



THE MARYLAND HOUSE OF DELEGATES
ANNAPOLIS, MARYLAND 21401

HB 1101 – Clean Water Justice Act of 2024

Chair Feldman, Vice Chair Kagan, Members of the Education, Energy, and the Environment Committee –

Numerous briefings presented to the Committee confirm that myriad sources of pollution continue to threaten the health of our prized Chesapeake Bay and its tributaries. Identifying pollution sources requires constant vigilance and while monitoring by Maryland regulatory agencies is critical, they cannot effectively do this work alone.

Until recently, Marylanders, including watchdog organizations, could supplement the work of regulatory agencies since they had the right to file citizens' lawsuits under the Clean Water Act (CWA). Last summer the U.S. Supreme Court decided *Sackett v. Environmental Protection Agency*, which limited the scope of federal protections for countless seasonal wetlands and marine ecosystems under the Clean Water Act. This in turn meant individuals and organizations could no longer file suit to protect those seasonal wetlands and marine ecosystems.

As amended, HB 1101 restores the rights of citizens to file civil enforcement actions against violators of Maryland waterway pollution protection statutes. These suits would now be brought in state court, instead of federal court, where they had been brought prior to *Sackett*. We have worked with the Maryland Department of the Environment on a set of amendments, which should be on the system.

Background: *Sackett v. EPA* and the Clean Water Act

- The federal Clean Water Act authorizes the EPA and the U.S. Army to define “waters of the United States” through regulatory rules, determining which bodies of water are within the statute's jurisdiction. For any other provisions of the CWA to apply, including citizen enforcement actions and environmental reviews, the body of water must fall within the definition of “waters of the United States”.
- In *Sackett v. EPA*, 598 U.S. (2023), plaintiffs challenged the EPA rule protecting wetlands on their property, leading to the Court substantially altering the definition of “waters of the United States,” loosening federal protections for over sixty percent of the nation’s wetlands.¹ The majority held that the definition “refers only to “geographic[al] features that are described in ordinary parlance as ‘streams, oceans, rivers, and lakes’ ” and to

¹ Chiu, Allyson. “Biden Rule, Heeding Supreme Court, Could Strip Over Half of U.S. Wetlands’ Protections.” *Washington Post*, 29 Aug. 2023, www.washingtonpost.com/climate-environment/2023/08/29/epa-new-wetland-rule/.

adjacent wetlands that are “indistinguishable” from those bodies of water due to a continuous surface connection.”² Because many wetlands are seasonal and do not maintain “a continuous surface connection” with a larger navigable body of water, they do not fall under the jurisdiction of the CWA.

- In Maryland, the Court’s decision doesn’t change the protected status of our waterways, as we have state-level protections that remain in place. However, the decision does strip the ability of citizens and advocates to bring enforcement actions under the CWA, as many of Maryland’s waterways no longer fall under the jurisdiction of the law.

The Value of Citizen Enforcement

- Many noteworthy water pollution enforcement actions have been brought by community groups, with the state often then subsequently filing an enforcement action.
- Local communities possess a wealth of knowledge about their environments and often can identify pollution sources that may go unnoticed by regulatory bodies.
- This partnership brings crucial capacity to the state and is touted by both MDE and the Attorney General’s office.

Other Important Points

- As amended, the legislation simply restores what was lost in the *Sackett* decision: the right for affected community members to enforce the law – just in state court instead of federal court.
- It will not increase the number of citizens’ lawsuits beyond what was filed pre-*Sackett*. In other states (such as Pennsylvania) that provide a public enforcement right like this one, it is used far less than the existing federal right. Litigation is far too time consuming and costly to become a commonplace tool in the environmental compliance toolbox.
- Collaborative efforts between concerned citizens and environmental agencies can lead to quicker response times, more accurate assessments of pollution levels, and targeted solutions to address specific issues.

We must return Marylanders’ right to participate in the protection of their waterways and treasured marine ecosystems.

For the foregoing reasons, I respectfully request a favorable report on HB 1101.

² Supreme Court of the United States. *Sackett et ux. v. Environmental Protection Agency et al.* 25 May 2023, https://www.supremecourt.gov/opinions/22pdf/21-454_4g15.pdf. Accessed 23 Feb. 2024.