



Senate Bill 221

Department of the Environment – Enforcement Authority

Date: February 2, 2022

Position: **Support with Amendments**

To: Education, Health, and Environmental Affairs From: Robin Clark, Chesapeake Bay Foundation

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Chesapeake Bay Foundation (CBF), Center for Progressive Reform (CPR), and Shore Rivers **SUPPORT SB 221 WITH AMENDMENTS**. This legislation would increase administrative penalties and tools the Department can employ in enforcement, including enforcement of drinking water, wastewater, and surface water permit violations.

This legislation makes many positive changes to existing environmental enforcement authorities

This comprehensive environmental bill would address gaps in the State's authority to enforce laws governing safe drinking water, wastewater facility operation, waterway construction and dam safety, and tidal and nontidal wetlands by authorizing or augmenting civil, administrative, and injunctive remedies. The bill would also revise certain, existing criminal remedies to reflect civil penalty thresholds. The bill also requires drinking water and wastewater facilities to report to the State the certified superintendents, certified operators, and certified industrial operators who are participating in the operation of, or are in responsible charge of, those facilities.

The enforcement provisions of the affected statutes have not been amended in many years—sometimes decades—and are incomplete or fail to provide sufficient deterrence. In fact, several of the affected statutes lack civil, administrative, and injunctive relief entirely and provide only criminal penalties. The amendments would ensure the State retains primacy and funding under the Safe Drinking Water Act and authorize the State to enforce existing laws and regulations more effectively to protect public health and the environment.

We support this legislation while offering the following strengthening suggestions:

1. The legislation should require the Maryland Department of the Environment to provide written notice to the Attorney General's Office of all administrative enforcement actions taken on an ongoing basis.

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2. The legislation should further increase the penalty caps for civil enforcement actions to reflect the effect of inflation and narrow the gap between state and federal penalties for the same violation.
3. The legislation should add the opportunity for citizen participation in administrative proceedings brought under Section 9-1025 and Section 12-503. Citizens should be afforded the same opportunity as violators to request a hearing, intervene and participate in any administrative proceedings.

With additional amendments, this legislation could supplement the State's dedication to pursuing civil and criminal cases.

The legislation appropriately updates administrative penalties. While administrative penalties should be increased, those higher penalties should supplement, not supplant, the ability and dedication of the State to pursue civil and criminal actions and penalties where appropriate. Increased availability of administrative penalties should not result in fewer civil enforcement actions. Civil and criminal penalties can often more accurately reflect the harm to the public caused by an incident. These legal actions also create judicial oversight, and, in the case of civil suits, allow citizens to participate in the process through citizen intervention.

Currently only a small fraction of environmental violations are litigated. The vast majority of violations are addressed through administrative proceedings. One way to ensure the opportunity and function of civil suits would be to require the Department to notify the Office of Attorney General any time administrative action is taken. This would give a greater opportunity to the Office of Attorney General to request a referral of the case.

With additional amendments, this legislation could ensure penalties to reflect the economic benefit a violator gained from failing to comply with the law.

The legislation, as drafted, states in 12-504 (on page 21 of SB 221) that the penalties will be assessed based on several factors, including willfulness of the violation, harm to the environment, cost of clean-up and other considerations. While these are positive improvements to the current law, the legislation should also consider the economic benefit the violator received for not complying with the law when assessing penalties. This inclusion alongside other considerations already stated would be consistent with how other forms of penalties are calculated and would more completely address the trade-offs for a business entity failing to comply with the State's laws, permits, and regulations. This consideration could be added to the list within 12-504 and other sections of the bill as appropriate.

With additional amendments, this legislation could increase the public's opportunity to participate in administrative proceedings.

In recent work on state general permits CBF's litigation team is finding that MDE's responses to comments and the administrative process with respect to citizen participation is sorely outdated and limits the ability of the public, and, in particular, most vulnerable communities to meaningfully participate and challenge MDE decisions. This change will facilitate greater access to the court for those most affected by decisions about the fate of pollution. This legislation could add the opportunity for citizen participation in administrative proceedings brought under Section 9-1025 and Section 12-503. Where there is the right for the violator to request a hearing, it would be good for impacted community members to have the opportunity to intervene and participate.

We urge the Committee's FAVORABLE report on SB 221 WITH AMENDMENTS and would be happy to work with the Committee to accommodate any strengthening amendments. For more information, please contact Robin Clark, Maryland Staff Attorney, CBF, at rclark@cbf.org and 443.995.8753.