

# **BAY RESTORATION FUND ADVISORY COMMITTEE**

Maryland Department of the Environment

Aqua and Terra Conference Rooms

1800 Washington Blvd.

Baltimore, Maryland 21230

December 5, 2013

1:00 p.m. to 4:00 p.m.

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## **Meeting Minutes**

### **Welcome/Introduction**

- The meeting was chaired by Mr. Greg Murray, Chairman for the Bay Restoration Fund Advisory Committee and Administrator for Washington County.
- Mr. Murray welcomed the committee members and other attendees.

### **Review of Minutes**

- Previous meeting minutes from the September 26, 2013 meeting were handed out to the committee members for their review and comment. An electronic copy of the meeting minutes was also e-mailed to the committee members prior to the meeting.
- Mr. Boussein had a correction on page three, line three. The statement should read “can prevent the plant from achieving 3.0 mg/L”. The minutes will be corrected. Unless any other comments from the members are received, the approved minutes and handouts from the meeting will be posted on MDE’s website.

### **Discussion**

#### **I. Update on ENR Implementation and Upcoming Events**

- Mr. Saffouri referenced the Wastewater Treatment Plants ENR Upgrade Status handout and noted the facility status comparison between the previous meeting and the meeting today. To date there are 33 facilities in operation, 21 under construction, 9 in design, 3 in planning, and 1 (Hampstead) in pre-planning, for a total of 67 facilities. Dorsey Run was designated ENR operational and Joppatown completed construction and initiated ENR operation. Marlay Taylor, Back River, and Northeast River have started construction.

- Mr. Saffouri called attention to the percentage complete for the plants currently under construction and noted that every project increased their percentage slightly. There are about five facilities that might be completing construction very soon. Some of those are already complete, but the final inspections have not been scheduled.
- The following facilities are ready to schedule an event, if needed: Committee members will be informed via e-mail, if an event is scheduled.

Back River – Ready for Groundbreaking

Northeast River – Ready for Groundbreaking

Joppatown – Ready for Dedication

Snow Hill - A dedication ceremony is being scheduled by the Town

- Mr. Saffouri informed the Committee that 2014 is critical, because if a facility does not start construction before the end of 2014, the facility may have problems completing construction by January 2017, which is an important milestone. MDE, therefore, will be tracking the facilities much closer to ensure that they proceed to construction. Currently MDE believes that Hampstead is not going to meet the 2017 deadline because they have not signed the agreement or proceeded with the planning. MDE is scheduled to meet with Hampstead next week.
- Mr. Khuman informed the Committee that the Back River Wastewater Treatment Plant is the last of the big three plants (Patapsco, Blue Plains, and Back River) to start construction. In addition, the Back River contract is the biggest contract, at \$264 million, to be managed through MDE.

## **II. Update on Cover Crop Activities**

- Mr. Astle provided an update on the cover crop activities. Last spring was very wet, and as a result, there was a delay in planting and, in turn led to a delay in harvesting. The certifications and claims that normally are received in the fall have been running behind, and it is questionable whether the number of acres planted reaches the total number of acres planted last year. Last year a total of 415,000 acres were planted. There was a sign-up of 608,000 acres compared to 609,000 acres in the previous year, so the sign-up is on target; it is just a question of whether the farmers were able to plant.
- Mr. Boussein asked other than meeting MDA's target for acres planted, does planting less acres have an implication for meeting the WIP targets for nutrient reduction. Mr. Astle stated that MDA's target for 2015 is 286,000 acres and MDA expects to meet that target.
- Mr. Murray inquired, if less number of farmers apply for the program, would those that have applied be eligible for a larger amount of money that MDA has for the program. Mr. Astle responded that MDA sets the contracts with a specified rate that is based on a per acre rate which MDA does not adjust frequently.

