


T&E COMMITTEE #1
April 4, 2019

Update

MEMORANDUM

April 2, 2019

TO: Transportation & Environment (T&E) Committee

FROM:  Keith Levchenko, Senior Legislative Analyst

SUBJECT: **Update:** Stormwater Management and MS4 Permit Status¹

PURPOSE: To receive an update from DEP on the County's Stormwater Management Capital Improvements Program (CIP) and the Status of the County's Next MS4 Permit

Participants include:

- Adam Ortiz, Director, Department of Environmental Protection (DEP)
- Patty Bubar, Deputy Director, DEP
- Frank Dawson, Chief, Watershed Management Capital Projects, DEP
- Kit Gage, Advocacy Director, Friends of Sligo Creek and member of the Stormwater Partners Network
- Caitlin Wall, Policy Director, Potomac Conservancy and Chair, Stormwater Partners Network

On April 4, the T&E Committee will receive an update from DEP on its MS4 Permit Status and Stormwater Management CIP. Council Staff has provided some background information below.

MS4 Permit Status

The County's most recent National Pollution Discharge Elimination System Municipal Separate Storm Sewer System (NPDES-MS4) Permit² expired in February 2015 (although the requirements remain in effect pending the issuance of a new permit).

¹ Key words: #EnvironmentalProtection, Stormwater, MS4 Permit.

² 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.

The County's Coordinated Implementation Strategy (CCIS)³ (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 continues to be the primary driver of DEP's CIP expenditures and was the focus of last year's Stormwater Management CIP debate discussed below.)*
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 2018.⁴

FY19-24 Stormwater Management CIP

Last year, as part of his FY19-24 CIP recommendations, the prior Executive recommended a new Design/Build/Maintain (DBM) project intended to improve project delivery and achieve lower per acre restoration/retrofit costs. The Executive's CIP recommendation assumed the next MS4 permit would include a five percent restoration/retrofit requirement (based on DEP discussions with MDE in early 2018), which equates to 945 acres. The DBM project would be the County's primary construction delivery

³ 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>.

⁴ For more information, please see DEP's FY18 NPDES-MS4 Annual Report and its Consent Decree report; both submitted to MDE on February 15, 2019; and available for download at: <https://www.montgomerycountymd.gov/DEP/Resources/Files/downloads/water-reports/npdes/AnnualReport-FY18-2-22-19-Final.pdf>, and <https://www.montgomerycountymd.gov/DEP/Resources/Files/downloads/water-reports/npdes/FY18-consent-decree-w-cover.pdf>.

method going forward for completing this restoration/retrofit work, with 500 acres of retrofit assumed in the DBM project over the six-year period. The balance of retrofit/restoration work/credits would be obtained through other projects, as well as some operating programs.

In July 2018, The Council approved the DBM project (and a revised Stormwater Management CIP). This action occurred after much debate and a rare Executive veto of the Stormwater Management CIP after the Council’s initial CIP actions in May. The July Council action included some substantive changes to the DBM project description form (PDF; see ©1-2) based on a compromise worked out with Executive staff. Among the changes included were:

- The project’s FY19 appropriation would be \$20 million instead of the \$43.2 million previously assumed by the Executive. The \$20 million appropriation was assumed to cover the first phase of work identified by the contractor. Future phases of work would require additional appropriations through future Council action.
- Require quarterly status reports be provided to the Council.
- Require DEP to meet regularly with an advisory group that would provide input and feedback on project issues.

In addition to these PDF changes, Council and Executive staff agreed to modifications to the structure and content of the Request for Proposals (RFP) for the DBM contract. Some of the more substantive items included:

- Contract bids would be required to include 10-12 existing projects in design but previously suspended by DEP. Bidders would also be required to review all of DEP’s suspended projects and note why projects were not selected.
- At least 60 percent of the projects included in contract bids would have to be “green infrastructure” projects.
- At least 5 percent of the project acreage or 10 percent of the project costs would have to be from low impact development (LID) projects.
- DEP must approve or disapprove projects proposed by the contractor and can add or substitute projects (subject to availability of funding in the project).

The FY19-24 Approved Stormwater Management CIP expenditures by project (based on final Council action last July) are summarized on the following chart.

FY19-24 Approved Stormwater Management CIP

Project	Six-Year	Expenditures (in 000s)					
		FY19	FY20	FY21	FY22	FY23	FY24
Misc Stream Valley Improvements	14,990	5,160	7,660	1,630	180	180	180
SM Retrofit - Roads	50	50					
SM Retrofit - Countywide	18,980	17,030	1,950				
SM Design/Build/Maintain Contract	46,300	1,830	8,720	8,770	9,140	9,640	8,200
Facility Planning: Stormwater Management	4,580	750	730	750	790	780	780
SM Facility Major Structural Repair	11,720	1,480	2,320	3,330	1,630	1,480	1,480
Wheaton Regional Dam Flooding Mitigation	5,530	70	80	330	3,130	1,920	
Total	102,150	26,370	21,460	14,810	14,870	14,000	10,640

The \$102.2 million six-year total is much less than the prior FY17-22 CIP (\$345.5 million) because the prior CIP included the County’s final push to meet its 20% retrofit/restoration requirement in the old

permit as well as a continued similar level of expenditures in the outyears. The FY19-24 CIP, as noted earlier, now assumes a lower 5% retrofit/restoration requirement.

