

STATE OF MARYLAND
DEPARTMENT OF THE ENVIRONMENT

PUBLIC HEARING
CONCERNING TENTATIVE DETERMINATION
TO ISSUE STORM WATER PERMIT

ANNE ARUNDEL COUNTY
AUGUST 7, 2013 10:10-10:44 P.M.

SPEAKERS:

RAYMOND P. BAHR
BRUCE GILMORE
ELAINE LUTZ
ERIK MICHELSEN

ALSO PRESENT:

STUART COMSTOCK
JANIS MARKUSIC

- - -

REPORTED BY: HUNT REPORTING COMPANY

P R O C E E D I N G S

1 MR. BAHR: Let's go ahead and get started.
2 It's about ten after 10:00. And this is a public
3 hearing of the Maryland Department of the Environment.
4 MDE has made a tentative determination to issue Anne
5 Arundel County a national pollutant discharge
6 elimination system (NPDES), municipal separate storm
7 sewer system, or MS4, permit.

8 My name is Ray Bahr. I work for MDE in the
9 sediment, storm water, and dam safety division. I'm
10 the division chief for the sediment and storm water
11 program review. I'm here with Stuart Comstock today,
12 who is a senior engineer with MDE. And he more or less
13 writes and administers Anne Arundel County's permit
14 from MDE's perspective.

15 I'd like to thank Stu and Janice and the
16 other people from Anne Arundel County Government here
17 who helped to put this public hearing on today.

18 In accordance with the Maryland
19 Administrative Procedures Act, a tentative
20 determination to issue Anne Arundel County an MS4
21 permit has been advertised -- you know what? These
22 notes are for Baltimore County. It's very similar, but
23 I don't think I want to read that one. Well, maybe we
24 can wing this and I can get some help from Janice back
25 there.

1 The tentative determination was advertised in
2 The Capital. Any other publications?

3 MS. MARKUSIC: Just the Capital.

4 MR. BAHR: Okay. Just The Capital. And do
5 you know the dates in which they were advertised?

6 MR. COMSTOCK: June 12th and June 19th.

7 MR. BAHR: June 12th and June 19th. And,
8 also, there was a request made for a public hearing and
9 that came from Chesapeake Bay Foundation from a Ms.
10 Elaine Lutz. Is that correct? Okay. And that is why
11 we are here today.

12 In the back of the room is an attendance
13 sheet. There was also a speaker sign-in sheet. We
14 have two people signed up to talk today. As we go
15 ahead and promulgate this permit, we will be getting
16 back in touch with everybody who has signed up today.
17 You'll become part of our interested parties list and
18 any permit actions that occur you will be notified via
19 e-mail for that. Okay.

20 I have some prepared remarks that I would
21 like to read into the record. And after that I would
22 like to give Anne Arundel County or any elected
23 officials an opportunity to speak. And then we'll go
24 ahead and go to the speakers list and work down that.

25 Today's hearing is scheduled for about two

1 hours. We'll probably get through that quicker than
2 two hours, but we do want to give everybody an
3 opportunity to speak. So if a lot of people do come
4 forward and decide to speak, I would just ask that you
5 keep your remarks very concise and to the point
6 regarding the permit. Okay. So let's get started.

7 The purpose of today's hearing is to accept
8 public comment on MDE's tentative determination to
9 issue Anne Arundel County an MS4 permit. For
10 background, Maryland has been delegated authority by
11 the United States Environmental Protection Agency, EPA,
12 to administer the NPDES program in the state.

13 Final storm water regulations were adopted by
14 EPA in November 1990 according to section 402(p) of the
15 Clean Water Act. These regulations require, in part,
16 that owners of storm drain systems serving populations
17 of greater than 100,000 people apply for phase one
18 NPDES municipal storm water permit coverage. Based on
19 1990 census data, Anne Arundel County was considered a
20 phase one municipality due to its population, which was
21 over 460,000 people at the time.

22 The county submitted a two year two part
23 application and was issued an MS4 permit in November of
24 1994 I believe. The county's permit laid the
25 foundation for a comprehensive approach to controlling

1 runoff. This was done by establishing the necessary
2 legal authority, mapping a storm drain system
3 infrastructure, identifying sources of pollution, and
4 monitoring storm events to characterize urban runoff.

5 This permit was reissued again in 2000 and
6 2005. For both of these reissued permits additional
7 requirements were included for assessing water quality
8 across the county and for restoring ten percent of the
9 impervious area that was not already managed to the
10 maximum extent practicable.

