

MEMORANDUM

June 21, 2016

TO: Transportation, Infrastructure, Energy and Environment Committee
FROM:  Keith Levchenko, Senior Legislative Analyst
SUBJECT: Executive Regulation 12-16: Water Quality Protection Charge

Council Staff Recommendation: Approve

Attachments to this Memorandum

- County Executive Transmittal Memorandum and Fiscal Impact Statement (©1-4)
- Executive Regulation 12-16 (Method 1)¹ (©5-16)
- DEP Analysis of Providing Credits to Properties with Public Participation Projects (©17-18)
- Letter dated May 31, 2016 from Paul N. Chod, President, Minkoff Development Corporation (©19-21)
- Summary Chart of Issues/Changes in Bill 11-16 and Executive Regulation 12-16 (©22)

Background

On June 16, 2016, the County Executive transmitted Executive Regulation 12-16 – Water Quality Protection Charge. This regulation includes the following changes:

- Consistent with Expedited Bill 45-15 (enacted in November 2015), the regulation now defines the Water Quality Protection Charge as an excise tax (see ©7).
- Consistent with Expedited Bill 11-16 (currently before the Council), the time to request reconsideration/appeal of decisions regarding the charge amount, credits, and hardship exemptions is extended from the current 10 days to 30 days.
- Consistent with Expedited Bill 11-16, language is included providing a grant request process for improved aircraft landing areas that are exempt from County property taxes (see ©16).

¹ As a Method 1 regulation, Regulation 12-16 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.

- Consistent with Expedited Bill 11-16, the regulation adds language noting that the credit can be revoked if the property owner does not keep the stormwater management facilities in proper working condition (see ©12-13).
- Consistent with Expedited Bill 11-16, the regulation clarifies that to be eligible for credits, a stormwater management system must be maintained by the property owner exclusively (i.e., both non-structural and structural maintenance). Regulation 12-16 goes further than Expedited Bill 11-16 and provides an exception to this requirement for a “stormwater management system...built as part of a County-approved stormwater management participation project.” (See ©11.²)
- The calculation of the credit is modified in several ways (see ©11-12), including:
 - The credit award is based on the proportion of the volume of water treated on site.
 - Properties utilizing traditional stormwater management facilities are eligible for a credit up to 60 percent (currently 50 percent).
 - Properties utilizing environmental site design (ESD) facilities to the maximum extent practicable are eligible for a credit up to 80 percent.
 - The maximum credit for treating offsite stormwater is increased up to 100 percent.

Discussion

Eligibility

Both Expedited Bill 11-16 and ER 12-16 include language clarifying that, for a property owner to be eligible for a credit, the stormwater management system must be exclusively maintained by the property owner. This means the property owner is responsible for both non-structural (typically grass mowing and trash removal around the facility) and structural maintenance (such as dredging and/or other repairs to the facility itself).

Council Staff concurs with the general principal that a property owner should be responsible for structural maintenance on a facility in order to be eligible for credits. When the County is responsible for structural maintenance, the County has assumed a significant long-term liability that must be accounted for within the Water Quality Protection Fund (WQPF). It is fair to expect property owners to pay the full charge to help cover these future costs. The County also must raise revenue within the WQPF for work being done on public property,³ as well as for many other non-site specific costs funded out of the WQPF, such as storm drain maintenance, streetsweeping, stream monitoring, and many other activities.⁴

Executive Regulation 12-16 provides one exception to the above requirement. Property owners who have facilities built as part of a County-approved stormwater management participation project are eligible for a credit, even if the County is responsible for structural maintenance. This exception was not included in the original text of Bill 11-16. However, based on comments received and Council and Staff discussions, the Executive transmitted suggested revised bill language on June 16 similar to what is included in the regulation.

² The County Executive transmitted revised bill language on June 16, 2016, which provides for the exception provided in Executive Regulation 12-16.

³ Approximately 40 percent of the County’s impervious area is publicly owned property (such as roads and buildings).

⁴ The T&E Committee is tentatively scheduled to discuss the activities funded out of the Water Quality Protection Fund later this year.

DEP has provided some background information (see ©17-18) on what “stormwater management participation projects” are, how many facilities fall into this category, and the potential fiscal impact of this proposed change in the bill and regulation. As noted in this information, there were 44 projects built under this approach. While it is unknown how much credit each of the properties where these facilities are located would get, if all of these properties qualified for a 100 percent credit, the fiscal impact would be about \$162,000, or \$0.70 on the water quality protection charge rate.

