



**The Maryland Department of the Environment
Secretary Serena McIlwain**

HB1003

Wicomico County - Seasonal Restaurants - Potable Running Water and Graywater

Position: OPPOSE

Committee: Environment and Transportation

Date: March 08, 2023

From: Gabrielle Leach

The Maryland Department of the Environment (MDE) **OPPOSES** House Bill 1003. The bill would allow seasonal restaurants in Wicomico County to operate without potable running water and to utilize a graywater system. As defined in the bill, a graywater system includes a holding tank connected to a three compartment sanitation sink and a holding tank used to store potable water. The seasonal restaurant is limited to Wicomico County and defined as operating on a seasonal basis and not providing indoor seating to customers. In addition, the seasonal restaurant is located on a former dredge site or in a remote area.

Legal Considerations: First, the bill overlaps and may conflict with § 21-324(c)(5) of the Health General Article, which states that an “unclean and unsanitary” condition exists if a restaurant lacks an adequate potable water supply. Similarly, the bill may overlap and conflict with the Department of Health’s regulatory authority in this area.

Health and Environmental Risk: For the water supply to be based on a holding tank to store potable water does not address the need for water that exceeds the temperature requirements for sanitary purposes. Seasonal operation of a restaurant does not negate the need for lavatory facilities in which water under pressure is necessary for adequate hygiene. Hand washing and waste facilities are necessary for employees and customers if outdoor seating is provided. The bill would allow the development of a property as a restaurant without satisfying the basic needs of potable water supply and wastewater system. The operation of a food service facility without sufficient plumbing is a risk for both the environment and public health.

Potable water used for human consumption is required at a restaurant or purposes beyond drinking. EPA interprets “human consumption” to include water used for drinking, bathing, showering, cooking, dishwashing, and maintaining oral hygiene. The bill distinguishes running water apart from other types of potable water, but it does not provide a definition of running water. Depending on how the water is obtained by the restaurant and conveyed by the customers, restaurants such as these may or may not be regulated under the Safe Drinking Water Act (SDWA).

Regulation Conflicts: Section 9-410 of the Environment Article defines a “public water system” as a system that “provides to the public water for human consumption through pipes or other constructed

conveyances.” Water for these purposes used by 25 or more individuals for 60 or more days per year would require a system to be regulated as a public water system, if it is introduced into a constructed conveyance. A constructed conveyance would include stationary structures (pipes or a holding tank), but not a water truck. If running water is interpreted to be water that is in a constructed conveyance, then these systems might operate without being regulated as SDWA public water systems.

The bill refers to “a holding tank used to collect and store potable water”, indicating that these restaurants could have constructed conveyances. If water is put into a constructed conveyance, then these would likely be regulated under the SDWA as transient non-community water systems, as long as they operate for more than 60 days a year (the bill is not clear on what seasonal means, but it is assumed it includes, at minimum, the 90+ days of summer). These systems would require regular inspections and routine testing for contaminants like E. coli. Maryland has not allowed water systems to establish public water systems using hauled water as their primary water source.

Conclusion: The rationale of this legislative proposal could be used for any business regardless of seasonal use and would undoubtedly expand to other counties. Without proper sanitation food borne outbreaks could increase and jeopardize customers' health and welfare.

For the reasons detailed above, MDE urges a **UNFAVORABLE** report for House Bill 1003.