

Let's Return to Mandatory ESD Code Changes and Deadlines in the MD MS-4s.

Comments of Diane Cameron submitted to the Maryland Department of the Environment

on behalf of the Natural Resources Defense Council and Audubon Naturalist Society

Regarding the draft Prince George's County MS-4 Permit

June 27, 2013

The Problem:

The draft Prince George's County MS-4 permit is weaker than the Montgomery County 2010 permit and the draft City of Baltimore permit, in that it lacks an explicit ***ESD code change mandate and deadlines for meeting that mandate***. This is a weakening from the Montgomery County permit as issued in 2010 and from the draft Baltimore City permit. We request that MDE fix this by restoring an effective and appropriate code change mandate and deadlines in the Prince George's County MS-4 (and all other Maryland MS-4s).

We discussed this issue with MDE officials earlier this year, during our meeting in Annapolis with Secretary Bob Summers and Water Management Administration Director Jay Sakai in January, 2013. Our understanding from that meeting was that MDE was going to ensure that all MS-4 permits were at least as specific and enforceable, including with appropriate deadlines on this aspect of ESD code changes, as is the language in the 2010 Montgomery County permit. While the draft City of Baltimore permit got this aspect right, both the Prince George's County and Baltimore County draft MS-4s got this wrong and contained the unacceptable, weak language on this topic.

We also recently discussed this issue of ESD code change mandate and deadlines with Prince George's County Department of Environmental Resources leaders, and they agreed with us that this item is one of the set of 10 points of change needed for the Prince George's County MS-4. Acting Director Adam Ortiz and Acting Deputy Director Larry Coffman endorsed this as Item # 10 in the set of requested MS-4 permit changes that they submitted today in their formal written comment to MDE.

The Solution:

Make the Prince George's County permit identical to the draft Baltimore City permit for this section, except insert 2 years, not 3 years, as the deadline for completion of the code changes. **Below is the requested language change for the Prince George's MS-4 permit, Section III.D.1.a. This also is close to the existing Montgomery County permit (page 3, Section III.D.1.a.iii,iv, and v.):**

Add two additional items – to become parts iii. and iv., to Section III. D. 1. a., (page 3):

1. Stormwater Management

An acceptable stormwater management program shall continue to be maintained in

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accordance with the Environment Article, Title 4, Subtitle 2, Annotated Code of Maryland. Activities to be undertaken by the County shall include, but not be limited to:

a. Implementing the stormwater management design policies, principles, methods, and practices found in the latest version of the 2000 Maryland Stormwater Design Manual. This includes:

- i. Complying with the Stormwater Management Act of 2007 (Act) by implementing environmental site design (ESD) to the MEP for new and redevelopment projects;
- ii. Tracking the progress toward satisfying the requirements of the Act and identifying and reporting annually the problems and modifications necessary to implement ESD to the MEP; ~~and~~
{{Insert new parts iii and iv, and change current part iii to become part v:}}

iii. Within one year of permit issuance, reviewing existing planning and zoning and public works ordinances and other codes to identify impediments to, and opportunities for promoting, the implementation of ESD to the MEP;

iv. Within two years of permit issuance, modifying ordinances and codes identified above, to eliminate impediments to and opportunities for promoting the implementation of ESD to the MEP;

~~iii.~~ v. Reporting annually the modifications that have been made or need to be made to all ordinances, regulations, and new development plan review and approval processes to accommodate the requirements of the Act.

In contrast, here's the current Prince George's draft MS-4, page 3:

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1. Stormwater Management

An acceptable stormwater management program shall continue to be maintained in accordance with the Environment Article, Title 4, Subtitle 2, Annotated Code of Maryland. Activities to be undertaken by the County shall include, but not be limited to:

- a. Implementing the stormwater management design policies, principles, methods, and practices found in the latest version of the *2000 Maryland Stormwater Design Manual*. This includes:
 - i. Complying with the Stormwater Management Act of 2007 (Act) by implementing environmental site design (ESD) to the MEP for new and redevelopment projects;
 - ii. Tracking the progress toward satisfying the requirements of the Act and identifying and reporting annually the problems and modifications necessary to implement ESD to the MEP; and
 - iii. Reporting annually the modifications that have been made or need to be made to all ordinances, regulations, and new development plan review and approval processes to comply with the requirements of the Act.

Rationale:

If issued as now drafted, this provision is unlikely to spur the permittee to do much if anything to change local codes and ordinances to promote ESD and remove impediments to it.

The reason is that without a specific schedule with enforceable deadlines, the permittee will not focus on this task – which requires extensive code review, and subsequent administrative and legal work involving anywhere from 5 to 10 separate agencies to implement timely revisions. For very practical reasons of allocating scarce resources, permittees tend to focus only on tasks with specific mandates and deadlines. For an example of the code change effort that is needed, see the attached report, *Implementing Environmental Site Design in Montgomery County (2010)*.

Reason for changing from 3 down to 2 years for completing the ESD code changes:

The Stormwater Management Act of 2007 is now more than five years old. Baltimore, Prince George's and other municipalities have had five years to review their ordinances and codes and to harmonize them with Environmental Site Design, as required by this law. In addition, the example of Montgomery County's comprehensive code change review and recommendation document has been available on the Web since 2010. Prince George's County, (as other municipalities), needs to jump-start its ESD code review and revision process -- and to be accountable for finishing that process and enacting the revisions by a date certain; two years is adequate given the lead time they've already had.

Further Background on the need for this change based on past experience:

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During and after the Stormwater Partners' negotiations in 2005-2008, which led to the Montgomery County MS-4 revised permit, we praised MDE for including this section, because it went a long way towards ensuring that a truly thorough ESD code change review and revision would occur. This permit mandate led to a comprehensive ESD code review in Montgomery County --that included but went far beyond the stormwater chapter. It's highly unlikely that Montgomery, or any other jurisdiction, would undertake this burdensome effort and finish it in the absence of enforceable deadlines.

The existing Montgomery County MS-4 permit, Part III.E. 1 (b), requires within one year, modification of the county's *stormwater management* ordinance, and its related new development review process, to incorporate ESD. To our knowledge virtually all Maryland municipalities have done this.

But, there is more than one layer or phase of ESD code changes. In order to make ESD effective, there are zoning, right-of-way, transportation, housing, and many other codes that need to be changed; the particular set will vary by municipality. This is the second stage of ESD code changes, separate from the SWM ordinance revision, that MDE wisely anticipated and established a mandate for code revision, and a set of deadlines, in parts (b) ii and iii. **To remove this mandate and its attached deadlines, is an unacceptable weakening of the existing permit requirements.**

Our review of COMAR and the Stormwater Management Act of 2007 revealed no specific deadlines for this second stage of local ESD code review and revision. So without the MS-4 permits containing the same set of ESD code review and revision deadlines as for the Montgomery County 2010-2015 MS-4, how will this more-difficult and involved process be assured? Answer: it won't be assured, and in many places, it either won't happen at all, or if it does happen, it will be far slower and far less comprehensive than it needs to be. Thus we request that MDE restore the specific ESD code change mandate and effective, specific deadlines, in the Prince George's County and other state MS-4 permits.