

# **BAY RESTORATION FUND ADVISORY COMMITTEE**

Maryland Department of the Environment

Aqua and Terra Conference Rooms

1800 Washington Blvd.

Baltimore, Maryland 21230

March 2, 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, Administrator for Washington County.
- Mr. Murray welcomed the committee members and other attendees.

### **Review of Minutes**

- Previous meeting minutes from the January 5, 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 ENR upgrade. To date there are 22 facilities in operation, 1 facility (Salisbury) in corrective action, 11 under construction, 20 in design, 7 in planning, and 6 in pre-planning, for a total of 67 facilities.
- Cumberland, Hagerstown, and Bowie have substantially completed construction and have commenced ENR operation, and Piscataway has started construction.
- Percentage completions for ENR facilities under construction have increased. Construction for Delmar is over 90 % complete.
- The following facilities are ready to schedule an event, if needed.

1. Blue Plains – Ready for Groundbreaking
  2. Thurmont – Ready for Groundbreaking
  3. Crisfield - Ready for Dedication
  4. Federalsburg - Ready for Dedication
  5. Perryville – Ready for Dedication
  6. Georges Creek - Ready for Dedication
  7. Mount Airy – Ready for Dedication
  8. Cumberland – Ready for Dedication
  9. Hagerstown – Ready for Dedication
  10. Bowie – Ready for Dedication
- A groundbreaking event is being arranged for Blue Plains.

## **II. Legislative Update**

- Mr. Khuman presented an update on some of the Bills introduced during this Legislative session that may be of interest to the Bay Restoration Fund Advisory Committee.
- House Bill 57/Senate Bill 539, Bay Restoration Fund-Authorized Uses. This Bill would authorize the Bay Restoration Septic Fund to pay the cost of connecting properties served by onsite sewage disposal systems to existing municipal wastewater plants provided certain conditions are met. The Bill has been passed by the House of Delegates (House) and is up for a hearing in the Senate. MDE has not voiced an opposition to the Bill. Maryland Department of Planning's (MDP) comments set some limiting parameters, namely, the septic system has to be within the PFA and is failing. The committee presented issues concerning the difficulty in implementing the Bill including, lack of funds in the BRF, determination of cost effectiveness, the current law giving priority to failing systems in critical areas, etc.
- 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 Best Available Technology for nitrogen removal. This Bill was heard in the House and Senate.
- House Bill 347/Senate Bill 372, Nitrogen Removal Technology – Evaluation and Ranking. This Bill would require 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. This Bill was heard in the House and Senate. This Bill requires the Department to rank various nitrogen removal technologies, which the Department has already done.
- 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 since it would require users of plants that do not qualify for BRF grants to pay the BRF fee indefinitely.
- 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 was a very specific Bill. It would also allow the septic fund to pay for some pilot projects in Talbot County and would allow sewer connections from non-PFA areas to “restricted access lines”. MDE is opposing this Bill.

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

- Ms. Bell presented an update on the budget. In the past years, the Governor’s budget transferred funds from the Bay Restoration Fund to the general fund, and the funds would be replaced with general obligation (GO) bonds. The Governor’s budget included GO bonds in 2012, and then preauthorized the remaining monies in 2013. The Department of Legislative Services has concurred with the Governor’s budget. We still have to see what the General assembly does.
- Mr. Khuman informed the Committee that as of last year’s Budget Reconciliation Act, it was \$200 million of the Bay Restoration fund to general funds and in return, we would get back \$200 million in GO bonds. This year another \$ 90 million will be transferred to the general fund to make the total \$290 million over a three year period, and we are getting back \$290 million in GO bonds, all with preauthorization. The State pays the debt service. From the Bay Restoration fund’s point of view, therefore, every dollar out will be returned. The fund will lose about \$3 million in interest it would have earned, and the fund did get downgraded by Moody’s one notch to AA-2.
- Mr. Khuman presented the revenue data from the fee program’s inception through the end of January 2011. The Wastewater Treatment Plant (WWTP) total revenues are approximately \$326.7 million and \$76.8 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, \$2.8 million over \$407.9 million.
- For fiscal year 2011 through the end of January 2011, the WWTP total revenue is \$30.4 million and the septics amount is 11.2 million.
- Annual revenues for the year are still on projection for the wastewater fund and the septics fund to be in the range of \$55 million and \$14 million, respectively. Based on prior years, the revenue is very stable.
- The total fund distribution to date is as follows: approximately \$326.7 million to MDE Line 1 (Wastewater Fund), \$40.8 million to MDE Line 2 (Septic Fund), and \$35.9 million to MDA Line 2 (Cover Crop Fund).
- Mr. Khuman reported that there are some monies coming in on the Baltimore City line for septics. This is questionable, because it is believed that Baltimore City has few septic systems. It is being investigated to determine who is making the deposit, and to determine if this is an error. Hopefully, the answer will be known by the next meeting.
- Ms. Butler had a question about the Liability and Collection fields. Mr. Khuman stated that they

are each a Comptroller's column. The first two columns are the gross receipts and the liability column is where the billing authorities are claiming back money they are entitled to for their expenses. Then by some formula, a claim is made for expenses, and the Comptroller pays money back. The overall claims have been very low. What has occurred is that start-up expenses were higher and expenses peaked. Since start-up, incremental costs have really gone down. By statute, the local governments were allowed up to 5 percent, but their overall claims have been very low (as stated above, less than one-half of one (1) percent).

