

MEMORANDUM

TO: County Council

FROM:  Michael Faden, Senior Legislative Attorney

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

Transportation, Infrastructure, Energy, and Environment Committee recommendation: enact with amendments (2-0-1, Councilmember Floreen abstaining).

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 and a Transportation, Infrastructure, Energy and Environment Committee worksession was held on March 11.

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 ©17-26. 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 ©49-50.

As some of the issues 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. The Transportation, Infrastructure, Energy, and Environment Committee, at its March 11 worksession on this Bill, also discussed the draft regulations and the issues they raise.

Issues/Committee recommendations

At its worksession on March 11, the Transportation, Infrastructure, Energy, and Environment Committee discussed the following issues before voting (2-0-1, Councilmember Floreen abstaining) to recommend enactment of this Bill with amendments.

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 ©11-16.) 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.

DEP did not 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 ©27-31 do not contain any revenue estimate. At the worksession DEP staff estimated an annual goal of \$25 million, which would be further refined in the Executive’s proposed operating budget.

DEP proposed to phase in over the next 3 fiscal years the increase in the fee to formerly uncovered non-residential properties. The Committee recommended extending the phase in period to 5 years (see ©9-10, lines 205-232).

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. However, the Bill as introduced did 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. Council staff questioned whether the credit was intended to be an entitlement, or could it be subject to availability of funding or an annual cap? DEP staff confirmed that they intend that the credit must be granted to each eligible applicant, and the Committee recommended amendments to reflect that intent. See ©7-8, lines 160-170.

To receive a credit in FY14, the Bill originally provided that a property owner would have to apply to DEP by July 31. Council staff questioned whether this early deadline was necessary. The Committee recommended moving that deadline to September 30, along with the deadline to apply for a hardship exemption (see ©10, lines 233-237).

3) Hardship exemption As the state law requires, the Bill allows an exemption in cases of substantial financial hardship, but the Bill does not define hardship. The Committee discussed whether “hardship” should be defined in the law, or decided by criteria set by regulation, and opted for the latter.

The Committee discussed, but left for the final regulation, the following issues regarding the hardship exemption: 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, as introduced the Bill would have limited the hardship exemption to owners on owner-occupied residential properties, while the state law does not so limit it (see state law subsection (j)(1) on ©26). After discussion the Committee recommended that the hardship exemption should also be available to non-profit organizations under criteria set by regulation (see ©8, lines 171-179)¹.

4) Grant program The Stormwater Partners (see testimony, ©37-42, especially ©38-39) 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 rural areas (see testimony, ©43-48). Before the worksession DEP submitted an amendment to authorize a grant program for non-profit organizations that would help in water quality protection or improvement activities (see ©6, lines 124-134).

5) Private roads The Committee briefly discussed how privately owned roads should 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. The Committee did not recommend any amendment on this issue.

6) 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 17-20) includes federal facilities in the law's definition of "person" only "to the extent allowed by law".

The US Navy recently sent a letter to the Council (but not to Executive staff) arguing that the Water Quality Protection Charge should not apply to federal agencies. See ©51-52. The Committee referred this letter to the County Attorney for an appropriate response.

The state law provides that the County cannot charge State and municipal facilities, and vice-versa. The state law (see state law subsection (e)(2) on ©20) expressly exempts property owned by the state, a County, a municipality, or a volunteer fire department, from the Charge. In its testimony (see ©34-36), 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).

¹In that context, see the letter from the Archdiocese of Washington on ©53-55.

The current County law contains a limited municipal exemption, covering property *in* a municipality (as distinct from property *owned by* the municipality) with a similar charge. The Committee agreed that this provision should be modified to conform to the state law's broader municipal exemption (see state law subsection (g)(2) on ©23). This is done by amending §19-35(g) to delete the current language and reflect the state law's process for notice to and from municipalities (see ©9, lines 190-197).

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Bill No. 34-12
Concerning: Stormwater Management –
Water Quality Protection Charge
Revised: 3-14-13 Draft No. 3
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

By adding

Chapter 19, Erosion, Sediment Control and Storm Water Management
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 Grant Program. The purpose of the Program is to provide
127 funds to non-profit organizations to perform water quality protection
128 or improvement activities that would help the County satisfy
129 applicable regulatory requirements of the County's National Pollutant
130 Discharge Elimination Systems permit.

131 (b) To identify non-profit organizations to perform water quality
132 protection or improvement activities, the Director of the Department
133 of General Services may issue a competitive solicitation under
134 Chapter 11B that is limited to non-profit organizations.

