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December 1, 2021

Via Electronic Mail

The Honorable Lawrence J. Hogan, Jr.
Governor
State House
100 State Circle
Annapolis, Maryland 21401

Dear Governor Hogan:

A report commissioned by the U.S. Environmental Protection Agency (EPA) reveals dramatic understaffing of MDE's Water Supply Program (WSP or Program). It calls into question the adequacy of the oversight of the State's drinking water systems. MDE's own reports to the EPA on the WSP's performance raise additional concerns about the safety of the water that Marylanders drink every day.

The mandate of the WSP is to ensure that the State's 3,300 public drinking water systems deliver safe drinking water to 5.5 million Marylanders. It must also act to prevent public health crises like the tragedy we saw in Flint, Michigan.¹ To assess MDE's efforts in achieving these critical public health goals, in 2019 the EPA engaged CADMUS, a business management consulting firm, to conduct a workload analysis of the State's WSP.

In its May 2021 report, CADMUS identified a "severe gap" between the Program's available staffing and funding resources, and those that would be sufficient to run the Program.² Specifically, it found that MDE "**needs approximately. . . 187% more FTEs [full-time employees] than currently staffed, and 93% more funding than currently available** to effectively implement the program and ensure safe drinking water for the public." (Emphasis in original).³ The report further found that the WSP currently has 27 vacancies out of a staff of 71 full-time positions, including 9 contractual positions. This decline in staffing has resulted from the

¹ *Analysis of Maryland's Drinking Water Program Resources and Needs*, May 2021, CADMUS, prepared for Maryland Department of the Environment and the U.S. Environmental Protection Agency, Region III (*CADMUS Report*), p. 3.

² *Id.*

³ *Id.*

Administration's decision to abolish approximately 12 FTEs vacated by retirement, to leave other vacant positions unfilled, and to perpetuate hiring freezes.⁴

The CADMUS report goes on to warn that these difficulties will only worsen as the WSP's workload increases. 350 new public water systems will be added to the State's inventory, and the Program must contend with emerging contaminants like PFAS, *Legionella*, and harmful algal blooms. The WSP has also been given responsibility for conducting sanitary surveys for 800 transient non-community water systems formerly inspected by the counties, and it has a host of new obligations to oversee testing for lead in public schools.⁵

In addition to these staffing concerns, the CADMUS report highlights questions raised by the WSP's underfunding. The Program has about \$8.1 million in annual funds, with 88% from federal sources and only 12% from the State's general fund. A survey of 36 other states found that collectively they have a more balanced funding mix, with 42% from non-federal sources (state general fund and fee programs), and 58% from federal funds.⁶ CADMUS concludes that in 2021, MDE's WSP "**needs 126 FTEs and approximately \$15.7 million** in funding to carry out current program responsibilities, implement drinking water regulations, and uphold public health protection."⁷ (Emphasis in original).

CADMUS concludes that this gap between what the Administration has provided, and the resources needed to ensure the safety of our drinking water, is 55 FTEs and \$7.8 million.⁸

The national average number of inspections a full-time employee can perform in one year is 67. Sanitary surveys require inspection of a facility in its entirety. As described by MDE itself, the inspection must include "the sources, the water treatment plant, the storage and distribution systems, and a review of water quality test results and operating and maintenance procedures."⁹ Yet WSP inspectors are required to conduct **240 inspections every year**, nearly four times the average number of inspections performed by their counterparts around the country.¹⁰

The numbers do not add up. With 104 weekend days, 12 state holidays, and an average two weeks of vacation per year, an inspector would have only 239 days a year to complete 240 inspections. These inspectors' colleagues in other states conduct 67 inspections in 239 days. Yet

⁴ *Id.*, at 3, 19.

⁵ 2017 Md. Laws, Chapter 386

⁶ *Id.*, at 9,10.

⁷ *Id.*, at 10.

⁸ *Id.*, at 17.

⁹ *Report to Governor: Capacity Development for Maryland Public Drinking Water Systems, Calendar Years 2017-2019* at 5; see also, Md. Code Regs. 26.04.01.11-3 (2021)

¹⁰ *Annual Review of the Public Water Supply Supervision Program for the State of Maryland*, January 1, 2020 – December 31, 2020, U.S. Environmental Protection Agency Region III (*EPA Report*), p. 5.

MDE has represented to EPA that WSP inspectors do in fact perform 240 surveys per year, and in 2020, MDE represented that they completed 97.6% of their required inspections.¹¹

In addition, conducting surveys constitutes only part of the inspectors' workload. As EPA pointed out, "the same staff are also responsible for addressing security concerns, managing emergencies, overseeing capacity development, and system optimization efforts."¹²

The WSP's record of inspections has also obscured an accurate picture of how many of the State's water systems have certified operators. Moreover, it may have contributed to the decline of those that do. Only 72% of the systems had a certified operator in 2020, down from 84% in 2015. The decline in the frequency of inspections has precluded "early identification and correction of non-compliant systems."¹³ Fully one-quarter of the State's systems "are operating in violation of state and federal requirements."¹⁴ And because the WSP's record of inspections – rendering it an outlier among other states – suggests less frequent or incomplete inspections, the number may well be higher; we have no way of knowing.

The assessment of CADMUS is stark: "Maryland's drinking water program is significantly understaffed and underfunded . . . Ultimately, MDE's ability to protect public health is compromised."¹⁵ The situation is so acute that the State "risks losing . . . primary enforcement responsibility" over the regulation of its own drinking water systems. It may soon be forced to cede primacy to the federal government.¹⁶ This loss of primacy will also mean a reduction of more than \$21.5 million in federal funds currently allocated to the program.¹⁷

In sum, the CADMUS report demonstrates that we have little visibility into the true condition of many of Maryland's 3,300 drinking water systems.

In its response to the CADMUS report, the EPA warns that the inadequacy of the WSP's resources "may adversely impact the State's ability to proactively or adequately react to emerging drinking water and emergency response issues."¹⁸ In other words, the State would not know if a Flint-style water crisis were just over the horizon.

The EPA directs MDE to develop a resource investment plan – to include "establishing a lower public water system to field staff ratio" – for EPA review and approval by October 2021.¹⁹ That date has now passed. If you have a plan, the people of Maryland deserve to know what it is.

¹¹ *EPA Report* at 5.

¹² *Id.*

¹³ *Id.*, at 16.

¹⁴ *Id.*, at 14, 15.

¹⁵ *CADMUS Report* at 20.

¹⁶ *Id.*, at 4.

¹⁷ *Id.*, at 20.

¹⁸ *EPA Report* at 4.

¹⁹ *Id.*

The Honorable Lawrence J. Hogan, Jr.
December 1, 2021
Page 4

Maryland's drinking water remains at risk. This threat to the public health should not continue one more day.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian E. Frosh". The signature is fluid and cursive, with a large, stylized initial "B".

Brian E. Frosh
Attorney General of Maryland