

## Support for Senate Bill 492

Dear Chairman Pinsky and Members of the Committee:

The Chesapeake Legal Alliance strongly supports SB 492 because it will help restore the ability of the Maryland Department of the Environment (MDE) to do the job it is charged with by the General Assembly. The passage of this bill would be particularly appropriate this year as Americans celebrate the 50<sup>th</sup> anniversary of the Clean Water Act. Without an agency capable of carrying out this landmark environmental law we will simply not be able to restore the Chesapeake Bay or achieve many of the other environmental goals you have established over the years through the legislation you work so hard to pass.

Congress passed the Clean Water Act in a stunningly bipartisan fashion, with unanimous approval in the Senate, despite the legislation's sweeping scope and bold ambition. And while the first several decades following the passage of the Clean Water Act saw dramatic improvements in water quality, leading some to call the Act "one of the greatest government achievements of the second half of the 20th century", the impact of the Clean Water Act has been in decline ever since. Why? Simply put, because it is the states – not the federal or local governments or public interest organizations – that were always intended to be primarily in charge of implementing the law. So, as state environmental agencies have been allowed to wither, so too has the potency of the law. And without a viable Clean Water Act, we will not fully restore the Chesapeake Bay or be able to adequately protect public health from the impacts of toxic pollution in our communities or our drinking water.

This is why SB 492 is so critical. Few bills heard by the General Assembly in recent decades have been targeted at addressing the root cause of so many of our environmental problems: a lack of resources for the agency charged with solving these problems. If enacted, SB 492 will accomplish the following:

1. ***Common Sense and Fiscally Prudent Solution.*** The General Assembly has taken bold actions over the years to try to restore the Chesapeake Bay and protect local communities and waterways from the hazardous effects of water pollution. Most notably, Maryland is now home to one of the largest fleets of advanced wastewater treatment plants in the world. Because of this investment, the state has dramatically reduced pollution from its largest discharge permit holders and has a fighting chance to reach the Bay restoration goal by the 2025 deadline. However, these massive contributions by Maryland households can be wasted if some facilities are allowed to vastly exceed their legal limits on pollution or are allowed to continue operating with outdated or ineffective pollution controls.

SB 492 would protect the state's investments in water pollution control – and investments from the many law abiding facilities subject to discharge permits – in several ways. First, the bill creates a culture of compliance through nudges – asking facilities to take control of

developing plans to regain compliance, giving them more time with MDE inspectors to understand the nature of the problem, and small but growing fines to incentivize compliance.

Secondly, it is important to understand that almost all facilities with discharge permits are reliant on the expertise of MDE engineers and staff, especially inspectors, for feedback on how to run their operations cleanly. If problems arise, it is far better to have a quick visit from an MDE engineer early on than to let the problem fester and grow, resulting in a system-wide failure along with massive amounts of needless pollution. At that stage, not only does public health and the environment suffer, but the facility is subject to stiff penalties and even greater costs to fix an otherwise preventable problem that should have been caught and corrected early on. Similarly, allowing a facility to operate years beyond the end of a 5-year permit term makes it that much more likely that outdated, aged, or ineffective water pollution controls are allowed to continue without input from MDE engineers that check to make sure facilities' controls are up to date and operating effectively.

This is how SB 492 delivers an intelligent solution to reducing pollution and the costs of preventing it in the future.

2. ***Promote Compliance Without Costly Civil or Criminal Actions.*** In recent years MDE has touted its focus on achieving compliance without the use of traditional tools such as enforcement actions with deterrent penalties. While CLA firmly believes that you cannot reasonably expect compliance with virtually any law or rule without imposing commensurate consequences, it is important to clarify that SB 492 is not a traditional enforcement bill. SB 492 does not increase maximum civil penalties, nor introduce new prohibitions. Rather, the bill creates a nuanced and thoughtful approach to promoting compliance with the Clean Water Act and state water pollution laws.

If a facility with a water pollution discharge permit is in ***significant*** noncompliance, the bill requires the facility to submit a letter to MDE to explain how it will come back into compliance and MDE would prioritize that facility for inspections. ***Only if*** the facility remains in significant noncompliance after two monthly inspections would exceptionally small penalties then be assessed.

For the vast majority of facilities, which are considered “minor” by MDE, the penalty is only \$250 after a ***third*** straight month of significant noncompliance. If the facility is still not in compliance after a fourth monthly inspection, the penalty only increases to a modest \$500. Finally, for each subsequent month of significant noncompliance the penalty grows to \$2,500, which is still just a fraction of the maximum ***daily*** civil penalty authorized under state or federal law. These penalties are modest in value and only designed to nudge facilities back into compliance by providing them with a reminder of their obligations and imposing a quick and effective disincentive to continuing to violate the law. It will achieve compliance for the vast majority of violators without any need to resort to time-consuming civil or criminal actions or requiring additional resources from MDE, the Attorney General, or the courts.

