

SB 1088 MDE OPP.pdf

Uploaded by: Les Knapp

Position: UNF



**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

Contact: Les Knapp, Government Relations Director
Cell: 410-453-2611 (cell), Email: les.knapp@maryland.gov

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.

MBIA Letter of Opposition SB 1088.pdf

Uploaded by: Lori Graf

Position: UNF

February 26, 2024

The Honorable Brian Feldman
Chairman, Senate Education, Energy, and the Environment Committee
2 West Miller Senate Office Building
Annapolis, Maryland 21401

RE: MBIA Letter of Opposition SB 1088 Environment – Public Participation in the Permitting Process – Alterations

Dear Chairman Feldman,

The Maryland Building Industry Association, representing 100,000 employees statewide, appreciates the opportunity to participate in the discussion surrounding **SB 1088 Environment – Public Participation in the Permitting Process – Alterations**. MBIA **opposes** the Act in its current version.

This bill repeals a certain provision of law authorizing the Department of Environment (MDE) to consolidate certain meetings or hearings under certain circumstances and requires a person applying for a certain permit from MDE to request an EJ Score from MDE for the census tract where the applicant is seeking the permit for purposes of including the score in the permit application. MBIA believes the removal of provisions allowing MDE to consolidate public hearings in cases involving multiple permits unnecessarily makes the permitting process tougher. Additionally, while existing law mandates a hearing only upon formal request, the new language would require MDE to conduct a hearing even without such a request. By adding additional hearings and eliminating flexibility in the process, the bill imposes undue burdens on both applicants and regulators, which will lead to delays on essential building projects.

The removal of existing language requiring MDE to estimate review times for applications and attempt to meet those schedules eliminates an important aspect of transparency and accountability in the permitting process. Without clear timelines, applicants and stakeholders are left in the dark regarding the expected duration of the review process.

Ambiguous standards and additional procedural requirements counter the Moore Administration's focus on certainty and streamlining.

For these reasons, MBIA respectfully urges the Committee to give this measure **an unfavorable** report. Thank you for your consideration.

For more information about this position, please contact Lori Graf at 410-800-7327 or lgraf@marylandbuilders.org.

cc: Members of the Senate Education, Energy, and the Environment Committee

SB1088-EEE-OPP.pdf

Uploaded by: Nina Themelis

Position: UNF



BRANDON M. SCOTT
MAYOR

Office of Government Relations

88 State Circle

Annapolis, Maryland 21401

SB 1088

February 27, 2024

TO: Members of the Education, Energy, and the Environment Committee

FROM: Nina Themelis, Director of Mayor's Office of Government Relations

RE: Senate Bill 1088 - Environment - Public Participation in the Permitting Process – Alterations

POSITION: OPPOSE

Chair Korman, Vice Chair Boyce, and Members of the Committee, please be advised that the Baltimore City Administration (BCA) wishes to **oppose** Senate Bill (HB) 1088. Given the city's diverse socio-economic structure, we firmly believe that municipalities and localities should retain the flexibility to implement environmental justice processes tailored to their unique community needs.

Baltimore is committed to environmental justice and the equitable treatment of all communities. Within our capital projects, the city utilizes environmental justice tools/process to identify prioritized communities. This initiative underscores our commitment to addressing environmental justice proactively and without the imposition of a one-size-fits-all approach.

The provision allowing for judicial review based on an individual's Environmental Justice (EJ) score request could lead to substantial delays in permit issuance. The bill, while well-intentioned, may result in protracted legal disputes, hindering the execution of projects essential for community well-being. Such delays could impose additional financial burdens on both local and state resources, as they would need to comply with multiple, potentially simultaneous individual requests.

Currently, the bill does not require that individuals wishing to challenge a permit in court must first participate in the public comment process. This oversight could prevent the Maryland Department of the Environment (MDE) from addressing issues proactively, leading to a lengthy judicial review process. Additionally, ensuring that the EJ Score is calculated consistently and in accordance with the established methodology outlined in Title 1, Subtitle 7 of the Environment Article would promote a comprehensive approach to assessing environmental justice concerns. This measure would complement the review process by providing a transparent basis for evaluations, further ensuring the review process does not inadvertently obstruct vital community projects.

