T&E COMMITTEE #3
October 12, 2020

Briefing

M E M O R A N D U M

October 8, 2020

TO: Transportation, Infrastructure, Energy and Environment (T&E) Committee

FROM: Keith Levchenko, Senior Legislative Analyst

SUBJECT: **Briefing** National Pollution Discharge Elimination System Municipal Separate Storm Sewer System Discharge (NPDES-MS4) Draft Permit

Attachments:

- Presentation Slides (©1-12)
- 8/28/2020 Letter from DEP to MDE with comments regarding the Draft Permit (©13-25)
- 7/13/2020 Letter from the Maryland Department of the Environment MDE to the Department of Environmental Protection (DEP) regarding Montgomery County's NPDES-MS4 Draft Permit (©26-27)

Meeting Participants:

Montgomery County Department of Environmental Protection (DEP)

- Adam Ortiz, Director
- Frank Dawson, Chief, Watershed Restoration Division
- Amy Stevens, Manager, Stormwater Facility Inspection and Maintenance
- Kate Bennett, Senior Planning Specialist

On June 29, 2020, the Maryland Department of the Environment (MDE) submitted its draft NPDES-MS4 permit for Montgomery County to the Environmental Protection Agency (EPA). Draft permits for Anne Arundel, Baltimore, and Prince George's Counties, and Baltimore City were submitted at the same time. The permit would take effect in early 2021 assuming a final determination on the permit is made by the end of the calendar year.

The Department of Environmental Protection (DEP) is the lead department responsible for coordinating a multi-department/agency effort to meet the NPDES-MS4 permit requirements and will provide a briefing to the T&E Committee on the draft permit.

Prior NPDES-MS4 Permit

The County's most recent National Pollution Discharge Elimination System Municipal Separate Storm Sewer System (NPDES-MS4) Permit[1] expired in February 2015 (although the requirements remain in effect pending the issuance of a new permit).

The County's Coordinated Implementation Strategy (CCIS)[2] (dated January 2012) provided the planning basis for the County to meet the following goals in the County's (now expired) NPDES-MS4 Permit:

1. Meet Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) approved by EPA.

2. Provide additional stormwater runoff management on impervious acres equal to 20 percent of the impervious area for which runoff is not currently managed, to the maximum extent practicable (MEP). (***This requirement has been the primary driver of DEP's CIP expenditures)***

3. Meet commitments in the Trash Free Potomac Watershed Initiative 2006 Action Agreement, which include support for regional strategies and collaborations aimed at reducing trash, increasing recycling, and increasing education and awareness of trash issues throughout the Potomac Watershed.

4. Educate and involve residents, businesses, and stakeholder groups in achieving measurable water quality improvements.

5. Establish a reporting framework that will be used for annual reporting, as required in the County's NPDES-MS4 Permit.

6. Identify necessary organizational infrastructure changes needed to implement the Strategy.

The requirement most affecting the County's Stormwater Management CIP was the restoration/retrofit requirement of 20 percent of the County's impervious surface not currently treated to the maximum extent practicable (3,778 acres). The County was not able to fully meet this requirement by the end of the permit period (February 2015) and negotiated a time extension through a Consent Decree with the Maryland Department of the Environment (MDE). Ultimately this requirement was met by December 2018.[3] Subsequent retrofit work that has been accomplished is assumed to be credited under the next permit.

Water Quality Protection Fund and Charge

DEP's MS4 work (both operating and capital) is budgeted within the County's Water Quality Protection Fund (WQPF). This self-supporting fund draws its revenue primarily from the Water Quality

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[1] The County's 2010-2015 MS4 permit is available on the DEP website at: https://www.montgomerycountymd.gov/DEP/Resources/Files/downloads/water-reports/npdes/MOCO_MS4_Permit.pdf.

[2] The County's Coordinated Implementation Strategy (January 2012) is available on the DEP website at: https://www.montgomerycountymd.gov/DEP/Resources/Files/ReportsandPublications/Water/Countywide%20Implementation%20Strategy/Countywide-coordinated-implemented-strategy-12.pdf.

[3] For more information, please see DEP's FY19 NPDES-MS4 Annual Report submitted to MDE on February 15, 2020; available for download at: https://www.montgomerycountymd.gov/DEP/Resources/Files/downloads/water-reports/npdes/AnnualReport-FY19-Final.pdf

Protection Charge (WQPC) (an annual excise tax included on the property tax bill which will generate an estimated $39 million in FY21) as well as revenue from the County's bag tax (an estimated $2.5 million in FY21). The Fund and charge were created in 2001, when the Council approved Bill 28-00. Significant modifications to the legislation and related regulations were later enacted by recent Councils.

The charge is based on a rate per equivalent residential unit (ERU). An ERU is an estimate of the average imperviousness for a single-family home and was established as 2,406 square feet when the charge was created in 2001. For the FY21 budget the ERU rate was approved at $107.60. Single-family homes and townhomes pay between 33 percent and 300 percent of this amount based on their actual imperviousness and where that imperviousness falls within a seven-tier structure. Multi-family and non-residential properties pay an amount based on actual imperviousness: (Imperviousness/2,406)x$107.60)

Cost Implications

The cost implications for implementation of the prior MS4 permit have been substantial. Several years ago, DEP estimated the permit costs to be about $305 million through 2015 and nearly $1.9 billion through 2030.

