PUBLIC HEARING:
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
STATE AND FEDERAL

The hearing in the above matter commenced on Monday, February 6, 2017, at the MDE Headquarters, Montgomery Park, 1800 Washington Boulevard, Baltimore, Maryland.

Reported by: Linda Metcalf

PROCEEDINGS

(1:34 p.m.)

MR. BAHR: Okay, let’s go ahead and get started. Good afternoon and welcome. Today is Monday, February 6th, 2017, and it’s approximately 1:34 p.m. Today’s public hearing is regarding Maryland Department of the Environment’s (MDE’s) tentative determination to issue a National Pollutant Discharge Elimination System (NPDES) General Permit for discharges from small State and Federal separate storm sewer systems (MS4s). For the record, it’s General Permit Number 13-SF-5501, General NPDES Number MDR055501.

My name is Raymond Bahr, Program Review Division Chief in the Sediment, Stormwater and Dam Safety Program within MDE’s Water Management Administration. With me here today is Deb Cappuccitti and Christina Lyerly and Michelle Crawford, who are engineers and natural resource planners in the Program Review Division, and they help to lead the administration of the small MS4 general permit.

In accordance with Title 1, Subtitle 6 of the Environment Article and Title 26, Subtitle 8, Chapter 4 of the Code of Maryland Regulations, a tentative determination to issue an NPDES small MS4 general permit for State and Federal agencies has been advertised in the Maryland Register on December 23rd, 2016. In addition, notices were placed in 13 regional and local newspapers throughout the State, beginning on December 22nd or December 23rd, 2016, and a second notice was published on December 29th or December 30th, 2016. These notices also included the date of today’s public hearing. MDE also provided notice of the upcoming tentative determination process to an interested parties list on December 21st, 2016. And it has been publicized on MDE’s website, along with its fact sheet and draft permit.

Anyone who signed the attendance sheet this morning will be added to MDE’s interested parties list and will be notified of any decisions or actions related to the general permit. If you have not signed the attendance sheet and want to be on MDE’s interested party list...

APPEARANCES

ON BEHALF OF THE MARYLAND DEPARTMENT OF THE ENVIRONMENT:
RAYMOND BAHR
DEBORAH CAPPUCITTI
CHRISTINA LYERLY
MICHELLE CRAWFORD
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230

SPEAKERS:
James O’Day, WSSC
J.L. Hearn, WSSC
Jai Cole, MNCPPC
list, please be sure to do so before leaving today.

I will start with some background information on MS4 permitting in Maryland, and more specifically about the current iteration of the Phase II State and Federal general permit. After that, I would like to give any elected officials that are here today an opportunity to comment. Then we’ll work our way through the speakers list, and from my understanding, we have two maybes so far, an opportunity to comment.

The purpose of today’s hearing is to accept public comment on MDE’s tentative determination to issue an NPDES general permit for discharges from small State and Federal MS4s. MDE has drafted a general permit designed to comply with the United States Environmental Protection Agency’s (EPA’s) regulations to control stormwater pollutant discharges from small State and Federal MS4s. The permit is issued for five years.

This hearing is part of MDE’s obligations for meeting public participation requirements under the Environment Article of the Annotated Code of Maryland. Written comments concerning this general permit will be accepted through March 30th, 2017. This comment period already incorporates an additional 60-day extension period provided in Environment Article Subtitle 1-606(d)(2)(ii).

Maryland has been delegated authority by EPA to administer the NPDES program in the State. Final stormwater regulations were adopted by EPA in November 1990 in accordance with Section 402(p) of the Clean Water Act. Phase I of these regulations required municipal owners of storm drain systems serving populations of greater than 100,000 to apply for a stormwater permit.

In Maryland, ten jurisdictions and the State Highway Administration were required to apply for individual NPDES stormwater permit coverage. Smaller cities and towns and State and Federal agencies within these Phase I jurisdictions often had significant and interconnected storm drain systems but were not affected by these Phase I regulations.

In December 1999, EPA promulgated the NPDES Phase II regulations, expanding the stormwater permitting program to smaller localities, as well as State and Federal agencies, located in Census-defined urbanized areas or designated by the permitting authority. MDE’s first Phase II MS4 general permit for State and Federal agencies was issued on November 12th, 2004.

The Phase II program is described in 40 Code of Federal Regulations Subsection 122.3 through 122.37 and requires the implementation of six minimum control measures. These six measures are public education and outreach; public involvement and participation; illicit discharge detection and elimination; construction site stormwater runoff control; and post-construction runoff control; also pollution prevention and good housekeeping.

The successful implementation of the six minimum control measures and other permit conditions constitute a compliance with the standard of reducing pollutants to the maximum extent practicable, protecting water quality and satisfying the requirements of the Clean Water Act.

This proposed permit action today is to issue a “second-generation” NPDES MS4 general permit for Phase II State and Federal agencies. This new permit includes additional conditions for consistency with EPA-approved total maximum daily loads, or TMDLs, to support Chesapeake Bay restoration efforts, as well as addressing local water quality concerns.

