

IN THE CIRCUIT COURT FOR PRINCE GEORGE’S COUNTY

MARYLAND DEPARTMENT OF THE ENVIRONMENT,

Plaintiff,

v.

PRINCE GEORGE’S COUNTY, MARYLAND,

Defendant.

*
*
*
*
*
*

CASE NO.: _____

* * * * *

CONSENT DECREE

Plaintiff, the Maryland Department of the Environment (hereinafter “MDE” or “the Department”), and Defendant, Prince George’s County, Maryland (the “County”), hereby represent and acknowledge that they agree to enter into this Consent Decree regarding certain alleged violations of State environmental laws arising out of the County’s failure to comply with the terms of a permit authorizing the discharge of pollutants from the County’s municipal separate storm sewer system (“MS4”) to waters of the State.

FACTUAL BACKGROUND

WHEREAS, Prince George’s County covers an area of 499 square miles and has approximately 4,770 “minor” outfalls and 2,816 “major” outfalls;

WHEREAS, the County’s MS4 channels stormwater that has collected pollutants as it washes over lawns, roadways, roofs, and other surfaces, and discharges that stormwater to waters of the State;

WHEREAS, sections 9-322 and 9-323 of the Environment Article, Annotated Code of Maryland, prohibit the discharge of any pollutant into the waters of the State unless

authorized by a discharge permit issued by the Department. The term “discharge” includes the placement of a pollutant in a position where it is likely to pollute waters of the State;

WHEREAS, sections 9-323 and 9-324 of the Environment Article authorize the Department to issue permits to persons for the discharge of pollutants, but only in compliance with any effluent limitations, or conditions the Department considers necessary to prevent water pollution; and

WHEREAS, the County successfully fulfilled its obligations under its previous 1993, 1999, and 2004 MS4 permits by completing county-wide watershed assessments, proposing restoration projects for impervious surface areas that were not already treated by stormwater management practices to the maximum extent practicable (“MEP”), and implementing capital improvement projects for treating 10% of its untreated impervious surface area.

PRINCE GEORGE’S COUNTY’S MS4 PERMIT

WHEREAS, on January 2, 2014, the Department issued the County a permit authorizing the discharge of pollutants from the County’s MS4, Permit No. 11-DP-3314/MD0068284 (“Permit”), under conditions set forth in the Permit;

WHEREAS, Part IV.C of the Permit requires the County to identify sources of pollutants in stormwater runoff, assess the impacts of those sources, and submit to the Department a report in a geographic information system (“GIS”) format that identifies the storm drain system, the location and type of best management practices (“BMPs”) implemented to control stormwater, impervious surfaces, monitoring locations, and proposed areas of restoration;

WHEREAS, a “best management practice (BMP)” is defined by regulation to mean a structural device or nonstructural practice designed to temporarily store or treat stormwater runoff in order to mitigate flooding, reduce pollution, and provide other amenities, Code of Maryland Regulations (“COMAR”) 26.17.02.02B(5);

WHEREAS, Part IV.D of the Permit further requires the County to establish management programs to address stormwater management, erosion and sediment control, illicit discharges to the MS4, trash and litter, management of County property, road maintenance, and public education that meet articulated minimum standards;

WHEREAS, under Part III.D.1.d of the Permit, the County is required to inspect all BMPs in the County every three years, and keep the subject BMPs maintained;

WHEREAS, Part III.D.3 of the Permit requires the County to field screen at least 150 outfalls annually, and conduct routine surveys of commercial and industrial areas as minimum activities required for an illicit discharge detection and elimination program;

WHEREAS, Part III.G.2 of the Permit requires the County to restore, by the end of the permit term, twenty percent of its impervious surface area that had not already been managed to the MEP prior to this permit term (the “Impervious Surface Restoration Plan” requirement). In practice, the restoration is conducted through the implementation of BMPs that treat stormwater from twenty percent of the County’s impervious acreage that is not constructed in accordance with stormwater standards established by the Department in 2000, and through the performance of alternate stormwater treatment practices established in accordance with Department standards;

