DDOE Response to Clarifying Questions from Environmental Groups

District's Proposed Rulemaking on Stormwater Management and Soil Erosion and Sediment Control and Draft Stormwater Management Guidebook

Date: October 25, 2012

Attendees:
Brent Bolin – Anacostia Watershed Society
Mike Bolinder – Anacostia Riverkeeper
Diane Cameron – Audubon Naturalist Society and Natural Resources Defense Council
Brooke DeRenzis – DC Appleseed
Jon Devine – Natural Resources Defense Council
Maisie Hughes – Casey Trees
Kevin Jeffery – Clean Water Action
Dana Minerva – Anacostia Watershed Restoration Partnership
Emily Oaksford – Casey Trees
Jennifer Peters – Clean Water Action
Chris Weiss – DC Environmental Network

On behalf of DDOE:
Alan Barak
Sheila Besse
Adriana Hochberg
Jeff Seltzer
Brian Van Wye

Discussion

As requested, DDOE gave an overview presentation to the group and took questions during the presentation.

Comment: Off-site retention for a regulated project in the Municipal Separate Storm Sewer System (MS4) could happen in the Combined Sewer System (CSS), and that would not provide the desired benefit for waterbodies receiving stormwater from the MS4.

DDOE: That is possible; however, DDOE's view is that allowing off-site retention through Stormwater Retention Credit (SRC) trading will tend to shift retention from the CSS to the MS4, not the other way around. This is because the bulk of the CSS is in the downtown core where opportunities to install retention Best Management Practices (BMPs) are more limited. Generally, there should be more and lower-cost opportunities in the portions of the District draining to the MS4.

Comment: The value of in-lieu fee must have rational basis, based on the full cost to DDOE to achieve retention. It seems that the in-lieu fee set by DDOE is too low, and it would be helpful to see more detail on the basis for the in-lieu fee.

DDOE: The in-lieu fee is based on DDOE's full cost to achieve a gallon of retention for one year. DDOE can provide additional detail on how the in-lieu fee was calculated.

Question: The rule does not seem to specify a timeline for public creation of retention capacity. Is that correct?

DDOE: That is correct, though DDOE's intent would be to install retention capacity as soon as practicable.

Question: With the use of off-site retention through the SRC market, there is a potential for temporal asynchronicity between when the retention would be required under strict on-site retention and when it will actually occur off site. This is a source of concern.

DDOE: This is true, but DDOE does not think that this potential justifies complicating the program and market by limiting banking. Recognizing that DDOE is the first jurisdiction to put a retention trading program in place in the context of its stormwater management regulations, DDOE intends to observe the extent to which this is actually a problem before deciding whether or how to adaptively manage the program or take other actions to offset such impacts.

There are a number of points to keep in mind on this issue. First, the temporal asynchronicity can cut both ways, with some SRC retention actually occurring prior to the regulatory obligation and some after. Second, off-site retention should generally result in greater overall retention on an annual basis than would otherwise occur, which should help to offset temporal and spatial impacts on the distribution of retention. Third, most development in the District is redevelopment of existing developed (impervious) area, and even if they achieve only half of the required retention volume on site, these regulated sites will typically be achieving much more retention than they currently do.

Finally, limiting banking would complicate the implementation and operation of the SRC trading program. It would make the administration of the program more complicated for DDOE and also complicate participation. From an economic standpoint, one effect would be to complicate the valuation of SRCs. For instance, if an SRC can only be banked for five years, each SRC would presumably be worth more at the beginning of that five-year period than at the end. Rather than having a market where one SRC offers the same value as any other SRC, this limitation would make a market where SRCs are not all equally valuable. Before entering into a transaction, market participants would have to determine the value of all SRCs involved, complicating transactions and increasing the overall cost of participating in the market.

Question: If an SRC-generating site fails to maintain its retention capacity, that will not affect subsequent owners of the SRCs, correct?

DDOE: That is correct. DDOE will not retire or invalidate SRCs once the original owner has sold them. DDOE will follow up with the SRC-generating site to address the maintenance failure and may require the purchase of replacement SRCs or in-lieu fee. Also, DDOE will not certify additional SRCs for the retention capacity if it is not maintained.

Question: Why not require an SRC generator to have a short term covenant for maintenance for the time period for which SRCs are certified?

DDOE: That would add to the transaction costs for SRC trading, and it is not clear that such a requirement is necessary. DDOE would appreciate receiving details on this proposal, including legal costs to develop and file the declaration of covenants.

Question: Will DDOE publish summaries of the focused group meetings that it is having? Are they open to participation by Casey Trees and others?

DDOE: Yes, DDOE plans to post summaries on its website, and these sessions will be open to the public.

Question: How will DDOE enforce the maintenance of SRC-generating retention capacity?

DDOE: When a person requests that DDOE certify SRCs for a three-year time period, he/she will sign a statement committing to maintain the associated retention capacity for that time period. If the retention capacity is not maintained, DDOE may require the purchase of replacement SRCs or in-lieu fee. Also, DDOE will not certify additional SRCs for the retention capacity if it is not maintained. DDOE plans to conduct inspections on its typical three-year cycle, though there may be more frequent inspections for some BMPS, especially early on while vegetation is getting established. DDOE can also conduct random inspections, and inspectors can respond to maintenance problems when observed in the field.

