

In the Matter of:

Maryland Department of the Environment

September 4, 2014
Public Hearing

Condensed Transcript with Word Index



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1 MARYLAND DEPARTMENT OF THE ENVIRONMENT
 2 WATER MANAGEMENT ADMINISTRATION
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 4
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 6 NATIONAL POLLUTANT DISCHARGE
 7 ELIMINATION SYSTEM (NPDES)
 8 MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) PERMIT
 9
 10
 11
 12 SEPTEMBER 4, 2014
 13 10:07 a.m.
 14
 15
 16 CHARLES COUNTY ADMINISTRATION BUILDING
 17 COMMISSIONERS CONFERENCE ROOM
 18 200 BALTIMORE STREET
 19 LA PLATA, MARYLAND 20646-2150
 20
 21
 22 Reported by: Wanda L. Granger, CVR-M

3

1 P R O C E E D I N G S
 2 - - - - -
 3 MR. BAHR: We're going to go ahead and get
 4 started.
 5 Good morning, everyone. Today is Thursday,
 6 September 4th, 2014, and it's, approximately, ten minutes
 7 after 10:00.
 8 Today's public hearing is regarding Maryland
 9 Department of the Environment/MDE's tentative determination
 10 to issue Charles County a National Pollutant Discharge
 11 Elimination System (NPDES) Municipal Separate Storm Sewer
 12 System (MS4) Permit.
 13 My name is Raymond Bahr and I'm the Division Chief
 14 in the Sediment, Stormwater and Dam Safety Program within
 15 MDE's Water Management Administration.
 16 With me today, to my left, is Deb Cappuccitti, and
 17 she is the Permit Administrator for Charles County. She's
 18 MDE's liaison. She's a senior engineer in our program.
 19 Also with us today -- and maybe if you could just
 20 raise your hand if you're out there -- is Michelle Arthur,
 21 Christina Lyerly and Travis Moore from MDE.
 22 I would like to thank Deb and the officials from

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1 A T T E N D E E S
 2 Ray Bahr, MDE
 3 Deb Cappuccitti, MDE
 4 Michelle Arthur, MDE
 5 Christina Lyerly, MDE
 6 Travis Moore, MDE
 7
 8 S P E A K E R S
 9 Charles Rice
 10 Jim Long
 11 Ken Hastings
 12 Joe Tieger
 13 Bonnie Bick
 14 Bruce Gilmore
 15
 16
 17 P U B L I C A T T E N D E E S
 18
 19 (See attached Attendee Sign-In sheets)
 20
 21
 22

4

1 Charles County for helping us put on this hearing today.
 2 In accordance with Maryland's Administrative
 3 Procedures Act, a tentative determination to issue Charles
 4 County an MS4 permit has been advertised in the Maryland
 5 Independent on June 18th, 2014, and June 27th, 2014.
 6 It was sent out to MDE's interested parties list
 7 and publicized on MDE's Web page where the draft permit
 8 supporting the fact sheet may be found.
 9 Anyone who signed up to speak today or who is on
 10 the attendance sheet will receive notice of any permit
 11 actions regarding Charles County's draft permit. If you
 12 want to be on MDE's interested parties list for this permit
 13 and did not sign up on one of those two sheets, please do so
 14 before the end of today's meeting.
 15 I have some prepared remarks that I'd like to read
 16 into the record and after that, we would like to give
 17 Charles County a chance to comment on the permit, as well.
 18 After that, if there's any elected officials in
 19 the audience, we would like to give them an opportunity to
 20 comment and then we'll work down the list of speakers that
 21 signed up this morning.
 22 Today's hearing is scheduled for two hours and

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1 we'd like to provide everyone who would like to speak an
 2 opportunity do so, so please keep your remarks concise and
 3 focused on the permit at hand.
 4 And with that, I will begin. The purpose of
 5 today's hearing is to accept public comment on MDE's
 6 tentative determination to issue Charles County an MS4
 7 permit.
 8 This hearing is being held to honor a request
 9 submitted on July 14th, 2014, from Peter Aluotto
 10 representing Charles County and a request submitted on July
 11 15th, 2014, from representatives of AMP Creek's Council,
 12 Chapman Forest Foundation, Clean Water Action, Maryland Bass
 13 Nation, Mason Springs Conservancy, Mattawoman Watershed
 14 Society, Southern Maryland Group and 1,000 Friends of
 15 Maryland.
 16 This hearing allows MDE to meet its obligations
 17 under Maryland's Administrative Procedures Act.
 18 For background, Maryland has been delegated
 19 authority of the United States Environmental Protection
 20 Agency/EPA to administer an NPDES program in the state.
 21 Final stormwater regulations were adopted by EPA in
 22 November 1990 according to Section 402(p) of the Clean Water

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1 Act. These regulations required, in part, that owners of
 2 storm drain systems serving populations of greater than
 3 100,000 apply for a Phase I NPDES Municipal Stormwater
 4 Permit.
 5 Based on 1990 census data and projections of
 6 population growth, MDE designated Charles County as a Phase
 7 I municipality. The county submitted a two-year, two-part
 8 application and was issued an initial MS4 permit in May of
 9 1997.
 10 The county's first permit laid the foundation for
 11 a comprehensive approach to control runoff. This was done
 12 by establishing the necessary legal authorities mapping
 13 storm drain system infrastructure, identifying sources of
 14 pollution, monitoring storm events that characterize urban
 15 runoff, enhancing existing erosion sediment control,
 16 stormwater management programs and establishing new programs
 17 for providing education and eliminating illegal storm drain
 18 system discharges.
 19 The permit was reissued again in July of 2002. In
 20 the reissued permit, additional requirements were included
 21 for assessing water quality across the entire county and for
 22 commencing the restoration of ten percent of the county's

