



# MARYLAND DEPARTMENT OF THE ENVIRONMENT

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Martin O'Malley  
Governor

Robert M. Summers, Ph.D.  
Secretary

Anthony G. Brown  
Lieutenant Governor

February 26, 2014

The Honorable Maggie McIntosh, Chair  
Members, Environmental Matters Committee  
House Office Building, Room 251  
Annapolis, MD 21401

**Re: House Bill 1073 - *Environment - Statute of Limitations - Administrative Penalties***

Dear Chairperson McIntosh and Committee Members:

The Maryland Department of the Environment (MDE or “the Department”) has reviewed House Bill 1073 - *Environment - Statute of Limitations - Administrative Penalties*, and would like to express our opposition to this legislation.

House Bill 1073 proposes to create a three-year statute of limitations for any proceeding for an administrative penalty for a violation of the Environment Article. Specifically, it proposes to require MDE to institute an action for an administrative penalty within three years of the date that it knew or reasonably should have known of the alleged violation. The bill proposes to modify § 1303(a) of the Environment Article, which provides a three year statute of limitations to institute a criminal prosecution or suit for a civil penalty. Under long-standing precedent in Maryland, existing limitations periods for criminal prosecutions and civil suits do not apply to administrative actions. No other State Agency has a statute of limitation on administrative actions.

House Bill 1073 will hinder the ability of MDE to protect the environmental interests of the public, including:

- Some environmental violations are factually complex and have impacts that are difficult for the agency to immediately assess. Thus, even if MDE has some knowledge that a violation occurred, it may not discover important facts about the violation or the full extent of harm it caused before the limitations period has run or is close to running.
- It is sometimes difficult to quickly identify all persons responsible for a violation. Thus, even after MDE discovers a violation, one or more of the parties that are subject to penalties may be able to effectively insulate themselves from liability under the proposed statute by remaining unidentified until the limitations period has run.
- Due to MDE's limited enforcement and attorney resources, House Bill 1073 will hinder or eliminate MDE's ability to impose administrative sanctions for certain medium or lower priority environmental violations that MDE cannot always pursue within three years.



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The Department makes every effort to enforce Maryland's environmental laws efficiently and effectively, including bringing outstanding compliance matters to resolution as quickly as possible. However, limiting the Department's ability to resolve outstanding compliance matters by imposing a three year statute of limitations on administrative actions may result in pollution cases being dropped or dismissed. This would undermine the existing environmental protections that our environmental laws provide.

Additionally, the Department's enforcement of environmental laws is critical to ensuring that regulated entities comply with these laws. The Department's enforcement is the mechanism by which the regulated entities that follow the environmental laws ensure that they are not put at an economic disadvantage for doing so by those who do not. This legislation would undermine the Department's consistent enforcement of environmental laws. For these reasons, the Department opposes HB 1073.

Thank you for your consideration of this information. The Department will continue to monitor House Bill 1073 during the committee's deliberations, and I am available to answer any questions you may have. Please feel free to contact me at (410) 260-6301 or by email at [jeffrey.fretwell@maryland.gov](mailto:jeffrey.fretwell@maryland.gov).

Sincerely,



Jeffrey Fretwell  
Legislative Liaison