

DRAFT

# CENTER FOR THE INLAND BAYS

---

## BOARD OF DIRECTORS'

### Meeting Minutes

Center for the Inland Bays Office  
Rehoboth Beach, Delaware

March 18, 2011

**IN ATTENDANCE:**

<i>Board Members Present</i>	<i>EPA Representatives</i>
Rick Eakle ( <i>Chair</i> )	Jon Capacasa
Dr. Bill McGowan ( <i>Vice-chair</i> )	Ed Ambrogio
Joanne Cabry ( <i>Treasurer</i> )	Sue McDowell
Dr. Bill Ullman ( <i>STAC Chair</i> )	
Secretary Ed Kee ( <i>DDA</i> )	<i>Center for the Inland Bays Staff</i>
Secretary Collin O'Mara ( <i>DNREC</i> )	Ed Lewandowski
Dave Baker ( <i>Sussex County</i> )	Sally Boswell
Gordon Wood ( <i>SCAT</i> )	E.J. Chalabala
<i>Board Alternates Present</i>	Loretta Smith
Hal Godwin ( <i>Sussex County</i> )	Eric Buehl
Kathy Bunting-Howarth ( <i>DNREC</i> )	R. Miller
<i>Board Members Absent</i>	<i>Public Attendees</i>
Bill Zak ( <i>CAC Chair</i> )	Leah Hoenen
	Paul Sample
<i>Special Guests</i>	Bruce Patrick
Senator Chris Coons	John Austin
Kate Rohrer	

# DRAFT

## SUMMARY OF MOTIONS

1. Motion by J. Cabry to accept the Secretary's report, including the minutes of the DEC 2010 meeting of the Board of Directors as written; seconded by Sec. Kee. Passed unanimously.
2. Motion by Sec. Kee to accept the Treasurer's report as written; seconded by G. Wood. Passed unanimously.
3. Motion by J. Cabry to adopt a resolution of the Board of Directors in response to the opinion of Judge Henley T. Graves concerning the dissolution of the buffer component of the Inland Bays Pollution Control Strategies; seconded by Sec. Kee. Passed: 6 ayes – 2 abstentions (Sussex County & DNREC)

## CALL TO ORDER/WELCOME

Chairman R. Eakle called the meeting to order at 9:39 a.m. and welcomed those in attendance. Meeting participants were asked to join in reciting the Pledge of Allegiance.

### *Administrative Items*

The Chair informed meeting attendees that requests to speak during the Open Forum should be submitted using the appropriate form made available in the rear of the room.

### *Governor Peterson Recognition*

The Board recognized the recent passing of Governor Russell W. Peterson by reading his "Declaration of Interdependence" (1973) and observing a moment of silence. E. Lewandowski also shared some quotes from and remembrances of Gov. Peterson's involvement with the CIB.

## MINUTES:

### *Secretary's Report/Approval of Minutes*

J. Cabry moved to approve the minutes of the 10 DEC 2010 meeting; Secretary Kee seconded. Hearing no objections, the motion passed unanimously.

### *Treasurer's Report/Work Plan Amendments*

J. Cabry asked the Board to refer to the Board budget summary for the Treasurer's Report. Secretary Kee made a motion to accept the Treasurer's report as written; G. Wood seconded the motion. The motion passed unanimously.

# DRAFT

## COMMITTEE REPORTS:

### *Citizens Advisory Committee (Citizens' Advisory Committee)*

E. Lewandowski provided the CAC report in the absence of B. Zak. The CAC did not have a regular meeting during the reporting period. Rather, the Chair convened a work group to identify priority issues and projects for the FY'12 Work Plan. The outcomes of that meeting were shared with the Strategic Planning Committee.

### *Scientific & Technical Advisory Committee (STAC)*

B. Ullman reported that the Scientific & Technical Advisory Committee convened a meeting on 18 FEB, which included presentations from Tidewater Utilities, Inc. regarding the Wandendale Regional Wastewater Treatment Facility. R. Balauskas also presented the results of a study about fish assemblages and blue crab abundance around Inland Bays' shorelines. The STAC also had a brainstorming session about project ideas for CIB and/or DNREC consideration. A number of useful ideas were subsequently presented to the Strategic Planning Committee.

