

National Park Service review and Comments for the District Department of the Environment request for input on Revisions to the Proposed Rulemaking: Stormwater Management, and Soil Erosion and Sediment Control

1. The District Department of the Environment (DDOE) has proposed a new method for retaining stormwater runoff at the project site. Previously stormwater was required to be managed by the timing and quality of stormwater conveyed into the public sewer infrastructure. The retention of stormwater volume was performed on site with a menu of stormwater management practices through which stormwater is absorbed by the soil, infiltrated into the ground, evapotranspired by plants, or stored (“harvested”) for use on site. The amendments propose to allow regulated sites the option of achieving a portion of their stormwater retention requirement off site, but still within the District, without having to first prove that on-site retention is infeasible. Such sites would have two off-site options: use of Stormwater Retention Credits (SRCs) purchased from the private market or payment of an in-lieu fee to DDOE. This could be a tracking nightmare. In addition it seems a contractor could walk away from maintenance responsibilities.
2. The new regulations represent a significant shift from the existing regulations. The types of projects that trigger the District’s stormwater management regulations may go through months or even years of design work prior to beginning the permitting process that triggers the regulations, and it is difficult for those projects to design to the new requirements in advance of finalizing the rulemaking, since the regulatory requirements and technical guidance supporting them in the Stormwater Management Guidebook (SWMG) have not yet been finalized.
3. What are the safeguards to facilitate DDOE’s tracking and reporting of In-Lieu Fee (ILF) payments made to DDOE. How will DDOE provide greater transparency to members of the public who are interested in ensuring that ILF payments are used exclusively for the installation, operation, and maintenance of stormwater retention BMPs.
4. 500.3 This section should include a statement related to the protection of groundwater and wetlands.
5. 505.10 Is it necessary to have two actions to address a violation, the Notice of Violation and the Notice of Infraction? These could easily be misinterpreted by the contractor.
6. 507.4 The two week period to address a health hazard may preclude a successful resolution within that period.
7. Will NPS be in compliance with the requirements of section 508?
8. Section 516 should the Department also be responsible to ensure protection of the environment and water quality through the extension of their agents?
9. Section 517 will provide for federal facilities to obtain an exception from section 520 Stormwater Management: Performance Requirements for major Land Disturbing Activity to voluntarily install Best Management Practices that protect, restore, or provide a water quality benefit for District water bodies.

10. Are there references for where pollutant removal efficiencies were obtained for BMP's?
11. 519.9 should include a plan for the protection of wetlands.
12. 520.2 (a) The Post-Development peak discharge rate for a 24 hour, 2-year frequency storm event has been shown to be inadequate protection for down-stream channels.
13. Reference to a site's pre-development peak discharge is not specific enough to address the sites pre-development condition as forested and in good condition.
14. 524 Stormwater Management: Performance Requirements for Major Regulated Projects in the Anacostia Waterfront Development Zone (AWDZ). The Rule states, Except for activities exempted under this chapter, if a provision of this section conflicts with any other provision of this chapter, an AWDZ site shall be subject to the more stringent provision. This could create implications for NACE. It is a significant area that includes:

Anacostia Waterfront Development Zone (AWDZ) - the following areas of the District of Columbia, as delineated on a map in the Department's *Stormwater Management Guidebook*:

(a) Interstate 395 and all rights-of-way of Interstate 395, within the District, except for the portion of Interstate 395 that is north of E Street, S.W., or S.E.;

(b) All land between that portion of Interstate 395 that is south of E Street, S.W., or S.E., and the Anacostia River or Washington Channel;

(c) All land between that portion of Interstate 695, and all rights of way, that are south of E Street, S.W. or S.E., and the Anacostia River;

(d) The portion of Interstate 295 that is north of the Anacostia River, within the District, and all rights-of-way of that portion of Interstate 295;

(e) All land between that portion of Interstate 295 that is north of the Anacostia River and the Anacostia River;

(f) The portions of:

(1) The Anacostia Freeway that are north or east of the intersection of the Anacostia Freeway and Defense Boulevard and all rights-of-way of that portion of the Anacostia Freeway;

(2) Kenilworth Avenue that extend to the northeast from the Anacostia Freeway to Eastern Ave; and

(3) Interstate 295, including its rights-of-way, that are east of the Anacostia River and that extends to the southwest from the Anacostia Freeway to Defense Boulevard.

(g) All land between those portions of the Anacostia Freeway, Kenilworth Avenue, and Interstate 295 described in paragraph (6) of this section and the Anacostia River;

(h) All land that is adjacent to the Anacostia River and designated as parks, recreation, and open space on the District of Columbia Generalized Land Use Map, dated January 2002, except for the land that is:

(1) North of New York Avenue, N.E.;

(2) East of the Anacostia Freeway, including rights-of-way of the Anacostia Freeway;

(3) East of the portion of Kenilworth Avenue that extends to the northeast from the Anacostia Freeway to Eastern Avenue;

(4) East of the portion of Interstate 295, including its rights-of-way, that is east of the Anacostia River and that extends to the southwest from the Anacostia Freeway to Defense Boulevard, but excluding the portion of 295 and its rights-of-way that go to the northwest across the Anacostia River;

(5) Contiguous to that portion of the Suitland Parkway that is south of Martin Luther King, Jr. Avenue; or

(6) South of a line drawn along, and as a continuation both east and west of the center line of the portion of Defense Boulevard between Brookley Avenue, S.W., and Mitscher Road, S.W.;

(i) All land, excluding Eastern High School, that is:

(1) Adjacent to the land described in paragraph (8) of this section;

(2) West of the Anacostia River; and

(3) Designated as a local public facility on the District of Columbia Generalized Land Use Map, dated January 2002;

(j) All land that is:

(1) South or east of that portion of Potomac Avenue, S.E., between Interstate 295 and 19th Street, S.E.; and

(2) West or north of the Anacostia River;

(k) The portion of the Anacostia River within the District; and

(l) The Washington Channel.

15. 524.8 An AWDZ site shall obtain Department approval of an integrated pesticide management plan meeting the requirements of the Department's *Stormwater Management Guidebook*.
16. 527.3 How will a Permittee guarantee payment for the in-lieu fee. The contractor could walk away from a project when it is completed leaving the owner holding the bag for maintenance. Covenants and easements may not be totally binding.