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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. 366, 367 and 369, Acts of 2017

.01 - .02 (text unchanged)

.03 Wastewater Fund.

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

(1) (text unchanged)

(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) – (9) (text unchanged)

(10) To earn interest[.]*;*

(11) To purchase nitrogen, phosphorus and sediment load reductions.

B. Project Prioritization.

(1) (text unchanged)

(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, *based on their project ranking in accordance with §C of this regulation*;

(c) Third for ENR upgrades at wastewater treatment plants that discharge into the Atlantic Coastal Bay or other waters of the State, *based on their project ranking in accordance with §C of this regulation* ;

(d) Fourth for future upgrades of wastewater facilities to achieve additional nutrient removal or water quality improvements at ENR treatment levels or better, *based on their project ranking in accordance with §C of this regulation*;

(e) Fifth for purchase nitrogen, phosphorus and sediment load reductions in accordance with §F of this regulation;

[(e) Fifth] *(f) Sixth* for any of the following types of projects based on their project ranking in accordance with §C of this regulation:

(i) Combined sewer overflow abatement, rehabilitation of existing sewers, and upgrading conveyance systems, including pumping stations;

(ii) Nitrogen reduction of onsite sewage disposal systems in accordance with Regulation .04 of this chapter;

(iii) Stormwater projects by local governments who have implemented a system of charges; and

(iv) Stormwater alternative compliance plans.

C. - E. (text unchanged)

F. Purchase of Nitrogen, Phosphorus and Sediment Load Reductions

(1) The contracts executed by the Department for the purchase of nitrogen, phosphorus and sediment load reductions shall not exceed an annual obligation of $4,000,000 in FY 2018, $6,000,000 in FY 2019, $10,000,000 in FY 2020 and $10,000,000 in FY 2021, and shall not exceed a cumulative expenditure of $30,000,000 over the term of the contracts.

(2) The term of the contracts for the annual purchase of nitrogen, phosphorus and sediment load reductions can be up to the useful life of the environmental practice and shall not exceed 30 years.

(3) The Department shall not sign any new contracts for the annual purchase of nitrogen, phosphorus and sediment load reductions after June 30, 2021.

(4) The purchase of nitrogen, phosphorus and sediment load reductions cannot be from agricultural environmental practices.

(5) The Department shall use the following factors in developing a methodology for the purchase of nitrogen, phosphorus and sediment load reductions:

(a) Baseline to calculate the reduction of nitrogen, phosphorus or sediment load reduction resulting from a proposed environmental practice:

(i) The baseline for wastewater treatment plants that received grant from the Bay Restoration Fund for ENR upgrade shall be calculated using the average annual flow at a nitrogen concentration of 3.0 mg/l and a phosphorus concentration of 0.3 mg/l;

(ii) The baseline for wastewater treatment plants that did not receive grant from the Bay Restoration Fund shall be calculated using the average annual flow at an average nitrogen concentration of 18 mg/l and an average phosphorus concentration of 2 mg/l, not to exceed the waste load allocation or concentrations assigned to the wastewater treatment plant by the Department;

(iii) The baseline for nitrogen discharged from a septic system after connecting to wastewater treatment plant shall be calculated based on an average flow of 250 gallons per day per home at the nitrogen concentration of 18 mg/l for secondary treatment facility, 8 mg/l for a BNR facility, 3 mg/l for an ENR facility, and not to exceed the waste load allocation or concentrations assigned to the wastewater treatment plant by the Department. [note, no phosphorus reduction is achieved when connecting septic tanks to WWTP]

(iv) The baseline for regulated entities undertaking stormwater best management practices and non-agricultural non-point source practices for nitrogen, phosphorus or sediment reduction shall be the existing minimum requirements consistent with their municipal separate storm sewer system permit;

(v) The baseline for non-regulated entities undertaking stormwater best management practices and non-agricultural non-point source practices for nitrogen, phosphorus or sediment reduction shall be the existing conditions as determined by the Department.

(b) Calculation to determine the total annual nitrogen, phosphorus or sediment load reduction resulting from a proposed environmental practice will be consistent with the Chesapeake Bay Program accounting procedures, and

(i) for a wastewater treatment plant shall be based on the annual average loading identified in the discharge monitoring reports submitted to the Department as required under the national pollution discharge elimination system permit or groundwater discharge permit, minus the baseline loading;

(ii) for septic system connection to wastewater treatment plants, the nitrogen reduction from each septic system shall be based on 18.56 lbs/year for a septic system located within the critical areas,11.60 lbs/year for a septic system within 1,000 feet of surface water and 6.96 lbs/year for all other septic system locations minus the baseline loading calculation per §F(5)(a)(iii) of this regulation;

(iii) for septic system connection to wastewater treatment plants, the phosphorus reduction shall be zero lbs/year.

(iv) for stormwater best management practices and non-agricultural non-point source practices will be based on ……. <<<< Need help from subject matter experts

(c) The gross nitrogen, phosphorus and sediment reduction calculated in sub-section (b) will be converted to net delivered load reduction based on Chesapeake Bay Program accounting procedures adopted by the Department, and will be the maximum amount available for purchase.

(d) Verification of nitrogen, phosphorus or sediment load reduction resulting from a proposed environmental practice.

(6) The Department shall use a competitive procurement process to select sellers for the purchase of nitrogen, phosphorus or sediment load reduction, based on the following factors:

(a) Cost. Lowest cost per pound for nitrogen and phosphorus load reduction, and lowest cost/ton for sediment load reduction;

(b) Materiality. Annual load reduction of at least 1,000 lbs of nitrogen or 200 lbs of phosphorus or 5,000 tons of sediment;

.04 (text unchanged)