

STATE OF MARYLAND
MARYLAND DEPARTMENT OF THE ENVIRONMENT
Robert M. Summers, Ph. D., Secretary

BILL NO: HB 1073

COMMITTEE: Education, Health, and Environmental Affairs

POSITION: Oppose

TITLE: Environment - Statute of Limitations - Administrative Penalties

BILL ANALYSIS: House Bill 1073 proposes to create a five-year statute of limitations for any proceeding for an administrative penalty for a violation of the Environment Article. This bill would preclude the Department from pursuing an administrative action for any violation of the Environment Article after a period of five years from the date that the Department knew, or reasonably should have known, of the alleged violation.

POSITION AND RATIONALE: MDE opposes HB 1073.

House Bill 1073 will hinder the ability of MDE to enforce Maryland's laws and regulations related to environmental protection. Current law provides for 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

There are circumstances which have arisen in the past that compelled the Department to pursue violations beyond five years. 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 five years.

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 five 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 regulated entities that do not. This legislation would undermine the Department's consistent enforcement of environmental laws.

For all of the above reasons, the Department opposes HB 1073.

FOR MORE INFORMATION,
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