



WICOMICO COUNTY, MARYLAND

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The Honorable Wes Moore
Governor of Maryland
100 State Circle
Annapolis, Maryland 21401

Dear Governor Moore,

On behalf of Wicomico County, I am writing to express serious concerns regarding the ongoing challenges associated with on-site septic system approvals due to the current interpretation and administration of percolation testing requirements by the Maryland Department of the Environment (MDE) and the local Health Department.

As you are aware, the State of Maryland has placed significant emphasis on addressing the statewide housing shortage and encouraging local jurisdictions to expand housing opportunities. Wicomico County shares this goal and remains committed to supporting responsible residential growth, affordable housing, workforce housing, and economic development throughout our County. Unfortunately, the inability to obtain timely approval for percolation testing has become a substantial obstacle to achieving these objectives.

Currently, perc testing for on-site septic systems is frequently delayed or effectively denied absent what is considered a sufficient "wet season." However, Wicomico County has not experienced a traditional wet season in approximately three years. As a result, residential projects, subdivision proposals, and individual property owners have found themselves stalled indefinitely because applicants are unable to complete the required testing necessary to move forward in the approval process.

One recent example involves a proposed development by Schell Brothers, a nationally recognized and top-ranked developer based in Delaware, which would have marked the company's first residential development project in the State of Maryland. The proposed project in Wicomico County would have created much-needed housing opportunities and aligned

directly with your administration's housing initiatives focused on increasing housing availability throughout the State.

Despite COMAR specifically providing an alternative pathway when no wet season is present — including the use of soil samples and soil data collection in lieu of wet season data — both MDE and MDH refused to acknowledge or apply that provision. This rigid and unnecessarily restrictive interpretation of the regulations continues to undermine economic development, delay housing projects, and create uncertainty for builders and investors seeking to invest in Maryland communities.

Specifically, COMAR 26.04.02.04(B) states:

“B. Soils Testing Requirements. In an area where the soil survey maps, soil borings or historical data indicate moderate or severe limitations based on seasonally perched or seasonally high water tables; site evaluations, a soil percolation test and any other test that the Approving Authority requires is performed at the time of the year when the highest water table is present as indicated by observation wells, rainfall totals and site conditions at the on-site sewage disposal area. The applicant shall conduct all soil tests at the depth and in the soil intended to be used for the on-site sewage disposal system. The official source of soil information is the National Resource Conservation Service (NRCS) Soil Data Mart, a part of the National Soil Information System.”

The language above clearly contemplates the use of soil survey maps, soil borings, and historical data in determining site suitability. In situations where good soil samples and acceptable soil conditions are present, it is difficult to understand why prolonged wet season testing is being treated as an absolute prerequisite in every circumstance, particularly when weather conditions have made traditional wet season observations virtually unattainable for years.

The practical effect is that otherwise viable residential developments are delayed for years, reducing the County's ability to provide attainable housing, limiting opportunities for economic growth, and constraining the supply of buildable lots for Maryland residents seeking housing in rural communities. Developers are being asked to invest substantial financial resources into engineering, planning, surveying, and land acquisition without any reliable timeframe for when, or if, they will ultimately be permitted to complete the necessary septic testing to proceed.

Equally troubling is the growing number of constituents currently waiting for perc tests simply to determine whether they can build a home on their own property. Many residents have now been waiting more than two years due to the repeated explanation that there has been a “lack of wet season.” Quite frankly, that is unacceptable, and there has to be a more practical and balanced approach moving forward.

Adding further frustration to this situation, the Health Department has also refused to allow hired surveyors and consultants onto sites to perform work associated with these evaluations and determinations. Preventing qualified professionals from even accessing sites to conduct necessary evaluations only contributes to unnecessary delays, additional costs, and growing public frustration.

There also appears to be a troubling lack of accountability and coordination between agencies. When these concerns are raised with the local Health Department, the response is often that

MDE is responsible for the delays or restrictions. However, when these same concerns are elevated directly to leadership within MDE, the responsibility frequently shifts back toward the local Health Department. Meanwhile, property owners, builders, and local governments are left dealing with the consequences of regulatory gridlock and uncertainty.

Compounding these frustrations is the reality that MDE does not bear the financial burden associated with growth constraints, delayed development, or stalled infrastructure investment. Local governments are the entities tasked with planning for housing, infrastructure, schools, and economic growth, yet state regulatory decisions continue to create barriers that directly hinder our ability to responsibly move projects forward.

Most recently, MDE leadership issued what was described as a temporary policy intended to assist local Health Departments in working through site evaluations. However, the policy was not even issued on formal letterhead and established an arbitrary June 1 cutoff date with stipulations that are extremely difficult, if not impossible, for many applicants to realistically meet. From our perspective, this appears to be an attempt to simply check a box and create the appearance of action rather than provide meaningful or workable long-term solutions to the underlying problem.

Wicomico County is not asking for special treatment. We are asking for consistency, fairness, accountability, and a willingness by state agencies to follow the entirety of the regulations as written — not selectively enforce portions that create unnecessary barriers to development and homeownership.

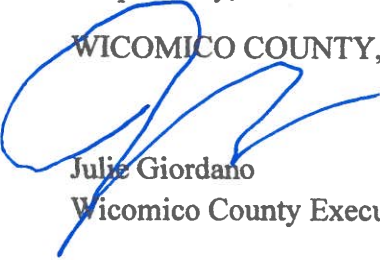
We respectfully request that your Administration work collaboratively with MDE and local health officials to evaluate alternative testing protocols, updated guidance, or other reasonable measures that would allow projects to move forward in the absence of prolonged wet weather conditions. We believe there must be a balanced approach that continues to protect public health and environmental quality while also recognizing changing weather patterns and the urgent need for housing throughout Maryland.

If Maryland is serious about addressing its housing shortage, then state agencies must become partners in solutions rather than obstacles to progress. Local jurisdictions cannot meet statewide housing goals when projects that otherwise comply with the law are stalled by bureaucratic resistance, inflexible interpretations, and an approval process that lacks predictability and practicality.

Thank you for your attention to this matter. Wicomico County remains committed to smart, responsible growth, and we welcome the opportunity to discuss potential solutions that would help restore certainty to the development process and support the State's broader housing goals.

Respectfully,

WICOMICO COUNTY, MARYLAND



Julie Giordano

Wicomico County Executive