anne Arundel County. No ex parte or temporary injunction was sought in that pleading.

(c) On July 1, 1971, Chapter 792 of the Laws of Maryland of 1971, the validity of which is the subject of this litigation, took effect, making it a crime punishable by a fine of not less than \$500 nor more than \$2,500 to dredge for sand, gravel or other aggregates or minerals in the tidal waters and marshlands of Charles County.

(d) On July 12, 1971, anticipating that trial of the subject case would take place and a decree would be filed prior to the end of October, 1971, an order setting dredging limits at the Greenway Flats dredging site was agreed to by counsel for both sides and filed in the subject case. See Joint Record Extract at pp. 9-10. That order specifically stated in paragraph 1 thereof that it was to be effective only "[d]uring the pendency of this action and until a final decree or order is entered by [the Circuit Court for Anne Arundel County]".

(e) On October 13 and October 14, 1971, trial of the subject case took place before the Honorable Matthew S. Evans of the Circuit Court for Anne Arundel County.

(f) On December 17, 1971, January 14, 1972, and February 3, 1972, subsequent agreed-upon orders were filed in the subject case extending the substance of the July 12, 1971 order month-by-month through February, 1972, each once again explicitly stating that it was valid only "during the pendency of this action in [the Circuit Court for Anne Arundel County] and until a final decree or order is entered by [the Circuit Court for Anne Arundel County]". See Joint Record Extract at pp. 33-35.

(g) On February 25, 1972, Judge Evans filed his opinion in the subject case and on March 3, 1972, a final decree was entered.

(h) Appellant immediately requested Appellees to consent to a further extension of the dredging orders pending appeal to this Honorable Court, which consent was refused on the ground that the case had been decided on its merits against Appellant and that, consequently, the statute was in full force and effect.

(i) Appellant approached the Circuit Court for Anne Arundel County with a request for a stay and on March 10, 1972, after a hearing, a compromise order was entered by Judge Evans permitting limited and selective dredging during the pendency of

the appeal to this Honorable Court with an explicit provision that Appellant would forfeit as liquidated damages the sum of \$10,000 as partial compensation to the State of Maryland for the loss of its natural resources in the event that the appeal was unsuccessful. See Joint Record Extract at pp. 55-56. As this order of Judge Evans expired by its terms at the end of June, 1972, its terms were extended by agreement into July in the order of June 29, 1972, entered by this Honorable Court.

(j) On July 6, 1972, this Honorable Court affirmed per curiam the decision of the Circuit Court for Anne Arundel County and adopted as its own the opinion filed below by Judge Evans. Also on that day a telegram was sent to Appellant by Appellees advising it of the decision and that, by the terms of the March 10 and June 29, 1972 orders, all dredging at the Greenway Flats site must stop immediately.

(k) On July 14, 1972, Appellant assured Appellees by letter that dredging at the Greenway Flats site did, in fact, cease on July 7, 1972.

2.

(a) Chapter 792 of the Laws of Maryland of 1971 is a clear, unambiguous criminal statute intended by the General Assembly to take effect on July 1, 1971, more than 12 months ago.

(b) During the more than 12 months that have elapsed since the effective date of Chapter 792, Appellant has removed at least 525,000 tons of sand and gravel from the Greenway Flats site, all of which dredging would have been the subject of criminal sanction had Chapter 792 been in effect. To give this Honorable Court some idea of the enormity of this dredging volume, it is the equivalent of dredging approximately 5 acres of subsurface area from the surface level to a depth of 50 feet. There is ample testimony in the record of this appeal indicating the manifold negative consequences of changes of this dimension in the river bottom of the Potomac River.

(c) Testimony at trial (Joint Record Extract at pp. 83-84) established that Appellant received a price of \$2.42 for each ton of sand and gravel sold between July 1 and the date of trial. Applying this price to the amount dredged over the last 12-month period, after the effective date of the statute, it is readily seen that Appellant received revenues of approximately \$1,270,500.

(d) The sand and gravel which Appellant removes from the Charles County bottom of the Potomac River and for which during the last 12 months it has received gross revenues of approximately \$1,270,500 is clearly State property under a long line of decisions of this Honorable Court. Yet, the State of Maryland receives no royalty whatsoever for this loss of natural resources.

