

MEMORANDUM

TO: Transportation, Infrastructure, Energy and Environment Committee

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession:** Bill 34-12, Stormwater Management – Water Quality Protection Charge

Bill 34-12, Stormwater Management – Water Quality Protection Charge, sponsored by the Council President at the request of the County Executive, was introduced on November 27, 2012. A public hearing was held on January 15.

Bill 34-12 would

- subject all properties not otherwise exempt under state law, mainly non-residential properties, to the Water Quality Protection Charge;
- allow certain property owners to obtain a credit for on-site stormwater management equal to a percentage of the Charge set by regulation;
- exempt owner-occupied residential property owners that can demonstrate substantial financial hardship from the Charge; and
- phase-in increases to the Charge.

This Bill would implement a 2012 state law, which is shown on ©15-24. The Bill appears to be generally consistent with the state law. A summary, prepared by Howard County Council staff, of steps taken in other Maryland jurisdictions to implement this law is on ©47-48.

As some of the questions discussed below indicate, many relevant policy issues arise in the context of the implementing regulations, which are not yet formally before the Council but were submitted in draft form with this Bill. This memo primarily focuses on policy issues raised by the Bill itself. A separate packet for today's worksession by Senior Legislative Analyst Keith Levchenko will cover the draft regulations and the issues they raise.

Legislative Issues

1) Revenue/phase-in As the state law requires, this Bill would expand the scope of the Water Quality Protection Charge to virtually all non-government properties, including many non-residential properties that do not currently pay the Charge. (For background and rationale,

see the Legislative Request Report and County Executive memo on ©9-14.) The amount of the Charge must be based on “the share of stormwater management services” provided by the County to the property. Most of the details of this expansion are contained in the implementing regulation.

Does DEP have an overall estimate of how much more net revenue will be generated annually as a result of the expanded Charge under this Bill, compared to under the current structure? The fiscal and economic impact statements on ©25-29 do not appear to contain any revenue estimate.

Setting aside the operating costs associated with managing the new process, and any credits that are granted to property owners, would the new tier system proposed in the regulation bring in the same, less, or more, revenue than the current ERU structure?

DEP would phase in over the next 3 fiscal years the increase in the fee to formerly uncovered non-residential properties (see ©7-8, lines 144-168). How would this revenue reduction, compared to full implementation, affect DEP’s stormwater management (SWM) programs?

2) Credits As the state law directs, the Bill allows a property owner to apply for a credit for on-site SWM systems or best practices. See ©6-7, lines 127-136. However, the Bill does not expressly require that a credit must be granted if the property owner meets certain conditions. The draft regulation also uses looser “may” language, implying that a property owner’s request could be denied even if it meets the applicable criteria. Is the credit intended to be an entitlement, or could it be subject to availability of funding or an annual cap? DEP staff have confirmed that they intend that the credit must be granted to each eligible applicant. In that case, **Council staff recommends** that ©6, lines 127-128 be amended as follows:

A property owner may [[request]] apply for, and the Director must grant, a credit equal to a percentage. ...

Council staff also **recommends** that the Bill’s credit and exemption provisions be moved to §19-35(e) to replace current provisions¹ that the state law has made outdated.

To receive a credit in FY14, a property owner would have to apply to DEP by July 31 (see ©8, lines 165-168). Is this early deadline necessary? The Committee may want to discuss with DEP how the County plans to notify potential applicants of this deadline.

The Stormwater Partners (see testimony, ©35-40, especially ©36-37) urged the County to expand the credits, publicize them better, and also start a parallel grants program for non-profit organizations. Similarly, the Montgomery Soil Conservation District proposed a grant program for

¹Current §19-35(e):

- (e) The regulations may allow credits against and exemptions from the Charge:
 - (1) to the extent that credits and exemptions are not prohibited by State law; and
 - (2) if each credit or exemption will enhance water quality or otherwise promote the purposes of this Article.

rural areas (see testimony, ©41-46). The Committee could ask DEP for its views on these suggestions.

3) Hardship exemption As the state law requires, the Bill allows an exemption in cases of substantial financial hardship (see ©7, lines 136-142), but the Bill does not define hardship. Should “hardship” be defined in the law, or decided by criteria set by regulation? The regulation sets the limit at 100% of the USDHHS poverty guidelines. Is this the best line to draw? Is a better reference already available, such as the energy assistance program (MEAP) (i.e. if the applicant is approved for MEAP, then could they automatically be eligible for the County credit; which would mean less work for the County)? Also, should the County use a sliding eligibility scale, rather than a single cutoff under which an applicant is either 100% eligible or 100% ineligible?

In addition, the Bill would limit the hardship exemption to owners on owner-occupied residential properties (see ©7, lines 136-139), while the state law does not so limit it (see state law subsection (j)(1) on ©24). A representative of the Archdiocese of Washington has requested an exemption from this charge. Should the hardship exemption be available to them and other non-residential property owners?

4) Private roads How should privately owned roads be charged under the new law and regulations? Several years ago DEP moved to assess the Charge to the Montgomery Village Foundation for its privately owned roads, but stopped when the Foundation protested. The state law does not exempt private roads as a class of property, but they could be eligible for credits or possibly a hardship exemption.

5) Federal and municipal facilities DEP assumes that federal facilities must pay this Charge (based on an amendment to federal law inserted by Senator Cardin several years ago). However, the County has not received any payments from any federal facilities. The Bill (see ©2, lines 16-19) includes federal facilities in the law’s definition of “person” only “to the extent allowed by law”. Should the County law be more clear that federal facilities are not exempt?

The County law also could be clearer that the County cannot charge State and municipal facilities, and vice-versa. The state law (see state law subsection (e)(2) on ©18) expressly exempts property owned by the state, a County, a municipality, or a volunteer fire department, from the Charge. In its testimony (see ©32-34), Rockville urged the County to budget and pay the amounts the City believes are past due from the County under the City’s own stormwater fee, but this part of the state law would appear to preclude the County from doing so (at least for future charges).

The current County law contains a limited municipal exemption², covering property *in* a municipality (as distinct from property *owned* by the municipality) with a similar charge. This

²See County Code §19-35(g), which provides:

- (g) This Charge does not apply to any property located in a municipality in the County which:
 - (1) operates a stormwater management program that meets all applicable federal, State, and County requirements and has received any necessary federal or State permit; and

provision probably should be modified to conform to the state law's broader municipal exemption (see state law subsection (g)(2) on ©21). This can be done by amending §19-35(g) to delete the current language and reflect the state law's process for notice to and from municipalities.

The County Attorney should be prepared to discuss the limits on the extent to which the County can charge other jurisdictions and is obligated to those jurisdictions.

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F:\LAW\BILLS\1234 Stormwater Management-WQPCVT&E Memo 3-11-13.Doc

(2) imposes a similar charge or other means of funding its stormwater management program in that municipality.

Bill No. 34-12
Concerning: Stormwater Management –
Water Quality Protection Charge
Revised: 11-20-12 Draft No. 2
Introduced: November 27, 2012
Expires: May 27, 2014
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

- (1) subject all properties not otherwise exempt under state law to the Water Quality Protection Charge;
- (2) allow certain property owners to obtain a credit equal to a certain percentage of the Charge;
- (3) exempt certain property owners that are able to demonstrate substantial financial hardship;
- (4) provide for a phase-in of certain increases to the Charge; and
- (5) generally amend County law regarding the Water Quality Protection Charge.

By amending

Montgomery County Code
Chapter 19, Erosion, Sediment Control and Storm Water Management
Sections 19-21, 19-28, 19-29, 19-35

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 19-21, 19-28, 19-29 and 19-35 are amended as follows:

19-21. Definitions

* * *

[Associated nonresidential property: A nonresidential property from which stormwater drains into a stormwater management facility that primarily serves one or more residential properties.]

* * *

Impervious area or impervious surface: Any surface that prevents or significantly impedes the infiltration of water into the underlying soil, including any structure, building, patio, [deck,] sidewalk, compacted gravel, pavement, asphalt, concrete, stone, brick, tile, swimming pool, or artificial turf. Impervious surface also includes any area used by or for motor vehicles or heavy commercial equipment, regardless of surface type or material, including any road, [road shoulder,] driveway, or parking area.

* * *

Person: An individual;[, corporation, firm, partnership, joint venture, agency, organization, municipal corporation,] a legal entity; or a department, agency, or instrument of the County or, [state agency, or any combination of them] to the extent allowed by law, federal, state, or local government.

* * *

19-28. Inspection and maintenance of stormwater management systems.

* * *

(b) *Maintenance of new stormwater management systems.*

(1) Before issuing a sediment control permit to develop any property that requires implementation of best management practices, the Department must require the property owner to execute an easement and an inspection and maintenance

28 agreement that is binding on each later [owner[s]] owner of the
 29 land to be served by any private stormwater management
 30 system.

31 (2) The easement must give the County a perpetual right of access
 32 to the stormwater management system at all reasonable times to
 33 inspect, operate, monitor, install, construct, reconstruct, modify,
 34 maintain, clean, or repair any part of the stormwater
 35 management system [within] in the area covered by the
 36 easement as needed to assure that the system remains in proper
 37 working condition under approved design and environmental
 38 standards. The inspection and maintenance agreement must
 39 require the owner to be responsible for all maintenance of any
 40 completed ESD treatment system and nonstructural
 41 maintenance of any on-site stormwater management facility if
 42 the development consists of residential property or [associated]
 43 of nonresidential property that contains a stormwater
 44 management facility built or retrofitted by the County.
 45 Otherwise, the inspection and maintenance agreement must
 46 require the owner to be responsible forever for all maintenance
 47 of the entire on-site stormwater management system, including
 48 maintaining in good condition, and promptly repairing and
 49 restoring, each ESD practice, grade surface, wall, drain, dam
 50 and structure, vegetation, erosion and sediment control
 51 measure, and any other protective device [forever].

52 (3) The owner must record the easement and agreement in the
 53 County land records and deliver a certified copy of each
 54 recorded document to the Departments of Permitting Services

55 and Environmental Protection before the Department may issue
56 a completion certificate.

57 (4) After the Department issues a completion certificate for
58 construction of a new stormwater management facility, the
59 County must perform all structural maintenance on the facility
60 if the facility serves residential property or [associated] is a
61 facility built or retrofitted by the County that serves
62 nonresidential property. No other person may perform
63 structural maintenance on a stormwater management facility
64 that the County is required to structurally maintain without the
65 County's written consent.

66 (5) Any repair or restoration and maintenance performed under this
67 Section must comply with each previously approved or newly
68 submitted plan and any reasonable corrective measure specified
69 by the Director of Environmental Protection.

70 (c) *Maintenance of existing stormwater management [facilities] systems.*

71 (1) The owner of a stormwater management facility that is not
72 subject to subsection (b) must perform all structural
73 maintenance needed to keep the facility in proper working
74 condition. The owner of a residential property or [associated] a
75 nonresidential property that contains a stormwater management
76 facility built or retrofitted by the County, or a homeowners'
77 association that includes the residential property, may execute a
78 stormwater management easement granting the County a
79 perpetual right of access to inspect, operate, monitor, install,
80 construct, reconstruct, modify, maintain, clean, or repair any
81 part of the stormwater management facility [within] in the

82 easement as needed to assure that the facility remains in proper
 83 working condition under approved design standards.

84 (2) If the owner of a stormwater management facility grants a
 85 stormwater management easement to the County, the owner
 86 must make any structural repairs needed to place the facility in
 87 proper working condition, as determined by the Department of
 88 Environmental Protection, before the County enters into an
 89 inspection and maintenance agreement with the owner that
 90 [obligates] makes the County [to assume responsibility]
 91 responsible for structural maintenance of the facility. After the
 92 owner and the County have agreed that the County will [assume
 93 responsibility] be responsible for structural maintenance of the
 94 facility, the owner must record in the County land records the
 95 easement and any other agreement executed in conjunction with
 96 the easement that binds any later owner of the land. The owner
 97 must deliver a certified copy of each recorded document to the
 98 Department of Environmental Protection.

99 (3) After the Department of Environmental Protection receives a
 100 certified copy of the easement and agreements, the County must
 101 structurally maintain and inspect the facility as provided in
 102 subsection (b).

103 (4) If a property contains an ESD treatment system that was
 104 installed or retrofitted by the County under a sediment control
 105 permit, the inspection and maintenance agreement may require
 106 the County to maintain the system.

107 * * *

108 **19-29. Stormwater management loan program.**

- 109 (a) The Department of Environmental Protection must create a
 110 Stormwater Management Loan Program. The Program must provide
 111 direct loans to eligible homeowners' associations and other residential
 112 [and associated nonresidential] property owners to:
- 113 (1) make structural repairs to restore a stormwater management
 114 facility to acceptable design standards before the owner
 115 petitions the County to assume responsibility for future
 116 structural maintenance of the facility under Section 19-28(d), or
 - 117 (2) cover the cost of abandoning a facility under Section 19-28(e).

118 * * *

119 **19-35. Water Quality Protection Charge.**

120 * * *

121 (b) The Charge must be imposed on each [residential property and
 122 associated nonresidential] property, as specified in regulations
 123 adopted by the Executive under Method (1) to administer this Section.
 124 The regulations may define different classes of real property,
 125 depending on the amount of impervious surface on the property,
 126 stormwater runoff from the property, and other relevant
 127 characteristics, for purposes of applying the Charge. A property
 128 owner may request a credit equal to a percentage, set by regulation, of
 129 the Charge if the property contains a stormwater management system
 130 that is not maintained by the County or the owner participates in a
 131 County-approved water quality management practice or initiative. To
 132 receive the credit, the property owner must submit a request to the
 133 Director of Environmental Protection in a form prescribed by the
 134 Director not later than October 31 of the year before payment of the
 135 Charge is due. Any credit granted under this subsection is valid for 3

136 years. The owner of an owner-occupied residential property that is
 137 able to demonstrate substantial financial hardship may request an
 138 exemption from the Charge for that property based on criteria set by
 139 regulation. The owner-occupant may apply for the exemption by
 140 submitting a written request to the Director of Environmental
 141 Protection not later than April 1 of the year before payment of the
 142 Charge is due.

143 * * *

144 **Sec. 2. Implementation.**

- 145 (a) Notwithstanding County Code Section 19-35(b), as amended by
 146 Section 1 of this Act, the Director of Finance must phase in the Water
 147 Quality Protection Charge as provided in this Section.
- 148 (b) The Director must phase in over 3 years any increase in the Charge
 149 that results from the application of Section 19-35(b), as amended by
 150 Section 1 of this Act, or any regulation adopted under that Section, by
 151 including:
- 152 (1) only one-third of the additional impervious surface that has
 153 been added to the calculation of the Charge in the fiscal year
 154 that begins on July 1, 2013;
 - 155 (2) only two-thirds of the additional impervious surface that has
 156 been added to the calculation of the Charge in the fiscal year
 157 that begins on July 1, 2014; and
 - 158 (3) the full amount of the additional impervious surface that has
 159 been added to the calculation of the Charge in the fiscal year
 160 that begins on July 1, 2015.
- 161 (c) The phase-in established in this Section does not apply to any portion
 162 of the Charge that results from the inclusion in the calculation of the

163 Charge of any impervious surface area that is created after this Act
164 takes effect.

165 (d) To receive a credit under Section 19-35(b) for the fiscal year that
166 begins on July 1, 2013, the property owner must submit a request to
167 the Director of Environmental Protection on a form prescribed by the
168 Director not later than July 31, 2013.

169 *Approved:*

170

Nancy Navarro, President, County Council

Date

171 *Approved:*

172

Isiah Leggett, County Executive

Date

173 *This is a correct copy of Council action.*

174

Linda M. Lauer, Clerk of the Council

Date

175

LEGISLATIVE REQUEST REPORT

Bill 34-12

Stormwater Management – Water Quality Protection Charge

DESCRIPTION: Amends the law governing the Water Quality Protection Charge by requiring all property owners not otherwise exempt under state law to pay the Charge, allowing property owners to obtain credits for undertaking certain water quality protection measures on their properties, and authorizing financial hardship exemptions for certain owner-occupants of residential properties.

PROBLEM: County law does not currently authorize imposition of the WQPC on the owner of any nonresidential property unless a portion of that property's impervious area drains to a residential stormwater treatment facility. The existing law classifies these properties as associated nonresidential properties ("ANRs"). The County's inability to levy the Charge on nonresidential properties other than ANRs has resulted in a large number of properties whose impervious surfaces contribute to water quality impairments while their owners are effectively exempt from paying into the Water Quality Protection Fund despite benefiting from the County's watershed restoration and water quality remediation initiatives.