In essence, the bill will help MDE distinguish between facilities that can quickly and easily regain compliance and those that the agency needs to prioritize for traditional enforcement actions due to a willful refusal to comply. A significant number of facilities in significant noncompliance have been given that designation by MDE because of a failure to report their

monthly discharge reports. In some cases, the facility has simply forgotten to do so and can be quickly reminded to begin submitting timely pollution reports. In other cases, the failure is intentional to cover up pollution problems that must be addressed. Again, the bill gives MDE the ability to distinguish between minor and more severe issues and gives facilities the ability to avoid significant – or any – penalties by fixing their problems quickly and demonstrating the ability and willingness to comply with the law. The public deserves nothing less than to know that violations are being quickly resolved.

3. ***Restore Agency Capacity and Public Trust.*** The General Assembly does its job to pass the laws needed to restore the Bay and water quality throughout Maryland. And the hard working staff at MDE do their jobs the best they can to protect the public from the thousands of toxic, carcinogenic, and radioactive substances the agency is charged with regulating. But the fact is that ***MDE resources have been in decline for more than two decades.***

MDE's general fund budget is roughly flat in absolute terms over the last two decades, meaning its resources have actually decreased by about a third accounting for inflation. Over that same time period, by contrast, the state's total general fund budget has more than doubled. As a consequence, more than one out of every seven previously filled positions at MDE is now gone, despite the significant increase in the state's population, economic activity, and overall workload for agency staff. At the turn of the century, MDE had 62 inspectors in its water division. That number declined slowly and bottomed out at 41 in 2016, and has apparently increased slightly since then but is nowhere near the more than 60 positions MDE had in the 1990s, much less the greater number it would need today.

When the Department of Legislative Services conducted an exhaustive analysis of executive agency staffing adequacy several years ago, it found a ***widespread and alarming deficiency across Maryland government, but held MDE's staff out as one of the single most overworked and understaffed workforces.*** In private conversations and meetings, almost all agency staff, regardless of the particular division or unit, readily admit that they are substantially lacking in personnel and resources; indeed, agency documents used to publicly state as much. But agency leadership now refuse to advocate for their own budget (or, in their words "advocate against the Governor's budget") thus refusing to give their staff the help they need. The agency has gone so far as to delete references to their staffing issues from public documents.

SB 492 will help ***rebuild the agency by mandating performance levels*** for the agency's permitting and compliance functions. Under the bill, a state of significant noncompliance or a long overdue permit renewal will necessitate monthly inspections, while the backlog of permits that are far beyond their 5-year expiration date must be cleared within a defined timeframe. These performance benchmarks will help provide a clear picture of whether or not MDE has the personnel and resources to adequately do its job and, if not, the underperformance against these benchmarks will clearly indicate to policymakers and the public what more is needed in order to ensure the agency is performing at expected levels to comply with the laws you wrote and achieve the purposes behind those laws to protect public health and the environment.

4. *Necessary and Critical for the Safety of Our Communities.* It must be stated that the Maryland Department of the Environment is a bit of a misnomer. When the average person hears the word “environment” they might think of trees, bees, or whales, the charismatic flora and fauna we love and want to protect. However, MDE is, first and foremost, a health agency at the front line of public health protection. If you have a concern about conserving aquatic or terrestrial habitat in Maryland, you need to direct your focus to the Department of Natural Resources. At MDE, the one common feature across each of its divisions and regulatory programs is the regulation of *substances that can and do sicken and kill Marylanders*.

One of the leading causes of death on this planet is particulate air pollution; we all understand that radiation is something to stay far away from; and we’re aware that lead, mercury, and all kinds of chemicals with strange names (“PFAS” is the latest) can be extremely dangerous if they make it into our water at high enough concentrations. These and many other hazards are the job of MDE to regulate for the safety of the public. When regulatory systems stop working, either because of a withering of the agency on a shoestring budget or because a culture of *non*compliance has taken hold, there are dangerous consequences for us all. And these consequences are most often felt by fenceline communities and our most vulnerable individuals.

We simply cannot afford to allow the status quo to continue. The stakes are too high, not only for restoring water quality and the Chesapeake Bay, but for keeping us all safe. SB 492 represents the first steps toward catalyzing a course correction at MDE. With a greater focus on providing MDE the resources it needs and with a thoughtful approach toward promoting a culture of compliance in Maryland, we are confident that SB 492 will put Maryland on a path toward a restored Chesapeake *and* safer and more sustainable communities for all Marylanders.

For these reasons, the Chesapeake Legal Alliance **strongly supports Senate Bill 492** and urges a favorable report. For additional information, you may contact Staff Attorney Evan Isaacson at [evan@chesapeakelegal.org](mailto:evan@chesapeakelegal.org).