Over the past decade, the DEP Operating budget (not counting the Division of Recycling and Resource Management) the WQPF has become dominated by water quality-related efforts. For FY21, the Water Quality Protection Fund budget is $29.4 million compared to $3.4 million in the General Fund; or about 90 percent of the total. The largest expenditure categories in the WQPF budget are facilities inspections and maintenance (about 38% of FY21 WQPF expenditures), funding provided to Parks to cover a portion of its water quality efforts, DEP staffing involved in various water quality activities, and numerous other activities such as BMP monitoring, streetsweeping, and low impact development (LID) work.

On the CIP side, the FY21-26 Stormwater Management CIP includes $112.2 million in the six-year period, most of which is related to addressing the County's expected capital requirements in the next permit.

Draft MS-4 Permit

The draft permit includes some significant changes both in accounting procedures as well as permit conditions which DEP can summarize in its presentation. DEP has requested clarifications from MDE regarding some of these changes as well as how certain conditions are interpreted (see attached letter on ©23-26). Additional discussions with MDE have occurred on some of these issues. MDE submitted a revised draft permit to EPA on September 29. MDE's current schedule assumes a tentative determination on October 23 and a final determination in January/February 2021. DEP can note for the Committee where things stand with MDE on the issues raised in its letter.

While there are a number of changes from the last permit, the condition with the biggest impact is likely to be the impervious acreage restoration requirement noted earlier. The overall acreage restoration requirement in the draft permit is 1,814 impervious acres. Although significantly lower than the 20 percent requirement (3,778 acres) in the prior permit, this is higher than the maximum extent practicable amount (1,649) that had been previously reported by the County to MDE based on the County's approved Stormwater Management Capital Improvements Program. The draft permit also includes annual retrofit benchmarks.

Given that there are questions regarding the accounting changes for counting impervious area credits going forward, if and how additional restoration work completed since the completion of the previous permit work can be counted, and that the costs to restore future acreage are uncertain, it is unclear whether the County's Approved CIP will require adjustment under the new permit.

Comments to MDE from the Choose Clean Water Coalition

The Choose Clean Water Coalition[4] sent a letter to MDE on September 10 (available here) expressing concerns about MDE's overall approach in its draft permits to meet Maryland's Phase III Watershed Implementation Plan (WIP). For instance, the group supports switching to an outcomes-based metric and away from the indirect/model-based metric of impervious surface restoration (ISR) and has noted its concern that the draft permits will fall short of what is needed to meet the State's goals in the WIP.

The Coalition also provided comments on the specific jurisdiction draft permits as well. It's primary concern with the Montgomery County permit is the rate of implementation and noted that if the ISR metric continues to be used, then counties should be required to meet a 20% ISR over the permit term.

Attachment
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[4] The Choose Clean Water Coalition is made up of more than 250 local, state, regional, and national organizations focused on restoring clean water to the Chesapeake Bay watershed.

DEPARTMENT OF
ENVIRONMENTAL PROTECTION
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Proposed NPDES MS4 Permit

October 12, 2020

Current MS4 Permit

DEPARTMENT OF ENVIRONMENTAL PROTECTION
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- Background
  - Montgomery County has been a national leader in addressing stormwater management.
  - This will be the fourth MS4 permit designed to reduce pollution from stormwater management (1996, 2001 and 2010).
  - First County to have a funding mechanism for the treating stormwater management, Water Quality Protection Charge.
  - County met the requirement to restore 20% of untreated impervious surface
  - County has continued constructing restoration projects since meeting 2010 permit

Pervious Pavement Cleaning

(2)

Next MS4 Permit Timeline

DEPARTMENT OF ENVIRONMENTAL PROTECTION
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- MDE Submitted Draft Permits to EPA June 29, 2020
- DEP Submitted Comments to MDE August 28, 2020
- DEP met with MDE September 11, 2020
- MDE Submitted Revised Draft Permits to EPA September 29, 2020
- DEP Received Revised Draft Permit October 2, 2020
- Current MDE Schedule:
  - Tentative Determination October 23, 2020
  - Final Determination in January/February 2021

Next MS4 Permit Overview

DEPARTMENT OF ENVIRONMENTAL PROTECTION
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Permit Issued to Montgomery County

- Compliance and reporting coordinated by DEP
- Multiple agencies involved in implementation, including DGS, DPS, DOT and MCPS

Water Quality Objectives

- Prohibit pollutants in stormwater discharges or other unauthorized discharges into, through, or from the MS4
- Increase the treatment of untreated impervious surfaces
- Attain applicable stormwater pollutant reductions for each TMDL (Sediment, Nutrients, Bacteria, Trash, PCBs)
- Comply with all other provisions and requirements

Next MS4 Permit Overview

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Main Permit Elements (and Lead Agencies):

- Stormwater Management (DEP & DPS)
- Erosion and Sediment Control Program (DPS)
- Illicit Discharge Detection and Elimination (DEP)
- Property Management and Maintenance (DOT, DGS, MCPS)
- Public education (DEP)
- Stormwater Restoration (DEP)
- Countywide Total Maximum Daily Load (TMDL) Stormwater Implementation Plan (DEP)
- Assessment of Controls (Monitoring, DEP)
- Program Funding (DEP)

Next MS4 Permit Changes

DEPARTMENT OF ENVIRONMENTAL PROTECTION
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Part IV.D.1. Stormwater Management and Part IV.D.2. Erosion and Sediment Control

Increased record-keeping for stormwater management plan review and approval, erosion and sediment control inspections and violations

Next MS4 Permit Changes

DEPARTMENT OF ENVIRONMENTAL PROTECTION
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Part IV.D.4. Property Management and Maintenance

- Develop good housekeeping plans for County properties
- Develop salt management plan
- Litter reduction

