

2022 MARYLAND CAP ENFORCEMENT SCORECARD

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ABOUT CHESAPEAKE ACCOUNTABILITY PROJECT



The health and restoration of local streams, rivers, and waterfronts in Maryland and the communities that depend on them face many obstacles, including funding shortfalls, lax enforcement of laws and regulations, and sub-par commitments to clean our waterways.

Weak permits and enforcement contribute millions of pounds of nitrogen pollution to the watershed, as recently [exemplified](#) by the millions of pounds of additional pollution beyond permit limits discharged by Maryland's two largest wastewater treatment plants in Baltimore City and Baltimore County. To fill these gaps, the Chesapeake Accountability Project's formidable team of legal, policy, communications, and data analysis experts demand accountability from regulators and polluters—resulting in significant, measurable improvements to local and downstream water quality as well as states' permitting programs.



The Chesapeake Accountability Project (CAP) is made up of five nonprofit organizations, including the Center for Progressive Reform, Chesapeake Bay Foundation, Chesapeake Legal Alliance, Choose Clean Water Coalition, and Environmental Integrity Project. Collectively, these organizations work to reduce Bay pollution attributable to weak water pollution permits and lack of government enforcement in the Bay region, particularly in Maryland. For more about CAP, visit [our website](#).

WHAT IS THE CAP ENFORCEMENT SCORECARD?

The CAP Enforcement Scorecard analyzes measures taken by the Water & Science Administration (WSA) within Maryland Department of the Environment (MDE) to hold polluters accountable to rules that are meant to protect our waterways. The WSA, as the primary enforcer of clean water laws and permits in Maryland, plays an indispensable role in ensuring compliance with important environmental protections. While the public and the U.S. Environmental Protection Agency also have some rights and capacity to protect water quality, those are substantially limited by resources, laws, and agreements, leaving WSA as the primary entity determining the fate of the state's water quality and related public health. This is why CAP members believe it is critically important that we hold WSA accountable to the Department's larger mission.

TIMING MATTERS.

The first time period covered by the Scorecard includes the last six years under Governor Larry Hogan's WSA (FY2016–FY2021). While Governor Hogan was elected in 2015, he was only in office for about a quarter of FY2015 (July 1, 2015–June 30, 2016) and it takes time to institute new executive policies. The second time period includes the last six years under Governor Martin J. O'Malley (FY2010–FY2015), who was elected in 2006. The third time period is used to gauge MDE's historical average (FY2001–FY2021).

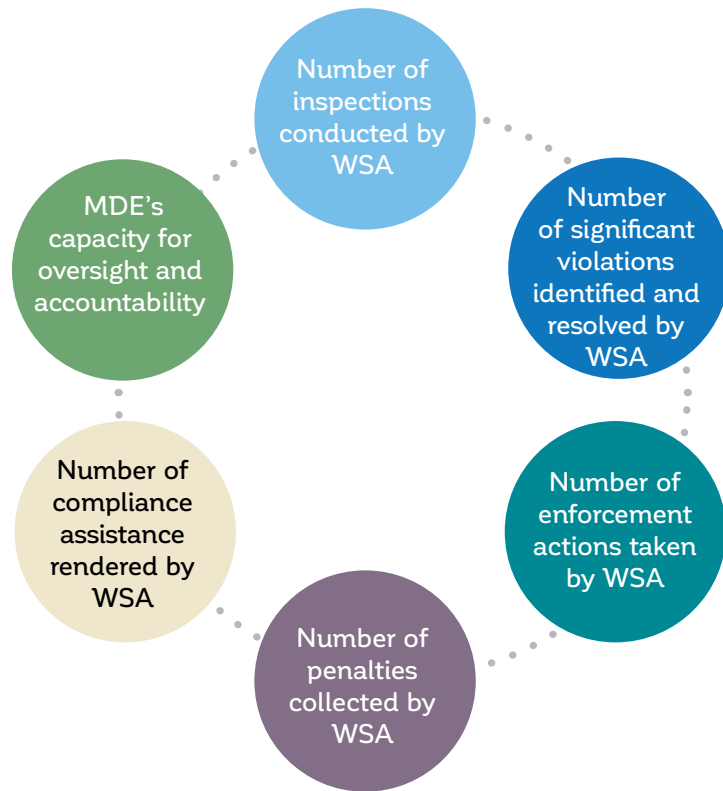
The 2022 CAP Enforcement Scorecard, as the first of its kind, measures water-related enforcement trends over the last two decades. The key findings refer to three distinct time periods:

FY2016–FY2021

FY2010–FY 2015

**WSA'S HISTORICAL
AVERAGE
FY2001–FY2021**

The CAP Enforcement Scorecard considers six key indicators to demonstrate how WSA performed on clean water enforcement in 2021, and over the last two decades:



The 2022 Scorecard's findings are based on data from MDE's annual enforcement and compliance reports that reflect its activities, specifically as the data relate to pollution and wetlands regulated by the WSA. The 2022 Scorecard's findings also use data from previous Maryland state budgets.

The findings in this Scorecard excludes enforcement and compliance data from WSA's Water Supply Program, which oversees dam failure and safety, Maryland's drinking water supplies, water appropriations and use permits, and certifications for laboratories, well drillers, and operators and superintendents of water treatment plants, water distribution systems, and wastewater treatment plants.

WSA'S "CORE PROGRAMS"

The Water & Science Administration (WSA) within the Maryland Department of the Environment has oversight over a number of important programs, but findings in this Scorecard relate to data from WSA's core programs related to ground and surface water discharge permits, erosion and sediment control, and wetlands and waterways. More specifically, WSA's core programs cover:

1. **Discharges to Groundwater** ➡ (a) municipal groundwater discharge permits for land application of treated wastewater or sewage and (b) industrial groundwater discharge permits for pollution from processing facilities (animal or vegetable), commercial car washing, service and maintenance shops, and other industrial processes that generate wastewaters, such as landfills.
2. **Discharges to Surface Water** ➡ direct discharges and stormwater runoff from industrial facilities, sewage treatment plants, agricultural operations.
3. **Erosion and Sediment Control and Stormwater Management for Construction Activity** ➡ pollution from construction sites to waterways and aquatic habitats.
4. **Nontidal Wetlands, Waterways, and Floodplains** ➡ (a) dredging, filling, or construction that otherwise alters a nontidal wetland, or an open water estuarine system that is vegetated and not affected by the tide, and (b) adequate replacement of lost nontidal wetlands acreage.
5. **Tidal Wetlands, Waterways, and Floodplains** ➡ dredging, filling, or construction that otherwise alters a tidal wetland, or an open water estuarine system that is vegetated and affected by the tide.
6. **Industrial Pretreatment Discharges** ➡ wastewaters from industrial and other sources (non-domestic) discharged into publicly-owned treatment facilities.

