



Maryland Association of Municipal Wastewater Agencies, Inc.

Washington Suburban Sanitary Commission

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March 25, 2024

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The Honorable Brian J. Feldman
Chair, Education, Energy, and the Environment Committee
2 West, Miller Senate Office Building
Annapolis, MD 21401

Re: OPPOSE -- HB 1101 (Standing-Environmental and Natural Resource Protection Proceedings) (Clean Water Justice Act of 2024)

Dear Chairman Feldman:

On behalf of the Maryland Association of Municipal Wastewater Agencies (MAMWA), I am writing to **oppose** HB 1101, which would create a new right for citizens to sue for alleged permit violations by publicly owned wastewater treatment plants (also known as publicly-owned treatment works, or "POTWs").

MAMWA is a statewide association of local governments and wastewater treatment agencies that serve approximately 95% of the State's sewer population. MAMWA members own and operate POTWs and work hard every day to fully comply with discharge permits issued by the Maryland Department of the Environment (MDE).

MAMWA **opposes** any bill that puts local governments at greater risk for state lawsuits.

MAMWA **opposes** HB 1101 for the following specific reasons:

- **Lawsuits Are Costly for Localities** – Allowing new lawsuits against POTWs under State law would drive up local costs. Localities would have to defend any suits brought (with costs for attorneys, expert testimony, etc.) and could potentially be ordered to pay attorney's fees and litigation costs for the third-party bringing the suit.

As publicly owned utilities, we must pass any costs along to our citizens, including the costs to defend ourselves in court. The State's POTWs very much do not want to have to increase sewer rates at a time when our citizens are already facing financial challenges (e.g., the lingering impacts from the COVID-19 pandemic, inflation for necessary goods and services).

- **HB 1101 Is Unfair to Potential Defendants** - The federal Clean Water Act Citizen Suit provision (§505) allows the court to award litigation costs to a prevailing or substantially prevailing party, whether that entity is the plaintiff or defendant. HB 1101 allows a court to award costs to a "prevailing" or "substantially prevailing plaintiff," but only authorizes costs for a "substantially prevailing" defendant "if the plaintiff's claim was frivolous, unreasonable, or groundless." It is fundamentally unfair for a plaintiff to have a more favorable standard for cost recovery than a defendant.

CONSULTANT MEMBERS

Black & Veatch
GHD Inc.
Greeley and Hansen Engineers
Hazen & Sawyer
HDR Engineering, Inc.
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Xylem, Inc.

GENERAL COUNSEL

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MAMWA Letter **Opposing** HB 1101

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- **Citizens Can Readily Participate in Enforcement Cases Under Current Law** – The Environment Article gives MDE significant enforcement authority over discharge permits, including the ability to impose civil and criminal penalties. ENV. §9-334 through 9-344. In addition, ENV. §9-344.1 (Right to intervene), which passed just last year, gives citizens who meet threshold standing requirements the “unconditional right” to intervene in a case MDE brings in State court. When combined with the State’s liberal environmental standing standards, there is little chance an interested citizen could not make their voice heard if there is alleged permit noncompliance.

MAMWA urges the Committee to vote “NO” on HB 1101. Please feel free to contact me with any questions at Lisa@AquaLaw.com or 804-716-9021.

Sincerely,



Lisa M. Ochsenhirt, MAMWA Deputy General Counsel

cc: Education, Energy, and the Environment Committee, HB 1101 Sponsors