ENVIRONMENTAL PROTECTION AGENCY
ENVIRONMENTAL FINANCIAL ADVISORY BOARD

DEC - 5 2005

Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW.
Washington, D.C. 20460

Dear Administrator Johnson:

The Environmental Financial Advisory Board (EFAB) has formed a workgroup to investigate and report on innovative finance mechanisms for environmental projects. In the course of its work, the workgroup has reviewed and reported to the Board on the provisions of a new statute in the State of Maryland called "The Bay Restoration Fund Act," certain provisions of which constitute one of the most innovative pieces of environmental finance legislation since the Congress amended the Clean Water Act in 1987 to create the Clean Water State Revolving Funds.

The Board would like to commend this legislation to you and to appropriate officials in the Office of Water, not for the purpose of altering any Agency policy, but rather for use in your public pronouncements and other statements, wherever appropriate, to encourage other States and other jurisdictions to review the provisions of this new law and to adopt similar legislation tailored to their own needs.

Let us briefly summarize the relevant provisions of the Maryland law.

In its 2003 session, the Maryland General Assembly adopted a bill, which was signed by Governor Robert B. Ehrlich, establishing a "The Bay Restoration Fund" (the Fund) and imposing a "restoration fee" to capitalize the Fund. This is a very innovative piece of legislation for three reasons. First, it envisions the securitization of the future income from the majority of the bay restoration fees. Second, for the first time in our Nation's history, we believe, it imposes a statewide fee on septic tanks at personal residences. And, third, it dedicates the income from the fees on septic tanks to support specific non-point source pollution programs within the State.

The Maryland law imposes the restoration fee, which is a flat fee of $2.50 per month, on each home in the state served by a wastewater treatment plant or septic system[1]. However, the law then divides up the proceeds of these fees into two separate funds. Revenues from those using wastewater treatment facilities will be paid into a special fund managed by the Maryland Water Quality Finance Administration (MWQFA) and can be used for grants, loans or to pay off bonded indebtedness. It is the understanding of the General Assembly and Governor Ehrlich's office that, in fact, for the first few years, until the revenue stream can be reliably predicted, the MWQFA may well use the funds for grants or loans, but that once the revenue stream has stabilized, the MWQFA will issue tax-exempt municipal bonds collateralized by the pledge of the future revenue stream of this portion of the restoration fees (i.e., the fees collected from users of waste treatment facilities).

The Governor's office estimates this portion of the restoration fee at $65 million per year. The fiscal note accompanying the bill suggests that the securitization of these revenues will support the issuance of over $700 million of bonds.

The proceeds of these bonds will be used as grants to 66 previously identified major wastewater treatment facilities[2] to upgrade their abilities to remove nitrates and phosphates from wastewater to Enhanced Nutrient Removal levels[3]. There are provisions in the bill for including other facilities as well.

The most innovative part of the legislation, however, arises from the same $30.00 per year restoration fee on the users of septic tanks and sewage holding tanks. There are an estimated 420,000 such users in Maryland. Thus, these facilities should generate some $12.6 million of additional revenue.

The Maryland law specifically says that 60 percent of the proceeds of these restoration fees shall be reserved by MWQFA for grants to owners of "failing septic systems." Priority must be given to upgrading failing septic systems located in the Chesapeake and Atlantic Coastal Bays Critical Area[4]. The other 40 percent of the proceeds of this portion of the restoration fee revenue stream will be paid into the Maryland Agricultural Water Quality Cost Share (MACS) Program within the Maryland Department of Agriculture (MDA) to provide financial assistance to farmers for cover crops. Under MACS, MDA provides grants to farmers to cover up to 87.5 percent of the cost to install best management practices (BMPs). Cover crops planted after the fall harvest to absorb unused fertilizers is one of the BMPs currently eligible for cost-share assistance.

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[1] Commercial and industrial users of wastewater treatment facilities will also pay the $2.50 per month for every Equivalent Dwelling Unit[1] (EDU) up to 3,000 EDUs, $1.25 per month for each EDU between 3,000 and 5,000, where it is capped at a maximum of $120,000 per year per site.

[2] Those with design flows in excess of 500,000 gallons per day.

[3] Three milligrams per liter of nitrogen and .3 milligrams per liter of phosphorus.

[4] The Chesapeake and Atlantic Coastal Bays Critical Area is defined as being within 100 yards of any tributary of the Chesapeake Bay.

Administrator, as you well know, the imposition of any type of charge on the people is never politically popular. It took great courage for the State of Maryland to enact this law. Moreover, the Board believes that this is truly one of the most innovative environmental finance laws to have been enacted anywhere in the United States in well over a decade. We commend it to you and your colleagues in the Office of Water to encourage other States to examine the provisions of this Act and to adopt similar legislation in their own jurisdictions according to their own needs.

In making this recommendation, we note that non-point-source pollution is a highly intractable problem. Its causes are diffuse, as are the funding sources for its remedies. Public awareness leading to behavioral change is a major tool in addressing this issue. The efforts of you and your colleague to highlight this innovative statute may well inspire other areas to enact other similar laws to address this issue.

Finally, since this statute also addresses the broader issue of sustainable watershed financing, we would like to inform you that the Board will be hosting a roundtable on this issue in March 2006 where, with the help of experts, we will examine a wide variety of financing tools that will enable watershed managers and groups to leverage federal and state grants with locally raised resources. Maryland's restoration fee will be highlighted at this gathering as a potential source of local financial resources.

If the Board may be of any further assistance on this matter, please do not hesitate to contact us.

Sincerely,

A. Stanley Meiburg
Executive Director

cc: Ben Grumbles, Assistant Administrator
Office of Water, MC 4104M

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 30 2006

OFFICE OF
WATER

Mr. A. Stanley Meiburg
Executive Director
Environmental Protection Agency
Environmental Financial Advisory Board
61 Forsyth Street, S.W.
Atlanta, GA 30303

Dear ~~Mr. Meiburg~~ STAN:

Thank you for your letter to Administrator Johnson, concerning a new statute in Maryland called the "The Bay Restoration Fund Act." The Administrator has asked me to reply. Your letter recommends that the Environmental Protection Agency (EPA) encourage "other States and other jurisdictions to review the provisions of this new law and to adopt similar legislation tailored to their needs."

First, we appreciate very much the Environmental Financial Advisory Board (EFAB) bringing this significant law to our attention. Over the years EFAB has earned a well-deserved reputation for bringing promising new ideas of environmental finance to the attention of EPA. The Bay Restoration Fund Act is no exception, and we will certainly endeavor to encourage other states and jurisdictions to seriously consider similar steps to securing a steady revenue stream to help pay for worthy environmental projects. A key feature in our view is the linkage established between the source of the funds, the so-called flush fee, and their use for wastewater-related projects.

I also want to bring to your attention our recent activities to inventory at the national, state, and local levels innovations in the financing of water infrastructure. We look forward to working closely with the EFAB committees involved with sustained watershed financing and innovations in environmental finance.

Again, thank you for your letter and this important information. If you have any questions, please contact George Ames at (202) 564-0661 or Jordan Dorfman at (202) 564-0614, in the Office of Wastewater Management.

Sincerely,

Benjamin H. Grumbles
Assistant Administrator