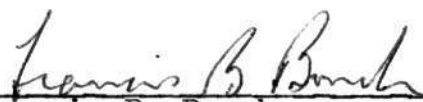
(e) By comparison, the State of Maryland receives under its lease of June 14, 1971, with C. J. Langenfelder & Son, Inc. a royalty in the amount of 25.5¢ for each ton of merchantable sand and gravel while the Wetlands Hearing Examiner on March 31, 1972, established a royalty rate of 45¢ per cubic yard for sand and gravel (application of the Arundel Corporation). A cubic yard of sand and gravel weighs 1.4 tons so that the effective royalty is 32.5¢ per ton. If these royalty rates were applied to the amount of sand and gravel removed from the Charles County bed of the Potomac River during the past more than 12 months since Chapter 792 has been in effect, it is seen that the State of Maryland has lost between \$133,875 and \$170,625.

(f) Appellant has stated that all dredging ceased at Greenway Flats on July 7, 1972.

(g) Under the rules of the United States Supreme Court Appellant has 90 days within which to file his petition for certiorari (until October 6). Under the present practice it is likely that the State of Maryland would be asked then to file an answer to that petition. Appellees believe and therefore aver

the lower court's opinion; that the legal questions presented on the proposed appeal to the United States Supreme Court are insubstantial and without merit; that considerable further environmental damage would be the result of further dredging; that the State would continue to lose valuable natural resources without compensation if dredging were permitted to continue; and that the ends of justice would not be served by granting the relief sought by Appellant in its motion.

WHEREFORE, Appellees respectfully urge that Appellant's Motion to Stay Issuance of Mandate be denied.



Francis B. Burch
Attorney General



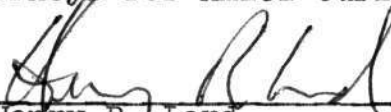
Henry R. Lord
Deputy Attorney General



Warren K. Rich
Assistant Attorney General

One South Calvert Street
Baltimore, Maryland 21202
383-3737
Attorneys for Appellees

I HEREBY CERTIFY that on this 24th day of July, 1972, a copy of the foregoing Answer was mailed, postage prepaid, to James J. Doyle, Jr., Esq. and John B. Jaske, Esq., Attorneys for Appellant, 10 Light Street, Baltimore, Maryland 21202, and to Alvin Ezrin, Esq., Hogan & Hartson, 815 Connecticut Avenue, Washington, D. C. 20006, and Anthony M. Carey, Esq., 2 Hopkins Plaza, Baltimore, Maryland 21201, Attorneys for Amici Curiae.



Henry R. Lord
Deputy Attorney General

[Handwritten initials]

June 29, 1972

James J. Doyle, Jr., Esq.
Attorney at Law
10 Light Street, 27th Floor
Baltimore, Maryland 21202

No 35, 1972

RE: Potomac Sand and Gravel Company v.
Governor of Maryland et al.
No. 35 (Adv.), September Term, 1972

Dear Mr. Doyle:

We enclose herewith a copy of an
Order of Court dated today in the above entitled
case.

Very truly yours,

James H. Norris, Jr.
Clerk

JHNjr/h
Encl.
cc: Henry R. Lord, Esq.
Deputy Attorney General

[Handwritten initials]

SHERBOW, SHEA & DOYLE

ATTORNEYS AT LAW
TWENTY-SEVENTH FLOOR
10 LIGHT STREET

BALTIMORE, MARYLAND 21202

JOSEPH SHERBOW
THEODORE SHERBOW
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ALAN B. LIPSON
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8-7681

June 27, 1972

Mr. James H. Norris, Jr.
Clerk
Maryland Court of Appeals
Court of Appeals Building
Annapolis, Maryland 21404

FILED

JUN 28 1972

James H. Norris Jr., Clerk
Court of Appeals
of Maryland

Re: Potomac Sand and Gravel Company
vs. Governor of Maryland, et al
No. 35 (Adv.)

