

# **In The Matter Of:**

## ***FREDERICK COUNTY GOVERNMENT'S MS4 PERMIT RENEWAL***

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***PUBLIC MEETING  
August 28, 2014***

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MARYLAND DEPARTMENT OF THE ENVIRONMENT

IN RE:

FREDERICK COUNTY GOVERNMENT'S MS4 PERMIT RENEWAL

PUBLIC MEETING

Frederick, Maryland

Thursday, August 28, 2014

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Reported by: Toni R. Thompson, RMR

1 PUBLIC MEETING, held at the office of:  
2 Frederick County Community Development  
3 Division  
4 30 North Market Street, Basement Level  
5 Frederick, Maryland 21701  
6 301.600.1153  
7  
8

9 Pursuant to agreement, before Toni R.  
10 Thompson, RMR, Court Reporter and Notary Public in and  
11 for the State of Maryland.  
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1 A P P E A R A N C E S

2 ON BEHALF OF MDE

3 BRIAN CLEVINGER, HEARING OFFICER

4 MARIA Warburton

5 RAYMOND BAHR

6 ANDREW TAGOE

7 MICHELLE ARTHUR

8 CHRISTINA LYERLY

9 ON BEHALF OF FREDERICK COUNTY GOVERNMENT-OSER

10 SHANNON MOORE

11 ERICA COOKE

12 DARLENE BUCCIERO

13 HEATHER MONTGOMERY

14 DANIEL SALTZBERG

15 EVELYN MICHAEL

16 SUZANNE CLIBER

17 LISA ORR

18 ON BEHALF OF THE POTOMAC CONSERVANCY

19 AMANDA JOHN

20 CHRIS McGRAW

21 ON BEHALF OF TROUT UNLIMITED

22 KEVIN ANDERSON

1                   A P P E A R A N C E S (cont'd)  
2       ON BEHALF OF THE MARYLAND STORMWATER CONSORTIUM  
3                   BRUCE GILMORE  
4       ON BEHALF OF CLEAN WATER ACTION  
5                   WILL FADELY  
6       ON BEHALF OF MARYLAND LEAGUE OF CONSERVATION VOTERS  
7                   BRENT BOLIN  
8       ON BEHALF OF THE CHESAPEAKE BAY FOUNDATION  
9                   ELAINE LUTZ, ESQUIRE

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

2 MR. CLEVINGER: Good morning and welcome.

3 Today is Thursday, August 28th, 2014, it's about nine  
4 minutes after 10 o'clock. We're in Frederick County,  
5 Maryland, and we are going to conduct a Public  
6 Hearing to take up Frederick County's Municipal  
7 Separate Storm Sewer System Permit. The acronym is  
8 MS4.

9 My name is Brian Clevenger. I am the  
10 Program Manager of the Maryland Department of the  
11 Environment's Sediment, Stormwater and Dam Safety  
12 Program. I'll be the Hearing Officer today.

13 With me today from MDE, and I will  
14 introduce them, is Ray Bahr to my left, who is the  
15 Program Review Division Manager in the Sediment,  
16 Stormwater and Dam Safety Program. Maria Warburton,  
17 sitting between Ray and I, is the Permit  
18 Administrator in our program.

19 Also we have Andrew Tagoe, Christina  
20 Lyerly and Michelle Arthur with us as well.

21 First I'd like to thank Shannon Moore  
22 from Frederick County for having us up, for setting

1     this room up and the hearing; Maria Warburton for  
2     holding the Department of the Environment's end up so  
3     well. And according to Maryland's Administrative  
4     Procedures Act, a tentative determination to issue  
5     this Frederick County Municipal Separate Storm Sewer  
6     System, MS4 Permit, was advertised in the Frederick  
7     News-Post on June 28th and June 30th, 2014. The  
8     Department sent out announcements to MDE's interested  
9     parties list and publicized the permit decision,  
10    tentative determination to issue on the Department's  
11    web page.

12                 Anyone who signed up to speak will be  
13    given an opportunity. If you have not signed up to  
14    speak and wish to do so, we'll give you an opportunity  
15    at the end of the hearing to speak up. Also, if you  
16    want to be on the Department's interested parties list  
17    and you're not now you can sign up with us and you'll  
18    get notices of further actions with this, and probably  
19    all the other permits that we issue for MS4s.

20                 I have a prepared statement to read into  
21    the record, and after I get finished with that we'll  
22    call on the County to present what it wants to say,



1 and then we will give deference to any elected  
2 officials that are here, and then the three people  
3 that have suggested that they'd like to give public  
4 comment too, and the logistics of what happens next  
5 we'll talk about at the end. So I'll go ahead and  
6 read this prepared statement, and then we'll go from  
7 there.