This proposed exception would allow for the Shady Grove Development Park (a property owned by Mr. Paul Chod, who testified before the Council on Expedited Bill 11-16 and submitted written correspondence on the regulation, see ©19-21) to be eligible for a credit of approximately 40 percent (or about \$14,442 per year) based on the volume of water treated by his stormwater management facility. Mr. Chod contends that he should receive a 100 percent credit, since his facility treats stormwater from off-site properties from which the County collects the full water quality protection charge. The proposed Bill and Regulation language partially addresses his concerns (he is eligible for a credit but not for the full 100 percent credit he is seeking).

Council Staff believes DEP has struck an appropriate balance with this revised language: providing credit eligibility for facilities with a unique history and that provide a regional benefit.

Calculating the Credit

Under Executive Regulation 12-16, all credits are calculated based on the proportion of the volume of stormwater treated, consistent with the 2000 Maryland Stormwater Design Manual as amended. This means the baseline for treatment is to the ESD level (which varies from 1.0 to 2.6 inches in treatment depth).⁵

The credit for properties with traditional stormwater management is increased from 50 to 60 percent. This provides a slightly higher potential credit for properties utilizing traditional stormwater management. It also happens to roughly match the percentage of privately owned impervious area in the County. DEP has also noted that, with the calculation based on the treatment to the ESD level, DEP does not anticipate a significant change in the value of credits provided.

Properties with stormwater management systems that implement ESD to the maximum extent practicable (i.e., the current requirement for new development) are eligible for a higher credit of up to 80 percent. While this provision may not apply to many existing developments, **Council Staff is supportive of this approach of providing a higher credit for those properties that provide this higher level of stormwater management.**

The increase in the maximum credit up to 100 percent for treating off-site stormwater addresses an equity concern raised in recent years. While this change could theoretically help Mr. Chod’s situation, DEP has estimated that his regional pond only treats about 40 percent of the total drainage to ESD levels.

⁵ Environmental Site Design (ESD) volume is a property specific calculation representing the volume of water required to be treated on a property using ESD techniques. The ESD volume is dependent on the impervious area and the soil type of the site. The intention of ESD is to replicate runoff characteristics similar to “woods in good condition”.

Using the ESD treatment level means that properties with traditional stormwater management facilities (such as Mr. Chod's) likely will not qualify for a full credit, since the stormwater management facilities were not designed to the ESD level when built. Mr. Chod contends that older facilities should not be held to the ESD standard for purposes of calculating the credit. **Council Staff believes it is appropriate for DEP to assume the current ESD treatment levels when calculating credits.**

Fiscal Impact (see ©3-4)

The overall fiscal impact of all of the proposed credit changes is estimated to be relatively small.

The new credit to a property owner of an improved aircraft landing area is expected to be \$3,600 in FY16, rising to \$5,600 per year by FY22.

As noted earlier, the new provision allowing credits for stormwater management participation projects could affect up to 44 properties, with a maximum fiscal impact of about \$162,000. However, the actual impact is likely to be much less, since not all of these property owners may seek credits, and those who do may not be eligible for a full 100 percent credit.

Council Staff Recommendation

Council Staff believes Executive Regulation 12-16 provides some improvements to the current credit program for the Water Quality Protection Charge without creating a major fiscal impact requiring significant increases in base rates. **Council Staff recommends approval of Executive Regulation 12-16.**

Attachment

KML:f:\levchenko\dep\stormwater\bill 11-16 and er 12-16\t&e wqpc regulation 12-16.docx



OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

June 16, 2016

TO: Nancy Floreen, County Council President

FROM: Isiah Leggett, County Executive 

SUBJECT: Executive Regulation 12-16 – Water Quality Protection Charge

Please find attached for County Council approval, Executive Regulation 12-16 – Water Quality Protection Charge (WQPC). This Regulation was published in the May Register and received one comment. The attached modifies current regulations governing the WQPC credit program to address the comment received, as well as issues raised by other property owners and the Audubon Naturalist Society.

The Regulation makes the following changes and clarifications to the Code of Montgomery County Regulations (COMCOR):

- Eligibility of Credits under Section 19.35.01.05.A – Clarifies the existing credit eligibility section to clearly state that the stormwater management system must be maintained by the property owner exclusively and in accordance to the maintenance requirements under Section 19-28 of the Code for the property owner to be eligible to receive a credit, unless the property contains a stormwater management system that was built as part of a County-approved stormwater management participation project.
- Modifies Credit Awards under Section 19.35.01.05.B, specifically,
 - Changes the credit award from being dependent on the type of stormwater management facility to now be based on the proportion of the volume of water treated by the stormwater management system.
 - Increases the maximum credit for a nonresidential or multifamily residential property to 100 percent for treatment of adjacent properties.



