

AG Letter on HB 76 SB0334 (002).pdf

Uploaded by: Carter, Jill

Position: FAV

BRIAN E. FROSH
ATTORNEY GENERAL

ELIZABETH F. HARRIS
CHIEF DEPUTY ATTORNEY GENERAL

CAROLYN A. QUATTROCKI
DEPUTY ATTORNEY GENERAL



THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

SANDRA BENSON BRANTLEY
COUNSEL TO THE GENERAL ASSEMBLY

KATHRYN M. ROWE
DEPUTY COUNSEL

JEREMY M. MCCOY
ASSISTANT ATTORNEY GENERAL

DAVID W. STAMPER
ASSISTANT ATTORNEY GENERAL

January 20, 2021

The Honorable Sara Love
Maryland General Assembly
210 House Office Bldg.
Annapolis, Maryland 21401
Via email

Re: *House Bill 76 - Water Pollution Control – Intervention in Civil Actions – Rights and Authority*

Dear Delegate Love:

You asked whether House Bill 76 expands standing in cases addressing compliance with specified environmental laws and regulations, or creates new causes of action. I do not read the bill that way. Rather, in my view, the bill would align State law consistent with the federal Clean Water Act (“CWA”).

Congress considers citizen suits as a key part of the CWA enforcement program. “The CWA prohibits independent citizen suits where a state ‘has commenced and is diligently pursuing a civil or criminal action ... to require compliance,’ but also provides that ‘in any such action in a court of the United States any citizen may intervene as a matter of right.’” *Environmental Integrity Project v. Mirant Ash Management, LLC*, 197 Md. App. 179, 187 n.8 (2010) (quoting 33 U.S.C. § 1365(b)(1)(B)). *See also Kentucky v. Shepherd*, 366 S.W.3d 1, 5 (Ky. 2012) (“[c]learly the regulations contemplate citizen intervention in an agency’s state-court enforcement action”).

It is important to note that intervention as a matter of right in this context is limited to a party who has an interest which is or may be adversely affected. *See* 40 C.F.R. 123.27(d)(1) (specifying as an option for states to meet the mandated public participation requirement in the CWA the provision in state law of “intervention as of right in any civil or administrative action to obtain remedies ... by any citizen having an interest which is or may be adversely affected”); *U.S. v. Hooker Chemicals & Plastics Corp.*, 101 F.R.D. 451 (W.D.N.Y. 1984) (holding that “[t]he right to intervene applies to actions which citizens could have commenced in their own right if the government had

The Honorable Sara Love
January 20, 2021
Page 2

not acted first”). Therefore, in my view, House Bill 76 does not expand standing or create a new cause of action; rather, it adopts the specific intervention provision outlined in the CWA for states to provide the required public participation.

Sincerely,

A handwritten signature in black ink, appearing to read "Sandra Benson Brantley". The signature is fluid and cursive, with the first name being the most prominent.

Sandra Benson Brantley
Counsel to the General Assembly

Testimony_JPC_SB0334 - Google Docs.pdf

Uploaded by: Carter, Jill

Position: FAV



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

**Testimony of Senator Jill P. Carter
In Favor of SB0334 - Water Pollution Control - Intervention in Civil
Actions - Rights and Authority
Before the Judicial Proceedings Committee
on January 26, 2021**

Mr. Chairman, Vice chair, and Members of the Committee:

Intervention is an important function for allowing interested parties to engage in legal matters that concern them. Intervention is all the more important when it comes to enforcement of our environmental laws, given the role of Citizen Suit provisions, allowing citizens to take the role “private attorneys general” that Congress established for citizens and the partnership of the state, the public, and environmental organizations in protecting our natural resources. Unfortunately, while Maryland law gives citizens the right to intervene, the Maryland Court of Special Appeals has refused to recognize that right in state Clean Water Act proceedings, even when both Maryland Department of the Environment and the Maryland Attorney General have expressly supported such intervention. Accordingly, we ask for your help enacting legislation to establish a statutory right to intervene for plaintiffs who already demonstrate the kind of standing needed to sustain a citizen suit for violations of the Clean Water Act.

A. Background: “Intervention as of Right” in Maryland

- **The federal Clean Water Act (“CWA”) provides several mechanisms for citizen participation, including the right to bring**

citizen suits against violations and the right to intervene in an enforcement action. 33 U.S.C. §§ 1365(a)(1), 1365(b)(1)(B). The importance of citizen enforcement to the CWA's regulatory scheme is reflected in the requirements for state-administered programs, such as Maryland's, which stipulate that a state *must allow* intervention as of right—where a citizen has an interest that is or may be adversely affected—or, alternatively, allow for and respond to public comments on proposed settlements. 40 C.F.R. § 123.27(d).

- **Maryland chose the first option, which is to provide intervention as of right to adversely affected citizens. See *Maryland Rule 2-214(a)*. Both the federal CWA and the regulations governing state-administered programs establish intervention as a key component of citizen participation in the enforcement process.**

- **The Maryland rules allow citizens to intervene as of right in two instances. First, when that intervention is timely and there is a statute that provides an *unconditional* right under Md. Rule 2-214(a)(1). If there is no statutory right, then citizens have to seek a *conditional* right to intervene under Md. Rule 2-214(a)(2). In order to secure a *conditional* right to intervene, that citizen's intervention must still be timely but must also meet additional conditions, for example, having an interest in the lawsuit.**

- **A decision by the Court of Special Appeals, however, has made it functionally impossible for environmental groups and most citizens to intervene as of right in these proceedings. In *Environmental Integrity Project v. Mirant Ash Management, LLC*, 197 Md. App. 179 (2010), the Maryland Court of Special Appeals found that environmental groups and citizens did not meet the**

test for intervention as of right in Maryland, as they lacked interests different than those of the general public, and with the presumption that Maryland Department of the Environment (“MDE”) would adequately represent their interests. In this case, toxic coal ash was being released into the Potomac River and local streams.

- The Maryland Attorney General supported the intervention of environmental organizations in that case.

- While the court’s analysis was premised on the facts of a specific case, it is difficult to see how *any* environmental group or most interested citizens could overcome this exceptionally high hurdle. The groups’ have specifically articulated interests: Environmental Integrity Project (“EIP”) is concerned with the enforcement of state environmental laws to prevent improper dumping of coal ash, one of the largest types of industrial waste generated in the United States, and Potomac Riverkeeper Network (“PRKN”) is also concerned with protecting and preventing pollution of their local waterways at issue in the case. Still, the court found these interests to be no different than the general public and therefore insufficient.

