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January 26, 2021

To: The Honorable William C. Smith, Jr.  
Chair, Judicial Proceedings Committee

From: Hannibal G. Williams II Kemerer, Esq.  
Office of the Attorney General

Re: SB0334 (HB0076) – Water Pollution Control – Intervention in Civil Actions – Rights  
and Authority – **Letter of Support**

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The Office of the Attorney General urges the Judicial Proceedings Committee to favorably report Senate Bill 334.

Under Section 402 of the federal Clean Water Act, one of the requirements for state-administered National Pollutant Discharge Elimination System (NPDES) permitting programs is that a state must either allow intervention as of right in enforcement proceedings where a citizen has an interest that is or may be adversely affected, or in the alternative not oppose permissive intervention by citizens and allow public comment on proposed settlements. *See* 40 C.F.R. § 123.27(d). EPA has concluded that Maryland satisfied this requirement by providing for intervention through Maryland Court Rule 2-214. However, Waterkeepers Chesapeake and the Environmental Integrity Project have sued EPA seeking to have Maryland's authorization to administer the NPDES program withdrawn, on the basis that Rule 2-214 does not provide a sufficient means of intervention; MDE has intervened as a defendant in that litigation.

Senate Bill 334 is intended to codify the standard for citizen intervention in state NPDES enforcement cases—namely, that a citizen who meets the federal standing requirements may intervene. In other words, contrary to representations in some opponents' written testimony, the bill does not create any new standing requirements; rather, it only codifies the standard for intervention. That standard is consistent with other provisions of the Environment Article that provide for citizen participation for those that meet standing requirements under federal law. *See, e.g.,* Md. Code Ann., Env't § 1-601(c)(1).

Although we wholeheartedly support passage of SB 334, there is one potential drafting error in subsection (b) of the bill. That subsection states that an intervening “citizen shall have all rights of a party in interest or aggrieved party, including all rights to *apply for judicial review and appeal.*” (emphasis added). The reference to judicial review should be deleted, as it is inapplicable to civil enforcement actions brought under Title 9, Subtitle 3, which are filed in Maryland circuit courts. Judicial review of a circuit court action is not available.

In conclusion, the Office of Attorney General urges a favorable report on SB 334 (HB 76).

cc: Judicial Proceedings Committee Members  
Judiciary Committee Members