135 **19-35. Water Quality Protection Charge.**

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- (a) As authorized by State law [(Maryland Code, Environment Art., § 4-204)], the Director of Finance must annually impose and collect a Water Quality Protection Charge, as provided in this Section. The Director must collect the Charge in the same manner as County real property taxes, apply the same interest, penalties, and other remedies (including tax sale) if the Charge is not paid, and generally treat the Charge for collection and administration purposes as if it were a County real property tax. The Director may treat any unpaid Charge as a lien on the property to which the charge applies.
- (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.

* * *

- (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.]]

(1) A property owner may [[request]] apply for, and the Director of Environmental Protection must grant, a credit equal to a percentage, set by regulation, of the Charge if the property

163 contains a stormwater management system that is not
 164 maintained by the County or if the owner participates in a
 165 County-approved water quality management practice or
 166 initiative. To receive the credit, the property owner must
 167 [[submit a request]] apply to the Director of Environmental
 168 Protection in a form prescribed by the Director not later than
 169 October 31 of the year before payment of the Charge is due.
 170 Any credit granted under this subsection is valid for 3 years.

171 (2) The owner of an owner-occupied residential property, or any
 172 non-profit organization, that [[is able to]] can demonstrate
 173 substantial financial hardship may [[request]] apply for an
 174 exemption from all or part of the Charge for that property,
 175 based on criteria set by regulation. The [[owner-occupant]]
 176 owner or organization may apply for the exemption [[by
 177 submitting a written request]] to the Director of Environmental
 178 Protection not later than April 1 of the year [[before]] when
 179 payment of the Charge is due.

180 (f) The Director must deposit funds raised by the Charge, and funds for
 181 this purpose from any other source, into a stormwater management
 182 fund. Funds in the stormwater management fund may be applied and
 183 pledged to pay debt service on debt obligations to finance the
 184 construction and related expenses of stormwater management
 185 facilities as approved in the Capital Improvements Program. Funds in
 186 the stormwater management fund must only be used for:

187 * * *

188 (3) any other activity authorized by this Article or [[Maryland
 189 Code, Environment Art., § 4-204]] state law.

190 (g) This Charge does not apply to any property located in a municipality
 191 in the County which notifies the County that it has imposed or
 192 intends to impose
 193 [(1) operates a stormwater management program that meets all
 194 applicable federal, State, and County requirements and has
 195 received any necessary federal or State permit; and
 196 (2) imposes]] a similar charge [[or other means of funding]] to fund
 197 its stormwater management program in that municipality.

198 * * *

199 (i) A person that believes that the Director of Environmental Protection
 200 has incorrectly denied the person's [[request]] application for a credit
 201 or exemption under subsection [[b)] (e) may appeal the Director's
 202 decision to the County Board of Appeals within 10 days after the
 203 Director issues the decision.

204 * * *

205 **Sec. 2. Implementation; effective date.**

206 (a) This Act takes effect on July 1, 2013. Notwithstanding County Code
 207 Section 19-35(b), as amended by Section 1 of this Act, the Director of
 208 Finance must phase in the Water Quality Protection Charge as
 209 provided in this Section.

210 (b) The Director must phase in over [[3]] 5 years any increase in the
 211 Charge that results from the application of Section 19-35(b), as
 212 amended by Section 1 of this Act, or any regulation adopted under
 213 that Section, by including:

214 (1) only [[one-third]] 20% of the additional impervious surface that
 215 has been added to the calculation of the Charge in the fiscal
 216 year that begins on July 1, 2013;

- 217 (2) only ~~two-thirds~~ 40% of the additional impervious surface
 218 that has been added to the calculation of the Charge in the fiscal
 219 year that begins on July 1, 2014; ~~and~~
- 220 (3) only 60% of the additional impervious surface that has been
 221 added to the calculation of the Charge in the fiscal year that
 222 begins on July 1, 2015;
- 223 (4) only 80% of the additional impervious surface that has been
 224 added to the calculation of the Charge in the fiscal year that
 225 begins on July 1, 2016; and
- 226 ~~(3)~~ (5) the full amount of the additional impervious surface that
 227 has been added to the calculation of the Charge in the fiscal
 228 year that begins on July 1, ~~2015~~ 2017.
- 229 (c) The phase-in established in this Section does not apply to any portion
 230 of the Charge that results from the inclusion in the calculation of the
 231 Charge of any impervious surface area that is created after ~~this Act~~
 232 ~~takes effect~~ June 30, 2013.
- 233 (d) To receive a credit or exemption under Section ~~19-35(b)~~ 19-35(e)
 234 for the fiscal year that begins on July 1, 2013, ~~the~~ a property owner
 235 must ~~submit a request~~ apply to the Director of Environmental
 236 Protection ~~on a form prescribed by the Director~~ not later than
 237 ~~July 31~~ September 30, 2013.

