



Middletown Wastewater Treatment Plant Enhanced Nutrient Removal (ENR) Upgrade

Bay Restoration Fund Policy Revisions & Code Amendments Initiative

Letters of Support From:

- 1) Congressman David J. Trone, Maryland's 6th Congressional District
- 2) Senator Brian J. Feldman, Chair, Education, Energy, & Environment Committee
- 3) Frederick County Delegation, Maryland Legislative Districts 2, 3, 4, & 5
- 4) Frederick County Executive & Frederick County Council

January 03, 2024

Honorable. Serena C. McIlwain
Secretary
Maryland Department of the Environment
Montgomery Park Business Center
1800 Washington Blvd.
Baltimore, MD 21230

Dear Secretary McIlwain,

I write today on behalf of the Town of Middletown, regarding the Department of the Environment's Bay Restoration Fund (BRF) allocation policy and the State of Maryland project subsidy levels granted to municipalities completing wastewater treatment facility 'enhanced nutrient removal' (ENR) upgrades.

The Burgess & Commissioners of Middletown was recently notified by MDE's Utility Permitting Department that one of their wastewater treatment plants, an aerated sewage lagoon, will not comply with the treatment and climate change resiliency requirements of their next 5-year permit, beginning in 2026. The lagoon is located in a 100-year floodplain (FEMA Flood Zone A) and must be decommissioned, rather than replaced. As a result, the Town's second wastewater treatment plant will need a complete renovation and capacity expansion, to treat all the Town's wastewater. The total project cost is \$40 million.

For such an expensive and comprehensive project, the BRF subsidy and an ENR upgrade is the Town's best-and-only option. Unfortunately, their consulting engineer's preliminary report projects a \$10 - \$12 million cost share (70% BRF, 30% Middletown). Like many rural communities, Middletown owns and operates their water and sewer utilities as an enterprise fund. A \$12 million dollar project that will overhaul their entire wastewater treatment processes and infrastructure, spurred not by growth and development, but by a State permitting requirement, will ensure the Town cannot complete another important capital project for the next 30 years.

Water quality projects like Middletown's are critical for the health and preservation of the local environment and the Chesapeake Bay, and the BRF has done an excellent job of incentivizing utility owners to upgrade their treatment processes. However, the Town's unique circumstances and

unusually high project cost warrant discretion from MDE and an increased BRF subsidy, given the intent and purpose of MD Env Code § 9-1605.2:

(2) Funds in the Bay Restoration Fund shall be used only:

(i) 1. To award grants for up to 100% of eligible costs of projects relating to planning, design, construction, and upgrade of a publicly owned wastewater facility for flows up to the design capacity of the wastewater facility, as approved by the Department, to achieve enhanced nutrient removal in accordance with paragraph (4) of this subsection; and

Middletown and their consultant, former State Senator Roger Manno, have been working with the Chair of the Education, Energy, and the Environment Committee, Senator Brian Feldman, along with fellow Committee Member, Senator Karen Lewis Young, and the Frederick County Delegation to seek increased BRF support from MDE for this important and expensive project. Middletown's \$40 million dollar Wastewater Treatment ENR Upgrade is too complex and costly for a rural community of 5,000. However, it is critical for their long-term public and environmental health and will become a model for Maryland's water quality and climate resiliency goals. This is an excellent investment opportunity for the State of Maryland and for MDE as the facilitator.

On behalf of my constituents, I strongly support the request of the Town of Middletown for MDE to increase the share of BRF funds dedicated to the Wastewater Treatment ENR Upgrade to allow this project to be reasonably affordable for the Town, and I ask that you give this request the highest priority as you discuss future disbursement of BRF funds in the next fiscal year.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Trone".

