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STATE OF MARYLAND
DEPARTMENT OF THE ENVIRONMENT
WATER MANAGEMENT ADMINISTRATION

Transcript of Public Hearing on the Tentative
Determination to Issue Storm Water Permit,
Carroll County, Maryland

Reagan Room -
Carroll County Government Office Building

Monday, September 8, 2014, 10:00 a.m.

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Reported by:

Angela N. Kilby, Court Reporter

1 P R O C E E D I N G S

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3 HEARING OFFICER CLEVENGER: Good morning
4 and welcome. We are in the Reagan Room of the
5 Carroll County Government Office Building,
6 Westminster, Maryland. It is about 10 o'clock on
7 Monday, September 8, 2014, to have a public
8 hearing regarding the Maryland Department of
9 Environment's tentative determination to issue
10 Carroll County a national pollutant discharge
11 elimination system, NPDES, municipal separate
12 storm system permit, MS-4. That is a mouthful,
13 especially for a Monday morning.

14 My name is Brian Clevenger,
15 C-L-E-V-E-N-G-E-R. I am the program manager of
16 the Maryland Department of Environment Sediment,
17 Storm Water, and Dam Safety Program. I'll be the
18 hearing officer for today.

19 Other MDE personnel in the room are, to
20 my right, Ray Bahr, who is the division chief of
21 the program review division, Maria Warburton,

1 Michelle Arthur, and Andrew Tagoe.

2 Thank you for the MDE staff, also to Tom
3 and Phil for having us up this morning to take
4 this permit up.

5 The State of Maryland has a tentative
6 determination -- or a -- let me get this right.
7 Administrative Procedures Act wherein we issue the
8 tentative determination to re-issue Carroll
9 County's MS-4 permit. These were announced --
10 this action was announced in the Carroll County
11 Times on June 27, and then again on June 30, 2014.
12 We also sent out notice to the Department's
13 interested parties list we maintain for all NPDES
14 permits.

15 We have two folks signed up to speak
16 this morning, both representing Carroll County. I
17 have, today, prepared remarks that we would like
18 to have read into the record formally. When we
19 get finished with that, we will give the county a
20 chance to provide comments for the record. And
21 then we will ask if there is any elected officials

1 here, we'll give them a shot as well. Then we'll
2 wrap things up at the end.

3 When you appear, please identify
4 yourself, please spell your name for Angie, and if
5 there are any questions subsequent to all of this,
6 we can take that off the record. This is to
7 accept public testimony comments, it is not a
8 question-and-answer period.

9 So, with that, I will read what is
10 prepared formally, we'll move a little forward
11 from that.

12 The purpose of today's hearing is to
13 accept public comment on MDE's tentative
14 determination to issue Carroll County an MS-4
15 permit. This hearing is being held to honor a
16 request submitted on July 18, 2014 from Tom
17 Devilbiss, representing Carroll County Government,
18 Department of Land Use Planning and Development.
19 This hearing allows MDE to meet its obligations
20 under Maryland's Administrative Procedures Act.

21 For background, Maryland has been

1 delegated authority by the United States
2 Environmental Protection Agency, EPA, to
3 administer the NPDES program in the state. Final
4 storm water regulations were adopted by EPA in
5 November 1990 according to section 402-P of the
6 Clean Water Act. These regulations require that
7 owners of storm drain systems serving populations
8 greater than 100,000 apply for a Phase I NPDES
9 municipal storm water permit.

10 Based on 1990 census data, Carroll
11 County was considered a Phase I median
12 municipality due to its population, which was over
13 120,000 at the time. The county submitted a two-
14 year, two-part application and was issued an
15 initial MS-4 permit in November 1993. The
16 county's first permit laid the foundation for a
17 comprehensive approach to controlling runoff.
18 This was done by establishing the necessary legal
19 authority, mapping storm drain system
20 infrastructure, identifying sources of pollution,
21 monitoring storm events to characterize urban

1 runoff, enhancing existing source -- erosion and
2 sediment control and storm water management
3 programs, and establishing new programs for
4 providing education and eliminating illegal storm
5 drain system discharges.

6 This permit was reissued on May 30,
7 2000, and again on July 14, 2005. For both of
8 these reissued permits, additional requirements
9 were included for assessing water quality across
10 the county and for restoring 10 percent of the
11 county's impervious area that was not already
12 managed to the maximum extent practicable.

