



HOWARD COUNTY DEPARTMENT OF PUBLIC WORKS

3430 Courthouse Drive ■ Ellicott City, Maryland 21043 ■ 410-313-4400

www.howardcountymd.gov/PublicWorks
James M. Irvin, Director

jirvin@howardcountymd.gov
FAX 410-313-3408
TDD 410-313-2323

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Mr. Brian Clevenger
Water Management Administration
Sediment, Stormwater, and Dam Safety Program
Maryland Department of the Environment
1800 Washington Blvd., STE. 440
Baltimore, Maryland 21230-1708

RE: Comments on the Howard County MS4 Tentative Determination

Dear Mr. Clevenger:

Howard County, Maryland, welcomes this opportunity to provide comments to the Maryland Department of the Environment (“MDE”) on the Tentative Determination of the County’s Municipal Separate Storm Sewer System (“MS4”) Permit. The County looks forward to working with MDE and other partners to not just contribute, but lead the way, in efforts to address pollution in local and State waterways and the Chesapeake Bay.

Howard County is proud of progress made to date to control pollution through stormwater management; progress, which the County believes is among the finest in the region. Significant investments have been made in the County’s storm sewer infrastructure and programs to address non-point source pollution. Most recently, in 2013, the County created the Watershed Protection and Restoration Fund, a dedicated Fund devoted exclusively to funding water quality improvements in Howard County. Financed by a fee based on County residents’ use of the storm sewer system, the Fund has collected approximately \$9.5 million in its first year. Combined with current County stormwater

management expenditures, the County will spend more than \$20 million annually over the next few years on stormwater management and pollution reduction.

To meet the objectives of the Chesapeake Bay Program, the County has established robust practices to preserve open space, restore stream banks, and maintain and rebuild the County's \$660 million investment in stormwater management facilities. The County has also launched aggressive community-based programs to reach individual property owners. Over the last two summers, the County has worked with the READY program to train and employ young adults in building stormwater management facilities to control stormwater run-off from many acres of impervious surface. Through the Watershed Protection and Restoration Fund, the County is providing grants and other assistance to non-profit organizations to install best management practices ("BMPs") on their property. The County has also increased infrastructure improvements, inspections, operations and maintenance, and education programs.

Additionally, every County public works project – from the construction of fire stations and libraries to recreational facilities and nature centers – includes the most rigorous stormwater treatment practices possible, such as installation of pervious pavement, capture systems for irrigation, and green roofs. The Robinson Nature Center and the Savage Branch of the Howard County Library are two stellar examples.

In accordance with the County's mission to be a strong steward of the environment, Howard County appreciates the substantial work of the United States Environmental Protection Agency ("EPA") and MDE in developing the new generation of MS4 permits in Maryland, which are among the strongest in the nation. The County believes that the Tentative Determination on the whole strikes the proper balance of establishing guidelines within which localities have the flexibility needed to manage stormwater in ways that are uniquely appropriate to their communities.

Howard County agrees with MDE and EPA that MS4 permits are unlike other National Pollution Discharge Elimination Permits (“NPDES”) permits that are issued to individual dischargers at discrete locations. The County’s many miles and acres of stormwater infrastructure cannot be managed with the same command and control as an industrial plant. The Clean Water Act (“CWA”) expressly addresses this in 33 U.S.C. § 1342(p), which provides that MS4 permits must

require controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques and system, design and engineering methods, and such other provisions as the Administrator or the State determines appropriate for the control of such pollutants.

Maximum Extent Practicable (“MEP”), though not well defined in detail, does clearly set a standard that requires serious efforts to reduce stormwater pollution.

The Tentative Determination takes several serious steps. Most significantly, for the first time, the permit includes mandatory “restoration” efforts – installation of BMPs that treat stormwater pollution. The permit requires restoration of 20% of the County’s entire impervious surface that is not currently treated to the MEP. This is a mammoth endeavor that is in line with the need to protect water quality and is an enormous logistical and financial challenge. The permit also includes new program and reporting requirements. Some elements of these requirements remain unclear as MDE, the Chesapeake Bay Program, and EPA continue to develop the Bay TMDL program. Mechanisms such as nutrient credit trading, which may be important in achieving real water quality improvements, are still undefined.

Notwithstanding the challenges, the County looks forward to leading the way to protect the Bay. To that end, the County provides the following comments on various elements of the permit.

Permit Timelines and Public Participation

The County appreciates that MDE has not proposed any automatic reopening provisions. Such a major modification process in the midst of the permit period would likely delay implementation and possibly the timely reissuance of the next permit in five years. The County values public participation and has incorporated it regularly in developing the County's stormwater programs and in implementing restoration efforts. The County will continue to expand the role of the public in addressing stormwater pollution through a variety of programs, in addition to the new public participation requirements of the permit.

