Like a Bridge Over Troubled Water
Know Your Water Law

Lisa M. Ochsenhirt
Sanitation is Greatest Medical Advance Since 1840

Improvements in Sanitation Wins Survey
- Wins over discovery of antibiotics
- Wins over development of anesthesia

Thank You Dr. Snow!
- British Doctor
- Credited with linking drinking water with cholera outbreak
  - Outbreak in 1854 near his home
  - Created a map of public wells and deaths around Soho
- Dr. Snow took handle off Broad St. pump
  - Outbreak declines
MD Has Excellent Water Programs

State Has Nearly 100 Water, Sewer Providers
- 89 owned by counties, municipalities, WSSC
- Plus numerous stormwater programs

Clean Water Employees Work for Public Health
- Water, wastewater, stormwater employees are dedicated
- Provide clean drinking water
- Remove and treat sewage from homes and businesses
- Implement environmental programs for stormwater

Bottom Line: This is Critical Work
- We need these systems for public health and environment
Funding is Necessary for Success

Local Utility Systems Are Highly-Regulated
- All wastewater, some stormwater have discharge permits
- Issued by Md. Dept. of the Environment (MDE)

Costs to Provide Service Have Increased
- Counties, cities, towns run sophisticated plants
- EX: Expense associated with O&M, electricity, etc.

State Policies Can Also Impact Costs
- EX: Winter ban for nutrients
- Forcing some POTWs to ship residuals out of state
Bay TMDL Costs

Chesapeake Bay is Impaired

- For nutrients and sediment
- EPA wrote Total Maximum Daily Load (TMDL) in 2010
- TMDL is a “pollution budget” for waterbody
- 6 states and Washington, D.C. included
- Goal is to make reductions by 2025

Reducing Pollutants is Costly

- Upgrades to wastewater plants
- BMPs (best management practices) for stormwater
- Addressing septic systems
Table 14: Summary of Costs for Maryland’s Interim (2017) and Final (2025) Chesapeake Bay Restoration Strategies

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<td>TOTAL</td>
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a. Cumulative total.
b. Costs are in 2011 dollars unless otherwise noted in Appendix C.
c. Maryland Department of Transportation (MDOT) costs are segregated from other stormwater costs due to their non-standard cost structure. Cost estimates were provided by MDOT.

Source: MD PII WIP (2012)
Ever-Present Enforcement Risk

Risk for Allegations of Permit Violations
• Clean Water Act (CWA) allows EPA to pursue enforcement
• CWA also includes citizen suit provision
• State law for MDE to pursue enforcement

Enforcement Can Mean Fines or Injunction
• CWA civil penalty can be up to $53,484 /day/violation
• MDE civil penalty can be up to $10,000/day/violation
• Injunctive relief can add to cost
Funding At Local Level

Localities Bear Much of Cost
• > 95% of drinking water and sewer costs
• Source: NACWA (2018)

Very Difficult Balancing Act
• Continued regulatory pressure
• Responding to affordability concerns

This is a National Issue
• 2017 NACWA survey
  – First time av. residential charge for wastewater > 2% federal poverty threshold
  – 22% increase in 5-year CIP budgets
Utility Rates Pay for Service

State Law Authorizes Utility Rates
- For water, sewerage service
- By political subdivision, ENV. § 9-724, -726
- By authority, ENV. § 9-946
- By sanitary commission, ENV. § 9-662
- By WSSC, PUB. UTILITIES § 25-502, -503

Special Authorization for Stormwater
- ENV. § 4-204 “System of Charges”
- ENV. § 4-202.1 Stormwater Remediation Fee and Fund
Bay Restoration Fund (BRF)

Also Authorized by State Law
- Signed into law May, 2004, ENV. § 9-1605.2
- Administered by MDE

Provides Funding for Local Projects, Programs
- 100% of eligible costs for wastewater plant upgrades
  - To provide enhanced nutrient removal (ENR)
- After FY16, for other sewer costs
  - EX: Rehabilitation of existing sewers
- After FY18, for other costs
  - EX: Grants for stormwater projects
<table>
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<tr>
<th>Basin</th>
<th>Nitrogen Est. Reduction (with vs. without Upgrade) Lbs/year</th>
<th>Phosphorus Est. Reduction (with vs. without Upgrade) Lbs/year</th>
<th>Start Date Construction</th>
<th>Target Date Construction Complete</th>
<th>Date In ENR Operation</th>
<th>% Const. Complete or Other Status</th>
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**Status Summary:**
- Operation = 58
- Construction = 2
- Design = 6
- Planning = 1
Rising Cost of Service

Forces Counties, Cities, Towns to Look at Rates
• Must recoup costs from customers; no other option

