

HOUSE BILL 555

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M3

2004 Regular Session
4r1002
CF 4r1001

By: **The Speaker and Minority Leader (By Request - Administration) and
Delegates Amedori, Aumann, Bates, Costa, Cryor, Dwyer, Eckardt,
Edwards, Elmore, Frank, Glassman, Haddaway, Hubbard, Jennings,
Kelly, Krebs, Malone, McComas, McConkey, McIntosh, Minnick,
O'Donnell, Sossi, Stocksdales, Stull, Walkup, Weir, Weldon, and Wood
Wood, and Owings**

Introduced and read first time: February 3, 2004
Assigned to: Environmental Matters

Committee Report: Favorable with amendments
House action: Adopted with floor amendments
Read second time: March 17, 2004

CHAPTER _____

1 AN ACT concerning

2 **Water Pollution - Nutrients - The State Waters - Chesapeake Bay Watershed**
3 **- Restoration Fund**

4 FOR the purpose of adding a certain alternative to requirements for nutrient
5 management plans; altering requirements relating to filings concerning
6 nutrient management plans; eliminating the requirement that a certain farm
7 owner or operator grant the Department of Agriculture the right of entry for a
8 certain purpose; altering the term and fee for the renewal of certain licenses and
9 certificates; authorizing the Department of Agriculture to issue certain
10 certificates for persons operating a farm under certain circumstances;
11 authorizing the Department of Agriculture to procure the services of private
12 certified nutrient management consultants to develop nutrient management
13 plans; authorizing the Department of Agriculture to review certain plans and
14 records under certain circumstances; providing for certain site visits under
15 certain circumstances; establishing the Chesapeake Bay Watershed Restoration
16 Fund as a special, continuing, nonlapsing fund in the Department of the
17 Environment; authorizing the Maryland Water Quality Financing
18 Administration of the Department of the Environment to award certain grants
19 from the Fund; providing for the money in the Fund to be used for grants and
20 loans to upgrade the nutrient removal technology at certain wastewater
21 facilities to achieve enhanced nutrient removal uses of the Fund, including
22 reducing the loading of nutrients into waters of the State; providing that certain
23 wastewater facilities that do not receive certain money may not be required to

~~upgrade the facilities to a certain standard except under certain circumstances; establishing an environmental surcharge to be paid by users of wastewater facilities; providing for certain exemptions from the environmental surcharge; providing for the collection of the environmental surcharge; providing for the management of the Fund; establishing a certain advisory committee; requiring certain reports by certain dates; requiring the Department of the Environment to adopt certain regulations; authorizing the Department to adopt certain regulations relating to a certain surcharge; providing for the payment of certain bond revenue to the Fund; defining certain terms; providing for the staggering of the terms of certain members of the Advisory Committee; and generally relating to the establishment and management of the Chesapeake Bay Watershed Restoration Fund reduction of nutrient water pollution in waters of the State, particularly the Chesapeake Bay.~~

BY repealing and reenacting, with amendments,

Article - Agriculture
Section 8-801.1, 8-803, 8-803.1, and 8-806
Annotated Code of Maryland
(1999 Replacement Volume and 2003 Supplement)

BY repealing and reenacting, with amendments,

Article - Environment
Section 9-1601, 9-1604, 9-1611, 9-1616, and 9-1617
Annotated Code of Maryland
(1996 Replacement Volume and 2003 Supplement)

BY adding to

Article - Environment
Section 9-1605.2 and 9-1605.3
Annotated Code of Maryland
(1996 Replacement Volume and 2003 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
MARYLAND, That the Laws of Maryland read as follows:

Article - Agriculture

8-801.1.

(a) (1) Each nutrient management plan shall be developed considering factors including:

(i) Levels of bioavailable nitrogen and phosphorus in the soil;

(ii) Levels of bioavailable nitrogen and phosphorus in all fertilizer materials to be applied;

1 (iii) The amount of nitrogen and phosphorus necessary to achieve
2 the expected crop yield for the land that is the subject of the nutrient management
3 plan, as determined by:

4 1. The field's actual yield record and soil productivity for that
5 crop; or

6 2. If information concerning actual yield record and soil
7 productivity for a crop is unavailable, relevant information concerning similar fields
8 and soil;

9 (iv) Soil erodibility and nutrient retention capacity;

10 (v) 1. The best reasonable scientific methods accepted by the
11 Department and the University of Maryland Cooperative Extension Service; OR

12 2. SCIENTIFICALLY VALIDATED DATA FOR THE
13 DEVELOPMENT OF A NUTRIENT MANAGEMENT PLAN AS DEFINED BY THE
14 DEPARTMENT IN REGULATION; and

15 (vi) Existing best management practices.

16 (2) Each nutrient management plan shall provide flexibility for
17 management decisions that may be required by conditions beyond the control of the
18 farmer.

19 (b) (1) [Each] A SUMMARY OF EACH nutrient management plan shall be
20 filed AND UPDATED with the Department[;

21 (i) When it is developed; and

22 (ii) Each time it is updated] AT A TIME AND IN A FORM THAT THE
23 DEPARTMENT REQUIRES BY REGULATION.

24 (2) [Submission of the plan shall include a grant by the property owner
25 or operator to the Department of a right of entry on the property to evaluate
26 compliance with the plan as long as the Department;

27 (i) Enters the property in daylight hours at a reasonable time that
28 allows the property owner or operator the opportunity to be present; and

29 (ii) Conducts its evaluation in a manner that minimizes any
30 inconvenience to the farmer.

31 (3) The Department shall maintain a copy of each [nutrient
32 management plan] SUMMARY for 3 years in a manner that protects the identity of the
33 individual for whom the nutrient management plan was prepared.

1 8-803.

2 (a) To apply for certification as a nutrient management consultant, an
3 applicant shall:

4 (1) Submit to the Department an application on the form the
5 Department requires; and

6 (2) Pay to the Department the certification fee stated in § 8-806 of this
7 subtitle.

8 (b) The Department shall certify any individual who:

9 (1) Meets the requirements of this subtitle;

10 (2) Meets the Department's educational requirements, including a
11 program on the proper application of nutrients;

12 (3) Passes a Department approved examination; and

13 (4) (i) Is employed by a person licensed under this subtitle; or

14 (ii) Holds a license as required by this subtitle.

15 (c) To apply for a license an applicant shall:

16 (1) Submit to the Department an application on the form the
17 Department requires; and

18 (2) Pay to the Department the applicable license fee stated in § 8-806 of
19 this subtitle.

20 (d) The Department shall license a person who meets the requirements of this
21 subtitle.

22 (e) A certificate or license is issued for 1 year unless the certificate or license
23 is renewed as provided by this subtitle.

24 (f) The Department shall renew the certificate or license of any applicant for
25 [an additional 1-year] A 3-YEAR term if the applicant:

26 (1) Submits a renewal application on the form that the Department
27 requires;

28 (2) Pays to the Department the applicable fee stated in § 8-806 of this
29 subtitle;

30 (3) Complies with applicable continuing education requirements;

31 (4) Complies with applicable record keeping and reporting requirements;
32 and

- 1 (5) Otherwise is entitled to be certified or licensed.
- 2 (G) (1) THE DEPARTMENT MAY ISSUE A FARM OPERATOR'S PLAN
3 DEVELOPMENT CERTIFICATE TO A PERSON OPERATING A FARM FOR THE
4 DEVELOPMENT OF THAT PERSON'S OWN NUTRIENT MANAGEMENT PLAN.
- 5 (2) THE CERTIFICATE IS VALID PROVIDED THE PERSON OPERATING THE
6 FARM:
- 7 (I) HAS PAID THE ONE-TIME FEE PROVIDED IN § 8-806 OF THIS
8 SUBTITLE;
- 9 (II) HAS PASSED AN EXAMINATION AS DETERMINED BY THE
10 DEPARTMENT;
- 11 (III) COMPLIES WITH APPLICABLE CONTINUING EDUCATION
12 REQUIREMENTS;
- 13 (IV) COMPLIES WITH APPLICABLE RECORD KEEPING AND
14 REPORTING REQUIREMENTS; AND
- 15 (V) OTHERWISE IS ENTITLED TO BE CERTIFIED.
- 16 8-803.1.
- 17 (a) In this section, "gross income" means the actual income that is received in
18 a calendar year that results directly from the farm or agricultural use of the land.
- 19 (b) This section does not apply to:
- 20 (1) An agricultural operation with less than \$2,500 in gross income; or
- 21 (2) A livestock operation with less than eight animal units defined as
22 1,000 pounds of live animal weight per animal unit.
- 23 (c) The Governor shall provide sufficient funding in each fiscal year's budget
24 to:
- 25 (1) Assist in the development of nutrient management plans;
- 26 (2) Meet the technical assistance and evaluation requirements of this
27 section;
- 28 (3) Meet the State's requirements for the implementation of the Manure
29 Transportation Project under § 8-704.2 of this title; and
- 30 (4) Provide State assistance under the Maryland Agricultural Water
31 Quality Cost Share Program in the Department.
- 32 (d) (1) State cost sharing may be made available [to farmers] to help offset
33 the costs of having a nutrient management plan prepared by a certified nutrient

1 management consultant who is not employed by the federal, State, or a local
2 government.