Next MS4 Permit Changes

DEPARTMENT OF ENVIRONMENTAL PROTECTION
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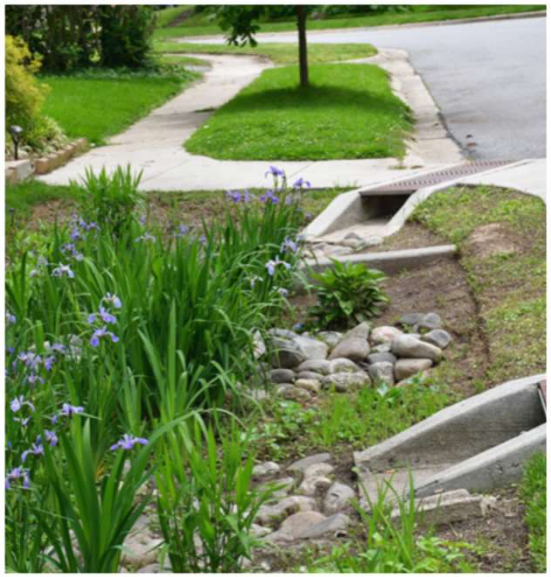
Part IV.E. Stormwater Restoration

- The County must restore "1,814 impervious acres […] by implementing stormwater BMPs, programmatic initiatives, or alternative control practices in accordance with the 2020 Accounting Guidance." (Part IV.E.3)
- Implement specific projects in year 1 (Appendix B)
- Nutrient trading option, credits verified annually
- Annual benchmarks
- Report annually



Next MS4 Permit Changes

DEPARTMENT OF ENVIRONMENTAL PROTECTION
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Part IV.F. Countywide Total Maximum Daily Load (TMDL) Stormwater Implementation Plan (IP)

- Update TMDL Implementation Plans within 1 year (trash, bacteria, PCB's, nutrients, sediment)
- Annually document progress in Countywide Stormwater TMDL Implementation Plan
- Provide continual outreach to the public and other stakeholders

Next MS4 Permit Changes

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Part IV.G. Assessment of Controls

- BMP Effectiveness Monitoring - continue current study (Breewood)
- Watershed Assessment Monitoring:
  - Biological and habitat assessment at randomly selected sites
  - Bacteria at TMDL sites
  - Chloride at two sites

Next Steps

DEPARTMENT OF ENVIRONMENTAL PROTECTION
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- Provide official comments on permit during public notice timeframe
- MDE Public hearing – Date TBD
- Brief Council on restoration plan and proposed contracting approach

Questions?

Contact: Frank Dawson

Watershed Restoration Division Chief, DEP

Frank.Dawson@MontgomeryCountyMD.gov

DEPARTMENT OF
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DEPARTMENT OF ENVIRONMENTAL PROTECTION

Marc Elrich
County Executive

Adam Ortiz
Director

August 28, 2020

Lee Currey, Director
Water and Science Administration
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230

Dear Mr. Currey:

Enclosed please find Montgomery County's comments on the June 24, 2020 draft National Pollutant Discharge Elimination System (NPDES) municipal separate storm sewer system (MS4) permit, fact sheet and 2020 accounting guidance update, which you shared with Montgomery County on July 13, 2020. As you know, Montgomery County's NPDES MS4 permit is issued to the County as a whole, and while implementation is coordinated by the Department of Environmental Protection (DEP), multiple other departments and co-permittees are involved in implementing the permit requirements. Earlier this month, DEP staff held meetings with our MS4 implementation partners in order to review the draft permit language and begin to plan for the transition from existing requirements to new ones. Our partners include the Departments of General Services, Permitting Services and Transportation, as well as Montgomery County Public Schools. The comments below and in the enclosed tables are a result of those meetings and follow the order and structure of the draft permit, fact sheet and accounting guidance documents.

Permit Area:

Language throughout the permit has been shifted from a focus on the area served by the MS4 to jurisdiction-wide. We would like to clarify that there are categories of property within the County that are excluded from the County's MS4 permit area:

- Properties that are covered by another permit (e.g. General Permits for Stormwater Associated with Construction or Industrial Activity, other MS4 permits)
- Properties that are owned by the state or federal government, and over which the County has no jurisdiction
- Properties that are zoned as part of the Agricultural Reserve (AR), which limits development to one house per 25 acres and most of which is further protected through permanent easements that restrict residential, industrial, and commercial development. The AR zone comprises 93,000 contiguous acres of agricultural land and has allowed 558 farms to remain viable in a county with high development pressure and cost of living.

The County has excluded these categories from its permit area in past permit cycles and intends to continue to exclude them. Please modify the fact sheet to include reference to these exclusions.

Stormwater Restoration:

Montgomery County submitted a revised maximum extent practicable (MEP) package as requested by MDE on March 13, 2020 that included an analysis of the physical and financial constraints on our restoration program, as well as a portfolio of restoration projects to be implemented under the next permit. As noted in your July 13 letter, the County's project portfolio detailed the restoration of 1,649 impervious acres (beyond the 3,778 acres restored under our 2010 permit and 2,146 acres restored under our 2001 permit). When we met with MDE staff in April to review our MEP submittal, there was no indication that our proposed restoration goal was inadequate. We were, therefore, surprised to learn that it had been increased by 10 percent in the draft permit that was sent to EPA. Your letter stated that the increase was needed in order to be consistent with the Phase III WIP, and that the increased opportunities and flexibilities in the 2020 accounting guidance led you to determine that "more restoration is likely achievable." However, it has been our experience that the cost of restoration work increases as easier and/or more readily available projects are implemented, and the remaining restoration opportunities become more challenging. It is also important to keep in mind that every acre restored adds to the inventory of stormwater facilities and BMPs that the County must inspect and ensure are maintained ad infinitum.