Dear Mr. Norris:

Since July, 1971, Appellant has operated its business under Orders issued by the Circuit Court for Anne Arundel County restraining the enforcement of Chapter 792, Laws of Maryland, 1971. The latest Order covering March, 1972, through June, 1972, was filed March 10, 1972 and may be found at page E.55 of the Joint Record Extract.

To preserve the same posture during the pendency of the appeal, it is necessary that a similar Order be entered by the Court of Appeals for the month of July, 1972. An original and seven copies of such an Order approved by the Deputy Attorney General are enclosed. Please submit this Order to the Court prior to July 1.

Sincerely,



JAMES J. DOYLE, JR.

JJD/lrc
encls.

c.c. Henry R. Lord, Esquire
For All Judges

POTOMAC SAND AND GRAVEL COMPANY : IN THE
Appellant : COURT OF APPEALS
vs. : OF
GOVERNOR OF MARYLAND, et al : MARYLAND
Appellees : September Term, 1972
: No. 35 (Adv.)

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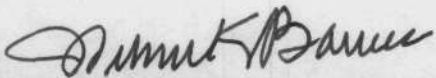
ORDER

It is the ^{29th} day of June, 1972, ordered that the Appellees, their agents, servants and employees are restrained from enforcing Chapter 792 of the Laws of Maryland, 1971, until either a per curiam decision or opinion is rendered in this appeal or this appeal is otherwise disposed of, and it is further ordered that during the pendency of this appeal Appellant shall only be allowed to dredge in and on the edges of previously dredged areas of the Greenway permit area. Appellant shall not remove from this area more than the following amounts of aggregate per month:

July, 1972..... 70,000 tons.

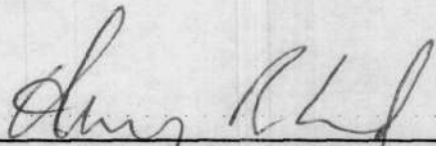
Dredging March, 1972 to June, 1972 was done under an order of the Circuit Court for Anne Arundel County dated March 10, 1972 (E-55).

Within ten (10) days after the end of July, 1972
Appellant shall certify to Appellees that amount dredged
during July, 1972.



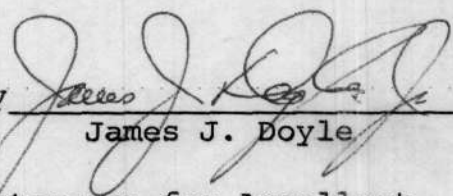
Acting Chief Judge

Approved:



Henry R. Lord,
Deputy Attorney General for Appellees

SHERBOW, SHEA & DOYLE

By 

James J. Doyle
Attorneys for Appellant

FOUR STAR BOND
SHEA-WHITE CO. U.S.A.
25% COTTON FIBER



April 24, 1972

No 35, 1972

Alvin Ezrin, Esq.
HOGAN & HARTSON
815 Connecticut Avenue
Washington, D. C. 20006

RE: Potomac Sand and Gravel Company v.
Governor of Maryland et al.
No. 35 (Adv.), September Term, 1972

Dear Mr. Ezrin:

We enclose herewith a copy of an
Order of Court filed April 21, 1972 in the above
entitled case.

The amicus curiae brief should be
filed in this Court on or before May 3, 1972.

Very truly yours,

James H. Norris, Jr.
Clerk

JHNjr/h
Encl.

cc: James J. Doyle, Jr., Esq.
Warren K. Rich, Esq.
Henry R. Lord, Esq.

IN THE COURT OF APPEALS
FOR THE STATE OF MARYLAND

POTOMAC SAND AND GRAVEL COMPANY,

Plaintiff

v.

MARVIN MANDEL,
Governor of the State of Maryland

JOHN C. HANCOCK,
State's Attorney for Charles County, Md.

FRANCIS C. GARNER,
Sheriff for Charles County, Md.

and

COL. THOMAS S. SMITH,
Superintendent, Maryland State Police,

Defendants.

