

Testimony for HB1484

CHERISH Our Communities Act: Cumulative Harms to Environmental Restoration for Improving our Shared Health

**House Environment and Transportation Committee
March 11, 2025**

Position: FAVORABLE

Dear Chair Korman and Members of the Committee,

In response to feedback received since the introduction of the CHERISH Our Communities Act, the bill's fiscal note, and Maryland's fiscal challenges, the Mid-Atlantic Justice Coalition and the broader coalition behind the CHERISH Our Communities Act have come to consensus around a number of amendments to the bill that will streamline the bill's implementation, reducing the burden on state agencies and the cost to implement the bill, while maintaining the bill's important scope. We are pursuing conversations with the Maryland Department of the Environment to discuss these amendments and look forward to a robust discussion with the committee.

These amendments reduce the fiscal note in the following ways:

1. **Eliminating the requirement for an Environmental Impact Statement.** The bill's original language includes two required reports: an Environmental Impact Statement for any such project throughout the state covering general environmental impact, and an Existing Burden Report for such projects located within a covered geographic area assessing public health implications.

Eliminating the requirement for an Environmental Impact Statement while maintaining the more targeted Existing Burden Report will reduce the total number of reports required to implement this bill by much more than half, significantly reducing required staff capacity, while keeping the report with the information most relevant for the bill's purpose.

2. **Eliminate the requirement that MDE edit and potentially produce a final Existing Burden Report.** The bill's original language requires an applicant for a covered permit in a covered geographic area to submit a Proposed Existing Burden Report with their application, and then requires the Maryland Department of the Environment, after soliciting and receiving feedback, to produce or cause to be produced a Final Existing Burden Report. MDE would also have to incorporate into the Final Existing Burden Report all public comments submitted on the Proposed Existing Burden Report or the permit application

Instead, these amendments propose that the applicant submit a complete Existing Burden Report with their permit application, which the Department must determine to be complete, and that it be made available for public comment. While the Department may still need to request information from the applicant to ensure the completeness of the Existing Burden Report, as the Department often does for other permit application materials, this removes the obligation for the Department to produce any aspect of the Existing Burden Report itself or incorporate any public comments into this report, reducing required staff capacity.

3. **Eliminating review requirements for the Commission on Environmental Justice and Sustainable Communities, the Maryland Department of Health, and elected officials representing the impacted community.** The bill's original language requires these bodies, as well as any other environmental or public health official that MDE deems appropriate, to review the Existing Burden Report for accuracy and sufficiency before the Department produces the final report. As the permit-issuing agency, the Department would have to function as the coordinating agency ensuring the completeness of these reviews before proceeding to the next step of the process.

By eliminating that requirement on the Department and the requirement to consult these bodies, significant MDE staff capacity as well as all of the costs to the Department of Health and impacts on local governments will be avoided.

4. **Eliminate the requirement that the Department publish the Environmental Impact Statement and Existing Burden Report as part of the notice published in a newspaper.** The bill's original language requires the Department to publish these materials alongside other, briefer, elements of public notice in a physical newspaper in circulation in the area of the proposed permit.

Eliminating this requirement will eliminate printing costs.

5. **Simplifying public review requirements for permits not already subject to public review requirements.** Some important permits for projects identified as having an increased potential for adverse community environmental and public health impacts, such as state air pollution operating permits, are not already subject to the public participation requirements detailed in Section §1-601 of the Environment article. The bill's original language applies all of the public participation requirements of Section §1-601 to such permits.

Instead, these amendments create a more streamlined set of public participation requirements for these permits that will provide the necessary steps for the bill's purpose without requiring other elements of the public participation process in Section §1-601. This change should significantly reduce the Department's required staff capacity to implement the bill.

- 6. Narrow the coverage of general permits.** The bill's original language applies equivalently to individual permits, which authorize activity at one facility, and general permits, which allow activities at multiple facilities, which are usually smaller than facilities that have individual permit coverage.

