



Maryland

Department of the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

Ben Grumbles, Secretary
Horacio Tablada, Deputy Secretary

February 28, 2020

The Honorable Kumar P. Barve
Environment and Transportation Committee
Room 251, House Office Building
Annapolis, Maryland 21401

Re: HB 1128: Environment – Water Quality Certifications – Requests (Water Quality Certification Improvement Act)

Dear Chairman Barve and Members of the Committee:

The Maryland Department of the Environment (MDE or Department) has reviewed House Bill 1128, entitled *Environment – Water Quality Certifications – Requests (Water Quality Certification Improvement Act)* and would like to share some concerns regarding this legislation, while also reiterating our strong and continuing commitment to the Clean Water Act (CWA) and fighting federal efforts to weaken Section §401 of the Act.

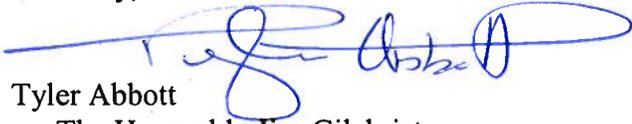
HB 1128, as introduced, requires that every request to Maryland for a water quality certification (WQC) under §401 of the federal CWA include an expanded list of required information and data, and more detailed review than current Maryland requirements. MDE estimates that this expanded review would increase the time required for MDE to process each WQC request by at least 25%. This represents a significant change in the WQC process and is estimated to have a significant impact on MDE's budget; requiring up to 15 new staff and more than \$1M per year. Additional certification would increase MDE's workload because the number of individual WQCs that MDE would be required to make decisions on would rise from approximately 200 per year to 2,200 per year.

This bill aims to expand the scope of MDE's WQC application review beyond the legal authority given to the State. For example, the bill would require MDE to deny a request for a WQC if MDE "is unable to affirm that the project will not adversely impact water quality," but "adverse impact" is not the proper standard for denial of a WQC under §401 of the CWA. Any attempt to expand MDE's authority beyond the scope of CWA §401 will inevitably lead to litigation, which could divert significant fiscal and operational resources away from MDE's core mission.

HB 1128 would also impose a significant burden on local governments related to the preparation of WQC requests. As currently drafted, this bill would impose significant additional cost, time, and effort on local governments related to the preparation of WQC requests due to the shift from the current practice of issuing general permits to the proposed new requirement for more individual permits. Both the U.S. Army Corps of Engineers and State agencies rely on general permits, where small environmental impacts may reasonably be expected, as a way to streamline and incorporate administrative efficiency to the permitting process. Without this efficiency, an increased burden to scrutinize every permit occurs, and potential delays and costs can be pushed onto local governments and small business applicants.

Thank you for your consideration. We will continue to monitor House Bill 1128 during the Committee's deliberations, and I am available to answer any questions you may have. Please feel free to contact me at 410-260-6301 or by e-mail at tyler.abbott@maryland.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tyler Abbott", with a large, stylized flourish extending to the right.

Tyler Abbott

cc: The Honorable Jim Gilchrist