Rate Increases Are Not Popular
• Local utility managers know this

Sometimes They Are Necessary
• EX: Baltimore Co. needs to replace aging infrastructure
  More than 50% of water, sewer pipes are > 50 yrs. old
  Has spent $1.8 billion since 2011 on upgrades
• Giving some residents a credit to help
  Homes assessed at $250,000 or less
Affordability & General Assembly

Challenges in Paying Bills Caught GA Attention
• Not limited to utility bills; larger discussion of tax sales

2017 General Assembly Passed SB 823
• Sponsored by Senator Eckardt

Established Tax Sales Task Force
• From the Preamble:
  – “Whereas, People are losing their homes for unpaid taxes and water bills;”
• Directed to evaluate tax sales to collect water charges
  – Alternative methods for collecting these charges
Tax Sales Task Force

Genesis of Issue Was Tax Sales in Baltimore

- Baltimore City has certificate system
- Private investors purchase liens, option to foreclose
- Alleged “cherry picking” by investors leaves some properties unsold year after year
- Properties go through tax sale year after year

Final Task Force Report Ended Up Much Broader

- Issued on Jan. 18, 2018
- Made statewide recommendations
- Some bills in 2018 Session (slides below)
Water Recommendations

Water Shut-Offs for Vacant Properties

• Enable and encourage jurisdictions to shut off water
• If property is deemed vacant and abandoned
• Keeps water bill from continuing to accrue
• Some concerns about fire suppression
• Report notes fire suppression must have separate connection

Homeowner Notice to Avert Sale

• Jurisdiction sending late notice would send info.
• On assistance from community organizations
• Some concerns regarding cost
Higher Threshold for Tax Sales
• Enable jurisdictions to set minimum threshold
• Currently $250 triggers sale (Balt. City, $750)

Enable Water Affordability Programs
• Jurisdictions may look to WSSC as model

Encourage Payment Plans
• Some jurisdictions already have in place

Enable Round Up Programs
• Ratepayers can round up payment to help others
Affordability Programs
HB 923 (Walker), SB 709 (Eckardt)
PASSED

Authorizes Affordability Program
• By political subdivision, sanitary commission, authority
• Providing water and sewer services
• Including payment plans and round up programs

Authorizes Disconnection to Vacant Properties
• If local governing body finds that property is vacant lot or
• Is “vacant and unfit for habitation on a house or building violation notice”

Uses Word “May”
• Neither authorization is mandatory
Tax Sales – Vacant and Abandoned Properties SB 951 (Eckardt) PASSED

Authorizes Release of Liens
• By governing board of county or municipal corporation
• Or Board of Estimates (Baltimore City)
• Encourage redevelopment of certain properties

Also Authorizes Other Actions
• Withhold certain property from sale
• Sell abandoned property for less than taxes or fees
• Purchase abandoned property for min. bid if no private purchaser
Tax Sales – Homeowner Protections
SB 952 (Eckardt)
PASSED

Authorizes Collector to Withhold From Sale

- Any residential property
- When taxes plus interest and penalties are less than $750
- As compared to other properties at $250

Requires Notification to Property Owner

- With 30 day notice sent before sale
- If the property is primary residence, reference program
  - To assist owner from losing home
  - HOPE hotline or another counseling svc
  - Must mention homeowners’ property tax credit option
Stormwater Fees

In 2012, General Assembly Passed HB 987

- Amended ENV. § 4-202.1
- County, muni covered by Phase I MS4 permit
  - MS4 = Municipal Separate Storm Sewer System
- Must have stormwater remediation fee

Impacted 9 Communities

- Frederick Co., Harford Co., Charles Co., Carroll Co.
Repeal of Stormwater Fee

Press Coverage Not Positive

- EX: From Forbes (2014)
  - “Maryland, for example, has had 40 new taxes signed into law by Gov. O’Malley since he took office in 2007. The most oppressive of those taxes is the one being levied on rain. If you’re expecting a punch line from that last sentence, you’ll be waiting awhile, because it is no joke. Maryland is the only state in the country that taxes the amount of rain that falls.”

In 2015, General Assembly Acted

- Passed SB 863
- Stormwater fund is still mandatory
- Stormwater fee is not
  - Stormwater program “may” include fee
Funding Gap Is Significant Issue

State’s MS4s Are Working Hard
• To reduce pollutants to Chesapeake Bay
• Permits require 20% restoration
  – Of untreated impervious surface
  – Includes ground surfaces that do not allow infiltration of rain

Costs for Permit Compliance Are High
• Installing BMPs in urban areas is most costly option

More Funding Assistance Is Needed
• At state and federal level
QUESTIONS?

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Serving Local Governments in MD, MO, NC, SC, VA, WV & Beyond