13 NPDES permits last for five years, and a
14 reapplication is required to be submitted as part
15 of the county's fourth-year annual report.
16 Carroll County submitted its fourth year annual
17 report on July 15, 2010. Since that time, MDE has
18 held numerous meetings and had many conversations
19 with individual citizens, environmental advocates,
20 the EPA, and other local government officials that
21 are affected by the MS-4 permit program, including

1 Carroll County.

2 The result of these meetings and
3 conversations is the draft permit we take up
4 today. Yet, more significant conditions have been
5 added to this version of Carroll County storm
6 water permit, largely based upon EPA recently
7 approved total maximum daily loads for TMDLs, for
8 impairments to local water bodies within the
9 county, and for nutrients and sediments in the
10 Chesapeake Bay.

11 The most significant permit condition is
12 the doubling of the impervious restoration
13 requirement from 10 percent to 20 percent. It
14 needs to occur within the five-year permit term.

15 These and all other remaining permit
16 conditions have been developed for abating the
17 discharge of pollutants from Carroll County storm
18 drain system and working toward meeting the
19 state's receding water quality criteria.

20 Thanks for enduring that. That
21 completes the prepared statement. Is there any

1 elected official present that would like to
2 provide comments?

3 There being none, we will call the
4 representatives of the county. Who wants to go
5 first? Phil, you want to go first. Phil Hager,
6 please spell your name for Angie, Phil. And take
7 it away.

8 MR. HAGER: Good morning. My name is
9 Phillip R. Hager, H-A-G-E-R. I have the honor of
10 serving as the director of the Department of Land
11 Use Planning and Development for Carroll County.
12 Thank you for this opportunity to provide comments
13 regarding the proposed new permit.

14 I would like to welcome Mr. Clevenger
15 and Mr. Bahr to Carroll County, and all the other
16 staff members who are here from the Maryland
17 Department of Environment. I noticed you have an
18 umbrella on the table. I can assure you that you
19 do not need that as it never rains in Carroll
20 County. (Laughter.)

21 The new permit that is the topic of

1 today's hearing proposes to impose additional
2 requirements and new conditions on Carroll County.
3 While we have legitimate concern about some of
4 these provisions, it would be wrong to question
5 our resolve or our commitment to effective storm
6 water management or our desire to pursue healthier
7 conditions in our local waterways, or our role in
8 improving the water quality of the Chesapeake Bay.

9 Over the past decade, Carroll County has
10 demonstrated our commitment. Our resource plans
11 and the budgets to fulfill those plans demonstrate
12 our intention to carry out these initiatives and
13 to follow through on our share of the water
14 quality challenges that we face.

15 Of the 50 employees in this department,
16 22, which equates to approximately 44 percent, are
17 involved in storm water management activities and
18 water quality management activities on a daily
19 basis. Three of these pursue storm water
20 management on a full-time basis, eight on a
21 part-time basis of more than 50 percent of their

1 time, and 11 on a part-time basis of less than 50
2 percent of their time. Again, that is 44 percent
3 of the manpower resources of this department.

4 Since 2008, Carroll County's annual
5 operating expenditures for this program have
6 tripled from approximately \$334,000 annually to
7 more than \$1.1 million annually.

8 From July 2005 to the present, we have
9 invested over \$10.1 million in capital outlays.
10 This does not include the more than \$2 million
11 that we have received in grant funds from outside
12 sources. These expenditures, and the fact that
13 our elected officials were willing to prioritize
14 this program to the extent they did, given the
15 significant downturn in the economy in that period
16 and the financial crisis of 2007. The hardships
17 resulting from these economic conditions required
18 budget cuts and staffing reductions in just about
19 every other area of county government. This
20 program is without precedent in Carroll County, as
21 this program has seen continued increases in

1 spending, manpower, and resource commitment.

2 Carroll County has been aggressively
3 pursuing permit compliance and has satisfied the
4 impervious surfaces treatment threshold of 10
5 percent, as mandated under our current permit.
6 However, we did not stop when we met that goal.
7 In anticipation of a likely doubling of the
8 required acreage of treatment, the county has
9 continued to plan, design, fund, construct, and
10 maintain storm water management facilities.
11 Presently, the county has completed 60 storm water
12 remediation projects, which equates to more than
13 14 percent of the county's impervious surface
14 acres. This treatment threshold will increase to
15 19 percent under the current CIP cycle.

16 In that current CIP cycle, we have
17 programmed \$20.6 million to continue to build upon
18 these successes. For the 11-year period from 2009
19 to 2020, Carroll County will invest more than \$8.8
20 million in operating expenses and more than \$37.1
21 million in capital expenditures for a grand total

1 of \$45.9 million. This total does not reflect any
2 additional grant funds that we may receive. And I
3 should point out this total equates to
4 approximately \$4.1 million annually within Carroll
5 County's budget.

