

District Department of the Environment

Stakeholder Meeting on Soil Erosion and Sediment Control and Stormwater Management Regulations Meeting Notes

Summary of Meeting No. 1

June 15, 2009, 1:00 – 3:00 p.m.

**City-wide Conference Center, Rm. 1107 South
One Judiciary Square, Washington, DC**

I. Disclaimer. On June 15, 2009, from 1:00 to 3:00 p.m., the District Department of the Environment (DDOE) held the first of four (4) scheduled public outreach meetings to consider implementation strategies and seek stakeholder input in developing soil erosion and sedimentation control and stormwater management regulations. DDOE has summarized a number of issues, challenges, and solutions that were discussed by stakeholders on June 15, 2009. These notes do not reflect the views of DDOE or any particular entity; and the notes are not intended as a transcript.

II. Introduction. This meeting represented the first in a series of stakeholder meetings to elicit public input from any interested party on DDOE’s draft Soil Erosion and Sediment Control and Stormwater Management Regulations. Mr. George Hawkins, Director of DDOE, opened the meeting and explained that DDOE has drafted these regulations under the authority of the Water Pollution Control Act for the purposes of reducing stormwater volume and improving water quality in the District’s rivers and streams. He emphasized the importance of this effort, and expressed appreciation to those in attendance for coming to offer their perspectives. (See Attachment A for attendance list.) Director Hawkins further noted that:

- Each of the 4 meetings in this series is open to all.
- Participants are free to comment on any part of the draft regulations, although staff may suggest questions on which it would be particularly helpful to receive input;
- Detailed comments can be submitted in writing.
(Written comments should be clearly marked “Stormwater Regulations” and mailed to DDOE, Watershed Protection Division, 51 N Street NE, 5th Floor, Washington, DC, 20002, Attention Ms. Sheila Besse. They can also be conveyed to Ms. Besse via email at Sheila.besse@dc.gov or by telephone at (202) 535-2244.)
- DDOE staff seek diverse input during these meetings, but want to listen rather than to engage in discussion, negotiation, or consensus-building;
- DDOE will evaluate the input received, whether to revise the draft regulations, and if so, how;
- Once the draft rule is formally proposed, there will be an official public comment period.

Director Hawkins concluded by encouraging attendees to be specific in their suggestions, and introducing facilitator Marci DuPraw of SRA, International. Ms. DuPraw reviewed the agenda and suggested ground rules (Attachment B). She mentioned that, while attendees were free to comment on any aspect of the draft regulations, she had a few suggestions to give focus to the comment period. In particular, she suggested that attendees focus on:

- The aspects of the regulations that would change if the draft stormwater regulations were enacted (rather than aspects of the existing regulations about which attendees may have concerns); and
- The stormwater management aspects of the draft regulations (as distinct from the erosion and sediment control aspects, since the latter section would not change as much).

Ms. DuPraw also noted that DDOE staff had prepared a handout listing questions on which they would particularly appreciate input, and confirmed that all attendees had a copy (see Attachment C). These questions are broken down into 3 categories – “Technical,” “Cost,” and “Process.” Ms. DuPraw suggested that this meeting embrace all of these categories of questions, but that the remaining 3 meetings be used to focus more in-depth on subsets of these questions. More specifically, she suggested that Meetings 2 and 3 (July 1 and 16, 1-3 pm) focus on the technical questions and that Meeting 4 (July 29, 1-3 pm) cover the cost and process questions. Ms. DuPraw also encouraged those attendees who might be so inclined to send more specific comments in writing to Sheila Besse (see above for contact information).

III. Input. Participants provided the following questions and comments for DDOE consideration:

A. Technical:

1. Need for More Detail:

- Several people indicated that they are eager to obtain a guidebook or manual with the details needed for building design and measuring effectiveness of best management practices (BMPs). They noted that developers need to know the metrics, performance standards, procedures, and how the BMPs for stormwater associated with these draft regulations will be expected to function before they can assess cost and feasibility.
- The State of Maryland has recently published a new stormwater ordinance, and provides over 200 pages of detailed information within the regulations on stormwater management including color graphics, charts, and graphs. Fairfax County, VA, provides over 250 pages of guidance on stormwater management in its “Public Facilities Manual.”
- Per the list of six different pollutants in Section 530.8, what metrics and techniques should be used to measure them?
- Developers need more information on what is possible if they cannot meet the standards on-site (e.g., off-site mitigation, cost implications, etc.).
- The draft regulations seem to be both forcing technology and limiting it at

the same time because they identify BMPs, but not metrics and not performance standards.