- In spite of the fact that groups presented evidence that five individual citizens lived five to fifteen miles downstream of the facility, recreated on and around the rivers, and expressed concerns regarding the pollution’s impact on their property values, the court found their interests to be no different than those of the general public. Under the court’s stringent view, the only proper intervening party appears to be an adjoining property owner who can demonstrate higher levels of pollution on his or her property. Thus, the Maryland Court of Special Appeals has effectively ruled that environmental groups and citizens without property adjoining the facility in question do not have the right to intervene in state Clean Water Act enforcement actions, even when intervention is supported by the state.

- A review of case law prior to and after *Mirant* bears this out: there have not been any instances of environmental groups or citizens intervening in state Clean Water Act enforcement actions since.
- The State supported the parties' motion to intervene in the *Mirant* case. However, it must also be acknowledged that the Maryland Department of the Environment and Office of the Attorney General's support was *not enough* to overcome The Court of Special Appeal's interpretation of the State's intervention as of right laws.

Quote from Mirant briefing:

"The Department and the Office of the Attorney General strongly support citizen engagement in matters concerning the quality of waters of this State and actions that threaten them. Citizens are often, through sampling streams and rivers, walking their shores and fishing their waters, the first to observe a problem. As such, the Department not only welcomes, but actively solicits citizens to come forward with complaints. In addition, the State is undergoing a period of budgetary constraints and hiring freezes. The convergence of this resources crisis with growing concern about the future of the Chesapeake and Coastal Bays makes citizen participation particularly welcome."

- This "growing concern" rings even truer today in the current financial crisis due to the COVID-19 pandemic, especially as the U.S. Environmental Protection Agency ("EPA") has stated that it will not seek enforcement of pollution violations during this pandemic.
- The COVID-19 pandemic has also shown that frontline communities suffering existing health problems from pollution in their communities are far more likely to contract and potentially die from COVID-19. Additionally, state and federal

enforcement budgets have been slashed, reducing government oversight and increasing the likelihood that more violations of law go unpunished. Moreover, political considerations—including interstate competition and pressure from industry to minimize regulation—threaten to further compromise states’ ability to enforce the laws. As government enforcement becomes increasingly less reliable, citizen enforcement of environmental law is more necessary than ever.

- We view SB334 as the *only* opportunity to ensure that citizens are provided the public participation that is required under the Clean Water Act for Maryland’s program.

Maryland Attorney General Agrees with this Legislation and its Purpose

- Based on some points raised by the opposition of cities and counties through their legislative representatives MACo and MML, we sought clarification from the Maryland Attorney General’s office. We have provided a copy of this letter to committee members. The letter states: *“House Bill 76 [and Senate Bill 334] does not expand standing or create a new cause of action; rather, it adopts the specific intervention provision outlined in the CWA for states to provide the required public participation.”*

Intervention is in the state’s interest:

- Citizen intervention allows individual citizens, organizations, cities and counties to help supplement the State’s resources and assist them in collecting penalties from polluters.
 - All penalties collected go into Maryland’s Clean Water Fund, making these resources available for a wide array of environmental and natural resource protection and restoration programs in the state.

- Penalties will *never* go to “intervenor”; they only go to the state.
- And the amount of penalties the state is allowed to collect does not increase when another party intervenes.
- Additionally, intervention does not apply to any other state programs, such as those administered by Maryland Department of Agriculture, Maryland Natural Resources Department, or even other programs administered by Maryland Department of the Environment. It only applies to Clean Water Act enforcement cases.
- MDE’s enforcement has been on a steep decline. Clean water act enforcement actions by Maryland Department of the Environment have dropped to record lows in Maryland in 4 of the last 5 years, and FY 20’s number was 85% below the long term average before 2015, when the steep decline in enforcement began. This drop is *not* due to a reduction in violations, as the percentage of facilities having violations has actually increased slightly over this same time period, according to MDE’s data.
- Eight other states (Alabama, Arkansas, Florida, Indiana, Kansas, Oklahoma, Tennessee and Wyoming) have used legislation to allow for unconditional citizen intervention as a right, ensuring that that public participation is provided for in the courts. However, most states already provided for intervention as a right through direct incorporation of the federal standard or incorporation by reference.
- Clean water is not just about health and safety. It is an economic necessity. About 40 million anglers spend \$45B annually to fish in U.S. waters; the beverage industry uses more than 12B gallons of water annually to produce products valued at \$58B; manufacturing companies use nine trillion gallons of

freshwater every year; 31 percent of all water withdrawals in the U.S. are for irrigation, highlighting the extent to which the nation's farmers depend on clean water. All of these uses become restricted when our waters are polluted. This means that there are strong economic reasons to ensure that enforcement of the CWA is stringent and sufficient penalties are assessed to remediate the damage from unlawful discharges of pollutants.

What this bill *does* and *does not* do:

- It **DOES NOT** create another cause of action. If the government has already begun—or is diligently pursuing legal action in court in order to require compliance with the Clean Water Act—a citizen cannot sue independently. The citizen may, however, still be able to file a motion to intervene in that case.
- It **DOES NOT** increase the costs of burden on the state. There will be no increase in lawsuits or burden on state courts or the attorney general's office. In fact, intervention helps relieve these burdens by supplementing state enforcement authority. For instance, citizen groups often hire their own experts from money out of their own pocket to help the State's staff (and polluter) reach the most efficient solution to bring the facility back into compliance with clean water laws (and avoid racking up more penalties, which are assessed per violation per day).
- Intervention **DOES NOT** provide any independent right to bring a lawsuit. It is not "standing" and, in fact, standing must be met by any party seeking to intervene. The State must already have brought a case in state court. This bill allows affected citizens to intervene in those cases.
- It **DOES NOT** expand standing. It **DOES** allow Maryland to provide intervention to citizens. It **DOES** bring Maryland into compliance with the Federal Clean Water Act. Maryland is

explicitly required to provide intervention in state clean water cases. Otherwise, its clean water program is out of compliance and could be de-authorized. This bill is not asking Maryland to provide more than what is owed to its citizens, it is asking to provide what it is legally required to do.

- Intervention only applies to a very narrow set of circumstances.
 - Citizen intervention under SB334 *only* applies to Clean Water Act enforcement cases, where the state files the enforcement action in state court. If Maryland were to file the enforcement action in federal court, citizens would already be provided the right of unconditional intervention, where standing is met.

As such, I urge this committee to give a favorable report on SB0334. Thank you.