In addition to these realities, we still have a number of outstanding questions regarding the accounting guidance that were submitted on February 14, 2020 and have still not received a response. The County is in the difficult position of being required to achieve a restoration goal that is higher than our MEP, without having clarity on how the accounting towards that goal will be done. Please explain how the increase of 165 impervious acres was determined and respond to our questions regarding the accounting guidance. Please also explain how the Year 1 BMP Portfolio in Appendix B was determined. It includes restoration work projected to be implemented in 2020 and 2021 in the County's restoration portfolio. It also includes multiple years of RainScapes implementation and redevelopment.

We understand the desire for the annual benchmark schedule to track progress during the permit term, and we appreciate that the permit language allows annual updates to the benchmark schedule, as long as the updates are increases. However, there are many factors that are completely beyond the County's control, such as state permit response times and County funding during a global pandemic, that could dramatically impact our ability to achieve these benchmarks. We must also have the flexibility to revise the benchmark schedule downward on an annual basis with the understanding that we will still have to achieve the overall restoration goal for the permit. Please explain how the annual benchmark schedule was developed and what will happen if a benchmark is not met.

Since the County met the Restoration goal of its 2010 MS4 Permit in December 2018, we have continued to design and construct restoration projects to improve water quality in local streams and the Chesapeake Bay. Based on previous communications with MDE on the draft accounting guidance, we understand that the County can credit these restoration projects toward the next Permit's restoration requirement; we would like to have this understanding documented in the permit the fact sheet. Also, based on communication from MDE, we understand the County can use the planning rate EIAf for any stream restoration project with an as-built date prior to January 1, 2020 and for our Glenstone projects that were under construction when the 2019 draft accounting guidance was provided to the jurisdictions. We would like this understanding documented in the permit fact sheet. Finally, the County has several projects completed in 2018 that were not needed to meet the 2010 MS4 Permit restoration goal. These projects were provided to MDE in the March 13, 2020 Restoration Project Portfolio. Previous communication with MDE indicated that the County can carry-over these projects to be credited under the new permit. We would like this understanding documented in the permit fact sheet.

Countywide TMDL Stormwater Implementation Plan:

The draft permit states that for TMDL implementation plans that have been submitted to MDE but not yet approved (which applies to all of our implementation plans with the exception of PCBs in the Anacostia), we must "address all outstanding comments needed for the Department's approval with one year of the new permit's effective date." Please confirm that the County only needs to address comments received from MDE on September 17, 2018 (Countywide Coordinated Implementation Strategy) and June 20,2019 (Patuxent PCB TMDL) in order to get MDE approval of the plans.

Appendix A includes three TMDLs that do not assign WLAs to Montgomery County's MS4 permit and that are not found in a search of MDE's TMDL Data Center:

- Clopper Lake Phosphorus and Sediment: Page 13 of the TMDL says that "The watershed that drains to Clopper Lake contains no permitted point source discharges. Hence, the entire allocation will be made to nonpoint sources."
- Patuxent River Upper Bacteria: the TMDL is focused on Anne Arundel and Prince George's Counties, and says that "Bacteria loads attributable to these MS4s, and any other Phase I and Phase II NPDES-regulated stormwater entities in the watershed, including the MD State Highway Administration (SHA) Phase I MS4, Phase II State and federal MS4s, and industrial stormwater permittees, are combined in aggregate stormwater waste load allocations (SW-WLAs) in this TMDL." The TMDL does not mention Montgomery County's MS4.
- Tidal Potomac and Anacostia River PCBs: Page 20 of the TMDL says that the "stormwater WLAs are calculated for the direct drainage areas located in the District of Columbia as well as Maryland and Virginia Counties covered by a NPDES stormwater permit."

These three TMDLs should be removed from Appendix A.

Assessment of Controls:

The draft permit references "2020 MS4 Monitoring Guidelines" and says that the guidelines "shall be referenced for addressing the technical guidelines and requirements outlined below." We were not aware that there were 2020 MS4 Monitoring Guidelines and we requested a copy as soon as we read the draft permit. We received the guidelines on August 12, 2020 and we are still reviewing them and will submit comments on the guidelines separately.

Program Funding:

Montgomery County and the other Phase I Large MS4s are eager to move Maryland's MS4 program forward and have cooperated with MDE every step of the way as the Department has determined its preferred restoration approach. We have asked that MDE acknowledge the uncertainties around potential impacts of the current global pandemic on our ability to meet permit requirements. We want to continue our permit and restoration programs, and we have a dedicated funding source to support that work. However, County residents' potential inability to pay the taxes levied by the County due to their inability to work could result in a decrease in our program funding through no fault of the County. We have offered language to address this concern and to date have not received a response from MDE. Inclusion of some protection from enforcement for noncompliance resulting from circumstances beyond our control is even more critical given the inclusion of annual benchmarks in the permit, which now offer five opportunities for enforcement during the permit term instead of just one.

I understand from your presentation at MAMSA earlier this month that you have already received comments on the draft Phase I Large MS4 permits from EPA and are working to address them. We would like to see EPA's comments and to meet with you and your staff at your earliest convenience to discuss our concerns regarding the draft permit. I will contact you next week to schedule a meeting. I sincerely hope that we can resolve the issues highlighted here and in the attached comments so that we can continue to work towards our shared goal of restoring local streams and the Chesapeake Bay.