- The draft regulations should define terms such as “increased downstream discharge,” “potential to pollute,” “stormwater hotspots,” and “substantially remove.” The draft regulations should provide more specificity regarding circumstances under which a new permit would be required (e.g. if you had to put additional equipment on a green roof; if you needed to upgrade rooftop equipment, etc.).
- It would be helpful if DDOE could provide maps of:
 - The Anacostia Waterfront Development zone; and
 - Portions of the District with contaminated soils (e.g., Brownfields) and/or groundwater, since certain stormwater management practices such as infiltration could exacerbate contamination and have implications for liability.

2. *Need Guidance on Managing Stormwater for a Variety of Development Scenarios:*

- It would be helpful if DDOE could make clear how the draft regulations would be applied to different kinds of projects (e.g., high-rise buildings vs. low rise buildings; commercial vs. residential; small vs. large tract developments such as college campuses, etc.).
- In high density zones, there is likely to be less space on-site for stormwater management, but at the same time, high-density development serves other valuable functions. What adjustments can be made to ensure compliance is feasible for high-density development?
- Section 540.6 limits the size of the area that can be disturbed during site grading to a maximum of 5 acres. This limit is too restrictive. No set limit should be imposed across-the-board. Such limits should be worked out project-by-project, taking into consideration sediment and erosion controls in use on the site.

3. *Inconsistencies:*

- The portion of the draft regulations that reference volume control may be inconsistent with the portion that discusses percentage removal.
- Standards should be consistent across the city.
- In terms of measuring BMP effectiveness for reducing six pollutants referenced in Section 530.8, references to volume control and to percent removal could be contradictory.
- Regarding Section 529.11, pre-treatment is required in certain circumstances where it is impossible (e.g., sheet flow and direct intake).

4. *Maintenance and Enforcement:*

- Who would be responsible for maintenance when a public utility (e.g., a vault) needs to be located on private land?
- Who would be responsible for maintenance and enforcement for off-site mitigation projects?

- Who is responsible for ongoing maintenance of stormwater BMPs on public space (e.g., treating water running off public space)?

5. Best Management Practices:

- What is the basis of the BMPs referenced in the draft regulations?
- Does the array of BMPs mentioned in the draft regulations reflect consultations with other jurisdictions as to what has worked for them under similar circumstances? If not, DDOE might want to look into BMPs used in the State of Maryland, in Montgomery County, in the City of Philadelphia, and in Fairfax County, VA.
- DDOE should take into considering the retention standards being used by other jurisdictions and associated costs. For example, the State of Maryland's regulations call for a one-inch volume reduction. The City of Philadelphia has a one-inch water retention standard.
- Green roofs are not always appropriate nor affordable. It is difficult to make more than 70% of a roof green. Alternatives to green roofs can be quite expensive. It is important to ensure that compliance is attainable.
- With respect to Section 542, where are the potential impacts of rechanneling water in areas of underground construction addressed? We need guidance on how to assess the likelihood that this will create more problems.
- Sections 542.4 and 542.3 call for a 25 foot buffer; however, some building sites will not allow that (e.g., a particular riverwalk along a seawall, which includes a path right at the water's edge). The regulations should allow flexibility for situations like that.
- Is "Christiana Sunny-Side" soil the only kind of soil that needs regulation? (DDOE confirmed this is the case.)
- Are there design standards for cisterns?
- It is important that DDOE set a bar that is attainable. Once the performance standards are clear, it would be helpful to have information about BMPs that others have used to meet that standard (e.g., in case study format).
- In the case of Level 3 renovations, on-site treatment that requires storage of water within the building may affect the amount of space available for parking and floor space. How would this conflict be addressed?
- Section 529.11 requires pretreatment stipulations, but some BMPs do not lend themselves to pretreatment.