7

1 impervious area that was not already managed, the maximum
 2 percent practicable.
 3 NPDES permits last for five years and re-
 4 applications are required to be submitted as part of the
 5 county's Fourth Year Annual Report. Charles County
 6 submitted it's Fourth Year Annual Report on July 21st, 2006.
 7 Since that time, MDE has held numerous meetings
 8 and had many conversations with individual citizens,
 9 environmental advocates, the EPA and other local government
 10 officials that are affected by the MS4 permit program. The
 11 result of these meetings and conversations is the draft
 12 permit that we take up today.
 13 Yet, more significant conditions have been added
 14 to this version of the Charles County stormwater permit
 15 largely based upon EPA's recently approved total maximum
 16 daily loads (TMDLs) or impairments to local water bodies
 17 within the county and to the Chesapeake Bay.
 18 The most significant permit condition is the
 19 doubling of the impervious area restoration requirement from
 20 10 to 20 percent that needs to occur within the five-year
 21 permit term.
 22 These and all other remaining permanent conditions

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1 have been developed for abating the discharge of pollutants
 2 from the Charles County storm drain system and working
 3 toward meeting the state's receding water quality criteria.
 4 Now, I'd like to take an opportunity to ask
 5 Charles County if they would like to speak for the record.
 6 I'd also like to ask anybody who comes up to testify to
 7 clearly state your name, your affiliation and spell your
 8 name so that Ms. Granger over here can get it right for the
 9 record.
 10 MR. RICE: All right, good morning. For the
 11 record my name is Charles Rice, R-I-C-E. I am the Program
 12 Manager for Environmental Programs within the county's
 13 planning division. To my left is Matthew Clagett, our
 14 Associate County Attorney.
 15 I want to start off by thanking MDE for conducting
 16 this permit and for giving the public the opportunity to
 17 comment.
 18 I want to start out by highlighting the county's
 19 commitment to environmental stewardship especially as it
 20 relates to stormwater management.
 21 In 1998, the county adopted one of the first
 22 stormwater fees in Maryland, our Environmental Service Fee

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1 of which a portion went to stormwater retrofits; in 2000,
 2 the county established a stormwater infrastructure in its
 3 GIS system; in 2002, allocated an initial one million
 4 dollars in the Capital Improvement Program for stormwater
 5 retrofits; in 2003, adopted an illicit discharge code; and,
 6 in 2005 received delegation of the Erosion and Sediment
 7 Control Program; in 2007, the county upgraded the stormwater
 8 treatment plant at Mattawoman and Swan Point to ENR
 9 technology.

10 That was a significant funding commitment for the
 11 county. It was consistent with the state's tributary
 12 strategies for the Chesapeake Bay, and the enhanced nutrient
 13 removal has reduced an annual discharge of nitrogen flowing
 14 to the Bay of 331,000 pounds.

15 In 2008, the county completed a shallow marsh
 16 wetland project at the Brown Elementary School and this was
 17 an unused part of the school property and now treats 25
 18 acres of impervious surface. It's also of note that the
 19 school uses that project for part of its environmental
 20 education programs.

21 Also in 2008, a similar project was completed at
 22 the Middleton Elementary School. The project also was on an

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1 unused portion of the school property and treated 16 acres
 2 within the Carrington community, and that's also part of
 3 their environmental education program.

4 The Department of Public Works completed a premier
 5 green fleet wash pad in 2009. The new wash pad is
 6 environmentally sustainable and conserves a significant
 7 amount of water and cleans vehicles faster, better and
 8 safer.

9 It reduces water consumption and recycles a
 10 hundred percent of the water used, removes silts, oil,
 11 grease, suspended solids and heavy metals by using an
 12 electrocoagulation pulse system. It reduces operating and
 13 maintenance costs and reduces cleaning times which allows
 14 for increased production.

15 The county has a robust recycling program. In
 16 2012, the county far surpassed the state's 20-percent
 17 required recycling rate and achieved a 49-percent recycling
 18 rate along with a four-percent source reduction credit
 19 equaling a total waste diversion of 53 percent.

20 In FY 2014, a 162 tons of trash and debris was
 21 collected from the county's road sweeping program and 320
 22 tons of trash collected by county litter crews, the Potomac

11

1 River Watershed Cleanup and other community cleanups.
 2 In 2013, the county completed what's known as the
 3 Bryans Road Village Green Underwater Stormwater Chambers.
 4 The project installed storm filters, filterra and dry swales
 5 treating over ten impervious acres and also doubled as a
 6 park on the surface.

7 In 2014, the county completed a hundred major
 8 outfall inspections for illicit discharge, 2,118 storm drain
 9 inlets inspected and 124 tons of debris removed from those
 10 storm drains. This photo is an example of the before and
 11 after of an outfall repair done in 2014.

12 Additional stormwater facility inspection and
 13 maintenance: 641 private and public stormwater facilities
 14 were inspected for proper functioning and maintenance and
 15 repairs were completed on 150 county-owned basins.

16 And to highlight some of our land preservation
 17 activities, the county has land preservation programs that
 18 also target water quality. These include the Chesapeake Bay
 19 critical area, forest conservation, agricultural
 20 preservation, resource protection and transfer and
 21 development rights programs.

22 Let's see. Sorry, I jumped ahead of myself.

12

1 Along with state, federal and private
 2 conservation, the county has preserved over 92,000 acres or
 3 31 percent of the county's land area. This is a significant
 4 stride towards the county's overall goal of protecting 50
 5 percent of the land base and open space. And in 2013 alone,
 6 the county protected just over one thousand acres.

7 In 2014, the county initiated a septic pump-out
 8 program and also has installed 97 nitrogen removal systems
 9 or BAT/best available technology. And for the septic pump-
 10 out program, we've received just over a hundred applicants
 11 in the first month alone.

