



DEPARTMENT OF THE NAVY

COMMANDER
NAVY REGION MID-ATLANTIC
1510 GILBERT ST.
NORFOLK, VA 23511-2737

IN REPLY REFER TO:

5090

EVN40/00/RE332

JUL 8 2013

Mr. Brian Van Wye
Stormwater Rules
Natural Resources Administration
1200 First Street, NE, Fifth Floor
Washington, D.C. 20002

Dear Mr. Van Wye:

SUBJECT: SECOND PROPOSED STORMWATER RULE COMMENTS

As the Department of Defense (DoD) Regional Environmental Coordinator (REC) for U.S. Environmental Protection Agency (EPA) Region III and on behalf of all of the military services, Commander, Navy Region Mid-Atlantic is responsible for coordinating responses to various environmental policies or regulatory matters of interest. We commend the District of Columbia for addressing various concerns of the regulated community, including the DOD, in this latest draft of the District Stormwater Rules by incorporating revisions that provide additional flexibility/options for development while still protecting and/or improving the environment and District of Columbia waters. However, we still do have a number of concerns we hope will be addressed in the final regulations. Detailed comments are enclosed.

If you have any questions, my points of contact for this matter are Lieutenant Commander Mark Nevitt, JAGC, U.S. Navy at mark.nevitt@navy.mil, telephone (757)322-2938 and Mr. Will Bullard at william.bullard1@navy.mil, telephone (757) 341-0429.

Sincerely,

A handwritten signature in black ink, reading "Christine H. Porter", is positioned above the typed name.

CHRISTINE H. PORTER
Director for Regional
Environmental Coordination
By direction of the Commander

Copy to: U.S. Army REC, Region III (Ms. Amy Alton)
U.S. Air Force REC, Regions I, III (Mr. Ron Joyner)

DEPARTMENT OF DEFENSE COMMENTS TO THE DISTRICT OF COLUMBIA
STORMWATER MANAGEMENT, AND SOIL AND SEDIMENT CONTROL PROPOSED
RULEMAKING

**Section 522: PERFORMANCE REQUIREMENTS FOR MAJOR SUBSTANTIAL
IMPROVEMENT ACTIVITY**

522.3 (a). An MSI must achieve a stormwater retention volume (SWRv) equal to the 80th percentile rainfall event for DC (0.8 inch). A Major Substantial Improvement (MSI) is defined in 599 as an activity where the combined footprint of the improved building and land disturbing activity is $\geq 5,000$ sq ft. In addition, a land disturbing activity is not necessary to place a building improvement into the MSI category.

Comment: MSI projects usually occur in highly developed areas where there is little pervious area left or available for implementing BMPs. Although the SWRv has been reduced the area trigger for land disturbance is also reduced. More significantly, this provision effectively amounts to an additional stormwater retrofit requirement beyond that already required by the District under their MS4 permit for MSI projects where there is no increase in impervious area.

Recommendation: Remove this requirement unless adequate justification is provided that the added stormwater burden on MSI projects is (1) necessary to meet water quality goals and (2) is not more cost effectively placed on another stormwater source sector.

Section 528: STORMWATER MANAGEMENT MAINTENANCE

528.10: Used soil media removed from a BMP receiving drainage from an area intended for use or storage of motor vehicles shall not be re-used for planting or as fill material and shall be disposed of in a landfill or at a transfer station for transport to a landfill.

Comment: The soil media from a BMP may not be contaminated to the point it would not be suitable for fill material elsewhere. Testing the material to verify its suitability for fill would promote appropriate recycling and avoid unnecessary disposal costs.

Recommendation: Provide an option for testing used soil media to verify if it is suitable for use as fill.

Section 530: STORMWATER MANAGEMENT IN-LIEU FEE

530.6. The in-lieu fee payment will be used solely to increase stormwater retention in the District.

Comment: It is unclear how this in-lieu fee relates to the stormwater fee that DDOE already requires District property holders to pay. According to the notice of final rulemaking for the stormwater fee, the purpose is to implement best management practices to prevent stormwater runoff from reaching the District streams and rivers. Both of these fees appear to charge for the same result and services.

Recommendation: Recognize the overlap between the two fees and reconcile the differences so that properties within the district are not being charged for the same services.

Section 534: STORMWATER RETENTION CERTIFICATION OF STORMWATER RETENTION CREDITS

534.1: A person may apply for certification of a Stormwater Retention Credit (SRC) for a gallon of existing retention capacity that increased retention in a Best Management Practice ... if 534.1(a): The BMP or land cover was installed after May 1, 2009 ...

Comment: We understand that May 1, 2009 was chosen as the cutoff date for credit since the Bay model run was run around that time and chosen as the baseline condition for Bay water quality upon which nutrient and sediment allocations were based. However, some in the regulated community, DoD in particular, has been retrofitting stormwater management of impervious areas by installing BMPs as far back as the early 2000's. The proposed 2009 cutoff for credit actually penalizes those that took a leadership role and stepped out early because any improvement in Bay water quality, as documented by the model run, would be credited to the entirety of the District's regulated community vice those that funded the improvement. In addition, the data used for that run was from sampling that occurred previously, possibly even in 2006, meaning that the actual modeled water quality condition was not representative of May 1, 2009. Therefore, at a minimum, the cutoff date for receiving any credit should be the date water quality data used in the model run was collected.

Enclosure (1)

Recommendation: Allow older BMPs to be considered for SRC certification. A ratio of the storm size used for the design basis of the older BMP to the currently proposed design size in this ruling could be used as a basis for the percent credit available, or some other method of receiving partial credit could be devised.

Section 540: SOIL EROSION AND SEDIMENT CONTROL APPLICABILITY

540.4: A person who applies for Department approval of a soil erosion and sediment control plan shall be the owner of the property where the activity is to take place.

Comment: DoD facilities may cover this requirement through the construction contract and have the contractor sign and submit the plan.

Recommendation: Allow the owner to designate an agent that could, on behalf of the owner, sign and submit the plan.

Section 545: SOIL EROSION AND SEDIMENT CONTROL: BUILDINGS, DEMOLITION, RAZING, AND SITE DEVELOPMENT

545.5. A buffer of 25 feet where the land is not disturbed, except to restore native vegetation, must be established on both sides of a waterbody.

Comment: A 25 foot undisturbed buffer may not exist for current impervious areas on DOD installations that are close to the water, including roads, sidewalks, and parking areas. It is also uncertain whether a DOD installation would be considered a public area within the context of these regulations. Some of these can also be associated with recreational and waterfront activities.

Recommendation: An exception from the buffer requirement and its associated 1.7 inch SWRv should be allowed for repair and improvement/renovation projects on DOD facilities provided other soil erosion and sediment control provisions, including inspection procedures, of the rules are followed.

Enclosure (1)