



MARYLAND DEPARTMENT OF THE ENVIRONMENT

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Lieutenant Governor

April 2, 2014

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

Re: Letter of Information, Senate Bill 706: *Environment – Permit Determinations – Cumulative Impact*

Dear Delegate McIntosh and Committee Members:

The Maryland Department of the Environment (MDE or “the Department”) has reviewed Senate Bill 706 (SB706) and would like to provide the committee with some information regarding this legislation.

The Department is supportive of the goal of SB706, which is to advance the cause of environmental justice. The concept behind the term environmental justice is to ensure that all people are able to enjoy equally high levels of environmental protection. The Department is engaged in stakeholder workgroups with the EPA and other States’ environmental departments to examine the issue of cumulative impacts assessments, as well as other means to advance environmental justice. Additionally, the Department is engaged in its own efforts to address environmental justice within the confines of current science and its statutory authority.

As amended, this legislation requires permit applicants to conduct a cumulative impact assessment for applications for specified permits in a specified unincorporated community in Prince George’s County. The cumulative impact assessment must address the likely impact on the environment and human health that will result from the incremental impact of the activity authorized under the permit when added to all past and present sources of pollution in the geographic area identified in the bill. The legislation requires the applicant to submit the cumulative impact assessment to MDE before the preparation of a tentative determination on the application for one of the permits. The legislation would then grant the Department the authority, based on the results of the cumulative impact assessment, to require additional assessment, issue or to not issue the permit, or to propose permit limitations or conditions to mitigate the impacts of the project on the environment and human health. MDE must provide a summary of the results of the cumulative impact assessment in any tentative determination issued to the local planning and zoning authority for review and consideration in any future land use decisions.

The amendments are important because they remove much of the fiscal and workload impacts to the Department. Having the permit applicant conduct the assessment is consistent with the permitting process, which requires the applicant, rather than Maryland taxpayers, to pay for all of the required



engineering, permit preparation, studies, etc. associated with the activity the permittee is seeking to undertake. The amendments requiring that the Department provide the results of the cumulative impact assessment to the local planning and zoning authority for consideration in any future land use decisions are an important addition, because issues of environmental justice are often the result of local land use decisions. Local planning and zoning authorities can and should play a role in addressing environmental justice concerns.

While some of the Department's concerns have been alleviated as a result of the amendments adopted in the Senate, there would still be difficulties in the implementation of the legislation. The first difficulty is that the science does not yet exist to determine, in a clear and concise manner, the incremental impact a single new pollution source would have on human health and the environment. For example, it will be hard to determine whether the added load will raise the cancer risk by a specific amount or cause asthma cases to rise by specific amounts. In the vast majority of cases it is hard to determine the link between a pollution source and a specific public health problem. Health issues can be caused by a wide variety of factors: life style, previous exposure, degree of exposure, work history and genetic predisposition, to name a few. Accordingly, it is difficult to determine whether any single factor or a mix of these factors is responsible for health issues in a given geographical area.

A second difficulty in implementing the bill is that it requires the assessment of the incremental environmental impact of the project. The Department currently determines the pollution load associated with a proposed project, and determines whether the added pollution load will cause air or water quality standards to be violated. For instance, NPDES permit reviews primarily focus on ensuring that a proposed discharge will not violate any water quality standard and is consistent with any TMDL developed for a water body. In the context of SB 706 there is uncertainty as to what a cumulative environmental assessment would involve. Also, legal and practical complications may arise when current pollutant loads come from sources outside of Maryland. Finally, the cumulative impact assessment might not provide clear answers relative to incremental impacts, which could lead to frustration among the impacted community, as well as permits being challenged.

Thank you for your consideration of this information as you review SB706. Please contact me at 410-260-6301 or by email at jeffery.fretwell@maryland.gov if you would like to discuss this issue further.

Sincerely,



Jeffery Fretwell

Cc: George (Tad) S. Aburn, Jr., Director, Air and Radiation Management Administration