KEY FINDINGS

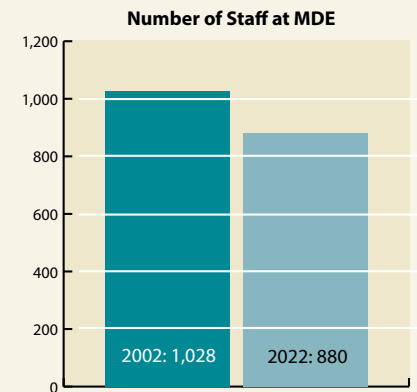
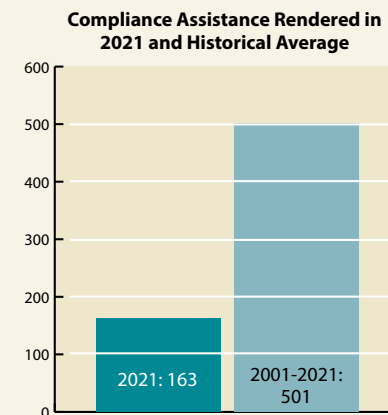
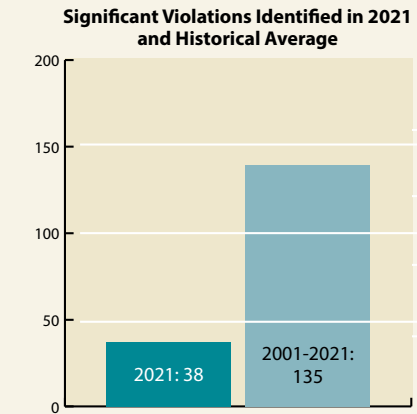
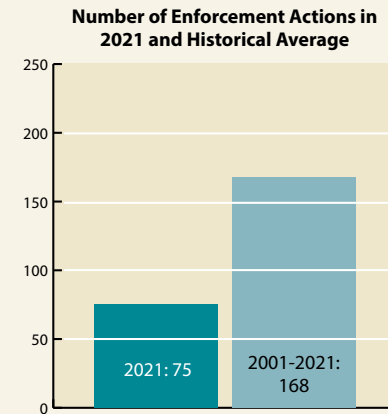
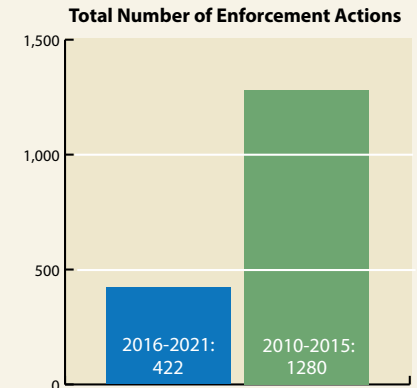
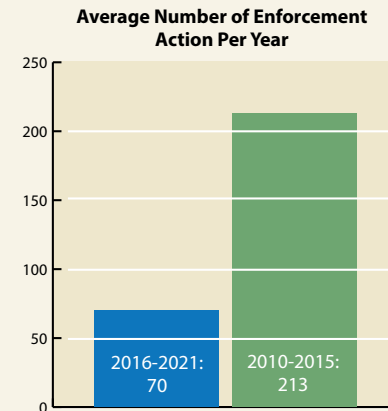
The key findings in the 2022 CAP Enforcement Scorecard demonstrate an overall downward trend in clean water enforcement in Maryland over the past twenty years.

In the last six years, there has been a dramatic decline in the number of enforcement actions taken by the Water & Science Administration (WSA), the number of sites inspected, and the number of significant violations identified involving environmental or health impacts.



- Overall, WSA took **67 percent fewer** water-related enforcement actions than it took from FY2010 through 2015. In total, WSA took 422 enforcement actions from FY2016 through FY2021 and WSA took 1,280 enforcement actions between FY2010 through FY2015.
- In FY2021, WSA took **55 percent fewer** water-related enforcement actions than WSA's historical average. (FY2001-FY2021)
- In FY2021, WSA identified **72 percent fewer** significant violations involving environmental or health impacts than WSA's historical average. In FY2021, WSA only identified 38 of these violations, a record low.
- In FY2021, WSA rendered **67 percent less** compliance assistance than WSA's historical average.

In the two decades between fiscal years 2002 and 2022, MDE lost one out of every seven staff, with its agency budget of state general funds falling by more than one-third, adjusting for inflation. MDE now represents less than one-fifth of one percent (0.018%) of Maryland's total state general fund budget, which is half of what it was two decades ago. At a time when protecting our environment is vitally important, MDE's budget has languished in the overall state budget.



2022 CAP ENFORCEMENT SCORECARD



1. NUMBER OF ENFORCEMENT ACTIONS TAKEN BY WSA

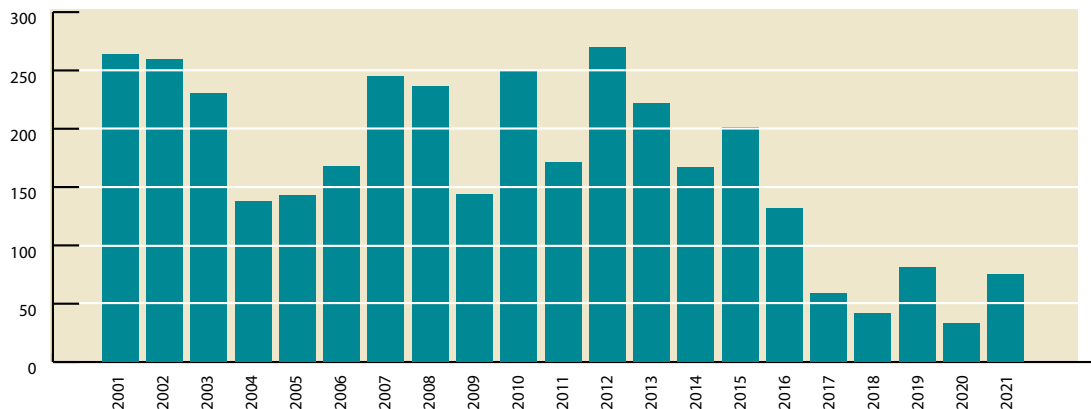
One of the most direct ways to measure WSA's water-related enforcement levels is to look at the overall number of enforcement actions taken by WSA. There are a wide number of enforcement actions that WSA can take against a facility for significant and non-significant violations such as issuing stop-work orders, requiring corrective actions, obtaining injunctive relief, issuing penalties, referring pollution violations to the Attorney General for civil and criminal action, among others. Enforcement actions encourage polluters to stay in line with the requirements of the law.

