

BAY RESTORATION FUND ADVISORY COMMITTEE

Maryland Department of the Environment

Aqua and Terra Conference Rooms

1800 Washington Blvd.

Baltimore, Maryland 21230

May 18, 2011

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

Meeting Minutes

Welcome/Introduction

- The meeting was chaired by Mr. Jag Khuman, Maryland Department of the Environment, on behalf of the Chairman, Mr. Greg Murray, who was unable to attend due to another commitment.
- Mr. Khuman welcomed the committee members and other attendees.

Review of Minutes

- Previous meeting minutes from the March 2, 2011 meeting were handed out to the committee members for their review and comments. 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 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 provided an update on the status of the 67 plants targeted for Enhanced Nutrient Removal (ENR) upgrade. To date there are 22 facilities in operation, 1 facility (Salisbury) in corrective action, 13 under construction, 18 in design, 7 in planning, and 6 in pre-planning, for a total of 67 facilities.
- Annapolis and Cambridge have initiated construction and LaPlata and Snow Hill are expected to start construction by June 2011.
- Percentage completions for ENR facilities under construction have increased. Construction for Delmar and Pocomoke City are expected to be complete by the end of June 2011.
- A groundbreaking ceremony for Blue Plains was held yesterday, May 17, 2011. Staff members from the Maryland Department of the Environment and the Maryland Department of Planning were in attendance.

- The following facilities are ready to schedule an event, if needed.
 1. Thurmont – Ready for Groundbreaking
 2. Crisfield - Ready for Dedication
 3. Federalsburg - Ready for Dedication
 4. Perryville – Ready for Dedication
 5. Georges Creek - Ready for Dedication
 6. Mount Airy – Ready for Dedication
 7. Cumberland – Ready for Dedication
 8. Hagerstown – Ready for Dedication
 9. Bowie – Ready for Dedication
- A dedication event for sometime in June is being planned for Cumberland and Georges Creek. They would like to combine both of them together.

II. 2011 Legislative Session Summary

- Mr. Khuman presented a summary on some of Bills introduced this Legislative session that would be of interest to the Bay Restoration Fund Advisory Committee.
- House Bill 57/Senate Bill 539, Bay Restoration Fund-Authorized Uses. **This Bill passed.** Effective October 1, 2011, this Bill authorizes the Bay Restoration Septic Fund to be used to pay the cost of connecting properties served by on-site sewage disposal systems to certain existing municipal wastewater facilities provided certain conditions are met. In summary, this Bill requires that the on-site sewage system be in the critical area, have failed, be within the Priority Funding Area (PFA) (no exceptions), and connect to an operational ENR wastewater treatment plant, and the project be cost effective. The Bill requires that all the following conditions must be met:
 - The environmental impact of the on-site sewage disposal system (OSDS) is documented by the local government and confirmed by the Department (MDE).
 - The project is consistent with the county’s comprehensive water and sewer master plan.
 - The local government has adopted a policy or procedure that will guarantee that all future connections to an existing wastewater facility funded under this subsection will meet all the requirements of this subparagraph (meet all these conditions).
 - The replacement of the OSDS with service to an existing municipal wastewater facility that is achieving ENR level treatment is more cost effective than upgrading the individual OSDS or, the individual replacement of the OSDS is not feasible.
 - The OSDS was installed as of October 1, 2008, and the property the system serves is located in a Priority Funding Area.
- House Bill 177/Senate Bill 160, On-site sewage Disposal Systems-Nitrogen Removal. This Bill would prohibit the installation of an on-site sewage disposal system in the State in the watersheds of the Chesapeake and Atlantic Coastal Bays to service a newly constructed building unless the system utilizes nitrogen removal technology. **This Bill was not passed** (not voted upon).

- House Bill 347/Senate Bill 372, Nitrogen Removal Technology – Evaluation and Ranking. **This Bill passed.** Effective June 1, 2011, this Bill requires the Department of the Environment to evaluate and rank nitrogen removal technologies for on-site sewage disposal systems to advise local governments and citizens of the State of approved technologies that qualify for funding under the Bay Restoration Fund.
- House Bill 532, Bay Restoration Fund – Fee Exemption. This Bill would require that users of major wastewater facilities (67 plants) be exempt from paying a Bay Restoration Fee once the users have paid into the fund, the amount of the grant. **This Bill was withdrawn.**
- House Bill 1164/Senate Bill 916, Bay Restoration Fund – Talbot County Demonstration Projects. This Bill would authorize the use of Bay Restoration Funds for specified demonstration projects in Talbot County for the extension of sewer from a publicly owned wastewater facility. **This Bill was reported unfavorable** by the Education, Health, and Environmental Affairs Committee.