### *Executive Committee Update*

The Chair referenced the Executive Committee meeting agenda and associated notes. He mentioned the unanimous agreement of the Executive Committee to prepare a resolution in response to the recent opinion of Judge Graves concerning the Inland Bays Pollution Control Strategies/buffers. The Chair encouraged the members to review the draft resolution that had been provided because a discussion about this matter was scheduled under "New Business."

### *Strategic Planning Committee*

E. Lewandowski reviewed the composition of the Committee. He reported that it had met four times in 2011. The first meeting focused on process/systems; the Committee identified priority issues and budget allocations during the second meeting; issues were prioritized during the third meeting; a project list was developed and FY' 12 projects were selected during the most recent meeting. B. Ullman discussed one of the identified projects, which hopes to assemble monitoring data into a useful model to understand the Inland Bays' condition. E. Lewandowski discussed another identified project, which responds to a request of the Citizens' Advisory Committee for an independent study of the fish and shellfish resources around the Burton's Island coal ash disposal site at the Indian River Generating Station. The Strategic Planning Committee is exploring the economic feasibility of initiating this project, the cost of which has been estimated to be in the mid-/upper- five figures.

# DRAFT

B. Ullman stated that there was also a discussion about members of the STAC providing an independent review of the DNREC report on the Burton's Island site assessment.

## *Water Use Plan Implementation Committee Update*

WUPIC hasn't been active during the winter months, but has a meeting scheduled for 23 MAR. Baker's Channel, a recent Committee success, will be highlighted by E. Buehl and E. Chalabala during the "Staff Report."

## **AGENCY REPORTS:**

The Chair introduced J. Capacasa from Environmental Protection Agency/Region III and thanked him for making the trip down to participate in the Board meeting.

## *Sussex County*

D. Baker provided the County's report. County sewer district construction and expansion continues. Johnson's Corner, west of Fenwick, is slated for completion by 30 APR; Angola by 30 JUN; Angola by the Bay by 31 DEC; Oak Orchard extension by 31 DEC; River Road by 30 APR; and, expansion of the Inland Bays spray facility to increase capacity is in process. About 4,500 septic systems will be eliminated after conversion to central sewer. Mr. Baker thanked EPA, DNREC, and USDA for SRF support for these projects; ARRA (stimulus) funding was also utilized.

County officials met recently with the Delaware delegation in Washington, D.C. and requested consideration of additional wastewater project funding for the state SRF low-interest loan program.

The County received a notice from FEMA about pending updates of the flood-plain maps, which are completed every five years. B. Ullman inquired about the urgent need for vertical leveling of survey sites in Sussex County. Four different sets of level markers have not been updated in about 20 years.

D. Baker recognized K. Bunting-Howarth for her outstanding efforts and commented on her professionalism. Subsequently, K. Bunting-Howarth acknowledged the scheduled retirement of D. Baker and appreciated the financial experience he offered.

## *Department of Natural Resources & Environmental Control*

Sec. O'Mara reported that the Department is updating its regulations for wells, septic and stormwater. The stormwater regulations will be innovative and performance-based. The Wandendale construction permit has been received and includes a substantial quantity of technical data. Department staff has been instructed to complete a thorough

# DRAFT

review. The environmental impact statement for the Rehoboth ocean outfall is anticipated by mid-summer, which will be followed by public meetings. The draft Burton's Island assessment was received in early-March and is under review. Sea Level Rise work continues. Membership on the Advisory Committee is limited to statewide organizations and the Secretary recommended CIB participation on an ad hoc committee. ARRA wastewater projects are on schedule and will remove 20% of the septics in the Inland Bays watershed.

Sec. O'Mara acknowledged the resignation of K. Bunting-Howarth as a huge loss to the Department. He has also asked the AG's office for a review of Judge Graves' order for the County's law suit to determine the possibility of an appeal.

J. Cabry inquired about the absence of the CIB on the Sea Level Rise Advisory Committee and stated that there are members currently on the committee who don't represent "statewide" organizations. Sec. O'Mara responded that they are taking a look at the membership roster and again encouraged CIB participation in an ad hoc capacity.