Respectfully,



Jill P. Carter

WKC-Citizen_Intervention_Testimony-MJ.pdf

Uploaded by: Johnson, Esq., Morgan

Position: FAV



Testimony in Support of Senate Bill 334 (Senator Carter) Water Pollution Control – Intervention in Civil Actions – Rights and Authority

January 26, 2021

Dear Chairman Smith and Members of the Committee:

Thank you for this opportunity to submit testimony in support of Senate Bill 334 on behalf of Waterkeepers Chesapeake, a coalition of seventeen Waterkeepers, Riverkeepers, and Coastkeepers working to make the waters of the Chesapeake and Coastal Bays swimmable and fishable. If enacted, SB 334 will be an important tool for Waterkeepers, citizen organizations, political subdivisions, and community groups working to protect their communities, rivers, and streams from pollution.

Senate Bill 334 **aligns Maryland law with federal law** by allowing citizen intervention in civil enforcement actions in state court, only when brought by the state of Maryland against alleged polluters. While the right to intervention is provided in federal court under the Federal Clean Water Act, when the same action is brought **in state court, intervention is functionally prohibited. This is in conflict with the requirements under the federal Clean Water Act for delegated state programs such as Maryland's.** This bar to intervention negatively impacts Waterkeepers, citizens, and communities seeking full and fair enforcement of our laws.

To be clear, **this bill is narrowly drafted, and does not impact standing, or offer citizens any additional causes of action.** (See Counsel to the General Assembly Memo, *attached*.)

MDE's enforcement, in terms of both penalties and cases, has been on a steep decline.¹

Clean Water Act enforcement actions by Maryland Department of the Environment have

¹ See Len Lazarik, Md. Environment Department Taking Fewer Enforcement Actions Against Water Pollution, MarylandReporter.com (April 22, 2018) <https://marylandreporter.com/2018/04/22/md-environment-department-taking-fewer-enforcement-actions-against-water-pollution/#:~:text=In%20a%20report%20submitted%20earlier,fewest%20since%20fiscal%20year%202008>



dropped to record lows in Maryland in 4 of the last 5 years, and FY 20's number was 85% below the long term average before 2015, when the steep decline in enforcement began.² This drop is not due to a reduction in violations, as the percentage of facilities having violations has actually increased slightly over this same time period.

A decline in penalties sought is, unequivocally, an environmental justice issue. A lack of fair enforcement is a clear signal to polluters—that they are welcome to pollute Maryland's communities. When these polluters engage in violations, they disproportionately do so in low-income communities and communities of color.³ Fair penalties are an important way that Maryland can address this disparity. It is in this spirit of participation and fair citizen involvement that the Clean Water Act ensures access to intervention in both state and federal court. **SB 334 addresses disparities and decline by ensuring that Maryland citizens have full access to intervention and participation—in the manner consistent with what the Clean Water Act prescribes** for states with delegated Clean Water Act permitting authority.

Maryland's low income communities and communities of color are most susceptible to being polluted, while possessing less tools (such as access to intervention) to address water pollution. A report from the Environmental Law Clinic at The University of Maryland stated that the lack of investment of Clean Water Act resources in Maryland's overburdened communities is highly problematic, and disrupts efforts to make these communities healthier and more sustainable.⁴ The report also concluded that in terms of a number of health risks in communities of color, that "...environmental factors, such as pollution and the lack of health promoting infrastructure in many communities, most likely contribute to the health disparities in Maryland."⁵

² See Md. Dept. of Environment, *Annual Enforcement & Compliance Report: Fiscal Year 2020* (2020) https://mde.maryland.gov/Documents/AECR_FY20.pdf.

³ See Elizabeth Shwe, *Md. Needs an Environmental Justice Plan, Advocates Say*, (August 24, 2020) <https://www.marylandmatters.org/2020/08/24/md-needs-an-environmental-justice-plan-advocates-say/>.

⁴ See Maryland Environmental Law Clinic, *Environmental Justice in Maryland*, (September, 2015) <https://www.bdlaw.com/content/uploads/2019/04/fulltext.pdf>.

⁵ *Id.*



This bill provides an essential tool for both citizens and the state, and an opportunity to make sure polluters are held to account through full and fair enforcement actions and penalties, which are strong deterrents to future pollution. Intervention allows community members across the state—particularly in overburdened communities on the frontlines of pollution, to seek stronger penalties through intervention and other appropriate court remedies for their communities. Ensuring that Marylanders have the right to intervene in Clean Water Act cases brought by the state in state court (which is comports with what the Federal Clean Water Act already requires) is a short bridge to cross towards a more just, healthy and equitable Maryland.

For all of these reasons, we urge a favorable report on Senate Bill 334.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M.A. Johnson".

Morgan Johnson
Staff Attorney
Waterkeepers Chesapeake

Attachment: AG - Counsel to The General Assembly Memo

BRIAN E. FROSH
ATTORNEY GENERAL

ELIZABETH F. HARRIS
CHIEF DEPUTY ATTORNEY GENERAL

CAROLYN A. QUATTROCKI
DEPUTY ATTORNEY GENERAL



THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

SANDRA BENSON BRANTLEY
COUNSEL TO THE GENERAL ASSEMBLY

KATHRYN M. ROWE
DEPUTY COUNSEL

JEREMY M. MCCOY
ASSISTANT ATTORNEY GENERAL

DAVID W. STAMPER
ASSISTANT ATTORNEY GENERAL

January 20, 2021

The Honorable Sara Love
Maryland General Assembly
210 House Office Bldg.
Annapolis, Maryland 21401
Via email

Re: *House Bill 76 - Water Pollution Control – Intervention in Civil Actions – Rights and Authority*

Dear Delegate Love:

You asked whether House Bill 76 expands standing in cases addressing compliance with specified environmental laws and regulations, or creates new causes of action. I do not read the bill that way. Rather, in my view, the bill would align State law consistent with the federal Clean Water Act (“CWA”).

Congress considers citizen suits as a key part of the CWA enforcement program. “The CWA prohibits independent citizen suits where a state ‘has commenced and is diligently pursuing a civil or criminal action ... to require compliance,’ but also provides that ‘in any such action in a court of the United States any citizen may intervene as a matter of right.’” *Environmental Integrity Project v. Mirant Ash Management, LLC*, 197 Md. App. 179, 187 n.8 (2010) (quoting 33 U.S.C. § 1365(b)(1)(B)). *See also Kentucky v. Shepherd*, 366 S.W.3d 1, 5 (Ky. 2012) (“[c]learly the regulations contemplate citizen intervention in an agency’s state-court enforcement action”).