12 There are some sewer connection studies under way,
 13 three septic connection projects under way in Hughesville,
 14 Benedict and Port Tobacco. The idea is to connect large
 15 communities that are on individual septic systems to the
 16 public sewer system. And our two-year WIP goal is to
 17 connect 269 septic systems.

18 Our 2014 Stormwater Retrofit Action Plan includes
 19 a stream restoration, a project in the main stem of Port
 20 Tobacco River, nine stormwater retrofit projects to be
 21 completed in 2015, and 29 stormwater retrofit projects are
 22 currently in design planned through fiscal year 2019.

13

1 I want to note that MDE has recognized the
 2 county's efforts in 2014, the passing evaluation of the
 3 Stormwater Program, high marks on our Watershed
 4 Implementation Plan, a passing evaluation of the Erosion
 5 Sediment Control Program and positive remarks on our MS4
 6 permit implementation to date.
 7 And at this time I want to turn it over to Matthew
 8 Clagett, our Associate County Attorney for closing remarks.
 9 MR. CLAGETT: Mr. Rice's presentation shows that
 10 Charles County has been and is committed to our stormwater
 11 program, the county waters and health of the Chesapeake Bay.
 12 Therefore, the county supports certain aspects of the draft
 13 permit, but we still have concerns, as MDE is aware.
 14 There are several legal issues that we have
 15 brought to MDE's attention. The financial burden that will
 16 be imposed on the county and its citizens and, perhaps most
 17 importantly, the permit contains an extraordinary scope of
 18 work.
 19 The Clean Water Act requires permitted MS4
 20 jurisdictions to include controls to reduce the discharge of
 21 pollutants to the maximum extent practicable. This is the
 22 MEP standard.

14

1 What constitutes that MEP standard EPA left
 2 undefined and the agency, instead, provided a list of
 3 factors for MDE to use in its permitting process for each
 4 jurisdiction.
 5 This makes the process tailored to the specific
 6 realities of each jurisdiction. MDE should thus take an
 7 individualized look at Charles County and its ability to
 8 reduce the discharge of pollutants to the maximum extent
 9 practicable.
 10 To that end, we've analyzed our MEP and have
 11 already provided you with a draft of that analysis. The
 12 final version will be submitted before the close of the
 13 comment period, along with forthcoming written comments that
 14 will explain and elaborate on our other concerns.
 15 We ask that you take our comments this morning and
 16 our forthcoming written comments into account before you
 17 issue the final determination of our permit helping us to
 18 wisely dedicate our resources on behalf of the environment
 19 and the bay.
 20 We take our responsibilities seriously. Our goal
 21 is full compliance with the MS4 permit during the next term;
 22 therefore, we look forward to a new permit that improves

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1 water quality, is clear and unambiguous and is achievable
 2 considering the cost of compliance.
 3 On behalf of Charles County, we want to thank you
 4 for holding this public hearing and for listening to our
 5 concerns.
 6 MR. BAHR: Okay, thank you, Mr. Rice and Mr.
 7 Clagett.
 8 Are there any elected officials here today that
 9 would like to speak?
 10 (No response.)
 11 MR. BAHR: Okay. And with that, what I'd like to
 12 do is go down the list of people who signed up. We have
 13 five people and we have an hour and a half.
 14 So, as I said, please keep your remarks focused on
 15 the permit and concise, though we do have a little bit more
 16 time for elaboration. So with that, let's begin with Mr.
 17 Jim Long.
 18 MR. LONG: Yes, thank you very much. My name is
 19 Jim Long -- that's L-O-N-G -- and I'm President of the
 20 Mattawoman Watershed Society who I'm representing today and
 21 our more than one thousand supporters.
 22 Let me first start by saying we're appreciative of

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1 MDE's efforts to improve this round of MS4 permits and for
 2 holding this hearing to learn how Charles County's permit
 3 might be strengthened.
 4 While this permit newly extends the regulated area
 5 to the entire county, Mattawoman Creek remains the telling
 6 lens for examining the permit.
 7 Mattawoman is the primary recipient of Charles
 8 County's urban stormwater and the effects of this stormwater
 9 have taken it from a waterway once described by fishery
 10 scientists as near to ideal conditions to unexhibiting
 11 alarming biological declines.
 12 What is at stake? Only the best, most productive
 13 tributary to the bay according to fishery scientists in
 14 2005. Before that, Mattawoman yielded anadromous fish at a
 15 rate 40 times greater than other Chesapeake -- seven other
 16 Chesapeake Bay tributaries combined.
 17 It is one of the finest largemouth bass meccas on
 18 the east coast. The economic value of the bass tournaments
 19 alone rivals the market value of all of Charles County's
 20 agricultural products.
 21 This does not include the eco-tourism economy that
 22 keeps three put-ins busy and supports a watercraft rental

17

1 business or the social value given by outstanding
 2 recreational opportunities.

3 The vulnerability of these assets to polluted
 4 stormwater has long been recognized; for example, by the
 5 1998 Clean Water Action Plan and the 2003 Army Corps
 6 Watershed Plan that warned of dramatic increases in
 7 pollution loads with severe biological repercussions.

8 Yet, water quality standards in the Mattawoman
 9 system are being violated with increasing frequency. In
 10 2002, the year the current MS4 permit went into effect, the
 11 non-tidal river was listed for biological impairment.

12 In 2005, a total maximum daily load for the
 13 estuary called for having the nitrogen and phosphorous loads
 14 from stormwater.

15 Three years later in 2008, the Mattawoman
 16 Watershed Society with the Department of Natural Resources
 17 discovered with Ichthyoplankton Surveys that anadromous fish
 18 were shunning upstream reaches of the river where a decade
 19 earlier they had been abundant.

20 In 2009, fishery scientists reported that an
 21 alarming decline in fish species richness and fish abundance
 22 in the tidal and freshwater estuary had begun around 2005.

