

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

MINUTES OF MAY 21, 2010, MEETING

ATTENDANCE:

Members and alternates:

Chair Cathy Drzyzgula, City of Gaithersburg
Vice Chair Hamid Karimi, District of Columbia
Vice Chair Barbara Favola, Arlington County
Bruce Williams, Takoma Park
Penelope Gross, Fairfax County
Andy Fellows, College Park
Mark Charles, City of Rockville
Glen Rubis, Loudoun County
Tim Goodfellow, Frederick County
Mary Conway, Prince George's County
Karen Pallansch, Alexandria Sanitation Authority
J. L. Hearn, WSSC

Staff:

Stuart Freudberg, DEP
Ted Graham, DEP
Steve Bieber, DEP
Heidi Bonnaffon, DEP
Karl Berger, DEP

Visitors:

Gary Felton, University of Maryland
Zack Fields, Rep. Connolly's office
Glynn Rountree, National Association of Home Builders

1. Introductions and Announcements

Chair Drzyzgula called the meeting to order at approximately 10:05 a.m. She noted that the Chesapeake Executive Council is scheduled to meet June 3 in the Baltimore area; no meeting details are currently available. She also said that staff is requested that the order of agenda items #5 and #6 be switched.

2. Approval of Meeting Summary for March 19, 2010

The members approved the draft summary.

3. Role of Lawn Fertilizer in Bay Restoration

Ms. Bonnaffon of COG staff briefly reviewed the current status of legislative and regulatory initiatives in the region addressing the potential for pollution from lawn care. She noted that there have been several bills introduced in recent legislative sessions in both Maryland and Virginia that would restrict or eliminate phosphorus in lawn fertilizer, even as the manufacturers of these products move to do so voluntarily. She also noted that there are currently different requirements among the bay states for urban nutrient management plans for lawn care service companies.

Dr. Felton, who conducts water quality research at the University of Maryland and also chairs the state's Urban Nutrient Management Workgroup, discussed the extent to which lawn care practices contribute to Bay-wide nutrient pollution and what can be done to reduce this level of pollution.

Mr. Felton said that turfgrass fertilizer does account for a certain portion of the nitrogen and phosphorus that reach the Bay, although it is difficult to pin down precisely how much. Industry and survey data show that turfgrass is one of the largest land covers in the Bay watershed, accounting for about as much land as cropland in Maryland, for instance, according to Felton. The amount of fertilizer applied can vary significantly, he noted, but industry and survey data show that half of all homeowners do not apply any fertilizer and about one-third are "do-it-yourselfers" who tend to apply no more than once a year. On average then, Felton said, home owners annually apply about 1 pound of nitrogen per 1,000 square feet, or about 42 pounds of nitrogen per acre per year. Research studies show that well-managed turf loses almost no nitrogen in surface runoff and leaching losses are a fraction of what they would be for corn production on the same ground and at the same level of fertilization. Nevertheless, he said, there are a number of fairly simple practices that could reduce turfgrass contributions to Bay loading, Felton noted, including leaving clippings on the lawn, mowing grass high and avoiding application of fertilizer to impervious surfaces such as driveways.

Discussion: Mr. Karimi asked if it was true that do-it yourselfers often over-apply lawn fertilizer. Mr. Felton replied that the data do not show this to be the case. He also noted that potential phosphorus loss from lawn fertilization is becoming a non-issue as all the major manufacturers are moving toward eliminating phosphorus in their products.

Ms. Gross noted that COG has worked previously with the Scotts Miracle-Gro Company on consumer education efforts and should take credit for some of the improvements that have occurred.

Mr. Rubis asked what was the source of the compacted soil that Mr. Felton had cited as one of the issues that could contribute to greater nutrient loss from turfgrass. Mr. Felton said it is a legacy of the construction process and is still detectable 12 years after construction.

Mr. Fellows cited the need for greater education efforts on this issue. In response, Mr. Felton noted that the industry has developed new spreaders with deflectors to minimize off-target application and that this could be promoted. Mr. Bieber said educational aspects could be included in COG's new "Water Words that Work" public education campaign.

Action: Ms. Gross suggested that there be a place holder in COG's legislative policy package to address lawn care issues and the committee concurred.

4. **Report on CBF-EPA Settlement, Other Developments**

Mr. Bieber briefed the committee on the current schedule for producing the Bay-wide series of TMDLs, the details of a recent legal settlement agreement between EPA and the Chesapeake Bay Foundation (CBF) and preliminary information regarding the level of effort that will be needed to reach the Bay restoration goals.

He said that a recent meeting of the Bay Program's Principals' Staff Committee re-affirmed the decision to issue the TMDL by Dec. 31, 2010 rather than waiting until closer to the May 2011 deadline set by a consent order from previous litigation. In doing so, however, EPA has fallen behind on its deadlines for providing the modeling data needed to set restoration targets and has significantly compressed its schedule for public input in the process. Mr. Bieber said that what was previously envisioned as a 90-day period for public comment on the draft TMDLs has

been reduced to 30 days.

