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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

.01 Scope.

A. This chapter specifies the procedures for implementing the Bay Restoration Fund authorized under Environment Article, § 9-1605.2, Annotated Code of Maryland. The Bay Restoration Fund is administered by the Maryland Water Quality Financing Administration (“Administration”), a unit of the Department, and is comprised of two sub-funds:

(1) Wastewater Fund: Bay Restoration Fund fees collected from customers or users of wastewater treatment facilities are deposited by the Comptroller into this fund and are used to provide grants for the upgrade of wastewater treatment plants with enhanced nutrient removal technology, a portion of the operation and maintenance costs related to ENR, and other authorized uses.

(2) Onsite Sewage Disposal System Fund: Bay Restoration Fund fees collected from users of Onsite Sewage Disposal Systems (such as septic systems or holding tanks) are deposited by the Comptroller into this fund and are used to provide grants or loans for the upgrade of onsite sewage disposal systems with best available technology for removal of nitrogen, and other authorized uses.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) “Biological Nutrient Removal” has the meaning stated in Environment Article, § 9-1601, Annotated Code of Maryland.

(2) “Department” means the Department of the Environment of the State of Maryland.

(3) “Eligible Cost” has the meaning stated in Environment Article, § 9-1605.2(i), Annotated Code of Maryland.

(4) “Enhanced Nutrient Removal” or “ENR” has the meaning stated in Environment Article, § 9-1601, Annotated Code of Maryland.

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(5) "Low Income Homeowner" means a household with an income less than the income eligible standards established by the Maryland Department of Human Resources for its Energy Assistance Program.

(6) "Non-Conforming Onsite Sewage Disposal Systems" means existing onsite sewage disposal systems that do not comply with current State or local laws, regulations or policies. (7) "Onsite Sewage Disposal System" means a sewage system that discharges treated effluent into the ground, such as a septic system.

.03 Wastewater Fund.

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

(1) To provide a source of revenue or security for the payment of principal and interest on bonds issued by the Administration, and the cost of issuance, if the bond proceeds are deposited in the Bay Restoration Fund;

(2) To provide grant awards to wastewater facilities whose users have contributed to the Bay Restoration Fund;

(a) For up to 100 percent of the eligible cost to upgrade wastewater treatment facilities from Biological Nutrient Removal treatment levels to Enhanced Nutrient Removal treatment levels at the design capacity approved by the Department;

(b) For a portion of the operation and maintenance costs, starting in FY 2010, of wastewater treatment facilities that operate at the Enhanced Nutrient Removal treatment levels, not to exceed 10 percent of the amount deposited into the Wastewater Fund annually;

(c) For the following categories in priority order, effective FY 2018:

(i) For up to 100 percent of the eligible cost to upgrade wastewater treatment facilities with design capacity of 500,000 gallons or more per day, from Biological Nutrient Removal treatment levels to Enhanced Nutrient Removal treatment levels;

(ii) For up to 100 percent of the eligible cost to upgrade wastewater treatment facilities with design capacity of less than 500,000 gallons per day, from Biological Nutrient Removal treatment levels to achieve Enhanced Nutrient Removal treatment levels;

(iii) For annual fund transfer to the Onsite Sewage Disposal System Fund to be used for the upgrade of onsite sewage disposal systems and other eligible uses under Environment Article, § 9-1605.2(h)(2)(i)1, Annotated Code of Maryland. These funds to be utilized under the Onsite Sewage Disposal System Fund regulations;

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(iv) For up to 50 percent of the eligible cost of cost-effective and efficient stormwater projects undertaken by local governments who have implemented a system of charges under Environment Article, § 4-204, Annotated Code of Maryland. The local governments must have funds available to cover the balance of project costs.

- (3) To provide for reasonable operating expenses to administer the Bay Restoration Wastewater Fund not to exceed 1.5 percent of the fees deposited into the Wastewater Fund annually;
- (4) To provide for future upgrades of wastewater facilities to achieve additional nutrient removal or water quality improvements at ENR treatment levels or better;
- (5) To earn interest.

