

BAY RESTORATION FUND ADVISORY COMMITTEE

Maryland Department of the Environment

MDEstat Conference Room

1800 Washington Blvd.

Baltimore, Maryland 21230

January 21, 2010

1:00 p.m. to 4:00 p.m.

Meeting Minutes Summary

Welcome/Introduction

- The meeting was chaired by Dr. Robert Summers, Deputy Secretary, Maryland Department of the Environment, and Advisory Committee Chairman.
- Dr. Summers welcomed the committee members and other attendees.
- Dr. Summers briefed the committee members on the Governor's budget. Through the Budget Reconciliation Act, up to \$155 million of Bay Restoration funds (BRF) not obligated for debt payment in 2010 and up to \$45 million in 2011 will be transferred to the General fund. In 2011, \$125 million general obligation (GO) bonds will be put into the BRF and another \$75 million will be put into the BRF in 2012. Therefore, it will not be a long term loss of funds, and will not impact the schedule.
- The Governor is also proposing to double the 2010 Trust Fund budget to \$20 million. The Governor is seeking the legislature's approval of both proposals this session.
- The BRF Annual Status Report to the Governor and Legislature is currently going through the normal review process and should be approved shortly.

Review of Minutes

- Previous meeting minutes from the December 3, 2009 meeting were handed out to the committee members for their review and comments. Also, an electronic copy of the meeting minutes was e-mailed to the committee members prior to the meeting.
- Ms. Aiosa had one (1) correction. Under item II, BRF Fee Collection and Budget, page 2 of 6 second bullet, it says \$500 million transferred from septic and two (2) lines later it says \$500 million may be slightly higher. In both cases, it should be corrected to state \$5 million. No other changes were suggested. Mr. Saffouri stated the items will be revised.
- The approved minutes (after the correction) 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 13 facilities in operation, an increase from 11; 13 under construction, 25 in design, 9 in planning, and 7 in pre-planning, for a total of 67 facilities.
- Patapsco and Pocomoke City are now under construction and Elton and Federalsburg initiated operation. Poolesville is expected to go to construction within a month and Crisfield is expected to complete construction by the end of February 2010.
- All the percentages have increased and Havre de Grace, currently at 95%, should be in operation very soon.
- The groundbreaking ceremony for the Ballenger Creek – McKinney WWTP was held on December 15, 2009.
- The following facilities are ready to schedule an event, if needed.
 1. Indian Head - Dedication
 2. Brunswick - Dedication
 3. St. Michael's – Dedication
 4. Elkton – Dedication
 5. Federalsburg – Dedication
 6. Hagerstown - Ready for Groundbreaking
 7. Delmar - Ready for Groundbreaking
 8. Cumberland - Ready for Groundbreaking
 9. Bowie - Ready for Groundbreaking
 10. Patapsco - Ready for Groundbreaking
 11. Mount Airy - Ready for Groundbreaking
 12. Pocomoke City - Ready for Groundbreaking

II. BRF Fee Collection and Budget

- Mr. Khuman presented the revenue data for fiscal years 2005-2009 and fiscal year 2010 through the end of November. This was a slow quarter because the deposits come once every quarter and there was no major activity in November. The Wastewater Treatment Plant revenues for fiscal years 2005-2010 are as follows: \$7.0 million, \$57.7 million, \$69.1 million, \$54.7 million, \$53.3 million, and \$18.9 million, respectively. The large variance in FY 2007 is due to an added extra quarter as a result of a change in the accounting system.

- The septic revenues for fiscal years 2005-2009 and 2010 through October are \$260 thousand, \$7.9 million, \$13.5 million, \$14.1 million, \$15.8 million, and \$8.1 million, respectively. Sixty percent (60 %) of the money goes to MDE and 40% to the Department of Agriculture. The item to note is that there is a one year formula change for fiscal year 2010, where MDE will only be getting 22.4% and the Department of Agriculture will get 77.6 % to deflect the one time \$5 million transfer from the septic side to the agricultural side.
- The total fund distribution to date is as follows: approximately \$260 million to MDE Line 1 (Wastewater Fund), \$32.8 million to MDE Line 2 (Septic Fund), and \$26.9 million to MDA Line 2 (Cover Crop Fund).
- Mr. Khuman expanded on earlier statement by Dr. Summers regarding money that the Governor proposed for transfer to the General fund. Page one (1) column one (1) “sewer” of the spreadsheet shows that about \$263 million were collected by the Comptroller. Subtracting some operating expenses leaves the net amount deposited to the fund. In addition, \$50 million in bonds were issued, resulting in a total of over \$300 million in cash, some of which has been spent. The remainder, in the range of \$180 million, is free and clear, without any obligations. That is the source of the \$155 million proposed for transfer to the General Fund in 2010. This can not be repeated indefinitely because next year the future revenues available will be \$45 million (proposed for transfer to the General Fund in 2011), and each following year it will keep getting less.
- Mr. Khuman explained the mechanics of the fund shift and how MDE will still be able to keep its promise to pay the long-term bond commitment made by the local jurisdictions even with the proposed transfer of BRF funds to the General Fund.
- Mr. Khuman provided an explanation of the apparent decline in on-site funding. On the last page of the handout the funding in 2009 is given as \$15.8 million. Looking at the funding to date, in 2010 it will not be that high. The reason is, in October 2008, the Comptroller made entry error depositing Prince George’s County’s septic fees as wastewater fees, i.e., on the wrong line. During an audit the Comptroller realized this had been going on for the past six quarters. They made a lump sum correction entry to transfer that money to the septic from the wastewater line creating a one-time blip. We will probably be going back to about \$13.5 million per year. The \$15.8 million, therefore, is just an anomaly.

