

# **BAY RESTORATION FUND ADVISORY COMMITTEE**

**Maryland Department of the Environment**

**Aqua and Terra Conference Rooms**

**1800 Washington Blvd.**

**Baltimore, Maryland 21230**

**August 4, 2011**

**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.
- Mr. Murray congratulated Dr. Summers on his appointment as Secretary of the Maryland Department of the Environment.

### **Review of Minutes**

- Previous meeting minutes from the May 18, 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, 17 under construction, 14 in design, 8 in planning, and 5 in pre-planning, for a total of 67 facilities.
- LaPlata, Broadneck, Damascus, and Parkway have initiated construction and Snow Hill is expected to start construction by middle of August 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 the end of August 2011.

- A dedication ceremony for the Cumberland WWTP was held June 22, 2011. It was attended by the Mayor and City officials as well as elected state officials and the staffs of Federal elected officials and members from the Maryland Department of the Environment's Office of Budget and Infrastructure Financing.
- Ms. Aiosa asked if an update was available regarding the Salisbury WWTP corrective action, and when the WWTP may be expected to be in operation. A stay of the lawsuit has been requested by all parties, including MDE, until the terms of the new consent decree can be negotiated. It is believed the parties are close in terms of an agreement, and completion could be by December 16, 2016. The current proposal to upgrade the plant is to use new technology at a cost of around \$50-\$55 million and the question of who pays is part of the lawsuit. If the City gets a settlement, they could use the cash towards the capital cost of the plant or for payment of the debt service on a loan the Town would have to take. It is estimated that the City would have to borrow \$30-\$35 million after getting a BNR/ENR grant of no more than \$20 million
- The following facilities are ready to schedule an event, if needed.
  1. LaPlata – Ready for Groundbreaking
  2. Annapolis - Ready for Groundbreaking
  3. Damascus - Ready for Groundbreaking
  4. Piscataway - Ready for Groundbreaking
  5. Parkway - Ready for Groundbreaking
  6. Hagerstown – Ready for Dedication
  7. Bowie – Ready for Dedication

## **II. Preparing for the Annual Report**

- Mr. Saffouri provided an update on the preparation of the Bay Restoration Fund Advisory Committee Annual Status Report (Annual Report). It is time for the Committee to begin preparation of the Annual Report. The goal is to have the first draft by the next meeting scheduled for October. MDE will send last year's Annual Report to the Committee members and everyone will update their portion.
- Mr. Khuman asked if there would be anything new in this year's Annual Report in terms of recommendations by the Bay Restoration Fund Advisory Committee that are already included in last year's Annual Report. Mr. Hearn commented that the new Task Force on Sustainable Growth and Wastewater Disposal (Task Force) is also looking at the Bay fee and may recommend something that would need to be considered by this Advisory Committee. The Task Force report is due December 1, 2011. After that date, if there is something in the Task Force report that the Advisory Committee should react to, it will be included in the Annual report. The Advisory Committee will also try to get an idea what is included in the Task Force report from their draft which should be available prior to December 1<sup>st</sup>.
- Mr. Murray commented that the Watershed Implementation Plan (WIP), Total Maximum Daily Load and how the WIP ties into the whole process should be acknowledged in the Annual Report.

### **III. BRF Fee Collection and Budget**

- Mr. Khuman presented the revenue data from the fee program's inception through the end of July 2011. The second and third pages, Year to Date and Quarter to Date, respectively, of the Comptrollers handout appear to have some transposed numbers, ignore these two pages.
- The Wastewater Treatment Plant (WWTP) total revenues are approximately \$352 million and \$79.2 million for the septic systems. 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, \$3.0 million over \$431.8 million.
- For fiscal year 2011 through the end of July 2011, the WWTP total revenue is \$55.5 million and the septic systems amount is \$13.6 million.
- Annual revenues for the year are still on projection for the wastewater fund and the septic systems fund to be in the range of \$55 million and \$14 million, respectively. Based on a comparison with prior years, the revenue stream is very stable.
- The total fund distribution to date is as follows: approximately \$351.7 million to MDE Line 1 (Wastewater Fund), \$42.3 million to MDE Line 2 (Septic Fund), and \$36.9 million to MDA Line 2 (Cover Crop Fund).

