



**Bay Restoration Fund
Advisory Committee
Legislative Update Report
January 2006**

Purpose

Section 1605.2 of Chapter 9 of Environment Article requires that beginning January 2006, and every year thereafter, the Bay Restoration Fund (BRF) Advisory Committee must provide an update to the Governor and the General Assembly on the implementation of the BRF program, and report on its findings and recommendations.

Programs and Administrative Functions

Comptroller's Office:

The role of the Comptroller of Maryland (CoM) is to act as the collection agent for the Bay Restoration Fund (BRF) and make distributions to the Maryland Department of the Environment (MDE) and the Maryland Department of Agriculture (MDA) as required. As such, the Comptroller, in cooperation with MDE, designed a working document that would act as a return for the reporting and payment of the BRF and FAQ information. The CoM and MDE conducted joint information sessions around the State, presenting ideas and plans regarding the BRF to the various stakeholders. Input from these sessions was used to finalize the BRF process for reporting and collection purposes. Additionally, the CoM designed information for the agency's Internet site linking to the MDE BRF information.

The CoM created a new fee type for the integrated tax processing system. The fee is required to be administered under the same provisions of the sales and use tax provisions in the Tax General Article. Creating the new fee type took advantage of the advanced technology of the integrated tax system for processing and reporting and allowed the CoM to use existing database information for the majority of the accounts identified by MDE as potential BRF filers. The system also allows for the capture of any state debts prior to the reimbursement of costs.

The CoM notified all accounts identified by MDE of the new fee and the procedures for reporting and paying the same via the sending of two informational letters. Draft forms and instructions and FAQ information were sent to every potential filer prior to the due date of the first BRF returns. The final return form, the BRF-1, was developed to allow the BRF filer to report amounts collected from water or sewer bills and on-site disposal (septic) systems on the same form yet allow for the distribution of the funds as mandated by legislation. Additionally, the form allows for the reimbursement of a portion of the fee to filers who had incremental costs associated with the creation of a BRF billing system. Such costs are allowed for up to 5 percent of the amount of BRF collected. The CoM and MDE anticipated initial start up costs not being able to be recaptured with the early collections, and therefore allowed for the carryover of un-reimbursed costs. The CoM established a procedure to track these expenses and report them back to the BRF filer on pre-printed returns mailed to each filer in the first week of the month in which the BRF return is to be filed.

Maryland Department of the Environment:

Three units within the Maryland Department of the Environment (MDE) are involved in the implementation of the Bay Restoration Fund.

I. Maryland Water Quality Financing Administration:

The Maryland Water Quality Financing Administration (MWQFA) was established under Annotated Code of Maryland, Title 9, Subtitle 16 with the primary responsibility for the financial management and fund accounting of the Water Quality Revolving Loan Fund, the Drinking Water Revolving Loan Fund and the newly created Bay Restoration Fund. Specifically for the Bay Restoration Fund, the MWQFA will be responsible for the issuance of revenue bonds, payment disbursements, and the overall financial accounting including audited financial statements.

II. Water Quality Infrastructure Program:

The Water Quality Infrastructure Program (WQIP) manages the engineering planning and project management of federal capital funds consisting of federal EPA construction grants, special federal appropriations grants, and state revolving loan funds for water quality and drinking water projects. The Program also manages State grant programs of \$18-20 million annually including Special Water Quality/Health, Small Creeks and Estuaries Restoration, Stormwater, Biological Nutrient Removal, Water Supply Financial Assistance and the state match to the federal grants. There may be as many as 250 active capital projects ranging in levels of complexity at any given time. Individual projects range in value from \$10,000 to \$50 million. A single project may involve as many as eight different funding sources and multiple construction and engineering contracts over a period of years. WQIP is responsible for assuring compliance with the requirements for each funding source while achieving the maximum benefit of funds to the recipient and timely completion of the individual projects. WQIP consists of four divisions, two project management divisions, a planning division, and a loan administration division.

To accommodate the implementation of the Bay Restoration Fund (BRF), WQIP has reorganized its project management divisions and dedicated one of the divisions to handle only the wastewater treatment plant enhanced nutrient removal upgrades under the BRF.

