

## Comment Response Document Regarding the Baltimore City Stormwater Remediation Fee Regulations

The Baltimore City Department of Public Works (DPW) conducted a public review of proposed revisions to the Stormwater Remediation Fee Regulations (the “Regulations”) in accordance with Baltimore City Code, Article 27 § 1-2(b). The public comment period was conducted from March 20, 2017 through April 19, 2017. DPW received written comments from four (4) individuals and/or organizations as follows:

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### COMMENTS

1. **Comment:** The commenter proposed that “the legislation could be amended to reflect rather than ‘monthly’ but ‘periodically as determined by DPW’ or some other appropriate wording that would provide DPW the flexibility to alter billing periods to something no greater than quarterly so as to not incur an expense that exceeds the revenue of an individual billing period.”

**Response:** The frequency of billing for the stormwater remediation fee is established by Article 27 of the Baltimore City Code. *See, e.g.*, Baltimore City Code, Article 27 § 3-4(b) (“For single-family properties ... the rate per month is the following multiple of the rate-per-month-per-ERU established for properties assessed under § 3-3....”) Accordingly, the Regulations have been revised to reflect monthly billing. DPW does not have authority to alter the frequency of billing.

2. **Comment:** (Page 12) The commenter proposed that the Regulations “[c]onsider adding downspout planters of a min[imum] size as Philadelphia does to allow for credits and meet runoff reduction objectives.”

**Response:** If installed and operated appropriately, downspout planters may be considered “Other Residential [Best Management Practices] BMPs” as outlined in Table 1 of the Regulations. As noted in the Baltimore City Customer Guidance Document: Single Family Property – “Customers may also receive credit for installing and maintaining other, more sophisticated on-site Best Management Practices that limit nutrient loading and decrease the quantity of water entering the City’s stormwater system.”

DPW notes that the City of Philadelphia operates a combined system that manages sewage and stormwater in the same collection and treatment system. In contrast, the City of Baltimore operates a Municipal Separate Storm Sewer System (MS4) that collects, treats, and discharges stormwater separately from the sanitary sewer system. Among other things, this means that reducing the quantity of stormwater discharge has benefits for the City of Philadelphia

(decreasing combined sewer overflows) that do not accrue to the City of Baltimore. For example, reducing the quantity of stormwater discharge helps to control flooding and minimizes the burden on the City's MS4 but does not reduce sanitary sewer overflows because the City operates a separate sanitary sewer system. In sum, DPW's credits reflect a different cost-benefit analysis based on the cost to operate the MS4 in compliance with the City's National Pollutant Discharge Elimination System (NPDES) permit issued under the Clean Water Act.

3. **Comment:** (Page 13) The commenter proposed that the Regulations “[c]onsider discouraging direct discharge to the Harbor and provide credits to innovative practices that detain and filter the water before discharging to the Harbor.”

**Response:** Pursuant to Baltimore City Code, Article 27 § 3-6(b)(1)(iv), a 30% credit is mandated for “any portion of a property that discharges directly to the Baltimore Harbor and not through the City’s stormdrain system...” DPW encourages property owners to adopt stormwater treatment practices as outlined, *inter alia*, in Table 1 of the Regulations. In general, Best Management Practices (BMPs) must be approved by the Maryland Department of the Environment (MDE) to be eligible for credit; however, DPW may also enter into a Memorandum of Agreement to accept innovative treatment practices that are not yet recognized by MDE.

4. **Comment:** (Page 15) The commenter proposed that the Regulations “[c]onsider requiring de-paving projects also address and demonstrate compaction and percolation likely in previously paved areas and lead to poor performing planting conditions.”

**Response:** In order to be eligible, de-paving events must document removal of impervious surface and stabilization of the newly exposed ground. These standards are based on applicable guidance documents issued by the Maryland Department of the Environment (MDE) that determine the amount of credit for specified treatment practices, including impervious area removal. *See, e.g.*, “Accounting For Stormwater Wasteload Allocations and Impervious Acres Treated: Guidance For National Pollutant Discharge Elimination System Stormwater Permits” Maryland Department of the Environment (August 2014). To supplement this guidance, DPW is developing a standard detail to clarify the requirements for impervious area removal. Once finalized, the standard detail will be published on the City’s website.

5. **Comment:** (Page 17) The commenter proposed that the Regulations “[c]onsider allowing one tree as a credit.”

**Response:** After consideration, DPW has determined that the proposed change would yield de minimis benefit to the City’s Municipal Separate Storm Sewer System (MS4) and should not receive a credit. As noted above, the City receives credit under its MS4 Permit for treatment practices based on guidance documents prepared by the Maryland Department of the Environment (MDE). In the case of tree plantings, MDE provides credit based on a minimum amount of one-hundred (100) trees per acre. *See* “Accounting For Stormwater Wasteload Allocations and Impervious Acres Treated: Guidance For National Pollutant Discharge Elimination System Stormwater Permits” Maryland Department of the Environment (August 2014). Given MDE’s treatment standard and the need to encourage effective management

practices, DPW has determined that the proposed change would provide insufficient benefit and should not receive credit.