FILED

APR 20 1972

James H. Norris Jr., Clerk
Court of Appeals
of Maryland

#35 (Adv)

1972 T

PETITION FOR LEAVE TO APPEAR AS AMICI CURIAE

Maryland Conservation Council, National Audubon Society, Southern Maryland Audubon Society, Mason Neck Citizens Association, Isaak Walton League of America, Inc., Virginia State Division, Great Falls Conservation Council, Conservation Council of Virginia, Inc. and Virginia Conservation Council, Inc. by Timothy J. Bloomfield, George W. Wise and Alvin Ezrin, their attorneys, petition for leave to appear in this action as amici curiae. The grounds of this petition are as follows:

1. This action raises important legal questions in the field of environmental law, namely the right of the State of Maryland by public local law to make it a criminal offense to dredge in the tidal waters and marshlands of a particular county of the State, and more particularly the constitutionality

of Chapter 792, Laws of Maryland, 1971 (Art. 9, Code of Public Local Laws of Maryland (1969 Ed.), Sec. 337 A) titled "Charles County", subtitled "Regulation of Dredging Operations".

2. Petitioner Maryland Conservation Council, Inc., a non-profit organization which was formed in April, 1969, is composed of numerous conservation organizations in the State of Maryland (a list of the Council's members is attached). The Council's function is to provide a continuing coordinating structure for its members to work for the conservation, preservation, and appreciation of Maryland's natural and historic resources by taking appropriate action and participating in all matters, including judicial and administrative proceedings, which could affect Maryland's environment.

3. Petitioner National Audubon Society is a non-profit organization which was founded in 1905. Individual memberships are in excess of 70,000 and there are more than 250 affiliated groups. The Society's major purpose is to advance public understanding of the value and need of conservation of wildlife, plants, soil, and water, and the relation of their intelligent treatment and wise use to human progress. Appropriate action is taken by the Society in judicial, administrative, and legislative actions which could have an effect on conservation of the nation's natural resources.

4. Petitioner Southern Maryland Audubon Society, a non-profit chapter of the National Audubon Society, was created in June, 1971. Its functions and activities are the same as those of the National Audubon Society.

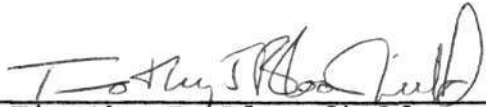
5. Petitioner Mason Neck Citizens Association is an organization of property owners and residents in the Mason Neck of Virginia. The Association was created in September, 1953

ISAAK WALTON LEAGUE OF AMERICA,
INC., VIRGINIA STATE DIVISION

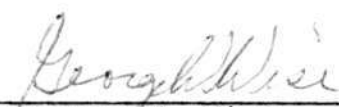
GREAT FALLS CONSERVATION COUNCIL
CONSERVATION COUNCIL OF VIRGINIA,
INC.

NORTHERN VIRGINIA CONSERVATION
COUNCIL, INC.

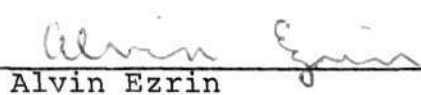
By


Timothy J. Bloomfield
Hogan & Hartson
815 Connecticut Avenue, N.W.
Washington, D.C. 20006

Of Counsel

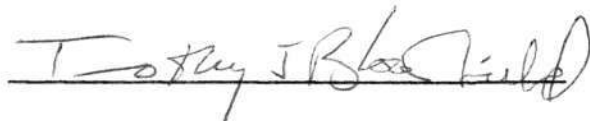

George W. Wise
Hogan & Hartson
815 Connecticut Avenue, N.W.
Washington, D.C. 20006

Of Counsel


Alvin Ezrin
Hogan & Hartson
815 Connecticut Avenue, N.W.
Washington, D.C. 20006

Attorneys

I HEREBY CERTIFY that on this 19th day of
April, 1972, copies of the foregoing Petition for
Leave to Appear as Amici Curiae were mailed to Francis B. Burch,
Attorney General, One South Calvert Street, Baltimore, Maryland
21202, and to Theodore Sherbow, Esq., and James J. Doyle, Jr.,
Esq., Sherbow, Shea & Doyle, 10 Light Street, 27th Floor,
Baltimore, Maryland 21202 and Victor H. Laws, Esq., 107 North
Baptist Street, Salisbury, Maryland 21801, Attorneys for Plain-
tiff.



