

**Testimony Opposing SB96**  
**Senate Education, Energy, and the Environment Committee**  
**Tuesday, March 5, 2024**

**Position: OPPOSE**

Dear Chair Feldman and Members of the Committee,

The Mid-Atlantic Justice Coalition is a regional, community-focused coalition of residents concerned about environmental toxins affecting their health, legal, policy, and health experts, and other allies advancing environmental and economic justice. We respectfully oppose SB96. We appreciate MDE meeting with us in advance of session and forming a workgroup since the House hearing, but the workgroup has not changed our position and our substantial concerns have not been addressed. Our opposition rests on both procedural and policy problems with the bill: that the bill was developed without input from Maryland's most overburdened and underserved communities and that the bill fails to provide additional permitting authority for the air permits most relevant to human health.

Environmental justice must, by definition, be informed primarily by the needs and priorities identified by affected communities. Without leadership from affected communities, a policy may be well-intentioned, but falls short of being environmental justice. This principle was codified by the activists who founded the environmental justice movement and later drafted the 17 Principles of Environmental Justice. These principles were adopted at the National People of Color Environmental Leadership Summit in 1991. Principle 7 states: "Environmental justice demands the right to participate as equal partners at every level of decision-making, including needs assessment, planning, implementation, enforcement, and evaluation."<sup>1</sup>

During 2023, the Maryland Department of the Environment ("MDE") held listening sessions in some of Maryland's communities overburdened with pollution. These listening sessions could have informed MDE's next steps, and the community members who participated in those could have participated as equal partners in the needs assessment, planning, implementation, enforcement, and evaluation as required by the 17 Principles of Environmental Justice. Unfortunately, aside from these listening sessions, communities were not involved further along the process. Despite communities raising air pollution and human health concerns, this feedback was not incorporated in this bill.

In December 2023, MDE shared legislative language for HB24/SB96, which would add layers of process to certain permits for pollution in communities defined as overburdened. This is a definition developed by the Center for Community Engagement, Environmental Justice, and Health, led by Dr. Sacoby Wilson, that our coalition has promoted into state law in previous years. Following MDE's circulation of the bill, members of the Mid-Atlantic Justice Coalition began raising concerns about the bill's failure to prioritize public health or community-identified priorities.

Several key concerns with the bill's content led to our opposition to the legislature passing SB96 this year and our request for different process and content to shape environmental justice legislation in future sessions.

1. **The list of permits to which this bill would apply was not developed with environmental justice or public health in environmental justice communities in mind.** This legislation would apply extra review to certain permits to pollute in overburdened and underserved communities - but the list of permits the bill would apply to does not prioritize environmental justice concerns identified by environmental justice communities in listening sessions. With one exception, that list of permits — as an enumeration of existing permits to which new legislation would apply — has appeared verbatim in multiple Maryland laws enacted since 1993, and was not developed with environmental justice in

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<sup>1</sup> 17 Principles of Environmental Justice, <https://climatejusticealliance.org/ej-principles/>

mind.<sup>2</sup> Instead of addressing the concerns put forward by communities, MDE is using a 30-year-old list of permits to prioritize how it allocates limited agency resources to address environmental injustice. Environmental justice legislation in other states, like New York, New Jersey, Massachusetts, Washington, and California, includes air pollution because it is consistently identified as a priority issue by communities impacted by disproportionate levels of pollution. HB24/SB96 should use the feedback from MDE’s community listening sessions to inform the first group of permits to be covered.