III. Wastewater Permits Program:

The Wastewater Permits Program (WPP) issues permits for surface and groundwater discharges from municipal and industrial sources and oversees onsite sewage disposal and well construction programs delegated to local approving authorities. Large municipal and all industrial discharges to the groundwater are regulated through individual groundwater discharge permits. All surface water discharges are regulated through combined state and federal permits under the National Pollutant Discharge Elimination System (NPDES). These permits are issued for sewage treatment plants, some water treatment plants and industrial facilities that discharge to State surface waters. These permits are designed to protect the quality of the body of water receiving the discharge.

Anyone who discharges wastewater to surface waters needs a surface water discharge permit. Applicants include industrial facilities, municipalities, counties, federal facilities, schools, and commercial water and wastewater treatment plants, as well as, treatment systems for private residences that discharge to surface waters.

To accommodate the implementation of the Onsite Sewage Disposal System (OSDS) portion of the Bay Restoration Fund, the WPP Deputy Program Manager has been designated as the lead for the onsite sewage disposal system upgrade program. Program staff needs are being met through the Onsite Systems Division. WPP will ensure that the enhanced nutrient removal goals and/or limits are included in the discharge permit of facilities upgraded under the BRF.

Maryland Department of Agriculture:

The Maryland Department of Agriculture (MDA) administers many programs targeted at improving the environment by working closely with individual agricultural landowners and operators across the state. Bay Restoration Funds are used to fund the Statewide Cover Crop Program. This is one of the most effective methods of removing excess nitrogen from soil following fall harvest of crops. The small grain cover crops effectively serve as a sponge for excess nutrients holding the nutrients through the winter and minimizing loss by leaching into the nearby streams and aquifers. MDA manages the program, which includes promotional and publicity activities, receiving applications, verifying eligibility, approving or denying applications, field verifying the work completed for each applicant and processing payments. The U. S. Department of Agriculture offers an additional incentive payment on cover crops with some stipulations. MDA assists with the administration of those incentives also.

Bay Restoration Fund Status

The Bay Restoration Fund (BRF) fees collected from wastewater treatment plant users are identified as “wastewater” fees and those collected from users on individual onsite septic systems as “septic” fees. These fees are collected by the State Comptroller’s Office and deposited as follows:

- Wastewater fees (net of administrative expenses) are deposited into MDE’s “Wastewater Fund.”
- 60 percent of the septic fees (net of administrative expenses) are deposited into MDE’s “Septic Fund.”
- 40 percent of the septic fees (net of administrative expenses) are deposited into Maryland Department of Agriculture’s (MDA) “Septic Fund.”

The status for each sub-fund identified above, as of August 30, 2005, is as follows:

Wastewater Fund (MDE 100 percent for ENR & Sewer Infrastructure)

| | | | |
|-------------------|-------------------|-------------------------|-----------------|
| Sources: | | Uses: | |
| Cash Deposits | \$18,815,051 | Capital Disbursements | \$889,739 |
| Interest Earnings | <u>\$ 120,353</u> | Administrative Expenses | <u>\$ 2,612</u> |
| Total | \$18,935,404 | Total | \$892,351 |

* Updated cash flow projection (Attachment 1)

Septic Fund (MDE 60 percent for Onsite Sewage Disposal System upgrades)

| | | | |
|-------------------|-----------------|-------------------------|-----------------|
| Sources: | | Uses: | |
| Cash Deposits | \$ 480,012 | Capital Disbursements | \$0 |
| Interest Earnings | <u>\$ 2,802</u> | Administrative Expenses | <u>\$29,440</u> |
| Total | \$ 482,815 | Total | \$29,440 |

Septic Fund (MDA 40 percent for Cover Crops) (Need MDA to provide data)

| | | | |
|-------------------|-----------|-------------------------|-----------|
| Sources: | | Uses: | |
| Cash Deposits | \$ | Capital Disbursements | \$ |
| Interest Earnings | <u>\$</u> | Administrative Expenses | <u>\$</u> |
| Total | \$ | Total | |

Maryland farmers have submitted applications to plant over 200,000 acres of cover crops, which equates to a maximum payment of over \$8 million. Given the normal slippage (later plantings, fewer acres than planned) the anticipated actual expenditure for this program year is \$5.4 million.

