



February 26, 2024

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

Re: OPPOSE--SB 653 (Standing-Environmental and Natural Resources Protection Proceedings (Clean Water Justice Act of 2024))

Dear Chairman Feldman:

On behalf of the Maryland Municipal Stormwater Association (MAMSA), I am writing to oppose SB 653, which would, among other things, create a new right for citizens to sue for alleged permit violations by municipally owned stormwater systems (also known as municipal separate storm sewer systems or “MS4s”).

MAMSA is an association of the State’s local governments and leading stormwater consultant firms who work for clean water and safe infrastructure based on sound science and good public policy. MAMSA members own and operate regulated MS4s. MAMSA members work hard every day to fully comply with discharge permits issued by the Maryland Department of the Environment (MDE).

MAMSA opposes any bill that puts local governments at greater risk for state lawsuits and their associated costs.

MAMSA opposes SB 653 for the following specific reasons:

- **The Bill Is Too Broad** – As filed, the bill would allow a person or association meeting the standing requirements in §1-902 (p. 3, l. 10 – p. 4, l. 2) to file a lawsuit in circuit court under a multitude of state statutes (more than 60 subtitles of the Code). This includes the sections of the Code governing the water and sewer planning process (Environment Article, Title 9, Subtitle 5), the operation of the Maryland Water Infrastructure Finance Administration (MWIFA) (Environment Article, Title 9, Subtitle 16), and the Maryland Environmental Policy Act (Natural Resources Article Title 1, Subtitle 3).

To provide a specific example, localities could be sued under this new Subtitle for alleged violations associated with a water and sewer plan. Currently, enforcement of Title 9, Subtitle 5 is reserved to MDE. Similarly, it appears MDE could be sued by any person who alleges an injury-in-fact associated with a financial decision made by its MWIFA. *In short, the bill appears to open the flood gates for new causes of action under State law that do not currently exist.*

- **Citizens Can Already Sue Under Federal Law** – Even if the bill is amended to limit it to MDE permits issued under Title 9, Subtitle 3 (Water Pollution Control, which includes MS4 permits) and Title 5, Subtitle 9 (Nontidal Wetlands) of the Environment Article, MAMSA still opposes this bill because citizens already have the right to sue discharge permittees under the Clean Water Act Citizen Suit provision.

MDE issues POTW discharge permits under delegated authority from the U.S. Environmental Protection Agency and the Clean Water Act (33 U.S.C. §1251, et seq.). Clean Water Act §503 allows any citizen to file a civil lawsuit against any person who is allegedly violating an effluent limit or standard in a discharge permit. SB 653 is unnecessary. Citizens are already allowed to go to federal court to allege permit violations.

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.

- **SB 653 Gives Citizens More Rights than Under Federal Law** – As with the federal Citizen Suit provision, the bill prohibits a private action from being brought if the Secretary of the Department of the Environment or the Secretary of the Department of Natural Resources has commenced and is diligently prosecuting an action to require compliance (page 4, lines 20-23). However, unlike federal law, the bill appears to allow a separate action to be brought if the private plaintiff asserts that the ongoing government enforcement action is allowing for undue delay or unreasonable schedules (page 4, lines 23-24). This may mean that a plaintiff who has slept on their right to intervene (page 4, lines 25-27) may nonetheless commence a separate action despite an ongoing government enforcement action.
- **MDE Enforces Environmental Laws and Citizens Can Readily Intervene in Those Cases** – 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.

MAMSA urges the Committee to vote “NO” on SB 653. Please feel free to contact me with any questions at Lisa@AquaLaw.com or 804-716-9021.

Sincerely,



Lisa M. Ochsenhirt, MAMSA Deputy General Counsel

cc: Education, Energy, and the Environment Committee, SB 653 Sponsor