III. A Citizen’s Suggestion Regarding the BRF Fee

- Mr. Khuman presented for discussion a question regarding the BRF fee asked occasionally by people usually on a fixed income. They want to know why the fee is a flat rate, and not a variable rate based on the amount of water used, i.e., the more water used, the higher the fee. The explanation given is that it is due to the simplicity of the bill, \$2.50 per month, and that it also provides revenue stability.
- The Committee was asked their opinion of the flat rate versus a variable rate for homeowners. The sense of the Committee members is that while the fee could be made fairer, it would not be cheaper. Also, the current system is working.

IV. BRF Fee Collection and Budget

- Mr. Khuman presented the revenue data from the fee program’s inception through the end of April 2011. The Wastewater Treatment Plant (WWTP) total revenues are approximately \$344.9 million and \$78.5 million for the 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, less than one - half of one (1) percent, \$2.9 million over \$423.8 million.
- For fiscal year 2011 through the end of April 2011, the WWTP total revenue is \$43.7 million and the septics amount is \$12.8 million.
- Annual revenues for the year are still on projection for the wastewater fund and the septics fund to be in the range of \$54 million and \$14 million, respectively. Based on prior years, the money is very stable.

- The total fund distribution to date is as follows: approximately \$340.0 million to MDE Line 1 (Wastewater Fund), \$41.8 million to MDE Line 2 (Septic Fund), and \$36.6 million to MDA Line 2 (Cover Crop Fund).
- Mr. Khuman reported that the answer to the question discussed at the March 2, 2011 meeting, why there are some monies coming in from Baltimore City for septics, has been resolved. The W. R. Grace Company has a groundwater discharge permit which they have been treating as a septic system and paying the fee accordingly. They have been paying \$30,000 each quarter. Since groundwater discharge wastewater plants are not septic systems and are treated as wastewater treatment plants, it was finally determined that the money should be going into the sewer account. The Comptroller's office has made the necessary correction. Also, about \$14,000 a year is coming from Baltimore City for some septic systems in the City.
- Ms. Aiosa asked if there is any way of knowing where, exactly, those septic systems are in Baltimore City. Mr. Prager stated that in general it is known there are some in Mount Washington and Roland Park at the end of the sewerage pipe lines. Also, there are some areas around the Hawkins Point side of the Key Bridge that are not served. The exact location of the individual systems, however, is unknown.
- The Maryland Department of Planning is trying to get data on the exact location of the systems however, it has been laborious in getting any information.

IV Onsite Sewage Disposal Systems (OSDS) Update

- Mr. Khuman provided an update on the implementation of the OSDS grant awards. MDE is going to the Board of Public Works on June 1, 2011 to make an award for the Fiscal 2012 grant to the counties. The grant amount is about \$8.9 million consisting of \$8.5 million new appropriation and some left over money from Fiscal 2011 for contingency.
- Every county is participating, except Baltimore City. Over 90 percent of the money is allocated to counties that have failing septic systems, and they will basically follow priority order guidelines similar to last year's program. No failing system however, can be denied funding, because of another state statute that says for calendar years 2010 through 2012 this fund will provide funding to failing septic systems in the critical areas. The way counties are going to manage the program is first to make sure they have money to fund the failing septic systems in critical areas, and then, if possible, use a small amount of money for other priorities.
- On June 30, 2011, the counties will be told to make the payment for the systems that have been installed, and for those systems that were not installed, they can use the 2012 monies since the 2011 monies are no longer available. The goal, on a cyclical basis, is to have one grant open at all times, and therefore, money available to the counties at all times. Fiscal year data, indicating how well each county did last year, should be available after June 30, 2011.

V Update on Cover Crop Activities

- Mr. Astle provided the update on the cover crop activities. At the previous March 2, 2011 meeting, a question was asked regarding the amount of corn acres that went into cover crops. Of the 400,000 acres that were planted this year (2010-2011), 270,000 acres or about 68 percent were in corn prior to going into a cover crop.
- The Maryland Department of Agriculture (MDA) is getting ready for next year's (2011-2012) program. MDA has increased the base rate within the Cover Crop program by \$5.00 due to the higher fuel cost and the increase in seed cost commodities. The sign-up for next year's program begins June 21, 2011 and goes through July 15, 2011.
- In regard to this years program, MDA is about halfway through completing the claims, but will not have the numbers, of what was actually paid for, until after July 2011. MDA knows that 400,000 acres were planted, what is not currently known how many acres were traditional, and how many were harvested under the commodity side.
- Ms. Aiosa asked if MDA is still doing split payments, meaning paying some money at planting, and the remainder when it is traditional or verified it is a commodity? MDA allows the farmer to do a fall planting that is capped at \$25.00 an acre (the earlier the planting, the more money paid per acre), and then what might be due in the spring after a spring certification.
- For the Cover Crop program, MDA gets funding from two sources, the Bay Restoration Fund and Bay trust funds. For 2012, MDA expects to get from the Bay Restoration Fund and the Bay Trust Fund a total of around \$16 million. The federal program is a separate program from the State program, and their funding in 2012 is about \$3.5 million.