8           The purpose of today's hearing is to  
9 accept public comment on the MDE's tentative  
10 determination to issue Frederick County an MS4 Permit.  
11 This hearing is being held to honor a request  
12 submitted on July 11th, 2014, from Ms. Shannon Moore  
13 representing Frederick County. This hearing allows  
14 MDE to meet its obligation under Maryland's  
15 Administrative Procedures Act.

16           For background, Maryland has been  
17 delegated authority by the United States Environmental  
18 Protection Agency, EPA, to administer the NPDES  
19 program in the state. NPDES stands for National  
20 Pollutant Discharge Elimination System.

21           Final stormwater regulations were adopted  
22 by EPA in November of 1990 according to Section 402(p)

1 of the Clean Water Act. These regulations required,  
2 in part, that owners of storm drain systems serving  
3 populations greater than 100,000 apply for a Phase I  
4 NPDES municipal stormwater permit. Based on the 1990  
5 Census and projections for growth, MDE designated  
6 Frederick County as a Phase I municipality due to its  
7 population. The County submitted a two-year, two-part  
8 application and was issued an initial MS4 Permit in  
9 November of 1994.

10 The County's first permit laid the  
11 foundation for a comprehensive approach to controlling  
12 runoff. This was done by establishing necessary legal  
13 authority, mapping storm drain system infrastructure,  
14 identifying sources of pollution, monitoring storm  
15 events to characterize urban runoff, and enhancing  
16 existing erosion and sediment control and stormwater  
17 management programs, and establishing new programs for  
18 providing education and eliminating illegal storm  
19 drain system discharges. This permit was reissued in  
20 March 2002. For this reissued permit additional  
21 requirements were included for assessing water quality  
22 across the County, and for restoring 10 percent of the

1 County's impervious area that was not already managed  
2 to the maximum extent practicable.

3 NPDES permits last for five years, and a  
4 reapplication is required to be submitted as part of  
5 the County's fourth year annual report. Frederick  
6 County submitted its fourth year annual report on  
7 March 8th, 2006. Since that time MDE has held  
8 numerous meetings and had many conversations with  
9 individual citizens, environmental advocates, the EPA,  
10 and other local government officials, including  
11 Frederick County, that are affected by the MS4 Permit  
12 program. The result of these meetings and  
13 conversations is the draft permit that we take up  
14 today.

15 Yet more significant conditions have been  
16 added to this version of Frederick County's stormwater  
17 permit, largely based upon EPA approved Total Maximum  
18 Daily Loads, or TMDLs, for impairments to local water  
19 bodies within the County and for nutrients and  
20 sediments in Chesapeake Bay. The most significant  
21 permit condition is doubling of the impervious area  
22 restoration requirement from 10 percent to 20 percent

1     that needs to occur within the five-year permit term.  
2     These and all other remaining permit conditions have  
3     been developed for abating the discharge of pollutants  
4     from Frederick County's storm drain system and working  
5     toward meeting the State's receiving water quality  
6     criteria.

7                 That ends the rather stuffy prepared  
8     statement. So with that I will ask Shannon,  
9     Ms. Shannon Moore of Frederick County to speak on  
10    behalf of the County. Again, if you would like to  
11    speak and you haven't signed our sign-up sheet please  
12    do so. We just had someone come in just recently, so  
13    if you want to speak let us know and we'll give you  
14    another chance.

15                Shannon.

16                MS. MOORE: Thank you, Brian. And thank  
17    you for everyone who's here today. I appreciate your  
18    dedication to the environment in Frederick County, as  
19    well as all the areas that it drains to. And I've  
20    worked with many of you in the past, and I look  
21    forward to working with you as we move forward with  
22    these challenges together in the future.

1           I wanted to just briefly update you about  
2   Frederick County's MS4 Permit. Here's a couple of  
3   maps that we've done of restoration areas and  
4   pollutant loadings. And I'm going to break my  
5   presentation down into three categories: One being  
6   about Frederick County, the second one being an  
7   overview of our current programs with a highlight on  
8   our budgeting and restoration efforts, and then the  
9   third being some brief comments on the tentative  
10  determination.

11           Just about Frederick County. It's  
12  approximately 664 square miles and it has 1400 miles  
13  of stream that go through five state watersheds, and  
14  those include the Lower Monocacy and the Upper  
15  Monocacy River, Catoctin Creek, Double Pipe Creek and  
16  the Potomac River.

17           Our staff has subdivided those watersheds  
18  into 20 smaller NPDES management units, and then  
19  we've broken those down further into smaller branches  
20  and catchments, and we do a lot of our loading  
21  estimates and restoration work at the catchment  
22  level.

1           The County is 35 percent forest, 58  
2     percent agriculture, but only 5 percent urban. Most  
3     of our urban land is within the municipalities and  
4     not the MS4. The non-municipal urban population as  
5     of August 1st, 2014, is 81,889.

6           The County has distinct places ranging  
7     from small rural communities to more developed areas  
8     and has no ultra urban areas.

