Standing Last in Line: The Hurdles to Bringing Environmental Accountability Lawsuits in Maryland

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Introduction

In the United States, the courts are a core component of the system established to address the dangers that pollution poses to the environment and people's health. While legislatures have passed laws expanding legal protections for the environment, executive agencies have often proven unwilling or unable to properly implement and enforce these laws. Because of this, the public is left to appeal to the legal system to ensure environmental laws accomplish what they are set out to: protect people and the environment and hold violators accountable.

To enforce environmental laws in court, however, an individual needs to have both a cause of action — a legal claim they can bring in court — and standing to sue — meaning they are the appropriate party to bring the claim. These two obstacles to seeking legal redress are critical to understand but can be confusing. Moreover, federal law and the law of each of the 50 states differ with regard to both their standing doctrine and the relative availability of environmental rights to bring legal actions.

The U.S. Congress passed the modern Clean Water Act 50 years ago on a nearly unanimous vote to respond to what all Americans at the time recognized was a crisis. The urban and natural landscapes were in an embarrassing condition and the rampant and increasingly dangerous forms of pollution had become a substantial public health threat. Congress and the American public understood that much stronger federal protections would be necessary to resolve the horrendous state of the nation's waterways. To that end, a key feature in the new Clean Water Act was an environmental right to deputize the public to ensure the proper implementation of the law and to increase the resources available to enforce it. This feature was referred to as the "citizen suit" provision and provides the public with a cause of action to enforce violations of the law.[1]

Congress included similar public enforcement rights in several other environmental laws, such as the Clean Air Act, the Resource Conservation and Recovery Act, and the Endangered Species Act. These new enforcement provisions created causes of action that ensured that all Americans could join in the process of restoring our environment to health or simply protecting their own communities from unlawful pollution.

In essence, unless authorized by a permit, *most forms of pollution were — and are — illegal* and Congress entrusted all of us with the right to do something about illegal pollution. In this way, the public was given the role of the essential backstop that Congress knew would be needed in the future to ensure regulatory agencies

could not just walk away from the crucial job they were tasked with under these new laws.

However, one obstacle that perhaps Congress could not foresee, and certainly did not resolve, was how to ensure Americans could invoke judicial intervention in the resolution of these newly authorized environmental enforcement actions. In the modern American legal system, a doctrine known as "standing" controls who has access to the courthouse doors. Our major federal environmental laws may include these powerful rights to bring a lawsuit to enforce the law, but in order to utilize these rights, one still must establish that they are the appropriate party to bring suit — in other words, they must prove to a court that they have the proper standing to sue.

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Executive Summary

As much as standing can be an obstacle for a person seeking to enforce an environmental law in *federal* court, even with the statutory causes of action provided by Congress, the situation is far more difficult for Marylanders seeking to enforce environmental laws in *Maryland* courts. There are two basic reasons for this.

First, as described in further detail in this report, Maryland's standing doctrine is much more restrictive than federal standing law and even more restrictive than most other states. Second, and perhaps even more important, Maryland law contains few environmental causes of action similar to the more common "citizen suit" provisions in federal environmental statutes.

The distinction between having standing and having a cause of action, blurry as it may be in individual situations, is critical to understand. While Maryland courts have sometimes conflated the questions of whether a person has standing to sue and whether the person has a cause of action, both are needed for the public to enforce environmental laws in court.

This policy brief is neither a comprehensive treatment of the law of environmental standing, nor an exploration of the various so-called "citizen suit" provisions in federal environmental statutes. But this report spotlights the comparatively sparse rights that Marylanders have to protect their environment and public health.

The absence of these rights has become far more glaring in recent years as state and federal environmental regulators have, at various times, significantly curtailed the enforcement of our environmental laws.[2] This report emphasizes the need to remove obstacles that limit access to justice for Marylanders seeking a vindication of their environmental rights by loosening the restrictive standing law in Maryland and creating new rights to address pollution and hold polluters accountable for their actions.

Recommendations

The Maryland General Assembly should enact a comprehensive suite of environmental laws that provide greater access to Maryland state courts. To provide greater recourse for Maryland communities seeking to enforce state environmental laws and remedy environmental harms, Maryland should:

I. Create new rights to allow Marylanders to enforce violations of state pollution control laws to ensure state residents have no less access to state courts than they have in federal courts;

II. Expand the use of federal standards of environmental standing in Maryland, which are far less restrictive than Maryland's standards; and

III. Modernize and improve the Maryland Environmental Standing Act to revive its original purpose and give effect to the General Assembly's initial intent.

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What is Standing?

The concept of standing law can be confusing — to the average person and, even, to lawyers. The U.S. Supreme Court and Maryland Court of Appeals have called the law of standing confusing and "amorphous."[3] Nor is it clear why the law of standing exists at all. Some legal doctrines are many hundreds of years older than the United States itself and, in fact, more than a few can be traced back to ancient Roman law. The law of standing is much newer and more distinctly American, but its birth and development is not one that is easily told, with a leading scholar describing this legal history as "cluttered, confused, and contradictory."[4]

So why *does* the standing doctrine exist? To make a long story short and perhaps unreasonably concise, controlling access to the courts is partly a function of protecting judicial resources and partly designed to ensure that courts are staying in their constitutional lane by hearing real cases and resolving actual controversies.[5] In essence, standing law provides a filtering function to ensure courts are not needlessly wading into policy or political matters or wasting time trying to resolve the abstract or hypothetical concerns from overly litigious members of the public with the time and financial means to bring lawsuits.

One way to understand the issue of standing in the environmental law context is to look to legal history before the advent of our modern environmental laws and regulatory systems. Before the passage of our foundational environmental laws beginning in the late 1960s, "tort law" was the primary avenue for remedying environmental harms done by private or governmental actors in state court.[6]

Broadly speaking, a tort suit is a civil (i.e., not criminal) action demanding recovery of damages as the result of an injury from another, with trespass, negligence, or nuisance being common examples of tort claims relevant to environmental law. To this day, tort law provides an important, but quite limited,[7] means for addressing environmental harms, with "toxic torts" cases being the most familiar example of modern environmental tort cases.[8]

Tort cases involve an alleged harm to the plaintiff caused by a defendant, with damages being the relief usually sought by the plaintiff. In these cases, the personal stake of the plaintiff is clear and obvious (the defendant harmed them), as is the role of the court (an award of damages is sought). Standing is rarely an issue with torts because the relevant questions in the context

of standing law, such as whether or not there is an "injury in fact," are generally not in dispute: without a showing of harm to the plaintiff stemming from the defendant's action (or inaction), there is no tort in the first place. In this way, torts are an example of a "private wrong," which typically does not involve standing hurdles in the same way as cases with a "public wrong," as would be the case for lawsuits brought for a violation of an environmental statute.

This is not to say that the bar for successfully establishing a tort claim is easily surmounted; it's quite the opposite in most cases. Having to prove causation and damages can be incredibly difficult, as discussed in the case study below. In fact, when creating environmental statutes, Congress tried to help regulators and the public avoid these high hurdles by deeming violators of a pollution permit to be "strictly liable" for offenses and sidestepping some of the extensive litigation obstacles that might otherwise be necessary to sue over excessive pollution.

