



Testimony on HB24
House Environment and Transportation Committee
February 21, 2024

Position: Informational

Dear Chair Korman and Members of the Committee,

The Environmental Integrity Project respectfully writes to provide information regarding HB24. In addition to the information shared below, we strongly support the testimony submitted by the Mid-Atlantic Justice Coalition. It is non-negotiable that environmental justice policies must be developed with input and leadership from the most affected communities. This is explained in Principle 7 of the 17 Principles of Environmental Justice, which states: “Environmental justice demands the right to participate as equal partners at every level of decision-making, including needs assessment, planning, implementation, enforcement, and evaluation.”¹ Decision-makers should have sought input on this bill from long-time organizers in Baltimore’s Curtis Bay neighborhood, the community with the highest-ranking EJ score in the state, but failed to do so following a 2023 listening session. In addition, the bill fails to address decisions on permits most directly related to the environmental health problems in the hardest-hit communities as identified by the State’s own “EJ scores.”

Critical permits not covered

This bill fails to cover the majority of essential air pollution permits. Air quality is of critical importance when assessing the public health impacts of exposure to pollution. This is particularly true in Baltimore City, which has the highest-scoring census tracts in Maryland for communities affected by pollution, represented by the “EJ scores.” As described in more detail below, apart from demographics, EJ scores are mostly based on air pollution factors.

Baltimore City is home to all of the census tracts with the 46 highest EJ scores in Maryland, the top 96.86 percentile. Of the areas with the top 100 EJ scores in Maryland, 86 are in Baltimore City (with the Curtis Bay neighborhood in South Baltimore ranking the highest in the entire State).² And Baltimore City does not use well water for drinking.³ This means that drinking water contamination, which can result from groundwater pollution, is not something that is addressed in Baltimore’s most affected communities using the bill’s localized permitting approach. Although all routes of exposure are of concern in communities with pre-existing pollution and health burdens, air pollution is of even greater relative importance in Baltimore City because of the lack of connection between the permits listed in the bill and drinking water impacts in Baltimore City’s most vulnerable neighborhoods.

This bill fails to cover the most important air pollution permits. It does not cover the following:

1. **Any permit renewals for existing air pollution sources.** The bill covers issuance and renewal of a list of permits already set in law at section 1-601(a) of the Environment Article. The 1-601(a) list includes “air quality permits to construct subject to section 2-404” of the Environment Article. However, air quality permits to construct cannot be renewed. Permits for ongoing operation of air pollution sources are called “permits to operate.” The bill covers zero air quality permits to operate. These permits to

¹ 17 Principles of Environmental Justice, <https://climatejusticealliance.org/ej-principles/>.

² See Attachment A for a ranked list of top EJ scores in Maryland exported from Maryland’s EJ Screening Tool, https://mde.maryland.gov/Environmental_Justice/Pages/EJ-Screening-Tool.aspx.

³ Baltimore City Department of Public Works, Baltimore DPW: The Region’s Water Supplier, <https://publicworks.baltimorecity.gov/drinkingwater>.

operate are further sub-classified by regulators as being for “major” and “minor” sources of air pollution. Both types of source can be very problematic in overburdened communities, but this bill does not even cover the larger, “major source” category.

The State of New Jersey’s recently-passed environmental justice law- which was spearheaded by frontline environmental justice groups⁴ - lists major sources of air pollution as the first category of facility that triggers an environmental justice analysis.⁵ There are only 109 of these major source operating permits in Maryland and not all are located in areas that would trigger additional requirements.⁶

The Maryland Department of the Environment (“MDE”), will likely argue that the “permits to construct” category covers permits for expansions of already-existing sources. However, companies that operate these sources frequently engage in “creative” accounting regarding emissions and attempt to show that no expansion has occurred and this permit requirement is not triggered. In other words, this is not even close to an acceptable substitute for covering the renewal of the permits to operate air pollution sources.

2. **Permits to build new energy-generating air pollution sources like power plants and incinerators.**

When a new air pollution source will generate energy, it is not issued an air quality “permit to construct” by MDE. Instead, it is issued a Certificate of Public Convenience and Necessity (“CPCN”) by the Maryland Public Service Commission (“PSC”). These CPCNs are issued, in lieu of state permits to construct, for some of the largest air pollution sources: power plants and energy-generating incinerators.⁷ These CPCNs are also not covered by the bill.

MDE will likely argue that CPCNs are covered by this bill when authorizing construction of a new air pollution source. This is not correct. The bill attaches the EJ requirements to (some) air quality “permits to construct.” MDE does not have the authority to require a permit to construct for a facility that must obtain a CPCN. Section 2-402 of the Environment Article states: “MDE may not require a permit [to construct] . . . for . . . [t]he construction of a generating station constructed by a person that is required to obtain a [CPCN] under §§ 7-207 and 7-208 of the Public Utilities Article,” which sections apply to energy-generating facilities.⁸

Since the Environment Article prohibits MDE from requiring a permit to construct for a facility that must obtain a CPCN, any attempt to rely on the authority granted by this bill to address the air quality conditions in a CPCN would almost certainly be struck down quickly in court.

Mismatch between “EJ score” and permits covered

The factors used to identify the communities experiencing the most harm are misaligned with the permits covered by the bill. The bill identifies communities that are overburdened primarily by air pollution and this bill does not even try to address the problem.

⁴ NJ.com, Landmarks law to protect N.J.’s poorest communities from pollution signed by Murphy, Sept. 18, 2020,

<https://www.nj.com/news/2020/09/landmark-law-to-protect-njs-poorest-communities-from-pollution-signed-by-murphy.html>

⁵ State of New Jersey, Governor Murphy Announces Nation’s First Environmental Justice Rules to Reduce Pollution in Vulnerable Communities, <https://www.nj.gov/governor/news/news/562023/approved/20230417a.shtml>.