Conditions of the permit will require small State and Federal MS4s to commence restoration efforts for 20 percent of existing developed lands that have little or no stormwater management. Permittees will be required to perform watershed assessments, identify water quality improvement opportunities, secure appropriate funding, and develop an implementation schedule to show how the 20 percent impervious area restoration requirement will be achieved by 2025.

This permit will be Maryland’s first MS4 Phase II State and Federal general permit to require impervious area restoration to address water quality impacts from urban areas that were developed prior to the State’s stormwater management program. These restoration efforts will build upon the six minimum control measures that were required under the previous permit cycle. Together, they ensure comprehensive watershed management strategy.
for controlling stormwater, improving the health of local
streams and rivers, and meeting the State’s water quality
standards.

With that, I would like to ask if there are any
elected officials present today that would like to make a
statement for the record.

(No response.)

MR. BAHR: Okay, now we'll work our way through
the speakers list. Has everyone that wishes to speak
today signed up to do so on the attendance sheet?

(No response.)

MR. BAHR: Okay. Today’s hearing is scheduled
for two hours, and we’d like to provide everyone an
opportunity to speak. Since we have two maybes, that
means each of you can probably testify for at least a
half an hour if you would like to, but do please keep
your comments concerning this permit.

With that, we’ll go ahead and get started.

And, also, prior to giving your testimony, please help
our stenographer by clearly pronouncing your name and
then spelling it out completely.

And James O’Day from the WSSC.

MR. O’DAY: I’m a maybe, and the reason for
that is J.L. Hearn I think will be the primary speaker of
WSSC, but I wanted to reserve the right to be able to
speak.

MR. BAHR: With no further ado, Mr. J.L. Hearn.
Would you like to come up here to the podium with the
speaker?

MR. HEARN: We have several concerns, and I
sort of had the feeling that you would go through the
parts of the permit first, but you didn’t really do that.
So let me talk about the few issues that we do have
concerns with.

First is the substantial contribution to
pollutant loadings. That’s identified as a possible way
to get a site to have an exemption. And rather than
formal comments, I basically have a series of questions
and I’d like to either have you respond now or in
writing, today if possible. So that was a question, how
do you -- how does one define what is a substantial
contribution.
basically, very close or if not below the 10 percent impervious area in the first place. We think a detailed site plan showing the storm drainage on that site would be adequate and that a separate pollution prevention plan for a site that’s not manned and nothing is stored on the site except the only structure there is a water tank that we don’t believe a detailed pollution prevention plan makes a lot of sense.

And I guess Jim was -- any other issues related to the Bay TMDL that you wanted -- think we should talk about today?

I guess the timing on the -- again, this goes back to the waiver request. The permit calls for developing impervious area restoration work plans and baseline impervious assessments within one year of the effective date of the permit. Again, this is something that becomes an issue if there’s any delay in making a decision on the waiver request because we have to use -- we do use external consultants, and that’s a process that takes several months to develop certain plans.

So they are basically the summary of comments,

unless there’s something else, Jim.

MR. O’DAY: I just have one thing to add.
MR. BAHR: Sure. Please go ahead.
MR. O’DAY: I’m James O’Day on behalf of WSSC.

On the impervious surface, the CFR doesn’t seem to define, that I’ve found anyway, the term “impervious surface.” We have some properties where it’s a little more complicated as to -- while it seems like it’s self-defining, I think we have some instances where it might not be quite as clear.

If you take, for instance, a water tank, we have a large water tank where obviously the top of the water tank is going to block some of the rainfall from hitting the ground, but eventually it’s going to run off to the same place that it probably would have.

And we’re looking for some clarification as to whether those are -- those types of facilities are going to be calculated as part of the impervious surface. And once again, that ties in with the waiver criteria, et cetera. So we’d like a little more clarification and maybe even some definition of “impervious surface” if you want to go there.

And another example would be we have large sedimentation tanks at, for instance, our Potomac water filtration plant, where rainfall falls into what might ordinarily be characterized as an impervious surface, but the water that goes in there is captured into a closed system. So should we be calculating that as part of those types of facilities, as part of our impervious surface calculation, which once again might tie in with whether a waiver is a possibility? So we would just like some assistance and having some clarity on that.

MR. O’DAY: Okay.
MR. BAHR: We can do that for you.
MR. O’DAY: Thank you.
MR. BAHR: And with that, I have Jai Cole from Maryland National Capital Parks & Planning Commission, is also a maybe.

