



January 14, 2021

The Honorable Kumar P. Barve, Chair
House Environment and Transportation Committee
House Office Building, Room 251
Annapolis, MD 21401

Re: House Bill 77 Environment – Application of Coal Tar Pavement Products – Prohibitions (Safer Sealant Act of 2021)

Dear Chair Barve and Members of the Committee:

The Maryland Department of the Environment (MDE or the Department) has reviewed House Bill 77 entitled *Environment – Application of Coal Tar Pavement Products – Prohibitions (Safer Sealant Act of 2021)*. We support the concept of reducing the use of products containing polycyclic aromatic hydrocarbons (PAHs) as a means to protect public health and the environment, and would like to provide additional information regarding the bill.

Beginning October 1, 2022, the bill would prohibit a person from applying to pavement or a similar surface a coal tar pavement product that contains levels of PAHs greater than 1,000 milligrams per kilogram (mg/kg), or applying more than one layer of a coal tar pavement product that contains levels of PAHs of 1,000 mg/kg or less. (Note, the U.S. Geological Survey (USGS) states that concentrations of PAHs in coal tar-based sealcoat range from 34,000–202,000 mg/kg.) The proposed prohibition would not apply to a wastewater treatment facility that uses coal tar to seal components of a sewerage system. A person found in violation of this prohibition would be subject to a civil penalty not to exceed \$500 for the first violation, and not to exceed \$1,000 for a second or subsequent violation. However, the bill does not specify how collected penalties would be administered nor provide any administrative or civil procedures relating to the enforcement of the proposed prohibition.

According to USGS, coal tar pavement products are generally composed of 20 to 35 percent coal tar or coal tar pitch, both known human carcinogens that contain high concentrations of PAHs and related chemicals. When applied to parking lot, driveway, and recreational surfaces, these products are eroded by vehicles and weathered by rainfall, sun exposure, and foot traffic into fine dust that becomes mobilized and can contaminate soil, bodies of water, and homes. PAHs are also released to the atmosphere via volatilization from pavement freshly sealed with a coal tar pavement product at levels that are tens of thousands of times higher than from unsealed pavement. Due to constant abrasion by vehicles and general weathering, coal tar pavement products must be reapplied every 2 to 5 years. There are several alternative pavement products commercially available, such as asphalt-based sealants that contain lower levels of PAHs.

The Maryland Department of Transportation (MDOT) and Department of General Services do not use coal tar pavement products on roads, parking lots, driveways, or roofs on their State-owned properties. In addition, MDOT State Highway Administration's *Standard Specifications for Construction and Materials* does not include coal tar or coal tar pavement products as authorized materials for pavement

construction. The Department has regulations that set a maximum concentration level for Benzo(a)pyrene, a PAH found in coal tar, in surface waters used as a public water supply. Passage of House Bill 77 would reduce the amount of PAH contamination from coal tar pavement in stormwater runoff, which may mitigate the occurrence of Benzo(a)pyrene exceedances in State surface waters. Approximately 70 percent of Marylanders' water supply comes from surface waters.

Since MDE does not currently regulate the application of coal tar pavement products, MDE would need to hire an Environmental Compliance Specialist to enforce the 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 pavement products, and the bill contains no mechanism to notify MDE of where and when applications of pavement products occur. The District of Columbia is currently developing a pavement sealant certification program funded through the Chesapeake Bay Program Goal Implementation Team Project Initiative to identify pavement sealants with total PAH levels below 1,000 mg/kg that can be applied in concurrence with the District's Coal Tar and High-PAH Pavement Sealant Ban. If House Bill 77 passes, a similar process could be implemented in Maryland to help Marylanders identify pavement sealants that comply with the proposed coal tar pavement product restrictions.

Because MDE does not interact with the home improvement or construction contractors that utilize coal tar pavement products, it may be more efficient for local governments to be primarily responsible for the enforcement of House Bill 77. Anne Arundel, Howard, Prince George's, and Montgomery Counties have all passed similar laws restricting the application of coal tar pavement products, which are enforced by their respective local environmental protection agencies. In addition, local governments already interact with the home improvement or construction contractors that would be targeted under this bill. Maryland's Business Regulation statute requires a person seeking to conduct construction business in the State to obtain a Construction License from a county Clerk of the Circuit Court, and a person seeking to perform home improvement work to obtain a Home Improvement License from the Maryland Home Improvement Commission. (A person with a Home Improvement License does not need a Construction License.) Each month, the Maryland Home Improvement Commission sends a list of all Home Improvement Licenses to each county's Building and Permits Department and the Office of Consumer Affairs.

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,



Tyler Abbott
Director, Legislative and Intergovernmental Relations

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