Sincerely,

Frank Dawson

Frank Dawson, Chief
Watershed Restoration Division

Enclosures: As stated

Cc: Jennifer Smith, Program Manager, Sediment, Stormwater, and Dam Safety Program
Ray Bahr, Division Chief, Program Review Division
Stew Comstock, Regulatory & Compliance Engineer, Program Review Division
Adam Ortiz, Director, Montgomery County Department of the Environment (DEP)
Patty Bubar, Deputy Director, DEP
Amy Stevens, Chief, Planning, Outreach and Monitoring Section, Watershed Restoration Division, DEP

#	Draft Permit Section	Page	Comment
1	I.B. Permit Area	1	The language has been changed to read: "This permit covers all stormwater discharges into, through, or from the municipal separate storm sewer system (MS4) owned or operated jurisdiction-wide by Montgomery County, Maryland." Please confirm that stormwater discharges into the County's MS4 that are covered by another permit (e.g. General Permits for Stormwater Associated with Construction or Industrial Activity, other MS4 permits) are not covered by this permit and are excluded from the County's MS4 permit area.
2	I.B. Permit Area	1	Why are the County's current co-permittees (Montgomery County Public Schools, Towns of Chevy Chase, Chevy Chase Village, Kensington, Somerset, and Poolesville; and Village of Friendship Heights) no longer reflected in the permit?
3	IV.B. Legal Authority	2	The language has been changed from allowing the County to "specify a schedule for making the necessary changes to maintain adequate legal authority" to "make the necessary changes to maintain adequate legal authority within one year of notification." This is not enough time. We recommend either returning to the existing language or allowing two years to make changes.
4	IV.C. Source Identification	2	The language has been changed to read: "Sources of pollutants in stormwater runoff jurisdiction-wide shall be identified…" As stated in Comment 1, please confirm that stormwater discharges that are covered by another permit are excluded from the County's MS4 permit area. In addition to discharges permitted by MDE, the County does not have jurisdiction over state and federal properties, so those properties are also excluded from the County's MS4 permit area. One-third of Montgomery County, or 93,000 acres, is designated as the Agricultural Reserve (AR zone). This unique area of contiguous farmland has special characteristics, including: • The AR zone limits development to one house per 25 acres • 70,000 acres, or 75% of the land area within the AR zone, is further protected through permanent easements that restrict residential, industrial, and commercial development • 558 farms remain viable in a county with high development pressure and cost of living The Chesapeake Bay Program designates agriculture as a separate source sector from developed land, and the regulations that apply to agriculture are very different from those applied to urban stormwater. For all of these reasons, Montgomery County has excluded the AR zone from its MS4 permit area in past permit cycles and plans to continue to do so.

#	Draft Permit Section	Page	Comment
5	IV.C. Source Identification	2	New permit language specifies the use of Version 1.2 (May 2017) of MDE's MS4 Geodatabase. Please provide guidance on how new permit elements, such as stream restoration protocols 4 and 5, that don't exist in version 1.2 should be reported?
6	IV.C.1. Storm drain system	2	"All infrastructure" has been added to the list of storm drain features that must be reported. Please confirm that this is limited to stormwater infrastructure that is owned or operated by Montgomery County.
7	IV.C.3. Urban best management practices (BMPs)	3	The permit language says that stormwater management facility data for new development and redevelopment should be reported in the Urban BMP table, which appears to exclude restoration projects. However, the 2017 geodatabase says that BMPs treating redevelopment should be reported as restoration BMPs. Please clarify how redevelopment should be reported.
8	IV.C.5. Monitoring locations	3	Should the County elect to participate in the pooled monitoring, will reporting of monitoring locations still be required? What if the sites monitored under the pooled program are not located in the County?
9	IV.C.5. Monitoring locations	3	The permit language refers to Part IV.F (Countywide TMDL Stormwater Implementation Plan) in the context of monitoring locations. Should the reference be to IV.G (Assessment of Controls) instead?
10	IV.C.6. Water quality improvement projects	3	The permit language specifies that BMPs reported as water quality improvement projects must be in accordance with the 2020 Accounting Guidance. Does this mean that restoration work from past permits should no longer be reported?
11	IV.D.4.b. (Property Management and Maintenance)	6	New permit language states that "The County shall develop, implement, and maintain a good housekeeping plan (GHP) for County-owned properties not required to be covered under Maryland's SW Industrial GP where the activities listed in PART IV.D.4.a. are performed." Part IV.D.4.a. lists activities that typically require a SW Industrial GP: • maintenance or storage of vehicles or equipment; • storage of fertilizers, pesticides, landscaping materials, hazardous materials, or other materials that could pollute stormwater runoff. It is not clear how the same activities that typically trigger permit coverage can be used to identify properties that do not require a permit, but should have a GHP. Also, how are hazardous materials defined?