B. Project Prioritization

- (1) Before FY 2018, priority for funding ENR upgrades will 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 ENR upgrades at wastewater treatment plants with a design capacity of less than 500,000 gallons per day that discharge to the Chesapeake Bay;
 - (c) Third for ENR upgrades at wastewater treatment plants that discharge into the Atlantic Coastal Bay or other waters of the State;
 - (d) Fourth for future upgrades of wastewater facilities to achieve additional nutrient removal or water quality improvements at ENR treatment levels or better.
- (2) Starting in FY 2018, priority for funding will 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 ENR upgrades at wastewater treatment plants with a design capacity of less than 500,000 gallons per day that discharge to the Chesapeake Bay;
 - (c) Third for ENR upgrades at wastewater treatment plants that discharge into the Atlantic Coastal Bay or other waters of the State;

(d) Fourth for future upgrades of wastewater facilities to achieve additional nutrient removal or water quality improvements at ENR treatment levels or better;

(d) Fifth for upgrades of onsite sewage disposal system with best available technology for nitrogen reduction by transferring funds annually from the Wastewater Fund to the Onsite Sewage Disposal System Fund to meet the excess demand during the fiscal year;

(e) Sixth for eligible stormwater projects by local governments who have implemented a system of charges under Environment Article, § 4-204, Annotated Code of Maryland.

C. Priority System

(1) The Department will seek applications for financial assistance annually and prepare a project priority list that rank individual projects based on the following factors:

- (a) Nutrient loads currently discharged and projected nutrient load reduction;
- (b) Cost-effectiveness in providing water quality benefits;
- (c) Relative effectiveness of water quality benefit to the Chesapeake Bay or other body of water identified by the Department as impaired under Section 303(d) of the Clean Water Act;
- (d) The existence of an Administrative or Civil Compliance Order or of a compliance schedule in a discharge permit;
- (e) Readiness to proceed to construction;
- (f) Other factors established by the Department.

D. Funding Allocation

(1) Each fiscal year, the total available grant funds, net of revenue needed for payment of debt service on outstanding bonds, operation and maintenance grants, and allowed operating expenses, shall be allocated in priority order to projects within each subcategory below. Once the eligible cost for all construction ready projects for the fiscal year in subcategory (a) are fully funded, any remaining grant funds shall be allocated next to subcategory (b), and so on, until the all of the available funds for the budget fiscal year are fully allocated in the priority order below:

- (a) Major wastewater facilities for ENR Upgrade that discharge to the Chesapeake Bay;
- (b) Minor wastewater facilities for ENR Upgrade that discharge to the Chesapeake Bay;
- (c) Other wastewater facilities for ENR Upgrade that discharge to the Atlantic Coastal Bay or other waters of the State;

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- (d) Other wastewater facilities for future upgrades to achieve additional nutrient removal or water quality improvements at ENR treatment levels or better;
- (e) OSDS Fund for Nitrogen Reduction, starting in fiscal year 2018;
- (f) Stormwater management, starting in fiscal year 2018.

E. Enhanced Nutrient Removal Operation and Maintenance Grants

(1) In fiscal year 2010 and thereafter, up to 10 percent of the fees collected annually in the Wastewater Fund shall be given to owners of wastewater treatment facilities that are operating at the enhanced nutrient removal treatment level as grant awards to partially offset the cost of operation and maintenance.

(2) Subject to annual budget appropriations, the operation and maintenance grant for wastewater treatment facilities operating at the enhanced nutrient removal treatment levels shall be at the base rate of \$25,000 per year for every one million gallons per day design flow, not to exceed \$250,000 per year. Facilities with less than one million gallons per day design flow shall receive the base rate of \$25,000 per year. This formula may be increased or decreased if the Bay Restoration Fund fee amount is increased or decreased, if there is a change in the Bay Restoration Fund statute, if the amount appropriated in the budget is reduced, or in the sole discretion of the Department.

(3) The Department may in its sole discretion, offer a pro-rated amount of an operations and maintenance grant to correspond with the number of months that a wastewater treatment facility operated at the enhanced nutrient removal treatment level in the first year of project completion.