This clarity is crucial not only for enhancing transparency and fairness in the permitting process, but it also provides a structured and predictable framework for all parties involved. For these reasons, the Baltimore City Administration respectfully request an **unfavorable report** on SB 1088.

SB1088_UNF_NWRA_Env. - Public Participation Permit

Uploaded by: Pam Kasemeyer

Position: UNF

Maryland-Delaware Solid Waste Association
a chapter of the



TO: The Honorable Brian J. Feldman, Chair
Members, Senate Education, Energy, and the Environment Committee
The Honorable Mary Washington

FROM: Pamela Metz Kasemeyer
J. Steven Wise
Danna L. Kauffman
Andrew G. Vetter

DATE: February 27, 2024

RE: **OPPOSE** – Senate Bill 1088 – *Environment – Public Participation in the Permitting Process – Alterations*

The Maryland-Delaware Solid Waste Association (MDSWA), a chapter of the National Waste and Recycling Association, is a trade association representing the private solid waste industry in the State of Maryland. Its membership includes hauling and collection companies, processing and recycling facilities, transfer stations, and disposal facilities. MDSWA and its members **oppose** Senate Bill 1088.

MDSWA appreciates the intent of this bill to promote environmental justice (EJ) and ensure that already overburdened communities do not suffer additional harm. MDSWA members already comply with the State's existing EJ requirements and support the important policy objectives of such laws and regulations. However, this legislation seeks to expand who has standing for the purposes of the judicial review of permit determinations made by the Maryland Department of the Environment (MDE), changes the process for determining EJ Score, using the Department's EJ Tool, thereby increasing the workload of MDE without any justification, and expands notice requirements for permit applications that will slow the permitting process without justification.

The State has prioritized EJ through various initiatives in the last several years and is working to strengthen the current framework. Senate Bill 1088 does not align with the current efforts by MDE and affected stakeholders to address EJ, will divert and complicate the work of MDE in achieving those objectives, and could result in unintended consequences for the very communities this legislation appears to intend to protect. For these reasons, MDSWA requests an unfavorable report.

For more information:

Pamela Metz Kasemeyer
J. Steven Wise
Danna L. Kauffman
Andrew G. Vetter
410-244-7000

SB01088 - Environment - Public Participation in th

Uploaded by: Tom Ballentine

Position: UNF



February 26, 2024

The Honorable Brian J. Feldman, Chair
Education, Energy, and the Environment Committee
Miller Senate Office Building, 2 West
Annapolis, MD 21401

Oppose: SB 1088 – Environment – Public Participation in the Permitting Process

Dear, Chair Feldman and Committee Members:

On behalf of the NAIOP Maryland Chapters representing seven hundred companies involved in all aspects of commercial, industrial, and mixed-use real estate I am writing in opposition to SB 1088.

This bill makes changes to the review of environmental permits in locations that have an EJ Score in the 75th percentile or higher. NAIOP is concerned that the bill will be a disincentive to beneficial redevelopment in Environmental Justice Districts and that the selection criteria will apply the bill's provisions broadly to areas that may not be intended.

The rationale for NAIOP's opposition includes the following:

- The land area indicated as scoring in 75th percentile or higher in the EJ Screening Tool coincides with designated Priority Funding Areas and Transit Oriented Development Areas. Areas mapped as being in the 75th to 100th percentile include most of the City of Baltimore, Odenton Town Center, Columbia Gateway Innovation District, Columbia Wilde Lake as well as important redevelopment sites such as the Lake Forest Mall near Gaithersburg. Designated Transit Oriented Development Areas at New Carrollton, Greenbelt, Naylor Road, Branch Avenue, Savage, Odenton, Westport, State Center, and Reisterstown Plaza are in locations that the EJ Screening Tool scores are being in the 75th percentile or higher. Purple Line stations at New Carrollton, Annapolis Road / Glenridge, Beacon Heights, Riverdale Park, U of M East Campus, U of M Campus Center, Riggs Road, Piney Branch Road, Silver Spring Library, Woodside / 16th Street are mapped in the 75th percentile by the EJ Screening Tool. These results indicate to us that the EJ Screening Tool should be utilized in conjunction with local land use plans to ensure coordination and reduce inconsistent decision making at the state and local levels.
- The scope of permits covered by the bill is broad. Its provisions apply to almost all air and water discharge permits regardless of intensity. The bill covers activities like waste-water treatment plants and hazardous waste facilities as well as minor activities like stormwater management on development sites, restaurant grills, heating boilers, backup power