



Support for Senate Resolution 4

Dear Chairman Feldman and Members of the Committee:

Enacted in 1973, the Maryland Environmental Policy Act (“MEPA”) was born from the environmental movement in the late 1960s and early 1970s that brought about the U.S. Environmental Protection Agency (EPA), the National Environmental Policy Act (NEPA), the Clean Water Act, and other major federal environmental laws. In that spirit, the General Assembly made several bold declarations through the passage of MEPA, including that *“each person has a fundamental and inalienable right to a healthful environment”* and that “[t]he protection, preservation, and enhancement of the State’s diverse environment is necessary for the maintenance of the public health and welfare and the continued viability of the economy of the State and is *a matter of the highest public priority.*” Additionally, MEPA established procedural requirements to force agencies to consider adverse impacts from certain activities before acting.

One of these requirements was for Executive Branch agencies to adopt regulations that will ensure environmental values are given appropriate consideration in planning, and that decision-making is undertaken with the “fullest practicable provision of timely public information in coordination with the public.” When the General Assembly declared environmental protection as a core value “of the highest public priority” it intended for this to be enshrined as a permanent bedrock principle given effect through sufficient integration within the other core processes and procedures of Executive agencies. Consideration of environmental impacts were to be forever ingrained in the daily operation of these entities.

However, several factors resulted in MEPA becoming a dead letter law. First, when MEPA was enacted there was no such thing as the Maryland Department of the Environment (“MDE”), which was not created until nearly 15 years later. So the agency that would be most involved in the implementation of MEPA did not exist. By the time it was created, that initial process of adopting MEPA regulations had long since passed. Secondly, over that same time period of the 1970s and early 1980s, most of our major federal and state environmental laws were created. Thus, the implementation of so many new laws and regulatory regimes essentially resulted in MEPA being lost in the shuffle. Once again, when MDE was first chartered, MEPA was already an older law, while a plethora of new environmental regulatory activities became the new agency’s primary charge.

But this is no excuse not to reinvigorate MEPA today, starting with ensuring that MDE adopt MEPA regulations for the very first time. If MDE and other agencies were to adopt regulations implementing MEPA, the goal would be to ensure that each agency revisits the bold intent of the

statute enacted in 1973 but with the benefit of hindsight and ability to give it modern relevance. Importantly, what MEPA could do to improve upon the current environmental law framework in Maryland is to enhance several key agency processes, including: (1) public participation, (2) transparency, and (3) community consultation and impact assessment.

- ❖ ***Public Participation.*** MEPA regulations could modernize or improve public participation requirements in several key ways. To start, agencies should commit to disseminate information in the ways that people actually consume it in the 21st century. This means going beyond newspaper notices to include, for example, greater social media activity and using tools that push information out to the public rather than forcing the public to come to the agency. Agencies could offer the public, for example, the opportunity to enter an email address to receive notices of permit applications in their area. Successful MEPA regulations should define a minimum level of notice, including no less than 30 days for public comment.
- ❖ ***Transparency.*** In order to ensure the “fullest practicable provision of public information” MEPA regulations should establish minimum standards of transparency that enable the public to become meaningfully involved in environmental decision-making processes and, indeed, foster and encourage such involvement. Agencies should maintain a centralized and easy to find web page that provides frequently updated (between daily and monthly depending on source) information on the topics or issues that the public most frequently asks for.
- ❖ ***Community Consultation and Impact Assessment.*** While some environmental issues are regional or even global in nature, many forms of pollution and environmental impacts are highly localized. Moreover, each community in Maryland faces a unique array of environmental stressors and concerns. Agencies cannot possibly regulate effectively in this context without conducting assessment, analysis, and outreach on a local level where decisions are local, not regional, in nature. To this end, MEPA regulations should establish processes that invite local input and procedures, where relevant, that ensure that adequate consideration is given to unique local factors in any agency decision.

To some extent, establishing greater public participation and transparency through MEPA regulations will necessarily help ensure greater community consultation. However, the MEPA regulations ought to create some additional and specific procedural steps that shed light on community impacts before the agency acts. For example, if a particular action proposes a new or increased source of pollution of a type and in an amount known to have human health impacts, then, true to MEPA’s statutory declaration regarding the importance of public health and welfare in environmental decision-making, a cumulative impact and/or health impact assessment should be conducted.

These are just a few examples of what modernized MEPA regulations could do to improve decision-making and environmental outcomes today and why the Chesapeake Legal Alliance supports SJ 4. For more information, please contact Evan Isaacson at evan@chesapeakelegal.org.