

**Summary of Comments**  
**Bay Restoration Fund Proposed Regulations**  
**June 2, 2008**

Comments/Questions	By	Date Received	MDE Action
Proposed change to section 7	WSSC	3/27/2008	Change was done and presented to the BRF Advisory Committee in the last meeting
Incorrect section number	Charles County	4/2/2008	Corrected
Proposed changes to some sections	Anne Arundel County	4/2/2008	Proposed changes will be presented to the advisory committee
What information in the application would be required to receive O&M grant?	Leonardtown	4/10/2008	Draft application form was provided
<ol style="list-style-type: none"> <li>1. By promulgating the 3 mg/l TN, are we promoting the possibility of future legal challenges to effectively lower the cap to be based on 3 instead of 4 mg/l, thus eliminating any allowance for future growth?</li> <li>2. How will these regulations incorporate HB 581?</li> <li>3. Proposing to tie section 05H regarding the project schedule and delays to the NPDES permit schedule instead of the ENR agreement.</li> <li>4. Incorrect section numbers</li> <li>5. What are the expected documentation under 07.B (for HB 893)?</li> <li>6. There is no mention of the purpose of the project ranking system in section 05B.</li> </ol>	Anne Arundel County	4/29/2008	<p><b>Proposed Response:</b></p> <ol style="list-style-type: none"> <li>1. 3 mg/l TN is the goal specified by the BRF law. 4 mg/l is the concentration used to calculate the NPDES discharge permit loading limit. The 1 mg/l grace is to allow for any possible minor problems in the operation without risking permit violation, since the 3 mg/l TN is the limit of technology. While no one can predict future regulatory requirements or possible legal challenges, similar concept of limits and goals has been used successfully in Drinking Water Standards since 1977.</li> <li>2. The proposed regulations will not incorporate HB 581 because they are only for ENR upgrade.</li> <li>3. MDE will ensure that both the permit and funding schedules are consistent.</li> <li>4. Section numbers were corrected.</li> <li>5. The proposed O&amp;M Grant application will be provided.</li> <li>6. MDE agrees. Proposed changes will be presented to the advisory committee.</li> </ol>
1. The draft regulations (Md. Code Regs. 26-03-13.06) state that MDE is	MAMWA	5/10/2008	1. We will provide this comment to MDE AG office, which will

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<p>to determine eligible project costs in its "sole discretion." The enabling statute only allows MDE to approve eligible costs and projects. See Md. Code Ann., Envir. § 9-1605.2(i)(1) and Md. Code Ann., Envir. § 9-1605.2(i)(2)(i). MDE should delete the reference to "sole discretion". MDE grant funding determinations are subject to administrative/judicial review rather than exempt from such review as the "sole discretion" language suggests.</p> <p>2. Our second concern is MDE's strict February 1st deadline for facilities seeking exemptions from the fund to request such an extension. See Draft Md. Code Regs. 26-03-13.05.A(2). We believe that MDE should retain discretion to consider exemption requests that may be submitted after February 1 (or any fixed deadline that may be established) as no such deadlines are provided in the Statute. MDE should reserve the discretion to waive any such deadline for good cause shown.</p> <p>3. MDE proposes a strict January 31st deadline for facilities to apply for operation and maintenance grants. See Draft Md. Code Regs. 26-03-13.07. We believe that all ENR facilities should automatically be considered for O&amp;M grant funding assistance rather than setting an application deadline (more paperwork and the potential that a facility might miss the deadline).</p>			<p>be reviewing the regulations to ensure consistency with law.</p> <p>2. For new exemptions, a facility owner may request an exemption at any time. Exemption renewals for currently exempted facilities need to be submitted as soon as last calendar year data becomes available (February 1<sup>st</sup>) so facilities, which are no longer meeting the criteria, will start paying the fee as soon as possible. Ocean Pine and all other facilities that are exempted under these criteria have been meeting this deadline since the inception of the BRF fee.</p> <p>3. All payments made by MDE are subject to legislative audits, which requires documentation to justify the payments. The January 31<sup>st</sup> deadline is to allow MDE to make the payments as soon as the funds become available for every funding cycle. MDE has presented the proposed application to the BRF Advisory Committee and some potential applicants and has revised it based their comments. Any other input from MAMWA to further simplify the process would be greatly appreciated.</p>
<p>MAMWA does not believe we need to provide this level of detail to report on the impact of the BRF on growth.</p>	<p>MAMWA</p>	<p>5/15/2008</p>	<p>MDE agrees. MDE has presented the proposed methodology to the advisory committee and has revised it based their comments. Any other input from MAMWA to further simplify the process would be greatly appreciated.</p>