

MARYLAND STATE BUILDERS ASSOCIATION

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November 23, 2009

Ms. Gail Castleman
Regulations Coordinator
Maryland Department of Environment
1800 Washington Blvd.
Baltimore, MD 21230-1719

Dear Ms. Castleman:

I am submitting comments on behalf of the Maryland State Builders Association (MSBA) to the proposed draft regulations 26.14.02 Investigating, Evaluating and Responding to Hazardous Substance Releases. As proposed these regulations cause a significant adverse burden on property owners and developers of infill and revitalization/redevelopment projects.

Interference with transactions---There are no deadlines for MDE response and review of potential releases. Without a departmental deadline and a clearly defined turnaround time for the Department to respond, the status of a property could be adversely impacted and result in delays in executing transactions for sale of a property and certain development approvals. This would pose an especially high risk for Brownfields development projects.

Broad scope of the requirements---the conservative screening levels of determining whether an exposure pathway exists is extremely broad and will result in scores of properties being captured under the reporting requirements. The vast majority of these sites will be shown to present no significant risk to human health or the environment. Casting the net in such a broad fashion wastes resources of the property owner and the Department.

Reporting requirements are burdensome and potentially expensive---the proposed regulations require information that would typically only be available upon further and more extensive investigation after a potential release. 48 hours after discovery is insufficient and will result in incomplete reporting, false positives and additional burden on the Department and the property owner.

Lack of grandfathering---The lack of grandfathering makes the regulations unfair and unworkable. The regulatory changes may make old sampling unreliable and changes in site conditions by removal of suspect conditions are not taken into account. It is possible that old and outdated information exists for sites and it is not clear that the Department will require only recent pertinent information. Outdated reports are likely based on outdated standards of environmental acceptability so the consultant's opinion is no longer valid. Reporting should only be required prospectively.

We urge the Department to withdraw the current regulations and work with stakeholders to draft a new proposal that is fair and implementable.

Thank you for your consideration of our views.

Sincerely,

Kathleen Maloney
On behalf of
Maryland State Builders Association

cc: Horatio Tablada
Jim Carroll