



## Testimony in Support of House Bill 1297 – Zombie Permit Elimination Act

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

March 3, 2020

Dear Chairman Barve and Members of the Committee:

Thank you for the opportunity to submit testimony **in support of House Bill 1297** on behalf of the Chesapeake Legal Alliance (CLA). The goal of CLA is to effect systemic and permanent improvement in the health of waterways and communities throughout the Chesapeake Bay region. CLA provides law and policy analysis, and coordinates a network of volunteer attorneys who assist communities in their legal efforts to improve water quality and restore the Chesapeake Bay.

The objective of the Clean Water Act, one of our foundational environmental laws, is to restore and maintain the integrity of our nation's waters. This objective translates into two goals: (1) eliminate the discharge of pollutants into our waters, and (2) achieve water quality standards for fishable, swimmable, and drinkable water. The Clean Water Act starts with the premise that the discharge of any pollutant into the waters of the United States is prohibited. However, the reality of our modern society is that some activities, such as wastewater treatment and industrial and chemical processing, create pollution that is discharged into our rivers, lakes, and streams. In order to operate legally under the Clean Water Act, the facilities that discharge into our waterways must obtain a specialized permit under the National Pollution Elimination Discharge System, otherwise known as an NPDES permit. An NPDES permit is typically a license for a facility to discharge a specified amount of a pollutant into a receiving water under certain

conditions. Permits may also authorize facilities to process, incinerate, landfill, or beneficially use sewage sludge.

The Clean Water Act requires that NPDES permits be for a set term of no more than five years. After that, a permit must be renewed through a regulatory process. This permit renewal cycle allows for a public participation process every five years which ensures an opportunity for the agencies to hear from members of the public and address potential concerns. Further, the Clean Water Act was drafted to be technology forcing, meaning that as we advance more and better pollution controls, the permit requirements will be updated to reflect and require the best technology available. The five year term also allows for a check on the facility to be sure that they are indeed operating as they should and following their permit terms.

If a permittee wants to continue discharging, they must re-submit a complete application for permit renewal at least 180 days prior to the expiration on the date of their permit. If the permitting authority receives the application, but does not reissue the permit prior to the expiration date, the permit is considered “administratively continued” and the facility can discharge pollutants at the same levels until the permit is renewed or canceled. If a permittee fails to submit a new application, the permit is considered “expired.”

In Maryland over 40% of NPDES permits are either expired or administratively continued, both of these categories of permits living beyond their 5-year expiration date are commonly branded “zombie permits.” This backlog has real implications to our environment. Failure to follow a permit is not just a violation on paper. It results in real, tangible pollution into our waters which threaten the ecosystems, and the people and economies that depend on them. Treated wastewater containing heavy metals such as iron, copper as well as high levels of nitrogen and phosphorus threaten the health of our local water and the Chesapeake Bay at large. Moreover, it was well understood by the U.S. Environmental Protection Agency and its state partners that continually updated permits would play a critical role in restoring the Chesapeake Bay by 2025 under the Bay Total Maximum Daily Load (“Bay TMDL”) restoration effort. If permits are not renewed, they cannot be improved as necessary for the Bay TMDL, which necessarily pushes more of the restoration burden onto the public and other sectors.

HB 1297 addresses the zombie permit problem in Maryland in two ways. First, it directs the Maryland Department of Environment (MDE) to examine methods for improving the permitting system to address the backlog and report its findings back to the Governor and General

Assembly. Second, it puts in a safeguard to prevent more zombie permits from adding to the backlog by requiring the decision reissue or deny a permit within 185 days of the permit term.

HB 1297 is an important step to address a backlog of expired and administratively continued permits. This bill will create much needed improvements to our permitting system, which in turn will result in tangible improvements to Maryland's waters. We urge your support.

Sincerely,

A handwritten signature in black ink, appearing to read 'AH', with a long horizontal stroke extending to the right.

Angela Haren  
Senior Staff Attorney, Director, Legal Innovation  
Chesapeake Legal Alliance

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