Fiscal Impact Statement
Executive Regulation XX-16 - Water Quality Protection Charge

1. Regulation Summary.

This regulation, which amends Executive Regulation 16-14AM, would make the following changes to the Water Quality Protection Charge (WQPC):

- a) Clarify the eligibility criteria for a property owner to receive a WQPC credit;
- b) Align the amount of WQPC credit to the proportion of stormwater runoff treated;
- c) Expand the timeframe for a property owner to appeal the denial of a request for a credit or adjustment of the amount of the WQPC billed to the property owner; and
- d) Provide a grant to offset the cost of the WQPC to the owners of improved aircraft landing areas exempt from County property taxes under Section 8-302 of the Tax-Property ("TP") Article, Maryland Code.

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.

For Item 1a: No fiscal impact as a result of this change as this is inserting clarifying language for eligibility criteria that does not alter the current policy of providing a credit only to those properties with facilities that are in proper working condition for which the Department of Environmental Protection (DEP) does not have responsibility to repair or generally manage. The language also allows DEP to revoke a credit application if a stormwater management facility was found to be deficient during the normal inspection process.

For Item 1b: The proposed change increases the maximum WQPC credit from 80 to 100 percent. To be eligible for the maximum credit, the property owner must demonstrate that in addition to treating a property's own stormwater runoff, a stormwater management facility on the owned property is treating offsite stormwater runoff that meets current standards. Based on the type of facilities that are large enough to potentially treat offsite runoff. DEP anticipates minimal fiscal impact as a result of Executive Regulation XX-16. The Water Quality Protection fund fiscal plan includes an estimated budget of \$146,300 in FY17 for stormwater management incentives. This amount provides for both the fiscal impacts from Executive Regulation XX-16 and an estimate of growth in the WQPC credit program participation based on historical data.

For Item 1c: No fiscal impact as a result of this change. This change expands the current timeframe from 10 days to 30 days for a property owner to appeal the denial of a request for a credit or an adjustment.

For Item 1d: This change is limited to owners of improved aircraft landing areas exempt from County property taxes under Section 8-302 of the Tax-Property ("TP") Article, Maryland Code. Currently there is one property in the county that meets this definition. The grant would reduce the WQPC revenues by 40 equivalent residential units (ERUs), or approximately \$3,600 in FY16.

This regulation does not have a fiscal impact on expenditures.

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

For Item 1b:

DEP expects minimal fiscal impact to County revenues for the next 6 fiscal years as a result of Executive Regulation XX-16.

The County Executive's fiscal plan for the Water Quality Protection fund includes estimates for impacts to County revenues resulting from Executive Regulation XX-16. DEP determined these estimates based on participation rates in the WQPC to date and a conservative estimate of the fiscal impact of the first-year of implementation of Executive Regulation XX-16. To date, DEP has received 251 credit applications out of 272,616 accounts charged or less than 1% participation rate.

For Item 1d: Assuming the airport's runway remains the same, the revenue reduction estimates related to the grant program is:

FY16: \$3,600
FY17: \$3,800
FY18: \$4,200
FY19: \$4,600
FY20: \$5,000
FY21: \$5,500
FY22: \$5,600

Any revenue reductions due to credits and/or grants is offset by adjustments to the WQPC in order to generate sufficient revenues to pay for the required stormwater management expenditures and to meet the debt service coverage ratio.

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

Not applicable.

5. An estimate of expenditures related to County's information technology (IT) systems, including Enterprise Resource Planning (ERP) systems.

Not applicable.

6. Later actions that may affect future revenue and expenditures if the regulation authorizes future spending.

Not applicable.

7. An estimate of the staff time needed to implement the regulation.

The additional time is not expected to be significant and can be absorbed by existing WQPC staff.

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

Not Applicable.

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

Additional appropriation is not needed.

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

The fiscal impact of WQPC credits is dependent on the number of properties that qualify for and are awarded credits.

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

See response for item 10.

12. If a regulation is likely to have no fiscal impact, why that is the case.

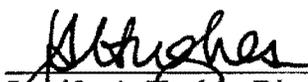
Not applicable.

13. Other fiscal impacts or comments.

Not applicable.

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

Vicky Wan, Department of Environmental Protection
Patty Bubar, Department of Environmental Protection
Matt Schaeffer, Office of Management and Budget



Jennifer A. Hughes, Director
Office of Management and Budget

3/21/16
Date



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Water Quality Protection Charge	Number 12-16
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. 12-16
COMCOR No. 19.35.01

Authority: Code Section 19-35
Supersedes: Executive Regulation 16-14AM
Council Review: Method (1) under Code Section 2A-15
Register Vol. 33 No. 4

Comment Deadline: May 31
Effective Date: _____
Sunset Date: None

Summary: This regulation, which amends Executive Regulation 16-14AM, modifies the Water Quality Protection Charge credit criteria and expands the timeframe for a property owner to appeal the denial of a request for a credit or adjustment of the amount of the Water Quality Protection Charge billed to the property owner.