DBM Contract Status

The DBM contract went out for bid last October and bids were received in early November. However, the contract procurement for this project was later put on hold by the new Executive pending further review of the project by the new DEP Director and pending more current information from the Maryland Department of the Environment (MDE) regarding the expected future permit requirements. A draft permit (the tentative determination) was previously expected from MDE by this past January. However, that expected date has been pushed back to June 2019.

Attachments

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**SM Design/Build/Maintain Contract
(P801901)**

Category	Conservation of Natural Resources	Date Last Modified	06/14/18
SubCategory	Stormwater Management	Administering Agency	Environmental Protection
Planning Area	Countywide	Status	Ongoing

EXPENDITURE SCHEDULE (\$000s)

	2018	2019	2020	2021	2022	2023	2024	2025	2026
Planning, Design and Supervision	12,250		1,830	2,180	2,410	2,430	2,430		990
Construction	34,050			6,580	6,360	6,710	7,210	7,210	
TOTAL EXPENDITURES	46,300		1,830	8,720	8,770	9,140	9,640	8,200	

FUNDING SCHEDULE (\$000s)

	2018	2019	2020	2021	2022	2023	2024	2025	2026
Long-Term Financing	27,265		1,830	8,720	5,130	4,380	4,450	2,775	
State Aid	11,500				2,500	3,000	3,000	3,000	
Current Revenue: Water Quality Protection	7,535				1,140	1,780	2,180	2,425	
TOTAL FUNDING SOURCES	46,300		1,830	8,720	8,770	9,140	9,640	8,200	

APPROPRIATION AND EXPENDITURE DATA (\$000s)

Appropriation FY 19 Request	Year First Appropriation	FY19
Appropriation FY 20 Request	Last FY's Cost Estimate	
Cumulative Appropriation	Transfer	10,657
Expenditure / Encumbrances		
Unencumbered Balance		

PROJECT DESCRIPTION

This project provides for the use of a Design/Build/Maintain (DBM) contract for the design and construction of new and/or upgrades of existing under-performing stormwater management facilities or stream restorations throughout the County to meet the requirements of the County's Municipal Separate Storm Sewer System (MS4) Permit. Compliance with the MS4 Permit requires the control of impervious surfaces not currently treated to the maximum extent practicable. Any stormwater management facility type(s) or stream restoration, deemed creditable per the Maryland Department of the Environment regulations, can be implemented per this project.

PROJECT JUSTIFICATION

This project is needed to comply with the County's MS4 permitting requirements in a cost-effective manner, to implement the County's adopted water quality goals (Chapter 19, Article IV), and to protect habitat conditions in local streams.

OTHER

The Montgomery Parks Department of the Maryland-National Capital Park and Planning Commission (M-NCPPC) and the Montgomery Department of Environmental Protection (DEP) have agreed that M-NCPPC will serve as the lead agency for implementing stream restoration projects including long term monitoring and maintenance, that are located wholly or mostly on parks property in support of the County's MS4 permit. Previously, DEP had begun design work on the following stream restoration projects which meet these criteria: Clearspring Manor, Gleasman, Stoneybrook (Beach Drive to Montrose Avenue), and Grosvenor (Beach Drive to Rockville Pike). In FY18, DEP will provide all design work for these projects to M-NCPPC for design completion, permitting, and construction under M-NCPPC's Stream Protection: SVP (P818571) project. M-NCPPC has agreed that all MS4 credits generated from these projects will be credited towards the County's future MS4 permit with delivery of the restored impervious acres no later than Dec. 31, 2023. M-NCPPC will provide appropriate updates at key project milestones to ensure that impervious acreage credits are achieved in the timeframe required, in addition to providing the long-term monitoring and maintenance required for the County to maintain the impervious acreage credit. These projects are currently estimated to have a combined cost of \$2.4M and will provide approximately 44 acres of credit. Parks will provide updated schedule and cost information on all projects in FY19 for construction allocation funding beginning in FY20, based on MDE's Water Quality Revolving Loan Fund cycle timeframes. M-NCPPC and DEP will immediately begin developing a Memorandum of Understanding that details how projects completed by M-NCPPC, funded with WQPF dollars, with MS4 credits going to DEP will be handled. M-NCPPC will document all MS4 credits created through these projects in accordance with MDE requirements to obtain State approval for the permit credits. M-NCPPC recognizes that stream restoration projects with relatively small segments located on parks property may be selected by the County's DBM contractor. If selected by the County's contractor and approved by DEP with concurrence by M-NCPPC, the contractor will need to obtain a Park Permit and comply with all M-NCPPC requirements.

DEP will provide quarterly program status updates to the Council under this contract. The annual work program will be based on permit requirements, an assessment of priority needs, community input including feedback from a stormwater program advisory group, and partnership agreements.

FISCAL NOTE



This project assumes the award of Maryland Water Quality Revolving Loan Funds (Long-Term Financing) over the six-year period, which would replace Water Quality Protection Bonds as the primary source of funding for the program. Expenditures in the outyears include expected costs to meet the requirements of the County's next MS4 permit. The scope of the next MS4 permit is subject to negotiation with the Maryland Department of Environment. The FY20 appropriation will be determined as part of the FY20 Capital Budget Process.

DISCLOSURES

Expenditures will continue indefinitely. The County Executive asserts that this project conforms to the requirement of relevant local plans, as required by the Maryland Economic Growth, Resource Protection and Planning Act.

COORDINATION

Maryland National Capital Park and Planning Commission, Department of Permitting Services, Maryland Department of the Environment