

Open Work Session
Proposed Illicit Discharge Legislation
July 2, 2019

Mr. Weston Young, Assistant Director of Administration, Mr. Paul Wilber, County Attorney, and Mr. Dallas Baker, Director of Public Works, came before Council. Mr. Baker said this Legislation is required under the County's Municipal Separate Storm Sewer System (MS4) permit, and this Legislation allows the County to inspect stormwater and storm drain pipes, even those on private property, for detecting any type of illegal discharge to the system. He said they have to inspect a certain number per year, according to their permit, which is 20 percent of their outfalls, or up to 100 per year looking for things like oils and grease, petroleum products, and all other kinds of nasty stuff that does harm to the environment. He said they copied what the City of Salisbury did, which has already been approved by MDE and the EPA. He said the City went through an EPA audit a couple of years ago, so they thought it was a safe bet to go with what had already been looked at and approved. He said the County has a firm lined up to start the inspections as part of this permit, but before they start they will need to get the Legislation passed so that if the County is looking at a ditch or storm drain on someone's property who asks them to get off, the County can say no because they actually have the right to be out there and look at it. He said it also incorporates fines for discharging illegal substances. Mr. Dodd asked if Mr. Baker knows how they will test that, or will it just be visualized, to which Mr. Baker responded, they actually have a sample kit, and they will collect samples during dry weather. He explained, they inspect 48 hours after a last recorded rainfall event. He said, if they see an illicit discharge, there is field testing equipment that can help isolate if something is just groundwater intrusion, or if there is some type of substance in there. He said, if it turns positive, they can then take that sample back to the lab for further testing, and give them a rundown of what is in it. He said they also have cameras they can stick into the pipes so they can trace where the flows are coming from and try to isolate who the source is.

Mr. Young said he would like to add that, as Mr. Baker mentioned, they mimicked the City of Salisbury, and other jurisdictions that have an MS4 permit have slightly different language. He said the key part of all of this is it needs to be approved by the State they are in, as well as, ultimately, the EPA, who will propose changes if they are not happy with it. He said they chose the City of Salisbury for a variety of reasons, but, if there are any other changes Council wishes to consider, they will take whatever Council drafts and send it to the State for approval. Mr. Cannon asked if this is boilerplate. He clarified, he asks because he is wondering if there are other measures Council should maybe think of considering in case this becomes a very intrusive process, to which Mr. Wilber responded, based on the consistency with the City's process, and the uniformity of enforcement between the City and the County, that is why the decision was made to go with what has passed MDE and EPA muster. He said, if they want to put enhancements in there, then they certainly are going to have to go back to MDE and the EPA for approval, but it is not that they cannot do it. Mr. Young said they can also try to weaken it instead of enhancing it, and that would also require the State to okay that change.

Mr. Holloway said he knows this started about putting leaves in ditches, but now it looks like it is full blown. Mr. Young said Mr. Cannon used the word boilerplate, but a lot of this is common, and they will see themes in this that they will see in other ones, but what they put forward is what they think will work for them. Mr. Cannon clarified, the reason he asked that question is because he would really like to avoid two or three years from now someone asking who put this in place, or how could they possibly have done that, and people calling them. He said that is an exaggeration, but if there were some type of Gestapo measures where people were just having Government completely invading people's properties and overstepping their boundaries, he wants to make sure they are acting within the proper boundaries,

but Council will have to depend on them to help them with that. Mr. Baker said the nice thing is that it is local, it is something people are already familiar with, the City has been using it for several years, and there has not been that backlash. Mr. Dodd asked if this is required, to which Mr. Baker responded, yes, they have to pass the Legislation as part of the MS4 permit.

Mr. Cannon said, as Mr. Young said, there may be parts Council may want to water down. Mr. Young clarified, they could try, but, again, everything comes down to the language. He said whatever language they propose, whether it is stronger, weaker, or different, the State has to approve, and, ultimately, when the EPA inspects the County, they could tweak it, but by mimicking the City almost verbatim they should be good because the EPA has been down here, and the City has remedied whatever issues the EPA found at that time. Mr. Baker added, when the EPA first came down and did that audit of the City, they got a substantial amount of fines, but then they got them reduced through mitigation efforts. He said there are not a lot of jurisdictions that have been audited by the EPA on these phase 2 permits. He said they have the big phase 1 communities on the Western Shore, such as Montgomery County, and those kinds of places, but the EPA has not audited a lot of phase 2 communities. He said they have one, literally, right next door to them that has been through that process, and that gives him a feeling of safety. He said, if they need to change things they can change things, but he is fairly confident about putting this forward that the EPA is not going to come down and ask where they pulled this from, and give them a \$200,000 fine, which is what the City of Salisbury was initially looking at from their EPA audit. He said, again, the City got that backed off through various efforts where they were able to demonstrate that what they were doing was part of their program, but that is why he likes this Legislation. Mr. Young added, as part of Mr. Cannon's concerns, it is sort of like Code enforcement. He explained, if they have the wrong person in Code Enforcement, they can have serious issues with how far that said individual will go, or, on the other end, what they will not enforce that will ultimately cause issues. He said part of it is staffing in terms of educating the employees that would be following this, and potentially enforcing parts of this. Mr. Holloway said Mr. Baker said they are going to hire a firm to do that, so they are not going to have employees, to which Mr. Baker responded, it is the same firm the City uses. He said, again, he makes no qualms about, when he is setting up the County's MS4 permit program, he is looking over the City's shoulder asking what they did because they have been through the EPA audit, so there is a safety factor there. He said he goes to the same firms they have been using, and, again, it also helps them save costs because when they are doing things like GIS mapping, there are so many overlapping parts between the City and County, so they do not have to double efforts because they are already down here, and they are not paying two mobilization charges, and things like that.

