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Raymond Bahr
Maryland Department of the Environment
Water and Science Administration
1800 Washington Boulevard, Baltimore, Maryland, 21230
raymond.bahr@maryland.gov



Re: Comments on Phase I MS4 permits

The undersigned members of the Choose Clean Water Coalition thank you for the opportunity to comment on the draft phase I MS4 permits for Anne Arundel County, Baltimore County, Baltimore City, Montgomery County and Prince George's County. We appreciate the opportunity to provide input before the official comment period. We also appreciate the ongoing dialogue over the last few years on polluted runoff and clean water permits with MDE.

While there are some components of the new permits that are laudable, such as the provisions on road salts, we have significant concerns over many of the stipulations and overall approach of this permit. Many of these concerns are ones that we have raised before, such as the 2017 letter on recommendations for a new metrics approach for the Phase I MS4 permit renewals, the various testimonies on nutrient trading, the Coalition's June 2019 comments on Maryland's Phase III WIP, the February 2020 comments on MS4 Accounting Guidance Document, etc. However, these deficiencies remain and indicate a worrying trend in MDE's approach to stormwater pollution. Using CAST, we also see that the draft MS4 Permits will not reduce stormwater pollution to achieve Phase III WIP goals and we urge Maryland to look to Virginia for lessons on how to make aggressive, actionable goals. In this letter, we enumerate concerns and urge proposed solutions in several areas. We outline problems and propose solutions to the following elements of the permit:

- I. The Draft MS4 Permits Will Not Reduce Stormwater Pollution to Achieve Phase III WIP
- II. Improved Water Quality Attainment - A New Approach
- III. Impervious Surface Restoration (ISR) Crediting and Specific Best Management Practice (BMP) Concerns
- IV. Monitoring Requirements are Insufficient
- V. Nutrient Trading Undermines the Ability of the MS4 Permits to Ensure Compliance with the TMDL
- VI. The Draft MS4 Permits Should Account for Climate Change
- VII. Environmental Justice: MS4s Must Eliminate Inequities in Impacts and Restoration Benefits
- VIII. Permit Waivers: The Permit Should Require Tracking of Stormwater Control Waivers
- IX. Include Watershed Assessments as They Were in the Last Permits
- X. Deicing: A Positive Addition to the MS4 Permit

We also make county specific recommendations for individual permits.

I. Draft MS4 Permits Will Not Reduce Stormwater Pollution to Achieve Phase III WIP

The MS4 permit is supposed to assist the state in meeting its Phase III WIP, but in reading the proposed permit renewal we not only find baseless conclusions but also contradictory evidence. As it currently stands, we do not see how this MS4 permit will be able to achieve the stormwater pollution reductions that will bring Maryland into alignment with the WIP.

The MS4 permits have an impervious area reduction target that can be met through a variety of alternatives, and according to the CAST scenarios, Maryland (through its WIP) is apparently planning for virtually no new impervious surface restoration. This strongly suggests that Maryland has assumed, in drafting the MS4 permits, that the permittees will not in fact reduce impervious surfaces by a meaningful amount. This is an assumption that requires clarification. If Maryland's WIP reflects substantially weaker stormwater planning targets and expectations, it stands to reason that Maryland is expecting smaller reductions from the MS4s. This creates a strong presumption that the MS4 permits are weaker than they once were, an outcome counter to the spirit and letter of the Clean Water Act. In addition, we know that nutrient and sediment loads are increasing due to climate change, and we know that Maryland's WIP did not account for that added load, so there is a strong presumption that the MS4 permits are based on an inaccurate stormwater planning target (i.e., one that does not yet account for climate change).

We are therefore confused and concerned about the following language in Part IV.E. of the permit: "[t]he impervious acre restoration requirements and associated pollutant reductions described below are consistent with Maryland's Phase III Watershed Implementation Plan (WIP) for the Chesapeake Bay TMDL and 2025 nutrient load targets, and for local TMDL implementation targets." This lacks any justification or explanation in support of the conclusion. If the permit terms are deemed by MDE to be consistent with all TMDLs, the permit should explain how that determination has been made and reference the supporting documentation. We are dubious that any such documentation can be produced, because the Bay Model clearly shows that urban stormwater pollution is increasing, not decreasing, and thus discharges under this permit are certainly causing and/or contributing to water quality impairments. **We strongly urge MDE to remove this sentence or replace it with an accurate statement about how much nutrient and sediment pollution MDE estimates will be reduced through water quality-based effluent limitations, such as the impervious acre restoration requirement.**

To the extent that MDE produces such an analysis, we would also appreciate a backsliding analysis as required in the NPDES Permit Writers' manual. This would demonstrate how many additional pounds of nutrient and sediment pollution could be removed if MDE did not backslide on the current impervious acre restoration requirement and retained the current 20 percent standard that serves as the key water quality-based effluent limitation for this permit. In order to reconcile the MS4 permits with Maryland's Phase III WIP, local TMDLs, waste load allocations, and restoration plans, it is critically important that

MDE provide its assumptions about the amount of nutrient and sediment reduction that the permits will generate, and how those reductions will be generated.

We use a comparison to Virginia to illustrate not only how Maryland has backtracked on pollution reduction promises, but to also demonstrate how our neighboring jurisdiction is using stormwater planning to drive pollution reductions.

Maryland Should Look to Virginia for Stormwater Planning Leadership

As described in more detail below, Maryland, like Pennsylvania, has fallen significantly behind on stormwater planning, and the state now expects to not reduce nitrogen or sediment pollution into the Chesapeake Bay from the urban sector. Virginia is rising to the challenge and strengthening its stormwater planning targets. Maryland must strive to be more like Virginia, or it will be unable to meet the goals of the Bay TMDL, or those of the years that follow 2025.

The following tables compare Maryland and Virginia from three vantage points. The first relates to each state’s Watershed Implementation Plan, or WIP. The states’ most recent WIPs – the “Phase III” WIPs – were finalized in 2019. The planning targets in the Phase III WIPs can be compared to the planning targets in the prior, Phase II WIPs, which were finalized in 2012. **Table 1** compares the Phase II and Phase III WIPs for each state using data from the Chesapeake Bay Program’s Chesapeake Assessment Scenario Tool (CAST). These estimates are not the same as those found in the WIPs. It was important to use CAST rather than the estimates from the WIPs themselves because each WIP was created using a different version of the Bay Program’s watershed model, so a direct comparison of the two WIPs would not be ‘apples-to-apples.’ In order to make a meaningful comparison, we obtained estimates of the delivered load of nitrogen, phosphorus and sediment corresponding to various scenarios, including 2009 as a baseline and the 2025 loads associated with full implementation of each WIP, all using the same version of CAST (version 2017d, the most recent public version to include a WIP II scenario).

