Clean Water Commerce Act - Nonuniform Payments and Assurance Methods

Chapter 501 and 502 of the 2024 Maryland General Assembly Session, "*Clean Water Commerce Account – Contracts for Purchase of Environmental Outcomes*", requires the Department of Environment, when entering into a contract for a project that includes construction, reconstruction, or rehabilitation, to allow nonuniform payment schedules that allow for a cost-per-pound of nitrogen reduced that varies with the achievement of performance milestones, as agreed to by both the Department and the funding recipient.

The first milestone payment may not be earlier than the time that the construction, reconstruction, or rehabilitation is complete.

To ensure the achievement of the environmental outcomes agreed to in a contract, the Department may require:

(1) A minimum final payment; and
(2) For a contract award greater than $500,000, additional financial protections, including a letter of credit, insurance instrument, or a performance bond.

Option 1: Nonuniform Payment Schedules – First Payment equal to or less than 50%

First payment no earlier than construction completion and must not exceed 50% of the total grant. The first payment can be made after MDE inspection and confirmation that the construction is in accordance with as-builts and consistent with the funding application (proposal).

I. Final payment must be greater than or equal to 10% of the total grant.

II. Other payments must be greater than or equal to 1% of the total grant.

III. No requirement for letter of credit, insurance or performance bond

Option 1 Example Payment Schedule

- $1,000,000 total contract
- 50% payment after construction completion
- No additional assurance required

Year	Payment %	Amount
1	50%	$500,000
2	25%	250,000
3	3%	30,000
4	2%	20,000
5	2%	20,000
6	2%	20,000
7	2%	20,000
8	2%	20,000
9	2%	20,000
10	10%	100,000

Option 2: Nonuniform Payment Schedules – First Payment greater than 50%

First payment no earlier than construction completion but can exceed 50% of the total grant. The first payment can be made after MDE inspection and confirmation that the construction is in accordance with as-builts and consistent with the funding application (proposal).

I. Final payment must be greater than or equal to 10% of the total grant

II. Other payments must be greater than or equal to 1% of the total grant

III. Additional assurance is required if project is greater than $500,000 and requests a first payment greater than 50% of the total grant. Additional assurance requirements are either in the form of a letter of credit, insurance, or performance bond. The additional assurance will serve to guarantee that the grantee will fulfill the terms of the contract. The assurance must be for 50% of the total grant amount and for the duration of the contract.

Option 2 Example Payment Schedule

- $1,000,000 total contract
- 74% payment after construction completion
- Additional assurance required for 50% of contract value = $500,000 letter of credit, insurance, or performance bond for the length of the contract

Year	Payment %	Amount
1	74%	$740,000
2	2%	20,000
3	2%	20,000
4	2%	20,000
5	2%	20,000
6	2%	20,000
7	2%	20,000
8	2%	20,000
9	2%	20,000
10	10%	100,000