



**DEPARTMENT OF THE NAVY**  
COMMANDER  
NAVY REGION, MID-ATLANTIC  
1510 GILBERT ST.  
NORFOLK, VA 23511-2737

IN REPLY REFER TO:  
5090  
EVN40/00/RE630  
NOV 8 2012

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

Dear Mr. Van Wye:

SUBJECT: REVISIONS TO CHAPTER 5 (WATER QUALITY AND POLLUTION)  
OF TITLE 21 (WATER AND SANITATION) OF THE DISTRICT OF  
COLUMBIA MUNICIPAL REGULATIONS (DCMR)

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 appreciate the opportunity, as part of the regulated community, to comment on the subject revisions to the District's stormwater rules.

We are pleased to provide the enclosed comments and recommendations, which we believe will clarify the regulation and better consider the uniqueness of DoD installations. If you have any questions, my point of contact for this matter is Mr. Will Bullard, who can be reached at (757) 322-0429, or by E-Mail at [william.bullard@navy.mil](mailto:william.bullard@navy.mil).

Sincerely,

A handwritten signature in cursive script that reads "Christine H. Porter".

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

Enclosure

Copy to: U.S. Army REC (Ms. Amy Alton)  
USAF REC (Mr. Ron Joyner)

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

**Section 518: PLAN REVIEW PROCESS**

518.9 & 518.10. To receive project approval, the applicant must submit proof to DDOE that a SWMP, declaration of covenant and applicable easements have been filed at the District Recorder of Deeds.

Comment: See comment for 529: Covenants and Easements

Recommendation: See recommendation for 529: Covenants and Easements

**Section 520: PERFORMANCE REQUIREMENTS FOR MAJOR LAND DISTURBING  
ACTIVITY**

520.5 (a) - (c). If conditions (a) & (c) are met, retention in excess of a 1.2 inch SWRv, but less than that from a 1.7 inch rainfall event, for one drainage area on a project site may be applied to another drainage area on that site.

Comment: See comment for 531: Certification of Stormwater Retention Credits

Recommendation: See recommendation for 531: Certification of Stormwater Retention Credits

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

522.3 (a). An MSI must achieve a stormwater retention volume (SWRv) equal to the 80<sup>th</sup> 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.

522.5 (a) - (c). If conditions (a) & (c) are met, retention in excess of a 0.8 inch SWRV, but less than that from a 1.7 inch rainfall event, for one drainage area on a project site may be applied to another drainage area on that site.

Comment: See comment for 531: Certification of Stormwater Retention Credits

Recommendation: See recommendation for 531: Certification of Stormwater Retention Credits

#### **Section 529: COVENANTS AND EASEMENTS**

529.1 & 2. The owner of each lot/parcel that is part of a site where a major regulated project occurred must record at the District Recorder of Deeds a declaration of covenants that includes the on-site and off-site responsibilities stated in a DDOE approved SWMP and an easement to ensure DDOE access for BMP inspection and maintenance. However, an agency of District government shall not be required to record a declaration of covenants unless the District owned property is sold to a private owner or leased for a period of more than three years.

Comment: Pursuant to broader General Service Administration (GSA) guidance, federal agencies, to include DoD facilities, lack authority to record an easement or covenant on property owned by the United States.

Recommendation: Modify 529.2 to include "**of the Federal government**" and state "An agency of the **Federal government** or District government shall not be required to make or record a declaration of covenants. . ." Recognize limitations of DoD facilities with respect to recording restrictive land covenants. Further, clarify the Stormwater Guidebook to specifically state that covenants are not required on "government properties," defined as both federal and District-owned properties.

Enclosure (1)

**Section 530: STORMWATER MANAGEMENT IN-LIEU FEE**

530.1 & 5. Indicates that the in-lieu fee payment will be used to increase retention in the District, specifically the cost of retaining one gallon of stormwater for one year.

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 531: CERTIFICATION OF STORMWATER RETENTION CREDITS**

531.3. A BMP or land cover change is eligible for Stormwater Retention Credit (SRC) certification. This includes retention in excess of a regulated site SWRV or in excess of a non-regulated site existing retention, but less than that from a 1.7 inch rainfall event.

Comment: DOD facilities and other federal agencies are required under EISA Section 438 and subsequent EPA guidance to retain, to the maximum extent technically feasible, the predevelopment hydrology of a site. A practical option for accomplishing this is to retain the rainfall from a 95<sup>th</sup> percentile storm event which equates to 1.7 inch for the District. Excess rainfall retention on a DOD project between 1.2 and 1.7 inch should be eligible for SRC certification provided the eligibility requirements stated in 531 are also met.

Recommendation: Verify in the rule or guidance that excess rainfall retention on a DOD project between 1.2 and 1.7 inch is eligible for SRC certification provided the eligibility requirements stated in 531 are also met.

**Section 534: EXISTING RETENTION**

534.2 (a). DDOE may certify an SRC for existing retention only if the BMP or land cover change providing the retention was installed or occurred after 1 May 2009.

Enclosure (1)

Comment: DOD and others installed stormwater BMPs prior to 1 May 2009. It seems reasonable that if these older BMPs were installed during (1) development/redevelopment projects and exceeded the retention criteria in these proposed rules or (2) stormwater retrofit projects, they should be eligible for SRC consideration.

Recommendation: Allow older BMPs to be considered for SRC certification.

**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, including roads, sidewalks, and parking areas. Some of these can also be associated with recreational and waterfront activities.

Recommendation: An exception from the buffer requirement should be allowed for repair and renovation projects in these areas provided other soil erosion and sediment control provisions, including inspection procedures, of the rules are followed.

**Section 599: DEFINITIONS**

599.1. Substantial improvement is defined as "[a] repair, alteration, addition, or improvement of a building or structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the improvement or repair is started."

Comment: There is no definition of "market value" in the regulations. This may make it difficult for DOD and other federal agencies to determine whether projects qualify under section 520, Requirements for Major Land Disturbing Activity.

Recommendation: Add a definition of market value to the regulations to help clarify whether certain projects qualify under Section 520.

Enclosure (1)