generators. On balance we believe that redevelopment is a catalyst for positive economic and environmental change bringing housing, commercial amenities, and improved quality of life. Because it applies to permits regardless of the intensity of use, SB 1088 will serve as a disincentive to commercial and residential redevelopment projects in underserved and overburdened communities.
- Intervention should happen earlier than at permit application. The bill does allow appeals of local zoning and comprehensive plans designation, but it does not address the role those documents

have in determining land use in underserved and overburdened communities. Evaluating the suitability of a zoned land use should be done earlier in the land use planning process than is proposed. Raising fundamental issues of suitability at the permit application stage makes it more difficult to achieve desired outcomes related to both environmental justice and redevelopment goals. Local land use plans are required to include sensitive areas elements that inform decisions about zoning and permitted land uses in environmentally sensitive areas, Environmental Justice considerations could be incorporated in a similar fashion.

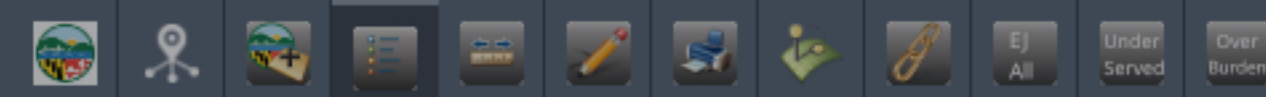
For these reasons NAIOP respectfully requests your unfavorable report on SB 1088

Sincerely,

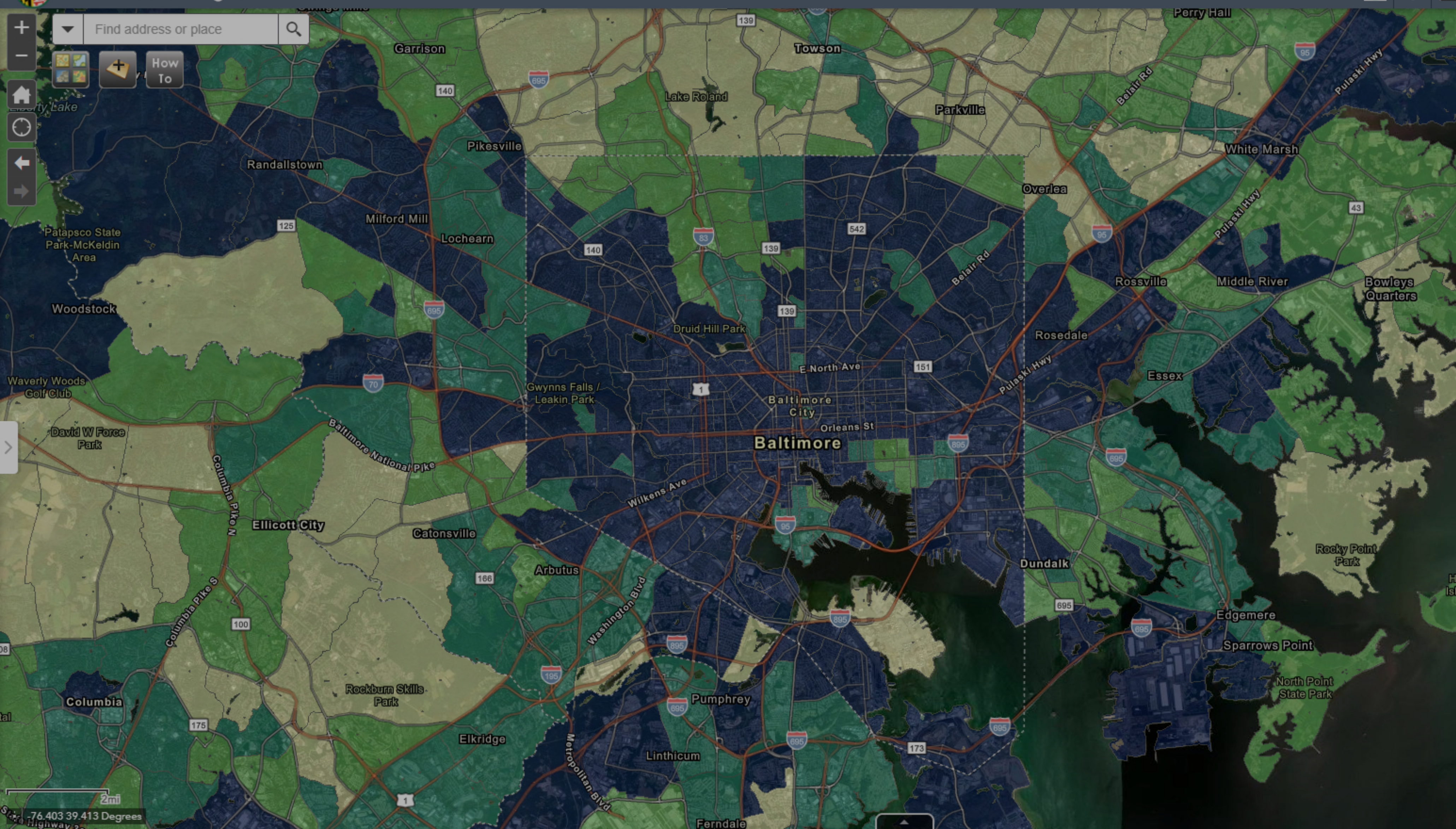
A handwritten signature in blue ink, appearing to read "T.M. Ballentine", is written over a faint, light-colored background that looks like a watermark or a very light stamp.