In 2010, the County received its third Municipal Separate Storm Sewer System ("MS4") Permit from the Maryland Department of the Environment. This permit, which is mandatory under the Federal Clean Water Act, requires the County to retrofit 4,300 impervious acres not currently treated to the maximum extent practicable. The intent of this Bill is to make the WQPC more equitable by spreading the cost of restoration over all properties contributing to the problem and whose owners benefit from the County's water quality protection programs.

The existing law provides credits specifically geared to property owners that have installed stormwater treatment facilities on their properties. The credits specified in the bill are intended to reduce the amount of the Charge paid by property owners whose actions have reduced stormwater runoff and thereby assisted the County's efforts to comply with its MS4 Permit.

Finally, state law enacted in 2012 mandates that County law exempt property owners who can demonstrate that paying the Charge would create a substantial financial hardship.

GOALS AND OBJECTIVES: To make the WQPC more equitable by spreading the cost of implementing the pollution control measures required under the County's MS4 Permit to all property owners not otherwise exempt under state law; create a systems of credits to encourage property owners to participate in certain water quality management practices; and bring County law into compliance with state law as it pertains to locally levied charges to pay for stormwater remediation.

COORDINATION: Department of Environmental Protection, Department of Finance

FISCAL IMPACT: See Fiscal and Economic Impact Statement

ECONOMIC IMPACT: See Fiscal and Economic Impact Statement

EVALUATION: To be determined.

EXPERIENCE ELSEWHERE: All the stormwater utilities run by other jurisdictions surveyed throughout the County charge nonresidential properties.

SOURCE OF INFORMATION: Steven Shofar, Division Chief, Watershed Management Division, Department of Environmental Protection (7-7736)

APPLICATION WITHIN MUNICIPALITIES: Does not apply in Rockville and Takoma Park. The County collects the Charge for Gaithersburg and provides the funds to the city minus an administrative fee.

PENALTIES: Class A



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

October 25, 2012

TO: Roger Berliner
County Council President

FROM: Isiah Leggett 
County Executive

SUBJECT: Proposed Legislation: Stormwater Management - Water Quality Protection Charge

I am transmitting for Council introduction a bill to amend current law governing the Water Quality Protection Charge (WQPC or Charge). The attached package includes the bill, draft regulations to implement the bill which will be published in the November 2012 County Register, Legislative Request Report, Fiscal Impact Statement, and Economic Impact Statement. Key issues related to the development of this legislative package are detailed below.

The WQPC, which was first authorized in 2002, is an excise tax levied against all residential property owners and a limited number of non-residential property owners. Currently, single-family residential properties are assessed the same amount, irrespective of size; townhomes are assessed one third of the single family Charge. Non-residential properties are assessed the Charge only to the extent their property drains to a residential stormwater management facility.

The WQPC is used primarily to fund the County's stormwater facility maintenance and inspection program and the activities necessary to meet the requirements in the Maryland Municipal Separate Storm Sewer System (MS4) permit. These activities include stream restoration projects, stormwater pond retrofits, stream monitoring, Low Impact Development techniques, outreach and education, and others.

At the end of the 2012 legislation session, the General Assembly passed House Bill 987 - Stormwater Management – Watershed Protection and Restoration Program, which requires certain jurisdictions, including Montgomery County, to adopt stormwater utility fees. The new State law specifically identifies elements that must be included in the stormwater utility fee program. The County Attorney has determined that the following key elements of the new State law must be reflected in the County's stormwater management programs funded by the WQPC:

- 1) All properties, including all non-residential properties, must be assessed the Charge (whereas currently, the only non-residential properties that are covered under the WQPC are those draining to a residential stormwater facility).

- 2) There must be a credit program providing a reduced charge to property owners with stormwater systems on their properties (whereas currently there is no credit program).
- 3) There must be a hardship exemption for property owners able to demonstrate substantial financial hardship (whereas currently there is no hardship exemption).
- 4) The amount of the Charge must be based on the share of stormwater management services related to the property (whereas currently all single family residential property owners pay the same amount). In general, the share of the stormwater management services utilized is a function of the amount of impervious surface on the property.

To comply with the new State law, the County must amend the WQPC law and the Executive Regulations that implement that law. All but the fourth item listed above require changes to the WQPC law. The fourth item requires changes to Executive Regulations.

Specifically, the attached bill amends the WQPC law to:

- 1) Expand the types of property that are subject to the Charge to include all non-residential properties.
- 2) Establish a 3-year phase-in for any increase in the Charge that is due to application of the bill or any regulations adopted under the bill.
- 3) Authorize the County to provide credits to property owners that have stormwater management systems on their properties.
- 4) Establish a hardship exemption for residential property owners who can demonstrate substantial financial hardship.
- 5) Authorize the County to perform maintenance on non-residential property when the County installs a retrofit on that property.

The draft companion Executive Regulations that are attached to this memorandum establish:

- 1) A 7-tier system for assessing the WQPC on residential properties based on the amount of impervious surface. The tiered system is designed to comply with the new State law requirement that the Charge must be based on the share of stormwater management services related to the residential property.
- 2) A credit program for eligible property owners with on-site stormwater treatment facilities. A property owner's eligibility is based on the type of stormwater management practice and level of treatment that the facility provides. The maximum credit for non-residential property owners is 50 percent of the assessed charge for traditional stormwater treatment facilities and 60 percent if the entire impervious area is treated using environmental site design. There is also a 50 percent maximum credit for residential property owners with stormwater treatment.
- 3) A hardship exemption for residential property owners whose income is below 100% of the Federal poverty level.

The impact of all these changes to both the County Code and related regulations is set forth in the attached Economic Impact Statement and Fiscal Impact Statement, but to summarize:

- 1) Non-residential property owners will now be charged for the entire impervious surface on their property, not just for the impervious surface that drains to a residential stormwater facility (as is currently the case). The Charge will be assessed based on the square footage of imperviousness, so the more impervious surface, the greater the Charge. Since there will be a significant increase in the Charge for some non-residential property owners, a three-year phase-in is being proposed for any increase in the Charge caused by additional square footage of imperviousness being included in the calculation of the Charge. Additionally, the credit program is available to reduce the Charge for properties with stormwater management systems meeting the proposed criteria.
- 2) Residential property owners will now receive a Charge that is based on the amount of impervious surface on their property through a 7-tier system. Under current law, the estimated Charge for all single family residential property owners for FY14 would be \$98. Under the proposed bill and regulations, the FY14 Charge would vary depending on the amount of imperviousness on the property, as set forth below:

- 1.\$33.76, for Tier 1 (1,000 sq ft or less)
- 2.\$51.15, for Tier 2 (1,001 – 1,410 sq ft)
- 3.\$102.30, for Tier 3 (1,411 – 3,412sq ft)
- 4.\$119.69, for Tier 4 (3,413 – 3,810 sq ft)
- 5.\$136.06, for Tier 5 (3,811 – 5,815 sq ft)
- 6.\$153.45, for Tier 6 (5,816 – 6,215 sq ft)
- 7.\$170.84 for Tier 7 (6,216 sq ft and greater)

For residential properties that are subject to an increased Charge under the new 7-tier system, the increase will be phased-in over three years. Also, the Charge could be reduced if properties qualify for credits.

- 1) There are administrative and programmatic expenditures associated with implementing the proposed changes to the WQPC law and companion draft Executive Regulations. Expenditures resulting from the Bill include: contractual geographic information system (GIS) personnel for impervious area data processing; one full-time Planning Specialist III to administer the new credit and hardship exemption programs; and facility maintenance and inspection costs on County installed or retrofitted stormwater facilities on non-residential property. The estimated annual expenditure to implement the proposed legislation and rate structure changes included in the draft Executive Regulation is \$184,860. These costs will be covered by the revenue collected through the proposed fees.

Roger Berliner
October 25, 2012
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As the Council works through this legislation and the companion regulations, Executive Staff is available to provide any information and assistance you may require.

Attachments (5)

- c. Bob Hoyt, Director, Department of Environmental Protection
Joe Beach, Director, Finance Department
Kathleen Boucher, Assistant Chief Administrative Officer
Marc Hansen, County Attorney
Jennifer Hughes, Director, Office of Management and Budget

Chapter 151

(House Bill 987)

AN ACT concerning

Stormwater Management – Watershed Protection and Restoration Program

FOR the purpose of requiring ~~each a county and or~~ municipality subject to a certain municipal stormwater permit to adopt and implement certain laws or ordinances to establish a watershed protection and restoration program on or before a certain date; exempting a certain county or municipality from the requirements of this Act if the county or municipality has enacted and implemented a certain system of charges in a certain manner by a certain date; requiring a watershed protection and restoration program to include a stormwater remediation fee and a local watershed protection and restoration fund; requiring ~~each a county and or~~ municipality to maintain ~~and or~~ administer a local watershed protection and restoration fund in accordance with this Act; establishing the purpose of a local watershed protection and restoration fund; requiring ~~each a county and or~~ municipality to establish and collect a stormwater remediation fee in accordance with this Act; requiring ~~each a county and or~~ municipality to set the amount of a ~~residential~~ stormwater remediation fee in a certain manner; authorizing a county or municipality to use certain calculation methods to set a stormwater remediation fee; ~~requiring each a county and or municipality to set the amount of a nonresidential stormwater remediation fee in a certain manner~~; providing that a stormwater remediation fee is separate from certain other charges; exempting certain property from paying the stormwater remediation fee; ~~authorizing~~ requiring a county or municipality to establish policies and procedures approved by the Department of the Environment to reduce a certain stormwater remediation fee in accordance with certain policies and procedures for a certain purpose; requiring the policies and procedures to include certain items; authorizing a county or municipality to monitor and verify the effectiveness of certain measures in a certain manner; prohibiting, ~~with certain exception, a county from imposing a stormwater remediation fee on a property located within a municipality~~; ~~authorizing a municipality to authorize a county to impose a stormwater remediation fee on a property located within a municipality in place of a municipal stormwater remediation fee~~; the assessment of a stormwater remediation fee on a property by both a county and a municipality; requiring a county to provide certain notice and a reasonable time to pass a certain ordinance before the county may impose a stormwater remediation fee on property located within a municipality; requiring a municipality to provide certain notice and a reasonable time for a county to discontinue collecting a certain stormwater remediation fee under certain circumstances; requiring ~~each a county and or~~ municipality to establish a procedure for a property owner to appeal the imposition of a stormwater

remediation fee; requiring ~~each~~ a county ~~and~~ or municipality to determine the method, frequency, and enforcement of the collection of the stormwater remediation fee and to deposit the fee into a local watershed protection and restoration fund; specifying the money to be deposited in a local watershed protection and restoration fund and the uses of the money in the fund; providing that money in a local watershed and restoration fund may not revert or be transferred to the general fund of any county or municipality; requiring each county and municipality to make publicly available a report on certain information; requiring a county or municipality to establish a certain hardship program; authorizing the Department of the Environment to adopt certain regulations; defining a certain term; and generally relating to stormwater management in the State.

BY repealing and reenacting, with amendments,
 Article – Environment
 Section 4–201.1
 Annotated Code of Maryland
 (2007 Replacement Volume and 2011 Supplement)

BY adding to
 Article – Environment
 Section 4–202.1
 Annotated Code of Maryland
 (2007 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Environment

4–201.1.

(a) In this subtitle the following words have the meanings indicated.

(b) “Environmental site design” means using small-scale stormwater management practices, nonstructural techniques, and better site planning to mimic natural hydrologic runoff characteristics and minimize the impact of land development on water resources.

(c) “Environmental site design” includes:

(1) Optimizing conservation of natural features, such as drainage patterns, soils, and vegetation;

(2) Minimizing use of impervious surfaces[, such as paved surfaces, concrete channels, roofs, and pipes];

(3) Slowing down runoff to maintain discharge timing and to increase infiltration and evapotranspiration; and

(4) Using other nonstructural practices or innovative stormwater management technologies approved by the Department.

(D) (1) "IMPERVIOUS SURFACE" MEANS A SURFACE THAT DOES NOT ALLOW STORMWATER TO INFILTRATE INTO THE GROUND.

(2) "IMPERVIOUS SURFACE" INCLUDES ROOFTOPS, DRIVEWAYS, SIDEWALKS, OR PAVEMENT.

4-202.1.

~~(A) ON OR BEFORE JULY 1, 2013, A COUNTY OR MUNICIPALITY SHALL ADOPT AND IMPLEMENT LOCAL LAWS OR ORDINANCES NECESSARY TO ESTABLISH A WATERSHED PROTECTION AND RESTORATION PROGRAM.~~

(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THIS SECTION APPLIES TO A COUNTY OR MUNICIPALITY THAT IS SUBJECT TO A NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PHASE I MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMIT.

(2) THIS SECTION DOES NOT APPLY TO A COUNTY OR MUNICIPALITY THAT, ON OR BEFORE JULY 1, 2012, HAS ENACTED AND IMPLEMENTED A SYSTEM OF CHARGES UNDER § 4-204 OF THIS SUBTITLE FOR THE PURPOSE OF FUNDING A WATERSHED PROTECTION AND RESTORATION PROGRAM, OR SIMILAR PROGRAM, IN A MANNER CONSISTENT WITH THE REQUIREMENTS OF THIS SECTION.

(B) ON OR BEFORE JULY 1, 2013, A COUNTY OR MUNICIPALITY SHALL ADOPT AND IMPLEMENT LOCAL LAWS OR ORDINANCES NECESSARY TO ESTABLISH A WATERSHED PROTECTION AND RESTORATION PROGRAM.

(C) A WATERSHED PROTECTION AND RESTORATION PROGRAM ESTABLISHED UNDER THIS SECTION SHALL INCLUDE:

(1) A STORMWATER REMEDIATION FEE; AND

(2) A LOCAL WATERSHED PROTECTION AND RESTORATION FUND.

(D) (1) ~~EACH A COUNTY AND OR~~ MUNICIPALITY SHALL MAINTAIN ~~AND OR~~ ADMINISTER A LOCAL WATERSHED PROTECTION AND RESTORATION FUND IN ACCORDANCE WITH THIS SECTION.

(2) THE PURPOSE OF A LOCAL WATERSHED PROTECTION AND RESTORATION FUND IS TO PROVIDE FINANCIAL ASSISTANCE FOR THE IMPLEMENTATION OF LOCAL STORMWATER MANAGEMENT PLANS THROUGH STORMWATER MANAGEMENT PRACTICES AND STREAM AND WETLAND RESTORATION ACTIVITIES.

(E) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION AND SUBSECTION (F) OF THIS SECTION, ~~EACH A COUNTY AND OR~~ MUNICIPALITY SHALL ESTABLISH AND ANNUALLY COLLECT A STORMWATER REMEDIATION FEE FROM ~~PROPERTY~~ OWNERS OF PROPERTY LOCATED WITHIN THE COUNTY OR MUNICIPALITY IN ACCORDANCE WITH THIS SECTION.

(2) PROPERTY OWNED BY THE STATE, A UNIT OF STATE GOVERNMENT, A COUNTY, A MUNICIPALITY, OR A REGULARLY ORGANIZED VOLUNTEER FIRE DEPARTMENT THAT IS USED FOR PUBLIC PURPOSES MAY NOT BE CHARGED A STORMWATER REMEDIATION FEE UNDER THIS SECTION.

(3) (I) ~~EACH A COUNTY AND OR~~ MUNICIPALITY SHALL SET A ~~RESIDENTIAL~~ STORMWATER REMEDIATION FEE FOR PROPERTY IN AN AMOUNT THAT IS BASED ON THE SHARE OF STORMWATER MANAGEMENT SERVICES RELATED TO THE PROPERTY AND PROVIDED BY THE COUNTY OR MUNICIPALITY.

~~(II) A COUNTY OR MUNICIPALITY MAY SET A STORMWATER REMEDIATION FEE UNDER THIS PARAGRAPH IN AN AMOUNT THAT IS GRADUATED, BASED ON THE AMOUNT OF IMPERVIOUS SURFACE ON EACH PROPERTY.~~

(II) A COUNTY OR MUNICIPALITY MAY SET A STORMWATER REMEDIATION FEE UNDER THIS PARAGRAPH BASED ON:

1. A FLAT RATE;
2. AN AMOUNT THAT IS GRADUATED, BASED ON THE AMOUNT OF IMPERVIOUS SURFACE ON EACH PROPERTY; OR
3. ANOTHER METHOD OF CALCULATION SELECTED BY THE COUNTY OR MUNICIPALITY.

