

BAY RESTORATION FUND ADVISORY COMMITTEE

Maryland Department of the Environment

Aqua and Aeris Conference Rooms

1800 Washington Blvd.

Baltimore, Maryland 21230

July 25, 2013

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 and introduced Ms. Fiona Burns, the new committee member from the Department of Budget and Management, replacing Ms. Hilary Bell.

Review of Minutes

- Previous meeting minutes from the April 25, 2013 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. Astle requested that on page two, second line, the word “converted” be deleted and replaced with “have been planted”. The minutes will be revised.
- There were no other comments on the meeting minutes. Unless any other comments from the members are received, the approved minutes and handouts from the meeting will be posted on MDE’s website.

Discussion

I. Nutrient Trading Presentation

- Mr. Sakai presented an update on the status of the Nutrient Trading Policy. The current point-to-point nutrient trading policy was developed in 2008, prior to the Watershed Implementation Plan. MDE is retooling the current trading policy to reflect some of the changed conditions that exist today. There are on-going discussions and guidance that will be forthcoming from EPA on nutrient trading.

- Rather than having a policy that states certain things very explicitly and which may not be accurate, the current policy will be revised to incorporate as much of what is known about trading. MDE has been working very closely with John Roderick of the Maryland Department of Agriculture on the non-point source trading policy.
- The purpose of this presentation is to make the Committee members aware that we will engage the Committee very directly to get their input, as we go through some of the trading policy changes. Most of the changes would be characterized as slight modifications to the current policy. Wholesale rewrites are not expected. It is not anticipated that it will be a long process to actually produce a revised policy. Work on the revision of the nutrient trading policy will continue through the better part of the summer, into the fall. The intent is to make sure that the information is accurately presented, based on what is known today, and incorporate along the way, as much as possible, in terms of the new non-point source trading policy.
- Mr. Boussein asked whether there will be a moratorium on trading during this process. The response was that a couple of potential trades are currently on-going. Another part of this effort is that the Offset Work Group is discussing the issue and some of that will be included, where possible.
- Mr. Boussein inquired if there will be a general public comment period. Mr. Sakai stated that while there will not be a formal public hearing and comment process, it will be published on the MDE website and comments will be requested.

II. Update on Cover Crop Activities.

- Mr. Astle provided an update on the cover crop activities. At the close of the 2013 program, 410,000 acres have been planted. For the 2014 program, final numbers are not in, but based on the applications input to the system, 500,000 acres have signed up. Last year, over 600,000 acres were signed up.
- Mr. Boussein asked if there are any factors, weather etc., that are influencing the program. Mr. Astle stated that in the past year weather factors probably did not have much impact on the number of acres planted. Because of the wet spring, however, the corn and soybeans were planted late, and that will delay getting the fall crops planted. MDA this year has seen a number of interests in aerial seeding. Aerial seeding can be done in a standing crop, so it has gained attention for the upcoming cover crop season. There are more services available for aerial seeding than in the past, and MDA is hoping to do well with the aerial seeding.
- Mr. Murray asked if county or local data is available showing goals or indicating where the county is versus where they should be in order to help promote the planting of cover crops. Mr. Astle stated that those goals could be provided by MDA or the local soil conservation district. Mr. Ball inquired if promotions are still on-going. Yes, MDA is promoting the Cover Crop program through magnets, banners, and yard signs.

III. 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 30 facilities in operation, 19 under construction, 12 in design, 4 in planning, and 2 in pre-planning, for a total of 67 facilities. The three additional facilities in operation are, Thurmont, Piscataway, and Parkway.
- Mr. Saffouri called attention to the percentage complete for each plant that is under construction and noted they are moving forward. There are four projects that are nearing completion and are in the process of initiating and refining ENR operations, Snow Hill, Aberdeen, Joppatown, and Cambridge. Marley Taylor and Northeast River have completed design and are expected to initiate construction by September 2013.
- The following facilities are ready to schedule an event, if needed: Committee members will be informed via e-mail, if an event is scheduled.

Chesapeake Beach – Ready for Groundbreaking
Thurmont – Ready for Dedication
Piscataway – Ready for Dedication
Parkway – Ready for Dedication
Snow Hill – Ready for Dedication

- Mr. Ball asked what is happening at Back River and Patapsco. The bids have been opened for Back River; it's just a matter of getting it approved by the local board. Patapsco is under construction, 56% complete.
- Mr. Ball asked if projects are listed if they are 100%. The response was no. To date, the 30 operational facilities have rolled off the top of the list. The complete list, all 67 facilities, is on the BRF website and it gives which facility is completed and operational, which is not, and the expected date of completion. Mr. Ball inquired if MDE is keeping track of the operation of the completed facilities. Mr. Saffouri stated that as part of the O&M grants, before the grants are provided, the facilities have to furnish to MDE their performance data. All, with a few exceptions, are doing well. That data is not available on the website. MDE has operating data and can provide the 2012 data for the completed facilities in a tabular form, possibly at the next meeting.