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

Vicky Wan
Office of the Director
Department of Environmental Protection
255 Rockville Pike
Rockville, Maryland 20850

Staff Contact: For further information or to obtain a copy of this regulation, contact Vicky Wan at (240) 777-7722.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject

Water Quality Protection Charge

Number

12-16

Originating Department

Department of Environmental Protection and Department of Finance

Effective Date

19.35.01.01 General Provisions

- A. **Authority.** In accordance with the authority conferred under Chapter 19, Section 19-35, of the Montgomery County Code, 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 nonresidential property in Montgomery County, Maryland.

19.35.01.02 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 means 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 means 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 means a property that is subject to the condominium regime established under the Maryland Condominium Act.

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

Eligible Nonprofit Property means real property owned by a 501(c)(3) nonprofit organization that is listed with the Maryland Department of Assessments and Taxation as exempt from *ad valorem* property taxes under State law

Equivalent Residential Unit or ERU means 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



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Water Quality Protection Charge	Number 12-16
Originating Department Department of Environmental Protection and Department of Finance	Effective Date

for the Water Quality Protection Charge. The designated ERU for Montgomery County equals 2,406 square feet of impervious surface.

Multifamily Residential Property means 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 condominium regime established under the Maryland Condominium Act.

Parking Lot means any area that is intended for parking of motor vehicles.

Water Quality Protection Charge or Charge means an [assessment] excise tax 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.

19.35.01.03 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. Single Family Residential Tier 1 (SFR1): For single family residential properties where the estimated total impervious area is greater than 0 square feet and 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. 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. 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



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Water Quality Protection Charge	Number 12-16
Originating Department Department of Environmental Protection and Department of Finance	Effective Date

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 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. Nonresidential property: Nonresidential properties may include commercial properties such as office buildings, hotels, retail establishments or industrial properties such as factories and warehouses. Nonresidential properties may also include properties owned by homeowner associations, nonprofit organizations, 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. Nonprofit Tier 1 (NP1): For eligible nonprofit property where the estimated total impervious area is greater than 0 square feet and less than or equal to 6,910 square feet and includes all buildings, driveways, parking lots, sidewalks, and any other impermeable installations permanently attached to the land parcel containing those installations.
- K. Nonprofit Tier 2 (NP2): For eligible nonprofit property where the estimated total impervious area is greater than 6,910 square feet and less than or equal to 54,455 square feet and includes all



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Water Quality Protection Charge	Number 12-16
Originating Department Department of Environmental Protection and Department of Finance	Effective Date

buildings, driveways, parking lots, sidewalks, and any other impermeable installations permanently attached to the land parcel containing those installations.

- L. Nonprofit Tier 3 (NP3): For eligible nonprofit property where the estimated total impervious area is greater than 54,455 square feet and includes all buildings, driveways, parking lots, sidewalks, and any other impermeable installations permanently attached to the land parcel containing those installations.
- M. Agricultural property: The impervious area for agricultural properties only includes the houses on those properties and is assessed in accordance with the Single Family Residential Tier classification.

19.35.01.04 Rates

- A. Single family residential properties: The Charge for each single family residential property is based on a percent of the base rate for one ERU in accordance with its assigned tier classification as follows:
 - (1) Single Family Residential Tier 1 (SFR1): The Charge for each Single Family Residential Tier 1 property is 33 percent of the applicable base rate for one ERU.
 - (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.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Water Quality Protection Charge	Number 12-16
Originating Department Department of Environmental Protection and Department of Finance	Effective Date

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.

C. Nonresidential properties: Except for eligible nonprofit property subject to nonprofit tier classifications under subsection D, the Charge for each 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 a 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 then multiplying the sum by the base rate to determine the amount billable to each unit owner.

D. Nonprofit properties: The Charge for eligible nonprofit property must not exceed the percent of the base rate for one ERU in accordance with the assigned tier classification as follows:

- (1) Nonprofit Tier 1 (NP1): The Charge for each nonprofit property is based on its total impervious area up to 150 percent of the applicable base rate for one ERU.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Water Quality Protection Charge	Number 12-16
Originating Department Department of Environmental Protection and Department of Finance	Effective Date

(2) Nonprofit Tier 2 (NP2): The Charge for each nonprofit property is based on its total impervious area up to 900 percent of the applicable base rate for one ERU.

(3) Nonprofit Tier 3 (NP3): The Charge for each nonprofit property is based on its total impervious area up to 2,300 percent of the applicable base rate for one ERU.

