

Senate Bill 254 – On-Site Sewage Disposal Systems – Inspection – Licensing
Jo Ann Grundy, Founder of CROSS
Support with Amendments

Written Testimony for February 11, 2020

Thank you for this opportunity to voice my support with amendments for this bill. My amendments have been submitted as an attachment to this testimony. I have experience in writing environmental regulations and have worked in government planning, engineering and construction. In the past year, 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. Because of this, I founded CROSS (Citizens for the Responsible Oversight of Septic Systems), which is based on a similar organization in Washington State (Citizens for Optimizing OSS Management Washington - COOMWA).

Septic oversight has increased dramatically without notification to property owners, who are expected to bear the financial burden, which can cost tens of thousands of dollars, when their system fails inspection. While I support licensing septic inspectors to set standards for inspection and hold them more accountable, there needs to be a code of ethics and clear standards of practice, established by MDE.

This bill will prohibit an individual from inspecting a septic system until they hold a license issued by MDE. Currently, a septic inspector is required by law to complete a course of instruction, approved by MDE. Many such inspectors work for companies that maintain, install, and/or repair septic systems, which is a conflict of interest. Unlike a home inspector, who is bound by a code of ethics under the Code of Maryland Regulations (COMAR – 09.36.06.01 – 09.36.06.04 – see attached) there is nothing prohibiting a septic inspector from profiting from a system that they fail. General home inspectors must wait at least one year before performing any work related to their inspection. The current law, nor this proposed bill require septic inspectors to abide by a code of ethics. In addition to my own experience, I have talked to others who have personal experiences with unethical practices by septic companies when conducting real estate inspections.

In addition, this bill also includes language to hold inspectors liable if they perform an incomplete inspection and the system fails within 6 months. An "incomplete" inspection is subject to interpretation and may result in systems failing in order for inspectors to avoid the potential for liability.

In addition, this bill mentions that training includes instruction as to whether the system is in compliance with statutory and regulatory requirements. It does not address functioning and allowable systems installed prior to laws and regulations.

During my meeting with Secretary Grumbles last year, he acknowledged that a widely used MDE approved inspector training manual developed by the Maryland Onsite Wastewater Professionals Association (MOWPA) was in conflict with laws and regulations. The MOWPA manual has resulted in functioning systems with no evidence of water contamination to automatically fail an inspection.

Some in the septic and regulatory industry would like to see more septic systems replaced using Best Available Technology (BAT). This would involve the installation of a BAT tank and absorption field. A

BAT tank is five times more expensive than a conventional tank and requires regular maintenance and electricity to operate and may detract home buyers. A BAT tank's focus is only nitrogen reduction. It does not reduce other nutrients or pathogens from the waste. The Bay Restoration funding only covers the material cost of the BAT tank itself and funding is limited. Installation of the BAT tank and absorption field may cost tens of thousands of dollars.

According to the Chesapeake Bay Program's website, it is estimated that five percent of nitrogen loads are from septic tanks compared to 20 percent from municipal and industrial wastewater. This correlates to the roughly 25 of Maryland homes served by septic systems. No method of sewage disposal is perfect. Combined sewer overflows contaminate surrounding water bodies. Damaged and deteriorated sewer lines contaminate water resources also.

I believe that septic owners such as myself would support this bill with amendments to include a requirement to abide by a code of ethics, the specification that older systems are not required to meet current statutory or regulatory requirements, and clarification of conditions when a licensed inspector would be held liable if a system fails within six months of the inspection.

