



# Maryland

## Department of the Environment

Larry Hogan, Governor  
Boyd K. Rutherford, Lt. Governor

Ben Grumbles, Secretary  
Horacio Tablada, Deputy Secretary

**JUN -6 2019**

Ms. Shannon Moore, Manager  
Sustainability & Environmental Resources  
Community Development Division  
Frederick County  
30 North Market Street  
Frederick, Maryland 21701

Dear Ms. Moore:

This letter acknowledges the Maryland Department of the Environment's (Department) receipt, on December 28, 2018, of Frederick County's 2018 Financial Assurance Plan (FAP) and 2018 Watershed Protection and Restoration Program (WPRP) Annual Report as required by the Annotated Code of Maryland.

Chapter 124 of the Acts of the General Assembly of 2015 requires the Department to make a determination regarding the sufficiency of funding in each FAP filed with the Department. The first FAP, filed in 2016 by the County, was found to demonstrate sufficient funding for the 2-year period immediately following the filing date of the FAP. The second and subsequent FAP is sufficient if it demonstrates that the County has dedicated revenues, funds, or sources of funds to meet, for the 2-year period immediately following the filing date of the FAP, 100% of the projected costs of compliance with the impervious surface restoration plan (ISRP) requirements of the County's National Pollutant Discharge Elimination System (NPDES) Phase I Municipal Separate Storm Sewer System (MS4) permit.

After reviewing the County's 2018 FAP, the Department has determined that there is insufficient data to complete its review. Specifically, the County's ISRP rate of implementation does not meet its MS4 permit's 20% restoration requirement. Meeting the 20% restoration requirement in the five-year permit term is crucial in the analysis of the County's FAP. Because restoration implementation data are missing, the Department requests that the County submit an updated FAP by June 30, 2019 that reflects updates to Chesapeake Bay Program efficiencies and demonstrates sufficient ISRP implementation and funding. More detailed comments on the County's FAP are provided in an attachment for your information and use.

The Department recognizes the substantial effort required in developing these FAPs and WPRP Annual Reports, and looks forward to working with Frederick County on this very important environmental program for improving local water resources and Chesapeake Bay. If you have any questions regarding this review, please contact me at 410-537-3567 or Jennifer M. Smith at 410-537-3561, or [jenniferm.smith@maryland.gov](mailto:jenniferm.smith@maryland.gov).

Sincerely,

D. Lee Currey  
Director, Water and Science Administration

cc: Jennifer M. Smith, P.E., Program Manager, Sediment, Stormwater and Dam Safety Program

Attachment

**Maryland Department of the Environment’s (MDE) Review of  
Frederick County’s 2018 Financial Assurance Plan (FAP)**

FAP Condition	MDE Assessment and Recommendations
<p>Demonstration of Public Participation and Sufficient Funding</p>	<ul style="list-style-type: none"> <li>• Frederick County’s Financial Assurance Plan (FAP) was received by the Maryland Department of the Environment (MDE) on December 28, 2018, prior to the December 31, 2018 due date.</li> <li>• A public hearing and approval from the County Council occurred on October 16, 2018.</li> <li>• The FAP demonstrates that at least 100% of the projected Impervious Surface Restoration Plan (ISRP) costs will be funded for fiscal years (FY) 2019-2020. However, the County’s ISRP rate of implementation does not meet its MS4 permit’s 20% restoration requirement. Meeting the 20% restoration requirement in the five-year permit term is crucial in the analysis of the County’s FAP. Because restoration implementation data are missing, the Department requests that the County submit an updated FAP by June 30, 2019 that reflects updates to Chesapeake Bay Program efficiencies and demonstrates sufficient ISRP implementation and funding.</li> </ul>
<p>Actions to Meet Permit Requirements   (“All Actions” worksheet)</p>	<ul style="list-style-type: none"> <li>• The FAP included an executive summary that outlined the necessary actions and costs required to meet the County’s current Municipal Separate Storm Sewer System (MS4) permit and ISRP.</li> <li>• In the MS4 Information table, the Baseline Treatment Requirement (Acres) was listed as 1,328 acres. However, the MDE determined baseline treatment requirement (or ISRP requirement) is 2,620 acres. This reduces the acres restored to date and the acres expected to be restored.</li> <li>• The “All Actions” worksheet contains projects that are either in the planning stages, under construction, or complete. For example, the FY2012 tree planting should be reported under “Spec Actions”, not “All Actions”. In future reports, completed projects must be reported in the “Spec Actions” worksheet.</li> <li>• The total restored impervious acres identified in the “Spec Actions” worksheet were transferred to the “All Actions” worksheet. However, a number of completed BMPs reported in the Specific Actions worksheet were also reported in the “All Actions” worksheet. The permit term sub totals for “All Actions” only accounted for these BMPs once and thus did not cause double counting.</li> <li>• The County’s “All Actions” and “Specific Actions” worksheets report 9 acres of treatment for BMP’s implemented prior to the expiration date of the previous permit term (March 11, 2007). For example, a bioswale (BMP code MSWB) completed in FY2002 was claimed for 3 acres of treatment and tree planting (BMP code FPU) completed in FY2005 was claimed for 0.4 acres.</li> </ul> <p>The “All Actions” worksheet summed the acreage for septic pumping reported under “Operational Programs”. Additionally, FY2019-2020 septic pumping credit for 29 and 56 acres was reported under “Other” projects and</p>

