

## **Q&A - Guidance for Implementing Revised COMAR 26.04.02.07; Best Available Technology for removal of Nitrogen (BAT).**

### **What are the requirements of 26.04.02.07?**

- A person may not install, or have installed, an onsite sewage disposal system unless the onsite sewage disposal system utilizes BAT for any of the following:
  - New construction in either the Chesapeake Bay Watershed or the Atlantic Coastal Bays watershed;
  - New construction in any watershed of a nitrogen impaired body of water; or
  - The repair or replacement of a system at a property in either the Chesapeake Bay critical area or the Atlantic Coastal Bays critical area.
- All newly installed and existing BAT systems shall be maintained and operated for the life of the system through a management measure.
- A person certified by MDE and the manufacturer must be onsite through entire installation of a BAT.

### **What is the effective date of 26.04.02.07?**

- The effective date of 26.04.02.07 is January 1, 2013.

### **Are any onsite sewage disposal systems grandfathered and not required to meet the provisions of 26.04.02.07?**

- Onsite sewage disposal systems for which a construction permit has been issued prior to January 1, 2013 do not have to meet the requirements of 26.04.02.07 provided the permit did not require BAT.

### **What constitutes a BAT?**

- Best Available Technology for Nitrogen Removal (BAT) means a nitrogen removal system approved by MDE for use in Maryland.
- A list of approved BAT systems can be found on the MDE/BRF webpage at: <http://www.mde.state.md.us/programs/Water/BayRestorationFund/OnsiteDisposalSystems/Pages/Water/cbwrf/index.aspx>
- Information on the BAT approval process can be found on the MDE / BRF webpage at: [http://www.mde.maryland.gov/programs/Water/BayRestorationFund/OnsiteDisposalSystems/Pages/Water/cbwrf/osds/brf\\_bat\\_process.aspx](http://www.mde.maryland.gov/programs/Water/BayRestorationFund/OnsiteDisposalSystems/Pages/Water/cbwrf/osds/brf_bat_process.aspx)
- The BAT approval process in Maryland entails stringent criteria for entry and verification of nitrogen reductions.

### **Who approves BATs for use in Maryland?**

- A Best Available Technology Review Committee consisting of members from MDE and local approving authorities analyzes and evaluates technology for use as BAT in MD.

### **Who may install a BAT?**

- Only a person who has completed a course of study approved by the Department for the installation of BAT, and who also has a certification of qualification for installing BAT systems from the manufacturer.
- The certified person must be present on the property while a BAT unit is installed.
- For a list of MDE-approved, BAT-approved installers or for more information on becoming an MDE approved installer please call (410) 537-3599.
- These requirements are in conjunction and in addition to the local approving authority's requirements for county specific installation requirements and any local installer certification or licensing if applicable. Check with each county for specific requirements.
- For sand mound systems that require a BAT, the installer must also be a current certified sand mound installer.

### **How will the installations of BAT be managed?**

- The installer is to notify the local authority, MDE and the manufacturer of installation within 30 days of final inspection. An installation record is to be maintained by the installer and manufacture and made available to MDE or the approving authority upon request

### **What are the Operation and Maintenance Requirements for a BAT?**

- BAT manufacturers are required to provide a 5 year O&M contract in the initial purchase price of their technology as a condition of approval in Maryland.
- All BAT shall be inspected and have the necessary operation and maintenance performed at least once per year.
- The service provider is to notify the local authority, MDE and the manufacturer of service performed after each site serviced.
- A service record is to be maintained by the provider and available to MDE or the approving authority upon request.

### **How will the required operation and maintenance of BAT be managed?**

- The Approving Authority or local government may establish a responsible management entity, acceptable to the Department, to assume operation and maintenance of BAT systems; or,
- The Approving Authority may require renewable operating permits that include enforcement provisions, inspections and monitoring; or
- The property owner shall maintain a service contract with a certified service provider for the life of the system.

### **Who may perform the required operation and maintenance of BAT**

A BAT system shall be operated by and maintained by a certified service provider.

- Individuals may become certified upon completion of a course of study on operation and maintenance of BAT systems approved by the Department. The course of study must include instruction on how BAT systems function as well as elements on operation, maintenance and repair of BAT systems.
- The certified service provider must also have a certificate of qualification from the manufacturer of the BAT system being serviced.
- A property owner may obtain certification as a service provider to maintain their system personally, subject to all the requirements of this regulation pertaining to operating and maintaining BAT systems.
- The Department shall maintain a list of certified service providers.

### **What financial assistance is available?**

Based on income and the availability of funds, the Bay Restoration Fund may pay for up to 100 percent of the cost difference between a traditional system and one that includes BAT. BRF applications for financial assistance are based on the following priorities:

1. Failing OSDS or holding tanks in the Critical Areas
2. Failing OSDS or holding tanks not in the Critical Areas
3. Non-failing OSDS in the Critical Areas
4. Non-failing OSDS outside the Critical Areas

Applications for financial assistance through the BRF should be made to the local county. A list of county contacts can be found at:

<http://www.mde.state.md.us/programs/Water/BayRestorationFund/OnsiteDisposalSystem/Documents/www.mde.state.md.us/assets/document/Maryland%20Contact%20Page%2012212011.pdf>

Additional financial assistance may be available through the following programs:

- [Maryland Housing Rehabilitation Program](#)
- [MDE's Linked Deposit Program](#)
- The United States Department of Agriculture's Rural Development 504 Grant/Loan Program may be able to provide financial assistance. Information can be found at: [http://www.rurdev.usda.gov/HAD-RR\\_Loans\\_Grants.html](http://www.rurdev.usda.gov/HAD-RR_Loans_Grants.html)

#### **What is considered a failing OSDS?**

- MDE considers an OSDS to be failing when the continued operation of the system presents an imminent threat to public health. This includes either the possibility of human contact with sewage through a system that directly discharges to the ground surface, surface water or backs up into a building; or, the system has been identified as contaminating a specific drinking water supply.
- In those circumstances where a private inspector determines an OSDS is failing as part of a property transfer inspection, the system will be given the same priority for a BRF grant as a failing system, provided the disposal portion of the system is actually replaced.

#### **What is considered new construction?**

- In those circumstances where a residence or other building is being altered and the Approving Authority determines that the existing OSDS is not adequate to serve the proposed altered building, installation of a BAT is necessary.
- New structures served by onsite sewage disposal systems in the Chesapeake Bay and Atlantic Coastal Bays watersheds

#### **When only part of a property is in the Critical Area, is BAT required for the repair or replacement of the OSDS [septic system] serving that property?**

If any part of the building served by the sewage disposal system, the sewage disposal system itself or the sewage disposal reserve area is within the Critical Area then BAT is required for the repair or replacement of the OSDS [septic system] serving the property.