

**Statement of Bruce A. Gilmore  
Maryland Stormwater Consortium  
Public Hearing on the Frederick County Phase I, NPDES MS4 Permit  
August 28, 2014**

This statement is submitted on behalf of the Maryland Stormwater Consortium, a group of organizations working to achieve strong stormwater management and MS4 permits so that stormwater runoff damage and pollution can be reduced as much as possible.

There are ten large Maryland counties and Baltimore City for which Phase I MS4 permits have been issued for over more than ten years. These same jurisdictions have seen substantial population growth and the accompanying residential and commercial development. Unfortunately, for these same jurisdictions, stormwater runoff is a continuing source of pollution and waterway damage. Frederick County is among these jurisdictions. It has severe stormwater runoff problems which need to be abated.

Frederick County, like the nine other large Maryland jurisdictions', has the opportunity, through the reissuance of a strong MS4 permit under consideration today, to restore its waterways to a level where its citizens can use them for enhanced economic and recreation opportunities. In Maryland, clean water drives better health and recreation, and the resulting economic opportunity. An example of this is the total \$3 billion benefit of recreation boating and fishing on Maryland's State and local economies. A good MS4 permit, vigorously implemented will result in less stormwater borne pollution and beneficially affect both the County's waterways and Chesapeake Bay.

As the fact sheet accompanying the release of this draft permit sets out, Frederick County covers an area of 644 square miles and has approximately 250 "major" outfalls. These outfalls, which are pipes or streams into which stormwater empties, discharge polluted stormwater at substantial volumes into the Upper Potomac River Basin, one of the ten major tributaries to the Chesapeake Bay. Several stream segments in the Basin are adversely affected by fecal bacteria, sediments and nutrients. TMDLs have been approved and WLAs established for portions of Catoctin Creek, Double Pipe Creek and the Lower and Upper Monocacy River. These stormwater pollution "diets" are very important and the MS4 permit is critical toward meeting them.

The Maryland Stormwater Consortium commends the Maryland Department of the Environment for the work it has done to issue more complete draft MS4 permits to address the growing impact of stormwater runoff. These more complete permit iterations

now contain a more specific text to restore, in each five year term, twenty percent of impervious cover, a clear statement that the permit is the “backbone” to achieving the Chesapeake Bay WIP and TMDL requirements, and the clear requirements to track any stormwater plan waivers and implementation of the Maryland Stormwater Management Act of 2007.

The Consortium now presents proposed changes to the Frederick County MS4 permit which will add to its completeness and strength. These recommendations, if adopted, will result in a permit of greater enforceability, accountability and a higher benefit to cost for implementation. Included with this statement are the recommended language changes which we hope will be adopted. I now will review them for the record.

- 1. Water quality standards** Frederick County must be required to manage implement and enforce programs, plans and practices in this permit which eliminate non-stormwater discharges into the MS4 and eliminate pollutants in stormwater discharges from the MS4. Compliance with these requirements and Parts IV through VII of the permit will constitute compliance by the County of the Clean Water Act.
- 2. Restoration Plans aka TMDL Implementation Plans** The permit should require Frederick County to prepare plans as enforceable permit requirements to implement approved TMDL and WLA with compliance schedules containing the final date for meeting applicable WLAs and interim milestones and numeric benchmarks. These deadlines and requirements must be consistent with Chesapeake Bay TMDL and WIP.
- 3. Impervious Surface Restoration** The permit should require, as part of the twenty percent impervious surface restoration, the use of environmental site design unless it can show the infeasibility for its use. At least of 1 inch of stormwater from a 24 hour storm must be retained on site.
- 4. Maintenance** The permit must require the County to establish within a set time frame a maintenance plan for County owned and operated maintenance facilities.
- 5. Monitoring** The permit must require the County, within two years of the effective date, to establish a monitoring program, sufficient to assess compliance with all the

provisions of the permit including TMDL restoration plans.

**6. Public Participation In Restoration Plans and Stormwater Management Programs**

The permit must require that public participation plans for restoration and stormwater management programs include any requested public hearing and continual public outreach and public input into such plans and thirty day comment periods.

**7. Maximum Extent Practicable** The permit should require that all stormwater discharges to the MS4 be controlled to the maximum extent practicable and that periodic evaluations by MDE be undertaken to assure such control is being met.