WHEREAS, by its terms, the Permit expired on January 1, 2019, but pursuant to COMAR 26.08.04.06A(3), the terms and conditions of the Permit continue in effect until the Department issues a new permit;

ALLEGED VIOLATIONS

WHEREAS, the Department approved an Impervious Surface Restoration Plan baseline for the restoration of 6,105 acres of impervious surfaces that have not been restored to the MEP based upon documentation found in the County's Fiscal Year 2014 annual report submitted on January 20, 2015, and a supplemental report submitted on May 20, 2015, and as indicated in the July 17, 2015 approval letter from the Department to the County;

WHEREAS, the Department understands that the County is continuing to refine its BMP database in accordance with Department guidelines and will provide any proposed changes to the database in the County's future Annual Reports for Department review and approval;

WHEREAS, pursuant to Part III.G.2 of the Permit, the County submitted its Fiscal Year 2018 annual report to the Department on December 21, 2018, and indicated that it had restored 2,215 acres of impervious surfaces, resulting in a deficit of 3,890 impervious acres that have not been restored to the MEP;

WHEREAS, the Department allowed additional time for the County to revise its analysis using the most recent stream restoration crediting numbers, and the County submitted an updated report on May 15, 2019, that reflected completion of 2,387 acres;

WHEREAS, pursuant to Part V.A. of the Permit, the County submitted its Fiscal Year 2019 annual report to the Department on January 16, 2020, and indicated that it had

restored 2,387 acres of impervious surfaces, resulting in a deficit of 3,718 impervious acres that have not been restored to the MEP;

WHEREAS, the Department met with Prince George's County, on January 23, 2020, to discuss non-compliance of its NPDES MS4 permit and agreed to provide the County an extension to update their restoration totals and submit to MDE no later than March 17, 2020;

WHEREAS, the County submitted its final analysis on impervious area restoration implementation on March 18, 2020, and reported that 2,563 acres of restoration had been completed, although the additional 176 impervious acres reportedly restored since the County's January 16, 2020, report have not yet been approved by the Department;

WHEREAS, the Department's final approved restoration total for the County is 2,387, resulting in a deficit of 3,718 impervious acres that have not been restored to the MEP;

WHEREAS, as a result of this final approved restoration total, the Department alleges that the County failed to restore twenty percent of its impervious surface area that was not restored to the MEP by January 2, 2019, under Part IV.E.2 of the Permit;

WHEREAS, the Department recognizes that the County has continued to work toward completion of its required impervious area restoration throughout since the expiration date of its most recent MS4 Permit;

WHEREAS, the Department's review of the County's January 16, 2020, submittal of its annual report and geodatabase revealed a number of additional alleged permit violations including:

- 474 BMPs reported as failed;

- BMPs with missing as-built plans;
- 38 restoration BMPs reported as failed;
- 61 stream restoration projects with no inspections;
- incorrect calculations used for outfall stabilization;
- numerous total maximum daily load (TMDL) implementation plans with no final completion dates for achieving required waste load allocations;
- no drainage area information for 142 BMPs, and 1,563 BMPs were not properly linked using GIS to drainage area polygons; and
- no illicit discharge detection and elimination procedures were provided for surveying commercial and industrial areas.

WHEREAS, section 9-342(a) of the Environment Article provides that any person who violates any provision of Title 9, Subtitle 3 of the Environment Article or any rule, regulation, order, or permit adopted or issued by the Department thereunder, is liable to a civil penalty of up to \$10,000 per violation, with each day a violation occurs constituting a separate violation;

WHEREAS, to avoid protracted litigation of the alleged violations and the corrective actions required, the parties have reached agreement on the terms of a Consent Decree;

WHEREAS, it is the mutual objective of the County and the Department, by entering into this Consent Decree, to provide for and achieve compliance with the environmental laws addressed by this Consent Decree in an expeditious manner to protect public health and the environment;

WHEREAS, the Department has provided a 30-day opportunity for public comment on the terms and conditions of this Consent Decree;

WHEREAS, it is the Department's position that this Consent Decree is in the best interests of and will benefit the citizens of the State of Maryland;

