



## WMDA/CAR Service Station and Automotive Repair Association

Chair: Kumar P. Barve  
Member of Environment and Transportation Committee  
RE: HB739  
Position: Unfavorable

The bill under consideration by this committee will have major impacts on gasoline retailers in the state of Maryland. Retailers either own or operate the underground storage tank systems that exist at every retail service station in the state. When these systems incur a leak, owners and operators can be considered parties responsible for any resultant discharge under section 4-401 of the Maryland environmental article.

For this reason, retailers are among the parties most vulnerable to the contribution claims made possible, and actually encouraged by the bill. Under the bill, as you know, any party that settles with the state is entitled to seek contribution from any "party responsible for the discharge." Maryland retailers, however, are the parties least likely to be able to pay any judgement for contribution, and the least likely to be able afford to defend against a contribution claim. The large majority of retailers in Maryland are family-owned businesses that operate a single service station.

In the now pending MTBE litigation in Maryland, the defendants who might settle with the state and seek contribution from retailers include major oil companies and other large entities. Most, if not all, retailer businesses are tiny in comparison to these industry giants, and the disparity in their resources, along with the new contribution rules contained in the bill, would leave most retailers effectively defenseless in a contribution action.

Like other tank owners and operators, retailers would have responded to historic discharges from their underground storage tank systems by complying with MDE regulations and directives, and most of them would have stretched their resources to the limit in order to comply. When all is said and done, a new liability in contribution made possible by this bill could break many small Maryland retailers. Even the cost of defending a contribution action is beyond the ability of most of them.

The drafters of the bill, however, appear indifferent to the potential impact of the new contribution law on retailers and other small businesses. The bill affords them no defenses, such as contributory negligence, which would apply in cases seeking contribution if the bill is not enacted. Nor is there any affirmative or other defense based on the retailer's having already resolved its environmental issues with the MDE. Moreover, for all intents and purposes, there is no statute of limitations defense that would bar claims that were resolved with the MDE many years ago.

In short, the exposure to liability created by the contribution provisions of the bill is too great, the potential amount of liability is too large, and the ability of most retailers to pay a judgment in contribution is too remote, to justify an enactment of this proposed legislation.

Please give HB 739 and unfavorable Report

WMDA/CAR is a trade association that has represented service stations, convenience stores and independent repair shops since 1937. Any questions can be addressed to Kirk McCauley, 301-775-0221 or [kmccauley@wmda.net](mailto:kmccauley@wmda.net)