

**The Talbot Integrity Project, Inc.**

**8404 Aveley Manor Lane**

**Easton, MD 21601**

April 26, 2022

**BY EMAIL AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Benjamin Grumbles, Secretary  
Maryland Department of the Environment  
1800 Washington Blvd.  
Baltimore, MD 21230

Attorney General Brian Frosh  
Office of the Attorney General  
200 St. Paul Place,  
Baltimore, MD. 21202

Re: Talbot County Comprehensive Water and Sewer Plan—  
(a) Request for Action, and (b) Notice Required by  
Environmental Standings Act Section 1-505(b)

Dear Secretary Grumbles and Attorney General Frosh:

This letter is delivered for a two-fold purpose. First, to respectfully urge that the Maryland Department of Environment (“MDE”) simply do the right thing for the citizens of Talbot County and all of Maryland by causing immediate modification to the Talbot County Comprehensive Water and Sewer Plan (“the CWSP”). Second, and hopefully unnecessary in the final analysis, is to provide required notice before any action is taken by The Talbot Integrity Project (“TIP”) under the Environmental Standing Act of the Maryland Code.

**SECTION 1: MDE SHOULD DELAY THE LAKESIDE CONNECTION--BECAUSE IT IS THE RIGHT THING FOR MARYLAND, IRRESPECTIVE OF PROCEDURAL ISSUES.**

The controversies surrounding the *process* of amending the Talbot County CWSP by adopting Resolution 281 (“R281”) are well known to MDE. But focusing so much attention on procedural matters, as important as they are, perhaps has supplanted any consideration by MDE of the even more critical *substantive* issues in question. (In recent months I have sent several letters to you strongly emphasizing the procedural problems, and in hindsight regret that singular emphasis.)

TIP and the vast majority of citizens of Talbot County believe we face an imminent environmental threat to the land and waters of Talbot County, and to public health, if MDE permits a significant additional sewage load to flow into the existing Trappe plant that discharges into a small unnamed tributary of La Trappe Creek that is already very highly impaired.

Here is a very brief summary of information not known by local authorities (and some not known by MDE) in 2020 when R281 was adopted:

- As to the existing Trappe sewerage treatment plant:
  - It has NO LIMIT on total nitrogen under its existing operating permit;
  - **It is regularly discharging nitrogen at 38 mg/L, vs the Enhanced Nutrient Removal (“ENR”) standard of 3 mg/L** (which in practice is often less than 1 mg/L);
  - It has serious uncorrected inflow and infiltration problems;
  - It has had occasional serious failures in the recent past (4 months in 2021);
  - It shows evidence of related bacteriological issues (e.g., fecal coliform in the stream beneath the plant tested at 10 x state limit for safe water);
  - The actual timing of any future improvements is inherently unknowable.
- As to Trappe Creek:
  - It is already impaired (issues involve dissolved oxygen, excess nutrients);
  - The entire tributary is under shellfish advisory; the upper half permanently closed to harvesting, the lower half conditionally (i.e., none after 3 days of heavy rain);
  - Its headwaters are very shallow, with limited flushing; characterized as “an effluent dominated stream;”
  - In addition to bars in the Creek where harvesting is prohibited, other oyster bars are located near where it empties into the Choptank.
  - Photographs of the Creek’s unnamed tributary are at “Exhibit B,” the very last Exhibit attached.
- As to proposed connections from the Lakeside Subdivision:
  - At least 120 homes are to be connected, possibly more;
  - Connections could remain indefinitely;
  - That increases the sewerage load by approximately 30%;
  - There is no “plan B,” if hook-ups occur and future concepts do not pan out.

The facts outlined above present serious and unacceptable environmental risks to Talbot County and Maryland waters. These are not just uninformed opinions of neighbors with a “NIMBY” mind frame seeking to harass or delay development; to the contrary, this information, and more, was assembled—and presented only in 2021, to the Talbot County Planning Commission (“the Commission”) and the Talbot County Council (“the Council”)—by such authoritative parties as scientists from the Chesapeake Bay Foundation, ShoreRivers, and a nationally recognized Ph.D. wastewater environmental engineer and scientist with 35-years’ experience in wastewater systems, as well as various citizens and citizen organizations experienced in these issues who live nowhere near the subdivision in question.

Hearing this important new information (which was unknown to it in 2020) and evaluating the information by the standards of the Talbot County Comprehensive Plan (the “Comp Plan”) with respect to local land use issues (which are not necessarily the same standards MDE would use for its determinations, as those do not involve local land use matters<sup>1</sup>), the Planning Commission determined that the new information revealed significant problems affecting the environment and public health which are NOT consistent with our Comp Plan.

The people in Talbot County also heard that new information, and are puzzled indeed as to why MDE is permitting this connection to happen, damaging irreparably the local environment and jeopardizing public health. But what few people realize is that that MDE itself has never actually received a meaningful presentation of the new information heard by our Planning Commission!

