

House Bill 1068 – Local Health Departments, Environmental Health Specialists, and On-Site Sewage Disposal Systems – Systems Standards, Regulations, Applications, and Funding

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Favorable with Amendments



CROSS-Maryland
Citizens for Responsible Oversight of Septic Systems

Written Testimony for March 2, 2022

Thank you for this opportunity to share my concerns and suggested amendments to this bill.

I have experience in writing environmental regulations and have worked in watershed planning, engineering, construction, disease control, and project management. In the past three years, I have become an advocate for property owners with septic systems. This is the result of my own experience with the septic industry's unethical practices. As a result, I founded CROSS (Citizens for Responsible Oversight of Septic Systems). Septic oversight has increased dramatically without notification to property owners, who bear the financial burden when their system fails. My focus last year was on local issues and Carroll County's short-sighted decision to reallocate remaining sewer capacity from over 1,200 older homes in the Freedom Designated Growth Area on small lots planned for sewer connection for decades in favor of undeveloped parcels planned for higher density development.

In alignment with the current bill, I am in favor of creating standardized forms and a database to track permit applications throughout the state. I also support auto-fill features for information already on record to simplify the process. I agree that if a permit is denied, the applicant should also simultaneously be given information on how to appeal the denial. I preferred the language in the original bill with a two month deadline to approve or deny permit applications. If the application is for a repair or replacement of a failing system it could pose a risk to public health. I know of residents that have had to relocate or discontinue use of their central plumbing until their system could be fixed due to raw sewage backing up into their homes. Such failing systems could also be contaminating ground water and surrounding drinking water wells.

My largest concern with this bill is the language under Section 2 of House Bill 1058 and Section 3 of Senate Bill 311 stating "...on or before October 1, 2023, the Department of the Environment shall adopt regulations establishing that the requirement for a minimum area of 10,000 square feet for subsurface disposal of sewage under COMAR 26.03.03.03 applies to detached dwellings." COMAR 25.04.02.02 (attached) began requiring this for systems installed on or before November 18, 1985. Therefore, this language would only apply to older dwellings constructed prior to 1985. Such dwellings often do not have the land available to meet this requirement. This would automatically make such properties out of compliance with the new law. Similar legislation passed in New Jersey several years ago has led to home foreclosure, bankruptcy, and abandonment of properties when homeowners could not afford to replace their functioning systems on small lots.

I also have concerns with allowing private individuals outside of the Maryland Department of the Environment (MDE) to be classified as Environmental Health Specialists. I would prefer to offer incentives to encourage recruitment and job retention of those licensed by the Board of Environmental Health Specialists

under MDE. However, I disagree with appropriating \$5 million specifically for Environmental Health Specialists to address wage disparities and staffing shortages. I believe the state of Maryland needs to re-evaluate their pay scale for their entire workforce to be competitive with other states and the private sector. When I moved to Maryland twenty years ago, I recently left a job at the Ohio Environmental Protection Agency (EPA) as an Environmental Health Specialist and Registered Sanitarian. I turned down a job offer at MDE since it was considerably less pay than I was making at Ohio EPA. Later I accepted a federal job making almost twice what MDE offered. I know from experience that other departments are short-staffed at MDE. I am currently managing a construction project valued at over \$80 million and the MDE storm water permit has been delayed for months due to a backlog caused by staff shortages.

Thank you in advance for your time.

.02 General Provisions.

A. The requirements of this chapter apply to new on-site sewage disposal systems and non-community water supply systems, replacements, additions to existing systems, repair or replacement of an existing system and any potential changes in the strength or volume of the sewage entering an on-site sewage disposal system.

B. If a community sewerage system is adequate and economically available to the building to be served, the Approving Authority may require a connection to the system.

C. On-Site Disposal System.

(1) Notwithstanding any other provision of this regulation, the Department may approve an on-site sewage disposal system:

(a) For a lot or parcel that was recorded and approved by the Department on or before November 17, 1985 if it meets the Department's regulations and policies that were in effect on November 17, 1985, and has at least one replacement system area; or

(b) For a lot or parcel that was recorded and approved by the Department on or before November 18, 1985 and was approved subject to a 10,000 square foot or greater disposal area, if it meets the other requirements and policies that were in effect on November 17, 1985. However, if a lot was approved subject to a 10,000 square foot disposal area, this disposal area is required; or

(c) For a lot that was recorded without Department approval before November 18, 1985, if it meets the other requirements of this regulation except that only area sufficient for an initial and one replacement system is required for the lot's initial dwelling unit. A 10,000 square foot area sufficient for an initial system installation and two replacement systems is required for each additional dwelling unit.

(2) If the Department has approved a county's groundwater protection plan, a sewage disposal system may be installed with less than a 4-foot treatment zone in a coastal plain county if the system complies with a groundwater protection report incorporated in the county's master water and sewerage plan. These counties include Talbot, Dorchester, Wicomico, Worcester, Somerset, Caroline, and Queen Anne's. A maximum density requirement of 160 residences or its equivalent per square mile for ground water protection shall apply in these areas for lots where direct ground water penetration is used for sewage disposal.

D. A person may not dispose of sewage, body, or industrial wastes in any manner which may cause pollution of the ground surface, the waters of the State, or create a nuisance.

E. A person may only dispose of sewage, body, or industrial wastes in accordance with an approved on-site sewage disposal permit or other method of disposal approved by the Approving Authority.

