



Environmental Health Systems Support Act of 2023: Interim Report

Maryland Department of the Environment
Water and Science Administration
Prepared for the General Assembly



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Interim Report for SB 830

In accordance with SB 830, Chapter 577 of the Acts of 2023, the Maryland Department of the Environment (MDE) is conducting a study of the implications of the delegation of the Department's authority related to well and septic systems permitting to the Maryland Department of Health. The Department is submitting this interim report with the final report due December 1, 2024. The study is required to address: the benefits of and issues with the existing system of the Department's delegating authority related to well and septic systems, lessons that can be drawn from other states' administrative structure and accountability measures, and the optimal long-term staff organization structure to best address issues of delays, communication and customer service.

The Department consulted with the Department of Legislative Services to request research assistance regarding the lessons that could be drawn from other states' administrative structures and accountability measures. In addition, the Department consulted with the University of Maryland Agriculture and Food Systems Extension Program to gather information regarding the organizational structure of each local approving authority and processes for communication and customer service.

The Department conducted multiple statewide stakeholder meetings to discuss the benefits and challenges with the delegation structure, the well and septic permitting process, and customer service. The stakeholders included representatives from the building, developer, real estate industry and the Maryland State Health Officers and Environmental Health Directors. Following each meeting, a confidential survey was provided to participants to obtain individual responses.

Following this interim report and in anticipation of the final report due 2024, the Department will continue with our surveying by conducting phone surveys with random property owners throughout the state who have obtained a well or septic permit in 2023.

Summary

The Department recognizes the need for standard operating procedures, improved guidance documents, and additional oversight of local approving authorities. The Department, while developing documents, will conduct program appraisals to gather additional information to consider regarding the effectiveness of the current administrative structure of the delegation agreements. The Department will continue to research and study the information provided from the Department of Legislative Services and the University of Maryland Agriculture and Food Systems Extension Program. In addition, the Department will continue conducting customer service surveys with property owners throughout the state to analyze if any progress can be noted. The final report will include details of these findings.

Background

To understand the administrative structure of the Department's delegation of authority, it is relevant to provide the background for the evolution to the present structure. In 1953, the

authority for well and septic permitting was established under Maryland Article 43 387C, which identified the Secretary of the Maryland Department of Health and Mental Hygiene (now the Maryland Department of Health) as the authority for public health and environment. At this time, the Secretary of the Maryland Department of Health and Mental Hygiene delegated the authority to administer and enforce public health and environmental laws to the County Health Officers. Therefore, the local health department performed the duties related to well and septic permitting. In 1985, Maryland laws changed to include the Environment Article, which created the Maryland Department of the Environment (MDE or the Department). The Secretary of MDE was redesignated as the authority for enforcing the provisions of the Environment Article and the rules and regulations adopted under the Article. Considering the County Health Officer was the agent, at that time, performing the duties locally, the Department entered into Delegation Agreements with each County Health Officer. The administrative structure has remained the same with a few modifications for home rule counties.

MDE is responsible for carrying out and enforcing the provisions of the Environment Article of the Annotated Code of Maryland and the rules and regulations adopted under the Article. The Environment Article authorizes the Secretary to delegate duties, powers, and functions to a health officer for a county or to another county official authorized to administer and enforce environmental laws. The Secretary has delegated the authority in each county to the County Health Officer or another County Official to perform the duties, powers and functions related to well and septic permitting. This makes the local Approving Authority responsible for implementation of the regulations and responsible for following the regulations except where the regulations clearly state the duties will be performed by the Department.

The delegation agreements that include well and septic permitting are not limited to issuance of septic system construction permits or water well construction permits. The delegations also include functions related to approval of subdivisions, review of building permit applications, issuance of certificates of potability, issuance of operational permits for bathing beaches, and issuances of notices of violation. The basic functions are soils and site evaluations to determine the adequacy for onsite sewage disposal systems, review of plans and materials for use in any proposed onsite sewage disposal system, inspection of the onsite sewage disposal system during construction, inspection of well construction, water sampling and interpretation of sample results for certificates of potability, investigation of nuisance complaints of improperly functioning water supplies or septic systems, and sanitary surveys. The delegated regulations in the delegation agreements are:

COMAR 26.04.02 “Sewage Disposal and Certain Water Systems for Homes and Other Establishments in the Counties of Maryland Where a Public Sewage System is Not Available.”