It is important to note that intervention as a matter of right in this context is limited to a party who has an interest which is or may be adversely affected. *See* 40 C.F.R. 123.27(d)(1) (specifying as an option for states to meet the mandated public participation requirement in the CWA the provision in state law of “intervention as of right in any civil or administrative action to obtain remedies ... by any citizen having an interest which is or may be adversely affected”); *U.S. v. Hooker Chemicals & Plastics Corp.*, 101 F.R.D. 451 (W.D.N.Y. 1984) (holding that “[t]he right to intervene applies to actions which citizens could have commenced in their own right if the government had

The Honorable Sara Love
January 20, 2021
Page 2

not acted first”). Therefore, in my view, House Bill 76 does not expand standing or create a new cause of action; rather, it adopts the specific intervention provision outlined in the CWA for states to provide the required public participation.

Sincerely,

A handwritten signature in black ink, appearing to read "Sandra Benson Brantley". The signature is written in a cursive, flowing style.

Sandra Benson Brantley
Counsel to the General Assembly

SB 334 Testimony_EIP Sylvia Lam.pdf

Uploaded by: Lam, Sylvia

Position: FAV



1000 Vermont Avenue NW
Suite 1100
Washington, DC 20005
T 202 296 8800
F 202 296 8822
environmentalintegrity.org

TESTIMONY IN SUPPORT OF SENATE BILL 334 (SENATOR CARTER)

January 26, 2021

Dear Chairman Smith and Members of the Committee,

Thank you for the opportunity to submit testimony in support of Senate Bill 334. I am submitting this testimony on behalf of the Environmental Integrity Project, an environmental nonprofit organization that advocates for the effective enforcement of environmental laws.

If enacted, SB 334 will give individuals, communities, and other groups in Maryland the opportunity to participate in state clean water enforcement actions against alleged polluters. While individuals are afforded an unconditional right to intervene in federal court under the Federal Clean Water Act, intervention is functionally prohibited when the same action is brought in state court. My testimony explains why intervention in state court is practically impossible, and how this bill would align Maryland law with federal law.

Intervention is an important function for allowing interested members of the public to engage in legal matters that concern them. Understanding that the environment and clean water is a matter of great public concern, the Federal Clean Water Act provides several avenues for citizen participation, including the right to intervene in an enforcement action.¹ Recognizing the importance of intervention, states are legally required to provide either intervention as of right or permissive intervention in order to carry out their own Clean Water Act programs.² Maryland chose the first option, relying on its general rules for intervention as of right.³

For background, Maryland Rules authorize intervention as of right in two instances. *First*, intervention as of right is allowed under Md. Rule 2-214(a)(1) when a statute provides an *unconditional* right to intervene. *Second*, if there is no unconditional right provided, parties must seek a *conditional* right to intervene, which requires parties to meet additional requirements. This *conditional* right to intervene under Md. Rule 2-214(a)(2) requires, for instance, that (1) a party has an interest in the subject of the lawsuit, and that (2) this interest is inadequately represented by the existing parties to the lawsuit. Because there is no unconditional right to intervene in state lawsuits under the Maryland Water Pollution Control Act, members of the public have to apply for a conditional right to intervene and meet these additional criteria.

A 2010 decision by the Court of Special Appeals, however, interpreted these additional criteria for the conditional right to intervene under Md. Rule 2-214(a)(2) in an extremely prohibitive

¹ 33 U.S.C. §1365(b)(1)(B).

² 40 C.F.R. § 123.27(d).

³ See Maryland Rule 2-214(a).

manner.⁴ In doing so, the court has made it functionally impossible to intervene as of right in these state clean water cases. In this particular case, five individuals who lived within five to fifteen miles downstream of a coal ash facility, the Environmental Integrity Project, and the Potomac Riverkeeper tried to intervene in a state clean water enforcement action against the facility, which was unlawfully dumping toxic pollution into the Potomac River and its tributaries. The court denied their attempt to intervene. And although the individuals and groups appealed, the Court of Special Appeals upheld the lower court's denial, finding that they were unable to meet these two additional requirements under the conditional right to intervene.

First, for the requirement that intervenors have an interest in the enforcement action, the individuals and groups attested that they lived downstream from, fished in, sailed in, and were dedicated to the protection of the rivers and streams receiving pollution from the facility. The Court of Special Appeals prohibitively concluded that these interests were shared by the general public and therefore insufficient. For example, the court ruled that the five individuals did not show “that they [were] personally affected in some way that is different from any other residents living within a ten to fifteen mile radius” of the facility.⁵ Likewise, the court ruled that the environmental groups' interests “do not appear to be different than and distinct from the interests of the general public in protecting the environment, restoring and safeguarding the natural habitats of the Wicomico and Potomac Rivers, and enforcing state environmental laws.”⁶

Second, the court also found that the individuals and environmental groups could not join the lawsuit because the State of Maryland adequately represented their interests. According to the court, Maryland and these private citizens and environmental groups all shared the goals of “generally protecting the environment.”⁷ This is despite the fact that Maryland asserted to the court that their interests were “potentially inconsistent” and “not necessarily the same.”⁸

While the court's analysis was premised on the facts of a specific case, it is difficult to see how any environmental group or most interested citizen could pass this impossible test. In spite of the fact that the five individual citizens lived downstream of the facility, recreated on and around the rivers, and expressed concerns regarding the pollution's impact on their property values, the court found their interests to be no different than other local residents'. And in spite of the groups' specifically articulated interests—for instance, Potomac Riverkeeper's with respect to protecting and preventing pollution of the very waterways at issue in the case—the court found these interests to be shared by the general public and the State of Maryland. So while Maryland law does lay out the rules for citizens if they want to seek the right to intervene, the Maryland Court of Special Appeals has refused to recognize that right in state clean water enforcement cases, which Maryland is legally required to provide. In contrast, under these same set of facts in

⁴ *Environmental Integrity Project v. Mirant Ash Management, LLC*, 197 Md. App. 179 (2010), available at <https://law.justia.com/cases/maryland/court-of-special-appeals/2010/1779s09-1.html> (last accessed Jan. 18, 2021).

⁵ *Id.* at 189.

⁶ *Id.*

⁷ *Id.* at 192.

⁸ *Id.* at 190–191.

federal court, intervention would have been granted because the Federal Clean Water Act provides an unconditional right to intervene.

SB 334 brings Maryland into compliance with its legal obligations under the Clean Water Act. If enacted, individuals, communities, and other groups in Maryland will have a right to intervene, to have their voices heard, and to have a chance to advocate for their interests in attaining cleaner waterways and a healthier Maryland.

For the foregoing reasons, we respectfully request a FAVORABLE report on SB 334.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'SL', is positioned above the typed name of the sender.