III. Evaluating Options to Address ENR Funding Shortfall

- Five options were presented to the Committee for addressing the funding shortfall. The financial impact of each option to the Bay Restoration Fund will need to be addressed. Each option evaluated, will state the amount of funds it would generate and the pros and cons of adopting it. The timing of phasing an option will also determine the amount of cash deficit and the money that would be needed in 2012, 2013, 2014, etc. The recommendations selected by the Committee will be included into the next annual status report.

- Mr. Khuman explained the development of the model to prepare the spreadsheet for evaluating the funding options. Some presumptions will have to be made, but the model will be made flexible enough that when changing input (assumptions), you can very quickly generate new outputs.
- In evaluating the options, the Committee discussed the following points;
 - Delaying a smaller WWTP will potentially not affect the State meeting its Total Maximum Daily Load (TMDL) requirements, but at best it could delay the funding deficit a couple of years not the 15 years until there is new cash flow. It may help, but ultimately its the three largest facilities (Blue Plains, Back River, and Patapsco) that will have the greatest impact.
 - There are not many facilities for which ENR upgrades can be delayed since 26 are in operation or under construction and 25 are in design, and many of the latter are nearing completion. Therefore this Option is immaterial at this point and should not be considered any further. No one objected.
- The analysis for the Option to make debt service on bonds issued by local governments that have a term up to thirty years has already been completed and will be presented to the Committee along with the analyses for the other options. Further discussion of the pros and cons for each option was deemed premature until the analyses for the each option is completed.

IV Update on Cover Crop Activities

- Mr. Astle provided an update on the cover crop activities. Around 205,000 acres of cover crops were planted this year. The agricultural community did a good job planting the cover crop given the 2009 weather conditions.
- Mr. Astle stated he did not know how much money was obligated for the cover crops, but he thought it was probably in the \$ 11-12 million range, but will depend upon how much of the crop will be determined as a commodity and how much as traditional.
- The planting season was extended to November 16th. A portion of the crop was planted between November 5th, the original deadline, and November 16th, but less than originally thought.

V Onsite Sewage Disposal systems (OSDS) Update

- Mr. Khuman provided an update on the implementation of the OSDS program. Starting in fiscal year 2011, rather than taking their applications at MDE, MDE is moving towards making the counties or other parties manage the program.
- In the last few years, some counties have been participating in the septics' program on a local basis and other county governments or health departments have not participated. For

homeowners in the latter, MDE has been taking applications directly, processing them on a priority basis, awarding them to the homeowner, paying the homeowner, who then pays the vender.

- MDE has made a business decision to implement the septic program through the counties because the current procedure is very inefficient. If a county does not participate, then MDE may implement the septic program through other governmental or non-governmental entities interested in participating. MDE will send a solicitation to all county governments on February 1, 2010 requesting them to submit applications for grants for 2011 and for 2012. Applications must be received by April 15, 2010. The requirements and guidance will be posted on February 1, 2010 on the MDE website. Mr. Khuman explained that each county will be asked to inform MDE by March 1st whether they intend to apply. If the answer is no, MDE will seek other entities; universities, MES, Maryland Center for Environmental Training, etc and ask if they are interested in participating.
- The two (2) key requirements for funding are: (1) grant awards be income-based. People who fall under the 15% or less tax bracket will get 100% and the people who fall in the highest tax bracket will get a minimum of 25%. People in-between will get 75% or 50% depending on their tax bracket. (2) Repairs and installation of septic tanks in critical areas must now meet 'best available technology' (BAT) criteria for nitrogen removal. Priority is given to failing septic systems in critical areas followed by failing systems in non-critical areas, and so on.
- Mr. Prager informed the Committee members that he met with the county Environmental Health Directors and told them to expect the solicitation early February and he also informed the members of the Environmental Health Liaison Committee.
- Effective July 1, 2010, when the grants are awarded for Fiscal year 2011, the new income based means testing will apply. If the 6 counties currently administering the program locally still have money, they can operate under the previous rules until their grant expires, which is July 1, 2010 for one of the counties and November 28, 2010 for the others. These counties should apply to the February 1, 2010 solicitation for any grants beyond their current respective expiration dates.

Next Meeting

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

Materials Distributed at the Meeting:

- Meeting Agenda
- Previous Meeting Minutes (December 3, 2009)
- Wastewater Treatment Plants ENR Upgrade Status (January 21, 2010)

- Program-to-Date BRF Fee Collection Report (through December 31, 2009)
- 2009 Tax Year Year-to-Date BRF Fee Collection Report (through December 31, 2009)
- 2009 Tax Year Third Quarter BRF Fee Collection Report (through December 31, 2009)
- BRF Fee Distribution Report through December 31, 2009
- Form – Options to Address ENR Funding Shortfall

Attendance

Advisory Committee Members or Designees Attending:

Robert Summers, Maryland Department of the Environment
 James L. Hearn, Washington Suburban Sanitary Commission
 Norman Astle, Maryland Department of Agriculture
 Jenn Aiosa, Chesapeake Bay Foundation
 Christopher Aadland, Department of Natural Resources
 Greg Murray, Washington County

Others in Attendance:

Peter Bouxsein, Maryland General Assembly
 Julie Pippel, Washington County
 Tracy Urbanczyk, RK&K

Maryland Dept. of the Environment (MDE) Attendees:

Jag Khuman	Elaine Dietz	Michael Kanowitz
Walid Saffouri	Cheryl Reilly	Jay Prager
Andrew Sawyers	Barry Glotfelty	Marya Levelev
Rajiv Chawla	Janice Outen	