Table 1 shows that Virginia’s plans have become more ambitious – the stormwater loads that Virginia now intends to achieve by 2025 are 5 to 7 percent lower than they were under the state’s 2012 WIP. By contrast, Maryland’s plan has become much less aggressive – **Maryland is now planning to allow 20 to 40 percent more stormwater pollution than it would have accepted under its 2012 plan.**

Table 1: Target stormwater pollution loads for 2025 in Phase II and Phase III WIPs (millions of EOT pounds).¹

	Virginia			Maryland		
	Phase II WIP	Phase III WIP	change	Phase II WIP	Phase III WIP	change

¹ Data obtained from CAST, version “CAST-2017d” <https://cast.chesapeakebay.net/>.

Nitrogen	10.3	9.7	-5.2%	7.7	9.3	+20.3%
Phosphorus	1.26	1.19	-5.4%	0.47	0.66	+41.2%
Sediment	512	476	-7.1%	284	394	+38.6%

Another useful perspective relates to the change in stormwater pollution loads over the course of the TMDL, from the 2009 baseline to the 2025 target date for achieving the reductions necessary to restore the health of the Chesapeake Bay. See **Table 2**, below, which again uses CAST load estimates for the various scenarios. Virginia has a plan that would reduce stormwater pollutants by 4 to 12 percent. Although Virginia’s plan may be modest in its ambition, it is at least consistent with the TMDL’s general goal of reducing nutrient and sediment pollution. Maryland’s plan, by contrast, is heading in the wrong direction. Maryland plans to finish the TMDL process with **more** nitrogen and sediment pollution than it had in 2009.² While its neighbors are working hard to reduce pollution in urban stormwater, Maryland’s BMP implementation targets for 2025 show otherwise. When converted by CAST into load estimates, Maryland shows an increase in nitrogen and sediment. If this permit does not ensure significant on the ground reductions, Maryland will allow more polluted runoff from the urban sector.

Table 2: Changes in stormwater pollution load from 2009 to 2025 under Phase III WIPs (millions of EOT pounds).³

	Virginia			Maryland		
	2009	2025	change	2009	2025	change
Nitrogen	10.1	9.7	-4.0%	9.0	9.3	+2.8%
Phosphorus	1.24	1.19	-3.8%	0.69	0.66	-3.8%
Sediment	542	476	-12.2%	388	394	+1.5%

² Maryland’s Phase III WIP appears to show a reduction in nitrogen and sediment loads (see, e.g., Phase III WIP at 24-25), which may seem inconsistent with what we show in Table 2. However, the reduction in the Phase III WIP is from a 2017 baseline, while here we are discussing stormwater loads over the course of the TMDL (i.e., relative to a 2009 baseline). These estimates are not inconsistent. Stormwater loads have been increasing since 2009, so it is plausible that loads could decline slightly from 2017 to 2025, but not decline to 2009 levels.

³ Data obtained from CAST, version “CAST-2019” <https://cast.chesapeakebay.net/>.

Perhaps most directly relevant to the MS4 permits are Maryland's plans for impervious surface reduction. In its 2012 WIP, Maryland was planning to reduce over 30,000 acres of impervious surface by 2025. These plans are no longer reflected in CAST and we do not see them in the permit. Again, this stands in sharp contrast to the trajectory in Virginia, where plans for impervious surface reduction have been accelerated by nearly 50 percent. It also points to a critical tension between the MS4 permits and Maryland's WIP. The permits appear to require much more than 199 acres of impervious surface restoration. However, the permits do not actually require the restoration of any impervious surface at all; instead, they require a combination of alternatives that are designed to produce pollutant reductions equivalent to the stated impervious surface restoration requirement. As a result, while the permits may appear to require the restoration of a certain number of impervious acres, they are likely to lead to much less restoration. According to CAST, the impervious surface ultimately restored will be on the order of 199 acres. We would appreciate clarification from MDE. **Does the Department have an estimate of the impervious surface restoration that the MS4 permits will produce? Does it differ from the estimate generated by CAST?**

Maryland must follow Virginia's lead and recognize the increasing threat to TMDL progress and local communities burdened by the many harmful effects of stormwater runoff, and rise to the challenge with more aggressive pollution control policies. Maryland is not on track to meet the goals of the TMDL more generally.⁴ In order to meet the goals for 2025, Maryland will have to triple the annual rate of nitrogen reductions seen over the past 10 years.⁵ Maryland must, like Virginia, accelerate stormwater pollution reductions, and abandon the wholesale retreat represented by the most recent Watershed Implementation Plans and MS4 permits.

Finally, we note that Maryland and Virginia differ in another significant way- Virginia's Phase III WIP accounts for the additional loads that climate change is expected to produce by 2025, and Maryland's WIP does not.⁶ Although Maryland may be planning to make this accounting change in the future, it will be too late for the current round of MS4 permits.

II. Improved Water Quality Attainment: A New Approach

Since the early 2000s, the paramount goal of the Maryland Phase I MS4 permits has been to prevent polluted stormwater from entering local waterways and Chesapeake Bay. In that same time period, each five year cycle of these permits has sought to achieve this goal by requiring Impervious Surface Restoration (ISR) using distinct BMPs to improve, reduce, or eliminate stormwater discharges to impaired waterways in the 10 largest Maryland jurisdictions and by the Maryland State Highway Administration. Despite advocacy from many Choose Clean Water Coalition members and certain permittees to change the metric, the 2020 draft MS4 permits still uses the impervious surface

⁴ See Environmental Integrity Project, the State of Chesapeake Bay Watershed Modeling, Table 8 (Aug. 8, 2019), <https://environmentalintegrity.org/reports/the-state-of-chesapeake-bay-watershed-modeling/>.

⁵ *Id.* at page 22 and Table 8.

⁶ See EIP, Stormwater Backup in the Chesapeake Region at 19-25 (Aug. 17, 2020) (<https://environmentalintegrity.org/reports/stormwater-backup-in-the-chesapeake-region/>).

restoration (ISR) metric instead of a metric more directly related to water quality. Our continued concerns with the use of ISR as a metric are outlined below and described in more detail in the attached 2017 letter sent to MDE.

Within the 11 Maryland Phase I permits, two efforts have been required: meet a jurisdiction-wide acreage target of ISR through stormwater management or equivalent practices, and the more specific stormwater wasteload allocations (WLAs) in impaired waterways.

The Phase I permittees in their annual reports were to make clear how they met the ISR acreage requirements and if they made progress in attaining the pollutant reductions to meet the WLA. The annual reports would make clear through data presentation in charts and tables and through the narrative how these requirements were achieved.

The reports show, in table form, the *WLA_{sw} Percent Reduction* and the *Percent Reduction Since Baseline Date*. *WLA_{sw} Percent Reduction* indicates the target percent reduction planned for this pollutant from a stormwater source load, with no end target date. The difference between the two is the remaining load to be addressed. In Audubon Naturalist Society's 2019 assessment, few, if any, of the jurisdictions had comparable progress towards the *WLA_{sw} Percent Reduction* goals in proportion to the acres treated (ISR) by each permittee. As an example, in Montgomery County as of FY2019, 30% of the MS4 acres have been treated with ISR since 2005, but no *WLA_{sw} Percent Reduction* goals for any pollutants or watersheds was close to a 30% reduction with the exception of sediment in certain watersheds and phosphorus in the Anacostia. Some pollutants are at less than 1% reduced despite all the ISR effort. For every Maryland Phase I MS4 permittee in 2019 this result was the same: none reached the percent reduction required to meet the "make progress" goal and most did not come close. This construct of reducing pollutant loads did not work: no combination of ISR acreage and specific TMDL pollutant reduction erased enough pollutant load to show adequate progress toward meeting WLA of these key pollutants.