Members (Continued)

Virginia Division, American Association of University Women

Virginia Division, Izaak Walton League

Virginia Farm Bureau Federation

Virginia Federation of Garden Clubs

Virginia Federation of Women's Clubs

Virginia Outing Club Association

Virginia Region, National Speleological Society

Virginia Society of Ornithology

Virginia Subsection, Society of American Foresters

Virginia Trails Association

Virginia Wilderness Committee

Wilderness Society

Wise County Conservation Council

Zero Population Growth of Virginia

Members
of
Maryland Conservation Council, Inc.

Audubon Naturalist Society of the Central Atlantic States, Inc.

Baltimore Campers Association, Inc.

Better Air Coalition

Canoe Cruisers Association

Casual Garden Club

Chesapeake Environmental Protection Association

Citizens Committee for Soldiers Delight

Committee for Maryland Trail Riding

Committee to Preserve Assateague

Cylburn Wildflower Preserve and Garden Center

Deer Creek Watershed Association, Inc.

Ecology Action, Inc.

Evergreen Garden Club

The Federated Garden Clubs of Maryland, Inc.

Frederick County Sportsman's Council

Isaak Walton League of America, Inc. Maryland State Division

The Junior League of Baltimore, Inc.

League of Maryland Horsemen, Inc.

League of Women Voters of Maryland

Maryland Ornithological Society, Inc.

Maryland Wetlands Committee

Maryland Wilderness Association

Mountain Club of Maryland

Moyano Association

Members (Cont'd)

U. S. NOL Fishing Club

Potomac Appalachian Trail Club

Potomac River Association of St. Mary's County

Sierra Club, Southeast Chapter

Soldiers Delight Conservation, Inc.

Western Maryland Wildlife Federation

Wilderness Society

Wildlands Committee

Zero Population Growth

IN THE COURT OF APPEALS
FOR THE STATE OF MARYLAND

POTOMAC SAND AND GRAVEL COMPANY,
Plaintiff

v.

MARVIN MANDEL,
Governor of the State of Maryland

JOHN C. HANCOCK,
State's Attorney for Charles County, Md.

FRANCIS C. GARNER,
Sheriff for Charles County, Md.

and

COL. THOMAS S. SMITH,
Superintendent, Maryland State Police,

Defendants.

No. 35 (Adv.)

September Term, 1972

ORDER

Upon the foregoing Petition for Leave to Appear as Amici Curiae, no Answer thereto having been filed by any of the parties to this action, it is this 21st day of April, 1972,

ORDERED by the Court that Maryland Environmental Defense Center, Inc., Maryland Conservation Council, National Audubon Society, Southern Maryland Audubon Society, Mason Neck Citizens Association, Isaak Walton League of America, Inc., Virginia State Division, Great Falls Conservation Council, Conservation Council of Virginia, Inc. and Northern Virginia Conservation Council, Inc. may appear as amici curiae to file briefs, but not to participate in arguments. Counsel for amici curiae shall furnish a copy of their briefs to counsel for all parties, and counsel for all parties shall serve upon counsel for amici curiae copies of all pleadings, motions, or briefs hereafter filed.


Chief Judge

April 6, 1972



James J. Doyle, Esq.
Attorney at Law
10 Light Street, 27th Floor
Baltimore, Maryland 21202

RE: Potomac Sand and Gravel Company v.
Governor of Maryland et al.
No. 35 (Adv.), September Term, 1972

Dear Mr. Doyle:

We enclose herewith a copy of an
Order of Court filed in the above entitled case.

Very truly yours,

James H. Norris, Jr.
Clerk

JHNjr/h
Encl.

cc: Henry R. Lord, Esq.
Warren K. Rich, Esq.

No 35, 1972



POTOMAC SAND AND GRAVEL COMPANY	:	IN THE
	:	COURT OF APPEALS
Appellant	:	OF MARYLAND
vs.	:	
	:	September Term, 1971
MARVIN MANDEL, Governor of Maryland, et al	:	No. 35
Appellees	:	FILED
	:	APR 6 1972
	:	James H. Norris Jr., Clerk Court of Appeals of Md.