Nevertheless, in cases with a "public wrong" like a governmental action to issue a permit or license that is alleged to allow too much pollution, standing law can present a similarly difficult obstacle for plaintiffs by controlling *who* can bring a lawsuit to challenge the offense.

Standing in environmental law thus means having to show a sufficient personal stake in a case dealing with a public wrong like pollution and ensuring that the alleged harm can actually be remedied by a court. This much any law student can tell you and is mostly comprehensible, we hope, to anyone wanting to understand the topic. But what is not at all clear is why standing law has become so restrictive to plaintiffs, especially in the context of environmental law, and especially in Maryland.

Jacksonville, Maryland Tort Cases

In early 2006, one of ExxonMobil's underground storage tanks spilled more than 26,000 gallons of gasoline containing methyl tertiary butyl ether,[9] a carcinogenic compound that used to be added to petroleum products to reduce carbon monoxide tailpipe emissions.[10] The spill contaminated underground drinking water sources with unsafe levels of MTBE, having a dire impact on the health of the residents of Jacksonville, Maryland. This spurred a number of lawsuits by nearby residents and the Maryland Department of the Environment (MDE).[11] While MDE was successful in obtaining a $4 million settlement from Exxon, there was far less success for the individual residents who brought various tort claims against Exxon for well water contamination. Less than one percent of the plaintiffs who brought tort suits against Exxon for the spill were ultimately successful due to the difficulty in demonstrating exposure and harms.[12]

These cases taught impacted communities that in order to be successful in remedying environmental harms through the tort regime provided in Maryland,[13] potential plaintiffs must provide ongoing certified testing and analysis of contaminated water, soil, and/or air, and expert testimony demonstrating how exposure to a contaminant is particularized and results in a decrease in the fair market value of the home[14] or significantly increased risks (i.e. of developing a disease) compared to the general public.[15] Potential plaintiffs must initially foot the bill for costly testing and monitoring while also having the means and foresight to pursue certified testing and analysis before the environmental damage occurs. This can be cost-prohibitive or impossible for many low-income communities facing pollution.[16]

FEDERAL STANDING

If Congress so clearly and nearly unanimously expressed its desire to maximize the enforceability of our environmental laws, why has our judicially created standing doctrine not evolved along with our environmental statutes and regulations? Why should we have laws that create environmental rights if those causes of action cannot be given effect in a court of law? If legislatures create statutes with public enforcement rights as a *core and indispensable feature of those laws*, should not the courts then give effect to the intent of these laws by minimizing standing obstacles that serve to prevent the public from invoking those very rights?

Without inviting debate over the answers to these questions or engaging at a broader philosophical level here, it is fair to say that these and many other questions about standing are still being litigated. In fact, in the 2021 term, the U.S. Supreme Court reaffirmed that federal standing remains an independent obstacle for a potential litigant *even where they have a clear and undisputed statutory right to bring that litigation*.[17]

In federal court, standing is a matter of constitutional law that arises out of Article III of the U.S. Constitution, which describes the power of the judiciary to decide "cases" and "controversies." Federal courts thus interpret our constitution as requiring that a litigant possess a sufficiently personal stake in a case or controversy to allow judicial intervention.

In the environmental context, decades of federal case law have established what sort of personal stake must be demonstrated to satisfy this constitutional standard regarding standing to sue. These cases broadly stand for the proposition that individuals and organizations can establish standing to sue over aesthetic, recreational, economic, and personal or property harms, as long as the alleged harm is within the "zone of interest" of the federal statute that created the right or cause of action. The cause of action provides an essential means for communities to demand that appropriate governmental agencies protect the environment through the proper enforcement and implementation of the law.[18]

In environmental law, what must be demonstrated is not harm *to the environment*, but rather how the alleged environmental harm translates to harm *to the plaintiff*. Federal courts have rejected the idea that there can be an "ecosystem nexus" between the harm to the plaintiff and the harm to the environment.[19] The plaintiff has to prove with facts that the environmental harm directly impacts them.

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This showing is, on the one hand, more restrictive than it arguably should be. Many, if not most, people would probably wonder why an individual's concerns about a threat to the environment could not, by itself, be enough to confer standing to sue. After all, litigation is so time-consuming and expensive that it is out of reach to most Americans absent an extraordinary situation. These obstacles would seem to be more than enough to protect judicial resources and would certainly seem to speak to the question of whether the plaintiff has a sufficiently authentic and adversarial concern with respect to the alleged harm caused by the defendant.

In other words, if a person is outraged enough about the impact of pollution or the destruction of a cherished resource that they would be

willing to engage in a costly lawsuit, should they really need to explain how it specifically or directly affects them? Especially given that the U.S. Supreme Court has already affirmed that "aesthetic" concerns alone are sufficient for standing purposes, it is more than a little odd that the difference between someone with and without standing to sue (in federal court) could come down to, for example, the particularity with which a plaintiff is able to describe their travel plans to a place that is threatened with destruction or despoliation.[20]

In this example, based on a real case, if the plaintiff satisfies the court that their travel plans are concrete enough, there is standing to sue to protect the environment; if not, there is no protection for the environment. This seems like a trivial factual distinction with a rather significant consequence for the environment and demonstrates the strange evolution of federal standing law and the potentially arbitrary or unjust nature of standing restrictions. Moreover, there are a number of other questions of jurisdiction and justiciability that filter out inappropriate cases from a court.

On the other hand, because federal environmental standing law does indeed allow individuals to invoke harms to other species or far-flung places and does at least recognize harms to "aesthetic" or "recreational" interests, establishing standing in federal court is *much less of an obstacle* than it is in some states, especially Maryland.

MARYLAND STANDING LAW

In Maryland, it is not enough to merely show how a person is *directly* affected, they also have to show how they are *uniquely or specially* affected by the alleged harm in order to have standing to sue. In other words, whereas federal standing law requires a showing that you are within the broader class or universe of people that is affected by an alleged harm, Maryland law virtually requires you to show that you are the *only* person among the broader public who could sue.

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While federal standing law arises out of the federal constitution, Maryland standing law is purely a matter of the "common law" that has arisen out of centuries of court decisions layered on top of — and occasionally contradicted by — other decisions. To establish standing to sue over a public wrong in Maryland, our common law states that an individual must demonstrate either "property owner standing" or "taxpayer standing."[21]

Property owner standing means that a person can demonstrate standing to sue if they are "specially aggrieved" because their property is adjacent to or in very close proximity to the alleged harm. Property owner standing requires a demonstration that the plaintiff uniquely suffered from harm in a way that is different from that of the general public.[22] A member of the broader public would not have standing to bring suit to resolve an environmental injury in Maryland, and the class of people who would have standing is a tiny number of individual property owners, perhaps only a single one.