~~(I) IS THE SAME FOR ALL RESIDENTIAL PROPERTY OWNERS WITHIN THE COUNTY OR MUNICIPALITY;~~

~~(II) VARIES BASED ON THE TYPE OF RESIDENTIAL PROPERTY, INCLUDING SINGLE FAMILY OR MULTIPLE OCCUPANCY PROPERTIES; OR~~

~~(III) IS GRADUATED, BASED ON THE AMOUNT OF IMPERVIOUS SURFACE ON EACH RESIDENTIAL PROPERTY.~~

~~(3) EACH A COUNTY AND OR MUNICIPALITY SHALL SET A NONRESIDENTIAL STORMWATER REMEDIATION FEE IN AN AMOUNT THAT:~~

~~(I) IS GREATER THAN OR EQUAL TO THE RESIDENTIAL STORMWATER REMEDIATION FEE SET UNDER PARAGRAPH (2) OF THIS SUBSECTION; AND~~

~~(II) CONSISTS OF:~~

~~1. A BASE AMOUNT THAT IS THE SAME FOR ALL NONRESIDENTIAL PROPERTY OWNERS WITHIN THE COUNTY OR MUNICIPALITY; AND~~

~~2. AN AMOUNT THAT IS GRADUATED BASED ON THE AMOUNT OF IMPERVIOUS SURFACE ON EACH NONRESIDENTIAL PROPERTY.~~

~~(4) (3) (4)~~ A STORMWATER REMEDIATION FEE ESTABLISHED UNDER THIS SECTION IS SEPARATE FROM ANY CHARGES THAT A COUNTY OR MUNICIPALITY ESTABLISHES RELATED TO STORMWATER MANAGEMENT FOR NEW DEVELOPMENTS UNDER § 4-204 OF THIS SUBTITLE, INCLUDING FEES FOR PERMITTING, REVIEW OF STORMWATER MANAGEMENT PLANS, INSPECTIONS, OR MONITORING.

(F) (1) ~~IN ACCORDANCE WITH A COUNTY OR MUNICIPALITY MAY~~ SHALL ESTABLISH POLICIES AND PROCEDURES ~~ESTABLISHED BY A COUNTY OR MUNICIPALITY AND,~~ APPROVED BY THE DEPARTMENT, ~~A COUNTY OR MUNICIPALITY MAY~~ TO REDUCE ANY PORTION OF A STORMWATER REMEDIATION FEE ESTABLISHED UNDER SUBSECTION (E) OF THIS SECTION ~~THAT IS BASED ON THE AMOUNT OF IMPERVIOUS SURFACE ON A PROPERTY TO~~ ACCOUNT FOR ON-SITE AND OFF-SITE SYSTEMS, FACILITIES, SERVICES, OR ACTIVITIES THAT REDUCE THE QUANTITY OR IMPROVE THE QUALITY OF STORMWATER DISCHARGED FROM THE PROPERTY.

(2) THE POLICIES AND PROCEDURES ESTABLISHED BY A COUNTY OR MUNICIPALITY UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL INCLUDE:

(I) GUIDELINES FOR DETERMINING WHICH ON-SITE SYSTEMS, FACILITIES, SERVICES, OR ACTIVITIES MAY BE THE BASIS FOR A FEE REDUCTION, INCLUDING GUIDELINES:

1. RELATING TO PROPERTIES WITH EXISTING ADVANCED STORMWATER BEST MANAGEMENT PRACTICES;

2. RELATING TO AGRICULTURAL ACTIVITIES OR FACILITIES THAT ARE OTHERWISE EXEMPTED FROM STORMWATER MANAGEMENT REQUIREMENTS BY THE COUNTY OR MUNICIPALITY; AND

3. THAT ACCOUNT FOR THE COSTS OF, AND THE LEVEL OF TREATMENT PROVIDED BY, STORMWATER MANAGEMENT FACILITIES THAT ARE FUNDED AND MAINTAINED BY A PROPERTY OWNER;

(II) THE METHOD FOR CALCULATING THE AMOUNT OF A FEE REDUCTION; AND

(III) PROCEDURES FOR MONITORING AND ~~ANNUALLY~~ VERIFYING THE EFFECTIVENESS OF THE ON-SITE SYSTEMS, FACILITIES, SERVICES, OR ACTIVITIES IN REDUCING THE QUANTITY OR IMPROVING THE QUALITY OF STORMWATER DISCHARGED FROM THE PROPERTY.

(3) FOR THE PURPOSE OF MONITORING AND VERIFYING THE EFFECTIVENESS OF ON-SITE SYSTEMS, FACILITIES, SERVICES, OR ACTIVITIES UNDER PARAGRAPH (2)(III) OF THIS SUBSECTION, A COUNTY OR MUNICIPALITY MAY:

(I) CONDUCT ON-SITE INSPECTIONS;

(II) AUTHORIZE A THIRD PARTY, CERTIFIED BY THE DEPARTMENT, TO CONDUCT ON-SITE INSPECTIONS ON BEHALF OF THE COUNTY OR MUNICIPALITY; OR

(III) REQUIRE A PROPERTY OWNER TO HIRE A THIRD PARTY, CERTIFIED BY THE DEPARTMENT, TO CONDUCT AN ON-SITE INSPECTION AND PROVIDE TO THE COUNTY OR MUNICIPALITY THE RESULTS OF THE INSPECTION AND ANY OTHER INFORMATION REQUIRED BY THE COUNTY OR MUNICIPALITY.

(G) (1) A PROPERTY MAY NOT BE ASSESSED A STORMWATER REMEDIATION FEE BY BOTH A COUNTY AND A MUNICIPALITY.

~~(2) (I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH, A COUNTY MAY NOT IMPOSE A COUNTY STORMWATER REMEDIATION FEE ON A PROPERTY LOCATED WITHIN A MUNICIPALITY.~~

~~(II) A MUNICIPALITY MAY AUTHORIZE A COUNTY TO IMPOSE A COUNTY STORMWATER REMEDIATION FEE ON A PROPERTY LOCATED WITHIN THE MUNICIPALITY IN PLACE OF A MUNICIPAL STORMWATER REMEDIATION FEE.~~

(2) (I) BEFORE A COUNTY MAY IMPOSE A STORMWATER REMEDIATION FEE ON A PROPERTY LOCATED WITHIN A MUNICIPALITY, THE COUNTY SHALL:

1. NOTIFY THE MUNICIPALITY OF THE COUNTY'S INTENT TO IMPOSE A STORMWATER REMEDIATION FEE ON PROPERTY LOCATED WITHIN THE MUNICIPALITY; AND

2. PROVIDE THE MUNICIPALITY REASONABLE TIME TO PASS AN ORDINANCE AUTHORIZING THE IMPOSITION OF A MUNICIPAL STORMWATER REMEDIATION FEE INSTEAD OF A COUNTY STORMWATER REMEDIATION FEE.

(II) IF A COUNTY CURRENTLY IMPOSES A STORMWATER REMEDIATION FEE ON PROPERTY LOCATED WITHIN A MUNICIPALITY AND THE MUNICIPALITY DECIDES TO IMPLEMENT ITS OWN STORMWATER REMEDIATION FEE UNDER THIS SECTION OR § 4-204 OF THIS SUBTITLE, THE MUNICIPALITY SHALL:

1. NOTIFY THE COUNTY OF THE MUNICIPALITY'S INTENT TO IMPOSE ITS OWN STORMWATER REMEDIATION FEE; AND

2. PROVIDE THE COUNTY REASONABLE TIME TO DISCONTINUE THE COLLECTION OF THE COUNTY STORMWATER REMEDIATION FEE WITHIN THE MUNICIPALITY BEFORE THE MUNICIPALITY'S STORMWATER REMEDIATION FEE BECOMES EFFECTIVE.

(3) ~~EACH~~ A COUNTY ~~AND~~ OR MUNICIPALITY SHALL ESTABLISH A PROCEDURE FOR A PROPERTY OWNER TO APPEAL A STORMWATER REMEDIATION FEE IMPOSED UNDER THIS SECTION.

(H) (1) ~~EACH A~~ COUNTY ~~AND OR~~ MUNICIPALITY SHALL DETERMINE THE METHOD, FREQUENCY, AND ENFORCEMENT OF THE COLLECTION OF THE STORMWATER REMEDIATION FEE.

(2) ~~EACH A~~ COUNTY ~~AND OR~~ MUNICIPALITY SHALL DEPOSIT THE STORMWATER REMEDIATION FEES IT COLLECTS INTO ITS LOCAL WATERSHED PROTECTION AND RESTORATION FUND.

(3) THERE SHALL BE DEPOSITED IN A LOCAL WATERSHED PROTECTION AND RESTORATION FUND:

(I) FUNDS RECEIVED FROM THE STORMWATER REMEDIATION FEE;

(II) INTEREST OR OTHER INCOME EARNED ON THE INVESTMENT OF MONEY IN THE LOCAL WATERSHED PROTECTION AND RESTORATION FUND; AND

(III) ANY ADDITIONAL MONEY MADE AVAILABLE FROM ANY SOURCES FOR THE PURPOSES FOR WHICH THE LOCAL WATERSHED PROTECTION AND RESTORATION FUND HAS BEEN ESTABLISHED.

(4) ~~EACH A~~ SUBJECT TO PARAGRAPH (5) OF THIS SUBSECTION, A COUNTY ~~AND OR~~ MUNICIPALITY SHALL USE THE MONEY IN ITS LOCAL WATERSHED PROTECTION AND RESTORATION FUND FOR THE FOLLOWING PURPOSES ONLY:

(I) CAPITAL IMPROVEMENTS FOR STORMWATER MANAGEMENT, INCLUDING STREAM AND WETLAND RESTORATION PROJECTS;

(II) OPERATION AND MAINTENANCE OF STORMWATER MANAGEMENT SYSTEMS AND FACILITIES;

(III) PUBLIC EDUCATION AND OUTREACH RELATING TO STORMWATER MANAGEMENT OR STREAM AND WETLAND RESTORATION;

(IV) STORMWATER MANAGEMENT PLANNING, INCLUDING:

1. MAPPING AND ASSESSMENT OF IMPERVIOUS SURFACES; AND

2. MONITORING, INSPECTION, AND ENFORCEMENT ACTIVITIES TO CARRY OUT THE PURPOSES OF THE WATERSHED PROTECTION AND RESTORATION FUND;

(v) TO THE EXTENT THAT FEES IMPOSED UNDER § 4-204 OF THIS SUBTITLE ARE DEPOSITED INTO THE LOCAL WATERSHED PROTECTION AND RESTORATION FUND, REVIEW OF STORMWATER MANAGEMENT PLANS AND PERMIT APPLICATIONS FOR NEW DEVELOPMENT;

(vi) GRANTS TO NONPROFIT ORGANIZATIONS FOR UP TO 100% OF A PROJECT'S COSTS FOR WATERSHED RESTORATION AND REHABILITATION PROJECTS RELATING TO:

1. PLANNING, DESIGN, AND CONSTRUCTION OF STORMWATER MANAGEMENT PRACTICES;

2. STREAM AND WETLAND RESTORATION; AND

3. PUBLIC EDUCATION AND OUTREACH RELATED TO STORMWATER MANAGEMENT OR STREAM AND WETLAND RESTORATION; AND

(vii) REASONABLE COSTS NECESSARY TO ADMINISTER THE LOCAL WATERSHED PROTECTION AND RESTORATION FUND.

(5) A COUNTY OR MUNICIPALITY MAY USE ITS LOCAL WATERSHED PROTECTION AND RESTORATION FUND AS AN ENVIRONMENTAL FUND, AND MAY DEPOSIT TO AND EXPEND FROM THE FUND ADDITIONAL MONEY MADE AVAILABLE FROM OTHER SOURCES AND DEDICATED TO ENVIRONMENTAL USES, PROVIDED THAT THE FUNDS RECEIVED FROM THE STORMWATER REMEDIATION FEE ARE EXPENDED ONLY FOR THE PURPOSES AUTHORIZED UNDER PARAGRAPH (4) OF THIS SUBSECTION.

~~(5)~~ (6) THE FUNDS DISBURSED UNDER THIS SUBSECTION ARE INTENDED TO BE IN ADDITION TO ANY EXISTING STATE OR LOCAL EXPENDITURES FOR STORMWATER MANAGEMENT.

~~(6)~~ (7) MONEY IN A LOCAL WATERSHED PROTECTION AND RESTORATION FUND MAY NOT REVERT OR BE TRANSFERRED TO THE GENERAL FUND OF ANY COUNTY OR MUNICIPALITY.

(i) BEGINNING JULY 1, 2014, AND EVERY 2 YEARS THEREAFTER, A COUNTY OR MUNICIPALITY SHALL MAKE PUBLICLY AVAILABLE A REPORT ON:

(1) THE NUMBER OF PROPERTIES SUBJECT TO A STORMWATER REMEDIATION FEE;

(2) THE AMOUNT OF MONEY DEPOSITED INTO THE WATERSHED PROTECTION AND RESTORATION FUND OVER THE PREVIOUS 2 FISCAL YEARS; AND

(3) THE PERCENTAGE OF FUNDS IN THE LOCAL WATERSHED PROTECTION AND RESTORATION FUND SPENT ON EACH OF THE PURPOSES PROVIDED IN SUBSECTION (H)(4) OF THIS SECTION.

(J) (1) A COUNTY OR MUNICIPALITY SHALL ESTABLISH A PROGRAM TO EXEMPT FROM THE REQUIREMENTS OF THIS SECTION A PROPERTY ABLE TO DEMONSTRATE SUBSTANTIAL FINANCIAL HARDSHIP AS A RESULT OF THE STORMWATER REMEDIATION FEE.

(2) A COUNTY OR MUNICIPALITY MAY ESTABLISH A SEPARATE HARDSHIP EXEMPTION PROGRAM OR INCLUDE A HARDSHIP EXEMPTION AS PART OF A SYSTEM OF OFFSETS ESTABLISHED UNDER SUBSECTION (F)(1) OF THIS SECTION.

~~(J)~~ (K) THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT AND ENFORCE THIS SECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2012.

Approved by the Governor, May 2, 2012.

Fiscal Impact Statement
Council Bill XX-12, Stormwater Management – Water Quality Protection Charge

1. Legislative Summary

This Bill applies to all non-residential properties and all residential properties in the County for purposes of stormwater management. The Bill would:

- a. Extend the Water Quality Protection Charge (WQPC or Charge) to include non-residential properties, which currently are covered only if they fall under the definition of an Associated Non-Residential Property (ANR)¹;
- b. Extend the WQPC for an ANR to include the remainder of the ANR's impervious area not currently charged;
- c. Phase in over three fiscal years any increase in the Charge to non-residential properties resulting from the expanded scope of the WQPC as described in a and b above (i.e. any impervious surface not currently draining to a residential pond);
- d. Phase in over three fiscal years any increase in the Charge to residential properties resulting from the modification of the Equivalent Residential Unit (ERU) system; Establish a credit program that would reduce the Charge to residential and non-residential properties having a County approved stormwater management system;
- e. Provide an exemption for residential property owners who are able to demonstrate substantial financial hardship; and,
- f. Authorize the County to perform maintenance on County installed or retrofitted facilities on non-residential properties.

2. An estimate of changes in County revenues and expenditures regardless of whether the revenues or expenditures are assumed in the recommended or approved budget. Includes source of information, assumptions, and methodologies used.

There are administrative and programmatic expenditures associated with implementing the proposed changes to the WQPC law and companion draft Executive Regulations, which would be covered by the proposed WQPC rate. Expenditures resulting from the Bill include: contractual geographic information system (GIS) personnel for impervious area data processing; one full-time Planning Specialist III to administer the new credit and hardship exemption programs; and facility maintenance and inspection costs on County installed or retrofitted stormwater facilities on non-residential property.

Contractual GIS personnel are needed to supplement DEP resources to keep impervious surface layer and associated data updated and accurate. The Contractual GIS personnel will cost an estimated \$45,760 annually. This estimate assumes a rate of \$22 per hour and 2,080 work hours for the one contractor.

¹ An Associate Non-Residential property (ANR) is a non-residential property that drains to a stormwater facility that primarily serves residential properties. ANRs are charged based on only the amount of impervious surface that drains to the residential stormwater facility.

The one new Planning Specialist position will coordinate the administration of the credit and hardship exemption programs, which is authorized in the proposed bill. The annual cost estimate of \$89,100 assumes a mid-point grade 23 Planning Specialist III position (salary of \$68,531 plus 30 percent for employee benefits). Specific responsibilities for this position include outreach and education, working with property owners to complete applications, reviewing applications and engineering drawings, managing the database, review applications and verify income qualifications.

The credit program itself has no fiscal impact but will reduce the rates for participating property owners. The WQPC rate will need to generate the offsetting revenue to implement the program as well as support the full-time Planning Specialist III needed to administer the program.

The proposed legislation also provides the County with the authority to perform maintenance on County installed or retrofitted facilities located on non-residential property. The additional costs to the maintenance and inspection program are estimated to be less than \$50,000 annually. The exact costs will be determined on an annual basis and will be subject to budgetary appropriation covered by the WQPC.

