

Chapter 6 Use of Off-Site Retention by Regulated Sites

6.1 Off-Site Retention Overview

A regulated site must retain a minimum volume on site that is equal to 50 percent of the SWRv. Above that minimum on-site volume, the regulated site may use off-site retention without having to first demonstrate that it would be infeasible to retain that volume on site. However, in order to retain less than the minimum on-site volume, the site must demonstrate that on-site retention of that volume is technically infeasible or environmentally harmful.

The portion of a SWRv that a regulated site does not retain on site is termed the Off-Site Retention Volume or Offv, and a regulated site's options for achieving its Offv are the following:

- a. Use Stormwater Retention Credits (SRCs), each of which corresponds to one gallon of retention for one year; or
- b. Pay DDOE's in-lieu fee (ILF), the cost of which corresponds to one gallon of retention for one year; or
- c. A combination of (a) and (b).

The owner of a regulated site may use SRCs that the owner has earned elsewhere in the District or SRCs purchased on the private market. DDOE will provide the regulated site with contact information for SRC owners who wish to sell their SRCs. SRC buyers and sellers negotiate the terms of a transaction between themselves, but the transaction is not complete until DDOE has approved it. DDOE's approval is required so that DDOE can effectively track ownership and use, including preventing fraudulent use of SRCs, and also publicly share the price at which SRCs sell.

Regulated sites are responsible for their Offv on an ongoing basis, just as they must maintain any on-site stormwater best management practices (BMPs) on an ongoing basis. In other words, they must continue to use SRCs or pay in-lieu fee for the life of the development, similar to paying a lease or utility fee. However, if in the future a regulated site retrofits and achieves its Offv on site, then it no longer must achieve that volume off site.

A regulated site may meet its Offv for multiple years by paying up front for sufficient in-lieu fee to satisfy its Offv for that time period. Likewise, the regulated site may purchase and commit to use sufficient SRCs to satisfy its Offv for multiple years. SRCs may be banked indefinitely. The one year lifespan of an SRC or in-lieu fee payment begins once it is used to satisfy an Offv.

Once SRCs have been used or sold, they remain valid, even if the owner of the retention practices for which SRCs were certified fails to maintain them. Note, however, that there are consequences for original SRC owners who fail to maintain retention practices for which SRCs have been certified, as discussed in Chapter 7 and Appendix D.

Each SRC will have a unique serial number, and DDOE will track how a regulated site is satisfying its Offv. DDOE will automatically assess an in-lieu fee, with penalties for late payment, for any site that does not stay current with its Offv obligation. DDOE may also take other action, including enforcement action, against a regulated site for failure to comply with an Offv.

The Stormwater Management Plan (SWMP) for a regulated site opting to use off-site retention must state its Offv. This Offv, along with related requirements for sites in the Anacostia Waterfront Development Zone, will be recorded in the declaration of covenants filed for the property. Whether using in-lieu fee or SRC, they must be in use as of the successful completion of DDOE's final inspection at the end of the construction process.

6.2 Off-Site Retention via Stormwater Retention Credits

One SRC satisfies one gallon of Off-Site Retention Volume (Offv) for one year. The use of an SRC is not restricted by watershed. However, for every gallon of Offv that an Anacostia Waterfront Development Zone (AWDZ) site elects to meet with SRCs from outside the Anacostia River watershed, it must use 1.25 SRCs.

A regulated site with an Offv may elect at a future date to install additional stormwater best management practices (BMPs) on site in a sufficient volume to eliminate or reduce the Offv.

To use SRCs to meet an Offv, a regulated site owner must submit an application to use SRCs to meet its Offv (see Appendix C). The application must identify SRCs that are owned by the site owner and may cover multiple years of Offv. The application must be submitted 30 days in advance of the planned date of use. SRCs (and/or in-lieu fee) must be in use as of the successful completion of DDOE's final inspection at the end of the construction process and thereafter on an ongoing basis.

After verifying the ownership of the SRCs and other information in the application to use SRCs, DDOE will approve the use of the SRCs. DDOE will not sign off on a regulated site's final inspection at the end of the construction process until it has approved the application and verified that any Offv is achieved. The one-year lifespan of the SRCs begins as of the date that it is used to meet the Offv.

At least 30 days before SRCs used to satisfy an Offv are set to expire, the regulated site owner must submit an application identifying additional SRCs that will be used to satisfy the Offv or pay in-lieu fee.

If DDOE does not receive an application to use SRCs or an in-lieu fee payment and a lapse in compliance with an Offv occurs, DDOE shall charge an in-lieu fee, with a 10 percent late fee, to the regulated site owner and provide notice to the site owner accordingly. For a site owner who does not comply within 30 days of DDOE's notice of a lapse in satisfaction of an Offv obligation and who owns an SRC that has not been used to satisfy the Offv for another site, DDOE may apply that SRC to the Offv that is out of compliance. DDOE may also take enforcement action against a regulated site that fails to comply with an Offv.

Summary of Key Steps for Using SRCs

- Step 1:** Apply to use SRCs to satisfy Offv 30 days in advance of final construction inspection.
- Step 2:** Receive DDOE approval of use of SRCs.
- Step 3:** Schedule final construction inspection with DDOE (Steps 2 and 3 can be reversed).
- Step 4:** Pass final construction inspection and start use of SRCs.
- Step 5:** 30 days before SRC expiration, apply to use additional SRCs to satisfy Offv.
- Step 6:** Receive DDOE approval of use of SRCs.
- Step 7:** Repeat Steps 5 and 6 as necessary.

6.3 Off-Site Retention via In-Lieu Fee

In-lieu fee corresponds to one gallon of retention for one year. Payment of one gallon worth of in-lieu fee satisfies one gallon of Off-Site Retention Volume (Offv) for one year. A regulated site may elect to install additional BMPs on site in a sufficient volume to eliminate or reduce the Offv.

To use in-lieu fee to meet an Offv, a regulated site must submit payment to the District, along with a notification form (see Appendix C). The notification and payment may be for multiple years. The notification and payment must be submitted 30 days in advance of the planned date of use. In-lieu fee (and/or SRCs) must be in use as of the successful completion of DDOE's final inspection at the end of the construction process and thereafter on an ongoing basis.

DDOE will confirm receipt of in-lieu fee. DDOE will not sign off on a regulated site's final inspection at the end of the construction process until it has verified that its Offv is achieved. The one-year lifespan of the in-lieu fee begins as of the date that it is used to meet Offv.

If DDOE does not receive an application to use SRCs or an in-lieu fee payment and a lapse in compliance with an Offv occurs, DDOE shall charge an in-lieu fee, with a 10 percent late fee, to the regulated site owner and provide notice to the site owner accordingly. For a site owner who does not comply within 30 days of DDOE's notice of a lapse in satisfaction of an Offv obligation and who owns an SRC that has not been used to satisfy the Offv for another site, DDOE may apply that SRC to the Offv that is out of compliance. DDOE may also take enforcement action against a regulated site that fails to comply with an Offv.

6.4 Forms for Use of Off-site Retention

See Appendix C for the following forms for use by the applicant:

- Application to Use Stormwater Retention Credits for Off-Site Retention Volume
- Notification of In-Lieu Fee Payment