Without a mandate from US EPA, every state in the US. is handling septic oversight differently. Some states, like New Jersey, are passing legislation that places an unreasonable financial burden on the individual property owner, which in some cases has led to home foreclosure, bankruptcy, and abandonment of properties. Other states, like Hawaii, are taking a well-planned approach by phasing out older systems gradually and with financial support. My hope is that Maryland follows their example and chooses the right path forward. For the next legislative session, I would like to see a bill introduced to begin to address older, failing septic systems. From Hawaii's example, and my previous experience in watershed planning, public outreach, and regulatory oversight, I recommend an inventory by each local health organization to identify all septic systems, further classified by age and type based on permit and tax records on file. With such information, homeowners could be mailed regarding the proper use, maintenance, and costs of upgrading or replacing their system. The inventory of septic systems could be mapped to prioritize funding for expanding sewer service or upgrade/replacement of older systems. Unfortunately, older systems are being forgotten and sewer capacity is allocated for new construction. In addition, financial incentives to promote alternatives beyond BAT tanks, and measures to reduce the load of sewage from each household, such as low flow and composting toilets and gray water recycling is also recommended.

Thank you.

AMENDMENT FOR SB 254

(Prepared by Jo Ann Grundy with CROSS for testimony on February 11, 2020)

Explanation: This amendment would add a requirement that all licensed inspectors abide by a code of ethics, similar to licensed home inspectors to avoid conflicts of interest. It also would specify that previously installed systems are not expected to meet current statutory or regulatory requirements. Lastly, the amendment would clarify the conditions when a licensed inspector would be held liable if a system fails within six months of the inspection.

AMENDMENT NO. 1 (Adds a code of ethics requirement analogous to a general home inspector.)

On page 2, line 11, add another entry that states “ALL LICENSED SEPTIC INSPECTORS SHALL ABIDE BY A CODE OF ETHICS PROVIDED BY THE DEPARTMENT.”

AMENDMENT NO. 2 (Adds language to clarify that previously installed systems are not expected to meet current statutory or regulatory requirements.)

On page 2, in lines 24, after “REQUIREMENTS” insert “AT THE TIME THE SYSTEM WAS INSTALLED”

AMENDMENT NO. 3 (Clarifies conditions when a licensed inspector would be held liable.)

On page 3, line 11, after “CONDUCTS AN” strike “AN INCOMPLETE INSPECTION” and insert “INSPECTION NOT IN ACCORDANCE WITH THE INSPECTION FORMAT PROVIDED BY THE DEPARTMENT”

09.36.06.01

.01 Responsibilities to the Public.

A home inspector shall:

- A. Act as an impartial third party;
- B. Discharge the home inspector's duties:
 - (1) With integrity and fidelity to the public;
 - (2) With fairness and objectivity to all parties; and
 - (3) Without bias to any party;
- C. Always act in good faith towards a client;
- D. Express an opinion only if it is based on practical experience and personal knowledge;
- E. Promptly inform a client of any business association, interest, or circumstance that may influence the home inspector's judgment or the quality of the home inspector's inspection service to the client; and
- F. Make every effort to uphold, maintain, and improve the professional practice, integrity, and reputation of the home inspection industry.

09.36.06.02

.02 Prohibitions.

A. A home inspector may not:

(1) Except under circumstances in which the safety, health, property, or welfare of the public is endangered, disclose any information concerning the results of an inspection without the approval of the client for whom the inspection was performed;

(2) Accept compensation, financial or otherwise, from more than one interested party for the same service on the same property unless the home inspector makes full disclosure to all interested parties and obtains the consent of all interested parties; or

(3) Accept or offer a commission or allowance, directly or indirectly, to or from another party dealing with the client in connection with home inspection services for which the home inspector is responsible.

B. A home inspector may not:

(1) Sell or offer to sell products for the repair of defects or the correction of deficiencies disclosed during an inspection to the client for a period of 1 year from the date of the inspection;

(2) Provide or offer to provide services to repair defects or correct deficiencies disclosed during an inspection for a period of 1 year from the date of the inspection; or

(3) Express an appraisal or opinion of the market value of the inspected property within the context of the inspection.

09.36.06.04

.04 Conflicts of Interest.

A. A home inspector shall avoid conflicts of interest with a client or an owner of property that is subject to an inspection by the home inspector.

B. If a conflict appears unavoidable, the home inspector shall disclose promptly and fully all circumstances of the conflict to the client.