

# **Title 26 DEPARTMENT OF THE ENVIRONMENT**

## **Subtitle 03 WATER SUPPLY, SEWERAGE, SOLID WASTE, AND POLLUTION CONTROL PLANNING AND FUNDING**

### **Chapter 13 Bay Restoration Fund Implementation**

**Authority: Environment Article, §9-1605.2, Annotated Code of Maryland; Chs. 80 and 379, Acts of 2014**

#### **01 Scope.**

This chapter specifies the procedures for implementing the Bay Restoration Fund authorized under Environment Article, §9-1605.2, Annotated Code of Maryland. The Bay Restoration Fund is administered by the Maryland Water Quality Financing Administration, a unit of the Department, and is comprised of two sub-funds:

A. Wastewater Fund: Bay Restoration Fund fees collected from customers or users of wastewater treatment plants are deposited by the Comptroller into this fund and are used to provide grants for the upgrade of wastewater treatment plants with enhanced nutrient removal technology, a portion of the operation and maintenance costs related to ENR, and other authorized uses.

B. Onsite Sewage Disposal System Fund: Bay Restoration Fund fees collected from users of onsite sewage disposal systems (such as septic systems or holding tanks) are deposited by the Comptroller into this fund and are used to provide grants or loans for the upgrade of onsite sewage disposal systems with best available technology for removal of nitrogen, and other authorized uses.

#### **.02 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) “Administration” means the Maryland Water Quality Financing Administration.

(2) “Biological nutrient removal” has the meaning stated in Environment Article, §9-1601, Annotated Code of Maryland.

- (3) “Department” means the Maryland Department of the Environment.
- (4) “Eligible cost” has the meaning stated in Environment Article, §9-1605.2(i), Annotated Code of Maryland.
- (5) “Enhanced nutrient removal” or “ENR” has the meaning stated in Environment Article, §9-1601, Annotated Code of Maryland.
- (6) “Low-income homeowner” means a household with an income less than the income eligible standards established by the Maryland Department of Human Resources for its Energy Assistance Program.
- (7) “Nonconforming onsite sewage disposal systems” means existing onsite sewage disposal systems that do not comply with current State or local laws, regulations, or policies.
- (8) “Onsite Sewage Disposal System” means a sewage system that discharges treated effluent into the ground, such as a septic system.

### **.03 Wastewater Fund.**

A. Bay Restoration Fund fees deposited into the Wastewater Fund shall be used:

- (1) To provide a source of revenue or security for the payment of principal and interest on bonds issued by the Administration, and the cost of issuance, if the bond proceeds are deposited in the Bay Restoration Fund;
- (2) To provide grant awards to wastewater treatment plants whose users have contributed to the Bay Restoration Fund for up to 100 percent of the eligible cost to upgrade wastewater treatment plants from biological nutrient removal treatment levels to enhanced nutrient removal treatment levels at the design capacity approved by the Department;
- (3) For a portion of the operation and maintenance costs, starting in FY 2010, of wastewater treatment plants that operate at the enhanced nutrient removal treatment levels, not to exceed 10 percent of the amount deposited into the Wastewater Fund annually;
- (4) Starting in FY 2018, for an annual fund transfer to the Onsite Sewage Disposal System Fund to be used in accordance with Regulation .04 of this chapter for the upgrade of onsite sewage disposal systems and other eligible uses under Environment Article, §9-1605.2(h)(2)(i)1, Annotated Code of Maryland;
- (5) Starting in FY 2018, for up to 50 percent of the eligible cost of cost-effective and efficient stormwater projects undertaken by local governments who have implemented a system of charges under Environment Article, §4-204, Annotated Code of Maryland. To be eligible for funding, the local governments shall have funds available to cover the balance of project costs;

(6) To provide for the Department's reasonable operating expenses to administer the Bay Restoration Wastewater Fund not to exceed 1.5 percent of the fees deposited into the Wastewater Fund annually;

(7) To provide for future upgrades of wastewater treatment plants to achieve additional nutrient removal or water quality improvements at ENR treatment levels or better;

(8) To earn interest.

