



Environmental Law Clinic
Francis King Carey School of Law
Director: Prof. Jon Mueller
jmueller@law.umaryland.edu
500 W. Baltimore St., Suite 360
Baltimore, MD 21201

Senate Education, Energy and Environment Committee
2 West, Miller Senate Office Building
Annapolis, Maryland 21401
March 5, 2024

TESTIMONY IN SUPPORT OF SB 96 – FAVORABLE WITH AMENDMENTS

To the Honorable Chair Feldman, Vice-Chair Kagan, and members of the Education, Energy, and the Environment Committee,

On behalf of the University of Maryland Carey School of Law Environmental Law Clinic, we write today in support of Senate Bill 96 - Environment - Impact of Environmental Permits and State Agency Actions. **First, this bill will enable the Maryland Department of the Environment to consider the impacts of its previous permitting decisions to better inform its subsequent decisions. Second, MDE should be required to consider all environmental harms endured by overburdened and underserved communities in its analysis of whether to grant or condition a pollution permit. Third, we further support the provisions of the bill mandating that all state agencies consider the total environmental impacts on communities arising from their decisions.**

Responsible governance and environmental justice demand these policies, and we applaud this bill's effort to codify them. An in-depth understanding of the aggregated effects of prior government decisions on overburdened and underserved communities is critical for smart agency decision making that benefits everyone. We believe this legislation is a significant step towards more responsible agency action and the creation of a balanced permitting system that serves all stakeholders equitably and with long-term benefits in mind.

Overburdened and underserved communities in Maryland experience overlapping environmental injustices from the significant and disproportionate concentration of harmful pollution sources in their environments due to decades of government decisions, especially concerning zoning and permitting. Environment Article, 1-701 (a)(7) defines a community as "overburdened" when three or more of twenty-one specific factors exist in a census tract and are above the 75th percentile statewide.

Moreover, overburdened and underserved communities inherently have fewer resources and are therefore often unable to effectively represent their best interests in the permitting processes of facilities within or near their borders. For years, our clinic has assisted numerous residents and representatives of these communities as they wrestle with disproportionate

environmental challenges. Overburdened and underserved communities need government intervention to prevent them from being subjected to further harm.

Marylanders in overburdened and underserved communities deserve additional consideration from state authorities during the decision making, permit application, and permit renewal process because they already experience a disproportionate amount of environmental harm as compared to other citizens across the state—often due to actions permitted or undertaken by the state. Mandatory agency consideration of those disproportionate harms during the permit and decision-making process would result in more balanced results for disadvantaged communities that cannot spend significant time or resources to secure adequate representation in the permitting process. So, it is only fair and within the principles of “environmental justice” as defined at 1-701(5) for the General Assembly to mandate consideration, mitigation, and/or prevention of any additional harms that will impact overburdened and underserved communities.¹ This consideration does not require an outright denial of a permit but can include permit modification.

We strongly support the framework created by this bill as written and have two small but impactful amendments. First, the list of permits subject to the bill should be expanded to include Title V air quality control permits, which have a more widespread effect on overburdened and underserved communities than the permits currently affected by the bill. Second, the bill language should be amended to mandate that MDE either deny or modify permit conditions for facilities that would impact overburdened and underserved communities. Such mandatory language would require the permit to mitigate the impacts identified in Climate and Equity Evaluations and Health Impact Assessments. The language should also require that any modifications must align with those documents.

Title V air quality control permits should be added to the list of permits addressed by SB96 because those sources account for most of the most harmful pollution impacting Maryland’s overburdened and underserved communities. Title V of the federal Clean Air Act is an essential part of our nation’s air pollution control framework, targeting major sources of air pollution. Title V covers many hazardous air pollutants, including nitrogen dioxide, sulfur dioxide, lead, carbon monoxide, ozone, and particulate matter. Particulate matter especially is disproportionately likely to affect people of color. Some of the health effects of particulate matter exposure include premature death in people with heart or lung disease, asthma, heart attacks, and decreased lung function. As drafted, SB96 only applies to air quality control permits to construct, permits to install or alter landfills and incinerators or sewage sludge storage structures, water discharge permits, controlled hazardous substance facility permits, low-level nuclear waste facility permits, and potable reuse permits. However, research developed by the League of Conservation Voters¹⁰⁸ established that only 3 permits under the bill as drafted are in census tracts considered

¹ Senate Bill 96 (“Environmental justice” means equal protection from environmental and public health hazards for all people regardless of race, income, culture, and social status).

overburdened, but 39 Title V permits² are in overburdened tracts.³ Therefore, without the addition of Title V permits, the beneficial purpose of this bill would be frustrated, and a major health hazard that overburdened and underserved communities currently experience would not be meaningfully reduced.

To ensure the purpose of the bill is met, there should also be stronger statutory language mandating that MDE must consider the potential harms and implement the solutions identified within each Evaluation and Assessment. 1-7A-03 (C) should thus be changed to read:

“The Department *shall* deny or alter a decision or amend the conditions under a pending permit based on the Department’s findings under this subtitle to alleviate additional adverse effects to overburdened and underserved communities. Permit modifications or amendments shall conform to the recommendations identified in the Evaluation and Assessment.”

This language change makes the Evaluations and Assessments more impactful by requiring the Department to consider and implement its findings when it makes decisions, ensuring that Maryland government fully utilizes its expertise to protect the most vulnerable of us from disproportionate environmental harm. Mandating these considerations would provide much needed additional protections and agency attention to overburdened and underserved communities—and Maryland would not be the first state to do so.³

SB96 is an important step in protecting overburdened and underserved communities in Maryland, taking our state closer towards realizing the goals of environmental justice. We believe our suggested amendments are small but necessary additions to turn a very good bill into a highly impactful one, ensuring the purpose of the bill is achieved and that the department has clear and strong statutory requirements.

Too many Marylanders experience the ripple effects of decades of environmentally unjust permitting decisions and agency actions taken without regard to the existing disproportionate harms facing marginalized communities, and we are hopeful that this bill will help reduce additional burdens placed on them. We urge this committee to incorporate our amendments and ultimately give the bill a favorable report as amended.

Respectfully submitted on behalf of the University of Maryland Environmental Law Clinic,

² Maryland League of Conservation Voters, <https://www.mdldcv.org/action-alert/ej-mde>.

³ New Jersey Stat. Ann. § 13:1D-157 requires the denial of permits for new facilities if the facility would disproportionately impact overburdened communities and requires that renewals whose disproportionate impact cannot be avoided must be modified to address the facility’s impacts on certain environmental factors. A New York law, Environmental Conservation Law (ECL) Sec. 70-0118., provides that its Department of Environmental Conservation shall not issue an applicable permit for a new project if it determines that the project will cause or contribute more than a de minimis amount of pollution to the cumulative pollution burden on a disadvantaged community. The Connecticut Department of Energy and Environmental Protection or the Connecticut Siting Council can deny or impose specific conditions on permits for new construction and operation of proposed industrial facilities based on a determination that cumulative environmental or public health stressors on environmental justice communities close to the proposed facility are higher than other communities in the state. General Statutes of Connecticut § 20a-22a.

Camila Reynolds-Dominguez, JD '24

Jamie Hoare, JD '24

Gabriella Werner, JD '24

Please feel free to direct any questions to our clinic director, Prof. Jon Mueller,

jmueller@law.umaryland.edu