November 2021 DEI Guidance

• Last month, our Office promulgated a framework for OAG attorneys to adapt to their own practice areas to integrate principles of diversity, equity, and inclusion into their work where appropriate. In reviewing policies, regulations, or contracts, OAG attorneys should consider the following questions, as appropriate:
DEI Questions

1. How is equity expressly incorporated within the policy?

2. Does the policy explicitly account for potential disparate outcomes for traditionally disadvantaged communities? If so, how? If not, can the policy be changed to explicitly account for potential disparate impacts or are those impacts addressed in a different way (through business processes or additional policies, for example)? Can legal risks for the client(s) be reduced by eliminating any anticipated disparate outcomes, regardless of intention?

3. Are policy outcomes tracked so that potential disparities can be monitored? Is there a plan to address any disparate outcomes? Does the plan include a concrete timeline and action items? Are there pathways for complaints and grievances about the policy to be heard and addressed early and often?

4. Will the policy increase access and opportunity for traditionally disadvantaged communities? How?
5. Will the policy further equity, increase inclusion, and allow for full participation for all people (in the process, in implementation, in breadth of outreach and participation, in decision-making and culture of decision-making, etc.)? Do stakeholder groups include members from impacted communities, including community sub-groups? Have all community outreach and input requirements or goals been met? Are there changes that could be made to increase access to input processes?

6. Will the policy protect against violence, profiling, and discrimination? How?

7. Are there changes that could be made to make the policy more equitable and inclusive so as to reduce legal risks and align better with nondiscrimination and civil rights laws?

8. What are the economic, social, and other benefits of not just ensuring that the policy complies with relevant nondiscrimination and civil rights laws but also of further reducing legal risks under such laws?
AG Frosh’s 2022 Environmental Enforcement Bill

This proposed priority bill seeks to address gaps in the State’s authority to enforce laws governing:

- safe drinking water,
- wastewater facility operation,
- waterway construction and dam safety, and
- tidal and nontidal wetlands.
Drinking Water

This Attorney General’s priority bill would amend the State’s drinking water statutes (Environment Article Title 9, Subtitle 4) to authorize MDE to pursue injunctive relief and administrative and civil enforcement and penalties against persons who violate the State’s drinking water rules and regulations.

- Harmonizes our Drinking Water statute with other enforcement provisions under the Environment Article.
- Allows civil penalties for any violation of the subtitle,
- Removes the requirement that MDE prove civil violations or breaches of administrative orders were “willful” before liability can be imposed, and
- Increases the civil penalty for drinking water violations and violations of administrative orders from $5,000 to $10,000 per day.
Maryland Water Quality Laboratory Certification Act

These provisions amend the Maryland Water Quality Laboratory Certification Act (Environment Article Title 9, Subtitle 10) to authorize MDE to pursue injunctive relief and administrative and civil enforcement and penalties against water quality laboratories. The statute governs the certification and operation of laboratories that perform testing and certification of drinking water under the Safe Drinking Water Act. Currently, the sole provisions to enforce Subtitle 10 are reprimanding, suspending, or revoking a water quality laboratory’s certification under Section 9-106 and Section 9-1017, or a criminal misdemeanor in Section 9-1026.

- Establishes authority for the Department to issue administrative orders and conduct hearings; and

- Amends Section 9-1026 to include civil and administrative penalties and add Section 9-1027 to authorize the Department to pursue injunctive relief
Maryland Waterworks and Waste Systems Operators Act

Provisions amend the Maryland Waterworks and Waste Systems Operators Act (Environment Article Title 12) to add sections with injunctive relief and administrative and civil enforcement and penalties. The statute requires drinking water and wastewater facilities to employ a superintendent or operator who is licensed by the State Board of Waterworks and Waste Systems Operators to oversee operations and ensure compliance with State and federal law. Currently, the sole provision to enforce Title 12 against drinking water or wastewater facilities is a criminal misdemeanor of $25 per.

- Section 12-501 is amended to require drinking water and wastewater facilities to annually report to the State the superintendents, operators and industrial operators who are participating in the operation of facilities;

- Section 12-502 and Section 12-503 within Subtitle 5 (Prohibited Acts; Penalties) are currently reserved. These sections would be replaced with authority for the Department to conduct hearings and issue administrative orders; and

- The bill also amends Section 12-504 to include civil and administrative penalties and adds Section 12-505 to authorize the Department to pursue injunctive relief.
Waterway Construction and Dam Safety

These provisions amend the Maryland waterway construction and dam safety statutes (Environment Article Title 5, Subtitle 5) to provide MDE the ability to recover civil penalties and provide for administrative enforcement and penalties.

- Section 5-514 (Violations and penalties) currently provides for civil penalties for violations of subtitle 5 but only as relates to the water appropriation and use provisions of subtitle 5;

- Maryland currently has no administrative or civil penalty authority for the waterway construction or dam safety provisions. The bill seeks to close this gap by providing civil penalties and administrative enforcement authority.
These provisions amend the Maryland Nontidal Wetlands Protection Act (Environment Article Title 5, Subtitle 9) to provide MDE the ability to recover administrative penalties for violations of the subtitle.

- **Section 5-911 (Enforcement)** currently provides for civil penalties and criminal fines for violations of subtitle 9, but Maryland currently has no administrative penalty authority. The bill rectifies this anomaly by providing administrative penalties for violations.

These provisions amend the Maryland Tidal Wetlands Act (Environment Article Title 16) to provide MDE the ability to recover administrative penalties for violations of the Title.

- **Section 16-502 (Civil penalty)** currently provides for civil penalties for violations of Title 16, but the statute does not specify any administrative penalty authority. The bill rectifies this anomaly by providing administrative penalties for violations.
Challenging EPA’s Chlorpyrifos Tolerances

• In addition to supporting Maryland legislation to ban chlorpyrifos every year in the General Assembly, we have litigated these issues in court.

• Maryland was part of a multistate coalition challenging, in the Ninth Circuit, EPA’s denial of objections to its decision not to revoke tolerances associated with the pesticide chlorpyrifos, which has adverse neurodevelopmental effects in children.
  – Culminating many years of litigation, the Ninth Circuit ruled in our favor this year. It held that if EPA could not make the safety finding required by statute, the agency had to revoke the tolerances.
  – On remand, EPA issued a final rule revoking the tolerances—a major victory for anyone who eats food.
Looking Out for Workers

Support

• Requiring employers to provide paid leave to workers who must self-quarantine due to workplace exposures;
• Requiring the Commissioner of Labor to adopt MOSHA regulations to address Aerosol Transmissible Diseases among workers;
• Improved working/living conditions for migrant workers

Oppose

• Any effort to undermine worker health protections;
• Legislation exempting family farm workers and fruit/vegetable peddlers from minimum wages;
• Legislation undermining prevailing wages for skilled laborers; etc.
Questions?

• If you prefer to reach me offline, my direct dial is 410-576-6584, work cell is 443-463-0751, and email is hkmmerer@oag.state.md.us.