

**Final Rule on Stormwater Management and Soil Erosion and Sediment Control**

Fact Sheet

On Friday, July 19, 2013, the District Department of the Environment (DDOE) finalizes its Rule on Stormwater Management and Soil Erosion and Sediment Control and its Stormwater Management Guidebook (SWMG), which provides technical guidance on complying with the Final Rule. Below is a brief summary of key points, organized under the following topics:

* Background and Purpose
* New Stormwater Retention Performance Standards
* Public Process Leading to Final Rulemaking
* Transition to New Stormwater Performance Requirements

Additional information is available via ddoe.dc.gov/swregs, including earlier versions of the rule and SWMG, public comments on those documents, DDOE’s responses to those comments, and related resources.

**Background and Purpose**

The Final Rule and Final SWMG will accomplish the following:

* Significantly reduce stormwater pollution flowing into the Anacostia and Potomac Rivers, Rock Creek, and other District waterbodies by requiring large construction projects to install and maintain green roofs, rain gardens, permeable pavement, and other Green Infrastructure (GI) practices to reduce stormwater runoff. Stormwater runoff erodes District stream banks and carries trash, oil, pet waste, and other pollutants into District waterbodies and downstream to the Potomac River and Chesapeake Bay.
* Retrofit existing rooftops, parking lots, and other “impervious” surfaces with GI practices that will reduce stormwater runoff. Approximately 43% of the District’s land area is composed of impervious surfaces, and DDOE expects that about 1% of the District’s land area will undergo construction that triggers these regulations in a typical year. Under these new regulations, DDOE expects that regulated development will be the biggest driver of the installation of stormwater GI retrofits in the District. Over time, this will make the District “spongier,” allowing it to better mimic how the vegetated natural environment captures rainwater and soaks it into the soil.
* Gradually improve the health of District waterbodies, making them more usable and attractive for residents, businesses, and visitors. This is critical to achieving Mayor Gray’s Sustainable DC goal of making 100% of District waterbodies fishable and swimmable by 2032.
* Update the District’s existing requirements in Chapter 5 of Title 21 of the District of Columbia Municipal Regulations (DCMR) to reflect the current scientific, engineering, and practical understanding in the fields of stormwater management and soil erosion and sediment control. Knowledge and technology in these fields have changed considerably since 1977, when the majority of the soil erosion and sediment control requirements were put into place, and since 1988, when the District’s existing stormwater management requirements were established.
* Establish an innovative Stormwater Retention Credit (SRC) trading program, which is the first of its kind in the nation and has the potential to increase the new standards’ benefit to District waterbodies while reducing the cost of compliance and providing other sustainability benefits.
* Create a financial incentive and business opportunity for voluntary installation of stormwater retrofits to earn SRCs that can be sold to regulated sites to meet part of their requirements.
* Achieve federal requirements in the Municipal Separate Storm Sewer System (MS4) permit issued to the District by Region III of the Environmental Protection Agency (EPA).

**New Stormwater Retention Performance Standards**

* Stormwater retention performance standards will be triggered by two different categories of projects:

1. Sites that disturb 5,000 square feet (SF) or more of land will be required to retain the stormwater from a 1.2 inch storm, either on site or through a combination of on-site and off-site retention. The disturbance of 5,000 SF of land has been the trigger under the stormwater management regulations established in 1988. These projects are referred to as major land-disturbing activities.
2. Major substantial improvement projects, which are renovations of existing structures that have a combined 5,000 SF footprint and for which the project cost exceeds 50% of the pre-project value of the structure, will be required to retain the volume from a 0.8 inch storm. This is a new trigger.

* After achieving 50% of its required retention volume on site, a regulated site has the option to achieve the remainder off site without first demonstrating that on-site retention is infeasible. The volume that the regulated site chooses to retain off site is an ongoing obligation that it must continue to achieve over time, just as the regulated site must continue to maintain the stormwater GI practices installed on site.
* A regulated site that elects to use off-site retention has two options for achieving the off-site retention volume:

1. Payment of an In-Lieu Fee (ILF) to DDOE. The ILF is set at $3.50 per gallon of retention per year.
2. Use of a privately tradable Stormwater Retention Credit (SRC). An SRC is equal to one gallon of retention for one year. A regulated site could generate SRCs on another property that it owns, or it could purchase SRCs from another property owner.

* Unless it drains into the Combined Sewer System, a site that elects to use off-site retention must either retain or provide treatment (i.e. filtration) for a minimum of 50% of the 1.2 inch retention requirement (or 50% of the 0.8 inch retention requirement for a major substantial improvement project) for each drainage area on the site and for any area intended for use or storage of motor vehicles.
* In addition to the stormwater retention performance standards, the stormwater management performance requirements in the final rule include detention requirements for major land-disturbing activities. These detention requirements are similar to the detention requirements in the stormwater management regulations that were established in 1988.

