



March 24, 2021

The Honorable Paul G. Pinsky, Chair
Senate Education, Health, and Environmental Affairs Committee
2 West, Miller Senate Office Building
Annapolis, MD 21401

Re: House Bill 77 - Environment - Driveway Sealers - Prohibitions (Safer Sealant Act of 2021)

Dear Chair Pinsky and Members of the Committee:

The Maryland Department of the Environment (MDE or the Department) has reviewed House Bill 77 entitled *Environment - Driveway Sealers - Prohibitions (Safer Sealant Act of 2021)* and would like to provide additional information regarding this bill.

Beginning October 1, 2022, a person would be prohibited from manufacturing or distributing for use in the State a high-PAH driveway sealer, and from applying or soliciting the application of a high-PAH driveway sealer on pavement in the State. A high-PAH driveway sealer is defined as a driveway sealer containing more than 0.100% polycyclic aromatic hydrocarbon (PAH) by weight. Also beginning October 1, 2022, a person would be prohibited from manufacturing or distributing a driveway sealer for use in the State unless the driveway sealer is labeled in accordance with labeling standards developed by the Department. MDE would be required to develop labeling standards for a person distributing or manufacturing a driveway sealer for use in Maryland, including the placement of the composition of the driveway sealer as a percentage of PAHs by weight on the label. MDE would also be required to adopt regulations to allow a sealant manufacturer to label a product containing less than 50 ppm (0.005%) PAH by weight as “low PAH”. The Department would enforce violations of this bill under existing enforcement provisions in §§9-334—9-344 of the Environment Article. MDE would use the Maryland Clean Water Fund to cover expenses related to implementing this bill and to collect penalties paid by violators.

MDE supports the concept of reducing the use of products containing PAHs as a means to protect public health and the environment. Pavement sealants contain PAHs, persistent organic compounds of which several are known or probable human carcinogens and toxic to aquatic life. Sealants applied to pavements eroded due to weathering and abrasion from vehicles and foot traffic break down into fine dust or particles. The PAH-contaminated dust or particles can contaminate soil, bodies of water, and homes. The Department has regulations that set a maximum concentration level for Benzo(a)pyrene, a PAH found in coal tar pavement products,

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in surface waters used as a public water supply. Approximately 70 percent of Marylanders' water supply comes from surface waters.

The sale and use of coal tar pavement sealants in the District of Columbia has been banned since 2009. In 2018, the D.C. Council passed a law broadening the definition of sealant products banned in the District to include sealant products that contains more than de minimis levels of PAHs, referred to as a high PAH sealant product. The District is currently developing a pavement sealant certification program funded through the Chesapeake Bay Program Goal Implementation Team Project Initiative to identify products with less than 0.100% PAH by weight, and thus not considered a high PAH sealant product. Under House Bill 77, the pavement sealants identified by the District could also be used in Maryland provided the products comply with the labeling standards to be developed by MDE.

MDE does not currently regulate the application of driveway sealers or any other pavement sealant product. Therefore, MDE would need to hire a temporary contractual Environmental Compliance Specialist to implement this bill. The Department's enforcement would occur on a complaint basis, with the performance of targeted inspection and compliance activities. The complaint-based approach would be necessary because MDE would not typically be present for the application of driveway sealers, and the bill contains no mechanism to notify MDE of where and when applications of driveway sealers occur. The Environment Compliance Specialist would also assist in the development of labeling standards for a person distributing or manufacturing a driveway sealer for use in the State, and the adoption of regulations to allow a sealant manufacturer to label a product containing less than 50 ppm PAH by weight as "low PAH".

Thank you for your consideration. We will continue to monitor House Bill 77 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", written over a horizontal line.

Tyler Abbott
Director, Legislative and Intergovernmental Relations

cc: The Honorable Vaughn Stewart
Kaley Laleker, Director, Land and Materials Administration