### **III. Update on Onsite Sewage disposal System (OSDS)**

- Mr. Khuman updated the committee on the on-site sewage disposal systems (OSDS) program. MDE provides grants to each of the counties to implement their local septic upgrades program.
- There was a total of \$3.1 million last year that the counties did not spend. The Board of Public Works yesterday (on December 4<sup>th</sup>) approved the second round of grants this year to the counties. Under this action \$2.0 million of the unexpended \$3.1 million were allocated to be expended this fiscal year. In February or March of 2014, MDE is planning to request that the Board approve another round of grants in order to maximize the available money provided to the counties for septic upgrades.
- It appears the local governments have learned how to manage the grant money they are receiving for this program. MDE believes 2014 is going to be a good year for installing septic-Best Available Technology systems (BATs), and that we will meet our target of at least 1,000-1,200 installations. Currently, more than 100 BATs a month are being installed.
- Mr. Prager provided an update on the OSDS database and the proposed regulations. Currently, MDE is slowly making progress in developing the database. MDE is not just creating a database, but also importing data from multiple sources, which increases the difficulty and slows down the development of the database. Mr. Boussein asked whether MDE has an anticipated completion date. The response was no.
- The proposed regulations for on-site sewage disposal; COMAR 26.04.02, which deals with basic on-site sewage disposal, and COMAR 26.04.05, which deals with shared facilities for both drinking water supplies and on-site sewage disposal are on schedule to be published in the Maryland Register next Friday, the 13<sup>th</sup> of December. There will be a minimum of a 30-day comment period. The most significant provision in the regulations is a variance to the existing regulation that says any septic system installed to serve new construction must include the BAT. It was determined that often this requirement did not make sense when flow was just too small or too intermittent. This variance was requested by MACO and the Environmental Health Directors.

### **IV. Update on BRF Fee Collection and Budget**

- Mr. Khuman presented the fee distribution data from the inception of the program through the end of July 2013, which was given on the last two pages of the handout from the Comptroller's office. The total fund distribution to date is as follows: approximately \$545 million to MDE Line 1 (Wastewater Fund), \$76.7 million to MDE Line 2 (Septic Fund), and \$59.9 million to MDA Line 2 (Cover Crop Fund).
- Review of these pages shows that the impact of doubling the flush fee, in terms of the revenue generated, is about what was expected. For Line 1, (Wastewater Fund) prior to fiscal year 2013, the amount was about \$55-56 million a year. Last year, fiscal year 2013, after the fee was essentially doubled for most users, the total collection was \$102 million. The October data is slightly higher than last year, because of the way the counties phased in the rate increase. The first

quarter is generally the highest compared to other quarters, because Baltimore County collects the BRF fee in its annual or semiannual property tax. Both the annual and semiannual collections occur in October, and then the second semiannual collection occurs in December.

- Similarly for the septic, Line 2, most of the septic fees are collected with property taxes. Therefore, the installments are high in October and December. Basically, annual deposits are about \$26.5 to 27 million, which are in line with the previous projections. Currently, it appears that fiscal year 2014 funds will also be in line with the fiscal year 2013 amount.

## **V. BRF January 2014 Annual Report**

- Mr. Saffouri presented the draft January 2014 Bay Restoration Fund Advisory Committee Annual Status Report (Report) to the Governor and Maryland Legislature. The full Draft Report was e-mailed to all of the committee members. Additional comments were received after the Draft Report was e-mailed. These additional comments are included in the meeting handout. Mr. Hearn suggested some changes on Page 17 to provide more clarifications. In addition comments were received from MDP and they mainly appear on pages seven and eight. Also, the program cash flow projection spreadsheets were updated by Mr. Khuman.
- Mr. Khuman asked the committee members whether they preferred to discuss the comments separately, or review them leisurely and submit their comments for a final draft. A discussion transpired of Mr. Hearn's and MDP's comments on page's 7 and 8 and page 17 and other comments suggested by the committee. It was decided that all the comments will be submitted to Mr. Saffouri and a final draft will be prepared and forwarded to all the committee members for review.
- Mr. Khuman referenced the handout spreadsheet titled Enhanced Nutrient Removal Program, July 2013 Projection. Mr. Khuman specifically discussed the amounts in purple on the bottom right for fiscal years 2018, 2019, and 2020. The table shows that after 2017, the major 67 facilities will be fully funded and the Bay Restoration Fund statute then allows expanded uses of the fund, including additional monies to the septic fund and for stormwater projects. In 2018 and thereafter, about \$40 to \$50 million can be available for septic upgrades and stormwater projects if they are not used for minor plants ENR upgrade. The law essentially states that in any given fiscal year, the first priority is funding the minor plants. If there is any money remaining, the monies will go to septic. After funding the minors and septic, any remaining money will go to the stormwater projects.
- Mr. Ball asked does the committee have the purview to make recommendations. Mr. Khuman responded that the committee can make recommendations but it is limited and has to be within the above priority ranking specified by the BRF law. As of right now, the law is somewhat restrictive in that it says WWTPs first, septic second, and stormwater third priority. Hence prioritization can only be done within each segment separately. For example a particular WWTP can be determined as higher priority than another WWTP, but a septic upgrade cannot be determined to be higher priority than any WWTP that is ready to proceed. Also, cover crops are not included in the expanded use, and they are not allowed for additional allocation.

