



January 25, 2021

The Honorable Kumar P. Barve, Chair
Environment and Transportation Committee
251 House Office Building
6 Bladen Street
Annapolis, MD 21401

Re: Opposition to House Bill 204 (Environment and Natural Resources-Complaints, Inspections, and Enforcement-Information Maintenance and Reporting)

Dear Chairman Barve:

On behalf of the Maryland Municipal Stormwater Association (MAMSA), I am writing to convey MAMSA's **opposition** to HB 204, which would require, among other things, that the Department of the Environment (MDE): 1) keep an electronic record of every complaint it receives of suspected violations of the Environment Article and 2) develop and maintain a website with complaints and other inspection and enforcement information. **MAMSA urges the Committee to vote "NO" on HB 204** because MDE already has substantial and adequate reporting and record keeping obligations and the public has ample access to these records.

MAMSA is an association of 20 proactive local governments and leading stormwater consulting firms that work for clean water and safe infrastructure in Maryland based on sound science and good public policy.

MAMSA opposes HB 204 because: 1) MDE is already required to provide in-depth information on its compliance assistance and enforcement activities; HB 204 would impose both new and overlapping obligations; and 2) the public already has access to complaints, inspections, violations, and enforcement records through the Maryland Public Information Act and MDE's and EPA's online databases. In addition, HB 204 requires that even meritless complaints be identified as "open" until MDE has actively investigated and affirmatively documented that they are meritless. A permittee could unfairly be identified as subject to an open complaint for lengthy periods of time, without being able to defend itself and while suffering potentially significant negative impacts. A complete list of concerns is provided as an attachment.

Please feel free to contact me at lisa@aqualaw.com or 804-716-9021 with any questions.

Sincerely,

A handwritten signature in blue ink that reads "Lisa Ochsenhirt".

Lisa Ochsenhirt
Deputy General Counsel

cc: House Environment and Transportation Members
HB 204 Sponsors

SB 324/HB 204 COMMENTS

<u>Page/Line</u>	<u>Comment</u>
p.3/l.9-18; p.2/l.5-28	Page 3, lines 9-18, requires MDE to maintain a website that provides a list of every complaint received by the Department, including the date, county, relevant administration, and a complaint or case identification number. Although the website is apparently not intended to provide the identity of facilities about which complaints of suspected violations have been made, it will be a simple matter to obtain that information through a Public Information Act request, since MDE will be required by page 2, lines 5-28, to keep an electronic record of every complaint of suspected violation, regardless how meritless. Even meritless complaints will be considered open until MDE actively investigates and affirmatively documents that they are without merit. Given MDE's workload, a facility could be identified as subject to an open complaint for years. This has the potential to impact real estate transactions, availability of credit, and the ability to bid on public procurements.
p.3/l.1-8	The Office of the Attorney General already takes the position that documents related to settlement negotiations may be subject to production under the Maryland Public Information Act (PIA). The language at page 3, line 1-8, goes well beyond the scope of the PIA and would require MDE to <i>create</i> a document that tracks proposed settlements on a monthly basis. This obligation could include not only the Department's <i>initial</i> settlement proposal but presumably any <i>subsequent</i> proposal made in response to information/counter proposals provided by alleged violators. Tracking this information would be extremely burdensome and would have a chilling effect on settlement negotiations.
p.3/l.19-29; p.4/l.1-7	This language would require MDE to maintain a list of information regarding each inspection conducted during the preceding 365 days. This time frame is inconsistent with MDE's obligations under MD Code, Envir. § 1-301(d). While some of the information required to be collected by the bill would likely not be burdensome to maintain (e.g., name of site/entity, county, zip code, permit number), the obligation to summarize the conclusions of the inspector would be very burdensome. Additionally, if MDE would also be required to provide a link to inspection reports that contain the same information (p.4/l.4-7), which would also likely be burdensome, there is no need to require separate entry of the same information. Furthermore, many programs already have electronic reporting requirements that would render this obligation superfluous. For example, facilities subject to National Pollutant Discharge Elimination System (NPDES) permits are already required to enter monitoring results, including permit exceedances, into the <i>publicly available</i> "NetDMR" system. Permittees are also obligated to report the date, quantity, and location of sanitary sewer overflows to MDE and that information is available to the public electronically.

- p.4/l.8-24 This language would require MDE to maintain a list of each “enforcement action” “initiated” in the preceding 365 days. “Enforcement action” and “initiated” are not defined and may be unduly broad. The language appears to include referring a matter to the Office of the Attorney General for civil or criminal prosecution. Although this provision would not require that a facility be identified by name, it does require that the permit number be provided, which readily allows the facility and the enforcement target to be identified. It is inadvisable to publicly announce ongoing investigations.
- p.4/l.25-30; p.5/l.1-8 As noted above, facilities subject to National Pollutant Discharge Elimination System (NPDES) permits are already required to enter monitoring results, including permit exceedances, into the publicly available “NetDMR” system. Furthermore, EPA uses that information to identify on its website facilities that are considered in significant noncompliance.
- p.5/l.9 (VI) should be (6).
- p.5/l.21 (VII) should be (7).
- p.5/l.25 This language would require the enormous amount of data that is posted on the MDE website to be maintained for a period of ten years. This is well beyond any applicable statute of limitations for air and water violations and is therefore unduly long and unnecessarily expensive.