#	Draft Permit Section	Page	Comment
12	IV.D.4.d. (Property Management and Maintenance)	7	Please confirm that the salt management plan is to address roads only, and not other county properties.
13	IV.D.4.e. (Property Management and Maintenance)	8	Being located in the Property Management and Maintenance section of the permit, the evaluation of litter problems appears to apply only to county properties. Please confirm or clarify.
14	IV.D.5. Public Education	8	The language has been changed to read: "These efforts are to be documented and summarized in each annual report, with details on resources (e.g., personnel and financial) expended and method of delivery for education and outreach." It is not clear what details on resources expended and method of delivery should be reported. Is this required for each outreach initiative, or will the total cost for all permit-related outreach suffice?
15	IV.E.3. (Stormwater Restoration)	9	New permit language reads: "By [Permit expiration date, to be determined], Montgomery County shall commence and complete the restoration of 1,814 impervious acres..." The County's MEP restoration portfolio outlined the restoration of 1,649 impervious acres. It is not clear why the required restoration has been increased to a goal beyond the County's MEP. It is also not clear how the increase of 165 impervious acres was determined. Please explain.
16	IV.E.3. (Stormwater Restoration)	9	Montgomery County still has outstanding questions that were submitted on the 2019 Accounting Guidance for which responses were never received, and which the 2020 update does not address. The County is in the difficult position of being required to achieve a restoration goal that is higher than MEP without having clarity on how the accounting towards that goal will be done.
17	IV.E.4. (Stormwater Restoration)	9	New permit language reads: "By [end of first year of permit term, date to be determined], Montgomery County shall complete the stormwater BMPs, programmatic initiatives, or alternative control practices listed in the Year 1 BMP Portfolio provided in Appendix B." It is not clear how the Year 1 BMP Portfolio in Appendix B was determined. It includes restoration work projected to be implemented in 2020 and 2021 in the County's Restoration Portfolio. It also includes multiple years of RainScapes implementation and redevelopment. Please explain how Appendix B was developed.

#	Draft Permit Section	Page	Comment
18	IV.E.4. (Stormwater Restoration)	9	Please confirm that projects completed after the 2010 permit restoration goal was met in December 2018 can be counted towards the new restoration goal, and more specifically, towards the year one goal.
19	IV.E.4. (Stormwater Restoration)	9	The language in this section refers to the "implementation milestone schedule in Table 1," but Table 1 is titled "Annual Restoration Benchmark Schedule," and the language in other sections refers to the goals in Table 1 as benchmarks. Is there a difference between milestones and benchmarks? For consistency it would make more sense to use benchmarks.
20	IV.E.7. (Stormwater Restoration)	10	New permit language reads: "Montgomery County shall meet its impervious acre implementation requirement according to the annual restoration benchmark schedule provided in Table 1." Are the annual benchmarks in Table 1 based on calendar year or fiscal year?
21	IV.F.1. Countywide TMDL Stormwater Implementation Plan	10	New permit language reads: "Where Montgomery County has submitted an implementation plan for a TMDL identified in Appendix A and that plan has yet to be approved, Montgomery County shall, within one year of the effective date of this permit, address all outstanding comments needed for the Department's approval of the plan." Please confirm that the County only needs to address comments received from MDE on September 17, 2018 (Countywide Coordinated Implementation Strategy) and June 20,2019 (Patuxent PCB TMDL) in order to get MDE approval of the plans.
22	IV.F.2. Countywide TMDL Stormwater Implementation Plan	10	The language has been changed to read: "Within one year of EPA's approval of a new TMDL, Montgomery County shall submit an implementation plan to the Department for approval." Please confirm that the County need only submit an implementation plan for any new TMDLs that assign a WLA to the County's NPDES MS4 permit.
23	IV.F.2. Countywide TMDL Stormwater Implementation Plan	10-11	Please confirm that these updated implementation plan requirements apply only to future TMDL implementation plans, and not to the implementation plans that have already been submitted to MDE for review.
24	IV.F.2.a. (Countywide TMDL Stormwater Implementation Plan)	11	New language requires TMDL implementation plans to include: "A list of stormwater BMPs, programmatic initiatives, or alternative control practices that will be implemented to reduce pollutants for the TMDL" Please clarify whether the list needs to include specific projects, or whether it can show types of projects?

#	Draft Permit Section	Page	Comment
25	IV.F.2.c. (Countywide TMDL Stormwater Implementation Plan)	11	New permit language reads: "Once approved by the Department, any new TMDL implementation plan shall be incorporated in the Countywide TMDL Stormwater Implementation Plan and subject to the annual progress report requirements under Part IV.F.3 of this permit." TMDL implementation plans will be developed on an individual pollutant and waterbody basis and submitted to MDE for review and approval. Once approved, the implementation plans are to be incorporated into the Countywide TMDL Stormwater Implementation Plan in order to report on implementation progress. The Countywide Plan should be renamed the Countywide TMDL Stormwater Implementation Progress Report to more accurately convey its purpose.
26	IV.F.3. Countywide TMDL Stormwater Implementation Plan	11	Appendix A includes three TMDLs that do not assign WLAs to Montgomery County's MS4 permit and that are not found in a search of MDE's TMDL Data Center: • Clopper Lake Phosphorus and Sediment: the TMDL says there are no point sources in the watershed, so there are no WLAs • Patuxent River Upper Bacteria: the TMDL is focused on Anne Arundel and Prince George's Counties, and says that "Bacteria loads attributable to these MS4s, and any other Phase I and Phase II NPDES-regulated stormwater entities in the watershed, including the MD State Highway Administration (SHA) Phase I MS4, Phase II State and federal MS4s, and industrial stormwater permittees, are combined in aggregate stormwater waste load allocations (SW-WLAs) in this TMDL." • Tidal Potomac and Anacostia River PCBs: this TMDL explicitly says it does not make WLAs to MS4s that are not part of the direct drainage to the tidal portion of the watershed. These three TMDLs should be removed from Appendix A.
27	IV.F.4. Countywide TMDL Stormwater Implementation Plan	11	New permit language reads: "Montgomery County shall provide continual outreach to the public and other stakeholders, including other jurisdictions or agencies holding stormwater WLAs in the same watersheds, regarding its TMDL stormwater implementation plans." Please clarify what is meant by "continual outreach." Does this outreach apply to both the individual implementation plans and to the Countywide TMDL Stormwater Implementation Plan/Progress Report? It makes sense to involve the public in developing an implementation plan, but it makes less sense to involve them in developing a progress report.