Property owner standing is a major hurdle because most environmental harms are borne by the general public as well as the property owner. Rarely does environmental harm impact only one person and, if it does, that sort of harm could be addressed via a tort suit (but would be subject to the potentially exacting requirements needed

to win a tort suit). Where plaintiffs are routinely successful in establishing standing under the Clean Water Act in federal courts for harms such as not being able to kayak or fish due to pollution of a river, they would not be successful in establishing standing in a Maryland state court.[23]

The second common law basis for standing in Maryland is taxpayer standing. To prove taxpayer standing, Maryland courts have established that a potential plaintiff must allege they are a taxpayer, that the suit is implicitly or explicitly brought on behalf of all other taxpayers, and the action by the public official is illegal or "*ultra vires*" (Latin for outside the scope of their authority).[24]

The *ultra vires* requirement "has been applied leniently,"[25] but, similar to property owner standing, the taxpayer must also allege a special interest distinct from the general public. This interest has been repeatedly interpreted to "require a showing that the action being challenged results in a pecuniary loss or an increase in taxes."[27] While taxpayer standing enlarges the class of potential litigants compared to property owner standing by removing any immediate geographical restrictions, it is nonetheless almost entirely irrelevant for purposes of environmental law.

Beyond these two bases for showing standing to sue over a public wrong, if a Marylander wants to sue because of an environmental injury, they are out of luck unless the General Assembly has specifically created a statutory exception to the common law standing doctrine that would apply to their lawsuit.

Maryland has indeed created a patchwork of statutory provisions that supplement the default standing doctrine under the state's common law. The effect of this patchwork is to provide environmental standing only in limited circumstances, such as for those challenging a pollution permit alleged to be insufficient to protect public health or the environment.

Essentially, because Maryland's common law is hundreds of years old, if the General Assembly establishes a new law with a public right to enforce it but does not specifically address standing, then the legislature is inadvertently fashioning a comparatively ancient standard to the new law and to our modern environmental regulatory system. This imperfect fit has proven to be a significant obstacle to those seeking access to justice in Maryland state courts, as well as to the proper functioning of environmental laws and regulations (especially as agency resources have dwindled, along with the political will to enforce environmental violations).

The underlying flaw with this patchwork approach is twofold. First and foremost, this set of statutory standing provisions has far too many holes to adequately address the full universe of environmental harms that Marylanders presently face.

Second, the relationship between a "cause of action" and the establishment of "standing to sue" has, for most of our history, been confusing to courts, the General Assembly, or both, resulting in incomplete or ineffective legislation when new environmental rights were created.

Individual statutory provisions within this patchwork may or may not include both a new right, or "cause of action," *and also* standing to sue under that cause of action. If only a statutory cause of action was deemed to have been created, then the restrictive common law standing standards still apply and effectively prevent use of the right. Conversely, a statutory provision declaring the intent to liberalize standing law in Maryland may do nothing if it is not attached to a specific cause of action.

To cure the problem facing Marylanders' access to justice with respect to environmental issues, the Maryland General Assembly should both (1) remove the unnecessarily restrictive obstacles in our standing laws; and (2) ensure Marylanders have *at least* the same rights to enforce our state environmental laws as they possess under federal law. Neither of these are radical ideas but are merely the basic steps needed to harmonize state environmental rights with comparable federal standards.

Standing in the Way of Justice in Maryland

Maryland has some of the most restrictive common law standing doctrines in the nation, and they apply to all cases, including environmental ones. Other states not only have less restrictive standing doctrines, but also specific statutes that provide even greater standing for environmental matters than many federal environmental laws (including, but not limited to Connecticut, the District of Columbia, Florida, Massachusetts, Michigan, Minnesota, New Jersey, South Dakota, and West Virginia).[28]

While America was undergoing a nationwide environmental awakening in the late 1960s and 1970s, Maryland's government responded to this moment in history on the state level. In 1973, the General Assembly passed a new law that declared the "protection, preservation, and enhancement of the State's diverse environment" was of "the highest public priority" and that Marylanders have a "fundamental and inalienable right to a healthful environment." Despite the inclusion of this lofty language in the Maryland Environmental Policy Act (MEPA), it turns out the law created neither a new cause of action to protect the environment nor any standing to sue. As discussed further below, the General Assembly returned to this issue a few years later, seemingly intent on resolving this glaring contradiction between MEPA's intent and its effect.

MARYLAND'S LIMITED PATCHWORK OF ENVIRONMENTAL STANDING STATUTES

The Maryland Environmental Standing Act

A few years after the passage of MEPA, the Maryland General Assembly passed the Maryland Environmental Standing Act (MESA), this time taking direct aim at Maryland's restrictive common law standing requirements.[29] Using exceedingly clear and unambiguous language, the General Assembly codified its intention that "the courts of the State of Maryland *are an appropriate forum for seeking the protection of the environment* and that *an unreasonably strict procedural definition of standing in environmental matters is not in the public interest.*"[30]

It is hard to imagine a clearer or more powerful statement by the General Assembly regarding its intent to relax the extraordinarily strict common law standing doctrine in Maryland. Unfortunately, this intent has mostly been ignored or subverted in subsequent decades.

As it happened, the bold and sweeping declarations in MESA predated the creation of most of Maryland's environmental statutes, including the ones incorporating and adopting all of the landmark federal laws Americans know and love. Indeed, this ambitious language is actually found in the Natural Resources Article of the Annotated Code of Maryland, separate and apart from most of the air, water, and toxic substances control laws in the Environment Article, seemingly rendering the statute devoid of relevance and outside of the context of our modern environmental regulatory system. In effect, the plain language of MESA appears to have only loosened standing requirements for potential plaintiffs seeking a very specific type of relief in a very narrow set of cases.[31] As a result, the Maryland Court of Appeals has dubbed "MESA a dead letter in the Maryland Code."[32]

What MESA did was create a few new rights, neither particularly broad or narrow in scope. These rights are simultaneously underappreciated but also underwhelming. Section 1-503 of MESA authorizes "declaratory or equitable relief" of two types.

The first type of relief that can be sought by a Marylander with the expanded standing of MESA is a "mandamus" action to compel action of an "officer or agency" (state or local) "for failure … to perform a nondiscretionary ministerial duty imposed upon them under an environmental statute, ordinance, rule, regulation, or order." In other words, MESA only grants standing for claims involving "non-discretionary" actions

by agencies, involving only the very narrow set of actions that are explicitly mandated by statute.[33] If MDE, for example, is defying a duty required by statute, a Marylander could use MESA to compel the agency to act to protect the environment (assuming that the harm is in the same county as the plaintiff).

Where "an agency is free to reject, approve, modify, or take any 'appropriate action' with respect" to a certain action or decision,[34] such a discretionary agency action falls outside the scope of MESA. This limitation makes a wide range of agency actions subject to this insurmountable hurdle to establish standing. The lack of expanded standing for discretionary agency decisions, like some permitting decisions, has limited the public's legal recourse to challenge actions that harm air and water quality or public health.

