MARYLAND MUNICIPAL STORMWATER ASSOCIATION

March 25, 2024

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 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** HB 1101, which would 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:

- **Lawsuits Are Costly for Localities –** Allowing new lawsuits against MS4s 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 public entities, we must pass any costs along to our citizens, including the costs to defend ourselves in court. The State's stormwater managers very much do not want to put this burden on our citizens, many of whom 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.

- **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.

MAMSA 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, MAMSA Deputy General Counsel

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