



January 19, 2022

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

Re: House Bill 133 - Environment – Coal Tar Sealant Products – Prohibitions (Safer Sealant Act of 2022)

Dear Chairman Barve and Members of the Committee:

The Maryland Department of the Environment (MDE) has reviewed House Bill 133 entitled *Environment – Coal Tar Sealant Products – Prohibitions (Safer Sealant Act of 2022)* and would like to provide additional information regarding this bill.

Beginning October 1, 2023, a person would be prohibited from supplying, selling, or offering for sale a high-PAH coal tar sealant product for application to, or applying or soliciting the application of a high-PAH coal tar sealant product on, a driveway or parking lot area in the State. Additionally, beginning October 1, 2023, a person would be prohibited from manufacturing, supplying, or selling a coal tar sealant product for use in the State unless the coal tar sealant product is labeled in accordance with labeling standards developed by MDE. A high-PAH coal tar sealant product is defined as a sealant product containing coal tar or coal tar pitch volatiles containing more than 0.1% polycyclic aromatic hydrocarbon (PAH) by weight that is intended for application on a surface. MDE would be required to develop certain labeling standards for a person manufacturing, supplying, or selling a coal tar sealant product for application to a driveway or parking lot area in Maryland, and to adopt regulations that allow a manufacturer to label a coal tar sealant product containing less than 50 ppm (0.005%) PAH by weight as a low-PAH coal tar sealant product. The bill authorizes the use of the Maryland Clean Water Fund to implement this bill and to collect penalty revenues.

Under House Bill 133, the existing enforcement provisions of §§9–334 through 9–344 of the Environment Article would apply to violations of the bill and regulations adopted thereunder. The bill would also establish a civil penalty of up to \$2,500 for each violation of Subtitle 24 of Title 9 of the Environment Article, a new subtitle in which the bill's provisions would be codified. Section 9-342 of the Environment Article already provides for civil and administrative penalties of up to \$10,000 per violation. As currently written, a person who violates Subtitle 24 of Title 9 of the Environment Article could pay a substantially higher penalty than \$2,500 per day for each violation in an administrative action brought by the Department under §9-342(b) of the Environment Article. If this is not the intent, the bill could be revised to provide that \$2,500 is to be the daily civil and administrative penalty maximum for violations of the proposed Subtitle 24, however the other penalty provisions established under §9-342 of the

Environment Article still apply. MDE is working with the bill sponsor on an amendment to clarify these provisions.

MDE supports the concept of reducing the use of products containing PAHs 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 can erode due to weathering, abrasion from vehicles or foot traffic, and can break down into fine dust or particles. The PAH-contaminated dust or particles can contaminate soil, bodies of water, and homes. MDE sets in regulation a maximum concentration level for Benzo(a)pyrene, a PAH found in coal tar sealant products, in surface waters used as a public water supply. Approximately 70 percent of Marylanders' water supply comes from surface waters.

The District of Columbia (D.C.) and several states and localities have banned the sale and use of coal tar sealant products for application on pavement, including Anne Arundel, Howard, Prince George's, and Montgomery Counties in Maryland. In 2018, the definition of sealant products banned under D.C.'s law was broadened to include sealant products that contain more than *de minimis* levels of PAHs, referred to as a high PAH sealant product. D.C. is currently developing a pavement sealant certification program to identify noncoal tar sealant products with less than 0.1% PAH by weight, and thus not considered a high PAH sealant product. Under House Bill 133, alternative sealant products identified by D.C. could be used in Maryland if there are limited inventories of coal tar sealants products with 0.1% or less PAH by weight or that comply with labeling standards to be developed by MDE.

MDE does not currently regulate the application of pavement sealant products. Therefore, MDE would need to hire a temporary contractual Environmental Compliance Specialist to implement this bill. MDE'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 coal tar sealants to driveways or parking lot areas of the State, and the bill contains no mechanism to notify MDE of where and when applications of sealant products occur. The contractor would also assist MDE in the development of labeling standards for a person distributing or manufacturing a coal tar sealant product for use in the State, and the adoption of regulations to allow a sealant manufacturer to label a coal tar sealant product containing less than 50 ppm PAH by weight as "low PAH".

Thank you for your consideration. We will continue to monitor House Bill 133 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 stylized flourish at the end.

Tyler Abbott
Director, Legislative and Intergovernmental Relations

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