



CHESAPEAKE BAY FOUNDATION
Saving a National Treasure

October 11, 2019

Submitted via E-mail

Expedited.reimbursementprogram@maryland.gov

Harry Hunsicker
Program Manager
Compliance Program
Maryland Department of the Environment
Baltimore, MD

RE: Effectiveness of Baltimore City's Pilot Building Backup Expedited Reimbursement Program

Dear Mr. Hunsicker,

The Chesapeake Bay Foundation (CBF) respectfully submits these comments on the effectiveness of the Baltimore City Pilot Building Backup Expedited Reimbursement Program ("Reimbursement Program" or "Program"). Appendix E of the Modified Consent Decree, *United States v. Mayor of Baltimore*, No. JFM-02-1524 (D.Md. October 6, 2017) (hereinafter "Modified Consent Decree"), requires the city of Baltimore ("Baltimore City" or "City") to establish a program to reimburse homeowners, renters, non-commercial occupants and residents (collectively, "residents) in the city of Baltimore for the costs of cleaning up and disinfecting after building backups, when a backup is the result of surcharging in the Collection System caused by wet weather events (hereafter "Capacity-Related Building Backups").¹ At the end of the pilot period, Appendix E further instructs the Maryland Department of the Environment (MDE) and the U.S. Environmental Protection Agency (EPA) to review and approve Baltimore City's required evaluation of the Program, and any recommended changes to approve efficacy.² CBF appreciates the opportunity to submit comments on the efficacy of the Program, thus far, in advance of MDE and EPA's planned review.

¹ Appendix E, Modified Consent Decree, *United States v. Mayor of Baltimore*, No. JFM-02-1524 (D. Md. Oct. 6, 2017).

² *Id.*

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Introduction

These comments focus solely on the process developed and implemented by Baltimore City to allow residents to submit requests for reimbursement following a building backup, and Baltimore City's response to those requests. CBF is encouraged by the decision of MDE and EPA to offer an opportunity for the public to provide comments. As Secretary Ben Grumbles noted at the public meeting held on September 30, 2019, addressing this program and its efficacy, this unique convergence of climate change, aging infrastructure and customer service raises both public health and environmental justice concerns. The effective and consistent implementation of the Program is necessary not only to ensure that residents of Baltimore City are safe and healthy, but to assist residents as they attempt to recover from the loss and damage of property following a building back up.

I. Public Notification Regarding the Building Backup Expedited Reimbursement Pilot Program

Residents cannot participate and take advantage of a program if they are not aware of its existence. In order to ensure that residents can participate in the Program, Baltimore City should increase its messaging and awareness campaigns and make concerted efforts to ensure that every resident is fully informed about the Program. Information distributed should clearly explain the eligibility criteria, the maximum amount provided, and any other relevant information that relates to the application process. This might include advertisements in newspapers, consistent and continued use of mail inserts for all DPW customers (including email attachments for customers who choose paperless billing), clear advertisements on the websites affiliated with MDE, DPW and Baltimore City, general mail campaigns for all Baltimore City addresses, and where phone numbers are provided (and customers consent) text and phone campaigns would be an effective means of raising awareness.

Currently, many residents report that they are unaware of the program, and those who are, largely attribute their knowledge to word of mouth. Baltimore City must evaluate its procedures for notifying residents of the existence of the Program and make significant efforts to increase and cultivate awareness. These efforts will create confidence in the Baltimore City government and its ability to address issues residents are facing and help to ensure that residents do not pursue insufficient and unsanitary remedies in an effort to save money following a sewage backup.

CBF member Pamela LuAllen, has experienced four backups in her home and feels as though the city has not lived up to its responsibility to Baltimore residents. Ms. LuAllen sought reimbursement through the Program, but she was informed that she is unable to seek relief because her last backup, which occurred in 2016, is out of the scope of the Program's coverage. Although she has not experienced a building backup in two years, Ms. LuAllen still spends the nights during a heavy storm pacing her living room worrying that another backup is coming, and she will have to spend her own time and money to address the damage.

