

BAY RESTORATION FUND ADVISORY COMMITTEE

Maryland Department of the Environment

Aqua and Terra Conference Rooms

1800 Washington Blvd.

Baltimore, Maryland 21230

April 18, 2012

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

Meeting Minutes

Welcome/Introduction

- The meeting was chaired by Jag Khuman, Maryland Department of the Environment, on behalf of Mr. Greg Murray, Chairman for the Bay Restoration Fund Advisory Committee, who could not attend due to a last minute conflict.
- Mr. Khuman welcomed the committee members and other attendees.

Review of Minutes

- Previous meeting minutes from the January 19, 2012 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.
- There were no comments on the meeting minutes. The comment period will be kept open until Friday, April 27, 2012. After that time, 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 24 facilities in operation, 22 under construction, 8 in design, 9 in planning, and 4 in pre-planning, for a total of 67 facilities.
- Mr. Saffouri called attention to the percentage complete for each plant that is under construction. Sod Run, Joppatowne, and Maryland City percentages are not shown since they have just started construction and have not undergone inspection.

- Construction for the Denton WWTP ENR upgrade has been substantially completed, and the contractor is working on the final punch list items. Final inspection will be conducted in May 2012.

- The following facilities are ready to schedule an event, if needed:

Patuxent - Ready for Groundbreaking

Maryland City - Ready for Groundbreaking

Western Branch - Ready for Groundbreaking

Sod Run - Ready for Groundbreaking

Joppatowne - Ready for Groundbreaking

Denton - Ready for Dedication

Little Patuxent – County arranged dedication ceremony for April 23, 2012 at 11:00 a.m.

- Mr. Hearn asked about the status of the Salisbury WWTP. Mr. Khuman said that Salisbury was in corrective action but has now initiated planning. Mr. Saffouri commented that Salisbury has completed the engineering report and is moving towards design. There is a consent order in the works, and they are working on BNR/ENR grant eligibility for this corrective action per Mr. Khuman.
- Mr. Hearn has inquired about scheduling an event(s) for the WSSC facilities. There has not been any interest suggested to date.

II. BRF Fee Increase

- Mr. Khuman congratulated the Advisory Committee on the passage of House Bill 446 which doubled the BRF fee. In summary, the \$2.50 flat fee now becomes \$5.00. In addition it became mandatory for billing authorities to establish a plan allowing an exemption for hardship cases. Mr. Khuman noted that a lot more people are expected to qualify for the exemption which will reduce the amount of revenue generated.
- Another effect on the revenue increase is that western Garrett County and Ocean City are exempt from the fee increase. This was due to Senator Edwards' amendment which stipulated that if you do not discharge into the Chesapeake Bay or Coastal Bay Watersheds, your fee will remain at \$2.50 and will not double. This was introduced for western Garrett County, but Ocean City will benefit since they discharge into the Atlantic Ocean rather than the Chesapeake Bay. This reduces the amount of potential ENR revenue generated by about \$1.2 million per year.
- Ms. Aiosa asked if the amendment applies to septic systems users too. Mr. Khuman said it does, but it will only apply to Garrett County's septic system users. Most of the Worcester County users are in the Coastal Bay Watershed, and that is about \$300,000 per year of revenue increase lost on the septic side.
- In terms of implementation, the amendment will go into effect on July 1, 2012, and billing authorities will have to modify their billing systems to allow for this change by then.

