

DDOE – DCBIA Meeting

Date: 10/12/12

Location: 800 17th Street NW

Attendees:

<u>Name</u>	<u>Organization</u>	<u>Contact</u>
Daniel Arking	H & K	202-469-5167
Alan Barak	DDOE-OGC	202-741-0843
Charles Barber	GW	202-994-5534
Sheila Besse	DDOE	202-535-2244
Blaine Carter	PGP	202-470-4900
Arquena Dailey	DDOE	202-741-2136
Dan Duke	Bohler	703-709-9500
Greg Hoffman	CWP	410-461-8323
Dr. Hamid Karimi	DDOE	202-535-2277
Kathy McDaniel	Akridge	202-624-8645
Bill McIntosh	Balfour Betty	703-819-3417
Kyle Oliver	Vika Capitol	202-244-4140
Mary Ramsey	WMC	703-381-7600
Matt Ritz	W.C. Smith Co.	202-371-1220
Jeffrey Seltzer	DDOE	202-535-1603
Rebecca Stack	DDOE	202-727-5160
Brian Van Wye	DDOE	202-741-2121
Andrew Williamson	Balfour	703-460-9132
Glenn Williamson	Amber	202-772-1980
Beth Squires	VIKA	
Patty Rose	Green Space	
Steve Goley	Straughan Environmental	
Paul Tummonds	Goulston and Storrs	

Prepared by: Arquena Dailey (DDOE) and Alan Barak (DDOE-OGC)

INTRODUCTION

Jeff (DDOE): The purpose of the meeting is to answer clarifying questions and share DDOE's intent regarding the proposed stormwater regulations, not to negotiate the requirements of the regulations. DCBIA's questions and DDOE responses will be posted to DDOE's website. DDOE distributed preliminary written responses to DCBIA questions (see attached). DDOE stated that a follow-up document will be provided to DCBIA responding to any unanswered questions.

Brian (DDOE): There has been some misconception on how the regulated stormwater volume is calculated. The regulated volume is static, based on a 1.2" design storm event. This regulated volume does not vary based on actual rainfall events and will not change unless the site conditions are modified. Regulated sites can use off-site retention options for up to 50% of the

stormwater retention volume at their discretion without demonstrating hardship. Additionally, regulated sites may seek relief from the minimum 50% on-site retention requirements if they can demonstrate extraordinarily difficult site conditions as defined in the Proposed Rule and Draft Stormwater Management Guidebook.

General Discussion

Dan (Bohler): Asked how DDOE will determine the definition of environmentally harmful site? The context for his question comes from the Maryland standard which no one knows how to define.

Rebecca (DDOE): States that this is addressed In Appendix E of the new Guidebook and the intent is to restrict infiltration into contaminated sites.

Dan (Bohler): Asked about relief for extraordinarily difficult site condition and suggested that DDOE review that in context of Maryland's regulations. It was noted that the maximum extent practicable (MEP) for DDOT is a different process.

Brian (DDOE): Stated that DDOE off-site retention options are unlike other jurisdictions', which typically require some demonstration that stormwater can not be managed on site before using mitigation options. In the District, a regulated site will be able to go offsite at its discretion for 50% of the regulated volume without demonstrating hardship.

Rebecca (DDOE): Referred the group to Appendix E of the draft Guidebook, with details on relief for extraordinarily difficult site conditions, and Appendix B, which contains the MEP for public rights of way.

The group discussed individual questions submitted by DCBIA Stormwater Task Force on October 5, 2012 as detailed below:

DCBIA Questions Section I. Technical

Jeff (DDOE): Stated that DDOE reviewed DCBIA's technical questions. Regarding the first question DCBIA submitted, some practices may achieve less retention (lower retention value) due to design, such as practices with underdrains. However those practices can be designed to meet retention requirements by increasing capacity.

Beth (VIKA): Noted that designers will chose solutions that are more efficient when possible instead of BMPs that only get 50% credit. We will start with infiltration because you get 100%. Why try anything else?

Jeff (DDOE): Concurred.

Beth (VIKA): States that she has more in-depth comments. e.g., there are spreadsheets that do not match.

Dave (DCBIA): If the proposed regulations assume some focus on a limited number of BMPs, then maybe we would use in-lieu fee. We don't want regulations to presuppose flexibility, but our cost-benefit looks at space and efficiency of the BMP and leads us to the in-lieu fee option. Is DDOE comfortable with this outcome?

