

BAY RESTORATION FUND ADVISORY COMMITTEE

Maryland Department of the Environment

Aqua & Terra Conference Room

1800 Washington Blvd.

Baltimore, Maryland 21230

June 9, 2009

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

Meeting Minutes Summary

Welcome/Introduction

- The meeting was chaired by Mr. Walid Saffouri, Program Manager for Water Quality Infrastructure Program and Mr. Jay Sakai, Director of Water Management on behalf of Dr. Summers, Advisory Committee Chairman, who was unable to attend.

Review of Minutes

- Previous meeting minutes from the March 3, 2009 meeting were handed out to the committee members for their review and comments. Also, an electronic copy of the meeting minutes was mailed to the committee members prior to the meeting. Corrections to the meeting minutes forwarded by Committee Member, Mr. Hearn were incorporated into the final copy of 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 11 facilities in ENR operation, 7 under construction, 21 are in design, 21 are in planning, and 7 are in pre-planning for a total of 67 facilities.
- Three facilities Bowie, Cumberland and Delmar have awarded construction contracts and are expected to proceed to construction within a month. Engineering contracts for design are under review by MDE for La Plata, Sod Run, Joppatown, and Snow Hill and are expected to proceed to design upon approval of their contracts.
- Howard County held a groundbreaking ceremony on May 14, 2009 for the Little Patuxent WWTP ENR Upgrade, although they had not started actual construction, since the project is a design built type contract. The groundbreaking ceremony was attended by MDE Secretary's office.
- Crisfield and Elkton WWTPs are expected to complete construction by fall 2009.

- It was determined that Dorsey Run and Northeast River were not achieving ENR performance and needed to be considered upgraded. Northeast River is unable to achieve phosphorus limits, while Dorsey Run may not be able to achieve ENR limits once it reaches its design capacity. These two facilities were therefore moved from operational to pre-planning status.
- The following facilities may be ready to schedule an event:
 1. Indian Head – Ready for Dedication
 2. Salisbury – Ready for Dedication
 3. Brunswick- Ready for Dedication
 4. St. Michael’s – Ready for Dedication
 5. Hagerstown- Ready for Groundbreaking
 6. Perryville – Ready for Groundbreaking
- Beginning in FY2010, the BRF law allows the Department to grant 10% of the BRF fee towards operation and maintenance (O&M) costs of the facilities that have completed their ENR Upgrade and have been operational since last year. Facilities that have been ENR operational for the entire 12 months will receive full allocation based on their design capacity, while others that have been ENR operational for the remainder of the year will be prorated based on their months in operation. A total of \$165,000 is being allocated O&M funding based on the list of facilities that are ENR operational and have applied for O&M funding. Two facilities, Kent Island and Swan Point are ENR operational, but have not applied for this funding.

II. Legislative Update

- Mr. Sakai provided an update of the legislative action on the following Maryland House and Senate Bills impacting the Bay Restoration Fund:
- House Bill 90 which was introduced at the request of MDE to correct a technical error regarding the Bay Restoration fee was enacted by the legislature. It ensures the bondholders that the legislature will not be able to reduce the BRF fee as long as bonds are outstanding and thereby compromise the ability to pay the bonds back. Only an increase in fee can be recommended by the Advisory Committee.
- House Bill 176 and Senate Bill 1064 were not passed by the legislature. These bills would have required Best Available Technology (BAT) upgrades to existing on-site sewage disposal systems that needed to be repaired or replaced as well as to new systems. These Bills also added a provision that would authorize the Department to establish regulations governing the inspections, operations, and maintenance of these septic systems. The home builders were opposed to these bills due to costs it would add to new homes and the local health directors testified in opposition since the requirements could discourage people from replacing or making needed repairs to their on-site disposal systems.
- House Bill 221 failed. This bill proposed to switch the distribution of BRF fees from Septic System funds between cover crops program and septic system upgrades. Currently 60% of the funds are for septic system upgrades and 40 % for the cover crops program. This bill would reverse that by making it 60% for the cover crop program and 40% for the septic system upgrades. The Department had opposed this bill, given the interest and increase in septic system upgrades with Best Available Technology.

- House Bill 346 failed. It authorized the use of Bay Restoration Fund for the costs to local governments for inspecting the upgrades to ensure long term performance of nitrogen-removing septic systems funded under this section.
- House Bill 529 failed. It proposed using funds from the Bay Restoration Fund to address environmental problems associated with improper handling and disposal of septage that's pumped out of septic tanks.
- House Bill 1083 failed. This bill would have required Best Available Technology (BAT) on new and replacement systems as well as inspections once every ten years on all septic systems in the State by making available 20 percent of the septic fee for these inspections. This would have had a significant fiscal impact to the Department since it would reduce the remaining funding available to support and implement the basic BRF septic upgrade program.
- House Bill 1106 was withdrawn by Anne Arundel County. This bill required a homeowner in that County that received a grant for upgrade of their septic system to pay back the grant if they increased the size of the dwelling. The County has since changed its policy at the direction of the Department and therefore this Bill was withdrawn.
- House Bill 1362 failed. This bill allowed a set of septic systems in a community to be hooked up to a state of the art sewage treatment plant where it can be demonstrated it is more cost-effective than to upgrade the existing septic systems. There were some issues and concern with this bill regarding growth and sprawl and as a consequence this bill failed.
- Senate Bill 329 failed. This bill would have allowed Dorchester County to put a lien on the property whose owner is not paying the BRF fee. This bill failed since it was a one county bill as opposed to statewide initiative.
- House Bill 1105 was passed by the legislature. This bill prohibits an individual from installing an surface discharge-wastewater treatment system on their property unless there is a septic system already in place that is failing and needs to be replaced to address their disposal issues.
- Senate Bill 554 referred to as the "Chesapeake Bay Nitrogen Reduction Act of 2009" was passed by the legislature. This bill requires best available technology for nitrogen removal to be implemented for new or replacement septic systems located in the critical area and requires the Department to assist the homeowners in paying the cost difference between a conventional on-site sewage disposal system and a system that utilizes nitrogen removal technology with money from BRF funds if sufficient funds are available. This bill will have a major impact on the increase in demand for the BRF septic fund. The Department plans to draft regulations that would have specific priorities in targeting money to implement this bill.