- Mr. Hearn asked about stormwater. Mr. Khuman responded that the statute stipulates that in fiscal year 2018 the ENR funds may also be used for ENR upgrade of minors/majors and stormwater. It is presumed that by 2017 the 67 major plants will be completed. While some monies will be needed for debt service, the remaining funds can be reallocated to these areas. This will not occur until 2018 or after and is something the committee will have to discuss in terms of policy and usage priority.
- Mr. Khuman stated that in 2030 the statute resets the BRF fee to the original \$2.50 level provided the bonds are paid-off.
- Mr. Hearn asked if there was any additional guidance on the hardship program. Mr. Khuman responded that guidance is on MDE website, and it has not been modified. In addition, no one has requested a change, but we are open for input if someone thinks it is too restrictive.
- Mr. Hearn asked about developing regulations and wondered if was in the final document. Mr. Khuman noted that during the Office of Legislative Audits (OLA) review of the statute last year, they went on record saying it's time for the Department to write regulations on the septic system. OLA read the statute as saying the Department "shall" develop regulations. There was some dispute as to whether it meant "shall" the Department thinks it's necessary to develop regulations. Mr. Khuman stated it's on notice that the Department should write regulations, and that the ENR regulations should be written at the same time as the septic regulations are being developed. The ENR regulations were drafted a while ago, but have not gone anywhere. Mr. Saffouri stated that MDE would have to reopen it based on the changes and finalize the regulations.

III. Other BRF Related Bills

- The existing law states that all failing septic systems in critical areas were to get a 100% grant in calendar years 2010, 2011, and 2012. House Bill 1333 (failed legislation) would have instead provided 100% grant for all septic systems with household income less than \$150,000. Since this bill did not pass, and on December 31, 2012, the 100% grants to everyone in critical areas will no longer be applicable, on January 1, 2013 the whole state will be on a means test basis and the means testing stays per current policy. This policy is on MDE's website. We are going to continue the process as is.
- House Bill 236 (the Governor's bill) which has an indirect impact, in some ways, restricts septic in major subdivisions. Mr. Leocha summarized by saying that the bill was amended greatly from its original version. It sets out to establish the minimum minor and major subdivision breaks with growth tiers by the end of the year.
- Another bill that passed was House Bill 987, which requires MS-4 permit holders (Phase I only) to implement a local stormwater fee.

IV. BRF Fee Collection and Budget

- Mr. Khuman presented the revenue data from the fee program's inception through the end of March 2012. The Wastewater Treatment Plant (WWTP) total revenues are approximately \$389.8 million and \$90.8 million for septics. These are deposits prior to administrative expenses being claimed by the local governments or paid. The amount for administrative expenses claimed by local governments is very low, approximately one-half of one percent.
- The total fund distribution to date is as follows: approximately \$382.5 million to MDE Line 1 (Wastewater Fund), \$50.3 million to MDE Line 2 (Septic Fund), and \$42.2 million to MDA Line 2 (Cover Crop Fund).

V. Update on Cost/Pound of Nitrogen Removal at WWTPs

- Mr. Khuman called attention to a chart, developed at the request of Mr. Ball, which shows cost per pound of nitrogen removal based on all of the ENR projects that have bids opened, are under construction, or are complete. The dollar amounts shown are actual expenditure data. A lot of these projects fell into two categories; many of the small plants did BNR and ENR at the same time while larger plants did BNR a few years ago and are now doing ENR. The spreadsheet shows the total cost of BNR plus ENR as it went to bid as a contract. For convenience, the data is also broken down to show how much money the state put in for BNR and how much money the state put in for ENR for each project.
- Mr. Khuman explained the methodology in computing cost per pound of nitrogen removed. The graphs show that plants less than 5 million gallons per day (MGD) capacity, the cost per pound is around \$10 to \$12 per pound annualized. As you go to plants with 8 MGD and higher capacity, it flattens out to about \$4.00 to \$5.00 per pound of nitrogen removed. For the most part if the plant is 10 MGD and above, you can do it for about \$5 a pound, while if you are less than 5 MGD it costs \$10 to \$12 per pound. Finally if the plant is less than 1 MGD, the cost is larger, and varies anywhere from \$10 to \$50 per pound of nitrogen removed.
- Based on this data, the cost per pound of nitrogen removed for the minor/major plants is at a very high marginal cost. That is a business decision to see how ENR compares to septics and cover crops. Cheaper technology for smaller facilities to reduce their cost per pound of nitrogen removed will need to be explored. Mr. Khuman concluded that if anyone is interested in more information about this to let him know.