11 NPDES permits last for five years and a re-
12 application is required to be submitted as part of the
13 county's fourth year annual report. The county
14 submitted its fourth annual report on June of 2008.
15 Since that time, MDE has held numerous meetings and had
16 many conversations with individual citizens,
17 environmental advocates, the EPA, and other local
18 government officials that are affected by the MS4
19 permit program. The results of these meetings and
20 conversations is the draft permit that we take up here
21 today.

22 Yet more significant conditions have been
23 added to the county's storm water permit, largely based
24 upon EPA's recently approved total maximum daily loads
25 for impairments, some local water bodies within the

1 county, trash in the Patapsco River, and for nutrients
2 and sediments in Chesapeake Bay. The most significant
3 condition is the doubling of the impervious area
4 restoration requirement from 10 percent to 20 percent.
5 This needs to occur within the five year permit term.

6 These and all other remaining permit
7 conditions have been developed for abating the
8 discharge of pollutants from Anne Arundel County's
9 storm drain system and working toward meeting the
10 state's receiving water quality criteria.

11 Well, now I'd like to ask if there's any
12 local elected officials that would like to speak at
13 this point. Okay. Does anyone from Anne Arundel
14 County Government with to speak at this point? Okay.

15 With that, we'll go ahead and get started
16 with the speakers list. Bruce, you have done this
17 before, so please spell your name, mention your name
18 clearly and spell it for our stenographer so he can get
19 it correct, and mention any organizations that you're
20 representing here today.

21 MR. GILMORE: Good morning. My name is Bruce
22 Gilmore, B-R-U-C-E A G-I-L-M-O-R-E. And I am here
23 today representing the Anacostia Watershed Society,
24 which is an advocacy group in the Washington, D.C.,
25 area. Anacostia Watershed Society wishes to share its

1 views today because of the similarity of the Anacostia
2 River watershed to the Anne Arundel County setting for
3 this permit. Both share heavily developed suburban and
4 urban neighborhoods in streams and rivers receiving
5 polluted storm water runoff and the shared public goals
6 of the Anacostia River Restoration and the Restoration
7 of the Waterways of Anne Arundel County. The ultimate
8 beneficiary, of course, is the Chesapeake Bay.

9 AWS joins with Anne Arundel County citizens
10 and organizations in urging that the Maryland
11 Department of the Environment take this improved permit
12 work product that it has developed and turn it into a
13 nationally recognized MS4 permit to the great credit of
14 the State of Maryland and the phase one permittees.

15 There is an urgency to achieve this permit
16 superiority. The receding waters in the Chesapeake Bay
17 need the immediate remedial benefits of a stronger
18 permit. The adverse impacts of storm water runoff are
19 now recognized as a growing phenomenon. We, therefore,
20 agree heartily with the MDE characterization of this
21 permit as the "backbone" of the Chesapeake Bay TMDL and
22 the Watershed Improvement Plan, WIP, implementation.

23 Our recommendations today will add strength
24 to this backbone and we urge their inclusion. They
25 will result in a permit of greater enforceability and

1 accountability and higher benefit to cost for
2 implementation. I will describe our recommendations
3 briefly in order to underscore our support for them
4 and, of course, to get them into this public record.

5 First, water quality standards. The
6 permittee, in this case, Anne Arundel County, must
7 manage, implement, and enforce programs, plans, and
8 practices in this permit, which eliminate non-storm
9 water discharges into the MS4 and eliminate pollutants
10 and storm water discharges from the MS4. Compliance
11 with these requirements in parts four through seven of
12 the permit will constitute compliance by the county
13 with the Clean Water Act.

14 Restoration plans, also known as TMDL
15 implementation plans. The permit should require the
16 county to prepare plans as enforceable permit
17 requirements to implement improved total maximum daily
18 loads and waste load allocations with compliance
19 schedules containing the final date for meeting
20 applicable WLAs and interim milestones and numeric
21 benchmarks. These deadlines and requirements must be
22 consistent with the Chesapeake Bay TMDL and Watershed
23 Implementation Plans.

24 Three, impervious surface restoration. As
25 part of the permit requirement to restore during each

1 five year term, 20 percent of impervious surface, the
2 permit must also require the county to use
3 environmental site design unless it can prove the
4 infeasibility of such use in retaining on site at least
5 one inch of storm water from a 24 hour storm using
6 environmental site design.

7 Let me just stop at three and say that there
8 can be other approaches to this restoration
9 requirement. Some of those approaches are being
10 contemplated by Anne Arundel County. Some of those
11 approaches are being supported by some of the advocates
12 in Anne Arundel County. And our view is that they can
13 be melded together into a requirement that would make
14 this permit a good permit and, hopefully, consistent
15 with other permits from the other permittees, local
16 government permittees.

