

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

MINUTES OF September 20, 2013 MEETING

ATTENDANCE:

Members and alternates:

Andrew Fellows, City of College Park
 Bruce Williams, City of Takoma Park
 J. Davis, City of Greenbelt
 Hamid Karimi, District Dept. of the Environment
 Jerry Maldonado, Prince George's County
 JL Hearn, WSSC
 Johannah Barry, City of Falls Church
 Karen Pallansch, Alexandria Renew Enterprises
 Libby Garvey, Arlington County
 Mark Charles, City of Rockville
 Maureen McGowan Holman
 Nicole Rentz, District of Columbia
 Pamela Parker, Montgomery County
 Penny Gross, Fairfax County (Chair)

COG Staff:

Christine Howard, DEP
 Heidi Bonnaffon, DEP
 Karl Berger, DEP
 Lana Sindler, DEP
 Stuart Freudberg, DEP Director
 Tanya Spano, DEP/RWQM Chief

Guests:

Judy Sheahan, U.S. Conference of Mayors
 Julie Ufner, NACO
 Mia Colson, NARC
 Rachel Healy, WMATA

1. Introductions and Announcements

Chair Gross called the meeting to order at approximately 9:00 a.m.

2. Approval of Meeting Summary for May 17th Water Quality Forum and July 24th Joint Meeting with CEEPC, 2013

Members approved the draft summaries from the May and July meetings. Chair Gross mentioned the positive feedback she heard about the joint CEEPC/CBPC meeting and the chance to meet members of the other committees. She said we should strive to meet again, perhaps every other year. Ms. Spano mentioned the transition in COG staffing for the CBPC from Mr. Berger to Ms. Bonnaffon; noting that Mr. Berger will still participate and support the CBPC, but will be taking on a new role to address technical Potomac water quality issues.

3. U.S. Conference of Mayors' Water Quality & Affordability Dialogue, Judy Sheahan, U.S. Conference of Mayors

Chair Gross introduced Ms. Sheahan, providing a brief history of the ongoing affordability and flexible permitting dialogue between EPA, U.S. Conference of Mayors (USCM), National Association of Counties (NACO), and the National League of Cities (NLC) – in which COG has participated. When these members met with top EPA officials in April, there was a quality discussion and EPA heard a unified message, according to Ms. Gross.

Ms. Sheahan provided further background on the issue as an introduction to a discussion of legislation the USCM has developed, which proposes to revise the Clean Water Act to give EPA more latitude to address the financial and permitting flexibility that USCM and others believe is needed. Ms. Sheahan said this issue stems back to 2009 when USCM members, concerned about their combined sewer overflow (CSO) consent decrees, met with EPA and the Department of Justice (DOJ). The Mayors questioned the high costs imposed by the decrees to achieve seemingly minor improvements in water quality, such as \$850 million to reduce phosphorus loadings by one percent. There have since been numerous meetings between the various parties about increasing flexibility for achieving clean water goals and granting local governments the ability to prioritize water projects in a holistic fashion, without undue burden to rate payers. In 2012, EPA released its Integrated Planning Memo and in January 2013 EPA released a memo on Assessing Financial Capability for the Municipal Clean Water Act Requirements.

Although discussions with EPA have gone well, the USCM believes that EPA's ability to grant regulatory flexibility based upon affordability considerations is constrained by the Clean Water Act, according to Ms. Sheahan. Therefore, the USCM has proposed legislation, the "Water Quality Improvement Act of 2013," to address these issues. In terms of funding, it requests a restoration of the Federal-local partnership, via \$3 billion in block grants for addressing stormwater controls, wastewater treatment plant upgrades, and sewage overflows. It also requests \$2 billion per year for five years to extend the repayment of State Revolving Loan Funds. Lastly, it would bar EPA from extracting monetary penalties from communities for past violations if they agree to take action to address Clean Water Act mandates and demonstrate reasonable progress. In terms of affordability, the legislation asks EPA to, among other things, redefine unaffordable as costs of more than two percent of actual household income for more than 20% of the households in the service area, and use a longer implementation timeframe (40 years), so utilities can spread costs over a greater period of time. In terms of flexibility, the legislation would allow for 10-year permit terms. USCM's next steps are to continue a multi-agency dialogue with EPA while it simultaneously works to find legislative sponsors in the House and Senate.

Discussion:

Chair Gross cautioned that opening the Clean Water Act presents risks, as it is a chance for others, including EPA, to insert new language or to take things out. Mr. Fellows remarked on the absence of state involvement in USCM's legislative proposal. Ms. Sheahan said USCM does want to include states and also EPA regions. Mr. Karimi asked why the proposed legislation does not address the fact that pollution from farms is not currently regulated under the Clean Water Act. Ms. Sheahan said changing this would require addressing the farm bill. Ms. Ufner, of NACO, and Ms. Colson, of NARC, said their organizations have not yet taken a position on the proposed legislation. Ms. Davis urged USCM to work with the governors. The next dialogue session with EPA is scheduled for October 10.

Note: Due to the government shutdown the dialogue with EPA has been rescheduled for Dec. 13.

