

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

MINUTES OF May 17, 2013 MEETING and WATER QUALITY FORUM

ATTENDANCE:

Members and alternates:

Chair Penny Gross, Fairfax County
 Bruce Williams, City of Takoma Park
 Robert Hoyt, Montgomery County
 Ellis Watson, Prince George's County
 JL Hearn, WSSC
 Andrew Fellows, City of College Park
 Cathy Drzyzgula, City of Gaithersburg
 Libby Garvey, Arlington County
 Mark Charles, City of Rockville
 Mary Cheh, District of Columbia
 Nicole Rentz, District of Columbia
 J. Davis, City of Greenbelt
 Craig Rice, Montgomery County
 Diane Davis, District of Columbia
 Tim Lovain, City of Alexandria

COG Staff:

Chuck Bean, Executive Director
 Stuart Freudberg, DEP Director
 Heidi Bonnaffon, DEP
 Karl Berger, DEP
 Steve Bieber, DEP
 Tanya Spano, RWQM Chief
 Christine Howard, DEP

Amanda Campbell, DEP

Visitors:

Shawn Garvin, EPA Region III Administrator
 Ellen Gilinsky, EPA, headquarters staff
 Doug Domenech, VA Secretary of Natural Resources
 Robert Summers, MD Secretary of the Environment
 Jon Capacasa, EPA Region 3 Water Div. Director
 Linda Miller, EPA
 Jeff Corbin, EPA
 Russ Baxter, VA DEQ
 Kate Bennett, Fairfax County
 Steve Shofar, Montgomery County
 Mow-Soung Cheng, Prince George's County
 Jeff Harn, Arlington County
 Allan Rowley, Arlington County
 Tim Stevens, City of Falls Church
 Craig Fricke, WSSC
 Kathleen Freeman, Caroline County
 Leslie Grunden, Caroline County
 Gordon Smith, Caroline County

1. Introductions and Announcements

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

She highlighted the COG Board's May 8th approval of the resolution recognizing the signing of the *Blue Plains Intermunicipal Agreement of 2012*, and shared what that achievement means for the region's water quality protection efforts.

2. Approval of Meeting Summary for March 22 , 2013

Members approved the draft summary of the March 22, 2013 meeting.

3. Committee Business

Ms. Spano, COG DEP, touched on the FY' 14 work program and budget for COG's Regional Water Fund, mentioning that next year's focus will be water quality and infrastructure. She also gave a brief overview of the agenda for the July 24th joint meeting with the Climate, Energy and Environment Policy Committee, which will include a discussion of overlapping issues such as the urban tree canopy and energy conservation at wastewater reclamation facilities.

Ms. Bonnaffon, COG DEP, mentioned that the TapIt program was promoted via flyers and water bottles

at the recent Bike to Work Day as part of a brief overview of the TapIt program. TapIt is an initiative by a network of local businesses that have agreed to fill reusable water bottles for the general public. COG is developing mobile phone applications for the public to find participating businesses; these “TapIt Metro DC” Apps are expected to be issued in early August.

4. Special Water Quality Forum with Invited Guests from EPA and States

Chair Gross and COG’s Executive Director, Chuck Bean, provided opening remarks, as did the invited participants from EPA and the Bay states of Maryland and Virginia. Committee member Diane Davis, who represented the District of Columbia at the forum, declined to provide opening remarks.

Subsequently, Chair Gross asked committee members to discuss their ongoing accomplishments and challenges pertaining to the Chesapeake Bay TMDL and to water quality protection efforts in general.

In her opening remarks, Chair Gross noted that wastewater fees in the county have increased greatly since she became a supervisor, driven largely by regulatory requirements for water quality. She also noted that the bay restoration effort requires that the federal and state partner jurisdictions not treat local governments as if it were a parent-child relationship.

Mr. Bean commended COG’s Bay Policy Committee for bringing together leaders from all levels of government to work together towards common goals such as water quality improvement and noted the significance of water quality to public health, environment, and the economy.

Mr. Garvin, EPA’s Region 3 Administrator, said that “we are all in this together,” and stated his belief that innovative planning to achieve cost efficiencies and the use of trading mechanisms will ease the concerns of local governments about the affordability of water quality regulations and the Chesapeake Bay TMDL in particular. He also said it is premature to worry about whether the Bay TMDL’s load reduction targets will be achieved by the current 2017 interim and 2025 final deadlines.

Ms. Gilinsky, also representing EPA, discussed the agency’s initiatives to accommodate flexible permitting and financial affordability. She said that EPA and the parties to a national dialogue around these issues have made progress, citing, in particular, a recent EPA memo that clarifies that the two-percent median household income threshold for determining the affordability of a particular regulatory requirement is just guidance; EPA can and will consider other factors.

Secretary Domenech said Virginia will attain its 2013 interim milestones for progress in reducing nutrients and sediment and is on track to achieve both the 2017 interim and 2025 final reduction targets under the Bay TMDL. He noted a series of recent actions the state has taken to achieve such progress, including the appropriation of \$216 million in this year’s General Assembly session to provide cost share funds for wastewater treatment plant upgrades, combined sewer overflow fixes and urban stormwater BMPs. He also noted the recent expansion of the state’s nutrient trading program and the inclusion of Bay TMDL goals in the new general permit for Phase II permit holders.

Secretary Summers said there are good working relationships between the state of Maryland and many of its local governments on Bay TMDL coordination, citing, in particular, Montgomery and Prince George’s counties and the city of Takoma Park. He said nutrient reduction efforts at wastewater plants are on track and will provide the bulk of the state’s progress toward meeting the Bay TMDL’s interim 2017 reduction targets. Beyond that, more reductions will be needed from agricultural and urban stormwater sources. He said the local government concerns about affordability can be addressed by spreading stormwater costs over a longer period of time and by taking advantage of increased trading opportunities that the state plans to provide.