6. **Comment:** (Page 17) The commenter proposed that the Regulations provide “credit for any shade or understory tree of 1 inch or greater planted and in good condition on the property.” The commenter noted that this may provide an incentive to maintain and sustain trees of larger size that provide greater ecosystem benefits, and questioned how the City would confirm what year a tree is planted for purposes of granting a credit.

**Response:** Existing trees are reflected in the City’s impervious area baseline. The baseline establishes the amount of impervious area that is subject to the 20% restoration requirement in the City’s Municipal Separate Storm Sewer (MS4) permit. As such, new trees must be planted to effectuate any improvement in the City’s existing impervious area and obtain credit under the MS4 Permit. After consideration, DPW has determined that adding further gradations to the tree planting credit would over-complicate the Regulations without corresponding benefits to the City’s Municipal Separate Storm Sewer System (MS4).

7. **Comment:** (Page 18) The commenter proposed that the Regulations “consider allowing credit for off-site treatment BMPs from public land to private land.”

**Response:** DPW notes that recognized Best Management Practices (BMPs) – whether onsite or off-site – may receive credit as provided in the Regulations. As discussed above, innovative BMPs that are not recognized by the Maryland Department of the Environment (MDE) may be accepted by DPW on a case-by-case basis through a Memorandum of Agreement. As such, DPW has determined that no further clarification is necessary at this time.

8. **Comment:** (Page 19) The commenter requested that the Regulations “further define proper maintenance.”

**Response:** After review, DPW has determined that defining “proper maintenance” by Regulation is impracticable. Individual Best Management Practices (BMPs) may have different maintenance requirements depending on the type of BMP and other, site-specific considerations. For example, a BMP located on a steep slope may have different maintenance requirements from the same BMP located in a flat area. If an inspection notes a deficiency in an existing BMP, DPW will notify the property owner to correct the deficiency and ensure that the treatment practices remains safe and effective.

9. **Comment:** (Page 20) Two (2) commenters proposed that the City accept inspections of stormwater Best Management Practices (BMPs) and Treatment Practices performed by Landscape Architects and Professional Surveyors who are licensed and in good standing.

**Response:** Pursuant to Baltimore City Code, Article 7 § 26-1, all inspections that are subject to Baltimore City Code, Article 7, Division II must be performed by an authorized DPW representative or a Professional Engineer who is licensed and in good standing with the State of

Maryland. This provision is consistent with Md. Code Regs. 26.17.02.10., which mandates that inspections of regulated developments be performed by an authorized City representative or a licensed Professional Engineer.

DPW has revised section (VI)(b)(viii)(4) to reflect that inspections of non-structural BMPs may be performed by Landscape Architects or Professional Surveyors who are licensed and in good standing, provided that construction of the non-structural BMP is otherwise exempt from the requirements of Baltimore City Code, Article 7, Division II.

10. **Comment:** One commenter proposed that the City adopt an additional 55% credit for port terminal properties located in the maritime industrial zone as defined by the Zoning Code of Baltimore City. The commenter stated that this credit would be an alternative to the 55% credit that is currently available for customers with an industrial stormwater permit, so that customers would be eligible for either but not both.

**Response:** Although DPW appreciates the commenter's desire to lower its stormwater remediation fee, DPW has determined that the proposed credit is not consistent with the logic underlying stormwater remediation fee credits. As prescribed in Baltimore City Code, Article 27 § 3-6(b)(1), DPW may promulgate Regulations to establish credits for practices that reduce the quantity or improve the quality of stormwater discharges. This predicate requirement is established, *inter alia*, to ensure that credits reward activities that reduce the City's obligations under its Municipal Separate Storm Sewer System (MS4) permit in compliance with the Clean Water Act. Credits have also been established for properties that operate within parallel permitting schemes that address stormwater pollution – for example, the 55% credit for properties subject to Industrial Stormwater National Pollutant Discharge Elimination System (NPDES) Permits – or for discharges that do not burden the City's MS4. However, the credit proposed by the commenter has no relationship to improving the quality or reducing the quantity of stormwater discharged.

DPW finds that the proposed credit would provide a significant financial benefit to a specific class of properties based on an un-related land use classification with no corresponding benefit to the MS4 or reduction in the City's financial obligations. If DPW established the proposed credit, the financial burden of compliance with the City's MS4 permit would be diverted from an unduly favored class of commercial properties onto homeowners, small businesses, and other customers. As such, DPW rejects the proposed credit as unfair to ratepayers and inconsistent with DPW's statutory obligations.