

To the contrary, there are many conditions affecting the subsoil integrity of a lot which change over time and, while they are not necessarily confined to the lot or the immediate vicinity, these changes may preclude the use of a septic system. The most common examples involve changes in groundwater levels and subsurface drainage. In addition, the owner's plans for the use of the lot may change, such as the enlargement or modification of an existing or proposed structure that may not be appropriate for the septic system initially approved.

In addition, under House Bill 212 a lot owner could be required to obtain another approval only if there has been "new information indicating that the system would pose a threat to the public health or to the environment." This provision may seriously weaken the current regulatory authority of the Department of Health and Mental Hygiene in protecting the public health. Under §§ 9-218 and 9-219 of the Health-Environmental Article, the Department is authorized to take action when a water supply or sewerage system "may become prejudicial to health." In upholding this standard in a precursory provision to §9-219 of the Health-Environmental Article, the Court of Appeals noted the importance of this broader authority by concluding that: "Protection of the public health is not required to wait until contamination is shown to exist. The statute is written to operate prospectively for the protection of the public...." Board of Health v. Crew, 212 Md. 230, 239 (1957). I believe it important to the public interest to maintain this preventative authority.

Despite the current requirements for environmental evaluations of lots and advances in technological know-how, septic systems continue to fail. Septic failures have occurred in developments in Back River Neck, Bowleys Quarters, Cape St. Claire, Cedar Beach, Deep Creek Lake, Mayo Peninsula, and West Ocean City. Without the ability to require additional testing and approval for a septic system, new information could not be obtained which might reveal a potential threat to the public health and suggest the need for remedial action.

The uneven implementation approach set forth in this bill may be counter productive to effective environmental control. Indeed, legislators have identified to health department officials problems with inconsistent application of laws and regulations relating to environmental health standards as a major concern. In response, the Department of Health and Mental Hygiene is now implementing administrative measures to reduce the uneven management of septic system permitting programs among the counties. The exclusion of five counties representing approximately 46% of the State's population from the provisions of this bill can only exacerbate this problem. In the implementation of its administrative measures, I have directed the Department to work with the sponsors of the vetoed legislation to develop an appropriate approach.

For the above reasons, I have decided to veto House Bill 212.