MOTION TO ADVANCE CASE FOR ARGUMENT

Appellant, Potomac Sand and Gravel Company, by James J. Doyle, Jr., John B. Jaske and Sherbow, Shea & Doyle, its attorneys, moves pursuant to Maryland Rule 845c that this case be advanced for argument ahead of its regular order on the docket for the following reasons:

1. Appellant, Potomac Sand and Gravel Company, dredges for sand and gravel in tidal waters and marshlands of Charles County, Maryland.
2. Chapter 792, Laws of Maryland, 1971, prohibits dredging in the tidal waters and marshlands of Charles County, Maryland. Chapter 792, Laws of Maryland, 1971, became effective July 1, 1971.
3. Appellant filed an action in the Circuit Court for Anne Arundel County challenging the constitutionality of Chapter 792, Laws of Maryland, 1971. This appeal is from a decree of that court that Chapter 792, Laws of Maryland, 1971, is not unconstitutional.
4. During the pendency of this case in the lower court, and at the present time, Appellant has operated its business under orders of the Circuit Court for Anne Arundel County restraining Appellees from enforcing Chapter 792, Laws of Maryland, 1971. An order of the

Circuit Court for Anne Arundel County restraining enforcement will expire on the last day of June, 1972, or upon a decision of this Court affirming the decree of the Circuit Court for Anne Arundel County.

5. The normal schedule for filing briefs and the numerical position of this case on the docket would result in a hearing of the appeal after July 1, 1972. Unless the case is advanced for oral argument, Appellant would be forced to cease dredging in Charles County and would be irreparably injured.

Further, Appellant asserts as cause for the granting of this Motion:

1. The record on appeal has been transmitted to this Court.

2. Appellant will file its brief in this Court by April ¹⁷~~21~~, 1972.

3. Appellees have agreed to file their brief in this Court by April 27, 1972.

4. Appellant and Appellees have agreed that the agreed record extract will be filed in this Court by April ¹⁷~~24~~, 1972.

5. Reply brief, if any, will be filed by May 3, 1972.

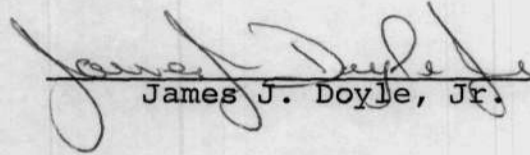
James J. Doyle, Jr.

James J. Doyle, Jr.
John B. Jaske


John B. Jaske
Sherbow, Shea & Doyle

Sherbow, Shea & Doyle
10 Light Street
Baltimore, Maryland 21202
685-6517
Attorneys for Appellant

WE HEREBY CERTIFY that a copy of the foregoing Motion and attached Order were mailed to Henry R. Lord, Esquire, and Warren K. Rich, Esquire, attorneys for Appellees, this 4th day of April, 1972.


James J. Doyle, Jr.


John B. Jaske


Sherbow, Shea & Doyle
Attorneys for Appellant

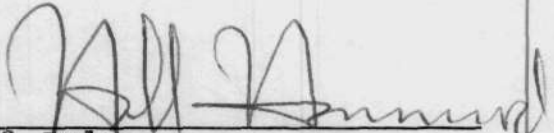
POWER STAR BOND
SOUTH WORTH CROSS
EX. CUTTING

POTOMAC SAND AND GRAVEL COMPANY : IN THE
 Appellant : COURT OF APPEALS
 vs. : OF MARYLAND
 :
 MARVIN MANDEL, : September Term, 1971
 Governor of Maryland, et al :
 Appellees : No. 35 (Adv.)
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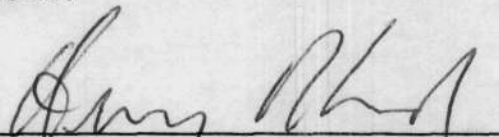
ORDER

It is this ^{6th} day of April, 1972, by the Court of Appeals of Maryland

O R D E R E D, that this case is advanced for argument on ^{may 9}, 1972. Briefs and an agreed record extract shall be filed on or before the following dates: Appellant's brief, April ¹⁷~~21~~, 1972. Agreed record extract, April ¹⁷~~21~~, 1972. Appellees' brief, April 27, 1972. Reply brief, if any, May 3, 1972.


 Chief Judge

Consent:


 Henry R. Lord
 Deputy Attorney General
 Attorney for Appellees