WSA has increasingly delegated enforcement responsibilities to local jurisdictions, but without increasing either financial support for, or ensuring sufficient oversight over, local agencies. The enforcement data reported by local agencies to WSA show abysmal levels of enforcement for construction and development related pollution violations, despite thousands of complaints being filed each year, according to state data.

According to data reported by local agencies, **concerned residents filed 3,344 complaints over the last two years and inspections identified 18,548 violations of erosion and sediment control or grading permits.**

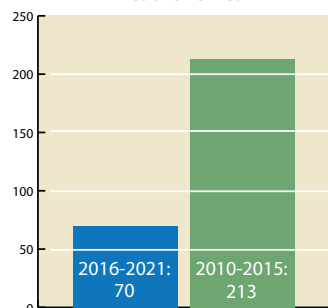
However, less than eight percent of violations resulted in either a stop work order or penalty. The penalties issued amounted to about \$20 per violation identified. With such low levels of enforcement and weak penalties, it is no wonder the number of violations is so high.

Number of Enforcement Actions for Core Programs Per Fiscal Year

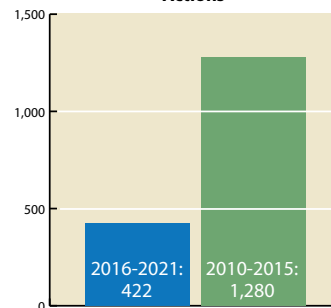


Overall, from FY2016 through FY2021, WSA took **67 percent fewer** water-related enforcement actions than in FY2010 through FY2015.

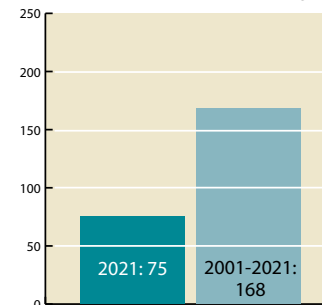
Average Number of Enforcement Actions Per Year



Total Number of Enforcement Actions



Number of Enforcement Actions in 2021 and Historical Average

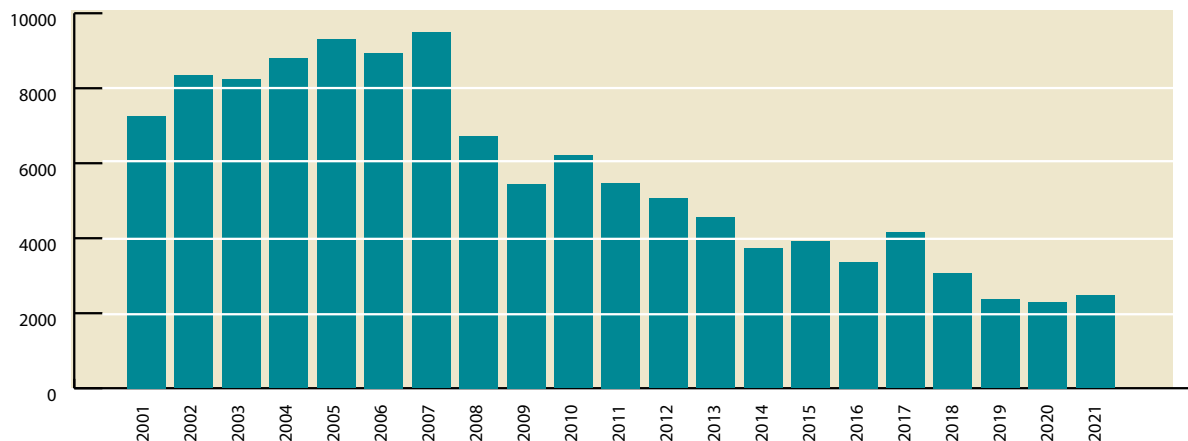


In FY2021, WSA took **55 percent fewer** water-related enforcement actions than WSA's historical average.

2. NUMBER OF WATER-RELATED INSPECTIONS CONDUCTED BY WSA

The number of inspections conducted by WSA is a key indicator for how the department monitors compliance with important environmental protections. Inspections involve WSA staff visiting facilities or sites to assess whether a facility or site is in compliance with the law. WSA staff do so by collecting samples, taking photographs, interviewing employees, reviewing records and reports, and observing the overall operations or conditions.

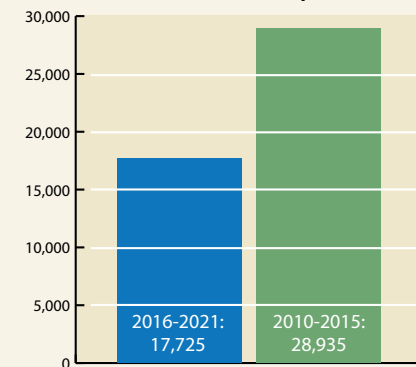
Number of Sites Inspected Per Fiscal Year



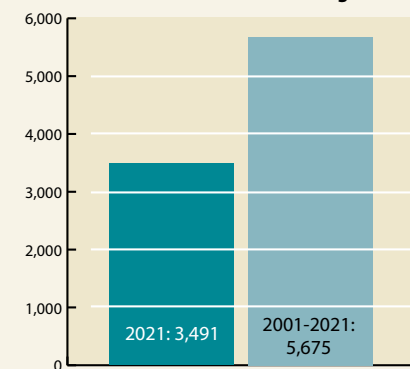
In FY2020, WSA only inspected 2,296 water-related sites, a record low over the past two decades.

The record high number of sites inspected occurred in FY2007, with 9,483 sites. While MDE cited the pandemic for its low number of inspections in FY2020 (July 1, 2019–June 30, 2020), the pandemic should have only impacted roughly one quarter of WSA's overall numbers, with Governor Hogan's State of Emergency declaration on March 5, 2020.