6. Interagency Coordination:

- Several people encouraged DDOE to coordinate closely with other agencies such as the District Department of Transportation (DDOT), Pepco, and the Water and Sewer Authority (WASA) to define circumstances under which public space could be used for managing stormwater (either stormwater running off public space or stormwater running off private lands).

- The use of public space, and placement of public utilities on private land, is already contentious without the stormwater management function added into the mix (e.g, due to loss of use of a portion of the private property when Pepco needs to place a utility vault or WASA needs to place control valves on private property). This regulation will exacerbate these tensions.
- Developers would like to know DDOT's views on use of public space for stormwater management.
- Cisterns raise plumbing issues that need to be taken into consideration; DDOE should coordinate with WASA on related building / plumbing codes.
- Does DDOE anticipate working closely with WASA? WASA imposes a fee on property owners for impervious surfaces; DDOE needs to ensure that property owners are not charged twice for impervious surfaces.

7. Other Technical Issues:

- Some surety bond companies are unwilling to service performance bonds.
- The portion of the draft regulations pertaining to erosion and sediment control requires a particular training program; however, engineers should already have that training, so the requirement is not necessary.
- Dry cleaning establishments should be included in the list of potential polluters.

B. Cost:

- A number of participants emphasized that the draft regulations do not provide enough detail to assess the cost of compliance. (See A.1. above.)
- With respect to Section 533, what would constitute adequate proof that on-site stormwater BMPs are not feasible for a given project and that the developer can pay the fee in lieu of using BMPs?
- Regarding the discussion of off-site mitigation in Section 534, will the fee ensure that deficiencies will be corrected?
- It is hard to project the cost of off-site mitigation because it is unclear how much of it will be required and what, specifically, developers would be asked to do.
- The reference to off-site mitigation fees of 1.5 times the amount for on-site mitigation seems exorbitant. Perhaps the fee should vary according to type of land use.
- Can the District establish mitigation banking mechanisms like adjacent jurisdictions, where an inventory of appropriate sites is identified upfront? Can District developers tap into mitigation banks operated by other jurisdictions?
- How will the off-site mitigation fee be calculated?
- With respect to bond requirements, what is the per-unit cost? Will DDOE provide a per-unit cost list, or should we use the list provided by neighboring jurisdictions?

C. Process:

- What is the legal authority and statutory basis for the approach DDOE proposes to take (e.g., for covenants in Section 536)?
- Why is it necessary to require approval of the Office of the Attorney General, rather than DDOE's in-house counsel? This is likely to cause delays.
- It would be helpful to take a more iterative path to developing these regulations, allowing for dialogue and exploration of more cooperative, creative approaches that could be undertaken without significantly impacting economic development.
- Regulations should be phased in.
- The draft regulations should include provisions for "grandfathering in" projects that have already reached a certain point in development.
- Several attendees expressed a preference for incentive-based approaches compared to the current approach, which appears punitive.
- Is DDOE open to considering other approaches? If so, DCBIA could supplement the record with additional information on incentive-based approaches.
- Shouldn't the regulations differentiate between areas served by the combined sewer system vs. separate sewer systems?
- DDOE should not be intervening in the market by approving specific contractors; instead, DDOE could specify contractor licensing requirements and any contractor who met those requirements would qualify for a license.
- With respect to permitting:
 - Add a section to the draft regulations describing how and when to apply for a permit, and specifying required DDOE response times.
 - Provide a flow chart depicting the permitting process. There should be a specific timeline built into the draft regulations so that all parties know what they can expect of one another, including what applicants can expect of DDOE in terms of turn-around time for permit approvals.
 - Link permitting requirements across agencies to avoid one permit application expiring while the applicant waits for another agency to act.
 - With respect to Section 548.13, the 14-day approval timeline is too fast. One month would be more reasonable, given the amount of time it takes to schedule contractor help and adjust for weather delays. If field corrections are subsequently required, the applicant should get additional flexibility (e.g., an additional 2-3 weeks).
 - With respect to Section 551.4, developers consider it crucial that they have the ability to transfer permits (e.g., if the developer cannot finish the project).
 - With respect to Section 552.3, insufficient time is allowed for relocation or rectifying problems before a permit is suspended, considering the time it can take to schedule contractor help; 15

- business days would be more reasonable than 10.
- Further flexibility would be needed for situations in which DDOE requires additional steps beyond what the developer initially does to rectify problems.