The financial hardship exemption, which is mandated under a recent amendment to the state's stormwater management law (*see* Md. Code Ann., Envir. § 4-202.1 (j)), is included in the proposed legislation. Although the hardship exemption does not have a fiscal impact, it will impact the WQPC rate, as it will require offsetting revenue to implement.

3. Revenue and expenditure estimates covering at least the next 6 fiscal years.

The estimated first year expenditure to implement the proposed legislation and rate structure changes included in the draft Executive Regulation is \$184,860. The estimated annual recurring costs are \$184,860. Six-year costs would total \$1,109,160.

4. An actuarial analysis through the entire amortization period for each bill that would affect retiree pension or group insurance costs.

Not applicable.

5. Later actions that may affect future revenue and expenditures if the bill authorizes, future spending.

As noted in number two above, the proposed legislation authorizes the County to perform maintenance on County installed or retrofitted facilities on non-residential property. This may lead to additional maintenance costs of no more than \$50,000 annually.

6. An estimate of the staff time needed to implement the bill.

DEP will be utilizing existing resources to implement the proposed rate structure changes effective FY14. Approximately one FTE will be devoted to this effort during the current year.

7. An explanation of how the addition of new staff responsibilities would affect other duties.

There is no effect on other duties assuming additional staffing is provided to administer the credit system as authorized in the proposed legislation.

8. An estimate of costs when an additional appropriation is needed.

See number three above.

9. A description of any variable that could affect revenue and cost estimates.

Variables that could affect the cost estimate include the amount of work needed to provide maintenance to County installed or retrofitted facilities on non-residential property (as authorized under the proposed legislation), as well as the administration of the credit and hardship exemption programs.

10. Ranges of revenue or expenditures that are uncertain or difficult to project.

Not applicable.

11. If a bill is likely to have no fiscal impact, why that is the case.

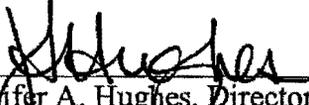
Not applicable.

12. Other fiscal impacts or comments.

Not applicable.

13. The following contributed to and concurred with this analysis:

Gladys Balderrama, Department of Environmental Protection
Vicky Wan, Department of Environmental Protection
Steven Shofar, Department of Environmental Protection
Matt Schaeffer, Office of Management and Budget
Amy Wilson, Office of Management and Budget
Naeem Mia, Office of Management and Budget



Jennifer A. Hughes, Director
Office of Management and Budget

10/9/12

Date

Economic Impact Statement
Council Bill xx-12, Stormwater Management – Water Quality Protection Charge

Background:

This Bill applies to all non-residential properties and all residential properties in the County for purposes of stormwater management. The Bill would:

- a. Extend the Water Quality Protection Charge (WQPC or Charge) to include non-residential properties, which currently are covered only if they fall under the definition of an associated non-residential property(ANR)¹;
- b. Extend the WQPC for an ANR to include the remainder of the ANR's impervious area not currently charged;
- c. Phase in over three fiscal years any increase in the Charge to non-residential properties resulting from the expanded scope of the WQPC as described in a and b above (i.e. any impervious surface not currently draining to a residential pond);
- d. Phase in over three fiscal years any increase in the Charge to residential properties resulting from the modification of the ERU system;
- e. Establish a credit program that would reduce the Charge to residential and non-residential properties having a County approved stormwater management system; and
- f. Provide an exemption for residential property owners who are able to demonstrate substantial financial hardship.

This economic impact statement (EIS) provides illustrative examples. The rates used in this EIS are preliminary and may be updated to reflect detailed data that are currently being developed by the Department of Environmental Protection (DEP). The economic impact is determined by comparing the estimated amount that a property owner would owe under the current WQPC to the estimated amount that the same property owner would owe under the proposed WQPC as set forth in the Bill.

1. The sources of information, assumptions, and methodologies used.

The analysis employs a case study approach that analyzes an averaged-sized non-residential property as an example of the economic impact for items a and b. A case study was used because of the variability in the number and characteristics of non-residential properties that currently pay the WQPC. The Department of Finance incorporated both the data and analysis undertaken by DEP to provide an example of the economic impact of Bill XX-12.

2. A description of any variable that could affect economic impact statements.

There are a number of variables that could affect the economic impact for each non-residential and single-family residential property. The variables include the amount of impervious surface on the property, the amount of the credit, and the proposed rate.

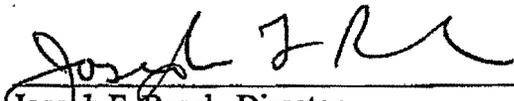
4. A single-family residential property with 4,000 square feet of impervious surface, would pay in FY14:
 - a. \$98 or 1 ERU² under existing law.
 - b. The property owner would have paid \$153.45 under the proposed law², but because of the three year phase-in of imperviousness, the Charge for the first year would be \$119.69.

5. A property with 2,000 square feet of impervious surface, which is owned and occupied by an owner who has an annual income equal to or less than 100% of the poverty guidelines would pay in FY14:
 - a. \$98.00 under existing law
 - b. Nothing under the proposed law since this person would qualify for an exemption.

4. If a bill is likely to have no economic impact, why is that the case?

The Bill does have an economic impact for both non-residential and single-family residential properties as presented in section 3.

5. The following contributed to and concurred with this analysis: Bob Hoyt, Steve Shofar and Vicky Wan, DEP; David Platt and Mike Coveyou, Finance.



 Joseph F. Beach, Director
 Department of Finance

9-27-12
 Date

¹ An Associated Non-Residential property (ANR) is a non-residential property that drains to a stormwater facility that primarily serves residential properties. ANRs are charged based on only the amount of impervious surface that drains to the residential stormwater facility.

² A tiered approach is being proposed through the companion draft Executive Regulations, and satisfies the state law requirement to base the Charge on "...the share of the stormwater management services related to the property and provided by the county..." [see Md. Code Ann., Envir. § 4-202.1(e)(3)(i) (2012)] The tiered approach reduces the amount paid for residential properties that fall into lower tiers because they have less imperviousness than one ERU, and increases it for those that fall into higher tiers because they have greater imperviousness. A residential property that would have paid \$98 under the existing law would pay the following under the proposed law. The amounts below could be reduced, however, if it qualified for credits.

- a. \$33.76, for Tier 1 (1,000 sq ft or less)
- b. \$51.15, for Tier 2 (1,001 – 1,410 sq ft)
- c. \$102.30, for Tier 3 (1,411 – 3,412sq ft)
- d. \$119.69, for Tier 4 (3,413 -3,810 sq ft)
- e. \$136.06, for Tier 5 (3,811 – 5,815 sq ft)
- f. \$153.45, for Tier 6 (5,816 – 6,215 sq ft)
- g. \$170.84 for Tier 7 (6,216 sq ft and greater)

**Testimony of Bob Hoyt, Director,
Department of Environmental Protection
on behalf of County Executive Isiah Leggett**

Bill 34-12 – Stormwater Management - Water Quality Protection Charge

January 15, 2013

Good afternoon. My name is Bob Hoyt. I am the Director of the Department of Environmental Protection. Thank you for the opportunity to testify on behalf of the County Executive in support of Bill 34-12, which amends the County’s existing Water Quality Protection Charge program to meet the requirements of a new State Law (HB 987 - Stormwater Management –Watershed Protection and Restoration Program (2012)).

This new State law requires certain jurisdictions, including Montgomery County, to adopt a stormwater utility program and sets forth specific criteria that must be included in the program. Thanks to the County Executive and County Council, Montgomery County is a national leader in addressing stormwater pollution and, in fact, adopted a utility charge ten years ago that complies with most of the criteria required by the new State law.

As required by State law, Bill 34-12 amends the County’s Water Quality Protection Charge Law to:

1. Require all non-residential properties to pay the Charge (under current law, only those non-residential properties that drain to a residential stormwater facility are subject to the Charge).
2. Create a credit program for property owners that have stormwater management systems on their property.
3. Establish a hardship exemption for residential property owners who can demonstrate substantial financial hardship.

In order to mitigate the financial impact of the new law, Bill 34-12 establishes a three year phase-in for any increase in the Charge caused by the bill or its accompanying regulations. The bill also allows the County to perform maintenance on facilities on non-residential properties when the County retrofits those facilities, which will help encourage non-residential property owners to allow retrofits on their property.

In order to implement changes to the County's program by the State deadline of July 1, 2013, draft regulations were published in the County register in November 2012. The proposed regulations establish:

1. A 7-tier system for assessing the Water Quality Protection Charge on residential property based on the amount of impervious surface.
2. A credit program for eligible property owners with on-site stormwater treatment facilities. The proposed maximum credit for non-residential property is 50% of the assessed charge for traditional stormwater management practices and 60% if the entire impervious area is treated using Environmental Site Design (ESD).
3. A hardship exemption for residential property owners whose income is below 100% of the Federal poverty level.

The revenue from the Water Quality Protection Charge is used to meet the requirements of the County's stormwater permit, which is formally called the Municipal Separate Storm Sewer System Permit – or MS4 Permit. Our permit requires the County to retrofit 4,300 impervious acres not currently treated to the maximum extent practicable. I appreciate your introduction of this bill on the County Executive's behalf and respectfully request that Council to adopt it as expeditiously as possible so the County can comply with the State deadline. Thank you for the opportunity to testify.

I would be happy to address any questions the Council may have.



**City of Rockville
Testimony of Councilmember Tom Moore
Bill 34-12 Stormwater Management – Water Quality Protection Charge
January 15, 2013**

Good afternoon. My name is Tom Moore, and I serve on the Rockville City Council. I want to thank President Navarro and the members of the Montgomery County Council for the opportunity to provide testimony on Bill 34-12 – Stormwater Management - Water Quality Protection Charge.

As you know, EPA’s mandated “pollution diet” for the Chesapeake Bay requires most Counties and Cities in Maryland to significantly increase their investment in local stormwater management. It is nearly impossible to comply with these requirements without establishing a fee structure to provide dedicated stormwater resources.

Rockville adopted its stormwater management utility fee in FY08. It is based on the premise that all property owners within the City limits pay the fee which is based on the amount of impervious surface on their property. Rockville commends the County for updating its Water Quality Protection Charge per the requirements of HB-987 (2012), by expanding the existing residential charge to include businesses and other properties not otherwise exempted under state law.

The Rockville Mayor and Council support Bill 34-12. Requiring landowners to pay a fee based on the level of imperviousness on their property approximates the amount of stormwater runoff they contribute and is the most equitable arrangement possible. Rockville's stormwater utility fee uses a credit system and we are pleased to see that Bill 34-12 allows property owners that treat stormwater on their land to apply for a credit towards the fee. The City has worked with other communities to provide education and technical assistance related to the implementation of stormwater utility fees, and we would welcome the opportunity to assist the County with this initiative.

As the County moves forward with this legislation, Rockville respectfully reminds you that that County has yet to pay our stormwater utility fee for the County's own considerable properties here in the City. Dating back to FY09, which was the first year the fee was charged to property owners, and through FY13, the County owes Rockville a total of \$329,249. The breakdown of the charges is as follows:

FY09 \$45,200,

FY10 \$55,596,

FY11 \$69,290,

FY12 \$71,164, and

FY13 \$87,999

The County's failure to pay its fair share has resulted in other property owners, including residents and nonprofit organizations, subsidizing the County. It also puts one of the best County programs in Maryland at odds with one of the State's best municipal programs when we should be allies working together to further stormwater management in the State.

Once this legislation is in place, the County will have ample additional revenue to pay our fee. We believe that the FY14 budget development process should include a mutually agreeable resolution to this critically important issue.

Thank you for the opportunity to speak to you today, and I would be happy to answer any questions that you may have.

Testimony of Diane Cameron
for the Montgomery County Stormwater Partners Network
on Bill 34-12
January 15, 2013

My name is Diane Cameron and I am the Coordinator of the Montgomery County Stormwater Partners Network. Formed in 2005 to support an improved stormwater permit for Montgomery County, the Partners have worked closely with DEP and other County agencies to protect and restore our streams. The Stormwater Partners support Bill 34-12 overall, and we offer strengthening changes. We look forward to sharing more-detailed comments on the proposed Regulation 17-12 with DEP in the near future.

Since 2006, the Stormwater Partners have been guided by a 12-point consensus agenda for the county's stormwater permit and water quality program (copy attached). Point number 12 reads:

Increase program funding while sending a "price incentive" for more-protective stormwater measures through broadening use of the County's Water Quality Protection Charge.

- ▲ Bill 34-12 and its regulation meet both of these objectives: they would increase total funding for the stormwater permit program, while creating incentives (fee reductions) for landowners who retrofit with trees, rain gardens, and other practices – and who maintain those practices.

Other key Points about 34-12 that we support:

- ▲ Provides increased, necessary funds for stormwater permit implementation;
- ▲ Includes a stormwater fee credit for homeowners who commit to maintaining a Green Street or similar practice located near their home;
- ▲ Includes all nonresidential property owners, correcting a longstanding inequity in the Water Quality Protection Charge, and
- ▲ The proposed 7-tier structure is also more equitable, since it charges landowners based roughly on the amount of imperviousness they own.

Changes still needed to improve the bill:

When landowners – from any sector – consider doing a green retrofit like a rain garden, tree planting or green roof, they ask themselves the following: *What's in it for me/ my family, company, organization?*

What are the benefits to the landowner of a Conservation Landscape or other green retrofit? What are the costs and the administrative hassles? And, are the costs and hassles worth the benefits?” The challenge that we face is ensuring that the answers to these questions will motivate owners to shoulder the burden of retrofitting in order to reap the benefits.

In order to craft the most successful stormwater fee credits possible, Montgomery County must:

- ▲ reduce the hassle factor;
- ▲ increase the credits and the price differential for those adopting “all-green retrofits;”
- ▲ Market the credits program. As part of this, communicate the benefits of green practices, and use social marketing to promote new norms in landscaping;
- ▲ engage local groups as partners, including through establishing a grants program; and
- ▲ further increase the Fairness Factor by including all imperviousness owners including all governmental landowners in the fee system.

Today we provide written comments on improvements needed to meet these objectives.

The City of Rockville has had a similar stormwater fee credit system in place for several years and thus far according to City staff, no one has applied for a stormwater fee credit – because it's easier to simply write a check. We suspect that this is due to a credit that is too small and a hassle that is too big.

We have worked fruitfully with DEP in furthering the RainScapes program, and the Stormwater Partners stand ready to work with DEP staff to help shape this program, including the credits and grants, to help ensure success in cleaning and restoring our streams, creating green businesses and jobs, and meeting our MS-4 permit mandates. Thank you for this public hearing and for considering our input.

The contributions and support of the following Stormwater Partners to these comments are gratefully acknowledged: Becky Hammer, Natural Resources Defense Council; Susan Eisendrath, Sierra Club; Anne Ambler, Neighbors of Northwest Branch; Kevin Jeffery, Clean Water Action; Jim Foster, Anacostia Watershed Society.

Further written comments on Bill 34-12 and Regulation 17-12.

- 1) **Include a grants program to nonprofit organizational partners** - Statewide Bill HB987, enacted in 2012, provides for (some say requires) a grants program to enable nonprofits to partner with local governments to provide stormwater practice design, planning and construction, and public outreach, among other functions. We urge Montgomery County to include this grants program as an amendment to Bill 34-12, and to set forth details to be added to the revisions to Regulation 17-12, after consultation with and input from local nonprofits including members of the Stormwater Partners.
- 2) **All landowners must pay their fair share of stormwater fees** - Montgomery County should charge all landowners, including all government entities, their fair share of stormwater fees. Unfortunately, HB987 exempted state government landowners from paying local stormwater fees. (We urge Montgomery County to support amending HB987 to correct this problem.)

Including Montgomery County's stormwater payments owed to the City of Rockville – Bill 34-12 and Regulation 17-12 should require Montgomery County to pay its own fair share of stormwater fees to the City of Rockville, since Montgomery County owns pollution-generating imperviousness within the City of Rockville. Montgomery has resisted making these payments to Rockville which is setting a bad example, and needs to turn this situation around immediately to model responsible and fair stormwater payments. (We respectfully disagree with Maryland's Attorney General on this point.)

- 3) **Stormwater Fee Structure needs to be tweaked** - Regarding Regulation 17-12: Though the 7-Tier fee structure is more equitable than the current billing method, it needs to be tweaked to be more equitable and to provide a strong and clear incentive to residential owners to reduce their imperviousness wherever possible. Especially, the Tier 3 for single family residential sites is too broad – it would charge the same fee for lots ranging from 1410 square feet to 3412 square feet of imperviousness. This spread is far too great for a single fee level, and creates little or no incentive for large driveway and roof owners to reduce or mitigate their imperviousness.

