

## **Citizens Advisory Committee**

**Charlottesville, VA**

**March 1-2, 2012**

### **Meeting Minutes**

**Members Present:** Bill Achor, Nancy Alexander, Elizabeth Burdick (PA Young Delegate), John Dawes (Vice Chair), Jim Elliott, Christy Everett, Rebecca Hanmer, Pat Levin, Joe Maroon, Karen McJunkin, Dan Milstein, Deborah Nardone, Betsy Quant, Adam Thompson (VA Young Delegate), Neil Wilkie and staff – Jessica Blackburn and Anna Mathis

**Guests Present:** James Davis-Martin (VA DCR), Jim Edward (EPA CBP), Natalie Gardner (STAC), Scott Hymes (MD DNR), Stefan Jirka (Blue Moon Fund), Cathy Malina (Southern Environmental Law Center), Leslie Middleton (Rivanna River Basin Commission), Rick Parrish (Southern Environmental Law Center), Kristel Riddervold (City of Charlottesville), Steve Williams (Thomas Jefferson Planning District Commission), Julie Winters (EPA CBP), and a few University of Virginia students.

Meeting presentations can be found at: <http://www.chesapeakebay.net/calendar/event/17761/>

#### **Thursday, March 01, 2012**

Vice Chair John Dawes called the meeting to order at 11:00am. Members and guests introduced themselves.

#### **Chesapeake Bay Program Updates, Jim Edward, EPA Chesapeake Bay Program Office**

- The Principal Staff Committee (PSC) met in February and made decisions on the following: (1) approval of the overall concept of BMP verification framework; (2) formed an action team for discussing a modeling lab for CBP (a recommendation of the NAS report); (3) supportive of LGAC membership expanding to headwater states; (4) appointed a planning team for the Executive Council meeting this spring/summer.
- The PSC also discussed the recommendations in the NAS report. They agreed to all recommendations except for concerns with creating an Independent Evaluator. PA, WV, and VA do not believe it is necessary. Goal Implementation Team (GIT) 6 is tasked with coming up with new options to bring to the PSC. Members commented that CAC needs to continue to champion the cause and should be involved in GIT 6.
- The draft Executive Order FY12 Action Plan and Progress Report will be issued Monday for a two week comment period. It will be posted on the EO website and you can provide comments online. \$419 million was committed by federal agencies for the FY12 EO Strategy.
- The Chesapeake Bay Program (CBP) budget has been increasing each year. The President's 2013 proposed budget allocates \$73 million, which includes an increase in direct money to go to local governments for WIP implementation through the National Fish and Wildlife Foundation (NFWF).

EPA has issued the 2012-2013 federal 2-year milestones. There are six federal agencies with milestones for water quality, stream restoration, and agricultural conservation outcomes, with a total of 32 programmatic milestones such as CAFO rule revisions and expanding monitoring network on non-tidal streams. CAC members looked over the milestones and made a few comments. The issue of the stream restoration outcome including streams designations of "fair" in addition to "good" and "excellent" was raised. Jim Edwards suggested that CAC comment on it during the comment period for the EO strategies. He said that they will be looking at the goals and revising them as part of the adaptive management component. The states plan to rely on interstate air pollution rules, but it has been "stayed" until 2013. At the request of the Administrator, EPA has to conduct further economic analysis on the statute of the national stormwater rule, so

the rule will be delayed a few months. It will be a national rule with potential Bay-specific provisions. The CAFO rule is on schedule, and will be Bay-specific with national provisions.

EPA evaluated the states' Phase II WIPs and 2-year milestones. For the milestones, states have been making progress on implementation. For the WIPs, states can set specific load reduction goals for localities or use implementation rates, such as increase cover crop acres by a certain percentage. States would then do the work of translating the implementation rates into load reductions. For the Phase II WIPs, states made a good effort overall to provide more detail and engage localities. They also improved on reasonable assurance and the milestones reflect necessary commitments to meet WIP implementation goals. Key findings from each jurisdiction are as follows:

- DE, DC, and MD met expectations.
- NY – hasn't submitted a complete draft yet, but should be completed by March 30th
- PA – progress made on 2025 input deck and stormwater offset guidance; still need to address stormwater and agriculture – EPA will maintain "enhanced oversight" for all sectors
- VA – "ongoing oversight" for all sectors except stormwater, which is "enhanced oversight". Some information was updated, but a Phase II input deck was not submitted; most milestones were in alignment with Phase I and II commitments.
- WV – substantial improvements compared to Phase I; agricultural now "enhanced oversight and stormwater/wastewater "ongoing oversight"; basic framework for trading and offsets

The Final WIPs and Milestones are due March 30<sup>th</sup>.

The CBP is taking a partnership approach for developing the BMP verification program with a three pronged framework: 1) verification principles, 2) sector-specific protocols and 3) verification panel. CBP would like to engage the committees in late spring for reviewing the BMP principles and protocols. The goal is to have the panel reviewing the states' verification programs by fall 2012. The key next steps are to: add BMP webpage on CBP website and for the Management Board to decide on panel memberships.