IV. Conclusion. DDOE Deputy Director Dr. Hamid Karimi thanked attendees for their participation and engagement. He noted that he heard many attendees express a desire for more detail, particularly with respect to:

- Process (e.g., how plans will be reviewed, timeline, and how feasibility of proposed best management practices will be determined);
- Coordination with various agencies such as WASA and DDOT on matters such as the fee system, use of public space, competing priorities, and identifying helpful examples from other jurisdictions; and
- How the presence of contaminated soils and/or groundwater will be factored into expectations for stormwater management practices and associated costs for a particular site.

Dr. Karimi reminded attendees that DDOE will hold three more similar stakeholder meetings on Soil Erosion and Sediment Control and Stormwater Management Regulations, spaced approximately two weeks apart, as follows:

- Wednesday, July 1 (1 pm to 3 pm)
- Thursday, July 16 (1 pm to 3 pm)
- Wednesday, July 29 (1 pm to 3 pm)

These meetings will also be held at One Judiciary Square, 441 4th Street, NW, Washington, DC. Dr. Karimi noted that, in addition to the remaining three meetings in this series of stakeholder meetings, the public will have another opportunity to comment after the draft regulations are formally published. He reiterated once more the opportunity to submit written comments to DDOE in care of Sheila Besse.

Attachment A**Attendance List****June 15, 2009, Stakeholder Meeting on Soil Erosion and Sediment Control and Stormwater Management Regulations Meeting****Sign-In Sheet**

Name, Affiliation	Email	Phone	Address
Charles Barber; GW University Michael Benton, VIKA Inc.	cbarber@gwu.edu	202-994-5534	2100 Penn Ave NW Ste 250
Lyle Blanchard Bryan Brannan, WMC Brooke	benton@vika.com	703-442-7800	8180 Greensboro Av. #200 McLean, VA 22102
Derenzis DC Appleseed	lmb@gdllaw.com	202-452-1400	1620 L St. NW #900 20036
Dan Duke Amy Edwards; H &K Alma Gates Wanda Gooden, Fort McNair	rbrannan@wilesmcasch	202-628-4040	1424 K st. NW
Mike Greene Ted Hallihan Louis Dreyhs Eddie Isaac; G&O Engineering David Landsman; CAS Engineering Tom Moir, CM Cheh Rachel Rosenberg; CWA Neil Weinstein; CIDC	bderenzis@dcappleseed.org	202-289-8007 x 15	1111 14th St NW suite 510 20009 22630 Daves Ste 200 Sterling, VA 21064
	dduke@bohlereng.com	703- 709-9500	
	amy.edwards@hklaw.com	202-457-5917	209 Penn Ave NW 20006
	ahg71139@aol.com	202-338-2218	4911 Ashbury St NW 20007
	wanda.gooden@us.army.mil	703-696-8513	106 stewart Rd. Bldg 313 Fort Myer, VA
	mike.greene@hines.com	202-347-6337	555 13th St NW 20004
	ted.hallihan@ldpg.us.com	202-470-4884	1101 New York Ave NW 20005
	aisaac@g-and-o.com	(301) 982- 2843	6110 Front Place, Laurel, MD 20707
	david@casengineering.com	301-607-8031	108 W. Ridgeville blvd Mount Airy, MD 21711
	tmoir@dccouncil.us	202-724-1388	1359 Pennsylvania Ave. NW #108
	rachel.e.rosenberg@gmail.com	202-506-2514	2745 29th St NW DC
	nweinstein@lowimpactdevelopment.org	301-982-5555	4600 Pamlermill Rd. 20707