17 Number four, maintenance. The permit must
18 require the county to establish within a set timeframe
19 the maintenance plan for the county to own and operate
20 practices and accountability requirements for all non-
21 county owned and operated practices.

22 Five, monitoring. The permit must require
23 the county, within two years of the effective date of
24 this permit, to establish a monitoring program
25 sufficient to assess compliance with all of the

1 provisions of the permit, including TMDL restoration
2 plans.

3 Let me say, additionally, that, in the last
4 several weeks, the advocacy, the storm water advocacy
5 community in Maryland and, particularly, in Prince
6 George's County have been working with the Prince
7 George's County Government on coming to an agreement on
8 the monitoring language.

9 Monitoring is a very expensive proposition
10 and we recognize it and we have come up with some
11 language that is agreeable to the Prince George's
12 County Government. And we are replicating that
13 language in our statement today so that it can be used
14 as a good template for other permittees. It also
15 enables a more -- perhaps more realistic way to achieve
16 monitoring requirements in a meaningful way.

17 Number six, public participation in
18 restoration plans and storm water management programs.
19 The permit must require the public participation plans
20 for restoration and storm water management programs
21 include any requests for public hearing and continued
22 public outreach and public input into such plans in 30
23 day comment periods.

24 Seven, maximum extent practicable. The
25 permit should require that all storm water discharges

1 to the MS4 be controlled to the maximum practicable and
2 that periodic evaluations by MDE be undertaken to
3 assure such control is being met.

4 Eight, other management program issues.
5 Permit should require that exemptions under the Storm
6 Water Management Act of 2007 should be justified and
7 that the associated pollutant loads resulting from such
8 granted exemptions be identified and, also, justified.

9 Nine, completion of local co-changes so as
10 not to block the use of environmental site design. The
11 permit should require the county council and executive
12 amend local land use and other ordinances within two
13 years to remove any impediments to the use of ESD and
14 to implementation of the 2007 Storm Water Management
15 Act.

16 I am including a text which contains our
17 recommendations, including language additions. I
18 request that it and this statement be made part of
19 today's hearing record. AWS strongly believes that
20 these recommended changes to the MS4 permit will add
21 strength to the storm water runoff remediation efforts.
22 We, therefore, urge MDE to adopt these recommended
23 changes during the period of time after today's public
24 hearing and the issuance of the final permit text. We
25 accompany our request with our steadfast commitment to

1 assist both MDE and Anne Arundel County in the full
2 implementation of the permit, particularly in the
3 reaching out to citizens to increase their
4 understanding and support.

5 Let me add one other thing here. We've had
6 these hearings. There's been some meetings and
7 discussions probably for the last four years among all
8 sorts of stakeholders. We believe that, after the
9 whole range of hearings is completed with each of the
10 permittees, so that that part of the permit process has
11 been accomplished, that we be able to sit down, we
12 being the advocacy community and any other stakeholders
13 that wish to join us, be able to sit down and come to
14 an agreement on the terms of this permit so we can get
15 them in place and get them implemented.

16 We appreciate greatly the opportunity to
17 present our views at this public hearing. Thank you
18 very much.

19 MR. BAHR: Thank you, Bruce. Let the record
20 show that Bruce Gilmore has submitted testimony for the
21 record.

22 Next up is Elaine Lutz.

23 MS. LUTZ: Good morning. My name is Elaine
24 Lutz, E-L-A-I-N-E L-U-T-Z. I am staff attorney for the
25 Chesapeake Bay Foundation. Thank you for setting up

1 this hearing to allow us to come in today and the Anne
2 Arundel County officials who have helped with that.

3 And please accept this statement today on
4 behalf of the Chesapeake Bay Foundation, and there are
5 more than 100,000 Maryland members, on the tentative
6 determination to issue a national pollutant discharge
7 elimination system municipal storm water permit to Anne
8 Arundel County. CBF will also be submitting detailed
9 written comments before the end of the formal comment
10 period.

11 Storm water runoff from developed urban areas
12 is an obvious and significant source of pollution that
13 contaminates the local water bodies in and around Anne
14 Arundel County. It's not only that the storm water
15 runoff contain nitrogen, phosphorous, and sediments,
16 but it also washes oil products, heavy metals, trash,
17 and bacteria into the bay tributaries.

