

TESTIMONY OF ROGER P. MANNO, ESQ.

SB726 / HB1478

BAY RESTORATION FUND - AUTHORIZED USES - DECOMMISSION OF WASTEWATER  
TREATMENT LAGOON

FAVORABLE

Dear Chairs Feldman and Korman, and members of the both the Senate Education, Energy, and Environment Committee; and the House Environment and Transportation Committee:

Please accept this testimony in strong support of SB726 / HB1478, legislation necessary to align the Maryland Department of Environment's (MDE) application of the Bay Restoration Fund (BRF) with the clear spirit, in not the letter, of the BRF.

The legislation for consideration is necessary and extremely narrowly-tailored to address a unique challenge and economic injustice faced by the Town of Middletown, which is the only town in the State of Maryland to legally operate a wastewater treatment lagoon in a floodplain.

On background, in 1976, MDE mandated that the Town, located within the Catoctin Creek Watershed (a sub-watershed of the Chesapeake Bay Watershed), install the subject wastewater treatment lagoon, which, for the last 48 years, has operated without incident, meeting all legal requirements under its operational MDE permit. In 2000, the Town built its East wastewater treatment plant (of which the wastewater treatment lagoon is a critical and integral system), financed by a DHCD critical infrastructure loan and debt service to ratepayers. In 2020, the Town responsibly completed its 20-year debt service obligation, anticipating several additional decades of debt-free useful life of the plant, and freeing up necessary debt and PAYGO capacity to begin addressing a 20-year backlog of projects, from roads, to drinking water, to public health and safety. Tragically, that was not to be the case.

Shortly after completion of the Town's 20-year debt obligation, MDE advised the Town that its wastewater treatment plant and lagoon needed to meet new Enhanced Nutrient Removal (ENR) standards, notwithstanding the highest environmental standards utilized by the plant and lagoon when built, and that its existing operational permit would not be renewed. As a result, the Town now finds itself in a bureaucratic morass, faced with either decommissioning its perfectly operational, recently paid off, MDE-mandated facility by 2025, at unprecedented financial cost to the Town, or face sanctions by MDE under a consent decree.<sup>1</sup>

---

<sup>1</sup> To the Town's knowledge, Middletown is the only town in the State of Maryland to be currently legally operating a wastewater lagoon in FEMA Flood Zone A, although there may be one other municipality illegally operating in violation of their expired 2013 MDE permit, and currently operating under a 2015 MDE consent decree. While this makes Middletown's funding case singularly unique in the State of Maryland, it is also unique in that the Town's location makes it ineligible for any neighboring funding opportunities administered by the Appalachian Regional Commission, or any Senator George C. Edwards Fund monies administered by the Western Maryland Economic Future Investment Board.

The costs necessary to meet this MDE mandate are uniquely onerous, since the Town has just completed two decades of debt service, and is now being mandated to decommission a completely functional wastewater treatment plant. In addition, the Town's wastewater treatment lagoon, uniquely located in a Special Flood Hazard Area floodplain (FEMA Flood Zone A), presents exorbitant costs to decommission and relocate out of the floodplain, unique among all other Maryland towns legally operating similar facilities. Taken together, MDE's mandate amounts to a \$40M capital outlay for the Town, which far exceeds the Town's total assets, including the value of Town Hall, together valued at some \$25M. In doing so, MDE's mandate threatens all other Town capital priorities that are just becoming viable for funding, given the recent completion of the Town's debt service on the existing wastewater treatment plan.

The Bay Restoration Fund anticipates funding these types of projects. However, while the BRF provides funding to replace a wastewater treatment lagoon at a 50 percent reimbursement level, the BRF also articulates that the highest funding prioritization, the 100 percent reimbursement level, applies to projects that raise issues of *public health* and *water clarity*. While the dissonance between these two provisions may cause confusion as to the appropriate level of MDE reimbursement, the Town is vexed to find a greater risk to *public health* and *water clarity* than a nine-million-gallon open-air sewage lagoon sandwiched between 3 waterways (Hollow Creek, Catoctin Creek, and Wiles Branch Creek), located in FEMA Flood Zone A, with at least a 25 percent chance of flooding over a 30-year period according to FEMA, as is the case with the Town of Middletown.

While the Town has engaged MDE on numerous occasions to address the agency's narrow interpretation of the BRF funding statute, and it is certainly true that both the letter and spirit of the statute can be debated, MDE continues to deny funding at the 100 percent reimbursement level, including inaccurately representing the cost in the SB726 / HB1478 Fiscal Note as \$10M. This is incorrect, as the accurate cost to the Town for full compliance with the MDE mandate is some \$4M, which, again, the Town simply cannot afford, either as a match or through debt service.

It is the Town's belief that the BRF is clear on this issue, and that funding should be reimbursable at the 100 percent level. It is certainly clear that MDE could, if it so chose, reach such a conclusion. Separate and aside from any such interpretation, the subject legislation seeks to address an anomaly in the overall intent of the BRF, such that a MDE-mandated wastewater treatment lagoon located within a floodplain, susceptible to flooding into contiguous waterways that run into the Chesapeake Bay, should meet the highest funding criteria.

For these reasons, I respectfully request a favorable report.



Sincerely,  
Roger P. Manno, Esq.

**Roger P. Manno, Esq. | Manno & Associates LLC**  
Attorney | Lobbyist | Maryland Senator and Delegate (Ret.)  
Admitted to practice law in MD and DC  
c 202.425.3523 | o 888.422.0131 | e rmanno@mannoandassociates.com  
www.mannoAndAssociates.com