3 (2) The Secretary of Agriculture shall adopt regulations authorizing the
4 disbursement of State cost sharing funds under this subsection.

5 (3) THE DEPARTMENT MAY PROCURE THE SERVICES OF A PRIVATE
6 CERTIFIED NUTRIENT MANAGEMENT CONSULTANT TO DEVELOP NUTRIENT
7 MANAGEMENT PLANS FOR PERSONS OPERATING A FARM.

8 (e) (1) By December 31, 2001, a person who, in operating a farm, uses
9 chemical fertilizer, shall have a nutrient management plan for nitrogen and
10 phosphorus that meets the requirements of this subtitle.

11 (2) (i) By December 31, 2001, a person who, in operating a farm, uses
12 sludge or animal manure, shall have a nutrient management plan for nitrogen.

13 (ii) By July 1, 2004, a person who, in operating a farm, uses sludge
14 or animal manure, shall have a nutrient management plan for nitrogen and
15 phosphorus.

16 (f) (1) By December 31, 2002, a person who, in operating a farm, uses
17 chemical fertilizer, shall comply with a nutrient management plan for nitrogen and
18 phosphorus that meets the requirements of this subtitle.

19 (2) (i) By December 31, 2002, a person who, in operating a farm, uses
20 sludge or animal manure, shall comply with a nutrient management plan for nitrogen
21 that meets the requirements of this subtitle.

22 (ii) By July 1, 2005, a person who, in operating a farm, uses sludge
23 or animal manure, shall comply with a nutrient management plan for nitrogen and
24 phosphorus that meets the requirements of this subtitle.

25 (g) A person may meet the requirements of subsection (e) of this section by
26 requesting, at least 60 days before the applicable date set forth in subsection (e) of
27 this section, the development of a nutrient management plan by a certified nutrient
28 management consultant.

29 (h) (1) If a person violates the provisions of subsection (e) of this section, the
30 Department shall notify the person that the person is in violation of the requirement
31 to have a nutrient management plan.

32 (2) After a reasonable period of time, if the person fails to have a
33 nutrient management plan, the person is subject to an administrative penalty not to
34 exceed \$250.

35 (i) (1) A person who violates any provision of subsection (f) of this section or
36 of any rule, regulation, or order adopted or issued under this section is subject to:

37 (i) For a first violation, a warning; and

1 (ii) For a second or subsequent violation, after an opportunity for a
2 hearing which may be waived in writing by the person accused of a violation, an
3 administrative penalty that may be imposed by the Department of Agriculture.

4 (2) The penalty imposed on a person under paragraph (1)(ii) of this
5 subsection shall be:

6 (i) Up to \$100 for each violation, but not exceeding \$2,000 per
7 farmer or operator per year; and

8 (ii) Assessed with consideration given to:

9 1. The willfulness of the violation, the extent to which the
10 existence of the violation was known to but uncorrected by the violator, and the extent
11 to which the violator exercised reasonable care;

12 2. Any actual harm to the environment or to human health;

13 3. The available technology and economic reasonableness of
14 controlling, reducing, or eliminating the violation; and

15 4. The extent to which the current violation is part of a
16 recurrent pattern of the same or similar type of violation committed by the violator.

17 (3) (i) Except as provided in subparagraph (ii) of this paragraph, each
18 day a violation occurs is a separate violation under this subsection.

19 (ii) Daily penalties do not continue to accrue as long as the farmer
20 takes reasonable steps to correct the violation.

21 (4) Any penalty imposed under this subsection is payable to the
22 Maryland Agricultural Water Quality Cost Share Program within the Department.

23 (j) If a person violates any provision of this section, the Department may:

24 (1) Require repayment of cost share funds under Subtitle 7 of this title
25 for the project that is in violation; or

26 (2) Deny or restrict future cost share payments under Subtitle 7 of this
27 title.

28 (k) (1) The Department shall determine compliance with the provisions of
29 this section.

30 (2) THE DEPARTMENT MAY REVIEW THE NUTRIENT MANAGEMENT
31 PLAN AND RECORDS RELATING TO THE PLAN AT A LOCATION AGREED TO BY THE
32 DEPARTMENT AND THE PERSON OPERATING THE FARM.

33 (3) IN CONDUCTING A SITE VISIT AND REVIEWING THE NUTRIENT
34 MANAGEMENT PLAN AND RELATED RECORDS, THE DEPARTMENT'S EVALUATION
35 SHALL BE LIMITED SOLELY TO DETERMINING WHETHER THE PERSON OPERATING

1 THE FARM IS IN COMPLIANCE WITH THE PROVISIONS OF THIS SECTION AND THE
2 REGULATIONS IMPLEMENTING THIS SECTION.

3 (4) IN CONDUCTING A SITE VISIT, THE DEPARTMENT SHALL:

4 (I) PROVIDE THE PERSON OPERATING THE FARM AT LEAST 48
5 HOURS ADVANCE NOTICE;

6 (II) ENTER THE PROPERTY AT A REASONABLE TIME THAT ALLOWS
7 THE OPERATOR TO BE PRESENT; AND

8 (III) CONDUCT THE EVALUATION IN A MANNER THAT MINIMIZES
9 ANY INCONVENIENCE TO THE PERSON OPERATING THE FARM.

10 (5) IF A PERSON OPERATING A FARM FAILS TO COOPERATE WITH THE
11 DEPARTMENT'S REQUEST TO CONDUCT A SITE VISIT AND REVIEW OF A NUTRIENT
12 MANAGEMENT PLAN AND RECORDS RELATING TO THE PLAN, THAT PERSON IS
13 SUBJECT TO SUBSECTIONS (I) AND (J) OF THIS SECTION.

14 8-806.

15 (a) Except for a government agency, the Department shall charge the
16 following fees under this subtitle:

17 (1) Certificate (nutrient management consultant)..... \$50;

18 (2) License (individual or sole proprietorship) \$50;

19 (3) License (corporation or partnership) \$100; [and]

20 (4) Renewal..... [\$50] \$150; AND

21 (5) CERTIFICATE (FARM OPERATOR'S PLAN DEVELOPMENT) \$20.

22 (b) The Department shall charge an applicant for the full cost of any training
23 provided by the Department under this subtitle.

24 (c) All moneys collected under this subtitle shall be deposited in the General
25 Fund of the State.

26 **Article - Environment**

27 9-1601.

28 (a) Unless the context clearly requires otherwise, in this subtitle the following
29 words have the meanings indicated.

30 (b) "Administration" means the Maryland Water Quality Financing
31 Administration.

1 (C) "BIOLOGICAL NUTRIENT REMOVAL" MEANS A BIOLOGICAL NUTRIENT
2 REMOVAL TECHNOLOGY CAPABLE OF REDUCING THE NITROGEN IN WASTEWATER
3 EFFLUENT TO NOT MORE THAN 8 MILLIGRAMS PER LITER CALCULATED ON AN
4 ANNUALLY AVERAGED BASIS.

5 [(c)] (D) "Board" means the Board of Public Works.

6 [(d)] (E) "Bond" means a bond, note, or other evidence of obligation of the
7 Administration issued under this subtitle, including a bond or revenue anticipation
8 note, notes in the nature of commercial paper, and refunding bonds.

9 [(e)] (F) "Bond resolution" means the resolution or resolutions of the Director,
10 including the trust agreement, if any, authorizing the issuance of and providing for
11 the terms and conditions applicable to bonds.

12 [(f)] (G) "Borrower" means a local government or a person as defined in §
13 1-101(h) of this article who has received a loan.

14 [(g)] (H) "Director" means the Director of the Administration.

15 [(h)] (I) "Drinking Water Loan Fund" means the Maryland Drinking Water
16 Revolving Loan Fund.

17 (J) "ELIGIBLE COSTS" MEANS THOSE COSTS IDENTIFIED IN § 9-1605.2(E) AND
18 (F) OF THIS SUBTITLE.

