



MARYLAND DEPARTMENT OF THE ENVIRONMENT

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Lieutenant Governor

March 5, 2014

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

Re: Letter of Information, House Bill 1210: *Environment – Permit Determinations – Cumulative Impact*

Dear Delegate McIntosh and Committee Members:

The Maryland Department of the Environment (the Department) has reviewed House Bill 1210 (HB 1210) and would like to provide the committee with some information regarding this legislation.

The Department is supportive of the goal of HB 1210, which is to advance the cause of environmental justice, working to ensure that all people are able to enjoy equally high levels of environmental protection. This legislation seeks to accomplish this goal by requiring the Department to conduct a cumulative impact assessment for applications for specified permits. 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, present, and reasonably foreseeable future sources of pollution in a given geographic area. The legislation would then grant the Department the authority, based on the results of the cumulative impact assessment, to 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.

The Department recognizes the value that a tool such as a cumulative impacts assessment would have in *identifying* environmental justice concerns. The Department is engaged in stakeholder workgroups with 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. While the Department sees value in a tool such as a cumulative impacts assessment, it would have great difficulties in the implementation of the legislation.

The greatest difficulty for the Department 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, we cannot 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 Department to assess incremental environmental impact. Environmental impact is an undefined and extremely broad term, which presents implementation issues. 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 HB 1210 there is uncertainty as to what a cumulative environmental assessment would involve. Also, legal and practical complications may arise when current or future pollutant loads come from sources outside of Maryland.

A third difficulty is the number of permitted sources that would fall under this bill. There are hundreds of permits issued each year that fall within the categories named in HB 1210. Preparing cumulative impact assessments for each of these permits would severely affect permit issuance times and the Department's staffing and financial resources. These permit delays could have a negative effect on the general public as well. For example, permits for boilers and generators to provide heat for schools, hospitals and governmental facilities, could be delayed. Projects that provide for the manufacture of everyday goods, such as paper, cosmetics, food products and cement, as well as, projects that allow for the storage and shipment of gasoline and natural gas would also be affected. Finally, the cumulative impact assessment might not provide clear answers relative to incremental impacts, which could lead to a high number of permits being challenged.

Thank you for your consideration of this information as you review HB 1210. Please contact me at 410-260-6301 or by email at jeffrey.fretwell@maryland.gov if you would like to discuss this issue further.

Sincerely,



Jeffrey Fretwell

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