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**Statement in Support, with Amendments, of Maryland Department  
of the Environment's Tentative Determination to Issue a National Pollutant  
Discharge Elimination System Municipal Stormwater Permit to Anne Arundel  
County**

August 7<sup>th</sup>, 2013

Please accept this statement on behalf of the Chesapeake Bay Foundation (CBF) and our more than 100,000 Maryland members on the Tentative Determination to issue a National Pollutant Discharge Elimination System (NPDES) Municipal Stormwater Permit to Anne Arundel County. CBF will also be submitting detailed written comments before the end of the formal comment period (8/19).

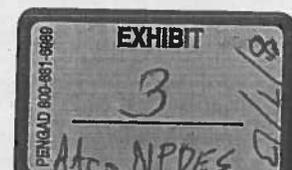
Stormwater runoff from developed urban areas is an obvious and significant source of pollution that contaminates the local water bodies in and around Anne Arundel County. Not only does stormwater runoff contain nitrogen, phosphorous and sediment, it also washes oil products, heavy metals and trash into Bay tributaries. All of these pollutants are a problem for Anne Arundel, as reflected by the 23 TMDLs for local waters and the Bay. Unfortunately, stormwater runoff is both the only growing and the fastest growing source of these pollutants.

A strong MS4 permit is crucial for Anne Arundel County, not only because of the impaired local waters but also because of the proximity to the Bay. This tentative permit is an improvement over previous permit cycles, as it incorporates the TMDL and prohibits discharges that would violate water quality standards, as required by law.

There are a few areas of the permit that must be improved, however, so that the new requirements adequately prevent polluted stormwater from spoiling our streams, rivers and, of course, the Chesapeake Bay. The three areas of change we highlight today are necessary to transform the new permit into a fully effective and enforceable one, under federal and state law.

**THREE MAJOR AREAS FOR AMENDMENT**

- (1) The Permit must include a quantification of the current loading of nitrogen, phosphorus and sediment from all identified sources in order to establish a quantitative baseline from which to assess progress towards either the Baywide or any local TMDLs and WLAs.**



- Currently, the draft permit requires the County to identify all sources of pollutants and link them to specific water quality impacts, which would then be used to develop watershed implementation plans. This requirement should include a mandatory baseline assessment of pollutants subject to a TMDL, so that progress towards attaining applicable wasteload allocations may be measured and final compliance may be determined. Because this new permit round seeks to tie the MS4 implementation to meeting the Watershed Implementation Plan (WIP) goals, these sources should apply Chesapeake Bay Model values or monitored Event Mean Concentrations to quantify the current loading of nitrogen, phosphorus and sediment from the existing stormwater infrastructure.

- Anne Arundel County has done an admirable job selecting and implementing stormwater management facilities, but such facilities are only effective to the extent that they are maintained and fully functional. Anne Arundel's FY2014 budget demonstrates that many stormwater management facilities in the County are badly in need of retrofitting, repair, and rehabilitation. It is not clear whether the loads that these existing facilities were meant to address are being properly accounted for. Adding a requirement to assess baseline based on the existing infrastructure and an evaluation of facility effectiveness would be beneficial to both the County and the State by updating data for the evaluation of BMP efficacy, assessing the progress being made by the County, and determining the projects needed to reach final WLAs.

**(2) Sections in the Permit Concerning TMDLs, Restoration Plans, and Management Programs must be clarified, strengthened, and made enforceable and fully accountable.**

- The section on stormwater management (Part IV.D.1.b) must require a programmatic assessment of the impact of stormwater exemptions and waivers. Since the MDE Guidelines<sup>1</sup> for impervious assessment calculations incorporated in the permit assume certain loads based on the era of the development (i.e. assuming ESD for post-2007 development), development that did not comply with all existing stormwater laws and regulations must be recorded and accounted for in any pollution reduction estimates.