18

1 These biological degradations correlate with
 2 deleterious trends in electrical conductivity, ammonia,
 3 dissolved oxygen, hydrological regime, pH, turbidity, and
 4 nutrient loads associated with high sediment loads which we
 5 will cover further in our written comments.

6 Finally, two years ago an interagency task force
 7 summarized the current situation: Mattawoman is at the
 8 tipping point for irreversible degradation.

9 These dramatic declines are directly tied to the
 10 effects of stormwater. Given the complete disregard of
 11 TMDLs and other permitting decisions, this MS4 affords MDE
 12 one of the few opportunities to enforce the Clean Water Act.

13 So we applied the permit's acknowledgment of the
 14 bay-wide and local TMDLs; however, we find areas where the
 15 permit needs significant strengthening.

16 First, the permit contains no pollutant load
 17 limits or timetable to achieve specific loads contrary to a
 18 Clean Water Act regulation that the permit must contain
 19 effluent limits.

20 The permit does not even clearly prohibit
 21 discharges that cause violations to water quality standards;
 22 instead, the draft requires only that reports be filed

19

1 documenting progress or lack of progress.

2 Second, the permit assigns to the permittee the
 3 responsibility to produce a restoration plan and to
 4 determine a timetable for load reductions; however, such a
 5 plan would represent a major permit modification and should
 6 be treated as such.

7 A major modification, as defined by the Clean
 8 Water Act regulation, ensures that the public has
 9 opportunity to review and legally challenge whatever has
 10 been negotiated between the county and the permitting
 11 authority. It is inappropriate to outsource the public
 12 process to the county as the permit presently does.

13 Finally, it is necessary to expand and clarify the
 14 monitoring requirements. The draft permit states the county
 15 shall continue monitoring in the Mattawoman Watershed or
 16 select a new watershed in blatant contrast to the fact
 17 sheet's assurance of Mattawoman's monitoring.

18 The draft is further misleading because, in fact,
 19 the currently active MS4 requires monitoring only in the
 20 Zekiah Watershed. The county added a monitoring site to the
 21 Mattawoman in 2005, but the draft permit, in fact, makes no
 22 requirement that Mattawoman be monitored. For reasons

20

1 already cited, it is clear the permit must require
 2 monitoring in the Mattawoman.

3 In addition, the permit requires only one outfall
 4 and associated stream to be monitored. This falls far short
 5 of other jurisdictions like Washington, D.C. and is
 6 inadequate to statistically determine measures, such as
 7 stormwater retrofits are working. The number of stations
 8 should, therefore, be expanded.

9 In addition, monitoring should be required to
 10 ensure that overall loads be reduced to the estuary.

11 Mattawoman's active TMDL determines that loads to the
 12 estuary are dominated by input from the fluvial river and
 13 monitoring to address these loads is necessary to determine
 14 the overall effectiveness of the MS4 permit.

15 I cannot overemphasize that local government
 16 relies on the state to protect aquatic resources. For
 17 example, the county has intentionally selected the most
 18 polluting land use scenario for its draft comprehensive
 19 plan. In another example, county staff shrugged off
 20 environmental concerns to the permitting agencies at a
 21 recent meeting of the Planning Commission on Waldorf
 22 Station, a project for which MDE has already issued a permit

21

1 that ignored anti-degradation regulations.
 2 In summary, the draft MS4 falls far short of
 3 fulfilling the legal requirements of NPDES permit to
 4 establish enforceable pollution load limits and schedules
 5 when these loads contribute to failing water quality
 6 standards.
 7 Under the guise of adaptive management, the permit
 8 essentially outsources the permitting authority's
 9 responsibilities to the permittee with an internal approval
 10 process that circumvents the public's right to challenge.
 11 Finally, the required monitoring program fails to
 12 ensure monitoring the waterway receiving most of the
 13 county's stormwater and is much too limited to assess the
 14 success or failure of this permit.
 15 We thank MDE for holding this hearing and trying
 16 to improve the permit, but we urge them to address these
 17 issues before issuing the final permit.
 18 Thank you very much.
 19 MR. BAHR: Thank you, Mr. Long, for your comments.
 20 Next up is Ken Hastings.
 21 MR. HASTINGS: Good morning. My name is Ken
 22 Hastings, last name H-A-S-T-I-N-G-S, and I'm with the Mason

22

1 Springs Conservancy here in Charles County.
 2 I'm one of the founders of the conservancy and
 3 I've invested, along with my co-founders, an extreme amount
 4 of sweat equity and a significant amount of money into this
 5 property to try to preserve a special place in Charles
 6 County. That's a place where we receive -- we're right on
 7 the main stem of Mattawoman Creek, so we receive the bulk of
 8 the stormwater that runs through Charles County.
 9 And we experience, first-hand, the corresponding
 10 erosion, the trees that get washed out of the banks and the
 11 pollution that litters our property.
 12 After years of watching Maryland default on one
 13 Chesapeake agreement after another, I'm here today to
 14 denounce the flawed MDE policies and priorities that are
 15 allowing our special places, water quality and marine life
 16 abundance to be destroyed.
 17 I hope you will remember that my criticisms are
 18 directed at these policies and procedures and not at
 19 individual MDE employees who probably don't have a lot to do
 20 with them in the first place.
 21 First off, I want to register a complaint about
 22 the hearing process. When the request for this hearing was

23

1 approved, we asked to be placed on the interested parties
 2 list. I think this is fairly standard administrative policy
 3 throughout the executive branch of Maryland government, but
 4 that didn't happen. We found out about the hearing from
 5 someone else outside of Charles County who was on the
 6 interested parties list that included our MS4 permit. I
 7 don't understand why we were left off of that. It certainly
 8 made it difficult for us to get prepared for this hearing.
 9 Also, if you were looking for a way to keep people
 10 from coming out to this hearing, ten o'clock in the morning
 11 on a workday was a perfect way to do that and I think you
 12 can see that by looking behind me.
 13 MR. BAHR: Mr. Hastings, I am sorry that we did
 14 not get you on the interested parties list. We will correct
 15 that immediately.
 16 MR. HASTINGS: Well, I think I may be on there now
 17 because I'm getting notices about Baltimore and Frederick
 18 and Anne Arundel, but I never got one specifically for
 19 Charles County.
 20 MR. BAHR: Okay. We are now trying to be all-
 21 inclusive now and be as transparent as possible and follow
 22 the EPA. I'll make sure that you're on the list for Charles

