



Mr. Brian Clevenger
Maryland Department of the Environment
Water Management Administration, Sediment,
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BY: Email

RE: National Pollution Discharge Elimination System, Tentative Municipal
Separate Storm Sewer System Discharge Permit for Frederick County, 11-DP-3321,
MD0068357

Dear Mr. Brian Clevenger,

Thank you for the opportunity to present our views on the above-titled tentative Municipal Separate Storm Sewer System ("MS4") permit for Frederick County. On behalf of our 4,000 Maryland members, including more than 500 in Frederick County, the Potomac Conservancy is vitally interested in improving the management of polluted stormwater runoff in Frederick County.

Stormwater pollution is a significant problem in Maryland and across the entire Potomac River watershed with a host of local threats like contaminated drinking water supplies, increased erosion and flooding, and unsafe recreation areas. According to the Chesapeake Bay Total Maximum Daily Load ("TMDL"), Maryland stormwater delivers 28 percent of the total nitrogen load, 28 percent of the total phosphorus load, and 32 percent of the total sediment load to the Bay¹.

Frederick County's creeks and streams are increasingly degraded from rapidly growing rates of local polluted runoff. A 2011 Versar Inc. report revealed that 11 of 20 local subwatersheds were severely impaired and the remainder showed at least moderate impairment on the benthic index scale on significant stretches of stream miles.² Over two dozen of the county's local rivers and streams are on Maryland 303d list of impaired waters.

Between 2000 and 2010, Frederick County's population grew by 19.5 percent—the second greatest increase in all suburban Maryland counties. Instead of responding to growth pressures by using Smart Growth land-use planning to concentrate new populations in areas where infrastructure and development already exist, Frederick County is experiencing exorbitant suburban sprawl.

Since January of 2014 alone, dozens of rezoning approvals by the Board of County Commissioners have transferred thousands of acres of land from agricultural and conservation zones to residential zones. This will lead to a vast increase in impervious surface in part of the county covered by the MS4 permit. With 1,400 stream miles flowing through Frederick County's changing landscape, waterways cannot survive

¹ U.S. Environmental Protection Agency, Chesapeake Bay Total Maximum Daily Load for Nitrogen, Phosphorus and Sediment (December 29, 2010), §4.3, at 4-5, 4-6 [hereinafter "Bay TMDL"]. In Maryland, stormwater contributes 18.2 percent, 22.4 percent, and 39.4 percent, of nitrogen, phosphorus, and sediment, respectively. Maryland Baystat, "Causes of the Problems," http://www.chesapeakebay.net/issues/issue/stormwater_runoff.

² Versar, Inc., Frederick County Stream Survey 2008-2011 Four-year Report (June, 2013)

uncontrolled stormwater runoff and it is imperative that the MS4 permit require appropriate and sufficient stormwater prevention and mitigation efforts that are enforceable and transparent.

U.S. Environmental Protection Agency (“EPA”) investigators and Chesapeake Bay Program scientists (respectively) estimate that the only pollution sector that is substantially growing is the urban and suburban stormwater sector, while the other major sectors’ contributions to water pollution in the Bay (e.g., agriculture or wastewater treatment) are being reduced.³

According to the National Research Council, managing urban stormwater pollution is “one of the great challenges of modern water pollution control, as this source of contamination is a principal contributor to water quality impairment of water bodies nationwide.”⁴

MS4 permits constitute one efficient and crucial nexus between the science of the Clean Water Act’s Chesapeake Bay TMDL, the policy narratives of states’ Watershed Implementation Plans (“WIPs”), and actually realizing many of those objectives at the local level.

The tentative permit is a better permit than its expired predecessor in 2002. While many of the state’s waters are still badly polluted by stormwater runoff and not yet in attainment of state water quality standards, each such permit improves somewhat on the ones before it. We recognize those improvements, including the integration of the Maryland Stormwater Act of 2007, the increase of from 10% to 20% impervious surface retrofit requirements, and attempts to bring the county’s 13 local TMDLs into the permit. We thank the Maryland Department of the Environment (“MDE”) for its hard work and continued efforts toward achieving state water quality standards through this improved MS4 permit.

Despite improvements, however, water quality violations remain.

- 1) The permit must require the county to establish and implement a regular and time-bound maintenance of stormwater utilities in order to prevent backslide in pollution reduction efforts.
- 2) The permit must include a schedule for necessary pollution reductions in order to hold the jurisdiction accountable for its Waste Load Allocations from all 250 of the county’s stormwater outfalls and diffuse runoff plaguing local and downstream waters.
 - a. The requirement to monitor 100 outfalls per year must be reflected in regular reporting to the State and made available for public and stakeholder review.
- 3) The permit must require the enforceable and transparent eradication of all point-source discharges in the county into the permit area in order to comply with Clean Water Act standards.
- 4) The permit must require that the county’s discharges comply with Water Quality Standards without exception for claims that resource restrictions inhibit full attainment under the veil of what is practicable. The permit must contain a stated prohibition against discharges which cause or contribute to the violation of applicable State water quality standards.
- 5) The permit must require and contend that the county review and amend local codes that create barriers to the use of Environmental Site Design that adopt ESD best management practices on private lots and permit areas.

