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**Testimony of Bryan Dunning
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**Before the Maryland Senate's Education, Energy, and the Environment Committee
Regarding Senate Bill 96: Environment – Impact of Environmental Permits and State
Agency Actions**

Dear Chair and Members of the Senate Education, Energy, and the Environment Committee:

Thank you for the opportunity to testify today on behalf of the Center for Progressive Reform (the Center) in support of SB0096 (SB 96). The Center is a nonprofit research and advocacy organization that is focused on addressing our most pressing societal challenges, including advancing the concerns of historically marginalized communities by centering racial and economic justice in climate policy.

SB 96 would legislatively strengthen the Maryland Department of the Environment (MDE), requiring the agency to review certain permits for pollution sources for their environmental justice impact, and issue, deny, or modify those permits based on that evaluation. This represents major progress for the state of Maryland in advancing environmental justice in the state, and for the reasons discussed, the Center requests that this committee issue a **favorable** report on SB 96.

Maryland, both through the legislature and the Moore administration, has prioritized advancing the principles of environmental justice in the state. Advancing these principles is necessary to address the fact that Maryland has historically disproportionately sited and permitted sources of pollution in low-income communities and communities of color.¹ Permitting of new or expanded pollution sources in these disparately impacted communities has continued over the concerns of both local government and residents of those communities. This continues, in part, because

¹ Notably, siting of polluting facilities and infrastructure has occurred at high rates in communities of color regardless of that community's economic status. For instance, the population of Brandywine, a census designated location in Prince George's County, is 78.6% Black or African American. Despite having a median household income over one and a half times greater than the state average, the community of Brandywine suffers from far higher levels of pollution than state average due to repeated decisions by the state to site and approve permits for polluting industries and facilities in or adjacent to the community. See, e.g., <https://www.census.gov/quickfacts/brandywinecdpmaryland>.

state permitting agencies, such as MDE, lack the authority to consider the environmental justice impacts of permitting in these environmentally burdened communities.

As such, SB 96's authorization for MDE to conduct and act upon an environmental justice evaluation is a meaningful step toward advancing Maryland's commitment to ensure equal protection from environmental and public health hazards for all people regardless of race, income, culture, and social status.²

SB 96 empowers MDE to take action to advance environmental justice in the state of Maryland in the following ways:

- Requires MDE to conduct an environmental justice evaluation of permit applications listed in section 1-601(a) of Maryland's environmental code that are located in an area with an EJ score greater than 75.³ The permits covered under 1-601(a) are inclusive of air and water pollution, landfills, hazardous storage facilities, and others. These covered permits are predominantly for new pollution sources, or expansion of existing ones, though a few permits subject to renewal are included.
- Authorizes MDE, following an EJ evaluation, to either approve, deny, or set conditions on covered permits for new sources of pollution based upon environmental justice considerations.
- Authorizes MDE, following an EJ evaluation, to either approve, or set conditions on the renewal of covered permits for existing sources of pollution based upon environmental justice considerations.
- Requires MDE to establish a publicly accessible website (or part thereof), or application process that would allow the public to identify pending permit applications within census tracts with an EJ score greater than 75.

This legislation provides MDE with a crucial means to give effect to Maryland's goal of advancing environmental justice in the state. The permits covered by SB 96 provide MDE with a crucial tool to safeguard the most disparately impacted communities (*i.e.* those with an EJ score greater than 75) against new or increased sources of pollution. This empowers MDE, after a careful review, to prevent, or mitigate against, new pollution sources that would increase the environmental justice disparities already present in these communities.

SB 96 also grants MDE authority to conduct an environmental justice evaluation of certain permits subject to renewal. This gives MDE the authority to redress excess pollution within these communities by issuing conditions on renewal permits and thus reduce the disparate health and economic impacts from existing sources of pollution. Taken in aggregate, SB 96 will serve to meaningfully advance environmental justice outcomes in the state of Maryland.

Air Quality Permits

² MD Code Ann. Env't § 1-701(a)(5) – defining environmental justice.

³ Those communities are in the top quarter of communities in the state for disparate pollution burden, toxic exposures, and other social and health factors associated with unequal environmental and health outcomes.

After reviewing SB 96, the Center recommends that the Maryland Legislature consider broadening the scope of permits covered by this bill to authorize MDE to address existing sources of air pollution in communities with an EJ score greater than 75.

Although the permits covered by SB 96 grant MDE authority to conduct an EJ evaluation for a wide range of pollution sources, MDE's jurisdiction to directly address the environmental justice impacts of air pollution is somewhat limited. Currently, SB 96 only grants MDE jurisdiction to conduct an EJ evaluation for air quality permits "to construct" subject to section 2-404 of the Maryland Environmental Code. These permits are issued either for a new source of air pollution or the expansion of an existing one and are not applicable to some of the largest sources of pollution in the state — namely, electric generation stations that acquired a certificate of public convenience and necessity (CPCN) from the Maryland Public Service Commission, which is not currently required to conduct an EJ evaluation in that process.⁴

Existing air pollution sources in EJ communities represent a substantial risk to the health and overall wellbeing of the residents of those communities. These air pollution sources are responsible for the release of numerous criteria pollutants into the communities, including PM 2.5, PM 10, ozone, and nitrogen dioxide. These criteria pollutants are directly linked to increased prevalence of asthma and other cardiovascular diseases, low birth weight, and the development of cancers in communities exposed to them. Both the heightened levels of air pollution, as well as the health impacts resulting from them, are major aspects of CSNA's definition of overburdened communities, and addressing them is a critical aspect of achieving Maryland's legislative mandate to guarantee environmental justice, as set forth in CSNA.

Including air quality permits "to operate" in MDE's jurisdiction for EJ permitting review would give the agency the ability to conduct an EJ assessment for existing air pollution sources in communities with an EJ score of 75+. This could include both "significant" sources, as well as "major" sources subject to a Title V permit. In particular, authority to conduct an EJ review of Title V permits would allow MDE to consider the impact of the greatest single sources of air pollution in those communities. Further, it would ensure that MDE has authority to conduct an EJ review of air pollution from electric generation stations – including coal and gas power plants permitted under the CPCN process. As "to operate" permits are subject to renewal, inclusion of them in MDE's jurisdiction for EJ review will empower the agency to not only prevent future harms to disparately impacted communities but allow for an alleviation of the existing pollution burden borne by them.

Conclusion

SB 96 creates a powerful means for MDE to take into consideration environmental justice in its permitting process, and as such safeguard disparately impacted communities from additional environmental burdens, as well as advance environmental justice in Maryland. For this reason, the Center for Progressive Reform supports SB 96. The Center respectfully requests that the Committee issue a favorable report on SB 96. The Center also respectfully requests that the Legislature consider inclusion of air quality "to operate" permits, especially Title V permits, either in this bill or at a future date, to address the disparate burden suffered by EJ communities from existing sources of air pollution.

⁴ The Public Services Commission *is*, however, required to assess whether issuing a CPCN would have a discriminatory impact under Title VI of the Civil Rights Act.