9           Brian went over the list of our NPDES  
10    requirements, so I'm not going to duplicate that.  
11    But suffice to say our existing NPDES Permit has a  
12    substantial amount of work in monitoring, mapping,  
13    identification and correction of impairments, and it  
14    includes a requirement to reduce 10 percent of the  
15    untreated urban impervious area in the County.

16          We also have a robust program to identify  
17    and correct elicited discharges, as Heather Montgomery  
18    knows, and we do a great deal of public education and  
19    outreach, including the coordination of the Monocacy  
20    and Catoclin Watershed Alliance. We comply with  
21    sediment erosion control regulations and we have  
22    provided adequate funding.

1           On the financing and funding side, I  
2       wanted to go over some financial items. Some of  
3       these I think may be a surprise to you, some of them  
4       will not.

5           Frederick County is in compliance with  
6       the State's HB 987, the requirement to create a  
7       stormwater utility financing mechanism, and that  
8       currently generates \$488 on average per year and is  
9       assessed at a one penny rate. However, the majority  
10      of the NPDES MS4 program is not funded through this  
11      fee. In fact this fee has not been utilized yet.

12           The average cost of the permit execution  
13      over the past ten years before FY 14 was \$2.5 million  
14      a year. The FY 14 budget was \$3.6 million, and the  
15      current FY 15 budget is estimated at \$5.35 million.  
16      And the reason why I say estimated is because there  
17      are some budgets that are directly within our control  
18      that are broken out completely, and others where we  
19      have to take a portion of other budgets from the  
20      County, such as for erosion and sediment control and  
21      street sweeping.

22           That last cost that we have there on the

1 table is the cost of the next MS4 Permit, and we're  
2 currently in the process of finalizing our cost  
3 estimates on that permit but that order of magnitude  
4 is about correct. So our estimate again is not  
5 complete.

6 As far as watershed planning and  
7 restoration, which is one of our major activities,  
8 we're required to identify problems in watershed  
9 assessments and then develop a list of candidate  
10 solutions to those problems. And we've completed  
11 assessments for Ballenger, Lower Bush Creek, Lower  
12 Linganore Creek, Bennett Creek, Upper Monocacy and  
13 Lower Monocacy River watersheds, which is about 60  
14 percent of the county.

15 The solutions are developed as part of  
16 stream restoration and stormwater management facility  
17 retrofit assessments, in addition to in many  
18 instances those watershed assessments. We've  
19 conducted those for Ballenger, Lower Bush, Linganore  
20 and Bennett. Those are not required by the permit,  
21 but they are necessary to take projects through the  
22 feasibility phase for project development.



1           Just some background about our watershed  
2     assessments. In 2012 EPA recognized us as having one  
3     of the four best watershed assessments in the nation  
4     for the Lower Monocacy River. And also in 2012 we  
5     had an inspection by EPA Region 3 of Frederick  
6     County's MS4 compliance program, and some of the  
7     things that they noted were the excellence of  
8     Frederick County's GIS program, our robust program to  
9     sample elicit discharges, the strength of our  
10    watershed assessment program, and our public access  
11    of permitting and inspection data.

12           In 2013 our MDE review of the MS4 Permit  
13    states that the County is congratulated for its  
14    continued endeavors and commitment to the  
15    implementation of the municipal stormwater program.  
16    And they noted two items in particular; one being the  
17    completion of the restoration goal in the permit,  
18    and, two, being maintenance of adequate budget.

19           The goal that we currently have in the  
20    permit that we currently have is a 672-acre  
21    impervious area reduction goal. We have completed  
22    the restoration of actually 713 acres. We are

1 currently -- the accounting standards for that kind  
2 of hinge between early accounting prior to 2011 when  
3 the accounting for stormwater requirements were  
4 developed and then post 2011, and then most recently  
5 we have a new guidance that was published in August  
6 for how to account for those projects.

7           These projects include 125 acres of  
8 capital improvement projects, 129 acres of projects  
9 completed by our Watershed Alliance Partners --  
10 several of you in the room have contributed to these  
11 and we thank you greatly -- 55 acres of street  
12 sweeping, and 413 acres of community restoration  
13 projects sponsored through our office with our  
14 partners.

15           Just a couple of examples of projects  
16 that we've done that are capital. One is the  
17 Ballenger Creek Stream Restoration Project. That one  
18 restored the channel at the Ballenger Creek  
19 Elementary School and provided multiple benefits  
20 through coordinations with Frederick County Public  
21 Schools, our Division of Utilities and Solid Waste  
22 Management, Parks. We stabilized banks, reduced

1 sediment, removed debris jams in the stream. We  
2 protected the sewer line from the stream. We created  
3 an area for the Ballenger Creek Trail and saved Parks  
4 from having to install a pedestrian bridge to the  
5 tune of about \$415,000, and we improved habitat for  
6 fish, birds and other organisms.

