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April 22, 2009

The Honorable Martin J. O'Malley
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401-1991

RE: *House Bill 259 and House Bill 148*

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency, House Bill 259, "Environmental Health Monitoring and Testing - Reimbursement of Costs," and House Bill 148, "Calvert County - Reimbursement of Costs Authority." We write to discuss the relationship between the two bills.

House Bill 259 requires the persons responsible for an oil spill, the release of hazardous substances, or the discharge of a pollutant into the waters of the State to reimburse a county for the:

reasonable costs incurred by the county in conducting environmental health monitoring or testing, including the cost of collecting and analyzing soil samples, surface water samples, or groundwater samples for the purpose of assessing the effect on public health and the environment.

The bill bars reimbursement for environmental health monitoring or testing under activities that are duplicative of State activities, or that are not reasonably necessary to protect human health or the environment. The bill also permits a county to request that the Department of the Environment seek costs on behalf of the county as part of a pending claim by the Department.

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House Bill 148 provides that the County Commissioners of Calvert County may seek reimbursement for costs incurred in the cleanup of hazardous materials in the County from the person responsible for the release of the hazardous materials.

A hazardous material is defined in current law as a "substance regulated as a hazardous material under Title 49 of the Code of Federal Regulations." Environment Article § 7-101(c). Those regulations, in turn, define hazardous material as:

a substance or material that the Secretary of Transportation has determined is capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous under section 5103 of Federal hazardous materials transportation law (49 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see 49 CFR 172.101), and materials that meet the defining criteria for hazard classes and divisions in part 173 of subchapter C of this chapter.

49 C.F.R. 105.5.

House Bill 259 does not reach hazardous materials *per se*, but deals with oil, pollutants, and hazardous substances, which are those substances defined as hazardous substances under § 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, or identified as a controlled hazardous substance by the Department of the Environment. Environment Article § 7-201(m). While a full comparison of the types of spills, releases, and discharges covered by the two bills is beyond the scope of this letter, it appears that they cover some of the same events, but are not coterminous. *See* Fiscal and Policy Note on House Bill 148. In addition, while the term "cleanup" is not defined in House Bill 148, it would appear to cover costs not included in House Bill 259, and could arguably not include costs involved in environmental health monitoring and testing that is not connected with cleanup.

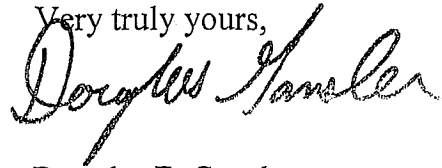
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In short, House Bill 148 applies in a single county, covers a broader range of expenses and a different but at least partially overlapping list of incidents than House Bill 259, which applies statewide and covers only environmental health monitoring and testing.

Very truly yours,

A handwritten signature in cursive script, reading "Douglas F. Gansler". The signature is written in dark ink and is positioned above the typed name.

Douglas F. Gansler
Attorney General

DFG/KMR/kk

cc: The Honorable Mary Ann E. Love
The Honorable Sue Kullen
The Honorable John P. McDonough
Joseph Bryce
Karl Aro