

Written Testimony in Support of Senate Bill 978

CHERISH Our Communities Act

Before the Education, Energy, and the Environment Committee: February 25, 2025

To the Honorable Chair Feldman, Vice-Chair Kagan, and members of the Education, Energy, and the Environment Committee,

On behalf of the University of Maryland Carey School of Law Environmental Law Clinic, we write today in support of Senate Bill 978 – Environmental Permits - Requirements for Public Participation and Impact and Burden Analyses (Cumulative Harms to Environmental Restoration for Improving Shared Health—CHERISH Our Communities Act). The CHERISH Act is community-driven and puts Maryland at the forefront of environmental justice reform—ensuring overburdened neighborhoods are not forced to accept more polluters without safeguards. The CHERISH Act would require the Maryland Department of the Environment (“MDE”) to consider all environmental and public health harms endured by overburdened and underserved communities in its analysis of whether to grant or condition new pollution permits—ensuring that no community suffers disproportionately from these impacts in perpetuity. This bill also requires MDE to take these considerations into account when existing permits are up for renewal. We support the state’s efforts to ensure a more transparent process that gives Maryland residents a voice in permitting decisions impacting their communities, thereby protecting public health and the environment.

Environmental justice (“EJ”) connects environmental issues with social justice.¹ Dr. Robert Bullard, the “father of environmental justice,” first documented the link between race and pollution exposure in a 1979 lawsuit,² highlighting the disproportionate environmental burdens on Black communities and laying the foundation for EJ research.³ The EJ movement stems from the Civil Rights Movement, as activists aimed to combat injustices of “toxic dumping, municipal waste facility siting, and land use decisions” in predominantly low-income and minority neighborhoods.⁴ Maryland law defines “environmental justice” as “equal protection from environmental and public health hazards for all people regardless of race, income, culture, and

¹ ROBERT V. PERCIVAL ET AL., ENVIRONMENTAL REGULATION: LAW, SCIENCE, AND POLICY, 16 (10th ed. 2024).

² *Bean v. Sw. Waste Mgmt. Corp.*, 482 F. Supp. 673 (S.D. Tex. 1979).

³ Yessenia Funes, *The Father of Environmental Justice Exposes the Geography of Inequity*, SCI. AM. (Sept. 19, 2023), <https://www.scientificamerican.com/article/the-father-of-environmental-justice-exposes-the-geography-of-inequity/>.

⁴ *Environmental Justice*, EPA, <https://www.epa.gov/environmentaljustice> (Sept. 16, 2024)

[<https://perma.cc/KV9B-3SN5>]; *History*, CONG. BLACK CAUCUS FOUND.

<https://avoice.cbcfinc.org/exhibits/environmental-justice/history/> (last visited Oct. 20, 2024). *See generally* UNITED CHURCH OF CHRIST COMMISSION FOR RACIAL JUSTICE, TOXIC WASTES AND RACE IN THE UNITED STATES (1987), <https://www.nrc.gov/docs/ml1310/ml13109a339.pdf>. [<https://perma.cc/KV9B-3SN5>]; *History*, CONG. BLACK CAUCUS FOUND. <https://avoice.cbcfinc.org/exhibits/environmental-justice/history/> (last visited Oct. 20, 2024). *See generally* UNITED CHURCH OF CHRIST COMMISSION FOR RACIAL JUSTICE, TOXIC WASTES AND RACE IN THE UNITED STATES (1987), <https://www.nrc.gov/docs/ml1310/ml13109a339.pdf>.

social status.”⁵ Environmental justice seeks to protect communities from disproportionate environmental and health risks and hazards while ensuring equitable access to a safe, sustainable environment.⁶

SB978 advances the goals of environmental justice. We applaud this bill’s efforts to codify these ideals, especially in a time where the federal government continues to roll back its EJ policies and state action is more important than ever to protect our communities and environment. An in-depth understanding of the aggregated effects of prior governmental decisions on overburdened and underserved communities is critical for informed agency decision making, transparent governance, and public support in political processes. We believe this legislation is a significant step towards more equitable agency action and the creation of a comprehensive permitting system that engages all stakeholders, keeping in mind the long-term, cumulative impacts on communities that have disproportionately borne the brunt of environmental injustice.

