



Testimony in Support of House Bill 76 (Delegate Love) Water Pollution Control – Intervention in Civil Actions – Rights and Authority

January 20, 2021

Dear Chairman Barve and Members of the Committee:

Thank you for this opportunity to submit testimony in support of House Bill 76 on behalf of Waterkeepers Chesapeake, a coalition of seventeen Waterkeepers, Riverkeepers, and Coastkeepers working to make the waters of the Chesapeake and Coastal Bays swimmable and fishable. If enacted, HB 76 will be an important tool for Waterkeepers, citizen organizations, political subdivisions, and community groups working to protect their communities, rivers, and streams from pollution.

House Bill 76 would align Maryland law with federal law by allowing citizen intervention in civil enforcement actions brought by the state of Maryland against alleged polluters. While this right is provided in federal court under the Federal Clean Water Act, when the same action is brought in state court, intervention is functionally prohibited. This is in conflict with the requirements under the federal Clean Water Act for delegated state programs such as Maryland's. This bar to intervention negatively impacts Waterkeepers, citizens, and communities seeking full and fair enforcement of our laws.

MDE's enforcement has been on a steep decline.¹ Clean Water Act enforcement actions by Maryland Department of the Environment have dropped to record lows in Maryland in 4 of the last 5 years, and FY 20's number was 85% below the long term average before 2015, when the steep decline in enforcement began.²

This drop is not due to a reduction in violations, as the percentage of facilities having violations has actually increased slightly over this same time period. However, rather than choosing to enforce, Maryland has chosen an approach of "compliance assistance"—working with polluters, rather than bringing the enforcement actions that our communities and watersheds desperately need. A lack of enforcement is a clear signal to polluters—that they are welcome to pollute Maryland's communities. When these polluters

¹ See Len Lazarik, *Md. Environment Department Taking Fewer Enforcement Actions Against Water Pollution*, MarylandReporter.com (April 22, 2018)

<https://marylandreporter.com/2018/04/22/md-environment-department-taking-fewer-enforcement-actions-against-water-pollution/#:~:text=In%20a%20report%20submitted%20earlier,fewest%20since%20fiscal%20year%202008>

² See Md. Dept. of Environment, *Annual Enforcement & Compliance Report: Fiscal Year 2020* (2020) https://mde.maryland.gov/Documents/AECR_FY20.pdf.



engage in violations, they disproportionately do so in low-income communities and communities of color.³

A decline in enforcement is, unequivocally, an environmental justice issue. It is Maryland's low income communities and communities of color that are most susceptible to being polluted, while possessing less tools to address water pollution. A report from the Environmental Law Clinic at The University of Maryland stated that the lack of investment of Clean Water Act resources in Maryland's overburdened communities is highly problematic, and disrupts efforts to make these communities healthier and more sustainable.⁴ The report also concluded that in terms of a number of health risks in communities of color, that "...environmental factors, such as pollution and the lack of health promoting infrastructure in many communities, most likely contribute to the health disparities in Maryland."⁵

This bill provides an essential tool for both citizens and the state, and an opportunity to make sure polluters are held to account through full and fair enforcement actions and penalties, which are strong deterrents to future pollution. Intervention allows community members across the state—particularly in overburdened communities on the frontlines of pollution, to seek stronger penalties through intervention. Ensuring that Marylanders have the right to intervene in Clean Water Act cases brought by the state in state court (which is comport with what the Federal Clean Water Act already requires) is a short bridge to cross towards a more just, healthy and equitable Maryland.

For these reasons, I urge a favorable report on House Bill 76.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M.A. Johnson", written in a cursive style.

Morgan Johnson
Staff Attorney
Waterkeepers Chesapeake

³ See Elizabeth Shwe, *Md. Needs an Environmental Justice Plan, Advocates Say*, (August 24, 2020) <https://www.marylandmatters.org/2020/08/24/md-needs-an-environmental-justice-plan-advocates-say/>.

⁴ See Maryland Environmental Law Clinic, *Environmental Justice in Maryland*, (September, 2015) <https://www.bdlaw.com/content/uploads/2019/04/fulltext.pdf>.

⁵ *Id.*