



May 21, 2020

Secretary Ben Grumbles  
Maryland Department of the Environment  
1800 Washington Blvd  
Baltimore, MD 21230

Re: Transparency during COVID pandemic

Secretary Grumbles,

In times of crisis, we need environmental leaders who will demonstrate their steadfast commitment to protecting the public from the pollution that can make the crisis worse. Without such leadership, some permitted facilities will fail to do their part to protect the public during this emergency.

Your agency plays a vital role in limiting our vulnerability to the COVID-19 virus. Air pollution, especially ground-level ozone and particulate matter, cause comorbidities like chronic lung disease and cardiovascular illness that make individuals more susceptible to infection and worse health outcomes after infection. Many Marylanders live in areas that are in nonattainment for ozone standards, and these are also areas that face other socioeconomic challenges that are exacerbating the public health threat from the coronavirus pandemic.

We are equally concerned about sewer system operations and compliance. Municipal wastewater, for instance, contains both fecal contamination and industrial wastewater. Human waterborne pathogens present a risk to immunocompromised individuals where contamination occurs, e.g. basement backups or overflows and upsets into waterways. Further, certain types of coronavirus have been found in untreated wastewater, suggesting at least a potential risk of contracting COVID-19 through exposure to untreated sewage. Exposure to contaminated surface water, especially now that the weather is warmer and Governor Hogan has allowed recreational fishing and boating to resume, presents even further public health risk. It is common sense to try to minimize additional public health risk during a pandemic that disproportionately impacts vulnerable populations

We appreciate that you and your staff are working hard during this unprecedented time, and we urge you to prioritize the activities that will keep us safe and reduce unnecessary risks. Continued air and water quality monitoring is a critical way of ensuring that public health risks

are timely identified and addressed, and thus it is important that the state implement robust air and water monitoring efforts during this period. The NGO community also should be allowed to resume air and water monitoring as well because these efforts provide a valuable adjunct to the Department's work and gets needed information into the hands of local communities.

EPA Assistant Administrator Susan Bodine's now infamous March 26, 2020 non-enforcement memo leaves an environmental compliance leadership vacuum that we look to you to fill, beginning with three specific actions:

- 1. Using your website, email lists, social and traditional media outlets, and other relevant channels, publicly remind all permit holders and those subject to compliance orders of their legal obligation to notify MDE of any noncompliance, including any COVID-related inability to comply with monitoring, testing, sampling, analysis, training, reporting and certification requirements, discharge or emissions limits, spill prevention and response plans, hazardous waste treatment, storage, disposal, and transportation requirements, claims of force majeure, and requests for waivers.**

It is not enough that permit holders keep records of their inability to comply with various legal and regulatory requirements, and make them available upon request, as Assistant Administrator Bodine's memo suggests. Major environmental statutes that your agencies are authorized to administer, such as the Clean Air Act and Clean Water Act, provide you with the authority to request information from permit holders.<sup>1</sup> Moreover, the permits that regulate individual sites generally contain recordkeeping requirements as well as a duty to notify the agency of pollution releases and noncompliance or the potential inability to comply with permit terms and conditions. We urge you to send a clear message to the regulated community that if they are experiencing compliance difficulties due to the pandemic, they must proactively reach out to the Department to notify and explain in detail the reason for the inability to comply. The expectation should be that permit holders and those under compliance orders will do all they reasonably and safely can to continue to comply with environmental standards and conditions.

- 2. Create a publicly available database of: (1) all notices and filings described above, and (2) any notices from EPA of acute risks and imminent threats as described in Part I.D. of Assistant Administrator Bodine's memo. The database should include for each listing (a) the Department's response and (b) a succinct description by the Department of the public health implications.**

Complete transparency and aggressive public information-sharing are an imperative during this crisis and your agency has the best tools for creating a trustworthy and centralized source of information about environmental threats. This level of transparency is particularly critical during the time when health and safety guidelines prevent inspectors from visiting sites. Notice and public communication about COVID-related noncompliance is consistent with the federal laws

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<sup>1</sup> See Clean Air Act Sec. 114 and Clean Water Act Sec. 308.

and delegation agreements and ensures that all of our communities are aware of your strong leadership and commitment to protecting environmental and public health.

