



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

November 26, 2012

Mr. Hamid Karimi, Ph.D.  
Deputy Director  
District Department of Environment  
Government of the District of Columbia  
1200 First Street NE, 5<sup>th</sup> Floor  
Washington DC 20002

Re: District of Columbia Proposed Stormwater Regulations

Dear *Hamid* Dr. Karimi:

On August 10, 2012 the District Department of Environment (DDOE) published for public comment proposed amendments to Chapter 5 (Water Quality and Pollution) of Title 21 (Water and Sanitation) of the District of Columbia Municipal Regulations. This letter provides:

- 1) EPA's comments on the proposed regulations, in particular with respect to compliance with the requirements of the District's MS4 Permit (DC0000221); and
- 2) EPA's comments on the off-site mitigation portions of the proposed regulations, reflecting EPA's interest that the regulations be consistent with the Chesapeake Bay TMDL and relevant Agency policy.

These comments follow two informal meetings between DDOE and EPA on October 17, 2012 and October 23, 2012 to discuss elements of the proposed regulations and supporting programs. These comments are not intended to serve as EPA's comments on the District's proposed Off-site Mitigation and Payment-in-Lieu program (as required by Part 4.1.3 of the permit); EPA will provide comments on the proposed program separately.

### **Consistency of the Proposed Regulations with the Permit**

#### Section 520.3

The MS4 permit requires that the rainfall volume of 1.2" be retained, NOT that the volume of runoff from this size storm be retained. The narrative in section 520.3(a) should be corrected to be consistent with this permit requirement (i.e., replacing the phrase "post-development runoff" with the phrase "volume of rainfall"). The calculation for this on-site retention volume, as required by the MS4 permit, is 1.2 x surface area of the regulated site x



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7.48/12 (a conversion factor).

In addition, the explanation for the calculation in section 520.3(b) should be clarified to explain that this equation is not the one to use to calculate the full volume of stormwater required to be retained on site, but rather is a step in the design process to calculate the volume of stormwater that must be retained by management practices (the difference between the full retention volume and the natural retention capacity of the site).

Accordingly, the regulations should be clear on the term "storm water retention volume" (SWRv). If it is intended to represent the volume required to be retained, as defined in section 520.3(a), then a different term should be used to represent the volume being calculated in section 520.3(b).

DDOE has expressed a certain amount of reluctance to amend these provisions because of confusion it may cause among the regulated community. However, EPA believes this is a fundamental inconsistency with the permit and must be corrected.

### **Additional Comment on the Proposed Regulations**

#### Section 521

Sections 521.2(b) and 521.3 require on-site retention to the "maximum extent practicable (MEP)" in public rights-of-way (PROW), but there is no quantitative definition specifying what would be considered acceptable MEP for on-site retention. The MS4 permit provides for exceptions to the 1.2" on-site retention requirement for transportation rights-of-way projects *during the current permit term*. Please note that the MS4 permit allows for this temporary flexibility only in transportation rights-of-way, not all PROWs. DDOE has clarified that all PROWs in the District are transportation rights-of-way. As long as this continues to be the case, the scope is consistent with the MS4 permit.

However, EPA was clear in issuance of this permit that the purpose of this exception is to provide the permittee with additional time to develop the details of this program element (e.g., designs and maintenance SOPs for transportation rights-of-way) and that EPA is unlikely to extend the exception when the permit is reissued. EPA anticipates including quantifiable on-site retention volumes for transportation rights-of-way in the next issuance of the permit and understands the difficulty often associated with amending regulations. Accordingly, EPA suggests including a "sunset" provision in the regulations whereby these sections would be in force only until the permit is reissued.

#### Section 523.3

EPA has concerns about situations where additional controls will be necessary because the standard requirements will not adequately control pollutants to ensure consistency with relevant water quality standards. We understand from our conversations that DDOE intends Section 523.3 to fill this gap. However, this section is worded in such a way as to only be

applicable when oil and grease exceeds 10 mg/L. EPA recommends either modifying this section to categorically address all potential pollutants, or adding a separate requirement included to address those pollutants.

#### Section 520.5(a)(2)

Although EPA appreciates the District's attempt in section 520.5(a)(2) to achieve improved water quality, percent removal of total suspended solids (TSS) is not a good approach for achieving water quality as it rewards the most poorly managed sites. Per our discussions, DDOE will explore the use of discharge concentrations for all stormwater control measures for which good treatment efficiency data exist. EPA has offered to assist with that effort.

#### **Comments on the Proposed Off-Site Mitigation and Payment-in-Lieu Program**

EPA understands that the District's proposed program is one of the first in the nation to formalize the establishment of stormwater credits and a program to trade or offset those credits. Although EPA recognizes that there is little experience upon which to build this program and some of the assumptions have yet to be tested, EPA expects the District's offset program to be consistent with existing Agency policy on offsets and trading, as well as the Chesapeake Bay TMDL and EPA's review of each Bay jurisdiction's offset and/or trading policy.

Accordingly, EPA recommends that the District provide additional information and/or make certain limited changes to the stormwater regulations, as described below. In addition, in anticipation that there will be a number of "lessons learned" over the next few years, EPA recommends that the District gather data to thoroughly evaluate the program in order to make timely improvements. In particular, EPA requests that the District address the following concerns:

#### Section 517.2

A land disturbing activity that is conducted solely for the purpose of generating an SRC is exempt from Sections 520 and 529, which causes concern that certain projects may be improperly presented as a project solely for the purpose of generating an SRC. Is this type of determination defined somewhere? How is the District going to determine whether or not a site meets these criteria?

#### Section 517.2(b)

EPA is concerned that off-site management practices are exempt from the accountability requirements of Section 529. How does the District plan to ensure that these practices will be maintained and operated to meet the program's overall retention goals and objectives over multiple permit cycles?

Section 532.1

Section 532 of the District's proposed regulations states that SRCs have an indefinite lifespan. EPA is concerned about this provision because it is inconsistent with Appendix S of the Chesapeake Bay TMDL, section 6(d) of which states that "For NPDES dischargers, credits should be created and used within the periods that are used to determine compliance with effluent limitations." Setting temporal bounds on the creation and use of credits is important for ensuring that water quality is protected. The lack of this safeguard opens the possibility that significant numbers of credits could be used during a period in which no credits are actually generated. This could result in high discharges of stormwater pollutants to local rivers, streams, and tributaries. EPA requests that the District provide a quantitative demonstration of how such a situation would be avoided under the proposed regulations.

EPA also remains concerned about the District's proposed regulations with regard to the lack of discussion of programmatic transparency. Appendix S, section 8 of the Chesapeake Bay TMDL states that offset programs should provide "maximum transparency, operational efficiency, and accessibility to all interested parties." EPA requests that the District provide a detailed plan explaining how it will provide access to information on the offsets program to all interested parties.

If you have any questions, please contact me, or Evelyn MacKnight of my staff at (215) 814-5717.

Sincerely,



Jon M. Capacasa, Director  
Water Protection Division

cc: Jeffrey Seltzer, District Department of Environment