Responses to Additional Questions Submitted in Advance of Meeting

1) What's the basis for the volumes assigned to the BMPs in the draft guidance?

DDOE: The retention volumes that the BMPs are capable of are primarily based on a large literature review conducted by the Center for Watershed Protection.

2) Would D-DOE please explain the rationale for the $3.50 per gallon fee-in-lieu level? How is that differential between that and the $1/gallon suggested SRC fee deemed to be adequate?

DDOE: The in-lieu fee is based on DDOE's full cost to achieve a gallon of retention for one year. If transaction costs can be kept low, the difference between the in-lieu fee and the expected value of an SRC should present an apples-to-apples comparison and opportunity for cost savings.

3) Re: using developers' compliance with the 1.2" retention standard including its off-site component, in order to comply with the MS-4 permit's impervious area retrofitting requirement: would D-DOE please explain how this constitutes adequate water quality restoration (vs. implementing them separately)?

DDOE: DDOE does plan to count those projects toward the retrofit requirement in the MS4 permit. During the development of the MS4 permit, DDOE communicated that intention to EPA. The District would not be able to meet that requirement without counting those projects.

The District's proposed approach also makes sense as the current MS4 permit transitions the District to a performance basis for reducing stormwater pollution through TMDL Implementation Plans. Under these new performance-based requirements, rather than specifying installation of specific BMPs or how retrofits occur, the District should have the flexibility to make strategic, cost-effective choices for achieving the required performance, whether by directly funding retrofits, providing incentives for retrofits, or using its regulatory tools to drive installation of retrofits.

4) What about the District's ability to meet the MS-4 deadlines for compliance with the 18M square feet of imperviousness retrofitting program in a timely way- if it is tied to this other SRC program that will have its own calendar and inevitable lag times?

DDOE: DDOE plans to count retrofits achieved by all of its programs toward the retrofit requirement. This includes area retrofitted by regulated sites, in addition to area voluntarily retrofitted by SRC-generating sites. It also includes areas retrofitted by other DDOE programs such as RiverSmart Homes and RiverSmart Rooftops.

5) Please explain how the 0.6" on-site retention floor effectively will meet D-DOE's watershed restoration and stormwater capture objectives, when implemented city-wide. (How it pans out when analyzed according to rainfall patterns, and how it works out in the aggregate market.)

DDOE: 43% of the District's land area is impervious, and the amount of retention retrofits that must be installed to restore health to the District's waterbodies is vast. Regulated sites meeting the new retention requirements will be the biggest driver of the installation of these retrofits in the District. The 0.6 inch on-site retention floor, coupled with off-site retention requirements, will produce more benefit for District waterbodies than would be achieved by requiring the entire 1.2 inch storm volume to be retained on the regulated site. In other words, structuring the regulatory framework in this way leverages the investment being made to retrofit developed areas in the District, and it will accelerate progress toward the District's watershed restoration and stormwater capture objectives.

6) Does D-DOE have "time to permit approval" estimates for different retrofit scenarios? How will private landowners be given administrative-streamlining incentives to self-retrofit, (other than the money incentive), given the often-onerous multi-agency permitting requirements in the District?

DDOE: In addition to the financial incentives associated with SRC generation and discounts on stormwater fees, the fee for DDOE to review an SRC retrofit plan is significantly lower than the plan review fee for a regulated site. Typically, DDOE approves a complete Stormwater Management Plan in 10-30 days.

DDOE is currently working with DDOT to clarify circumstances under which the Right of Way (ROW) can be retrofitted in the interest of streamlining the approval process. Also, DDOT is developing standard specifications for Low Impact Development installed in the ROW, and DDOE is working with DDOT to provide input and ensure consistency between DDOT's specifications and the technical guidance in DDOE's Draft Stormwater Management Guidebook.

7) Why is the off-site Stormwater Retention Credit market citywide, rather than being confined to the originating watershed?

DDOE: The District is a relatively small jurisdiction, and all of it ultimately drains into the Potomac River. Though DDOE considered the possibility of establishing trading ratios to incentivize the installation of off-site retention in the same watershed that the regulated project is in, DDOE determined that the benefit of doing so was outweighed by the complexity that such trading ratios would introduce. However, as required under the Anacostia Waterfront Environmental Standards Amendment Act of 2012, public or publicly financed projects along the Anacostia River would face a 1:1.25 trading ratio if using SRCs from outside of the Anacostia Watershed.

8) What is the rationale for allowing SRCs in the Combined Sewer areas of the District? We don't see that such retrofits will have the same water quality benefits as for the retrofits in the separately-sewered areas, has D-DOE done an analysis to show that this is beneficial?

DDOE: DDOE expects that allowing off-site retention through Stormwater Retention Credit (SRC) trading will tend to shift retention from the CSS to the MS4, not the other way around. This is because the bulk of the CSS is in the downtown core where opportunities to install retention Best Management Practices (BMPs) are more limited. Generally, there should be more and lower-cost opportunities in the portions of the District draining to the MS4.