

**ACC Informational Testimony on SB 524 Environment – Multidefendant Oil and Hazardous
Substance Pollution Cases – Effect of Settlement
Senate Judicial Proceedings Committee
February 26, 2021**

Comments: SB 524 could greatly expand the scope of liability for covered discharges in the state of Maryland. The expansion created by this bill could duplicate existing regulatory and enforcement authorities already administered by existing state authorities and the Environmental Protection Agency's Clean Water Act (CWA) Section 311 Spill Prevention, Control, and Countermeasure (SPCC) program.

The requirements and penalties provided by the SPCC program provide an example of existing regulatory requirements that address potential spills and provide regulators with appropriate enforcement authority. The SPCC program covers a range of product releases or discharges depending on a number of factors including source, size of tank or storage vessel, and discharge amount, among others. The SPCC program also includes requirements for facilities to adopt mitigation measures and develop and regularly review site-specific spill response plans. Any failure to properly submit or review these plans can result in fines and penalties maintained under the SPCC program. In the event of a discharge or spill, CWA Section 311(j) provides a process to determine the resulting seriousness of the risk posed to the environment. The risk of a potential violation is determined by factors like the extent of the violation, likelihood of a spill, and sensitivity of the environment. This determination is further informed by the level of severity of the violation, which may be dependent on the storage capacity of the violator's facility, existence, and adequacy of secondary containment and duration of the violation. In the event of a spill or discharge resulting from gross negligence or willful misconduct, the SPCC provides a type of judicial forum with minimum penalties starting at \$100,000 (33 U.S.C. § 1321(b)(7)(d)). These SPCC program requirements exist in addition to state-level requirements that also address potential spills.

Under SB 524, any party that settles with the state would be entitled to seek contribution from any "party responsible for the discharge." This broad language is of concern to many industries in the state as well as small businesses that may lack access to resources to any judgment for contribution. In addition to its liability expansion, the bill also lacks any limiting criteria that would further refine the scope of applicability of specific "persons responsible for the discharge" or the size of covered discharges. It should also be noted that the duplicative nature of the bill overlooks the fact that, in the case of a product release or pollution, the state already administers requirements to report incidents and weigh enforcement penalties against potential violators. The liability for contribution proposed in this bill is in addition to the state's existing requirements and compensatory damage scheme.

In short, the bill greatly expands exposure to liability to an extent that is duplicative of existing regulatory and enforcement requirements. ACC supports the position and input from the Maryland Retailers Association on the draft bill and looks forward to its continued review by the bill's sponsor and the Maryland Office of the Attorney General on these priority issues. Thank you for your consideration.