**8. Other Management Programs** The permit should require that exemptions under the Stormwater Management Act of 2007 should be justified and that the associated pollutant loads resulting from such granted exemptions be identified and justified.

**9. Completion of of Local Code Changes So As Not to Block the Use of Environmental Site Design** The permit should be amended to require the new County government to change local land use and other ordinances with two years, to remove any impediments to the use ESD and to the implementation of the 2007 Stormwater Management Act.

The Maryland Stormwater Consortium urges MDE to adopt these recommended changes during the period of time after today's public hearing and the issuance of the final permit text. We accompany our request with our commitment to assist both MDE and Frederick County in the full implementation of the permit particularly in reaching out to citizens for their participation.

We appreciate greatly the opportunity to present our views at this public hearing.

**Frederick County NPDES MS4 Permit - proposed language revisions  
Submitted by the Maryland Stormwater Consortium  
August 28, 2014**

Additions to permit text are underlined; deletions are in ~~strikethrough~~

**1. Water Quality Standards**

Section III. Water Quality

The permittee must manage, implement, and enforce ~~a stormwater management program (SWMP)~~ the programs, plans, and practices required in this permit in accordance with the Clean Water Act (CWA) and corresponding stormwater National Pollutant Discharge Elimination System (NPDES) regulations, 40 CFR Part 122, to meet the following requirements:

1. ~~Effectively prohibit pollutants in stormwater discharges or~~ Eliminate non-stormwater discharges and other unauthorized discharges into the MS4;
2. Eliminate pollutants in stormwater discharges from the MS4 as necessary to comply with Maryland's receiving water quality standards;
23. Attain applicable wasteload allocations (WLAs) for each established or approved Total Maximum Daily Load (TMDL) for each receiving water body, consistent with Title 33 of the U.S. Code (USC) §1342(p)(3)(B)(iii); 40 CFR §122.44(k)(2) and (3); and
34. Comply with all other provisions and requirements contained in this permit, and in plans and schedules developed in fulfillment of this permit.

Compliance with all the conditions contained in PARTs IV through VII of this permit, including milestones and final dates for attainment of applicable WLAs, shall constitute compliance with §402(p)(3)(B)(iii) of the CWA and adequate progress toward compliance with ~~Maryland's receiving water quality standards~~ and any EPA approved stormwater WLAs for this permit term.

## **2. Restoration Plans (aka TMDL Implementation Plans)**

Section IV.E.2.b (within "Restoration Plans and Total Maximum Daily Load" permit section):

b. Within one year of permit issuance, Frederick County shall submit to MDE for approval a restoration plan for each stormwater WLA approved by EPA prior to the effective date of the permit. The County shall submit restoration plans for subsequent TMDL WLAs within one year of EPA approval. Upon approval by MDE, these restoration plans will be incorporated into the permit as enforceable under this permit provisions via a major modification, including milestones, benchmarks, and final dates for attainment of applicable WLAs. The County shall fully implement the plan upon MDE approval.

If the County cannot demonstrate that its selected projects, programs, and controls will achieve WLAs, MDE will revise this permit to include additional controls and/or additional numeric effluent limitations sufficient to ensure that all applicable WLAs will be met. The County shall post the most current version of the plan on the County's website.

As part of the restoration plans, Frederick County shall:

i. Include a compliance schedule containing the final date for meeting applicable WLAs and interim milestones and numeric benchmarks. Final attainment dates shall be set as the soonest possible date by which each WLA can be attained and shall be consistent with the deadlines associated with the Chesapeake Bay TMDL and associated Watershed Implementation Plans.

a. Numeric benchmarks will specify annual pollutant load reductions and will be used to assess progress toward attainment of milestones and ultimate WLA attainment;

b. Interim milestones will be expressed as a pollutant load reduction, with associated deadlines for attainment, will be enforceable upon incorporation into the permit, and will be included where final attainment of applicable WLAs requires more than five (5) years. Milestone intervals will be as frequent as possible but will in no case be less

frequent than every five(5) years;

ii. Include a detailed schedule for implementing all structural and nonstructural water quality projects, enhanced stormwater management programs, illicit discharge detection and elimination program, erosion and sediment control program, and alternative stormwater control initiatives necessary for meeting applicable WLAs, along with provision of the basis for the chosen approach, through demonstration with modeling of how each applicable WLA (and associated benchmarks and milestones) will be attained using the chosen projects, programs, and controls, by the date for ultimate attainment;

iii. Establish a quantitative assessment of the County's current pollutant loadings using the information collected during the source identification process required by Part IV.C of this Permit. This assessment of current loadings shall serve as the baseline from which the pollutant load reductions called for in the County's compliance schedule shall be calculated;