IV. BRF Regulations Update

- Mr. Khuman referenced the Draft Bay Restoration Fund Implementation handout. The statute for the Bay Restoration Fund is quite explicit in stating what can be funded. Within the statute, however, there is a notation that the Department shall develop the regulations if it is deemed necessary. A couple of years ago, the MDE legislative auditors said there should be regulations. With that in mind, there are no statutory changes in the regulations, this is within the existing statute stating how the program works. Part of it is already in the statute, but there is some

elaboration on certain aspects. The draft regulations will likely get published in the Maryland Register on August 23rd for a 30 day comment period.

- The project prioritization is given on page three of the draft regulations, Section .03 B, and it is in two tiers. Prior to 2018, Section .03 B (1), the draft regulations follow the statute which prioritizes funding for ENR upgrades at higher flow facilities, and thereafter at smaller and other facilities. It does not allow for any expanded uses beyond ENR. Starting in 2018, Section.03 B (2), the draft regulations follow the statute which expands the use of the monies beyond ENR, allowing the transfer of some of the wastewater money to the Onsite Sewage Disposal System Fund (septics) and for stormwater projects.
- In accordance with the statute, the order of priority shall be ENR, septics, stormwater. So, if there are enough applications for septics, there may not be money for stormwater. Eventually, however, the criteria for implementation would be readiness to proceed. For example, in any given fiscal year if a septic project is not ready and a stormwater project is, the money will not be held up by MDE. The details are all going to be worked out after 2018.
- Mr. Murray asked if the septic money will continue to be used for upgrades and not to provide connection to a public sewer system. Mr. Khuman responded that it could be used for anything. The monies will get moved to the septic fund based on demand. The septic funds, in turn, based on eligibility within the statutory limitations, could be used for individual septic system upgrades or to run sewer lines to an ENR plant.
- Mr. Ball questioned the wording in the draft regulations Section .03 B (2) (d) “Fifth for upgrades” because it appears to limit the septic funds to just upgrades. Mr. Khuman stated that the statute was written that way, but the intent is for all the permitted uses within the septic onsite disposal system can be funded. In all practicality, the real demand is not going to be for individual upgrades. There will be opportunities, within, the law, to run sewer lines to an ENR plant. The reason being that with the expected wastewater fund revenue of \$100 million a year, about \$50 million will be going to bond debt service, and \$50 million would be available for majors, minors, septics and stormwater.
- Mr. Boussein inquired if Section .03 B (2) (e) of the draft regulations needs to be looked at, because Article 4-204 was passed before the septics bill. Mr. Khuman stated that under Article 4-204, if a jurisdiction has a fee structure of any kind, the jurisdiction is technically eligible for stormwater funds. Ms. Barthel added that the legislative intent was not to limit it to those ten jurisdictions with MS4 permits. During the aforementioned draft comment period these and other issues will be looked at.
- Mr. Khuman next referred to the draft regulations Section .03 E, Enhanced Nutrient Removal Operation and Maintenance (O&M) Grants. MDE had an internal policy of providing \$18,000 per one million gallons per day (MGD) design flow, not to exceed \$ 216,000 per year per wastewater plant. Since the flush fee has doubled, that has been increased to \$25,000 per MGD, not to exceed \$250,000 per plant. The math works out that with the 67 plants meeting ENR, plus some minors, the annual allocation range will still be about \$6 million. The law allows for up to 10 percent of

the money to be distributed as grants for O&M for plants operating at the ENR level. This formula currently would use \$6 to \$7 million for the large and small plants. The minors will get \$25,000 each because they are all less than one (1) MGD. If a plant is operating at an annual average of 3 milligrams per liter (mg/l) for Total Nitrogen (TN), it will get the full grant amount, if it is only getting 4 mg/l , it will not get any O&M grant money, and between 3mg/l and 4 mg/l it will be prorated.

- On page 3 Section .03 B (2) (c) (iv) of the draft regulations, Mr. Khuman noted that for stormwater projects, the draft regulations are essentially recommending a 50 percent grant. The grant will be a cost-share, 50 percent grant and 50 percent local.
- Under the septic portion Section (.04) of the draft regulations, this is much the same as what we have been doing, only it's being implemented through guidance by the local health departments who have provided significant input in terms of what they would like to include in the regulation. One item to note is on page 7, Section .04 D, Income Based Grant Eligibility. For households with annual household incomes of \$300,000 or less, the grant funding is up to 100 percent of the cost. For households with annual incomes above \$300,000, the grant will be up to 50 percent of the cost. All businesses will qualify for up to 50 percent of the cost as grant funding.

