



Maryland Association of Municipal Wastewater Agencies, Inc.

Washington Suburban Sanitary Commission

14501 Sweitzer Lane, 7th Floor

Laurel, MD 20707

Tel: 301-206-7008

February 28, 2024

MEMBER AGENCIES

Allegany County
Anne Arundel County
City of Baltimore
Baltimore County
Town of Berlin
Cecil County
Charles County
City of Cumberland
D.C. Water
Frederick County
City of Hagerstown
Harford County
City of Havre de Grace
Howard County
Ocean City
Pocomoke City
Queen Anne's County
City of Salisbury
Somerset County Sanitary District
St. Mary's Metro. Comm.
Washington County
WSSC Water

The Honorable Marc Korman
Chair, Environment and Transportation Committee
Room 251 House Office Building
Annapolis, MD 21401

Re: OPPOSE – HB 1101 (Standing-Environmental and Natural Resource Protection Proceedings) (Clean Water Justice Act of 2024))

Dear Chairman Korman:

On behalf of the Maryland Association of Municipal Wastewater Agencies (MAMWA), I am writing to **oppose** HB 1101, which would, among other things, create a new right for citizens to sue for alleged permit violations by publicly owned wastewater treatment plants (also known as publicly-owned treatment works, or “POTWs”).

MAMWA is a statewide association of local governments and wastewater treatment agencies that serve approximately 95% of the State's sewer population. MAMWA members own and operate POTWs and work hard every day to fully comply with discharge permits issued by the Maryland Department of the Environment (MDE).

MAMWA **opposes** any bill that puts local governments at greater risk for state lawsuits and their associated costs.

MAMWA **opposes** HB 1101 for the following specific reasons:

- **The Bill Is Too Broad** – As filed, the bill would allow a person or association meeting the standing requirements in §1-902 (p. 3, l. 10 – p. 4, l. 2) to file a lawsuit in circuit court under a multitude of state statutes (more than 60 subtitles of the Code). This includes the sections of the Code governing the water and sewer planning process (Environment Article, Title 9, Subtitle 5), the operation of the Maryland Water Infrastructure Finance Administration (MWIFA) (Environment Article, Title 9, Subtitle 16), and the Maryland Environmental Policy Act (Natural Resources Article Title 1, Subtitle 3).

To provide a specific example, localities could be sued under this new Subtitle for alleged violations associated with a water and sewer plan. Currently, enforcement of Title 9, Subtitle 5 is reserved to MDE. Similarly, it appears MDE could be sued by any person who alleges an injury-in-fact associated with a financial decision made by its MWIFA. ***In short, the bill appears to open the flood gates for new causes of action under State law that do not currently exist.***

CONSULTANT MEMBERS

Black & Veatch
GHD Inc.
Greeley and Hansen Engineers
Hazen & Sawyer
HDR Engineering, Inc.
Jacobs
Ramboll Americas
Whitman, Requardt & Assoc.
Xylem, Inc.

GENERAL COUNSEL

AquaLaw PLC

February 28, 2024

Page 2

- **Citizens Can Already Sue Under Federal Law** – Even if the bill is amended to limit it to MDE permits issued under Title 9, Subtitle 3 (Water Pollution Control, which includes POTW permits) and Title 5, Subtitle 9 (Nontidal Wetlands) of the Environment Article, MAMWA still opposes this bill because citizens already have the right to sue under the Clean Water Act Citizen Suit provision.

MDE issues POTW discharge permits under delegated authority from the U.S. Environmental Protection Agency and the Clean Water Act (33 U.S.C. §1251, et seq.). Clean Water Act §503 allows any citizen to file a civil lawsuit against any person who is allegedly violating an effluent limit or standard in a discharge permit. HB 1101 is unnecessary. Citizens are already allowed to go to federal court to allege permit violations.

Allowing new lawsuits against POTWs under State law would drive up local costs. Localities would have to defend any suits brought (with costs for attorneys, expert testimony, etc.) and could potentially be ordered to pay attorney's fees and litigation costs for the third-party bringing the suit.

- **HB 1101 Gives Citizens More Rights than Under Federal Law** – As with the federal Citizen Suit provision, the bill prohibits a private action from being brought if the Secretary of the Department of the Environment or the Secretary of the Department of Natural Resources has commenced and is diligently prosecuting an action to require compliance (page 4, lines 20-23). However, unlike federal law, the bill appears to allow a separate action to be brought if the private plaintiff asserts that the ongoing government enforcement action is allowing for undue delay or unreasonable schedules (page 4, lines 23-24). This may mean that a plaintiff who has slept on their right to intervene (page 4, lines 25-27) may nonetheless commence a separate action despite an ongoing government enforcement action.
- **MDE Enforces Environmental Laws and Citizens Can Readily Intervene in Those Cases** – The Environment Article gives MDE significant enforcement authority over discharge permits, including the ability to impose civil and criminal penalties. ENV. §9-334 through 9-344. In addition, ENV. §9-344.1 (Right to intervene), which passed just last year, gives citizens who meet threshold standing requirements the “unconditional right” to intervene in a case MDE brings in State court. When combined with the State’s liberal environmental standing standards, there is little chance an interested citizen could not make their voice heard if there is alleged permit noncompliance.

MAMWA urges the Committee to vote “NO” on HB 1101. Please feel free to contact me with any questions at Lisa@AquaLaw.com or 804-716-9021.

Sincerely,



Lisa M. Ochsenhirt, MAMWA Deputy General Counsel

cc: Environment and Transportation Committee, HB 1101 Sponsors