

## **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 (text unchanged)**

**.02 Definitions.**

A. (text unchanged)

B. Terms Defined.

(1) – (5) (text unchanged)

(6) *“Local government” has the meaning stated in Environment Article, §9-1601.*

(7) *“Low-income homeowner” (text unchanged)*

(8) *“Nonconforming onsite sewage disposal systems” (text unchanged)*

(9) *“Onsite Sewage Disposal System” (text unchanged)*

(10) *“Person” has the meaning stated in Environment Article, §1-101.*

(11) *“Seller” means any person or local government entering into a contract to sell nutrient or sediment load reductions to the Department in accordance with §F of this regulation.*

(12) *“Septic equivalent dwelling unit” means a measure determined based on the average daily flow of a septic system as follows:*

*(a) A household septic or any other septic system with average daily flow of 195 gallons per day or less is considered one septic equivalent dwelling unit; or*

*(b) for a larger septic system, septic equivalent dwelling units are determined by the average daily flow of the system divided by 195 gallons per day.*

**.03 Wastewater Fund.**

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

(1) – (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 of 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. Ranking System. The Department shall request and accept applications for financial assistance annually and prepare a project priority list that ranks individual projects according to the methodology developed by the Department based on the following factors:

(1) Nutrient loads currently discharged and projected nutrient load reduction;

(2) Cost-effectiveness in providing water quality or public health benefits;

(3) 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;

(4) The existence of an Administrative or Civil Compliance Order or of a compliance schedule in a discharge permit;

(5) Sustainability benefits such as water reuse, asset management, full cost pricing, energy conservation and smart growth;

(6) Readiness to proceed to construction.

D. Funding Allocation. 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 construction ready projects in accordance with §§B and C of this regulation.

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 plants that are operating at the enhanced nutrient removal treatment level as grant awards to partially offset the cost of operation and maintenance.

(2) The operation and maintenance grant for wastewater treatment plants operating at the enhanced nutrient removal treatment levels shall be at the base rate of \$30,000 per year for every one million gallons per day design flow, not to exceed \$300,000 per facility per year. Facilities with less than one million gallons per day design flow shall receive the base rate of \$30,000 per year. This formula may be adjusted if there is a change in the Bay Restoration Fund statute, or if the amount appropriated in the budget is reduced.

(3) The Department may offer a prorated amount of an operations and maintenance grant to correspond with the number of months that a wastewater treatment plant 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 shall be met:

(a) The users of the wastewater treatment plant 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 plant 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; and

(d) The owner shall provide data requested by the Department about the impact that a wastewater treatment plant that was upgraded to ENR has had on growth within the municipality or county that such a wastewater treatment plant is located as required by Environment Article, §9-1605.2, Annotated Code of Maryland.

F. Purchase of Nitrogen, Phosphorus and Sediment Load Reductions

(1) Nitrogen, Phosphorus or sediment load reductions eligible for purchase shall meet the following criteria:

(a) The environmental practices generating the purchased nitrogen, phosphorus and sediment load reductions shall be located in the State of Maryland;

(b) The purchase of nitrogen, phosphorus and sediment load reductions may not be from the agricultural sector, and shall not be permitted from environmental practices implemented on agricultural land as defined in COMAR 15.20.12.02.;

(c) The load reductions to be purchased pursuant to these regulations shall have been created on or after July 1, 2017; and

(d) The load reductions purchased pursuant to these regulations may not be used for any other purpose.

(2) Contracts for purchase of load reductions shall meet the following criteria:

(a) The contracts executed by the Department for the purchase of nitrogen, phosphorus and sediment load reductions may 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 may not exceed a cumulative expenditure of \$30,000,000 over the term of the contracts;

(b) The term of the contracts for the annual purchase of nitrogen, phosphorus and sediment load reductions may not exceed the useful life of the environmental practice as determined by the Department;

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

(d) Payment provisions will be defined in each purchasing contract and shall require documentation submitted by the seller reporting the nitrogen, phosphorus or sediment load reduction resulting from a completed environmental practice.

(3) The Department shall use baseline loads and load reductions from baseline loads in developing a methodology for the purchase of nitrogen, phosphorus and sediment load reductions.

(4) The purchasing baseline loads used to calculate the reduction of nitrogen, phosphorus or sediment load reduction resulting from a proposed environmental practice are as follows:

(a) The baseline for wastewater treatment plants that received a grant from the Bay Restoration Fund for ENR upgrade shall be the lesser of:

(i) the annual load calculated based on a nitrogen concentration of 3.0 mg/l for nitrogen or a phosphorus concentration of 0.3 mg/l for phosphorus; or

(ii) the annual load for nitrogen or phosphorus, whichever is applicable, reported for the wastewater treatment plant for calendar year 2016.