The EPA-CBF agreement, which was announced May 10, at least temporarily settles a lawsuit that CBF and other parties filed in January 2009 in which they alleged that EPA was failing to live up to its Clean water Act responsibility to clean up the Bay, according to Mr. Bieber. Among other things, the settlement commits EPA to meeting its announced Dec. 31 deadline for issuing the Bay-wide series of TMDLs. It also commits EPA to issuing a permitting approach for local jurisdictions in the Bay with stormwater permits and to issue its proposals for updating general stormwater regulations to help meet Bay goals.

Mr. Bieber, noting that COG's Water Resources Technical Committee members had expressed a number of concerns about the schedule, said staff is recommending that the committee send a letter to EPA expressing concerns about the TMDL development process.

Discussion: Ms. Gross noted that it was important for local governments to have input into this process, which tends to be dominated by federal and state agencies. Mr. Fellows said that it may be most appropriate for COG to comment later during the official comment period. In response, Mr. Graham said that one of the main purposes of sending a letter ahead of the official comment period is to put COG on record with some of its process concerns independently of whatever concerns it may have with the substance of the TMDLs.

Action: The committee agreed that COG staff should draft a letter to EPA outlining concerns with the TMDL process and circulate it for review by committee members.

5. Decision on FY 11 Regional Water Fund Work Program and Budget

Mr. Graham noted the highlights of the proposed work program and budget for Regional Water Fund in fiscal 2011. As in past years, developments regarding Bay restoration will continue to be a major work program focus, particularly the development of the Bay-wide series of TMDLs and their associated watershed implementation plans. He noted that the budget does not propose any increase in the overall budget of the fund. And he also noted that the Water Resources Technical Committee had endorsed the proposed work program and budget.

Action: The committee voted unanimously to approve the proposed work program and budget for fiscal 2011.

6. Update on Federal Legislation

Mr. Berger briefed the committee on recent changes in the Chesapeake Clean Water and Ecosystem Recovery Act legislation that was introduced by Maryland Sen. Ben Cardin 2009. The senator is expected to re-introduce the revised legislation soon. He and his staff have asked COG to support the bill. Mr. Berger also briefly noted the status of the National Capital Region Land Conservation Act legislation that was introduced by Virginia Rep. James Moran and which has been endorsed by COG. He said there have been no further legislative developments in regard to that bill since its introduction.

Discussion: Ms. Gross said that the current language of the Cardin bill, which would codify the TMDL process in statutory language, puts local governments at risk for failing to meet regulatory requirements. She said that county staff has estimated the potential cost of meeting TMD requirements at \$290 million a year for the county, an amount she said is just not realistic.

Ms. Pallansch agreed with Ms. Gross, noting that those who are developing plans for how to achieve Bay restoration goals already know that there is not enough time to achieve nutrient reduction efforts in the deadlines proposed under the current TMDL process. She said it has taken society 400 years to create the current conditions

in the Bay and it is unrealistic to think that it can be restored in a short time frame. She added that the nutrient trading provisions in the bill are not clear and precise enough to achieve their goals.

Chair Drzyzgula asked the committee whether it wished to establish a position or take any action on the bill. She outlined several options, including full support, sending a supportive letter that stops short of full support and seeking consensus on what changes to the bill would allow COG to fully support it.

Mr. Fields noted that representatives from Pennsylvania and Virginia that are members of the House Agriculture Committee have introduced a rival bill to reauthorize Section 117 of the Clean Water Act. He said the Holden-Goodlatte bill does not have most of the Cardin bill provisions, including no potential funding for urban stormwater efforts and no provisions regarding stormwater regulations.

Mr. Fellows said he supports the legislation in his role as Mayor of College Park as something that would force more action on Bay restoration efforts and provide cost-share fund to local governments.

After further discussion by committee members of what to do, Mr. Freudberg suggested that COG should ask for a much higher level of funding for urban stormwater than the \$1.5 billion the bill would authorize. He said COG could ask for \$1.5 billion a year in funding and ask that implementation responsibility for local governments, which is expected to be largely in the form of stormwater retrofits, be deferred unless a sufficient level of funding materializes.

In further discussion, Mr. Karimi and Mr. Charles noted that one thing to like about the current version of the bill is that it attempts to level the playing field between the various sources of pollution to the Bay, including agriculture and urban stormwater. They asked that a COG letter support this aspect of the bill. Mr. Fellows said he could support a letter along the lines suggested by Mr. Freudberg.

Action: The committee directed COG staff to prepare a letter to Congress expressing the previous points about Bay restoration legislation. They further asked that staff circulate the draft to the full committee for review and comment.

7. Update on Gulf Oil Spill

Mr. Bieber briefed the committee on the status of the oil spill in the Gulf of Mexico and the prospects for the impact to be felt in the Chesapeake Bay. He presented some information from modeling studies of the interaction of the oil spill with several major currents found in the Gulf of Mexico and along the East Coast. He said that scientists have indicated that it is possible that some of the oil could reach the East Coast and even get into the Bay, but the potential for any serious impact is very remote.

8. Update on Committee Tour

Ms. Bonnaffon noted that plans for the committee's June 4 tour of green building sites in the District of Columbia are complete. She said that tour participants will have the option of meeting at COG's offices by 10 a.m. to travel; to the first tour destination or of joining the tour at its first venue, the headquarters of the American Society of landscape Architects on I Street, NW. The group will travel on foot to another tour location and then by Metro back to the American Psychology Association building next to COG for the final stop.

9. New Business

None was noted.

10. Adjourn

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