

CHESAPEAKE BAY and WATER RESOURCES POLICY COMMITTEE
777 North Capitol Street, N.E.
Washington, D.C. 20002

MINUTES OF SEPTEMBER 18, 2009, MEETING

ATTENDANCE:

Members and alternates:

Chair Cathy Drzyzgula, City of Gaithersburg
Vice Chair Barbara Favola, Arlington County
Vice Chair Hamid Karimi, District of Columbia
William Skrabak, City of Alexandria
Penelope Gross, Fairfax County
Ed Putens, City of Greenbelt
Mohsin Siddique, District of Columbia WASA
J. L. Hearn, WSSC

Staff:

Stuart Freudberg, DEP
Ted Graham, DEP
Steve Bieber, DEP
Tanya Spano, DEP
Karl Berger, DEP

Visitors:

Hedrick Belin, Potomac Conservancy
Patrick Felling, Potomac Conservancy
Kate Fritz, Maryland National Capitol Park and Planning Commission

1. Introductions and Announcements

Chair Drzyzgula called the meeting to order at approximately 10:05 a.m.

2. Approval of Meeting Summary for July 17, 2009

Acting as a committee of the whole, the members present approved the draft summary.

3. Bay Program Developments

• Watershed Implementation Plans

Mr. Graham discussed the implications for local governments of the Bay Program's development of watershed implementation plans. These plans, known as WIPs, are intended to be the successors to the old tributary strategy plans under the new TMDL regulatory process that is driving restoration efforts. Mr. Graham noted that the WIPs are likely to result in greater regulations for local governments under their MS4 permits for stormwater discharges, which, in turn, could result in higher costs and potentially onerous consequences for failing to meet Bay Program goals.

Mr. Graham outlined the historical development of the TMDL process, which has been embraced because of the Bay Program's failure to meet the Chesapeake 2000 goal of achieving water quality standards by 2010. He also discussed the basic framework of the TMDL development process, noting that the WIPs are required to provide

EPA with what is reasonable assurance that the Bay Program partner states, including the District of Columbia, will achieve the reductions in nutrients and sediment that will be necessary to achieve water quality standards. He noted that the WIPs are ultimately expected to break down the overall Bay-wide reduction requirements – known as allocations – into specific reduction targets at the local jurisdictional level, with accountability tests every two years and consequences for nonperformance.

Mr. Graham also noted that COG recently sponsored a roundtable discussion for technical staff from its member governments on the WIP process. He noted that the meeting, which featured state and EPA representatives, was well attended and sparked a lot of discussion. COG staff has compiled a list of unresolved issues regarding the WIP process and hopes to continue a dialogue with state and EPA officials.

Discussion: Mr. Skrabak asked which party will be responsible for issuing and maintaining the WIPs. Mr. Graham noted that this will be a state responsibility. Mr. Skrabak also asked on what basis local allocation targets would be set. Mr. Berger noted that the main tool for this would be the Bay program’s watershed model, which is capable of estimating nutrient and sediment loads at the level of watershed segments within individual local jurisdictions. Mr. Graham added that this would be a real challenge to accomplish by the Bay Program’s May 2010 deadline.

Mr. Karimi asked how EPA intends to provide what the Clean Water Act calls “reasonable assurance” that implementation activity will meet the TMDL goals. In reply, Mr. Graham noted that is what the WIPs are supposed to do. Mr. Siddique expressed skepticism that the WIPs would provide such assurance.

Chair Drzyzgula noted some of the points that she intends to make in her testimony at a Sept. 22 hearing of the House Subcommittee on Water Resources and the Environment on Chesapeake Bay restoration.

- **Chesapeake Bay Ecosystem Restoration Act**

Chair Drzyzgula noted that COG had been invited to testify at the House hearing, which will explore in general what might be done legislatively to improve the Bay restoration effort. The hearing would not deal directly with the “Chesapeake Bay Ecosystem Restoration Act,” a proposed bill that Maryland Sen. Ben Cardin is currently circulating as a discussion draft. But his bill is designed to reauthorize Section 117 of the Clean Water Act, which is the section under which federal authority for the Bay restoration effort is established, and the House hearing will address how companion legislation could be drafted in the House.

Chair Drzyzgula said that in its current draft form the Cardin bill is very prescriptive for what EPA and the states must do under the TMDL Process. It contains a deadline for achievement of all of the measures that will be required by the TMDL that is five years earlier – 2020 rather than 2025 – than the deadline that the Bay Program is currently working to achieve. The proposed bill also is very detailed in describing consequences for failing to meet TMDL goals. On all of these points, she said, COG intends to argue for the need to maintain regulatory flexibility.

She also noted that the proposed Cardin bill would establish federal benchmarks for new development and redevelopment projects under municipal stormwater permits. She suggested that the region should argue that any standards that may be established be more rigorous for new development projects than for redevelopment so as to not to discourage the latter. She noted that in Gaithersburg, it has been very difficult to achieve any sort of redevelopment under current rules and regulations.

Ms. Gross noted that she recently attended an EPA listening session regarding their relationship with local governments. She said the agency needs to do a better job of managing expectations, so that local governments

are not faced with the unsustainable burden of trying to do everything everywhere. She said that many federal officials do not appear to recognize that the funding for most of the TMDL implementation for stormwater sources will come from local taxpayers. Ms. Favola said that it might be possible to pass on the costs to developers, where new development or redevelopment is occurring.