For example, an environmental organization would need a property interest separate and distinct from its members and show that it is "specifically" affected by the agency's actions in a way that is different from the public in general.[35] In *Friends of Mount Aventine, Inc. v. Carroll*, the Maryland Court of Special Appeals found that an environmental group did not have standing under MESA to challenge the Maryland Department of the Environment's ("MDE's") discretionary approval of amendments to a county's water and sewerage plan,[36] and the group had to meet the stricter common law standing requirements.[37] The Maryland Court of Appeals later denied an appeal by the environmental group,[38] reaffirming the limited scope of MESA.

MESA also limits the location in which a plaintiff can bring an action and against whom. Plaintiffs are unable to meet MESA standing requirements for environmental injuries existing outside of their respective counties of residence.[39] In addition, plaintiffs only obtain the expanded standing under MESA if they bring actions against state officers and agencies for their non-discretionary duties, and so they do not have environmental standing under MESA if they bring cases against corporations or other private citizens.[40] Lastly, MESA does not extend standing for alleged harm to aesthetic and recreational interests.[41]

The second type of right created by MESA and found in the very same subsection is the right to compel the state or a local government "to enforce an applicable environmental quality standard for the protection of the air, water, or other natural resources of the State, as expressed in a statute, ordinance, rule, regulation, or order." This is a watered down but still valuable public right to ensure Maryland's environmental rules are enforced. It is nowhere close to being the direct right created by federal statutory citizen suit provisions that allows a person with standing to sue a private entity violating their permit or other environmental law and maintain an action in court with or without government regulators. Yet, MESA does have this little understood and virtually unused or untested right to do *something* about pollution when it is in violation of state laws. It is not a particularly attractive solution, because it puts the regulator (that previously refused to act) in complete charge of the outcome of the enforcement action. But it does still enable some recourse for a Marylander frustrated or aggrieved by illegal and unchecked pollution.

The Miscellaneous Environmental Protection Proceedings and Judicial Review Act

In 2009, the Maryland General Assembly made some progress in remedying the lack of standing with the adoption of the Miscellaneous Environmental Protection Proceedings and Judicial Review Act ("MEPPJRA"). This law provided another step forward in providing recourse for environmental harms by conferring much looser federal environmental standing law standards upon Marylanders challenging allegedly deficient pollution permits. However, the expansion in standing was narrow, as it did not even extend to all environmental permits or local zoning decisions, much less the far broader array of "citizen suit" environmental cases involving violations of Maryland's environmental statutes that are available at the federal level for violations of federal permits.

Local decisions, in particular, should have been included in the scope of the law, as these are often the epicenter of intense environmental conflicts between communities and polluting industries.[42] Zoning decisions have historically been used to segregate and displace people while concentrating pollution in low-income communities of color.[43] The effect of this legal regime is that only a narrow subset of the population is able to successfully address environmental harms in state court.[44]

This lack of access to justice can contribute to continued disproportionate harm in lower-income communities and communities of color, where heavy industry has tended to locate its facilities.[45] It also limits nonprofit organizations with missions to protect the environment and public health from bringing environmental lawsuits in state court. While a growing amount of state and federal legislation is being introduced and enacted to address environmental injustice, without adequate standing to present their cases to a judge or jury in state court, underserved and overburdened communities are once again left without legal redress for their harms.

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MEPPJRA and the Petition for Judicial Review of a Pollution Permit

Not only did the 2009 enactment of the MEPPJRA statute loosen common law standing requirements for those challenging many pollution control permitting and wetlands licensing decisions,[46] but the new law also created a new and modified right to seek judicial review of those decisions. MEPPJRA significantly streamlined the existing procedures previously available under the Administrative Procedure Act for exercising the right of judicial review of permit decisions, and it did so in conjunction with the more relaxed standards of federal standing.

The 2009 law left no doubt as to the availability of redress for individuals or organizations that are aggrieved by a decision to authorize new environmental harms that could arise from the issuance of a deficient pollution control permit or permit to destroy wetlands. To show standing, an individual or an association only needs to participate in the permit renewal process during the public participation period and satisfy the more reasonable federal environmental standing standards by showing that one of its members suffered or will suffer an injury in fact, which may include aesthetic recreational harms.[47]

What this means is that, practically speaking, standing will often be less of an impediment to justice for Marylanders seeking to challenge a pollution permit as would be the traditional impediments of cost and resources. A plaintiff with sufficient financial means or who is a member of an environmental organization with adequate litigation capacity may be able to have their day in court to challenge an arbitrary or illegal decision of an agency that is harming their health or environment.

Unfortunately, not all permitting and licensing decisions qualify for the expanded standing and statutory right to seek judicial review under MEPPJRA. That law enumerated the permits that are covered within the scope of the law, including those related to ambient air quality control, landfills, incinerators, discharge pollutants,

sewage sludge, controlled hazardous substance facilities, hazardous materials facilities, low-level nuclear waste facilities, water appropriation and use, nontidal wetlands, gas and oil drilling, surface mining, private wetland.48 While this list seems extensive, there are a few important permits not covered by MEPPJRA, including Maryland's:

- Coal Mining Permit49 (i.e. large coal mining operation and associated facilities)
- Oil Operations Permit50 (i.e. operation storing 10,000 gallons or more of oil)
- Oil Operations Permit for Contaminated Soils51 (i.e. operation storing and treating oil-contaminated soils)
- Non-Coal Mining Permit52 (i.e. surface mining operation for gravel and clay and associated infrastructure)
- Dam Safety Permit53 (i.e. nearby construction of a dam)

Additionally, MEPPJRA does not extend to environmental decisions by all agencies that make decisions that impact the environment, like the Department of Natural Resources or the Public Service Commission.[54] Finally, while MEPPJRA provides expanded standing to challenge the issuance of a general permit to discharge, it does not provide standing to challenge the decision of MDE to extend coverage under a general permit to one of the thousands of water pollution dischargers in Maryland covered by it. This is an underappreciated limitation in the law with significant practical implications given the sheer number of regulated facilities that discharge pollution under a general permit, rather than an individual permit.

Standing under the Maryland Administrative Procedure Act (APA)

The Maryland Administrative Procedure Act (APA) provides another limited pathway for establishing standing, but it only applies to aggrieved parties in challenges against certain administrative decisions in Maryland state courts.[55] The APA explicitly provides judicial review for plaintiffs who are aggrieved by the final decision of a contested case hearing or one where the state constitution requires an opportunity for a hearing with respect to a right, duty, statutory entitlement privilege, or the grant, denial, renewal, revocation, suspension, or amendment of a license.[56]

The contested case hearings covered include a "huge swath of titles and subtitles of the Environment Article,"[57] but only aggrieved parties, or those with a personal interest or property right that is "specifically" affected in a different way from the public may establish standing.[58] The APA also requires associations to have property interests distinct from their members,[59] mirroring the common law requirements outlined above. In sum, the APA provides another means to challenge a decision impacting the environment, but it does nothing to expand standing for environmental plaintiffs.

Judicial Review of Environmental Regulations

Finally, another small piece of the patchwork of environmental causes of action in Maryland is the little known right to petition a court to review the legality of an "order, rule, or regulation" of the Maryland Department of the Environment. This cause of action is not associated with any expanded standing and the right must be exercised exceptionally swiftly - within 10 days of the effective date of the order or regulation. Moreover, the law seems to have been written more with the interests of the regulated community, as opposed to those concerned about the environment, in mind, as it specifies that the provision may be based on the ground that the MDE action "is not necessary for the protection of the public health or comfort." In short, this is an exceptionally narrow cause of action.