V. Onsite Sewage Disposal Systems (OSDS) Update/ BRF Septic Uses

- Mr. Khuman referenced the one-page handout labeled BRF Septic Uses taken from the BRF Statute 9-1605.2. Currently, one of the permitted uses for the Bay Restoration Septic Fund is that homes can be connected to a sanitary sewer system that flows to an ENR wastewater plant. Section 1. E. states that up to 100 percent of the cost, up to the sum of the costs authorized under item 1. C. (the full septic system) for each individual system (home), to connect a property using an onsite sewage disposal system to an existing municipal wastewater facility achieving ENR. On the page labeled 2 are listed the conditions that must be met. Section (iii) 1. states that the environmental impact is documented (should be known), Section (iii) 2. states that it can be demonstrated it is cost-effective or, replacement of the on-site system is not feasible, and Section (iii) 3. states, it is consistent with the water and sewer master plan.
- The key conditions, however, are in Sections (iii) 4. and (iii) 5. Section (iii) 4. states the septic system must have been installed as of October 1, 2008, and the property the system serves is located in a priority funding area (PFA). In other words, the law says if the property is outside the PFA, it can not connect to a sewer line that was funded with BRF funds. Section (iii) 5. says the local government has adopted a policy or procedure that will guarantee that any future connections to an existing municipal plant that use BRF funds will meet the above requirements. This means that if someone has a vacant lot and it is within the PFA, because the vacant lot did not have a septic system before October 1, 2008, it can not connect to a sewer line that was funded with BRF funds.

- It is not believed that it was the legislative intent to prevent vacant lots from being connected to a sewer line, but that is the way it has been treated. This has impacted many properties within the PFA and has created chaos locally, because in many jurisdictions, connection to a sewer line can not legally be denied if the lot has a sewer line in front of the house. Another issue is in regards to Section (iii) 4. There is no exception provision that states if the property is outside the PFA, and there is a public health concern, the property can be connected to a sewer system funded with BRF funds, even if there is some kind of mitigation or denied access. That clause does not exist under the BRF, but it exists under other parts of Maryland financing, such as the revolving loan fund. There is now an opportunity to re-look at these pertinent sections of the statute to determine what can be done to make it more practical. Currently, MDE and MDP are looking at these sections.

VI. BRF Fee Collection and Budget

- Mr. Khuman presented the fee distribution data from the fee program's inception through the end of March 2013. The total fund distribution to date is as follows: approximately \$487.3 million to MDE Line 1 (Wastewater Fund), \$65.4 million to MDE Line 2 (Septic Fund), and \$52.3 million to MDA Line 2 (Cover Crop Fund).
- Mr. Khuman stated that on Line 1 (Wastewater) so far this fiscal year we have received about \$79.6 million, and it appears that the projected target of \$100 million will be met. All that is needed is another \$21 million. We will actually know the first week of August. The fees are due to the comptroller on July 20th and they will report the revenues to MDE the first week of August. Similarly, on Line 2 (septics) the target was around \$26 million and the total to date is about \$24.7 million. So, it is expected that target will also be met.

VII. Major/Minors

It was hoped that this topic could be discussed at this meeting, but the preliminary list presented at the last meeting is currently being discussed between MDE and MDP. The issues that are being looked at include which projects may have growth pressure, priority for funding, flow rates, etc. MDP will be giving a presentation at the next meeting.

Next Meeting

The next meeting will take place September 2013 on a Thursday.

Materials Distributed at the Meeting

- Meeting Agenda
- Previous Meeting Minutes (April 25, 2013)
- Wastewater Treatment Plants ENR Upgrade Status (July 25, 2013)
- Draft COMAR Regulation 26.03.13 Bay Restoration Fund Implementation
- Excerpt from the BRF Statute 9-1605.2
- Program-to-Date BRF Fee Collection Report (through June 30, 2013)
- BRF Fee Collection Reports (through June 30, 2013)
- BRF Fee Distribution Report through June 30, 2013

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
Fiona Burns, Department of Budget and Management
Sarah Lane, Department of Natural Resources
Peter Bouxsein, Chesapeake Bay Foundation
William Ball, Johns Hopkins University
Walid Saffouri, Maryland Department of the Environment

Others in Attendance:

Julie Pippel, Washington County
John Rhoderick, Maryland Department of Agriculture
Andrew Gray, Department of Legislative Services
Matthew Klein, Department of Legislative Services
Sara Bouadjemi, Citizen

Maryland Dept. of the Environment (MDE) Attendees:

Jag Khuman
Kimberly Knussman
Rajiv Chawla
Sunita Boyle
Jay Sakai

Michael Kanowitz
Susan Iaconangelo
Jay Prager
Cheryl Reilly

Debbie Thomas
Marya Levelev
Heather Barthel
Jim George