Sylvia Lam
Attorney
Environmental Integrity Project
1000 Vermont Avenue NW, Suite 1100
Washington, DC 20005
(202) 888-2701
slam@environmentalintegrity.org

Senate Written Testimony Citizen Intervention.pdf

Uploaded by: Nicholas, Elizabeth

Position: FAV



Testimony in Support of Senate Bill 334 (Senator Carter) **Water Pollution Control – Intervention in Civil Actions – Rights and Authority**

January 26, 2021

Dear Chairman Smith and Members of the Committee:

Thank you for this opportunity to submit testimony in support of Senate Bill 334 on behalf of Waterkeepers Chesapeake, a coalition of seventeen Waterkeepers, Riverkeepers, and Coastkeepers working to make the waters of the Chesapeake and Coastal Bays swimmable and fishable. If enacted, SB 334 will be an important tool for Waterkeepers as they protect their communities, rivers, and streams from pollution. These comments are also submitted on behalf of Chesapeake Bay Foundation, Chesapeake Legal Alliance, Assateague Coastal Trust, Center for Progressive Reform, Food and Water Watch, Potomac Riverkeeper Network, Safe Skies Maryland, Maryland Campaign for Environmental Human Rights, ShoreRivers, Maryland Sierra Club, and Blue Water Baltimore.

Senate Bill 334 would align Maryland law with federal law by allowing citizen intervention in civil enforcement actions brought by the state of Maryland against alleged polluters. While this right is provided in federal court under the Federal Clean Water Act, when the same action is brought in state court, intervention is functionally prohibited. This is in conflict with the requirements under the federal Clean Water Act for delegated state programs – which Maryland has.

The Federal Clean Water Act and Maryland’s State Delegated Program

While Congress intended federal and state agencies to be primarily responsible for enforcement of the Clean Water Act, legislators recognized that enforcing these provisions could be beyond the resources of the federal government and/or expensive and politically difficult. Therefore, Congress included provisions in the Clean Water Act to allow private citizens the ability to enforce the laws when the government was unwilling or unable to do so. These so-called “citizen lawsuit” (or “citizen suit”) provisions, included in every major federal environmental law on the books, allow citizens to sue alleged violators in federal court.

Congress intended citizen suits to supplement government action, when underfunded or overworked agencies could not ensure that all laws are complied with. If the government brings an enforcement action under the Clean Water Act—a citizen cannot bring their own action. In other words, state enforcement precludes any citizen



enforcement. When a private citizen, a community organization, or other party seeks to bring an enforcement action under the Clean Water Act, they have to provide notice of their intent 60-days before they are allowed to file. The specific purpose is to allow the government to take action, if they choose to do so, even though it will prevent that citizen action from going forward. But Congress had no intent of cutting citizens out of the process, that's why they provided for an unconditional right for citizens to intervene in that state action. This allows the state to be the enforcer while also allowing impacted people, groups and municipalities to have a voice in the process and ensure a just result for their communities.

The Clean Water Act is a federal law, but it also allows for “delegation” of the authority to administer this law, along with permitting and enforcement authority, to qualified states. When a state like Maryland is qualified to administer the Clean Water Act, they adopt state laws and regulations for administering this program. As such, this creates a somewhat parallel system of federal and state laws and also allows for enforcement actions to be brought in either federal or state court. One of the criteria for a state to be approved as a delegated program is that the state, here Maryland, must provide at least as much access to courts under the state program as would be allowed under the federal program. That's where the problem lies and what this bill will fix.

The federal clean water act requires that citizens have an unconditional right to intervene in enforcement actions. Maryland is currently not providing citizens with this right for intervention. Under current Maryland law, if the state were to bring an enforcement action in federal court for Clean Water Act violations, “citizens”—which includes cities, counties and community groups—would be provided an unconditional opportunity to participate in the case. However, if that same enforcement action were brought in Maryland courts, citizen groups, cities and counties would not be allowed to intervene (i.e. participate) in the case, even if the violations were originally investigated and documented by one of these parties. SB 334 would remedy this problem.

Back in 2009, Waterkeepers Chesapeake and our member Riverkeepers filed a petition to the U.S. EPA to de-delegate, i.e., withdraw Maryland's authority to administer the Clean Water Act due to a series of inspection and enforcement problems as well as a legal issue. The legal issue was Maryland's failure to provide an unconditional right to intervene in state clean water enforcement cases. The Clean Water Act requires states to provide one of two types of citizen intervention in enforcement cases—permissive intervention or intervention as of right. While this petition was sitting before the EPA, Potomac Riverkeeper and the Environmental Integrity project (EIP) investigated and documented permit violations from a coal ash landfill owned by Mirant. The state of



Maryland brought an enforcement action in state court, Potomac Riverkeeper and five citizens living near the landfill sought to intervene, and the court barred their intervention, applying a more stringent standard for intervention after finding that state clean water laws did not provide an unconditional right to intervention like the Clean Water Act. Without an unconditional right to intervention, the Maryland Court of Special Appeals' 2010 court decision ([EIP v. Mirant](#)) interpreted Maryland's general intervention rules that makes it virtually impossible for Maryland citizens and political subdivisions to successfully intervene. Since 2010, there have been no cases of successful intervention in any state-based lawsuits targeting polluters. This bill will fix this problem by clarifying in Maryland law that the state allows unconditional intervention, when standing has been met, for Clean Water Act enforcement cases.

1. No Additional Lawsuits or Burden on Courts

Providing for intervention will not increase the number of lawsuits filed and may reduce them. Intervention only deals with who can participate in the court proceedings already brought forward by the state. In order to intervene, citizens must show "standing," meaning a compelling interest in the matter and a specific harm to them. When intervention is granted, it provides no rights or authorization related to bringing a matter to court.

This bill also only relates to a very narrow class of lawsuits -- state enforcement of the Clean Water Act. This bill will not impact any other laws or actions and has no effect on zoning, agriculture, or other matters governed outside the Clean Water Act.

2. Other States Already Provide These Rights

Many states have referred to the federal law in their state laws regarding intervention, or they have explicitly stated that they provide the same unconditional right of intervention. However, where states have not provided for unconditional intervention, or where their state court limited intervention, states have changed their laws. Eight other states (Alabama, Arkansas, Florida, Indiana, Kansas, Oklahoma, Tennessee and Wyoming) have enacted legislation to allow for citizen intervention as a right, thereby ensuring that public participation is provided for in the courts.