Permit Area

The County acknowledges that the PART I(A) of the permit governs discharges from "the MS4 owned or operated" by the County, as required by the CWA, 33 U.S.C. § 1342(p), and its attendant regulations. *See* 40 CFR 122.26(b)(8). The County also agrees that effectively addressing MS4 discharge requires jurisdiction-wide programs including erosion and sediment control ("ESC") and stormwater management ("SWM") as well as restoration and educational efforts. However, that does not provide a logical or legal basis for requiring that every provision in an MS4 permit applies across the entire geographic area of the County. The statement to that effect in the Fact Sheet creates ambiguity and poses numerous questions, raising uncertainty.

Restoration Requirement

The County has been actively engaged in identifying untreated impervious surface in the County and developing plans to treat those areas. As MDE is aware, restoring 20% of the County's impervious surface will be challenging in both design and implementation. The County looks forward to working with MDE to develop the most efficient solutions possible and makes the following comments to assist in the development of those solutions.

Parts IV(E)(1)(b) and (2)(b) of the Tentative Determination are somewhat inconsistent. Section (1)(b) requires that the County perform detailed watershed assessments before the end of the permit term. However, section (2)(b) requires that, within the first year, restoration plans for each stormwater wasteload allocations (“WLA”) be submitted to MDE. The watershed assessments should inform the restoration plans. Requiring the plans to be submitted within the first year means that they will be speculative and will need to be revised based on the information gathered in the watershed assessments. The County interprets the “watershed assessment” requirements contained in this part to refer to watersheds identified by an 8-digit basin number.

The County notes that it will not be able to provide “detailed” cost estimates for individual projects, programs, controls, and plan implementation within the first year of the permit as required by Part IV(E)(2)(b). Although the County will strive to provide the most complete estimates available, it will be impossible to provide detailed estimates about those programs within the first year. This is particularly true because the restoration plans themselves will be in development throughout the course of the first year and will need to incorporate public comment, MDE approval, etc. Detailed costs estimates will be produced as quickly as possible after the restoration plans are finalized.

Subsection (E)(2)(b)(iv) notes that where TMDL stormwater WLAs are not being met according to the benchmarks and deadlines, an “ongoing, iterative process” must be developed. This appears to recognize the fact that a failure to meet a benchmark or deadline is not a *de facto* permit violation. The County agrees with that approach. The County requests guidance from MDE about whether it will interpret a failure to meet a deadline in a restoration plan as a permit violation. Part IV(E)(2)(b) requires the restoration plans to include benchmarks and deadlines. These will largely be guesswork and the flexibility of adaptive management, as adopted in Part D of the permit, will be necessary as programs and strategies are evaluated for their efficacy in reducing pollutant loads. The County recognizes the need for accountability and measurability in MS4 permits but is not certain that establishing TMDL

WLAs as *de jure* permit limits is appropriate in the MS4 context, especially in light of the significant amount of guesswork required in establishing the benchmarks and deadlines. Aggressive goal setting will be discouraged if benchmarks and deadlines are made hard and fast permit limits.

Additional Monitoring and Reporting Requirements

Extensive stormwater monitoring has occurred throughout the State since before the MS4 program began. The County is unsure how effective it is to continuing all current monitoring. Some monitoring is certainly required, but the County believes more limited, targeted monitoring may provide more useable information at less cost. We look forward to reviewing this area in the next permit cycle.

The Tentative Determination contains numerous new reporting requirements. Some of the requirements in MDE's proposed Geodatabase Schema have not yet been determined. It is not clear what the reporting requirements will be over the term of the permit. The County has a state of the art geographical information system ("GIS"), but it is difficult to establish the system engineering necessary for reporting if the data elements required are not known. The County encourages MDE to study the reporting requirements carefully to determine what is necessary and helpful, and what may not be necessary. As in the past, the County is eager to assist MDE in data collection, but is not certain that all such efforts need to be incorporated in the permit.

Part V(A)(1) of the Tentative Determination requires that annual reports be submitted on or before the anniversary date of the permit. MDE and the County have agreed that the County will submit its annual reports on or before September 15 of each year to allow for adequate time to compile information after the close of the fiscal year. This provision should be revised to reflect that agreement.

Source Identification

Mapping

Part IV(C)(1) of the permit has been significantly revised. The current permit requires that the County provide GIS data on “major outfalls, inlets, and associated drainage areas.” 2005 Permit, Part III(C)(1). The Tentative Determination requires the County to map “*all infrastructure*, major outfalls, inlets, and associated drainage areas *delineated*.” There are two problems with the expanded requirements.

The first is that “all infrastructure” is ambiguous, as it is not clear what constitutes “infrastructure.” The County requests that MDE provide written guidance about what the requirement encompasses. The second problem is the delineation of drainage areas. The County is not certain of the effect of adding the word “delineation” to the requirement. More importantly, the County is concerned that the existing text could be read to require the County to produce a drainage area delineation for “all infrastructure.” Identifying the individual drainage area for every individual component of the County’s storm sewer system would be nearly impossible and presents little to no benefit. The County requests clarification about MDE’s interpretation of this requirement. The County interprets this provision to require that the drainage areas for major outfalls be delineated, not “all infrastructure.” The County also notes that the reporting requirements of Attachment A do not clearly correspond to the reporting requirements of this section.