#### B. Project Prioritization.

(1) Before FY 2018, priority for funding ENR upgrades shall be:

(a) First for ENR upgrades at wastewater treatment plants with a design capacity of 500,000 gallons per day or more that discharge to the Chesapeake Bay;

(b) Second for the most cost-effective ENR upgrades at wastewater treatment plants with a design capacity of less than 500,000 gallons per day that discharge to the Chesapeake Bay;

(c) Third for ENR upgrades at wastewater treatment plants that discharge into the Atlantic Coastal Bay or other waters of the State;

(d) Fourth for future upgrades of wastewater treatment plants to achieve additional nutrient removal or water quality improvements at ENR treatment levels or better.

(2) Starting in FY 2018, priority for funding shall be:

(a) First for ENR upgrades at wastewater treatment plants with a design capacity of 500,000 gallons per day or more that discharge to the Chesapeake Bay;

(b) Second for the most cost-effective ENR upgrades at wastewater treatment plants with a design capacity of less than 500,000 gallons per day that discharge to the Chesapeake Bay;

(c) Third for ENR upgrades at wastewater treatment plants that discharge into the Atlantic Coastal Bay or other waters of the State;

(d) Fourth for future upgrades of wastewater facilities to achieve additional nutrient removal or water quality improvements at ENR treatment levels or better;

(e) Fifth for nitrogen reduction of onsite sewage disposal systems in accordance with Regulation .04 of this chapter by transferring funds annually from the Wastewater Fund to the Onsite Sewage Disposal System Fund;

(f) Sixth for eligible stormwater projects by local governments who have implemented a system of charges under Environment Article, §4-204, Annotated Code of Maryland.

C. Ranking System. The Department shall request for and accept applications for financial assistance annually and prepare a project priority list that ranks individual projects based on the following factors:

- (1) Nutrient loads currently discharged and projected nutrient load reduction;
- (2) Cost-effectiveness in providing water quality benefits;
- (3) Relative effectiveness of water quality benefit to the Chesapeake Bay or other body of water identified by the Department as impaired under Section 303(d) of the Clean Water Act;
- (4) The existence of an Administrative or Civil Compliance Order or of a compliance schedule in a discharge permit;
- (5) Readiness to proceed to construction.

D. Funding Allocation. Each fiscal year, the total available grant funds, net of revenue needed for payment of debt service on outstanding bonds, operation and maintenance grants, and allowed operating expenses shall be allocated in priority order to construction ready projects in accordance with §§B and C of this regulation, and as follows:

- (1) Major wastewater treatment plants for ENR upgrade that discharge to the Chesapeake Bay;
- (2) Minor wastewater treatment plants for ENR upgrade that discharge to the Chesapeake Bay;
- (3) Other wastewater treatment plants for ENR upgrade that discharge to the Atlantic Coastal Bay or other waters of the State;
- (4) Other wastewater treatment plants for future upgrades to achieve additional nutrient removal or water quality improvements at ENR treatment levels or better;
- (5) Onsite Sewage Disposal System Fund for nitrogen reduction, starting in fiscal year 2018;
- (6) Stormwater management, starting in fiscal year 2018.

E. Enhanced Nutrient Removal Operation and Maintenance Grants.

- (1) In fiscal year 2010 and thereafter, up to 10 percent of the fees collected annually in the Wastewater Fund shall be given to owners of wastewater treatment plants that are operating at the enhanced nutrient removal treatment level as grant awards to partially offset the cost of operation and maintenance.
- (2) The operation and maintenance grant for wastewater treatment plants operating at the enhanced nutrient removal treatment levels shall be at the base rate of \$30,000 per year for every one million gallons per day design flow, not to exceed \$300,000 per facility per year. Facilities with less than one million gallons per day design flow shall receive the base rate of \$30,000 per

year. This formula may be adjusted if there is a change in the Bay Restoration Fund statute, or if the amount appropriated in the budget is reduced.

(3) The Department may offer a prorated amount of an operations and maintenance grant to correspond with the number of months that a wastewater treatment plant operated at the enhanced nutrient removal treatment level in the first year of project completion.

(4) To qualify for the annual operation and maintenance grant, the following criteria shall be met:

(a) The users of the wastewater treatment plant pay the Bay Restoration Fund fee;

(b) The owner shall file an application with the Department on or before January 31 of each year, or by a date specified by the Department;

(c) The owner shall demonstrate, by submitting performance data for the prior calendar year, that the plant was operated in a manner that optimized enhanced nutrient removal and used its best efforts to achieve equal to or less than 3 mg/l total nitrogen and equal to or less than 0.3 mg/l total phosphorus in wastewater effluent concentration;

(d) The owner shall provide data requested by the Department about the impact that a wastewater treatment plant that was upgraded to ENR has had on growth within the municipality or county that such a wastewater treatment plant is located as required by Environment Article, §9-1605.2, Annotated Code of Maryland.

