

## DISTRICT DEPARTMENT OF THE ENVIRONMENT

### NOTICE OF FINAL RULEMAKING

#### Stormwater Fee Revisions

The Acting Director of the District Department of the Environment (DDOE) in accordance with the authority set forth in the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.01 *et seq.* (2008 Repl. and 2010 Supp.)), the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111; D.C. Official Code § 34-2202.16(d-1)-(d-3) (2010 Supp.)), and Mayor's Order 2006-61, dated June 14, 2006, hereby gives notice of the adoption of amendments to Title 21 of the District of Columbia Municipal Regulations (DCMR), revising the current stormwater fee structure for single family residences to a multi-tiered fee structure.

The final rulemaking revises the current stormwater fee from one based on one (1) Equivalent Residential Unit (ERU) for a single-family residence, to a tiered fee based on the amount of impervious surface on that property. An ERU is defined for billing purposes as 1,000 square feet, and is based on a median area of a single-family residential property. Currently, all single-family residences in the District are charged as one (1) ERU as an administrative simplification measure. However, improvements to the impervious billing database have provided an opportunity to group single family residences into “tiers,” based on their amount of impervious surface. Billing single-family residences according to these tiers will result in a more equitable distribution of the District’s stormwater management costs among single-family properties. Smaller single-family homes will pay lower stormwater fees than larger single-family homes. The proposed rule also adjusts the rate that is charged to each ERU. This stormwater fee revision will be done in coordination with the District of Columbia Water and Sewer Authority (DC Water) update of their impervious area charge to a multi-tiered billing for single-family residences (see 57 D.C.R. 2108; Rule Number 21-112 (March 12, 2010)). The new stormwater fee will be effective November 1, 2010.

Stormwater fees are required for the District to implement the best management practices to reduce pollutants from entering the streams and rivers, as required by the municipal separate storm sewer system permit (MS4 Permit) issued by the U.S. Environmental Protection Agency (EPA) to the District. Fees are required for the District to manage storm water in accordance with its permit requirements, including installation of stormwater controls on roadways, and increased cleaning and maintenance of stormwater drains, and to avoid violations and potential fines. The required stormwater management measures and associated costs are best illustrated by the provisions of the August 2008 MS4 Permit Enhancement Agreement between the District and the U.S. EPA Region III (available on the DDOE website at [http://ddoe.dc.gov/ddoe/frames.asp?doc=/ddoe/lib/ddoe/stormwaterdiv/epa\\_letter\\_agreement\\_august\\_2008.pdf](http://ddoe.dc.gov/ddoe/frames.asp?doc=/ddoe/lib/ddoe/stormwaterdiv/epa_letter_agreement_august_2008.pdf)), and the 2008 Storm Water Management Administration Study conducted for DDOE by RESOLVE, Inc. (available on the DDOE website at <http://ddoe.dc.gov/ddoe/cwp/view,a,1209,q,497549.asp>). Copies of both documents may also be obtained by calling DDOE at (202) 535-2600.

The rulemaking was published as proposed in the *D.C. Register* at 57 D.C.R. 8749; Rule Number 21-556 (September 24, 2010)). One set of written comments was received, which were supportive of the changes to the single family residential fee structure but requested additional information to support the fee increase. The public was also given an opportunity to present its views and comments on the proposed stormwater fee revisions at a public hearing on October 25, 2010. No additional comments or testimony were provided at this hearing. In response to the written comments, the Department clarifies that the fee increase is resulting from a number of factors that have modified the number of ERUs in the stormwater fee billing system, including refinement of the billing database, the shift to a multi-tiered structure for single-family residences, and incorporation of a standard non-payment calculation into the stormwater fee. These changes do not result in the generation of additional revenue from the stormwater fee; the fee remains structured to generate approximately \$13.2 million per year. The Department may need to consider an additional fee increase to comply with the requirements of the District's next MS4 Permit. The Department will consider this step once the Permit has been issued in its final form by EPA.

The Department has considered the comments, and has determined that no changes will be made to the proposed rules published on September 24, 2010. The comments, the Department's detailed responses, and an audio recording of the hearing will be maintained as part of the official record, and are available for inspection. These may be obtained by calling Jonathan Champion at DDOE (202) 535-1722. The rulemaking implementing the multi-tiered residential fee structure and new rate per ERU shall become effective on November 1, 2010.

**Title 21 of the District of Columbia Municipal Regulations, Chapter 5, "Water Quality and Pollution," Section 556, is amended as follows:**

**Subsection 556.2 is amended to read as follows:**

556.2 A residential customer means a single-family dwelling used for domestic purposes, a condominium or apartment unit where each unit is served by a separate service line and is individually metered and the unit is used for domestic purposes, or a multifamily structure of less than four apartment units where all the units are served by a single service line that is master metered. Residential customers shall be assessed ERUs for the square feet of impervious surface on the property, as follows:

- (a) 0.6 ERUs for 100 to 600 square feet of impervious surface;
- (b) 1.0 ERU for 700 to 2,000 square feet of impervious surface;
- (c) 2.4 ERUs for 2,100 to 3,000 square feet of impervious surface;
- (d) 3.8 ERUs for 3,100 to 7,000 square feet of impervious surface;

- (e) 8.6 ERUs for 7,100 to 11,000 square feet of impervious surface; and
- (f) 13.5 ERUs for 11,100 square feet or more of impervious surface.

**Subsection 556.5 is amended to read as follows:**

556.5 The charge for one Equivalent Residential Unit (ERU) shall be two dollars and sixty-seven cents (\$2.67) per month. This charge shall become effective November 1, 2010.