E. 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.

19.35.01.05 Credits

A. Eligibility. If a property contains a stormwater management system, the system must be maintained by the property owner exclusively and in accordance with the maintenance requirements of Section 19-28 of the Code for the property owner to be eligible to receive a credit against the Water Quality Protection Charge unless the system was built as part of a County-approved stormwater management participation project.

B. Credit Awards.

(1) The Director must award a [maximum] credit [of 50], not to exceed 60 percent, based on the proportion of the total volume of water [treated by a combination of] treatment provided by the stormwater management system relative to the environmental site design [and other stormwater management systems maintained by the property owner exclusively, or a maximum credit of 80 percent,] storage volume required under State law as specified in the Water Quality Protection Charge Credit Procedures Manual published by the Director and incorporated by reference as if fully set forth. The volume of treatment required will be based on the [volume of water completely treated by] environmental site design [practices alone, as] specified in the [application provided to a] 2000 Maryland Stormwater Design Manual, as amended.

(2) A nonresidential property or a multifamily residential [property owner if the property contains a County approved stormwater management system and the system is maintained by the property owner exclusively, in accordance with the maintenance requirements of the Department of Environmental Protection. A] property must be credited for treatment of off-site drainage from other properties located within the same drainage area as that property[.], not to exceed 100 percent of the Charge billed to the property owner, if the stormwater management system located on the nonresidential property or multifamily residential property treats the required on-site environmental site



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Water Quality Protection Charge	Number 12-16
Originating Department Department of Environmental Protection and Department of Finance	Effective Date

design storage volume while at the same time providing additional storage volume for off-site drainage. The total credit will be determined by applying the percent credit of off-site property to the impervious area of that off-site property and then adding that computation to the credit for the on-site impervious area, not to exceed 100 percent of the total Charge billed to the property owner as specified in the Water Quality Protection Charge Credit Procedures Manual.

- (3) The owner of [A] a property that does not contain a stormwater management system must be credited if that property is located within the same drainage area as another property that contains a stormwater management system [if] for which the County does not perform structural maintenance and both properties have the same owner. However, a property owner must not receive a credit based on a calculation that exceeds the total impervious area on the property for which the credit is issued.
- (4) The Director must award a credit, not to exceed 80 percent, if the total volume of water treatment is provided by a stormwater management system that implements environmental site design to the maximum extent practicable.
- [B. The Director must award a maximum credit of 80 percent based on the volume of water treated as specified in the application provided by the Department to the owner of a single family residential property or agricultural property if the property contains a County approved stormwater management system that is maintained, by the property owner exclusively, in accordance with the maintenance requirements of the Department of Environmental Protection.]
- C. Application Schedule.
- (1) To receive the credit, the property owner must apply to the Director of Environmental Protection in a form prescribed by the Director not later than September 30 of the year that payment of the Charge is due.
- (2) Once approved, the credit is valid for three years. To renew the credit, the property owner must reapply to the Director in a form prescribed by the Director not later than September 30 of the year that payment of the Charge is due.
- D. Credit Revocation.
- (1) The Director of Environmental Protection may revoke a credit granted under this Section if the property owner does not continue to take the measures needed to assure that the



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Water Quality Protection Charge	Number 12-16
Originating Department Department of Environmental Protection and Department of Finance	Effective Date

stormwater management system remains in proper working condition by correcting any deficiencies discovered by the Director during a maintenance inspection.

- (2) The Director must not reinstate a revoked credit until the property owner has sufficiently corrected the deficiencies to fully satisfy the property owner's maintenance obligations under Section 19-28 of the Code.

E. Appeals.

- (1) If the Director denies or revokes the credit, 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] 30 days after the date of the Director's written decision.
- (2) If the Director does not approve the request for reconsideration, the property owner may appeal the Director's final decision within [10] 30 days after the Director issues that decision as provided in Chapter 2A, Article I, of the County Code.

19.35.01.06 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 identify every parcel to be charged and include the amount of the Charge. If requested by the owner using the review and adjustment process outlined in Section 19.35.01.07, the Director may consolidate under a single parcel any contiguous parcels owned by the same legal owner. If the Director combines two or more parcels consisting individually of at least one residential parcel and at least one nonresidential parcel, the Director must, for purposes of calculating the Water Quality Protection Charge, treat the consolidated parcel as nonresidential property.
- 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



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Water Quality Protection Charge	Number 12-16
Originating Department Department of Environmental Protection and Department of Finance	Effective Date

and interest. An unpaid Charge is subject to all penalties and remedies that apply to unpaid real property taxes. Any delinquent Charge is a lien against the property. The lien has the same priority as a lien imposed for nonpayment of real property taxes. The Charge must be collected in the same manner as real property taxes.