To correct this problem, we suggest breaking this into two Tiers.

- 4) **Credit program headed in the right direction**- Overall we think the credit program is headed in the right direction. We like the “maintenance credit” offered to landowners who adopt a Green Street or other green stormwater practice and agree to maintain it. And, we like that there is a differential with preference for “all green retrofits.”
- 5) **Credit system needs 5 improvements** - Based on our review of proposed Regulation 17-12, the credit levels need to be improved in four ways:

A) Greater clarity needed – the credit system as laid out in Regulation 17-12 is rather confusing. Example: the term “Adopt a Best Management Practice” in Table 2 (residential

credits) is vague. We understand that this refers only to green infrastructure practices like Green Street Bioretention facilities – please clarify this. And the non-residential credits are also somewhat confusing, given that it's hard to tell as now written, whether the 25% credits for sites that are controlling the water quality volume and the channel protection volume, are additive, meaning that sites that have stormwater systems controlling both volumes will receive a total of a 50% credit.

B) The credits for green retrofits need to be increased – We have talked with DEP staff in the recent past about the need to create incentives for landowners to adopt green stormwater retrofits. Our preference is to give credits (fee reductions) only for green infrastructure practices like rain gardens, trees and conservation landscapes, because these by far carry the most water quality and other benefits, but DEP sees a need to also give some credit to landowners who have built stormwater ponds and other non-green practices.

Given the county's desire to give credits to both gray and green practices, we then are looking for a credit system that creates the strongest incentive to go green, including the credit level itself and the difference between gray and green credit levels. The current proposed credit for landowners who invest in green stormwater retrofits must be increased. The proposed 60% fee reduction offered to non-residential owners who invest in an all-green stormwater retrofit, may be too low of an inducement once the "money math" is done for a given site. Instead, landowners who adopt an all-green retrofit approach should be offered an 85% or greater credit.

C) Increase the credit differential to benefit those "going all green" - For non-residential and multi-family sites, the proposed differential between an all-green (all ESD) approach (60% fee reduction) and a partially green approach (mixed set of green and grey practices – 50% fee reduction) proposed is too low – it's only a 10% difference. The difference should be much greater.

D) The proposed system for single-family residential owners needs to be revised to create an effective set of incentives:

* Table 2 on page 7 of proposed Regulation 17-12 contains a set of residential credits for various retrofit practices. Overall, the proposed credit levels are too low, with the range being from 10% up to 25% for the credits. Instead, the credit range should be more like 25% to 85%. And, tree plantings need to be added. If the credits are not big enough, and if the administrative hassle is too great, this program won't induce the kind of widespread neighborhood greening that our streams need and that the MS-4 requires.

We understand that DEP is concerned about the potential for lost revenue that could result from increased credit levels inducing massive increases in participation in this program. However, lost revenue from increased participation is unlikely to be a big problem for DEP (given historically low rates of participation in similar programs in the region and in the RainScapes Program). Alternatively, perhaps this should be considered a problem

that DEP would be lucky to have. After all, property owners retrofitting and maintaining green BMPs are reducing DEP's retrofitting burden. And the bottom line is that nobody's going to do retrofits if they're not worth enough credit-wise. The point of the credits is to serve as an incentive for landowners to self-retrofit. The credits need to be priced right if this program is going to be successful.

If DEP really is concerned about losing too much revenue from retrofits, then we urge them to counterbalance those losses by raising fees overall. Virtually every stormwater fee we've seen has been too low to either (a) encourage retrofits or (b) fully cover local agencies' stormwater-related costs, much less accomplish both objectives.

We look forward to working with DEP in evolving this WQPC credit and related programs, and to reviewing DEP's economic analysis underlying this bill and regulation and sharing further comments in the future.

E) An Education & Awareness Program needs to be built into the credit program --and it can reinforce other elements of DEP's MS-4 Permit work as well (RainScapes, promoting benefits of going green, etc.). The credit program needs to both involve and engage the community to work towards new solutions and improvements. RainScapes has been working with this principle to an extent, with a small budget and staff. We encourage the expansion of the RainScapes program to adopt more social marketing strategies. Social marketing strategies such as competitions between neighbors can be effective (i.e., utilizing competition to encourage cooperation and social support, e.g., neighborhood challenges to get them to compete for having the most neighbors with the most credits.) Other strategies such as promoting examples of people who have successfully gotten credits could help to beneficially change social norms around landscaping and other behaviors.

Since residents and other landowners will look at this credit program from their own perspective of "*what will I get out of this,*" the marketing of the credits and the larger RainScapes program must also take this approach. People are more inclined to take action when they are faced with what they could or are losing if they don't use the credits. This type of message is motivating as long as it's coupled with a solution (too much negative messaging can people off, but a little can motivate them with a bit of challenge, e.g., "I don't want to loose the credit or my drinking water quality or green space, etc.")

6) **Present the administrative protocol – and keep it simple, fast and easy.** Regulation 17-12 doesn't specify the administrative protocol for landowners seeking to apply for the fee reduction credits. Basically, the protocol will borrow from the RainScapes Rebates program, which has evolved over the years. We support DEP's continued evolution towards more user-friendly RainScapes protocols. It's essential that DEP make the applications as easy and quick as possible, otherwise too few landowners will bother with the hassle – and then the credits won't achieve their intended effect. Unless the paperwork is simple, fast and easy, the program won't

entice enough landowners to "go green at home" with tree plantings, rain gardens, green roofs, or conservation landscapes.



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Montgomery Soil Conservation District

18410 Muncaster Road - Derwood, MD 20855 - Phone (301) 590-2855

www.montgomeryscd.org

January 15, 2013

The Honorable Nancy Navarro
Montgomery County Council President
100 Maryland Avenue
Rockville, MD 20950

Re: Bill 34-12, Stormwater Management – Water Quality Protection Charge

Dear Council President Navarro and Council Members:

On behalf of the Montgomery Soil Conservation District (MSCD) I would like to thank you for the opportunity to provide comments on Bill 34-12, Storm water Management – Water Quality Protection Charge (WQPC). The staff and Supervisors of the MSCD provide technical assistance to farmers and rural landowners and assist them in implementing conservation practices that prevent soil erosion and protect water quality. In many ways, the best management practices (BMPs) implemented by farmers accomplish the same goals as stormwater management efforts in urban portions of the County.

The reality is that in most areas of the Agricultural Reserve storm water is controlled through well-managed areas of open fields, forests, and wetlands. The vast amounts of impervious surfaces that require storm water management in the more urban areas of the County are simply not a problem in the Ag Reserve. This is evidenced by the fact that the streams in our agricultural areas have the highest water quality in the County.

Rural landowners and farmers who pay this fee are in effect paying for problems associated with down County development. A better solution would be to reward farmers for managing the stormwater in their communities, or provide a funding source to increase efforts to implement BMPs through the work of the Soil Conservation District. We offer the following suggestions for amendments to the bill to help accomplish this:

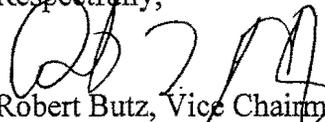
- 1) Agricultural landowners who manage the soil, water, and other natural resources on their property through a Soil Conservation and Water Quality Plan (SCWQ Plan) should not be subject to a storm water fee.
- 2) The credit program outlined in Bill 34-12 should also apply to any landowner that has a SCWQ Plan.
- 3) Resources from the WQPC should be provided to MSCD for conservation planning and BMP implementation in the Ag Reserve to demonstrate to the agricultural sector that their WQPC funds are benefitting rural communities.

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Included with our testimony is a proposal MSCD has developed in cooperation with the Department of Environmental Protection (DEP), which would form a partnership to help insure that funding from the WQPC that comes from rural areas of the County would provide for water quality benefits within the agricultural communities from which the funds originate. Addressing stormwater issues on small headwater streams in rural areas is more cost efficient and can be more effective than using the WQPC fees for down county projects.

While many of the details of this proposal must be worked out, we believe it represents a more targeted approach to improving water quality in the agricultural portions of the County and insuring that the agricultural sector is able to meet the stringent requirements of the Chesapeake Bay Total Maximum Daily Load (TMDL) restoration plan.

Respectfully,



Robert Butz, Vice Chairman
Montgomery SCD Board of Supervisors

Cc: Council Members
Bob Hoyt, DEP Director
Jeremy Criss, Ag Services Division Manager

Partnership for Water Quality in Montgomery County
Montgomery County Department of Environmental Protection
Montgomery Soil Conservation District
Cooperative Strategy for Addressing Montgomery County
TMDL Goals for the Agricultural and Urban Sectors

BACKGROUND

The Montgomery County Department of Environmental Protection (DEP) and the Montgomery Soil Conservation District (MSCD) both share responsibilities for protecting soil, water, and other natural resources and habitats in Montgomery County. While DEP operates county-wide, their efforts to improve water quality are often focused on the urban and suburban areas of the county. This is particularly true as it relates to the County's Municipal Separate Storm Sewer System (MS4) Permit and the Watershed Implementation Plan (WIP) II for meeting TMDL requirements for the developed areas of the County. Operating predominately in the rural portions of the county, MSCD is the conduit by which agricultural landowners may receive technical assistance and project design for water quality best management practices. While DEP's primary focus may be in more urban environments and MSCD's in more rural, a unique opportunity presents itself for collaborative effort between our two agencies.

There are approximately 500 parcels with over 10,000 acres of Ag Assessed property within the County's designated MS4 permit area. In addition, there are also agricultural properties that are assessed residential within the MS4 area. We believe a real need exists to provide outreach and technical assistance to "Agriculturally" assessed properties located outside the Agricultural Reserve. Unfortunately, the MSCD's ability to reach these landowners and provide an effective level of assistance is compromised by reduced funding at the Federal, State, and County level. It is for these reasons that the MSCD is requesting financial support from the Water Quality Protection Charge (WQPC) through a partnership with DEP, that will provide resources necessary to explore the potential for stormwater control practices on these agricultural parcels and further augment our existing outreach to agricultural landowners in the agricultural reserve.

JUSTIFICATION

The three main objectives of this proposal are:

- I. Focus soil conservation and water quality planning on the agricultural properties within the County's MS4 permit area to explore opportunities for installing best management practices (BMPs) to reduce stormwater and nutrients, and develop a database and map layer of these potential restoration sites.
- II. Provide WQPC resources to MSCD for conservation planning and BMP implementation in the Ag Reserve areas to demonstrate to the agricultural sector that their WQPC funds

are benefiting rural communities. Estimates indicate over 4,000 improved properties within the Ag Reserve that are assessed the WQPC, for a total of \$286,000 per year.

- III. Develop a goal oriented, implementation focused outreach initiative to inventory and document installation of BMPs on Agricultural Preservation parcels that drain into County MS4 watersheds, and catalog the potential for additional BMP implementation.

Based on the TMDL Goals and the strategy outlined in the proposed WIP II, challenges exist for both the agricultural sector and the urban/suburban portions of the County to meet many of the nutrient reduction targets. Compounding the situation is the 50% reduction in MSCD Conservation Planning staff funded by the County through the Department of Economic Development. This dramatic reduction involved the elimination of an experienced Soil Conservation Planner position in FY2010, and has negatively impacted the MSCD's ability to reach TMDL goals for the agricultural sector.

Urban stormwater retrofits are very expensive, so the County can realize substantial cost savings by identifying additional sites on agricultural properties within the MS4 area where BMP implementation will result in water quality improvements and stormwater mitigation. With both agencies working to protect our environment, there is considerable synergy in their approach to addressing Montgomery County's restoration challenges. This funding partnership will expand opportunities for the agencies to combine resources and expertise in tackling the County's TMDL Goals.

DESCRIPTION AND OBJECTIVES

MSCD works with landowners throughout the County to implement BMPs that improve water quality and reduce storm water impacts. Most conservation practices that farmers install have stormwater benefits in addition to the associated nutrient and sediment load reductions. (Please see the attached sheet of practice descriptions.) Through the development of Soil Conservation and Water Quality (SCWQ) Plans for landowners, MSCD makes recommendations on conservation techniques that improve soil health and increase infiltration capacity. By allowing more rain to permeate into the soil rather than running off into streams, these practices prevent soil erosion and control stormwater flows. Some examples of these practices include crop rotation, no-till farming, cover crops, rotational grazing, and pasture management. There are also a number of structural BMPs that provide stormwater control in addition to nutrient and sediment reductions.

Providing resources to MSCD through the WQPC will help DEP insure that the rural landowners that pay the WQPC will have tangible water quality benefits right in their own communities. Furthermore, the agencies will collaborate on an outreach campaign to assess the conservation potential on agricultural properties within the urban/suburban portions of the county. Working with the owners of this 10,000+ acre land base will create a catalog of potential conservation practices that could be applied to these farms to generate nutrient and stormwater reductions. Some of these practices may result in nutrient credits that could be used to help the county achieve their MS4 permit goals at a considerable discount to more expensive urban stormwater management practices.

Funding from the WQPC will be used to restore the previously eliminated County Conservation Planner position, create a new Soil Conservation Technician position, and replace deficiencies in

MSCD's operating budget. A portion will also go toward salary reimbursements MSCD has been required to provide to DED to compensate for General Fund budget reductions. The new Conservation Planner will develop an outreach campaign and focus SCWQ Planning efforts on the agricultural properties within the MS4 permit sections of the county. In addition, a Soil Conservation Engineering Technician position is necessary to provide technical assistance, project design, and surveying for the increased level of BMP implementation required to meet the TMDL. It is anticipated that many of the operations in the MS4 sections of the county will be equestrian facilities, horticultural or nursery operations, small vegetable operations, and other niche agricultural producers. These operations have specialized needs and often require considerably more staff time than our traditional agricultural clients. MSCD has experienced an increase in requests from these new and emerging clients over the last couple years, and with adequate staff, will be well positioned to provide them with technical assistance and ideas for improving their operations. There are also a number of cost-share programs currently available to assist these clients with the implementation of conservation practices.

A portion of the proposed funding will also be used to establish a rental equipment program for conservation practices and encourage SCWQ planning among Cover Crop program participants. Many landowners are interested in a variety of conservation planting techniques, but may not have the equipment necessary to carry out these practices. This may include no-till planting practices for cover crop and pasture reseeding, as well other conservation equipment such as aerators, conservation tillage, and compost spreaders. Although Cover Crop program participants are not required to have an updated SCWQ Plan, many would benefit from knowing what other conservation opportunities exist on their farms. By establishing a County incentive linked to the MDA Cover Crop program, Montgomery County will increase participation in the program and promote the conservation planning needed to achieve enhanced levels of BMP implementation.

PROPOSED BUDGET EXPENDITURES

Funding received by MSCD will be used to cover the following current budget shortfalls:

Re-Instate Resource Conservationist Position		\$100,000
Soil Conservation Engineering Technician		
Including benefits, equipment, rent, etc		\$60,000
MSCD Reimbursement to DED		\$20,000
Operating Funds*		\$50,000
Conservation Matters Newsletter	\$5,000	
Communications, phones, copiers, etc.	\$5,000	
Office supplies, equipment, printing, etc.	\$3,000	
Conservation Equipment Rental Program	\$20,000	
IT Equipment	\$10,000	
Workshops, Seminars, Outreach to small Agricultural landowners	\$7,000	
County Cover Crop Incentive ^		\$50,000
TOTAL REQUEST		\$280,000

* MSCD receives the lowest operating budget of all Soil Conservation Districts in the state, and has deferred the purchase of equipment, tools, and IT hardware for years because of this shortfall. We cannot meet the rigorous goals outlined in the TMDL without proper resources. ^ An incentive payment of \$5/acre for parcels enrolled in the Cover Crop program that have a current SCWQ Plan will serve as a statewide model for encouraging conservation planning and greater participation in the Cover Crop program, which is one of the best mechanisms for reaching water quality goals.