- Mr. Ball suggested that possibly in the next annual report the committee could make a recommendation for legislation that would allow funding for research to determine the most efficient and appropriate best management practice. Ms. Donoho stated that after the Accounting for Growth (AFG) regulations are passed, it will drive people to start trying to determine how cost-effectively the BRF funds are being spent.
- Mr. Murray asked if any of the old BNR money is left. Mr. Khuman stated that the BNR program is still on-going and will continue for the minors. Funding for BNR is about \$25 million annually.
- Ms. Donoho asked whether all minor facilities will have to complete both BNR and ENR upgrades, or some facilities will be allowed to complete only BNR upgrade. Mr. Khuman responded that if the plant is going to take the grant money, then they might as well go for ENR. The decision for a municipality is going to be to do nothing or upgrade to ENR.

## **VI. Minor Plants Upgrade (Funded Vs. non-funded loading cap)**

- Mr. Saffouri stated that two requests regarding the Targeted Minor Facilities Ranking Sheet were made at the last (September 26, 2013) meeting. One request is to show the priority scores in more detail. At the last meeting, the table only included the total score and the ranking. The new spreadsheet now includes the score for every category for each plant and the smart growth score that is determined by MDP. The resulting priority ranking did not change by much. The top five (5) or six (6) are still the plants that are currently active and moving forward.
- Looking at Rising Sun for example, it received the maximum points for readiness to proceed because it is under construction, it received the maximum for load reduction because it has greater than 10,000 pounds of nitrogen in reduction, and it received the maximum on unit per cost because it cost less than \$20 per pound. Rising Sun also received the maximum on TMDL. For TMDL, rather than the load, the score is determined by high, medium, and low. Any load above 3,000 lbs/year is considered high reduction, between 1,000 and 3,000 lbs/year is considered medium, and below 1,000 lb/year is considered low.
- Mr. Leocha explained how the smart growth score was determined. The 35 points were divided up between four (4) categories and then totaled to come up with number of points. The total could be anywhere from zero to 35. The four categories were: readiness to proceed based on the water and sewer plan and the Water Resource Element (WRE) being coordinated with growth goals and reasonable supply and demand; the evaluation of urgency (the plant's percent of capacity, ie. current use versus design capacity); the sewer service area match to the Sustainable Community areas ( how does the municipalities targeted growth and revitalization areas match the water and sewer plan and the PFA); and serving the watershed (number of septic systems in the PFA and the number of septic systems within a two mile radius that could be connected to the plant and help the WIP). The entire list of minor WWTPs has not been evaluated but the 22 that have are the ones most likely the top of the list for upgrades. In the MDE list, where there are zeros in the smart growth column means MDP has not completed its analysis yet.

- Mr. Murray asked what does the funded vs. the non-funded loading cap in the agenda section heading mean. Mr. Saffouri responded that this was the second request made at the last meeting and is given on the other handout. There is a funded cap, which would apply to minor plants upgraded using BRF. MDE is using the same rule that is used for the major plants. The annual load cap is calculated based on 4.0 mg/l for nitrogen and 0.3 mg/L for phosphorus at design capacity. Currently, minor plants have no loading caps because until now funding was not offered to upgrade them to ENR. Since BRF funding is now being offered and accepted by minor plants, annual loading cap would be applicable as it has been for major plants. If a minor plant does not get the funding, they would not have a loading cap based on the current MDE policy and they will continue to have the same loading goals in their current discharge permit.
- Mr. Murray questioned the determination of the cap for the minor facilities and its impact upon the municipalities' WRE and future growth. Mr. Saffouri stated that it is not any different than what was done with the major plants. To be consistent with the major plants, the minors cannot be given additional load allocation. If a plant is taking the BRF money, it is getting a new permitted TN limit of 4.0 mg/l, but the plant will be upgraded to operate at 3.0 mg/l, that inherent 25 percent difference can be used for growth. Also, if the septic systems around the plant are connected, the plant will get some nitrogen credits. Mr. Khuman added that MDE and MDP will be having a separate discussion concerning the pounds saved resulting from the plant upgrades, and whether there is an opportunity to allocate some of that for growth.