19 (K) "ENHANCED NUTRIENT REMOVAL" ~~MEANS~~ MEANS:

20 (1) AN ENHANCED NUTRIENT REMOVAL TECHNOLOGY CAPABLE OF
21 REDUCING THE NITROGEN AND PHOSPHORUS CONCENTRATIONS IN WASTEWATER
22 EFFLUENT TO NOT MORE THAN 4 ~~3~~ MILLIGRAMS PER LITER TOTAL NITROGEN AND
23 NOT MORE THAN 0.3 MILLIGRAMS PER LITER TOTAL PHOSPHORUS CALCULATED ON
24 AN ANNUALLY AVERAGED ~~BASIS~~ BASIS; OR

25 (2) IF THE DEPARTMENT HAS DETERMINED THAT THE
26 CONCENTRATIONS IN PARAGRAPH (1) OF THIS SUBSECTION ARE NOT FEASIBLE FOR
27 A FACILITY, THE LOWEST AVERAGE ANNUAL WASTEWATER EFFLUENT NITROGEN
28 AND PHOSPHORUS CONCENTRATIONS THAT THE DEPARTMENT DETERMINES ARE
29 FEASIBLE FOR THE FACILITY.

30 (L) "EQUIVALENT DWELLING UNIT" MEANS A MEASURE OF WASTEWATER
31 EFFLUENT WHERE ONE UNIT IS EQUIVALENT TO:

32 (1) IF A LOCAL GOVERNMENT OR BILLING AUTHORITY HAS NOT
33 ESTABLISHED A DEFINITION OF "EQUIVALENT DWELLING UNIT" ON OR BEFORE
34 JANUARY 1, 2004, AN AVERAGE OF 250 GALLONS OF WASTEWATER EFFLUENT PER
35 DAY; DAY; OR THIS AVERAGE SHALL BE DETERMINED BY THE LOCAL GOVERNMENT
36 OR BILLING AUTHORITY FOR A WASTEWATER FACILITY FOR THE CALENDAR
37 QUARTER OR BILLING CYCLE OF THE WASTEWATER FACILITY; OR

1 (2) ~~THE TOTAL AVERAGE DAILY FLOW OF WASTEWATER EFFLUENT IF A~~
2 ~~LOCAL GOVERNMENT OR BILLING AUTHORITY HAS ESTABLISHED A DEFINITION OF~~
3 ~~"EQUIVALENT DWELLING UNIT" ON OR BEFORE JANUARY 1, 2004, THE FLOW THAT~~
4 ~~THE LOCAL GOVERNMENT OR BILLING AUTHORITY FOR A WASTEWATER FACILITY~~
5 ~~DETERMINES HAS ESTABLISHED TO BE EQUIVALENT TO THE AVERAGE DAILY FLOW~~
6 ~~OF WASTEWATER EFFLUENT DISCHARGED BY A RESIDENTIAL DWELLING, AND~~
7 ~~WHICH MAY NOT EXCEED 250 GALLONS.~~

8 [(i)] (M) "Facility" means a wastewater facility or all or a portion of a water
9 supply system as defined in § 9-201(u) of this article.

10 [(j)] (N) "Federal Safe Drinking Water Act" means Title XIV of the Public
11 Health Service Act, P.L. 93-523, as amended, 42 U.S.C. § 300f, et seq., and the rules
12 and regulations promulgated thereunder.

13 [(k)] (O) "Federal Water Pollution Control Act" means the Water Pollution
14 Control Act of 1972, P.L. 92-500, as amended, 33 U.S.C. § 1251, et seq., and rules and
15 regulations promulgated thereunder.

16 [(l)] (P) "Fund" means a fund established by this subtitle, including the Water
17 Quality Fund, the Drinking Water Loan Fund, AND THE WATERSHED RESTORATION
18 FUND.

19 (Q) "GRANT" MEANS A GRANT FROM THE ADMINISTRATION TO A GRANTEE.

20 (R) "GRANT AGREEMENT" MEANS A WRITTEN AGREEMENT BETWEEN THE
21 ADMINISTRATION AND A GRANTEE WITH RESPECT TO A GRANT.

22 (S) "GRANTEE" MEANS THE GRANT RECIPIENT.

23 [(m)] (T) "Lender" has the meaning stated in § 9-1606.1 of this subtitle.

24 [(n)] (U) "Linked deposit" has the meaning stated in § 9-1606.1 of this
25 subtitle.

26 [(o)] (V) "Linked deposit loan" has the meaning stated in § 9-1606.1 of this
27 subtitle.

28 [(p)] (W) "Linked deposit program" has the meaning stated in § 9-1606.1 of
29 this subtitle.

30 [(q)] (X) "Local government" means a county, municipal corporation, sanitary
31 district, or other State or local public entity which has authority to own or operate a
32 facility, and includes any combination of 2 or more of the foregoing, acting jointly to
33 construct or operate a facility.

34 [(r)] (Y) "Loan" means a loan from the Administration to a borrower for the
35 purpose of financing all or a portion of the cost of a wastewater facility, if the loan is
36 from the Water Quality Fund, or water supply system, if the loan is from the
37 Drinking Water Loan Fund.

1 [(s)] (Z) "Loan agreement" means a written agreement between the
2 Administration and a borrower with respect to a loan.

3 [(t)] (AA) "Loan obligation" means a bond, note, or other evidence of obligation,
4 including a mortgage, deed of trust, lien, or other security instrument, issued or
5 executed by a borrower to evidence its indebtedness under a loan agreement with
6 respect to a loan.

7 (BB) "PERSON" MEANS AN INDIVIDUAL, CORPORATION, PARTNERSHIP,
8 ASSOCIATION, THE STATE, COUNTY, MUNICIPAL CORPORATION, COMMISSION, OR
9 OTHER POLITICAL SUBDIVISION OF THE STATE, OR ANY UNIT OF A POLITICAL
10 SUBDIVISION OF THE STATE, OR THE FEDERAL GOVERNMENT.

11 (CC) (1) "RESIDENTIAL DWELLING" MEANS A ROOM OR GROUP OF ROOMS
12 OCCUPIED AS LIVING QUARTERS BY AN INDIVIDUAL, A SINGLE FAMILY, OR OTHER
13 DISCRETE GROUP OF PERSONS WITH FACILITIES THAT ARE USED OR INTENDED TO
14 BE USED FOR LIVING, SLEEPING, COOKING, SANITATION, AND EATING, INCLUDING
15 AN APARTMENT UNIT, CONDOMINIUM UNIT, COOPERATIVE UNIT, TOWN HOUSE
16 UNIT, MOBILE HOME, OR HOUSE.

17 (2) "RESIDENTIAL DWELLING" DOES NOT INCLUDE A HOSPITAL, HOTEL,
18 MOTEL, INN, BOARDING HOUSE, CONVENT, MONASTERY, CLUB, DORMITORY, SCHOOL,
19 COLLEGE, OR SIMILAR SEASONAL, INSTITUTIONAL, OR TRANSIENT FACILITY.

20 (DD) "SEPTIC SYSTEM" MEANS A SUBSURFACE SYSTEM THAT UTILIZES
21 NATURAL PROCESSES AND MECHANICAL COMPONENTS AND COLLECTS, TREATS,
22 AND DISPERSES SEWAGE FROM A BUILDING OR BUILDINGS.

23 (EE) "SINGLE SITE" MEANS A DISCRETE GROUPING OF BUILDINGS OR
24 STRUCTURES LOCATED ON CONTIGUOUS OR ADJACENT PROPERTY THAT IS OWNED
25 BY THE SAME USER.

26 ~~(CC)~~ ~~(EE)~~ (FF) "USER" MEANS ANY PERSON DISCHARGING TO A WASTEWATER
27 FACILITY THAT HAS A STATE OR NATIONAL POLLUTION DISCHARGE ELIMINATION
28 SYSTEM DISCHARGE PERMIT.

29 [(u)] ~~(DD)~~ ~~(FF)~~ (GG) "Wastewater Facility" means any equipment, plant,
30 treatment works, structure, machinery, apparatus, interest in land, or any
31 combination of these, which is acquired, used, constructed, or operated for the
32 storage, collection, treatment, neutralization, stabilization, reduction, recycling,
33 reclamation, separation, or disposal of wastewater, or for the final disposal of residues
34 resulting from the treatment of wastewater, including: treatment or disposal plants;
35 outfall sewers, interceptor sewers, and collector sewers; pumping and ventilating
36 stations, facilities, and works; programs and projects for controlling nonpoint sources
37 of water pollution and for estuarine conservation and management; and other real or
38 personal property and appurtenances incident to their development, use, or
39 operation.

40 [(v)] ~~(EE)~~ ~~(GG)~~ (HH) "Water Quality Fund" means the Maryland Water
41 Quality Revolving Loan Fund.

1 [(w)] ~~(FF)~~ ~~(HH)~~ (II) "Water supply system" has the meaning stated in §
2 9-201(u) of this title.

3 ~~(GG)~~ ~~(H)~~ (JJ) "WATERSHED RESTORATION FUND" MEANS THE CHESAPEAKE
4 BAY WATERSHED RESTORATION FUND.

5 9-1604.