#### **.04 Onsite Sewage Disposal System Fund.**

A. Bay Restoration Fund fees deposited into the Onsite Sewage Disposal System Fund shall be used:

(1) To provide grants or loans up to 100 percent for:

(a) The cost to upgrade an existing onsite sewage disposal system with the best available technology for the removal of nitrogen;

(b) The cost difference between a conventional onsite sewage disposal system and an onsite sewage disposal system that utilizes the best available technology for the removal of nitrogen;

(c) The cost of replacing multiple onsite sewage disposal systems located in the same community with a new community sewerage system that is owned by a local government and that meets enhanced nutrient removal standards, and the cost may not exceed the sum of the cost difference between conventional onsite sewage disposal systems and new onsite sewage disposal systems that use the best available technology for removing nitrogen; and

(d) The cost of connecting a property using an onsite sewage disposal systems to an existing wastewater treatment plant that meets either enhanced nutrient removal or biological nutrient

removal standards. This cost may not exceed the sum of the cost of onsite sewage disposal systems that include best available technology for removing nitrogen. This cost may include payment of principal, but not interest, of debt issued by a local government for such connection.

(2) To provide grants or loans up to 100 percent for the cost of repairing or replacing failing onsite sewage disposal systems with a system that uses the best available technology for the removal of nitrogen. This option is available only to low-income homeowners. The cost is the total cost of repair, replacement and upgrade including wastewater disposal drainfields, provided that funds are available after addressing the priorities listed in Regulation .04A(1)(a) and (b) of this chapter.

(3) For the Department's operating expenses, including technical assistance, to administer the Bay Restoration Onsite Sewage Disposal System Fund not to exceed 8 percent of fees deposited into the Onsite Sewage Disposal System Fund.

(4) For expenses of a local public entity, not to exceed 10 percent of the fees deposited into the onsite sewage disposal system fund, to administer, enforce, and implement regulations adopted by the Department and delegated to the local public entity, for the reduction of nitrogen using best available technology at onsite sewage disposal systems.

B. Project Prioritization. Funding shall be based on the following order of priority:

(1) Failing onsite sewage disposal systems in the Chesapeake and Atlantic Coastal Bays Critical Area, with best available technology for the removal of nitrogen;

(2) Failing onsite sewage disposal systems outside the Chesapeake and Atlantic Coastal Bays Critical Area, with best available technology for the removal of nitrogen;

(3) Nonconforming onsite sewage disposal systems in the Chesapeake and Atlantic Coastal Bays Critical Area, with best available technology for the removal of nitrogen;

(4) Nonconforming onsite sewage disposal systems outside the Chesapeake and Atlantic Coastal Bays Critical Area, with best available technology for the removal of nitrogen;

(5) Other onsite sewage disposal systems in the Chesapeake and Atlantic Coastal Bays Critical Area including new construction, with best available technology for the removal of nitrogen;

(6) Other onsite sewage disposal systems outside the Chesapeake and Atlantic Coastal Bays Critical Area, including new construction, with best available technology for the removal of nitrogen.

C. Grant Awards. The Department shall request and accept applications for financial assistance annually and shall award grants based on the following factors:

(1) Total number of septic systems within a county;

(2) Number of septic systems within the Chesapeake Bay and Atlantic Coastal Bays Critical Area within a county;

(3) Grant funding requested by the county or its authorized agent.

#### D. Income Based Grant Eligibility.

(1) Homeowners with existing onsite sewage disposal systems or new onsite sewage disposal system construction may qualify for grant funding based on their income as follows:

(a) Up to 100 percent of the approved cost for annual household income of \$300,000 or less;

(b) Up to 50 percent of the approved cost for annual household income above \$300,000.

(2) Not for profit entities with existing onsite sewage disposal systems or proposing new onsite sewage disposal system construction may qualify for up to 100 percent of the approved cost as grant funding.

(3) Businesses with existing onsite sewage disposal systems or proposing a new onsite sewage disposal system construction can qualify for up to 50 percent of the approved cost as grant funding.

