



MARYLAND DEPARTMENT OF THE ENVIRONMENT

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Martin O'Malley
Governor

Robert M. Summers, Ph.D.
Secretary

Anthony G. Brown
Lieutenant Governor

March 11, 2014

The Honorable Maggie L. McIntosh, Chairman
House Environmental Matters Committee
Room 251
House Office Building
Annapolis, MD 21401-1991

Re: House Bill 1373 – *Environment – Permits to Construct or Materially Alter an Incinerator – Limitations on Issuance*

Dear Chairman McIntosh and Members of the Committee:

The Maryland Department of the Environment (MDE or “the Department”) has reviewed House Bill 1373 entitled, *Environment – Permits to Construct or Materially Alter an Incinerator – Limitations on Issuance*, and would like to explain our concerns with this bill.

House Bill 1373 would amend § 9-204 of the Environment Article, which governs the permitting of refuse disposal systems, including incinerators. Current law prohibits the construction and operation of an incinerator located within one mile of a public or private preschool, elementary, or secondary school. This bill would expand the prohibition on construction to a three-mile radius from additional facilities, including, but not limited to, hospitals; day care centers; nursing homes; places of worship; athletic facilities or recreation centers and fields; and federal, State, or local parks. These facilities would be included in the term “protected location[s].” With the exception of a crematorium or incinerator used solely for the disposal of dead animals, the bill applies to any incinerator that burns 250 tons or more of municipal solid waste, fuel derived or created from solid waste, or medical waste, and that is subject to Title 40, Part 60, Subpart Eb of the Code of Federal Regulations (Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced After September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996).

With the exception of crematories for human or animal remains, the bill prohibits the Department from issuing any permit to construct or materially alter an incinerator within 3 miles of any point on the property boundary line of a protected location, including permits issued under subsection (d) of § 7-232 of the Environment Article (hazardous substance facilities) or § 9-204 (water supply systems, sewerage systems, and refuse disposal systems), and Title 26, Subtitle 11 of the Code of Maryland Regulations (air quality permits). We are aware of no scientific basis for such a prohibition.

The bill provides an exception to the general prohibition for the operation, construction, reconstruction, replacement, expansion, and material alteration or extension of an incinerator that was operating as a resource recovery facility on January 1, 1997, or an incinerator that was operating on January 1, 1997, *if these activities would result in a reduction in emissions, discharges to waterways, or impacts to surrounding communities, human health, or the environment.* This language is ambiguous insofar as it does not specify whether the reduced emissions or impacts derive from the permitted “activity” prior to its current operations, or compared to



closure of the facility. Moreover, it is unclear to what extent a reduction in emissions or other impacts is required to qualify for the exemption.

MDE is tasked with the responsibility to ensure the proper management of solid waste generated in Maryland. The Department's existing regulatory requirements for resource recovery facilities and incinerators are protective of public health and the environment. This bill would effectively prevent the permitting and construction of incinerators in many areas of Maryland due to the geographical restrictions it would impose. The legislation might also prohibit the renewal of permits for the continued operation of three waste-to-energy facilities currently operating that manage solid waste for Baltimore, Harford, and Montgomery Counties and Baltimore City, as well as the recently permitted Frederick Waste-To-Energy Facility. As a policy matter, the Department is opposed to restricting the use of resource recovery facilities or incinerators in this manner. Restrictions on the siting of resource recovery facilities and incinerators within the State would deprive local jurisdictions of an existing option for managing the solid waste they generate and could result in overall higher disposal costs.

Thank you for your consideration. We will continue to monitor House Bill 1373 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 jeffrey.fretwell@maryland.gov.

Sincerely,



Jeffrey Fretwell

cc: The Honorable Doyle L. Niemann
Mr. Horacio Tablada, Director, Land Management Administration