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March 13, 2015

Mr. Raymond Bahr
Maryland Department of the Environment
Water Management Administration
1800 Washington Blvd., STE 440
Baltimore, MD 21230

Re: Draft NPDES Permit No. 11-DP-3313, MD0068276 for State Highway Admin.

Dear Mr. Bahr,

Thank you for the opportunity to comment on the draft National Pollution Discharge Elimination System (NPDES) Permit for the Maryland State Highway Administration (SHA) [hereinafter "Draft Permit"]. Roads, highways, and bridges are a significant source of pollutants to local rivers, streams and the Chesapeake Bay, as contaminants from vehicles and road construction and maintenance are washed from roads and roadsides when it rains or snow melts. A large amount of this pollution is carried directly to our waters. As the SHA is responsible for more than 16,000 lane miles and more than 2,400 bridges across the state, this permit and the activities of the SHA will play a vital role in reaching pollution reduction goals under the Chesapeake Bay Total Daily Maximum Load (TMDL), as well as local TMDLs.

CBF applauds the work done by SHA to date to reduce stormwater runoff from the state's roads. SHA has worked consistently to not only comply with previous MS4 permits but to go above and beyond the permit requirements. Still, under this next generation of MS4 permit, SHA will have to redouble their efforts. This draft permit changes the SHA's stormwater responsibilities from a number of "significant" stormwater projects to a percentage of restoration required for untreated impervious surfaces. Like all the other Phase I MS4 permits issued this cycle, this permit contains a 20% restoration requirement for impervious surface with little or no stormwater controls. While this restoration requirement represents an increase in restoration and is an improvement over the previous permit, it still does not provide any estimate of how close (or far) the SHA will be to applicable waste load allocations (WLAS) under the Chesapeake Bay TMDL or local TMDLs. As a general matter, as with all the MS4 permits, the Department should show the expected pollutant reductions related to the 20% restoration requirement, and provide an estimate of how those reductions relate to the WLA targets under the Bay TMDL. Without such connections, accountability is necessarily lacking.

As the SHA has responsibility for an extensive amount of roads and bridges, as mentioned above, it will be crucially important for the state to fund the SHA's efforts and for the SHA to choose cost-effective projects. CBF hopes the state continues to fund this important work

and will continue to advocate for implementation funding during the legislative budget process. CBF's specific substantive comments on the Draft Permit are as follows.

Restoration Plans

In the Draft Permit E.1, the SHA is required to submit a "coordinated TMDL implementation Plan" that, upon approval from MDE, will be enforceable under the permit. This TMDL implementation plan requires a final date for meeting waste load allocations (WLAs) and a detailed schedule, but does not set any outside parameters for what that schedule should look like. Final stormwater WLA attainment dates should be set at the soonest possible date and shall be consistent with the deadlines associated with the Chesapeake Bay TMDL and the state and local Watershed Implementation Plans (WIPs).

The TMDL Plans must also coordinate and identify the activities, preferably by year, that the SHA will undertake to meet the 20% untreated pavement restoration requirement. It is difficult, if not impossible, to budget for sometimes costly projects if there is no clear, identifiable timeline under which the projects are to take place. Currently in this Draft Permit, there are no deadlines for the 20% restoration requirement, other than the end of the five year permit term. The Permit fails to require the numeric benchmarks or interim standards or milestones in the implementation plan to be quantified as defined in Maryland law and under the federal Clean Water Act regulations.¹ Maryland law specifically states that where a schedule of compliance is required as a permit condition (which is the case here), "then quantitative limits shall be set for the interim period and following the final compliance date."² Further, federal regulations require that "if a permit established a schedule of compliance which exceeds 1 year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement."³ The restoration plan requirements outlined in Part IV. E. 2. of the draft permit clearly trigger these requirements for quantitative benchmarks under federal and Maryland law.

Public Participation

In the Draft Permit Part IV.E.3, there is a section for "Public Participation." However, there is a lack of specificity of how, when, or to what effect the public may comment. It would appear that SHA will inform the public of the development of the coordinated TMDL plans, but stops short of providing for full public review, comment, and if necessary, appeal. As the TMDL plans do not require the SHA to set out how they will reach their 20% restoration goals it is therefore unclear what will be enforceable under the TMDL Plans. However, to the extent that the TMDL Plans explain how the 20% restoration requirement will be met or implement other enforceable permit terms as suggested by the enforceability language, those permit terms must be subject to the appropriate public review and comment provisions. Currently such review does not exist in violation of state and federal law. CBF would recommend that the 20% restoration plans be

¹ See Md. Code Regs. 26.08.04.02-1(A)(3).

² Md. Code Regs 26.08.04.02.1.

³ 40 C.F.R. §122.47(a)(3).

incorporated into the TMDL plans, as mentioned above, and that those plans be made subject to the full public review and comment process.

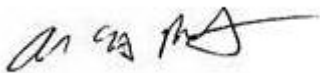
Monitoring

“Assessment of controls” is noted in the permit as “critical for determining the effectiveness of the NPDES stormwater management program and progress toward improving water quality.”⁴ We agree. However, the Draft Permit contemplates monitoring of just one small sub-watershed for this purpose, the Montgomery County Seneca Creek watershed. This one subwatershed is not sufficient to provide meaningful information about the larger watershed in which it is located, much less provide meaningful information about the larger watershed in which it nests or the SHA network pollution trends across the state. The SHA system covers eleven Chesapeake Bay watershed counties with varying topography and geology CBF recommends more extensive, representative monitoring across the state, in multiple watersheds, to obtain more statistically significant monitoring data.

Conclusion

The Maryland Watershed Implementation Plan relies heavily on the MS4 permitted entities for the urban stormwater pollution reductions required under the Chesapeake Bay Total Daily Maximum Load. Providing some identifiable benchmarks and interim targets in these permits, improved public participation, and monitoring sufficient to determine whether the anticipated pollution reductions are being reached, are three critical parts of ensuring these MS4 permits provide the expected pollution reductions.

Thank you for the opportunity to present these comments.



Sincerely,
Alison Prost
Maryland Office Executive Director
Chesapeake Bay Foundation

Cc: Lee R. Epstein, CBF
Jeff Corbin, U.S. EPA
David B. McGuigan, U.S. EPA
Evelyn MacKnight, U.S. EPA

⁴ Draft Permit, Part IV.F.

