

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Department of the Environment
(DLS Control No. 14-018)**

Overview and Legal and Fiscal Impact

The regulations make clarifying and technical changes to the rules for implementing the Bay Restoration Fund. The regulations also increase the base and maximum funding rates for grants issued from the fund and require the Department of the Environment to consider the cost-effectiveness of a proposed wastewater treatment plant upgrades when prioritizing projects for funding.

The regulations present no legal issues of concern.

The regulations do not affect overall, long-term State finances or local finances on a statewide basis, but they may result in a reallocation of local grant revenues either among jurisdictions or for different uses within jurisdictions.

Regulations of COMAR Affected

Department of the Environment:

Water Supply, Sewerage, Solid Waste, and Pollution Control Planning and Funding:
Bay Restoration Fund Implementation:
COMAR 26.03.13.01, .03, and .04

Legal Analysis

Background

Chapter 428 of 2004 established the Bay Restoration Fund, which is administered by the Maryland Department of the Environment. The main goal of the fund is to provide grants to owners of wastewater treatment plants (WWTPs) to reduce nutrient pollution to the Chesapeake Bay by upgrading the systems with enhanced nutrient removal (ENR) technology. The fund is also used to support septic system upgrades and the planting of cover crops.

As a revenue source for the fund, Chapter 428 established a bay restoration fee on users of wastewater facilities, septic systems, and sewage holding tanks, and Chapter 150 of 2012 (House Bill 446) doubled the fee for most users. The revenues collected from WWTP users are used to provide grants to upgrade the State's major WWTPs with ENR technology. Of the

revenues collected from users of septic systems and sewage holding tanks, 60% is distributed to the department's Septics Account for the upgrade of septic systems, and 40% is transferred to the Maryland Department of Agriculture to provide assistance to farmers for planting cover crops.

The department adopted regulations implementing the fund in fall of 2013. Subsequently, the department received comments from the Maryland Association of Municipal Wastewater Agencies, Inc., the Washington County Division of Environmental Management, and the Chesapeake Bay Foundation, requesting clarifying and technical changes to the regulations. The proposed regulations implement those changes.

Summary of the Regulations

The action clarifies the requirements of the Bay Restoration Fund regulations and makes several technical and corrective changes. Portions of Regulation .03 listing the authorized uses for the Wastewater Fund are re-tabulated to clarify that the list is not hierarchical and that the department shall give equal priority to each authorized use. Reporting criteria for wastewater treatment plant owners are also clarified in Regulation .03. In Regulation .04, an erroneous internal reference is corrected, and throughout the regulations the term "wastewater treatment plant" is substituted for existing references to "wastewater treatment facilities."

The action also makes minor substantive changes. Amendments to Regulation .03 require the department to consider the cost-effectiveness of a proposed ENR upgrade when prioritizing projects for funding from the fund. Regulation .03 also increases the rates for operation and maintenance grants issued under the fund to wastewater treatment plants – from a base rate of \$25,000 per year for every one million gallons per day design flow, capped at \$250,000 per facility per year, to a base rate of \$30,000 per year for every one million gallons per day design flow, capped at \$300,000 per year. Facilities with less than one million gallons per day design flow are still eligible to receive the base rate.

Legal Issue

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The department cites § 9-1605.2 of the Environment Article as authority for the regulations. Section 9-1605.2 establishes the Bay Restoration Fund, which must be used, among other things, to provide the funding necessary to upgrade WWTPs with ENR technology and to support septic system upgrades; specifically, § 9-1605.2(1) requires the department to adopt regulations that are necessary or appropriate to carry out the provisions of the fund. This authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

The regulations were submitted in an improper format that showed only portions of the amended COMAR text. The department has been working with the Division of State Documents

to address these formatting issues and plans to resubmit the regulations in the correct format for publication in the *Maryland Register*.

Fiscal Analysis

The regulations do not affect overall, long-term State finances or local finances on a statewide basis, but they may result in a reallocation of local grant revenues either among jurisdictions or for different uses within jurisdictions.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulations have no impact on State or local governments. The Department of Legislative Services generally concurs, as the regulations affect the distribution of grant funding and not overall Bay Restoration Fund (BRF) finances. The regulations' substantive changes affect the allocation of WWTP grant funds by (1) requiring the consideration of a proposed project's cost-effectiveness and (2) increasing the funding available for operation and maintenance grants.

Although the amount of funding available for operation and maintenance grants increases under the regulations, the total amount of such funding is capped by statute at 10% of the money collected by WWTP users. The regulations, therefore, do not affect overall finances of BRF, but they likely result in an increase in funding allocated to WWTPs operating at ENR levels for operation and maintenance, beginning in fiscal 2014, and a decrease in the potential funding levels of other authorized uses. This impact only occurs in fiscal years in which the amount in operation and maintenance grants provided would otherwise be less than the 10% capped amount, which is likely to occur in fiscal 2014 and for the foreseeable future, based on the grant funds provided in fiscal 2013 (which amounted to about 1.2% of revenues) and current departmental estimates of future years (which range from about 2.0% in fiscal 2014 to about 8.3% in fiscal 2020). Thus, the regulations likely increase operation and maintenance grant funding for WWTPs (primarily owned by local governments) and decrease – by a corresponding amount – the funding available to other authorized uses (which are also primarily distributed for local government uses).

The regulations' requirement to consider the cost-effectiveness of a project also does not affect the overall finances of BRF or of local governments statewide, but it may alter the distribution of funds among local governments, based on the cost-effectiveness of local projects.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

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