**MDE’s Review of Frederick County’s 2018 FAP**

FAP Condition	MDE Assessment and Recommendations
<p>Actions to Meet Permit Requirements (Cont.)</p>	<p>was also summed. The “Other” section of the Specific Actions worksheet contained 155 acres of cumulative septic pumping credit for FY2015-2018 that was included in the permit term totals. The sum of improperly claimed septic pumping for FY2015-2020 equals 239 acres (154.7+28.8+55.5). Septic pumping is an annual practice and should not be summed. These credits have been moved to “Operational Programs” and included in the averages.</p> <p>By averaging these BMPs, the adjusted treatment credit for FY2019-2020 Operational BMPs is 53 acres, thus reducing the total restoration credit for the next two years. The permit term subtotal for “Operational Programs” was reduced from 87 acres to 75 acres (or a decrease of 12 acres). Removing the 239 acres of septic pumping and 9 acres of treatment from the previous permit term, and accounting for the decrease of 12 acres for the permit term average of Operational Programs, the total claimed permit restoration should be reduced by 260 acres.</p> <ul style="list-style-type: none"> <li>• The County did not document sufficient BMPs to meet the ISRP requirement during the current permit term. The County’s FAP reported that it would meet the restoration requirement of 1,328 acres; however, a review of the submitted data only accounts for 1,068 acres (80% of the claimed 1,328 acre requirement, or 40% of the MDE determined ISRP requirement).</li> <li>• The County proposed 170 acres of treatment, or 13% of the claimed ISRP requirement, to be completed by improving the performance of publicly owned treatment works (POTWs) to achieve equivalent pollutant reductions. Water Quality Trading Program regulations, Code of Maryland Regulations (COMAR) 26.08.11, became effective on July 16, 2018.</li> </ul> <p>The Department supports nutrient trading with the wastewater sector to achieve restoration goals; however, the current permit must be modified accordingly. The permit modification process will require time and effort; the Department recommends that the County initiate this process as soon as possible so that the trading option may be added to the County’s MS4 permit before the end of the term in December 2019.</p> <ul style="list-style-type: none"> <li>• While the County has indicated a desire to engage in nutrient trading, the Executive Summary of the current FAP indicates this may not be possible.</li> <li>• MDE requests that the County review the data discrepancies described above and provide clarifications in its next FAP submittal.</li> </ul>
<p>Annual and Projected Costs (“All Actions” and “ISRP Costs”)</p>	<ul style="list-style-type: none"> <li>• The reported Specific Actions cost per acre is \$35,018. The adjusted cost per acre, reflecting MDE’s corrections and excluding catch basin cleaning, is \$41,547. The reported cost per acre for completed and projected projects for the permit term, including POTW crediting, is \$30,737. MDE’s corrected cost per acre for this period, excluding \$0 BMPs and catch basin cleaning, is \$36,036. If calculating permit term cost per acre for each BMP</li> </ul>

