

BAY RESTORATION FUND ADVISORY COMMITTEE

**Maryland Department of the Environment
Aqua and Aeris Conference Rooms
1800 Washington Blvd.
Baltimore, Maryland 21230
October 13, 2011
1:00 p.m. to 4:00 p.m.**

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 August 4, 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.
- Mr. Leocha had some comments regarding the discussion under ENR Upgrade and Growth on page five regarding growth outside the PFA. It was decided that Mr. Leocha (did not attend the previous meeting) will comment on the minutes to clarify the intent of the statements about which he and Ms. Butler have concerns. The comments will be distributed to the Committee.
- The minutes were approved with the understanding that Mr. Leocha's comments will be distributed at a later date. 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 23 facilities in operation, 18 under construction, 12 in design, 10 in planning, and 4 in pre-planning, for a total of 67 facilities.
- Snow Hill and Seneca Creek have initiated construction and Pocomoke City has completed construction and initiated ENR operation.
- Salisbury has been moved from corrective action to planning because the engineering report has been received. MDE is currently reviewing the report and will be providing comments to the City.

- Percentage completions for ENR facilities under construction have increased. Construction of the Delmar and Denton plants are expected to be complete by the next meeting.
- A groundbreaking ceremony for the Snow Hill WWTP was held on September 20, 2011. It was attended by the Town officials as well as elected state and Federal officials and members from the Maryland Department of the Environment's Office of Budget and Infrastructure Financing.
- A groundbreaking ceremony was held on October 12, 2011 for the Blue Plains tunnel project. This is the second major project at Blue Plains, and it will be used to equalize and manage peak flows for the ENR process at the Blue Plains WWTP.
- 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. Pocomoke City – Ready for Dedication
 7. Bowie – Ready for Dedication

II. First Draft of the Annual Report

- Mr. Saffouri provided an update on the preparation of the Bay Restoration Fund Advisory Committee (BRFAC) Annual Status Report (Annual Report). The First Draft of the Annual Report (furnished at the meeting) consists of the Maryland Department of the Environment (MDE) update. The Maryland Department of Agriculture (MDA) update has just recently been received and will be included in the Annual Report. Mr. Astle furnished copies of the MDA update to the Committee members at the meeting. The Maryland Department of Planning (MDP) is currently working on their portion of the Annual Report.
- Mr. Murray brought up the issue of other groups or subcommittees making independent recommendations on how to use the doubled portion of the Bay Restoration Fund, and the possibility that those recommendations come forward in one report and this Committee's recommendation comes forward in our separate report. He asked how the recommendations are to be consolidated and/or prioritized. Advisory committee members who also participate in, or are aware of, what transpires at some of these other committees, presented some of the scenarios discussed in those committees. Many of the scenarios include tripling the fee and using it for multiple purposes including stormwater. The good news is if the fee is tripled, there is a clear recognition that most of the money in the initial years will go to funding the wastewater plants and septic upgrade.
- Mr. Murray and Mr. Hearn questioned whether the Annual report should acknowledge that there is a separate work group looking at the funding issues or should the Committee just focus on what is needed for its task. Ms. Barthel voiced the opinion that the Committee is an independent group from any other task force, and it should just make recommendations based on its charge.

- Ms. Bell had a comment regarding a statement on page three of the draft report that states that the only option that can fully offset the shortfall is to double the fee. In spite of doubling the fee, it should be noted that there will still be a \$90 million shortfall. Mr. Khuman agreed.
- Mr. Saffouri called attention to page 25 where Easton is listed as one of the facilities that included expansion as part of the ENR project and has exceeded the original design capacity. He asked MDP to study that facility somewhat more than the others because of that fact. Ms. Butler agreed.
- It was decided that the first round of comments should be furnished within two weeks and a final draft will be sent to the Committee members in early November. Then take another two weeks for another review and finalize the Report by the end of November.

III. Update on the ENR fund deficit

- Mr. Khuman referred the Committee to the tables in Attachment 1 to the draft Annual Report. The major update to the Annual Report is that the Bay Restoration Fund shortfall has been reduced from about \$535 million as given in last year's Annual Report to around \$385 million. Since the last Annual Report, two things have happened to cause this change. First, as time has gone by, the numbers have been revised slightly. Second, the biggest change is due to a reduction of the ENR needed costs for the Back River WWTP from a one time need of \$370 million to around \$265 million. As a result of these changes, there is a substantial decrease in the overall need, which went from about \$1.5 billion to about \$1.38 billion and a significant reduction in the shortfall which now is projected at about \$385 million.
- As a result of the projected shortfall, the projects budgeted in 2012 and most of the projects being planned for 2013 will be funded. The red hi-lighted projects on the table are theoretically the projects where there is no money, and the biggest of these in terms of dollars are Back River and Cox Creek. Therefore, the conclusion does not change; the fee still needs to be doubled.
- Last year's Annual Report stated that with the fee doubled more bonds can be leveraged, providing enough money to do ENR plus money for some major minors to be upgraded. DBM and the capital debt affordability staff have clearly stated that between now and 2017, there is no way the Bay Restoration Fund will be given additional bonding capacity. The \$530 million fund, that has already been authorized, can be kept and used. The result is, even if the fee is doubled, not issuing additional bonds will mean no money for major minors and a small shortfall of \$90 million to finish the 67 major plants. MDE is working with DBM to find a mechanism to overcome the \$90 million shortfall.

IV. BRF Fee Collection and Budget

- Mr. Khuman presented the revenue data from the fee program's inception through the end of September 2011. The tables show no material change from the previous report due to the switching of some systems around.