We propose an amendment that reduces the coverage for general permits while maintaining coverage where general permits cover critical environmental justice concerns, such as Animal Feeding Operations and concrete batching plants, and look forward to working with the Department and impacted communities on this item.

An outline of line edits implementing these and other friendly technical amendments follows. Thank you for your consideration of this important environmental justice bill and these potential amendments to reduce the CHERISH Our Community Act's fiscal note while leaving no one behind.

Sincerely,

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Clean Water Action and Centro de Apoyo Familiar are the co-anchors of the Mid-Atlantic Justice Coalition's Maryland table.

1. Changes to streamline process and simplify language.

a. Requiring only one new report in this bill, not two.

i. Explanation: For the purpose of requiring only an Existing Burden Report (EBR) and not an Environmental Impact Analysis (EIA).

ii. Line changes: Delete the following: page 3, lines 5-21

b. Removing requirement to publish EIA in the newspaper.

i. Line changes: Delete the following: Page 4, lines 8-13

c. Simplifying language regarding the triggers for MDE action. And addressing general permits v. individual permits.

i. Line changes

(I) Delete the text starting with page 5, line 26 through page 6 line 2

a. Replace it with the following: “(B) In this section, Covered Permit means (1) Any of the following”

(II) List of permits (1 through 9) is to be numbered by Roman numerals since Arabic numeral 1 now has different text

(III) After the list of permits, another point – Arabic numeral 2- is to be added. This will read: “Covered Permit includes any general permit for animal feeding operations, concrete batching plants *[and potentially additional sectors]* but does not include any other general permit.”

(IV) Page 6, line 28, add “Covered” before “Permit”

d. Simplifying process for completion and review of EBR. Requiring complete EBR to be submitted with application rather than requiring proposed EBR, comment and review, then final EBR.

i. Line Changes

(I) Delete the text starting on page 6, line 28 through page 7 line 2

a. Replace it with the following: “An application for a Covered Permit listed under §1-703(B)(1)(I)through (IX) of this Subtitle for a Covered Project that is located within a 1.5-mile radius from the boundary of an at-risk census tract shall include with the application for a Covered Permit a complete Existing Burden Report.”

(II) Page 7, line 3 – delete the word “proposed”

(III) Delete the text starting on page 8 line 7 through line 28.

a. Replace with the following: “(C)(1) No application for a Covered Permit for a Covered Project shall be considered complete until the Department determines that a complete Existing Burden Report has been submitted; (2) The Existing Burden Report shall be made available to the public, along with the Department’s determination under this subtitle on whether a Covered Project would cause or contribute to an increase in adverse environmental and

public health impacts within an at-risk census tract, for the purposes of public comment;

(3) The following shall be part of the record on appeal: the Existing Burden Report, the Department's determination under this subtitle on whether a Covered Project would cause or contribute to an increase in adverse environmental and public health impacts within an at-risk census tract, and any public comments submitted thereon.

(IV) Page 9, line 1 – delete the word “final”

(V) Page 9, line 2 through 4 – delete the following text: “The Environmental Impact analysis under 2 1–601.1(B) of this Title and any accompanying public comments.”

2. Strengthening EBR requirement.

a. **Line change:** page 8, line 5, delete “unavoidable”

3. Adding requirement for regulations and establishing deadline.

- a. **Explanation:** Creating a deadline for development of regulations. If MDE believes it will take longer to issue rules, we would like to discuss.
- b. **Line change:** Adding at the end of the bill: “The Department shall adopt regulations to implement this section by January 1, 2026.”