(4) To qualify for the annual operation and maintenance grant, the following criteria must be met:

(a) The users of the wastewater treatment facilities pay the Bay Restoration Fund fee;

(b) The owner shall file an application with the Department on or before January 31 of each year, or by a date specified by the Department;

(c) The owner shall demonstrate, by submitting performance data for the prior calendar year, that the facility was operated in a manner that optimized enhanced nutrient removal and used its best efforts to achieve equal to or less than 3 mg/l total nitrogen and equal to or less than 0.3 mg/l total phosphorus in wastewater effluent concentration;

(d) The owner shall assist the Department by providing requested data in reporting the impact of the Bay Restoration Fund on growth as required by Environment Article, § 9-1605.2, Annotated Code of Maryland.

.04 Onsite Sewage Disposal System Fund.

A. Bay Restoration Fund fees deposited into the Onsite Sewage Disposal System Fund shall be used:

(1) To provide grants or loans up to 100 percent for:

(a) The cost to upgrade an existing onsite sewage disposal system with the best available technology for the removal of nitrogen;

(b) The cost difference between an existing conventional onsite sewage disposal system and a new onsite sewage disposal system that utilizes the best available technology for the removal of nitrogen;

(c) The cost of replacing multiple onsite sewage disposal systems located in the same community with a new community sewerage system that is owned by a local government and that meets enhanced nutrient removal standards. Cost may not exceed the sum of the cost difference between conventional Onsite Sewage Disposal Systems and new onsite sewage disposal systems that use the best available technology for removing nitrogen;

(d) The cost of connecting onsite sewage disposal systems to an existing wastewater treatment facility that meets enhanced nutrient removal standards. Costs may not exceed the sum of the cost of onsite sewage disposal systems that include best available technology for removing nitrogen.

(2) To provide grants or loans up to 100 percent for:

(a) The cost of repairing or replacing failing onsite sewage disposal systems with a system that uses the best available technology for the removal of nitrogen. This option is available only to low-income homeowners. The cost is the total cost of repair, replacement and upgrade including wastewater disposal drainfields, provided that funds are available after addressing the priorities listed in §A(1)(a) (b)(c) and (d) of this regulation.

(3) The cost of operating expenses, including technical assistance, to administer the Bay Restoration Onsite Sewage Disposal System Fund not to exceed 8 percent of fees deposited into the Onsite Sewage Disposal System Fund.

B. Project Prioritization

Funding shall be based on the following order of priority:

(1) Failing onsite sewage disposal systems in the Chesapeake and Atlantic Coastal Bays Critical Area, with best available technology for the removal of nitrogen;

(2) Failing onsite sewage disposal systems outside the Chesapeake and Atlantic Coastal Bays Critical Area, with best available technology for the removal of nitrogen;

(3) Non-conforming Onsite Sewage Disposal Systems in the Chesapeake and Atlantic Coastal Bays Critical Area, with best available technology for the removal of nitrogen;

(4) Non-conforming Onsite Sewage Disposal Systems outside the Chesapeake and Atlantic Coastal Bays Critical Area, with best available technology for the removal of nitrogen;

(5) Other Onsite Sewage Disposal Systems in the Chesapeake and Atlantic Coastal Bays Critical Area including new construction, with best available technology for the removal of nitrogen;

(6) Other Onsite Sewage Disposal Systems outside the Chesapeake and Atlantic Coastal Bays Critical Area including new construction, with best available technology for the removal of nitrogen.

C. Grant Awards

(1) The Department will seek applications for financial assistance annually, subject to annual budget appropriation, and shall award grants based on the following factors:

- (a) Total number of septic systems within a County;
- (b) Number of septic systems within the Chesapeake Bay and Atlantic Coastal Bays Critical Area within a County;
- (c) Grant funding requested by the County or their Authorized Agent

D. Income Based Grant Eligibility

(1) Homeowners with existing Onsite Sewage Disposal Systems or new Onsite Sewage Disposal System construction may qualify for grant funding based on their income as follows:

- (a) Up to 100 percent of the approved cost for annual household income of \$300,000 or less;

(b) Up to 50 percent of the approved cost for annual household income above \$300,000;

(2) Not for profit entities with existing Onsite Sewage Disposal Systems or proposing new onsite sewage disposal system construction may qualify for up to 100 percent of the approved cost as grant funding;

(3) Businesses with existing onsite sewage disposal systems or proposing a new onsite sewage disposal system construction can qualify for up to 50 percent of the approved cost as grant funding;

(4) The grant eligibility percentages above may be adjusted in the future based on higher or lower funding demands for the upgrade of onsite sewage disposal systems.

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