WHEREAS, it is expressly understood that this Consent Decree pertains to the specific violations of the State's environmental laws and regulations described herein, and that the Department has made no promises or representations other than those contained in this Consent Decree and that no other promises or representations will be made unless in writing. The Department makes no representations with regard to any criminal liability for the above-referenced violations, and has no authority over any criminal prosecutions; and

WHEREAS, the above recitals form the basis of and the consideration for this Consent Decree.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

I. JUDGMENT

1. A judgment is entered in favor of the Maryland Department of the Environment, against the County, in the amount of \$475,000, which shall be due on December 31, 2024. If, by December 31, 2024, the County designs, permits, and constructs Supplemental Environmental Projects ("SEPs"), approved by the Department in accordance with this Consent Decree, the Department shall file a Satisfaction of Judgment with the Court. These SEPs in lieu of the penalty shall be impervious surface area restoration projects that will demonstrably treat stormwater runoff, located in the County with a minimum cost of \$475,000. The County may not count the impervious acres treated

to the MEP by the SEPs as part of the Impervious Surface Restoration Plan requirement set forth in Part IV.E.2.a. of the Permit.

2. Payment of the judgment in Paragraph 1 shall be by check payable to the Maryland Department of the Environment and mailed to the following address: Maryland Department of the Environment, Fiscal Services Division, Cash Receipts/Advance Unit, P.O. Box 2057, Baltimore, Maryland 21230. An invoice for payment will be mailed by MDE to the County. The lack of receipt of an invoice has no effect on the County's obligation to make timely payment to the Department.

II. CORRECTIVE ACTIONS

3. Within 90 days of the execution of this Consent Decree by the County and the Department, the County shall submit to the Department for review and approval, a detailed annual milestone schedule for completion by December 31, 2024, of the Impervious Surface Restoration Plan requirement set forth in Part IV.E.2.a. of the Permit. The schedule will establish how many acres of impervious surface will be treated by the County by the end of Calendar Years 2021, 2022, and 2023 (collectively, "the Annual Restoration Goals"), in addition to meeting the entire requirement of 3,718 acres of Impervious Surface restoration by December 31, 2024 ("the Final Restoration Goal"). The County may replace individual scheduled projects as necessary, as long as the restoration goals are fulfilled.

4. Within 90 days after the execution of this Consent Decree by the County and the Department, the County shall submit to the Department for its review and approval a detailed description and annual milestone schedule for completion of the SEPs by December 31, 2024.

5. The County must adhere to the following reporting schedule:
 - a. By December 31, 2021, the County must submit to the Department an interim Consent Decree Completion Report that documents the acres of impervious surface area restoration completed in relation to the County's proposed Annual Restoration Goals;
 - b. By December 31, 2022, the County must submit to the Department an interim Consent Decree Completion Report that documents the acres of impervious surface area restoration completed in relation to the County's proposed Annual Restoration Goals;
 - c. By December 31, 2023, the County must submit to the Department an interim Consent Decree Completion Report that documents the acres of impervious surface area restoration completed in relation to the County's proposed Annual Restoration Goals;
 - d. By December 31, 2024, the County shall submit to the Department the Final Consent Decree Completion Report. This report must demonstrate that the County has inspected the completion of all projects needed to restore 3,718 acres of impervious surfaces to the MEP and has inspected the completion of the required SEPs. If the County does not meet the Final Restoration Goal, it must specify in the Final Report the amount of acreage by which the County has failed to satisfy the 3,718 acre restoration goal.
6. Within 90 days after the execution of this Consent Decree by the County and the Department, the County shall submit to the Department a proposal and schedule

for review and approval, pursuant to Part IV.C., Part IV.D., and Part IV.E. of the Permit, of corrective actions for the following alleged violations:

- a. 474 BMPs reported as failed;
- b. BMPs with missing as-built plans;
- c. 38 restoration BMPs reported as failed;
- d. 61 stream restoration projects with no inspections;
- e. incorrect calculations used for outfall stabilization;
- f. numerous total maximum daily load (TMDL) implementation plans with no final completion dates for achieving required waste load allocations;
- g. no drainage area information for 142 BMPs, and 1,563 BMPs were not properly linked using GIS to drainage area polygons; and
- h. no illicit discharge detection and elimination procedures were provided for surveying commercial and industrial areas.