F. Water Supply for Non-Community System.

(1) Only the following may be used as a water supply for residential and other establishments not served by a community system:

(a) A well that satisfies the requirements of COMAR 26.04.04; and

(b) A surface water system permitted by the Department and which meets the requirements of COMAR 26.04.01.

(2) A spring or dug well may not be used as a water supply for a new homesite.

(3) A cistern may not be used as a potable water supply.

(4) A well for a new construction, addition, or alteration and a potential source of contamination shall meet the minimum setback requirements established in COMAR 26.04.04.

(5) The owner of an abandoned well shall properly fill and seal the well in compliance with the requirements of COMAR 26.04.04.11.

G. Building and floating home contractors, septic contractors, plumbers, licensed well drillers, drivers, and diggers, along with any person for whom the work is being performed, are responsible for compliance with these regulations and COMAR 26.04.04.

H. An on-site sewage disposal system may not serve more than one building unless specifically authorized by the Approving Authority. In those instances where connection of more than one building to an onsite sewage disposal system is approved, the available area for onsite sewage disposal shall meet the requirements established by §C of this regulation.

I. If water under pressure is not available, all human body wastes shall be disposed of in approved privies, chemical toilets, or any other installations acceptable to the Approving Authority. These methods may not be authorized for new construction.

J. Site evaluations including percolation tests shall be conducted under the supervision of the Approving Authority. Other pertinent soil evaluations may be required by the Approving Authority if considered necessary.

K. A holding tank may be used to resolve an existing on-site sewage disposal failure if a community sewerage facility is not available and on-site repair protective of the public health is not possible. A holding tank may not be permitted to serve new construction or for the purpose of adding capacity to an existing disposal system in order to accommodate a change in property use. For a building served by a holding tank, the Approving Authority may not allow a building addition or a change-in-use or operation that would result in a foreseeable or potential increase in sewage flows from the building. A holding tank may be permitted to serve a public building as determined by the Approving Authority and the Department of the Environment to be essential. The permission to allow a holding tank for an essential public service building shall include consideration of the following:

- (1) Whether the proposed building is directly related to and necessary to protect the public safety;
- (2) Whether the proposed building supplies any critical public service;
- (3) The volume and character of the waste to be generated, and, its ultimate disposal; and
- (4) The expected length of time the holding tank will be in service before a conventional disposal mode is available.

L. A holding tank is required to hold a minimum of 7 days effluent and shall be of watertight construction. The Approving Authority may require a test of water tightness, in accordance with Regulation .05(F) of this chapter. The owner shall regularly remove and dispose of the contents in accordance with Regulation .08 of this chapter. The applicant shall submit, along with the application, a maintenance contract which is acceptable to the Approving Authority and which includes an acceptable pumping schedule by an approved liquid waste hauler. The Approving Authority may issue a holding tank permit if it determines that the issuance of the permit complies with the requirements of this section and does not compromise the public health, a maintenance contract requires safe and adequate disposal of sewage generated, and a holding tank agreement and easement is recorded in the land records for the property.

M. Criteria for a Holding Tank for an Owner Occupied, Legally Occupied, and Legally Situated Dwelling Unit.

- (1) A community sewerage facility is not available and on-site repair is not possible.
- (2) The dwelling unit is presently legally occupied by the owner or some other person who has permission of the owner or is vacant, but could be occupied by the owner or some other person who has permission of the owner.
- (3) The dwelling is physically occupied in compliance with all required occupancy permits, except for any permit or permit requirement relating directly to the sewage disposal system. If no occupancy permit is required, a dwelling unit is legally if it is physically occupied.
- (4) The dwelling has all required governmental approvals relating to its size (including all enclosed floor space) and location.
- (5) The square footage of the original dwelling may is not increased.
- (6) The estimated daily sewage flow may not be increased beyond the proven historical use.
- (7) The dwelling does not require major repairs.
- (8) The dwelling is existing if it has been occupied year round within 3 years prior to the date of an application for approval of a sewage disposal system. The approving authority may grant a variance if:
 - (a) The applicant demonstrates to the satisfaction of the approving authority that occupancy was interrupted by events beyond his control;
 - (b) The dwelling is the only structure on the property; and
 - (c) The dwelling has been occupied year round within 7 years of the application.

N. No part of an on-site sewage disposal system may be covered or used until it has been inspected and approved by the Approving Authority or a third party approved by the Approving Authority.

O. If hydrologic or geologic problems exist, or if construction activities may adversely impact the sewage system, the Approving Authority may require installation, inspection, and approval of the on-site sewage disposal system before issuance of the building

permit by the local agency issuing building permits.

P. The permittee shall backfill all as excavations soon as possible. If an excavation is required to be left open, the excavator shall properly protect the excavation to prevent injury to humans and animals.

Q. Every person engaged in the business of removing and disposing of the solid and liquid contents of on-site sewage disposal systems shall obtain an annual permit from the Approving Authority.

R. Sewage or sewage effluent, treated or non-treated, may not be disposed of in any manner that is likely to cause contamination of a potable water supply system or waters of the State, or create a nuisance.

S. An Approving Authority may require operating permits for on-site sewage disposal systems.

T. A local jurisdiction may establish a responsible management entity to manage, operate and maintain an on-site sewage disposal system.