7 Pay attention to the picture on the  
8 bottom left. That's the before, that's the  
9 immediately after, and that's after it started to  
10 grow up.

11 We've also done at Urbana High School  
12 stormwater retrofit. That was a bioretention type  
13 project. We partnered with Frederick County Public  
14 Schools on that. We treated -- the existing  
15 stormwater pond treated for volume, but not quality.  
16 We constructed bioretention facilities in the  
17 courtyard and the bus lot to treat for quality. The  
18 facilities look like a landscaping feature, and we  
19 also provided porous pavers at the emergency exits  
20 which the school was very pleased about.

21 And so on the bottom left again is the  
22 before picture in front of the pond, and then

1 immediately following it after the construction of  
2 it.

3 Another project that I wanted to call  
4 your attention to is the Linganore Stream Restoration  
5 Capital Improvement Project. This picture here on  
6 the right is candidate sites for restoration from the  
7 Linganore watershed's restoration and retrofit  
8 assessment, and then on the upper right-hand corner  
9 is a detail from that assessment that showed  
10 restoration opportunities. We do have a lot of these  
11 kinds of publications and we are happy to share them  
12 with you. Many of them are at the Watershed Alliance  
13 website at [www.watershed-alliance.com](http://www.watershed-alliance.com).

14 So in this particular project we selected  
15 the Pinecliff Park Stream Restoration Project. We  
16 addressed the degrading stream, sediment and nutrient  
17 pollution, and we coordinated with Parks to protect  
18 their assets, as well as a main water line and a road  
19 cover.

20 So that's kind of an overview of some of  
21 the highlights of our program. There are many other  
22 areas that we work in, but I thought it would be

1 important for us to talk about those because I think  
2 that that's an area where the County has spent a  
3 significant amount of work and maybe people are not  
4 aware of it.

5 Some general comments on the tentative  
6 determination. The first general category is in the  
7 area of maximum extent practicability. The Clean  
8 Water Act, Section 402(p)(3)(b)(iii), establishes MEP  
9 as a legal compliance standard for MS4 Permits. And  
10 MDE has included MEP references in Parts III, IV.D.,  
11 IV.E. and VII of the draft permit that appropriately  
12 reflect the MEP legal compliance standard.

13 We are finalizing our analysis of the  
14 maximum extent practicable to execute the draft  
15 permit and will commit to programs that are  
16 determined in the analysis to be practicable. We are  
17 concerned that some terms may not be achievable due  
18 to cost scheduling or other issues.

19 And I want to note that we're not alone  
20 in having some of those concerns. I recently heard a  
21 presentation from Bob Hoyt of Montgomery County to  
22 the Metropolitan Washington Council of Governments

1 where he presented to Secretary Summers, and also  
2 Nicholas DiPasquale, who is the head of the  
3 Chesapeake Bay Program, and he was concerned that  
4 Montgomery County was not going to be able to meet  
5 its 20 percent retrofit within its permit term, and  
6 so we echo the concerns of many other jurisdictions  
7 on this particular item.

8 Part III of the draft permit states that  
9 implementation of Parts IV through VII will  
10 constitute adequate progress towards water quality  
11 standards compliance. Water quality standards are a  
12 big issue for all of us. The County submits that  
13 there's no legal requirement that an MS4 Permit  
14 include any references to water quality standards or  
15 TMDL wasteload allocations, but can support this  
16 language as a reasonable compromise that has been  
17 used elsewhere in Region 3, for example in the 2012  
18 MS4 Permit issued to the District of Columbia.

19 We also have concerns that some of the  
20 tests in the draft permit may be impossible to  
21 accomplish even with unlimited funding and time, and  
22 an example of that is the draft permit requires that

1 the County develop a litter and floatables program  
2 with the goal of elimination of these materials.  
3 Eliminating litter and floatables will never occur,  
4 regardless of the County's efforts to address the  
5 issue. And it's kind of similar to the issue of  
6 policing where you are never able to completely  
7 eliminate crime.

8 So my last comment is that Frederick  
9 County has met its commitment under its current MS4  
10 program, has more than doubled its program resources  
11 in anticipation of the next MS4 Permit, and is  
12 committed to executing the draft permit to the  
13 maximum extent practicable.

14 So thank you very much, and I appreciate  
15 your time today.

16 MR. CLEVINGER: Thanks, Shannon.

17 At this time are there any elected  
18 officials present that would like to speak?

19 No one did, so we'll go with the three  
20 speakers that have signed up. Actually it's only  
21 two.

22 Bruce Gilmore. Bruce, if you would

1 identify yourself and your affiliation, your  
2 organization you're with, please.