Tom Ballentine, Vice President for Policy
NAIOP – Maryland Chapters, *The Association for Commercial Real Estate*

cc: Education, Energy, and the Environment Committee Members
Manis – Manis, Canning Assoc.



Find address or place



Legend

MDE_EJ_Score_All

MDE Final EJ Score (%ile score)

- 0% - 24.9th %ile
- 25% - 49.9th %ile
- 50% - 74.9th %ile
- 75% - 100th %ile

2mi
-76.403 39.413 Degrees



Find address or place

How To

Map navigation controls: Home, Back, Forward, etc.



Legend

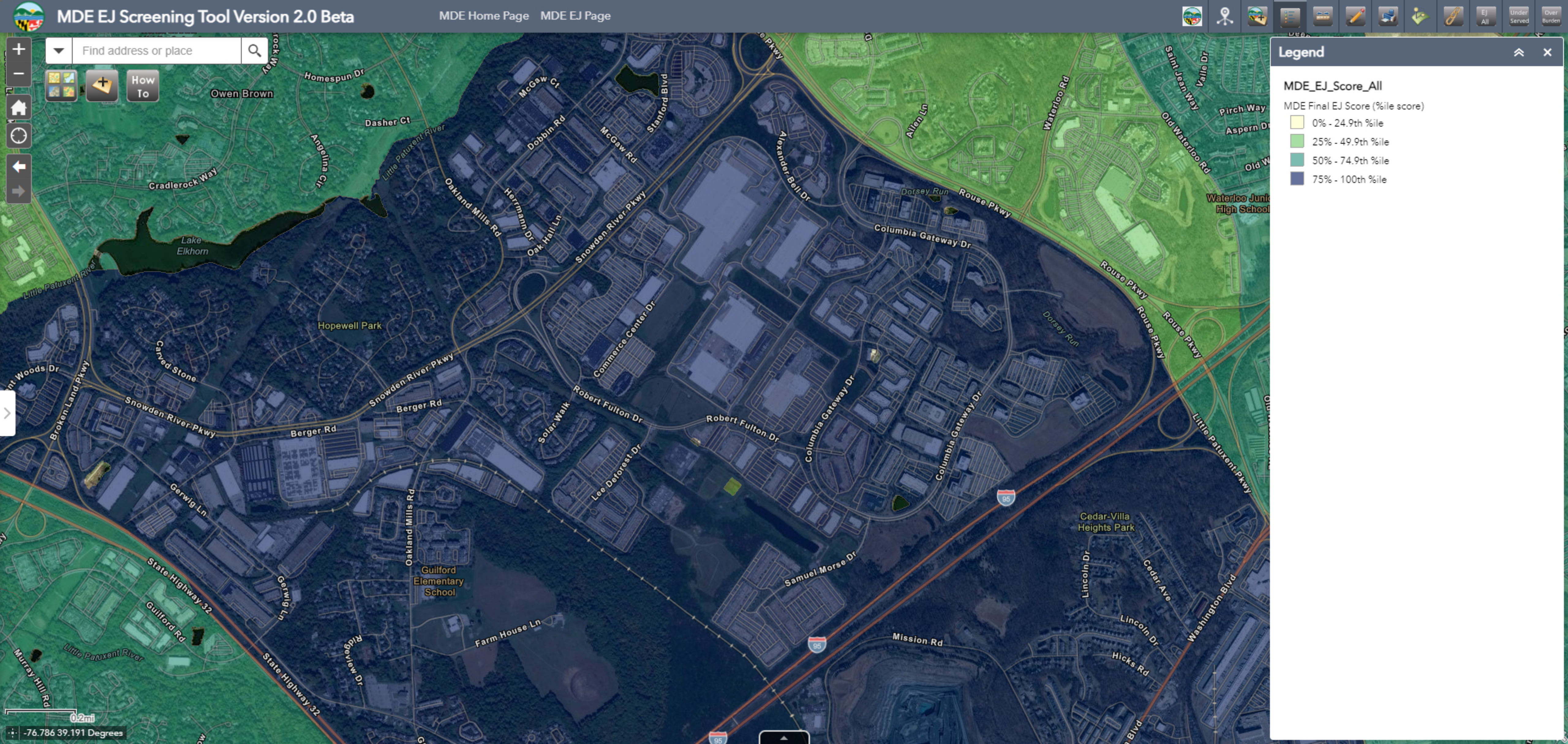
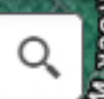
MDE_EJ_Score_All

MDE Final EJ Score (%ile score)