**Public Process and Training**

* Over the past ten years, DDOE has evaluated the impact on District waterbodies of stormwater runoff and made initial efforts to revise its regulations for stormwater management and soil erosion and sediment control.
* Initial efforts to revise these regulations provided valuable stakeholder input to DDOE. When EPA issued a draft MS4 permit with stormwater retention requirements in April, 2010, DDOE redoubled its efforts to develop a practical regulatory framework that would significantly improve protection for District waterbodies, engaging helpful input from stakeholders in the environmental community and the regulated community and providing periodic briefings to these stakeholders. DDOE has continued to provide these briefings to stakeholders throughout the process described below.
* The MS4 permit was finalized as of January 22, 2012, and DDOE incorporated these final requirements into the draft regulations.
* On August 10, 2012, DDOE published its Proposed Rule on Stormwater Management and Soil Erosion and Sediment Control in the DC Register and began a 90-day comment period (“first formal comment period”) that extended through November 8, 2012. DDOE also invited comment on a Proposed SWMG, posted on its website, during this 90-day period.
* During the first formal comment period, DDOE conducted numerous public trainings on compliance with the regulations and participation in the SRC trading program. DDOE also held two public hearings. DDOE received 21 sets of formal comments on the Proposed Rule and 24 sets of formal comments on the Proposed SWMG.
* After considering comments on the Proposed Rule and SWMG and making appropriate changes, DDOE released revised versions of the rule and SWMG for a 30-day informal comment period, which ended on April 30, 2013. DDOE posted the Revised Rule and Revised SWMG on its website and notified stakeholders through an email list, on which members of the public have been added at their request throughout the process. DDOE received eight sets of comments on the Revised Rule and 10 sets of comments on the Revised SWMG
* After considering comments submitted on the Revised Rule and SWMG and making appropriate changes, DDOE began a 30-day “second formal comment period” on its Second Proposed Rule by publishing it in the DC Register on June 7, 2013. DDOE also posted a Second Proposed SWMG on its website and requested public comment. Subsequently DDOE issued a Notice of Superseding Rulemaking in the DC Register on June 28, 2013 to correct an editorial error. DDOE held a public hearing at which it took comments on the Second Proposed Rule and SWMG and on the Notice of Superseding Rulemaking on July 8, 2013, which is also the day that the second formal comment period ended. The comment period for the Notice of Superseding Rulemaking ended on July 10, 2013. On the Second Proposed Rule and the Notice of Superseding Rulemaking, DDOE received 12 written sets of comments and three sets of comments given orally at the hearing. On the Second Proposed SWMG, DDOE received seven sets of comments.
* DDOE is currently scheduling a new round of public trainings on compliance with the Final Rule and participation in SRC trading. DDOE will make the training schedule available via ddoe.dc.gov/swregs, in addition to distributing it through the email list mentioned above.

**Transition to New Stormwater Performance Requirements**

* The Final Rule includes a transition plan for regulated projects to comply with the new stormwater performance requirements. The Final Rule’s provisions related to SRC trading and to erosion and sediment control take effect upon final publication in the DC Register.
* In developing this transition plan, DDOE carefully considered competing stakeholder interests, and comments, as well as the requirements of the MS4 permit. On the one hand, the new requirements are essential for the restoration of the District’s waterbodies, and without these new requirements, or something very similar, it is difficult to envision how the full use of District waterbodies can be restored to its residents, visitors, and businesses. On the other hand, requiring regulated projects to meet the new requirements immediately or very soon after finalizing the rule may impose significant costs and time delays on these projects. As noted above, the new regulations represent a significant shift from the existing regulations. The types of projects that trigger the District’s stormwater management regulations may go through months or even years of design work prior to beginning the permitting process that triggers the regulations, and it is difficult for those projects to design to the new requirements before the finalization of the Rule and SWMG.
* Figure 1 provides a summary of the transition plan.

Transition Period One (TP1)

* Major regulated projects comply with stormwater regulations in place before Final Rule.

Transition Period Two A (TP2A) for Major Land-Disturbing Activities and

Transition Period Two B (TP2B) for Major Substantial Improvement Activities

* Minimum on-site retention requirement waived. Entire retention volume may be achieved off site.
* Minimum on-site treatment required per the Final Rule, as applicable.

Exceptions:

* + Areas of projects for which an Advanced Design (AD) has been submitted and for which approval has not expired shall comply with the stormwater management requirements in place at the time of submittal.
  + Areas of multi-phased projects for which all stormwater infrastructure and BMPs are installed in compliance with a DDOE-approved SWMP during an earlier phase of construction shall be deemed to have met the stormwater management requirements.
  + Projects for which an unexpired approval listed below conflicts with the installation of a retention BMP can use evidence of that conflict in applying for relief from the minimum on-site retention requirement, provided that the project applied for the unexpired approval before the end of TP2A for a major regulated project or the end of TP2B for a major substantial improvement activity:
    - Concept review by the Historic Preservation Review Board;
    - Concept review by the Commission on Fine Arts;
    - Preliminary or final design submission by the National Capital Planning Commission; or
    - Variance or special exception from the Board of Zoning Adjustment.
    - Large Tract Review by the District Office of Planning.

**Figure 1: DDOE Transition Plan for Stormwater Management Performance Requirements**