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To: The Honorable Paul G. Pinsky
Chair, Education, Health, and Environmental Affairs Committee

From: Hannibal G. Williams II Kemerer
Chief Counsel, Legislative Affairs, Office of the Attorney General

Re: SB 492– Environment – Discharge Permits – Inspections and Administrative
Continuations – **Support**

The Office of Attorney General urges this Committee to favorably report SB 492. If enacted, SB 492 would prevent the Maryland Department of the Environment (“MDE”) from administratively continuing discharge permits (so-called “zombie permits”) for a period longer than 3 years on or after July 1, 2022; and after January 1, 2027, MDE would be precluded from administratively continuing a discharge permit for a period longer than 1 year. The bill requires MDE to conduct monthly inspections of (1) each permit holder operating under an administratively continued permit; and (2) each permit holder that the Department has determined to be in significant noncompliance of an applicable state or federal standard, effluent limitation, or other applicable requirement of the Department or the U.S. Environmental Protection Agency (“EPA”). The bill further provides for the Department to assess administrative penalties against permit holders found to be in significant noncompliance with applicable state or federal requirements. Penalties range from \$250 - \$2,500 for minor facilities and from \$1,000 to \$10,000 for major facilities.

MDE’s Water Supply Program’s (“WSP”) mission is to ensure safety of the State’s 3,300 public drinking water systems. These systems, in turn, supply drinking water to 5.5 million Marylanders. To assess MDE’s efforts in achieving these critical public health goals, in 2019 the EPA engaged CADMUS, a business management consulting firm, to conduct a workload analysis of the State’s WSP. The 2021 CADMUS report found that understaffing and underfunding of the WSP program called into question the adequacy of inspections of Maryland’s drinking water systems.¹ The report identified a “severe gap” between WSP’s

¹ See CADMUS Analysis of Maryland’s Drinking Water Program Resources and Needs (May 2021), available online at: https://www.marylandattorneygeneral.gov/news%20documents/2020_MD_Workload_Analysis.pdf.

available staffing and funding resources, and those that would be required to run the program. Specifically, it found that MDE “needs approximately. . . 187% more full-time employees (FTEs) than currently staffed, and 93% more funding than currently available to effectively implement the program and ensure safe drinking water for the public.”

The CADMUS report raises multiple concerns, including:

- The national average number of inspections a full-time employee performs in one year is 67. WSP inspectors supposedly conduct 240 inspections every year.
- Only 72% of the State’s public drinking water systems had a certified operator in 2020, down from 84% in 2015. Fully one-quarter of the State’s systems “are operating in violation of state and federal requirements.”
- The State risks losing enforcement responsibility and more than \$21.5 million in federal funding due to its lack of staffing and funding.
- These challenges will be made more acute as 350 new public water systems will be added to the State’s inventory, and the program must manage emerging contaminants including PFAS, Legionella, and harmful algal blooms.
- WSP currently has 27 vacancies out of a staff of 71 full-time positions, including 9 contractual positions. The Hogan Administration abolished approximately 12 FTEs vacated by retirement, left other vacant positions unfilled, and implemented hiring freezes.
- The Program has about \$8.1 million in annual funds, with 88% from federal sources and only 12% from the State’s general fund. The report concludes that in 2021, MDE’s WSP “needs 126 FTEs and approximately \$15.7 million in funding to carry out current program responsibilities, implement drinking water regulations, and uphold public health protection.”

These findings prompted Attorney General Frosh to write Governor Hogan on December 1, 2021,² saying at the time, “Marylanders expect the State to ensure our drinking water is safe. The EPA has warned the Administration that years of underfunding and understaffing of the Department of the Environment’s Water Supply Program have compromised its ability to conduct adequate inspections and oversight, threatening the health of millions of Marylanders.” To date, however, the Hogan administration’s response has been inadequate. That is why SB 492 is a necessary strategy to ensure that MDE conducts better oversight of water suppliers and discontinues the use of multi-year zombie permits.

For the foregoing reasons, the Office of the Attorney General urges a favorable report of Senate Bill 492.

cc: Committee Members

² See Brian E. Frosh letter to Lawrence J. Hogan, Jr. (Dec. 1, 2021), available online at: https://www.marylandattorneygeneral.gov/news%20documents/120121_MDE_Water_Supply_Program.pdf.