

Attachment B

Excerpt from December 6, 2013 The Week That Was Correspondence Packet Recent Local Stormwater Development Information

Recent Local Stormwater Development

As you know, Rockville is regulated by a Clean Water Act stormwater NPDES permit issued in 2003 that expired in 2008 but which has been administratively continued pending future permit reissuance. Rockville is not alone in this regard.

Montgomery County is the only Maryland jurisdiction with a current permit. However, that permit was challenged by a coalition of local environmental organizations shortly after it was issued in February 2010. On November 20, 2013 a Montgomery County Circuit Court Judge ruled on the permit challenge. The case challenged the Maryland Department of the Environment's (MDE) decision not to include pollutant specific effluent limits (on the quality of stormwater discharges) and outfall monitoring in the permit. The Court agreed with the environmental plaintiffs and remanded the permit back to MDE for revision. According to the plaintiff's press release, the permits' lack of specific effluent limits and outfall monitoring made the permit deficient and did not satisfy the minimum requirements of State (and presumably Federal) law. The decision is likely to be appealed (by the County and the State).

U.S. EPA is clearly on record indicating that effluent limits and monitoring are not necessary in stormwater permits and courts around the country have followed EPA's lead. This development is likely to slow all of MDE's permit issuance activity down even further. If the Maryland court's decision is upheld, it could result in more stringent permits in the future.

We will keep you informed of further developments that affect the City's stormwater permits.

Response Provided by Public Works Director to Councilmember Moore's Inquiry on the Impact of the Montgomery County Circuit Court Decision on Rockville's' Permit and Fee

Based upon the Phase I Communities that have received their draft permits, staff is anticipating increased requirements in the City's new permit. The result of this lawsuit could, if upheld, further increase requirements. While staff does not know for sure, it anticipates that this court decision will further delay the City's permit issuance. The Court has not issued the written ruling and the decision could also be appealed, possibly adding more delay. As the City's fee covers only the current program, increased requirements may mean a need to increase stormwater fees. However, we cannot anticipate either the requirements or the timeline to implement them until MDE formally approaches the City with the draft permit.