***Why is that?*** It is because MDE only reviewed R281 and the CWSP amendment it embodied in the autumn of 2020, *before* any of the new information was available to anyone at all—not the Planning Commission, the Council, or MDE itself. People are generally confused, knowing that MDE has evaluated Lakeside’s wastewater plans in the past—and is reviewing it again under a court-ordered remand. But people do not generally understand that that review pertains *exclusively to the new spray irrigation treatment plant* contemplated to serve the rest of the subdivision, BUT NOT THE FIRST 120 HOMES<sup>2</sup>.

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<sup>1</sup> A Maryland Court discussed the importance of County-level land use decisions vs. other wastewater regulations administered by MDE, noting, “this body of state law clearly contemplates a ***pervasive and vital*** role for local legislation in the field of sewerage management [Holmes v. MRA, 90 Md. App. 120 (1992)]

<sup>2</sup> Those lots already designated long ago as “immediate priority” for sewer service in the Town of Trappe by past Planning Commissions are legally able to connect to the Trappe plant. The primary point of R281 was to designate the Lakeside subdivision also as “immediate priority,” which is required for the first 120 homes to connect to the

We are confident that, applying its own standards when evaluating the new information and given the responsibilities delegated to MDE by EPA under the Clean Water Act, and other laws, MDE will reach the same conclusion as our Planning Commission and the experts referred to herein: that for the sake of our environment and public health, it is necessary to prohibit sewer connections from Lakeside to the existing Trappe plant until such time as that plant is upgraded to current ENR technology. Accordingly, TIP, for itself and the citizens of Talbot County, respectfully requests that MDE schedule a hearing to receive from knowledgeable parties a proper presentation of information germane to the *substance* of this controversy.

(Due to the possibility of imminent and irreparable harm, we believe the matter is particularly urgent, and so respectfully request the MDE suspend the effectiveness of its November 4, 2020 approval of R281 until it is able to hold such a hearing and reach a science-based conclusion on the substantive merits.)

## **SECTION 2: REQUIRED NOTICE UNDER THE ENVIRONMENTAL STANDARDS ACT:**

Section 1-505(b) of the Environmental Standing Act (“the ESA”) requires that, at least 30 days prior to the commencement of any action, a party proceeding under the ESA must deliver “a sufficient written notice of the alleged condition, activity, or failure to the agency of the State or its political subdivision responsible for initiating or instituting some official action as a result of the alleged condition, activity, or failure. A copy of the notice shall be simultaneously delivered to the Attorney General.”

MDE has taken no action in the face of the Planning Commission’s November 3, 2021, finding that connecting wastewater lines serving the Lakeside subdivision to the existing Trappe wastewater plant is inconsistent with the Comp Plan until such time as that plant meets ENR standards. Yet the CWSP permits just such a connection.

Accordingly, please accept this notice that TIP believes MDE has a non-discretionary, non-delegable affirmative duty to approve only amendments to the CWSP that are and remain consistent with the Comp Plan as that consistency is determined by the Planning Commission. Amendments to the CWSP that the Planning Commission has found to be inconsistent with the Comprehensive Plan are unlawful and prohibited.

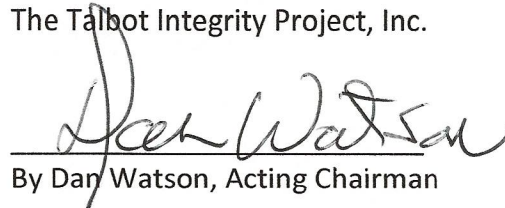
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existing plant. When learning the new information, the Planning Commission determined that no additional homes—at least those describe in R281—should be connected the existing plant irrespective of existing capacity.

The allegations conditions, activities, and failures underlying this claim are detailed in "Exhibit 0 – ESA NOTICE" attached hereto, and the enumerated Exhibits that are attached to that document.

TIP and many others look forward to prompt action by MDE to modify the CWSP so as to protect the public health and local waters of Talbot County and the State.

Sincerely,  
The Talbot Integrity Project, Inc.



By Dan Watson, Acting Chairman

All Exhibits are available to view or download at the following drop box location:

<https://www.dropbox.com/scl/fo/5u5gx3gv3ggka363omtpa/h?dl=0&rlkey=cckt2ky8gwy2yr2ha63jtff0u>

CC: BY EMAIL DELIVERY ONLY:

Suzanne Dorsey, Assistant Secretary, Maryland Department of Environment  
Les Knapp, Program Manager, Maryland Department of Environment  
Addie Eckardt, Maryland Senate  
Johnny Mautz, Maryland House of Delegates  
Chris Adams, Maryland House of Delegates  
Paul Pinsky, Maryland Senate  
Kumar Barve, Maryland House of Delegates  
Ben Cardin, US Senate  
Chris Van Hollen, US Senate  
Andy Harris, US House of Representatives  
Steny Hoyer, US House of Representatives  
Adam C. Ortiz, Regional Administrator, Region 3, EPA  
Karen Melvin, Director, Enforcement and Compliance Assurance, Region 3, EPA  
Cecil A. Rodrigues, Regional Counsel, Region 3, EPA  
Catherine Libertz, Director, Water Division, Region 3, EPA  
Michelle Price-Fay, Director, Chesapeake Bay Program, Region 3, EPA