#### **VA Watershed Implementation Plan, James Davis-Martin, VA DCR Chesapeake Bay TMDL Coordinator**

The VA Phase II WIPs were developed on a Regional Planning Commission level. The nuts and bolts are strategies to implement scenarios and identified resource needs. VAST (VA Assessment and Scenario tool developed to help localities, PDCs and others take existing land use and BMP data and develop local nutrient reduction scenarios) was used to develop and submit scenarios, estimate loads, and report land use data. James said they may use as a tool to report implementation in the future and will also use it for local milestone development. One big issue with the Phase II development was that the localities did not have enough time to go through the formal process. VA did receive responses from 95% of localities, which is about 99.5% of VA's portion of the watershed. Not all local responses included data submissions. For these counties, VA will default to WIP I implementation level for the 2025 scenario. MS4 communities are apprehensive about submitting too much detail because they are concerned that it may show up in permits. VA told them they would use the data in aggregate to report to EPA.

The next steps for the VA Phase II WIP are: March 15 - Stakeholder Advisory Group meeting; March 30- submit to EPA; March 30-May 31 – public comment period. After the public comment period, they will revise the plan to incorporate comments. The state will also be involved in continued engagement of local and federal partners through capacity building, implementation, tracking, and milestone planning. James emphasized that the state is still concerned with agricultural practices in the Bay model, because simulation of nutrient management can reduce nitrogen but increase phosphorus.

It was noted that there were budget cuts to some resources in this past legislative session. The identified needs from localities have numerical values, and specifics will be identified during milestone development. VA is also looking to EPA to provide BMP implementation info on cost/benefit analysis. Jim Edward said that the analysis will come out around 1<sup>st</sup> quarter 2013.

### **Committee Discussion: Jurisdiction Watershed Implementation Plans**

Prior to this meeting, the members of each jurisdiction met via conference call to discuss their state's Phase II Watershed Implementation Plan (WIP).

For VA, Christy Everett reported on the member's comments and concerns. With verification and transparency, there is no information in the WIP about the localities' plans, so the public is not able to provide input. Plans are contingent on funding and resources; however there's no cost analysis for local implementation. The nutrient trading component is encouraging, but additional work needs to be done to make sure local water quality is protected.

Neil gave an overview of MD's comments and observations. CAC acknowledges that MD is taking a different allocation approach by dividing at the basin level. Focusing on this level helps with public participation and implementation; however actions will need to happen on the county level. Verification and transparency is still unclear in the MD II WIPs. The bill to double the restoration fund will be helpful in meeting some funding needs. For nutrient trading, a program should be codified. MD did do a good job on engaging localities in WIP development.

Dan says that DC is a bit different since most of the land owners are federal facilities. DC is doing a good job engaging them, but there's no mechanism for making sure federal facilities implement the plan. They did say that would do their part, if they have funding. DC's Phase I WIP is more analogous to other jurisdictions' Phase IIs WIPs. They plan to meet TMDL targets through large capital improvement projects, such as \$2.7 billion at Blue Plains. However, it will be difficult to complete this upgrade without Congressional funding.

John reported on the PA members' discussion. For verification and transparency, PA has a good start but is still lacking detail for reasonable assurance and implementation. There's also a lack of detail on how funds will be designated and no cost analysis for local implementation strategies. The current structure of the nutrient trading program does not fit the TMDL, because it was designed under the tributary strategy. While PA did engage localities in the WIP development, there's not a plan for ongoing outreach to local governments.

**ACTION ITEM:** Jessica will work with delegations to draft and finalize letters. They will be set to the Secretaries and copied to EPA.

### **Local Successes and Implementation Panel Discussion**

Representatives from local organizations and localities in the Charlottesville area provided some insight on their work with the Phase II WIP development.

*Leslie Middleton, Executive Director, Rivanna River Basin Commission* – The Rivanna River Basin Commission (RRBC) is a strictly advisory commission that tries to address the issue of political divisions not being along watershed lines. In their experience with working for the localities, some time was lost in 2012 with the struggle between VA and EPA on model issues. This generated a feeling of distrust. Most localities decided to submit their plans administratively, so they do not necessarily have the buy-in from councils and/or boards of supervisors. Leslie also stressed the importance of localities receiving feedback from the states and EPA showing appreciation for their work.

*Steve Williams, Executive Director, Thomas Jefferson Planning District Commission* – The PDC’s main role was to help the localities understand the technical aspects of WIP II. Through this work, he observed that local governments: 1) felt like there wasn’t enough time to complete the work and engage stakeholders; 2) were concerned about competitive disadvantage for sectors in the Bay Watershed; 3) and have received very little positive support so far.