Total Number of Inspections



Average Number of Inspections in 2021 and Historical Average



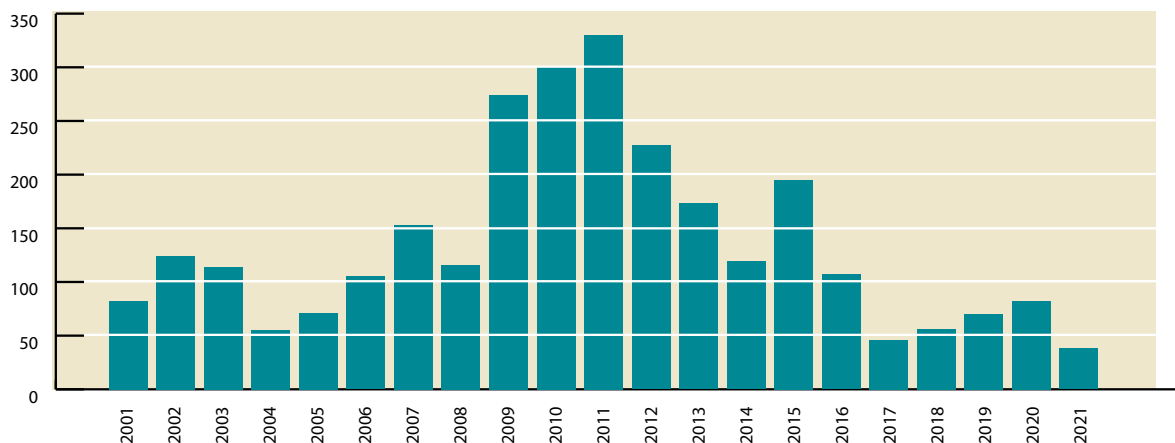
Overall, from FY2016 through FY2021, WSA inspected **39 percent fewer** water-related sites than in FY2010 through FY2015 WSA average.

In FY2021, WSA inspected **38 percent fewer** water-related sites than WSA's historical average.

3. NUMBER OF WATER-RELATED SIGNIFICANT VIOLATIONS IDENTIFIED & RESOLVED BY WSA

The number of significant violations identified by WSA is a good indicator of how aggressive the department is in pursuing serious pollution violations. The Maryland Department of the Environment generally defines a significant violation as one that requires some form of remedial or enforcement action to assure compliance with environmental protections. This does not include the actual number of significant water-related ‘violations’ that are not pursued by WSA, go undetected, or are not self-reported. In other words, just because there is a decrease in significant violations identified by WSA does not mean there is a decrease in pollution.

Number of Significant Violations Involving Environmental or Health Impact Per Fiscal Year

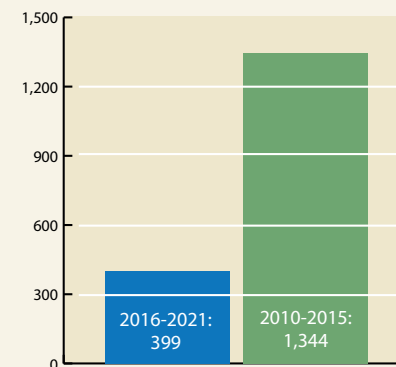


Overall, from FY2016 through FY2021, WSA identified **70 percent fewer** significant violations involving environmental or health impacts than in FY2010 through FY2015.

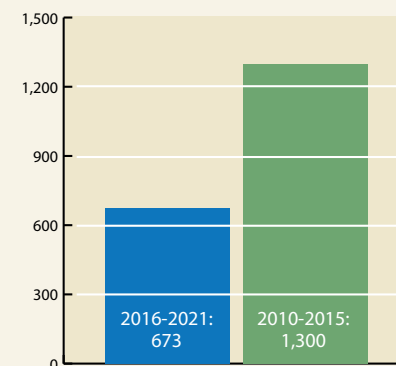
Overall, FY2016 through FY2021 WSA resolved **48 percent fewer** significant violations than in FY2010 through FY2015..

In FY2021, WSA identified **72 percent fewer** significant violations involving environmental or health impacts than WSA's historical average. This number is a record low over the past two decades.

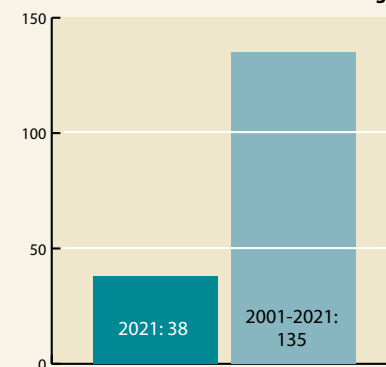
Total Number of Identified Violations



Total Number of Resolved Violations



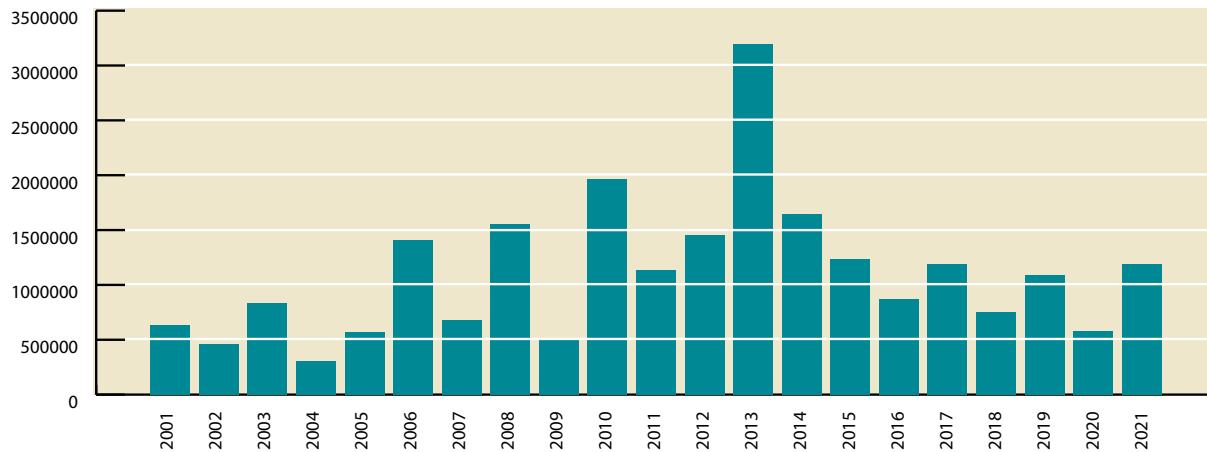
Average Number of Identified Violations in 2021 and Historic Average



4. NUMBER OF WATER-RELATED PENALTIES COLLECTED BY WSA

While the number of water-related penalties (adjusted for inflation, as measured by the Consumer Price Index) collected by WSA varies dramatically based on the nature, amount, and severity of violations resolved by various enforcement and legal actions against violators (much of which is outside of the control of WSA), this number gives some sense of the Department's willingness to collect penalties from violators as a way to enforce environmental protections.