Attempt to Create Public Enforcement Rights for Maryland Pollution

The same year that MEPPJRA passed, state lawmakers introduced the "Community Environmental Protection Act of 2009" to fix many of Maryland's environmental standing hurdles while expanding access to state courts for environmental harm and filling the gaps left by existing statutes. The Community Environmental Protection Act would have introduced the reforms found in MEPPJRA but would have gone much further by also authorizing a public right to enforcement of state environmental laws against any person or government alleged to have violated or be in violation of a permit, order, or law, or against any governmental entity for the failure to exercise a mandatory duty.

The Community Environmental Protection Act would have essentially overhauled Maryland's environmental rights to bring them on par with federal standards with respect to standing and citizen suits. Had the bill become law, Marylanders today would have a right to enforce against illegal pollution as well as expanded standing in line with federal standards, including the same availability of associational standing enjoyed by residents of 44 other states. Unfortunately, this bill was ultimately voted down as the relevant committees of the General Assembly opted for more incremental reform via MEPPJRA.

STANDING TO CHALLENGE LOCAL COMPREHENSIVE ZONING SCHEMES AND ZONING ACTIONS IS UNDULY RESTRICTIVE

As noted above, local zoning decisions often create intense environmental conflicts between communities and polluting industries. But Maryland's standing requirements for challenges to comprehensive zoning schemes and independent zoning actions are more stringent than federal standing requirements, making standing difficult to attain under general zoning statutes.

In order to successfully establish standing in a lawsuit challenging a comprehensive zoning scheme,[60] a plaintiff must demonstrate common law taxpayer standing as described above. Additionally, a plaintiff must show that the government action harms their property and is illegal or *ultra vires*.[61] To show harm or injury, a plaintiff must show a "pecuniary loss or an increase in taxes," and there must be a nexus between the challenged action and the harm.[62] In *Anne Arundel Cty. v. Bell*, the Maryland Court of Appeals found that plaintiffs challenging the adoption of a comprehensive zoning ordinance lacked standing because the harms they claimed only included increased traffic and noise.[63]

For challenges to individual zoning classifications of a particular property, plaintiffs must demonstrate taxpayer standing, that they were aggrieved by the decision, or they are an officer or unit of the local jurisdiction.[64] In *Ray v. Mayor & City Council of Baltimore*, the Maryland Court of Appeals found that plaintiffs who lived a half a mile away lacked standing to challenge a Baltimore City Council zoning approval for a mixed-used development.[65] The plaintiffs were unable to show that they were sufficiently aggrieved or that their personal or property rights were adversely affected by the approval. The court also found that an entire neighborhood could not be an aggrieved class, but rather "the creation of a class of aggrieved persons is done on an individual scale and not based on delineations of city neighborhoods…"[66]

The court went on to clarify, "[t]he decision must not only affect a matter in which the protestant has a specific interest or property right but his interest therein must be such that he is personally and specially affected in a way different from that suffered by the public generally."[67]

On the other hand, plaintiffs who live immediately adjacent to the affected property can successfully establish standing.[68] The Court of Appeals has established a rule that "adjoining, confronting or nearby property owners" are automatically assumed to be aggrieved, and thus have standing.[69] In another opinion from

the Maryland Court of Special Appeals, the court found that to successfully show aggrievement for standing, the potential plaintiff "must be within sight or sound range of the property that is subject to the complaint," giving more guidance to Maryland communities.[70]

ASSOCIATIONS HAVE A HIGH HURDLE TO ESTABLISH STANDING IN MARYLAND

It is harder to establish what is called "associational standing," in which an environmental organization brings a lawsuit on behalf of their members, in Maryland than it is in federal court. Under federal law, an environmental organization can generally bring a lawsuit on behalf of its members so long as at least one of its members' use and enjoyment of the area is affected or has a particular interest in the property affected. In essence, federal law recognizes that environmental organizations serve an important role in representing the interests of the public.

There is an inequitable distribution of procedural remedies in Maryland, especially when it comes to environmental injustices for low-income communities.

Maryland courts, however, require organizations to have "an affected property interest separate and distinct from its members." This requires environmental groups to own land or otherwise have a distinct interest of their own — defeating the purpose of associational standing altogether. As a result, there is an inequitable distribution of procedural remedies in Maryland, especially when it comes to environmental injustices for low-income communities.

A lawsuit can be exceedingly expensive to maintain and beyond the means of most Marylanders. By comparison, membership in an organization that can represent a member's interests through its work, including litigation, provides a greater degree of access to the courts. Access to justice for lower-income Marylanders would thereby be enhanced by liberalizing associational standing doctrines.

The Maryland legislature made certain exceptions to these strict standing requirements through the passage of the *Miscellaneous Environmental Protection Proceedings and Judicial Review Act* in 2009. Because association standing is recognized under federal law, MEPPJRA's grant of federal-like standing for judicial appeals of permitting decisions resulted in associational standing for this segment of environmental litigation.

The relaxation of these standing requirements were put to the test in 2011 in the case of *Patuxent Riverkeeper v. Maryland Department of the Environment*, where the Maryland Court of Appeals ultimately found that the environmental group had standing to bring a lawsuit on behalf of its members against MDE for a permit decision related to a road extension at a stream crossing. The court found that associational standing existed for Patuxent Riverkeeper because a member who was an avid paddler and mapmaker would suffer aesthetically, recreationally, and economically due to the downstream impacts of the road expansion.

In 2016, Maryland courts confirmed the broader standing regime ushered in by MEPPJRA in *Maryland Department of Environment v. Anacostia Riverkeeper*.[76] In this case, the Anacostia Riverkeeper, among a number of other environmental groups, successfully established standing to challenge MDE's issuance of stormwater management permits to various counties across Maryland.[77]

Despite these steps forward, Maryland's environmental standing regime is still antiquated and out of step with comparable federal rights for the broader array of environmental harms

faced by Marylanders. But the lack of expanded standing is only one part of the problem.

IN PRACTICE: MARYLAND'S ENVIRONMENTAL STANDING BARRIERS

The lack of public enforcement rights supported by federal environmental standing standards has proven to be a substantial hurdle to Marylanders. Perhaps in part because of these barriers, there has been a growing movement in the last few years to enshrine environmental rights in Maryland's constitution.[78] Moreover, the lack of public access to enforcement of our environmental laws has resulted in the situation that Congress foresaw as it was crafting the Clean Air Act and Clean Water Act, in which regulators, captured by special interests and lacking accountability, walk away from their duty to enforce the law against egregious violations. This is precisely what has happened in Maryland.[79]

It is similarly strange to have a situation in which a person has a clear right, along with expanded federal standing, to appeal the issuance of a permit to pollute, but then has no ability to enforce violations of that same permit.