This result must be changed; and it can be. On August 25, 2017, participating members of CCWC submitted a memorandum to MDE which called for the establishment of a specific pollutant reduction methodology to focus not in ISR acreage equivalents but rather on WLA reduction requirements and requiring a proportion of environmental site design (ESD) or "green infrastructure." We have attached this document along with this letter. We recommended basing these metrics on the permit- and watershed-specific numeric pollutant load reduction goals to be met in the course of the permit term which would result in reaching WLA for each TMDL.

We still strongly recommend switching to this outcomes-based metric and away from the indirect/model-based metric of ISR acreage and EIAs. A WLA/pollutant reduction metric, as described in greater detail in our August 25, 2017 memorandum, could effectuate a "catch up" or "gap closure" result wherein the gap between the annual review table *WLA_{sw} Percent Reduction* goal and the *Percent Reduction Since Baseline Date* can be closed **within a defined time period**, thus ensuring the ecosystem and human health benefits that are the ultimate goal of the Clean Water Act.

III. Impervious Surface Restoration (ISR) Crediting and Specific Best Management Practice (BMP) Concerns

We appreciate that MDE accepted some of the comments made by the Choose Clean Water Coalition members on the December Draft Guidance document provided in our letter dated February 7, 2020. We note clarifying language added to the June Guidance document regarding Urban Soil Restoration Credit and Forest Conservation BMPS, which we recommended. We are pleased that MDE reevaluated the benefit of trees within the urban environment and removed the footnote on page 15 that stated street trees have no TMDL nutrient reduction value. **We seek clarification that removal of this footnote in the June document means urban trees will be credited for pollution reductions in the TMDL.**

We applaud reinstatement of the previous “100 trees equivalent to one acre” standard for equivalent impervious acres from the December Guidance proposal which would have reduced street trees and urban canopy to 0.003 acre per tree. Street trees and urban canopy are critical practices in highly urbanized areas, not simply for stormwater, but also for co-benefits like summer temperature reduction, shade, and air quality improvement. These practices are also cost-effective options within high-density developed areas.

However, we are disappointed that MDE dismissed additional substantive concerns from our coalition that could have resulted in stronger draft MS4 permits. The “restoration” requirements within the current draft permits are highly inadequate; instead of requiring stepped-up implementation of green infrastructure with numerous co-benefits, or requiring more physical stormwater BMPS that control volume while treating flows, or even limiting the amount of total ISR credit from a single practice, MDE appears to have developed permits that differ little from the last round, other than to require much less than the previous 20 percent restoration standard.

It is worth noting that most permitted jurisdictions failed to meet expected pollutant load reductions under the previous permit, even while some met the “equivalent impervious acres restored” standard. For example, Baltimore City’s draft 2020 permit again allows Baltimore City to rely almost solely on street sweeping, the majority of its 2013 MS4 permit. The amount of street sweeping reported in 2019 exceeded a calculated “equivalence” threshold, but met none of its expected pollutant reductions. Why should anyone expect a different result from the same approach? As climate change-induced weather patterns continue to shift, many of our jurisdictions are expecting heavier rains, flashier storms, and greater flooding. Many of the alternative BMPs approved for these permits, such as street sweeping or septic system treatments, do nothing to address this critical stormwater challenge.

We remain concerned about the doubled Equivalent Impervious Acre credit afforded stream restoration, despite the inconsistent results associated with this practice, and continue to urge that MDE cap the amount of credits a single jurisdiction can generate toward compliance with their restoration requirement from this, or any other, single practice. Given the lack of monitoring and verifiable performance monitoring as discussed in this letter, it is inappropriate to give a higher rate of credit to permittees even if it is intended to be a ‘planning target’ as stated by MDE. As stated in our previous

letter, the Bay Program Expert Panel does not support the increase of stream restoration wholesale, and only projects verified to reduce pollution, such as with onsite upstream and downstream monitoring should be afforded extra credit.

We also continue to oppose the inclusion of dry wells under MDE's list of approved Green Infrastructure Practices eligible for bonus credits. As stated in our coalition letter from February 2020, we firmly believe that only practices that truly mimic natural processes to both reduce pollutant loads and reduce runoff volumes should be eligible for the bonus credit, which we support. If the EPA does not recognize dry wells as green infrastructure, why would MDE?

And finally, we are truly discouraged that MDE is not requiring some minimum amount of green infrastructure to be undertaken by jurisdictions to comply with this newest permit. As mentioned elsewhere, climate change is perhaps the most critical issue facing our waterways and residents. Failure to require some percentage of practices in a jurisdiction-wide permit to be met by implementation of practices that may actually address stormwater volumes is inappropriate. By this omission, MDE is creating a confusing and disingenuous permitting scheme that is not appreciably improving water quality nor addressing increasing stormwater flows, flooding, nor stream damage which can undermine infrastructure like sanitary sewers and roadways.

IV. Monitoring Requirements are Insufficient-

The requirement to monitor only one waterway to help determine the effectiveness of best management practices should be in addition to - not instead of - other monitoring methods.

The updated MS4 Permits reviewed include an option for jurisdictions to either participate in a Pooled Monitoring Advisory Committee administered by the Chesapeake Bay Trust or undertake monitoring only one of its tributaries. The option for best management practice efficiency monitoring is a positive development in this round of permits, however, the monitoring should be mandatory. The optional approach thwarts the ability to determine the adequacy of stormwater management particular to the specific MS4 jurisdiction, providing insufficient data to review the effects of best management practices on water quality in that jurisdiction.

Data collected from one location does not adequately measure the effect of best management practices throughout a jurisdiction. MS4s typically contain multiple areas of residential and commercial development sending runoff into various Chesapeake Bay tributaries. Each of these tributaries have their own hydrogeologic character and are drainages from specific land uses. It is possible that monitoring just one small sub-watershed under- or over-represents the effectiveness of stormwater best management practices undertaken within the past year. Monitoring several local waterways receiving stormwater runoff, which are characterized by different land uses and hydrogeologic profiles, in addition to a pooled approach, would provide a more complete picture of progress specific to that MS4.

Annual reports, required by the MS4 Permit, should be publicly available on MDE’s website.

Annual reports detailing the activities demonstrating compliance with the National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Permit terms provided by 40 CFR 122.42(c) should be publicly available. The reports describe the components of the program for each jurisdiction and the associated implementation status, allowing review of progress. The reports also summarize monitoring programs implemented, including data collection and analysis. This detail should be readily accessible to the public to improve accountability and understanding of monitoring results.