STRATEGY HIGHLIGHTS

- WQPC funds collected from the Agricultural Reserve areas of the county will be used to fund water quality projects through DEP financial support provided to the MSCD.
- Focused outreach and technical assistance directed at agricultural property owners within sections of the County covered under the MS4 permit will demonstrate opportunities for stormwater control, sediment reduction, and nutrient credit trading potential to achieve TMDL goals.
- Design and construct conservation best management practices on agricultural parcels within the MS4 permit areas of the County.
- The cost of Ag BMPs are shared by private citizens – this represents a tremendous LEVERAGING opportunity, whereby WQPC funds would actually have greater impact by encouraging private investment in water quality improvements.
- MSCD, in cooperation with DEP, will develop a database and GIS layer for ag properties outside of the Ag Reserve as well as Ag Preservation parcels in watersheds that drain to the MS4 permit area, and target 20 SCWQ Plans on 1,000 new acres a year within the urban/suburban areas of the County.
- This partnership will help to demonstrate a united approach to addressing water quality challenges in Montgomery County, and provide collaboration between the agricultural and urban/suburban sectors.
- The “aggressive” nutrient reduction targets established for the ag sector under the WIP II process cannot be achieved without additional resources. All Montgomery County agencies must work together to insure that we do everything we can to meet the Bay goals.
- Establish a rental program to provide more farmers access to conservation equipment for no-till planting, pasture renovation, compost spreading, and other practices that reduce stormwater impacts and nutrient and sediment loads. Cover Crops, no-till farming, and establishing well maintained pastures are some of the most economical and effective methods of controlling runoff and reducing nutrient loss from agricultural fields.
- Create a Cover Crop incentive payment program that will encourage broader participation by County farmers and promote the development of SCWQ Plans, which are the genesis of BMP implementation on agricultural properties.

Faden, Michael

From: Meyers, Jeff [jmeyers@howardcountymd.gov]
Sent: Friday, February 22, 2013 11:48 AM
To: Devilbiss, Thomas S.
Cc: Faden, Michael
Subject: RE: Stormwater utility fee

Updated

Anne Arundel County

The proposal was introduced on January 22, 2013. The Council is still deliberating. As introduced, the legislation establishes a three-tier payment structure paid annually:

- \$34 for townhouses and condominiums (R10, R15, R22 zones)
- \$85 for single family homes (R2 and R5 zones)
- \$170 for rural agricultural (RA, RLD, R1 zones)

Council administrator reports "will likely be amended".

<http://www.aacounty.org/CountyCouncil/Resources/2013/2-13.pdf>

Baltimore City

Council Bill 12-0155 was introduced in November and is still pending Committee action. The Bill requires the Board of Estimates to establish a fee schedule. The Department of Public Works has scheduled meetings to educate and inform residents about the impact stormwater has on their communities, and the proposed legislation for a stormwater remediation fee.

<http://legistar.baltimorecitycouncil.com/attachments/9843.pdf>

Baltimore County

Council administrator: "I think this fee will be dealt with in the budget process which begins in April."

Carroll County

Carroll having the first meeting of advisory group tonight to figure out how to proceed.

Frederick County

The County is in the beginning stages of the process. Staff made a presentation to the County Commissioners and they (reluctantly) directed staff to continue working on a fee proposal.

Frederick has a bill before the General Assembly to exempt the county – HB407.

Harford County

The County's Department of Public Works held a public information/open house night earlier this month to provide information to the public regarding the fee. Bill 13-12 is now before the Council.

<http://www.harfordcountymd.gov/weblink8/ElectronicFile.aspx?docid=4070220&dbid=0>

Montgomery County

Bill 34-12, introduced late last year, had a public hearing on January 15, is now pending before the Council's Transportation, Infrastructure, Energy, and Environment Committee. Under the Bill, the charge for a residential property would range from \$33.76 to \$170.84 depending on size and level of imperviousness. Non-residential properties would be charged by square foot of imperviousness. There will be credits for various stormwater management elements on the property. The charges will be phased in over 3 years. Council staff anticipates progress in March.

http://www6.montgomerycountymd.gov/content/council/pdf/bill/2012/Packets/20121127_6B.pdf

Prince George's County

A county workgroup to evaluate the State requirements is in its final stages. The workgroup will be briefing the county executive and county council in February. The workgroup will hold a public forum in March and expects to see legislation in April.

Charles County

County is currently waiting for technical information from consultants that will allow choice of methodology in calculating the fee. County hopes to have that information sometime in March, after which legislation will be proposed implementing that fee.

MEMORANDUM

TO: Transportation, Infrastructure, Energy and Environment Committee

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Worksession:** Bill 34-12, Stormwater Management – Water Quality Protection Charge

After this packet went to print, Council staff received or noticed several relevant documents:

- Executive branch staff submitted a set of amendments to this Bill, some of which responded to issues raised by Council staff. See ©A1-A9.
- Executive branch also submitted a memo explaining those amendments. See ©B1-B2.
- The US Navy sent a letter to the Council (but apparently not to Executive staff) arguing that the Water Quality Protection Charge should not apply to federal agencies, as discussed in Issue 5 of the original packet. See ©C1-C2.
- DEP staff submitted answers to questions posed by Council staff, mainly about the implementing regulations. See ©D1-D3.

We will be prepared to discuss all these documents at the worksession.

This packet contains:	<u>Circle #</u>
Bill 34-12 with Executive branch amendments	A1
Memo re Executive branch amendments	B1
Letter from US Navy re federal facilities	C1
DEP answers to Council staff questions	D1

Bill No. 34-12
Concerning: Stormwater Management –
Water Quality Protection Charge
Revised: 11-20-12 Draft No. 2
Introduced: November 27, 2012
Expires: May 27, 2014
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

- (1) subject all properties not otherwise exempt under state law to the Water Quality Protection Charge;
- (2) allow certain property owners to obtain a credit equal to a certain percentage of the Charge;
- (3) exempt certain property owners that are able to demonstrate substantial financial hardship;
- (4) provide for a phase-in of certain increases to the Charge; ~~[[and]]~~
- (5) establish a Watershed Management Grants Program; and
- ~~[[5]]~~(6) generally amend County law regarding the Water Quality Protection Charge.

By amending

Montgomery County Code
Chapter 19, Erosion, Sediment Control and Storm Water Management
Sections 19-21, 19-28, 19-29, 19-35

By adding

Section 19-29A

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[[Single boldface brackets]]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

28 execute an easement and an inspection and maintenance
29 agreement that is binding on each later [owner[s]] owner of the
30 land to be served by any private stormwater management
31 system.

32 (2) The easement must give the County a perpetual right of access
33 to the stormwater management system at all reasonable times to
34 inspect, operate, monitor, install, construct, reconstruct, modify,
35 maintain, clean, or repair any part of the stormwater
36 management system [within] in the area covered by the
37 easement as needed to assure that the system remains in proper
38 working condition under approved design and environmental
39 standards. The inspection and maintenance agreement must
40 require the owner to be responsible for all maintenance of any
41 completed ESD treatment system and nonstructural
42 maintenance of any on-site stormwater management facility if
43 the development consists of residential property [[or
44 [associated] of nonresidential property that contains a
45 stormwater management facility built or retrofitted by the
46 County]]. Otherwise, the inspection and maintenance
47 agreement must require the owner to be responsible forever for
48 all maintenance of the entire on-site stormwater management
49 system, including maintaining in good condition, and promptly
50 repairing and restoring, each ESD practice, grade surface, wall,
51 drain, dam and structure, vegetation, erosion and sediment
52 control measure, and any other protective device [forever].

53 (3) The owner must record the easement and agreement in the
54 County land records and deliver a certified copy of each

55 recorded document to the Departments of Permitting Services
 56 and Environmental Protection before the Department may issue
 57 a completion certificate.

58 (4) After the Department issues a completion certificate for
 59 construction of a new stormwater management facility, the
 60 County must perform all structural maintenance on the facility
 61 if the facility serves residential property ~~[[or [associated] is a~~
 62 facility built or retrofitted by the County that serves
 63 nonresidential property]] unless the inspection and maintenance
 64 agreement requires the property owner to be responsible for
 65 structural maintenance of the facility. No other person may
 66 perform structural maintenance on a stormwater management
 67 facility that the County is required to structurally maintain
 68 without the County's written consent.

69 (5) Any repair or restoration and maintenance performed under this
 70 Section must comply with each previously approved or newly
 71 submitted plan and any reasonable corrective measure specified
 72 by the Director of Environmental Protection.

73 (c) *Maintenance of existing or retrofitted stormwater management*
 74 *[facilities] systems.*

75 (1) The owner of a stormwater management facility that is not
 76 subject to subsection (b) must perform all structural
 77 maintenance needed to keep the facility in proper working
 78 condition. The owner of a residential property or [associated] a
 79 nonresidential property that contains a stormwater management
 80 facility built or retrofitted by the County, or a homeowners'
 81 association that includes the residential property, may execute a

82 stormwater management easement granting the County a
83 perpetual right of access to inspect, operate, monitor, install,
84 construct, reconstruct, modify, maintain, clean, or repair any
85 part of the stormwater management facility [within] in the
86 easement as needed to assure that the facility remains in proper
87 working condition under approved design standards.

88 (2) If the owner of a stormwater management facility grants a
89 stormwater management easement to the County, the owner
90 must make any structural repairs needed to place the facility in
91 proper working condition, as determined by the Department of
92 Environmental Protection, before the County enters into an
93 inspection and maintenance agreement with the owner that
94 [obligates] makes the County [to assume responsibility]
95 responsible for structural maintenance of the facility. After the
96 owner and the County have agreed that the County will [assume
97 responsibility] be responsible for structural maintenance of the
98 facility, the owner must record in the County land records the
99 easement and any other agreement executed in conjunction with
100 the easement that binds any later owner of the land. The owner
101 must deliver a certified copy of each recorded document to the
102 Department of Environmental Protection.

103 (3) After the Department of Environmental Protection receives a
104 certified copy of the easement and agreements, the County must
105 structurally maintain and inspect the facility as provided in
106 subsection (b).

107 (4) If a property contains [[an ESD treatment]] a stormwater
108 management system that was installed or retrofitted by the

109 County under a sediment control permit, the inspection and
110 maintenance agreement may require the County to maintain the
111 system.

112 * * *

113 **19-29. Stormwater management loan program.**

114 (a) The Department of Environmental Protection must create a
115 Stormwater Management Loan Program. The Program must provide
116 direct loans to eligible homeowners' associations and other residential
117 [and associated nonresidential] property owners to:

- 118 (1) make structural repairs to restore a stormwater management
- 119 facility to acceptable design standards before the owner
- 120 petitions the County to assume responsibility for future
- 121 structural maintenance of the facility under Section 19-28(d), or
- 122 (2) cover the cost of abandoning a facility under Section 19-28(e).

123 * * *

124 **19-29A. Watershed restoration grants program.**

125 (a) The Director of Environmental Protection may establish a Watershed
126 Restoration Grants Program. The purpose of the program is to
127 provide grant funding to non-profit organizations to perform water
128 quality protection or improvement activities that are demonstrably
129 beneficial to the County's efforts to satisfy the regulatory
130 requirements of the County's National Pollutant Discharge
131 Elimination Systems permit.

132 (b) The County Executive may adopt regulations under method (2) that:
133 (1) Describe the eligibility criteria and identifies the types of
134 organizations and activities that may qualify for a grant under
135 the program;

- (2) Specify the procedures to apply for and receive a grant; and
- (3) Include any additional program criteria, standards, and procedures that are consistent with the County's watershed management policies.

* * *

19-35. Water Quality Protection Charge.

* * *

(b) The Charge must be imposed on each [residential property and associated nonresidential] property, as specified in regulations adopted by the Executive under Method (1) to administer this Section. The regulations may define different classes of real property, depending on the amount of impervious surface on the property, stormwater runoff from the property, and other relevant characteristics, for purposes of applying the Charge. [[A property owner may request a credit equal to a percentage, set by regulation, of the Charge if the property contains a stormwater management system that is not maintained by the County or the owner participates in a County-approved water quality management practice or initiative. To receive the credit, the property owner must submit a request to the Director of Environmental Protection in a form prescribed by the Director not later than October 31 of the year before payment of the Charge is due. Any credit granted under this subsection is valid for 3 years.]] The owner of an owner-occupied residential property that is able to demonstrate substantial financial hardship may request an exemption from the Charge for that property based on criteria set by regulation. The owner-occupant may apply for the exemption by submitting a written request to the Director of Environmental

163 Protection not later than April 1 of the year before payment of the
164 Charge is due.

165 * * *

166 (e) [[The regulations may allow credits against and exemptions from the
167 Charge:

168 (1) to the extent that credits and exemptions are not
169 prohibited by State law; and

170 (2) if each credit or exemption will enhance water quality or
171 otherwise promote the purposes of this Article.]]

172 A property owner may request a credit equal to a percentage, set by
173 regulation, of the Charge if the property contains a stormwater
174 management system that is not maintained by the County or the owner
175 participates in a County-approved water quality management practice
176 or initiative. To receive the credit, the property owner must submit a
177 request to the Director of Environmental Protection in a form
178 prescribed by the Director not later than October 31 of the year before
179 payment of the Charge is due. Any credit granted under this
180 subsection is valid for 3 years.

181 * * *

182 **Sec. 2. Implementation.**

183 (a) Notwithstanding County Code Section 19-35(b), as amended by
184 Section 1 of this Act, the Director of Finance must phase in the Water
185 Quality Protection Charge as provided in this Section.

186 (b) The Director must phase in over 3 years any increase in the Charge
187 that results from the application of Section 19-35(b), as amended by
188 Section 1 of this Act, or any regulation adopted under that Section, by
189 including:

- 190 (1) only one-third of the additional impervious surface that has
- 191 been added to the calculation of the Charge in the fiscal year
- 192 that begins on July 1, 2013;
- 193 (2) only two-thirds of the additional impervious surface that has
- 194 been added to the calculation of the Charge in the fiscal year
- 195 that begins on July 1, 2014; and
- 196 (3) the full amount of the additional impervious surface that has
- 197 been added to the calculation of the Charge in the fiscal year
- 198 that begins on July 1, 2015.
- 199 (c) The phase-in established in this Section does not apply to any portion
- 200 of the Charge that results from the inclusion in the calculation of the
- 201 Charge of any impervious surface area that is created after this Act
- 202 takes effect.
- 203 (d) To receive a credit under Section 19-35(b) for the fiscal year that
- 204 begins on July 1, 2013, the property owner must submit a request to
- 205 the Director of Environmental Protection on a form prescribed by the
- 206 Director not later than July 31, 2013.
- 207 (e) To receive an exemption under Section 19-35 (b) for the fiscal year
- 208 that begins on July 1, 2013, the property owner must submit a request
- 209 to the Director of Environmental Protection in a form prescribed by
- 210 the Director not later than September 1, 2013.

211 *Approved:*

212 _____
 Nancy Navarro, President, County Council Date

Proposed Edits to WQPC Legislation 34-12
Department of Environmental Protection
March 7, 2013

Page and line numbers refer to the document in the file titled "Bill 34-12rvsd030813.doc"

Page 3 lines 43-46.

Remove "or nonresidential property that contains a stormwater management facility built or retrofitted by the County".

Reason: The language was added to allow DEP to perform structural maintenance on a facility on a nonresidential property if DEP installed a stormwater retrofit. Based on discussions with the County Attorney's Office, it was determined that Section 19-28(b) refers to stormwater management systems installed as part of new development or redevelopment, and 19-28(c) refers to stormwater management systems that are existing or retrofitted. Any retrofit would, therefore, occur under subsection (c). So the reference to retrofit was under subsection (b) is removed.

Page 4 lines 63-65.

Add "unless the inspection and maintenance agreement requires the property owner to be responsible for structural maintenance of the facility".

Reason: Currently any new residential facility must be placed in the County's structural maintenance program. In order for a residential property owner to receive a credit, the property owner must perform all maintenance on its stormwater facility. The language change will give residential property owners the option of keeping all maintenance responsibilities (i.e., structural and non-structural) so that they can receive the credit.

Page 4 line 73.

Add "or retrofitted"

Reason: This clarifies that Section 19-28 (c) is the provision that addresses stormwater management systems built or retrofitted by the County.

Page 5 lines 107-108.

Replace "an ESD treatment" with "a stormwater management".

The original language limited the types of stormwater management systems that DEP could maintain to ESD treatment systems. Revised language allows DEP to build any type of stormwater management system on private property and perform maintenance.

Pages 6-7 lines 124-139.

Add new Section 19-29A.

Reason: The new section creates a grant program for non-profit organizations in accordance with Md. Code Ann., Envir. § 4-202.1 (h) (4) (vi). This was requested by some stakeholders, and it supports outreach requirements of the County's MS4 Permit by authorizing DEP to issue grants directly to non-profit organizations.

Pages 7-8 lines 149-158 and 172-180.

Remove the language concerning credits from Section 19-35 (b) and replace the language concerning credits and exemptions under subsection (e).

Reason: The added provisions on credits and exemptions under Section 19-35 make the current language under subsection (e) unnecessary.

Page 9 lines 207-210

Add language concerning the implementation of the hardship exemption for the first year.

Reason: Due to timing, the WQPC will have been billed to eligible property owners before they have had the opportunity to apply for a hardship exemption in the first year of implementation. We added language to allow for the application period to extend until September 1.