There is no shortage of examples where public enforcement rights and/or expanded standing are harming Maryland's environment and communities. Certainly, wherever the General Assembly has created an environmental standard or pollution limit in state law that is separate and distinct from federal law, there is little to no ability for Maryland residents to ensure a violation of that standard or limit is enforced, short of the untested enforcement right under MESA. An affected community may file a complaint or request an inspection, but it would not be able to sue the polluter in Maryland court the way they could for a violation of federal law in a federal court.

Strangely, if the department does bring an enforcement action in state court, an affected community could intervene under new statutory authority.[80] But that same community is unable to get their day in court for the exact same violation if the department does not act to enforce the law first. If the General Assembly sees fit to give Marylanders the ability to enforce the law by crowding into an ongoing enforcement action, it would seem natural that they would extend that right to bring the same enforcement action absent a lawsuit by the department. This would be particularly important in a situation like the one Maryland is facing now, where the department is reluctant to bring enforcement actions in the first place, especially in state court.[81]

It is similarly strange to have a situation in which a person has a clear right, along with expanded federal standing, to appeal the issuance of a permit to pollute, but then has no ability to enforce violations of that same permit. For example, if the Maryland Department of the Environment issued a permit to pollute state groundwaters under state law and an individual participated in the permitting process, that individual could take the department to state court over an alleged legal deficiency of that permit based on the rights created in the MEPPJRA. The individual could even take advantage of their membership in an environmental organization that could sue on their behalf. But if that permit is then issued and the permit holder starts violating it, the same individual would be powerless to directly enforce the law.

Another oddity involves the interplay between state and federal laws. Congress envisioned a situation in which states were the primary regulators and enforcers of most of our federal environmental laws. For example, Maryland

is one of 46 states in which the Clean Water Act is implemented and enforced by a state environmental agency under an agreement with the U.S. Environmental Protection Agency. And yet, even though all complaints, inspections, and enforcement actions of *federal* laws in Maryland are handled by the Maryland Department of the Environment, and most civil or criminal prosecutions are brought before *state* courts, for some reason, a civil action brought by a Maryland resident to enforce those same laws must be in *federal* court.

Federal courts should not be the only avenue of enforcement given their limited capacity. Moreover, federal courts should not be the only venue for enforcement of laws like the Clean Water Act, given that many of the other pollution control standards implicated by a specific violation are based on state law.

Maryland's current standing doctrine also creates problems beyond violations of environmental standards, such as when seeking to hold environmental agencies responsible for implementing the law. This is an issue that has played out numerous times in recent years. For example, in 2012, the General Assembly passed a smart growth law that, among other things, specifically mandated that the Maryland Department of the Environment adopt regulations to offset the pollution that arises from certain types of new pollution sources. The department has never adopted those regulations and it is not clear who, if anyone, would have standing to compel the agency to do its job and follow the law.

An even more egregious issue arose more recently. MDE is tasked by law with imposing reasonable permit fees on large poultry operations based on the costs of implementing and enforcing the permits for these facilities.[82] However, the agency recently chose to administratively waive these fees for a number of years — despite an acknowledged and severe shortfall in staff and resources. To resolve this worsening problem, the General Assembly passed a law in 2019 that expressly prevented the continued waiver of the fee and established minimum fee limits for super-sized poultry operations.

The goal of the law was to provide much-needed funding for MDE to better regulate the agricultural sector, which remains the largest source of nitrogen pollution for the Chesapeake Bay. However, following passage, MDE published a proposed regulation to revise the permit fees for Animal Feeding Operations (AFO) that was inconsistent with the law. The Assistant Attorney General (AAG) that provides advice and counsel to the Maryland General Assembly confirmed that the regulation was likely inconsistent with the statute, and a temporary hold was placed on the rule.

Despite this, the Secretary of MDE repeated his intention to proceed with developing the regulation as drafted, citing the approval of the AAG for MDE, who originally conducted the perfunctory review of the proposed regulation. Because of this disagreement between AAGs, State Sen. Paul Pinsky requested that Maryland Attorney General Brian Frosh settle the conflicting opinions.

Frosh responded to Pinsky that both AAGs involved agreed that the regulation as drafted was inconsistent with the statute. Nevertheless, the MDE indicated that it planned to publish the fee regulation for final adoption. Developing a regulation without the approval of the AAG is unlawful under Maryland's Administrative Procedure Act. Despite this seeming illegality, it is not clear who, if anyone, would have legal standing to stop it.

Thankfully, under public pressure, MDE ultimately began charging the fees in 2020, but this situation emphasizes the absurd lack of access to courts facing Marylanders.

RECOMMENDATIONS

The Maryland General Assembly should enact comprehensive environmental standing legislation that provides as much access to Maryland state courts as others are afforded in most other states and in federal courts. To provide better recourse for Maryland communities seeking to enforce state environmental laws and remedy environmental harm, Maryland should:

- Create new rights to allow Marylanders to enforce violations of state pollution laws;
- Codify federal standards for environmental standing in Maryland to ensure Marylanders have no less access to state courts than they have in federal courts; and
- Modernize and improve the Maryland Environmental Standing Act to revive its original purpose and give effect to the General Assembly's initial intent.

This could be accomplished in various ways, including, but not limited to the following:

- Pass legislation mirroring the environmental standing regime outlined in the Maryland Community Environmental Protection Act of 2009;
- Extend the standing rights granted under the Miscellaneous Environmental Protection Proceedings and Judicial Review Act to all environmental permits and local zoning decisions;
- Amend the Maryland Environmental Standing Act to conform to federal standing rules;
- Extend the Maryland Environmental Standing Act to all common law and statutory causes of action for environmental harms litigated in Maryland courts more broadly;
- Ensure broadened environmental standing rights for individuals and organizations with the mission of protecting the environment (i.e. associational standing rights) so that low-income communities of color have additional resources and a clear avenue in court for redressing their harms; and
- Support and enact legislation that expands access to the courts for environmental standing, such as the Maryland Environmental Human Rights Amendment.

Conclusion

One of the most important first steps toward revolutionizing American environmental law in the 1960s and 1970s involved the creation of the "citizen suit" provisions in federal laws like the Clean Water Act. These laws dramatically improved upon the far weaker air and water pollution laws that predated them, principally by making them more enforceable. The most transformative component of these enforceability enhancements were the provisions, or cause of action, that allow any individual or organization to bring suit for violations of the laws.

Congress authorized the use of these lawsuits as an additional measure of accountability because, with limited resources and politically powerful industries on the other side of each case, members of Congress understood that federal and, especially, state environmental agencies may not be able to effectively watchdog and prosecute industries on their own.

By contrast, Maryland has no public enforcement rights in its pollution control statutes and almost no causes of action that would allow Marylanders to protect their environment.