19.35.01.07 Requests for Adjustment; Appeals

- A. A property owner may request a review and adjustment of the Charge by petitioning the Director in writing, not later than September 30 of the year that payment of the Charge is due 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 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] 30 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] 30 days after the Director issues that decision as provided in Chapter 2A, Article I, of the County Code.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Water Quality Protection Charge	Number 12-16
Originating Department Department of Environmental Protection and Department of Finance	Effective Date

- 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 regulation.

19.35.01.08 Requests for Exemption

- A. Before paying the Charge, the owner of residential property that is owner-occupied, or a nonprofit organization that owns property subject to the Charge, may apply for a financial hardship exemption from the Charge by submitting a written request to the Director of Finance in a form prescribed by the Director not later than September 30 of the year when payment of the Charge is due.
- B. (1) To qualify for the exemption, the request submitted by an owner-occupant of residential property must be accompanied by a copy of the owner-occupant's income tax returns indicating that the property owner's gross household income did not exceed 170 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 or verification that the property owner meets eligibility criteria for receiving benefits under the Maryland Energy Assistance Program for the year that payment of the Charge is due.
- (2) The request submitted by a nonprofit organization must be accompanied by the organization's most recent federal tax return or other verification of total revenues derived from the property for which the exemption is sought, as required by the Director of Finance. To qualify for a partial exemption: (i) the amount of the Charge must exceed 0.2% of the organization's total revenues from the property for which the exemption is sought for the year before payment of the Charge is due; and (ii) the property for which the exemption is sought must be exempt from real property *ad valorem* taxation under State law. The amount of the partial exemption is the amount of the Charge that exceeds 0.2 percent of the nonprofit's total revenues derived from the property.
- C. The Director of Finance 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.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject Water Quality Protection Charge	Number 12-16
Originating Department Department of Environmental Protection and Department of Finance	Effective Date

- E. If the Director of Finance 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] 30 days after the date of the Director's written decision.
- F. If the Director of Finance does not approve the request for reconsideration, the property owner may appeal the Director's final decision within [10] 30 days after the Director issues that decision as provided in Chapter 2A, Article I, of the County Code.

19.35.01.09 Requests for Grants

[A homeowners' association] An owner of an improved aircraft landing area that is exempt from County property taxes under Maryland Code, Tax-Property Art., § 8-302, as amended, may apply for a grant to offset all or part of the cost of the Charge [for any private maintenance road, as defined in Section 24B.00.02.02 of the Code of Montgomery County Regulations, which is eligible for State highway user revenues, not including any parking lot,] by submitting a written application to the Director [in a form prescribed by the Director] not later than September 30 of the year that payment of the Charge is due.

19.35.01.10. Severability

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

Approved as to Form and Legality
Office of County Attorney

By [Signature]
Date 6/15/16
Walter E. Wilson

[Signature]
Isiah Leggett
County Executive

DEP Analysis based on LY16 Charges

Based on County CIP books from 1985-2001, there are 54 projects that were planned. Of those, 44 projects were completed. So the universe of participants is reduced from the budgeted 54 projects to actual 44 projects.

There are a total of 263 properties (30 owners) within the 44 projects that will be charged a total of \$162,052.92 for the WQPC in 2016.

1. Of the 30 owners, 27 are private owners and 3 are public entities (Montgomery county, MNCPPC, and Town of Poolesville).
2. Of the 44 projects, 15 of them are now owned by Montgomery County, MNCPPC, or Town of Poolesville therefore narrowing the number of projects eligible for credit to 29 projects.

A detailed analysis of these facility's water quality treatment performance was not completed therefore it is unknown whether these facilities will be eligible for 100% credit. However, if they were, the revenue loss would not exceed \$162,052.92 or no more than \$0.70 on the rate.

What we do know is that one property list on this owner (Shady Grove Development Park) will be eligible for approximately 40% credit or \$14,442. However, that credit is already included in the budget analysis, making the inclusion of that budget neutral.

Excluding Shady Grove from the revenue loss (since they are already budgeted), the worst-case would be \$150,611 or no more than \$0.65 on the rate.

Description and Justification of Stormwater Management Participation Projects (CIP 808440)

A CIP project where the county participated, with developers, in funding construction of regional stormwater management facilities, including wet and dry ponds and other protective devices, where such construction would benefit other properties in addition to the developers. The County provides funds for portions of additional storage capacity and features beyond the developers' legal requirements and that will serve off-site developments. The County then accepts contributions from developers in the area as deemed appropriate by the County. Most participation projects are located in fast developing areas where they are needed to prevent stream degradation.