3 MR. GILMORE: Yes, my name is Bruce  
4 Gilmore, B-r-u-c-e G-i-l-m-o-r-e. I am associated  
5 with as an advocate, stormwater abatement or a  
6 stormwater management advocacy effort on behalf of  
7 several nonprofit groups. They include the Anacostia  
8 Watershed Society, and I am the coordinator for  
9 Maryland Stormwater Consortium.

10 I'm here today to present a statement on  
11 behalf of the Consortium, and as I had indicated to  
12 Mr. Bahr last evening as I went to copy my statement  
13 and the attachment my abilities as a IT person were  
14 revealed. And so I'm going to have to provide a  
15 clear copy of the statement and the attachment. And  
16 so Mr. Bahr in turn very kindly informed me that if I  
17 were to stop by tomorrow I would find the office  
18 closed, and so I therefore have rescheduled my visit  
19 and I will send something electronically to our  
20 transcriber also and then I'll provide a hard copy  
21 care of Mr. Bahr. So that's my mea culpa for the  
22 hearing.



1 MR. CLEVINGER: Ray's a nice guy, so  
2 he'll be able to accommodate you.

3 MR. GILMORE: He is a very nice guy.  
4 Without exception the folks at MDE are nice people.

5 MR. CLEVINGER: You should ask around, by  
6 the way, about that.

7 MR. GILMORE: Some of them used to work  
8 for my alma matter, the Department of Natural  
9 Resources. That was a long time ago.

10 Okay. Let me see if I can get through  
11 the statement. There are ten large Maryland counties  
12 in Baltimore City for which Phase II MS4 Permits have  
13 been issued for more than ten years. Actually there  
14 is also a permit issued for the State Highway  
15 Administration.

16 These same jurisdictions have substantial  
17 population, have had substantial population growth  
18 and the accompanying residential and commercial  
19 development. Unfortunately for these same  
20 jurisdictions stormwater runoff is a continuing  
21 source of pollution and waterway damage. Frederick  
22 County is among these jurisdictions that has severe

1 stormwater runoff problems which need to be abated.

2 Notice that I said abated, I didn't say  
3 solved forever.

4 Frederick County, like the nine other  
5 large Maryland jurisdictions, has the opportunity  
6 through the reissuance of a strong MS4 Permit under  
7 consideration today to restore its waterways to a  
8 level where its citizens can use them for enhanced  
9 economic and recreational opportunities. In Maryland  
10 clean water drives better health and recreation and  
11 the resulting economic opportunity. An example of  
12 this is the total annual \$3 billion benefit of  
13 recreational boating and fishing on Maryland state  
14 and local economies. A good MS4 Permit vigorously  
15 implemented will result in less stormwater borne  
16 pollution and beneficially affect both the county's  
17 waterways and Chesapeake Bay.

18 As the fact sheet accompanied the release  
19 of this draft permit sets out, and as Ms. Moore  
20 emphasized, Frederick County covers an area of 644  
21 square miles and has approximately 250 major  
22 outfalls. These outfalls, which are pipes or other

1 conveyances into which stormwater empties, discharge  
2 polluted stormwater and substantial volumes into the  
3 Upper Potomac River Basin, which is one of the ten  
4 major basins, one of the ten major tributaries to  
5 Chesapeake Bay. Several stream segments in the Basin  
6 are adversely affected by fecal bacteria, sediments  
7 and nutrients. TMDLs have been approved and  
8 wasteload allocations established for portions of  
9 Catoctin Creek, Double Pipe Creek, and the Lower and  
10 Upper Monocacy River. These stormwater pollution  
11 diets are very important, and the MS4 Permit is  
12 critical toward meeting them.

13 The Maryland Stormwater Consortium  
14 commends the Maryland Department of the Environment  
15 for the work it has done to issue more complete draft  
16 MS4 Permits to address the growing impact of  
17 stormwater runoff. These more complete permit  
18 iterations now contain a more specific text to  
19 restore in each five-year term 20 percent of the  
20 impervious cover, a clear statement that the permit  
21 is the backbone to achieving the Chesapeake Bay WIP  
22 and TMDL requirements, and the clear requirements to

1 track any stormwater plan waivers and implementation  
2 of the Maryland Stormwater Management Act of 2007.

3 The Consortium now would like to present  
4 proposed changes to the Frederick County MS4 Permit  
5 which will add to its completeness and strength.

6 These recommendations, if adopted, will result in a  
7 permit of greater enforceability, accountability and  
8 high benefit to cost analysis for implementation.

9 Included with the statement are the recommended  
10 language changes which we hope will be adopted.

11 I now will review them for the record.  
12 This whole packet will be introduced into the record  
13 and then a better packet will be forthcoming.

14 Water Quality Standards. Frederick  
15 County must be required to manage, implement and  
16 enforce programs, plans and practices in this permit  
17 which eliminate non-stormwater discharges into the  
18 MS4, and eliminate pollutants in stormwater  
19 discharges from the MS4. Compliance with these  
20 requirements in Parts IV through VII of the permit  
21 will constitute compliance by the county of the Clean  
22 Water Act.

