

BAY RESTORATION FUND ADVISORY COMMITTEE

Maryland Department of the Environment

Aqua and Terra Conference Rooms

1800 Washington Blvd.

Baltimore, Maryland 21230

October 4, 2012

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 April 18, 2012 meeting were handed out to the committee members for their review and comment. An electronic copy of the meeting minutes was also e-mailed to the committee members prior to the meeting.
- Mr. Hearn had a comment regarding Item II, BRF Fee Increase, the last bulleted item, on Page 3. Mr. Hearn asked if the septic regulations have been developed. Mr. Khuman responded no, the BRF septic regulations are also due, and the septic regulation regarding new construction is a separate regulation.
- There were no other comments on the meeting minutes. Unless any other comments that were e-mailed from members are received, 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 referenced the Wastewater Treatment Plants ENR Upgrade Status handout and noted the facility status comparison between the previous meeting and the meeting today. To date there are 26 facilities in operation, 22 under construction, 9 in design, 7 in planning, and 3 in pre-planning, for a total of 67 facilities.
- Mr. Saffouri called attention to the percentage complete for each plant that is under construction and noted they are moving forward. Three projects are 90% or more complete. The Emmitsburg percentage is not shown since it has just started construction and has not undergone inspection.

- Construction of the Little Patuxent facility has been completed.
- The following facilities are ready to schedule an event, if needed:
Emmitsburg – Ready for Groundbreaking
- Mr. Boussein asked if another column listing the expected completion date could be added to the percentage completion table. Mr. Saffouri stated we can add it.

II. 2013 Legislative Update Report

- Mr. Khuman provided an update on the 2013 Bay Restoration Fund Advisory Committee Annual Status Report to the Maryland Legislature. An initial draft report was e-mailed to the BRF Advisory Committee members. A short executive summary of the initial draft report was handed out at the committee meeting. In the past five years, most of the discussion centered on the shortfall and need for the fee increase. Since the fee increase has been implemented, most of those sections were removed in the options and alternatives discussion. The cash flow presented on the spreadsheet attached to the handout, showed that the 67 plants can be completed under the current funding scenario by 2018, if the current revenue projections are correct. After 2018, over \$50 million a year may remain for major/minors and other additional authorized uses.
- The issue for the Committee this year is whether the Report is simply going to be a status update of the 67 plants and how things stand, or does the Committee want to open the discussion with regard to future policies and the use of the monies after 2017. Those discussions are not included in this Report. It may be early, but the discussions have to happen to determine how the monies will be allocated among major/minors, septics, and stormwater, because there will be conflicting pressures, including within the project types. For future agendas and reports, the Committee needs to decide how and when to move forward on these issues. There are lists of potential projects already available, developed by MDP, MDE, and the septic task force, etc., but no decisions have been made as to priority and funding (how to fund, which ones, how many, etc.). These discussions need to be started soon, because it takes about two years to start planning and another year for design. The projects need to be planned and designed and ready to go to construction in 2018, rather than start planning or design in 2018. Also, the law has some stipulations that say we are to look for projects that are cost-effective.
- Mr. Boussein asked if completing the 67 major WWTP ENR projects will allow us to achieve the TMDL allocation for wastewater treatment plants. The Watershed Implementation Plan (WIP) includes five more major/minor plants for the TMDL allocation to be achieved.
- A motion was made for MDE, in conjunction with the Committee, to develop a methodology to prioritize selection of projects to fund with BRF after the 67 are completed. The motion was seconded, and the Committee unanimously approved the motion.
- The Report currently is a rough draft and MDP and MDA still need to provide their comments. It was decided that all comments are to be submitted by the end of October. The final draft will then be circulated to the Committee.

III. BRF Fee Collection and Budget

- Mr. Khuman presented the revenue data from the fee program's inception through the end of August 2012. The Wastewater Treatment Plant (WWTP) total revenues are approximately \$413.1 million and \$92.9 million for 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 percent.
- The total fund distribution to date is as follows: approximately \$407.8 million to MDE Line 1 (Wastewater Fund), \$50.6 million to MDE Line 2 (Septic Fund), and \$42.4 million to MDA Line 2 (Cover Crop Fund).
- Mr. Khuman stated any comparison between the revenues of the \$30 fee and the \$60 fee will not be able to be made until the first deposits come in to the Comptroller on October 20th and will be reflected to the Committee in the November report. It will probably take two (2) quarters to make a true comparison of revenues, because there will be a transitional quarter and some have implemented the increase exactly on July 1st, some have prorated it, and others used either the old or new rate for the entire quarter. After the first quarter it will even out to \$60 per year, \$15 a quarter. By the end of the fiscal year, the average yearly WWTP ENR fee of \$53 million is predicted to double to approximately \$100 million. About \$6 million will be lost in hardship exemptions and exemptions for areas that do not discharge to the Chesapeake Bay or Coastal Bay Watersheds. The on-site sewage disposal systems (septics) will have a similar situation, but it's going to have a lesser impact, because there are not many septic systems outside of the Chesapeake Bay or inland bays watersheds.
- Mr. Boussein inquired that with the increase in revenue for the septic systems, if it would be sensible to consider adding O&M expenses to the payments that are being made to upgrade the septics to Best Available Technology (BAT). The grant currently pays for five years of O&M. Giving a homeowner a one-time capital grant which includes the maintenance for five years is one thing, giving an O&M grant for the life of the system is another. The agreement with the homeowners states that they must maintain the septic system with self-pay. It was suggested that it may be time for the counties to consider a centralized maintenance system where they get a vendor to maintain the systems and back charge a homeowner. Mr. Boussein stated a concern that if the maintenance is not done, the State's capital investment will be lost, i.e., the system's performance will be impacted. Mr. Prager addressed this issue further under OSDS Update.