DEPARTMENT OF THE NAVY
COMMANDER
NAVY REGION, MID-ATLANTIC
1510 GILBERT ST.
NORFOLK, VA 23511-2737

IN REPLY REFER TO:
5090
EVN40/09/RE092

071708

FEB 25 2013

Montgomery County Council
100 Maryland Avenue, Fifth Floor
Rockville, MD 20850



RECEIVED
MONTGOMERY COUNTY

REC'D
FEB 27 11 32

Ladies and Gentlemen:

SUBJECT: MONTGOMERY COUNTY BILL 34-12, STORMWATER MANAGEMENT - WATER QUALITY PROTECTION CHARGE

As the Department of Defense (DoD) Regional Environmental Coordinator (REC) for EPA Region III and on behalf of all the military services, we are responsible for coordinating responses to various environmental policies or regulatory matters of interest. The DoD appreciates the opportunity to provide comments regarding Montgomery County Council Bill 34-12, Stormwater Management - Water Quality Protection Charge.

There are several concerns we would like to discuss. First, in accordance with guidance/direction from the Maryland Department of the Environment, federal facilities already submit Erosion and Sediment Control Plans for land disturbing projects to the State vice County for approval. Therefore, submitting these plans to the County for a sediment control permit, as currently proposed, is redundant and should not pertain to federal facilities.

Second, Bill 34-12 would require property owners to place in County records an easement and agreement related to BMP inspection and maintenance. Federal properties, to include DoD installations, are prohibited from placing easements on federal lands and DoD installations in Montgomery County would not be able to comply with this provision. We request that you place specific exemption language making it clear that federal lands are exempt from this easement requirement.

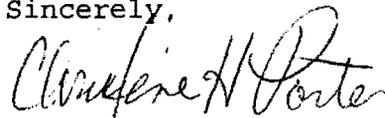
Third, we do not believe federal law permits federal agencies to pay the proposed Water Quality Protection Charge as set out in Section 19-35 of the proposed bill. The Clean Water Act was amended in 2011 to provide for the payment of reasonable service fees by federal agencies. However, payment is conditioned on several factors. For a state or local stormwater charge to be payable by a DoD facility, a stormwater service charge must: (1) relate to the control and abatement of water pollution; (2) be reasonable; (3) be nondiscriminatory; (4) be based on some fair approximation of the proportionate contribution of the property or facility to stormwater pollution; (5) be based in terms of quantities of pollutants, or

volume or rate of stormwater discharge or runoff from the property or facility; (6) be used to pay or reimburse the costs associated with any stormwater management program; and (7) may include the full range of programmatic and structural costs attributable to collecting stormwater, reducing pollutants in stormwater, and reducing the volume and rate of stormwater discharge (33 U.S.C.A. § 1323(c)).

There are a number of DoD facilities within Montgomery County. Most of these are or will be regulated by the Maryland MS4 Phase II General Permit. In addition, stormwater runoff from a number of these facilities discharges directly to U.S. waters vice into Montgomery County's MS4 system. Therefore, the Water Quality Protection Charge for these facilities with respect to stormwater discharges to the County MS4 system would not clearly relate to the control and abatement of water pollution, be reasonable, be based on some fair approximation of the proportionate contribution of the property or facility to stormwater pollution, or be based in terms of quantities of pollutants, volume, rate of stormwater discharge, or runoff from the property.

If you have any questions, please contact Lieutenant Commander Mark P. Nevitt at mark.nevitt@navy.mil, telephone (757) 322-2938 or Mr. William Bullard at william.bullard@navy.mil or telephone (757) 341-0429.

Sincerely,



CHRISTINE H. PORTER
Director for Regional
Environmental Coordination
By direction of the Commander

Copy to: U.S. Army REC, Region III (Ms. Amy Alton)
U.S. Air Force REC, Regions I, III (Mr. Ron Joyner)

1. Who will be attending the T&E worksession on March 11?

Bob Hoyt

Kathleen Boucher

Steve Shofar

Vicky Wan

Lauren VanderTak (CH2M Hill)

Keith Bishton (CH2M Hill)

2. When do you expect the draft regulations to be transmitted to the Council?

Draft regulations were transmitted to Council along with the proposed Bill. I am attaching another copy here. These draft Regulations were published in the County Register on November 1, 2012. We did not receive comments on the Regulations. We have made some clarifying edits to the draft Regulations based on feedback received after the public hearing. For example, a comment was made that our use of “may issue a credit” was too vague, so we’ve changed that language to “must issue a credit”. We are also in the process of amending the Regulations to create a grant program, as requested by some stakeholders and as authorized by State law. The grant program will also support our MS4 outreach efforts. Our intent is to submit the final proposed Regulation to Council after we discuss the Bill and draft Regulation with the T&E Committee.

Based on stakeholder feedback, we recommend several technical and clarifying amendments to the Bill. To facilitate the Committee’s discussion of these amendments, we are attaching a marked up version of the Bill and a written explanation for each requested change. These amendments include grant making authority for non-profit organizations as authorized by the new State Law.

3. Does the 3 year phase-in affect **all** properties that will experience an increase in their charge as a result of the legislation? It seems that properties could experience an increase in their charge for multiple reasons including: A) They will now pay a charge where they did not before (non-residential properties that are not considered “associated non-residential”) B) Single Family properties that fall into Tier 4 or higher, and C) Cases like the Montgomery Village Foundation that have not been assessed for private road imperviousness but will now be assessed going forward. Does the phase-in apply in all of these cases?

Yes, properties may experience increases in the charge for all of the reasons listed above. In addition, non-residential properties that have been charged because they are associated non-residential properties will now be charged for the entire impervious surface on the property and not just the drainage into residential stormwater facilities. However, the 3-year phase-in only applies to the portion of the impervious surface on any of these properties for which the charge has not been previously imposed.

As you stated above, residential properties that fall into Tier 4 or higher will experience an increase in their charge. In addition, larger townhomes who were paying .33 of an ERU may now see an increase as well. All of the above increases will be phased-in under the proposal.

4. How many more non-residential properties will be assessed under the new legislation/regulations. How many equivalent ERUs will this be?

Approximately 5,000 more non-residential properties will be assessed a WQPC under the new legislation/regulations. By phasing-in all new impervious area over three years, as proposed, these properties will account for approximately 21,400 ERUs in the first year. By year three, these properties will account for approximately 64,300 ERUs.

4. Please provide the approximate number of residential properties that will fall into each residential tier.

Number of Properties and SFR phase-in of IA

WQPC subtype	Impervious Area (sf)	Phase-in Year 1	Phase-in Year 2	Phase-in Year 3
Tier 1	<=1,000	47,262	42,609	40,278
Tier 2	>1,000 and <=1,410	13,320	17,389	18,431
Tier 3	>1,410 and <=3,412	128,772	114,889	106,402
Tier 4	>3,412 and <=3,810	5,502	7,351	8,114
Tier 5	>3,810 and <=5,815	9,275	15,221	18,238
Tier 6	>5,815 and <=6,215	645	1,361	1,854
Tier 7	>6,215	2,702	8,658	14,161
Total		207,478	207,478	207,478

Source: CH2M HILL. January 4, 2013. "Draft Technical Memorandum — ERU Analysis and WQPC Rate Model Update."

The number of properties in each tier changes during the phase in period because the square footage calculations used to place a property in a tier changes. All single family homes are currently assessed the WQPC based on 1 Equivalent Residential Unit (ERU), which is calculated to be 2,406 sq. ft. Under the proposed system, a house with actual imperviousness of 6,000 sq. ft. would see a total increase of 3,594 sq ft. For the first year of the phase in, only 1/3 of this new imperviousness would be added back to the base of 2,406. This would provide a phase-in value of 3,604 sq. ft. and place the property in Tier 4 for Year 1 of the phase-in, but 4,802 sq. ft. or Tier 5 in Year 2 of the phase-in, and then Tier 6 in the third year.

5. Approximately how many townhouse properties will pay more (i.e. fall into Tier 2 or higher) as a result of the tiered structure?

Based on the proposed phase-in structure, in the first year, approximately 1,900 residential properties currently classified as RSFA will fall into Tier 2 or higher. In the second year, approximately 6,200 residential properties currently classified as RSFA will fall into Tier 2 or higher. In the third year, approximately 8,400 residential properties currently classified as RSFA will fall into Tier 2 or higher.

MEMORANDUM

March 7, 2013

TO: Transportation, Infrastructure, Energy & Environment (T&E) Committee

FROM: *KL* Keith Levchenko, Senior Legislative Analyst

SUBJECT: **Worksession:** Bill 34-12, Stormwater Management – Water Quality Protection Charge and Draft¹ Executive Regulation 17-12: Water Quality Protection Charge

NOTE: Executive Regulation 17-12 would implement changes in the Water Quality Protection Charge enabled by Council Bill 34-12, Stormwater Management – Water Quality Protection Charge (discussed in T&E Item #1A). County legislation is needed to meet the requirements contained in Maryland House Bill 987 (approved during the 2012 State Legislative Session). Bill 34-12 also includes modifications to the Water Quality Protection Charge recommended by the County Executive.

Attachments to this Memorandum

- Draft Executive Regulation 17-12: Water Quality Protection Charge (Method 1)² (©1-10)

Water Quality Protection Charge Background

In 2001, the Council approved Bill 28-00, which created the stormwater management fund (called the Water Quality Protection Fund). This fund is supported by the annual Water Quality Protection Charge. The charge is based on an equivalent residential unit (ERU), defined as 2,406 square feet (which was the calculated statistical median of the total horizontal impervious area of developed single-family detached residences in the County at the time the fund was established).

¹ Executive Regulation 17-12 has not yet been formally transmitted to the Council. However, a draft was included with the Executive transmittal of Water Quality Protection Charge legislation (Bill 34-12).

² As a Method 1 regulation, Regulation 17-12 is not adopted until the Council approves it. The Council may approve or disapprove the regulation by resolution. The regulation takes effect upon adoption unless a later date is specified.

The ERU rate is the amount each property owner of a single-family detached home currently pays annually for each property owned. Townhouse owners pay 1/3 of an ERU, under the assumption that townhouses on average have less impervious area per unit than detached homes. Condominiums and apartments are assessed based on actual imperviousness that is converted to an ERU number. "Associated" non-residential properties (i.e., properties that drain into facilities that also serve residential properties) are also charged based on actual imperviousness.

The Council is required to set the ERU rate each year by resolution. The FY13 rate is \$92.60. For FY13, the County billed an estimated 248,930 ERUs. The net annual revenue³ generated per dollar charged per equivalent residential unit (ERU) is approximately \$233,000. Overall, for FY13, the Water Quality Protection Fund is assumed to raise about \$23 million from the charge.

Revenue from the County's excise tax on disposable shopping bags also goes to the Water Quality Protection Fund. The FY13 budget assumes \$561,640 in revenue from this source.

NPDES MS4 Permit

Revenue from the Water Quality Protection Fund is used to fund the activities required under the County's National Pollutant Discharge Elimination Systems Municipal Separate Storm Sewer System (NPDES MS4) permit.

DEP is the lead agency for Montgomery County with regard to the NPDES MS-4 permit. The Maryland Department of the Environment (MDE) is the State agency responsible for approving NPDES permits, which are required as part of the Clean Water Act enforced by the Environmental Protection Agency. The current 5-year permit was issued by MDE on February 16, 2010.

The major requirements of the County's NPDES-MS4 Permit are:

1. Complete restoration efforts for an additional 20 percent of the County's impervious, urban surfaces not currently restored to the maximum extent practicable. **This is the primary driver of CIP costs under the permit.**
2. Support regional strategies to reduce trash and increase recycling, as set forth in the Trash Free Potomac Watershed Initiative 2006 Action Agreement, to eliminate trash in the Anacostia and Potomac Rivers.
3. Implement TMDL limits to restore impaired waterways in the County by developing and implementing plans to reduce nonpoint source pollutant loads (e.g., from stormwater). Ensure anti-degradation measures for high quality waters (Tier II waters) within the County, including appropriate reviews prior to approval of capital projects, water/sewer

³ The charge is paid by Gaithersburg residents, but the revenue received is passed back (minus an administrative fee) to the City of Gaithersburg, which spends the revenue on stormwater management-related projects in the City.

plan amendments, and any development with the potential to affect water quality and downstream water quality.

4. Establish long-term schedules for identifying sources of pollution and water quality improvement opportunities for all watersheds in the County.
5. Use environmental site design/low-impact development as a method to capture stormwater by improving the County's stormwater management laws/regulations and modifying the County's planning and zoning codes as needed. Environmental Site Design (ESD), as outlined in Chapter 5 of the Maryland Stormwater Management Act, is required to be implemented to the maximum extent practicable.
6. All new construction in the County must follow the State stormwater controls as defined in the Stormwater Management Act of 2007. Chapter 5 of the Stormwater Management Act on Environmental Site Design requires developers to maintain after development, as nearly as possible, the predevelopment runoff characteristics to the maximum extent practicable.
7. Detect and eliminate illegal, non-stormwater discharges into the storm drain.
8. Involve and engage the public in the process of stormwater control.

A portion of the Water Quality Protection Fund is also appropriated to the Montgomery County side of M-NCPPC for its water quality activities required to meet separate permits.

The cost implications for implementation of the current permit are substantial. In the fall of 2011, DEP estimated the permit costs at about \$305 million through 2015 and nearly \$1.9 billion through 2030.

Major Elements of the Draft Regulation

Draft Executive Regulation 17-12 would result in a number of substantive changes to the structure of the Water Quality Protection Charge. These are summarized below, with Council Staff comments also provided.

Broadening of the Charge

Under the current law, non-residential properties that DO NOT drain into residential facilities are not assessed a charge. Agricultural properties are not assessed either. Under Bill 34-12 and the new regulation, all properties would be assessed a charge. Credits would be available for properties that have on-site stormwater management systems and/or have certain best management practices in place. Also, for agricultural properties, only the residential portion of the property would be assessed.

This broadening of the charge is required under HB 987. While credits and exemptions are allowed as well, the law clearly assumes that all properties (with the exception of State and local government facilities and volunteer fire departments) are to be assessed a charge.

One issue that came up in recent years involved the assessment of privately owned roads. The Montgomery Village Foundation asked DEP to not charge it for private roads on its properties, the argument being that publicly-owned neighborhood roads are not assessed and that private roads serve a similar purpose. However, HB 987 does not provide an exception for private roads and Bill 34-12 and Executive Regulation 17-12 assume to assess private roads with all other privately owned impervious area.

It should be noted that Bill 34-12 provides for a 3 year phase-in of the charge for those properties that experience an increase in the impervious area being charged. *Council Staff has asked Executive Staff for clarification on precisely who would be eligible to receive this phase-in. However, it appears that properties not previously charged, or properties now having more impervious area charged, would have their resulting increased assessment phased-in over 3 years.*

Adding Tiers to the Charge

The existing charge for single-family residential properties has only two tiers (one for detached homes – which pay 1 ERU; and one for townhouses – which pay 1/3 of an ERU). The new regulation creates 7 tiers, based on where a property falls in terms of its actual impervious surface.⁴ These tiers are defined in the regulation (see ©3-5). Tier 1 properties would pay 33 percent of an ERU (the same charge currently paid by townhouses). Tier 7 properties would pay 300 percent of an ERU.

This new approach is far more progressive than the current charge, since residential properties with higher amounts of imperviousness will pay more than other residential properties. Under the current structure, for example, a 25,000 square foot mansion with long driveways and a guest house would pay the same annual charge (1 ERU) as a small bungalow. For this reason, Council Staff believes this new tiered approach is far superior to the existing structure.

Council Staff has asked Executive Staff for more information on the fiscal impact associated with the particular tier structure chosen, how many properties would fall into each tier, and what percent of properties would pay more or less under this new structure.

Credits

House Bill 987 requires counties to establish credits to properties for on-site or off-site systems or activities that improve stormwater quality or reduce stormwater quantity discharged from the property. Regulation 17-12 makes these types of credits available to residential and non-residential property owners.

For non-residential and multi-family residential property owners, on-site stormwater management systems on a property can result in up to as much as a 50 percent credit. Environmentally sensitive design practices can result in up to as much as a 60 percent credit.

⁴ Each property's impervious surface is to be determined by DEP through GIS mapping.

For single-family residential property owners, credits up to 50% of the charge are available for properties that implement various practices detailed in the regulation (see ©7).

Council Staff is supportive of this credit structure, but suggests one change in the regulation language in Sections 5A and 5C, “The Director may issue or may award a credit...”. Council staff suggests this language be clarified to clearly note that these credits are assured if the property owner’s practices are confirmed by DEP. The current language could be read to imply that the credits are awarded at the discretion of the Director (and could theoretically be denied for other reasons (such as fiscal reasons)).