1 Restoration Plans, also known as TMDL  
2 implementation plans. The permit should require  
3 Frederick County to prepare plans as enforceable  
4 permit requirements to implement approved TMDL and  
5 wasteload allocations with compliance schedules  
6 containing the final date for meeting the applicable  
7 WLA and interim milestones and numeric benchmarks.  
8 These deadlines and requirements must be consistent  
9 with the Chesapeake Bay TMDL and the WIP.

10 3. Impervious Surface Restoration. The  
11 permit should require as part of the 20 percent  
12 impervious surface restoration the use of an  
13 environmental site design, unless it can show the  
14 infeasibility for its use. At least 1 inch of  
15 stormwater from a 24-hour storm must be retained on  
16 site.

17 Maintenance, No. 4, Maintenance. The  
18 permit must require the County to establish within a  
19 set time frame a maintenance plan for county owned  
20 and operated maintenance facilities, and other  
21 facilities.

22 Monitoring, No. 5. The permit must

1     require the county within two years of the effective  
2     date to establish a monitoring program sufficient to  
3     assess compliance with all the provisions of the  
4     permit, including TMDL restoration plans.

5             6. Public Participation in Restoration  
6     Plans and Stormwater Management Programs. The permit  
7     must require that public participation plans for  
8     restoration and stormwater management programs  
9     include any requested public hearing and continual  
10    public outreach and public input into such plans and  
11    30-day comment periods.

12            7. Maximum Extent Practicable. The  
13    permit should require that all stormwater discharges  
14    to the MS4 be controlled to the maximum extent  
15    practicable, and that periodic evaluations by MDE be  
16    undertaken to assure such control is being met.

17            8. Other Management Programs. The  
18    permit should require that exemptions under the  
19    Stormwater Management Act of 2007 should be  
20    justified, and that the associated pollutant loads  
21    resulting from such granted exemptions be identified  
22    and justified.

1                   9. Completion of the Local Code Changes  
2     So As Not to Block the Use of Environmental Site  
3     Design. The permit should be amended to require the  
4     new County government to change local land use and  
5     other ordinances within two years, to remove any  
6     impediments to the use of the ESD and to the  
7     implementation of the 2007 Stormwater Management Act.

8                   The Maryland Stormwater Consortium urges  
9     MDE to adopt these recommended changes during the  
10    period of time after today's public hearing and the  
11    issuance of the final permit text. We accompany our  
12    request with our commitment to assist both MDE and  
13    Frederick County in the full implementation of the  
14    permit, particularly in reaching out to citizens for  
15    their participation. We greatly appreciate the  
16    opportunity to present our views at this public  
17    hearing.

18                  I'm going to introduce this flawed  
19    statement, if I may, and I promise a better iteration  
20    thereto.

21                  Thank you.

22                  MR. CLEVINGER: Mr. Gilmore submitted the

1 statement that he read from. Thanks, Bruce.

2 MR. GILMORE: Thank you.

3 MR. CLEVINGER: William Fadely. I hope I  
4 pronounced that right.

5 MR. FADELY: Yep.

6 My name is William Fadely and I'm from  
7 Clean Water Action. We just want to take the  
8 opportunity to thank you guys today for the  
9 opportunity to come here and having the meeting and  
10 giving us an opportunity to speak. I'm not going to  
11 be nearly as long as Bruce or nearly detailed.

12 Clean Water Action would just like to  
13 advocate for the value and significance of a robust  
14 MS4 Permit for Frederick County. We just want to  
15 echo and support the Consortium's proposed changes to  
16 the Frederick County MS4 Permit, which will add to  
17 its completeness and strength. Like Bruce said, the  
18 recommendations if adopted will result in a permit of  
19 greater enforceability, accountability and a higher  
20 benefit to the cost for implementation.

21 Thanks.

22 MR. CLEVINGER: Thanks, William.



1 MR. FADELY: Thanks.

2 MR. CLEVINGER: I'm still writing what  
3 you just said.

4 Now, it's not clear whether these two  
5 others but we'll call you anyway. Chris McGraw?  
6 Don't want to? No, okay. Thanks. And Kevin  
7 Anderson?

8 MR. ANDERSON: No testimony, thanks.

9 MR. CLEVINGER: No? Okay.

10 So that's it for those who signed it.  
11 Anybody else? Elaine? Okay, we'll get to you next.

12 MS. LUTZ: Thanks for accepting these  
13 comments. My name is Elaine Lutz, staff attorney  
14 Chesapeake Bay Foundation, and my comments will be  
15 brief and broad, and we'll be submitting more  
16 detailed comments by the end of the formal comment  
17 period.

