

**MARYLAND DEPARTMENT OF THE ENVIRONMENT  
WATER QUALITY FINANCING ADMINISTRATION**

**RESPONSE TO COMMENTS  
ON THE PROPOSED REGULATIONS  
FOR THE BAY RESTORATION FUND IMPLEMENTATION  
IN COMAR 26.03.13**

**DECEMBER 4, 2013**

The Department of the Environment of the State of Maryland (“the Department”) proposed new regulations in **COMAR 26.03.13** that specified the procedures for implementing the Bay Restoration Fund authorized under Environment Article, §9-1605.2, Annotated Code of Maryland.

Public comments were accepted through October 7, 2013. Comments were received from the Maryland Association of Municipal Wastewater Agencies, Inc., Washington County Division of Environmental Management, Chesapeake Bay Foundation, and Committee Counsel for the Joint Committee on Administrative, Executive and Legislative Review. The written responses received have been summarized and the Department’s response is given below.

Total Funding Levels for Operation & Maintenance Grants (O&M)

1. **COMMENT:** The Bay Restoration Fund (“BRF”) statute authorizes up to 10% of the fund to be utilized for Operation and Maintenance (O&M) grant funds. We recommend that the Department set aside and utilize the full amount of 10% per year for O&M grants.

**RESPONSE:** The Department agrees with this recommendation and is revising the regulation to increase the proposed allocation rate from \$25,000 per MGD with a maximum \$250,000 per wastewater treatment plant (“WWTP”) per year, to \$30,000 per MGD with a maximum of \$300,000 per WWTP per year. With the new rate, the grant award will be within the statutory limit of up to 10% of annual BRF (WWTP) fee revenue, while also allocating O&M funding for the minor WWTPs that will be upgraded to ENR over the next few years.

Performance Based O&M Grants

2. **COMMENT:** The BRF statute mandates the operation and maintenance grant and does not impose any restriction based on the actual performance of the ENR plant in a given year. Therefore, all ENR facilities should receive an annual O&M grant. Some additional recommended approaches were made to set aside annually, a portion of the O&M funds to be given as grants to all ENR plants irrespective of actual performance, while the balance of the O&M funds is given as a performance incentive grant to the plants that achieve ENR or

higher nitrogen removal performance levels. Alternatively, a suggestion was made for a plant that is meeting the 4 mg/L TN permit limits or the sliding scale (3 mg/l and 4 mg/l TN) to receive a prorated amount of annual O&M grant.

**RESPONSE:** The proposed regulation provides an annual O&M grant to the WWTPs that perform at ENR ( $\leq$  3mg/l TN, 0.3 mg/l TP) during the prior calendar year. The BRF grant awarded by the Department to the WWTPs paid for the design and construction of WWTP upgrades to achieve ENR limits on an annual average. The ENR grant agreement between the owner and the Department contractually requires the owner to optimize the WWTP operations to achieve ENR. The proposal to allocate some O&M funding to all WWTPs that have been upgraded to ENR irrespective of their performance in achieving ENR is not accepted in the final regulations. The recommended approach to set aside a portion of the O&M funds as grants to all ENR plants irrespective of actual performance while the balance is given as a performance incentive grant to the plants that achieve ENR is also not accepted. The sliding scale (3 mg/l and 4 mg/l TN) O&M grant award allocation proposal previously discussed with the BRF advisory committee and proposed in the comments is also not accepted. In conclusion, the Department will maintain the same terms in the final regulation as is in the proposed regulation.

#### Unlimited Discretion

3. **COMMENT:** The Department should delete all references to “sole discretion” for O&M grants found in COMAR 26.03.13.03(E)(3).

**RESPONSE:** The Department agrees with your recommendation and has deleted the term “sole discretion” in the final regulations.

#### Priority for O&M Grants

4. **COMMENT:** The proposed regulation in COMAR 26.03.13.03(A)(2)(b) and 26.03.13.03(A)(2)(c) has two priority lists and the priority for O&M funding is confusing.

**RESPONSE:** The Department agrees with your comment and has revised the final regulations to make O&M grants a stand alone permitted use of the BRF, not subject to the prioritization process of project selection.

#### Extraneous Grant Condition

5. **COMMENT:** The Department proposes in COMAR 26.03.13.03(E)(4)(d) that, as a condition for O&M grants, a WTPP owner must assist the Department by providing requested data in reporting the impact of the BRF on growth. There is no statutory basis for imposing this data collection and submittal obligation on WWTP owners as a condition for O&M grants.

**RESPONSE:** The BRF statute requires the assistance of the ENR facility owner, the Department and MDP to gather annual data regarding growth resulting from WWTPs that have completed ENR using BRF funds. The proposed regulation narrowly seeks such data from the owner as part of the O&M grant application. The Department sees this condition as reasonable and an essential mechanism to gather the required data. Therefore, the recommendation to delete this condition is not accepted in the final regulations.

#### Onsite Sewage Disposal System - Use of Funds

6. **COMMENT:** The proposed regulation limits the use of funds for onsite wastewater disposal systems to upgrades of such onsite systems to best available technology for the removal of nitrogen. However, the statute authorizes funds to be used for such additional uses as replacing multiple systems with a community sewerage system, connecting a property using an onsite system to an existing wastewater treatment facility. We recommend that this is revised to include all the permitted uses.

**RESPONSE:** The Department agrees with your recommendation and has revised the final regulations to be inclusive of all the permitted uses.

#### Onsite Sewage Disposal System - Low Income Homeowners

7. **COMMENT:** The proposed regulation in COMAR 26.03.13.04(A)(2) does not give priority to funding low income homeowners prior to funding a community system or connecting properties to a wastewater treatment facility, as required by statute.

**RESPONSE:** The Department agrees with your recommendation and has revised the final regulations to comply with the statute and fund low income homeowners prior to funding a community system or connecting properties to a wastewater treatment facility.

#### Onsite Sewage Disposal System – Future Adjustment of Grant Eligibility

8. **COMMENT:** The proposed regulation in COMAR 26.03.13.04(D)(4) contains language that states that the grant eligibility percentages may be adjusted in the future. What does this mean?

**RESPONSE:** The intent of this language is to notify the regulated community that the grant eligibility percentages may be changed in the future. Any such change will be made by amending the regulations and following the required procedures for amending regulations.