

SUBJECT: Watershed Protection and Restoration Fund Legislation

TO: Lonnie R. Robbins,
Chief Administrative Officer

FROM: Joshua Feldmark,
Director, Office of Environmental Sustainability

DATE: February 12, 2013

Bill No. 8-2013

AN ACT establishing a Watershed Protection and Restoration Fund as a dedicated, non-lapsing, enterprise fund; specifying the purpose of the fund and allowing certain revenue to be deposited into the fund; allowing the fund to be used for certain purposes; establishing a Watershed Protection and Restoration Fee; establishing the method, frequency and enforcement of the collection of the Fee, setting forth certain provisions specific to particular types of properties; creating a certain credit and reimbursement program to adjust the amount of the Fee that certain properties will pay; allowing for certain adjustments; allowing for a certain Assistance Program; allowing certain appeals; authorizing the adoption of certain regulations; defining certain terms; amending certain definitions; providing for certain enforcement; and generally relating to the Watershed Protection and Restoration Program in Howard County.

Resolution No. 21-2013

A RESOLUTION approving schedules for various charges related to the Watershed Protection and Restoration Fee including impervious unit rate and the amounts for certain credit, reimbursement and assistance programs.

Background

Efforts to clean up the Chesapeake Bay watershed have been underway for the better part of the last 30 years. For most of that time the activities were undertaken on a voluntary basis; however, over the last 10 years the US EPA and MDE stepped up the effort by mandating clean up goals in the form of Municipal Separate Stormwater Sewer System (MS4) permits and more recently with the adoption of Total Maximum Daily Loads (TMDL's) and corresponding Watershed Implementation Plans (WIP). Each Bay watershed jurisdiction has been charged with the implementing programs that, based on science and modeling projections, will meet clean-up goals by 2025. These mandates cannot be met with existing program expenditures and therefore will require a significant infusion of new funds to reach the goals in the required timeframe.

Howard County like most jurisdictions in Maryland had a respectable stormwater management program underway, but the level of effort fell short of the activity necessary to meet the new permit requirements. Recognizing the need for increased funding, the county considered implementing a stormwater fee as part of the FY 12 budget. However, after reviewing the complexity of the effort and the limited time, the County Executive instead chose to jump start the program with an increase of capital program funding from \$3 million to \$10 million, while also setting aside funding to hire a consultant to assist in the development of a comprehensive stormwater service fee.

In the late summer of 2011, AMEC was hired to assist the county in the creation of a stormwater fee. Soon after, a new position of Stormwater Manager was added to the Office of Environmental Sustainability, to guide policies and practices associated with an expanded stormwater program. Research, data collection and stormwater program assessment began in earnest in the fall of 2011 and continued through the winter with the expectation that a stormwater fee proposal would be presented to the County Executive for consideration for the FY14 budget.

Mid-way through the County's effort, the Maryland Legislature, in April 2012, passed HB 987 requiring the 10, Phase 1 Stormwater Permit jurisdictions, to adopt a funding mechanism no later than July 1 of 2013. Fortunately Howard County was well along the way in the development of a fee. Despite some necessary changes in direction due to the requirements of HB 987, staff, with the assistance of a community based Stormwater Advisory Committee; evaluated the program needs, calculated anticipated costs, and developed a fee structure that complies with HB987. The proposed Watershed Protection and Restoration Fund and related fee, meets our financial needs in a manner that is believed to be fair and equitable to all community sectors.

The Watershed Protection and Restoration Fund

This is a dedicated, non-lapsing enterprise fund. Revenue is derived from the following sources:

- Fees paid in lieu of implementing best management practices

- All fines, penalties and costs associated with violations of Title 9, subtitle 18, Stormwater Management

- All money collected from the watershed protection fee

- All interest earned by the watershed protection fee

- Any additional money available and dedicated to watershed protection or restoration, such as Federal and State grants

The fund can be used for the following stormwater program related expenses:

Capital improvement for stormwater management

Operation and maintenance of stormwater facilities

Public education and outreach related to stormwater and water quality programs

Planning for stormwater management including mapping, monitoring, inspections and enforcement

Grants to non-profit organizations for costs associated with watershed protection and restoration

Reasonable costs to administer the fund

The Watershed Protection and Restoration Fee

The Watershed Fee will be charged annually to all property owners (except state and local government and voluntary fire companies, according to State law). The fee is based on the number of 500 square foot impervious units that exists on a property, on March 1 of each billing year. The County Council will determine the dollar value of an impervious unit each year by resolution.

