



Judge Dismisses Appeal of MDE's Industrial Stormwater GP May 2016

On February 18, 2016, Baltimore City Circuit Court Judge Michael DiPietro issued an order dismissing the Environmental Integrity Project's (EIP's) request for review of MDE's issuance of the Industrial Stormwater General Permit (12-SW, effective January 1, 2014). EIP has not filed an appeal of the Circuit Court's decision with the intermediate appellate court, the Court of Special Appeals. Therefore, this litigation is concluded.

In December 2013, the EIP, working with Blue Water Baltimore, Potomac Riverkeeper, and the Assateague Coastal Trust, appealed MDE's November 1, 2013 decision to issue the permit, arguing that: (i) MDE violated the CWA by allowing for coverage without giving the public the opportunity to review individual Notices of Intent (NOI) and Stormwater Pollution Prevention Plans (SWPPPs); and (ii) the GP inappropriately only requires benchmark monitoring by a limited subset of the industrial sectors covered by the permit.

The Court dismissed both arguments. After considering arguments from both the Petitioners and MDE regarding the need for public notice and comment on NOIs and SWPPPs, the Court held that: "...it is clear that NOIs and SWPPPs used in connection with Permit No. SW12 do not set forth effluent limitations that would subject them to public notice and comment. There was sufficient evidence presented in the administrative record demonstrating that the SWPPPs used in connection with Permit No. SW12 are not restrictions, but simply control measures to be used as a guide by the industries." In addition, the Court refused to overturn MDE's decision to select benchmark sectors based on compliance history and potential for metals discharges. Highlighting the highly deferential standard extended to an administrative agency on factual issues, the Court noted that "...while Petitioners may believe, rightfully so, that a more robust benchmark monitoring system would better protect the waters of Maryland, MDE's current regime was not promulgated in an arbitrary and capricious manner."