18 All of these pollutants are a problem for
19 Anne Arundel County, as reflected by the 2013 TMDLs for
20 local waters in the bay. Unfortunately, storm water
21 runoff is both the only growing and the fastest growing
22 source of these pollutants.

23 The storm water MS4 permit is crucial for
24 Anne Arundel County, not only because of the impaired
25 local waters, but, also, because of the proximity to

1 the bay. This tentative permit is an improvement over
2 previous permit cycles as it incorporates the TMDL and
3 prohibits discharges that would violate water quality
4 standards as required by law.

5 There are a few areas of the permit that must
6 be improved so that the new requirements adequately
7 prevent polluted storm water from spoiling our streams,
8 rivers, and, of course, the Chesapeake Bay. The three
9 general areas of change I highlight today are necessary
10 to transform the new permit into a full, effective, and
11 enforceable one under federal and state law.

12 First, we would request that the permit
13 include a quantification of the current loadings of
14 nitrogen, phosphorous, and sediment from all identified
15 sources in order to establish a quantitative baseline
16 from which to assess progress for either bay-wide or
17 any local TMDL in waste load allocations.

18 The draft permit currently requires the
19 county to identify all sources of pollutants and link
20 them to specific water quality impacts, which would
21 then be used to develop the watershed implementation
22 restoration plan. This requirement should include a
23 mandatory baseline assessment of pollutants subject to
24 a TMDL so that progress towards obtaining the
25 applicable waste load allocations can be measured and

1 final compliance may be determined. Because this new
2 permit round seeks to tie the MS4 implementation to
3 meeting the Watershed Implementation Plan goals, these
4 sources could apply to the Chesapeake Bay model values
5 or monitored (indiscernible) mean concentrations to
6 quantify the current load.

7 For example, Anne Arundel County has done an
8 admirable job selecting and implementing the storm
9 water management facilities, but these facilities are
10 only effective to the extent that they are maintained
11 and fully functional.

12 Anne Arundel's fiscal year 2014 budget
13 demonstrates that many storm water management
14 facilities in the county are badly in need of
15 retrofitting, repair, and rehabilitation. It's not
16 entirely clear whether the loads that these existing
17 facilities were meant to address are being properly
18 accounted for.

19 Having the requirement to assess the baseline
20 based on the existing infrastructure and an evaluation
21 of the facility's effectiveness would be beneficial to
22 both the county and state by updating data for the
23 evaluation of BMP efficiency, assessing the progress
24 being made by the county, and determining the future
25 projects needed to reach the waste load allocations.

1 Second, the sections in the permit concerning
2 TMDL's, restoration plans, and management programs must
3 be clarified, strengthened, and made fully enforceable
4 and accountable.

5 Under this general subtitle, I'd like to talk
6 about the storm water management systems first that Mr.
7 Gilmore also touched upon. We would like to see a
8 programmatic assessment of the impact of storm water
9 exceptions and waivers. Since the MDE guidelines for
10 impervious assessment calculations, which is
11 incorporated into the permit, assumes certain loads
12 based on the era of the development, development that
13 did not comply with all existing storm water laws and
14 regulations must be recorded and accounted for in any
15 reduction estimates.

16 The final date for meeting waste load
17 allocations should be incorporated into a compliance
18 schedule that includes interim milestones and numeric
19 benchmarks. These milestones are essential to
20 determining whether the implementation strategy and
21 chosen practices are sufficient to meet the final waste
22 load allocations. Currently, the draft permit would
23 only require a schedule for implementing projects, not
24 for retaining required waste load allocations.

25 As noted above, it is crucially important

1 that the storm water management facilities and the
2 other best manager practices are not just put into
3 place, but also evaluated in terms of pollutant
4 reductions to allow the county to determine whether
5 they are moving towards compliance with the waste load
6 allocations and the TMDLs.

7 What's more, the TMDL implementation plans
8 and compliance schedules are legally required when
9 final compliance is over one year, as contemplated in
10 this permit.

11 Finally, MDE should improve them through a
12 formal permit modification with the associated public
13 participation. And, as a practical matter, including
14 the source of compliance guidelines would allow the
15 county to practice adoptive management and change their
16 project plans based on the actual pollutant reductions
17 being attained by the projects. And if the county had
18 clear goals and deadlines throughout the permit, it
19 might help them leverage those goals to obtain any sort
20 of resources they need to accomplish them.