18 Generally what we've been seeking in  
19 Frederick County, and other counties subject to the  
20 MS4 Permit, is greater accountability, transparency  
21 and reassurances of progress, both for the County and  
22 then the public and other stakeholders. And the way

1 we think that those goals are achievable is by  
2 providing some deadlines and numeric benchmarks, or  
3 other interim status updates, for how the County is  
4 proceeding over the five-year permit term. Federal  
5 and state law does require that when compliance  
6 cannot be made within a year, which I think everyone  
7 fully understands that 20 percent restoration cannot  
8 be done within a year, the law does then require such  
9 benchmarks and interim milestones to track progress  
10 towards compliance.

11 On the 20 percent restoration, the  
12 effectiveness of that number for reaching a, well,  
13 any water quality standards or local or abated TMDLs  
14 has not really been shown, and we are concerned that  
15 at the end of five years this enormous undertaking of  
16 20 percent restoration could be accomplished while  
17 still being very far from clean waters in local  
18 waters and in the Bay.

19 Then that takes me to my third point.  
20 The monitoring we feel is not sufficient to  
21 demonstrate water quality improvements across the  
22 county, and to that point at the end of five years

1 and all this money and time spent in restoration, if  
2 we cannot demonstrate that the results are taking us  
3 where we need to be then it's going to be impossible  
4 to correct the course to get to wasteload allocations  
5 required under the Bay TMDL, and then many local  
6 streams and rivers in Frederick County that have  
7 their own separate TMDLs, which he we think is  
8 equally important and required goal of the MS4  
9 Permits. It's not just to reach the Bay TMDL, but  
10 also the local TMDLs. And if the restoration plans  
11 that guide these, this 20 percent restoration are  
12 being done outside of public process but then putting  
13 certain terms into the permit, that should be a major  
14 modification that requires public participation,  
15 comments and review.

16 For instance, if a restoration plan is  
17 only addressing one watershed, then I think that  
18 stakeholders in another watershed would be interested  
19 to see how that restoration plan is going to affect  
20 their local waters when it's not being addressed.

21 So there are a couple of broad-view  
22 points that we'll be elaborating on in some formal

1        comments. But basically the general goal I think for  
2        the County, for CBF and for other stakeholders is to  
3        be sure that we are making efficient and rapid  
4        progress towards wasteload allocations in local and  
5        Bay TMDLs, and we're just not confident that this  
6        current iteration of the permit allows all these  
7        parties to know what the goals are, know how to  
8        achieve them, and determine whether they're being  
9        reached.

10                    So that's all I'll say for now. Thank  
11        you.

12                    MR. CLEVINGER: Thanks, Elaine.

13                    And finally -- I'm sorry, I don't know  
14        your name.

15                    MS. JOHN: Thank you. My name is Amanda  
16        John and I'm a Policy Manager for Potomac  
17        Conservancy.

18                    I wanted to say thank you to Shannon  
19        Moore of Frederick County for calling this public  
20        meeting today and for MDE for hosting. I think it's  
21        really important to continue the public comment  
22        opportunities moving forward as the MS4 process

1 continues as we near final determination. We will  
2 submit formal comments by the close of the formal  
3 comment period, but I will just make a few brief  
4 comments and add that we support the previous  
5 statements from the Maryland Stormwater Consortium  
6 and Chesapeake Bay Foundation.

7 Specifically, I would just like to  
8 request on behalf of the Potomac Conservancy and many  
9 of our partners that MDE expeditiously work with  
10 Frederick County to review the cost assessment of  
11 this MS4 Permit. Previous efforts between the County  
12 and MDE to determine discrepancies between the total  
13 cost of the WIP implementation definitely slowed down  
14 the process for stakeholder engagement and public  
15 input. As the County finalizes its assessment I  
16 would encourage MDE to meet them at the table and  
17 look at the Maryland assessment and scenario tool to  
18 seek the greatest amount of performance-based BMP  
19 modeling, to seek the greatest cost effective  
20 implementation planning around the MS4 20 percent  
21 retrofit.

22 In terms of Frederick County's assessment

1 of ESD maximum extent practicability, I would also  
2 note that Bruce's recommendation to encourage  
3 biannual review of local codes and ordinances that  
4 create barriers to the implementation to  
5 environmental site design be included in the upcoming  
6 permit. We have recently completed an assessment  
7 with the Center for Watershed Protection of all nine  
8 Maryland counties within the Potomac Watershed to  
9 review codified barriers to environmental site  
10 design. We have a suite of 12 recommendations coming  
11 out of our review of Frederick County's local codes  
12 and ordinances with the complete cooperation of the  
13 County's Planning Department for access to their  
14 local codes, and we would like to see that the permit  
15 encourage full adoption and removal of these barriers  
16 that were completed with the Center for Watershed  
17 Protection's patented codes and ordinance worksheet.

