



February 10, 2021

The Honorable Delores G. Kelley, Chair
Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, Maryland 21401

Re: Senate Bill 26 - State Highway Administration - State Highways and Interstate Highways - Litter Collection and Mowing

Dear Chair Kelley and Members of the Committee:

The Maryland Department of the Environment (MDE or the Department) has reviewed Senate Bill 26 entitled *State Highway Administration - State Highways and Interstate Highways - Litter Collection and Mowing* and would like to provide information regarding this bill.

The bill would require the Maryland Department of Transportation, State Highway Administration (SHA) to collect litter and mow grass on state and interstate highways for which SHA is responsible on a consistent and regular basis as set forth in the bill. The bill also establishes minimum frequency requirements for litter collection and mowing, depending on the season. SHA would be required to contract with Maryland-based companies for litter collection and mowing services, and when awarding a contract to give preference to: (1) companies within the county where litter collection and mowing services will occur; and (2) companies that hire individuals that were previously incarcerated. The bill also mandates that the litter collection and mowing services performed by SHA's contractor must be considered a supplemental environmental project (SEP) under the U.S. Environmental Protection Agency's (EPA) SEP Policy.

A SEP is a voluntary agreement between a government agency and an alleged violator of an environmental law that may be included in a formal settlement agreement. As part of a settlement, an alleged violator may propose to undertake a SEP to provide tangible environmental or public health benefits to the affected community or environment. A SEP is one factor considered in determining an appropriate settlement penalty and may be the basis for a reduction in the final penalty. MDE supports the inclusion of SEPs in appropriate settlements.

While Senate Bill 26 would not fiscally or operationally impact the Department, there may be legal issues with the bill language requiring the litter collection and mowing services to be considered a SEP for the purposes of EPA's SEP Policy. When EPA exercises enforcement or prosecutorial discretion to include a SEP as part of a settlement, for example, EPA looks at the nexus between the violation and the SEP, and whether the project advances the goals of the environmental law from which the violation stemmed. MDE lacks the authority to declare that a

litter collection or mowing service performed under this bill qualifies as a SEP on behalf of EPA, and such a position would interfere with EPA's prosecutorial discretion. Additionally, EPA's SEP Policy requires that a project go beyond an activity or service an alleged violator is already obligated or required to perform under a federal, state, or local law. Under EPA's SEP Policy, a litter collection or mowing service performed under this bill likely would not qualify as a SEP in a case where SHA was a defendant entering a settlement agreement with EPA.

Thank you for your consideration. We will continue to monitor Senate Bill 26 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 e-mail at tyler.abbott@maryland.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Abbott", with a long horizontal line extending to the left.

Tyler Abbott

cc: The Honorable Arthur Ellis
Ms. Kaley Laleker, Director, Land and Materials Administration