- The Wastewater Treatment Plant (WWTP) total revenues are approximately \$356.9 million and \$79.4 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.
- For fiscal year 2012 through the end of September 2011, due to the system switch no data was reported and the numbers are the same as before. The WWTP total revenue is \$55.5 million and the septics amount is \$13.6 million. The big amount actually comes next month, in October, because of quarterly deposits by the local billing authorities.
- Annual revenues for the year, based on the history of the last few years, for the wastewater plants averages about \$55 million and the septics fund even though it has been up and down seems to have stabilized at about \$14 million.
- The total fund distribution to date is as follows: approximately \$351.7 million to MDE Line 1 (Wastewater Fund), \$42.4 million to MDE Line 2 (Septic Fund), and \$37.0 million to MDA Line 2 (Cover Crop Fund).

IV. Onsite Sewage Disposal Systems (OSDS) Update

- Mr. Prager provided an update on the implementation of the OSDS. Mr. Prager distributed to the Committee members a chart, currently on MDE's web site, that is being revised. The chart is a result of past legislation that required MDE to publish and distribute rankings of approved best available technologies (BAT) showing performance and cost related to OSDS systems. A fifth vendor, Retrofast, has been added to the list of field verified vendors. Also, two vendors, Aquasafe and Jet Technology, have been dropped from the list, because they did not achieve the required 50% nitrogen removal.
- In addition, other changes are being made to the chart to try to improve and simplify things. MDE is moving to a percent reduction based on an assumed influent value of 60 milligrams per liter, and that is also consistent with the Watershed Implementation Plan (WIP). Other changes include basing the per-year cost per pound of nitrogen reduced on a ten-year life cycle rather than the current one year. Within about two weeks the changes will be made, and there will be five field verified BAT systems.
- Mr. Hearn asked about the draft regulations discussed in the past and distributed at the Task Force on Sustainable Growth and Wastewater Technology meeting in Annapolis. Mr. Prager said that they were distributed to all stakeholders and were about the same draft regulations distributed last summer. Mr. Prager said he would send the regulations out to the Committee. Mr. Hearn asked if the regulations still would be promulgated this year to which Mr. Prager responded, "I do not know".
- The draft regulations focus only on BAT. Based on the statute, all BATs in the critical areas are getting 100% financing if the septic system is failing, irrespective of owner's income or means testing criteria. That portion of the statute sunsets in December 2012, unless extended. About ninety percent of the money went to critical area counties, but not all of that was put in critical areas. Only about seventy-five percent is going to failing systems in critical areas.

V. Update on Cover Crop Activities

- Mr. Astle provided the update on the cover crop activities. The Maryland Department of Agriculture (MDA) amended the BRF Annual Report, and some of the amended items were provided. The number of acres planted last year (2011) was 400,331. For the 2012 program, the base payment will increase to offset increases in fuel and seed. In 2011, MDA spent a total of \$ 17.5 million, \$5.6 million BRF and \$11.9 million from the Chesapeake Bay Trust Fund. In 2011, the enrollment was 508,000 acres, about 160 percent of the Chesapeake Bay milestone. In 2012, the application for cover crop acres is 568,000 acres.
- Ms. Aiosa asked about the split payments. In the fall, the applicant is eligible for a \$ 25 dollar per acre payment. If they are planting and signed up for a commodity, then that contract closes out in the fall. If they are a traditional cover crop, they get the second portion of the payment after they certify in the spring that it was killed down.
- Last year, Maryland had a lot of rain in the spring which delayed the crops and subsequently the harvest. Also, given the wet fall, it may be difficult to even reach the 400,000 acres that were planted last year.

VI. ENR Upgrade and Growth

- Mr. Leocha presented no comments on the subject other than, as previously agreed, to comment on the August 4, 2011 meeting minutes for clarification of MDA's intent on the subject. Mr. Leocha is working on the analysis for the Annual report. He expects to provide a very detailed report regarding the analysis and those connections that are outside the PFA. He plans to add data to show, of the connections outside the PFA, the percentage of smart growth exception cases that have been previously approved.

Next Meeting

The next meeting will take place in January 2012. Committee members will be informed via e-mail of the meeting date.

Materials Distributed at the Meeting:

- Meeting Agenda
- Previous Meeting Minutes (August 4, 2011)
- Wastewater Treatment Plants ENR Upgrade Status (October 13, 2011)
- Program-to-Date BRF Fee Collection Report (through September 30, 2011)
- 2011 Tax Year Year-to-Date BRF Fee Collection Report (through September 30, 2011)
- 2011 Tax Year Third Quarter BRF Fee Collection Report (through September 30, 2011)
- BRF Fee Distribution Report through July 31, 2011
- Bay Restoration Fund Advisory Committee Annual Status Report, January 2012

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
Angela Butler, Maryland Department of Planning
John Leocha, Maryland Department of Planning
Hillary Bell, Department of Budget and Management
Jennifer Raulin, Department of Natural Resources

Others in Attendance:

Peter Bouxsein, Chesapeake Bay Foundation
Julie Pippel, Washington County
Andrew Gray, Department of Legislative Services
Paresh Sanhavi, Brown and Caldwell
Kelly Duffy, RK&K

Maryland Dept. of the Environment (MDE) Attendees:

Jag Khuman	Michael Kanowitz	Marya Levelev
Walid Saffouri	Andrew Sawyers	Cheryl Reilly
Mehdi Majedi	Jay Prager	Elaine Dietz
Joshua Flatley	David Costello	Heather Fleming
Rajiv Chawla	Heather Barthel	Paul Hlavinka