³ U.S. Environmental Protection Agency, Office of the Inspector General, Development Growth Outpacing Progress in Watershed Efforts to Restore the Chesapeake Bay, Evaluation Report No.2007-P-00031, September 10, 2007, Summary Recommendations; Chesapeake Bay Program, Bay Barometer, CBP/TRS 293-09, EPA-903-R-09-001 (March 2009), 8.

⁴ National Research Council, National Academies of Science, Urban Stormwater Management in the United States (2008), vii.

- 6) Sections in the permit concerning the county's 13 local TMDLs and restoration plans must be clarified, strengthened, and made enforceable and fully accountable.
- 7) The permit must require compliance within one year with The Maryland Stormwater Act of 2007.
- 8) The permit must require the county to annually review the pollution reduction efficiencies of BMPs based on hydrologic and filtering performance standards in order to reap the greatest pollution reductions per investment within standardized reporting procedures.
- 9) In accordance with COMAR, the County must demonstrate verifiable plans and progress toward implementing ESD to the MEP by removing codified barriers to ESD and prioritizing the preservation of natural features to filter and slow stormwater.
- 10) The County must provide reasonable assurance of infeasibility before rejecting efforts to remove barriers to Environmental Site Design or the use of Environmental Site Design to the Maximum Extent Practicable for required impervious surface retrofits.
- 11) 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, and on the impacts of the county's stormwater management program under the permit for annual review and federal TMDL reporting.
- 12) Post-construction stormwater performance standards which apply in the county should be set higher under this permit than current state standards, and trading should be permitted.
- 13) The permit must require that the county's Soil and Conservation District regularly report results of inspections and enforcement on all 5,000 square foot+ development lots to MDE.
- 14) Retrofit plans should prioritize permit areas where the greatest concentration of impervious surfaces exist and Environmental Site Design where new development is zoned to sprawl in order to focus programs in urbanized and developing areas of the county.
- 15) The permit must require public transparency and allow for stakeholder engagement on impactful changes to MS4 permit procedures.
- 16) The permit must not allow for exemptions or variance under the Maryland Stormwater Management Act of 2007 unless fully justified with reasonable assurance that alternative efforts to comply have been fully exhausted and subject to a 30 day public comment period if requested.
- 17) The permit should allow for reasonable crediting of preservation practices for natural lands and open space without reducing the 20% retrofit requirement of existing impervious surfaces. All preservation practices should be credited but should not substitute pollution reduction practices.

Potomac Conservancy appreciates the opportunity to comment on Frederick County's tentative permit and regards the enforcement of this permit as the most essential tool to restoring local watershed health, saving the Potomac River, and protecting Chesapeake Bay. We urge MDE to adopt the above recommendations to strengthen Frederick County's tentative draft MS4 permit. The MS4 permit offers the greatest reasonable assurance that the overarching Chesapeake Bay TMDL will be achieved and local waterways will be protected and restored.

This draft permit represents a far stronger regulatory instrument than its predecessor approved in 2002 and expired in 2007 and previous iterations. However, the above concerns must be addressed to achieve restored local waterways and to meet WLA's under the Chesapeake Bay TMDL. The county must expeditiously establish quantitative baselines from which to measure progress toward local TMDLs and State Water Quality Standards.

Frederick County's waterways are experiencing increased sedimentation, declining benthic index samplings from over half of the county's subwatersheds, and poorly planned growth and development. Investments in stormwater management have been insufficient and are increasingly caught in political crosshairs.

A comprehensive, transparent, and enforceable MS4 permit is essential to directing this rapidly urbanizing county toward responsible stormwater management and the use of ESD to the MEP. Rezoning of conservation and agricultural areas to residential zones under the 2002 permit and current land-use regulations render the county unlikely to avoid or control additional pollutant loading from new development in a given watershed if left unabated. This MS4 permit must verifiably result in the achievement of local WLAs and TMDLs and yield attainment of State Water Quality Standards. Annual targets and interim milestones must hold the county accountable for pollution reductions and allow for public transparency. Codes and Ordinances must be updated and amended in on a regular timetable to comply with the Stormwater Management Act of 2007 and result in the use of Environmental Site Design to the Maximum Extent Practicable. The county must responsibly manage growth to limit increases in stormwater runoff and prevent a backslide in pollution reductions.

Now is the moment in time for Frederick County and Phase I MS4 jurisdictions around the State to adopt an MS4 permit capable of realizing restored local waterways, a healthy Potomac River, and a saved Chesapeake Bay. Potomac Conservancy sincerely hopes that MDE will make the appropriate amendments to the tentative draft to drive these conservation results.

Thank you for the opportunity to present our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Amanda John". The signature is fluid and cursive, with a large initial "A" and a long, sweeping tail.

Amanda John
Policy Manager