

RE: Comments on the Tentative Determination to Issue a Phase I Municipal Separate Storm Sewer System Discharge Permit (MS4) for Montgomery County, Maryland, Permit # 06-DP-3320 MD0068349

December 2, 2008

Mr. Brian Clevenger
Water Management Administration
Maryland Department of the Environment
1800 Washington Boulevard Suite 440
Baltimore, MD 21230-1708

Dear Mr. Clevenger:

Please accept the following comments by the undersigned Stormwater Partner member organizations regarding the Department's tentative determination to reissue the above-titled permit under the National Pollutant Discharge Elimination System ("NPDES"). The undersigned groups and individuals are members of the Montgomery County Stormwater Partners Network, which collectively represents more than 55,000 residents of Montgomery County. We also support the detailed comments submitted jointly to you by the Chesapeake Bay Foundation, Audubon Naturalist Society, Natural Resources Defense Council, and Anacostia Watershed Society.

Overall, this draft permit represents a major step forward in the prevention and reduction of urban stormwater pollution in Maryland, and with the few key revisions that we request in these comments, we believe that this permit will be a model for other stormwater permits in Maryland. In particular, we support the following upgrades to the existing permit: inclusion of Montgomery County Public Schools as a co-permittee; code changes to reflect Environmental Site Design (ESD); a significant role for ESD practices in watershed restoration; and incorporation by reference of the Potomac River Watershed Trash Treaty and all approved Total Maximum Daily Load Wasteload Allocations. These provisions help to ensure public confidence in stormwater pollution prevention. However, we urge MDE to revise several provisions to ensure that these requirements are clear and enforceable, as outlined below.

1) Clarify MCPS's obligations as a co-permittee.

Even though Montgomery County Public School System (MCPS) transferred its structural stormwater maintenance duties to Montgomery County Department of Environmental Protection last year, the School System's stormwater responsibilities do not end there. We strongly support the inclusion of MCPS as a co-permittee in this permit, and we request that MDE revise the final stormwater permit to clearly define the stormwater-related duties pertaining to the school system. Explicit additions to several permit sections would clarify the role of MCPS as a watershed steward and stormwater manager. These particular sections include the ESD (Stormwater Management Act of 2007) code changes, along with the sections on TMDLs, Watershed Restoration, Trash, and Public Education.

2) The permit needs to include anti-degradation provisions.

New discharges cannot be approved that will cause or contribute to violations of water quality standards, in either impaired waters or in high-quality waters. The permit must be revised to require that any proposed new discharges will not violate applicable water quality standards for impaired waters. In addition, the permit must stipulate that new development or redevelopment projects (including road projects) approved by one or more of the co-permittees shall not measurably reduce water quality in designated trout waters of Montgomery County. The permit must also prohibit cumulative impacts of discharges that together would cause water quality standards violations.

3) The Total Maximum Daily Load (TMDL) provision needs specific deadlines.

We strongly support the draft permit's language incorporating by reference pollutant loading limits (Waste Load Allocations - WLAs) in approved TMDLs. However, other provisions in the permit undermine the requirement to meet the loading limits and also fail to specify interim and final deadlines for meeting these limits. Considering the clear requirements under Maryland law for deadlines and quantified interim standards, we urge MDE to revise the final permit to include a deadline for actually meeting the pollution loading limits for all EPA-approved TMDLs (bacteria, Biochemical Oxygen Demand, and sediment) in the permit itself, or explicitly require the County's implementation plan for each EPA-approved TMDL to include a final deadline for meeting the pollutant loading limits. We also request that Montgomery County be held to interim limits and deadlines established in its implementation plans.

4) The Trash provision needs clarification of its geographic scope, and interim and final deadlines for meeting the Zero Trash objective.

We strongly support the draft permit's incorporation by reference of the Potomac River Watershed Trash Treaty, and the requirement for MDE review and approval of Montgomery County's trash reduction strategy and work plan to meet the Trash Treaty's "Zero by 2013" commitment. The permit must clarify that the geographic scope is the Potomac Watershed in Montgomery County (including but not limited to the Anacostia); and must specify that annual trash reduction and the 2013 trash elimination deadlines must be met by the County, rather than the draft permit's vague requirement to "show progress toward" reducing and eliminating trash.

5) We support the requirements in the draft permit for Environmental Site Design (ESD) code changes and retrofits for new development and redevelopment, and the Watershed Restoration requirements.

All co-permittees be explicitly named in these sections. In order for ESD practices to become the norm for stormwater management for new development, redevelopment, and watershed restoration, Montgomery County and its seven co-permittees must begin ramping up ESD applications far beyond their present level of use, which in far too many sectors and locations is still at the "pilot demonstration phase." Green roofs, bioretention,

permeable pavements, and many other ESD practices have all been well-demonstrated throughout Montgomery County and the greater Washington, D.C. region; these permit provisions will help to significantly ramp-up their use. We also propose monitoring program changes to enable the tracking of the performance of these measures compared with other approaches.

6) Public participation provisions must be strengthened.

The sections on Public Education, Annual Reporting and Program Review should provide opportunities for public participation. This is one of our "Twelve Points of Change for the Montgomery MS-4 Permit," proposed to MDE in 2006. Montgomery citizens have found through long experience that our local stormwater and land management agencies need to engage more fully in a two-way relationship with citizens, rather than the traditional one-way imparting of pre-selected information to the public. Through requiring greater public participation in the review and revision of Montgomery's stormwater and erosion and sediment control programs, these programs will improve and evolve more rapidly and effectively

7) MNCPPC needs to be issued its own separate NPDES MS-4 permit.

During our meetings this summer with MDE and with Montgomery County DEP, and previously during Clean Water Task Force meetings that included staff of the Maryland-National Capital Park and Planning Commission, the Stormwater Partners proposed that MDE issue a separate NPDES Municipal Separate Storm Sewer System permit to the Commission. This bi-county commission controls tens of thousands of acres and though much of it is wooded parkland, huge swaths also consist of pavement, compacted turfgrass, and heavily-cut-over and degraded woodland edges. If this public land is not well-managed for stormwater prevention and ESD practices, as should be required via an MS-4 permit, it will continue to be a source of poorly-controlled and uncontrolled stormwater discharges rather than a "Green Infrastructure" stormwater prevention asset.

Thank you for considering these comments.

Sincerely,

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