

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	09/15/2014	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 10/31/2014

2. COMAR Codification

Title Subtitle Chapter Regulation

26 03 13 04

3. Name of Promulgating Authority

Department of the Environment

4. Name of Regulations Coordinator

Renee D Matthews

Telephone Number

410-537-3567

Mailing Address

1800 Washington Blvd

City State Zip Code

Baltimore MD 21230

Email

rmatthews@mde.state.md.us

5. Name of Person to Call About this Document

Jag Khuman

Telephone No.

410-537-3981

Email Address

jsag,khuman@marylaND.GOV

6. Check applicable items:

- New Regulations
- Amendments to Existing Regulations
 - Date when existing text was downloaded from COMAR online: 07/29/14.
- Repeal of Existing Regulations
- Recodification
- Incorporation by Reference of Documents Requiring DSD Approval
- Reproposal of Substantively Different Text:

: Md. R
 (vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

- Yes No

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

- OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to State Government Article, §10-506(c), Annotated Code of Maryland.
- OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Helen Akparanta, Assistant Attorney General, (telephone #410-537-3036) on 7/30/14. A written copy of the approval is on file at this agency.

Name of Authorized Officer

Robert M. Summers, Ph.D.

Title

Secretary

Telephone No.

410-537-3084

Date

8/13/14

Title 26
DEPARTMENT OF THE ENVIRONMENT

**Subtitle 03 WATER SUPPLY, SEWERAGE, SOLID WASTE, AND
POLLUTION CONTROL PLANNING AND FUNDING**

26.03.13 Bay Restoration Fund Implementation

Authority: Environment Article, §9-1605.2, Annotated Code of Maryland

Notice of Proposed Action

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The Secretary of the Environment proposes to amend regulations .04 under COMAR 26.03.13 Bay Restoration Fund Implementation.

Statement of Purpose

The purpose of this action is to amend the existing regulations based on the statutory changes to §9-1605.2, Annotated Code of Maryland, during the 2014 legislative session (HB11 & HB12).

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact.

The proposed amendment will provide funding to local government environmental health departments.

II. Types of Economic Impact.

	Revenue (R+/R-)	
	Expenditure (E+/E-)	Magnitude
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A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	(R+)	Up to 1.5 million/year
	Benefit (+)	
	Cost (-)	Magnitude
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D. On regulated industries or trade groups: NONE

E. On other industries or trade groups: NONE

F. Direct and indirect effects on public: NONE

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

C. Up to 10% (estimated \$1.5 million) of the Bay Restoration Fund (septic) fees deposited to the Department may be used to provide additional administrative assistance to local government environmental health departments to implement regulations related to septic systems.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Jag Khuman, Director, Water Quality Financing Administration, Maryland Department of the Environment, 1800 Washington Boulevard, or call 410-537-3891, or email to jag.khuman@maryland.gov, or fax to 410-537-3968. Comments will be accepted through December 1, 2014. A public hearing has not been scheduled.

Economic Impact Statement Part C

A. Fiscal Year in which regulations will become effective: FY 0

B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?

C. If 'yes', state whether general, special (exact name), or federal funds will be used:

D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:

E. If these regulations have no economic impact under Part A, indicate reason briefly:

F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.

G. Small Business Worksheet:

Attached Document:

Title 26 DEPARTMENT OF THE ENVIRONMENT
Subtitle 03 WATER SUPPLY, SEWERAGE, SOLID WASTE AND
POLLUTION CONTROL PLANNING AND FUNDING

26.03.13 Bay Restoration Fund Implementation

Authority: Environment Article, §9-1605.2, Annotated Code of Maryland

.01 - .03 (text unchanged)

.04 Onsite Sewage Disposal System Fund.

A. Bay Restoration Fund fees deposited into the Onsite Sewage Disposal System Fund shall be used:

(1) To provide grants or loans up to 100 percent for:

(a) – (b) (text unchanged)

(c) The cost of replacing multiple onsite sewage disposal systems located in the same community with a new community sewerage system that is owned by a local government and that meets enhanced nutrient removal standards, and the cost may not exceed the sum of the cost difference between conventional onsite sewage disposal systems and new onsite sewage disposal systems that use the best available technology for removing nitrogen;

(d) The cost of connecting a property using an onsite sewage disposal systems to an existing wastewater treatment plant that meets *either* enhanced nutrient removal *or biological nutrient removal standards*., and the] *This cost may not exceed the sum of the cost of onsite sewage disposal systems that include best available technology for removing nitrogen. This cost may include payment of principal, but not interest, of debt issued by a local government for such connection.*

(2) (text unchanged)

(3) [The] For the Department's operating expenses, including technical assistance, to administer the Bay Restoration Onsite Sewage Disposal System Fund not to exceed 8 percent of fees deposited into the Onsite Sewage Disposal System Fund.