V. Nutrient Trading Undermines the Ability of the MS4 Permits to Ensure Compliance with the Chesapeake Bay TMDL

Nutrient trading, particularly as it has been implemented by Maryland in the context of MS4 permits, is a fundamentally flawed, mathematically unsound, program that may prevent Maryland from reaching its TMDL goals and will result in “hot spots” that place yet more burdens on environmental justice communities. There are at least four major problems with the nutrient trading provisions of the MS4 permits.

1. First, there is no verifiable additionality (i.e., ensuring that trades result in additional practices or pollution reduction that would not have happened without the trading program) in any credits that have been traded so far and allowing annual credits in lieu of permanent practices (i.e., impervious surface restoration) increases uncertainty and creates an indefinite administrative burden.
2. Second, allowing the purchase of credits from wastewater treatment plants whose reductions are already incorporated into the Phase 6 Model and WIP results in double-counting.
3. Third, allowing the purchase of agricultural credits without a margin of safety (i.e., an “uncertainty ratio”) will result in net pollution reductions that are much less than each MS4 would achieve in the absence of trading.
4. Finally, trading enables and incentivizes disinvestment in urban communities. When jurisdictions are encouraged to outsource their pollution reduction activities rather than invest in green infrastructure projects that allow stormwater to infiltrate, the local communities lose out on the numerous co-benefits that MDE has written extensively about. We have repeatedly asked MDE to cap the amount of impervious restoration “credit” that a permitted jurisdiction can claim from nutrient trading or alternative practices or to set a minimum amount of reduction that must happen from green infrastructure. We are disappointed MDE has ignored this suggestion, knowing that this approach results in community disinvestment and furthers the environmental stressors urban residents face.

First and foremost, the forthcoming round of permits would require each MS4 to continue to buy credits to cover the impervious surface restoration shortfall from the last permit cycle. This requires each county to secure and purchase credits every year, and requires the independent verification of these

credits every year, until the county ultimately restores the impervious surface (or implements some other alternative). MDE has not indicated an end to this cycle – the current permit drafts say “expiration date TBD,” and the cycle has already been carried over from one permit term to another. This arrangement therefore creates an ongoing, annual administrative burden for the counties and for MDE with no corresponding on the ground benefit.

According to our analysis of the credits that have been traded so far, none have substantial information or evidence available to the public verifying additionality. There are enough wastewater treatment plants operating below the 3.0 mg/L nitrogen baseline solely because of Bay Restoration Fund upgrades already accounted for in the WIP and CAST model that hundreds of thousands of pounds worth of credit can be generated without any additional pollution reduction or change in practices at all.

There is not enough information easily available or accessible to the public. This coupled with the fact that the units are then converted between nutrient credits and impervious acre equivalents adds additional uncertainty inherent in nutrient trading. Instead of tangible pollution control practices, the counties will be securing credits for pollutant reductions that may not cover the underlying impervious surface obligation. With the data currently available to the public, it is difficult to see if the credits are adequately verified, and the BMPs supporting each credit may fail to generate the expected reductions.

Second, MDE appears to be double-counting pollutant reductions. When wastewater treatment plants make pollution control upgrades, they immediately begin to report lower pollutant loads through their discharge monitoring reports. The Chesapeake Bay Program uses these discharge monitoring reports to inform the model used to track progress toward the TMDL goals. If a wastewater treatment plant made upgrades in 2012, then those pollutant reductions have already been counted toward Maryland’s total pollution load. When Maryland allows an MS4 to purchase credits from that plant, in lieu of impervious surface restoration or any other obligation, it is counting the same pollutant reduction twice – once on behalf of the wastewater treatment plant, and again on behalf of the MS4. This is explained in more detail in a [2019 Environmental Integrity Project report](#) provided along with this letter.⁷ This is a major mathematical error in MDE’s approach, and it gets Maryland no closer to its TMDL goals. An acre’s worth of paper credits is not equal in value to an acre of restored impervious surface, the permitted activities will not meet the sector’s wasteload allocation, and the permit will not protect water quality. Instead, the permit is simply weaker, and this represents impermissible backsliding from previous requirements.

Third, as explained in much greater detail in the EIP report⁸, Maryland’s nutrient trading regulations fail to require an uncertainty ratio for trades between nonpoint credit generators (such as farms) and MS4 credit purchasers, despite an EPA policy requiring the use of an uncertainty ratio for all trades involving nonpoint credits. The uncertainty ratio policy is based on the fact that nonpoint BMPs are likely to

⁷ See Environmental Integrity project, *Pollution Trading in the Chesapeake Bay* at 14 to 18 (Aug. 19, 2019) (<https://environmentalintegrity.org/reports/pollution-trading-in-the-chesapeake-bay/>). See also *id.* at pages 23 to 25.

⁸ See *id.* at 18; *id.* pages 15 to 22.

underperform. This problem is amplified by climate change, which causes more intense precipitation events that can overwhelm a BMP or otherwise reduce the ability of a BMP to mitigate pollution – a problem that MDE has recognized.⁹

Since the MS4 “trading” provisions will not produce pollutant reductions commensurate with what would have been achieved in their absence – through a more straightforward implementation of the impervious surface restoration requirement – the provisions represent impermissible backsliding from the prior water quality-based restoration requirements.¹⁰ **MDE must eliminate the trading option in the MS4 permits.**

VI. Draft MS4 Permits Should Account for Climate Change

The Fourth National Climate Assessment predicts precipitation duration and intensity will increase with climate change in the northeastern United States¹¹ in addition to expected increases in temperature. However, MDE guidance documents fail to reflect these projections in several key areas such as design storm runoff volumes, runoff coefficients for various land uses, increased outfall temperatures, and the corresponding effects these discharges will have on water quality, streambank integrity, fish and benthic fauna. MDE has rightfully and consistently supported the concept of considering climate change in numerous state fora and projects, but fails to do so within this permit program.

Draft MS4 monitoring requirements being limited to one permanent cross section are unlikely to capture expected changes in hydrology. The Department should evaluate past monitoring data from the program relative to precipitation data from the permit time periods for both reference and developed watersheds to determine any trends in these outcomes that might require updated guidance.

Bay Model efficiencies for many restoration BMPs are likely to inaccurately reflect the real runoff constituents and behavior of runoff events downstream of outfalls that could liberate additional nutrients and sediments from stream banks. The impervious surface restoration requirements in the draft permit are insufficient to reduce nutrient and sediment loads on their own and many jurisdictions will attempt to meet those load reductions through nutrient trading unless our recommendation above that trading should be eliminated from the MS4 permits is adopted. The additional nutrient and sediment loads mentioned above could further impair 303(d)-listed segments requiring local TMDLs, and hydrologic damage to fish and benthic invertebrate habitats could result in degradation of Tier II waters and impairment of some Tier I waters by no longer supporting designated uses.

Impervious surfaces will be delivering hotter and given the stronger force of increased stormwater in stronger storms, potentially more contaminated runoff to local waterways than those same surfaces

⁹ See Maryland’s Phase III Watershed Implementation Plan at 56 (Aug. 23, 2019).