### **IV. Onsite Sewage Disposal Systems (OSDS) Update**

- Mr. Khuman provided an update on the implementation of the OSDS grant awards. Through June 2011, the total amount of grants awarded is about \$41.5 million, of which \$36.1 million has been paid. The latter was a total of \$17.7 million directly to individual septic system owners and \$18.4 million to the counties. The individual septic subtotal was the direct program, originally administered by MDE prior to making it a county program. The individual direct program has been shut down and all grants now go to the counties or their partners.
- The revenue coming in and the payments made are both happening quite fast resulting in a grant balance of only \$5.4 million at the end of June 2011. The manner in which this program is going to work is each year the local governments will receive a grant award which they must spend within the fiscal year. At the end of the fiscal year they will have 90 days to settle up their expenditures. If all the monies are not spent, the remaining funds will be forfeited and will be made part of the new awards the following year. Every fiscal year there will be a new award.
- For fiscal year 2012, the new awards totaled \$8.9 million. In the next 60 days, the old grants that were underspent through fiscal year 2011 will be cancelled, and the monies will be redistributed in the new grant year to the counties, especially, those implementing the program faster, and where there are failing septic systems in critical areas. The intent is to get each county to spend the grant money they are awarded.

- The program is nearing the time where the initial grants are close to the end of the period where five years of operation and maintenance (O&M) were included in the grant. Ms. Aiosa asked whether MDE has addressed the fact that these initial septic systems upgrades will no longer be getting O&M monies. MDE has some draft regulations that are addressing the O&M. MDE's concern is with our and the citizen's limited resources, how can this be done at the least cost. The State law states MDE shall provide regulations to address O&M. The concern is once there is a law that says O&M is mandatory, whether it is going to be retroactive to include those septic system owners who entered the program of their own volition, or whether it will be as of a given date. There is no answer to that yet.
- MDE is making the effort to try to get these regulations out this year. MDE recognizes the importance of this regulation, it's a question of approach, resources, and benefits to citizens. Currently the draft regulation says that the homeowner must maintain a service contract for performing the O&M. It also states that the service provider must be approved by MDE and the manufacturer of the system. There is an option that will allow the property owner to become certified to perform the O&M, but he still must be approved by MDE and the manufacturer. MDE also wants it to be web-based reporting. One issue that has not yet been explored is enforcement (fines or penalties). However, even without a means of enforcement, MDE expects a 75 percent compliance rate, long term. MDE sees the State administering the program, with an option for the local approving authority to do it.
- Last year, legislation was approved that requires MDE to rank the best available technologies in several categories. It required MDE to request information from the vendors and manufacturers by July 1, 2011. This has been done. The information is currently being compiled and is expected to be published soon. There will be several listings. The technologies will be ranked based on electrical use, based on cost, and based on cost per pound nitrogen removed. There have been several drafts so it should not be long until the rankings are available on the internet for anyone to use.

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

- Mr. Astle provided the update on the cover crop activities. The Maryland Department of Agriculture (MDA) is wrapping up the 2011 program. To date, MDA paid for over 386,000 acres, which is over \$18 million in total program costs. The sign up for this year's (2012) program ended July 15, 2011. This year's program sign-up is better than last year's, which was historic. Due to the numbers and a Governor's event scheduled on August 16, 2011, the numbers can not be disclosed at this time.
- The Maryland Department of Agriculture (MDA) is expecting to receive approximately \$5.4 million from the Bay Restoration Fund based on the stabilized funding for the septic program (\$13.5-\$14 million) and about \$12 million from the Chesapeake Bay Trust Fund. There also may be a budget amendment next year.
- Due to the dry weather, the cover crop planting will occur earlier, similar to last year, when there was a record 78 percent of the sign-up acres planted. We could repeat that this year. If that occurs, we could exceed the \$18 million that was paid out this year.