The fee for each property will be calculated as follows:

The impervious area of the property will be measured in square feet, by one of the following methods:

Analysis of aerial photography

Direct measurement from engineering drawings

Field surveys conducted by a professional engineer or licensed land surveyor

Inspection by the Department of Public Works

The total impervious area will then be divided by the impervious unit rate (500). The resulting number of units for a property will be rounded to the nearest whole unit (i.e. $3.0 - 3.49 = 3$ units; $3.5 - 3.99 = 4$ units). The number of impervious units will then be multiplied by the impervious unit rate to determine the annual charge.

There are a few unique property conditions that will require special methods to determine the fee as follows:

Common area property owned by a community association or other common ownership will be charged based on the total impervious surface, and billed either:

Directly to the community association or manager of common ownership property

If no association or manager exists the fee will be divided by the number of owners in the association and added to the fee for each owner's individual property.

Properties under agricultural use assessment are subject to, or may participate in programs designed to mitigate stormwater impacts. These agricultural properties will be assessed in one of two ways:

If the property has a fully implemented Conservation and water quality plan approved by the Soil Conservation District then the property will be charged only impervious surface represented by the residential structures and appurtenances on the property

If the property has not implemented a Conservation plan then the property will be charged for all the imperviousness of the entire property.

Credits to the Watershed Protection and Restoration Fee

The Watershed Protection and Restoration Fee is collected in order to maintain existing stormwater controls and implement new controls to better protect our streams and subsequently the Chesapeake Bay. If a property owner undertakes activities that assist in this effort the financial needs for the overall program are reduced. A property built with a Site Development plan dated before January 1, 2003 may be eligible for credits, up to 50% of the Watershed Fee for implementing best management practices such as:

Rain gardens/conservation landscapes

Permeable pavers or removing pavement

Cisterns or dry wells

Other practices defined in the 2000 Maryland Stormwater Design Manual

To receive a credit a property owner must complete a form supplied by the Office of Environmental Sustainability and if qualified, the credit will be calculated as follows:

The impervious area treated by the practice will be multiplied by 0.5 and deducted from the total amount of impervious are on the property. The fee will then be calculated on this reduced amount of imperviousness

In addition, any property built under a Site Development Plan dated on or after January 1, 2003 has met the criteria of the 2000 Maryland Stormwater Design Manual and is considered to be managing stormwater to the maximum extent possible. These properties are eligible for a credit of 50%. These properties must complete a form supplied by the Office of Environmental Sustainability.

All properties receiving a credit must reapply for the credit every three years, certifying continued maintenance and operation of the practice.

Reimbursements for implementing on-site stormwater management practices

As an incentive for property owners to add stormwater management controls on their property that reduce the impact of runoff to the public stormwater management system, funds will be made available to reimburse a portion of costs of implementing the practice.

This is a one-time, partial reimbursement for specified best management practices provided when the property owner is able to show that the practice is completed and functioning as designed.

The dollar amount of reimbursement for a best management practice will be set by Resolution each year by the County Council.

Administration Aspects of the Fee

Billing

The Department of Finance will include the Fee as a separate line item on the real property tax bill for each property subject to the fee. The fee will be collected in the same manner as the County real property taxes. An unpaid charge is a lien against the property.

Adjustments

Property owners may request an adjustment to the fee in writing to the Office of Environmental Sustainability. Adjustments are limited to the following:

An error was made in the measurement of the impervious surface on the property

A mathematical error was made in calculating the fee

The property owner invoiced is in error

Fee Assistance

The Department of Finance will administer a financial assistance program if an owner subject to the fee has an income that is 250% or less of the poverty level, established by the US Department of Health and Human Services. The fee will be reduced for eligible property owners in an amount adopted by resolution of the County Council.

Appeals

Any property owner aggrieved by actions of any of the agencies with responsibilities for administering the Watershed Protection and Restoration Fee may appeal the action to the Board of Appeals.