¹⁰ 33 USC § 1342(o)(1).

¹¹ <https://nca2018.globalchange.gov/chapter/18/>

have in the past. Higher ambient temperatures will be more stressful to fish and invertebrates acting cumulatively with these discharges which could affect stream Indices of Biotic Integrity (IBI) on which the state's tier system for classification is based, resulting in a shifting baseline. The final permit must include impervious surface restoration requirements that take into account a more realistic level of contaminant runoff, especially in local areas where nutrient and sediment loads are not the sole concern for meeting water quality standards and designated uses.

The MS4 permit is perhaps Maryland's most important climate adaptation policy. If the permits promote an acceleration of green infrastructure projects year after year and permit after permit, this key policy can help ensure Maryland slowly but surely re-plumbs its urban landscapes over the coming decades in a way that will maximize protections from the devastating effects of climate change that we know are coming. Maryland can lead the nation in climate adaptation with only minor tweaks to this permit. Instead, the State is promoting a short-sighted and penny-pinching approach to stormwater and flood control that will have lasting and long-term consequences for the health and well-being of Maryland's communities, economy, and environment.

VII. Environmental Justice: MS4s Must Avoid and Eliminate Inequities in Polluted Runoff Impacts and Restoration Benefits

Stormwater pollution and flooding are environmental justice issues. While contaminated stormwater poses risks for everyone, some communities are at greater risk because of past and current discrimination that has led to residential segregation, disinvestment, and lack of political power to shape land-use and stormwater management decisions. In Maryland and across the United States, residents of low-income communities and communities of color have long been excluded from decisions about land use. The result is that these neighborhoods are often paved-over and lacking in green spaces that could absorb stormwater and filter contaminated urban runoff.¹²

Furthermore, stormwater restoration is itself an equity issue. Restoration practices like green infrastructure provide not only improved water quality and reduced urban flooding, but also other benefits to communities such as cleaner air and reduced urban heat island effect.¹³ Because many of these benefits are highly localized, the siting of green infrastructure and other stormwater BMPs can have equity implications if governments do not ensure that restoration efforts are carried out in marginalized communities.

It is critical that these draft MS4 permits include provisions to avoid and/or eliminate inequities in both the harmful impacts of polluted runoff and the distribution of benefits that communities receive from jurisdictions' restoration efforts. Moreover, because one of the central principles of environmental

¹² See Manal J. Aboelata & Elva Yañez, "Stormwater Management Is an Equity Issue," *Meeting of the Minds* (Feb. 25, 2020), <https://meetingoftheminds.org/stormwater-management-is-an-equity-issue-33258>.

¹³ EPA, Benefits of Green Infrastructure, <https://www.epa.gov/green-infrastructure/benefits-green-infrastructure>.

justice is the right to participate as equal partners at every level of decision-making,¹⁴ the permittees must be required to include all affected communities in permit implementation through robust and inclusive public outreach efforts. We believe that the draft permits continue to promote disinvestment in urban communities, which can only be addressed by requiring permitted jurisdictions to include more green infrastructure projects that enhance pollution controls and community wellbeing in disadvantaged communities. And we believe nutrient trading creates sacrifice zones that send restoration funds, and the benefits accrued from the projects those funds support, elsewhere.

Equity in Restoration and TMDL Implementation

The draft permits do not include any guidelines or requirements regarding the locations where permittees should carry out their impervious surface restoration efforts (IV.E Stormwater Restoration). While we recognize the need for permittees to have a certain degree of flexibility in implementation, it is also important to ensure that the benefits of stormwater projects are enjoyed by all members of the community and not clustered in wealthier neighborhoods. To that effect, the permit should include provisions to guarantee that restoration activities benefit low-income communities and communities of color within each jurisdiction.

One option would be to provide a credit bonus to stormwater practices carried out in marginalized neighborhoods; this approach has been used in Washington state, where MS4 permits provide extra project credit for BMPs in overburdened communities.¹⁵ EPA's EJSCREEN mapping tool provides an easy-to-use resource for jurisdictions to identify areas that meet certain demographic criteria.¹⁶ In fact, Montgomery County has already used this tool to develop an "equity map" that it plans to use when carrying out its own restoration efforts, proving the feasibility of directing implementation toward underserved areas.¹⁷ Any such targeted focus on BMP implementation in marginalized communities must be accompanied by extensive community outreach to ensure that local concerns about green gentrification and other issues are addressed at the outset.

In the same vein, the permits should require permittees to consider equity as they develop and implement their TMDL implementation plans (IV.F). Permittees should ensure that pollution reductions achieved through TMDL implementation will not disproportionately benefit wealthier communities. One straightforward way to ameliorate any existing environmental inequities would be to require that

¹⁴ People of Color Environmental Leadership Summit, The Principles of Environmental Justice (Oct. 1991), <https://www.nrdc.org/sites/default/files/ej-principles.pdf>.

¹⁵ See Washington Department of Ecology, Phase I Municipal Stormwater Permit, Appendix 12 - Structural Stormwater Controls Project List, at 7 ("Multiply SSC point total by 0.10 for completed capital projects related to the MS4 which occur in overburdened communities."), <https://ecology.wa.gov/Regulations-Permits/Permits-certifications/Stormwater-general-permits/Municipal-stormwater-general-permits/Municipal-Stormwater-Phase-I-Permit>.

¹⁶ EPA, Environmental Justice Screening and Mapping Tool, <https://www.epa.gov/ejscreen>.

¹⁷ Montgomery County DEP, Watershed Restoration Suitability & Equity Mapping Tools, <https://www.montgomerycountymd.gov/water/restoration/equity.html>.

permittees prioritize the TMDL watersheds with the highest proportion of low-income and non-white residents to implement first.

These efforts will be even more critical if MDE follows through on its proposal to allow jurisdictions to meet their restoration goals through water quality trading. Trading can have severe environmental justice implications, as it shifts pollution reduction activities from one geographic area or pollution sector to another. If jurisdictions decide to meet their permit requirements by purchasing pollution reduction credits from wastewater treatment plants or agricultural producers, fewer stormwater practices will be implemented in environmental justice communities and other demographically vulnerable areas. In a place like Baltimore, this would mean a city with more than 65% Black residents becomes or remains polluted because the local government chooses to pay someone elsewhere to reduce pollution. Because the benefits of stormwater BMPs are so localized, the result will be worse water quality, air quality, urban heat island, flooding, and other impacts to urban communities than would have occurred if the permittees were required to complete all their restoration locally without trading. MDE should ensure that a large percentage of restoration the permittees actually complete benefits historically underserved communities.

Equity in Analysis and Reporting

Environmental justice cannot be achieved without complete information about disproportionate benefits and burdens experienced by members of the community. Several permit provisions that deal with analysis and reporting provide opportunities to improve data transparency and identify areas in need of improvement from an equity perspective.