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

- Mr. Khuman provided an update on the implementation of the OSDS program. All the grants for this fiscal year, about \$8.5 million, were awarded, and all the counties are participating, some through third parties, and it is a completely locally run program. There will be no more direct grants to a homeowner from MDE. The plan is to start the application process for Fiscal Year 2012 in April 2011 and go to the Board of Public Works for approval in June 2011. Then by July 1, 2011, all counties will have an allocation for Fiscal Year 2012 money. At present, there are \$9 million to award for Fiscal Year 2012, including the \$500,000 that was kept last year for contingency in case any county ran out of money and still had applications from eligible OSDS failing systems. To date, no county has asked for additional money. If that money is not used it will be awarded in the Fiscal Year 2012 budget.
- Mr. Khuman stated that the monies are allocated to the counties using a formula based on the number of OSDS systems located in the critical area and the number of OSDS systems in the non-critical area. The way it has worked out this fiscal year (2011) is 90 percent of the money went towards systems in the counties with critical areas and 10 percent to counties without critical areas. In the next round, a similar formula will be used, but, additionally, a county's past performance will now also be available. Consequently, if a county is exhausting their money, they should get more.
- Mr. Leocha brought up the point that there are a number of communities on OSDS systems within classified Intensely Development Areas (IDA), where some of the lots would be very difficult, if at all, to upgrade the OSDS treatment individually. He asked if any thought has been given to using the Bay Restoration Fund to fund community systems, instead of upgrading individual on-site systems, in these problem areas.
- Mr. Khuman stated that the current statute actually permitted that. The condition is, it must be cost effective. Instead of fixing individual homes, take the equivalent money and do a community system. Also, the system must be owned by a public entity, it must be a new system, and it must be an Enhanced Nutrient Removal (ENR) level of treatment to fund with the BRF septic money. At present, there have not been any requests for a community system.

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

- Mr. Astle provided the update on the cover crop activities. As of the previous meeting, there was a sign-up of over 509,000 planted acres. At present for this meeting, it's over 400,000 acres, about 78.5 percent. These numbers are historically high. It was an optimum year, given the conditions between an early harvest and the drought on the Eastern Shore that allowed things to be done earlier.

- Mr. Bouxsein asked for an estimate of the percent of acreage planted in corn. Mr. Astle stated he would have to query the database and get back to him with that number, but that it is probably higher than what it has been in the past.

## **VI ENR Upgrade and Growth**

- Mr. Leocha presented for discussion the question – are BRF funds subject to Priority Funding Area (PFA) regulation? Mr. Khuman stated that BRF funds are statutorily not subject to PFA regulation. The PFA law states that state funding is not to be used for new development outside the (PFA). Mr. Khuman stated that statute 1605 applies to sewerage projects funded by the Water Quality Revolving Loan Fund, except for Non-Point Source Projects. Then 1605.2 was promulgated and became the Bay Restoration Fund. The original PFA statute categorically exempts Biological Nutrient Reduction (BNR) from the PFA law, and therefore, it was presumed that the legislative intent of 1605.2 (new BRF statute) was to also exempt ENR, because it did not apply to BNR. 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.
- There are some cases where the actual sewage flow may be less than the approved design capacity, however, ENR upgrade does not increase the capacity of the wastewater treatment plant. At this point, it can not be stated that any expansions outside the PFA are due to the ENR upgrade, because they would have happened regardless since the plants have an existing approved capacity to accommodate.
- Mr. Leocha then discussed whether there should be an effort to recoup some of the BRF money being used for development outside the PFA. In response, it was stated that there is no legal basis to recoup the money, since in the agreement for providing the funds no where did it say all the hook ups must be within the PFA and/or money for development outside the PFA would have to be returned. It was also stated that the law has not demonstrated any growth as a result of the ENR funding. Development outside the PFA is also controlled by utilizing denied access restricted development pipe lines which control adding connections both by pipe size and a clear delineation in the water and sewer plan that shows/states this segment is not available for connections by anyone.

## **Status of the Advisory Committee Annual Report**

The Bay Restoration Fund Advisory Committee Annual report was finalized and sent to the appropriate parties. The Senate Appropriation Committee and the House Appropriation Committee have been informed that without a fee increase the BRF will have a shortfall. A list was prepared by MDE listing all of the projects planned for construction in fiscal years 2013 and 2014 that may not get funded if the monies are not there. As of this meeting, no bill has been introduced, and no one at the hearings said a word for or against the recommended fee increase.

## **Next Meeting**

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

**Materials Distributed at the Meeting:**

- Meeting Agenda
- Previous Meeting Minutes (January 5, 2011)
- Wastewater Treatment Plants ENR Upgrade Status (March 2, 2011)
- Program-to-Date BRF Fee Collection Report (through January 31, 2011)
- 2010 Tax Year Year-to-Date BRF Fee Collection Report (through January 31, 2011)
- 2010 Tax Year Fourth Quarter BRF Fee Collection Report (through January 31, 2011)
- BRF Fee Distribution Report through January 31, 2011
- Legislative Bills of Interest –Status dated March 2, 2011
- Copy of House Bill 1164, Bay restoration Fund-Talbot County Demonstration Projects

**Attendance**

**Advisory Committee Members or Designees Attending:**

Greg Murray, Washington County  
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  
Peter Bouxsein, Chesapeake Bay Foundation  
John Leocha, Maryland Department of Planning  
Jeff Horan, Department of Natural Resources

**Others in Attendance:**

Lesley Cook, Department of Legislative Services  
Ted Halley, Hazen and Sawyer  
Julie Pippel, Washington County

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

Jag Khuman	Michael Kanowitz	Sunita Boyle
Walid Saffouri	Jay Prager	Andrew Sawyers
Rajiv Chawla	Marya Levelev	Cheryl Reilly
Linda Cross	Elaine Dietz	Debbie Thomas