## *Senator Chris Coons*

The Chair welcomed Sen. Coons to the meeting and Board member introductions followed. The Senator expressed the importance of the federal investment in the EPA and its local estuary programs. He explained the current budget considerations by Congress and how the proposed funding cuts concentrated on a narrow piece of the federal budget. Sen. Coons recommended prioritizing budget cuts and said it was a tremendous national challenge. He hoped that Congress would reach a resolution in the next few weeks to fund the government for the remainder of this fiscal year. He also mentioned the understandable distress about the local estuary programs absorbing the entire proposed funding cut. Sen. Coons said he agreed with this concern and would bring this to the attention of the appropriators back in Washington.

Also, work on the FY'12 budget had commenced. An appropriations request letter from Sen. Whitehouse, which requests full-funding for the National Estuary Program, is being circulated. The Senator said he is likely to sign on, but had not yet read the letter. He stated that one of the reasons for visiting the CIB was to learn more about the organization and its operations.

The Senator asserted that Delaware is far ahead of our neighboring states in matters of balancing business, civic, and community interests while protecting the environment. The way we work collaboratively on water quality, economic development, and energy policy, for example, is dramatically different than how things are done elsewhere in our region.

# DRAFT

G. Wood asked what the Senator's position is on efforts by the agricultural community to limit funding for implementation of the Chesapeake Bay clean-up effort. The Senator said he plans to continue to fight for funding to support some of the most effective actions, such as upgrades to improve the quality of wastewater treatment. He also commented that Delaware agriculture has been more progressive than the rest of the Delmarva in addressing Chesapeake Bay problems and that it deserves more credit. The Senator said he believes that Delaware's farmers will continue to embrace effective best management practices.

## *Department of Natural Resources & Environmental Control(continued)*

B. Ullman asked if a clean copy of the revised wastewater regulations could be provided for Scientific & Technical Advisory Committee review. He also asked whether the Wandendale construction permit is available for review. K. Bunting-Howarth said that the application is not administratively complete at this time and there are likely to be a number of changes. She did not offer a timeline for completion and suggested that Dr. Ullman should contact Dave Scheppens for updates.

B. Ullman again expressed his concern about leveling the elevation markers because that data is critical to accurate planning for sea level rise. He suggested that DelDOT surveying could play a significant role in the process to update the vertical leveling.

B. Ullman asked whether the Department planned to appeal the recent buffer opinion and what its response would be if it decided not to appeal, particularly with regard to what modifications would be made to the Pollution Control Strategies to satisfy the requirements of the Clean Water Act. Sec. O'Mara said that the DNREC was leaning strongly towards an appeal, so it hasn't given much consideration yet to how it might respond to all of the other scenarios. He asserted that the Department needs to continue to make arguments about the water quality benefits of buffers in a compelling way. He felt that it would not be possible to achieve the water quality goals that we have for the Inland Bays without buffers being part of the equation. B. Ullman inquired if there were other approaches in the Clean Water Act, such as bringing the County under a consent order, to improve water quality. Sec. O'Mara said that he was exploring those boundaries.

## *Delaware Department of Agriculture*

Sec. Kee congratulated Sussex County for eliminating 4,500 septic systems and significantly reducing nitrogen contributions to groundwater. He reported that 327 farmers had applied for a Notice of Intent for CAFOs; of those, 25 farmers have signed

# DRAFT

up voluntarily. A vast majority of the State's poultry operations had applied for an individual permit.

The poultry industry continues to be under huge economic distress because of the high cost of feed. In Sussex County, 25K-30K jobs are related to that industry.

According to EPA, agriculture in the six Bay states has reduced nutrient and sediment pollution by about 40% during the last 10 years. With respect to the earlier comments of G. Wood about agriculture's attacks on the Chesapeake Bay program, Sec. Kee said some of the sentiments being expressed by agriculture are about fairness and equity.

Sec. Kee said that a team has been organized to review 20 year-old data concerning the nutrient content of manure being generated and spread on crops. This data needs to be validated and recalibrated.

## *Environmental Protection Agency*

J. Capacasa suggested that Shawn Garvin, Region 3 Administrator, is interested in convening a meeting with the Directors of the three NEPs in the region during the next few months. He reported that a nationwide memo from the Office of Water Director about nutrient pollution has been released, which encourages a state framework for collaborative partnerships. Also, a 319/Non-point Source Program review by the GAO is underway this year. Any recommendations that might enhance the effectiveness of the 319 program should be forwarded to EPA3. Finally, J. Capacasa highlighted the "Rain Gardens for the Bays" program and thanked CIB for its role.