The County intends to continue using the latest technology to identify and delineate its MS4 and is implementing programs to require that all relevant information submitted to the County in the future be in an electronic format that facilitates incorporation into the County GIS.

Industrial and Commercial Sources

The County requests guidance about the requirements of Part IV(C)(2). Land uses are already identified in the County GIS. What circumstances does MDE consider to have the “potential to contribute significant pollutants” and what does “significant” mean? Additionally, what types of “sites” does MDE intend be reported under this section?

Neither this section, nor Part IV(C)(4), are included in the Attachment A reporting requirements. The County suggests that MDE provide more detail about how this information should be reported via Attachment A reporting.

Triennial Inspections

Triennial inspections of public and private stormwater facilities are required by the County’s current permit. The Tentative Determination slightly modifies this requirement in recognition of the immense number of small, or micro, BMPs that will be utilized in the future as Environmental Site Design concepts are fully implemented. The number of BMPs is expected to grow from the current few thousand to tens of thousands. Because triennial inspection of every micro BMP is not feasible, the County has been working with MDE and EPA to develop inspection programs that will ensure that all BMPs are properly maintained and functioning. These inspection programs may incorporate elements such as self-certification and/or random sampling.

Acknowledging this reality, MDE has modified the inspection requirement to “structural stormwater management facilities” and “all ESD systems.” Part IV(E). The County is concerned that, although structural BMPs are listed in Attachment A, there is no definition of “ESD systems.” The County interprets “ESD systems” as referring to the designed system serving a particular development. The County will continue to work with MDE and EPA to develop methodologies for inspecting ESD systems that will identify necessary operations or maintenance issues. However, it would be helpful if MDE could offer guidance on its interpretation of the term “ESD systems.” Additionally, the County

suggests that MDE review COMAR § 26.17.02.11 to determine whether it should be revised to better address the growing implementation of ESD practices.

Property Management

The County suggests that MDE consider revising the proposed language in Part IV(D)(5)(b) for clarity. Currently, the text provides that *all* of the listed requirements are mandatory. Not all of the requirements apply to all County Property. Although MDE has included a caveat concerning its approval of alternate activities, there should be more flexibility in this section to allow the local government to determine maintenance activities. Otherwise, MDE may be immediately inundated with numerous requests to approve alternate activities.

Additionally, the County would appreciate guidance about how it is to determine pollutant load reductions from these activities for the annual report. Although some maintenance activities are addressed in the DRAFT 2011 Guidance - *Accounting For Stormwater Wasteload Allocations and Impervious Acres Treated*, others are not. The County is capable of developing quantifications for pollutant load reductions but certain areas, such as training, are not easily susceptible to such quantification. The County suggests that MDE address these activities in the final version of the Guidance.

Litter and Floatables

Regarding the new litter and floatables requirement in Part IV(D)(4) to develop public education and outreach programs to reduce littering and increase recycling, the County already does this. Although not currently required by its MS4 Permit, the County has instituted several waste control and recycling programs. In fact, the County is a national leader in this regard. The County believes it already satisfies this requirement and would appreciate MDE's confirmation that it does not need to develop an entirely new program within the first year of the permit.

Other

The County interprets the requirement in Part III(2) that it “attain” applicable WLA and TMDL, to refer to the deadlines and schedules that will be contained in the County’s Restoration Plans. Part IV(E).

The County interprets the requirement in Part IV(C)(6) that it identify all “proposed” water quality improvement projects to include only those projects that are proposed for funding, rather than all projects under consideration by the County.

The County requests additional guidance on the requirements of Part IV(D)(3)(b). The County is uncertain what the “survey” should consist of and what information should be reported.

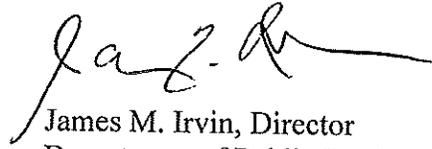
The requirements of Part IV(D)(1)(b) are unclear. Should the relevant information only be “maintained” or must it be reported? If the latter, the requirements should be included in Attachment A.

Part IV(E)(3) is overly broad. The requirement that “any relevant ideas and program improvements that can aid in achieving TMDLs” must be utilized is too restrictive. The County values public participation and will incorporate useful suggestions. However, some ideas might be in conflict with each other. The County needs to have the ultimate ability to decide which strategies to implement.

Finally, two of the 8-digit basins listed in Attachment B, EPA Approved Total Maximum Daily Loads, are not within Howard County, and their impairments and WLAs should therefore not apply to Howard County. The County requests that the following basins be removed from Attachment B:

- Basin 02131104 for Patuxent River Upper (Cash Lake) in Prince George’s County
- Basin 02130902 for Bodkin Creek in Anne Arundel County. This basin number is listed in Attachment B under the Patuxent River Tidal Fresh basin and the Patapsco River Mesohaline basin.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. M. Irvin', with a long horizontal flourish extending to the right.

James M. Irvin, Director
Department of Public Works