Update on Fees from Federal Facilities:

Federal facilities perceive the BRF fee as a state tax and federal facilities are not responsible for paying it. The state Attorney General’s Office has written a 12-page legal opinion letter that was sent to a group of lawyers from Department of Defense in March.2005 explaining that the fee is not a state tax. No response has been received to date from federal facilities. However, MDE continue its discussions with the federal facilities to resolve this issue. One option to resolve this issue would be to upgrade the federal facilities with enhanced nutrient removal capability without the state participation, which would exempt them from paying the fee.

Wastewater Treatment Plant Upgrades With Enhanced Nutrient Removal (ENR)

Status of Upgrades:

The Maryland Department of the Environment (MDE) is implementing a strategy known as Enhanced Nutrient Removal (ENR) and is providing financial assistance to upgrade wastewater treatment facilities in order to achieve ENR. The ENR Strategy and the Bay Restoration Fund set forth annual average nutrient goals of WWTP effluent quality of Total Nitrogen (TN) at 3 mg/l as “N” and Total Phosphorus (TP) at 0.3 mg/l as “P”, where feasible, for all significant wastewater treatment plants with a design capacity of 0.5 million gallons per day (MGD) or greater. Other wastewater treatment plants may be selected by the Department for upgrade on a case-by-case basis and based on the cost effectiveness of the upgrade and other factors. Specifically, 66 facilities are targeted for the initial upgrades.

MDE has taken advantage of the momentum generated by the existing biological nutrient removal (BNR) program and has proceeded with the ENR strategy as a continuation to the BNR. Facilities that were in the planning or design phase to upgrade to BNR (achieving 8 mg/l total nitrogen) were asked to revise their plans to include ENR capability to achieve 3 mg/l total nitrogen and 0.3 mg/l total phosphorus. Consequently, ENR upgrades are underway at many plants, and to date, one facility has initiated the ENR operation, 6 facilities are under construction, 10 are under design, and 29 are in planning. Fact-sheets for projects under construction and in operation are provided in Attachment 2.

Estimated Cost of the Upgrades:

The cost of the upgrades continued to be estimated between \$700 million and \$1 billion. A detailed cost estimate is provided in Attachment 1. Based on these estimates and recently opened construction bids coming between 20 - 30 percent above the original estimates, it is becoming more likely that the cost of the upgrades may be closer to the \$1 billion than the \$700 million. Increasing costs have been attributed to increasing energy, supplies and materials, and labor costs. MDE’s staff is working with local officials and their consultant engineers to find ways to cut these costs. However, if this trend continues, the committee will need to initiate the discussion on how to cover the funding gap as the fund and its associated bonds can only generate \$700 million for these upgrades. Options may include increasing the fee, cutting the grant share below 100 percent, and/or extend the implementation schedule.

Impacts of Budget Cut from Other Funding Programs:

During last year’s legislative session, the BNR program was cut by \$3 million. MDE was able to mitigate for this cut on the short-term basis and to maintain the momentum of implementation. However, future cuts in the BNR program will adversely impact the implementation of ENR under the Bay Restoration Fund. The state financial assistance provided for under the Bay Restoration Fund is limited to eligible project costs that would be attributable to upgrading a wastewater facility from BNR to ENR. BNR will allow the treatment facility to reduce nitrogen discharge from ~18 mg/l total nitrogen (secondary treatment level) to 8 mg/l total nitrogen (the BNR/advanced treatment level). ENR continues the progress to upgrade the BNR facilities to reduce nitrogen discharge from 8 mg/l to 3 mg/l total nitrogen (the limit of wastewater treatment technology). Therefore, ENR cannot be implemented without achieving BNR first.

In addition, the BRF does not pay for expansion or non-ENR related items being replaced due to deterioration. Traditionally, these items are covered by the State Revolving Loan Fund (SRF), which is subsidized by federal capitalization grants and state match allowing low interest loans currently at 0.4 to 1 percent. Maintaining the level of federal and state funding for this program is critical to the success of ENR implementation.