18 Frederick County is the second fastest  
19 growing county in the State of Maryland. I think  
20 there's a notable point about only 5 percent urban in  
21 the MS4 area, but I think as we see growth in  
22 population, and in the last few years there have been

1 22 large rezonings of agricultural properties, we  
2 will also be seeing an increase in impervious surface  
3 as the infrastructure in roads and sewer lines will  
4 need to accommodate the rapid rate of development.

5 So I would encourage the full adoption of  
6 the previous recommendations from the Maryland  
7 Stormwater Consortium and from Chesapeake Bay  
8 Foundation, and we will be submitting more  
9 comprehensive recommendations before the end of the  
10 final comment period.

11 MR. CLEVENGER: Thanks, Amanda.

12 Anybody else like to speak?

13 So everyone knows -- Bruce, you'll have  
14 some time to submit your formal, you know, cleaned-up  
15 copy. The public record is going to remain open  
16 until the 29th of next month, September 29th, 2014.  
17 You can submit any formal comments up until then to  
18 Ray Bahr, Maryland Department of the Environment,  
19 Water Management Administration, Sediment, Stormwater  
20 and Dam Safety Program. Our address is 1800  
21 Washington Boulevard, Suite 440, Baltimore, Maryland,  
22 21230. Ray's e-mail is Raymond.Bahr@Maryland.gov,

1 R-a-y-m-o-n-d.B-a-h-r@Maryland.gov.

2 You can also get more information about  
3 the general MS4 program and individual permits,  
4 evaluations, prior annual reports on the department's  
5 web page at [www.mde.state.md.us](http://www.mde.state.md.us).

6 After the comment period closes we will  
7 develop a response to the comments we've received  
8 today and in writing until the 28th of September, and  
9 that will be the basis of our final determination to  
10 issue the Frederick County's permit.

11 Everyone that's here and signed up on the  
12 interested parties -- again we've only got a few  
13 names. If you want to be on the interested parties  
14 list if you're not already please sign up. You'll  
15 get notice of all the actions that we take subsequent  
16 to this hearing, so keep that in mind.

17 I'd like to thank Shannon again and Toni  
18 for taking note of everything we uttered today, thank  
19 you very much. If there's nothing else, then we can  
20 close the hearing formally. Thanks.

21 (The public hearing concluded at 10:55  
22 a.m.)



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## CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

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I, Toni R. Thompson, RMR, Court Reporter,

the officer before whom the foregoing proceedings was

taken, do hereby certify that the foregoing transcript

is a true and correct record of the proceedings; that

said proceedings were taken by me stenographically and

thereafter reduced to typewriting under my

supervision; and that I am neither counsel for,

related to, nor employed by any of the parties to this

case and have no interest, financial or otherwise, in

its outcome.

IN WITNESS WHEREOF, I have hereunto set my

hand and affixed my notarial seal this 5th day of

September 2014.

My Commission Expires:

January 18, 2017

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NOTARY PUBLIC IN AND FOR

THE STATE OF MARYLAND

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14:8	10:22 12:18 21:5	<b>30-day</b>	<b>672-acre</b>
<b>\$5.35</b>	26:19 28:11 33:7,11	29:11	16:20
14:15	33:16 34:11 36:20	<b>301.600.1153</b>	<hr/>
<hr/>	<b>2002</b>	2:6	<b>7</b>
<b>1</b>	9:20	<b>31</b>	<b>7</b>
1:20 28:14	<b>2006</b>	5:7	29:12
<b>1st</b>	10:7	<b>32</b>	<b>713</b>
13:5	<b>2007</b>	5:8	16:22
<b>1-251521</b>	27:2 29:19 30:7	<b>35</b>	<hr/>
1:19	<b>2011</b>	5:9 13:1	<b>8</b>
<b>10</b>	17:2,4	<b>38</b>	<b>8</b>
6:4 9:22 10:22 13:14	<b>2012</b>	5:11	29:17
<b>10:00</b>	16:2,4 21:17	<hr/>	<b>8th</b>
1:14	<b>2013</b>	<b>4</b>	10:7
<b>10:55</b>	16:12	28:17	<b>81,889</b>
39:21	<b>2014</b>	<b>40</b>	13:5
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<b>11</b>	<b>2017</b>	8:22	<b>9</b>
5:5	40:18	<b>402(p)(3)(b)(iii)</b>	30:1
<b>11th</b>	<b>21230</b>	20:8	<b>987</b>
8:12	38:22	<b>413</b>	14:6
<b>12</b>	<b>21701</b>	17:12	
37:10	2:5	<b>440</b>	
<b>125</b>	<b>22</b>	38:21	
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<b>129</b>	<b>23</b>	<b>5</b>	
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<b>1400</b>	<b>250</b>	40:15	
12:12	25:21	<b>55</b>	
<b>15</b>	<b>28</b>	17:11	
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