24

1 County, as well.
 2 MR. HASTINGS: Okay, thank you.
 3 MDE is on record in trying to defend some of the
 4 important parts of this permit that I actually understand.
 5 I attended the court hearing in Prince George's
 6 County and I was appalled by the type of excuses that the
 7 assistant attorney general offered to defend the policies
 8 that are embodied by this permit. And our permit is
 9 essentially the same, and so the generalities I'm about to
 10 speak of do apply to this.
 11 The AAG said the current flurry of MS4 permits
 12 marks the fourth generation of such permits and he went on
 13 to emphasize that the MDE maintains planning is the first
 14 priority and has since ignored results as a way to clean up
 15 stormwater management, while, meanwhile, stormwater
 16 continues to flood our facility undermining the trees and
 17 increasing the pollution of an important bay tributary.
 18 The second point of his defense I'd like to
 19 explain, stormwater discharges are not required by federal
 20 law to have pollution limits placed on them even though the
 21 law didn't specifically exclude stormwater from this
 22 requirement.

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1 This is a matter of searching for loopholes.
2 And maybe we'd be better off if we just once went right for
3 the letter of the law and tried to do something as specific
4 as we could to reach our goals.

5 The third point: monitoring one discharge, which
6 is going to be an issue everywhere, I think, is better than
7 measuring many because it provides a way to evaluate best
8 management practices at that point.

9 Really? I would think after four generations of
10 MS4 permits and at least two iterations of your stormwater
11 management manual that we wouldn't still be experimenting.
12 We'd actually be trying to reduce pollution and make sure
13 it's being done correctly.

14 This permit is too little, too late. We know it's
15 wrong. We know how to fix it. All we lack is the will to
16 do the right thing.

17 In finding out what MDE's role in life is, I went
18 to the Internet and I found two examples that I think are
19 worthy of note.

20 From Secretary Summers' greeting on your website,
21 he said, "MDE's mission is to protect and restore the
22 quality of Maryland's air, water and land resources while

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1 regulations and permits and the enforcement of federal
2 environmental laws, including the Clean Water Act, I
3 understand the challenges you face.

4 I do not seek perfection, just a modicum of
5 success. I am an old bureaucrat, a biologist and an
6 attorney, so there are a few things I understand about
7 regulatory process.

8 As a general rule, if you will, no defined
9 measurable standard means no enforcement. If you don't have
10 a number, if you don't have a measurement, you cannot
11 enforce a permit. The phrase used by the judges is "void
12 for vagueness."

13 The MDE fact sheet says, an example, "passed in
14 1982 that required appropriate best management practices in
15 order to maintain after development as nearly as possible
16 the pre-development runoff conditions," that after 32 years
17 we are still discussing BMPs as a standard of performance
18 brings to mind the old adage describing insanity, doing the
19 same thing over and over again and expecting a different
20 result.

21 BMPs are methods, not standards. If you do not
22 have a numerical standard, this permit is useless.

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1 fostering smart growth, a thriving and sustainable economy
2 and healthy communities." Well, that makes me feel better.

3 From the MDE brochure that I downloaded,
4 "Restoring and maintaining the quality of ground and surface
5 waters requires MDE to enforce standards and controls on
6 point and non-point sources of pollution." It doesn't say
7 anything about just picking one. It says standards and
8 controls on point and non-point sources of pollution.

9 Nowhere does it say that your mission -- MDE's
10 mission is to hide behind ineffective permits while
11 stormwater helps destroy our public resources, our health
12 and quality of life.

13 You need to turn these warm, fuzzy mission
14 statements into something besides words on paper without
15 substance.

16 Thank you.

17 MR. BAHR: Thank you, Mr. Hastings, for your
18 comments.

19 Next up is Joe Tieger.

20 MR. TIEGER: Joe Tieger, T-I-E-G-E-R, resident of
21 Port Tobacco.

22 With 38 years of experience in the drafting of

28

1 The water quality standards to be achieved are not
2 the vague goals of, quote, "improved water quality," but
3 specific numbers that provide a water body with water
4 quality that supports the biological community in its
5 natural condition.

6 ESD criteria is a predictor of program failure.
7 The criteria for sizing -- from your fact sheet, the
8 criteria for sizing ESD practices are based on capturing and
9 retaining enough rainfall so that the runoff leaving a site
10 is reduced to a level equivalent to a wooded site in good
11 condition. That is perfect.

12 It's the next sentence that makes it nonsensical:
13 "The goal is to provide enough treatment using ESD to
14 address groundwater recharge, water quality and the stream
15 channel protection requirements by replicating woods in good
16 condition for the one-year rainfall event or, approximately,
17 2.7 inches."

18 "Managing the one-year rainfall event on a site is
19 equivalent to treating 98 percent of Maryland's average
20 annual rainfall," well, we may have 98 percent of our
21 average annual rainfall come in one-year events, but that is
22 misleading. The one-year event on impervious surface that

29

1 you're trying to eliminate has a significant effect on a
2 stream because it behaves like, in terms of volume and wave
3 shape, like a less periodic event, like a five-year, ten-
4 year or 20-year event increasing both the volume and
5 velocity.

6 So treating the one-year event is helpful only if
7 the pervious surface or treatment can also reduce the
8 effects of a larger volume event.