COMAR 26.04.03 “Water Supply and Sewerage Systems in the Subdivision of Land in Maryland”

COMAR 26.04.04 “Well Construction”

COMAR 26.04.05 “Shared Facilities”

COMAR 26.08.09 “Public Bathing Beaches”

In Maryland, the local Approving Authorities are either Maryland Department of Health employees or Local County Government employees. The Department provides oversight of the Delegation of Authority and assigns an MDE Regional Consultant to each county to assist with implementation and interpretation of regulations and to provide technical assistance with the well and septic programs to ensure compliance with Maryland law and regulations.

Benefits with the Existing Delegation

The Department’s research to identify the benefits of the existing delegation structure with industry stakeholders and local approving authorities provided the consensus that continuity and familiarity with the local agency was an advantage to all parties. Well and septic permitting services integrate with the many of the county functions such as the local building permit procedure, having local approving authorities that are involved with the county agencies is a comfort and convenience. In addition to understanding the local issues and how to implement state regulations locally is a service for both the State and the County. For example, the local approving authority’s involvement with updating the county water and sewer planning document benefits the County and the State.

The Department asked the industry what they consider to be the advantage of the current local well and septic permitting authority and the repetitive responses are summarized below.

Quick response and understanding of local conditions
Water supply wells and on-site sewage disposal systems depend on local knowledge; while MDE should establish the minimum requirements for these systems to protect the health, safety and welfare of the public, it would be very difficult for a State agency to effectively review the design and installation of these systems within a state with the diverse geology and geography as Maryland.
Knowledge of the local area challenges that may not exist in other areas.
Knowledgeable and practical staff
Quicker response times, less red tape, less people who need to be involved is typically best. Additionally, local people typically understand the region best.
Local level accessibility and timeliness

Issues with the Existing Delegation

The Department stakeholder meetings revealed several challenges with the existing delegation that ranged from consistency both locally and statewide, timeliness, accountability and continuity. The industry expressed a need for transparency on the decision making processes and a strong desire to understand the regulatory requirements in a clear and concise manner. Reliability of decisions is crucial for the industry to properly represent their clients and there have been concerns with decision changes within a local health department without any clear justification. Inconsistently applying rules and regulations leads to confusion, erodes confidence, and creates distrust for realtors and builders. The stakeholders expressed the general perception is that any challenges of a local approving authority's decision will promote retribution or retaliation. To remain silent to prevent this occurrence appears to be the manner of operation. This was reflected by the ratio of attendees in the meeting to the completed survey responses. The Department highlight the issues with the existing delegations are:

1. Consistency
2. Interpretation of the regulations
3. Timing
4. Understanding the reasoning for decisions
5. Oversight
6. Accountability

The Health Officers and Environmental Health Directors identified the challenges with the current structure of the delegation and the responses are summarized below.

Lack of communication or formal guidance from MDE
Timely response to questions and requests for assistance from MDE
Lack of standard operating procedures
Consistency with decisions
Workforce - adequate staff, recruitment and retention
Conflict resolution between MDE and the Approving Authority
Permit fees not equivalent with service

Other States Structures and Accountability Measures

The Department of Legislative Service reviewed relevant statutes, regulations, delegations agreements and program web pages from various states. Based on the review, the practice of delegating a state's environmental regulatory authority to a local governing agency is relatively common. Different states implement the delegation in various manners therefore DLS examined seven different states Arizona, Minnesota, Pennsylvania, Vermont, Virginia, Washington and

Wisconsin. The overview of each of these states' delegation and structure was provided to the Department with links to conduct additional research.

The effectiveness of achieving compliance with environmental goals could not be determined by DLS from the other states research but it was noted specific policies would provide clarity and improve accountability. DLS concluded the state and local government delegation relationship may benefit from express policies, either by law, regulation, agreement, or guidance that address the following:

1. Delegated functions and duties
2. Standards of performance
3. Program oversight
4. Inspections
5. Complaint handling
6. Enforcement authority
7. Personnel qualifications and training
8. Recording keeping and reporting
9. Regional approaches

The Department will conduct additional research of these states to determine the effectiveness and efficiency with delegations practices. Whether the Department determines the delegation structure should be changed or not, it will be beneficial to identify improvements that could be incorporated into the processing of permitting, complaint resolution, and responsive communication.

