



CHESAPEAKE BAY FOUNDATION

*Environmental Protection and Restoration
Environmental Education*

Dr. Robert Summers, Deputy Secretary
Maryland Department of the Environment
1800 Washington Blvd.
Baltimore, MD 21230

February 10, 2009

Dear Bob,

Thank you, and Jay, for meeting with Bruce Gilmore, Diane Cameron, Fred Tutman, Tom Schueler and me on January 30, 2009 to further discuss our community's concerns regarding the draft stormwater regulations and Chapter 5 Manual changes proposed by the Department. Thank you also for your follow-up email dated February 2, 2009 in which you outlined the Department's desired path forward for promulgating these regulations and ultimately implementing higher levels of stormwater management in Maryland over the next 18 months or so. Please consider this our community's formal response.

1) In no way can we overstate our commitment to the belief that the current draft proposal by MDE is inadequate to address stormwater pollution loads to Maryland's rivers and the Bay. All evidence points to the need to substantially escalate stormwater management statewide. Bay Program modeling is demonstrating we are further from our pollution reduction goals than previously thought. Pollution from urban and suburban land uses are increasing while others are being reduced. Even a county with progressive stormwater standards, Montgomery County, has witnessed stream degradation in an area "protected" from development pressures, emphasizing the need for improved stormwater management statewide.

The current treatment standards proposed by MDE fail to meet the expectations of the 2007 statute and the citizens of Maryland who are relying on the Department to ensure new standards are meaningful. We firmly believe that the stormwater Environmental Site Design (ESD) volume standards for which we have advocated are reasonable, achievable, and necessary to substantially reduce polluted runoff from development:

- 100% of the Water Quality Volume (WQv) for redevelopment (the first one-inch of each storm);
- 100% of the Channel Protection Volume (CPv) (the one-year, 24-hour storm), ranging from 2.4 inches to 2.8 inches depending on the County); and
- the statutorily-required maintenance of 100% of a site's annual predevelopment groundwater recharge volume.

As discussed in our January 30 meeting with you and Jay, we do not dispute the need for a stepwise site design process that allows for flexibility and site-specific tailoring of stormwater practices and approaches. The key difference, as we see it, between our proposed stormwater volume standards, and MDE's proposal is in the presumption about the ability of a given site to meet the required stormwater management volumes using ESD practices. Our proposal, consistent with the Stormwater Management Act of 2007, would require establishing a high standard, under the presumption that most Greenfield sites are able to meet the required volumes using ESD measures. In doing so, the burden of proof would be on the applicant to show that they have exhausted ESD practices prior to proposing standard BMPs or to request a partial volume waiver.

In contrast, MDE's draft manual and regulations presume only that the first one inch of each storm can be fully met via ESD measures at most sites. This places the burden of proof on the local plan reviewers to show that a given site is capable of greater ESD volumes. We firmly believe that this approach will virtually guarantee that the vast majority of new developments will stop at or near one inch to be handled via ESD measures, and the rest of the Channel Protection Volume will be handled via standard BMPs. Thus, the requirement of the Stormwater Management Act to maximize ESD is not met by MDE's proposed regulation.

While we acknowledge that MDE's current draft offers improvement over the existing requirements, this draft promulgation misses a significant opportunity to reduce pollution and stream degradation from development and redevelopment.

2) We respectfully request that MDE suspend the current process for promulgating the draft regulations. We support the request made by the Joint Committee on Administrative, Executive, and Legislative Review in a letter dated January 7, 2009, to slow down and better address the legitimate concerns we have brought forth regarding the adequacy of the draft regulations and manual changes. In our view, it would be far more beneficial for local implementation if all components of the regulations, including some key provisions within the design manual, were improved *now* while stakeholders are engaged and expectations for meaningful change are high. Instead, we feel moving forward with this draft would amount to the promulgation of incomplete regulations that miss the spirit and intent of the Stormwater Management Act of 2007 and further delay improvements to water quality.

3) This request notwithstanding, we agree with the Department that there are looming challenges regarding the implementation of Environmental Site Design on all new development. Regardless of when the regulations are promulgated, we agree that the Department should begin immediately addressing the development of technical guidance, local ordinance changes, and training programs to ensure the design and review communities are adequately equipped to fully integrate ESD into existing programs for review of site designs and plan approvals. We believe our comments, and several of our recommendations, should be included in these efforts – including the development of spreadsheets and the inclusion of a runoff reduction component to the demonstration of MEP achievement. The process by which the Department undertakes these critical implementation elements should be open and inclusive.

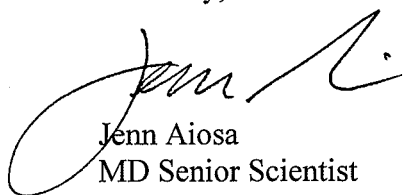
4) Finally, we are concerned with the proposal to undertake an additional process during 2010 to “make appropriate revisions to the regulations and Design manual to address issues raised by the Stormwater Consortium ... and any other issues identified during the development of local ordinances.” The most meaningful opportunity to make changes to the regulations and manual is *now*, not some time in the

future. As stated previously, loads from stormwater are increasing; we do not feel additional delay in load reductions is justified.

Make no mistake, we generally support the concept of “adaptive management” but we also believe there is no time like the present to make tough choices about improving the health of the Bay and its rivers. For our community to have confidence that participation in yet another process will improve required levels of stormwater management across the state, we would require additional details regarding that process and a draft timeframe for undertaking this future assessment and revision.

We appreciate the time you and your staff have taken to hear our concerns, but we simply can not support the regulations and design manual as drafted.

Sincerely,

A handwritten signature in black ink, appearing to read "Jenn Aiosa". The signature is fluid and cursive, with a large initial "J" and "A".

Jenn Aiosa
MD Senior Scientist
Chesapeake Bay Foundation

Cc: Senator Paul Pinsky
Delegate Anne Healey
Secretary Shari Wilson