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1. "Citizen suit" is a widely used, but antiquated label that the authors generally do not use as it is not adequately inclusive or descriptive of the public's enforcement rights under various statutes.
2. *See* 2022 Maryland Enforcement Scorecard, Chesapeake Accountability Project. Available at: https://chesapeakeaccountability.org/scorecard.
3. *State Ctr. v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 498, 92 A.3d 400, 428 (2014) (quoting *Flast v. Cohen*, 392 U.S. 83, 99, 88 S. Ct. 1942, 1952, 20 L. Ed. 2d 947 (1968) (internal citation omitted)).
4. *State Ctr. v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 498-99, 92 A.3d 400, 428 (2014) (quoting 3 Kenneth C. Davis, Administrative Law Treatise, § 22.18 (1965 Supp.)).
5. Maryland Constitution Article VIII.
6. Latham, Mark. "The Intersection of Tort and Environmental Law: Where the Twains Should Meet and Depart." Fordham Law Review, vol. 80, no. 12, 2011, ir.lawnet.fordham.edu/flr/vol80/iss2/12.
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8. "A toxic tort is a subcategory of torts involving injuries to plaintiffs caused by toxic substances. Such cases are often brought under the doctrine of product liability." Cornell Law School. Legal Information Institute. https://www.law.cornell.edu/wex/toxic_tort
9. *Id.*
10. *Exxon Mobil Corp. v. Albright*, 433 Md. 303, 316–17, 71 A.3d 30, 37–38, on reconsideration in part, 433 Md. 502, 71 A.3d 150 (2013); Jacksonville, Maryland has been the subject of water contamination when three of Exxon's underground tanks leaked in 1986, see *Exxon Corp. v. Yarema*, 69 Md.App. 124, 516 A.2d 990 (1986); Maryland v. Exxon Mobil Corp., 352 F. Supp. 3d 435 (D. Md. 2018).
11. Nick Madigan & Arin Gencer, Baltimore Sun, *Exxon fined $4 million for gas leak* (Sep. 17, 2008), https://www.baltimoresun.com/maryland/baltimore-county/bal-exxon091708-story.html.
12. In *Albright*, only 2 of the 466 residents were able to demonstrate the actual exposure of MTBE through well water tests, but the jury instructions incorrectly stated the law so their claims were remanded. *See* Albright vs. ExxonMobil, which was appealed in Exxon Mobil Corp. v. Albright, 433 Md. 303, 316–17, 71 A.3d 30, 37–38, on reconsideration in part, 433 Md. 502, 71 A.3d 150 (2013); the court consolidated six related court cases into *Albright*. In a later case, *Ford v. Exxon Mobil*, the Baltimore County Circuit Court awarded compensatory damages totaling over $147 million to eighty-seven Jacksonville Residents who rely on residential wells for drinking water. In 2013, however, the Maryland Court of Appeals reversed the award and threw out a majority of the claims, except for the diminution of property value claims made by certain residents. The Court of Special Appeals, 204 Md.App. 1, 40 A.3d 514,affirmed in part, reversed in part, and remanded. Parties petitioned and cross-petitioned for certiorari. The latest case in the string of cases arising from the 2006 spill, *Wilson v. Exxon Mobil Corp*, did not result in any award for the residents because they failed to demonstrate that their properties and drinking wells were contaminated with MTBE. Wilson v. Exxon Mobil Corp, 2015 WL 6549167, at *5 (Md. Ct. Spec. App. Aug. 13, 2015).
13. The general tort claims available for environmental damages in Maryland include (but are not limited to) nuisance, trespass, emotional distress for fear of developing disease, diminution in value to real property, loss of use and enjoyment of real property.
14. *Albright v. Exxon Mobil Corp.*, 134 S. Ct. 648, 405 (2013).
15. *Id.*
16. *Id.*
17. *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2205 (2021) ("Congress's creation of a statutory prohibition or obligation and a cause of action does not relieve courts of their responsibility to independently decide whether a plaintiff has suffered a concrete harm under Article III any more than, for example, Congress's enactment of a law regulating speech relieves courts of their responsibility to independently decide whether the law violates the First Amendment.") (citation omitted).

18. For a recent example, see Wheeler, Timothy. "Maryland Files Suit Seeking Cleanup of Baltimore's Troubled Sewage Plants." Bay Journal, 2 Feb. 2022, www.bayjournal.com/news/pollution/maryland-files-suit-seeking-cleanup-of-baltimore-s-troubled-sewage-plants/article_985630e0-8447-11ec-a326-6377230628da.html, and Pacella, Rachel. "Magothy River Association to File Lawsuit over Alleged Damage to River from Ecology Services, Inc. Lot in Pasadena." Capital Gazette, 24 Oct. 2020, www.capitalgazette.com/environment/ac-cn-magothy-river-lawsuit-20201024-xzcg4bfgwvctdmnx3od7cnrp4e-story.html, and Maryland Department of Environment legal complaint against Ecology Services, https://mde.maryland.gov/Documents/Complaint-%20Final.pdf.
19. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 566, 112 S. Ct. 2130, 2139 (1992) ("To say that the Act protects ecosystems is not to say that the Act creates (if it were possible) rights of action in persons who have not been injured in fact, that is, persons who use portions of an ecosystem not perceptibly affected by the unlawful action in question.").
20. *Id.* at 564, 112 S. Ct. at 2138.
21. *State Ctr., LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 518-19, 92 A.3d 400, 440 (2014).
22. The property owner must show that they are "specially and adversely affected." *State Ctr., LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 518-19, 92 A.3d 400, 440 (2014). *Sugarloaf Citizens' Ass'n v. Dep't of Env't*, 686 A.2d 605, 614 (1996) (citations omitted), *rev'd on other grounds, Chesapeake Bay Found., Inc. v. DCW Dutchship Island, LLC*, 439 Md. 588, 595, 97 A.3d 135, 139 (2014).
23. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC)*, Inc., 528 U.S. 167 (2000).
24. *Holt v. Moxley*, 157 Md. 619, 622–26, 147 A. 596, 597–99 (1929); *State Ctr., LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 540, 547, 555-56 (2014).
25. *State Ctr., LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 556 (2014).
26. *Kelly v. City of Baltimore*, 53 Md. 134, 140 (1880).
27. *Citizens Planning & Housing Ass'n v. Cnty. Exec. of Baltimore Cnty.*, 273 Md. 333, 339 (1974).
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29. Md. Code Ann., Nat. Res. § 1-502 (West 2022); *see also Med. Waste Assocs., Inc. v. Maryland Waste Coal., Inc.*, 327 Md. 596, 617, 612 A.2d 241, 252 (1992).
30. Md. Code Ann., Nat. Res. § 1-502 (West 2022).
31. It addresses claims for injunctive, declaratory or mandamus relief.
32. Daniel W. Ingersoll IV. "Impediments to Environmental Justice: The Inequities of the Maryland Standing Doctrine". University of Maryland Law Journal of Race, Religion, Gender and Class (Vol. 6, Iss. 2, Art. 11). See generally Md. Code Ann., Nat. Res. §§ 1-501 to -508. While MESA establishes several forms of relief, such as a writ of mandamus and equitable relief, Md. Code Ann., Nat. Res. § 1-503(b), the Court of Appeals in *Medical Waste Associates, Inc. v. Medical Waste Coalition, Inc.* was quick to point out that judicial review was not one of the actions created by the statute. 327 Md. 596, 618, 612 A.2d 241, 252 (Md. 1992).
33. Johanna Gnall, Addressing Maryland's Restrictive Environmental Standing Law: Maryland's Environmental Standing Law Must Be Reformed to Allow an Individual to Have Standing to Sue Based on an Aesthetic or Recreational Injury and to Permit an Organization to Have Standing to Sue on Behalf of a Member Asserting an Aesthetic or Recreational Injury, 16 U. Balt. J. Envtl. L. 151, 168 (2009).
34. *Id.*
35. *See Med. Waste Assocs. V. Md. Waste Coal.*, 327 Md. 596, 612 A.2d 241 (1992) (discussing limitations of MESA in granting associations standing to sue).
36. 103 Md. App. 204, 209, 652 A.2d 1197, 1199 (Md. App. 1995), certiorari denied 661 A.2d 700, 339 Md. 166.
37. *Id.*
38. certiorari denied 661 A.2d 700, 339 Md. 166.