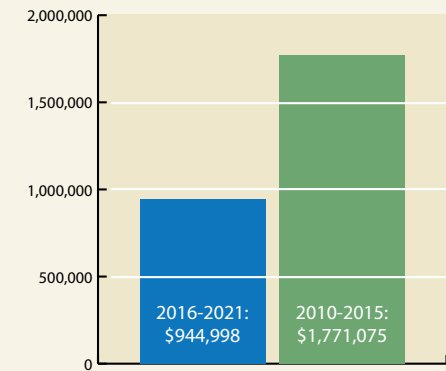
Amount in Penalties Collected Per Fiscal Year (Adjusted for CPI)



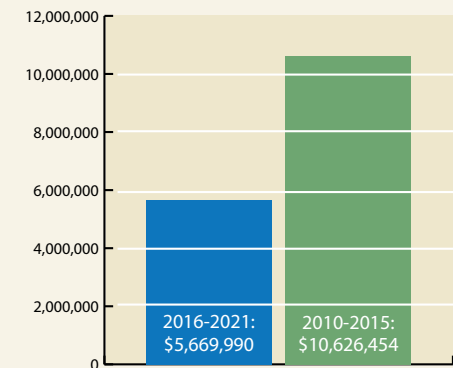
Overall, from FY2016 through FY2021, WSA collected **47 percent less** in water-related penalties than from FY2016 through FY2021, WSA.

In FY2021, WSA collected **eight percent more** in water-related penalties than WSA's historical average.

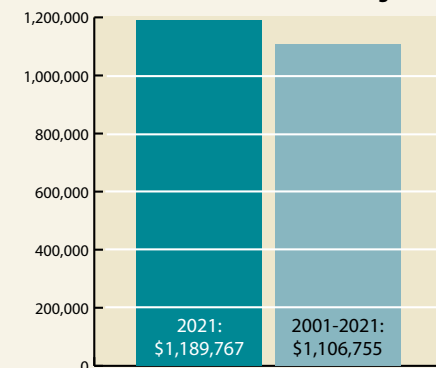
Penalties Collected Per Year



Total Number of Penalties Collected



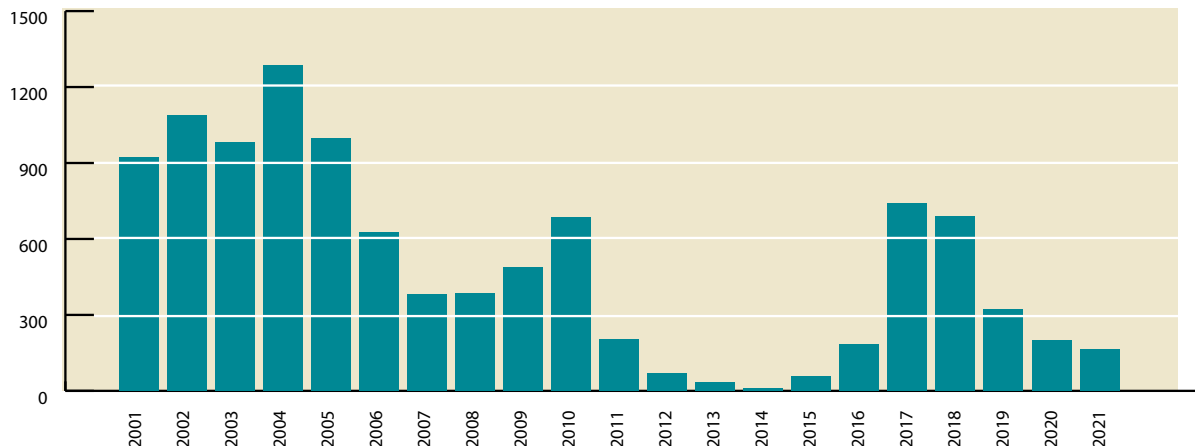
Number of Penalties Collected in 2021 and Historical Average



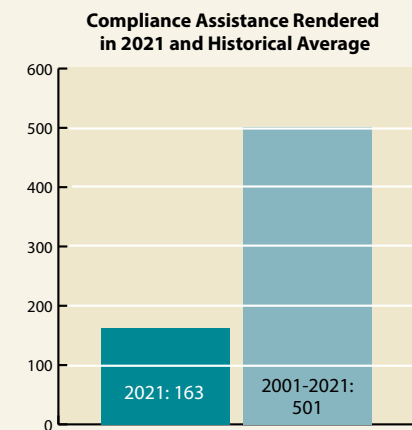
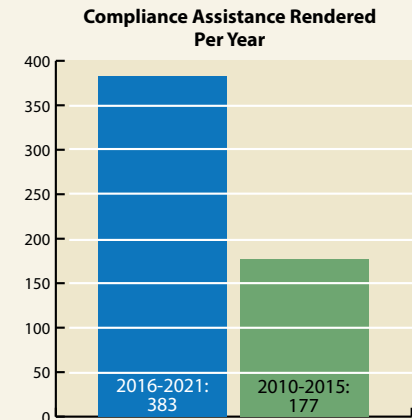
5. NUMBER OF WATER-RELATED COMPLIANCE ASSISTANCE RENDERED

Under Governor Hogan’s administration, the MDE prioritized so-called “compliance assistance”² as its principal enforcement policy for addressing ‘minor’ violations before they turn into significant violations. Despite this, compliance assistance rendered was the highest at WSA between 2001 and 2005. WSA’s implementation of its compliance assistance program leaves major questions about its effectiveness at resolving violations. According to MDE, compliance assistance is considered “rendered” when the non-compliant facility or entity sends written documentation that the correction has “been made or commenced.” While compliance assistance can sometimes lessen the environmental impacts of certain violations, it’s unclear whether MDE verifies the written documentation in any way. It’s also unclear how many facilities or entities that submit documentation have actually come into compliance as a result of any corrections made or commenced and how many of those facilities stay in compliance.

Number of Compliance Assistance Actions Rendered



²MDE’s Annual Enforcement & Compliance Report (2021) defines compliance assistance as “a process that turns to enforcement action if violations are uncorrected or environmental harm is threatened..Compliance assistance is used by MDE as one of the many tools to educate the regulated community before violations occur and - in the case of non-serious violations - to bring a site into compliance and to assure future compliance... As an element of MDE’s compliance process, an inspector renders a tangible act of compliance assistance when the inspector does one or both of the following: (a) Documents a specific past or current violation, which the regulated entity corrects in the absence of a formal enforcement action; or (b) Documents a specific action or actions, which the regulated entity has the option of undertaking to bring a site into compliance and to assure future compliance. The action or actions are voluntarily undertaken by the regulated entity in such manner and within such time period as deemed acceptable by MDE in the absence of a formal enforcement action.”



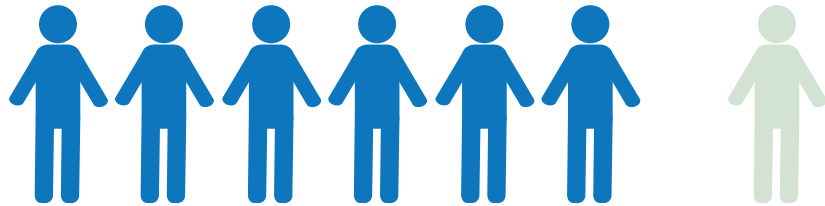
Overall, from FY2016 through FY2021, WSA rendered **116 percent more** compliance assistance than in FY2010 through FY2015.

