

BAY RESTORATION FUND ADVISORY COMMITTEE

Maryland Department of the Environment
Aqua & Terra Conference Room
1800 Washington Blvd.
Baltimore, Maryland 21230

Meeting Minutes
November 10, 2004
1:00 p.m. to 4:30 p.m.
Mr. Robert Warfield, Chair

Welcome

- Due to a scheduling conflict Robert Warfield, Chairman was unable to attend and asked Dr. Summers to chair the meeting in his absence.
- The meeting was opened by having each member and guest introduce themselves

Review of Minutes

- Dr. Summers gave an overview of the draft minutes of the October 13, 2004 meeting and asked the Committee members to provide any comments or corrections to MDE within the next few days.

Discussion

- There is a legal requirement that will only allow MDE to sell 15-year bonds rather than the 20-year bonds we had planned to sell. This reduces the amount of funding that can be raised through bond sales, which means that we can only fund about \$750,000,000 of upgrade costs. This is the lower end of the range of MDE's estimated costs. This does not present a problem for the fund at this time, however, if upgrade costs come in higher than currently estimated, the Committee may in the future need to reevaluate the sufficiency of the Fund and recommend solutions for consideration by the Legislature.
- Governor Ehrlich presided over a ground breaking ceremony in Easton on November 4, 2004. This is the first facility in the State to initiate its upgrade since the signing of the Bay Restoration Fund legislation by the Governor.
- News update - Chesapeake Bay Foundation has filed a lawsuit against the U.S. Environmental Protection Agency to get them to take action on the petition that was filed for EPA. The petition seeks to have EPA require States to place specific nutrient limits in the permits throughout the entire Bay watershed. If EPA concurs with CBF, all WWTPs in the Bay watershed, from NY to VA, will need to have limits in their permits. The lawsuit and petition do not affect the Bay

Restoration Fund, however, depending on how stringent the EPA requirements are, it may result in higher costs to build plants that are guaranteed to be able to meet the necessary permit limits. Maryland's Bay Restoration Fund and ENR strategy are the most aggressive in the Bay Watershed and put Maryland in an excellent position to meet the requirements.

Presentation #1: - Review of the draft Bay Restoration Fund Implementation Document - Development of the Wastewater Treatment Plant Upgrade Process given by Walid Saffouri, Water Quality Infrastructure Program (WQIP). The power point presentation can be found on the following website:
http://www.mde.state.md.us/Water/CBWRF/advcom_meetings.asp

- Water Quality Financing Administration (WQFA) will manage the financial and accounting aspects and WQIP will handle the day-to-day project management and administration of the upgrade projects.
- The Bay Restoration Fees will be collected by the State Comptroller and deposited into the Bay Restoration Fund, which in turn will be administered by the Maryland Department of the Environment (ENR & Septic Upgrades) and Maryland Department of Agriculture (Cover Crop).
- The Maryland Water Quality Financing Administration (MWQFA) will manage the financial and accounting aspects of the Fund, while the Water Management Administration's (WMA) WQIP will manage the technical and administrative aspects. Both Administrations are units within MDE.
- It is estimated that the ENR upgrades at the 66 major WWTPs will cost at least \$740 million. Based on preliminary project prioritization (by WMA), and assuming that 15 projects can initiate ENR design annually, followed by two-years of construction, the ENR upgrades can ideally be completed by FY 2011 (delays may result from design issues, bid protests, unforeseen site conditions, inclement weather and other complications).
- The law requires the users of any wastewater facility that has a State discharge permit or National Pollutant Discharge Elimination System discharge permit to pay the Bay Restoration Fund fee.
- The Law allows for two scenarios to request a fee exception; Scenario (1) Facility has achieved ENR had never received any State or Federal grant; Scenario (2) Facilities discharge non-contact cooling water; the dewatering operations, or reclaimed wastewater from a facility whose users pay into the fund, and the discharge does not result in a net increase in nutrient loading
- Under Scenario 1 all users are exempt from the fee, with continued monitoring that shows that they do not exceed the standards. Under Scenario

2, the nature of the discharge is such that it does not add N or P to the State's waters.

