

In the Matter of:

Maryland Department of the Environment

July 18, 2019
Public Hearing

Condensed Transcript with Word Index



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<p style="text-align: right;">1</p> <p>1 MARYLAND DEPARTMENT OF THE ENVIRONMENT</p> <p>2</p> <p>3</p> <p>4</p> <p>5 TENTATIVE DETERMINATION TO MODIFY</p> <p>6 MARYLAND DEPARTMENT OF TRANSPORTATION - STATE HIGHWAY</p> <p>7 ADMINISTRATION'S NATIONAL POLLUTANT DISCHARGE ELIMINATION</p> <p>8 SYSTEM MS4 PERMIT</p> <p>9 PERMIT NO. 11-DP-3313/MD0068276</p> <p>10</p> <p>11</p> <p>12 The hearing in the above matter commenced on</p> <p>13 Thursday, July 18, 2019, at the Maryland Department of</p> <p>14 the Environment, 1800 Washington Boulevard, Baltimore,</p> <p>15 Maryland.</p> <p>16</p> <p>17</p> <p>18</p> <p>19 Before: Stewart Comstock, Hearing Officer</p> <p>20</p> <p>21</p> <p>22 Reported by: George Quade, CERT</p>	<p style="text-align: right;">3</p> <p>1 P R O C E E D I N G S</p> <p>2 - - - - -</p> <p>3 MR. COMSTOCK: Okay, all. Let's go ahead and</p> <p>4 get this started. Good evening. Welcome to the Maryland</p> <p>5 Department of the Environment. Today is July 18th, 2019,</p> <p>6 and it's 5:05 p.m. Today's public hearing is regarding</p> <p>7 the Maryland Department of the Environment's, the</p> <p>8 Department, tentative determination to modify the</p> <p>9 Maryland Department of Transportation State Highway</p> <p>10 Administration, or MDOT-SHA's, National Pollutant</p> <p>11 Discharge Elimination System, NPDES, municipal separate</p> <p>12 storm sewer, MS4, permit number -- I got rid of all the</p> <p>13 acronyms -- permit number 11-DP-3313, MD0068276.</p> <p>14 My name is Stewart Comstock and I am the</p> <p>15 Division Chief for the Program Review Division, Sediment,</p> <p>16 Stormwater and Dam Safety Program, Water and Science</p> <p>17 Administration.</p> <p>18 With me today from MDE are Andrew Tagoe,</p> <p>19 Brian Cooper, Michelle Crawford, Christina Lyerly and</p> <p>20 Jennifer Smith.</p> <p>21 I want to thank you, everyone, for coming</p> <p>22 tonight. And we also have some individuals from MDOT-SHA</p>
<p style="text-align: right;">2</p> <p>1 A T T E N D E E S</p> <p>2</p> <p>3 Stewart Comstock, Maryland Department of the Environment</p> <p>4 Brian Cooper, Maryland Department of the Environment</p> <p>5 Andrew Tagoe, Maryland Department of the Environment</p> <p>6 Michelle Crawford, Maryland Department of the Environment</p> <p>7 Emily Ranson, Clean Water Action</p> <p>8 Bruce Gilmore, Audubon Naturalist Society</p> <p>9 Elaine Lutz, Chesapeake Bay Foundation</p> <p>10 Christina Lyerly, Maryland Department of the Environment</p> <p>11 Mollie Soloway, Chesapeake Bay Foundation</p> <p>12 Eliza Smith Steinmeier, Chesapeake Legal Alliance</p> <p>13 Angela Haren, Blue Water Baltimore</p> <p>14 Christopher Zink, MDOT-SHA</p> <p>15 Kevin Wilsey, MDOT-SHA</p> <p>16 Karen Coffman, MDOT-SHA</p> <p>17 Jennifer Smith, Maryland Department of the Environment</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">4</p> <p>1 who helped us to getting today's proceedings. From MDOT-</p> <p>2 SHA, we have Karen Coffman, Christopher Zink and Kevin</p> <p>3 Wilsey.</p> <p>4 Now, I'd like to take a chance here and just go</p> <p>5 around the room so the court reporter can get everyone's</p> <p>6 names and ask each person to introduce themselves and</p> <p>7 spell their names for the court reporter for us.</p> <p>8 MS. RANSON: All right. Hi, I'm Emily Ranson,</p> <p>9 E-m-i-l-y, R-a-n-s-o-n, as in Nancy, and I'm with Clean</p> <p>10 Water Action.</p> <p>11 MR. GILMORE: My name is Bruce Gilmore. I am a</p> <p>12 -- B-r-u-c-e, G-i-l-m-o-r-e. I am a storm water policy</p> <p>13 consultant to the Audubon Naturalist Society.</p> <p>14 MR. TAGOE: I'm Andrew Tagoe with MDE. A-n-d-</p> <p>15 r-e-w, T-a-g-o-e.</p> <p>16 MR. COOPER: Brian Cooper, MDE, B-r-i-a-n, C-o-</p> <p>17 o-p-e-r.</p> <p>18 MS. CRAWFORD: I'm Michelle Crawford with MDE,</p> <p>19 M-i-c-h-e-l-l-e, C-r-a-w-f-o-r-d.</p> <p>20 MS. LYERLY: Christina Lyerly, MDE, C-h-r-i-s-</p> <p>21 t-i-n-a, L-y-e-r-l-y.</p> <p>22 MS. SOLOWAY: Mollie Soloway from the</p>