- Capacity: Designs are based on existing County and State requirements.
- Service Area: Countywide
- Plans and Studies: Facility sites are typically first identified in the Preliminary Stormwater Management Investigations project (808439). Construction plans and all necessary permits for individual projects are obtained by the developer. This program provides an efficient and relatively low-cost method of constructing regional stormwater management facilities.
- Other: Each participation agreement is structured so that the County will reimburse the developer for a portion of the project cost after designated levels of construction are completed. A waiver of the onsite stormwater management requirements is granted to developers, served or planned to be served by such facilities, once DEP has approved a SM waiver request and collected fees. Significant time and cost savings have occurred from the County entering into participation projects as compared to alternative County actions either to construct a public off-site stormwater management facility or to repair future flood, erosion and water quality damages.

In FY87, the County established a separate revenue source for Stormwater Management Waiver Fees within the Capital Projects Fund, into which all FY87 and later waiver fees are deposited.

This CIP project was closed out effective July 1, 2008.

May 31, 2016

Vicky Wan
Office of the Director
Department of Environmental Protection
255 Rockville Pike
Rockville, Maryland 20850

Dear Ms. Wan:

After reviewing the Draft Water Quality Protection Charge Credit Procedures Manual ("Manual") and the Montgomery County Executive Regulation 12-16 ("12-16"), it is apparent that the purpose of these amendments is to raise as much money as possible without giving property owners fair, practical and reasonable credits for the stormwater management ("SWM") they have done and continue to do on their properties and for any offsite areas. That is why we OPPOSE the proposed regulations.

Unfortunately, your new legislation and regulation are structured to take away most of the credits from us, regardless of how much work we do and how much money we spend, even if it is far more than the County does for all properties in our drainage areas. That is UNFAIR and UNREASONABLE.

According to the Introduction of the Manual, the purpose of the WQPC is stated as preventing unmanaged stormwater from eroding creeks and streams at high speeds and in large volumes. For many years, through our construction, maintenance and investment of our regional stormwater facilities, it is apparent that our managed ponds do NOT allow stormwater to flow through storm drains to nearby creeks and streams at high speeds and large volumes. Our ponds hold the water, treat it somewhat, and very much slow down the discharge of the water. Our stormwater facilities, which were approved by the County when built and have been inspected annually, do not have the impact that causes the problems that DEP needs the WQPC for. The Introduction also states that "Property owners can receive a credit off their annual Water Quality Protection Charge by maintaining stormwater management practices on their property". We have done that for many years without any problems. It is a fact that our practices do capture and treat runoff from our properties and many offsite areas so that the water does not flow directly into storm drains or streams. We therefore deserve a FAIR and REASONABLE credit for all of the SWM facilities we manage.

We also oppose the concept of the Manual where the bases for receiving a WQPC credit can be altered without review or public comment.

The major problem is that 12-16 and the Manual evaluate and calculate the credit based exclusively on the Maryland Department of the Environment (MDE) current SWM regulations, including environmental site design to the maximum extent practical ("ESD to the MEP"). ESD to the MEP is the standard focused on the design of new or newly renovated construction, not the maintenance of existing development. It is a bar that can constantly change, and as a moving target, no matter what a property owner does for SWM, he or she will later be precluded from obtaining the maximum credit, as the State (and thereby the County through 12-16 and the Manual) can and will modify its definition of

what is ESD to the MEP in the future. That is not practical, nor does it consider the realities of stormwater management. Property owners are required to maintain SWM according to the standards in place at the time of construction. Their credit eligibility and amount should be based on the same. Otherwise, even the most ESD-compliant properties today could be excluded from a credit in the future, when the ESD to the MEP standard changes in the future.

Our facilities do provide SWM, not only for Minkoff Development-related properties, but also for upstream offsite areas, and we have been providing treatment for both quality and quantity. All of our SWM facilities were designed and constructed with the oversight and approval of the County – the facilities treat stormwater from our properties, and our neighbors' properties, according to the requirements imposed by the County at the time of construction. Like the building code, we should continue to be held to the standard implemented at the time of construction. We deserve a REASONABLE and FAIR credit for giving up our land, spending our money, building SWM facilities and providing SWM treatment of offsite areas as required by the County when they were constructed. Under this new Manual standard, we are being penalized for complying with the current design standards at the time of construction. Just as it was impossible for us to anticipate changes in the regulation at the time of construction, it is now impossible for us to obtain a full credit, because we would have to constantly redesign and rebuild the SWM facilities (and most of our property) to comply with ESD as stated. That is IMPRACTICAL, UNFAIR and UNREASONABLE.