David Trone
Member of Congress

BRIAN J. FELDMAN
Legislative District 15
Montgomery County

Chair
Education, Energy, and the
Environment Committee



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The Senate of Maryland
ANNAPOLIS, MARYLAND 21401

September 18, 2023

The Honorable Serena C. McIlwain
Maryland Department of the Environment
Montgomery Park Business Center
1800 Washington Blvd.
Baltimore, MD 21230

Dear Secretary McIlwain,

I recently met with representatives from the Town of Middletown regarding the Bay Restoration Fund (BRF) eligibility criteria for their wastewater treatment plant (WWTP). They explained to me that the Maryland Department of the Environment (MDE) has mandated that all wastewater treatment lagoons must meet modern treatment standards, including the implementation of treatment technologies and upgraded infrastructure capable of achieving Enhanced Nutrient Removal (ENR) levels of wastewater treatment. Middletown's wastewater treatment lagoon is located in a floodplain (FEMA Flood Zone A), and designated as "Special Flood Hazard Areas," at high risk of flooding. FEMA Flood Zone A indicates there is at least a 25 percent chance of flooding over a 30-year period.

I was informed that MDE has indicated that Middletown's current wastewater treatment lagoon, scheduled for permit reapplication in 2025, will not be renewed unless significant ENR upgrades are made. These upgrades require considerable expense due to the fact that the wastewater treatment lagoon is located in a high-risk flood zone, and decommissioning will necessitate the relocation of half the town's wastewater flows to a second town-owned facility. That facility must therefore undergo an ENR upgrade and capacity increase. The confluence of these upgrades presents an onerous situation for Middletown, a small town with limited resources, resulting in complex engineering, operational, and safety upgrades that have exacerbated the already high cost of the upgrades.

It is also my understanding that, in order to meet the required ENR standards, MDE has released BRF ENR grant eligibility criteria, which covers 50 percent of costs for decommissioning, leaving localities with the remaining 50 percent of costs. However, according to MD Env Code § 9-1605.2 (2018) with regard to the applicability to publicly owned wastewater facilities, BRF grants are eligible for up to 100 percent of costs for planning, design, construction, and upgrades, necessary to achieve enhanced nutrient removal standards. This would appear to arguably apply to wastewater treatment lagoon decommissioning and replacement with modern ENR systems. Furthermore, for systems that MDE determines to be a threat to public health or water quality, grants, or loans for up to 100 percent of cost are available. It is this last criterion, public health or water quality, which is of interest for Middletown since it may be applicable to open-air sewage lagoons, especially if situated within a floodplain.

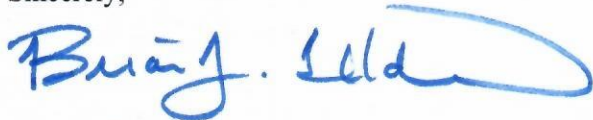
Secretary McIlwain
September 18, 2023
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Finally, while the statute states that “the eligibility and priority ranking of a project shall be determined by the Department based on criteria established in regulations adopted by the Department,” COMAR appears silent on the ENR eligibility criteria of 50 percent grant funds for decommissioning a wastewater treatment lagoon.

As we approach the upcoming 2024 legislative session, legislators and members of the public have contacted me about a variety of issues. Some of these concerns can be addressed by legislation, while others can be resolved administratively with guidance and assistance from a State agency. Regarding potential clarifying legislation to address the issue discussed above, it would be helpful for me to understand the rationale and statutory and/or regulatory authority for limiting the BRF ENR eligibility criteria for wastewater treatment lagoons to 50 percent and the associated high costs and limited program support for relocating sewage treatment out of flood zones. In the alternative, and in lieu of potential legislation addressing this situation, I also respectfully request that you coordinate with the town of Middletown to discuss how they may request consideration for a grant to recover 100 percent of the costs for planning, design, construction, and upgrades, necessary to achieve the enhanced nutrient removal standards.

Your assistance in this matter would be greatly appreciated. I look forward to your response.