III. BRF Fee Collection and Budget

- Mr. Freyman from the Maryland Comptroller's office presented the program to date, year-to-date, and 1st Quarter through May 31, 2009, fee collection amounts, which are approximately \$284.2 million, \$13.1 million, and \$13.1 million respectively. The \$13.1 million amount is identical for year-to-date and through May 31, 2009 since it only reflects the 1st quarter's data for 2009.

- The total fund distribution to date is as follows: Approximately \$230.6 million to MDE Line 1 (Wastewater Fund), \$30.4 million to MDE Line 2 (Septic Fund), and \$20.3 million to MDA Line 2 (Cover Crop Fund).

IV. Onsite Sewage Disposal Systems (OSDS) Update

- Mr. Prager provided an update on OSDS upgrades. A number of outreach and marketing efforts to promote the upgrade of the septic systems have resulted in a significant increase in new applications, 300 to 400 a month. The number of septic system upgrades installed over the previous months has also steadily increased resulting in over 90 installations for the month of May 2009. Contractors have been given a 30-day commitment period to install the system upgrades, but some are getting backed up due to wet weather, which may impact the number of systems installed for the month of June 2009.

V. Update on Cover Crops Activities

- Ms. Lawrence from the Maryland Department of Agriculture (MDA) provided an update on Cover Crop activities. The estimated payout for the cover crop program in fiscal year 2009 was \$11 million for 237,000 acres. Approximately \$12 million have been budgeted for the Cover Crop Program in FY 2010 as opposed to \$18 million that were budget for FY 2009.
- USDA has offered to provide up to \$2 million for the Cover Crop Program in some priority watersheds as determined by their SPARROW model for nitrogen loading. The base rate under this program will be \$45 an acre of cover crops in those areas versus the state base rate of \$40 an acre of cover crops and there will be no cap on the number of acres that can be enrolled per applicant. Under the State Cover Crop Program there is a 750 acres cap that has been established due to fewer funds for the FY 2010.
- MDA is combining the commodity and traditional cover crop programs into one single application to make it easier for the people to apply and get paid. The base rate for traditional cover crops has been dropped from \$45 to \$40/acre and from \$35 to \$30/acre for the commodity cover crops. This rate change combined with 750 acres cap per application is expected to expand the program with fewer funds available for the 2010 fiscal year.
- MDA had a survey conducted by the Schaeffer Policy Center at the University of Maryland to find out the impediments to signing up for the program for planting of the cover crops. The survey found that the cover crops did not tend to fit well into the farmer's management system and that availability of labor and time were also significant factors. Additionally Cover crops do not generate a lot of money for the farmers. In response MDA is developing a list of custom contractors and applicators that farmers may want to hire for planting of the cover crops, and the incentive might be attractive enough to pay the contractor and still make money for the farmer.

Next Meeting

Committee members will be informed via e-mail when the next meeting is scheduled.

Materials Distributed at the Meeting:

- Meeting Agenda
- Previous Meeting Minutes (March 3, 2009)
- Wastewater Treatment Plants ENR Upgrade Status (June 9, 2009)
- O&M Annual Grant Request FY-2010
- 2009 Legislative Session Review
- Program-to-Date BRF Fee Collection Report (through May 31, 2009)
- 2008 Tax Year Year-to-Date BRF Fee Collection Report (through May 31, 2009)
- 2008 Tax Year Fourth Quarter BRF Fee Collection Report (through May 31, 2009)
- BRF Fee Distribution Report through May 31, 2009

Attendance

Advisory Committee Members or Designees Attending:

James L. Hearn	Washington Suburban Sanitary Commission
George Freyman	Maryland Comptroller's Office
Louise Lawrence	Maryland Department of Agriculture
Jenn Aiosa	Chesapeake Bay Foundation
Julie Pippel	Washington County

Others in Attendance:

Evan Issacson	Maryland Department of Legislative Services
Andrew Gray	Maryland Department of Legislative Services
Jennifer Raulin	Maryland Department of Natural Resources
Theresa Bruton	Hazen & Sawyer

Maryland Dept. of the Environment (MDE) Attendees:

Jag Khuman
Walid Saffouri
Andrew Sawyers
Rajiv Chawla
Jay Prager
John Boris
Elaine Dietz
Heather Fleming