*Kristel Riddervold, Environmental Administrator, City of Charlottesville* – The City of Charlottesville is an MS4 community that is mostly developed. Charlottesville wanted to submit a local alternative plan, but did not know how it would be compared to the default plan. So they submitted a responsive but conservative plan, in which they conveyed their proactive track record and summarized uncertainties and concerns. One major challenge with this process was that the BMP suites were not complete and the efficiencies did not match what Charlottesville knows is on the ground. Kristel also said that the assessment tools could use some improvement and they have heard concerns from the public and City Council about costs of implementation. The process was an opportunity to get data and put together a list of practices.

The panel was asked what the localities need from Virginia and EPA? Steve says he’d like to see an effort to put something beyond voluntary practices in place for agriculture. Kristel says they need acknowledgement for taking this seriously and less reporting requirements associated with funding grants. All four of the localities’ plans are on the RRBC website: <http://www.rivannariverbasin.org/Chesapeake-Bay-TMDL.php>

#### **CBF’s Job Report, Christy Everett**

Christy provided information and examples on how implementation of pollution controls creates jobs. There can be success when there’s a pollutant identified, a plan formed, and implementation. CBF also has a report on the Value of Clean Water at [www.cbf.org/economic-report](http://www.cbf.org/economic-report). These reports help strengthen elected officials’ confidence – investment and not just more government spending.

#### **Business Meeting & Committee Discussion**

Neil moved to adopt the November 2011 meeting minutes, Bill seconded and all were in favor. For membership, work is moving forward on replacing Charles and Nina Beth. We also need to fill 1 DC Mayoral appointment. CAC will contact DOE and resubmit names. There is a goal to have headwater states in place by September meeting. Jessica will email CAC a reminder to ask for headwater states recommendations.

#### **Friday, March 02, 2012**

##### **Business Meeting Continued**

Each delegation provided legislative updates:

##### **VA**

- HB 1210: slow release nitrogen lawn maintenance fertilizer – passed
- WWTP upgrades to 57 plants - did not pass
- Nutrient credit certification: have some provisions to help protect water quality (such as 2:1 ratio), MS4s will now be able to trade – likely to pass
- Legislation against TMDL: unfunded and unconstitutional – did not pass
- DCR and DEQ stormwater Integration bill: integrates regulatory programs; allows localities to enact more stringent E&S, but eliminates local assistance board – passed

##### **MD**

- Fee on existing impervious surfaces – may or may not pass
- Prohibit transfer of bay money into general fund

- Senate 236 – 4 tiers for septic systems – good chance of passing

PA

- House 1950: Growing Greener Coalition - some groups dropped out over this bill because of some provisions. John suggested we have Andrew Heath come tell us more about Growing Greener.
- Governor proposing to divert some funds from programs to general fund
- At the federal level, there is a possibility of Office of Surface Mining being folded into Bureau of Land Management. Hoping it will not pass.

Joe provided members an update on nutrient trading. The EPA reviews didn't really address comments from groups other than states, were silent on trading ratios and other issues, and asked states to incorporate recommendations into 2 yr milestones. Joe encouraged CAC to stay involved in this issue because trading is a major part of some state WIPs. Jim asked what our next opportunity is to weigh-in. A few ideas were raised: comments on the Phase II WIPs, hear from someone from Region 3 on trading strategy, bring this up to the Executive Committee, or hear about the report on costs of trading from Ann Swanson. Dan inquired about what they are saying on the local level. Localities are concerned about local impacts and looking for clarity on what a trading program means for them.

Accountability for WIPs, accountability of nutrient trading, and accountability of BMP verification were the top 3 priorities from the CAC 2012 survey. This brought up a discussion about EPA's set-up for the BMP verification process. We need to focus on this process where we can make an impact. Neil raised a concern that there are not boots on the ground to verify. Rebecca asked who will do the verification. There is variability among the states and it will require new resources

Discussion then turned back to other CAC 2012 priorities. Dan commented that we have been focused mostly on TMDLs, but what about more focus on Executive Order goals tracking? Joe agreed but we are at a critical point to be vigilant on issues that will make or break the TMDL. Pat emphasized the need for interactive communication between plan and implementation. Deb then asked for a "revote" based on conversations here. The link to the survey will be sent to CAC for a chance to revote on priorities.

For the EC report, the following key themes were proposed: 1) accountability; 2) "How" – concern about communications, strategies, and positive messages; 3) make a point that citizens remain concerned with other aspects of Bay issues, not just water quality.

Dan also asked to hear about the big picture view of climate change for one of our meeting topics.

Members discussed Secretary Domenech's letter to CAC regarding our process for commenting on the menhaden issue.

ACTION ITEM: The Executive Committee will send a response to Shawn Garvin correcting inaccuracies in the letter. There will be another discussion on the process for submitting letters on topics that arise between meetings.

### **Bay Simulation Game**

CAC members participated in the computer simulated UVA Bay Game by assuming different stakeholder roles, entering natural resource policy decisions and monitoring the impacts on watermen and agriculture.

The meeting was adjourned at 12:23pm.