~~ii-~~iv. Provide detailed cost estimates for individual projects, programs, controls, and plan implementation and maintenance;

~~iii-~~v. Evaluate and track the implementation of restoration plans through monitoring ~~or~~ and modeling to document the progress toward meeting established benchmarks, deadlines, and stormwater WLAs; and

~~iv-~~vi. Develop an ongoing, iterative process that continuously implements structural and nonstructural restoration projects, program enhancements, new and additional programs, and alternative BMPs where EPA approved TMDL stormwater WLAs are not being met according to the benchmarks and deadlines established as part of the City's watershed assessments. If data indicate failure to meet any applicable WLA, including failure to attain any interim milestone or benchmark, the City shall make appropriate adjustments to its programs and controls within (6) months to address these failures.

### **3. Impervious Surface Restoration**

Within Section IV.E.2.a ("Restoration Plans"):

By the end of this permit term, Frederick County shall commence and complete the implementation of restoration efforts for twenty percent of the County's impervious surface area ~~consistent with the methodology described in the MDE document cited in Part IV.E.2.a.~~ that has not already been restored to the MEP, in addition to any impervious surface area

which the County is under a previous obligation to restore. Such restoration efforts shall be designed to retain on-site at least 1 inch of stormwater from a 24-hour storm through evapotranspiration, infiltration, and/or reuse using Environmental Site Design retrofit techniques, unless the County demonstrates that:

- i. sole use of such techniques to meet the requirements of this section is impracticable and the County has exhausted all reasonable opportunities to use ESD to meet this requirement, and
- ii. that other types of restoration techniques will, in combination with ESD techniques, be adequate to achieve all applicable benchmarks, milestones, and final deadlines for attainment of WLAs and protect or restore the physical and biological integrity of the County's streams and rivers.

#### 4. Maintenance

In a new section titled "Maintenance of Stormwater Management Practices" – this can replace Section IV.D.1.d (regarding inspections):

##### d. Maintenance of Stormwater Management Practices

###### i. County Owned and Operated Practices

Within 18 months of the effective date of this permit, the County shall develop and implement a maintenance plan for all County-owned and operated stormwater management practices. This plan shall be designed to ensure that these practices are properly maintained so that they operate as designed, are safe, and are free from trash. The plan shall provide for the inspection of all practices at least once every three years and shall identify the means by which the County will keep the practices properly maintained. The County shall submit documentation in its annual reports identifying the practices inspected, the number of maintenance inspections performed, the County's inspection schedules, the actions used to ensure compliance, and any other relevant information.

###### ii. Non-County Owned and Operated Practices

In conjunction with updating of relevant ordinances and policies, as required by COMAR 26.17.02, the County shall develop accountability mechanisms to ensure maintenance of stormwater control measures on non-County property. Those mechanisms may include combinations of deed restrictions, ordinances, maintenance agreements, or other policies deemed appropriate by the permittee. The County must also include a long-term maintenance

verification process, which may include County inspections, 3rd party inspections, owner/operator certification on a frequency deemed appropriate by the permittee, and/or other mechanisms.

## **5. Monitoring**

Within Section IV.F ("Assessment of Controls"):

Assessment of controls is critical for determining the effectiveness of the NPDES stormwater management program and progress toward improving water quality. The County shall use chemical, biological, and physical monitoring to assess watershed restoration efforts, document BMP effectiveness, ~~or and calibrate water quality models for showing track~~ progress toward meeting benchmarks, milestones and final deadlines for attainment of any applicable WLAs developed under EPA approved TMDLs identified above. ~~Additionally, the County shall continue physical stream monitoring in the Black Branch watershed to assess the implementation of the latest version of the 2000 Maryland Stormwater Design Manual.~~ Specific monitoring requirements are described below:

Within 2 years of the effective date of this permit, the County shall develop, public notice, and submit to MDE for review and approval a monitoring program sufficient to demonstrate compliance with all provisions of this permit, including TMDL restoration plans, wasteload allocations, milestones, and benchmarks. The program shall include water quality monitoring and may be supplemented by modeling. The program will be incorporated into the permit as enforceable provisions via a major modification. The County shall fully implement the program upon MDE approval.