E. Ambrogio commented on the annual National Estuary Program meeting in Washington, D.C. While in D.C., he attended a different gathering of federal and state officials to discuss offshore activities, particularly wind energy projects. Delaware was represented by Sarah Cooksey and Dave Carter from Coastal Programs at DNREC. Ed suggested that there will be a role to play for the local estuary programs because the activities end at the head of tide.

Senator Coons thanked EPA for providing an update and its active engagement with the estuary programs. The Senator asked that J. Capacasa report his enthusiasm for the CIB to Environmental Protection Agency H.Q. He also suggested that Delaware agriculture deserves more credit for its successful efforts to manage poultry litter and reduce nutrient loads to the bays. Sen. Coons said he believes that progressive solutions around land use should be identified so that Delaware's poultry farmers are not unduly burdened. All of these issues are costly and challenging, but we need to keep an eye on the long-term

# DRAFT

benefits while considering the short-term consequences. J. Capacasa thanked Senator Coons for his efforts.

J. Cabry referred to a hand-out she prepared for the Board. Senator Coons stated that he had reviewed the handout and hoped his concerns were reflected in his comments.

The Senator thanked the Board for hosting his visit, then departed

J. Cabry reported that during the recent Executive Committee meeting, the Chair and Executive Director discussed the outcomes of the annual National Estuary Program meeting, including budget figures. Using those numbers, she prepared a comparison of EPA vs. local estuary program funding, which highlighted the proposed budget cuts. These cuts would apparently reduce funding for the local estuary programs while keeping the Agency level-funded. J. Cabry asked EPA if it could offer clarification why the allocation resulted in significant cuts at the local level.

E. Ambrogio responded that he was challenged to explain a decision that happens at the HQ office. He has previously heard concerns from the NEPs about why funding cuts weren't done so in an equitable fashion. Ed provided an explanation of extramural expenses vs. intramural expenses. He characterized the intramural funds as the cost of doing business, or overhead. The extramural portion provides for contractor support, monitoring/reporting, and supporting the national conference. He also said that part of the \$10.1M funds activities not directly related to the National Estuary Program, such as ocean disposal and monitoring with the EPA vessel "Bold." E. Ambrogio stated that at the moment, no one has a good sense of what is going to happen during this fiscal year or next. J. Cabry said she was concerned about the proposed 25% cut for the NEPs while there was a 0% cut for HQ. J. Capacasa suggested that he would ask HQ why there seems to be a disproportionate reduction in the funding proposals. He also stated that because budgets are being developed at the moment, specific funding amounts may not be available. J. Cabry asked whether a balance sheet could be produced to help explain how the \$10.1M is being used by EPA.

D. Baker expressed his concerns about the economic impacts on Sussex County that might result from efforts to implement a watershed plan for the Chesapeake Bay. He cautioned against the regulated impacts on the poultry industry. J. Capacasa said EPA was attempting to offer some flexibility in the regulations to limit these impacts.

## *Sussex Conservation District*

B. McGowan described the District as being in a "holding pattern" dependent upon what happens with the Pollution Control Strategies. The Sussex Conservation District is



# DRAFT

responsible for reviewing development plans for compliance with the Pollution Control Strategies. He also honored Gilbert Buckley, a long-time equipment operator, who was highly respected by the agricultural community.

## *Sussex County Association of Towns*

G. Wood referred to a previous Board discussion about having the CIB brief elected officials from the local municipalities. He said Ocean View would be privileged to host a briefing this spring, provided he is reelected in the upcoming voting.

## *General Assembly Updates*

### House

The Chair, Treasurer and Executive Director met with Rep. Schwartzkopf to discuss CIB funding, specifically the move from DNREC's budget unit to Grant-In-Aid. The CIB has asked the Joint Finance Committee to consider returning CIB to the DNREC budget unit. An outcome probably won't be realized until the end of the legislative session. Sec. O'Mara responded that the estuary programs should be treated the same and funding contained within his Department. E. Lewandowski assured Sec. O'Mara that any conversations that he had about CIB being returned to the Department's budget unit asked that the funding from Grant-In-Aid become transportable.

