



**The Maryland Department of the Environment
Secretary Serena McIlwain**

***Senate Bill 1088
Environment - Public Participation in the Permitting Process - Alterations***

Position: Oppose
Committee: Education, Energy, and the Environment
Date: February 27, 2024
From: Hadley Anthony

The Maryland Department of the Environment (MDE) **OPPOSES** SB 1088.

Bill Summary

Senate Bill 1088 repeals § 1-604 of the Environment Article, which includes the public review process for tentative and final determinations for certain permits. This section requires MDE to prepare a tentative determination (*e.g.*, to issue or deny a permit that has been under review), provides notification and an opportunity for the public to review both the proposed determination and the environmental and engineering documentation, and requires a public hearing on the tentative determination if MDE receives a written request for a public hearing. This process allows MDE to amend the determination before it becomes final. Final determinations may be appealed to the circuit court of the local jurisdiction where the permitted facility is located.

The bill would require that the public notice of an application that is received be emailed by MDE on a quarterly basis to the local government's planning and zoning authority for the jurisdiction in which the proposed facility would be located. The bill removes the current requirement that the applicant bear the costs of notifications.

Finally, the bill also expands appeal rights for permits located in a community with an environmental justice (EJ) score of at least 75 on MDE's EJ Screening Tool and makes other changes based on EJ concerns.

Position Rationale

Most importantly, the bill's removal of § 1-604 creates a serious legal problem because this section requires MDE to publish a tentative determination on which the public can provide comments. By removing this section, the bill removes the ability for the agency to receive responsive public comments during the permitting process. The Clean Water Act requires the NPDES program, delegated by EPA to Maryland, to have a public notice and comment process. See 33 U.S.C. § 1342(b)(3). Therefore, the bill

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would render MDE's permitting program noncompliant with the NPDES program's requirements and present a serious risk that EPA would withdraw its program delegation.

Additionally, the opportunity for public notice and comment allows MDE to receive important feedback and provides the agency with the ability to address public concern. Removal of this opportunity would therefore generate tension between the agency and the public in permitting decisions and would almost certainly increase the number of permit appeals. The changes to § 1-602's notice requirements, requiring the notice to be "inclusive and culturally connected" to "ensure accessibility and linguistic responsiveness" are vague and difficult to implement.

MDE is also concerned that changing the appeal rights in § 1-601(c) to allow a person to appeal a permitting decision despite not participating in the public participation process if the proposal facility is in a census tract with an EJ score of at least 75 could increase the number of permitting appeals and potentially allow for abuse by opponents of a permit.

The bill's quarterly notice requirements would result in duplicative notifications being sent to local officials as many of MDE's more technically complex permit application processes may take months or years to complete. Removing the requirement that the applicant bear the burden of publication of notices will also have a significant fiscal impact on MDE, as the cost of newspaper publication can be significant, often amounting to over a thousand dollars per announcement.

Finally, to successfully implement the bill and fulfill its numerous obligations, MDE would need to hire 10 new employees, thereby increasing general fund expenditures by \$1.1 million in fiscal year 2025 and \$1.5 million or more annually thereafter.

For the reasons detailed above, MDE urges an **UNFAVORABLE** report for SB 1088.