Kansas changed their intervention law following a 1989 petition to the U.S. Environmental Protection Agency, requesting that the state's authority to administer the Clean Water Act be revoked since they were not allowing unconditional intervention. Following this petition, the Kansas legislature took the same action we are asking of the Maryland General Assembly -- to explicitly allow for unconditional intervention in these



state enforcement actions under the Clean Water Act.

3. It is Critical That the General Assembly Act This Year

Waterkeepers Chesapeake has a lawsuit pending in the 4th Circuit Court of Appeals regarding this issue. We have asked the court to stay (hold) this lawsuit and allow the Maryland General Assembly an opportunity to amend state law to provide for unconditional intervention. If the Maryland General Assembly does not make this change, the court action will resume and this matter will be decided by a federal court, rather than Maryland lawmakers. Additionally, the “question” before the court is whether they should direct the U.S. EPA to withdraw Maryland’s entire permitting program for the failure to provide this required citizen intervention. We would prefer that this not be the outcome and that the Maryland General Assembly fix this problem. The 4th Circuit has asked for us to report an update on our efforts by the end of March.

4. Intervention is a critical element of community involvement and public participation

Many of the communities hit hardest by the COVID-19 pandemic are also dealing with health effects of disproportionate environmental burdens. These communities deserve a right to participate in state actions against violators to ensure their experiences and concerns are heard.

The Clean Water Act is considered one of the most successful environmental laws in the United States. It has provided tremendous improvements to water quality and public health. But as state and federal enforcement budgets have been slashed, government oversight has been reduced, and this has increased the likelihood that more violations of law will go unpunished. Moreover, political considerations, including interstate competition, pressure from industry to minimize regulation, and competing governmental priorities threaten to further compromise states’ ability to enforce the laws.

States are confronting massive budget shortfalls due the COVID-19 pandemic and corresponding economic decline. As you know, Maryland government is facing hiring restrictions and staff reductions. This will result in fewer inspection and enforcement personnel, making the role of “citizens” to assist the state in prosecuting cases even more important. Senate Bill 334 ensures that Maryland citizens, cities and counties have a right to intervene and the chance to fight for full and fair enforcement of laws that affect their local waterways and their health.

4. What This Bill Is and Is Not



- This bill is about intervention, not standing. In order to intervene you *must* already show standing prior to requesting intervention. In fact, the bill directly states that federal standing is required for any citizen intervention. It is “federal” instead of “state” standing since state law does not provide a “citizen suit provision” under the Maryland Water Pollution Control Act, so there is no “state standing” that could be reference for this type of action.
- This bill needs to pass this session, as there is a case pending before the 4th Circuit -- the FEDERAL appeals court -- that will otherwise decide this issue. However, the federal court cannot decide issues of state law, and thus the question before that court is whether EPA should revoke Maryland's permitting program under the Clean Water Act, because Maryland does not have a required element -- unconditional intervention in Clean Water Act cases. For "delegated" state program -- states that administer the Clean Water Act at the state level, they must provide at least as much public participation, including things like intervention, as the federal law provides. Thus, Maryland's permitting authority could be withdrawn. This is not what the groups involved in this case would like to see happen. MDE, EPA and the appellants -- WKC and EIP, all requested that the court put a "stay" i.e., hold on the case to resolve this at the Maryland General Assembly. There are eight other states that have had to do this exact same thing -- seek a legislative amendment of their program to allow for unconditional intervention, so as to avoid possible federal withdrawal and take over of their permitting program.
- The Maryland Attorney General and MDE are both supportive of Citizen Intervention for the enforcement of Clean Water Act cases. Their quote for the Mirant case, where the Court of Special Appeals misconstrued intervention was:

"The Department and the Office of the Attorney General strongly support citizen engagement in matters concerning the quality of waters of this State and actions that threaten them. Citizens are often, through sampling streams and rivers, walking their shores and fishing their waters, the first to observe a problem. As such, the Department not only welcomes, but actively solicits citizens to come forward with complaints. In addition, the State is undergoing a period of budgetary constraints and hiring freezes. The convergence of this resources crisis with growing concern about the future of the Chesapeake and Coastal Bays makes citizen participation particularly welcome."

- Maryland Department of the Environment, in the fiscal note for this bill, noted that there would be minimal financial impact at the state *and* local level.



- The Maryland Attorney General's office has provided a letter of clarification on this bill, which clearly states their opinion that: this bill will not expand standing in any way, and does not add a new cause of action. Specifically, “**[Senate Bill 334] does not expand standing or create a new cause of action; rather, it adopts the specific intervention provision outlined in the CWA for states to provide the required public participation.**”
- Citizens already have full authority to bring enforcement actions against polluters for violations of the Clean Water Act in federal court. But, there is no citizen enforcement provision under state law. Thus, it is simply "impossible" to expand standing at the state level because there is no possible cause of action under the Maryland Water Pollution Control Act.

For all of these reasons, we urge a favorable report on Senate Bill 334.

Thank you,

Betsy Nicholas Waterkeepers Chesapeake

Mark Southerland, Safe Skies Maryland

Kathy Phillips, Assateague Coastal Trust

Robin Eilenberg, Chesapeake Bay Foundation

Nina Beth Cardin, Maryland Campaign for Environmental Human Rights

Mark Frondork, Shenandoah Riverkeeper

Jenn Aiosa, Blue Water Baltimore

Katlyn Schmitt, Center for Progressive Reform

Michele Merkel, Food and Water Watch

Matt Pluta, ShoreRivers

Mark Posner, Maryland Sierra Club

Phillip Musegaas, Potomac Riverkeeper Network

Hannah Brubach, Chesapeake Legal Alliance

SB0334 MD NARAL SUPPORT.pdf

Uploaded by: Philip, Diana

Position: FAV



SB0334 - Water Pollution Control - Intervention in Civil Action - Rights and Authority

Presented to the Hon. Will Smith and the Senate Judicial Proceedings Committee

January 26, 2021 at 1:00 p.m.

POSITION: SUPPORT

NARAL Pro-Choice Maryland urges the Senate Judicial Proceedings Committee to issue **a favorable report on, SB0334 - Water Pollution Control - Intervention in Civil Action - Rights and Authority** sponsored by Senator Jill Carter.

Our organization is an advocate for reproductive health, rights, and justice. Environmental pollutants, including water and soil pollution, are increasingly recognized as contributors to negative sexual and reproductive health outcomes. Communities of color and socioeconomically disadvantaged peoples are exposed to toxic water pollutants at a disproportionate rate, making water pollution control a critical [environmental justice](#) and reproductive justice issue.

