

An Affiliate of  
the Maryland Association  
of Counties, Inc.



Reply to:

February 14, 2011

The Honorable Joan Carter Conway  
Education Health and Environmental Affairs Committee  
Miller Senate Office Building  
11 Baden St.  
Annapolis, Maryland 21401

Re: Opposition to Senate Bill 160

Madam Chairwoman and Members of the Committee:

Thank you for this opportunity to testify in opposition to Senate Bill 160. This bill as written would require all newly constructed buildings served by septic systems to utilize best available technology for nitrogen removal (BAT) in the watersheds of the Chesapeake and Atlantic Coastal Bays. While the Maryland Conference of Local Environmental Health Directors supports providing nitrogen removal technology for septic systems, we are opposed to this bill for the following reasons.

Presently, there is a lack of regulatory framework to ensure BAT achieves nitrogen removal long term. In other words, regulation is needed now to require proper operation and maintenance in perpetuity. The Maryland Department of the Environment (MDE) notes that as a condition of being approved as BAT, manufacturers and vendors must provide five years of operation and maintenance (O&M). What happens after five years? Anne Arundel County, which has the highest number of BAT upgrades states on their website, "After the five year period, O&M will become the responsibility of the homeowner".

This lack of regulation leads to another concern, which is the potential fiscal impact to local health departments as a result of BAT O&M non-compliance. The current law §9-1108 states, "regulations adopted in accordance with paragraph (1) of this subsection shall include provisions to ensure that appropriate management measures are provided for the operation and maintenance of nitrogen removal technology". MDE has assured Environmental Health Directors that enforcement of this provision would be done by MDE and not be required of the local health departments. We fully support a requirement for proper O&M of BAT, but are concerned that BAT management enforcement could become an un-funded mandate on local health departments. We suggest language be incorporated in the bill that clearly makes enforcement of this provision MDE's responsibility, unless a local health department specifically requests delegation of this authority from the Department.

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Lastly, our efforts should continue to target Bay Restoration Funding for BAT retrofits in those areas that are most sensitive to nitrogen loadings, i.e. Critical Area. Nitrogen delivery rates to surface waters are highest at the tidal line and diminish with increasing distance from the body of water. While septic system's nitrogen loadings to surface waters in the critical area are assumed to be the highest, these loadings are impacted by many variables which include, soil type, local geology, plant uptake, and depth to ground water. A scientific based rationale should be used when targeting grant funding. There are many areas throughout the state where nitrogen from septic systems has negligible impact in the Chesapeake Bay watershed. These include areas where the shallow aquifer flow regime recharges deeper aquifers through leaky confining layers.

Bay Restoration grant funding has provided us with the best tool in assisting homeowners with correcting septic failures in the critical area. We feel great strides have been made in protecting the public health and the environment. We also realize that grant funding is limited and that the 100% grant assistance to property owners with failing systems in the critical area expires at the end of 2012.

We urge you to give Senate Bill 160 as written an unfavorable report. We are willing to work with the committee and other stakeholders in order to draft language that would address our concerns. If you have any questions concerning this letter, please feel free to contact me at 410-479-8049 or by email [donwilson@dohmh.state.md.us](mailto:donwilson@dohmh.state.md.us).

Sincerely,



Don Wilson, R.S.  
President

DEW/br

Cc: Ruth Maiorana, MACHO