










MARYLAND  
*Association of*  
COUNTIES

# *CWEA 2015 Stormwater Seminar*

**Don't Get Swept Away in the  
Runoff: Meeting MS4 Challenges**  
*(October 21, 2015)*






# *The Challenges*

-  **Implementation Timeline**
-  **Contractor Pool**
-  **Permitting Issues**
-  **Costs**
-  **Funding**
-  **Chesapeake Bay Total Maximum Daily Load (TMDL) Requirements**
-  **Litigation (all 10 Phase I MS4 counties)**






# *Implementation Timeline & Contractor Pool*

## Implementation Timeline







-  Five Years
-  20% retrofit requirement
-  Challenge to plan, permit, fund, and complete projects

## Contractor Pool

-  Jurisdictions all vying for same contractors
-  Industry slowly responding
-  Training and education challenges – statutory and regulatory requirements, current Best Management Practices (BMPs)



# *Permitting Issues*

-  **Fast permit process critical for MS4 projects**
-  **Current permitting system viewed as slow and cumbersome**
-  **United States Army Corps of Engineers**
  -  **Slow response times;**
  -  **Inflexible**
  -  **Unwilling to consider reforms?**



# *Permitting Issues*

- 🏛️ **Maryland Department of the Environment (MDE)**
  - 🏛️ Permit reform proposals for stormwater restoration project permits by MACo, Washington Metropolitan Council of Governments, and MS4 counties
  - 🏛️ Positive response letter from MDE
  - 🏛️ 90-day permit review for most projects
  - 🏛️ “Checklist” of required information & pre-application meetings
  - 🏛️ Removal of wetlands program requirement for “alternative site analysis” for TMDL-driven restoration projects
  - 🏛️ Removal of mitigation requirements for most “restorative” projects
  - 🏛️ Quarterly meetings with counties and ongoing discussion on further reforms/issues








# *Costs*

- 🏠 Along with septic system upgrades, stormwater mitigation is most expensive of Bay TMDL sectors
- 🏠 In Maryland, retrofit costs mostly borne by local governments (county costs are over a billion statewide)
- 🏠 SB 863 of 2015 (stormwater fee/"rain tax" legislation) requires Phase I MS4 counties to have a financial assurance plan approved by MDE and penalties for non-compliance (up to \$5,000-10,000 per day)









# *Funding*

-  Both State and counties facing significant budget restraints
-  State at debt limit for issuing bonds
-  Other state-imposed or necessary funding mandates, such as public schools, public safety
-  State reductions to local aid (~90% reduction in local highway user revenue)
-  New funding avenue - Bay Restoration Fund now able to be used for stormwater restoration projects



# *Chesapeake Bay TMDL Requirements*

-  TMDL efforts separate but influence MS4 requirements
-  2017 Chesapeake Bay Total Maximum Daily Load (TMDL) Milestone
-  Changes to Bay Model
-  New nutrient reduction goals?
-  Maryland is an acknowledged leader
-  EPA recognizes Pennsylvania and Conowingo Dam issues








# *Litigation*

- 🏛️ **Anne Arundel, Baltimore, Montgomery, Prince George's Counties and Baltimore City**
  - 🏛️ **All before Maryland Court of Appeals**
  - 🏛️ **Montgomery is the original case, others now essentially moving with it**
  - 🏛️ **Suits originally brought by various in-state and out-of-state environmental groups; MDE & Baltimore City now also petitioners**
  - 🏛️ **Issues: (1) Standard of Compliance (strict compliance or maximum extent practicable (MEP) and (2) sufficiency of permit benchmarks, deadlines & monitoring**
  - 🏛️ **Lower courts upheld MEP standard and generally found all but Montgomery County's permit sufficient in detail (essentially giving MDE 4 wins and 1 loss)**
  - 🏛️ **Court of Appeals hearings scheduled for November 5**



# *Litigation*

## **Howard County**

-  **Before the Maryland Court of Special Appeals**
-  **Chesapeake Bay Foundation (CBF) challenged sufficiency of MDE's issued permit**
-  **Howard County made motion to dismiss for lack of standing and circuit court granted County's motion**
-  **CBF appealed to Court of Special Appeals and initial brief is due October 28**








# *Litigation*

- 🏛️ **Carroll, Charles, Frederick and Harford Counties**
  - 🏛️ Each case currently before Circuit Court
  - 🏛️ CBF (joined by Mattawoman Watershed Society in the Charles County case) challenged sufficiency for each county's issued permit
  - 🏛️ Each county also separately challenged the terms of their permit
  - 🏛️ Both cases for each county pending in Circuit Court but currently stayed pending higher court action for other counties



# *Litigation*

## Paul N. Chod v. Board of Appeals for Montgomery County

-  July 22 Circuit Court Decision that called into question Montgomery County's Water Quality Protection Charge (WQPC)
-  Case was driven by a specific set of facts regarding the developer plaintiff and holding was based on statutory language from § 4-202.1 of the Environment Article
-  Court held: (1) the WQPC is per se invalid and (2) the WQPC is invalid as applied in this instance
-  Court held the fee must be related to stormwater services the county provides to a property owner and must take into account on-site mitigation efforts
-  Decision limited to current case but could potentially be used to establish much broader precedent for any jurisdiction with stormwater fee



# *Looking Forward*

- ☞ Is the future dark and cloudy or bright and sunny?
- ☞ Still cloudy: outcome of litigation, effect of 2017 TMDL review, budget and economic uncertainties
- ☞ But chance of sun: MDE permit reform, increased availability of Bay Restoration Fund monies for stormwater restoration, more flexibility and best management practices
- ☞ Bottom line: Predicting the weather is hard



# *Contact Information*

**Leslie Knapp Jr.**

**Legal and Policy Counsel**

**Maryland Association of Counties**

**[lknapp@mdcounties.org](mailto:lknapp@mdcounties.org)**

**Phone: 410.269.0043**