

Testimony in Support of Senate Bill 324 – Environment and Natural Resources – Complaints, Inspections, and Enforcement – Information Maintenance and Reporting

January 21, 2021

Dear Chairman Pinsky and Members the Senate Education, Health, and Environmental Affairs Committee:

The undersigned organizations thank you for this opportunity to submit testimony in support of Senate Bill 324. This bill would modernize the Maryland Department of the Environment's (MDE) and Department of Natural Resources (DNR) process for receiving, processing, and keeping records of any complaint that involves environmental or natural resources violations. The bill also will cut down on the amount of Public Information Act (PIA) requests these agencies must respond to, while ensuring greater access to information about violations, inspections and other enforcement actions pursued by the state. At a time when violations of our environmental laws are already widespread,¹ Maryland communities have every right to know when a nearby facility is or may be polluting at unusual levels.

Since 2002, staffing at Maryland state agencies has been cut by 6500 positions, which has led to dramatic decreases in environmental agencies ability to provide the public accountability and transparency of their enforcement activities. Over the last 20 years, MDE has lost over 13 percent of their positions and DNR has lost 17.5% of their positions. These reductions in environmental staffing at state agencies and other policy changes at the state and federal levels have limited the ability of agency staff to complete enforcement actions and hold polluters accountable.

Senate Bill 324 will:

1. Require the MDE to update its process for receiving and processing complaints from concerned Marylanders of suspected environmental violations and create a website that includes (a) a list of those complaints and other relevant information, (b) a list of inspections conducted by the department, along with pertinent information related to each inspection (c) a list of enforcement actions taken by the department, along with pertinent information related to each action, and (d) a list of violations that are deemed as a high-priority violations, including facilities that are in significant noncompliance. MDE would be required to update the information provided on this website on a monthly basis and provide annual reports relaying the state's efforts.
2. Require the DNR to annually report on (a) inspections, (b) citations and warnings issued, violations that led to a conviction, and (c) pertinent information related to DNR's enforcement of commercial and recreational fishing, crabbing, harvesting, gaming, wildlife and boating laws.

Public access to information related to environmental violations and the state's enforcement response is a fundamental right in state, federal, and even international law. The Maryland Environmental Policy Act (MEPA) provides "[a]ll State agencies... will assure that...decision-making involving environmental effects are undertaken with the fullest practicable provision of timely public information" and Maryland's Public Information Act establishes that "[a]ll persons are entitled to have

¹Noncompliance rates are as high as 70 percent for some federal programs. Harvard Law School, Environmental and Energy Law Program: Environmental Regulation for the Modern Era Part 2: Noncompliance with Environmental Rules Is Worse Than You Think *available at* <http://eelp.law.harvard.edu/wp-content/uploads/Cynthia-Giles-Part-2-FINAL.pdf>.

access to information about the affairs of government and the official acts of public officials and employees."² The very first section of the federal Clean Water Act states that “public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States.” As mentioned above, the lack of adequate staffing at MDE is well documented and a significant hindrance to its mission. MDE would save extremely valuable time, money, and staff resources by ensuring that any public records in its possession are clearly provided to the public via its website.

Senate Bill 324 supports the legal right of public participation in environmental enforcement. The Clean Water Act, like many of our foundational environmental laws, was designed to allow the public to step in and enforce the laws when needed, thereby alleviating state and federal agencies of the overwhelming burden of taking on this role alone. However, Marylanders cannot provide this desperately needed assistance effectively or efficiently without access to the relevant information to which they have a fundamental right. Access to environmental enforcement data is an important tool in protecting this right.

The need for greater access to environmental enforcement data could not be more clear. Not only has the level of enforcement of our environmental laws declined at the federal level, but the number of actions taken by MDE to enforce the Clean Water Act and state water pollution control laws has declined substantially in recent years, exacerbating the challenges we have of meeting our clean water goals. The need for public enforcement is greatest when the state proves unwilling or incapable of doing the job itself.

Our environmental laws are meaningless without appropriate enforcement measures to back them up. For the sake of our environment, our communities, and our public health, we strongly urge your favorable report on this legislation

Arundel Rivers Federation
Blue Water Baltimore
Central Maryland Beekeepers Association
Clean Water Action
Common Cause Maryland
Humane Society of the United States
Maryland Campaign for Environmental Human Rights
Maryland Pesticide Education Network
Maryland Votes for Animals
Nuclear Information and Resource Service
Unitarian Universalist Legislative Ministry of Maryland

Audubon Maryland-DC
Center for Progressive Reform
Chesapeake Legal Alliance
Climate Law & Policy Project
Friends of the Earth
Maryland League of Conservation Voters
Maryland Sierra Club
NARAL Pro-Choice Maryland
Shore Rivers
Waterkeepers Chesapeake

² Md Code Ann. Nat. Res. §1-303(3) and Md Code Ann. Gen. Prov. §4-103, respectively.