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TO: The Honorable Kumar P. Barve
Chair, Environment and Transportation Committee

FROM: Brian E. Frosh
Attorney General

RE: HB 402 – Department of the Environment – Enforcement Authority – **Support**

Chair Barve, Vice Chair Stein, and distinguished members of the Environment and Transportation Committee, I appear before you today to urge your favorable report on House Bill 402. This legislation will assist our lawyers at the Maryland Department of the Environment (“Department”) in more efficiently and effectively doing their work and protecting public health and the environment.

Overview

House Bill 402 would address gaps in the State’s authority to enforce laws governing safe drinking water, wastewater facility operation, waterway construction and dam safety, and tidal and nontidal wetlands by authorizing or augmenting civil, administrative, and/or injunctive remedies. The bill would also revise certain, existing criminal remedies to reflect civil penalty thresholds. The bill also requires drinking water and wastewater facilities to report to the State the certified superintendents, certified operators, and certified industrial operators who are participating in the operation of, or are in responsible charge of, those facilities. Specifically, the bill would amend Maryland’s drinking water statute (Environment Article Title 9, Subtitle 4); the Maryland Water Quality Laboratory Certification Act (Environment Article Title 9, Subtitle 10); and the Maryland Waterworks and Waste Systems Operators Act (Environment Article Title 12) to strengthen the State’s regulation of drinking water safety, testing, and wastewater operations. The bill would also amend Maryland’s waterway construction and dam safety statutes (Environment Article Title 5, Subtitle 5); the Maryland Nontidal Wetlands Protection Act (Environment Article Title 5, Subtitle 9); and the Maryland Tidal Wetlands Act (Environment Article Title 16). The enforcement provisions of the affected statutes have not been amended in

many years—sometimes decades—and are incomplete or fail to provide sufficient deterrence. In fact, several of the affected statutes lack civil, administrative, and/or injunctive relief entirely and provide only criminal penalties. The amendments would ensure the State retains primacy and funding under the Safe Drinking Water Act and authorize the State to enforce existing laws and regulations more effectively to protect public health and the environment.

Drinking Water

House Bill 402 would amend the State’s drinking water statutes (Environment Article Title 9, Subtitle 4) to authorize the Department to pursue injunctive relief and administrative and civil enforcement and penalties against persons who violate the State’s drinking water rules and regulations. This bill would also align the Drinking Water statute with other enforcement provisions under the Environment Article. The bill would allow civil penalties for any violation of the subtitle, remove the requirement that the Department prove that civil violations or breaches of administrative orders were “willful” before liability can be imposed, and increase the civil penalty for drinking water violations and violations of administrative orders from \$5,000 to \$10,000 per day. Currently, there is no civil or administrative penalty authority for violations by persons under Section 9-412(b). The bill would also authorize the Department to assess administrative penalties against persons who violate drinking water rules and regulations. This would address the anomalous wording in Section 9-413(d)(1), which authorizes the Department to impose administrative penalties against persons, then limits the Department’s authority to public water systems in Section 9-413(d)(2) et seq. In addition to Section 9-413(d)(1), Subtitle 4 provides certain enforcement mechanisms for violations by “persons” in Section 9-413, Section 9-414, Section 9-415, and Section 9-416. However, Section 9-412 differentiates between violations by a public water system and violations by a “person”, severely constraining the Department’s authority to enforce the statute against persons notwithstanding the broad authority that otherwise exists in the statute.

Maryland Water Quality Laboratory Certification Act

If enacted, House Bill 402 would amend the Maryland Water Quality Laboratory Certification Act (Environment Article Title 9, Subtitle 10) to authorize the Department to pursue injunctive relief and administrative and civil enforcement and penalties against water quality laboratories. The statute governs the certification and operation of laboratories that perform testing and certification of drinking water under the Safe Drinking Water Act. Currently, the sole provisions to enforce Subtitle 10 are reprimanding, suspending, or revoking a water quality laboratory’s certification under Section 9-106 and Section 9-1017, or a criminal misdemeanor in Section 9-1026. These provisions have not been amended since 1982. Section 9-1024 and Section 9-1025 within Part III (Prohibited Acts; Penalties) are currently reserved. These sections would be replaced with authority for the Department to issue administrative orders and conduct hearings. The bill would also amend Section 9-1026 to include civil and administrative penalties and add Section 9-1027 to authorize the Department to pursue injunctive relief. The Department currently has no injunctive relief, or administrative or civil enforcement authority in the Maryland Water Quality Laboratory Certification Act, and the Department cannot effectively enforce laboratory suspensions or revocations without the proposed authority.