238 *Approved:*

239

Nancy Navarro, President, County Council

Date

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.

ger Berliner
October 25, 2012
Page 4

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) (2) (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 (H) 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.

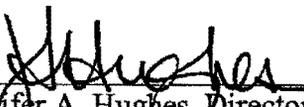
Not applicable.

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.

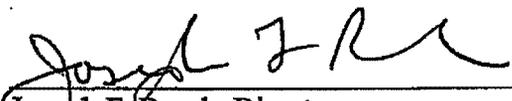
4. A single-family residential property with 4,000 square feet of impervious surface, would pay in FY14:
 - a. \$98 or 1 ERU² under existing law.
 - b. The property owner would have paid \$153.45 under the proposed law², but because of the three year phase-in of imperviousness, the Charge for the first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



15

Montgomery Soil Conservation District

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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.

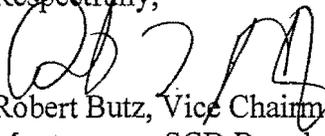
Rural landowners and farmers who pay this fee are in effect paying for problems associated with down County development. A better solution would be to reward farmers for managing the stormwater in their communities, or provide a funding source to increase efforts to implement BMPs through the work of 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.

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 [jimeyers@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.



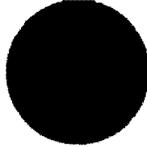
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NORFOLK, VA 23511-2737

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

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.

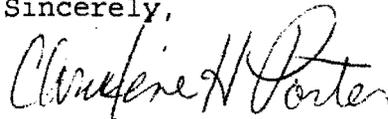
Third, we do not believe federal law permits federal agencies to pay the proposed Water Quality Protection Charge as set out in Section 19-35 of the proposed bill. The Clean Water Act was amended in 2011 to provide for the payment of reasonable service fees by federal agencies. However, payment is conditioned 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.

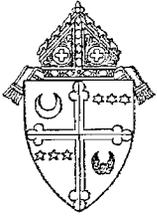
If you have any questions, please contact Lieutenant Commander Mark P. Nevitt at mark.nevitt@navy.mil, telephone (757) 322-2938 or Mr. William Bullard at william.bullard@navy.mil or telephone (757) 341-0429.

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)



ARCHDIOCESE OF WASHINGTON

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301-853-4500 TDD 301-853-5300

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March 13, 2013

Council Members
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

RECEIVED
MONTGOMERY COUNTY
2013 MAR 13 PM 2:34

Re: BILL 34-12 Storm Water Management – Water Quality Protection Charge

Dear Council Members:

On behalf of the Roman Catholic Archdiocese of Washington, I am writing to you regarding Bill 34-12, a bill that would implement a state mandate enacted in 2012 by the Maryland General Assembly for local subdivisions to adopt measures to improve the water quality of the Chesapeake Bay. This bill would impose a “Water Quality Protection Charge” (“WPQC”) on all non-residential properties in the County, commencing July 1, 2013.

The Archdiocese supports the environmental objective of improving the water quality of our community’s watershed and wishes, as it is able, to contribute a fair share to mitigation efforts. Nonetheless, as an owner of many religious institutional properties in the County, the Archdiocese has concerns about the implications of this legislation and accompanying regulations for its operations.

The Archdiocese’s properties in Montgomery County represent a variety of uses. Among them are 36 parishes that include places of worship, educational facilities, convents and residences for clergy, soup kitchens, community health clinics, food pantries, and other parish-based outreach ministries. There are 39 Catholic elementary and secondary schools that enroll 11,880 students, at an estimated annual savings of \$168 million to Montgomery County. The Archdiocese has 16 affordable housing properties that provide independent and assisted living communities for low and moderate income seniors and affordable workforce rental housing for families. Finally, the Archdiocese has properties that provide an array of social services, including medical and dental clinics for uninsured, low-income adults and children, shelter services, emergency assistance, job training, English language classes, programs for persons with developmental disabilities, and many other programs and services for those in need in the County.