Ms. Davis, representing Greenbelt, said that the National League of Cities, Maryland Municipal League (MML) and COG are all concerned about affordability. MML, she said, represents 157 municipalities with a wide range in household wealth and other factors. Although all of these jurisdictions want to do the right thing, they also face mounting costs for transportation, public safety and pensions. She asked for more flexibility on schedules.

Mr. Williams, representing Takoma Park, noted that at \$1.5 million a year, the budget for stormwater programs represents a sizable percentage of the city's \$25 million total annual budget.

Ms. Gross mentioned that the federal government must also do its part to provide stormwater controls on its property in the region or to pay fees to local governments to do so. In response, Mr. Summers mentioned that Maryland has executed a MOU with the Department of Defense in which the department has agreed to do more than what would have been accomplished if it had just paid fees in lieu. Ms. Diane Davis said the District's Department of the Environment has had similar success in working with federal properties such as the Smithsonian museums and the National Arboretum.

Representing Rockville, Mr. Charles, said the city does not have a regulatory basis for what it is currently collecting in stormwater fees and constructing, given Maryland's delay in issuing Phase II municipal permits. In response, Mr. Summers said the state has been working on issuing a new general permit, but it has been held up by legal challenges.

Ms. Garvey, representing Arlington County, noted that the county had recently reached agreement with the state and EPA on a new stormwater permit that will likely be a template for other such permits in Virginia. Although the county has agreed to significant increases in its stormwater programs, Ms. Garvey said she is concerned by the threat of third-party litigation. She also said she has concerns that establishing public-private partnerships to fund and implement stormwater controls may result in an unequal assumption of risk by the public sector compared to the private sector.

Representing Prince George's County, Dr. Cheng explained the public-private partnership concept that the county plans to establish to improve its implementation of stormwater practices under its anticipated new permit.

Ms. Drzyzgula mentioned that in Gaithersburg the city government does not have the legal authority to borrow funds to pay for stormwater improvements, forcing a reliance on pay-as-you-go financing. It's not a one fits all scenario for local governments. They don't have legal authority for fees scalable to income, so it is hard to raise enough stormwater and revenue for infrastructure when citizens are cash strapped by increasing gas and electrical bills as well. There is also a need for new infrastructure but it takes time and public support. Ms. Davis mentioned citizen push back on the so-called "flush tax" or "rain tax." There is a need for public education and acceptance.

Mr. Rice shared Montgomery County's success in banning the use of coal tar sealants and directing citizens to alternative sealants as a way for local governments to implement a relatively painless stormwater initiative.

Representing College Park, Mr. Fellows raised the need for flexibility in permitting arrangements in jurisdictions where smaller Phase I municipalities are located with a larger Phase I county. He also said educational efforts should not consist simply of EPA telling folks what to do.

In response to a suggestion from Mr. Garvin that smaller communities could band together to achieve economies of scale, Mr. Freudberg, noted that COG has various programs to assist its members in procurement.

Ms. Bennett, representing Fairfax County, said the average citizen is not seeing the benefit of increasing their stormwater fees and all levels of government need to work together to support better understanding of this benefit and encourage behavioral change. She added that we cannot regulate cultural change; doing so will take time. Local governments are doing a lot, including raising stormwater fees while federal funding for stormwater is being cut and while local education, public safety, and human services are being cut. She stressed the need for a supportive role from EPA, since adding regulations and enforcement measures engender opposition to the common goal of improving water quality.

Mr. Fricke, representing WSSC, said that coping with new regulatory requirements to address combined sewer overflows (CSOs) and to implement enhanced nutrient removal (ENR) at wastewater treatment plants has forced utilities and local governments to raise costs for ratepayers.

Ms. Neiderer, representing DC Water, detailed the \$3.8 Billion in improvements either underway or scheduled to occur to address CSOs, install enhanced nutrient removal technology and build a new solids handling system. She noted that rates have risen 81 percent in the last five years and are scheduled to increase further in upcoming years. In addition, DC Water is committed to replacing at least one percent of its aging drinking water and wastewater pipes per year. Ms. Spano noted that many utilities find their need to replace and maintain infrastructure is being squeezed by the capital expenses required by new water quality regulations. Some of this conflict can be avoided, she said, by stretching out the schedule for the implementation of regulatory requirements.

Representing Montgomery County, Mr. Hoyt said the county has chosen to go along with the state's ambitious permit requirements for stormwater. He said there has been fear that if a local government cannot achieve such requirements that it will be penalized. However, he said, he believes that the county's good faith efforts to meet the requirements will not result in such punishment even if they miss some deadlines. Another county representative, Ms. Curtis, said that in regard to public education and outreach, Montgomery tries to engage with citizen groups and interested individuals who can spread the word and lead stormwater management efforts in their neighborhoods.

5. Closing Remarks & Adjournment

In her closing summary, Chair Gross noted that she heard the words "partnership, innovation and education" used often. She also said that EPA and the states need to recognize that taxpayers and rate payers are the same people.

She suggested that EPA should consider establishing a local government ombudsman. In reply, Mr. Garvin said EPA has appointed staff as state liaisons to the Bay states and they could serve as a point of contact for local governments.

Finally, Ms. Gross requested that EPA "not set us up for failure." She noted that local governments do not want to set up EPA as the enemy and the Bay partnership should include local governments as equal partners.

Chair Gross adjourned the forum at 12:10 p.m.