



**Testimony in Support of House Bill 1128
Environment – Water Quality Certifications – Requests ('Water Quality Certification
Improvement Act')
Position: Favorable with Sponsor Amendments**

House Environment and Transportation Committee | February 28, 2020

Steven Hershkowitz, Maryland Director, CCAN Action Fund

Thank you for this opportunity to submit written testimony in support of the Water Quality Certification Improvement Act. This bill would help clarify and improve the permitting process for the 100-200 federally licensed projects proposed each year that could harm our state waters. It would help preserve the state's authority to fully review these projects, in the face of an imminent rollback of federal protections. And, for the first time, it would direct the Maryland Department of the Environment to consider the impacts of climate change on proposed projects.

Section 401 is the single most powerful authority granted to states under the Clean Water Act. It provides the only mechanism for states to review proposed projects, such as dams and interstate pipelines, that are federally licensed but could negatively impact state waterways. This important state power, however, is under threat from a proposed rule from the U.S. Environmental Protection Agency.

The proposed rule received strong public opposition, including a forceful letter from MDE Secretary Ben Grumbles, concerned that it would “undermine state authority and jeopardize the ability of states to protect their waters from pollution associated with federally permitted activities.”

The proposed federal rule would allow applicants to provide inadequate information to the State. It would also limit the time states have to review an application by setting a hard one-year deadline and starting that the clock when the State receives an application, no matter the completeness of the application.

Protecting water quality requires complete information. House Bill 1128 would define the minimum requirements for an application for a Water Quality Certification and require MDE to publish regulations that fully specify the contents of that application. By clearly laying out what constitutes a complete application, companies will know exactly what information to provide and MDE can easily determine whether an application is complete. This clarity will increase the likelihood that the agency receives a complete application and can immediately begin the necessary environmental review.

The bill also clarifies the public comment process so that interested Marylanders know where to find information and how and when to weigh in. Maryland residents have a strong interest in environmental protection and deserve clear, transparent opportunities to participate.

MDE's regulations governing its 401 process were last updated in 2001 and environmental threats have evolved since then. The impacts from climate change are more pronounced than they were 19 years ago, for example. This bill requires MDE to update its regulations to match the times. Under this bill, the applicant would need to provide and the agency would need to consider how the consequences of climate change such as sea-level rise, increased rainfall, and extreme storm events could impact the project.

That climate change could impact a project is not a theoretical concern. The extreme rainfall over the summer of 2018 caused so much erosion during construction of the Mountain Valley Pipeline in neighboring Virginia that the Attorney General is suing the operator for over 300 environmental violations. This lawsuit, brought at the taxpayer's expense, may result in fines levied on the operator, but it cannot fix the harm that this erosion has caused to Virginia's waterways. Regulators should consider these issues before the project is approved--and not after the damage has been done--to mitigate the harm.

For the reasons outlined above, we urge the Committee to adopt a favorable report on House Bill 1128.

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