Mr. Holloway asked who is going to be the Code Enforcement Officer, to which Mr. Baker responded, the inspectors will report the findings to the County. Mr. Holloway again asked who the Code Enforcement Officer is, to which Mr. Young responded, there are several aspects of this. He said Mr. Baker is talking about the illicit discharge detection and elimination (IDDE), and a good example of how that typically works is, if they go on the river at low tide and if it has not rained for several days, they look at the pipes. He said, if there is a liquid steadily coming out of the pipe, that is not stormwater, so the inspectors will track it back and see what it is. He said it could be somebody watering their lawn and too much water is going off into the road, or it could be that somebody has hooked up their sewer line into a storm drain, which the City of Salisbury found of few cases of. He said, for a single family home, that is 250 gallons per day of waste and wash water going directly into the river, so this is trying to detect that. He said, in terms of what Mr. Holloway is referring to, when they have drainage complaints and go to the site and see someone has filled their ditches, they always try education first, but they are going to get the stubborn person who just keeps dumping things into their ditch, so they now have an enforcement mechanism. He said they could go through their Codes, or have the stormwater inspector

doing it depending on how active this is, and they may need an additional position to do that, but he thinks there are two things going on. Mr. Wilber said, to answer Mr. Holloway, it would be a County person who would be doing the citation, but there might be background work done by the consultant.

Mr. Dodd said, if they pass this tonight, and the inspector goes out tomorrow and finds a problem, who is he going to report to, to which Mr. Baker responded, the County. Mr. Dodd asked who, to which Mr. Baker responded, Public Works. Mr. Dodd asked who will be the Enforcement person because they have to have somebody to report to and not just Public Works, to which Mr. Young responded, they have a stormwater inspector right now. Mr. Cannon clarified, he thinks the real issue is what this entails itself, and not whoever that individual might be. He said maybe they need to hire somebody, but what Council needs to worry about are the dynamics of this actual Resolution. Mr. Dodd said that is what he is getting at. He said, if they pass this, they have to have an Enforcement Officer, to which Mr. Young responded, they have a gentleman who goes around and, as part of their State regulations with stormwater management, inspects all the best management practices (BMP). He said they will go to a business or subdivision and make sure the storm drain is being maintained. He said, if it is not, he will send a letter. He said, on the other end, they have the Code Enforcement folks who are used to taking somebody to court because their mattress is in the yard, for example. Mr. Holloway said he has an example, and wants to know how they will handle this. He said, on the eastside of Forest Grove Road on the property between Forest Grove Road and where the branch goes across Mt. Hermon Road, the beavers keep damming it up. He said the County has gone in there, but will this now become the property owner's problem to keep those beavers from damming that up and blocking up the ditch, to which Mr. Baker responded, that is a natural process. He clarified, that is not an illicit discharge and detection elimination, but it is a beaver. Mr. Holloway said they have been talking about too many leaves in people's ditches, and that is part of what this is about. He then asked if this came about because of all of the flooding they had, to which Mr. Baker responded, this Legislation came about because of the municipal separate storm sewer system. Mr. Holloway said it also came about because of the drainage problems they have been having, to which Mr. Young responded, it has provisions in it that helps with drainage and the conversations they have been having, and there are provisions in it. Mr. Baker clarified, they are related, but it is not directly to address private drainage and private drainage only. Mr. Hastings said they have to do this because they have a population over 100,000. He then asked if there are aspects of that being the real reason, to which Mr. Baker responded, with the MS4 and the phase 2, yes. Mr. Young added, it surrounds the urbanized area, so it is not every part of the County. He said, specifically, with the Beavers they have a trapper on call. Mr. Holloway said he knows how they take care of it, but there are some ditches that end up with more pine needles and leaves in them than others do, and that is why he was asking if it will be the property owner's problem, to which Mr. Young responded, the specific language says any yard waste that has been moved or gathered by a person. He said, if it is natural pine needles, it is fine if they rake it into the ditch.