(4) The grant eligibility percentages in this section may be adjusted in the future based on higher or lower funding demands for the upgrade of onsite sewage disposal systems.

#### E. Procedures for Review, Public Notice and Public Hearing for Projects Not Located in the Priority Funding Area.

(1) Departmental Review. The applicant shall submit a complete application to include the following:

(a) Information about the public health issues that the project addresses including a description of the current condition of the onsite sewage disposal system based on factors such as type of soil, lot size, water table, bacteria samples, and dye tests;

(b) The anticipated mitigation that the project will provide to the identified public health issues;

(c) Information regarding any potential new development resulting from the project;

(d) Measures to be taken to mitigate the potential impacts of new growth resulting from the project;

(e) Evidence that demonstrates the total net nitrogen reduction resulting from the project as well as any additional nitrogen loading that may result from potential new growth, including:

(i) Methods used to calculate the total nitrogen reductions and additional nitrogen loading; and

(ii) Assumptions relied upon to calculate the total nitrogen reductions and additional nitrogen loading; and

(f) Language amending the Water and Sewer Plan in draft or final form to identify the problem area and provide proof of available sewer service capacity, including identity of all necessary service agreements, proposed service area boundary changes, and any text and data changes needed to document new sewerage services.

(2) Notice of Application and Public Hearing. Upon receiving an application for funding, the Department shall coordinate with the Maryland Department of Planning prior to granting preliminary approval and shall:

(a) Provide a 30-day public notice on its website homepage summarizing:

(i) The public health issues being addressed by the project;

(ii) New in-fill growth resulting from the project;

(iii) Mitigation measures to lessen the impact of new growth that could result from the project;

(iv) Net nitrogen reductions resulting from the project that shall consider the impact of additional nitrogen loading from potential new growth; and

(v) A deadline for receiving written comments;

(b) Provide a copy of the public notice to any interested party that has requested such notice; and

(c) Provide an opportunity for a public hearing, if requested within 30 days of the public notice.

(3) If a public hearing is held regarding an application:

(a) The applicant shall attend the hearing and present information concerning the application;

(b) Written comments shall be accepted if they are received by the Department on or before the deadline specified by the Department; and

(c) Oral comments may be made at the public hearing.

(4) Determination of Preliminary Approval. The Department shall, in coordination with the Maryland Department of Planning, make its determination of preliminary approval:

(a) Based on the information received with the application, along with any written comments received or any oral public comments received at the hearing that raise issues of law or material facts regarding an application for funding, but only if the issues are pertinent to purposes of the onsite sewage disposal system fund; or

(b) If no public hearing is requested, based on the information received with the application and from written comments that raise issues of law or material facts regarding an application for funding, but only if the issues are pertinent to purposes of the onsite sewage disposal system fund.

(5) Funding Approval. Upon granting an applicant preliminary approval for funding, the Department shall submit the application for a Priority Funding Area exception to the Smart Growth Coordinating Committee or to such body as may be designated by the State to consider applications for Priority Funding Area exceptions, for final approval or disapproval. The Smart Growth Coordinating Committee shall formally notify the Department of its decision.

(6) Grant Conditions: Upon final approval of a priority funding area exception by the Smart Growth Coordinating Committee or such other body as may be designated by the State to consider applications for Priority Funding Area exceptions, the Department shall notify the applicant of the approval and shall enter into a grant agreement with the applicant that shall include terms and conditions of such final approval, including:

(a) A denial of access for any future connections not included in the project's proposed service area;

(b) Limits on potential new developments that could result from the project;

(c) A requirement to amend the county water and sewer plan;

(d) Provisions to ensure that the funding for the project will not unduly impede access to funding for upgrading other individual onsite sewage disposal systems within the jurisdiction; and

(e) A certification from the county's environmental health director that the project is consistent with a public health area of concern and shall be subsequently added to the county's water and sewer plan.

## Administrative History

*Effective date: February 3, 2014 (40:2 Md. R. 92)*

Regulation .01A amended effective June 23, 2014 (41:12 Md. R. 669)

Regulation .03 amended effective June 23, 2014 (41:12 Md. R. 669)

Regulation .04A amended effective January 23, 2015 (42:1 Md. R. 19)

Regulation .04A, C amended effective June 23, 2014 (41:12 Md. R. 669)

Regulation .04D adopted effective January 23, 2015 (42:1 Md. R. 19)