



HB1101 – Clean Water Justice Act

Senate EEE Hearing Date: March 26, 2024

Position: FAVORABLE with amendments

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

Waterkeepers Chesapeake and the below signed organizations strongly urge a FAVORABLE report with the sponsor’s technical amendments on HB1101 – the Clean Water Justice Act. The Clean Water Justice Act allows communities harmed by illegal water pollution to enforce state law. Access to the courts to enforce laws that protect communities from pollution was at the heart of the federal Clean Water Act (CWA). Unfortunately, the U.S. Supreme Court decision in *Sackett v EPA* removed more than half of streams and wetlands from federal Clean Water Act protection. Fortunately, Maryland still protects these waterways, but our law provides no right for communities to enforce the law like under the CWA.

Wetlands and streams are the lungs and kidneys of our landscape – filtering out pollution, keeping drinking water clean, protecting us from flooding and storm surges, and providing billions of dollars in benefits. These aquatic ecosystems are also among the very most valuable biodiverse habitats. Now, the majority of these waterways are only protected by Maryland law.

Given our urgent climate and biodiversity crises, we should be doing everything we can to protect these waterways and restore what was lost after the Supreme Court decision.

The Maryland General Assembly has long established itself as a leader among states in creating protections for water quality that go beyond the federal minimum. This leadership is needed now more than ever. The public enforcement right written into the Clean Water Act serves as a crucial backstop to regulators who do not act to enforce violations of water pollution laws. Even though state and federal agencies were intended to be the primary enforcers, Congress knew that the public would be an essential backstop, stepping up to enforce the Act where regulatory agencies refused.

The Clean Water Justice Act does not change any environmental standards or add any new requirements. It simply provides a public right to enforce our water quality laws. It ensures that no Marylander is left without access to justice or the ability to protect their right to ensure their waters are made unsafe by illegal levels of pollution.

The Clean Water Justice Act, for inland wetlands and intermittent and ephemeral streams, will:

- Restore a right for impacted community members to enforce the law in state court the same way that they were previously able to do in federal court under the Clean Water Act.
- Give Marylanders the same degree of access to state courts as they have in federal court.
- Repair the threat to Maryland's critical water resources caused by the U.S. Supreme Court decision.

We strongly support the sponsor's technical amendments that put "political subdivision" back into the bill under who can be sued. "Political Subdivision" is extremely important to include, and if it is removed, this bill would make Maryland law far weaker than what we had pre-Sackett. First, we should not be exempting or excluding a class of polluters, especially not such a large one as municipal entities. In addition, it sends a bad signal that the government is above the law and that privately owned facilities and small businesses must be held to a higher standard than our own governments.

In including "political subdivision," it is critical to understand that this will result in virtually no additional liability as compared with where we were historically. The bill does not establish new legal requirements or prohibitions. There is no reason to believe that the law will result in any change to the overall number of enforcement actions going forward. This new state law would only be used as a backstop when federal court is not an option. In fact, under State law, water pollution penalties are less than 15% of the federal penalty so any new enforcement actions under the new law that would have otherwise been brought under federal law will result in far less liability for the polluter. Again, the law provides recourse of last resort for Marylanders seeking to stop illegal pollution.

In addition, we urge that the uncodified language that had previously been offered as an amendment to the HB1101 be included in the bill. This uncodified language would set up an informal stakeholder process to review how the new law is functioning after two years to ensure that the bill accomplishes its goals and without undue or unintended consequences.

With the inclusion of these sponsor amendments, it's important to note that the bill does not create a right of judicial review of final agency actions, and does not expand standing beyond that provided by federal courts, essentially restoring the enforcement of clean water laws to what existed before the Supreme Court's ruling.

Many noteworthy environmental enforcement actions in Maryland have been brought by community groups, with the state often then subsequently filing an enforcement action, allowing the community groups to work alongside the state to enforce the law and negotiate settlements. This partnership is something that has brought crucial capacity to the state to enforce the law and utilizes the community members as the eyes and ears on the water.

Thank you for your consideration, and we look to the committee to give HB1101 with the sponsor's technical amendments a favorable report.

Contact: Robin Broder, Waterkeepers Chesapeake, robin@waterkeeperschesapeake.org

Organizations signed on:

Potomac Riverkeeper Network	Climate XChange
Chesapeake Legal Alliance	Interfaith Partners for the Chesapeake
ShoreRivers	Severn River Association
Chester Riverkeeper	Trash Free Maryland
Choptank Riverkeeper	League of Women Voters of Maryland
Miles-Wye Riverkeeper	Maryland Conservation Council
Sassafras Riverkeeper	Coalition to Prevent Stream Destruction
Arundel Rivers Federation	Cedar Lane Environmental Justice Ministry
South, West & Rhode Riverkeeper	IndivisibleHoCoMD Environmental Action Team
Chesapeake Bay Foundation	St. Mary's River Watershed Society
Clean Water Action	Maryland Legislative Coalition Climate
Maryland PIRG	Justice Wing
Potomac Conservancy	CASA
Maryland League of Conservation Voters	National Aquarium
Sierra Club Maryland Chapter	Quaker Voices
Blue Water Baltimore - Baltimore Harbor	Audubon Mid-Atlantic
Waterkeeper	Baltimore Jewish Council
Assateague Coastal Trust - Assateague	Environment Maryland
Coastkeeper	Maryland Pesticide Education Network
Anacostia Riverkeeper	Alice Ferguson Foundation
Potomac Riverkeeper	Beaverdam Creek Watershed Watch Group
Upper Potomac Riverkeeper	Rock Creek Conservancy
Patuxent Riverkeeper	Public Employees for Environmental
Severn Riverkeeper Association	Responsibility
Gunpowder Riverkeeper	Center for Progressive Reform
Lower Susquehanna Riverkeeper	The 6th Branch
Association	Nature Forward

Earth Force
Unitarian Universalist Legislative Ministry of
Maryland
Maryland Catholics for Our Common Home
Center for Water Security and Cooperation
Vernal Pool Partners
Queen Anne's Conservation Association
The Nature Conservancy
Rebuild Maryland Coalition
Friends of Quincy Run Watershed
Warm Springs Watershed Association
Ward 8 Woods Conservancy (DC)
Safe Healthy Playing Fields Inc.
Sustainable Hyattsville
Environmental Integrity Project