## **VI. ENR Upgrade and Growth**

- It is anticipated that the discussion regarding ENR growth and the Smart Growth statute will be included in the Draft Bay Restoration Fund Advisory Committee Annual Status Report (Annual Report). There is a question whether this issue should be included in the Annual Report because no facts have been presented.
- The Committee representatives from the Department of Planning are providing conflicting information. One representative is saying that based on their work, there is no evidence that the growth in the Priority Funding Area (PFA) due to the Enhanced Nutrient Removal (ENR) WWTP upgrades is occurring. The other representative is suggesting that it is something the Committee needs to address. If the data from the former representative is included in the Annual Report, it will show that the number of service areas outside the PFA that are being built is very small. The latter representative's argument that an ENR WWTP upgrade adds capacity because the treatment is more efficient was previously disputed at earlier Committee meetings. The Committee also has previously accepted the legal interpretation that the Bay Restoration Fund is not subject to the PFA.

### **Bay Restoration Fee**

The question was asked if MDE was working on the increase in the Bay Restoration Fund fee as part of their legislative package. MDE is in the process of finalizing its legislative package. But, until the Governor's office has the opportunity to review it and sign off on MDE's submissions, the possible proposals can not be discussed. However, because the BRF and fee issue is getting attention from work groups and legislators, it is safe to say that we will probably see something concerning this issue in the next legislative session.

The Bay Restoration Fund is expected to be in a deficit situation in fiscal year 2013. Most of the ENR projects opening bids through fiscal year 2012 will be financed. In fiscal year 2013, however, some projects will receive money and others will not. The spreadsheet for fiscal years 2014 and 2015 in the Annual Report shows, whichever plants are on it, will receive zero dollars, unless the fee goes up. The two big WWTPs at this point that can not be fully funded are Back River and Cox Creek. There is also still the debt ceiling cap issue. The BRF is a highly leveraged debt instrument. However, even with a fee increase, the State will not be in a position to leverage additional debt. The current thinking, therefore, is that cash, or some form of cash and potentially General Obligation funds may have to be used. Those decisions have not been made yet.

### **Next Meeting**

The next meeting will take place in October 2011. The plan is to have one meeting before the special session on October 17<sup>th</sup> and one meeting after the session. Committee members will be informed via e-mail of the meeting date.

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

- Meeting Agenda
- Previous Meeting Minutes (May 18, 2011)
- Wastewater Treatment Plants ENR Upgrade Status (August 4, 2011)
- Program-to-Date BRF Fee Collection Report (through July 31, 2011)
- 2011 Tax Year Year-to-Date BRF Fee Collection Report (through July 31, 2011)
- 2011 Tax Year Second Quarter BRF Fee Collection Report (through July 31, 2011)
- BRF Fee Distribution Report through July 31, 2011
- BRF FY2011 OSDS Grant Summary, June 30, 2011
- BPW Secretary's Agenda for OSDS, June 1, 2011

**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  
 Jenn Aiosa, Chesapeake Bay Foundation  
 Alyson Black, Maryland Chamber of Commerce  
 Don William Bradley, Maryland Municipal League  
 Chad Clapsaddle, Department of Budget and Management  
 Brenton McCloskey, Department of Natural Resources

**Others in Attendance:**

Julie Pippel, Washington County  
 Evan Isaacson, Department of Legislative Services  
 Chris Phipps, Anne Arundel County  
 Mary Vitale, Hazen and Sawyer

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

Jag Khuman	Michael Kanowitz	Sunita Boyle
Walid Saffouri	Andrew Sawyers	Cheryl Reilly
Linda Cross	Joseph Bratchie	Elaine Dietz
Josh Flatley	Debbie Thomas	Heather Fleming
Rajiv Chawla	Heather Barthel	