



House Bill 190

Environment – Failing On-Site Sewage Disposal System - Definition

MACo Position: **SUPPORT**
WITH AMENDMENTS

To: Environment and Transportation Committee

Date: February 13, 2019

From: Leslie Knapp, Jr.

The Maryland Association of Counties (MACo) **SUPPORTS HB 190 WITH AMENDMENTS**. The bill would codify a definition for a “failing on-site sewage disposal system.”

Currently, a “failing” system is determined by criteria established by the Maryland Department of the Environment (MDE). The criteria allow for some discretion by a local health department in jurisdictions where the health department has delegated authority. A system classified as “failing” triggers certain enforcement provisions regarding repair or upgrade requirements and may allow the system’s owner access to grant funding under the Chesapeake Bay Restoration Fund (BRF). The costs of repairing or upgrading a failing system can run into the tens of thousands of dollars.

Given the significant ramifications of being classified as a failing system, it is important that any attempt to create a statutory definition be carefully balanced. Too broad of a definition will subject systems with minor maintenance issues to unnecessary enforcement and upgrade requirements (and possibly dilute the effectiveness of BRF grants). Too strict of a definition will remove some needed enforcement discretion from MDE and local health departments.

With these concerns in mind, MACo offers the following amendments to HB 190 in an attempt to craft a definition that: (1) covers system failures that pose an actual health or water quality risk; (2) eliminates vague terminology in the bill’s current language that could treat any system with a minor maintenance issue as a failing system; and (3) allows for reasonable enforcement discretion to account for the specific nature of system problem and site characteristics. The amendment language also clarifies that the bill does not intend to alter the longstanding enforcement referral method used by MDE and local health departments.

HB 190 attempts to create a statutory definition for what constitutes a failing on-site sewage disposal system. Such an attempt must be narrowly tailored to target systems that truly pose a threat to public or environmental health and still allow for reasonable enforcement discretion. MACo believes the offered amendment language achieves those important goals. Accordingly, MACo requests the Committee issue a **FAVORABLE WITH AMENDMENTS** report on HB 190.

PROPOSED MACo AMENDMENT TO HB 190

LINE-OUT VERSION OF THE AMENDMENT

9-101.

(a) In this title the following words have the meanings indicated.

(D-1) (1) “FAILING ON-SITE SEWAGE DISPOSAL SYSTEM” MEANS THE CONDITION OF AN ON-SITE SEWAGE DISPOSAL SYSTEM OR A COMPONENT OF AN ON-SITE SEWAGE DISPOSAL SYSTEM THREATENS OR IMPACTS PUBLIC HEALTH DUE TO:

(i) ~~THE INADEQUATE TREATMENT OF SEWAGE; OR~~

(ii) ~~THE POTENTIAL FOR DIRECT OR INDIRECT CONTACT BETWEEN SEWAGE AND MEMBERS OF THE PUBLIC;~~

(ii) FAILURE TO PREVENT SEWAGE FROM:

1. REACHING THE SURFACE OF THE GROUND;

2. BACKING UP INTO A STRUCTURE DUE TO SLOW SOIL ABSORPTION OF SEWAGE EFFLUENT;

3. LEAKING FROM A SEWAGE TANK OR COLLECTION SYSTEM;

(iv) FAILURE TO PREVENT GROUNDWATER DEGRADATION UNLESS SPECIFICALLY AUTHORIZED BY OTHER CRITERIA ADOPTED BY THE DEPARTMENT BY REGULATION; OR SURFACE WATER CONTAMINATION;

(v) FAILURE TO PREVENT SURFACE WATER DEGRADATION; OR

(vi) FOR PERMITTED SYSTEMS, NONCOMPLIANCE WITH STANDARDS AND CONDITIONS OF THE ON-SITE SEWAGE DISPOSAL SYSTEM PERMIT.

(2) “FAILING ON-SITE SEWAGE DISPOSAL SYSTEM” INCLUDES ~~AN ON-SITE SEWAGE DISPOSAL SYSTEM OR A COMPONENT OF AN ON-SITE SEWAGE DISPOSAL SYSTEM THAT:~~

~~**(i) FAILS TO PREVENT SEWAGE FROM:**~~

~~**1. REACHING THE SURFACE OF THE GROUND;**~~

~~**2. BACKING UP INTO A STRUCTURE DUE TO SLOW SOIL ABSORPTION OF SEWAGE EFFLUENT; OR**~~

~~**3. LEAKING FROM A SEWAGE TANK OR COLLECTION SYSTEM;**~~

~~**(ii) FAILS TO PREVENT GROUNDWATER OR SURFACE WATER DEGRADATION FROM CESSPOOLS OR SEEPAGE PITS;**~~

~~**(iii) FAILS TO PREVENT GROUNDWATER OR SURFACE WATER CONTAMINATION FROM INADEQUATELY TREATED SEWAGE EFFLUENT;**~~

~~_____ (iv) IS A CESSPOOL; OR~~

~~_____ (v) DOES NOT COMPLY WITH STANDARDS AND CONDITIONS OF AN ON-SITE SEWAGE DISPOSAL SYSTEM PERMIT A CESSPOOL.~~

9-1113.

~~EACH COUNTY SHALL ADOPT BY LOCAL LAW OR ORDINANCE THE DEFINITION OF "FAILING ON-SITE SEWAGE DISPOSAL SYSTEM" AS DEFINED IN § 9-101 OF THIS TITLE. NOTHING IN THIS SUBTITLE PROHIBITS A COUNTY FROM ADOPTING A DEFINITION OF "FAILING ON-SITE SEWAGE DISPOSAL SYSTEM" THAT IS MORE STRINGENT THAN THE DEFINITION IN THIS SUBTITLE.~~

SECTION 2. AND BE IT FURTHER ENACTED. That nothing in this Act shall be construed to alter the existing enforcement referral method established between the Maryland Department of the Environment and local health departments unless a county has adopted a definition of "failing on-site sewage disposal system" that is more stringent than the definition of this Act.

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED. That this Act shall take effect October 1, 2019.