First, the permits require permittees to track and report a variety of information related to their enforcement of stormwater management rules for development sites (IV.D.1). In addition to the information already listed in the draft permits, permittees should also be required to report on compliance and enforcement of stormwater management requirements with the data broken out by census tract or ZIP code and cross-referenced against demographic data. This analysis would help identify whether the stormwater rules are being enforced fairly across all segments of the community, or whether certain demographic groups are more routinely granted waivers from compliance or subject to enforcement actions.

Second, in the annual TMDL implementation report (IV.F.3), permittees are required to document all “BMPs, programmatic initiatives, alternative control practices, or other actions implemented for each TMDL.” This requirement should include an analysis of the geographic distribution of these practices and actions to determine whether they are disproportionately benefiting certain demographic groups. Finally, the permit should require a similar analysis when reporting on activities undertaken to meet the permit’s impervious acre restoration requirement (IV.E), with the analysis detailing how many acres have been restored in each census tract or ZIP code, accompanied by demographic information for each area.

In addition, the permittee's annual report (V.A) should include a mandatory stand-alone section summarizing all of the equity and justice focused analyses described above.

Equity in Public Outreach and Notice

Given the emergent nature of storm and flood events, mechanisms for rapid public outreach are essential to addressing community needs. The draft permits require permittees to operate a compliance hotline for public reporting of water quality complaints, including illicit discharges, illegal dumping, and spills (IV.D.5.a). The permit should require them to have a mechanism in place for non-English speakers to access this hotline.

In addition to a hotline, permittees are also required to provide information to the general public about various stormwater topics (IV.D.5.b), as well as to educate homeowners specifically about best management practices for salt application (IV.D.4.d). These provisions should both include a requirement for permittees to seek out and accommodate non-English speakers in their outreach and education efforts. Adequate outreach to non-English speakers should go beyond the mere publication of documents in languages other than English. These populations must receive targeted outreach to ensure they are adequately informed, and to the same degree as their English-speaking counterparts. The permit could establish specific metrics for the number of languages that must be accommodated (e.g., the five most commonly-spoken languages in the jurisdiction, or any language spoken by more than a certain percentage of the population) or simply set a qualitative standard requiring inclusivity in all education and outreach activities.

Additionally, this "targeted outreach approach" should extend more generally to non-white and low-income communities to ensure they are included in all educational and engagement opportunities. The permit should list low-income communities and communities of color as a mandatory target audience for stormwater educational awareness efforts.¹⁸ Moreover, these requirements should specifically apply to Indigenous communities. As of the last census, more than 40,000 individuals in Maryland identified as American Indian, and the state is home to at least 8 known tribes.¹⁹ According to the National Park Service, over half of Maryland's Native population lives near Baltimore and Washington, D.C.²⁰ Given the significant Indigenous population in Maryland's urbanized areas, MS4 permittees should make a concerted effort to include them in all educational and public engagement activities. Permittees should regularly evaluate and re-evaluate the efficacy of their messaging in reaching marginalized communities.

Inclusivity is critical for public engagement and input around stormwater programs as well. Ample notice and sufficient outreach are critical for informing affected communities and allowing for meaningful

¹⁸ See Washington Department of Ecology, Phase I Municipal Stormwater Permit (effective date Aug. 1, 2019), at 29 ("Each Permittee shall implement an education and outreach program for the area served by the MS4. . . . To build general awareness, Permittees shall target the following audiences and subject areas: (a) Target Audiences: General Public (including school age children and overburdened communities)").

¹⁹ National Park Service, <https://www.nps.gov/cajo/learn/historyculture/american-indian-tribes-today.htm>.

²⁰ *Id.*

participation. These draft permits require permittees to “maintain a list of interested parties for notification of TMDL development actions” and to “provide copies of TMDL stormwater implementation plans to interested parties upon request” (IV.F.4). While opportunities for targeted and/or advance notification could be helpful, the procedure as drafted reinforces pre-existing notice and outreach deficiencies to communities of color, non-English speakers, or immigrant Marylanders. Therefore, this section should be re-drafted to ensure that these communities are not further “locked out” of critical decision-making processes. Under the current draft permits, it is unclear whether individuals and organizations outside of the ‘interested parties list’ will be provided copies of TMDL stormwater implementation plans upon request. If not, this presents a significant barrier to meaningful participation. The permits should require permittees to make a dedicated effort to let marginalized communities including low-income and non-white populations know about opportunities to participate in any decision-making processes around the development, implementation, and/or updates of the permittees’ stormwater programs.²¹

Finally, the permits should require permittees to publish a summary of the annual report in other languages so that a greater segment of the community can access information about the restoration efforts they are funding and how well those efforts are working.

Equity in Program Funding

The permits require permittees to annually analyze the expenditures necessary to comply with the permit, as well as to maintain adequate program funding (IV.H). The permit should also require them to analyze how the costs of implementation are borne by different segments of the population to ensure that the financial burdens are not disproportionately falling on low-income residents and people of color. The goal of the analysis should be to identify whether current funding mechanisms are regressive (i.e., imposed in such a manner that the burden is higher, relative to resources, on people with lower incomes).²² If they are regressive, the permittee should be required to develop a plan to ameliorate the disproportionate burden on low-income people, whether that is through a restructured funding approach, an assistance program, a combination, or something else.

Additionally, permittees should be required to identify whether stormwater fees and/or costs are known to have led to shut-offs or disconnections of residents’ water service, including during the pandemic, and if so, how many.

²¹ See Washington Department of Ecology, Phase I Municipal Stormwater Permit at 10 (“Permittees shall create opportunities for the public, including overburdened communities, to participate in the decision-making processes involving the development, implementation, and update of the Permittee’s SWMP.”).

²² See Environmental Financial Advisory Board, *Evaluating Stormwater Infrastructure Funding and Financing* (Mar. 2020), at Table I-2, https://www.epa.gov/sites/production/files/2020-04/documents/efab-evaluating_stormwater_infrastructure_funding_and_financing.pdf (describing the “household affordability impact” of different stormwater funding mechanisms).

VIII. Permit Waivers: The Permits Should Require Tracking of Stormwater Control Waiver Quantity and Volume, Not Just Counts and Types of Waivers

The standard permit language in the draft permit (Part IV.D.1.b.iv) says: "Activities...shall include...Maintaining programmatic and implementation information related to...Number, type, and water quantity volume of waivers received and issued, including those for quantity control, quality control, or both. Multiple requests for waivers may be received for a single project and each should be counted separately, whether part of the same project or plan."