III. STIPULATED PENALTIES

7. If the County fails to meet any date or deadline under this Consent Decree, or any date or deadline set forth in a plan or schedule submitted under paragraphs 3 through 6 of this Consent Decree, other than for the Annual Restoration Goals, Final Restoration Goal, and SEPs, the County shall pay \$250 per day of noncompliance for the first 30 days, \$500 per day of noncompliance between 31 and 90 days, and \$1,000 per day of noncompliance thereafter until the requirement is met. Failure to meet more than one date shall subject the County to cumulative penalties for each day that each separate requirement is not met by its due date.

8. If the County fails to meet the Annual Restoration Goals or Final Restoration Goal, the Department may demand a stipulated penalty of \$2,000 per acre per day not completed by these deadlines.

9. If the County has elected to perform a SEP and fails to complete it by December 31, 2024, the Department may demand a stipulated penalty of \$500 per acre per day not completed by that deadline.

10. Payment of any stipulated penalties shall be made by check payable to the Maryland Department of the Environment and directed to the Maryland Department of the Environment, Fiscal Services Division, Cash Receipts/Advance Unit, P.O. Box 2057, Baltimore, Maryland 21230. All stipulated penalties due under this Consent Decree shall be paid within 30 days of a written demand and invoice by the Department.

11. All stipulated penalties shall begin to accrue on the date that complete performance was due or a violation occurs and shall continue to accrue through the final day of noncompliance. The County has the obligation to document to the Department's satisfaction that compliance has been achieved. Nothing herein shall prevent the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree.

12. Except as otherwise expressly set forth in this Consent Decree, none of the stipulated penalties in this Consent Decree shall be construed as an election of remedy or other limitation on the Department's discretion to seek, in lieu of stipulated penalties, any other remedy or sanction available to it for violations of this Consent Decree or any other violation of State law or regulation not expressly made the subject of this Consent Decree.

The Department's failure to demand any or all of a stipulated penalty under this Consent Decree does not constitute a waiver of the Department's right to make such a demand.

13. Except as otherwise expressly set forth in this Consent Decree, payment of any stipulated penalty shall not relieve the County from the obligations imposed by this Consent Decree, any permit that may be issued to the County, or any other statute or regulation, nor shall such payment limit the right of the Department to seek enforcement of the terms of this Consent Decree or any other statute or regulation.

14. The Department may, in its discretion, reduce or waive any stipulated penalty if it determines that noncompliance is due to an event of force majeure as set forth in Section VII of this Consent Decree, or for any other reason deemed appropriate by the Department.

IV. MODIFICATION

15. This Consent Decree contains the entire agreement of the parties and shall not be modified by any prior oral or written agreement, representation, or understanding. Any modification of this Consent Decree shall be made in writing, signed by the parties, and approved by the Court.

16. No informal advice, guidance, suggestion, or comment by the Department regarding reports, plans, specifications, schedules, or any other writing submitted by the County shall relieve the County of its obligation to obtain such formal approval as may be required by this Consent Decree, and to comply with all requirements of this Consent Decree unless it is formally modified.

17. Any deliverables, plans, technical memoranda, reports, specifications, schedules and attachments required by this Consent Decree are, upon approval by the Department, incorporated into and enforceable under this Consent Decree.

18. Any request to modify the work shall not excuse, toll, or suspend any compliance obligation or deadline required pursuant to this Consent Decree during the pendency of the Department's consideration of the request, nor shall it stay the accrual of stipulated penalties.

V. REVIEW AND APPROVAL PROCEDURES

19. The County shall submit to the Department for review and approval, all plans, schedules, reports, or other documents that are required to be submitted in accordance with the terms and conditions of the work to be performed pursuant to this Consent Decree. The Department may approve any submittal, in whole or in part, or decline to approve it and provide written comments. The Department may also request additional information.