- **Action Item: The Committee would like to have an explanation of these scenarios and the monitoring process included in the implementation document.**
- The Comptroller's Office and MDE are ready to proceed with collecting the fees from Wastewater Treatment Plant (WWTP) users, and on-site system owners who receive a water bill. Fees will start to be collected from these owners in January, 2005.
- The legislation identified 66 major WWTP's to be rated and ranked based on four criteria; (1) cost effectiveness (2) water quality benefit to a body of water identified by MDE as impaired under section 303(D) of the Clean Water Act (3) readiness to proceed to construction and (4) nitrogen and phosphorous loads discharged from the WWTP.
- **Action Item: Two different ranking scenarios were discussed with the Committee. It was decided that a ranking process that balances readiness to proceed with the environmental benefits of the project should be followed. It was also noted that the ranking system is a management tool and is not a strict priority list that must be followed regardless of extenuating circumstances.**
 - For example, if a high priority upgrade project runs into a technical or political problem that prevents the project from moving forward, the next project on the list can move up. In this way we can fund the most environmentally beneficial upgrades as quickly as possible, but do not have all progress blocked by one troublesome upgrade project.
- Although at this time, whether or not a plant proceeds with an upgrade is a voluntary decision on the part of an owner, the Bay Agreement and the federal Clean Water Act calls for a regulatory Total Maximum Daily Load (TMDL) limit to be put in place for the Bay by 2010 unless the Bay can be removed from the impaired waters list before that date. This means that regulatory requirements are on the way, sooner or later. This is well known in the regulated community and most systems are anxious to proceed with their upgrades as quickly as possible.
- The other factor driving systems to upgrade sooner rather than later is that in order to support growth, upgrades are needed to keep plants below the nutrient loading caps (cap = maximum nutrient load allowed under the ENR strategy to meet the Bay nutrient loading goals). Although the Bay Restoration Fund law does not permit the fund to be used to pay for growth, by upgrading to achieve ENR for their existing design capacity, plants will make room for

some growth (at their own expense) and still be able to remain under their loading caps.

- Also, as part of the Bay Restoration Fund, Combined Sewer Overflow and Sanitary Sewer Overflow projects can be funded through 2009 using up to 10% of the revenue from the Fund (about \$6 million). (After 2009 that portion of the fund will be utilized to offset a portion of the operating costs for upgraded ENR facilities.)
 - This portion of the Fund will be handled in the same manner as MDE's existing Supplemental Assistance Grant program to provide up to 75% of the cost for small communities with low median household incomes.
- Operating costs for ENR facilities are expected to be significantly higher than for BNR facilities, so the \$6 million will only cover a small portion of the total operating costs. MDE does not have good estimates of the cost other than that it will be more than the fund can provide.
 - **Action Item: The Committee would like additional information from MDE on the expected operating costs.**
- MDE will enter into a formal ENR Agreement with the WWTP owner for each upgrade project. This legally binding agreement documents the funding allocations (BNR v. ENR) and how much each party is contributing to the project. The Attorney General's Office has developed a model agreement to use as a template.
 - **Action Item: The ENR Agreement template should be included in the implementation document.**
- The draft implementation plan includes a reference to EPA design allowances for determining the allowable funding for the design of upgrades. Given the fact that ENR is a new technology, these allowances should be used as guidelines rather than as strict allowances to guide funding decisions. MDE should retain flexibility in determining allowable design costs.
 - **Action Item: MDE will edit the implementation document to better explain this concept.**

Presentation #2: - Report from the Onsite Sewage Disposal System (OSDS) Subcommittee – Jay Prager, MDE. The full report can be found on the following website: http://www.mde.state.md.us/Water/CBWRf/advcom_meetings.asp

- The Subcommittee is dealing with a number of issues:
 - Identifying users of OSDS and the billing of those users
 - OSDS upgrade grant and loan eligibility
 - Education and outreach
 - System management. Nutrient removing OSDS require ongoing maintenance and operation.

- The initial focus has been on the identification and billing of OSDS users
 - Chairman Warfield has sent a letter to all 23 counties and Baltimore City asking them to provide their suggestions for how billing of OSDS should be accomplished.
 - 14 of 24 jurisdictions had responded by 11/10/04
 - Four different approaches were discussed by the Subcommittee based on the information provided by the counties. All but one involves using the Maryland Department of Assessment and Taxation data to identify all improved properties. All will require a simple appeal process, because some improved properties may not have sewage sources (e.g. storage facilities, parking garages, etc.).
 - The approach most likely to be used by most counties involves merging the improved properties with the water and sewer billing list and identifying improved properties that do not receive a water and/or sewer bill.
 - Departments of Assessment and Taxation and Planning have been working together to develop a state-wide consistent method using MDAT data base and MDP's maps of county water and sewer service areas.
 - To get the billing system on line by October 1, 2005 is going to be very difficult due to the lack of good data.