21 The restoration plan required under part
22 4(e)2 lacks some specific quantitative measures of
23 restoration, but instead allow treatment by the use of
24 any practice found in the 2000 Maryland Storm Water
25 manual. Many of those practices, such as detention

1 systems, have been recognized in the MDE guidelines as
2 providing very little water quality benefits. Anne
3 Arundel County's own 2011 annual report recognized that
4 fact, noting that detention facilities provide
5 approximately 5 to 10 percent reductions, while
6 infiltration or ESD practices provide 80 to 95 percent.
7 This permit should, when practical, incorporate a
8 preference for environmental site design or a green
9 infrastructure, as recommended in many EPA guidance
10 documents.

11 Third, the permit should include a monitoring
12 and assessment system which is capable of providing
13 accurate, timely, representative, and statistically
14 significant information on water quality county wide.
15 The monitoring in the draft permit includes only three
16 small watersheds and one of three requires only
17 physical stream monitoring.

18 Adequate representative monitoring is crucial
19 to the success of the county's storm water program to
20 ensure that the waste load allocations are being met as
21 required. This would become more important as the
22 actual numeric benchmarks, if incorporated in the
23 permit, to determine whether they were being attained.

24 So, in conclusion, these three areas to
25 change are not exhaustive and we would reserve for

1 coverage in our formal written comments any additional
2 concerns. And we've applied the department directly
3 some of the changes which we have all sought but, as I
4 mentioned, the inclusion of TMDL and water quality
5 standards and waste load allocations, but we do believe
6 that these general areas of change could really make
7 this permit fully enforceable and yield data that would
8 be helpful to the county and the state.

9 So thanks for the opportunity to give comment
10 today. And I can hand in a copy of this written
11 statement.

12 MR. BAHR: Okay. Thank you, Ms. Lutz. Let
13 the record show that her comments are being submitted
14 for the record.

15 Does anybody else wish to speak at this time?
16 Please.

17 MR. MICHELSEN: My name is Erik Michelsen, E-
18 R-I-K M-I-C-H-E-L-S-E-N. I'm the executive director
19 for the South River Federation. I hadn't originally
20 intended to speak and I certainly agree with many of
21 the statements that both Bruce and Elaine made in terms
22 of potential improvements to the permit. But I wanted
23 to take one major exception with the recommendation
24 that each of them made.

25 I think that it's no secret in terms of what

1 the county's strategy is going to be for achieving the
2 terms of the MS4 permit. They put together one of the
3 most sophisticated watershed implementation plans in
4 the state and were selected by MDE with Caroline County
5 to serve as a model in terms of helping other
6 jurisdictions around the state develop their phase two
7 WIPs, as well.

8 And so I think that binding the hands of Anne
9 Arundel County or, frankly, any jurisdiction with
10 regards to a preference for restoration strategies does
11 not make sense. I think that we should allow counties,
12 especially counties that have determined or have
13 demonstrated an understanding of the nature of the
14 problems in their counties and their watersheds and
15 have determined the most cost effective strategies for
16 reaching those waste load reductions to pursue those
17 without a prescriptive preference for one strategy or
18 another.

19 Certainly, there's been the storm water
20 manual and various expert panel recommendations from
21 EPA should serve as the determinations for the
22 efficiencies for those practices and whatnot. But I
23 think that it would be premature and unnecessary to
24 prescribe the restoration strategy that any given
25 county needs to take in terms of complying with its

1 MS4. Thank you.

2 MR. BAHR: Great. Thank you, Mr. Michelsen.
3 Does anybody else wish to speak? Okay. As Bruce and
4 Ms. Lutz mentioned, the public record will be open for
5 an extended period in order to receive written
6 comments.

7 The public record will be open until August
8 19th, 2013, and the comments can be submitted to me,
9 Mr. Raymond Bahr, at Maryland Department of the
10 Environment, Water Management Administration, Sediment,
11 Storm Water, and Dam Safety Program. That's at 1800
12 Washington Boulevard, Suite 440, Baltimore, Maryland,
13 21230-1708. You can also e-mail them to me at
14 raymond.bahr@maryland.gov. Additional information on
15 the permit and fact sheet can be found on MDE's website
16 at www.mde.state.md.us.

17 After the comment period has closed on August
18 19th, MDE will develop a response to comments that will
19 document the final determination to issue Anne Arundel
20 County its MS4 permit. Anybody who signed up today on
21 the attendance sheet or the speakers list will be added
22 to MDE's interested parties list for Anne Arundel
23 County and will be kept apprised of any permit actions.

24 By my watch, it is now 10:44 and the public
25 hearing is now closed. I would like to thank everybody

1 for their attendance today. Thank you.

2 (Whereupon, at 10:44 p.m., the above-entitled
3 hearing was concluded.)