We have studied the granting and tracking of waivers in Montgomery County and have found it exceedingly difficult to determine how much stormwater goes uncontrolled as a result of these waivers. The Department of Permitting Services, which administers erosion & sediment control and stormwater management permits, only has a machine-readable digital database for the dollar amount of waiver fees, not the quantity of stormwater volume waived or ISR equivalent. Without knowing the volume of water not treated as per the Stormwater Management Act (and local standards), regulators cannot know how far behind they are slipping as a result of new or redevelopment that does not adequately control stormwater. **MDE should push permittees to improve the utility and accessibility of waiver databases and report not only on the number and types of waivers, but on the quantity of water management waived.**

IX. Include Watershed Assessments as They Were in the Last Permit -

We are also concerned that the draft permit recently released by the Maryland Department of the Environment would terminate the requirement for the preparation of Watershed Assessments (Section III.F in the 2010 permit text). Even if MDE assumes that all watersheds have now been appropriately assessed and a plan created, in some others these plans may now be more than 10 years old. Climate change, new development, new monitoring data, and other information should be used to update these assessments. And, in the 2020 draft, there is no requirement to "report annually on the status of compliance with the watershed assessment schedule" as required in the 2010 permit.

This is of particular concern given Montgomery County's intention to update the TMDL Implementation Plans for its impaired waterways, as directed in the 2020 draft permit. Such plans use the data gathered and the BMP location recommendations from the Assessments to formulate how the TMDL plans will be structured. The two activities work together to assure the efficacy of stormwater management to achieve durable reductions in pollutant loads. We urge that there be further consideration of the importance of Watershed Assessments, and a section thoughtfully utilizing and updating these important assessment tools added back in, before a proposed 2020 permit text is released.

X. Deicing: A Positive Addition to the MS4 Permits

Thank you for including deicing as a component in the 2020 MS4 permits. Road salts are an emerging threat to the Chesapeake Bay Watershed. The use of road salts is accelerating faster than urban sprawl meaning the use of road salts is accelerating. While we understand that some use of salt may be needed for safety controls, the pervasive overuse of salts can have significant negative effects on our waterways. Not only can salt damage the ecology of local waterways, but excessive chlorides in drinking water sources from road salts can also be a significant human health danger. For example, it was the excessive chlorides in the Flint River, the drinking water in Flint, Michigan, that caused the water to become corrosive and led to the leaching of lead from drinking water pipes. The University of Maryland Extension has highlighted the concerns of rising salinity levels in Maryland groundwater and aquifers. Salt in Maryland well water is an ongoing issue and is also a concern for people who need a low-sodium diet for health reasons. The provisions in these MS4 permits are important first steps to addressing the emerging threat to our region.

Jurisdiction Specific Comments

Baltimore City & Baltimore County -

Despite the laudatory language in Baltimore City and County Draft MS4 cover letters and fact sheets about the jurisdictions' restoration of impervious acreage and robust stormwater programs, we are deeply concerned that the new permits will not result in improved water quality in the Patapsco and Back River waterways.

The new draft MS4 permit for Baltimore City doubles down on street sweeping and substantially increases the amount of stream restoration "acres" restored via proposed projects prioritized largely based on needed sanitary sewer rehabilitation under a Federal Consent Decree and opposed by concerned residents. In the City's 2019 Annual MS4 Report under its previous permit, it reported completing the "equivalent restoration" of more than 6,000 acres of impervious surfaces; 5,475 of these "equivalent acres" were calculated from street sweeping. Street sweeping is a popular trash abatement strategy but does little to "control" stormwater or remove pollutants critical to the Bay and local TMDLs. It is also important to note that since street sweeping is an annual practice and not a permanent one, the City must continue its prior commitment to street sweeping at constant levels to comply with the last round of permits, and that prior commitment sweeping cannot be used towards this permit.

Only 1.54 acres of impervious surface were removed, and less than 200 acres were actually restored through City-installed environmental site design (ESD) practices, tree plantings, and voluntary third-party ESD implementation during the previous permit term. It is worth noting that after 6 years under this permit, pollutant load reductions were not met. Despite the supposed significant increase in street sweeping, in early 2020, Blue Water Baltimore scientists found worsening nitrogen, phosphorus, water clarity, and conductivity trends at roughly half of their nontidal monitoring locations throughout the Jones and Gwynns Falls, the two primary tributaries to the Patapsco River.

From a water quality perspective, Baltimore County's permit adds fuel to the fire. MDE states on page 7 of the Fact Sheet associated with Baltimore County's draft permit that the "impervious acre restoration requirements and associated pollution reductions described in Baltimore County's MS4 permit are consistent with 'Maryland's Phase III Watershed Implementation Plan to Restore Chesapeake Bay by 2025' ...", then goes on to admit on page 9 of the same Fact Sheet that "Baltimore County's restoration requirement is less than the two percent Phase III WIP restoration goal by 322 impervious acres" but this is deemed acceptable because "the total acres addressed by all MS4 permittees will cumulatively exceed the restoration goal."

These statements are contradictory, and worse, demonstrate a complete lack of equity between requirements of the two jurisdictions that share the Patapsco and Back River watersheds. MDE appears to endorse under-compliance with stormwater remediation requirements from the more affluent and populous jurisdiction, while suggesting other jurisdictions, presumably including the less populous and affluent downstream neighbor, will make up for the shortfall. Though pollutant trading is highlighted as a compliance option in both permits, and in the June 2020 Guidance for crediting practices within MS4 permits, there is no requirement by MDE that Baltimore County trade with other jurisdiction(s) in order to make up for this shortfall. Interestingly, IV.F.4 suggests the County should communicate with "other jurisdictions or agencies holding stormwater WLA in the same watersheds, regarding its TMDL stormwater implementation plans."

It is difficult to understand exactly how the County plans to meet MDE's requirement of 2,696 acres of equivalent acres restored in its draft permit. Appendix B lists a series of practices, both continued annual practices from the previous permit and new practices that, combined, appear to meet 27% of the 5-year permit goal in Year 1. However, there is no detail regarding which watershed will benefit from listed practices, so there is no way to know the extent to which one or more County watersheds will suffer from this proposed under-compliance. MDE must address this inequity and hold each jurisdiction accountable for meeting their fair share of the stormwater reduction efforts.

Anne Arundel County

We appreciate the efforts of MDE and Anne Arundel County in their collaborative effort creating the draft Maryland Phase I Large MS4 Permit. The following comments are offered in the spirit of collaboration toward improving stormwater management standards, the health of the watersheds and rivers of Anne Arundel County and the Chesapeake Bay. Our concerns with the permits as drafted are as follows:

1. Part IV(D)(2)(b) One improvement of this section is that the language of this version is 'stronger' as it requires that the County ensures certification, whereas the prior permit only required the County to conduct trainings. However, this requires that only one training be offered. The prior version of the permit required construction site operator trainings to be done at least three times per year. Therefore, additional trainings should be made available, ideally at a rate greater

than the previous permit required.