<p style="text-align: right;">5</p> <p>1 Chesapeake Bay Foundation, M-o-l-l-i-e, S-o-l-o-w-a-y. 2 MS. SMITH STEINMEIER: Eliza Smith Steinmeier 3 from Chesapeake Legal Alliance. Good luck with this one. 4 E-l-i-z-a, Smith, S-m-i-t-h, Steinmeier, S-t-e-i-n-m-e-i- 5 e-r. 6 MS. HAREN: Hi. I'm Angela Haren with Blue 7 Water Baltimore. A-n-g-e-l-a, H-a-r-e-n, also as in 8 Nancy. 9 MR. ZINK: I'm Christopher Zink with the MDOT- 10 SHA, Water Programs Division. C-h-r-i-s-t-o-p-h-e-r, Z- 11 i-n-k. 12 MR. WILSEY: I'm Kevin Wilsey, K-e-v-i-n, W-i- 13 l-s-e-y, with MDOT-SHA. 14 MS. COFFMAN: Karen Coffman with MDOT-SHA. K- 15 a-r-e-n, C-o-f-f-m-a-n. 16 MS. SMITH: Jennifer Smith with MDE. J-e-n-n- 17 i-f-e-r, S-m-i-t-h. 18 MR. COMSTOCK: And Stewart Comstock. Thank you 19 all. Okay. And, again, thank you for showing up today. 20 In accordance with Maryland's Administrative Procedures 21 Act, a tentative determination to modify MDOT-SHA's MS4 22 permit has been advertised in the Maryland Register on</p>	<p style="text-align: right;">7</p> <p>1 believe there are one, two, three individuals who signed 2 up to give testimony today. 3 MS. LUTZ: Four. 4 MR. COMSTOCK: Four. Four individuals. Okay. 5 For background, Maryland has been delegated authority by 6 the United States Environmental Protection Agency, or 7 EPA, to administer the NPDES program in this state. 8 Final storm water regulations were adopted by 9 EPA in November 1990 according to Section 402(p) of the 10 Clean Water Act. These regulations require in part that 11 owners or operators of storm drain systems serving 12 populations greater than 100,000, including MDOT-SHA, 13 apply for a phase one NPDES municipal storm permit. 14 To improve local water quality and the 15 Chesapeake Bay, Maryland -- MDOT-SHA's most recently 16 issued MS4 permit on October 9th, 2015, included a 17 requirement for the restoration of 20 percent of the 18 impervious surface area within the county that was not 19 already managed for storm water to the maximum extent 20 practicable. 21 On February 13th, 2019, MDOT-SHA formally 22 requested a permit modification from the Department to</p>
<p style="text-align: right;">6</p> <p>1 June 21st and July 5th; in the Baltimore Sun on June 21st 2 and June 28th; sent out to the Department's interested 3 party list for MDOT-SHA, and publicized on the 4 Department's web page where the proposed permit 5 modification and supporting fact sheet material can be 6 found. 7 Everyone who signed up to speak today or signed 8 the attendance sheet will be added to the Department's 9 interested party list and will receive notice of any 10 actions regarding this permit. If you want to be on the 11 Department's interested party list for this permit and 12 did not sign up on one of these two sheets, please do so 13 before the end of the hearing. 14 The purpose of today's hearing is to accept 15 public comment on the Department's tentative 16 determination to modify this MS4 permit. The Department 17 has some introductory remarks regarding this action, and 18 then after that I would like to give MDOT-SHA, the 19 permittee, an opportunity to comment. 20 There are no local elected officials here 21 today. After that, we will work down the list of 22 speakers who signed up to give testimony today. I</p>	<p style="text-align: right;">8</p> <p>1 use Maryland's newly authorized trading program as an 2 option to help meet its 20 percent impervious surface 3 area restoration requirement. 4 MDOT-SHA anticipates that it will be able to 5 complete this restoration by the end of its permit term 6 on October 8th, 2020. However, they have requested 7 trading as an alternative if the goal cannot be met. 8 The Department has determined that MDOT-SHA's 9 MS4 permit may be modified to allow the use of nutrient 10 trading for the following reasons: In accordance with 11 the Code of Federal Regulations, CFR 40 Section 122.62, 12 the Department may receive new information which 13 justifies the applying conditions different from those in 14 the permit if the information was not available at the 15 time of permit issuance. 16 In accordance with 40 CFR Section 122.62, the 17 Department may modify an existing permit when proposed 18 standards and regulations covering the permitted activity 19 may have changed this issuance of the permit. 20 A new phase of Maryland's Nutrient Trading 21 Program with authorizing regulations in the Code of 22 Maryland Regulations, or COMAR, 26.08.11, were formally</p>