- 0% - 24.9th %ile
- 25% - 49.9th %ile
- 50% - 74.9th %ile
- 75% - 100th %ile



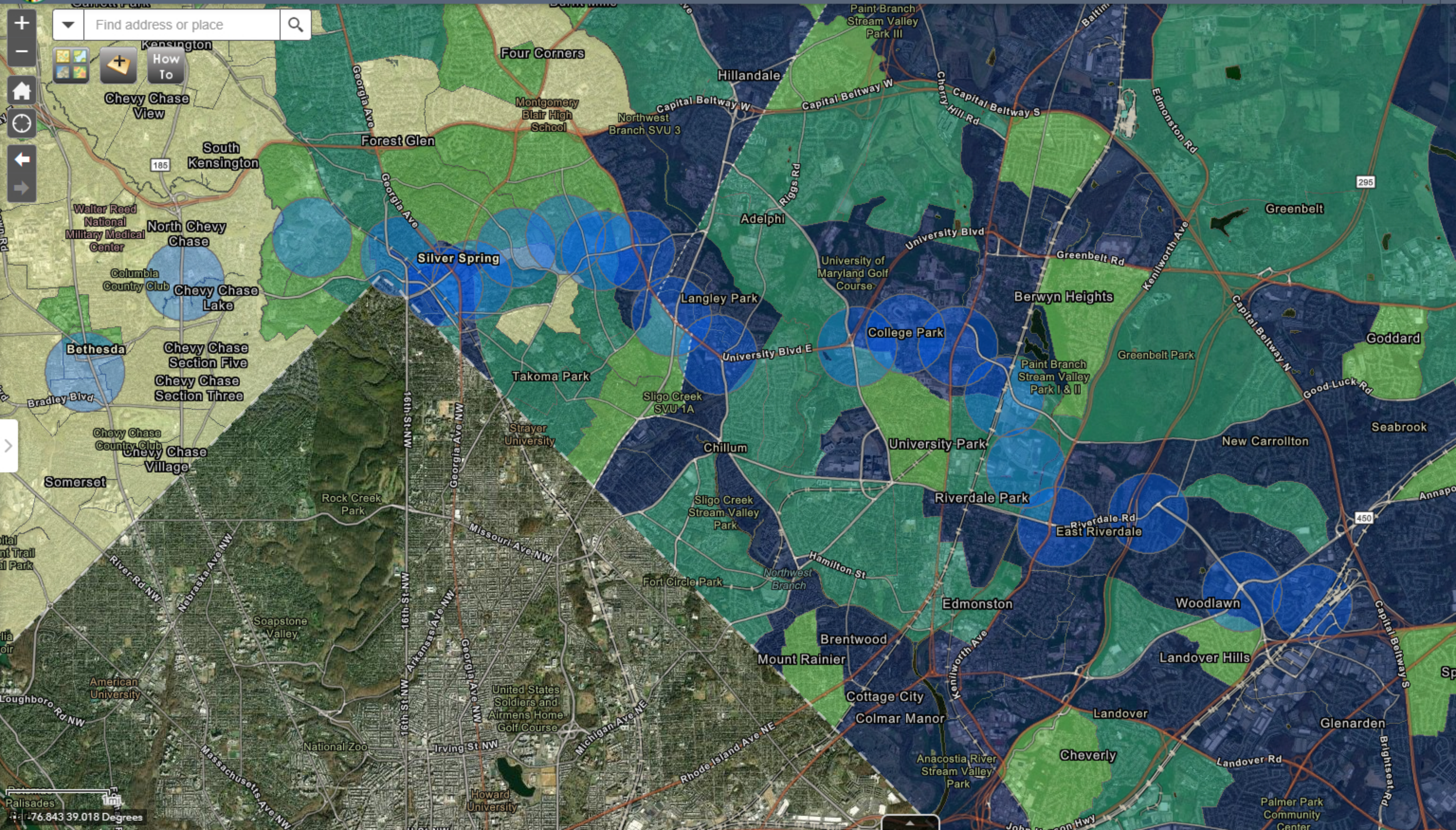
Find address or place



Legend

- MDE_EJ_Score_All
- MDE Final EJ Score (%ile score)
- 0% - 24.9th %ile
 - 25% - 49.9th %ile
 - 50% - 74.9th %ile
 - 75% - 100th %ile

0.2mi
-76.786 39.191 Degrees



Legend

Purple Line Station Half Mile Buffers - Purple_Line_Stations_Half_Mile_Buffer

MDE_EJ_Score_All

MDE Final EJ Score (%ile score)

- 0% - 24.9th %ile
- 25% - 49.9th %ile
- 50% - 74.9th %ile
- 75% - 100th %ile

SB1088_CleanWaterAction_info.pdf

Uploaded by: Emily Ranson

Position: INFO



SB1088: Environment - Public Participation in the Permitting Process - Alterations
Senate Education, Energy, and the Environment
February 27, 2024

Position: Information

Dear Chair Feldman and Members of the Committee,

The use of the 1-601(a) permit list as the basis for a bill whose purpose is to provide additional avenues for constituents to protect their health is problematic.

The 1-601(a) permit list was not developed with environmental justice or public health in environmental justice communities in mind. With one exception, that list of permits has appeared verbatim in multiple Maryland laws enacted since 1993. It is not an appropriate list of permits to direct resources and attention for environmental justice efforts. The list of permits is not small, and many of these permits have limited impact on human health and concerns expressed by EJ communities. The list expansively covers surface water pollution permits: both first-time permit issuance and renewals, both major and minor sources of water pollution. In contrast, it largely excludes air permits, covering only the small subset of permits to construct issued by MDE - leaving out any air pollution renewal permit applications, and permits to construct issued by the PSC, which have been the focus of many community-led environmental justice campaigns in recent decades.