II. Current Operation of the Expedited Reimbursement Program

In order to be eligible for Reimbursement, residents must report a backup to Baltimore City's 311 line, which is designed to allow residents to report problem related to the city, within 24 hours.³ In the first year of the Program, Baltimore City's 311 line received 6,287 reports of sewage backups.⁴ Of those 6,287 reported backups, 150 residents applied for reimbursement, and only 10 of those requests have been approved.⁵ Based on these numbers, 97.6% of reported building backups are not submitted to Baltimore City to be considered for reimbursement, and of those that are, only 15% have been approved. The idea that residents are responsible for building backups 97% of the time defies logic, but they are operating as if they are. This phenomenon can be traced back to the City's own literature describing the occurrences of building backups and the City's staggering failure to provide relief to residents.

Baltimore City's "Sewage Backup Guide," as developed by the Department of Public Works (DPW), discourages residents from contacting the City for assistance, and suggests that users first consider whether they might be at fault. In the "Causes and Risks" section, the first bullet point identifies pipe blockages and failures "caused by inappropriate disposal of fats/oils/grease, wipes/rags/sanitary products..."⁶ Where the second bullet point does acknowledge that stormwater and groundwater intrusions are a cause of backups, it first attributes this to "illegal connections."⁷ When the guide goes on to discuss clean up, the first sentence under "Documentation and Cleanup" reads: "DPW does not clean sewage backups. Customers are responsible for *all* cleanup and disinfection of private property." (emphasis added)⁸ The reader is then presented with two options, "Do it yourself or Hire a Professional?"⁹ It is only after DPW dedicates almost three of its four pages to placing fault and responsibility on the customer, that it begins to describe the expedited reimbursement program.¹⁰ This guide is emblematic of the way Baltimore City has presented the Program to residents, as a last resort which has led to woefully poor response to a problem caused, in large measure, by the City's infrastructure.

The figures discussed above further show that even if residents gain the confidence to contact the City, and apply for reimbursement, they are unlikely to receive relief. If only 15% of claims are eligible for reimbursement, the eligibility criteria Baltimore City utilizes is unnecessarily restrictive.

The Program was developed to address the troubling convergence of aging infrastructure and wet weather events of increased frequency and magnitude that results in a backup event.

³ Appendix E, Modified Consent Decree, *United States v. Mayor of Baltimore*, No. JFM-02-1524 (D. Md. Oct. 6, 2017).

⁴ *311 Customer Service Requests*, Open Baltimore, <https://data.baltimorecity.gov/City-Services/311-Customer-Service-Requests/9agw-sxsr/data>, (last visited Aug. 1, 2019).

⁵ Scott Dance, *Baltimore program to help homeowners clean up sewer backups denies 85 percent of applicants*, BALT. SUN, Jan. 25, 2019, <https://www.baltimoresun.com/news/investigations/bs-md-sewage-backups-20190124-story.html> (last visited Oct. 11, 2019).

⁶ DEPARTMENT OF PUBLIC WORKS, BALTIMORE CITY, Sewage Backup Guide.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

Instead, Baltimore City has chosen to implement the Program in such a way that residents now believe that they are not entitled to relief and should not expect any form of support.

III. Baltimore City's Administration of the Expedited Reimbursement Program

a. Baltimore City has Spent 0.007% of its annual budget

In establishing the Program, the Modified Consent Decree sought to ensure that it was well funded, and that the entirety of the funds would be used to assist residents. The program grants \$2 million annually, and Appendix E instructs that the costs of the City to administer the pilot program should not be counted against that amount.¹¹ In spite of the fact that City has, and is required to maintain, sufficient funding to support the program, in the 2018-2019 fiscal year, the City only expended \$14,775 of its \$2 million budget.¹² Baltimore City has only granted the maximum \$2,500 reimbursement two times, even though seven of the approved applicants requested that amount and two additional applicants requested amounts just below the maximum threshold.¹³ What is more, even though the number of backups has not decreased, the Baltimore Board of Estimates recommended cutting the budget for the Program in half.¹⁴ The occurrence of building backups is a public health and environmental justice crisis. Baltimore City's decision not to expend the funds to address it is shocking and counter to the purpose and intent of the Modified Consent Decree itself.