<p style="text-align: right;">9</p> <p>1 adopted for use on July 16th, 2018. EPA reviewed and did 2 not object to Maryland's trading policy updates and draft 3 MS4 permit modification language.</p> <p>4 The new trading policy allowing MS4s to acquire 5 nutrient credits was not in place at the time MDOT-SHA's 6 permit was issued. MDOT-SHA has documented that while 7 capital and operational funds necessary to meet the 20 8 percent impervious surface restoration requirement are 9 available, the physical capacity for implementing 10 structural BMPs within the permit time frame is a 11 limiting factor.</p> <p>12 EPA, this Department and Maryland's Court of 13 Appeals have determined that the 20 percent impervious 14 surface restoration requirement is an approved effluent 15 limit consistent with and satisfactory for addressing 16 both the Chesapeake Bay and other applicable total 17 maximum daily loads, TMDLs; waste load allocations, WLAs; 18 trading for amounts of total nitrogen, or TN; total 19 phosphorus, or TP; or total suspended solids, TSS, that 20 would have been reduced through the 20 percent impervious 21 surface area restoration requirement will have a similar 22 net effect on local and Chesapeake Bay water quality.</p>	<p style="text-align: right;">11</p> <p>1 restoration of impervious surface called for by the 2 permit?</p> <p>3 Second, what is the impact the modification 4 will have on enabling the State Highway Administration to 5 meet its pollutant load reduction goals?</p> <p>6 The third concern is how SHA will be able to 7 use nutrient trading when it is not clear from the record 8 -- the record as we now understand it -- where the 9 pollutant reduction credits will be found and how they 10 will be replaced during a new permit term.</p> <p>11 It is incumbent upon both the Maryland 12 Department of the Environment and the Maryland Department 13 of Transportation/State Highway Administration, to 14 address these concerns and make clear in the record that 15 even after the modification of this permit goes forward, 16 the current permit and the new permit will still play an 17 important role in reducing pollutant loadings and meeting 18 local and Chesapeake Bay TMDLs up to and even beyond 19 2025.</p> <p>20 The pertinent facts and questions relating to 21 the performance of MDOT-SHA in meeting its permit 22 requirements and fulfilling its role as a state agency</p>
<p style="text-align: right;">10</p> <p>1 Now I would like to ask if anyone from MDOT-SHA 2 would like to add comments to the public record at this 3 time?</p> <p>4 MR. WILSEY: No, none.</p> <p>5 MR. COMSTOCK: All right. I see no comments at 6 this time. Okay, then. Let's get started. When called 7 to testify, we have microphones around the room so 8 there's no podium. Start by stating your name and 9 spelling it out again for the stenographer, and if you're 10 affiliated with an organization, let us know who that is 11 for the record.</p> <p>12 First, Bruce Gilmore. I've got you on the list 13 first.</p> <p>14 MR. GILMORE: I am Bruce Gilmore, B-r-u-c-e, G- 15 i-l-m-o-r-e, and I am testifying this evening on behalf 16 of the Audubon Naturalist Society. I will be submitting 17 a formal statement to be entered into the record during 18 the comment period.</p> <p>19 There are three areas of concern posed by the 20 modification of the phase one MS4 permit for the Maryland 21 State Highway Administration. The first is what impact 22 will enabling the use of nutrient trading have on</p>	<p style="text-align: right;">12</p> <p>1 partner in Chesapeake Bay restoration and local waterway 2 restoration are as follows: The data presented in the 3 narrative and the tables of the 2018 permit annual report 4 reveal that the agency has not been particularly 5 successful in restoring the imperviousness which it has 6 control over.</p> <p>7 The data also revealed that SHA has not 8 performed particularly well in reducing the TMDL nutrient 9 and sediment pollutants called for in its permit.</p> <p>10 There is no information as to how SHA will 11 obtain trading credits. Does it have relationships with 12 wastewater treatment plants? How much credit can be 13 obtained from those relationships? Does it plan to 14 obtain credits from the agriculture community through 15 which its huge land owning extends?</p> <p>16 Will any of these credits be obtained in a 17 durable and timely fashion given that they are to pertain 18 to the current permit which expires in October of this 19 year?</p> <p>20 These facts and questions should be addressed 21 by the permittee and MDE soon so that the restoration of 22 the Bay and our waterways can be assured. We will be</p>

