

July 8, 2013

District Department of the Environment
Attn: Brian Van Wye, Natural Resources Administration
1200 First Street, NE, 5th Floor
Washington, DC 20002
Brian.VanWye@dc.gov

Re: Second Proposed Stormwater Rule Comments

On behalf of the undersigned members of the Choose Clean Water Coalition's Stormwater Workgroup, please accept the following comments on the second proposed draft of the District of Columbia stormwater regulations.

Our organizations support the efforts of the District Department of the Environment (DDOE) to reduce the amount of polluted runoff flowing into Washington, D.C. water bodies and ultimately the Chesapeake Bay. As the District stated in its Phase II Watershed Implementation Plan (WIP), the stormwater management requirements contained in the District's municipal separate storm sewer system (MS4) permit, including the requirement to implement these regulations, will "better equip the District to be in compliance with the Chesapeake Bay TMDL, by reducing greater amounts of nitrogen, phosphorous and sediment resulting from stormwater runoff throughout the District."¹

Timely implementation of the retention standard embodied in these regulations is critical if the District is to meet the obligations set forth in the WIP and its Bay TMDL two-year milestones. One of the milestones contained in the District's plan is that by December 31, 2013, "214 acres of development will have been required to meet the 1.2 inch retention standard."² The importance of this milestone was emphasized by EPA in its evaluation of the first draft of these milestones, when it noted that the Agency expected the District to: "Add milestone with commitment and schedule to revise, adopt and implement stormwater regulations by 2013."³

However, under the current proposed regulations, no developments – much less 214 acres of development – will be required to meet the retention standard until after the six-month "Phase 1" transition period expires in January 2014. We are concerned that this delay will set back the District's efforts to meet its Bay TMDL obligations. DDOE should eliminate this "Phase 1"

¹ District of Columbia Department of the Environment, *Chesapeake Bay TMDL Phase II Watershed Implementation Plan* 32 (Mar. 30, 2012), available at <http://ddoe.dc.gov/sites/default/files/dc/sites/ddoe/publication/attachments/FINAL%20DC%20WIP%20March%2030%202012.pdf>.

² District of Columbia, *Restore Clean Water Action Items – Programmatic Two-Year Milestones* 1 (2012), http://www.epa.gov/reg3wapd/pdf/pdf_chesbay/2yearmilestones/DC2012_13ProgrammaticMilestonesFinalMay2012.pdf.

³ EPA, *Evaluation of District of Columbia's Draft Phase II WIPs and Final 2012-2013 Milestones* 2 (Feb. 15, 2012), http://www.epa.gov/reg3wapd/pdf/pdf_chesbay/Phase2WIPEvals/DCWIPMilestoneEvaluation21512_final.pdf.

transition period and ensure that the requisite amount of stormwater retention occurs in the District from the outset, as originally planned.

Additionally, we are concerned about certain fundamental, structural elements of the proposed volume credit trading program that reduce certainty about its environmental results. In particular, programmatic features such as indefinite credit banking, credit for pre-existing retention practices, credit for rarely-used large-storm capacity, exemptions for DC Water infrastructure projects, and lower standards for projects within the public right-of-way collectively undermine confidence that the 1.2-inch retention standard will be achieved during a given storm event or even during a given year.⁴ If DDOE plans to implement the retention standard via a complex trading program instead of a straightforward on-site performance standard, it must close all of these loopholes to ensure that the stormwater retention planned for in the District's WIP will be accomplished.

In conclusion, we urge DDOE to strengthen the program by eliminating these delays and sources of uncertainty so that we can be confident in the benefits that the regulations will have for the Chesapeake Bay and local waters.

Sincerely,

Audubon Naturalist Society
Anacostia Watershed Society
Audubon Maryland-DC
DC Environmental Network
National Wildlife Federation – Mid-Atlantic Regional Center
Natural Resources Defense Council
Potomac Conservancy
Potomac Riverkeeper
Rock Creek Conservancy

⁴ See NRDC et al., *Revised Stormwater Rule Comments* (Apr. 30, 2013); NRDC et al., *Stormwater Rule Comments* (Nov. 8, 2012).