MS. COLE: But you pronounced my name right.
MR. BAHR: I’m sorry. Please help us out.
MS. COLE: No, you pronounced it right.
exemptions. The portion of the permit that says
basically that pollution prevention plans for each site,
clarity on what site is. We have 420 parks, so I don’t
know what -- what the site is.
There are -- there’s also a lot of -- and
forgive me, because we’re a weird agency, but we’re a
State agency, but we’re not permitted by the State. So a
lot of the requirements in the permit talk about MDE
permitting, and we’re not permitted by MDE. So there’s
that.
And then how -- and this is one of those things
I’d have to go back and explain -- so the permittees with
a new permit are only required if they have over 10
percent impervious. Is -- I’m assuming that that’s
total. So we have two in our counterparts in Prince
George’s County, therefore, we wouldn’t be required to
have a permit.
That would be a little bit of a -- because they
have less than 10 percent and they didn’t have a permit
last time, so the thing that kicks us in is the fact that
we had a permit last cycle. So we’re -- we’ll be a State
agency and our counterparts won’t have the same lovely
headache that we have. That’s mostly just -- okay.
And I think that that’s it. Did we have any
other that I missed?
(Brief pause.)
MS. COLE: I think that’s -- oh, just one small
little comment. Under your Part (4)(a), the personal
education and outreach, I don’t know if it was left out
or not, but there’s not -- it doesn’t say public
education, it doesn’t say personal outreach and public --
sorry. Personnel education and public outreach, it
doesn’t say that anymore. It just says personnel
education and outreach. I didn’t know if that meant
outreach internally or to the public, but the old permit
said public outreach, so that’s --

MR. BAHR: Okay, great.
MS. COLE: -- that’s a thing for us. That’s
it.
MR. BAHR: Thank you. Very good comments.
Does anybody else here today wish to give
testimony regarding this permit?

(No response.)

MR. BAHR: Okay. I’ll give you a little bit of
where do we go from here, and then we’re formally over,
but please, if you have questions, stick around and staff
will be here to help answer them.
So, Linda, our stenographer, hopes to get us
the transcript back in about two weeks. At that time,
we’ll put it up online, and we’ll send an email out to
everybody on our interested parties list and let you know
about that.
The record, as we’ve said numerous times, it’s
going to be open until March 30th, 2017. The process
after that, we’re going to aggregate all the comments.
MDE will do a response to comments, and that will
probably take a couple of months, and then we’re going to
issue a final determination.
Once the final determination is issued, the
designated State and Federal agencies will have 180 days
to apply for coverage. And that’s the process. That’s
about it. So with that, once again, going once, going
twice, does anybody have any further testimony for this
CERTIFICATE OF COURT REPORTER

I, Linda Metcalf, do hereby certify that the foregoing transcription was reduced to typewriting via audiotapes recorded by me; that I am neither counsel for, nor related to, nor employed by any of the parties to the case in which these proceedings were transcribed; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

LINDA METCALF, CER
Court Reporter
Maryland Department of the Environment

2/6/2017

employed 21:6,9
employee 21:8
engineers 3:18
ensure 8:21
entities 16:14,16
Environment 1:1
2:3,8 4:2 5:20 6:3
Environment’s 3:8
Environmental 5:14
EPA 6:5,7,19 12:16
EPA-approved 8:1
EPA’s 5:15
et 14:19
eventually 14:14
everybody 19:9
example 15:2
exempt 12:7,13
exemption 10:16
exemptions 17:1
existing 8:7
expanding 6:20
explain 17:12
extension 6:2
extent 7:16
external 13:19

facilities 14:17 15:8
fact 4:15 17:20
falls 15:4
far 5:9
February 1:12 3:6
Federal 1:8 3:11 4:5
5:5,13,17 6:15 7:1
7:3,6,21 8:6,15
19:18 20:5
feeling 10:10
fenced 12:20
filtration 15:4
final 6:6 19:16,17
financially 21:9
first 7:3 8:14 10:11
10:14 11:17 12:13
13:2 16:7
five 5:17
fold 16:9
foregoing 21:4

Highway 6:13
hitting 14:14
hopes 19:6
hour 9:16
hours 9:13
housekeeping 7:12
12:16
I
I’d 10:18 11:4 17:12
I’ll 19:2
I’m 10:2 14:4 15:20
17:14
I’ve 14:6
identified 10:15
identify 8:9
II 5:4 6:20 7:3,5,20
8:15 20:5
illicit 7:9
impacts 8:16
impervious 8:12,15
13:2,14,15 14:5,6
14:18,21 15:5,8
17:14
implementation 7:7
7:13 8:11
improvement 8:10
improving 9:1
inadequate 12:12
include 12:9,17
included 4:11
includes 7:21
incorporates 6:2
individual 6:14
individually 11:16
information 5:2
16:21
instance 14:11 15:3
instances 14:9
interconnected 6:17
interconnection 11:21
interested 4:13,18
4:21 19:9 21:10
internally 18:14
involvement 7:9
issue 3:9 4:4 5:11

K
keep 9:16
kicks 17:20
know 12:8,13 17:4
18:8,13 19:9
L
lands 8:7
large 14:12 15:2
lead 3:20
leaving 5:1
left 12:11 18:8
let’s 3:4
Linda 1:19 19:6
21:3,14
list 4:14,18 5:1,8 9:9
19:9
little 8:8 14:7,20
16:6,13,20 17:18
18:7 19:2
loadings 10:15
loads 8:2
local 4:8 8:4 9:1
localities 6:21
located 7:1
looking 14:16
lot 13:8 16:14 17:5,8
lovely 18:1
lucky 16:1

For The Record, Inc.
(301) 870-8025 - www.ftrinc.net - (800) 921-5555