Mr. Berger said that COG staff is looking for the committee's guidance in crafting Chair Drzyzgula's testimony. He raised two particular issues: whether COG should comment on the need for regulation of agricultural pollution sources just as there is regulation for urban stormwater and wastewater and whether federal regulatory authority over stormwater should be broadened beyond the current localities with MS4 permits.

Ms. Gross said that COG should not press the case for regulation of agriculture at this time, although it should be encouraged to do more. Ms. Favola said that having stormwater standards that are only enforced in the higher population jurisdictions would tend to favor development in areas outside the metropolitan region. Committee members indicated that COG should support the extension of federal stormwater regulatory authority to jurisdictions without MS permits.

Action: The committee authorized COG staff to finalize comments for Chair Drzyzgula to present at the Sept. 22 congressional hearing.

4. **Review of Plastic Bag Report**

Mr. Snarr of COG staff reviewed a draft staff report on the issue of plastic bag pollution of the region's waterways and the effectiveness of measures taken elsewhere to reduce the incidence of such pollution. He noted that the report was written to address COG Board Resolution R19-09, which called on the committee to research these issues. He noted data showing that plastic bags are one of the main components of trash found in the tributaries of the Anacostia River. He noted that there are some private and local government initiatives aimed at reducing use of plastic bags. He noted that legislation proposing bans or fees on plastic bag use were debated in the Maryland and Virginia legislatures in 2009 and approved by the District of Columbia Council. The District's legislation, effective Jan. 1, will impose a fee of five cents on the distribution of recyclable plastic or paper bags from five types of stores in the city. It bans the distribution of non-recyclable bags and imposes standards for the content of recyclable bags. Proceeds from the fee will go in part to provide reusable bags to low-income residents and partly to a new clean-up fund for the Anacostia River.

Mr. Snarr also summarized the results of his research into the extent and effectiveness of other plastic bag measures in the United States and globally. Some of the observations he noted are: the various initiatives focus on different goals; from a broad perspective, life-cycle analysis suggests that the use of paper bags has a bigger environmental impact than the use of plastic bags, and increased recycling may not correlate with reduced litter. He qualified his observations by noting that almost all of these initiatives were established in the last few years and results are still preliminary.

Discussion: Mr. Freudberg, COG's Director of Environmental Programs, said this committee is expected to report back to the COG Board on this issue and could make recommendations that are not in the report. He noted a suggestion from COG's Executive Director that COG consider supporting fee legislation in Maryland and Virginia.

Mr. Karimi said there appears to be a lot of misinformation on this issue and suggested that COG staff develop some educational materials for its members. Mr. Skrabak asked if the report has a general recommendation about expanding opportunities for regional education on this issue. He noted that the City of Alexandria is getting ready to begin an educational effort on the bag issue. In response, Mr. Snarr said that COG and its member governments

stage an annual recycling outreach effort, but that it has not previously addressed the plastic bag issue.

Ms. Favola proposed that the region's recycling managers elevate this issue and that COG should continue to provide information to its members on this issue.

Mr. Freudberg suggested three potential Board recommendations for the committee to consider: that COG include support for legislation on this issue in its policy platform for 2010, that COG staff continue to track this issue and report information to its members and that the members be encouraged to include plastic bags in its recycling outreach efforts.

Action item: The committee endorsed Mr. Freudberg's suggested recommendations for presentation at the October COG Board meeting.

5. Introduction to Potomac Conservancy

Mr. Belin, president of the Potomac Conservancy, highlighted the programs of this nonprofit environmental group, which is dedicated to improving the river's water quality and maintaining appropriate land use along its shores. He also discussed the conservancy's view of the role of local governments in meeting these objectives, focusing on controlling stormwater pollution.

He said the conservancy can play a leadership role in helping to coordinate the demonstration of innovative new practices. The conservancy also lobbies at the state and federal government levels for more funds for stormwater practices.

He said local governments need to increase their enforcement efforts in regard to construction sites, which the Conservancy believes are not meeting permit requirements. He also said that the Washington region is in competition with other metropolitan areas around the country in terms of the implementation of green infrastructure. He cited the city of Philadelphia, which released committed to a major green infrastructure development policy as an example.

Discussion: Ms. Gross said that local government staff have concerns with the widespread movement to require the use of low-impact development and environmental site design practices for managing stormwater. Although the practices may be effective as installed, it is not clear how to manage long-term maintenance of these practices, which can be widely dispersed among private properties. Mr. Belin said that practitioners have learned a lot about how to install and maintain these techniques in recent years.

Mr. Skrabak noted that LID/ESD practices do not make sense in all situations, citing highly urbanized areas where virtually no land is available for installing practices.

Mr. Karimi asked how the conservancy's role as a land trust preserving conservation lands might work in an area such as the Anacostia watershed. In reply, Mr. Belin noted that the conservancy is not pursuing the acquisition of conservation easements here, but rather is focused on promoting the use of stormwater retrofits and changes to existing stormwater regulations.

6. Discussion of Septic Policy Recommendation

Mr. Berger noted that COG staff had prepared a proposed COG policy for statewide legislation on this issue based on the presentation and member comments on this issue at the July meeting. He briefly reviewed the policy, which states that COG should support state legislative initiatives that call for all new construction using on-site

sewage disposal system (septic systems) in the Chesapeake Bay watershed to employ nitrogen reduction technology.

Action item: The committee endorsed inclusion of this recommendation in COG's 2010 policy platform.

7. Update on Community Engagement Campaign

This item was deferred due to time constraints.

8. Staff Updates

This item was deferred due to time constraints.

9. New Business

None was offered.

10. Adjourn

The meeting was adjourned at approximately 12:10 p.m.