Sincerely,



Brian J. Feldman

cc: Senator Karen Lewis Young

DELEGATE JESSE T. PIPPY
DELEGATION CHAIR
SENATOR WILLIAM G. FOLDEN
DELEGATION VICE CHAIR



THE MARYLAND GENERAL ASSEMBLY
ANNAPOLIS, MARYLAND 21401
FREDERICK COUNTY DELEGATION

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WILLIAM WIVELL

January 26th, 2024

Hon. Serena C. McIlwain, Secretary
Maryland Department of Environment
Montgomery Park Business Center
1800 Washington Blvd.
Baltimore, MD 21230

Dear Secretary McIlwain:

The Frederick County Delegation would like to indicate our collective support for MDE increasing the share of Bay Restoration Fund (BRF) funding that The Town of Middletown is to receive for “enhanced nutrient removal” (ENR) upgrades to their wastewater treatment system.

The Middletown Burgess & Commissioners were recently informed by MDE's Utility Permitting Department that their aerated sewage lagoon, located in a 100-year floodplain (FEMA Flood Zone AE), does not meet the treatment and climate change resiliency requirements for the next 5-year permit, set to start in 2026 (reapplication in 2025). It is mandated that the lagoon be decommissioned, meaning a \$40 million renovation and expansion of Middletown's second wastewater treatment plant is the Town's only available option to meet capacity demands and treatment permit requirements.

To address these unique circumstances and extraordinary cost, the Town must consider a BRF subsidy and an ENR upgrade, with a preliminary estimate of a \$10-\$12 million cost share (70% BRF, 30% Middletown). Although it's true that the town must only upgrade their treatment facilities to meet the State's near-term treatment requirements, the BRF subsidy heavily incentivizes upgrading to ENR-level processes and infrastructure, and it is inevitably the best-and-only option for any municipality planning an upgrade to meet MDE's permit requirements, in both the near- and long-term. This financial commitment, driven by a State permitting requirement rather than growth or asset lifecycle, would be a catastrophic financial burden for a town of only 5,000.

Please also consider that, in the 1970s, the Town was mandated and permitted by the State to install the treatment lagoon in its current location, at considerable expense and resources. Of course, the boundaries of the flood zones continue to expand, over time, with the effects of climate change and FEMA's 5-year reclassification cycle. Currently, the Town's nine-million-gallon open-air sewage lagoon is situated in a “high-risk” area that FEMA estimates has a 1% annual chance of flooding and a 26% chance over a 30-year period.

Wastewater treatment is an issue that is paramount to maintaining a healthy local environment and Chesapeake Bay, and while the BRF has certainly helped in tackling that issue across the state, the high cost and difficult circumstances Middletown is facing demand discretion with funding policies and/or legislative action. **Given the intent and purpose of MD Env Code § 9-1605.2, which permits MDE to award a grant for “up to 100% of eligible costs” for an ENR upgrade, we ask that MDE increase the share of BRF funds dedicated to the Wastewater Treatment ENR Upgrade. We also ask that you give this project special consideration in discussions regarding BRF disbursement for the next fiscal year.** Our hope is that this project can be made financially attainable for the Town and can serve as an example of MDE’s commitment to water quality and climate resiliency goals.

In the alternative, we would like to amend the BRF ENR eligibility criteria, if not clarify the criteria, and the rationale and statutory and/or regulatory authority for limiting the BRF ENR eligibility criteria for wastewater treatment lagoons to 50 percent and the associated high costs and limited program support for relocating sewage treatment out of flood zones. The legislation sought would add the following language to the Bay Restoration Fund statute (MD Env Code § 9-1605.2 (2018)), and/or MDE's 2017 published "BRF Eligibility Determination for WWTPs For Projects Starting Construction on or after July 1, 2017 (Based on House Bill 384 of 2017)":

- *Process: Decommissioning of treatment lagoon, located in a floodplain and at high risk of flooding (FEMA Flood Zones A or V), that will no longer be utilized with the new system. Relocate treatment out of floodplain, by new collection and conveyance infrastructure. The decommissioning, collection, and conveyance methods must be consistent with MDE-LMA guidelines.*
- *ENR Eligibility = 100% eligible if the existing system is lagoon*


