UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

SEP 20 2012

Mr. Jay Sakai, Director
Water Management Administration
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230

Re: Specific Objection to Frederick County Phase I Municipal Separate Storm Sewer System (MS4) Permit MD0068357

Dear Mr. Sakai:

On June 22, 2012, the U. S. Environmental Protection Agency (EPA), received the latest draft of the above-referenced National Pollutant Discharge Elimination System (NPDES) permit (Frederick County permit) which the Agency has reviewed pursuant to 40 C.F.R. § 123.44 and the Memorandum of Agreement (MOA) between MDE and EPA Region III (May 22, 1989).

On June 14, 2012, EPA sent written comments and a marked-up permit to the Maryland Department of the Environment (MDE) with the understanding that MDE would make changes requested by EPA to all subsequent draft MS4 permits, including Frederick County. However, MDE did not incorporate EPA's comments into the initial draft of the Frederick County permit. On July 20, 2012, EPA issued a general objection/time extension letter to allow EPA the full 90 day review period to provide a specific objection or comment on the permit. EPA and MDE are currently engaged in productive discussions regarding these issues. Since these discussions are still ongoing and the 90-day review period expires on September 20, 2012, EPA is providing this specific objection to the issuance of the referenced permit pursuant to 40 C.F.R. §§ 123.44(b)(1) and (c)(1) and Section III.A of the MOA. As further explained herein, EPA believes that several substantive requirements for MS4 permits, as required by the federal Clean Water Act, 33 U.S.C. §§ 1251 *et seq.* (CWA), and its implementing regulations, have not been incorporated into the Frederick County permit.

EPA's objections to the draft permit and identification of revisions needed before EPA can remove the objection, *see* 40 C.F.R. § 123.44(b)(2)(ii), are described below:

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I. *Required Changes*

1. Water Quality Standards

Federal regulations require that all NPDES permits contain limitations to control discharges which may cause, have the reasonable potential to cause or contribute to an excursion above water quality standards. 40 C.F.R. §122.44(d)(1)(i). Part VI of the draft Frederick County permit (Enforcement and Penalties) contains general language related to "minimizing" and "preventing to the MEP" contamination or physical alteration of waters of the state; however, it does not actually prohibit water quality exceedances. Please refer to EPA's suggested language in the enclosed marked permit and also consider the recommendation made via our comments of June 14, 2012 that the language be contained in Part A of the permit.

MDE may also wish to refer to the 2011 draft of the Frederick County permit (p.7), which contains the following provision: "Frederick County shall annually provide watershed assessments, watershed implementation plans, opportunities for public participation, and TMDL compliance status *as required below to ensure that water quality standards are met for all water bodies in the County.*" (emphasis added) The italicized language, which EPA and MDE had agreed on but was omitted from the latest Frederick County permit, would also be appropriate to ensure attainment of water quality standards as well as consistency with federal regulations.

In order to resolve this portion of EPA's objection, MDE must add language which specifically prohibits discharges from the MS4 that cause or contribute to any violation of water quality standards, such as the Frederick County language listed above, or similar acceptable language.

2. Industrial / Commercial Monitoring

Part III.C of the draft Frederick County permit requires source identification of pollutants in certain categories of stormwater runoff County-wide. However, this requirement is insufficient because the draft permit does not specifically include the category of industrial and commercial sources. An inventory of industrial and commercial sites which could contribute pollutants to receiving waters is integral to compliance with the requirement under federal regulations that stormwater management programs include a description of "a monitoring program for storm water discharges associated with the industrial facilities identified in paragraph (d)(2)(iv)(C)..." 40 C.F.R. § 122.26 (d)(2)(iv)(C)(*2*).

EPA provided recommended language to MDE in Part IV.C, Part IV.D.3.b, and Part V.A.2 of the marked-up permit. In order to resolve this portion of EPA's objection, MDE must revise the permit in accordance with those recommendations.

II. *Recommended Change*

EPA also suggests the following recommendation for inclusion in the County's permit.

Education

In Part IV.D.1 (Management Programs) of the enclosed EPA marked-up permit, EPA recommended adding an additional section for staff training that includes requirements for new technology, implementing pollution prevention, good housekeeping, inspections and permit requirements. EPA believes such an addition will improve employee efficiency and awareness during inspections while ensuring continued and thorough maintenance of the stormwater program.

III. *Anticipated Changes*

EPA had previously advised MDE that its Phase I MS4 Permits would need to be revised in three additional areas – the Chesapeake Bay TMDL, Backsliding, and Maximum Extent Practicable language, all of which are described in more detail below. Based on the Agency's review of the most recent draft permit submitted for Prince George's County, we expect additional MS4 permits, including Frederick County, to reflect those changes and we have included them in the body of the draft Permit. However, if such changes are not made in the next draft permit for Frederick County, EPA hereby reserves its right to renew its objection to such a draft permit.

1. Chesapeake Bay TMDL

EPA's permit review concluded that although the 20% restoration strategy in the draft permit does represent a Bay milestone (and apparently constitutes partial compliance with Maryland's Watershed Implementation Plan), it was not adequately expressed in the Frederick County draft permit. Because the Prince George's County draft permit does contain a requirement sufficient for compliance with the Bay TMDL, EPA expects a similar provision in the Frederick County permit.

2. **Backsliding**

EPA had previously expressed a concern that the Frederick County draft permit contained requirements that would constitute impermissible backsliding, including provisions requiring the permittee to, *inter alia*: (1) establish or implement a management program in areas served by the County's MS4 (Part III.D.1-3, at pp. 2-4); and (2) establish and publicize a compliance hotline for the public reporting of suspected illicit discharges (Part III.D.6.a). Because these same requirements are contained in Frederick County's permit which is currently in effect, their inclusion in a subsequent permit would constitute impermissible backsliding. EPA notes that the Prince George's County draft permit has been revised to expand upon the tasks required by the current permit, and anticipates that MDE will make similar revisions to the Frederick County permit.

3. Maximum Extent Practicable

Throughout EPA's permit mark up, we requested removing the use of the phrase "maximum extent practicable" or "MEP" for several reasons: it is imprecise in its interpretation and thus makes enforcing the terms of the permit more difficult; it could lead to backsliding; and it rightfully is a determination to be made by the permitting authority in the permit's terms. All references to MEP, with the exception of the requirement that the permittee develop and implement the "Stormwater Management Act of 2007 and Environmental Site Design to the MEP" should be modified. EPA was pleased to see that the Prince George's County draft permit deletes these references.

EPA looks forward to working cooperatively with MDE to resolve the remaining issues in an expeditious manner. Until the issues are resolved, however, in accordance with 40 C.F.R §122.4(c), MDE may not issue the Frederick County MS4 permit without written authorization from EPA.

If you have any questions, please contact me, or Evelyn S. MacKnight, Chief, NPDES Permits Branch, at (215) 814-5717.

Sincerely,

Jon M. Capacasa, Director
Water Protection Division

Enclosure

cc: Brian Clevenger, MDE
Shannon Moore, Frederick County