39. Md. Code Ann., Nat. Res. § 1-503(a)(3) (West 2021); MESA requires that any potential plaintiff "[r]eside in the county or Baltimore City where the action is brought, or ... demonstrate that the alleged condition, activity, or failure complained of affects the environment where he resides." *Id.*
40. Id. § 1-503(b)
41. Johanna Gnall, Addressing Maryland's Restrictive Environmental Standing Law: Maryland's Environmental Standing Law Must Be Reformed to Allow an Individual to Have Standing to Sue Based on an Aesthetic or Recreational Injury and to Permit an Organization to Have Standing to Sue on Behalf of a Member Asserting an Aesthetic or Recreational Injury, 16 U. Balt. J. Envtl. L. 151, 152 (2009); *see also Patuxent Riverkeeper v. Maryland Dep't of Env't*, 422 Md. 294, 298, 29 A.3d 584, 586 (2011)
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46. § 1-601(c) Maryland Environmental Code; Chapter 651, House Bill 1569 (2009). https://mgaleg.maryland.gov/2009rs/chapters_noln/Ch_651_hb1569E.pdf
47. See § 5-204(f) of the Maryland Environmental Code; § 1-601 of the Maryland environmental code; see also https://mgaleg.maryland.gov/2009rs/fnotes/bil_0009/hb1569.pdf
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49. See general permit requirements in Maryland Environment Article, Title 15, Subtitle 5 and Subtitle 6; COMAR 26.20.
50. See general permit requirements in Maryland Environment Article - §4-405, Annotated Code of Maryland; COMAR 26.10.01.07
51. See general permit requirements in Maryland Environment Article - §4-405, Annotated Code of Maryland; COMAR 26.10.13.
52. See general permit requirements in Maryland Environment Article Title 15, Subtitle 8; COMAR 26.21.01.
53. See general permit requirements in Maryland Environment Article Title 5, Subtitle 05, COMAR 26.17.04
54. Note, decisions by the Public Service Commission are already subject to a looser standard – to satisfy the standing requirements a plaintiff must have an interest in the matter and be "dissatisfied," which is demonstrated by the fact that a plaintiff files a lawsuit.
55. Md. Code Ann., State Gov't § 10-101 (West 2021)
56. Md. Code Ann., State Gov't § 10-202(d)(1) (West 2021)
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58. *See, e.g., Jordan Towing, Inc. v. Hebbville Auto Repair, Inc.*, 369 Md. 439, 442, 800 A.2d 768, 770 (2002) ("A party is aggrieved and there is standing if the party suffers some 'special damage ... differing in character and kind from that suffered by the general public.'") (citations omitted).

59. *Med. Waste*, 327 Md. at 612-613, 612 A.2d at 249 (quoting *Citizens Planning and Hous. Ass'n v. County Executive of Balt.*, 273 Md. 333, 345, 329 A.2d 681, 687 (Md. 1974)).
60. These are considered "classically legislative determinations designed to affect local and regional needs and all property owners within the planning area." *Anne Arundel Cty. V. Bell*, 442 Md. 539, 553, 113 A.3d 639, 647-48 (Md. 2015) (citations omitted).
61. *Anne Arundel Cty.*, 442 Md. at 577, 113 A.3d at 662.
62. *Id.*
63. *Id.* at 584-586, 113 A.3d at 666-667.
64. Md. Code Ann., Land Use § 4-401; Md. Code Ann., Land Use § 10-501
65. *Ray v. Mayor of Balt.*, 430 Md. 74, 90-99, 59 A.3d 545, 555-560 (2013).
66. *Id.* at 88, 59 A.3d at 553-554.
67. *Id.* at 81, 59 A.3d at 549 (citation omitted).
68. *Id.*
69. *Id.*
70. Daniel W. Ingersoll IV, Impediments to Environmental Justice: The Inequities of the Maryland Standing Doctrine, 6 U. Md. L.J. Race, Religion, Gender & Class 491, 503 (2006) referencing *Comm. For Responsible Dev. On 25th St. v. Mayor & City Council of Baltimore*, 137 Md. App. 60, 72, 767 A.2d 906, 912 (2001). Although the discussion is centered around Article 66B of Maryland's Land Use Code, which was repealed by Md. Code Ann., Land Use § 4-40 and Md. Code Ann., Land Use § 10-501, the standing requirements remain the same.
71. Under federal law, an association may bring a suit on behalf of its members when: (1) at least one member of the organization would have standing to sue in his or her own right; (2) the interest it seeks to protect is "germane" to the organization's purpose; and (3) the claim asserted and the relief requested does not require the participation of the individual members. *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 342-43 (1977).
72. *Patuxent Riverkeeper v. Maryland Dep't of Env't*, 422 Md. 294, 299, 29 A.3d 584, 587 (2011) (citation omitted).
73. *Medical Waste Associates, Inc. v. Medical Waste Coalition, Inc.*, 327 Md. 596, 612-613, 612 A.2d 241, 249 (Md. 1992), [*rev'd on other land Dep't of Env't*, 422 Md. 294 (2011)](?). *See also Citizens Planning & Housing Ass'n v. County Executive*, 273 Md. 333, 329 A.2d 681 (1974).
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76. *Md. Dep't of the Env't v. Riverkeeper*, 447 Md. 88, 134 A.3d 892 (2016).
77. *Id.* at 116 n.36, 134 A.3d at 908 n.36.
78. *See, e.g.,* HB 596 and SB 783 of 2022; HB 82 and SB 151 of 2021; HB 517 of 2020; HB 472 of 2019; SB 873 of 2018.
79. *See* 2022 Maryland Enforcement Scorecard, Chesapeake Accountability Project. Available at: https://chesapeakeaccountability.org/scorecard.
80. Chapters 618 and 619 of 2021.
81. The vast majority of MDE enforcement actions are "administrative" rather than "civil" actions. *See, e.g.,* Maryland Department of the Environment, Annual Enforcement and Compliance Report, FY 2021. Available at: https://mde.maryland.gov/Documents/FY%2021%20MDE%20Annual%20Enforcement%20and%20Compliance%20Report.pdf
82. Md. Code, Envir. § 9-325.

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