

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

MINUTES OF MARCH 18, 2011, MEETING

ATTENDANCE:

Members and alternates:

Chair Barbara Favola, Arlington County
Penelope Gross, Fairfax County
Andy Fellows, College Park
Bruce Williams, Takoma Park
J Davis, Greenbelt
Cathy Drzyzgula, City of Gaithersburg
Ellis Watson (for Obie Patterson) Prince George's County
Meo Curtis,, Montgomery County
Shelley Aloi, City of Frederick
Johannah Barry, City of Falls Church
J. L. Hearn, WSSC
Mohsin Siddique, DC Water
Karen Pallansch, Alexandria Sanitation Authority
Jim Sizemore, Alexandria Sanitation Authority

Staff:

Stuart Freudberg, DEP Director
Tanya Spano, DEP
Steve Bieber, DEP
Heidi Bonnaffon, DEP
Karl Berger, DEP

Visitors:

Glen Rubis, Loudoun County
Kate Bennett, Fairfax County
Feed Rose, Fairfax County
Tom Hebert, Agricultural Nutrients Policy Council
Glynn Rountree, National Association of Home Builders

1. Introductions and Announcements

Chair Favola called the meeting to order at approximately 10:05 a.m. She introduced Tanya Spano, who was recently appointed as the Chief for Regional Water Quality Management. Ms. Spano explained the reorganization of the water quality staff at COG in the wake of the retirement of Ted Graham.

Chair Favola noted two other items: (1) a recent survey from the Maryland Chesapeake Bay Trust indicating popular concern about water quality and support for Bay restoration efforts. Mr. Berger of COG staff noted that staff is not aware of a comparable survey in Virginia. (2) Ms. Spano asked if any Maryland member of the committee was interested in participating in an American Planning Association seminar on Bay restoration. Mr. Fellows indicated interest.

2. Approval of Meeting Summary for Jan. 21 2010

After correcting a date in the draft summary under Item #4 from 2010 to 2011, the members approved the draft summary.

3. Survey - Member Interest in Addressing Specific Topics

Chair Favola expressed a desire to see committee members more engaged in the development of policy items to be considered by the committee. She asked that members fill out a survey to indicate their preferences for which policies they would be interested in developing as work groups in consultation with staff.

Discussion: In response to a question from Mr. Williams, COG staff (Mr. Berger) noted that it will conduct the poll via internet using Survey Monkey.com.

Action item: COG staff was directed to poll the CBPC members regarding their interest in participating in workgroups to develop policy positions for the committee to consider.

4. Status of Bay TMDL & Development of Phase 2 WIP

Ms. Spano summarized recent developments regarding the Bay TMDL and the accompanying state watershed implementation plans (WIPs). She noted that EPA recently issued new deadlines issued for the development of Phase 2 WIPs, in which the states are expected to engage local governments in the development of much more specific plans for how to attain the nutrient and sediment reductions called for in the TMDL. EOA extended the deadline for the submission of preliminary Phase II WIPs to the end of November 2011 and the deadline for these plans to be finalized by three months, to March 31, 2012. However, she noted, state representatives at the recent Principals' Staff Committee meeting of the Bay Program expressed dissatisfaction with the length of the extension, saying that it still does not provide adequate time to develop the plans.

Discussion: Ms. Gross said that deferring the deadline may not be a good thing even though local governments currently lack the information to know whether they can reasonably meet the deadlines for implementation. She added that her hope is that EPA will work cooperatively with stakeholders to make the regulatory aspects of the TMDL more doable. Ms. Davis noted that participants at a recent National League of Cities forum on transportation expressed concern that EPA is over stepping its authority in various areas. In acknowledging these concerns, Chair Favola said her assumption is that EPA will be such a partner and that a way will be found to move forward cooperatively on TMDL implementation.

5. Agriculture's Perspective on Bay Restoration

Mr. Hebert discussed the views of the Agricultural Nutrients Policy Council, which represents, he said, the interests of about 35 regional and national groups affiliated with agriculture. These include the American Farm Bureau Federation, which is one of the parties that has sued EPA in an attempt to block implementation of the Bay TMDL. Mr. Hebert did not directly address the litigation, although he did outline issues of concern for the members of his group.

He said national agricultural groups have gotten involved in the Bay TMDL because they fear EPA will use it as a precedent for action elsewhere. For this reason, he said, it is important to get it right, something that his members do not think was the case with the TMDL promulgated at the end of December 2010. He noted that the number of acres of cropland and overall farmland in the Bay region estimated by EPA in its watershed model do not match up well with estimates just issued by the U. S. Department of Agriculture under its Conservation Effects

Assessment Project (CEAP). Nor do the estimates of nutrient and sediment pollution derived from agriculture match up well between the two efforts. He noted that EPA estimates that agriculture accounts for about 2.6 million tons of sediment pollution on an annual basis while USDA estimates it accounts for less than 1 million tons.

Mr. Hebert cited a number of statistics from the CEAP report which, he said, indicated that the agricultural sector has made great progress in reducing nutrient and sediment loss. Regardless of the fate of the TMDL, agriculture will continue to make such progress, he said.

Discussion: Ms. Gross noted that there also are problems with EPA's estimates of pollution from urban lands in the Bay watershed. Unlike agriculture, she added, urban local governments have not received any substantial amount of cost-share funding for implementation measures from federal or state governments. Chair Favola asked how the farm sector was able to gain access to such funding, to which Mr. Hebert replied that lobbyists for the industry worked for many years to gain the cost-share funds in the most recent federal farm bill.

Mr. Fellows said that he took two somewhat contradictory messages from Mr. Hebert's presentation. On the one hand, the agricultural sector appears to be making good progress in reducing its negative impact on the Bay; on the other, there are major discrepancies between what farmers think they are achieving and what EPA gives them credit for achieving. Since similar discrepancies exist in the urban sector, Mr. Fellows noted, he expressed the hope that both sectors could work together to resolve these issues.

