

## Title 26 DEPARTMENT OF THE ENVIRONMENT

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

#### Chapter 13 Bay Restoration Fund Regulations

##### .01 Scope.

Section 1605.2 of Chapter 9 of Environment Article authorizes Maryland Department of the Environment to utilize certain funds generated from fees within the Bay Restoration Fund to provide grants for the upgrade of wastewater treatment plants with enhanced nutrient removal technology, and operation and maintenance cost for the enhanced nutrient removal.

##### .02 Definitions.

- A. *In general* – Unless the context clearly requires otherwise, in this chapter the following words have the meaning indicated.
- B. “Administration” means the Maryland Water Quality Financing Administration, a unit within the Department.
- C. “Bay Restoration Fund” means the Bay Restoration Fund established under § 9-1605.2 of Environment Article.
- D. “Fee” means the Bay Restoration Fund fee established under § 9-1605.2 of Environment Article.
- E. “Biological nutrient removal” means a biological nutrient removal technology capable of reducing the nitrogen in wastewater effluent to not more than 8 milligrams per liter, as calculated on an annually averaged basis.
- F. “Board” means the Maryland Board of Public Works.
- G. “Department” means the Maryland Department of the Environment.
- H. “Director” means the Director of the Administration.
- I. “Eligible costs” mean the costs identified under § 9-1605.2(i) of Environment Article.
- J. “Enhanced nutrient removal” means:
  - (1) An enhanced nutrient removal technology that is capable of reducing the nitrogen and phosphorus concentrations in wastewater effluent to concentrations of not more than 3 milligrams per liter total nitrogen and not more than 0.3 milligrams per liter total phosphorus, as calculated on an annually averaged basis; or
  - (2) If the Department has determined that the concentrations under item (1) of this subsection are not practicable for a wastewater facility, the lowest average annual wastewater effluent nitrogen and phosphorus concentrations that the Department determines are practicable for that facility.
- K. “Equivalent dwelling unit” means a measure of wastewater generated where one unit is such that:
  - (1) If a local government or billing authority for a wastewater facility has established a definition for “equivalent dwelling unit” on or before January 1, 2004, the

average daily flow of wastewater generated that the local government or billing authority has established to be equivalent to the average daily flow of wastewater generated by a residential dwelling, which may not exceed 250 gallons; or  
(2) If a local government or billing authority has not established a definition for “equivalent dwelling unit” on or before January 1, 2004, or if a local government or billing authority has established a definition that exceeds 250 gallons of wastewater generated per day, an average daily flow of 250 gallons of wastewater generated.

~~(3)(2) A business establishment shall pay for a minimum of one equivalent dwelling unit if its average daily flow is less than 250 gallons.~~

- L. “Facility” means a wastewater treatment facility.
- M. “Grant” means a grant from the Department to a grantee.
- N. “Grant agreement” means a written agreement between the Department and a grantee
- O. “Grantee” means the grant recipient.

### **.03 Fund Management.**

A. Any property subject to the Bay Restoration Fund fee shall pay for a minimum of one equivalent dwelling unit.

A.B. The Fees shall be collected by the State Comptroller from local billing authorities and deposited into the Bay Restoration Fund. The State Comptroller will transfer certain funds to the Department and to the Maryland Department of Agriculture.

B.C. The Administration shall manage the financial and accounting aspects of the Department’s share of the Bay Restoration Fund.

C.D. The Water Management Administration, a unit of the Department, will manage the technical and engineering aspects of the Bay Restoration Fund program.

### **.04 Fee Exemptions.**

- A. The fee does not apply to facilities that:
  - (1) Do not discharge nitrogen or phosphorus as determined by the Department; or
  - (2) Meet 3 mg/l total nitrogen and 0.3 mg/l total phosphorus treatment levels, **AND** did not receive any state or federal grants; or
  - (3) Discharge non-contact cooling water, water from dewatering operations, or reclaimed wastewater from a facility whose users pay into the fund, **AND** the discharge does not result in a net increase in nutrient loading.
  - (4) Solely serve a county, municipal corporation, bi-county or multi-county agency under Article 28 or 29 of the Code, Housing Authority under Article 44a of the code, school board, community college, or any other unit of a county or municipal corporation.
- B. A facility owner may submit a request for fee exemption to the Department if the facility meets at least one of the above criteria.
- C. Fee exemptions under Section 13.04.A(2) of this subtitle are valid for up to one year.
- D. Fee will resume for all facilities exempted under Section 13.04.A(2) of this subtitle on February 1 of every year unless an exemption renewal was requested prior to this date.