⁶ These major source operating permits are called “Part 70” or “Title 5” permits and they are listed on MDE’s website at: https://mde.maryland.gov/programs/permits/airmanagementpermits/pages/title5_issued_permits.aspx.

⁷ CPCNs must still meet the requirements of the federal Clean Air Act. However, MDE’s authority to use the EJ score to affect permits, as set forth in this bill, is not attached to federal requirements but to the state “permit to construct” requirement.

⁸ Md. Code, Environment, § 2-402(3), also available at

[https://govt.westlaw.com/mdc/Document/N64AA21F098DD11DFA11CF4C2C3EE1A63?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/mdc/Document/N64AA21F098DD11DFA11CF4C2C3EE1A63?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)).

This bill identifies communities in need of help based on whether those communities are “overburdened” and “underserved.” Overburdened status is based on a list of 21 indicators⁹ of exposure to pollution or lack of infrastructure (underserved status is based on demographic indicators). The same 21 exposure indicators also comprise 3/4 of the EJ score

Of these 21 indicators:

- Eight relate exclusively to air pollution exposure. These are: (1) particulate matter (PM2.5); (2) ozone, (3) National Air Toxics Assessment Assessment (NATA) diesel PM; (4) NATA cancer risk; (5) NATA respiratory hazard risk; (6) traffic proximity; (7) proximity to an emitting power plant (“emitting” refers to air pollution); and (8) risk management plan proximity (risk management plans are required under section 112 of the federal Clean Air Act because of the risk of chemical leaks, explosions, and fires).
- Three are health outcomes – asthma emergency room discharges, low-birth-weight infants, and myocardial infarction – that are most often correlated in literature with exposure to air pollution but can also be triggered by other types of exposures, such as ingestion.¹⁰ However, air pollution remains the primary concern for these health outcomes in Baltimore City since the bill does not cover permits that relate directly to drinking water quality in affected communities, which would be associated with the “ingestion” route of exposure.
- Only one indicator relates exclusively to surface water pollution.¹¹ But the bill covers many types of these surface water pollution permits: “major” and “minor” sources of surface water pollution as well as renewals of all permits and first-time issuance of new permits for discharges to surface water.¹²

This bill fails to prioritize solutions to the problem that it identifies. If enacted as law, it will divert resources away from the priorities that the most-affected communities would likely have identified, had they been asked.

Legislators should consider crafting a bill that is more narrowly focused on the communities experiencing the most harm and the permits (or other decision points) most directly related to that harm. For example, legislators could add air pollution permits but apply the bill only to permits in areas with the top 90th percentile of EJ scores, rather than the 75th percentile as currently written. Alternatively air permits could be substituted for a different category of permit already in the bill.

Who isn’t in the room

Frontline environmental justice communities are, by definition, those that have historically lacked power. Neighborhoods become overburdened with pollution when they lack the political power of wealthier communities to fight off polluting development. Baltimore City’s Curtis Bay neighborhood, which has the highest EJ score in the State of Maryland, is in an area with a median household income of about \$35,000, where 32.9% of family households live below the poverty line.¹³

⁹ Md. Code, Environment, § 1-701(a)(7). The 21 indicators used to identify overburdened communities are also listed on MDE’s website at https://mde.maryland.gov/Environmental_Justice/Pages/EJ-Screening-Tool.aspx.

¹⁰ See, e.g., Zheng, Xue-yan, et al. 2015. “Association between Air Pollutants and Asthma Emergency Room Visits and Hospital Admissions in Time Series Studies: A Systematic Review and Meta-Analysis.” PLOS ONE: 2. DOI:10.1371/journal.pone.0138146. Link: <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0138146>; R. Nachman, et. al., Intrauterine Inflammation and Maternal Exposure to Ambient PM2.5 during Preconception and Specific Periods of Pregnancy: The Boston Birth Cohort, Environ. Health Perspect., Advanced Publication, DOI:10.1289/EHP243: 4; Wolf K, Schneider A, Breitner S, Meisinger C, Heier M, Cyrys J. Associations between short-term exposure to particulate matter and ultrafine particles and myocardial infarction in Augsburg, Germany. *Int J Hyg Environ Health*. 2015;218(6):535–542. doi: 10.1016/j.ijheh.2015.05.002.

¹¹ This is the “wastewater discharge indicator.”

¹² This is the third category of permit listed under 1-601(a): “permits to discharge pollutants to waters of the State,” subject to section 9-232 of the Environment Article.

¹³ Baltimore Neighborhood Indicators Alliance, 2021 Vital Signs, <https://bniajfi.org/>.

Communities like Curtis Bay do not employ lobbyists. And community-based environmental justice advocacy organizations – like the South Baltimore Community Land Trust, a resident-led group that has organized in Curtis Bay for over a decade - are chronically underfunded.¹⁴ Groups like this are often unable to take on a new issue, like this problematic bill, without significant planning or to set aside an entire afternoon to testify at a bill hearing. This is why organizations working in the hardest-hit communities must be consulted as a bill is drafted and not told about it after the major decisions have already been made. We ask that legislators consider this resource disparity when assessing the groups from which they are hearing on this bill.

¹⁴ The Community of Curtis Bay Association, another community-based group, unsuccessfully called on MDE in April 2023 to declare an Air Pollution Emergency following yet another chemical incident, this time a nitric acid leak from the nearby W.R. Grace chemical plant, <https://ilovecurtisbay.com/2023/05/19/call-for-declaration-of-air-pollution-emergency-in-curtis-bay/>.