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1 submitting more formal testimony within the comment
2 period. Thank you for the opportunity to appear this
3 evening.

4 MR. COMSTOCK: Thank you, Bruce. Next on the
5 list, I have Angela Haren from Blue Water Baltimore.
6 Angela?

7 MS. HAREN: Hi, thanks.

8 MR. COMSTOCK: Good evening.

9 MS. HAREN: Thank you for the opportunity to
10 speak today. I am Angela Haren, A-n-g-e-l-a, H-a-r-e-n,
11 the Baltimore Harbor Waterkeeper and director of advocacy
12 with Blue Water Baltimore.

13 So we conduct year-round water quality
14 monitoring at 49 stations throughout our watershed and
15 have found that nitrogen scores in the tidal Patapsco
16 River and its tributaries are consistently poor from the
17 Baltimore Harbor all the way down to the mouth of the
18 river near Bodkin Creek.

19 High levels of nitrogen and phosphorus
20 contribute to very poor chlorophyll scores as well, which
21 is an indication of the ever-present algae bloom that can
22 be harmful to human health or otherwise detrimental to

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1 the ecosystem.

2 So I'm here today to express our concern that
3 if nutrient trading is done in this permit, it must be
4 done appropriately so that we are not exchanging real
5 reductions and pollutants for a largely paper exercise.

6 To that end, it is our perspective that in
7 order to be eligible for trade, any credit must first
8 result from a new quantifiable, verifiable and
9 enforceable reduction of pollution as is required under
10 the Maryland trading regulations. Any permit
11 modification to allow trading should expressly include
12 this requirement and require verification of each credit
13 used to comply with the permit.

14 Second, the best management practice or other
15 pollution control measure must not have already been paid
16 for by the taxpayers. For example, the SHA should not be
17 allowed to acquire credits generated by wastewater
18 treatment plants that are performing better than the
19 minimum requirements which involves, as you know, meeting
20 nitrogen limit equal to or below three parts per million
21 in the effluent.

22 This superior performance was paid for with

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1 taxpayer dollars and the taxpayers should get the full
2 benefit of the resulting technology upgrades, including
3 any performance that is better than 3 parts per million
4 of nitrogen in the effluent.

5 So, for example, if the plant is, in fact -- or
6 a wastewater treatment plant is, in fact, achieving 2.5
7 parts per million, it should not be allowed to create a
8 credit by agreeing to operate at that level and using the
9 difference, which would be .5 parts per million, times
10 its flow volume to generate or sell or transfer a credit.
11 Because this reduced discharge is a reduction to the
12 taxpayers that we've already paid for and that we must
13 use every reduction we can to meet the TMDL goals for
14 nitrogen on which, as you know, Maryland is behind.