6 We may have reservations about certain
7 aspects of the proposed NPDES permit, which Mr.
8 Devilbiss is going to expound upon. And I am
9 certainly hopeful that this process, including
10 today's hearing, can help to address some of those
11 reservations. However, we have no reservations
12 when it comes to the importance of our program and
13 its benefits to the natural resources of our
14 region.

15 Again, thank you for this opportunity to
16 provide comment. I look forward to continuing to
17 work moving forward and working with your agency.

18 Thank you.

19 CHAIRMAN CLEVINGER: Thanks, Phil. Tom
20 Devilbiss.

21 MR. DEVILBISS: Good morning. My name's

1 Tom Devilbiss, D-E-V-I-L-B-I-S-S. I serve as
2 Carroll County's deputy director of the Department
3 of Land Use Planning and Development.

4 I would like to begin by extending
5 Carroll County's sincere appreciation for the
6 continuing support and assistance provided by the
7 State's Water Management Administration, and,
8 specifically, the Staff of Settlement, Storm
9 Water, and Dam Safety Program. Their
10 responsiveness, technical advice, and willingness
11 to work cooperatively towards resolution of issues
12 has been invaluable and allowed Carroll County's
13 program to move forward in a very productive
14 manner. All those entities involved in the NPDES
15 MS-4 efforts would be very well served if these
16 positive, strong-working relationships can
17 continue in order to achieve our common goals of
18 improved water quality.

19 Mr. Hager stressed the commitment of our
20 past and current Board of Commissioners to support
21 the County's storm water management program. As

1 evidenced by the fiscal and staff commitment,
2 Carroll County is diligently working to address
3 the requirements of our current permit. However,
4 we are very concerned with the direction taken by
5 some of the new requirements and/or language in
6 the tentative permit. We believe that some of
7 these items set a dangerous precedent for work or
8 expected outcomes that either cannot be achieved
9 or cannot be measured, particularly within the
10 time frames associated with the permit.

11 The insertion of a new Part III Water
12 Quality in the draft permit appears to be very
13 problematic both in the short and long term. It
14 is unclear whether the attainment of applicable
15 waste load allocations for each established or
16 approved TMDL as well as effectively prohibiting
17 pollutants in storm water is required within this
18 permit cycle. This is especially troublesome
19 considering many of the current TMDLs have been
20 acknowledged by MDE to be technically infeasible
21 to attain at this time. In addition, related to

1 the Chesapeake Bay TMDL effort USGS, United States
2 Geological Survey, has acknowledged that the
3 actual impact and results of all BMPs implemented
4 for that effort, the Bay effort, may take decades
5 to identify and measure.

6 If the most prominent scientific federal
7 government organization in the U.S. cannot
8 definitely predict the outcomes of practices
9 involved by 2025 via the Bay effort, then why
10 should a single county jurisdiction like Carroll
11 be expected to set benchmarks for pollutant load
12 reductions and deadlines that demonstrate progress
13 toward meeting all applicable storm water waste
14 load allocations. There certainly is no guarantee
15 that, even when all BMPs predicted to achieve a
16 reduction are in place, the anticipated reductions
17 will incur. To continue with these expectations,
18 attainment, benchmarks, and deadlines is
19 regulatory requirements in the permit seems both
20 unrealistic and purposefully jeopardizing the
21 permittee's ability to comply. The tentative

1 permit also requires a description of a plan for
2 implementing additional watershed restoration
3 actions that can be enforced when benchmarks,
4 deadlines, and applicable storm water waste load
5 allocations are not being met or when projected
6 funding is inadequate. If these restoration plans
7 are intended to be iterative, as the language of
8 the permit indicates, it is not feasible or
9 practical to base enforcement actions or measures
10 on a document that is intended to change and adapt
11 to changing conditions and implementation
12 measures. It also is not practical or prudent to
13 require restoration plans to be completed before
14 the watershed assessments have been completed.
15 Therefore, critical consideration needs to be
16 given as to the removal of references related to
17 benchmarks and deadlines, as well as the
18 re-insertion of the maximum extent practicable
19 language as provided within previous permits. The
20 permit should continue to address and require BMPs
21 to be put in place that represent the reductions

1 that should result based on the sum of the
2 recognized effectiveness values of those BMPs. It
3 would then be appropriate for progress toward
4 achieving the waste load allocations, through
5 mitigation of impervious services, be demonstrated
6 and reported annually.