4. Reverting back to distinction between new/expansion and renewal permits that was in the draft sent to DLS.

- a. **Line Change:** starting in page 9, line 3, delete text starting with “The Department may” through page 9, line 16.
 - i. Replace it with the following: “The Department shall make an official, written determination as to whether the Covered Project would cause or contribute to an increase in adverse environmental and public health impacts within an at-risk census tract.
(2) If the Department determines that the Covered Project would cause or contribute to an increase in adverse environmental and public health impacts within an at-risk census tract:
 - (I) For a Covered Permit for a new pollution source or a Covered Permit that allows for an increase in pollution from an existing pollution source, the Department shall deny the permit application, unless the permit applicant can meet the burden of establishing that the project would serve an essential environmental, health, or safety need of the community for which there is no reasonable alternative (i.e. in a community with a lower EJ score).
 - (II) For the renewal of an existing Covered Permit or the issuance of a Covered Permit that meets the requirements of paragraph (2)(I) of this section regarding serving an essential environmental, health, or safety need of the community for which there is no reasonable alternative, the Department shall:”

5. Clarifying CAFO/AFO applicability

- i. Explanation: The intent is to apply requirements to Large AFOs as defined at COMAR 26.08.03.09.
- ii. Line change: page 4, line 29, replace “Concentrated” with “Large”

6. Addressing procedural issues relating to Title V permits and permits not listed under 1-601(a).

- a. Explanation: Ensuring that Title V permits remain subject to public participation requirements of current MDE regulations. For all permits considered “Cover Permits” that are not currently subject to public participation procedural requirements under Title 1, Subtitle 6 of the Environment Article, creating public participation requirements that are less extensive than those in Title 1, Subtitle 6. Establishing standard for legal standing for persons that join a permit appeal as a respondent to defend decision.
- b. Line changes:
 - i. Page 2, delete lines 27-29.
 - ii. Page 6, line 15, delete the text “state-only conditions associated with”
 - iii. Page 6, lines 15-19. Reverse the order of permits at numbers 8 and 9 (make 8 into 9 and 9 into 8).
 - iv. Page 10, after line 12 and before line 13, insert the following text:

1-705. Public Participation

(A) For covered projects.

(1) permits listed under § 1-601(a) of this Article shall be subject to the public participation requirements of Subtitle 6 of this Article.

(2) Permits listed in §1-703(B)(1)-(8) of this Article and not under § 1-601(a) of this Article shall be issued and renewed in accordance with the requirements below:

a. Tentative and final determinations for issuance and renewal shall be issued in accordance with § 1-604 of this Article.

b. Final determinations shall be accompanied by the Department’s written response to comments raising issues under this subtitle.

c. When a draft permit or tentative determination is issued, the Department shall extend the public comment period by 15 days on request by a person.

d. A request submitted to the Department under paragraph (A)(2)(c) of this subsection shall be:

(i) Submitted in writing; and

(ii) Made before the expiration of the original comment period.

e. A public comment period may not be extended more than once under paragraph (A)(2)(b) of this subsection.

(3) Title V (Part 70) Permits to Operate for covered projects shall be issued and renewed in accordance with the public participation requirements set forth in the Department’s regulations.

1-706. Judicial Review.

(A) For a covered project:

(1) A permit listed under § 1-601(a) of this Article for a covered project shall be subject to the judicial review provisions of Subtitle 6 of this Article.

(2) A permit listed in §1-703 of this Article and not under § 1-601(a) shall be subject to the following provisions regarding judicial review:

(a) a final determination by the Department on the issuance, denial, or renewal of a permit is subject to judicial review at the request of any person that:

(1) Meets the threshold standing requirements under federal law; and

(2)(i) Is the applicant; or

(ii) Participated in a public participation process through the submission of written or oral comments, unless an opportunity for public participation was not provided.

(B) A person that meets the requirements for requesting judicial review under section 2(a) of this subpart may also proceed as a respondent in any such judicial review action for the purpose of defending the Department's final determination.

(C) A request for judicial review shall be subject to the scope of review provisions in paragraph d of § 1-601 of this Article.

(D) A request for judicial review shall be subject to the venue provisions in paragraph e of § 1-601 of this Article.

(E) A petition or review shall be filed in accordance with the requirements of § 1-605 of this Article.

(F) Any judicial review of a determination provided for in accordance with paragraph 2 of this section shall be limited to a record compiled by the Department consisting of the materials listed in paragraph c of § 1-605 of this Article.

v. Page 10, line 13, replace "1-705" with "1-707"s