



MARYLAND DEPARTMENT OF THE ENVIRONMENT

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Governor

Boyd Rutherford
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Ben Grumbles
Secretary

September 14, 2015

Mr. Leslie Knapp
Associate Director
Maryland Association of Counties
169 Conduit Street
Annapolis, MD 21401

Dear Mr. ^{Les}Knapp:

Thank you for your thoughtful letter dated July 22, 2015 containing important recommendations for the Municipal Separate Storm Sewer System ("MS4") permits issued and overseen by the Maryland Department of the Environment ("MDE" or "The Department"). We discussed these issues and recommendations with you during meetings on July 22 and August 7.

The Department agrees that US EPA's establishment of the Chesapeake Bay Total Maximum Daily Load ("TMDL") in 2010 "changed the game" by establishing nutrient reduction goals for 2017 and 2025. In turn, Maryland developed Watershed Implementation Plans ("WIPs") that subdivided nutrient reduction goals into four sectors: agriculture, wastewater treatment plants, urban stormwater and septic systems. Counties and municipalities are key players in achieving reductions in the latter three sectors. For proposed projects that require MDE permits, it is MDE's obligation to evaluate these proposals expeditiously to help the counties in reaching those goals in a timely fashion.

MDE agrees to participate in quarterly meetings with MACO members and representatives to discuss the types of projects proposed, whether they satisfy regulatory requirements, and whether they achieve the projected improvements. Participants would share what types of projects worked and what didn't work under what types of conditions, so that we can build a collective knowledge base with real world experience. We propose a meeting on September 23 or 24. Please let us know if those dates work for you and your members.

The Department embraces the concept of a separate streamlined track for the MS4 TMDL implementation project applications. Our goal is to shorten the review process to 90 days for most projects; exceptions would include projects requiring public notice and projects which cause increased flooding on adjacent property. This will require applicants to pay close attention to the application requirements, including a brief summary of the anticipated benefits of the project in terms of "no net loss" of wetlands and associated functions, and the overall "functional uplift" resulting from the



project. We agree it will be helpful to have a "checklist" of required information and that it will be helpful for MDE to clarify what factors are considered in approving or denying an application. MDE hopes to share with you "standards of review" to ensure consistency as much as possible among permit reviewers.

The Department agreed in the August 7 meeting to remove the typical wetlands program requirement that an "alternative site analysis" be prepared for these TMDL-driven restoration projects, based on an assumption that the counties have performed comprehensive assessments of the problems within their jurisdictions which essentially mirrors the substance of such an analysis. This comprehensive assessment should accompany an application for wetlands and waterways authorization.


The Department further agreed that no mitigation is required for a project that is intended to be "restorative" of water quality, habitat, aquatic resources, etc., provided the need for restoration is adequately documented. If a project is designed to provide "functional uplift", then it can be construed as a "net gain", rather than a "net loss" of resources/functions, and is essentially self-mitigating.

The monitoring component of your proposal needs continued discussion. The existence of the lawsuits challenging each county MS4 permit makes resolution of this particular detail difficult. We can certainly agree to continue discussing what is reasonable and informative. However, with regard to stream restoration projects, MDE most likely will require some degree of post-construction monitoring to ensure that the project remains stable and continues to do its job as authorized.

In addition, MDE strongly recommends that a pre-application meeting be held at which the project can be described and requirements can be confirmed before an applicant spends considerable dollars on design and engineering. At the August 7 meeting, participants also discussed the idea that a series of projects – along a given waterway or within the same watershed – be discussed as a whole, as opposed to individually on a "piecemeal" basis. This would allow MDE permit reviewers to evaluate individual projects within the context of an overall watershed proposal.

We thank you and your members for your thoughtful suggestions and look forward to frequent and constructive dialogue with county representatives.

Sincerely,



Ben Grumbles
Secretary

Cc: Lynn Buhl, Senior Policy Advisor
Virginia Kearney, Acting Director, Water Management Administration