20. All work plans, reports, schedules, procedures, or other documents that are required to be submitted in accordance with the terms and conditions of the work to be performed pursuant to this Consent Decree, upon approval by the Department, are incorporated into this Consent Decree. Any failure to comply with such approved documents, including any deadlines therein, shall be deemed noncompliance with this Consent Decree.

21. In the event of the Department's disapproval, in whole or in part, of any work plans, reports, or other documents that are required to be submitted in accordance with the terms and conditions of the work to be performed pursuant to this Consent Decree,

the Department shall specify any deficiencies in writing to the County. The County shall correct the deficiencies within 30 days from receipt of disapproval by the Department and submit the corrected document to the Department for review.

22. If the County takes exception to all or part of the Department's disapproval of any work plans, reports, or other documents that are required to be submitted in accordance with the terms and conditions of the work to be performed pursuant to this Consent Decree, the County shall submit within 30 days, a written statement of the grounds for the exception to the Department. Representatives of the Department and the County may confer in person or by telephone in an attempt to resolve any disagreement. If a resolution is reached, that resolution shall be documented in writing and signed by representatives of each party. In the event that resolution is not reached within 15 calendar days, the County shall modify the work plans, reports, or other documents as required by the Department in response to the Department's expressed deficiencies.

VI. RIGHT TO ENTER

23. The County shall allow authorized representatives of the Department to enter upon any County property or rights-of-way at all reasonable hours for the purpose of collecting samples, information, and/or photographs, and any other activity necessary to ascertain and evaluate whether the County is in compliance with this Consent Decree, its Permit, and State law. Upon request by the Department, the County shall provide the Department with access to any records or information that may be related to the County's MS4, this Consent Decree, or the County's compliance with State law.

VII. FORCE MAJEURE

24. The County shall perform all requirements under this Consent Decree in the manner and within the time limits established herein, unless performance is delayed or prevented by a force majeure. For purposes of this Consent Decree, a force majeure is defined as any event arising from causes not reasonably foreseeable and beyond the control of the County, or any entity controlled by the County or the County's contractors, which delays or prevents performance of any obligation under this Consent Decree despite due diligence and best efforts to fulfill the obligation. Circumstances beyond the control of the County include earthquake, flood or other act of God, pandemic, war, riot, fire, or freight embargo. Force majeure does not include normal inclement weather, financial inability to complete the work, increased cost of performance, changes in the County's economic circumstances, or the failure to obtain federal, State, or local permits and authorizations.

25. The County shall notify the Department in writing within 10 work days of its knowledge of the event that causes or may cause delay. The notification shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by the County to prevent or minimize the delay, and a timetable by which those measures will be implemented. The County shall adopt all reasonable measures to avoid or minimize any such delay.

26. Failure by the County to comply with the notice requirements set forth in the preceding paragraph constitutes a waiver of the County's right to request an extension of the applicable deadline associated with the work at issue.

27. The County shall have the burden of proving that any delay is caused by circumstances beyond the control of the County.

VIII. PERSONS BOUND BY THIS CONSENT DECREE

28. This Consent Decree shall apply to and be binding upon the Department, the County, and the County's respective officers, employees, agents, trustees, receivers, and upon all persons acting on behalf of the County.

29. The County shall ensure that their contractors, subcontractors, laboratories, and consultants comply with this Consent Decree.

IX. NOTIFICATION

30. Unless otherwise specified, reports, correspondence, approvals, disapprovals, notices, or other submissions relating to or required by this Consent Decree shall be in writing and shall be sent to the following:

For MDE:

D. Lee Currey
Director
Water and Sciences Administration
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, MD 21230

For County:

Michelle W. Russell, Acting Director
Department of Environmental Protection
Prince George's County Government
9400 Peppercorn Place, 6th Floor
Largo, Maryland 20774

Terry L. Bellamy, Director,
Department of Public Works and Transportation
9400 Peppercorn Place, Ste 300
Largo, Maryland 20774

With Copy to:

Rhonda L. Weaver, County Attorney
Prince George's County Office of Law
1301 McCormick Drive, Suite 4100
Largo, Maryland 20774

If the point of contact changes for any party, that party shall provide notification of the new point of contact.