7 MS-4 permits are intended to be
8 individual permits, thus the conditions of the
9 permit can and should be written to address issues
10 specific to the permit holder. It is not
11 necessary to apply a boilerplate approach to all
12 Phase I permittees. Yet a requirement to address
13 litter and floatables included in this tentative
14 permit appears to be. This requirement is
15 included in the permit despite there being no
16 listing on TMDL for any water body related to
17 trash or floatables in Carroll County. The county
18 has performed numerous stream walks on an
19 extensive number of streams and has not identified
20 a significant issue related to litter or
21 floatables. The inclusion of this requirement

1 within the Carroll County tentative permit should
2 be strongly reconsidered.

3 This testimony is provided to highlight
4 several of the more significant concerns related
5 to the tentative permit. The County will be
6 expanding on this testimony via written comments
7 by the close of the comment period, which will
8 provide details to the issues discussed today.

9 In closing, I would like to strongly
10 urge all involved in the NPDES MS-4 process of the
11 legal quagmire being created. Those permits
12 issued prior to Carroll County have begun this
13 time-consuming, fiscally-draining process. Rather
14 than continuing the situation the State and
15 regulated jurisdictions should be moving in a
16 direction which ensures efforts related to NPDES
17 implementation and water quality improvements are
18 realistic, rational, and with expectations which
19 are based on sound science and smart economics.

20 When I was preparing this, actually
21 yesterday, I was also in-between doing a little

1 reading to kind of take my mind away from some of
2 these issues. And I actually was reading an issue
3 of Earth Magazine from September 2013. And within
4 that magazine there was a comment section written
5 by Professor Scott Tinker, who is director of the
6 Bureau of Economic Geology, State Geologist of
7 Texas. His comments were geared towards the
8 energy industry, but I think some of the things he
9 stated in here are very pertinent to where we are
10 at with the NPDES efforts in Maryland. And his
11 commentary was based on this -- what he calls the
12 radical middle.

13 I would like to read you a few excerpts
14 from that. I think it is very pertinent. He
15 says, one thing I have learned from my
16 considerable interactions with industry,
17 government, academia, and the public is that
18 groups of people, each armed with different
19 knowledge, and with the courage to leave their
20 corners and seek compromise, often arrive at
21 workable solutions to seemingly intractable

1 problems. This common ground, what I call the
2 radical middle, is where the solution to -- he
3 says energy challenges lie, I would say water
4 quality improvements lie.

5 He goes on to say, what is clear is the
6 issue won't be addressed properly unless the
7 principles involved, industry, political parties,
8 academics, nongovernmental organization, and the
9 public, come out of their respective corners, open
10 their minds to information compromise. Compromise
11 is not a show of weakness, because barometer of
12 personal confidence and respect for others' views.
13 It also reviews the intention to get things done.

14 And, finally, the most important, I
15 encourage all groups to leave their corners and
16 head towards the common ground of the radical
17 middle.

18 I think, personally, that is where we
19 are at right now. We need for this whole process
20 to step back and go to a middle so we can get
21 these things done.

1 Thank you very much.

2 CHAIRMAN CLEVINGER: Thanks, Tom.

3 Does anyone else wish to give public
4 comment?

5 There being no hands raised, we will
6 keep the public record open until September 29,
7 2014. If anyone here wants to submit written
8 comments, they can do so by writing, submitting
9 them to Ray Bahr, B-A-H-R, Maryland Department of
10 Environment, Water Management Administration,
11 Sediment Storm Water and Dam Safety Program, 1800
12 Washington Boulevard, Suite 440, Baltimore,
13 Maryland 21230. Or you can e-mail Ray at Raymond,
14 R-A-Y-M-O-N-D, dot Bahr, B-A-H-R, at Maryland dot
15 gov.

16 You can also find additional information
17 about the entire NPDES storm water program on the
18 Department's web page, website. The face of it is
19 W-W-W dot M-D-E dot state dot M-D-E dot U-S.
20 There is a blue panel on the upper left-hand
21 corner of the web page. Click on water and

1 navigate from there.

2 After the comment period closes, the
3 Department will develop a response to comments
4 document that will support our final determination
5 to issue Carroll County's permit as final. Anyone
6 who signed up on our audience sheet -- attendance
7 sheet today or gave testimony will receive notices
8 from the Department about actions that take place
9 with regard to this permit. We will keep you
10 apprised, in other words.

11 I would again like to thank Phil and Tom
12 for having us up and everybody who came out Monday
13 morning.

14 There being no other business, we can
15 close the hearing now. Thank you.

16 (The hearing concluded at 10:25 a.m.)

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CERTIFICATE OF REPORTER

I hereby certify that the foregoing is a
true and accurate transcription of the recordings
in the aforementioned matter.

Angie N. Kilby, Notary Public

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