

Task Force on Sustainable Growth and Wastewater Disposal Funding Sustainable Communities & Growth Workgroup

Workgroup Progress Report November 8, 2011

NOTE: Recommendations #6, 8, 9, 10, and 11 in this Progress Report are revised/added as per the November 7, 2011 Workgroup meeting and are so indicated as bold underlined below. All other recommendations are unchanged from the October 25, 2011 Workgroup Progress Report.

Background

The Workgroup has taken as its charge the identification and development of recommended actions to offset fully or partially the financial costs associated with a) realizing/incentivizing Smart Growth objectives, and b) minimizing pollutant impacts from existing and future development. To that end, the Workgroup has focused discussions to date on several approaches and options for restructuring the Bay Restoration Fund (BRF). At a minimum, restructuring of the BRF is necessary in order to address the current approximately \$385 M funding shortfall for upgrading all 67 major WWTPs. The Workgroup discussed approaches for addressing this need as well as other solutions for reducing nutrient and sediment runoff from developed lands – developing a State “Funding Plan” to essentially close the funding gap for the developed lands portion of Maryland’s TMDL requirements.

Under the most recent EPA Chesapeake Bay Program Model, Maryland must reduce annual nitrogen loads to Chesapeake Bay from developed lands (i.e. urban and septic) by approximately 7.6 M lbs (from 2012) in order to meet our mandated TMDL requirements. The suite of actions available to realize the necessary nutrient reductions from developed lands include, a) ENR upgrades to “major” WWTPs, b) ENR upgrades to 10 “major/minor” WWTPs, c) retrofit of septic systems to Best Available Technology (BAT) or connections to ENR WWTPs, and 4) stormwater retrofits. A strong majority of Workgroup members felt that financing these needs would best be met by raising the BRF as opposed to a multitude of other fees. The Workgroup explored a diversity of BRF funding scenarios designed to meet these needs and other mandates currently required by state law (e.g. upgrade of septic systems in the Critical Area).

Following is a summary progress report on areas of consensus and areas for continued work as of November 8, 2011. The Workgroup is committed to continuing its efforts on all these issues identified below and can provide more specifics and updates as requested.

Areas of Consensus: Potential Solutions

Recommendation #1: Extend Maryland's timeframe for meeting its TMDL obligations to 2025 as required by EPA with additional accountability measures.

The Workgroup commends Governor O'Malley for setting an accelerated timeframe for Maryland to meet its TMDL obligations by 2020 – 5 years ahead of the EPA requirement – and encourages the State to continue at this accelerated pace as much as possible. However, the Workgroup was unable to identify a reasonable funding scenario that would get Maryland to this accelerated goal and, as a result, is recommending that Maryland formally extend its timeframe for full TMDL compliance to 2025. There are funding scenarios (see Recommendation #2 below) for which baseline projections allow Maryland to achieve approximately 100% of our WIP goal from developed lands if the deadline is extended to 2025. The Workgroup is also recommending that Maryland continue and expand its accountability measures through BayStat and other appropriate means to publicly and transparently drive progress toward the TMDL goal (see also Recommendation #2C below).

Recommendation #2: Increase BRF revenue as follows in order to cover existing shortfall in major WWTP ENR upgrades and essentially close the funding gap for implementing other WIP requirements from developed lands:

- 2A): Increase average annual residential fee rate to \$60/year/dwelling unit beginning in SFY13 and \$90/year/dwelling unit beginning in SFY15. Increase average non-residential fee rates and cap accordingly.**
- 2B): Index the residential and commercial fee rates to the Consumer Price Index (CPI) beginning in SFY16. Establish an annual floor for the index of 1% and a ceiling of 3%.**

The Workgroup evaluated general scenarios as follows:

Scenario "A" - average residential fee rate remains at an average of \$30/year/dwelling unit (*status quo*):

Scenario "B" - increase to \$60/year/dwelling unit;

Scenario "C" - increase to \$60/year/dwelling unit in FY13 and then \$90/year/dwelling unit in FY15; and

Scenario "D" - increase to \$60/year/dwelling unit in FY13 and \$90/year/dwelling unit in FY15 with an indexing to the CPI in FY16.