15 Further, any better than minimum performance by
16 a wastewater treatment plant should be preserved for
17 future growth when future circumstances may not enable
18 the plant to discharge at the better than three parts per
19 million level.

20 So, lastly, we have concerns about how this
21 could potentially impact local water quality. Because
22 highways run through the state as a whole throughout the

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1 region, SHA can get credits essentially anywhere and
2 could ignore all of the good analysis that they have
3 already done about how their work could meet local water
4 quality TMDLs.

5 So we will also be submitting written comments,
6 but we appreciate the opportunity to be here tonight.

7 MR. COMSTOCK: Thank you, Angela. I'm going to
8 jump down to the other list here. Next on my list is
9 Eliza Smith Steinmeier from the Chesapeake Legal
10 Alliance. Eliza?

11 MS. SMITH STEINMEIER: That's me. Thanks for
12 the opportunity. Hi, my name is Eliza Smith Steinmeier.
13 I'm the executive director of Chesapeake Legal Alliance
14 and we provide legal advice on issues related to the Bay.

15 And my comments are going to be slightly more
16 informal because Angela and Bruce have covered so much of
17 the formal comments that I was going to make. And part
18 of it is very personal because, you know, you come to a
19 hearing like this and we're talking about something very
20 paper oriented, very technical.

21 And as it happens, I have my son with me today.
22 And he's eight years old and he's sitting in the corner

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1 watching fishing videos. And I just picked him up from
 2 the airport because I had to fly him to Florida to go
 3 fishing at my parents house because I can't send him out
 4 back to go fishing at my house. I can't do that because
 5 of the intense stormwater pollution in and around
 6 Baltimore. And that's -- that's what we're looking at
 7 when we're -- you know, when we're having this
 8 conversation. That's the one that's going to suffer when
 9 we don't get this right.

10 So I don't normally bring my kids to work with
 11 me, but when I do, I'm very much reminded why I do the
 12 work that I do. And we're all here because we -- nobody
 13 works at a state agency because they want glory. I think
 14 everybody is here for the same reason. We're all here
 15 because we care about Maryland. And that's Maryland when
 16 we're gone.

17 And so I'd just like to bring it down to a
 18 level of, yeah, sure, this is technical and, yeah, sure,
 19 I get it, State Highway needs to meet some minimums and
 20 trading is a really simpler way to get to the end result.
 21 But honestly, we believe as a member of the environmental
 22 community that this is not going to result in less

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1 pollution and it's going to result in, at a minimum, the
 2 same amount of pollution or potentially more.

3 And, you know, when you're looking at a permit
 4 modification, that is a really big deal under the Clean
 5 Water Act. And, you know, you're a year out saying
 6 you're going to probably make your -- make your goals.
 7 That's good news if that's, you know, in fact feasible.

8 And so to modify a permit, you should really
 9 only be doing if you can make the permit better. And in
 10 this case, I don't believe that this trading scheme for
 11 the reasons articulated by Angela and Bruce, and I
 12 suspect some of the other advocates here will add to, can
 13 make this permit better. If at all, it would be neutral
 14 and I suspect it would potentially result in higher
 15 levels of pollution.

16 So I'd like to just start with I don't entirely
 17 understand the need at this stage for a modification.
 18 Perhaps we could have a more robust discussion during a
 19 permit renewal about this particular issue.

20 In addition, I would like to second, I believe
 21 it was Bruce, to express the concern about how these --
 22 how is it that you might intend to replace these credits

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1 in the next permit cycle. That's not codified anywhere.
 2 That's not written anywhere. If you do end up taking the
 3 trading route, it would be important to be very specific
 4 about how that's going to happen and how and when and on
 5 what schedule, and how the public can know how those
 6 credits will be replaced.

7 Again, as Angela mentioned, the threat of local
 8 hot spots is real. There's not just the Bay TMDL tox.
 9 There's issues of toxics and trash and other things that
 10 need to be addressed. And I worry that given the
 11 coverage across the state of the State Highway permit,
 12 the trading could happen across very large -- it's
 13 unclear how that would happen and you could really end up
 14 with taking credits for a wastewater treatment plant and
 15 applying them in a spot where you end up with a
 16 significant higher pollution level that could impact
 17 local TMDLs.