Although the statute, as currently proposed in Bill 11-16, would award a 100% credit for a SWM facility that treats off-site drainage, the new Manual severely limits this opportunity, and we question whether any property owner could receive the full credit, or even a reasonable credit, intended by the statute. The Manual (in Section B.3), literally destroys credits for treatment of offsite areas. First, in order to be eligible to receive a credit for offsite drainage, the regulation requires the property to be exclusively ESD (and achieve the full 60% credit for onsite ESD). That will automatically eliminate regional ponds constructed before the ESD standard (before the early 2000's), including SGDP treating 110 acres that it does not own, and SMCC, treating about 170 acres that it does not own (and both of which areas include County owned roads). Second, the Manual limits any additional credit for offsite areas to 40%, without regard to the size of those areas being treated, and again only for SWM systems that provide full treatment of the ESDv, something that changes over time. That is grossly UNFAIR and UNREASONABLE. Our regional ponds serve a large drainage area and help the County treat stormwater from other properties, and yet these ponds are considered pre-ESD and will be precluded from consideration for off-site drainage. This does not make sense and defeats the efforts taken to have the DEP acknowledge how private SWM treats neighboring properties. This is a step backwards. Our suggestions: (1) the maximum credit for off-site drainage should be the same as on-site drainage, 60%, and should not require current ESD requirements, as that would be UNFAIR, IMPRACTICAL and UNREASONABLE; and (2) the maximum credit anyone could get for the treatment of their properties and offsite areas is 100%.

It is very UNREASONABLE and UNFAIR to exclude any SWM facility, regardless of the drainage area served, if the County has a Declaration of Covenants issued by the County to perform structural maintenance for that facility. This precludes SGDP, ignoring our investment of land, construction and continued maintenance, as well as the larger offsite areas served. In 2015, the County collected \$172,670 from offsite areas treated by our SWM facilities at SGDP and SMCC and not owned by us. The only structural maintenance they did cost about \$18,000. During the T&E Committee hearing on May 5, Director Feldt indicated that she was considering an alternative to not exclude a SWM facility built or renovated for a public purpose, such as widening of a road, and if the County issued a Declaration

requiring the County to do structural maintenance. What is the status of that consideration? The new legislation does not deal with it. Also, Director Feldt was asked how much the DEP spends on maintenance of SWM facilities on private property. Does the DEP now have that figure available?

In reviewing 12-16 and the Manual, it is apparent that these new credit parameters are designed to exclude us from obtaining any relief for our long-term commitment to stormwater management. For the past few years, we have repeatedly met with DEP representatives to discuss how the charge and credit can be more fairly applied; this response for the new legislation not only ignores our concerns but excludes us. For these reasons, as well as those set forth in our testimony to the County Council concerning the WQPC statute, we OPPOSE the proposed new regulation. It is definitely not FAIR and REASONABLE as promised by the County Council. We remain ready, willing and able to discuss these issues with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul N. Chod". The signature is fluid and cursive, with the first name "Paul" being the most prominent.

Paul N. Chod, President
Minkoff Development Corporation

**Location of Issues/Changes
in Bill 11-16 and Executive Regulation 12-16**

Issues/Changes	Bill 11-16		Executive Regulation
	As Introduced	DEP Revision	12-16
New credit for improved aircraft landing areas that are exempt from County Property Taxes	Yes	Yes	Yes
Clarify that property owner must be responsible for structural maintenance in order to be eligible for a credit	Yes	Yes	Yes
Credit may be revoked if the property owner does not take the measures needed to keep an swm system in proper working condition	Yes	Yes	Yes
Time to appeal the Director's decision on a charge to a person's property is extended to 30 days (currently 10 days)	Yes	Yes	Yes
Time to appeal a denial or revocation of a credit is extended to 30 days (currently 10 days)	Yes	Yes	Yes
Time to request reconsideration or appeal a denial of a hardship exemption is extended to 30 days (currently 10 days)	Yes	Yes	Yes
Credit available to properties with swm systems built as part of a County-approved swm participation project.	-	Yes	Yes
Credit based on the proportion of total volume of water treatment provided relative to the ESD storage volume required per the 2000 Maryland Stormwater Design Manual as amended	-	-	Yes
Properties utilizing traditional swm eligible for up to a 60% credit (currently 50%)	-	-	Yes
Properties utilizing ESD to the MEP eligible for up to an 80% credit (currently a property must exclusively use ESD facilities to qualify for the the 80% credit)	-	-	Yes
The maximum credit available if an swm facility treats off-site sw is increased to a max of 100%	-	-	Yes
Consider providing credits to off-site properties which contribute to the maintenance of a swm facility on another property	-	-	-

Yes = Change/Issue Language included
 - = Change/Issue is not included