6 In addition to the powers set forth elsewhere in this subtitle, but subject to such
7 rules or program directives as the Secretary may from time to time prescribe, the
8 Administration may:

9 (1) Adopt and alter an official seal;

10 (2) Sue and be sued, plead, and be impleaded;

11 (3) Adopt bylaws, rules, and regulations to carry out the provisions of
12 this subtitle;

13 (4) Maintain an office at such place as the Secretary may designate;

14 (5) Employ consultants, accountants, attorneys, financial experts, and
15 other personnel and agents as may be necessary in its judgment, and fix their
16 compensation;

17 (6) Establish regulations, criteria, or guidelines with respect to loans,
18 loan agreements, loan obligations, GRANTS, GRANT AGREEMENTS, AND GRANT
19 OBLIGATIONS;

20 (7) Receive and accept from any source, private or public, contributions,
21 grants, or gifts of money or property;

22 (8) Enter into contracts of any kind, and execute all instruments
23 necessary or convenient with respect to carrying out the powers in this subtitle to
24 accomplish the purposes of the Administration;

25 (9) Make loans, enter into loan agreements, and accept and enforce loan
26 obligations;

27 (10) AWARD GRANTS, ENTER INTO GRANT AGREEMENTS, AND ACCEPT
28 AND ENFORCE GRANT OBLIGATIONS;

29 [(10)] (11) Subject to the prior approval of the Board and the Secretary,
30 issue bonds under this subtitle; and

31 [(11)] (12) Do all acts and things necessary or convenient to carry out the
32 powers granted by this subtitle.

33 9-1605.2.

34 (A) (1) THERE IS A CHESAPEAKE BAY WATERSHED RESTORATION FUND.

1 (2) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE
2 WATERSHED RESTORATION FUND BE USED, IN PART, TO PROVIDE THE FUNDING
3 NECESSARY TO UPGRADE ANY OF THE WASTEWATER TREATMENT FACILITIES,
4 LOCATED IN THE STATE OR USED BY THE CITIZENS OF THE STATE, TO ACHIEVE
5 ENHANCED NUTRIENT REMOVAL WHERE IT IS COST EFFECTIVE TO DO SO, WITH
6 PRIORITY GIVEN TO FACILITIES DISCHARGING TO THE CHESAPEAKE BAY, BUT NOT
7 EXCLUDING FACILITIES DISCHARGING TO THE MARYLAND COASTAL BAYS OR OTHER
8 WATERS OF THE STATE.

9 (3) THE WATERSHED RESTORATION FUND SHALL BE MAINTAINED AND
10 ADMINISTERED BY THE ADMINISTRATION IN ACCORDANCE WITH THE PROVISIONS
11 OF THIS SUBTITLE AND ANY RULES OR PROGRAM DIRECTIVES AS THE SECRETARY OR
12 THE BOARD MAY PRESCRIBE.

13 ~~(3) FOR THE PURPOSES OF THIS SUBTITLE, THERE IS ESTABLISHED AN~~
14 ~~ENVIRONMENTAL SURCHARGE TO BE PAID BY ANY USER OF A WASTEWATER~~
15 ~~FACILITY IN THE STATE AS FOLLOWS:~~

16 ~~(I) FOR EACH RESIDENTIAL DWELLING, THE ENVIRONMENTAL~~
17 ~~SURCHARGE SHALL BE \$2.50 PER MONTH.~~

18 ~~(II) FOR A NONRESIDENTIAL USER WITH AN AVERAGE OF 8,000~~
19 ~~EQUIVALENT DWELLING UNITS OR LESS, THE ENVIRONMENTAL SURCHARGE SHALL~~
20 ~~BE:~~

21 ~~1. FOR EACH EQUIVALENT DWELLING UNIT NOT EXCEEDING~~
22 ~~2,000 EQUIVALENT DWELLING UNITS, \$2.50 PER MONTH FOR EACH EQUIVALENT~~
23 ~~DWELLING UNIT; AND~~

24 ~~2. FOR EACH EQUIVALENT DWELLING UNIT OVER 2,000~~
25 ~~EQUIVALENT DWELLING UNITS AND NOT EXCEEDING 8,000 EQUIVALENT DWELLING~~
26 ~~UNITS, \$1.25 PER MONTH FOR EACH EQUIVALENT DWELLING UNIT.~~

27 ~~(III) FOR A UNIT WITH MORE THAN 8,000 EQUIVALENT DWELLING~~
28 ~~UNITS, THERE WILL BE NO SURCHARGE OTHER THAN THE SURCHARGE IN~~
29 ~~SUBPARAGRAPH (II) OF THIS PARAGRAPH.~~

30 ~~(IV) A NONRESIDENTIAL USER OF A WASTEWATER FACILITY IS~~
31 ~~EXEMPT FROM PAYING THE SURCHARGE IF:~~

32 ~~1. THE WASTEWATER FACILITY'S AVERAGE ANNUAL~~
33 ~~EFFLUENT NITROGEN AND PHOSPHORUS CONCENTRATIONS, AS REPORTED IN THE~~
34 ~~FACILITY'S STATE DISCHARGE MONITORING REPORTS FOR THE PREVIOUS~~
35 ~~CALENDAR YEAR, HAVE NOT EXCEEDED 3 MILLIGRAMS PER LITER TOTAL NITROGEN~~
36 ~~AND 0.3 MILLIGRAMS PER LITER TOTAL PHOSPHORUS; AND~~

37 ~~2. THE OWNER OF THE FACILITY HAS NOT RECEIVED A~~
38 ~~STATE OR FEDERAL GRANT FOR BIOLOGICAL NUTRIENT REMOVAL OR ENHANCED~~
39 ~~NUTRIENT REMOVAL FOR THAT FACILITY.~~

1 (V) ~~SUBJECT TO THE APPROVAL OF THE ADMINISTRATION, A~~
2 ~~LOCAL GOVERNMENT MAY ESTABLISH A PROGRAM TO EXEMPT FROM THE~~
3 ~~REQUIREMENTS OF THIS SECTION A RESIDENTIAL DWELLING ABLE TO~~
4 ~~DEMONSTRATE SUBSTANTIAL FINANCIAL HARDSHIP AS A RESULT OF THE~~
5 ~~SURCHARGE.~~

6 (VI) 1. ~~THE SURCHARGE MAY BE ADJUSTED FOR FISCAL YEAR~~
7 ~~2008 AND SUBSEQUENT YEARS IN ACCORDANCE WITH REGULATIONS ADOPTED~~
8 ~~UNDER SUBSECTION (G) OF THIS TITLE.~~

9 2. ~~ANY ADJUSTMENT TO THE AMOUNT OF THE SURCHARGE~~
10 ~~SHALL BE MADE SUBJECT TO AND IN COMPLIANCE WITH THE REQUIREMENTS OF~~
11 ~~ANY APPLICABLE BOND RESOLUTION.~~

12 (VII) 1. ~~THE SURCHARGE SHALL BE COLLECTED BY THE BILLING~~
13 ~~AUTHORITY FOR THE WASTEWATER FACILITY ON BEHALF OF THE STATE.~~

14 2. ~~THE BILLING AUTHORITY FOR THE WASTEWATER~~
15 ~~FACILITY SHALL ADD THE FULL AMOUNT OF THE SURCHARGE TO EACH CUSTOMER'S~~
16 ~~BILL AND SHALL ESTABLISH A SEGREGATED ACCOUNT FOR THE DEPOSIT OF FUNDS~~
17 ~~COLLECTED UNDER THIS SUBTITLE.~~

18 3. A. ~~THE ADMINISTRATION SHALL DETERMINE THE~~
19 ~~METHOD OF COLLECTION OF THE SURCHARGE FROM THE WASTEWATER FACILITY.~~

20 B. ~~THE COLLECTIONS SHALL ACCRUE TO THE FUND.~~

21 (VIII) ~~FOR A WASTEWATER FACILITY WITHOUT A BILLING~~
22 ~~AUTHORITY, THE ADMINISTRATION MAY COLLECT THE SURCHARGE FROM THE~~
23 ~~FACILITY OWNER.~~

24 (B) (1) (I) THE WATERSHED RESTORATION FUND IS A SPECIAL,
25 CONTINUING, NONLAPSING FUND THAT IS NOT SUBJECT TO § 7-302 OF THE STATE
26 FINANCE AND PROCUREMENT ARTICLE AND SHALL BE AVAILABLE IN PERPETUITY
27 FOR THE PURPOSE OF PROVIDING FINANCIAL ASSISTANCE IN ACCORDANCE WITH
28 THE PROVISIONS OF THIS SUBTITLE.

29 (II) MONEY IN THE FUND MAY NOT REVERT OR BE TRANSFERRED
30 TO THE GENERAL FUND OF THE STATE.