- The final date for meeting applicable WLAs must be incorporated into a compliance schedule that includes interim milestones and numeric benchmarks. These milestones are

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<sup>1</sup> Maryland Department of the Environment, *Accounting for Stormwater Wasteload Allocations and Impervious Acres Treated: Guidance for National Pollutant Discharge Elimination System Stormwater Permits*, June 2011. Available at: <http://www.mde.state.md.us/programs/Water/StormwaterManagementProgram/Documents/NPDES%20Draft%20Guidance%206%2014.pdf> (last visited 5/31/2013).

essential to determining whether the implementation strategy and chosen practices are sufficient to meet the final WLAs. Currently, the draft permit would only require a schedule for implementing projects, not for attaining required WLAs. As noted above, it is of crucial importance that stormwater management facilities and other BMPs are not just put into place, but also evaluated in terms of pollutant reductions to allow the County to determine whether they are moving towards compliance with WLAs and TMDLs. What's more, the TMDL implementation plans and compliance schedules are legally required when final compliance is over one year.<sup>2</sup> MDE must approve them through a formal permit modification and with the associated required public participation.

- The restoration plans required under Part IV.E.2 lack any specific, quantitative measurement of restoration, but instead allow "treatment" by use of any practice found in the 2000 Maryland Stormwater Design Manual. Many of those practices, such as detention systems, have been recognized in the MDE Guidance<sup>3</sup> as providing very little water quality benefits. Anne Arundel County's own 2011 Annual Report also recognized that fact, noting the detention facilities provide approximately 5-10% reductions while infiltration practices provide 80-95%. This permit should impose a higher performance standard in Anne Arundel County: i.e. the on-site retention and treatment of at least the full 90<sup>th</sup> percentile, 24-hour storm event from a 72-hour antecedent dry period (about 1 inch of treatment). This performance-based approach should be done primarily through Environmental Site Design (ESD) or "green infrastructure," as recommended in many EPA guidance documents.<sup>4</sup>

**(3) The Permit must include a monitoring and assessment program which is capable of providing accurate, timely, representative, and statistically significant information on water quality countywide.**

- The monitoring in the draft permit includes only three small watersheds, and one of the three requires only physical stream monitoring. Adequate, representative monitoring is crucial to the success of the County's stormwater program, to ensure that the wasteload allocations are being met as required.

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<sup>2</sup> 40 C.F.R. § 122.47(a)(3).

<sup>3</sup> *Id.*

<sup>4</sup> See, e.g., Protecting Water Quality with Green Infrastructure in EPA Water Permitting and Enforcement Programs, signed by Nancy Stoner, Acting Assistant Administrator, Office of Water, and Cynthia Giles, Assistant Administrator, Office of Enforcement and Compliance Assurance, April 20, 2011.

- Federal regulations require all NPDES permits to contain monitoring requirements “to assure compliance with permit limitations.”<sup>5</sup> Stated differently, these monitoring requirements must be of the “type, intervals, and frequency sufficient to yield data which are representative of the monitored activity.”<sup>6</sup> Representative monitoring data is vital to evaluating the efficacy of the projects listed in restoration plans, and to determining progress towards compliance with WLAs.

## CONCLUSION

The three areas of changes noted above are not exhaustive, and we would reserve for coverage in our formal, written comments any additional concerns. Additionally, as the Department is aware, over the past year we have worked extensively with members of the Maryland Stormwater Consortium in presenting our shared interests. Therefore, to the extent that our colleagues’ testimony is not in conflict with our own, we would like to adopt their statements as our own, for the record.

We applaud the Department for including some of the changes which we have long sought in the draft permit, but it still falls short in the areas mentioned above, and in several others. These changes must be adopted to create a permit that best serves our shared goal of adequately and measurably advancing water quality objectives for the State and for the Bay. Please contact Elaine Lutz at [elutz@cbf.org](mailto:elutz@cbf.org) with any questions or concerns.

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<sup>5</sup> 40 C.F.R. § 122.44(i).

<sup>6</sup> 40 C.F.R. § 122.48(b). Maryland law confirms: “A discharge authorized by a discharge permit shall be subject to any monitoring requirements the Department deems necessary.” Md. Code Regs. § 26.08.04.03(A)(1).