2. **This bill is not limited in scope - instead, it would create a scope of work that would not address community needs, misallocating precious state resources.** We have heard this bill categorized as an opportunity for the Department to test how an environmental justice review would work on a more limited set of permits. A pilot program for extra review of pollution permits in EJ communities might be effective, if it identified a small set of permits that do influence public health in EJ communities and subjected them to review. But that is not the approach that this bill has taken. The preexisting list of permits that HB24/SB96 would apply to is not small, and some of these permits have limited impact on human health and the concerns expressed by EJ communities. On the other hand, there are only 109 permits for the operation of “major” air pollution sources (Title V or Part 70 permits) in the entire state of Maryland<sup>3</sup> and not all of these are in communities that would trigger the extra review. This would be a manageable number to pilot a new review process, while protecting community health. This legislation prioritizes less significant pollution permits and leaves Title V permits out. State resources are scarce, and we cannot support legislation that will direct these limited resources to conduct reviews on permits that do not address the vast majority of community needs.
3. **The metrics used to define an overburdened and underserved community in this legislation are in misalignment with the bill’s scope.** The bill mainly uses air pollution exposure to identify communities in need of extra permit review, but then largely does not apply to air pollution permits. “Overburdened communities” are defined in the bill using a list of 21 indicators,<sup>4</sup> which also make up 3/4 of the “EJ scores” by which MDE is identifying the hardest-hit communities. Of these 21 indicators of an overburdened community, the majority — 11 — relate solely or mainly to exposure to air pollution..<sup>5</sup> Conversely, only 1 of the 21 indicators relates solely to surface water pollution.<sup>6</sup> Yet the bill covers just about every type of permit addressing water pollution discharges to surface waters and only a small subset of air permits. We see a mismatch between what is currently in law and has been prioritized by EJ communities and what is in the current bill.
4. **While permit renewals for water pollution sources would trigger additional review under this bill, permit renewals for air pollution permits would not: a fundamental inequity.** For surface water pollution permits, the bill covers renewals of permits for existing sources as well as first-time permit issuance for new sources. It also covers both large (“major”) and small (“minor”) sources of surface water pollution. For air pollution permits, MDE’s bill addresses only a small subset: “permits to construct subject to § 2-404 of” the Environment Article. Because this type of permit cannot be renewed (permits for existing air pollution sources are called “permits to operate”), **the bill does not cover renewal permits for ANY existing air pollution sources.** It also does not cover permits to construct new air pollution sources when those permits are issued by the Maryland Public Service Commission

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<sup>2</sup> 1993 Maryland Laws Ch. 59 (H.B. 877). This law can be accessed in the Maryland Archives Online (volume 772, pages 1054-1055) <https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000772/html/am772--1054.html>).

<sup>3</sup> MDE, Issued Part 70 Permits, [https://mde.maryland.gov/programs/permits/airmanagementpermits/pages/title5\\_issued\\_permits.aspx](https://mde.maryland.gov/programs/permits/airmanagementpermits/pages/title5_issued_permits.aspx).

<sup>4</sup> The bill incorporates Maryland’s recently-added definition of “overburdened communities,” which is at section 1-701 of the Environment Article and shown on MDE’s website here: [https://mde.maryland.gov/Environmental\\_Justice/Pages/EJ-Screening-Tool.aspx](https://mde.maryland.gov/Environmental_Justice/Pages/EJ-Screening-Tool.aspx).

<sup>5</sup> These 11 indicators are: PM2.5 and ozone (both air pollutants), three categories shown by the National Air Toxics Assessment which uses only air toxics data (diesel PM, cancer risk, respiratory hazard), risk management plans (required under section 112 of the federal Clean Air Act for facilities that pose a risk of chemical leaks, explosions, and fires), asthma emergency room discharges (associated with multiple air pollutants); myocardial infarction (associated with PM2.5), low-birth-weight infants (associated with PM2.5), proximity to emitting power plants (“emitting” means air pollution), and traffic proximity.

<sup>6</sup> This indicator is “wastewater discharge indicator.”

(“PSC”), which occurs when a pollution source generates energy. These PSC permits are issued for some of the largest air pollution sources in existence: power plants and energy-generating trash incinerators.

For example, Baltimore’s Curtis Bay community hosted a listening session with MDE and identified day-to-day toxic exposures. Curtis Bay has the highest EJ score in the state with heavy industry, nearby incinerators, and coal storage that showers the community with fine particulate matter. Their neighborhood remains an attractive spot for more pollution, and their fight for their health and lives has galvanized the environmental justice movement in Maryland. Yet, this bill will not provide them with more protection from the pollution that harms them most, as represented in the EJ score. When a company called Energy Answers proposed to build the country’s largest trash incinerator in South Baltimore in 2009, four miles from Baltimore’s existing trash incinerator (the largest in the state), the permit to construct was issued by the PSC. The community-led movement to end the proposal gained international recognition<sup>7</sup> and clarified the need for bold action in Maryland for environmental justice. Other PSC-issued permits have become flash points for community opposition over the last 10 years in Maryland. Yet PSC permits are not addressed in this bill.