X. RELEASE AND RESERVATION OF RIGHTS

31. Upon the full completion of all of the obligations set forth in this Consent Decree, the Department agrees to refrain from pursuing against the County any civil enforcement action for the violations alleged in this Consent Decree that could have been brought prior to the execution of this Consent Decree. The Department specifically reserves, and this Consent Decree is without prejudice to, all rights against the County with respect to (a) criminal enforcement actions, or (b) violations of any other State law not alleged herein.

32. Nothing in this Consent Decree shall be construed to limit any authority of the Department to issue any order or to take any action it deems necessary to protect public health or the environment, or to limit any authority the Department now has or may hereafter be delegated.

33. The County and the Department intend that nothing in this Consent Decree shall be construed as a release or covenant not to sue any third party not a signatory to this Consent Decree. Nothing contained in this Consent Decree shall affect any right, claim, cause of action, or defense of any party hereto with respect to third parties. The County and the Department specifically reserve any and all rights, defenses, claims, demands, and causes of action that the County and the Department may have against any third parties relating in any way to the subject matter of this Consent Decree.

XI. THIRD PARTY BENEFICIARIES

34. This Consent Decree does not and is not intended to create any rights, claims, or benefits for any third party. No third party shall have any legally enforceable rights, claims, or benefits under this Consent Decree, nor shall any third party have any rights to enforce the terms of this Consent Decree. No act of performance by the County or the Department, nor forbearance to enforce any term of this Consent Decree by the Department, shall be construed as creating any rights, claims, or benefits for any third party.

35. This Consent Decree does not affect and is not intended to influence any third party's rights to investigate, evaluate and, respond independently to any impacts from stormwater pollution.

XII. TERMS OF THIS CONSENT DECREE

36. The effective date of this Consent Decree shall be the date upon which the Consent Decree is entered by the Court.

37. Each person signing this Consent Decree certifies that he or she is duly authorized by the party on behalf of which each signs to execute this Consent Decree and to bind that party to the terms of this Consent Decree.

38. The County agrees to undertake and complete all actions required by the terms and conditions of this Consent Decree. In any action by the Department to enforce the terms of this Consent Decree, the County consents to and agrees not to contest the authority or jurisdiction of the Department to issue or enforce this Consent Decree, and agrees not to contest the validity of this Consent Decree or its terms or conditions.

39. This Consent Decree is not intended to be, nor shall it be construed to be a permit or to replace or modify the existing Permit. This Consent Decree is intended to establish penalties for violations that have occurred and plans for implementation of corrective measures. The County acknowledges and agrees that the Department's approval of any plan does not constitute a warranty or representation that the plan will achieve the required compliance or performance standards. Compliance by the County with the terms of this Consent Decree shall not relieve the County of its obligation to comply with any other applicable local, State, or federal laws and regulations.

40. If a court issues an order that invalidates any provision of this Consent Decree or finds that the County has sufficient cause not to comply with one or more provisions of this Consent Decree, the County shall remain bound to comply with all provisions of this Consent Decree not invalidated or determined to be subject to a sufficient cause defense by the court's order.

41. This Consent Decree shall be construed in accordance with the laws of the State of Maryland.

IT IS SO DECREED this _____ day of _____, 2021:

Judge, Circuit Court for Prince George's
County

IT IS SO AGREED AND CONSENTED TO:

ON BEHALF OF PRINCE GEORGE’S COUNTY, MARYLAND:

Date

Tara H. Jackson
Chief Administrative Officer

Approved as to form and legal sufficiency this _____
day of _____, 2021.

Rhonda L. Weaver
County Attorney

ON BEHALF OF THE MARYLAND DEPARTMENT OF THE ENVIRONMENT:

Date

Suzanne Dorsey
Assistant Secretary

Approved as to form and legal sufficiency this _____
day of _____, 2021.

Matthew Clagett
Assistant Attorney General