Mr. Taylor said there is one thing to note, which is MS4 as defined in the ordinance and what is required by MDE only pertains to drainage systems the County owns and operates, and does not apply to private. He said, if there was a beaver that knocked down a tree in one of the HOA swales, that would not be under this ordinance. He said, if it was in the County's, it would because that is the way it is defined. Mr. Cannon asked if it is private discharges into the public system, to which Mr. Taylor responded, it is public systems, if they want to look at it that way. He said, if they want to expand it to private it would take some language, but it could be done. Mr. Holloway said this is a pretty thick document giving people the right to go on other people's property, to which Mr. Wilber responded, it is the EPA and MDE.

Mr. Cannon asked where they will go from here, and how fine-tuned this is, to which Mr. Young responded, what they have proposed is what they are willing to live with. He said, if there are any changes Council would like to make beyond that, they will gladly send them. He said the next step is, whatever draft Council is comfortable with, Mr. Baker will give to the appropriate staff at MDE to review, and it should be a quick review because it mimics the City of Salisbury almost verbatim. He said, if they are okay with it, they will talk to Mrs. Hurley and get it put on the soonest Agenda. Mr. Cannon asked if MDE has to review it first, to which Mr. Young responded, yes. He explained, if Council approves it in any form, they run the risk that MDE could come back and require a change, so that would just be extra work. Mr. Cannon asked, if MDE reviews it and it comes back to Council for adoption, but Council amends it, what would happen, to which Mr. Baker responded, they would probably send it back to MDE again. He said it just gives them a layer of protection. He said, if the EPA challenged something they changed, but they submitted it to MDE and they reviewed it, then the EPA would look at MDE, and not the County, and they have done their due diligence to protect themselves. Mr. Young said, if Council has any additions, deletions or changes, they will gladly put them forward to MDE for review. Mr. Dodd asked if this is time sensitive, to which Mr. Baker responded, yes. He said he would really like to get started in the fall, and really as soon as possible to get this process going. He said, again, with their actual number, if they do 20 percent of their outfalls, it is 105 outfalls they have to inspect. He said, again, they cannot inspect an outfall if it has rained within 48 hours, and that is prime season right now.

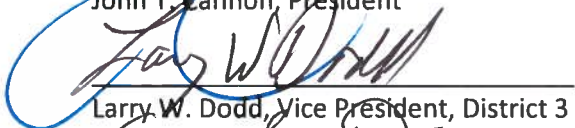
Mr. Cannon asked Mr. Taylor if, for the most part, he feels comfortable with what he has seen, to which Mr. Taylor responded, he has suggested some changes, which are from other approved MS4 IDDE ordinances that mostly strengthen it. He said, for example, many Counties provide requirement for notification of spills, and he is talking about spills of pollutants, and not just ordinary water. He said he cannot imagine that MS4 or EPA would object to that, and, as he said, this is in other County's ordinances. He said, in a couple of instances he would not call it weakening, but would call it a common sense provision. He said, for example, certain things are exempted from being put into the MS4 systems, but, in Cecil County they have the extra kicker "Other discharges specified in writing by the Department of Public Works as being necessary to protect public health and safety." He said it is a catchall, but the idea of it is, if something comes up and for some reason to protect public health and safety would require the discharge of a pollutant into the MS4 system, then they are covered, and, apparently, MDE has approved that. He said, just so they know, the way this is defined, anything other than stormwater is a pollutant. He said, if it is other than stormwater, and it is not on the exempted list, then it is a pollutant the way it is defined, so that is why something like that might make sense. He said other ordinances exempt dye testing because the dye would be a pollutant since it is dumping other than stormwater. He said he has suggested several things, he has sent the ordinances to Mr. Wilber, and he thinks all of them would pass muster by MDE and the EPA in a heartbeat.

Mr. Holloway asked, with the situation in Kaywood with natural water flow, if that had filled in where the farm is, would this ordinance give them the right to go in there and clean that out? He clarified, in other words, that drainage is not where it should be, but it showed to have been there at one time, and got filled in over a period of 20 years, to which Mr. Young responded, that is not the intention of this Legislation. Mr. McCain clarified, that is not an illicit discharge. Mr. Cannon said he knows there have been a lot of emails going back and forth between Mr. Taylor and the Administration, but he would strongly suggest they try to incorporate some of what Mr. Taylor is suggesting keeping in mind, if they are going to send it to MDE and it is going to come back before Council again, he would hate to prolong that process. He said he thinks it would be instrumental to try to make sure they strongly consider those recommendations because, at face value, they seem to make sense, to which Mr. Wilber responded, he will talk to Mr. Taylor tomorrow. There was no further discussion.

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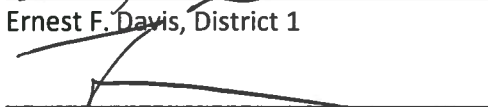
John T. Cannon, President



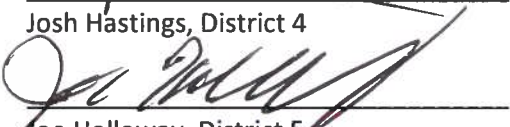
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Joe Holloway, District 5



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