



OFFICE OF THE COUNTY ATTORNEY

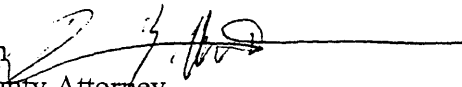
Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

MEMORANDUM

December 6, 2002

TO: Meosotis Curtis
Department of Environmental Protection

FROM: Walter Wilson 
Associate County Attorney

RE: Applicability of Chapter 19 in Friendship Heights

You have asked whether Chapter 19 (Erosion, Sediment Control and Storm Water Management) of the Montgomery County Code is enforceable within the Village of Friendship Heights (the "Village"). Your question was prompted by the Maryland Department of the Environment (MDE) having designated nine jurisdictions¹ in Montgomery County as small municipal separate storm sewer systems (MS4s) that must obtain stormwater permit coverage in 2003 because they satisfy certain criteria that make them subject to the U.S. Environmental Protection Agency's Phase II stormwater management regulations. The Phase II regulations implement certain components of the National Pollutant Discharge Elimination System (NPDES) Program under the federal Clean Water Act. All of the designated jurisdictions are municipalities except Friendship Heights, which is a special taxing district created by the Maryland General Assembly in 1914. Under the NPDES Program, any political subdivision within Montgomery County that has been identified as a Phase II MS4 can satisfy its stormwater permitting requirements through coverage under a modified County MS4 permit if Chapter 19 is enforceable within that political subdivision.

Because Friendship Heights is not a municipality, state laws governing the enforceability of a County law within a municipality are inapplicable there. *See generally* Md. Ann. Code art. 23A, § 2B (a). *See also* Montgomery County, Md., Code § 1-203 (c). The Village exercises limited municipal-like functions as authorized by state law. *See* Montgomery County, Md., Code § 66-9; 1980 Md. Laws 230. Unlike a municipality, however, the Village has no state-granted powers to make County laws unenforceable within its boundaries. Therefore, Chapter 19 is applicable to the residents of Friendship Heights, which makes it possible for the Village to

¹ The nine jurisdictions identified by MDE are Chevy Chase Village, Town of Chevy Chase, Poolesville, Somerset, Kensington, Rockville, Gaithersburg, Takoma Park, and Friendship Heights.

Meo Curtis

12/6/2002

Page 2

obtain stormwater permit coverage through Montgomery County as a co-permittee under the NPDES Program. As with any small MS4 that is subject to the Phase II stormwater regulations, the Village could opt for coverage under the state's general permit or obtain its own MS4 permit through MDE independently.

I trust that this addresses your question. Please let me know if our office might be of further assistance.

cc: James Caldwell, Department of Environmental Protection
Marc Hansen, Office of the County Attorney