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By Doug Day | State of the State | March 2017

A new governor draws back on statewide advanced system requirements, prompting market changes for contractors and manufacturers.

Nitrogen removal is no longer required for every septic system installed in the state of Maryland. The best available technology (BAT) regulation has been unpopular in rural areas of the state that saw it as a barrier to development because of the approximate \$10,000 added cost for building a home.

Republican Gov. Larry Hogan announced the rollback of the regulations by the state Department of Environment in August during a speech to the state's Association of Counties, calling it a "cost-prohibitive burden on Maryland homeowners and businesses."

The change became effective in late November after a rulemaking process by the Department of Environment. The new regulation allows conventional septic systems outside of the Critical Area, defined as within 1,000 feet of tidal water, and such systems require a two-year service agreement for operations and

maintenance, and must be inspected annually. Local governments can still require BAT outside of critical areas in order to protect public health or water quality, and all systems with design flows of 5,000 gpd or more still require BAT.

In 2012, Hogan's predecessor, Democrat Martin O'Malley, began requiring that all new septic systems reduce nitrogen releases by 50 percent. Eddie Harrison, Maryland Onsite Wastewater Professionals Association president, says it was no surprise that Hogan overturned his action. "Not to anybody that's been aware of things. When Mr. O'Malley put it in, there was a very strong kickback amongst the rural voters that voted in Mr. Hogan."

Hogan's 2014 win over the then-Lt. Governor in the heavily Democratic state was seen as a big upset. Hogan campaigned on a theme of blocking taxes and regulations from the O'Malley administration. "O'Malley implemented it for political reasons and Hogan pulled it out for the same reasons," says Harrison of the BAT requirement. "Neither one did it for the environment or anything to do with the (onsite) industry, it was about satisfying a political agenda."

Potential Impact

According to the MDE, there are about 420,000 septic systems in Maryland, with 52,000 in critical areas. The Bay Restoration Fund Onsite Sewer Disposal System grant program has upgraded more than 8,000 septic systems to include technology that removes nitrogen from the effluent as part of the efforts to clean up Chesapeake Bay.

On the Department of Environment website, MDE Secretary Ben Grumbles published a statement saying the agency was committed to clean water and meeting the state's goals for cleaning up Chesapeake Bay.

"This is a measured step to reduce regulatory burden and build public support for a smarter and more effective septic program across the state," he wrote. "We are customizing the statewide requirement to meet local watershed needs more effectively while still insisting on excellent environmental results. Innovation and collaboration at the local level, rather than locking into one particular technology, will lead to more success in protecting and sustaining Maryland's precious environment. We will work hard to make sure it

happens through regulatory reform, education, compliance assistance and enforcement.”

Harrison says for the most part, members of MOWPA agree with Hogan’s action to overturn the BAT requirement. A survey of members showed about two-thirds, mainly installers and local regulators, were in favor of it and a third, equipment manufacturers and some installers, were opposed.

“It was sold as ‘Save the Bay,’” Harrison explains. “Any person with a basic knowledge of septic knows that the nitrogen (from septic systems outside Critical Areas) is never going to make it to the Bay.” He adds that other benefits of BAT, such as protection of wells and groundwater, and longevity of the systems, was not promoted when the requirement was added. “When you get a bad taste in your mouth about something, it’s hard to convince you that it’s good.”

While there is support for the BAT rollback, some installers may be lamenting the costs they incurred in meeting the 2012 law. “People had to invest a lot of money in training and materials to satisfy the change,” says Harrison. “They spent, cumulatively, millions of dollars for equipment that is just going to be parked with weeds growing out of it. Most of our membership is glad it rolled back, but for a sector of our membership, it hurt them pretty bad.”

Harrison says counties are adjusting to the new regulation. “Counties are handling it differently as far as

modifying existing permits. Some counties are still leaving BAT as an option to put in depending on their soils and site conditions. There are some counties that like it (BAT) and still want to put them in. But they can’t require them everywhere; they have to come up with a good reason to have it.”

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Nothing is Final

Politics being what they are, Harrison says the future of BAT regulations in Maryland is uncertain. “The (onsite) manufacturing industry really got upset. They’ve started their own movement to bring it back. They were upset that they were forced into the business. But once they made the investment, they’re upset that they spent all that money for a few short years and now the bottom has dropped out of it.”

There is also a chance the legislature, controlled by the Democrats, may get involved, though that has failed in the past. Democrat Gov. Parris Glendening (1995-’03) was the first who tried to get in passed into law without success. “O’Malley had tried earlier through legislation and it wouldn’t go because the rural legislators’ constituents wouldn’t stand for them voting for it, so he did it by regulation right before he left office,” says Harrison.

“Now Hogan has pulled it back through regulation. But now that it has already been in and all the pains of getting it started have passed, the legislature may — there’s a chance that they will pass it for political reasons,” he continues. “It’s a Democratic legislature and a Republican Governor, so it may come back.”

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Because of the mixed feelings of its membership, MOWPA hasn’t taken an official position. “It’s all about politics; it’s not about science. And it’s very frustrating for those of us in the industry,” Harrison continues.

“Stay tuned.”

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