Minor Facilities:

Under the ENR strategy, minor facilities (with design flow of less than 0.5 MGD) will be targeted for funding under the BRF only after the upgrade of the 66 targeted major facilities is completed. Also, minor facilities were not targeted for upgrade under the BNR program. All these minor facilities are currently achieving the secondary treatment level of ~18 mg/l total nitrogen. Some of these minor facilities (more than 0.11 MGD flow) will be discharging more pounds of nitrogen per year than major facilities that have an average flow of 0.5 MGD and will be achieving the ENR level of treatment. Accordingly, MDE in consultation with the Advisory Committee is considering a policy to allow funding for BNR upgrade at these minor facilities.

Onsite Sewage Disposal System (OSDS) Upgrade Program

OSDS Identification and Billing

There are an estimated 420,000 OSDS's in Maryland that need to be identified by local jurisdictions and billed. All jurisdictions now have a plan for billing. The entire plan is now underway to collect by each county, as follows:

- 8 counties sent the bill with their July, 2005 tax bill.
- 8 counties will send a separate bill by November 2005.
- 2 counties will bill with a second tax bill in December 2005.
- 3 counties will bill with their July, 2006 with tax bill.
- 3 jurisdictions are slated to determine how they will bill by July, 2006.

Best Available Technology (BAT)

The Bay Restoration Fund legislation states the following:

“ With priority given to failing systems and holding tanks located in the Chesapeake Bay and Atlantic Coastal Bays Critical Area, grants or loans for up to 100% of:

- A. The costs attributable to upgrading an onsite sewage disposal system to the best available technology for removal of nitrogen; or
- B. The cost difference between a conventional onsite sewage disposal system and a system that utilizes the best available technology for the removal of nitrogen;”

The Department has been working with stakeholders and has formed a BAT subcommittee to develop a protocol to determine which technologies should be considered BAT, and thus be eligible for BRF funding. MDE and the BAT subcommittee have reviewed programs in other states, published research and third party verification programs. Current research indicates that nitrogen discharges from OSDS's can be reduced by 50 to 60 percent. Findings and recommendations of the BAT subcommittee are presented to the Bay Restoration Fund Advisory Committee for comment.

BAT Project Selection

The statute states that failing systems in Critical Areas receive the highest funding priority. Other criteria may include the sensitivity of the receiving environment, being part of a comprehensive watershed management plan, the water quality benefit to a body of water identified by the Department as impaired under section 303(d) of the Clean Water Act, the nitrogen load discharged by the system, cost efficiency and readiness to proceed. MDE is working with the Bay Restoration Fund Advisory Committee to develop a request for proposals (RFP) to be sent to government agencies, municipalities and large onsite system users with an individual State groundwater discharge permit. The RFP will firmly establish the priority criteria, funding eligibility and awards process. The Bay Restoration Fund Advisory Committee and MDE will review the RFP submittals.

The Department plans to outsource the administration of the BRF fund for non-state permitted systems to government agencies and municipalities. The agencies and municipalities can then provide funding, attributable to the cost for upgrading OSDS to BAT, for individual OSDS, consistent with their response to the RFP. At least a portion of the costs incurred by jurisdictions for BRF related inspections, engineering and planning will be considered costs attributable for upgrading OSDS to BAT and are eligible for BRF funds. MDE will administer grants for OSDS that have a State groundwater discharge permit.

Cover Crop Activities (Maryland Department of Agriculture)

Recent Program Streamlining Activities in Preparation to BRF Program:

The Maryland Department of Agriculture engaged the Schaefer Center for Public Policy to assist with a series of focus groups across the state and questionnaires sent to over 3,000 agricultural operators across the state. The purpose was to assess the Cover Crop Program and identify improvements that would result in additional acreage enrolled in the program. The recommendations have been evaluated and many of the recommendations incorporated in the current program. Specific streamlining actions include putting the application and certification forms on the MDA website so they can be downloaded by the applicants and faxed into the local Soil Conservation District offices.

Status of Implementation of BRF for Cover Crop Activities:

The Maryland Department of Agriculture has received some funds from the BRF and is awaiting additional funds to be able to carry out the commitment made to program applicants. The demand is far greater than the estimated \$3 million to \$3.6 million in anticipated revenue.

Findings and Recommendations

The implementation of the Bay Restoration Fund program has been initiated successfully. As this report indicates, the first year of implementation was full of accomplishments and achievements. At this time, the Committee submits no recommendations.