31 (2) THE WATERSHED RESTORATION FUND SHALL BE AVAILABLE FOR
32 THE PURPOSE OF PROVIDING FINANCIAL ASSISTANCE IN ACCORDANCE WITH THE
33 PROVISIONS OF THIS SUBTITLE, FOR:

34 (I) ELIGIBLE COSTS OF PROJECTS RELATING TO PLANNING,
35 DESIGN, CONSTRUCTION, AND UPGRADES OF WASTEWATER FACILITIES TO ACHIEVE
36 ENHANCED NUTRIENT REMOVAL AS REQUIRED BY THE CONDITIONS OF A GRANT
37 AGREEMENT AND A DISCHARGE PERMIT; AND

1 (II) ELIGIBLE COSTS OF PROJECTS RELATING TO THE BEST
2 AVAILABLE TECHNOLOGY FOR THE REMOVAL OF NITROGEN IN SEPTIC SYSTEMS.

3 (3) SUBJECT TO THE PROVISIONS OF ANY APPLICABLE BOND
4 RESOLUTION REGARDING THE HOLDING OR APPLICATION OF AMOUNTS IN THE
5 WATERSHED RESTORATION FUND, THE TREASURER SHALL SEPARATELY HOLD, AND
6 THE COMPTROLLER SHALL ACCOUNT FOR, THE WATERSHED RESTORATION FUND.

7 (4) SUBJECT TO THE PROVISIONS OF ANY APPLICABLE BOND
8 RESOLUTION GOVERNING THE INVESTMENT OF AMOUNTS IN THE WATERSHED
9 RESTORATION FUND, THE WATERSHED RESTORATION FUND SHALL BE INVESTED
10 AND REINVESTED IN THE SAME MANNER AS OTHER STATE FUNDS.

11 (5) ANY INVESTMENT EARNINGS SHALL BE RETAINED TO THE CREDIT
12 OF THE WATERSHED RESTORATION FUND.

13 (6) THE WATERSHED RESTORATION FUND SHALL BE SUBJECT TO AUDIT
14 ~~ONCE EVERY 2 YEARS~~ BY THE OFFICE OF LEGISLATIVE AUDITS AS PROVIDED FOR IN
15 § 2-1220 OF THE STATE GOVERNMENT ARTICLE.

16 (7) THE ADMINISTRATION SHALL OPERATE THE WATERSHED
17 RESTORATION FUND IN ACCORDANCE WITH §§ 9-1616 THROUGH 9-1621 OF THIS
18 SUBTITLE.

19 (8) THE DEPARTMENT SHALL DETERMINE THE PRIORITY RANKING OF
20 PROJECTS.

21 (C) THERE SHALL BE DEPOSITED IN THE WATERSHED RESTORATION FUND:

22 (1) EXCEPT AS PROVIDED IN § 9-1605.3(E)(4) OF THIS SUBTITLE, FUNDS
23 RECEIVED FROM THE ENVIRONMENTAL SURCHARGE;

24 (2) NET PROCEEDS OF BONDS ISSUED BY THE ADMINISTRATION;

25 (3) INTEREST OR OTHER INCOME EARNED ON THE INVESTMENT OF
26 MONEY IN THE WATERSHED RESTORATION FUND; AND

27 (4) ANY ADDITIONAL MONEY MADE AVAILABLE FROM ANY SOURCES,
28 PUBLIC OR PRIVATE, FOR THE PURPOSES FOR WHICH THE WATERSHED
29 RESTORATION FUND HAS BEEN ESTABLISHED.

30 (D) THE ADMINISTRATION MAY ESTABLISH ACCOUNTS AND SUBACCOUNTS
31 WITHIN THE WATERSHED RESTORATION FUND TO:

32 (1) EFFECTUATE THE PURPOSES OF THIS SUBTITLE;

33 (2) COMPLY WITH THE PROVISIONS OF ANY BOND RESOLUTION;

34 (3) MEET THE REQUIREMENTS OF ANY FEDERAL OR STATE LAW OR OF
35 ANY GRANT OR AWARD TO THE WATERSHED RESTORATION FUND; AND

1 (4) MEET ANY RULES OR PROGRAM DIRECTIVES ESTABLISHED BY THE
2 SECRETARY OR THE BOARD.

3 (E) (1) IN THIS SUBSECTION, "ELIGIBLE COSTS" MEANS THE ADDITIONAL
4 COSTS THAT WOULD BE ATTRIBUTABLE TO UPGRADING A WASTEWATER FACILITY
5 FROM BIOLOGICAL NUTRIENT REMOVAL TO ENHANCED NUTRIENT REMOVAL, AS
6 DETERMINED BY THE DEPARTMENT.

7 (2) EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION, FUNDS
8 IN THE WATERSHED RESTORATION FUND ~~MAY~~ SHALL BE USED ONLY:

9 (I) TO AWARD GRANTS FOR UP TO 100% OF ELIGIBLE COSTS OF
10 PROJECTS RELATING TO PLANNING, DESIGN, CONSTRUCTION, AND UPGRADE OF A
11 WASTEWATER FACILITY ~~WITH A DESIGN CAPACITY OF 500,000 GALLONS OR MORE~~
12 ~~PER DAY, FOR FLOWS UP TO THE DESIGN CAPACITY OF THE FACILITY AS APPROVED~~
13 ~~BY THE DEPARTMENT, TO ACHIEVE ENHANCED NUTRIENT REMOVAL AS REQUIRED~~
14 ~~BY THE CONDITIONS OF A GRANT AGREEMENT AND A DISCHARGE PERMIT IN~~
15 ACCORDANCE WITH PARAGRAPH ~~(3)~~ (5) OF THIS SUBSECTION. SUBSECTION;

16 (II) 1. IN FISCAL YEARS 2005 THROUGH 2009, FOR A PORTION OF
17 THE COSTS OF PROJECTS RELATING TO COMBINED SEWER OVERFLOWS ABATEMENT,
18 REHABILITATION OF EXISTING SEWERS, AND UPGRADING CONVEYANCE SYSTEMS,
19 INCLUDING PUMPING STATIONS, TO BE DISTRIBUTED TO FACILITIES BASED ON THE
20 AVERAGE ANNUAL FLOW OF THE FACILITY AND THE EXTENT OF THE UPGRADES
21 NEEDED, NOT TO EXCEED \$5,000,000 TOTAL ANNUALLY; AND

22 2. IN FISCAL YEARS 2010 AND THEREAFTER, FOR A PORTION
23 OF THE OPERATION AND MAINTENANCE COSTS RELATED TO THE ENHANCED
24 NUTRIENT REMOVAL TECHNOLOGY, WHICH MAY NOT EXCEED 10% OF THE TOTAL
25 ENVIRONMENTAL SURCHARGE COLLECTED UNDER § 9-1605.3(B) OF THIS SUBTITLE
26 BY THE ADMINISTRATION ANNUALLY;

27 (III) AS A SOURCE OF REVENUE OR SECURITY FOR THE PAYMENT OF
28 PRINCIPAL AND INTEREST ON BONDS ISSUED BY THE ADMINISTRATION IF THE
29 PROCEEDS OF THE SALE OF THE BONDS WILL BE DEPOSITED IN THE WATERSHED
30 RESTORATION FUND;

31 (IV) TO EARN INTEREST ON WATERSHED RESTORATION FUND
32 ACCOUNTS;

33 (V) FOR THE REASONABLE COSTS OF ADMINISTERING THE
34 WATERSHED RESTORATION FUND, WHICH MAY NOT EXCEED 1.5% OF THE TOTAL
35 ENVIRONMENTAL SURCHARGE COLLECTED BY THE ADMINISTRATION ANNUALLY;

36 (VI) FOR THE REASONABLE ADMINISTRATIVE COSTS INCURRED BY
37 A BILLING AUTHORITY FOR A WASTEWATER FACILITY COLLECTING THE
38 ENVIRONMENTAL SURCHARGE, THE ADMINISTRATIVE COSTS MAY BE RETAINED BY
39 THE BILLING AUTHORITY IN AN AMOUNT NOT TO EXCEED ~~3%~~ 5% OF THE TOTAL
40 ENVIRONMENTAL SURCHARGE COLLECTED BY THE BILLING AUTHORITY;

1 (VII) FOR FUTURE UPGRADES OF WASTEWATER FACILITIES ~~WITH A~~
2 ~~DESIGN CAPACITY OF LESS THAN 500,000 GALLONS PER DAY TO ACHIEVE~~
3 ~~ADDITIONAL NUTRIENT REMOVAL OR WATER QUALITY IMPROVEMENT, IN~~
4 ~~ACCORDANCE WITH PARAGRAPH (4) PARAGRAPHS (6) AND (7) OF THIS SUBSECTION;~~
5 AND

6 (VIII) FOR COSTS ASSOCIATED WITH THE ISSUANCE OF BONDS.

7 (3) ALL FACILITIES THAT SERVE MARYLAND USERS THAT HAVE
8 CONTRIBUTED TO THE WATERSHED RESTORATION FUND ARE ELIGIBLE FOR GRANTS
9 UNDER THIS SECTION, INCLUDING THE BLUE PLAINS WASTEWATER TREATMENT
10 PLANT IN THE DISTRICT OF COLUMBIA.