In FY2021, WSA rendered **67 percent less** compliance assistance than WSA’s historical average.

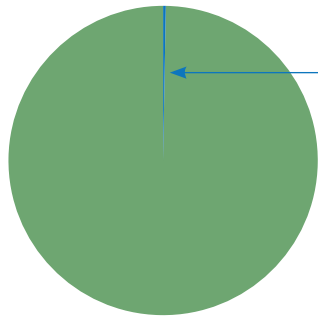
6. MDE'S CAPACITY FOR OVERSIGHT AND ENFORCEMENT

The Maryland Department of Environment's capacity to enforce environmental laws and permits includes the number of active staff within the agency and the agency's overall budget.

In the two decades between fiscal years 2002 and 2022, MDE lost one out of every seven staff, with its agency budget of state general funds falling by more than one-third, adjusting for inflation. MDE now represents less than one-fifth of one percent (0.018%) of Maryland's total state general fund budget, which is half of what it was two decades ago. At a time when protecting our environment is vitally important, MDE's budget has languished in the overall state budget.



Between fiscal years 2002 and 2022, MDE lost 1 out of every 7 staff



MDE now represents less than one-fifth of one percent (0.018%) of Maryland's total state general fund budget



CAP ENFORCEMENT SCORECARD: A DEEPER UNDERSTANDING



1. IMPORTANCE OF WSA'S ROLE IN CLEAN WATER ACT PERMITTING SCHEME

The Clean Water Act (CWA), as passed in 1972, was the first major law in the United States to effectively address water pollution, largely by creating an enforceable pollution permitting regime, with accountability and oversight provided by the federal government and citizens. The CWA serves to “restore and maintain the chemical, physical, and biological integrity of the Nation’s water” and does so by requiring EPA and the states to work toward the attainment of states’ water quality standards and by fully eliminating sources of water pollution.³

Any facility that intends to discharge pollution from its operation must apply for and be covered by a permit. These permits include technology-based and water quality-based limitations among other requirements. If permit holders fail to comply with the permit requirements or discharge a pollutant without permit authorization, they are subject to potentially substantial enforcement actions and penalties.

Some facilities require individual permits with requirements that are based on site-specific considerations, while other facilities must follow the blanket terms set under a ‘General Permit,’ where one permit applies to an entire sector.

Under the CWA, the EPA may delegate authority to implement the permitting program to states, tribes, and territories, allowing them to perform permitting, administrative, and enforcement duties. In Maryland, MDE’s Water & Science Administration primarily retains this authority.

³CWA Section 101(a)



2. ENSURING THAT FACILITIES THAT REQUIRE A PERMIT, HAVE A PERMIT

There are some facilities or sites that require clean water permits **but do not have one**. The stated goal of the Clean Water Act was to eliminate discharges of pollutants into navigable waters by 1985. We've failed to reach this goal by a long shot due to a myriad of reasons, including, but not limited to, lagging environmental enforcement and pollution from unpermitted facilities.

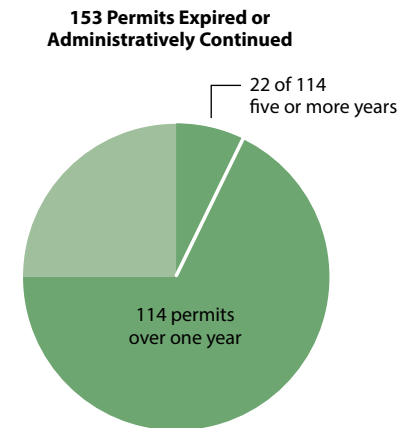
In Maryland, according to CAP and partners' assessments, there are still many facilities that are operating without appropriate permits or operating with outdated permits. For example, a Magothy River Association (MRA) query of MDE databases found that, of the 12 facilities in the watershed that appeared to be subject to the industrial stormwater general permit, six facilities were operating without coverage, five had expired permits, and one site had coverage, but had only recently obtained it. Based on the low rate at which these facilities were properly permitted, there are likely hundreds of other facilities operating across the state without the required permit coverage and discharging untreated pollution in our communities and to our local waterways without any consequence.

3. ZOMBIE PERMITS: CLEAN WATER PERMITS “LIVING” PAST THEIR EXPIRATION DATE

A review of data from the U.S. Environmental Protection Agency's (EPA) [Enforcement and Compliance History Online database](#) in July 2021 demonstrated that many permitted facilities in Maryland are operating under outdated permits. This review revealed a backlog of permits for MDE to consider and renew that were beyond their five-year permit term and were either administratively continued or expired. A permit is administratively continued when it stays in effect past its expiration date because MDE, through no fault of the permittee, is unable to issue a new permit in a timely fashion (in response to a permittee's timely permit renewal application).⁴ If the expiration date of a permit has passed and the permit has not been administratively continued (no timely submission of permit renewal application by permittee), then the permit is expired.

⁴COMAR 26.08.04.06.

At the time of CAP's data review, there were 153 permits that were either expired or administratively continued, and **114 that had been expired or administratively continued for over one year. Of those, 22 permits had been either expired or administratively continued for five or more years.** For these egregiously delayed permits, an entire additional five-year permit term went by beyond the expiration date, without MDE analysis of the pollutants being discharged and the appropriateness of permit terms. After the period of significant delay, renewed permits may end up with more stringent terms than the prior permit. If MDE had not delayed in renewing these permits, some pollutant discharges to waterways from these facilities could have been prevented. These findings underscore the importance of MDE allocating adequate resources to permit renewals to avoid long periods of delay resulting in outdated permit terms. See [August 9, 2021 Letter to MDE Re CAP Concerns Regarding Backlog of Administratively Continued and Expired Individual NPDES Permits](#) for more information.



4. UNDERSTANDING MARYLAND'S CLEAN WATER COMPLIANCE TRENDS

MDE's [2020 Enforcement and Compliance Report](#) reflects the state's downward trend in clean water enforcement over the last two decades. This includes record lows in enforcement related to surface water dischargers and stormwater management, with 22 and four enforcement actions for each program, respectively.

The low number of reported significant violations raises concern due to MDE's definition of "significant violation." MDE generally defines "significant violation" as "any violation that requires MDE to take some form of remedial or enforcement action to bring the facility into compliance."⁵ MDE's definition of significant violations relies on the agency's own action to provide some form of remedial effort. This leads to reporting issues because if MDE brings fewer enforcement actions then the number of reported significant violations will decrease regardless of whether there has been a decrease in the number of actual violations.