Environment Article, § 1-701(a)(7) defines a community as “overburdened” when three or more of twenty-one specific factors are above the 75th percentile statewide within the census tract. These overburdened and underserved communities in Maryland experience significant, overlapping environmental injustices from the disproportionate concentration of harmful pollution sources in their environments due to decades of governmental decisions—especially concerning zoning and permitting.

Moreover, overburdened and underserved communities often are not aware of pending decisions that would affect their neighborhoods due to a current lack of transparency and public engagement, which SB978 aims to address. Additionally, these communities often have insufficient resources and political capital to effectively represent their best interests in the permitting processes of facilities within or near their borders.

Marylanders deserve consideration from state authorities during the permit application and renewal processes to ensure protection of their health and environment, especially if they reside in disadvantaged areas. Overburdened and underserved communities already experience disproportionate environmental and health risks compared to other citizens across the state—often due to actions taken or permitted by the state. Requiring the agency to consider these disproportionate harms from start to finish of the permitting process would result in more equitable results for disadvantaged communities that do not have the resources at their disposal to spend significant time to participate or secure adequate representation during the permitting process. It is within the principles of “environmental justice” as defined at § 1-701(a)(5) for the General Assembly to mandate consideration, mitigation, and/or prevention of any additional harms that will impact overburdened and underserved communities. This consideration does not mandate

⁵ MD. CODE ANN., ENV’T, § 1-701(a)(7)

⁶ *Environmental Justice*, EPA, <https://www.epa.gov/environmentaljustice> (Sept. 16, 2024) [<https://perma.cc/KV9B-3SN5>].

outright denial of a permit but includes provisions regarding conditional permits that have protections built in for these residents.

For years, our clinic has assisted numerous residents and communities wrestling with disproportionate environmental challenges:

- The communities near Curtis Bay face significant health and environmental challenges posed by the nearby CSX coal terminal. Persistent coal dust emissions have contaminated the community, contributing to severe air quality issues which are linked to respiratory diseases, cardiovascular issues, and premature mortality. Residents have complained for decades about the toxic coal dust, but MDE has yet to set stricter standards to protect their health and safety.
- The clinic is also working with several EJ community associations representing neighborhoods that would be adversely impacted by Amtrak's proposed Frederick Douglass Tunnel Program ("Project"). These historically Black communities continue to bear the consequences of local, state, and federal segregation and suppression. Such efforts include redlining, racial housing ordinances, restrictive covenants, highway construction and urban renewal practices that divide communities and isolate them from economic opportunities. The harm suffered by these neighborhoods due to these systemic, discriminatory policies would only be exacerbated by the Project's exclusionary communication practices, underestimation of noise and vibration impacts, and public health concerns.
- Another EJ community the clinic is currently working with deals with frequent blasting from a quarry sited in a residentially zoned area pursuant to a conditional use permit. Residents deal not only with the integrity of their homes deteriorating, but also their health. Air quality is significantly worse at their homes when compared to nearby areas further from the quarry. Some people have even moved into the neighborhoods without knowing of the quarry until they felt a blast.

Overburdened and underserved communities need government intervention to prevent them from being subjected to further harm. Each of the communities mentioned above would have benefitted from more a transparent permitting process with more opportunities for public participation and safeguards that ensure EJ communities do not continue to suffer disproportionately from the cumulative impacts of state permitting decisions. SB978 provides for such safeguards and transparency.

We strongly support the framework created by this bill. Last session, in our testimony in support of SB978's predecessor bill, SB96 - Environment - Impact of Environmental Permits and State Agency Actions, we advocated for two small but impactful amendments that have been incorporated into SB978.