Applying the revenue from these four rate structures to meeting the Phase I WIP strategies for developed lands and other requirements under current state law (e.g. funding BAT retrofits in the Critical Area) resulted in Scenario "A" achieving approximately 45% of the nitrogen reduction requirement for developed lands, Scenario "B" achieving approximately 90%, Scenario "C" achieving approximately 95%, and Scenario "D" achieving approximately 100%. **The workgroup recommended Scenario "D".**

- 2C): Conduct a thorough evaluation of progress to date in 2017 and restructure the fee rates accordingly if progress to meet our TMDL obligations by 2025 is not being met.**

2D): Sunset the rate increases back to an average annual residential fee of \$30/year/dwelling unit beginning in 2030 if TMDL obligations are met and any remaining debt is retired: or consider eliminating the fee entirely. Sunset average non-residential rates and cap similarly.

Recommendation #3: Revise authorized uses of BRF funding to better meet needs of developed lands:

3A): Remove funding for cover crops as an authorized use of the BRF. Amend statute enabling the Chesapeake and Coastal Bays Trust Fund to require that all State funding for cover crops come from the Trust Fund at annual levels no less than the combined SFY12 BRF and Trust Fund cover crop levels.

State support for cover crop implementation is currently realized through two funding programs; the BRF (SFY12 levels = approx. \$5.6 M) and the Trust Fund (SFY12 levels = approx. \$12.150 M). The Workgroup supports state funding for cover crops, but felt that it more appropriate for the funding to come via one fund source. Implementing this recommendation would focus BRF funding on WIP implementation on developed lands, and Trust Fund funding on WIP implementation on non-developed lands - primarily agricultural BMPs and natural filters on public lands. Doing so would also legislatively mandate a minimum amount of state cover crop funding at SFY12 levels. It is important to recognize that the Workgroup is not recommending shifting any funds from the BRF to the Trust Fund, rather just removing cover crops as an authorized use of the BRF and requiring a minimum amount of cover crop funding in the Trust Fund.

3B): Amend BRF enabling statute to permit funding of stormwater retrofits as an authorized use of the BRF funds.

The BRF is currently authorized to fund WWTP upgrades to ENR, septic system upgrades to Best Available Technology (BAT), and septic system connections to ENR WWTPs. Stormwater retrofits are the last remaining developed land BMP and represent a significant funding hurdle for local jurisdictions, yet are not an authorized use of the BRF. The Workgroup recommends amending the BRF enabling statute to allow funding of stormwater retrofits.

Recommendation #4: Maximize cost effectiveness and efficiencies of state-funded projects utilizing BRF revenue through competition, targeting, and leveraging funds.

The following recommendations apply to that portion of increased BRF revenue that is not dedicated to upgrading the remaining 6 major WWTP plants to ENR and paying off their associated debt obligation. Under these recommendations, local WIP implementing jurisdictions can submit competitive proposals for funding that suite of authorized practices (ENR upgrades to major/minor WWTPs, septic retrofits to BAT, septic connections to existing WWTPSs, and stormwater retrofits) that best serve their specific WIP implementation needs.

- 4A): BRF funds should be awarded to local jurisdictions through a competitive process in which awards are determined primarily on the goal of maximizing the pounds of nitrogen reduced per state dollar expended.**
- 4B): Pounds of nitrogen reduced for septic systems and stormwater projects should be based on scientifically defensible analysis of watershed areas with the highest septic or stormwater nitrogen loads and immediacy of delivery of nutrients to the Bay. Maps resulting from the above two analyses should be published and made readily available to applicants.**
- 4C): Competitive grants for 10 major/minor WWTPs upgrades to ENR should be prioritized based first on those areas of the State in which growth is projected to occur without the availability of public sewer, and secondarily on resulting nutrient reduction benefits.**

Recommendation #5: Expenditure of BRF funds should be maximized by implementing the following:

- 5A): Change the current 100% BRF funding requirement for failing septic systems in the Critical Area to match the income based scale currently used for septic systems outside of the Critical Area. The State should provide between 25% - 100% of upgrade to BAT dependent upon income. The State should continue to provide \$13,000 (average cost of a BAT upgrade) toward connection of a failing septic system to an ENR WWTP.**
- 5B): State should provide up to 50% cost share for stormwater retrofit projects based on the above competitive priority ranking system (See Recommendation #4 above).**
- 5C): State should continue to allow up to 10% of total BRF revenue to go to ENR WWTP operations and maintenance, but with a cap of \$5 million per year.**

Recommendation #6: Amendments to the conditions under which counties can connect failing septic systems to existing ENR WWTPs. The Workgroup recommends that MDE and MDP develop an exception process, and recommend the necessary statutory changes, to allow the use of BRF funds for septic hookups in areas outside a PFA where it is consistent with Smart Growth and Bay goals and will not result in sprawl development.