⁵ Md. Dep. Env't, Annual Enforcement & Compliance Report, Fiscal Year 2020, 19, https://mde.maryland.gov/Documents/AECR_FY20.pdf.

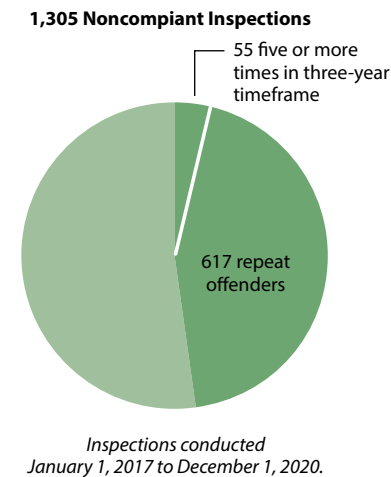
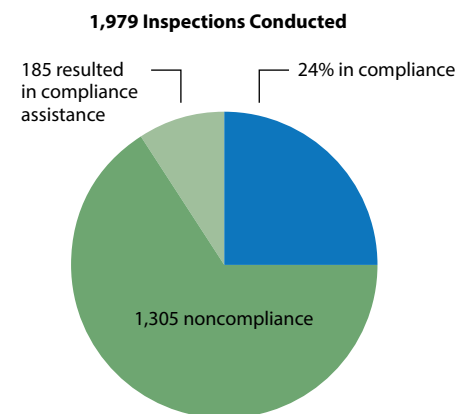
5. A CASE STUDY: RAMPANT NONCOMPLIANCE WITH MARYLAND'S INDUSTRIAL STORMWATER GENERAL PERMIT

MDE's Water & Science Administration is responsible for regulating stormwater from approximately 1,200 industrial facilities—like processing plants, auto salvage yards, and landfills—across Maryland. Whenever it rains or snows, harmful chemicals, heavy metals and toxic compounds used in industrial processes at these facilities end up off-site in local waterways through stormwater. WSA's industrial stormwater permit seeks to limit the amount of pollution from these industrial facilities through the requirement of pollution controls and monitoring, but many industrial facilities are failing to meet all necessary permit requirements.

The compliance rate for the industrial stormwater general permit is one of the lowest of the regulated sectors tracked by the Water & Science Administration.

In the period from January 1, 2017 to December 1, 2020, WSA conducted 1,979 inspections, and only 475 (24 percent) of those inspections found the industrial facility to be in compliance. The inspection reports for 1,305, about two-thirds, of the total inspections directly stated “noncompliance” as the condition of the permitted site. An additional 185 inspections resulted in compliance assistance rendered, or required corrective actions or additional investigation.⁶

Inspection data show that numerous facilities were in noncompliance repeatedly, and many times consecutively. **Of the 1,305 inspections that resulted in direct findings of noncompliance, nearly half (617 inspections) were of facilities that were repeat offenders—meaning the facilities had previously been inspected in the same timeframe and found to be in noncompliance. In fact, from the inspections, 55 facilities were found to be in noncompliance five or more times in the three-year timeframe.** The three counties with the largest concentration of repeat offenders, facilities with five

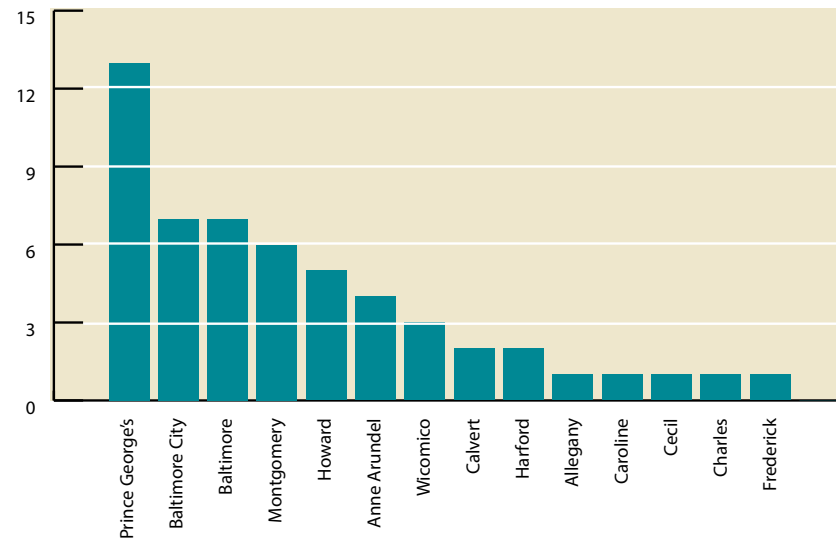


⁶Because the available data did not indicate the type of noncompliance, we cannot assess the severity of the noncompliance, even where “noncompliance” was the specific condition of the site.



or more findings of noncompliance over the three-year period, were Prince George's County, Baltimore City, and Baltimore County. The distribution of worst offenders by county shows the environmental injustice that results from noncompliance with, and lack of enforcement of, these permits, as the worst repeat offenders are concentrated in the two counties with the highest percentage of Black residents in the state.

Number of Repeat Offenders by County



Further analysis demonstrates that, of 300 industrial stormwater facilities in Baltimore City and Baltimore County, 41 percent were located in census tracts in the top 25 percent of the state with respect to environmental justice burden. Additionally, the census tracts where industrial stormwater permittees are located are more overburdened by cumulative pollution impacts than the state overall.

Despite the high levels of noncompliance, and the negative impacts to environmental justice and overburdened communities, formal enforcement actions against industrial stormwater permittees are relatively rare. In response to the noncompliance outlined above, there were only 14 formal enforcement actions against industrial facilities in the same three-year timeframe.

6. COVID-19 IMPACTS TO ENVIRONMENTAL ENFORCEMENT IN MARYLAND

In March 2020, in response to the COVID-19 outbreak, the EPA issued a dangerous (and now-rescinded) policy relaxing enforcement of environmental protections. The policy gave federally regulated facilities a free pass to not monitor or report pollution levels as required during the pandemic. It was akin to a police department announcing that they no longer would be issuing speeding tickets for traffic violations. Without monitoring, there is no way a facility can gauge whether it is polluting above its permit limits. And without fines, lawsuits, or penalties, companies have little incentive to abide by environmental laws.

While EPA's policy was problematic for many reasons, it proved to be even more so when increased air pollution was linked to an [increased risk](#) of contracting COVID-19.