(b) The baseline for wastewater treatment plants that did not receive a grant from the Bay Restoration Fund shall be the lesser of:

(i) the annual load calculated based on a nitrogen concentration of 18 mg/l for the nitrogen or a phosphorus concentration of 2 mg/l for the phosphorus, and the baselines may not to exceed the waste load allocation or concentrations assigned to the wastewater treatment plant by the discharge permit; or

(ii) the annual load for nitrogen or phosphorus, whichever is applicable, reported for the wastewater treatment plant for calendar year prior to a proposal submitted in response to a Request for Proposals issued by the Department pursuant to these regulations, and the baseline may not to exceed the waste load allocation or concentrations assigned to the wastewater treatment plant by the discharge permit.

(c) The baseline per septic equivalent dwelling unit for nitrogen loading for a septic system that is connected to wastewater treatment plant on or after July 1, 2017 and did not receive state or federal financial assistance for the connection shall be:

(i) for a septic system that has not been upgraded with the best available technology, 18.56 lbs/year for a system located within the critical areas, 11.60 lbs/year for a system located within 1,000 feet of surface water and 6.96 lbs/year for all other system locations; and,

(ii) for a septic system that has been upgraded with the best available technology, 9.28 lbs/year for a system located within the critical areas, 5.80 lbs/year for a system located within 1,000 feet of surface water and 3.48 lbs/year for all other system locations;

(d) The baseline for a permittee implementing stormwater best management practices and non-agricultural non-point source practices for nitrogen, phosphorus or sediment reduction shall be the load reduction achieved after subtracting the load reductions the permittee is required to make under its municipal separate storm sewer system permit; or

(e) The baseline for a person not regulated under municipal separate storm sewer system permit or property owner implementing stormwater best management practices or any other permissible non-point source practices for nitrogen, phosphorus or sediment reduction shall be the existing conditions of the date a proposal is submitted for the purchase of a load reduction pursuant to these regulations, as determined by the Department consistent with appropriate assumptions and provisions of the Chesapeake Bay TMDL and the Chesapeake Bay Watershed Model, or other Chesapeake Bay Program models, provided that the reduction is not used by a regulated entity to meet the reductions required under its municipal separate storm sewer system permit;

(5) Calculations to determine the total annual nitrogen, phosphorus or sediment load reduction resulting from a proposed environmental practice shall be consistent with appropriate assumptions and provisions of the Chesapeake Bay TMDL and the Chesapeake Bay Watershed Model, or other Chesapeake Bay Program models; and shall be based on the following:

(a) for a wastewater treatment plant, the load reduction is the annual loading identified in the monthly discharge monitoring reports submitted to the Department by the permittee as required under the national pollution discharge elimination system permit or groundwater discharge permit, subtracted from the baseline loading;

(b) for septic system connections to wastewater treatment plants, the nitrogen reduction from each septic system is the average flow of 250 gallons per day per connected septic equivalent dwelling unit multiplied by the annual average nitrogen concentration at the wastewater treatment plant servicing the connections for the calendar year preceding the connection, subtracted from the baseline loading;

(c) for a septic system connection to wastewater treatment plants, the phosphorus reduction is zero lbs/year;

or

(d) for stormwater best management practices and non-agricultural non-point source practices, the load reduction is the loads generated after the implementation of the best management practice as determined by the Department consistent with appropriate assumptions and provisions of the Chesapeake Bay TMDL and the Chesapeake Bay Watershed Model, or other Chesapeake Bay Program models subtracted from the baseline loading;

(6) The gross nitrogen, phosphorus and sediment reduction calculated in Subsection (5) shall be converted to net delivered load reduction consistent with appropriate assumptions and provisions of the Chesapeake Bay TMDL and the Chesapeake Bay Watershed Model, or other Chesapeake Bay Program models, and the converted load is the maximum amount available for purchase.

(7) The Department may not process any payment without being able to verify the reported reductions through the review of the supporting documentation provided by the seller, the review of other documents available to the Department, or on-site inspection, or combination of whichever is applicable.

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

(a) Cost. Lowest annual cost per pound for nitrogen and phosphorus load reduction, and lowest cost/ton for sediment load reduction with the cost of reduction for each pollutant evaluated and compared independently; and

(b) Materiality. Annual load reduction of at least 500 lbs of nitrogen or 100 lbs of phosphorus or 30 tons of sediment; and

*(c) Sustainability. The environment practice is innovative and is able to produce nitrogen, phosphorus or sediment load reductions, or combinations thereof, for extended periods of time or provide additional environmental benefits; and*

*(d) Additional benefits. The environmental practice provides additional benefits to water quality, habitat, watershed function, or social/community enhancement beyond nitrogen, phosphorus, and sediment reduction.*

*(9) Any load reductions purchased pursuant to this program and regulations shall be based on projects, practices, or activities initiated after the execution of a contract between the seller and the Department in response to the Request for Proposal issued by the Department.*

*(10) Beginning July 1, 2018, the Department shall report each year to the Bay Restoration Fund Advisory Committee on the implementation of this program.*