As the Frederick County Delegation continues to pursue our legislative priorities in the 2024 legislative session, it would be helpful to understand the rationale and statutory and/or regulatory authority for limiting the BRF ENR eligibility criteria for wastewater treatment lagoons to 50 percent and the associated high costs and limited program support for relocating sewage treatment out of flood zones. Certainly, Middletown’s Wastewater Treatment ENR Upgrade project deserves special consideration from MDE and meets the spirit and intent of the Bay Restoration Fund Statute: to incentivize our municipal utilities to upgrade their facilities and participate in our goals for the environment. It shouldn’t harness them with debt and prevent them from becoming the environmentally proactive municipal governments we’re trying to encourage.

Thank you in advance for your consideration, please don’t hesitate to reach out to either my or Senator Folden’s office, should you or your staff have any questions.

Sincerely,



Delegate Jesse T. Pippy,
Frederick County Delegation – Chair



Senator William Folden,
Frederick County Delegation – Vice Chair

Jessica Fitzwater
County Executive



Brad W. Young
County Council President

FREDERICK COUNTY GOVERNMENT

February 5, 2024

Hon. Serena C. McIlwain, Secretary
Maryland Department of Environment
Montgomery Park Business Center
1800 Washington Blvd.
Baltimore, MD 21230

Dear Secretary McIlwain,

We are writing to you regarding a future wastewater treatment enhanced nutrient removal project, currently in planning with the Maryland Department of the Environment (MDE) and the Town of Middletown. As briefly discussed during your visit in October, Middletown is facing a complete renovation of their wastewater treatment facilities, including the decommissioning of an aging aerated lagoon plant and consolidating treatment to a single facility on the other side of town. The project is spurred by notification from MDE that the lagoon will soon no longer meet permitted treatment standards and, unfortunately, the small town of 5,000 will soon be overseeing a \$40 million dollar capital project to overhaul the majority of its wastewater infrastructure. Compounding the issue, the lagoon is located in a flood zone (FEMA Flood Zone A) and presents evermore increasing threats to public health and the environment, with the gradual effects of climate change.

Access to running water and sewer are essential parts of our everyday lives, and this project will ensure over 5,000 Frederick County constituents will continue to have reliable and environmentally responsible wastewater services. Of particular importance is the removal of a 1960's era treatment lagoon, located in a flood zone, which represents a significant hazard to public health, our local environment, and an insurmountable expense for this small, rural town.

The Town has expressed that such an expensive and comprehensive project simply isn't affordable, even with the projected 70% Bay Restoration Fund (BRF) subsidy. A \$10 - \$12 million dollar loan will inevitably come at the expense of the town's future and their ability to fund other important capital projects. It's important to note that the need for this project isn't the result of population growth, poor planning, and/or poor maintenance, but a mandate from the Department of the Environment to meet future treatment performance standards.

As you know, the County recently built an enhanced nutrient removal plant and we recognize that water quality projects, like Middletown's, are critically important for our future, our local environment, and ultimately the health of the Chesapeake Bay. The BRF does an outstanding job of incentivizing utility owners to upgrade their treatment processes, but it seems the Town's circumstances and high project cost warrant funding discretion and an increased subsidy from MDE.

Burgess Miller informed our offices that the Town working with the Maryland Senate Education, Energy, and the Environment Committee Members, Chair Feldman and Senator Karen Lewis Young, along with Chair Pippy and the Frederick County Delegation to pursue increased BRF support from MDE. Please accept this letter as our support and endorsement of this initiative, on behalf of our constituents in the Town of Middletown.

Your assistance in this matter would be greatly appreciated. Thank you for your consideration and please reach out with any questions or comments.

Sincerely,



Jessica Fitzwater
County Executive



Brad W. Young
County Council President