First, the list of permits subject to the bill now includes Title V air quality control permits. These permits have a widespread effect on overburdened and underserved communities. Identifying these permits in SB978 is important because those sources account for some of the most harmful pollution impacting Maryland's overburdened and underserved communities. Title V of the federal Clean Air Act is an essential part of our nation's air pollution control framework, targeting major sources of hazardous air pollution—including nitrogen dioxide, sulfur dioxide, lead, carbon monoxide, ozone, and particulate matter. Particulate matter specifically has a disproportionate effect on EJ communities. Some of the health effects of particulate matter exposure include premature death in people with heart or lung disease, asthma, heart attacks, and decreased lung function. Moreover, Maryland must fill the void created by the federal government's recent abandonment of EJ principles and policies. *See* Executive Order, Ending Radical and Wasteful Government DEI Programs and Preferencing, January 20, 2025.

Second, the bill language now mandates that MDE either deny or condition permits for facilities that would compound adverse environmental and public health impacts on overburdened and underserved communities. This explicit requirement guarantees that Maryland's government will take steps to protect the most vulnerable of us from disproportionate harm. Maryland would not be the first state to adopt such requirements.⁷

Research on toxics, fugitive dust, and transparency that the Clinic conducted in 2023 for MDE's Air and Radiation Administration shows that other states understand the impact permitting can have on the health and well-being of residents—especially those exposed to multiple environmental stressors such as air and land pollution. Showing they understand the impact, states like New York, Minnesota, and New Jersey have all adopted more stringent public participation requirements for permitting decisions that will impact ⁸~~our~~ communities.

SB978 is an important step in protecting overburdened and underserved communities in Maryland, taking our state a step closer to realizing the goals of environmental justice. Too many Marylanders experience the ripple effects of decades of environmentally unjust permitting decisions and agency actions taken without regard to the existing disproportionate harms facing

⁷ New Jersey Stat. Ann. § 13:1D-157 requires the denial of permits for new facilities if the facility would disproportionately impact overburdened communities and requires that renewals whose disproportionate impact cannot be avoided must be modified to address the facility's impacts on certain environmental factors. A New York law, Environmental Conservation Law (ECL) Sec. 70-0118., provides that its Department of Environmental Conservation shall not issue an applicable permit for a new project if it determines that the project will cause or contribute more than a de minimis amount of pollution to the cumulative pollution burden on a disadvantaged community. The Connecticut Department of Energy and Environmental Protection or the Connecticut Siting Council can deny or impose specific conditions on permits for new construction and operation of proposed industrial facilities based on a determination that cumulative environmental or public health stressors on environmental justice communities close to the proposed facility are higher than other communities in the state. General Statutes of Connecticut § 20a-22a.

⁸ *See Commissioner Policy 29, Environmental Justice and Permitting*, New York State Department of Environmental Conservation (Mar. 19, 2003), <https://www.dec.ny.gov/regulations/36951.html>; Minn. Stat. § 116.065; N.J. Stat. §§ 13:1D-157–13:1D-161 (2018); N.J. Admin. Code. §§ 7:1C-2.1(a), 7:1C-2.2(a), 7:1C-4.1(a)(1)(i)–(vii), 7:1C-4.1(c), 7:1C-4.2(a)(2), 7:1C-5.2(a) (2025).

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marginalized communities, and we are hopeful that this bill will help reduce additional burdens placed on them. We urge this committee to give the bill a favorable report.

Respectfully submitted on behalf of the University of Maryland Environmental Law Clinic,

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Please feel free to direct any questions to our clinic director, Prof. Jon Mueller,

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This testimony is submitted on behalf of the Environmental Law Clinic at the University of Maryland Carey School of Law and not by the School of Law, the University of Maryland, Baltimore, or the University of Maryland System.