**MDE’s Review of Frederick County’s 2018 FAP**

FAP Condition	MDE Assessment and Recommendations
Annual and Projected Costs (Cont.)	<p>(not including BMPs with \$0 in costs and excluding catch basin cleaning), the average cost per acre is \$52,765. This is an increase from the average cost per acre for completed BMPs (i.e., \$40,703).</p> <ul style="list-style-type: none"> <li>• In the ISRP Costs worksheet, annual costs have been reported for previous years up to FY2017. Projected costs have been reported in the document for FY2018 through FY2023.</li> <li>• In future submittals, please limit the use of cost estimates for completed restoration efforts. For FY15-FY18, septic pumping activities were reported as costing \$10,833 per acre. This cost is far higher than the other septic pumping activities. Comparing the cost for septic pumping, the cost/acre for completed SEPP is \$10,833 per acre while the cost for projected SEPP is \$325 per acre (for the SEPP reported in Capital Projects) and \$2,500 per acre (for the SEPP reported under Operational Programs).</li> <li>• On the “All Actions” worksheet, catch basin cleaning (CBC) has been included but no impervious area credits were provided for this specific BMP in the worksheet. These practices can help the County meet its restoration goals, reduce program cost, and should be proposed for credit. Until credits are claimed for these practices, no ISRP costs should be reported in the FAP because doing so increases the total costs of restoration.</li> <li>• All discrepancies noted above shall be more fully explained or corrected in future FAP submittals.</li> </ul>
Annual and Projected Revenues (“ISRP Revenue” worksheet)	<ul style="list-style-type: none"> <li>• The values for revenue were obtained by using a formula that makes the reported ISRP revenue equal the reported costs. The County should re-examine how revenues were calculated and provide clarification in its next FAP submittal.</li> <li>• The County’s reported annual sources of funds exceeds the reported ISRP revenue, demonstrating that the County has more than sufficient funding to meet the reported cost for its ISRP requirement.</li> <li>• For the next two fiscal years (FY2019-2020), the total projected fund sources (\$21.8 M) exceeds the projected costs (\$20.1M). This is equivalent to 108%, exceeding the 100% requirement.</li> </ul>
Funding Sources (“Fund Sources” worksheet)	<ul style="list-style-type: none"> <li>• The required fields for funding sources are complete and the formulas appear to be correct.</li> <li>• Sources of funds for the next two years include: <ul style="list-style-type: none"> <li>○ General Fund = \$20.3M</li> <li>○ Stormwater Remediation Fee = \$1,024</li> <li>○ State Grants = \$1.5M</li> <li>○ Total Funding Sources = \$21.8M</li> </ul> </li> </ul>
Specific Actions and Expenditures from Previous	<ul style="list-style-type: none"> <li>• As required, completed BMPs for specific projects were included in the “Spec Actions” worksheet. However, a number of practices identified as “Funded” were also included. The County is reminded to include only “Completed” BMP’s for specific projects.</li> </ul>



**MDE’s Review of Frederick County’s 2018 FAP**

<b>FAP Condition</b>	<b>MDE Assessment and Recommendations</b>
<p>Fiscal Years (“Spec Actions” worksheet)</p>	<ul style="list-style-type: none"> <li>• A majority of the formulas were correct. The County did not average impervious acres from Operational Programs and instead used a sum of the most recent year of implementation. Additionally, septic pumping activities claimed under “Other” BMPs were summed instead of averaged.</li> <li>• The Specific Actions worksheet includes BMPs that were implemented prior to the expiration date of the previous permit term. Only BMPs implemented after the expiration date of the previous permit term (March 11, 2007) should be claimed for restoration credit.</li> <li>• The only annual BMPs accounted for on the “Spec Actions” worksheet under Operational Programs are street sweeping, septic pumping, and catch basin cleaning. Of the activities listed, one BMP does not provide any quantities of restored acreage (i.e., catch basin cleaning). As stated in MDE’s previous review, these practices can help the County meet its restoration goals, reduce program cost, and should be proposed for credit. Until restoration credit is claimed, the costs for these BMPs should not be reported in the FAP.</li> </ul>
<p>Future WPRP and FAP Reporting</p>	<ul style="list-style-type: none"> <li>• Frederick County’s next Watershed Protection and Restoration Program (WPRP) Annual Report will be due in coordination with the County’s next MS4 Annual Report.</li> <li>• The County’s next FAP will be due in coordination with its 2020 Annual Report.</li> </ul>