Some reproductive health outcomes associated with water pollution include infertility, abnormal menstruation, and abnormal puberty; the effects of water pollution on pregnant individuals can include endometriosis, recurrent pregnancy loss, and polycystic ovarian syndrome (PCOS); impacts on the fetus include fetal death, prenatal growth abnormalities, reduced gestational period, and low birth weight. Furthermore, toxic chemicals can enter breastmilk after delivery.¹ The recent case of lead contamination in Flint, Michigan's water supply exemplifies these issues, where the community saw a 12% decrease in fertility rates and overall health at birth was diminished following the water contamination.² These health outcomes can cause enduring mental and physical trauma to pregnant persons and the infants they deliver. Substantial research has shown that low birth weight infants may be more at risk for many health problems; some may become sick in the first six days of life or develop infections, others can suffer from long term problems such as delayed motor skills and social development or learning disabilities.³

This bill gives individuals impacted by water and soil pollution the right to seek justice in civil court. Water pollution impacts marginalized groups most and reinforces the cycle of poverty; it is essential people have the right to seek reparations for any harm caused and enduring effects. Clean water and a safe environment are human rights, and the intergenerational damage caused by water pollution is reduced when justice is sought and served. For these reasons, NARAL Pro-Choice Maryland **urges a favorable committee report on SB0334**. Thank you for your time and consideration.

¹ Rashtian, J., Chavkin, D.E. & Merhi, Z. (2019) Water and soil pollution as determinant of water and food quality/contamination and its impact on female fertility. *Reproductive Biology & Endocrinology* 17, 5. <https://doi.org/10.1186/s12958-018-0448-5>

² Grossman, D. & Slusky, D. (2019). The Impact of the Flint Water Crisis on Fertility. *Demography*, 56(6):2005-2031. doi: 10.1007/s13524-019-00831-0. PMID: 31808102.

³ Centers for Disease Control and Prevention. Reproductive and Birth Outcomes and the Environment. Retrieved <https://ephtracking.cdc.gov/showRbBirthOutcomeEnv>

sb0334 - Water Pollution Control - Intervention in

Uploaded by: Ballentine, Tom

Position: FWA



January 22, 2021

The Honorable William C. Smith, Jr., Chair
Senate Judicial Proceedings Committee
Miller Senate Office Building, 2 East
Annapolis, MD 21401

Favorable w/ Amendment: SB 334 - Water Pollution Control – Intervention in Civil Actions – Rights and Authority

Dear, Chair Smith and Committee Members:

The NAIOP Maryland Chapters representing more than 700 companies involved in all aspects of commercial, industrial, and mixed-use real estate support with amendment SB 334 which would broaden the right of a person to intervene in state court actions to enforce state water quality regulations and permits.

NAIOP recommends amendments to clarify:

- 1) the bill does not provide rights broader than allowed in federal cases, and;
- 2) the bill does not extend the broader right to intervene to administrative cases which may be appealed to state court.

Amendment No. 1:

On page 1, line 19, strike “MEETS THE THRESHOLD STANDING REQUIREMENTS” and substitute “COULD INTERVENE IN A SIMILAR ACTION”

Amendment No. 2:

On page 1, line 21, strike “BRINGS” and insert “INITIATES.”

With these amendments NAIOP would respectfully request your favorable w / amendment report on SB 334.

Sincerely;

A handwritten signature in blue ink that reads "T.M. Ballentine". The signature is written in a cursive style and is positioned above the typed name of the sender.

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

cc: Senate Judicial Proceedings Committee Members
Nick Manis – Manis, Canning Assoc.

Amendment sb334.pdf

Uploaded by: Graf, Lori

Position: FWA

Amendments to

House Bill 76

Submitted on behalf of the Maryland Building Industry Association and NAIOP

Amendment No. 1:

On page 1, line 19, strike “MEETS THE THRESHOLD STANDING REQUIREMENTS” and substitute “COULD INTERVENE IN A SIMILAR ACTION”

Amendment No. 2:

On page 1, line 21, strike “BRINGS” and insert “INITIATES.”

MBIA Testimony SB 334.pdf

Uploaded by: Graf, Lori

Position: FWA

January 26, 2021

The Honorable William C. Smith Jr.
Senate Judicial Proceedings Committee
Miller Senate Office Building,
2 East Wing 11 Bladen St.,
Annapolis, MD, 21401

RE: Support of SB 334 (Water Pollution Control – Intervention in Civil Actions – Rights and Authority) with Amendment

Dear Chairman Smith:

The Maryland Building Industry Association, representing 1,100 member firms statewide, appreciates the opportunity to participate in the discussion surrounding Water Pollution Control – Intervention in Civil Actions – Rights and Authority. MBIA supports this legislation with Amendments.

This bill, as currently written, establishes that a person who meets the threshold standing requirements under the Clean Water Act has the right to, unconditionally; intervene in a civil action brought by the State. As currently written this bill is very broad and could have unintended consequences.

Giving single persons the right to unconditionally intervene in civil actions in state courts undermines not only the legal judgments of the court but opens itself to biasing the results of individual cases based on the political agendas of the ruling political party that makes determinations as to the standing requirements under the Federal Clean water Act. The clean water act is already established law and is represented in court proceedings by virtue of a judge being present. There is no need for additional advocates disrupting legal proceedings and injecting political opinions into a court case.

However, with the proposed amendments clarify that intervention must comply with all the requirements that exist in Federal law. This bill should not provide greater rights than would be afforded in Federal cases.

For these reasons, MBIA respectfully requests the Committee adopt the proposed amendments and give the bill a favorable 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: Senate Judicial Proceedings Committee

SB334.pdf

Uploaded by: Powell, Michael

Position: FWA

GORDON • FEINBLATT_{LLC}
ATTORNEYS AT LAW

MICHAEL C. POWELL
410.576.4175
mpowell@gfrlaw.com

233 EAST REDWOOD STREET
BALTIMORE, MARYLAND 21202-3332
410.576.4000
www.gfrlaw.com

January 22, 2021

Honorable William C. Smith, Jr.
Senate Judicial Proceedings Committee
2 East Miller Senate Office Building
Annapolis, MD 21401

Re: SB334 - Water Pollution Control - Intervention in Civil
Actions - Rights and Authority

Dear Chairman Smith:

On behalf of the Maryland Home Builders and NAIOP, I am submitting the attached proposed amendments to Senate Bill 334. These organizations would support the proposed legislation if these amendments were adopted.

The first amendment makes it clear that any intervention must comply with all of the requirements that would exist if an intervention were brought in a federal case, not merely the standing requirements. The bill should not provide greater rights than would be afforded in federal cases.