Financial Hardship Exemption

House Bill 987 requires counties to establish an exemption related to “substantial financial hardship.” The State law leaves it to the jurisdiction to determine the criteria for determining eligibility for this exemption. Under the new regulation (see ©9-10), a property owner may seek a financial hardship exemption if

“the property owner’s gross household income does not exceed 110 percent of the poverty guidelines published by the United States Department of Health and Human Services for the year before the payment of the Charge is due.”

As with the credits, this section is vague as to what grounds the Director can use to deny a request or why a reconsideration process would be needed, given the criteria appear to provide a simple yes/no answer as to whether a property owner meets the criteria.

Council Staff is also concerned that the exemption appears to be an all or nothing proposition. It seems a sliding scale approach would be more equitable. Given the simplicity of comparing gross income to a poverty guideline, a sliding scale would seem to be a relatively easy approach to implement. **Council Staff supports a sliding scale exemption and has asked Executive Staff to consider this approach.**

As noted in the Council Staff Packet T&E Committee #1A, Bill 34-12 and the draft regulation provide a hardship exemption only for owner-occupied residential properties. If the Council wishes to consider broadening the exemption to non-residential properties, an amendment to Bill 34-12 would be needed.

Attachment

KML:f:\levchenko\dep\stormwater\t&e wqpc regulation 17-12.doc



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Water Quality Protection Charge	Number 17-12
Originating Department Department of Environmental Protection and Department of Finance	Effective Date

Montgomery County Regulation on:

WATER QUALITY PROTECTION CHARGE

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND
DEPARTMENT OF FINANCE

Issued by: County Executive
Regulation No. 17-12

Authority: Code Section 19-35
Supersedes: Executive Regulation 6-02AM
Council Review: Method (1) under Code Section 2A-15
Register Vol. 29 No. 7

Comment Deadline: December 15, 2012

Effective Date: _____

Sunset Date: None

Summary: This regulation amends Executive Regulation 6-02AM, which establishes the procedure to set rates for and implement a water quality protection charge to be applied to certain properties based on those properties' contribution of runoff to the County's stormwater management system.

Address: Written comments on these regulations should be sent to:

Steven Shofar, Chief
Division of Watershed Management
Department of Environmental Protection
255 Rockville Pike
Rockville, Maryland 20850

Staff Contact: For further information or to obtain a copy of this regulation, contact Steve Shofar at (240) 777-7736.



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject Water Quality Protection Charge	Number 17-12
Originating Department Department of Environmental Protection and Department of Finance	Effective Date

Section 1. General Provisions

- A. **Authority.** In accordance with the authority conferred under Chapter 19, Section 19-35, of the Montgomery County Code, [1994] 2004, as amended (hereinafter referred to as the "Code"), the County Executive hereby promulgates this regulation for the purpose of implementing the County's Water Quality Protection Charge as set forth in Chapter 19 of the Code.
- B. **Applicability.** This regulation applies to all owners of residential property and [associated] nonresidential property in Montgomery County, Maryland.

Section 2. Definitions

The definitions of the terms used in this regulation are provided in Chapter 19, Section 19-21, of the Code. For purposes of this regulation, the following additional words and phrases will have the meaning respectively ascribed to them in this regulation unless the context indicates otherwise:

Agricultural Property – A property that is used primarily for agriculture, viticulture, aquaculture, silviculture, horticulture, or livestock and equine activities; temporary or seasonal outdoor activities that do not permanently alter the property's physical appearance and that do not diminish the property's rural character; or activities that are intrinsically related to the ongoing agricultural enterprise on the property.

Base Rate - The annually designated dollar amount set by the County Council to be assessed for each equivalent residential unit of property that is subject to the Water Quality Protection Charge.

Condominium - A [residential] property that is subject to the condominium regime established under the Maryland Condominium Act.

Director - The Director of the Montgomery County Department of Environmental Protection or the Director's designee.

Equivalent Residential Unit or ERU - The statistical median of the total horizontal impervious area of developed single[-]family detached residences in the County that serves as the base unit of assessment for the Water Quality Protection Charge. The designated ERU for Montgomery County equals 2,406 square feet of impervious surface.

Multifamily Residential Property - A mobile home park or a residential building where one or more dwelling units share a common entrance from the outside with other dwelling units that are arranged above, below or next to one another in the same building[.], and any housing unit that is subject to the



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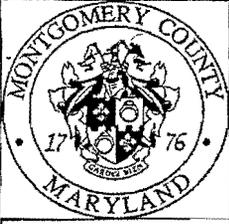
condominium regime established under the Maryland Condominium Act.

Water Quality Protection Charge or Charge - An assessment levied by the Director of Finance to cover the cost of constructing, operating, and maintaining facilities within the County's stormwater management system and fund related expenses allowed under applicable state law based on the impact of stormwater runoff from the impervious areas of developed land in the County.

Section 3. Classification of Properties

For purposes of determining the appropriate assessment rate, all properties that are subject to the Water Quality Protection Charge are assigned to one of the following classifications:

- A. [Detached] Single family Residential Tier 1 (SFR1): [single family residential property:] For [detached] single[-]family residential properties[,] where the estimated total impervious area is less than or equal to 1,000 square feet and includes the house, driveways, sidewalks, sheds, and any other fixtures on the property that are impenetrable by water.
- B. [Attached single-family residential property: Attached single-family residential properties, which include townhouses and duplexes, contain the same kind of impervious area as detached single-family residential properties.] Single family Residential Tier 2 (SFR2): For single family residential properties where the estimated total impervious area is greater than 1,000 square feet and less than or equal to 1,410 square feet and includes the house, driveways, sidewalks, sheds, and any other fixtures on the property that are impenetrable by water.
- C. [Multifamily residential property: For multifamily residential properties the impervious area includes the residential structures that contain the dwelling units, the sidewalks, parking lots and any other permanent installations on the developed parcel, whether under single or common ownership, that is impenetrable by water.] Single family Residential Tier 3 (SFR3): For single family residential properties where the estimated total impervious area is greater than 1,410 square feet and less than or equal to 3,412 square feet and includes the house, driveways, sidewalks, sheds, and any other fixtures on the property that are impenetrable by water.
- D. Single Family Residential Tier 4 (SFR4): For single family residential properties where the estimated total impervious area is greater than 3,412 square feet and less than or equal to 3,810 square feet and includes the house, driveways, sidewalks, sheds, and any other fixtures on the property that are impenetrable by water.
- E. Single Family Residential Tier 5 (SFR5): For single family residential properties where the



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estimated total impervious area is greater than 3,810 square feet and less than or equal to 5,815 square feet and includes the house, driveways, sidewalks, sheds, and any other fixtures on the property that are impenetrable by water.

F. Single Family Residential Tier 6 (SFR6): For single family residential properties where the estimated total impervious area is greater than 5,815 square feet and less than or equal to 6,215 square feet and includes the house, driveways, sidewalks, sheds, and any other fixtures on the property that are impenetrable by water.

G. Single Family Residential Tier 7 (SFR7): For single family residential properties where the estimated total impervious area is greater than 6,215 square feet and includes the house, driveways, sidewalks, sheds, and any other fixtures on the property that are impenetrable by water.

H. Multifamily residential property: For multifamily residential properties the impervious area includes the residential structures that contain the dwelling units, the sidewalks, parking lots and any other permanent installations on the developed parcel, whether under single or common ownership, that is impenetrable by water.

I. [Associated nonresidential] Nonresidential property: [Associated nonresidential] Nonresidential properties may include commercial properties such as office buildings, hotels, retail establishments or industrial properties such as factories and warehouses. [Associated nonresidential] Nonresidential properties also include properties owned by homeowner associations, not-for-profit entities such as religious institutions, healthcare facilities, [and] other developed properties devoted to non-governmental charitable and institutional uses[.], and any government-owned properties subject to the Charge. The impervious area for these properties includes all buildings, parking lots, sidewalks, and any other impermeable installations permanently attached to the land parcel containing those installations.

J. Agricultural property: The impervious area for agricultural properties only includes the houses on those properties.

Section 4. Rates

A. [Detached single-] Single family residential properties: The Charge for each [detached] single-family residential property is based on a percent of the [full applicable] base rate for one ERU[.] in accordance with its assigned tier classification as follows:



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[B.] (1) [Attached single-family residential properties:] Single Family Residential Tier 1 (SFR1): The Charge for each [attached single-family residential] Single Family Residential Tier 1 property is 33 percent of the applicable base rate for one ERU.

[C.] (2) Single Family Residential Tier 2 (SFR2): The Charge for each Single Family Residential Tier 2 property is 50 percent of the applicable base rate for one ERU.

(3) Single Family Residential Tier 3 (SFR3): The Charge for each Single Family Residential Tier 3 property is 100 percent of the applicable base rate for one ERU.

(4) Single Family Residential Tier 4 (SFR4): The Charge for each Single Family Residential Tier 4 property is 150 percent of the applicable base rate for one ERU.

(5) Single Family Residential Tier 5 (SFR5): The Charge for each Single Family Residential Tier 5 property is 200 percent of the applicable base rate for one ERU.

(6) Single Family Residential Tier 6 (SFR6): The Charge for each Single Family Residential Tier 6 property is 250 percent of the applicable base rate for one ERU.

(7) Single Family Residential Tier 7 (SFR7): The Charge for each Single Family Residential Tier 7 property is 300 percent of the applicable base rate for one ERU.

B. Multifamily residential properties: The Charge for each multifamily residential property is based on the number of ERUs assigned to the property in accordance with the following procedure:

(1) The Director determines the number of ERUs for a multifamily residential property by dividing the property's actual impervious area by the designated ERU for Montgomery County.

(2) The Director computes the billable Charge by multiplying the base rate by the total number of ERUs assigned to the property.

(3) If the multifamily residential property is a condominium development, the Director calculates the Charge to be billed in equal shares to the owners of the development by dividing the total ERUs calculated for the property by the number of individual condominium units and then multiplying the sum by the base rate to determine the amount billable to each unit owner.



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[D.] C. [Associated nonresidential] Nonresidential properties: The Charge for [the owner of] each [associated] nonresidential property is based on the number of ERUs assigned to the property in accordance with the following procedure:

- (1) The Director determines the number of ERUs for [an] a [associated] nonresidential property by dividing the property's actual impervious area by the designated ERU for Montgomery County.
- (2) The Director computes the billable Charge by multiplying the base rate by the total number of ERUs assigned to the property.
- (3) If the nonresidential property is a condominium development, the Director calculates the Charge to be billed in equal shares to the owners of the development by dividing the total ERUs calculated for the property by the number of individual condominium units and the multiplying the sum by the base rate to determine the amount billable to each unit owner.

D. Agricultural properties: The Charge for each agricultural property is based on a percent of the base rate for one ERU in accordance with the applicable Single Family Residential Tier.

Section 5. Credits

A. The Director may issue a credit to a nonresidential or multifamily residential property owner if the property contains a stormwater management system and the system is maintained in accordance with the maintenance requirements of the Department of Environmental Protection. A property may be credited for treatment of off-site drainage from other properties located within the same drainage area as that property. A property that does not contain a stormwater management system may be credited if located within the same drainage area as another property that contains a stormwater management system if both properties have the same owner. However, a property owner may not receive a credit based on a calculation that exceeds the total impervious area on the property for which the credit is issued. A property owner may receive a maximum credit of 50 percent for a combination of ESD and other stormwater management systems or a maximum credit of 60 percent if the property is completely treated by ESD practices alone. Otherwise, the Director will calculate the credit based on the following criteria:

- (1) 25 percent credit for the treated impervious area if the facility is designed to manage the full water quality volume;
- (2) 25 percent credit for the treated impervious area if the facility is designed to manage the



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full channel protection volume; or

(3) 60 percent if the property is designed to treat the entire ESD volume using ESD practices.

B. Requests for credit by the property owner must be submitted on form approved by the Department of Environmental protection.

C. The Director may award a maximum credit of 50% as provided in Table 2 to the owner of a single family residential property if the property contains a County approved stormwater management system and the system is maintained in accordance with the maintenance requirements of the Department of Environmental Protection. To receive the credit, the owner must submit a request using a form provided by the Department.

Table 2. Single Family Residential Credit Calculation Criteria

<u>System Type</u>	<u>Percentage</u>
<u>Adopt a Best Management Practice</u>	<u>50</u>
<u>Rain garden, pervious pavement, green roof</u>	<u>25</u>
<u>Conservation landscaping, dry well, rooftop disconnection</u>	<u>15</u>
<u>Cistern/rain barrel (>=200 gallon)</u>	<u>10</u>

D. Application Schedule

(1) To receive the credit, the property owner must submit a request to the Director of Environmental Protection in a form prescribed by the Director not later than October 31 of the year before payment of the Charge is due.



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- (2) Once approved, the credit is valid for three years. To renew the credit, the Property owners must submit a new request to the Director in a form prescribed by the Director not later than October 31 of the year before payment of the Charge is due.

Section 6. Billing and Payment

- A. The Director must prepare and forward to the Director of Finance the necessary data for collecting the Water Quality Protection Charge from owners of property subject to the Charge. The data must include the identification of every parcel to be charged and the amount of the Charge.
- B. The Director of Finance must include the Charge as a separate line item on the real estate tax bill for each property subject to the Charge.
- C. The Director of Finance must deposit all payments collected under this Section into a County stormwater management fund.
- D. Interest on any overdue payment accrues according to the same schedule and at the same rate charged for delinquent real property taxes until the owner has remitted the outstanding payment and interest. An unpaid Charge is subject to all penalties and remedies that apply to unpaid real property taxes. If the unpaid Charge becomes a lien against the property, the lien has the same priority as a lien imposed for nonpayment of real property taxes.

Section [6] 7. Requests for Adjustment; Appeals

- A. A property owner may request a review and adjustment of the Charge by petitioning the Director in writing [within 21 days], not later than September 30 of the year that payment of the Charge is due, after the property owner receives a bill for the Charge if the property owner believes that the Charge has been assigned or calculated incorrectly.
- B. When submitting a petition for review of the Charge, the property owner must include a detailed statement of the basis for the petition and documents supporting the property owner's assertion that the property should be assigned to a different classification, the impervious area measurements used to calculate the ERUs for the property are incorrect, or the property is not subject to the Charge under applicable law.
- C. Within 60 days after receiving the petition, the Director must review the Charge assigned to the property and make a written determination of whether the property owner's request for an



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adjustment of the Charge should be granted or denied. The Director may request additional information from the property owner that the Director reasonably believes will help the Director decide whether the property owner is entitled to an adjustment.

- D. If the Director concludes that the Charge was levied by mistake or resulted from an inaccurate computation, the Director must submit the corrected data to the Department of Finance with a request for an adjustment to the property owner's bill. After receiving the Director's request, the Director of Finance must make an appropriate adjustment based on the new data submitted by the Director and refund any overpayment to the property owner.
- E. If the Director concludes that some or all of the requested adjustment should be denied, the property owner may seek reconsideration of the Director's conclusion by submitting a written request for reconsideration with supporting reasons to the Director within 10 days after the date of the Director's written decision.
- F. If the Director does not approve the request for reconsideration, the property owner may appeal the Director's final decision within 10 days after the Director issues that decision as provided in Chapter 2A, Article I, of [Chapter 2A] the County Code.
- G. The County Board of Appeals is the designated authority charged with hearing and deciding all appeals taken from the Director's final decision to deny any relief requested under this [Section] regulation.

[Section 7. Severability]

[If a court holds that a portion of this regulation is invalid, the other portions remain in effect.]

[Section 8. Effective Date]

[This regulation takes effect upon approval by the County Council.]

Section 8. Requests for Exemption

- A. Before paying the Charge, the owner-occupant of a residential property may apply for a financial hardship exemption from the Charge by submitting a written request to the Director in a form prescribed by the Director not later than April 1 of the year before payment of the Charge is due.
- B. To be eligible for the exemption, the property owner's request must be accompanied by a copy



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of the owner's income tax returns indicating that the property owner's gross household income did not exceed 100 percent of the poverty guidelines published by the United States Department of Health and Human Services for the year before payment of the Charge is due.

- C. The Director must issue a written decision to grant or deny the exemption within 30 days after receiving the request.
- D. Any exemption granted under this Section is only valid for the year that payment of the Charge is due.
- E. If the Director denies the exemption, the property owner may seek reconsideration of the Director's decision by submitting a written request for reconsideration with supporting reasons to the Director within 10 days after the date of the Director's written decision.
- F. If the Director does not approve the request for reconsideration, the property owner may appeal the Director's final decision within 10 days after the Director issues that decision as provided in Chapter 2A, Article I, of the County Code.

Section 9. Severability

If a court holds that a portion of this regulation is invalid, the other portions remain in effect.

Isiah Leggett
County Executive

Approved as to Form and Legality
Office of County Attorney

By _____
Date 10/16/12
Walter E. Wilson