MDE responded to EPA's policy stating it would only grant waivers of environmental requirements on a "careful and limited case-by-case basis." However, when EPA's enforcement discretion policy expired in August 2020, MDE still had not:

- published any pandemic-related waivers of environmental requirements;
- stated a clear decision-making policy for waiver determinations or permittee obligations on its website;
- notified all permit holders of legal requirements to provide immediate notice to the state of noncompliance related to the COVID-19;
- [suspended](#) or taken an official position on non-emergency proceedings; or
- extended comment periods during the declared emergency.

Finally, in September 2020, MDE updated its website to include a list of all the [waiver requests](#) it had received from regulated sites. It also added new language clarifying permittees' obligations during the pandemic and listing a point of contact for compliance and enforcement inquiries.



In total, MDE received **71 requests** from facilities to waive environmental laws, regulations, or permits for purposes allegedly related to the pandemic. Here is the breakdown:



36

waiver requests related to land, 19 to air, and 16 to water. Of those, **only 10 were denied**; decisions about eight others are pending.



33

requests were for **time extensions** of permit or other legal requirements, such as monitoring or construction timelines.

14

were minor, such as requests to move from paper to electronic reporting or to change operating hours.

6

involved **changes to permit requirements** regarding sterilized medical waste, as well as the type of cover material used at a landfill.



Many pending requests involve various **consent decrees**, including a consent decree requiring Baltimore City's Department of Public Works to make much-needed sewage infrastructure upgrades.

A majority of the requests sent to MDE were related to the pandemic. But others, such as those seeking to delay important deadlines for construction projects, were not. Some of the entities requesting waivers had a track record of non-compliance before the pandemic. This suggests that some polluters may have used COVID-19 as an excuse to subvert or delay deadlines. These deadlines often work to prevent further air or water pollution. It also would not be unheard of if many entities failed to self-report violations to MDE at all.



In theory, denial of a waiver request would mean that MDE has chosen to enforce the law by taking enforcement action against any company that violated its environmental obligations. Yet here, MDE chose to deny ten waiver requests without taking any further enforcement action or issuing any fines or penalties against those facilities even if an environmental violation may have occurred. While this approach defeats the purpose of the waiver request process, it is also not out of line with the state's downward trend in environmental enforcement activity over the last two decades, as this Scorecard demonstrates.

7. NONPROFITS DISCOVERING ONGOING POLLUTION VIOLATIONS

The lack of Water & Science Administration enforcement and inspection activity creates a void that nonprofits have incredibly been forced to step into to hold violators accountable. In the past year, several high-profile examples have emerged where local environmental groups work with CAP members to spur MDE's Water & Science Administration to take action against water polluters, either through litigation or other means.

Ecology Services waste management and recycling facility in Pasadena, Maryland

The Magothy River Association and members within CAP's team raised concerns with the Maryland Department of the Environment (MDE) about a 4.38-acre waste management and recycling facility in Pasadena, Maryland. This facility, owned by Ecology Services, was suspected to be operating without a pollution discharge permit, as required by the Clean Water Act. Beginning in January 2020, MDE inspected this facility eight times and found violations during every single visit before it finally filed a lawsuit against the facility in April 2021. In addition to the company operating illegally without permit coverage, MDE noted illegal sediment tracking, improperly stored vehicle parts, stains on the ground, and other unknown liquids and containers that were exposed to rainfall. While the filing of the lawsuit is independently a great win on the enforcement front, the state tolerated an endless number of stormwater violations prior to this and if it weren't to watchdog groups, MDE may have never pursued further action against the facility.

The facility had been operating without its required coverage under the state's industrial stormwater permit for quite some time, despite discharging sediment and other unknown pollutants into the Magothy River. This runoff prevented yellow perch from spawning in nearby parts of the Magothy this year. The Magothy River is currently impaired by sediment, bacteria, ions, metals, nutrients, and PCBs.

Patapsco and Back River wastewater treatment plants in Baltimore

CAP's team regularly researches and assesses enforcement data related to potential polluters in areas across Maryland. The Patapsco and Back River wastewater treatment plants (WWTPs) are the two largest facilities of their kind in the state, and CAP's team has been tracking their compliance for some time. In the spring of 2021, the Baltimore Harbor Waterkeeper, who regularly conducts water quality monitoring in the local waterways around Baltimore City on behalf of Blue Water Baltimore, detected high levels of bacteria in the water near the Patapsco WWTP discharges point. At the same time, CAP member Chesapeake Legal Alliance noticed online reports of unusually high nitrogen levels at both WWTPs.

Chesapeake Legal Alliance coordinated with Blue Water Baltimore to alert MDE and ensure they were aware of the potential pollution violations. MDE sent inspectors and determined significant staffing and operational failures were causing the plants to release far more pollutants into the Back River and Patapsco River than permitted. The amount of nitrogen pollution from these two plants is so significant it could single-handedly jeopardize Maryland's ability to reach its Bay TMDL goals. In response, Chesapeake Legal Alliance filed suit on behalf of Blue Water Baltimore in federal court against Baltimore City for violations of the Clean Water Act at both WWTPs. Maryland later filed legal action against Baltimore City for the failures at the plants.

Valley Proteins rendering plant in Linkwood

For years multiple environmental organizations have called on MDE to update the discharge permit for the Valley Proteins chicken rendering plant on Maryland's Eastern Shore. The plant is the largest single source of nitrogen pollution in the Transquaking River and the plant has been operating on an outdated permit since 2006. This particular plant is in Linkwood, Maryland and uses chemical processes to render leftover chicken parts and bones for protein in animal feed.



Since its inception, CAP's team has researched and assessed enforcement data related to this problematic facility. In April 2021, as a part of CAP's work, Chesapeake Legal Alliance, representing ShoreRivers and Dorchester Citizens for Planned Growth, and Chesapeake Bay Foundation filed a notice of a potential lawsuit against Valley Proteins for its pollution violations. In just one quarter (July 2020 through September 2020), the rendering plant exceeded its ammonia pollution limits by 2,518 percent, according to EPA's Enforcement & Compliance History Online.

In Dec. 2021, ShoreRivers discovered what it believed to be pollution violations at the plant using a drone and reported it to MDE. Subsequent MDE inspections found significant violations at the plant and ordered it to be briefly shut down. The plant had been discharging sludge and inadequately treated wastewater into the river.

MDE filed a lawsuit against Valley Proteins in state court on February 2nd, shortly after the Chesapeake Legal Alliance, ShoreRivers, Dorchester Citizens for Planned Growth, and Chesapeake Bay Foundation filed their own lawsuit in federal court against Valley Proteins for violating their permit, with over 40 effluent violations over roughly two years, and exceeding pollution limits. In February, the above-named NGOs also filed a motion to intervene in MDE's lawsuit. Without necessary changes at this rendering plant, the Transquaking River, the Chesapeake Bay, and the residents and ecosystems that rely upon them will continue to suffer.

