



ANACOSTIA WATERSHED SOCIETY

November 8, 2012

Brian Van Wye
Natural Resources Administration
District Department of the Environment
1200 First Street, N.E., 6th Floor
Washington, DC 20002

Via email: brian.vanwye@dc.gov & SWRule@dc.gov

Re: Stormwater Rule Comments

Dear Mr. Van Wye:

The Anacostia Watershed Society (AWS) appreciates the opportunity to comment on the District Department of the Environment's (DDOE) proposed stormwater rule. Since our founding in 1989, AWS has worked to restore the Anacostia River to swimmable and fishable condition for the benefit of the watershed and its communities. We believe that this proposed stormwater rule, and the new MS4 permit that underlies it, are absolutely essential steps toward meeting this goal. AWS has signed on to the comments of DC Appleseed and the Natural Resources Defense Council and incorporates them by reference here.

AWS believes that this proposed rule demonstrates both DDOE's creativity and its dedication to cleaning up the waters of the District of Columbia. However, given the new MS4 permit requirements, we are concerned that certain provisions of the rule are not strong enough to ensure that the 1.2" retention requirement is met. We also believe consideration must be given to ensuring that the off-site retention credit trading program is effective and that the program's benefits reach all sectors of DC.

Off-site retention credit trading program

DDOE is to be commended for developing a stormwater rule that takes a creative approach to providing flexibility for developers while also upholding the 1.2" stormwater retention standard in the new MS4 permit. However, the requirement that only 0.6" of retention be met on-site is potentially limiting in the long run. First, 0.6" is a fairly low retention volume even by today's green infrastructure standards, and over the life of the permit may become a "floor" for on-site retention that is simply too low. By setting too low a bar, green infrastructure technology will not be driven forward as developers find and settle on lowest-cost ways to meet the 0.6" on-site requirement. Other jurisdictions with higher minimum volumes (Philadelphia, Montgomery County) are seeing innovation from their development communities and stormwater treatment

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being turned into property amenities via creative green infrastructure. We therefore suggest that the minimum on-site retention volume be raised to 1”.

Creating and sustaining a market for off-site stormwater retention credits is no simple task and the “devil is in the details” for effective program administration. It will require a sustained effort to ensure that the promise of the program on paper is seen in the real world. To this end, DDOE absolutely must invest in a robust database and program administration system to lower transaction costs and prevent headaches down the road if the program grows as anticipated. While it is a laudable goal to spread retention volume around the city, particularly because it increases captures of the first flush for more storm events, the heavily developed areas of the District are exactly those most in need of green infrastructure. Embedded in this credit trading program is the potential for uneven distribution of benefits – not only away from heavily developed areas but also away from lower income areas.

Environmental justice

The off-site retention credit trading program is envisioned as a way for downtown development to fund green infrastructure implementation in outlying and primarily residential neighborhoods. DDOE also makes an assumption that lower property values and greater land availability in lower-income neighborhoods will drive the credit trading market toward those locations, causing disproportionate environmental benefits to flow into those areas. While this may well be true in a perfect market, it seems equally likely that developers will find it more convenient to do business in more affluent areas of town – leaving behind the neighborhoods most in need of the sort of positive impact green infrastructure provides. Therefore DDOE should develop a property inventory or some type of incentive to create a positive driver toward lower-income neighborhoods. Since DDOE is already creating a market, setting market conditions such that preferred outcomes are favored is entirely appropriate.

Amount of fee in-lieu

The proposed rule sets the in-lieu fee at \$3.50 per gallon per year, determined by evaluation of retention practices installed by DDOE, District land values, amortization, and other factors. However, without having seen how this number was calculated we are concerned that the \$3.50 figure is too low. We also believe that a higher fee is needed to ensure that simply paying the fee in-lieu is disincentivized and used as a true last resort. If site restrictions truly limit the amount of retention at a given construction site, surely the remaining unaddressed retention volume can be addressed through the purchase of off-site retention credits.

We further believe that a “penalty” or disincentive component of the in-lieu fee can be justified on several practical grounds. First, the fee could be raised above calculated costs in recognition of the fact that it is easier for a developer to write a check than to participate in the off-site retention credit trading program, even if it costs more in dollars to pay the fee in-lieu. The saved time and energy for compliance and transaction costs would make the fee in-lieu program attractive to many developers even at high dollar amounts. A second legitimate justification for a higher in-lieu fee would involve recognizing DDOE’s realistic limits in scaling up to install large amounts of green infrastructure should fee payments end up greater than initial projections. If in-lieu fee money ends up sitting unused because of DDOE’s limited ability to expend it, the potential of the retention credit trading program will not be reached and the 1.2” retention required under the MS4 permit will not be met.