11 (4) GRANTS ISSUED UNDER PARAGRAPH (2)(I) OF THIS SUBSECTION FOR
12 UPGRADES TO THE BLUE PLAINS WASTEWATER TREATMENT PLANT MAY BE
13 AWARDED ONLY IF EACH USER OF THE BLUE PLAINS WASTEWATER TREATMENT
14 PLANT CONTRIBUTES A PROPORTIONAL SHARE OF THE UPGRADE COSTS IN
15 ACCORDANCE WITH THE BLUE PLAINS INTERMUNICIPAL AGREEMENT OF 1985, AS
16 REVISED AND UPDATED.

17 (5) THE GRANT AGREEMENT AND STATE DISCHARGE PERMIT, IF
18 APPLICABLE, SHALL REQUIRE AN OWNER OF A WASTEWATER FACILITY TO OPERATE
19 THE ENHANCED NUTRIENT REMOVAL FACILITY IN A MANNER THAT OPTIMIZES THE
20 NUTRIENT REMOVAL CAPABILITY OF THE FACILITY IN ORDER TO ACHIEVE
21 ENHANCED NUTRIENT REMOVAL PERFORMANCE LEVELS.

22 ~~(4)~~ ~~(4)~~ (6) PRIORITY FOR FUNDING AN UPGRADE OF A WASTEWATER
23 FACILITY SHALL BE COMMENCED ONLY ON COMPLETION OF GIVEN TO ENHANCED
24 NUTRIENT REMOVAL UPGRADES AT WASTEWATER FACILITIES WITH A DESIGN
25 CAPACITY OF 500,000 GALLONS OR MORE PER DAY.

26 ~~(4)~~ (7) (I) THE ELIGIBILITY AND PRIORITY RANKING OF A
27 PROJECT SHALL BE DETERMINED BY THE DEPARTMENT BASED ON CRITERIA
28 ESTABLISHED IN REGULATIONS ADOPTED BY THE DEPARTMENT, IN ACCORDANCE
29 WITH SUBSECTION (G) OF THIS SECTION.

30 (II) THE CRITERIA ADOPTED BY THE DEPARTMENT SHALL
31 INCLUDE, AS APPROPRIATE, CONSIDERATION OF THE:

32 1. COST EFFECTIVENESS IN PROVIDING WATER QUALITY
33 BENEFIT;

34 2. WATER QUALITY BENEFIT TO A WATER IDENTIFIED AS
35 IMPAIRED UNDER SECTION 303(D) OF THE CLEAN WATER ACT;

36 3. READINESS TO PROCEED TO CONSTRUCTION; AND

37 4. THE NITROGEN LOAD DISCHARGED BY THE FACILITY.

1 (8) A WASTEWATER FACILITY THAT DOES NOT RECEIVE FUNDS FROM
2 THE DEPARTMENT UNDER THIS SECTION OR FROM ANOTHER FUND IN THE
3 DEPARTMENT MAY NOT BE REQUIRED TO UPGRADE TO ENHANCED NUTRIENT
4 REMOVAL LEVELS, EXCEPT AS REQUIRED UNDER FEDERAL LAW.

5 (F) (1) IN THIS SUBSECTION, "ELIGIBLE COSTS" MEANS:

6 (I) THE COSTS ATTRIBUTABLE TO UPGRADING A SEPTIC SYSTEM
7 TO THE BEST AVAILABLE TECHNOLOGY FOR THE REMOVAL OF NITROGEN; OR

8 (II) THE COST DIFFERENCE BETWEEN A CONVENTIONAL SEPTIC
9 SYSTEM AND A SEPTIC SYSTEM THAT UTILIZES THE BEST AVAILABLE TECHNOLOGY
10 FOR THE REMOVAL OF NITROGEN.

11 (2) FUNDS IN THE WATERSHED RESTORATION FUND RECEIVED FROM
12 THE ENVIRONMENTAL SURCHARGE ON WASTE FROM SEPTIC SYSTEMS SHALL BE
13 USED ONLY:

14 (I) TO AWARD GRANTS OR PROVIDE LOANS FOR UP TO 100% OF
15 ELIGIBLE COSTS; AND

16 (II) FOR THE ADMINISTRATIVE COSTS PROVIDED UNDER
17 SUBSECTION (E)(2)(V) AND (VI) OF THIS SECTION.

18 (3) PRIORITY FOR THE GRANTS OR LOANS PROVIDED UNDER THIS
19 SUBSECTION SHALL BE GIVEN TO FAILING SEPTIC SYSTEMS LOCATED IN THE
20 CRITICAL AREAS OF THE STATE.

21 (G) (1) THERE IS A WATERSHED RESTORATION FUND ADVISORY
22 COMMITTEE.

23 (2) THE COMMITTEE CONSISTS OF THE FOLLOWING MEMBERS:

24 (I) THE SECRETARIES OF THE ENVIRONMENT, AGRICULTURE,
25 NATURAL RESOURCES, AND BUDGET AND MANAGEMENT, OR THEIR DESIGNEES;

26 (II) ONE MEMBER OF THE SENATE, APPOINTED BY THE PRESIDENT
27 OF THE SENATE;

28 (III) ONE MEMBER OF THE HOUSE OF DELEGATES, APPOINTED BY
29 THE SPEAKER OF THE HOUSE OF DELEGATES;

30 (IV) TWO PERSONS REPRESENTING PUBLICLY OWNED
31 WASTEWATER FACILITIES, APPOINTED BY THE GOVERNOR;

32 (V) TWO PERSONS REPRESENTING ENVIRONMENTAL
33 ORGANIZATIONS, APPOINTED BY THE GOVERNOR;

34 (VI) ONE PERSON EACH FROM THE MARYLAND ASSOCIATION OF
35 COUNTIES AND THE MARYLAND MUNICIPAL LEAGUE, APPOINTED BY THE
36 GOVERNOR;

1 (VII) TWO PERSONS REPRESENTING THE BUSINESS COMMUNITY,
2 APPOINTED BY THE GOVERNOR; ~~AND~~

3 (VIII) TWO PERSONS REPRESENTING LOCAL HEALTH DEPARTMENTS
4 WITH EXPERTISE IN ON-SITE SEWAGE DISPOSAL SYSTEMS, APPOINTED BY THE
5 GOVERNOR; AND

6 (IX) ONE PERSON REPRESENTING A UNIVERSITY OR RESEARCH
7 INSTITUTE WITH EXPERIENCE IN NUTRIENT POLLUTION.

8 (3) THE GOVERNOR SHALL APPOINT THE CHAIRMAN OF THE
9 COMMITTEE FROM THE DESIGNATED MEMBERS OF THE COMMITTEE.

10 (4) THE COMMITTEE MAY CONSULT WITH ANY STAKEHOLDER GROUP AS
11 IT DEEMS NECESSARY.

12 (5) (I) THE TERM OF A MEMBER IS 4 YEARS.

13 (II) A MEMBER CONTINUES TO SERVE UNTIL A SUCCESSOR IS
14 APPOINTED.

15 (III) THE TERMS OF THE MEMBERS APPOINTED BY THE GOVERNOR
16 ARE STAGGERED AS REQUIRED BY THE TERMS PROVIDED FOR MEMBERS OF THE
17 COMMITTEE ON OCTOBER 1, 2004.

18 (IV) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE
19 UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

20 (V) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN
21 SERVES ONLY FOR THE REST OF THE TERM AND UNTIL A SUCCESSOR IS APPOINTED
22 AND QUALIFIES.

23 (6) THE COMMITTEE SHALL:

24 (I) PERFORM AN ANALYSIS OF THE COST OF NUTRIENT REMOVAL
25 FROM WASTEWATER FACILITIES;

26 (II) IDENTIFY ADDITIONAL SOURCES FOR FUNDING THE
27 WATERSHED RESTORATION FUND; ~~INCLUDING A MEANS OF ESTABLISHING A~~
28 ~~SIMILAR IMPACT FEE FOR ON-SITE SEWAGE DISPOSAL SYSTEM OWNERS;~~

29 (III) STUDY ALTERNATIVE METHODS OF COLLECTING THE
30 ENVIRONMENTAL SURCHARGE FROM USERS OF SEPTIC SYSTEMS AND USES FOR THE
31 MONEY COLLECTED FROM USERS OF SEPTIC SYSTEMS;

32 (IV) STUDY METHODS OF COLLECTING AN APPROPRIATE
33 ENVIRONMENTAL SURCHARGE FROM OWNERS OF SEWAGE HOLDING TANKS;

34 (V) MAKE RECOMMENDATIONS TO IMPROVE THE EFFECTIVENESS
35 OF THE WATERSHED RESTORATION FUND IN REDUCING NUTRIENT LOADINGS TO
36 THE WATERS OF THE STATE;

1 ~~(IV)~~ ~~(V)~~ (VI) MAKE RECOMMENDATIONS REGARDING THE
2 APPROPRIATE ENVIRONMENTAL SURCHARGE TO BE ASSESSED IN FISCAL YEAR 2008
3 AND SUBSEQUENT YEARS AS NECESSARY TO MEET THE FINANCING NEEDS OF THE
4 WATERSHED RESTORATION FUND;

5 ~~(V)~~ ~~(VI)~~ (VII) ADVISE THE SECRETARY CONCERNING THE
6 ADOPTION OF REGULATIONS AS DESCRIBED IN SUBSECTION (G) OF THIS SECTION;
7 AND

8 ~~(VI)~~ ~~(VII)~~ (VIII) BEGINNING JANUARY 1, 2006, AND EVERY ~~2-YEARS~~
9 YEAR THEREAFTER, REPORT TO THE GOVERNOR AND, SUBJECT TO § 2-1246 OF THE
10 STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY ON ITS FINDINGS AND
11 RECOMMENDATIONS.