IV. Onsite Sewage Disposal Systems (OSDS) Update

- Mr. Prager provided an update on the Onsite Sewage Disposal Systems. MDE drafted, circulated, and published in the Maryland Register on June 1, 2012, the regulation that requires the Best Available Technology (BAT) for nitrogen removal for all septic systems installed to serve construction in the Chesapeake Bay and coastal bays watersheds, and other nitrogen impaired watersheds. The final regulation was published, with no substantive changes from the June 1st version, in the September 21, 2012 Maryland Register with an effective date of January 1, 2013.

- Effective January 1, 2013, the regulations require that any OSDS installed to serve new construction must include BAT. Any permit issued prior to January 1st without BAT will be honored, i.e., grandfathered. Included in the regulation are requirements that the installations be reported to MDE, that the property owner maintain a service contract, that the property owner receive the necessary O&M at least once a year, and that the service provider must report to MDE that the O&M is taking place.
- MDE is working on developing a database to allow for web-based reporting, and the database will automatically report which system has gone 12 or 18 months without an O&M report. This will allow MDE to follow up on the O&M. There is no provision to pay for this to the property owner. It will be at their expense. The BAT systems, as defined under the Bay Restoration Fund, must include the five years of O&M, regardless of whether the State pays for it or not. Currently, there is not real strong enforcement to make the owners pay for O&M after five years. MDE will be looking into what provisions are available to strengthen its regulatory authority.
- The regulation also includes a provision that any installer of the BAT systems must be certified by MDE and the manufacturer to install these systems. MDE, therefore, is working on developing training and certification workshops. The installation training should take half a day and another half a day for O&M training. MDE is going to hold the manufacturers responsible to assure the installers and service providers know the nuances of each technology.
- Mr. Prager reminded the Committee of the grant eligible priority, and where the new construction could fall within the priority. The highest priority is upgrading failing OSDSs in the critical area. These systems still require BAT technology. The second priority is failing OSDSs outside the critical area. Failing OSDSs outside the critical area do not require BAT. The third priority is other OSDS upgrades and new construction within the critical area. The last priority is construction of new OSDSs outside the critical area. This year we might see an extension into the lower priorities because, there is twice as much money dedicated this year compared to last year.
- Mr. Khuman asked even if an individual was installing the BAT system with his own money, the new regulations require it to include five years of O&M to be provided by the installer? The answer was yes. That gives MDE some time to determine what would be the policy in five years. Mr. Leocha questioned what would happen if after five years the property changed hands, is there some methodology to help educate the new owners as to what is required? MDE recognizes that this issue needs to be addressed, and currently MDE does periodic presentations for realtors.
- Mr. Leocha suggested that a simple presentation could be included on the MDE website and the new property owner would be required to sign off on the property and register himself to maintain the BAT system. As regards to education, MDE could approach mortgage companies and realtors and add information to the website, but asking an owner to sign an acknowledgment would require another regulation.

V. Update on Cover Crop Activities

- Mr. Astle provided an update on the cover crop activities. The official number of acres planted last year is 429,818, slightly less than the 430,000 acres reported at the previous meeting, and equates to a nitrogen reduction of about 2.6 million pounds. This year's sign-up of 607,400 acres resulted in another record sign-up two years in a row, last years total was 570,000 acres.
- MDA is currently in the process of beginning to take fall certifications, where they are certifying the acres planted. Around January 1st, they will have an idea of how many acres have been planted. They hope to exceed last year's total of 429,000 acres. Last year the cover crop program cost \$19.9 million and they expect to exceed \$20,000 million this year. From the Bay restoration Fund the amount will increase from \$5.6 million to about \$10 million. The \$10 million deficit will be made up by the 2010 Trust Fund or a budget amendment at the end of the year.
- Mr. Khuman asked if the reimbursement rate per acre is being kept the same as the prior year's rate. MDA has not changed the program. MDA conducted meetings to discuss the program and changes, but they resulted in no program changes. Mr. Bouxsein asked if MDA is seeing any shift or bounce between commodities crops and other types of crops. Generally, it is relatively stable from year to year as far as percentages of commodities.
- Ms. Lane asked if they are doing the same breakdowns for rye, barley, and the planting methods in terms of what is planted, not the payment rates. MDA did keep track of that information, and it would be available if requested. Ms. Lane stated that DNR is using an average of six pounds per acre for nitrogen reduction in response to inquiries, but that is for the whole program. They continue to be queried for more data.
- Mr. Astle stated that one other thing that is being looked into is putting in a system where the local districts can electronic file the applications of their operators with MDA. MDA thinks they could be in a position next year to initiate a pilot program with one or two districts.

Next Meeting

The next meeting will take place mid-January 2013 on a Thursday.

Materials Distributed at the Meeting

- Meeting Agenda
- Previous Meeting Minutes (April 18, 2012)
- Wastewater Treatment Plants ENR Upgrade Status (October 4, 2012)
- Draft Bay Restoration Fund Advisory Committee Annual Report, January 2013.
- Program-to-Date BRF Fee Collection Report (through August 31, 2012)
- BRF Fee Collection Reports (through August 31, 2012)
- BRF Fee Distribution Report through August 31, 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
Angela Butler, Maryland Department of Planning
John Leocha, Maryland Department of Planning
Sarah Lane, Department of Natural Resources

Others in Attendance:

Julie Pippel, Washington County
Andrew Gray, Department of Legislative Services
Peter Bouxsein, Chesapeake Bay Foundation

Maryland Dept. of the Environment (MDE) Attendees:

Jag Khuman	Jay Prager	Marya Levelev
Walid Saffouri	Joshua Flatley	Susan Iaconangelo
Rajiv Chawla	Debbie Thomas	
Sunita Boyle	Cheryl Reilly	