



3070 M Street, NW
Washington, DC 20007
202.888.2037
keeper@prknetwork.org
www.prknetwork.org

January 18, 2021

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

Thank you for this opportunity to provide testimony in support of House Bill 76. My name is Phillip Musegaas, and I am the Vice President of Potomac Riverkeeper Network (PRKN), a member supported clean water advocacy organization founded in 2000 with the mission of protecting the public's right to clean water in the Potomac and Shenandoah Rivers.¹ PRKN is a member of Waterkeepers Chesapeake, and one of over two hundred Keeper organizations around the U.S. working to protect local communities and our rivers from pollution. Enactment of HB76 would provide PRKN and other Maryland advocates full access to represent our members' interests in state court, and thus give us a powerful tool to protect Maryland's communities and waterways from pollution.

One of the core requirements of every Riverkeeper organization is that, when appropriate, we use citizen enforcement of federal and state pollution laws to hold polluters accountable in our watershed. In our twenty year history, PRKN has used litigation to address a diverse range of pollution challenges, from untreated sewage discharges to toxic seeps from coal fired power plants and landfills. While PRKN often files suit in federal court, we have also sought to intervene in environmental enforcement actions filed in state court by state agencies or the state's Attorney General. Unfortunately, the Maryland Court of Special Appeals abrogated our right to intervene in state court in its 2010 ruling regarding coal ash pollution at the Faulkner coal ash landfill in Charles County, MD. PRKN documented violations of the Clean Water Act and state law, and sought to intervene in support of the state's enforcement action. In fact, our intervention was supported by MDE and the Maryland Attorney General's office. Despite this, the court ruled against us, finding that we did not meet its unreasonably high threshold for intervention.

Since that time, PRKN has not sought to intervene in any state enforcement actions in Maryland, knowing that such effort would likely be futile under current state case precedent. This limits our ability to fully protect our rivers and communities from pollution, constraining PRKN to pursue legal action only in federal court. While federal citizen suits are a powerful tool, and are often used by PRKN, not all pollution issues can be directly addressed through the Clean Water Act and other federal laws. For example, states have broader authority to address groundwater and nonpoint source water pollution than do citizen groups. In order to best protect and represent the public's right to redress pollution in their communities, it is essential that PRKN and other clean water advocates have the ability to fully represent the public in state court proceedings.


¹ For more information on our campaigns and cases, please see www.potomacriverkeepernetwork.org



Providing the public this right through enactment of HB76 would not automatically lead to increased litigation, because intervention is only available when the state has already brought an action. Allowing citizen groups to intervene benefits the public, because it would enable PRKN to strengthen the state's case and seek remedies that most directly address local community harms.

Thank you for providing me with the opportunity to voice PRKN's support for HB76.

Respectfully,

A handwritten signature in cursive script that reads "Phillip Musegaas".

Phillip Musegaas
Vice President of Programs and Litigation