



July 2, 2012

Jay Prager
Deputy Program Administrator
MDE/Water Management Administration
1800 Washington Boulevard
Baltimore, MD 21230

RE: COMAR 26.04.02.01 - .12

Dear Mr. Prager:

The Maryland Association of Counties (MACo) is concerned with the potential county fiscal impact of new septic system regulations proposed by the Maryland Department Environment (MDE). The regulations would require the use of best available technology for nitrogen removal (BAT) septic systems in new construction located in the Chesapeake or Atlantic Coastal Bays watersheds or in any watershed with a nitrogen impaired water body. These regulations are currently under review by the Joint Committee on Administrative, Executive, and Legislative Review (AELR).

The proposed regulations were a recommendation of the Task Force on Sustainable Growth and Wastewater Disposal. While MACo did not object to this recommendation, it did raise concerns that the cost these regulations could have on the environmental health divisions within local health departments (LHDs) and the local economy in general.

Under current law, environmental health divisions are responsible for plan review, permitting, construction inspection, record keeping and enforcement of the installation of new septic systems. This role would continue with the installation of BAT systems. However due to the nature of these systems an additional inspection would be required and possibly more plan review.

While the proposed regulations provide for third-party inspection and maintenance of these systems, should a homeowner or business owner not be in compliance, the ultimate enforcement of these regulations will rest with the LHD. Some LHDs fear that over time MDE will not have the resources to enforce this regulatory change and counties will be required to assume full responsibility for the ongoing operation/maintenance, inspection, and enforcement of these systems.

To determine the fiscal impact of these regulations, MACo's Affiliate Organization, the Maryland Conference of Local Environmental Health Directors, surveyed its members. Fifteen counties responded to the survey and all felt that the additional work load would warrant additional staff. The increased staff required varies from county to county and is dependent on the county approach to implementing the new regulation.

The responding counties estimate that the proposed regulations will have a fiscal impact equivalent to an increase in personnel needed ranging from 0.5 to 3.0 FTE's depending on the

county. Counties believe that the most time consuming aspect of this program will be managing enforcement activities relating to non-compliance and that this burden will likely increase over time.

In addition, it should be noted that these regulations will have an effect on the local economy of certain rural counties. BAT systems can cost twice as much as traditional septic systems to install and have higher annual operating costs. When the BAT regulations are combined with mandatory sprinkler system requirements (HB 366/SB 205 of 2011) and new energy codes, this will substantially increase the cost of housing in rural jurisdictions at a time when individuals and families can least afford it.

In conclusion, MACo is not inherently opposed to the proposed BAT regulations but is concerned that the regulations impose long-term implementation costs that will be borne by the counties. MACo and the county environmental health directors are willing to work with MDE and the AELR Committee to amend the regulations so that the counties are not unfairly burdened with these additional costs.

Sincerely,

A handwritten signature in cursive script that reads "Leslie Knapp Jr".

Leslie Knapp, Jr.
Associate Director