## **VII. Update on BRF Proposed Regulations**

- Mr. Khuman presented the BRF proposed regulations, which were published in September 2013. Mr. Khuman referenced the handout "Response to Comments on the Proposed Regulations". A number of good comments were received that MDE agrees with, and the regulations are being revised accordingly. Most of the comments received were regarding the O&M grants.
- The major O&M issue was a suggestion to utilize the full amount (10%) that is authorized in the law. MDE agreed and the final regulations will increase the dollar amount from \$25,000 per million gallons per day (MGD) to \$30,000 per MGD and the maximum amount for each plant per year will increase from \$250,000 to \$300,000. This will bring the annual expenditure very close to the \$10 million range, including the allowance for the minors.
- The second comment on the O&M grant was a recommendation stating that irrespective of the performance at 3.0 milligrams per liter (mg/l) total nitrogen and 0.3 mg/l total phosphorous, all ENR facilities should receive an annual O&M grant. After legal review, MDE will not allow this recommended flexibility. If a plant achieves TN of 3.0 mg/l and TP of 0.3 mg/l, it will get a full allocation. If the plant does not achieve those limits, it will not get any O&M allocation. This is based on the BRF law definition of ENR and based on the funding agreement signed by MDE and the facilities.
- The third comment on the O&M grant states that the proposed regulations should not require the owner to cooperate with MDE and MDP and provide information with regard the impact of BRF on growth as part of the application for the O&M grants. MDE believes that it is reasonable and

practical to obtain the information as part of the O&M grant application process instead of creating a separate process just for growth information. Therefore, the recommendation to delete this from the proposed regulations will not be accepted.

- Also, some comments were received regarding the septic sections of the proposed regulations. MDE accepted these comments as valid and these sections are being corrected.
- Mr. Hearn asked when the BRF regulations are going to be re-published. Mr. Khuman responded that it would probably be in another three weeks, and this will be a final regulation since the changes are not material.

### **VIII. Septics PFA Exception Issue**

Mr. Khuman provided an update regarding the Priority Funding Area (PFA) exception legislation on septic connections, discussed at the July 25, 2013 and again at the September 26, 2013 meeting. There is nothing new to report. The committee agreed and recommended that MDE proceed with the legislative bill.

### **Next Meeting**

The next meeting will take place on Thursday, February 6th.

### **Materials Distributed at the Meeting**

- Meeting Agenda
- Previous Meeting Minutes (September 26, 2013)
- Wastewater Treatment Plants ENR Upgrade Status (December 5, 2013)
- Draft Bay Restoration Fund Advisory Committee Annual Status Report, January 2014
- ENR Projected Grant Awards (July 2013)
- BRF WWTP Upgrade Cashflow Projection (July 2013)
- Targeted Minor Facilities and Permitted Flow (Final- July 28, 2013)
- Targeted Minor Facilities and Permitted Flow-Draft (December 5, 2013)
- Program-to-Date BRF Fee Collection Report (through October 31, 2013)
- BRF Fee Collection Reports (through October 31, 2013)
- BRF Fee Distribution Report through October 31, 2013
- Response to Comments on the Proposed Regulations for the BRF Implementation (December 4, 2013)

**Attendance**

**Advisory Committee Members or Designees Attending:**

Greg Murray, Chairman, Washington County Government  
James L. Hearn, Washington Suburban Sanitary Commission  
Norman Astle, Maryland Department of Agriculture  
John Leocha, Maryland Department of Planning  
Angela Butler, Maryland Department of Planning  
Fiona Burns, Department of Budget and Management  
Peter Bouxsein, Chesapeake Bay Foundation  
William Ball, Johns Hopkins University  
Walid Saffouri, Maryland Department of the Environment  
Candace Donoho, Maryland Municipal League

**Others in Attendance:**

Julie Pippel, Washington County  
Mary Vitale, Hazen and Sawyer  
Andrew Gray, Department of Legislative Services

**Maryland Dept. of the Environment (MDE) Attendees:**

Jag Khuman  
Rajiv Chawla  
Jay Prager

Michael Kanowitz  
Elaine Dietz  
Janice Outen

Heather Barthel  
Cheryl Reilly