When we look at the pollution sources that matter most to overburdened communities, this bill does not prioritize them. This is a major deficiency in the bill and underscores why we cannot support HB24/SB96. In order to equitably push forward the state’s nation-leading climate program, there are opportunities to learn from other states that are pushing environmental justice to the forefront in parallel.

- In Massachusetts, not only is there a state definition for cumulative impacts ("the total effect of past, present, and future actions on the environment and human health") but also legislation that mandates the Massachusetts Department of Environmental Protection (MassDEP) to evaluate and seek public comment on incorporating cumulative impact analysis into its review of applications for certain categories of air permits and approvals.<sup>8</sup>
- In Minnesota, the legislature passed the Frontline Communities Act (FCPA), which grants overburdened communities with stronger regulatory protections against further pollution. Under this legislation the state requires the Minnesota Pollution Control Agency (MPCA) to conduct cumulative impact studies when issuing or denying a permit for siting new facilities. This legislation was developed in partnership with local grassroots organizations and aims to protect environmental justice communities and will go into effect in April 2026 following a robust and active public participation period which kicked off in October 2023. A preliminary analysis conducted by the MPCA estimates that roughly 120 current facilities in the state will be impacted by this new legislation specifically due to their air permits they require and where they are sited.<sup>9</sup>

Maryland has environmental health resources with track records of engaging overburdened and underrepresented communities in addressing their public health concerns; for example, the Center for Community Engagement, Environmental Justice and Bloomberg School of Public Health’s Health Impact Assessments.

Our coalition appreciates the commitment to environmental justice that MDE and others have expressed. Decades of decisions have heaped environmental contamination on the same communities over and over, even resulting in the permanent displacement of the Fairfield and Wagners Point communities that once existed near Curtis Bay.<sup>10</sup> We appreciate the intent of HB24/SB96, but as written, the bill does not sufficiently move toward providing the protection that affected communities need and have asked for. The bill is not small – it covers many water permits, but it does not address the pollution sources most dangerous for human health. We worry that this bill will require MDE to spend significant staff time conducting reviews that will not meaningfully address the most serious environmental justice and health concerns raised by communities in Maryland.

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<sup>7</sup> 2016 Goldman Prize Award Winner for North America: Destiny Watford, <https://www.goldmanprize.org/recipient/destiny-watford/>.

<sup>8</sup> Massachusetts DEP, <https://www.mass.gov/info-details/cumulative-impact-analysis-in-air-quality-permitting>

<sup>9</sup> Minnesota Pollution Control Agency, <https://www.pca.state.mn.us/sites/default/files/cumulative-impacts-facilities.pdf>

<sup>10</sup> See, e.g., An Environmental History of Fairfield/Wagners Point by Philip Diamond, based on research by University of Maryland School of Law (1998), [https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1030&context=mlh\\_pubs](https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1030&context=mlh_pubs).

We appreciate recently-appointed MDE Assistant Secretary for Environmental Justice Atkinson’s statement that MDE “is listening to those who have been ignored in the past.”<sup>11</sup> Unfortunately, this bill does not make good on that promise. Overburdened communities, like leaders in Curtis Bay, have been clear that legislation needs to focus state efforts on EJ concerns. In the Moore-Miller Transition report, the transition plan recommends that the state “develop effective and meaningful legislation on cumulative impacts, comparable to legislation recently passed in Massachusetts, New Jersey, and New York.” The legislation in those states started with addressing the pollution needs in communities.

MDE should continue the process it started of listening to and engaging with communities at the frontlines of environmental danger. MDE should work with them and experts like the Center for Community Engagement, Environmental Justice and Health to meaningfully address environmental justice and incorporate their needs into prioritizing permits for additional review. Residents across the state and the Maryland Mid-Atlantic Justice Coalition stand eager to work with MDE, Senator Jackson and Delegate Boyce, and other decision-makers to craft solutions to community problems.

We respectfully oppose SB96 and urge the State to meet with residents of environmental justice communities to understand which permits those communities need heightened review and present a set of options for policy tools to address their concerns.

Sincerely,

Mid-Atlantic Justice Coalition, Maryland Table

Steering Committee members:

Shashawnda Campbell / Toby Harris, Baltimore

Norberto Martinez, Langley Park

Samuel Jordan, Baltimore

Annie Bristow, Frostburg

Anchors:

Walkiria Pool, Centro de Apoyo Familiar

Emily Ranson, Clean Water Action