4. Proposed New Bay Agreement – Update on Process, Schedule, & Potential Areas of Comment, Heidi Bonnaffon, DEP staff

Ms. Bonnaffon presented an overview of the COG comments submitted to the Chesapeake Bay Program in July, and summarized the 22 other letters to the CBP regarding the initial draft Agreement. Ms. Bonnaffon also shared additional comments from the WRTC members from their September 6th meeting. The WRTC members suggested that COG should copy the states on our next letter; that the Bay Agreement ought to be look beyond 2025; and that the agreement's commitment to monitoring should be emphasized, because the Bay Program is currently considering cutbacks to its monitoring programs. Ms. Bonnaffon then noted areas of potential focus and proposed COG comments for the next letter. She also said the period for submitting final comments is still to be determined.

COG's proposed list of potential areas for formal comment on the next/detailed draft of the Bay Agreement:

- Focus new agreement on post-2017 reevaluation/beyond 2025 – to be forward looking & reflect adaptive management principles.
- Do not incorporate 2017/2025 deadlines into this voluntary agreement – could create conflicts & constrain regulatory flexibility to extend deadlines
- Do not make time targets binding
- Strengthen local government goal to include flexibility & adaptive management as active principles necessary to best address evolving nature of water quality issues.
- Emphasize the need for continued financial assistance for local governments from state and federal governments.
- Provide support for monitoring program, calling attention to current funding shortfalls.
- Issues/goals to watch
 - *Land conservation goal
 - *Toxics
- Fish Passages Recommendations:
 - *Remove/modify blockages located at the furthest downstream (for migratory/anadromous fish)
 - *Develop an inventory of high priority blockages, and then target additional stream miles

Note: The revised draft will likely be released for public comment in the December to February time period, so COG staff will draft a comment letter in advance of the committee's January meeting.

Discussion:

Chair Gross opened the discussion by referencing COG's water quality principles. She noted that while the bay restoration effort relies a lot more on regulatory actions than it once did, COG should maintain a commitment to voluntary actions where possible and applicable. Mr. Karami said it is important for COG to comment on the agreement. Mr. Fellows said that the COG region has made a lot of progress and asking for too much "voluntary" language may undermine our efforts if other signatories do not uphold their end of the bargain. There is a need for "appropriate accountability." Chair Gross agreed, but said it is the punitive piece that hurts local governments. Mr. Karimi agreed there is a need for meaningful accountability and non-draconian flexibility. Ms. Moore said just as the proposed "Accounting for Growth" policy in Maryland argues for a consistent baseline of practices, so, too, should there be a baseline of standards for the Bay Agreement. Sometimes states may minimize reporting of progress, for fear of backsliding due to others in the watershed. Ms. McGowan Holman suggested that the land conservation goal in the draft Bay Agreement could be framed positively with source water protection language, and that the letter could mention the importance of breaking down silos, and acknowledge the targets that have been met in the region. The members agreed that we should package the region's success to date in its nutrient and sediment reduction efforts in the opening part of the comment letter.

5. Water Resources Infrastructure: Focus on Wastewater, Tanya Spano, DEP

Ms. Spano noted that an analysis of the future capacity of wastewater treatment plants in the COG region shows that the region can meet the additional capacity required by population growth through at least 2040. Capacity has been furthered by the regional implementation of enhanced nutrient removal (ENR), as well as by reduced flows due to water conservation. Since the COG region is home to 30 percent of the Bay watershed's population, this is good news for the Bay, she said. The analysis completed by COG staff used COG's Regional Wastewater Flow Forecast Model and Round 8.2 of the COG Regional Cooperative Forecast projections for employment and households, which includes local government activity centers and growth projections from COG's members. Staff overlaid these projections on the wastewater service area maps, and also accounted for shifting regional capacity/flow diversions. Ms. Spano said there is concern about meeting the nutrient load cap over time due to the increased concentration of pollutants as flows are reduced. COG is continuing to refine its analysis through work with regional wastewater treatment plant operators. This body of research will inform the COG-wide analysis of the Region Forward goals and will also be used as input for the planned COG infrastructure forum that is being organized in conjunction with the Water Environment Federation.

Discussion:

Ms. Garvey said that we should do more to educate the public about the value of water, and what is being done with the ratepayers' funds. Mr. Williams compared the water industry to transportation and electric utilities, where often the greater the efficiency, the less the revenue (there's an inverse when the utility rate is heavily based upon usage) when the funds needed to meet requirements actually continues to increase

6. Staff Updates

Mr. Berger provided the committee with a briefing of the proposed Green Streets policy scheduled to be considered by the Transportation Planning Board (TPB) later in the fall. The green streets policy would complement the TPB's existing "Complete Streets" policy by encouraging member to consider adding stormwater improvements when conducting new or retrofit transportation projects. The proposal includes a template for creating a green streets policy, which would be optional for COG's members. The draft green streets policy was previously shared with the WRTC, which supported it. Chair Gross said the policy makes sense.

7. Adjournment

Chair Gross adjourned the meeting at 11:50 a.m.