The lack of injunctive relief and administrative and civil enforcement authority makes it difficult for the Department to enforce Safe Drinking Water Act testing and recordkeeping requirements against the laboratories that perform these verifications on behalf of public and private drinking water systems and weakens the State's regulatory system that protects drinking water.

Maryland Waterworks and Waste Systems Operators Act

House Bill 402 seeks to amend the Maryland Waterworks and Waste Systems Operators Act (Environment Article Title 12) to add sections with injunctive relief and administrative and civil enforcement and penalties. The statute requires drinking water and wastewater facilities to employ a superintendent or operator who is licensed by the State Board of Waterworks and Waste Systems Operators to oversee operations and ensure compliance with State and federal law. Currently, the sole provision to enforce Title 12 against drinking water or wastewater facilities is a criminal misdemeanor of \$25 per day in Section 12-504. This provision has not been revised since 1987. Section 12-501 would be amended to require drinking water and wastewater facilities to annually report to the State the superintendents, operators and industrial operators who are participating in the operation of or are in responsible charge of those facilities. Section 12-502 and Section 12-503 within Subtitle 5 (Prohibited Acts; Penalties) are currently reserved. These sections would be replaced with authority for the Department to issue administrative orders and conduct hearings. The bill would also amend Section 12-504 to include civil and administrative penalties and add Section 12-505 to authorize the Department to pursue injunctive relief. The Department currently has no injunctive relief, or administrative or civil enforcement authority in the Maryland Waterworks and Waste Systems Operators Act. Finally, the bill would amend Section 12-101 to add a definition of "person" which is used throughout the statute but not defined. The lack of enforcement authority makes it difficult for the Department to require public water systems to have certified operators. The U.S. Environmental Protection Agency ("EPA") has recommended that the Department develop and implement a strategy to increase compliance with State and federal operator requirements under the Safe Drinking Water Act. This legislation could be part of that strategy.

EPA requires Maryland to have injunctive relief and administrative and civil enforcement authority for its operator licensing laws as a condition of the delegation of primary enforcement responsibility to Maryland for the Safe Drinking Water Act. Failure to have adequate enforcement authority could also jeopardize the federal Drinking Water State Revolving Loan Fund capitalization grant, which Maryland receives each year, and upon which Maryland's Water Supply Program and Drinking Water State Revolving Loan Fund depend.

Waterway Construction and Dam Safety

House Bill 402 amends the Maryland waterway construction and dam safety statutes (Environment Article Title 5, Subtitle 5) to provide MDE the ability to recover civil penalties and provide for administrative enforcement and penalties. Section 5-514 (Violations and penalties) currently provides for civil penalties for violations of subtitle 5 but only as relates to the water appropriation and use provisions of subtitle 5. Maryland currently has no administrative or civil penalty authority for the waterway construction or dam safety provisions of subtitle 5. The lack of administrative and civil penalty authority limits the enforcement tools available to MDE in

certain instances. Section 5-515 similarly allows MDE to issue administrative orders for violations of the water appropriation and use provisions of subtitle 5, but not the waterway construction or dam safety provisions of subtitle 5. However, MDE has promulgated regulation allowing it to issue corrective orders for waterway construction and dam safety violations. COMAR 26.17.04.12.

Nontidal Wetlands Protection Act and Tidal Wetlands Act

Finally, House Bill 402 would amend the Maryland Nontidal Wetlands Protection Act (Environment Article Title 5, Subtitle 9) and the Maryland Tidal Wetlands Act (Environment Article Title 16) to provide MDE the ability to recover administrative penalties for violations of both titles. Section 5-911 (Enforcement) currently provides for civil penalties and criminal fines for violations of subtitle 9, but Maryland currently has no administrative penalty authority. The lack of administrative penalty authority limits the enforcement tools available to MDE in certain instances. Similarly, Section 16-502 (Civil penalty) currently provides for civil penalties for violations of Title 16, but the statute does not specify any administrative penalty authority. The lack of administrative penalty authority limits the enforcement tools available to MDE in certain instances.

For the foregoing reasons, the Office of the Attorney General urges a favorable report of the House Bill 402.

cc: Committee Members