VI. Onsite Sewage Disposal Systems (OSDS) Update

- Mr. Khuman stated that MDE has sent out notices to local health directors and their partners regarding their application for fiscal year 2013. With the flush fee increase, MDE expects to have around \$15 million to award this coming year. Recommendations to the Secretary for awards through the Board will be made by the end of June, so that by July 1, 2012, the local health departments will have the money to continue the program for fiscal year 2013.

- Most of the money will be spent in critical area counties. Last year 90% of the total awards went to failing septic systems in critical areas, with some exceptions. MDE's goal is to provide every county a grant so that no one is excluded, but the majority of the money will be utilized in critical area counties. Fifteen million dollars in awards is targeted for fiscal year 2013.

VII. Update on Cover Crop Activities

- Mr. Astle provided an update on the cover crop activities. Approximately 430,000 acres of cover crops were planted. That is the highest number of acres planted to date in the program, which represents good program participation. MDA is processing all the spring certification contracts with the close of this fiscal year approaching. Spring certification acre numbers will be down from 430,000, because spring certification only includes the acres that received payment. There will be contracts that are not paid, maybe because a farmer is not compliant with the nutrient management program, but we still capture the acres.
- Sign-up for this year's program will run from June 20, 2012 through July 16, 2012. MDA will soon be releasing the brochure which has next year's fee and payment schedule. As far as evaluating and/or making changes to the program, a technical advisory committee has conducted a thorough evaluation of the program. The committee concluded that the program is doing well presently; therefore, very few changes will be made to the program.
- Mr. Khuman asked if the cost per acre fee might change since the revenue is increasing. Mr. Astle replied that he didn't think the fee or payment schedule would change, since the cost per acre fee increased \$5 an acre last year due to increasing fuel costs. We expect to stay with the same fee schedule.
- Mr. Khuman asked if the demand by the farmers exceeds the amount of money supplied or whether we have reached the point where we can manage the 430,000 acres solely with the Bay Restoration Funds. Mr. Astle replied that it is not fully self-sufficient, and the 2010 Trust Fund will still be needed.

Next Meeting

The next meeting will take place mid-July 2012 on a Wednesday or Thursday.

Materials Distributed at the Meeting

- Meeting Agenda
- Previous Meeting Minutes (January 19, 2012)
- Wastewater Treatment Plants ENR Upgrade Status (April 18, 2012)
- Wastewater Treatment Plants BNR/ENR Report
- Program-to-Date BRF Fee Collection Report (through March 31, 2012)
- BRF Fee Collection Reports (through March 31, 2012)
- BRF Fee Distribution Report through March 31, 2012

Attendance

Advisory Committee Members or Designees Attending:

James L. Hearn, Washington Suburban Sanitary Commission
Norman Astle, Maryland Department of Agriculture
Angela Butler, Maryland Department of Planning
John Leocha, Maryland Department of Planning
Hilary Bell, Department of Budget and Management
Jennifer Raulin, Chesapeake Bay Trust
William Ball, Johns Hopkins University
Don Bradley, Maryland Municipal League
Jen Aiosa, Chesapeake Bay Foundation
Evan Isaacson, Legislative Services

Others in Attendance:

Julie Pippel, Washington County
Theresa Bruton, Hazen and Sawyer
Kevin Nash, RK&K
Andrew Gray, Department of Legislative Services
Michael Pennington, Tri-County Council, LES

Maryland Dept. of the Environment (MDE) Attendees:

Jag Khuman	Jay Prager	Ching Tien
Walid Saffouri	Joshua Flatley	Elaine Dietz
Rajiv Chawla	Heather Barthel	Debbie Thomas
Sunita Boyle	Cheryl Reilly	Susan Iaconangelo