9 If the larger volume event destroys the parameters
10 of a stream, eroding the bed and banks and destroying the
11 biological community, then what you do in the following one-
12 year event isn't going to make any difference, which also
13 raises a question of cumulative effects of all the
14 discharges to a waterway.

15 In poking around your site and in calling various
16 offices in Charles County and Prince George's County, I
17 cannot find an entity that evaluates the cumulative
18 discharges to a waterway. And if each discharge is based on
19 the hydrologic parameters of a stream in its natural
20 condition, then that's misleading.

21 You have to consider the total volume of
22 discharges coming from -- in the case of the Mattawoman,

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1 from Prince George's County and those from Charles County.

2 We have pending permits, for example, for the so-
3 called "Waldorf Crossing." There's nothing in there that
4 even indicates any knowledge of the fact that Prince
5 George's County zoned the land immediately north of that
6 project on the other side of Mattawoman Creek from
7 agricultural to residential and commercial last year.

8 Someone has to be evaluating these cumulative
9 discharges with respect to the hydrologic characteristics
10 and biological characteristics of these streams. It doesn't
11 matter if you greatly improve one of those discharges and
12 you do nothing about the rest of them.

13 That may mean limiting discharges in its entirety
14 and that is burdensome. Providing additional capacity is
15 burdensome. But it's time this burden was dealt with
16 because we are really just shifting this burden from the
17 environment to those who caused the burden.

18 As I said, I understand the difficulties you face,
19 that fine-fine edge of the razor of public policy between
20 the public and private sectors. But I think this permit
21 requires a lot of work before it will achieve the goals of
22 protecting the water quality of the streams like the

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1 Mattawoman and Port Tobacco Creek.

2 Thank you very much for this opportunity and for
3 holding this hearing.

4 MR. BAHR: Thank you, Mr. Tieger, for your
5 comments.

6 Next up, we have Bonnie Bick.

7 MS. BICK: Thank you for the opportunity to
8 participate in this hearing. My name is Bonnie Bick, B-I-C-
9 K. I'm representing the Southern Maryland Sierra Club.

10 And I'm actually extremely disappointed with the
11 MS4 permit. We were very excited about the new MS4 coming
12 forward and we heard that it was going to be greatly
13 superior to the last MS4.

14 And we understand that this permit is the only
15 means of enforcing the provisions of the Clean Water Act.
16 So seeing a permit that is disappointing is not what we need
17 to protect the water bodies in Charles County or in the bay.

18 The previous MS4 only dealt with the so-called
19 "development district," and that was primarily the
20 Mattawoman Watershed. And if you listen carefully to Dr.
21 Long's testimony about the decline of the Mattawoman, it is
22 very clear that the previous MS4 failed miserably to protect

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1 the Mattawoman.

2 And, now, the MS4 is going to be covering the
3 entire county and that's a good thing. But I'm very much
4 enthusiastic about environmental protection, but Charles
5 County's stewardship and MDE's stewardship is greatly
6 lacking when it comes to the reality of what's happening on
7 the ground in the watershed.

8 Waldorf Crossing is an example. There's a TMDL
9 for Mattawoman since 2005 and, yet, there's been absolutely
10 no effort to restrain permitting projects that have great
11 destruction for the Mattawoman Creek.

12 And the Waldorf Crossing is just an example, but
13 it's still outstanding. And MDE issued the permit and the
14 water quality certification in a tier-two encatchment area.

15 And, as far as stewardship, I was a participant in
16 the MDE hearing and I was never notified of any of this
17 decision-making by MDE.

18 And as far as the county stewardship, there was a
19 previous alignment for the highway. We're talking about a
20 highway and a large portion of Waldorf which is all in the
21 Mattawoman Watershed.

22 And there was a highway alignment that had much

1 less impact on Mattawoman Creek and the county changed the
2 application in order to move the highway into the Mattawoman
3 stream valleys and wetlands at the developer's request in
4 order to maximize the amount of space the developer could
5 use. And this is just not stewardship. It's lack of
6 stewardship on both the county and MDE's perspective.

7 MDE is required -- was required to do an alignment
8 study -- an alternative alignment study, which they did not
9 do, and this is not a good sign when it comes to protecting
10 our watersheds. It's worse than a bad sign.

11 So we understand that stormwater planning requires
12 reduction in impervious surfaces and reduction of the loss
13 of forest or, in more urbanized areas, the planting of
14 forest, but there's no consideration of that when these
15 permit decisions are made.

16 So, essentially, with the TMDL for Mattawoman
17 Creek, it can be used as an example of how the TMDL has not
18 been enforced.

19 I am a very active participant in trying to save
20 Mattawoman Creek. I'm Chair of the Mattawoman campaign for
21 the Maryland Chapter of the Sierra Club and I attended all
22 of the WIP meetings; and, yet, I'm extremely disappointed in

1 Charles County's WIP because, essentially, it's using the
2 excess capacity in the Mattawoman Sewage Treatment Plant as
3 a catchall for its restoration. There are restoration
4 projects, but the main part of that is the excess capacity
5 of the Mattawoman Sewage Treatment Plant.

6 What did Charles County do? At the same time that
7 they're claiming excess capacity, they're applying to double
8 the capacity. That's called just getting around the issue
9 of protecting the watershed.

10 And Dr. Long mentioned the taskforce. MDE was a
11 participate in the taskforce and, yet, there is a blatant --
12 I hate to say it, but Mattawoman is dying under the Charles
13 County and MDE stewardship, and it is worth more than we can
14 say.

15 And this is an example of how the bay is dying.
16 And, yes, you're dotting your T's and you're putting your
17 reports in, but right before our eyes, the watershed -- this
18 one watershed that we're talking about is dying.

19 And I'm just -- I'm very unhappy about that. How
20 could you -- as I said, we were excited about the coming of
21 the MS4 because we thought it would make a difference, but
22 it has no limits and no numbers, as Mr. Tieger mentioned,

1 and all of the people who have testified.