12 (7) MEMBERS OF THE COMMITTEE:

13 (I) MAY NOT RECEIVE COMPENSATION; BUT

14 (II) ARE ENTITLED TO REIMBURSEMENT FOR EXPENSES UNDER
15 THE STANDARD STATE TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET.

16 (8) THE DEPARTMENT OF THE ENVIRONMENT, DEPARTMENT OF
17 NATURAL RESOURCES, AND DEPARTMENT OF BUDGET AND MANAGEMENT SHALL
18 PROVIDE STAFF SUPPORT FOR THE COMMITTEE.

19 (G) ~~(+)~~ THE DEPARTMENT SHALL ADOPT ANY REGULATIONS THAT ARE
20 NECESSARY OR APPROPRIATE TO CARRY OUT THE PROVISIONS OF THIS SUBTITLE.

21 ~~(2) THE DEPARTMENT, IN CONSULTATION WITH THE WATERSHED FUND~~
22 ~~ADVISORY COMMITTEE, MAY ADOPT REGULATIONS THAT ESTABLISH THE AMOUNT,~~
23 ~~METHOD OF CALCULATION, AND TYPES OF ENVIRONMENTAL SURCHARGES TO BE~~
24 ~~DEPOSITED IN THE WATERSHED RESTORATION FUND FOR FISCAL YEAR 2008 AND~~
25 ~~SUBSEQUENT YEARS.~~

26 9-1605.3.

27 (A) THERE IS AN ENVIRONMENTAL SURCHARGE TO BE PAID BY ANY USER OF
28 A WASTEWATER FACILITY THAT:

29 (1) IS LOCATED IN THE STATE; OR

30 (2) SERVES A MARYLAND USER AND IS ELIGIBLE FOR FUNDING UNDER
31 THIS SUBTITLE.

32 (B) (1) EXCEPT AS PROVIDED IN SUBSECTIONS (C) AND (D) OF THIS SECTION
33 AND PARAGRAPH (2) OF THIS SUBSECTION, THE ENVIRONMENTAL SURCHARGE IS:

34 (I) FOR EACH RESIDENTIAL DWELLING THAT RECEIVES AN
35 INDIVIDUAL SEWER BILL, \$2.50 PER MONTH; AND

1 (II) FOR A BUILDING OR GROUP OF BUILDINGS UNDER SINGLE
2 OWNERSHIP OR MANAGEMENT THAT CONTAIN MULTIPLE RESIDENTIAL DWELLINGS
3 THAT DO NOT RECEIVE INDIVIDUAL SEWER BILLS OR A NONRESIDENTIAL USER:

4 1. FOR EACH EQUIVALENT DWELLING UNIT NOT EXCEEDING
5 2,000 EQUIVALENT DWELLING UNITS, \$2.50 PER MONTH;

6 2. FOR EACH EQUIVALENT DWELLING UNIT OVER 2,000
7 EQUIVALENT DWELLING UNITS AND NOT EXCEEDING 5,000 EQUIVALENT DWELLING
8 UNITS, \$1.25 PER MONTH; AND

9 3. FOR EACH EQUIVALENT DWELLING UNIT OVER 5,000
10 EQUIVALENT DWELLING UNITS, THERE IS NO SURCHARGE.

11 (2) THE TOTAL SURCHARGE IMPOSED UNDER PARAGRAPH (1) OF THIS
12 SUBSECTION MAY NOT EXCEED \$105,000 FOR A SINGLE SITE.

13 (3) (I) FOR PURPOSES OF MEASURING AVERAGE DAILY WASTEWATER
14 FLOW, THE LOCAL GOVERNMENT OR BILLING AUTHORITY FOR A WASTEWATER
15 FACILITY SHALL USE EXISTING MEASURING METHODS, THAT MAY INCLUDE WATER
16 USAGE OR OTHER ESTIMATION METHODS.

17 (II) THE AVERAGING PERIOD IS:

18 1. THE BILLING PERIOD ESTABLISHED BY THE LOCAL
19 GOVERNMENT OR BILLING AUTHORITY; OR

20 2. IF A BILLING PERIOD IS NOT ESTABLISHED BY THE LOCAL
21 GOVERNMENT OR BILLING AUTHORITY, A QUARTER OF A CALENDAR YEAR.

22 (C) A USER OF A WASTEWATER FACILITY SHALL BE EXEMPT FROM PAYING A
23 SURCHARGE IF:

24 (1) (I) 1. THE USER'S WASTEWATER FACILITY'S AVERAGE ANNUAL
25 EFFLUENT NITROGEN AND PHOSPHORUS CONCENTRATIONS, AS REPORTED IN THE
26 FACILITY'S STATE DISCHARGE MONITORING REPORTS FOR THE PREVIOUS
27 CALENDAR YEAR, DEMONSTRATE THAT THE FACILITY IS ACHIEVING ENHANCED
28 NUTRIENT REMOVAL, AS DEFINED IN § 9-1601(K) OF THIS SUBTITLE; OR

29 2. THE DEPARTMENT HAS DETERMINED THAT THE USER'S
30 WASTEWATER FACILITY IS NOT REQUIRED TO MONITOR FOR NITROGEN OR
31 PHOSPHORUS IN ITS DISCHARGE PERMIT; AND

32 (II) THE USER'S WASTEWATER FACILITY HAS NOT RECEIVED A
33 STATE OR FEDERAL GRANT FOR THAT FACILITY;

34 (2) (I) THE USER'S WASTEWATER FACILITY DISCHARGES TO
35 GROUNDWATER AND THE NUTRIENT CONCENTRATIONS IN THE WASTEWATER PRIOR
36 TO DISCHARGE TO GROUNDWATER HAVE NOT EXCEEDED 3 MILLIGRAMS PER LITER
37 TOTAL NITROGEN AND 0.3 MILLIGRAMS PER LITER TOTAL PHOSPHORUS AS

1 DEMONSTRATED BY AN ANALYSIS OF THE GROUNDWATER FROM MONITORING
2 WELLS LOCATED ON THE PROPERTY AND AS REPORTED IN DISCHARGE MONITORING
3 REPORTS FOR THE PREVIOUS CALENDAR YEAR; AND

4 (II) THE USER'S WASTEWATER FACILITY HAS NOT RECEIVED A
5 STATE OR FEDERAL GRANT FOR THAT FACILITY; OR

6 (3) THE DEPARTMENT DETERMINES THAT:

7 (I) THE USER'S WASTEWATER FACILITY DISCHARGES
8 NONCONTACT COOLING WATER, WATER FROM DEWATERING OPERATIONS, OR
9 RECLAIMED WASTEWATER FROM A FACILITY WHOSE USERS PAY INTO THE FUND;
10 AND

11 (II) THE DISCHARGE DOES NOT RESULT IN A NET INCREASE IN
12 LOADING OF NUTRIENTS COMPARED TO THE INTAKE WATER.

13 (D) THE ENVIRONMENTAL SURCHARGE ON SEPTIC SYSTEM WASTE THAT IS
14 PUMPED OR DISCHARGED INTO A WASTEWATER FACILITY IS \$0.08 PER GALLON.

15 (E) (1) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS
16 PARAGRAPH, THE ENVIRONMENTAL SURCHARGE SHALL BE COLLECTED BY THE
17 WASTEWATER FACILITY OR THE BILLING AUTHORITY FOR THE WASTEWATER
18 FACILITY, AS APPROPRIATE, ON BEHALF OF THE STATE.

19 (II) FOR A WASTEWATER FACILITY WITHOUT A BILLING
20 AUTHORITY, THE COMPTROLLER MAY COLLECT THE SURCHARGE FROM THE
21 FACILITY OWNER.