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28	IV.G. Assessment of Controls	12	New permit language reads: "The 2020 MS4 Monitoring Guidelines shall be referenced for addressing the technical guidelines and requirements outlined below." We received the draft 2020 MS4 Monitoring Guidelines on August 12, 2020 and we are still reviewing it. As with the draft 2020 Accounting Guidance, the County is in the difficult position of being required to implement monitoring requirements without fully understanding what those requirements are.
29	IV.G.1. BMP Effectiveness Monitoring	12	New permit language reads: "By [4 months after permit issuance, date to be determined], the County shall notify the Department which option it chooses for BMP effectiveness monitoring." The County completed more than 10 years of restoration work in the Breewood Tributary in July 2018. We would like to collect another two years of data on the post-restoration conditions. Can enrollment begin in any year of the permit?
30	IV.G.1.b (BMP Effectiveness Monitoring)	12-14	Bullets in sections IV.G.1.b.i. through iv should be changed to letters for navigation/citation purposes.
31	IV.G.1.b.i. Chemical Monitoring	12-13	Please confirm that changes to chemical monitoring parameters do not apply if the Breewood Tributary monitoring is continued. The County has invested over 10 years in monitoring and restoration implementation in the Breewood watershed, and we are in the process of collecting post-restoration data. Changing the sampling parameters now would jeopardize our ability to draw conclusions from the data.
32	IV.G.1.b.iv. Annual Data Submittal	14	New permit language requires the annual data submittal to include: "Any available analysis of surrogate relationships with the above monitoring parameters." Major issues have been identified with different turbidity measurements, most significantly, there is high variability at higher turbidity. Has Maryland identified a method, a calibration method, or a standard QA/QC protocol for TSS-Turbidity or Chloride-Specific Conductivity relationships? It will likely take multiple permit cycles to collect enough data to establish reliable surrogate relationships.

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33	IV.G.2. Watershed Assessment Monitoring	15	New permit language reads: "By [4 months after permit issuance, date to be determined], the County shall notify the Department which option it chooses for watershed assessment monitoring." As with the BMP Effectiveness Monitoring, depending on when the final permit is issued, this may not give us enough time to budget for the selected option. Can enrollment begin in year 2?
34	IV.G.2.b. (Watershed Assessment Monitoring)	15	New permit language reads: "The County shall submit a comprehensive plan for watershed monitoring by [one year and 4 months after permit issuance, date to be determined] related to stream biology and habitat, bacteria, and chlorides and commence monitoring upon the Department's approval." Please confirm that monitoring is conducted on a calendar year basis and will not begin until the first full calendar year of the permit cycle. Also please confirm that there will be a one year lag between data collection and reporting to allow for QA/QC and analysis.
35	IV.G.2.b.ii. (Watershed Assessment Monitoring)	15	New permit language requires: "Bacteria (i.e., E.coli, Enterococcus spp., or fecal coliform monitoring)" Please clarify which of the three forms of bacteria should be sampled.
36	IV.H.2. (Program Funding)	15	The permit language reads: "Lack of funding does not constitute a justification for noncompliance with the terms of this permit." Montgomery County and the other Phase I Large MS4s are eager to move Maryland's MS4 program forward and have cooperated with MDE every step of the way as the Department has determined its preferred restoration approach. We have asked repeatedly that MDE acknowledge the uncertainties around potential impacts of the current global pandemic on our ability to meet permit requirements. We want to continue our permit and restoration programs, and we have a dedicated funding source to support that work. However, County residents' potential inability to pay the taxes levied by the County due to their inability to work could result in a decrease in our program funding through no fault of the County. MDE's refusal to acknowledge the unprecedented conditions we all find ourselves in is deeply troubling.

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37	V.A.3. Annual Reporting	17	The language has been changed to read "County must continuously evaluate the effectiveness of its programs and report any modifications in each annual report." Please clarify the intended meaning of the word "continuously."
38	VI. Special Programmatic Conditions	18	New permit language reads: "Montgomery County shall reflect these policies, programs, and implementation as part of its net WLA accounting as stipulated in Part IV.E.4.b.ii of this permit." There is no Part IV.E.b.ii of the permit. Please clarify what part of the permit this requirement is referring to.
39	VII.F.1.e. Permit Actions	22	The following language has been added to the list of causes for which MDE may modify, suspend, or revoke and reissue all or part of the permit: "To incorporate additional controls that are necessary to ensure that the permit effluent limit requirements are consistent with any applicable TMDL WLA allocated to the discharge of pollutants from the MS4" Please confirm that "the permit effluent limit requirements" for NPDES MS4 permits are expressed as best management practices or other similar requirements consistent with the MEP standard, rather than as numeric effluent limits.
40	Part VII.K. Signature of Authorized Administrator and Jurisdiction	23	The section of code cited (COMAR 16.08.04.01-1) applies to the Department of Juvenile Services. Should the citation be COMAR 26.08.04.01-1 instead?
41	Appendix A	A.1-A.2	As stated in comment 25 above, Appendix A includes three TMDLs that are not found in a search of MDE's TMDL Data Center for Stormwater WLAs assigned to Montgomery County. The TMDLs do not assign WLAs to Montgomery County's NPDES MS4 permit and should therefore be removed. They are: • Clopper Lake Phosphorus and Sediment • Patuxent River Upper Bacteria • Tidal Potomac and Anacostia River PCBs
42	Appendix B	B.1-B.2	As requested in comment 17, please explain how Appendix B was developed from the restoration portfolio that was submitted on March 13, 2020.