- E. A facility exempted under Section 13.04.A(2) of this subtitle may request the Department to re-evaluate and renew its eligibility for exemption annually based on the facility's nutrient removal performance in the previous calendar year.
- F. For the annual fee exemption approval request under Section 13.04.A(2) of this subtitle, the prior calendar year nutrient removal performance data must be submitted to the Department no later than January 31<sup>st</sup> for the exemption to be renewed and continued for the current calendar year.
- G. In the event the owner of a facility exempted under Section 13.04.A(2) of this subtitle allows the prior year fee exemption to expire, or the facility found not to meet nutrient removal performance specified under Section 13.04.A(2), the fee collection will resume from February 1, until the date the Department approves a new exemption, if applicable.

**.05 Wastewater Treatment Plant Enhanced Nutrient Removal Upgrade.**

- A. The purpose of this program is to fund the planning, design, construction and upgrade of enhanced nutrient removal facilities capable of achieving 3 mg/l in total nitrogen and 0.3 mg/l in total phosphorus, or as determined practicable by the Department, at the existing wastewater treatment plants in Maryland.
- B. All wastewater facilities serving Maryland users that have contributed to the Bay Restoration Fund are eligible for grants under this section.
- C. The Department will initially target major sewage treatment facilities that are with a design capacity of 0.5 million gallons per day or greater and discharge to the Chesapeake Bay.
- B.D. Upon completion of the initially targeted facilities and retirement of associated debt, the Department may shall rate, rank, and establish a priority list to fund other wastewater facilities based on:
  - (1) The cost-effectiveness in providing water quality benefits;
  - (2) Water quality benefit to a body of water identified by the Department as impaired under section 303(d) of the Clean Water Act;
  - (3) Readiness to proceed to construction; and
  - (4) Current and projected nitrogen and phosphorus loads discharged by a wastewater treatment facility.
- C.E. Contingent upon the availability of funds, up to 100% of eligible enhanced nutrient removal cost can be provided for the planning, design, construction and upgrade of enhanced nutrient removal facilities for flows up to the design capacity as determined by the Department in its sole discretion.
- D.F. The State financial assistance provided under this section is limited to eligible project costs that would be attributable to upgrading a wastewater facility from biological nutrient removal to enhanced nutrient removal as determined by the Department in its sole discretion.
- E.G. A grant agreement shall be signed by the Department and a grantee prior to disbursement of funds.

F.H. The grant agreement shall obligate the grantee to operate the enhanced nutrient removal facility in a manner that optimizes the nutrient removal capability of the facility in order to achieve enhanced nutrient removal performance levels.

G.I. A project schedule shall be submitted by the grantee and approved by the Department as part of the grant agreement between the Department and the grantee.

H.J. Unjustifiable delays in initiation of construction for more than 12 months from the project schedule specified in the agreement may result in reduction of eligible cost for the Bay Restoration Fund participation using Engineering News-Record or another inflation index as determined suitable by the Department.

#### **.06 Enhanced Nutrient Removal Operation and Maintenance Costs.**

- A. Starting in fiscal year 2010, up to 10% of the annual fee-revenue generated from wastewater treatment plant users may be earmarked by the Department to provide grants for a portion of the enhanced nutrient removal facility's operation and maintenance costs.
- B. Contingent upon availability of funds, the Department may provide an operation and maintenance annual grant at a rate of up to \$18,000 per million gallons per day of design capacity, as approved by the Department, not to exceed \$216,000 per facility.
- C. The Department may increase the grant rate under Section 13.06.B of this subtitle proportionately to any future fee increase.
- D. Only facilities paying into the Bay Restoration Fund that have completed an enhanced nutrient removal upgrade and are operational may be eligible for the annual grant as determined in this subsection.
- E. Facilities must apply for their share of the annual grant on or before January 31<sup>st</sup> of each year or by a certain date specified by the Department in order to be considered for funding.
- F. To be considered for the annual grant under this subsection, the grantee shall operate the enhanced nutrient removal facility in a manner that optimizes the nutrient removal capability of the facility in order to achieve enhanced nutrient removal performance levels, thereby making best efforts to achieve 3 mg/l total nitrogen and 0.3 mg/l total phosphorus in wastewater effluent concentration.

#### **.07 Post Upgrade Growth Impact Reporting.**

- A. After the completion of the enhanced nutrient removal upgrade, the Department assisted by the Department of Planning shall report on the impact of the Bay Restoration Fund on growth.
- B. The grantee shall assist the Department in implementing this reporting requirement, and that after completion of the enhanced nutrient removal upgrade, to submit to the Department any requested information that are readily available regarding properties connected to the facility starting with the date of the upgrade completion until December 31 of that year.

- C. The grantee shall continue to submit the information to the Department for every calendar year thereafter, as long as requested by the Department.