6. Report on Local Progress with Watershed Implementation Planning and "Next Generation" Stormwater Permits

Ms. Curtis briefed the committee on the county's draft Coordinated Implementation Strategy, which identifies and prioritizes the various actions the county plans to take to meet its obligations under its MS4 stormwater permit. She noted that the county was the first in Maryland to receive a final third-round permit, which took effect in 2010 and runs through 2015. One of the permit's requirements was for the county to conduct a detailed assessment of each of its watersheds to determine where the potential exists to install stormwater retrofits and other BMPS that improve water quality and address the negative impacts of impervious surface. A permit requirement for the county to treat 20 percent of its existing imperviousness that is not adequately treated (in addition to the amount of imperviousness addressed in the two previous permit cycles) is the main driver for the strategy, she said. The consultants who developed the strategy for the county also employed a simpler model than the Bay Program's watershed model to estimate the reductions in nutrients and sediment that would occur as a result of the county's retrofit and VBMP actions. That model predicted the county's efforts would meet overall Maryland statewide targets for the reduction of nutrients and sediment required by the Bay TMDL by 2020, she noted. In response to a question about costs, she noted that the county currently has about \$86 million set aside for capital projects in its stormwater budget, which is far less than the hundreds of millions that it will take to meet the strategy's projected level of implementation. Nor is the current stormwater fee, which generates about \$5.6 million in capital funds annually, going to be sufficient to meet these goals, Ms. Curtis noted.

Discussion: Much of the members' questions concerned how the interwoven process of developing Phase II WIPs and updated stormwater permit requirements would work for smaller Phase II jurisdictions. Mr. Williams asked if the Montgomery strategy document included figures for municipalities such as Takoma Park. Ms. Curtis said it does not because urban lands that are controlled by separate permittees, which include state and federal agencies as well as municipalities, are not subject to Montgomery's Phase I permit requirements. Ms. Drzyzgula said that Maryland officials who spoke at a recent Phase II WIP meeting were not clear on how the process would work for smaller jurisdictions such as Gaithersburg. Ms. Drzyzgula also asked if the Montgomery cost estimates included the cost of inspection and maintenance of stormwater practices and the answer was no.

Ms. Alois said that it is not clear how local governments will be able to monitor the newer types of BMPs being encouraged or required by the state under its “environmental site design” policy, which will result in many smaller BMPs being built on individual lots.

Ms. Bennett briefed members on the current status of the Phase I MS4 permit in Fairfax County. She noted that the county has been negotiating the details of a revised permit with state and EPA officials for the past four years and is still waiting to finalize it.

As is the case in Montgomery County, she said, meeting future permit conditions may be more of a driver for the county’s stormwater program than meeting requirements under the Phase II WIPs for the TMDL. She noted that the permit requires compliance with all applicable wasteload allocations (WLAs) and that EPA issued specific WLAs for the county and the other Phase I permittees in Virginia in an appendix of the TMDL itself.

Ms. Bennett said the county is still analyzing the potential impacts, but the mixing together of the TMDL and the permit complicate matters for the county. For example, she noted, the fact that EPA has set individual wasteload allocations that apply to the county’s permit expose the county to a greater risk of third-party litigation under the Clean Water Act. The county still has a lot of questions about the area to which the permit applies and the way in which the specific wasteload numbers were set. All of this makes it unclear how Phase I permittees in Virginia will work on Phase II WIPs, she said.

Discussion: In response to an enquiry about costs, Ms. Bennett said that the county has not yet developed detailed cost estimates because of the many things that are still unknown, but it seems likely that the costs will exceed \$1 billion over the next 15 years. Ms. Gross noted that the county’s current stormwater tax, which collects about \$20 million a year, will not come close to supplying that kind of money. She also said the larger issue for the county may turn out to be the impact on local land use. In regard to Tyson’s Corner, where the county has developed extensive redevelopment plans, for instance, will EPA wind up forestalling those plans because the county did not meet its restoration targets, she asked.

Ms. Spano summarized a discussion of this issue at a recent meeting of COG’s Water Resources Technical Committee. She said they are concerned with the lack of time and information in the WIP development process as well as having continued concerns about the accuracy of the model used in setting allocation numbers. Ms. Spano said the WRTC recommends that the policy committee communicate these concerns to the Bay Program, but question whether doing so through another letter is the best way to do so. She said the members recommend trying to meet with EPA officials face to face.

Action: The committee directed COG staff to try to organize a meeting with EPA staff to discuss these issues and draft a letter if further needed to express these concerns.

7. Federal Budget Developments re Bay Restoration

Mr. Berger briefly reviewed the budget status of EPA’s Chesapeake Bay Program funding as Congress continues to debate budget totals for fiscal 2011. He said EPA’s Bay Program funding is likely to be reduced from the \$63 million proposed by the Obama administration. He also noted that the budget rider approved by the House to cut off all spending by EPA on the Bay TMDL has not been accepted by the Senate and is not likely to be approved as part of an overall budget deal. Mr. Berger also briefly noted that a recent opinion by the federal Justice Department on legislation passed last year clears the way for the payment of at least some local stormwater fees by federal government agencies.

8. Collaborating with Other COG Policy Committees

This item was deferred.

9. New Business

Ms. Gross noted that she had recently heard a presentation from a lobbying group, Alcade & Fay, about its proposal to launch a collation of local governments to lobby for more federal funding for Bay restoration work. She suggested that the Bay Policy Committee might want to schedule a future presentation from this group.

10. Adjournment

The meeting was adjourned at approximately 12:05 p.m.