22 (2) A LOCAL GOVERNMENT OR A BILLING AUTHORITY FOR A
23 WASTEWATER FACILITY IS AUTHORIZED TO USE ALL EXISTING PROCEDURES AND
24 AUTHORITY FOR COLLECTING A WATER AND SEWER BILL TO ENFORCE THE
25 COLLECTION OF THE ENVIRONMENTAL SURCHARGE.

26 (3) THE BILLING AUTHORITY FOR THE WASTEWATER FACILITY SHALL
27 ADD THE FULL AMOUNT OF THE SURCHARGE TO EACH CUSTOMER'S BILL AND SHALL
28 ESTABLISH A SEGREGATED ACCOUNT FOR THE DEPOSIT OF FUNDS COLLECTED
29 UNDER THIS SECTION.

30 (4) (I) THE COMPTROLLER SHALL DETERMINE THE METHOD OF
31 COLLECTION OF THE SURCHARGE FROM THE WASTEWATER FACILITY.

32 (II) EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS
33 PARAGRAPH, THE COMPTROLLER SHALL DEPOSIT THE MONEY IN THE WATERSHED
34 RESTORATION FUND.

35 (III) WITH REGARD TO THE MONEY COLLECTED UNDER
36 SUBSECTION (D) OF THIS SECTION, THE COMPTROLLER SHALL DEPOSIT:

1 1. 60% OF THE MONEY IN A SEPARATE ACCOUNT WITHIN
2 THE WATERSHED RESTORATION FUND; AND

3 2. 40% OF THE MONEY WITH THE MARYLAND AGRICULTURE
4 WATER QUALITY COST SHARE PROGRAM IN THE DEPARTMENT OF AGRICULTURE TO
5 FUND COVER CROP ACTIVITIES.

6 (5) THE STATE CENTRAL COLLECTION UNIT MAY COLLECT DELINQUENT
7 ACCOUNTS UNDER THIS SUBSECTION IN ACCORDANCE WITH § 3-302 OF THE STATE
8 FINANCE AND PROCUREMENT ARTICLE.

9 (F) SUBJECT TO THE APPROVAL OF THE ADMINISTRATION, A LOCAL
10 GOVERNMENT MAY ESTABLISH A PROGRAM TO EXEMPT FROM THE ENVIRONMENTAL
11 SURCHARGE A RESIDENTIAL DWELLING ABLE TO DEMONSTRATE SUBSTANTIAL
12 FINANCIAL HARDSHIP AS A RESULT OF THE SURCHARGE.

13 9-1611.

14 (a) Bonds may be secured by a trust agreement by and between the
15 Administration and a corporate trustee, which may be any trust company or bank
16 having trust powers, within or without the State. Such trust agreement may pledge or
17 assign all or any part of the revenues or corpus of the Water Quality [Fund or] FUND,
18 Drinking Water Loan Fund, OR WATERSHED RESTORATION FUND, or any account
19 [therein] WITHIN THESE FUNDS, and may pledge or assign or grant a lien on or
20 security interest in any loan agreement or loan obligation. Any such trust agreement
21 or resolution authorizing the issuance of bonds may contain such provisions for the
22 protection and enforcement of the rights and remedies of the bondholders as may be
23 deemed reasonable and proper, including covenants setting forth the duties of the
24 Administration in relation to the making, administration and enforcement of loans
25 and the custody, safeguarding and application of moneys. Such trust agreement may
26 set forth the rights and remedies of the bondholders and of the trustee and may
27 restrict the individual right of action by bondholders. In addition to the foregoing,
28 such trust agreement may contain such other provisions as the Director may deem
29 reasonable and proper for the security of the bondholders, including, without
30 limitation, covenants pertaining to the issuance of additional parity bonds upon
31 conditions stated therein consistent with the requirements of this subtitle.

32 (b) The proceeds of the sale of bonds shall be disbursed in such manner and
33 under such restrictions, if any, as may be provided in such trust agreement.

34 (c) (1) The revenues and moneys designated as security for bonds shall be
35 set aside at such regular intervals as may be provided in the bond resolution in a
36 special account in the Water Quality Fund, if the net sale proceeds will be deposited in
37 the Water Quality Fund, [or] the Drinking Water Loan Fund, if the net sale proceeds
38 will be deposited in the Drinking Water Loan Fund, OR THE WATERSHED
39 RESTORATION FUND, IF THE NET SALE PROCEEDS WILL BE DEPOSITED IN THE
40 WATERSHED RESTORATION FUND which is pledged to, and charged with, the
41 payment of:

42 (i) The interest upon such bonds as such interest falls due;

- 1 (ii) The principal of such bonds as it falls due;
- 2 (iii) The necessary charges of the trustee, bond registrar, and paying
- 3 agents; and
- 4 (iv) The redemption price or purchase price of bonds retired by call
- 5 or purchase as provided in the bond resolution or trust agreement.

6 (2) Any amounts set aside in such special account which are not needed

7 to provide for the payment of the items included under paragraph (1) of this

8 subsection may be used for any other lawful purpose, to the extent provided in the

9 bond resolution. Such pledge shall be valid and binding from the time when the

10 pledge is made. Such revenues or other moneys so pledged and thereafter received by

11 the Administration shall immediately be subject to the lien of such pledge without

12 any physical delivery thereof or further act, and the lien of any such pledge shall be

13 valid and binding as against all parties having any claims of any kind in tort,

14 contract, or otherwise against the Administration or the Water Quality Fund, [or] the

15 Drinking Water Loan Fund, OR THE WATERSHED RESTORATION FUND, irrespective of

16 whether such parties have notice thereof. Neither the bond resolution nor any trust

17 agreement by which a pledge is created need be filed or recorded except in the records

18 of the Administration, any public general or public local law to the contrary

19 notwithstanding.

20 (d) Any net earnings of the Administration, beyond that necessary for the

21 retirement of bonds or to implement the public purposes or programs of the

22 Administration, shall not inure to the benefit of any person, other than the State of

23 Maryland for use to accomplish the purposes of this subtitle.

24 9-1616.

25 The Administration shall not be required to give any bond as security for costs,

26 supersedeas, or any other security in any suit or action brought by or against it, or in

27 proceedings to which it may be a party, in any court of this State, and the

28 Administration shall have the remedies of appeal of whatever kind to all courts

29 without bonds, supersedeas, or security of any kind. No builder's, materialman's,

30 contractor's, laborer's, or mechanic's liens of any kind or character shall ever attach to

31 or become a lien upon the Water Quality [Fund or] FUND, the Drinking Water Loan

32 Fund, OR THE WATERSHED RESTORATION FUND or any property, real or personal,

33 belonging to the Administration and no assignment of wages shall be binding upon or

34 recognized by the Administration.

35 9-1617.

36 The Administration shall make provision for a system of financial accounting,

37 controls, audits, and reports in accordance with generally accepted principles of

38 governmental accounting. All accounting systems and records, auditing procedures

39 and standards, and financial reporting for the Water Quality Fund, THE DRINKING

40 WATER LOAN FUND, AND THE WATERSHED RESTORATION FUND shall conform to the

41 requirements of Title VI of the Federal Water Pollution Control Act, THE FEDERAL

42 SAFE DRINKING WATER ACT, AND THE ACT ESTABLISHING THE CHESAPEAKE BAY

1 WATERSHED RESTORATION FUND ~~ACT~~, AS APPLICABLE and, to the extent not
2 inconsistent therewith, generally accepted principles of governmental accounting. As
3 soon as practical after the closing of the fiscal year, an audit shall be made of the
4 financial books, records, and accounts of the Administration. The audit shall be made
5 by independent certified public accountants, selected by the Administration, and
6 licensed to practice in the State as auditors. The auditors may not have a personal
7 interest either directly or indirectly in the fiscal affairs of the Administration. They
8 shall be experienced and qualified in the accounting and auditing of public bodies.
9 The report of audit shall be prepared in accordance with generally accepted auditing
10 principles and point out any irregularities found to exist. The auditors shall report to
11 the Secretary the results of their examination, including their unqualified opinion on
12 the presentation of the financial positions of the Water Quality [Fund and] FUND,
13 the Drinking Water Loan Fund, AND THE WATERSHED RESTORATION FUND, and the
14 results of the Administration's financial operations. If they are unable to express an
15 unqualified opinion they shall state and explain in detail the reasons for their
16 qualifications, disclaimer, or opinion including recommendations necessary to make
17 possible future unqualified opinions.

18 SECTION 2. AND BE IT FURTHER ENACTED, That the terms of the members
19 of the Chesapeake Bay Watershed Restoration Fund Advisory Committee, appointed
20 by the Governor, shall expire as follows:

- 21 (1) four members in 2005;
- 22 (2) ~~four~~ three members in 2006; and
- 23 (3) ~~four~~ three members in 2007.

24 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 ~~July~~ October 1, 2004.