The second amendment clarifies that the right to intervene is in cases initiated in the court system and does not extend to administrative cases which may be appealed to state court. Intervention at that stage, after a trial has been held and testimony taken, would be disruptive of an orderly resolution of issues.

Sincerely,

Michael C. Powell

Michael C. Powell

MCP

Amendments to

Senate Bill 334

Submitted on behalf of the Maryland Building Industry Association and NAIOP

Amendment No. 1:

On page 1, line 19, strike “MEETS THE THRESHOLD STANDING REQUIREMENTS” and substitute “COULD INTERVENE IN A SIMILAR ACTION”

Amendment No. 2:

On page 1, line 21, strike “BRINGS” and insert “INITIATES.”

SB 334_UNF_MML.pdf

Uploaded by: Bailey, Angelica

Position: UNF



Maryland Municipal League

The Association of Maryland's Cities and Towns

TESTIMONY

January 26, 2021

Committee: Senate Judicial Proceedings

Bill: SB 334 – Water Pollution Control – Intervention in Civil Actions – Rights and Authority

Position: Oppose

Reason for Position:

The Maryland Municipal League opposes SB 334. This bill establishes that a person who has standing under the federal Clean Water Act (CWA) has an unconditional right to intervene in civil actions brought by the State on the State level regarding enforcement of water pollution control or any related discharge permit, effluent limitation, or order issued by Maryland Department of the Environment (MDE).

Allowing standing to be applied this way opens the door for anyone who meets the basic requirements to intervene in the same way an interested or aggrieved party would under the CWA. Current State law permits the Attorney General, a political subdivision of the State, or any other person regardless of whether the person possesses a special interest different from the general public, to pursue legal action in an appropriate court for mandamus or equitable relief against the State or an agency for its failure to perform under an environmental statute, ordinance, rule, regulation, or order. State law does not authorize citizen suits against private individuals or entities that violate environmental laws, nor does it authorize actions for monetary damages. Standing is reserved for parties with a significant stake in the issue, who has been adversely affected. Ensuring that only relevant parties can be involved protects against frivolous lawsuits clogging up the legal system and utilizing valuable resources.

Furthermore, allowing third parties to intervene in civil enforcement cases between local governments and MDE lengthens and complicates the case and adds significant cost. In this economy, any extra cost is a challenge to our members.

The existing standing statute in Maryland is more than adequate to address environmental conflicts. It is very likely that municipal finances will be significantly impacted to the extent that the bill results in more individuals or entities seeking judicial review of environmental actions of a

legislative body and/or an increase in the length of time and resources needed to address individual cases. For these reasons, the Maryland Municipal League opposes SB 334 and respectfully requests an unfavorable committee report.

FOR MORE INFORMATION CONTACT:

Scott A. Hancock
Angelica Bailey
Bill Jorch
Justin Fiore

Executive Director
Director, Government Relations
Director, Research & Policy Analysis
Manager, Government Relations

2021 SB334 Intervention in Civil ActionsJP.pdf

Uploaded by: Porter, Holly

Position: UNF



Educate. Advocate. Innovate.

Date: January 22, 2021
To: Members of the Senate Judicial Proceedings Committee
From: Holly Porter, Executive Director
Re: SB 334 – Water Pollution Control – Intervention in Civil Actions – Rights and Authority - **OPPOSE**

Delmarva Chicken Association (formerly Delmarva Poultry Industry, Inc.), the 1,600-member trade association representing the meat-chicken growers, processing companies and allied business members on the Eastern Shore of Maryland, the Eastern Shore of Virginia, and Delaware opposes SB 334 and urges an unfavorable committee report.

SB 334 allows a person that meets the threshold of standing under the federal Clean Water Act to intervene in a civil action that the state brings to state court. That person would also have the same rights as interested or aggrieved parties, including the right to apply for judicial review and appeal.

The Delmarva chicken community witnessed firsthand the devastating impacts of a lawsuit on a family farmer during *Waterkeeper Alliance, Inc. vs. Alan Hudson et al.* While the lawsuit was not filed by the Department of the Environment, it was a frivolous lawsuit that almost cost the livelihood of the farmer and left years of mental stress for he and his family.

It is one thing for an aggrieved party or individual, who according to the fiscal and policy note by the Department of Legislative Services, means a “plaintiff with a specific interest or property right that has been affected by the disputed action or decision” to have the ability to bring about a suit on the state if there has been an egregious violation to the Clean Water Act. But when the law is expanded to allow for civil suits against individual family farmers from outside of the area and even state, after the state (MDE) has put forth their enforcement action and case, it invites more lawsuits by parties that likely have significant more resources than the family farmer that has already had to pay court costs.

DCA supports the Department of the Environment holding violators of the Clean Water Act accountable for their misdeeds. However, we strongly oppose groups or individuals from outside of the state of Maryland, or even the area of the violation, who have a strong appetite for litigation to intervene and potentially bankrupt family farmers.

We urge an **unfavorable** vote on SB 334.

Should you have any additional questions, please feel free to contact me at porter@dcachicken.com or 302-222-4069 or Nick Manis, Manis Canning & Associates, 410-263-7882.

SB0334-JPR_MACo_OPP.pdf

Uploaded by: Sanderson, Michael

Position: UNF



Senate Bill 334

Water Pollution Control – Intervention in Civil Actions – Rights and Authority

MACo Position: **OPPOSE**

To: Judicial Proceedings and Education, Health, and
Environmental Affairs Committees

Date: January 26, 2021

From: Michael Sanderson and Alex Butler

The Maryland Association of Counties (MACo) **OPPOSES** SB 334. The bill would allow virtually any person to intervene in State civil actions, regulations, or certain permit renewals without limit or other traditional standing as an affected party. The bill would subject local governments, and their well-intentioned water cleanup efforts, to unnecessary and burdensome litigation.

SB 334 gives any person who has standing under the federal Clean Water Act the ability to intervene in State enforcement actions. Essential local government National Pollutant Discharge Elimination System (NPDES) permits would now be vulnerable to increased challenge from third parties. Sufficient provisions already exist to allow private parties to seek relief without this addition. Additionally, the bill stands in direct conflict with §9-344 of the Environment Article that designates the Attorney General as the responsible authority.

SB 334 would allow third parties to further complicate and delay already complex cases between defendants and the State. Local governments would then be forced to negotiate resolutions with unaffected parties, as they now have a newly granted “cause of action” to involve themselves in State enforcement cases relating to water pollution.

SB 334 would give new, unnecessary legal standing to unaffected parties that would complicate State enforcement actions and lead to increased costs and burden for local government. Accordingly, MACo requests that the Committee give SB 334 an **UNFAVORABLE** report.