2 How can we have -- it's just like the TMDL that we
3 got in 2005, no progress, no -- it was like it didn't
4 happen, although it did happen from your perspective, from
5 MDE's perspective because you needed to do it. But it was
6 never enforced and it didn't influence permitting decisions
7 at all.

8 And the county now is going to be responsible for
9 monitoring their own decision-making and that's not
10 conducive to, you know, protecting the watershed.

11 So the permit must be -- I mean, we're not
12 expecting MDE, unfortunately, to revise this permit because
13 we are a member of the lawsuit against the Prince George's
14 County MS4 which is virtually the same permit as we have
15 here. So MDE isn't voluntarily making the MS4 a better
16 permit. But even though we're not expecting it, it would be
17 a good thing to happen.

18 And it should happen and it should be
19 strengthened, and these issues that we've brought forward
20 should be addressed.

21 And I thank you very much.

22 MR. BAHR: Thank you, Ms. Bick, for your comments.

1 Finally on our list is Mr. Bruce Gilmore.

2 MR. GILMORE: Thank you, Mr. Bahr. I have before
3 me a statement and the recommended changes to the permit
4 which the Maryland Stormwater Consortium -- and let me start
5 over again by saying my name is Bruce Gilmore. My last name
6 is G-I-L-M-O-R-E, first name is B-R-U-C-E. I'm here on
7 behalf of the Maryland Stormwater Consortium.

8 I would also like to say that I endorse the
9 comments from the four previous advocates who preceded me in
10 today's hearing.

11 As I was saying, I have a statement and the
12 attached proposed recommended changes for the permit. They
13 are nicely printed out. And I will endorse -- I will
14 introduce them or ask that they be part of the record both
15 for today's hearing and for the final record as it proceeds.

16 Let me also say that the recommendations that we
17 make have been pulled together by a wide and broad group of
18 advocates. They were part of the submission made by --
19 almost identical to the submission made by Prince George's
20 County on behalf of the county as part of the record for the
21 public hearing and comment period. That date of submission
22 was June 27th, 2013.

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1 Unfortunatly, MDE rejected the county's
 2 submission. And had it accepted that submission and
 3 permitted the county to proceed on the basis of that
 4 submission, then the county's ability to have stronger
 5 results in terms of permit implementation would have been
 6 achieved. And it is regrettable that that did not happen.
 7 Today, we are faced with nine jurisdictions who
 8 will be issued permits. Some have already been issued them
 9 at the end of last year. Some were issued permits earlier
 10 this year. And several others are still in the public
 11 process of public hearings and comment periods. But,
 12 inevitably, in this year, 2014, these permits will be issued
 13 and final in one way or another.
 14 As Ms. Bick alluded to, it is not too late for MDE
 15 to look carefully at our submission and to accept it as a
 16 departure point for discussion with stakeholders on the
 17 permit, with us on the permit, to incorporate our
 18 recommendations or at least come to an agreement with our
 19 community on the recommendations and speaking to offer a
 20 somewhat informed view of the status of these permits.
 21 I believe that if MDE were to do that, they would avoid
 22 litigation that is beginning to unfold throughout the

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1 various counties to which these permits apply.
 2 Let me say that my -- I've just given a summary of
 3 some of the views that the consortium has. Others are
 4 contained in the printed statement. I will not reiterate
 5 those today at this hearing.
 6 Let me just say that there are nine recommended
 7 changes to the permit. They are set forward. We have
 8 commented and brought these forward at every other hearing
 9 that I have appeared on the permits, including Baltimore
 10 City, Baltimore County, Frederick County, Prince George's
 11 County, Anne Arundel County and today.
 12 And, if I may, I just want to briefly go over them
 13 in subject matter form and then I will be completing my
 14 statement.
 15 The nine changes that we propose bear on
 16 strengthening the language on water quality standards so
 17 it's clear what the goal is; strengthening the language on
 18 restoration plans, also known as the TMDL Implementation
 19 Plans. Essentially, I guess, MDE is now calling them TMDL,
 20 wasteload allocation/WLA restoration plans.
 21 Three, impervious surface restoration that
 22 environmental site design be used as the default mode of

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1 impervious surface, impervious cover restoration.
 2 Four, maintenance of county-owned facilities that
 3 the county and all permittees which have such facilities
 4 which are under their direct control have a great deal of
 5 imperviousness associated with them, which have a history of
 6 having stormwater runoff in less than optimum controlled
 7 environments, that those impervious surfaces in the
 8 maintenance facilities be set in more of a timeframe so that
 9 there's a sense of the community and the public officials
 10 that those maintenance facilities and other facilities will
 11 have -- meet goals within this permit and not go over into
 12 subsequent permits, years.
 13 Monitoring: I think monitoring has been dealt with
 14 by my colleagues. I can only say that when it comes to a
 15 wasteload allocation restoration plan, the permittee,
 16 Charles County, is given a choice. They can do actual
 17 monitoring to see if that plan is working or they can apply
 18 some sort of modeling.
 19 Our concern that either -- that since there are no
 20 real goals, timetables and benchmarks to meet in the course
 21 of this first five-year permit, so that the public,
 22 permittee-MDE-EPA can say they are numerically meeting and

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1 making progress.
 2 You can't make progress in this kind of a permit
 3 texturally because, essentially, the permittee says, "I am
 4 making progress. See, I'm making progress."
 5 If you repeat that phrase enough, you're still not
 6 making any progress unless you can show that there is a
 7 measurable reduction of the results of stormwater pollution.
 8 And that's the nub of the WLA/TMDL restoration plan
 9 deficiencies.
 10 Public participation: We believe -- and I hope
 11 today to begin a discussion with my colleagues to begin an
 12 outreach program in the watersheds to bring together
 13 citizens and the county to look at the specifics of a TMDL
 14 restoration plan so that there's a meeting of the minds
 15 between the advocates and the county or permittee on what
 16 should be done to meet those TMDL restoration plans.
 17 And I hope that we can work with MDE to have a
 18 sort of a sense of what we need to do even though these
 19 permits are not perfect. They are the permits likely to be
 20 what we have to work with.
 21 They may be modified. They may be modified either
 22 by the good sense of MDE as a result of this and other