Attachment A (continued)**District Personnel:**

Name	Email	Phone	Address
George Hawkins, Director	george.hawkins@dc.gov		51 N St., NE
Hamid Karimi, Deputy Director	hamid.karimi@dc.gov	202-535-227 202-535- 2244	51 N St., NE
Sheila Besse, Associate Director	sheila.besse@dc.gov		51 N St., NE
Jonathan Champion	jonathan.champion@dc.gov		51 N St., NE
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Rebecca Stack	rebecca.stack@dc.gov	202-727- 5160	51 N St., NE
John Thomas	john.pthomas@dc.gov	202-671- 5133	2217 14th St NW
Meredith Upchurch	meredith.upchurch@dc.gov	202-671- 4663	
Barry Weiss	barry.weiss@dc.gov		51 N St., NE

Facilitation Team:

Name	Email	Phone	Address
Marci DuPraw, SRA Senior Facilitator	Marci_dupraw@sra.com	703-284- 6920	3434 WA Blvd., Arlington, VA
Brittany Patton, SRA Facilitation Support	Brittany_Patton@sra.com	703-284- 5000	3434 WA Blvd., Arlington, VA

Attachment B
Agenda and Ground Rules

District Department of the Environment
Stakeholder Meeting on Soil Erosion and Sediment Control
And Stormwater Management Regulations

Monday, June 15, 2009,

1:00 – 3:00 p.m.

Facilitator: Marci DuPraw, SRA

-- MEETING AGENDA --

Purpose of Meeting: Receive comments and answer questions from stakeholders on DDOE's draft proposed Soil Erosion and Sediment Control and Stormwater Management Regulations

<u>Timing</u>	<u>Topic</u>	<u>Lead</u>
12:45	Sign In	
1:00	Opening Remarks	
	<ul style="list-style-type: none"> ✓ Welcome <ul style="list-style-type: none"> ▪ <i>Meeting purpose</i> ▪ <i>Policy context</i> ▪ <i>How input will be used</i> ✓ Review proposed meeting agenda ✓ Self-introductions 	<p>Mr. George Hawkins DDOE Director</p> <p>Facilitator</p> <p>All</p>
1:15	Overview of Draft Proposed Regulations	Rebecca Stack, DDOE Environmental Engineer
1:30	Stakeholder Comments and Questions	All (facilitated)
2:55	Closing Comments	Dr. Hamid Karimi DDOE Deputy Director
3:00	Adjourn	

Suggested Ground Rules:

1. Stand your tent card on end to be recognized.
2. When recognized, please speak into the mike and give your name and affiliation.
3. Share the floor by being succinct (1 or 2 points, or a couple of minutes, per turn); let everyone speak once before taking another turn.
4. No need to repeat earlier comments – just note desire to reinforce them.
5. Please send more detailed comments in writing.

Attachment C

Questions Upon Which DDOE Especially Seeks Input

Technical

- Some say the requirement to achieve 1 inch reduction in the Anacostia Waterfront Development Zone is too harsh while others believe it should be a requirement District-wide. Please provide us input into examples of the hardships and benefits for implementing this requirement.
- What is an appropriate retention volume requirement?
- What would constitute acceptable reasons water could not be retained onsite?
- We have heard complaints that, on the one hand, these regulations put a disproportionate burden on the development community; while on the other hand, we have heard complaints that these regulations do not do enough to solve our stormwater pollution problem. Please provide us with those aspects of the regulations that appear overly burdensome and those that must be included to address water quality and EPA stormwater requirements.
- Provide your vision of how an off-site mitigation program would work.
- Should the regulations include a fee-in-lieu provision?

Cost

- Because space is limited in the District, it is very important to be able to have the option to use public space to treat stormwater running off of private property). Could DDOE establish mechanisms to support public / private partnerships for this purpose, including the maintenance component?
- Given that amounts of review fees must be sufficient to cover staffing and administrative costs associated with permitting, please comment on how those fees should be structured.
- Are the proposed performance bond requirements appropriate? If not, how else could DDOE assure that stormwater work is completed correctly?

Process

- Please provide us with ways that can increase the efficiency in obtaining a stormwater or erosion and sediment control permit?
- Are there any procedural improvements that should be adopted to make the process more efficient? Are there innovative practices in stormwater or permit review in other jurisdictions that DDOE should consider?
- How much time should be given for final regulations to become effective?
- What is an appropriate mechanism for ensuring long-term maintenance of the stormwater system? Does the covenant system need to be changed?