18 In addition, the trading concept in general,
 19 getting away from actually implementing restoration
 20 practices, ends up negating the co-benefits of the other
 21 pollutants that get reduced as a result of actual
 22 restoration practices. And I think that's real. And I

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1 asked my son what he -- what ideas he had on the way over
 2 here for how we could keep things cleaner on the
 3 highways. And he's eight. And he said, well, what about
 4 if you planted a lot of plants that sucked up all the bad
 5 stuff? And I said, that's a great idea, and that is part
 6 of what we do, but those are real solutions. Those
 7 aren't paper solutions.

8 So I would advocate that this group,
 9 considering the vast application of -- I mean, this
 10 permit applies all across the State. You know, despite
 11 the few people here, this does not represent the
 12 importance of this permit. This permit is incredibly
 13 important for the State of Maryland. And so a paper
 14 exercise that doesn't result in pollutant reductions is
 15 unfair.

16 And I'd just like to remind you that they're
 17 the ones that are going to suffer, not so much us, when
 18 we get this wrong. So, thank you. And we do -- we will
 19 likely be submitting written comments, but I appreciate
 20 the opportunity to speak.

21 MR. COMSTOCK: Thank you. Thank you so much.
 22 Last on the last who signed up to speak, we have Ms.

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1 Elaine Lutz from the Chesapeake Bay Foundation.
 2 MS. LUTZ: Thanks. Elaine Lutz, E-l-a-i-n-e,
 3 L-u-t-z, from Chesapeake Bay Foundation. I appreciate
 4 the opportunity to be here tonight and the extended time
 5 frame that was given for these comments. We had a
 6 similar process about a year ago where other MS4s
 7 incorporated trading and had a longer time frame for
 8 comments. Unfortunately that longer time frame didn't
 9 actually translate to any changes to the proposal as it
 10 originally came out. So I'm hoping that having this
 11 hearing early we can maybe consider incorporation of some
 12 of the comments here.

13 On that note, a lot of the comments that I have
 14 to make are similar to the comments we made last year
 15 when trading was incorporated into the first set of MS4
 16 permits. I do want to acknowledge that the State Highway
 17 Administration has made considerable progress under their
 18 permit. It's encouraging to hear that they'll finish
 19 their permit likely. And the State has provided a lot of
 20 funding to this effort and we want to acknowledge that
 21 effort as it has been pretty good.

22 There were some warning signs along the way

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1 that the State Highway Administration might not finish
 2 their permit, especially because a lot of the credit that
 3 got them advanced in the permit occurred before the
 4 permit term. And so there were some progress signs that
 5 we do believe should have been corrected a little bit
 6 earlier like many MS4 permits that would have made sure
 7 that we were hitting benchmarks as the permit term was
 8 advancing.

9 However, we are where we are. So on the
 10 trading itself, there were a couple of questions that we
 11 had last time around that didn't really get answered and
 12 we haven't seen how -- as those trading modifications
 13 have been implemented, how those questions are working
 14 now. So I just would like to repeat those.

15 In some cases, unlike some of the other
 16 commenters, we do think that trading could have some
 17 benefit due to what CBF perceives as flaws in the current
 18 MS4 implementation guidance, particularly in stream
 19 restoration. It recently came to our attention that
 20 State Highway Administration consultants was approaching
 21 agricultural land owners with forested riparian buffers
 22 looking to repair streams that were already functional.

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1 And the current MS4 guidance document does allow that
 2 sort of restoration on a linear basis regardless of
 3 actual pollution reductions.

4 And in that case, a trading program that has
 5 confirmed and documented pollution reductions could
 6 actually be a benefit here. But we only think that
 7 benefit would happen with some additional clarity in what
 8 the permit modification says.

9 To that extent, the only number of pounds that
 10 is going to be required per acre, it doesn't -- it
 11 doesn't give an actual numerical pounds per acre but
 12 refers to the guidance document. That guidance document
 13 does have a delta between various initial land use covers
 14 and forest, which is the ideal land use cover. But that
 15 does differ between what the original land use cover is
 16 and what forest is.