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1 hearings or they may be modified according to litigation.
 2 Now, if it's the latter course, then years and years can go
 3 by.
 4 And the bay restoration has a deadline. It has a
 5 deadline of 2025. Now, if this permit goes until 2019, then
 6 the question becomes will there be not just some progress
 7 made, continuing progress made, but some numerically
 8 identifiable progress that shows that the TMDLs and
 9 wasteload allocations will be met, because if they're not
 10 met, then, as you look at the whole aggregation of permits
 11 in this state, the wasteload allocations and TMDLs for the
 12 Chesapeake Bay will not be met and so we will have lost
 13 time. We're sort of not getting traction, if you will.
 14 Maximum extent practicable: The permit should
 15 require that all stormwater discharges to the MS4 be
 16 controlled to the maximum extent practicable and that
 17 periodic evaluations by MDE be undertaken to assure that
 18 such control is being met.
 19 The permit and other management programs should
 20 require that exemptions under the Stormwater Management Act
 21 of 2007 should be justified and that the associated
 22 pollutant loads resulting from such granted exemptions be

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1 identified and justified.
 2 If I can just elaborate for a moment on this
 3 context, essentially, you have the 2007 Act. It has gone
 4 into effect.
 5 The manual is in place, as it's a regulatory
 6 requirement that the manual be adhered to by all new and
 7 redevelopment which is one of the most progressive parts of
 8 any stormwater law in the country. In fact, the 2007 act is
 9 probably the most progressive stormwater law in the United
 10 States of America.
 11 However, if under some of the permutations of
 12 amendments to the regulations effectuated toward the end of
 13 -- three or four years ago, I guess, you can have exemptions
 14 in new development or redevelopment and those exemptions are
 15 not tracked and understood in terms of the water quality
 16 impact, then you've sort of under -- if I may, pun intended,
 17 you've eroded the efficacy of the Act, which is what this
 18 permit and this section of the permit intends to get at,
 19 that the Act not be eroded, that there be very careful
 20 attention to what kind of exemptions and when they were
 21 granted.
 22 Finally, the completion of local code changes so

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1 as not to block the use of environmental site design. The
 2 permit should be amended to require the new county
 3 government to change local land use and other ordinances
 4 within two years -- let me strike new. That's a mis-quote -
 5 - to remove any impediments to the use of environmental site
 6 design and to implement the 2007 Act.
 7 I know that essentially MDE has tried its best to
 8 keep track of where these local codes have been changed.
 9 That is a substantial task for it to oversee and we hope
 10 that the county and this amendment to this permit working
 11 together can effectuate this requirement much more
 12 efficiently.
 13 We urge, the Maryland Stormwater Consortium, that
 14 MDE adopt these recommended changes during the period of
 15 time after today's public hearing and the issuance of the
 16 final permit text.
 17 We accompany our request with our commitment to
 18 assist both MDE and Charles County in the full
 19 implementation of the permit particularly in reaching out to
 20 citizens for their participation.
 21 Thank you very much for the opportunity granted to
 22 me to come and participate today. And I am going to now

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1 deliver this directly to the young woman here who is our
 2 reporter today.
 3 MR. BAHR: Okay, thank you, Mr. Gilmore.
 4 And, for the record, Mr. Gilmore has provided
 5 written testimony to For the Record, Ms. Wanda Granger.
 6 Does anyone else here wish to speak today?
 7 (No response.)
 8 MR. BAHR: Okay. Anybody that wants to submit
 9 written testimony after today can do so up until September
 10 26th, 2014.
 11 Comments can be submitted to me at Mr. Raymond
 12 Bahr, Maryland Department of the Environment, Water
 13 Management Administration, Sediment, Stormwater and Dam
 14 Safety Program, 1800 Washington Boulevard, Suite 440,
 15 Baltimore, Maryland 21230-1708 or they can be emailed to me
 16 at raymond.bahr -- spelled out R-A-Y-M-O-N-D dot B-A-H-R --
 17 @Maryland.gov.
 18 Additional information on this draft permit, fact
 19 sheet and stormwater management in Maryland can be found on
 20 MDE's website at www.mde.state.md.us.
 21 After the comment period has closed on September
 22 26th, 2014, MDE will develop a response to comments document

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1 that will support the final determination to issue Charles
2 County an MS4 permit.

3 Anyone who signed up on our attendance sheet today
4 or gave testimony will be added to MDE's interested parties
5 list for Charles County and will be kept apprised of all
6 permit actions via email announcements.

7 And I would ask that if there's anybody in the
8 audience who has not signed one of these two sheets that are
9 sitting up next to the reporter, to please do so if you want
10 to be on the interested parties list.

11 Finally, I would like to thank everyone for
12 attending today's public hearing and for your participation
13 in these very important matters.

14 Thank you.

15 (Whereupon, the public hearing concluded at
16 approximately 11:20 a.m.)

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1 CERTIFICATE OF COURT REPORTER

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4 I, Wanda L. Granger, a Notary Public of the State
5 of Maryland, County of St. Mary's, do hereby certify the
6 foregoing proceeding was recorded via voice writing by me
7 and this transcript is a true record of the proceedings.

8 I further certify that I am not of counsel to any
9 of the parties, nor in any way interested in the outcome of
10 this action.

11 As witness my hand and notarial seal this 4th day
12 of September, 2014.

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WANDA L. GRANGER, Court Reporter
NOTARY PUBLIC

20 My Commission Expires: January 20, 2017

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