For water quality monitoring, the number of samples, sampling frequencies, and number and locations of sampling sources must be adequate to ensure data are statistically significant and interpretable for all County water bodies. This monitoring must also be adequate to determine if improvement in water quality is being attained in order to make modifications to relevant management programs as necessary.

If the County chooses to use modeling (including modeling based on volume reduction achieved by impervious surface restoration) to supplement its water quality monitoring efforts, the County shall show that its chemical and physical monitoring provides accurate representations of water quality conditions sufficient to calibrate its model(s). In its annual report to MDE, the County shall describe how it has calibrated its model(s) with monitoring.

The County shall evaluate the implementation of the program in its annual report and make adjustments to its monitoring and modeling programs if their results are found at any point to be inaccurate or insufficiently representative.

## **6. Public Participation in Restoration Plans and Stormwater Management Programs**

Within Section IV.E.3. ("Public Participation," within the section on Restoration Plans):

Frederick County shall provide continual outreach to the public regarding the development of its watershed assessments and restoration plans. Additionally, the County shall allow for public participation in the TMDL process, solicit input, and incorporate any relevant ideas and program improvements that can aid in achieving TMDLs and water quality standards. Frederick County shall provide:

- a. Notice in a local newspaper and the County's web site outlining how the public may obtain information on the development of watershed assessments and stormwater watershed restoration plans and opportunities for comment;
- b. Procedures for providing watershed assessments and restoration plans to interested parties upon request;
- c. A minimum 30 day comment period before finalizing watershed assessments and stormwater watershed restoration plans;
- d. A public hearing at least 30 days before finalizing restoration plans upon request;
- ~~e.~~ A summary in each annual report of how the County addressed or will address any material comment received from the public.

Within Section IV.D ("Management Programs," within the section on Stormwater Management, a new section titled "Public Participation":

## **7. Public Participation**

The County shall provide continual outreach to the public regarding the development of its stormwater management programs. Additionally, the County shall allow for public participation and input in the development of any plans or programs developed pursuant to this section. Frederick County shall provide:

- a. Notice in a local newspaper and the County's web site outlining how the public may obtain information on the development of its stormwater management programs and opportunities for comment;
- b. Procedures for providing any written plans developed pursuant to this section to interested parties upon request;

c. A minimum 30 day comment period before finalizing any plans or programs developed pursuant to this section;

d. A public hearing at least 30 days before finalizing such plans or programs;

e. ~~4~~. A summary in each annual report of how the County addressed or will address any material comment received from the public.

## **7. Maximum Extent Practicable**

Section IV.D (“Management Programs”):

The following management programs shall be implemented in areas served by Frederick County’s MS4. These management programs ~~are~~ shall be designed to control stormwater discharges to the maximum extent practicable (MEP) and shall be maintained for the term of this permit. Additionally, these programs shall be integrated with other permit requirements to promote a comprehensive adaptive approach toward solving water quality problems. The County shall modify these programs according to needed program improvements identified as a result of periodic evaluations by MDE to ensure that the County is in fact reducing its discharge of pollutants to the MEP.

## **8. Other Management Program Issues**

Within Section IV.D (“Management Programs”):

- IV.D.1.a.i. Complying with the Stormwater Management Act of 2007 (Act) by implementing environmental site design (ESD) to the MEP, as defined by the Act and implementing regulations, for new and redevelopment projects
- IV.D.1.b.iii. Number of stormwater exemptions issued, including the justification for the exemption and associated pollutant load; and
- IV.D.1.b.iv. Number and type of waivers received and issued, including those for quantity control, quality control, or both. Multiple requests for waivers may be received for a single project and each should be counted separately, whether part of the same project or plan. The total number of waivers requested and granted for qualitative and quantitative control shall be documented, along with the justification for the waivers and associated pollutant load.

## **10. ESD Code Changes and Deadlines**

Within Section IV.D.1.a:

- 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. 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; and
  - ~~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.