VI ENR Upgrade and Growth

- Mr. Leocha, of Maryland Department of Planning (MDP), presented the issue of BRF funds and the growth into areas outside the Priority Funding Area (PFA). His concern is that expansions outside the PFA are happening, and the goal of PFA is to restrict funding and guide growth. Mr. Khuman stated that whenever wastewater extensions are done there are some exceptions. The Smart Growth Statute when written said under MDE that the State revolving Loan Fund and the State Supplemental Assistance Sewage Grant are subject to the PFA. It did not include the Bay Restoration Fund which was written later, which by statute is not subject to the PFA.
- The whole idea was to upgrade the 67 major plants at their existing approved design capacity, and they are all being upgraded at that design capacity. The real issue is a wastewater treatment plant has an approved design capacity and it was upgraded to ENR treatment level using BRF money. The current flow happens to be less than the approved capacity, so there is additional capacity at the plant. Purely from a legal perspective, the municipality can give all or some of that capacity to whomever they want, within or outside of the PFA, there is nothing restricting them as long as only BRF money was used.

- As of the last Bay Restoration Fund Advisory Committee Annual Report, the data showed no significant abuse of expansion outside the PFA. At present, there is no fact to support the case that is attempting to be made. MDP is currently analyzing cases where expansions have occurred to determine if, in fact, expansion has occurred outside the PFA. Findings of the analyses will hopefully be included in the next Bay Restoration Fund Advisory Committee Annual Report.
- Ms. Aiosa asked when the 2003 cap strategy was developed, what was the basis for the population figures? Depending on the jurisdiction, the basis varies. Some of the figures are based on general growth rates, some are based on more exact demographics and projections using actual data and individual studies, and some are based on model simulations. The projections were included in the approved water and sewer plans and are believed to be pretty close. The point of the question was to determine how big a concern this issue may truly be now and somewhere in the future.
- If this is an issue that the Committee wants to take action, or some other initiative to address it, with the goal to say the ENR plants should have only served PFA areas, there has to be some other mechanism for enforcement. Right now, the current statute is not the enforcement mechanism. It was agreed that the Committee will wait until it gets results from the monitoring being performed by MDP. MDP will also take this discussion to other committees looking into this issue.

Special Legislative Session – Bay Restoration Fee

The question was asked if there was a chance the Bay Restoration Fee might be discussed during the special legislative session. The answer is it would purely speculative at this time, but no discussion has occurred. At present, funding is okay for 2012, funds are available for any project opening bids. As we go into 2013, funds may not be available, and the municipalities may be told to delay the bids until instructed to proceed with the bid. If fee increases are not approved in the special session or in the 2013 legislative session, then funding of new ENR contracts with BRF funds will be slowed down and/or halted. There is a second issue. There may be a limit on the amount of bonds that are able to be issued, because the State may reach its debt capacity. That can be managed, however, as long as cash is coming in.

Next Meeting

The next meeting will take place in August 2011. Committee members will be informed via e-mail of the meeting date.

Materials Distributed at the Meeting:

- Meeting Agenda
- Previous Meeting Minutes (March 2, 2011)
- Wastewater Treatment Plants ENR Upgrade Status (May 18, 2011)
- Program-to-Date BRF Fee Collection Report (through April 30, 2011)
- 2011 Tax Year Year-to-Date BRF Fee Collection Report (through April 30, 2011)
- 2011 Tax Year First Quarter BRF Fee Collection Report (through April 30, 2011)
- BRF Fee Distribution Report through April 30, 2011
- Legislative Bills of Interest –Status dated May 18, 2011

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
Hilary Bell, Maryland Department of Budget and Management
Jenn Aiosa, Chesapeake Bay Foundation
John Leocha, Maryland Department of Planning
Alyson Black, Maryland Chamber of Commerce
Don William Bradley

Others in Attendance:

Peter Bouxsein, Chesapeake Bay Foundation
Evan Isaacson, Department of Legislative Services

Maryland Dept. of the Environment (MDE) Attendees:

Jag Khuman	Michael Kanowitz	Sunita Boyle
Walid Saffouri	Jay Prager	Andrew Sawyers
Terri Wilson	Marya Levelev	Cheryl Reilly
Linda Cross	Susan Iaconangelo	Tsung Chen
Josh Flatley	Debbie Thomas	