17 We think the appropriate delta would be for
 18 impervious surface to forest. So we would like to see in
 19 the permit modification a specific number of pounds for
 20 all three priority pollutants of nitrogen, phosphorus and
 21 sediment to be actually in the permit itself, saying for
 22 each acre you have to restore -- you have to restore this

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1 or you have to purchase this number of credits or pounds,
 2 I'm sorry.

3 We also think that the issue of local hot spots
 4 is critical. The trading regulations do address local
 5 impairments and have some restrictions on where credits
 6 must be generated if the credits are going to be used in
 7 impaired waters. But that scheme is a little too
 8 simplistic to cover something like an MS4 permit that
 9 covers many impaired waters. It's not the same as a
 10 single outfall.

11 During the last permit round of modifications,
 12 there was an indication early on that the Department
 13 intended to apply it to Bay segments. But then we didn't
 14 see any followup on that discussion reflected in the
 15 comment responses to the last permit modifications. And
 16 we haven't see that carried through in the MS4 permittees
 17 that are currently seeking trades.

18 So we would like to see some more geographic
 19 specificity that would handle the impaired waterway
 20 swapping so that at least some proportion of credits
 21 purchased are being generated in some of the impaired
 22 waterways that the SHA permit covers.

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1 And I also would like to echo the concern that
 2 where the credits are coming from is fairly uncertain at
 3 this time and would just like to note a point of caution
 4 that, again, we've seen some permittees slow down work in
 5 anticipation of purchasing credits that then have not
 6 actually materialized. Some permits that got modified
 7 are now expired without ever finding those credits. And
 8 we would just like to encourage the State Highway
 9 Administration and the Department to ensure that work is
 10 continuing on the same or advanced pace while credits are
 11 being sought instead of slowing down work and looking to
 12 rely on credits that right now are uncertain.

13 The State Highway Administration reports and
 14 plans did have a huge increase in effort in the last two
 15 years of the permit, and we support that and would
 16 support that funding in the State budget to get that work
 17 done. And we wouldn't want to see that be decreased in
 18 anticipation of credit purchasing.

19 So we would encourage that effort -- level of
 20 effort that's anticipated to increase to continue to
 21 increase. I will also be submitting some written
 22 comments during the comment period and appreciate the

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1 hearing discussion.

2 MR. COMSTOCK: Thank you. Thank you. Does
 3 anybody else wish to speak?
 4 (No response.)

5 MR. COMSTOCK: Okay. Anybody that wants to
 6 submit written testimony after today can do so up until
 7 September 21st, 2019. Comments should be submitted to
 8 Mr. Raymond Bahr. That's Raymond, R-a-y-m-o-n-d, Bahr,
 9 B-a-h-r, at the Maryland Department of the Environment,
 10 Water and Science Administration, Sediment, Storm Water
 11 and Dam Safety Program. The address is 1800 Washington
 12 Boulevard, Suite 440, Baltimore, Maryland 21230-1708, or
 13 you can email him at raymond.bahr@maryland.gov.

14 Additional information on this permit
 15 modification can be found on the Department's website,
 16 www.mde.maryland.gov. After the comment period is closed
 17 on September 21st, 2019, the Department will develop a
 18 response to comments document that will support the final
 19 determination to modify MDOT-SHA's MS4 permit.

20 Anyone who signed up on our attendance sheet
 21 today or gave testimony will be added to the Department's
 22 interested party list for Maryland State Highway

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1 Administration and will be kept apprised of all permit
 2 actions via email announcements.

3 Again, I would like to personally thank
 4 everyone for attending this evening's public hearing and
 5 for your participation in these important matters. Thank
 6 you.

7 (Whereupon, at 5:34 p.m., the
 8 hearing was concluded.)
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1 CERTIFICATE OF REPORTER

2
 3 I, George Quade, do hereby certify that the
 4 foregoing proceedings were digitally recorded by me and
 5 reduced to typewriting under my supervision; that I am
 6 neither counsel for, related to, nor employed by any of
 7 the parties to the action in which these proceedings were
 8 transcribed; that I am not a relative or employee of any
 9 attorney or counsel employed by the parties hereto, not
 10 financially or otherwise interested in the outcome in the
 11 action.
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