Efforts to address environmental justice concerns through permitting reform should start at determining which permits are most relevant to Maryland's environmental justice concerns by listening to impacted communities. We encourage the committee to revisit the list of relevant permits to be referenced before adding new permitting requirements related to environmental justice.

Sincerely,

Emily Ranson
Chesapeake Regional Director
Clean Water Action
eranson@cleanwater.org

SB 1088_MTBMA_LOI.pdf

Uploaded by: Michael Sakata

Position: INFO



February 27th, 2024

Senator Brian Feldman, Chair
Education, Energy, and the Environment Committee
2 West Miller Senate Office Building
Annapolis, MD 21401

RE: SB 1088 – LETTER OF INQUIRY – Environment – Public Participation in the Permitting Process – Alterations

Dear Chair Feldman and Members of the Committee:

The Maryland Transportation Builders and Materials Association (“MTBMA”) has been and continues to serve as the voice for Maryland’s construction transportation industry since 1932. Our association is comprised of 200 members. MTBMA encourages, develops, and protects the prestige of the transportation construction and materials industry in Maryland by establishing and maintaining respected relationships with federal, state, and local public officials. We proactively work with regulatory agencies and governing bodies to represent the interests of the transportation industry and advocate for adequate state and federal funding for Maryland’s multimodal transportation system.

Senate Bill 1088 expands judicial review for certain environmental permits to include areas where the EJ Score for the census tract where the applicant is seeking a permit is above the 75th percentile. It also requires permit applicants to request an EJ Score from the Department of Environment and include that EJ Score on the application. Lastly, it expands the standing for a party.

MTBMA submits this letter of inquiry to ask that the legislation define and clarify what an EJ Score is. The bill does not include a definition. Moreover, we have some concerns about the expanded standing as well as the requirements of the permit applicant. These changes will only add delay and therefore cost to what is often a long and arduous process.

We appreciate you taking the time to review our concerns on SB 1088.

Thank you,

A handwritten signature in blue ink, appearing to read "Michael Sakata", is written over a faint, light blue circular watermark or seal.

Michael Sakata
President and CEO
Maryland Transportation Builders and Materials Association

SB1088_MAA_LOI.pdf

Uploaded by: Tim Smith

Position: INFO

CHAIRMAN:
Jeff Graf
VICE CHAIRMAN
David Slaughter

MARYLAND ASPHALT ASSOCIATION



TREASURER:
Paul Bramble
SECRETARY:
Curtis Hall
PRESIDENT:
Tim Smith

February 27th, 2024

Senator Brian Feldman, Chair
Education, Energy, and the Environment Committee
2 West Miller Senate Office Building
Annapolis, MD 21401

RE: SB 1088 – LETTER OF INQUIRY – Environment – Public Participation in the Permitting Process – Alterations

Dear Chair Feldman and Members of the Committee:

The Maryland Asphalt Association (MAA) is comprised of 19 producer members representing more than 48 production facilities, 25 contractor members, 25 consulting engineer firms, and 41 other associate members. MAA works proactively with regulatory agencies to represent the interests of the asphalt industry both in the writing and interpretation of state and federal regulations that may affect our members. We also advocate for adequate state and federal funding for Maryland's multimodal transportation system.

Senate Bill 1088 expands judicial review for certain environmental permits to include areas where the EJ Score for the census tract where the applicant is seeking a permit is above the 75th percentile. It also requires permit applicants to request an EJ Score from the Department of Environment and include that EJ Score on the application. Lastly, it expands the standing for a party.

MAA submits this letter of inquiry to ask that the legislation define and clarify what an EJ Score is. The bill does not include a definition. Moreover, we have some concerns about the expanded standing as well as the requirements of the permit applicant. These changes will only add delay and therefore cost to what is often a long and arduous process.

We appreciate you taking the time to review our concerns on SB 1088.

Sincerely,

Tim E. Smith. P.E.
President
Maryland Asphalt Association