



**The Maryland Department of the Environment**  
**Secretary Serena McIlwain**

***House Bill 1101***

***Standing - Environmental and Natural Resources Protection Proceedings (Clean Water Justice Act of 2024)***

**Position:** Support with Amendments  
**Committee:** Environment and Transportation  
**Date:** March 1, 2024  
**From:** Jeremy D. Baker

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The Maryland Department of the Environment (MDE) **SUPPORTS** HB 1101 **WITH AMENDMENTS**. The bill would enact several changes in State environmental law enforcement and the authority to intervene in State enforcement actions.

**Bill Summary**

As introduced, the bill goes far beyond restoring the parameters of citizen suits under the federal Clean Water Act (CWA) prior to the U.S. Supreme Court's decision in *Sackett v. Env't Prot. Agency*, 598 U.S. 651 (2023). MDE has been working with the sponsors and several non-governmental organizations that engage in environmental citizen suits to amend the bill, with the goal of restoring a pre-*Sackett* legal landscape in Maryland. The sponsors' amendments accomplish that goal, and eliminate the provisions in the bill as drafted that raise issues related to sovereign immunity and lawsuits over past violations, among other concerns.

In *Sackett*, the Supreme Court held that wetlands and bodies of water that have no surface connection to navigable, CWA-protected bodies of water are not Waters of the United States (WOTUS) and thus do not qualify for CWA protections. The justices asserted that the CWA should not extend to "channels through which water flows intermittently or ephemerally, or channels that periodically provide drainage for rainfall." Rather, it should only cover wetlands and waterways with a "continuous surface connection" to interstate bodies of water.

**Position Rationale**

As amended, the bill would expand the standing of all persons and organizations to enforce, or intervene in any State action to enforce, Title 5, Subtitle 9 (nontidal wetlands), and Title 9, Subtitle 3 (water pollution control) of the Environment Article. With the amendments narrowing the bill to these areas of State law that *Sackett* placed outside of the scope of CWA protections, the bill confines its scope to restoring the CWA's Citizen Plaintiff provisions in accordance with the pre-*Sackett* "significant nexus" test.

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MDE recognizes the important role that non-governmental organizations and interested citizens can play in enforcing laws and regulations related to addressing water pollution and providing clean water for Maryland residents, and believes that the bill as amended restores the correct balance that was lost in the *Sackett* decision.

Accordingly, MDE asks for a **FAVORABLE WITH AMENDMENTS** report for House Bill 1101.