Optimal Long-term Staff Organization Structure

The Department is reviewing the data collected and comparing personnel qualifications along with inventory of workload to determine the optimal organization structure. Well and septic permits inventory workload varies throughout the state as reflected in the table on the following page. The adequate number of staff necessary to perform these duties and associated responsibilities as well as the organization of the staff will be determined at the completion of this study.

County	Number of Well Construction Permits Issued in FY 23	Average time for issuance of well construction permit	Number of Onsite Sewage Disposal Permits Issued in FY23	Average time for issuance of Onsite Sewage Disposal Permit
Allegany	44	0-2 days	10	
Anne Arundel	399	1 day	421	24 hrs
Baltimore City	121	2 days	na	na
Baltimore County	201	3-5 days	367	3-7 days
Calvert	157	10	586	10
Caroline	135	30 day	139	30 day
Carroll	142	10 days	329	1-4 weeks
Cecil	177	5 days avg.	120	18-20 wks.
Charles	196	5-14 days	252	10-14 days
Dorchester	178		258	
Frederick	176	1 week	259	2-3 weeks
Garrett	124	2-3 Days	86	2-3 Days
Harford	181	5-10 days	312	5-14 days
Howard	72	10 days	179	24 hours
Kent	89	15 days	54	30 days
Montgomery	174	15 days	205	30 days
Prince George's	134	5 days	58	10 days
Queen Anne's	178	1-2 days	118	2-5 days
Somerset	69	1-2 weeks	76	4-6 weeks
St. Mary's	188	5-7 bus days	255	0-2 bus. days
Talbot	158	5-7 bus days	103	14 days
Washington	117		146	
Wicomico	236	3 days	187	2 weeks
Worcester	156	5 days	96	1-2 wks

Delays

The Department is in the process of collecting data from local approving authorities to analyze the average permit processing times. The data varies by county, considering counties with advanced databases have the ability to track permits whereas other counties tracking is more labor intensive. The analysis of this data will assist in determining the expected turnaround times for permitting. In addition, the Department has developed a draft delegation agreement which includes a quarterly requirement for statistical reporting of permit inventory and processing times.

Organization of data and ease of standardizing permits is necessary to improve processing times. The Department is exploring resources to develop a database that would include the standardized well construction permit application and the standardized sewage construction permit application to integrate data and expedite the permitting process.

An initial survey conducted by the Department in September/October 2023 with homeowners demonstrated 60% of the delays were due to construction/contractor issues and 40% to local permitting issues. The permitting process for 66% of the individuals surveyed was less than 60 days, with the same percentage satisfied in the time it took to obtain a permit.

The stakeholder meetings survey asked “how long did it take to receive a decision on the last well or septic permit you applied for” the response indicated 61.5% received a decision within 60 days and 53.8% received a decision in less than 30 days.

Communication

The Department has developed standard operating procedures for the local approving authorities to utilize to develop their own standard operating procedures representing each local process. In addition, the Department is drafting additional guidance documents to assist with implementation of regulations. The review of other states will assist the Department with methods to improve communication between the Department, local Approving Authorities, and the public.

The survey response from homeowners conducted by the Department indicates 71% would rate the effectiveness of communication with the local permitting authority as excellent. The stakeholders meeting survey asked if the local permitting authority provided efficient service to which 20% stated no.

Customer Service

The response provided by the University of Maryland Agriculture and Food Systems Extension Program survey for customer service related complaints outlines the types of complaints received by local authorities. Although the subject was based on categorizing complaints, the results were not clear if the complaints are actual complaints regarding customer service or inquiries related to the status of projects. The types of complaints were:

- Status of permit application
- Complaints often go to others outside the Health Department (MDE/MDH or local/state politicians)
- Requirement for wet season testing

- Permit delays
- People not satisfied with site evaluations results, requesting a second opinion
- Requests for repairing failed drainfield
- Replacement options limited to a sewage holding tank

The survey response of homeowners conducted by the Department indicated 71.4% rated the overall customer service experience from the local permitting authority as excellent. The stakeholders meeting survey asked if the local permitting authority provided efficient service to which 20% stated no. Recognizing improvements are necessary to increase the satisfaction of customer service the Department will continue to explore procedural changes that may be implemented.