These good works undertaken through our ministries of education, health care and social service, such as Catholic Charities, the Spanish Catholic Center, and Victory Housing, as well as through our parishes, provide vital and essential services to our citizens regardless of their

religion. Thus it is fair to say that the Archdiocese is deeply rooted in Montgomery County and invested in the common good.

Many of our properties in the County are large institutional structures with sizeable parking lots. Many are older buildings, built well before modern storm water management techniques were put in place. In addition, many of our parishes and parochial schools have tight operating budgets, budgets which are not able to absorb new, unanticipated fees or taxes, especially on a few months' notice. As yet, we have not learned how much this WPQC will be on each of our properties, but the estimate for one of our parishes, St. Camillus, is nearly \$15,000 annually at full implementation.

In addition to the amount of this new fee applied to all our properties not previously subject to the charge, it is our understanding that the WPQC is intended not only to charge property owners for the "untreated" drainage volumes from their own properties but also to fund storm water mitigation efforts for County buildings and uses, including public schools. This methodology will have, it seems to me, the inequitable effect of making our Catholic schools, which save the County millions of dollars each year in per pupil spending, pay fees to a fund that will be used, at least in part, to mitigate runoff from public schools that are themselves exempt from this WPQC. Furthermore, these Catholic schools will have to generate their own funds to construct and maintain storm water projects necessary to earn credits against the assessed fees.

Given our demonstrated relationship with Montgomery County, the Archdiocese is hopeful that in its final form this ordinance, and its accompanying regulations, will provide needed relief to the Archdiocese to soften the economic impact on its properties, particularly its parishes and schools, some of which would feel the costs created by this legislation more than others, and that the legislation will share the costs of the mitigation efforts more equitably.

It is clear that the state law contemplates various means to balance the equities available to property owners through implementation of a fair local ordinance. For example, exemptions for any property that can demonstrate substantial hardship resulting from fees imposed are mandated by state law. Under the state law, counties "may establish a separate hardship exemption program or include a hardship exemption as part of a system of offsets" once again, to provide economic relief to properties subject to burdensome fees. Finally, the state law mandates that the counties establish policies and procedures "to reduce any portion of a storm water remediation fee to account for on-site and off-site systems, facilities, services or activities that reduce the quantity or improve the quality of storm water discharge from the property."

There are a variety of ways, I believe, to lessen the economic impact on our properties and other religious institutions and nonprofits that are similarly situated. You may wish to give consideration to a possible rate structure that treats institutional, nonprofit properties separately from general commercial or industrial properties. Perhaps there could be a separate tier for religious use, either by way of a percentage reduction to the "regular" rate, justified on the basis

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Montgomery County Council
March 13, 2013
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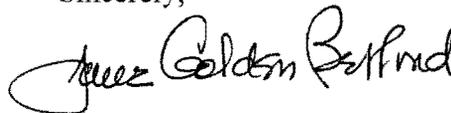
of the community contributions of these nonprofit institutions. A delayed start to the imposition of the fee, or a longer phase-in of the fees would help in adjusting budgets. The County itself could contribute from the general fund to the Bay restoration fund so that County taxpayers as a whole, and not just property owners, particularly religious institutions, bear the costs of mitigating the effects from County facilities.

Loans to promote property mitigation efforts and the availability of grant monies to non-profit organizations to promote the development and implementation of sound storm water management practices on a property by property basis would be welcomed. Meaningful credits, beyond the 50%/60% limit in the Bill, ones that are reasonably easy to seek (that is, which do not require engineering consultants to assist owners in applying) should be available. With these tools, institutional owners can have the option of installing storm water management facilities in lieu of the annual charge. An increase in the credit percentage beyond 50%/60% seems particularly compelling given that the property owner who constructs a storm water project will be required to assume the maintenance responsibilities and costs in perpetuity.

At this stage, there are many unknown factors that make close analysis of the issues presented in the Bill difficult to ascertain. The amount of the fee and how it will be charged against nonresidential properties and the determination of our properties' impervious areas are not yet understood. The Archdiocese will be working with the County DEP, as it has offered, to understand the magnitude of this new charge on all our properties. At this point, however, we have only to speculate as to the specific dollar impact of implementation of the ordinance before you. That there is so much unknown about the economic impact of implementation is in itself disturbing and unsettling. We trust that you will be afforded vital cost information and other data before you move forward with this ordinance.

Thank you for your willingness to hear our concerns.

Sincerely,



Jane Golden Belford
Chancellor