The Workgroup fully supports the objectives of the State's Smart Growth initiatives and also recognizes the potential negative sprawl consequences of connecting existing septic systems to WWTPs. However, the Workgroup found that the current restrictions on septic connections to WWTPs placed on BRF funded projects can, in some cases, be both detrimental to Smart Growth objectives (eg. preventing appropriate infill development) and limit the State's ability to meet its TMDL obligations in the most cost effective manner. The Workgroup would like the opportunity to work on suggested language to address this issue prior to the Task Force's November 8 meeting.

Recommendation #7: Provide billing authorities the option to base BRF fee structures on water usage (vs current flat rate) but not on income.

Current statute provides billing authorities the opportunity to offer fee exemptions to low income households. Some billing authorities exercise this option, but relatively few households take advantage of it. The Workgroup decided against requiring billing authorities to offer this exemption. The Workgroup did agree, however, to allow billing authorities the option of basing their fee structure on the current flat rate or basing it on water usage as long as the collected revenue meets the requirements of Recommendation #2 above.

Recommendation #8: Guaranteed grants to county governments from the increased BRF to implement stormwater BMPs.

- 8A) Beginning in FY13, county governments will annually receive 15% of the gross BRF revenue generated in their jurisdiction for implementation of approved stormwater BMPs as per conditions 8B-8F below. Beginning in FY18, and subject to recommendations of the BRF Advisory Committee in 2017, the percentage that counties governments will annually receive will increase to 25% of the gross BRF revenue.**
- 8B) Submission and subsequent approval by MDE of an annual implementation plan. Projects identified in the spending plan must:**
- a. be limited to implementation of authorized stormwater BMPs for meeting Phase II WIP requirements,**
 - b. be targeted by practice and geography to realize greatest nutrient and sediment benefits to the bay per dollar as identified in State targeting protocols.**
 - c. include no more than 1.5% administrative overhead.**
- 8C) Funds will be received by the Comptroller's Office via the billing authorities as per current practice, and then reallocated to the local jurisdictions consistent with above conditions.**
- 8D) There is no match requirement for jurisdictions to receive the funds. Jurisdictions may use the received funds as match for state funded projects (see Item 8Eb below).**
- 8E) Remaining 85% gross BRF revenue retained by the State will be allocated in the following priority:**
- a. completion of ENR upgrades to the remaining six major WWTP plants and retirement of associated debt obligation,**
 - b. to local jurisdictions through a competitive and targeted process for a) upgrades of major/minor WWTPs, b) septic system upgrades to BAT, c) septic system connections to WWTPs, and d) stormwater BMPs. Funds will granted on a competitive and targeted process based on nutrient and sediment benefits to the bay per state dollar as per Workgroup Recommendation #4 in October 25, 2011 Workgroup Progress Report.**
- 8F) The Maryland Association of Counties and Maryland Municipal League will develop and recommend by mutual agreement how the grants for stormwater retrofits shall be distributed to municipalities.**

The above recommendations are contingent upon the implementation of increased BRF revenue resulting from the Workgroup's Recommendation #2 in the October 25, 2011 Workgroup Progress Report.

See Attachment 1 for more specifics.

Recommendation #9: The Workgroup recommends pursuing with Maryland Environmental Service several statutory changes to streamline and clarify their current authorities to assist local governments in implementing the urban practices addressed in the workgroup report.

Recommendation #10: Stewardship Incentives to Lower BRF

Some members of the workgroup recommended that we include the idea of developing a set of best management practices that property owners (including residential, commercial, industrial and institutional property owners) can implement above-and-beyond what they would otherwise be required to do under existing laws to offset BRF payments. That idea, while having merit, will take a fair amount of effort to develop and vet. The workgroup has simply not had the time to do that. We recommend that the Task Force endorse an effort by a group of governmental and nongovernmental parties continue to work on this for the 2013 legislative session.

Recommendation #11: Expand BRF funding to include the state's 50% share of BNR upgrade costs for 10 major-minor plants.

The workgroup recommends authorizing the BFR to fund (no earlier than FY 2018) not only 100% of the costs for ENR upgrades to the major-minors but also 100% of the state's 50% share of BNR upgrade costs to those plants. This will raise the state expenditures on the major-minors to by an additional \$23 million, for a total of \$55 million.