### Senate

No business to report

## **STAFF UPDATES**

E. Lewandowski introduced R. Miller as the CIB's new P/T Environmental Policy Coordinator. Roy's primary task for the next several months will be to assist in the process to update the Inland Bays CCMP. Roy provided a biographical sketch and stated that he looked forward to his work with CIB.

E. Lewandowski described the efforts of the Water Use Plan Implementation Committee to initiate the Baker's Channel project. E. Buehl provided a PowerPoint presentation that highlighted the recent completion of this navigational by-pass channel, which connects Indian River Bay with Rehoboth Bay. G. Wood inquired whether maintenance dredging would be required for the new channel. He also asked about the impacts from boat wakes on the nearby island. E. Lewandowski pronounced that this project not only benefitted the bays, but the recreational boating community and the local economy as well, because a local marine contractor was used. Sec. O'Mara suggested that it would be important to promote the use of the appropriate channel. B. Ullman recommended publicizing the marking of the new channel. E. Buehl said the USCG will release a Notice to Mariners.

# DRAFT

E. Lewandowski commented that Capt. Bill Baker has been announcing completion of the channel on his weekly radio show.

## **OLD BUSINESS**

The Board inquiry concerning the member composition of the Sea Level Rise Advisory Committee was already addressed by Sec. O'Mara during the Department's report.

## **NEW BUSINESS**

The Chair entertained a motion to accept the draft resolution concerning Judge Graves' opinion on the Inland Bays Pollution Control Strategies/buffers as the official CIB position. J. Cabry moved to adopt the resolution; Sec. Kee seconded.

D. Baker clarified the County's position concerning the lawsuit and said County Council believes that it is a land use issue that affects private property rights. He reflected on a series of meetings between the County and the Department to resolve the buffer issue. After a period, Council decided to pursue a lawsuit rather than continue dialogue with the Department.

Sec. Kee asked to clarify what non-point sources were referenced in the first paragraph of the draft resolution. He questioned whether the word "alarming" was the correct word to use in that paragraph because it was difficult to assign scientific validity to that word. J. Cabry responded that "alarming" is not a scientific term nor is the resolution a scientific document. R. Eakle explained the Executive Committee's purpose for introducing the resolution was to encourage the CIB's partner signatories to resolve the buffer issue. The Board considered a number of changes that would eliminate the word "alarming." G. Wood suggested changing the first paragraph to, "Whereas, detrimental levels of plant nutrients (nitrogen and phosphorus) continue to be contributed to the Inland Bays from non-point sources;" might be a suitable replacement.

D. Baker raised a concern about the paragraph, which read, "Whereas, CIB has observed several instances which demonstrate that Sussex County's enforcement of its existing buffer ordinance is inadequate;" and stated that the County would like to know about such instances so that they can be addressed. He asked for an explanation from staff about the statement in the resolution. E. Lewandowski summarized steps that CIB had taken to collaborate with the County planner to organize a series of meetings with County inspection staff to offer training; however, upon the retirement of the County planner, CIB has not had the opportunity to reengage the inspection staff in this effort. D. Baker said that he was unaware that these meetings had occurred. Sec. Kee sought clarification regarding whether the CIB believed that the County was still deficient in enforcing its buffer ordinance. E. Lewandowski said that CIB staff had documented continuing

# DRAFT

violations. D. Baker requested that CIB staff communicate with him whenever violations are observed or reported.

The Chair called for a show of hands to indicate support for the draft resolution, as amended. There were 6 ayes; motion passed with 2 abstentions (Sussex County and DNREC).

### Recognition of Dave Baker and Kathy Bunting-Howarth

The Chair recognized the participation of D. Baker and K. Bunting-Howarth on the Board of the CIB. Each was presented with a gift.

### **OPEN FORUM**

There were no requests from the public to speak during the Open Forum.

### **ADJOURNMENT**

The Chair thanked all of the Board members for their participation at the meeting. At 11:40 a.m., the Chair called for adjournment.

Respectfully submitted,

Bill Zak, Secretary

BZ/eal