Committee Discussion and Action Items

- The Committee discussed the different types of OSDS users and how billing will be carried out for systems that support multiple dwellings.

- **Action Item: The OSDS Subcommittee will work on clearly defining the users of OSDS and how the billing will be carried out for multiple dwelling units, including appropriate provisions for financial hardship cases.**
- The Committee discussed when billing starts for OSDS. There is the potential for confusion since different counties will be sending bills at different times covering different periods
 - **Action Item: The OSDS Subcommittee will look to the approach taken by the billing authorities for WWTPs and develop a comparable approach.**
- The Committee discussed the responsibility of federal facilities for paying the fee. This is an issue that is in discussion between MDE's Assistant Attorney General's Office and the attorneys for Department of Defense.
 - **Action Item: At a future meeting, the AG's will need to make a presentation and lead a discussion on this issue by the Committee.**
- The Committee discussed the format of the report to the legislature, due January 15.
 - **Action Item: The OSDS Subcommittee will draft a report to the legislature, due January 15, 2005, that focuses on the specific question regarding the billing for OSDS. MDE will also prepare a more general overview briefing for the legislature, to be ready for the expected request for more information on the implementation of the legislation.**

Future Meetings

The Committee agreed that the **next meeting (the Committee's third meeting) will be held on December 16, 2004 at MDE at 1 pm.** Lunch for members @ 12:00.

The fourth meeting will be held on January 6, 2005 @ 1:00 in the Aqua & Aeris Conference Rooms – Lunch for members @ 12:00

Adjournment

Robert Summers thanked the members of the Advisory Committee and all guests, for their participation.

Materials Distributed at the Meeting

Attendance

Advisory Committee Members Attending:

Robert M. Summers, Ph.D.	Maryland Dept. of the Environment
Thomas H. Stoner	Trustee of the Chesapeake Bay Foundation
David Bancroft	Executive Director, Alliance for Chesapeake Bay
Veronica L. Chenowith	Harford County Council
Ron Crites	Dept. of Budget & Management
James L. Hearn	Washington Suburban Sanitary Commission
Gregory B. Murray	Director, Washington Co. Dept. of Water Quality
Leland D. Spencer, M.D.	Maryland Assoc. of Co Health Officers Health Officer for Kent & Caroline County
Karen Harris Oertel	W.H. Harris Seafood
Delegate Barbara Frush	Maryland House of Delegates, (Note: Del. Frush did not receive notice of the meeting and requested a special briefing, which she received at MDE.)

Committee Members Absent:

Robert E. Warfield	Chairman
James T. Noonan	Maryland Dept. of Planning
Represented by Larry Fogelson	
Mayor Kevin Dayhoff	Mayor of Westminster
Represented by Frank Johnson	
William P. Ball, Ph.D.	Johns Hopkins University
Mark Bundy, Ph.D.	Dept. of Natural Resources
E. Keith Menchey	Maryland Dept. of Agriculture
Senator Paula C. Hollinger	Maryland Senate
William Bryan Icenhower, M.D.	St. Mary's Co. Health Dept.

Others in Attendance:

Bernie Marczyk	Policy Advisor to Governor Ehrlich
Beth McGee	Chesapeake Bay Foundation
Candice Donoho	Maryland Municipal League
Judson Berger	Capital News Service
Beverly G. Warfield	Prince George's County
Amanda Mock	Dept. of Legislative Services
Heather Hamilton	Maryland Chamber of Commerce
John Martin	Baltimore City Dept. of Public Works
Charles Zeleski	EH Directors
Krista McKim	RKK
Julie Pippel	Washington County DWQ
Kathy Howard	Md. Multi Housing Assoc.

Ali Shirazie
Peter Thomson

Howard County
Maryland Environmental Committee

Maryland Dept. of the Environment (MDE) Attendees:

Jag Khuman
Walid Saffouri
George Keller
Jay Prager
Stella Hajimihalis Jenkins
Renee Matthews
Marya Levelev