

An Affiliate of
the Maryland Association
of Counties, Inc.



Reply to:

July 6, 2012

The Honorable Paul G. Pinsky
Senate Chair
Joint Committee on Administrative, Executive, and Legislative Review
Room 220 James Senate Office Building
Annapolis, MD 21401

The Honorable Anne Healey
House Chair
Joint Committee on Administrative, Executive, and Legislative Review
Room 350 House Office Building
Annapolis, MD 21401

RE: COMAR 26.04.02.01 - .12

Dear Senator Pinsky and Delegate Healey:

The Maryland Conference of the Local Environmental Health Directors (Conference) would like to submit comments to the Joint Committee on Administrative, Executive, and Legislative Review regarding the proposed changes to the Code of Maryland Regulations (COMAR) 26.04.02. As you know, our members are delegated the responsibility by MDE to regulate the design, installation, and operation of on-site sewage disposal systems (OSDS) within our respective jurisdictions. Given the ever-increasing number of BAT units being installed throughout the state, we understand and are in favor of requirements for on-going maintenance, but we have serious concerns about the implications of some of the proposed requirements and respectfully request consideration of the following:

1. **COMAR 26.04.02.07 A (1) (2) and 26.04.02.07 B should be deleted.** The proposed requirement that BAT units must be installed on all new construction in the Chesapeake Bay and Atlantic Coastal Bay Watershed seems contrary to the purpose of the local Watershed Implementation Plans (WIPs). Each jurisdiction is responsible for planning and implementing a WIP, wherein, a variety of best management practices (including BATs installations) can be utilized to reduce nutrient loading to the bays. Given the limited resources and time available for meeting the WIPs, it seems wise to approach it in the most efficient and cost effective manner. The USEPA and MDE acknowledge that the landscape position of an OSDS affects the delivery of nitrogen to a stream, and that distance of streams from tidal waters and the presence of reservoirs, in turn affects the delivery of nitrogen to the Bay. It has also been shown that the cost of upgrading all OSDS throughout the state is very high compared to the actual benefit to the Chesapeake Bay. Since there will be a significant effort and cost to permit, inspect, track and enforce

the maintenance of these BATs, it seems prudent to allow the local jurisdictions to decide where BAT units will be most effective.

2. **Proposed regulations should include a requirement for MDE to develop and implement a statewide tracking system for BATs by December 31, 2012.** Inherent with the installation of each BAT, it is arguable that the government has a responsibility to track and monitor these units to ensure that they are being properly maintained, especially if we are taking credit for the theoretical supposed nitrogen reduction. Currently, BATs account for less than 1 percent all OSDS in the state. However a regulation requiring BAT units on new and repaired OSDS would result in a rapid proliferation of these systems that would quickly overwhelm the ability of local health or the state to manage them effectively. Ideally, the program should be set-up so that the local, state and certified service providers can access the system.
3. **The conference would argue that the stated "minimal" economic impact on local governments published would actually be "significant." This economic impact on local approving authorities would be difficult, if not impossible, to absorb in an economic environment where most are seeing our resources reduced.** In all jurisdictions, the responsibility for funding enforcement of provisions in these regulations is delegated to a local approving authority. No funding is contributed by MDE for this enforcement. The Conference estimates that the permitting and inspection process for systems utilizing BAT would require 1 ½ to 2 times the amount of time to inspect these systems. A survey conducted by Maryland Association of Counties of LHDs reflects the need to increase staffing by 0.5-3 FTEs depending on the individual jurisdiction. We would like to point out that the counties have all completed their budget process for the new fiscal year. Funding for additional personnel, establishment of fees (depending on operations and maintenance option the local jurisdictions select), and designation of local controlling authorities could all involve requesting local budgetary and/or legislative actions. This would be very hard to complete at the local level if the fiscal matters for the new year have already been decided.
4. **The Conference would suggest that the changes proposed by MDE to COMAR 26.04.02 be withdrawn and that the regulations be reviewed and revisions proposed by a committee consisting of representatives of MDE, local approving authorities, industry, businesses, and environmental groups.** The last comprehensive review and revision of the OSDS regulations occurred almost 30 years ago. We would suggest that a comprehensive review of the regulations by all stakeholders would be much more beneficial than proposed changes that MDE has developed independently without input from the regulated community and local approving authorities.

We appreciate your consideration of these concerns. If there is any additional information we can provide, please contact me at 301-475-4335.

Sincerely,



Daryl W. Calvano R.S., B.S.

President, Maryland Conference of Local Environmental Health Directors

Cc: Members, AELR Committee
Marie H. Razulis, AELR Staff
Evan M. Isaacson, AELR Staff