2. Part IV(D)(3)(a) It is a good change to make the county review all outfalls and prioritize, rather than allowing the simple screening of 150 outfalls at random. However, it is unclear how alternative programs submitted to MDE will be reviewable by the public.
3. Part IV(D)(3)(c) Written Standard Operating Procedures should be public.
4. Part IV(D)(3)(e) Making improved collaboration a facet of the permit is a good change, especially vis-a-vis the City of Annapolis. We would support this change in other jurisdictions as well.
5. Part IV(D)(4)(d) The three-year time period for the salt study is unclear and seems extensive. What does “based on” mean? The SHA salt management plan should be clear in how it accounts for regional differences within the state.
6. Part IV(D)(5) The prior permit included specific performance goals and deadlines. It is important that this language be restored.
7. Part IV(D)(5)(b)(iv) It is unclear how many more days or locations have been set up for household hazardous waste disposal. Available data on this should be offered.
8. Part IV(E)(5) It is unclear whether the specific numeric nutrient credits per equivalent impervious acre are the same as in the previous permit. (e.g. TN-18.08 lb; TP- 2.23lb; TSS- 8046lb.)
9. Part IV(E)(7)(table 1) It is unclear what accounts for the differential values between years. Why isn't a set percentage of Cumulative Percent Impervious Acre Restoration Completed required each year for the permit term?
10. Part IV(F)(4) Given current circumstances related to the global health pandemic, the permit should more clearly outline opportunities and requirements for remote outreach.
11. Part VI SPECIAL PROGRAMMATIC CONDITIONS The statement, “Maryland's baseline programs, including the 1991 Forest Conservation Act, 1997 Priority Funding Areas Act, 2007 Stormwater Management Act, 2009 Smart, Green & Growing Planning Legislation, 2010 Sustainable Communities Act, 2011 Best Available Technology Regulation, and the 2012 Sustainable Growth & Agricultural Preservation Act effectively mitigate the majority of the impacts from new development,” is conclusory, and is not supported by any reference to actual pollutant load reductions to the Bay from the State or County.

Montgomery County

Rate of implementation

Because Montgomery County began its first Phase I MS4 permit in 2005 and second in 2010 but extended via consent decree through 2018, the county effectively had 13 years to achieve 30% ISR, which is an implementation rate of 2.3%/year. With the caveat that, as discussed elsewhere, ISR is an output-based measurement of activity and not actually an outcome-based measure of water quality success, if MDE continues to use this inadequate ISR metric, we believe that the level of effort required in the 2020 permit should be significantly higher than contemplated. If Montgomery County were actually on 5-year permit cycles of 10% 2005-2010, 20% 2010-2015, and 20% 2015-2020 as envisioned earlier in the MD stormwater planning process, the county should have achieved 50% ISR by now. Since the county is now effectively banking credits towards the next permit term (presumed to begin in 2021), they will effectively have 7 years to complete the ~10% additional ISR (1,814 acres) contemplated in the 2020 permit, which is an implementation pace of only ~1.4%/year. What this pace of implementation shows is that Montgomery County's, and probably other counties', effective maximum extent practicable should be set higher than the 2020 permit contemplates. Both the drafted 2%/year and the effective (including the extra two years of delay) 1.4%/year rates are lower than Montgomery County has clearly demonstrated it is able to achieve. We have recommended, and continue to urge, that if the ISR metric is continued to be used, counties continue to be required to meet 20% ISR over the permit term.

Prince George's County

Prince George's County is particularly linguistically diverse. The most common foreign languages spoken in the county are Spanish (145,656 speakers), Yoruba, Twi, Igbo, or Other Languages of Western Africa (21,905 speakers), and French (12,640 speakers). As noted in the Equity section of this letter, ensuring sufficient outreach and notice to community requires that outreach be targeted to these communities. Notices should be made available in these languages, and an established hotline should be required to have a mechanism in place for accessibility by non-English speakers. The Prince George's County's 2018 Annual NPDES MS4 Supplemental Report demonstrates that without additional methods of public outreach, equity concerns will persist. In the 2018 Supplemental Report, the County outlined that it met Part III-B "Public Involvement and Participation" requirements primarily through local newspaper notices, and the 2018 report was entirely unclear about language access. For stormwater-related community events, the County heavily cited municipality-led events. While programming can have positive effects for communities, ensuring adequate notice and methods of addressing emergent stormwater needs are critical. Strengthening notice requirements at the permittee level will best address equity concerns specific to Prince George's County.

Finally, the 2014 permit's augmented permit conditions included litter and trash reduction strategies. The requirements for litter reduction in the permit were robust and place-specific. Part IV(D)(4). The 2014 permit required:

- Inventory and evaluation of trash and recyclable pickup operations;

- Development and Implementation of a public education and outreach strategy with specific performance goals and deadlines;
- Development of a work plan consistent with the assumptions of the Anacostia Trash TMDL based on an estimation that 170,628 pounds of trash needed to be removed annually;
- Development of accounting methods to quantify trash reductions;
- Reporting progress toward implementation of the trash reduction strategy annually;
- Evaluation and modification of local trash reduction strategy with an emphasis on source reduction; and
- Conducting a public participation process in the development of the trash reduction strategy requiring sufficient notice, development procedures, a comment period and summarization of how the county addressed any material public comments received.

In this current draft permit these (comparatively) robust requirements were reduced to, “[t]he County shall evaluate current litter control problems associated with discharges into, through, or from portions of its MS4 that are not already addressed under the TMDL implementation plan for trash, litter and floatables.” **We urge MDE to restore the prior detailed requirements.**

Conclusion

The MS4 permits are inadequate. Maryland is going in the wrong direction in the stormwater sector and these permits will only continue this downward trend. The MS4 permits need to be significantly altered. We appreciate the years of continued open dialogue and communication. However, we have raised most of the issues in this letter several times before in several letters and meetings with MDE and we will continue to do so. **Finally, we urge MDE to release the permits for the other Phase I counties, as all are overdue for a new permit and the last five-year permit has expired.**

We hope to schedule a meeting with MDE leadership to discuss these MS4 permits at your earliest convenience. Thank you for your time and consideration. Please reach out to Ben Alexandro at balalexandro@mdlcv.org to discuss these issues in more detail.

Sincerely,

Alice Ferguson Foundation

Anacostia Watershed Society

Arundel Rivers Federation

Audubon Naturalist Society

Baltimore Green Space

Baltimore Tree Trust

Beaverdam Creek Watershed Watch Group

Blue Water Baltimore

Center for Progressive Reform

Chapman Forest Foundation

Chesapeake Bay Foundation

Chesapeake Legal Alliance

Clean Water Action

Cleanwater Linganore, Inc

Environmental Integrity Project

Friends of Cabin John Creek

Friends of Lower Beaverdam Creek

Friends of Nanticoke River

Friends of Quincy Run

Friends of Sligo Creek

Healthy Soils Frederick

Little Falls Watershed Alliance

Maryland Conservation Council

Maryland League of Conservation Voters

Mattawoman Watershed Society

Montgomery Countryside Alliance

Multifaith Alliance of Climate Stewards - MACS of Frederick County, MD

National Parks Conservation Association

Natural Resources Defense Council

Neighbors of the Northwest Branch

Preservation Maryland

Queen Anne's Conservation Association

Rachel Carson Council

Rock Creek Conservancy

ShoreRivers

Sierra Club - Maryland Chapter

Southern Maryland Audubon Society

Sparks-Glencoe Community Planning Council

Waterkeepers Chesapeake

Watts Branch Watershed Alliance

Wicomico Environmental Trust