(4) *For expenses of a local public entity, not to exceed 10 percent of the fees deposited into the onsite sewage disposal system fund, to administer, enforce and implement regulations adopted by the Department and delegated to the local public entity, for the reduction of nitrogen using best available technology at onsite sewage disposal systems.*

B. (text unchanged)

C. (text unchanged)

D. (text unchanged)

E. *Procedures for Review, Public Notice and Public Hearing for projects not located in the Priority Funding Area.*

1) *Departmental Review. The applicant shall submit a complete application to include the following:*

(a) *Information about the public health issues that the project addresses including a description of the current condition of the onsite sewage disposal system based on factors such as type Of soil, lot size, water table, bacteria samples, dye tests;*

(b) *The anticipated mitigation that the project will provide to the identified public health issues; Information regarding any potential new development resulting from the project;*

- (c) *Measures to be taken to mitigate the potential impacts of new growth resulting from the project; and*
- (d) *Evidence that demonstrates the total net nitrogen reduction resulting from the project as well as any additional nitrogen loading that may result from potential new growth, including:*
 - (i) *Methods used to calculate the total nitrogen reductions and additional nitrogen loading;*
 - (ii) *Assumptions relied upon to calculate the total nitrogen reductions and additional nitrogen loading; and*
- (e) *Language amending the Water and Sewer Plan in draft or final form to identify the problem area, provide proof of available sewer service capacity, including identity of all necessary service agreements, proposed service area boundary changes, and any text and data changes needed to document new sewerage services.*

2) *Notice of Application and Public Hearing. Upon receiving an application for funding, the Department shall coordinate with the Maryland Department of Planning prior to granting preliminary approval and shall:*

- (a) *Provide a 30-day public notice on its website homepage summarizing:*
 - (i) *The public health issues being addressed by the project;*
 - (ii) *New in-fill growth resulting from the project;*
 - (iii) *Mitigation measures to lessen the impact of new growth that could result from the project;*
 - (iv) *Net nitrogen reductions resulting from the project that shall consider the impact of additional nitrogen loading from potential new growth; and*
 - (v) *A deadline for receiving written comments;*
- (b) *Provide a copy of the public notice to any interested party that has requested such notice;*
- (c) *Provide an opportunity for a public hearing, if requested within 30 days of the public notice;*
- (d) *If a public hearing is held regarding an application:*
 - (i) *The applicant shall attend the hearing and present information concerning the application;*
 - (ii) *Written comments shall be accepted if they are received by the Department on or before the deadline specified by the Department; and*
 - (iii) *Oral comments may be made at the public hearing.*

3) *Determination of preliminary approval. The Department shall, in coordination with the Maryland Department of Planning, make its determination of preliminary approval:*

(a) *based on the information received with the application, along with any written comments received or any oral public comments received at the hearing that raise issues of law or material facts regarding an application for funding, but only if the issues are pertinent to purposes of the onsite sewage disposal system fund; or*

(b) *if no public hearing is requested, based on the information received with the application and from written comments that raise issues of law or material facts regarding an application for funding, but only if the issues are pertinent to purposes of the onsite sewage disposal system fund.*

(4) *Funding Approval. Upon granting an applicant preliminary approval for funding, the Department shall submit the application for a Priority Funding Area exception to the Smart Growth Coordinating Committee or to such body as may be designated by the State to consider applications for Priority Funding Area exceptions, for final approval or disapproval. The Smart Growth Coordinating Committee shall formally notify the Department of its decision.*

(5) *Grant Conditions: Upon final approval of a priority funding area exception by the Smart Growth Coordinating Committee or such other body as may be designated by the State to consider applications for Priority Funding Area exceptions, the Department shall notify the applicant of the approval and shall enter into a grant agreement with the applicant that shall include terms and conditions of such final approval, including:*

- (a) *A denial of access for any future connections not included in the project's proposed service area;*
- (b) *Limits on potential new developments that could result from the project;*
- (c) *A requirement to amend the County water and sewer plan;*
- (d) *Provisions to ensure that the funding for the project will not unduly impede access to funding for upgrading other individual onsite sewage disposal systems within the jurisdiction; and*
- (e) *A certification from the County's Environmental Health Director that the Project is consistent with a public health area of concern and shall be subsequently added to the County's Water and Sewer Plan.*