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43	Appendix B	B.1	Appendix B includes three stream restoration projects. Appendix H to the 2020 Accounting Guidance specifies the minimum qualifying conditions for stream restoration and shoreline management projects. Condition 5 states that "Before credits are granted, stream restoration projects will need to meet post-construction monitoring requirements, exhibit successful vegetative establishment, and have undergone initial project maintenance." Will MDE give EIA credit for stream restoration at construction completion, rather than waiting until after post-construction monitoring, vegetative establishment and project maintenance? It is not clear that annual benchmarks in Table 1 can be met if credit is not granted until these post-construction activities are complete.

Adam Ortiz, Director
Montgomery County Department of Environmental Protection
255 Rockville Pike, Suite 120
Rockville, MD 20850

July 13, 2020

Dear Mr. Ortiz:

The Maryland Department of the Environment (Department) on June 29, 2020, sent to the US Environmental Protection Agency (EPA) Montgomery County's National Pollutant Discharge Elimination System (NPDES) municipal separate storm sewer system (MS4) draft permit. We expect to receive review comments from EPA in 30 - 90 days. Attached is a copy of the County's draft permit, accompanying fact sheet, and the *2020 Accounting for Stormwater Wasteload Allocations and Impervious Acres Treated* (2020 Guidance). These documents are a result of extensive collaboration among the Department and County staff, environmental stakeholders, State agencies, and the EPA, and continue the County's progress toward improving local water quality and in meeting Chesapeake Bay restoration requirements.

As part of this process, the Department developed a maximum extent practicable (MEP) analysis, in coordination with the University of Maryland's Environmental Finance Center, for Montgomery County to provide important information regarding its stormwater restoration capabilities. The MEP analysis took into account fiscal constraints (e.g., budgets, stormwater fees, citizen willingness to pay) and physical realities (e.g., project timelines that exceeded a five-year permit term). As a result of this effort, the County proposed a robust, locally-driven, best management practice portfolio (BMP portfolio) for implementation during its next permit term that included the restoration of 1,649 impervious acres.

The Department's MS4 permits must also be consistent with Maryland's Phase III Watershed Implementation Plan (Phase III WIP) and the Chesapeake Bay Total Maximum Daily Loads (TMDLs). The Phase III WIP set a stormwater target of restoring two percent per year of the County's impervious areas that have little or no stormwater management by 2025. Further analysis and discussions with the County regarding its BMP portfolio of 1,649 impervious acres, and recognition of the increased opportunities and flexibilities in the 2020 Guidance, led the Department to determine that more restoration is likely achievable. Specifically, the County expressed an interest in using more green infrastructure and climate change incentives, along with other new BMPs included in the 2020 Guidance (e.g., soil decompaction, illicit discharge detection and elimination, floating treatment wetlands, riparian buffers, and conservation of forests), once these new criteria and their implementation are fully understood. Other BMPs that were routinely used during the last permit (e.g., street sweeping, catch-basin cleanouts, septic pumping, redevelopment) were not fully utilized in the County's BMP portfolio. Additionally, the County uses a planning rate to estimate pollutant reductions for stream restoration

projects in the County's BMP portfolio. Experience has shown that these planning rates tend to underestimate actual pollutant reductions. The Department is committed to providing further implementation guidance on these practices and exploring new BMPs for inclusion in its 2020 Guidance to help the County implement additional restoration. Based on these discussions and understandings, the Department has set the County's restoration requirement at 1,814 impervious acres.

During its prior permit term, Montgomery County and Maryland's other large and medium MS4 jurisdictions have established themselves as national leaders by collectively investing $685 million in clean water infrastructure. As a result, 35,000 impervious acres have been restored, reducing more than 67,000 lbs of phosphorus, 270,000 lbs of nitrogen, and 30,000,000 lbs of sediment annually to local waters and the Chesapeake Bay. The prior permits were also modified to allow trading under Maryland's landmark Water Quality Trading Program (WQT) that was used to acquire cost effective reductions totaling 5,000 lbs of phosphorus, 35,000 lbs of nitrogen, and 750,000 lbs of sediment. The Chesapeake Bay Trust, created by Maryland's General Assembly in 1985, awarded $36.5 million in grants to MS4 programs during this time period for hands-on projects that are ensuring a cleaner, greener, and healthier Chesapeake Bay. The Department's Water Quality Finance Administration (WQFA) guaranteed $107 million in low interest loans for MS4 restoration projects and another $135 million in low interest loans are pending for additional projects. The WQFA funding has allowed local jurisdictions to experiment with pay for performance contracting and public private partnerships that have increased the efficiency of BMP implementation while reducing cost. Maryland will continue to push for additional federal funding for local MS4 projects, especially for those that result in increased climate change resiliency to local communities and that can help in sustaining Chesapeake Bay restoration efforts further into the future.

The Department's development of this draft MS4 permit for Montgomery County continues its robust stormwater restoration strategy that is part of a larger effort that is incumbent on all sectors within Maryland and the surrounding region to do their fair share toward restoring the Chesapeake Bay, our nation's largest estuary. Upon receipt of the EPA's comments on this draft permit, the Department would like to schedule a meeting with you to discuss the next steps toward permit issuance. The Department appreciates the County's commitment to this important effort and looks forward to partnering with you in the coming years to make it happen.

Sincerely,

D. Lee Currey, Director
Water and Science Administration

Attachments

cc: Karl Berger, Washington Council of Governments