b. Residents are not given a meaningful explanation or clear opportunity to appeal

Baltimore City must provide more information to applicants about why their request is being denied and a meaningful opportunity to appeal the denial. In the majority of the cases identified, residents received a terse, one or two sentence explanation for the denial were directed to contact the City Attorney if they would like to take additional actions. This suggestion is offered without any explanation of costs, procedures or what legal remedy might be available to them if they choose to go forward.

Baltimore City should provide detailed explanations of the actions taken by the City and its agents following an application for reimbursement and if denied, a full explanation of the circumstances which prevented reimbursement. The process for appeal should be explained in greater detail. Further, given that the inspections following an application are carried out by contractors and other agents, residents should be entitled to a second opinion and an opportunity to appeal a denial or reduced recovery.

¹¹ Appendix E, Modified Consent Decree, *United States v. Mayor of Baltimore*, No. JFM-02-1524 (D. Md. Oct. 6, 2017).

¹² MODIFIED CONSENT DECREE CALENDAR QUARTERLY REPORT NO. 7, BALTIMORE CITY, (Jun. 30, 2019), <http://publicworks.baltimorecity.gov/sites/default/files/MCD%20Quarterly%20Report%2007.pdf>.

¹³ *Id.*

¹⁴ BALT. BOARD OF ESTIMATES RECOMMENDATIONS, 390 (2019).

c. Language Contained in the Emergency Response Plan

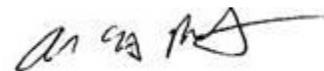
Appendix E states that residents will be reimbursed for the costs of cleaning up and disinfecting after a building backup, “when a backup is the result of surcharging in the Collection System caused by wet weather events.” Appendix E deems these “Capacity-Related Building Backups.”¹⁵ The Baltimore City’s Revised Emergency Response Plan (ERP), states that the Program “will not apply to wet weather events that exceed the applicable level of protection established in the [Modified Consent Decree].”¹⁶ First, most applicants have no knowledge of the Modified Consent Decree, its terms, or how to obtain a copy. Second, the standard described in the Emergency Response Plan appears to attach an additional requirement that wet weather events be of the type that the Collection System is reasonably expected to handle during a particular phase of implementation. Given that Appendix E very clearly states that backups need only be the result of “surcharging in the Collection System caused by wet weather events”¹⁷ and makes no mention of exceptions for the status of Collection System updates, the City must clarify its statements in the ERP so that people know they can apply. We recommend that those terms be clearly described in the Program materials. If the ERP remains the controlling legal document, the standard for evaluating requests for reimbursement should be consistent with the terms agreed to by the parties, and ultimately incorporated into the Modified Consent Decree.

IV. Conclusion

The Baltimore City Expedited Reimbursement Program, as it is currently being administered, fails to provide residents with the relief and assistance that the Modified Consent Decree intended. Baltimore City must make full uses of the resources allocated and pursue robust, meaningful implantation of the Program.

Thank you for the opportunity to share these comments.

Sincerely,



Alison Prost
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¹⁵ Appendix E, Modified Consent Decree, *United States v. Mayor of Baltimore*, No. JFM-02-1524 (D. Md. Oct. 6, 2017).

¹⁶ MODIFIED CONSENT DECREE REVISED EMERGENCY RESPONSE PLAN, BALTIMORE CITY (Apr. 4, 2018).

¹⁷ Appendix E, Modified Consent Decree, *United States v. Mayor of Baltimore*, No. JFM-02-1524 (D. Md. Oct. 6, 2017).