**3. *Improve public transparency and notice for state issued permits and permit renewals.***

All of the permits that the Department issues are required to be made available for public notice and comment. These notice and comment periods exist for the public to provide important information to enhance the agency's capacity to make informed and responsible decisions, but the public cannot adequately participate if we lack adequate notification of public comment periods. Currently, the onus is on an individual to request access to the 'interested parties' list prior to the time when a tentative determination is made and public comment period opens. However, the MDE website offers no central location to sign up for the interested parties list. After multiple emails to staff within MDE, it is still unclear what the appropriate mechanism is to register oneself on the appropriate list to ensure receipt of public notice for the many different types of permits that MDE issues. Now is the time for MDE to modernize its public notification system. A centralized database of all programs' open-for-comment tentative determinations would enhance public participation and the final permits. Such a database, if designed with basic search features including searches by type of pollution (e.g., air, water, or land) and location of permittee, would allow communities to be more engaged in the decisions affecting their health and wellbeing. The current system presumes a high level of sophistication and knowledge regarding MDE permitting programs that raises environmental justice concerns.

While a modernized database is under development, we ask that, at a minimum, MDE follow the example of many other states by providing a clear and easy to use sign up form on its website to get on the interested parties list for various types of permits in Maryland. In addition, we expect that MDE would ensure public notice is available via email. While some programs within MDE, such as the Air Quality Permits Program, issue electronic notifications of permit renewals to individuals on the interested parties list<sup>2</sup>, other programs, such as the Wastewater Permitting program, only send notifications to interested parties via US Mail. The current COVID-19 crisis has underscored the importance and value of digital communications. For organizations receiving notices via US Mail, this results in almost certain failure of proper public notice, as the vast majority of offices are closed. Certainly providing public notice via email to interested parties who choose to receive such notices via email would be a time and financial savings for MDE.

**4. *Encourage whistleblowers to report environmental violations to your agency, post on your website the state laws that protect whistleblowers and information***

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<sup>2</sup> See

<https://mde.maryland.gov/programs/Permits/AirManagementPermits/Pages/citizensview.aspx>.

***regarding how to lodge a whistleblower complaint, and make referrals of potential whistleblower cases to relevant state agencies and officials for investigation. .***

During this unprecedented time of reduced agency-initiated inspections, we are especially dependent upon whistleblowers to call attention to environmental hazards created by facilities in the region. Workers are a vital component of agencies' enforcement efforts because workers are often witness to hazardous conditions or environmental violations in real time and can serve as the agencies' "eyes and ears" inside the workplace. Your agency should ensure workers across the state know to call and report concerns directly (and anonymously if desired) when they reasonably suspect a violation to have occurred. This will help the agencies prioritize their limited inspection resources in this difficult time.

Additionally, your agency should post on your website the state laws that protect whistleblowers and information regarding how to lodge a complaint. When your agency learns of potential retaliation against a worker who has raised concerns about environmental or other violations, you should make referrals to the relevant state labor agency or government official that is responsible for overseeing the investigation, being careful to protect the identity of the whistleblower. For workers to feel comfortable reporting violations, they must feel they can come forward without fear of retaliation.

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Thank you for your consideration. We look forward to working with you to protect our communities and ecosystems, even during these difficult times. We request your response to our recommendations in the next 30 days and look forward to receiving them.

If you have any questions or concerns, please contact Emily Harris, coordinator for the Chesapeake Accountability Project ([HarrisE@nwf.org](mailto:HarrisE@nwf.org)).

Sincerely,

Jon Mueller, VP of Litigation  
Chesapeake Bay Foundation

Eliza Smith Steinmeyer and David Reed, Co-Directors  
Chesapeake Legal Alliance

Matthew Shultz, Executive Director  
Center for Progressive Reform

Mary Greene, Deputy Director  
Environmental Integrity Project