Beth (VIKA): Explains that it is hard to sell the need to use both a green roof and a detention tank – retention and detention. The District is small acreage and has poor soils. Also, we should consider all green aspects -- e.g. had to take solar off a green roof in order to maximize the infiltration on it.

Greg (CWP): Agreed that separate solutions for retention and detention will likely be required.

Dave (DCBIA): DCBIA will provide some examples and bring them to DDOE.

Rebecca: Replied that she would look forward to receiving them. The Industrial Economics report drew on what they could find regarding capital cost.

Greg (CWP): We did a large literature review to determine retention values for BMP options. We looked at 90th percentile storm event for each method. That is where the guidebook percentages came from. DDOE will post the technical memo on its website.

Beth (VIKA): We don't push for permeable pavers due to the freeze thaw cycle. Additionally, DDOE gives less benefit for a green roof by limiting the drainage that can contribute to the green roof.

Rebecca (DDOE): Replied that DDOE set green roof plus 25% contributing area based on what our inspectors had seen for failure from sheeting too much water onto the roofs.

Steve (Straughan): Replied that he believes this is an unnecessary limitation. We can overcome the inspectors' observations with solutions such as thicker soils.

Dave (DCBIA): Let's go to more of a performance based standard that allows for high-performing variations like a deeper medium. We feel very comfortable with green roofs, and there is a lot of innovation potential there.

Rebecca (DDOE): Replied that she understood the point and wants the group to tell DDOE what could change in the manual. Submit public comments and wording.

Kyle (Vika Capitol): Asked why only 45% for permeable pavers with underdrains but you give sand filters a zero in terms of retention value. He recognized that bioretention is better.

Greg (CWP): Stated that the key thing about a permeable paver is surface space that allows for evaporation. Stated that no retention created with a filter because there is no opportunity for evaporation

Hamid (DDOE): Again invited the group to submit comments and to continue discussing.

Rebecca (DDOE): Stated that DDOE did a 2008 literature search on BMP performance but would be happy to expand if more information is available.

Dave (DCBIA): Stated that they only have weeks to get through the proposed rule and Guidebook. Asked how we can replicate in a mini collaborative session this type of dialogue and suggested that DDOE and DCBIA set up technical working groups.

Rebecca (DDOE): Replied that she agreed.

Brian (DDOE): Stated that DDOE had this in mind, included a process for this in the preamble to the proposed rule, and is soliciting requests for working sessions.

Steve (Straughan): Stated that the regulations specify volume and don't account for soils on site that give the greatest infiltration. He asks why not direct to areas on site with highest infiltration rates.

Rebecca (DDOE): Requested that engineers give us two or three case studies and we structure some sessions to discuss.

Dave (DCBIA): Stated that they will request two-three sessions to review the 4 pages of questions and the case study.

Steve (Straughan) Asked if the regulations allow 72-hour drawdown on cisterns to achieve retention.

Greg (CWP): Stated that that figure was correct.

DCBIA Questions Sections II. Process

Jeff (DDOE): Stated that the only way to submit a SWMP is through the application process as that there is no preliminary process currently.

Dave (DCBIA): Stated that this was a surprise to the group. They want a preliminary process outside of the building permit process otherwise they have to go to DCRA too soon. They don't want to go to war on the effective date. They would like to extend out the time the regulations go into effect.

Brian (DDOE): Stated that DDOE's intent was a 6-month period between finalization and implementation, but that this is constrained by the federal requirement for the rule's effective date in the MS4 permit. He asked the group to give some suggestions on how to approach this while still meeting the federal requirement.

Dave (DCBIA): Stated that an extra 6 months is not what we want because projects take years to develop. They may have suggestions on adopting e.g. LEED standards as a proxy.

DCBIA Question: What if we get a sheeting and shoring permit, can that be the point at which a SWMP is submitted?

Brian (DDOE): Stated that DDOE has planned to stay consistent with the existing DCRA process for when it sends Stormwater Management Plans to DDOE during the permitting process.

Jeff (DDOE): DDOE will get back to the group on the question of the 25-foot buffer.

Brian (DDOE): Other jurisdictions have larger buffers. Recognized that there may be a need to allow some exceptions.

DCBIA Question: Would a stormwater outfall violate the buffer requirement?

Dave (DCBIA): Wanted to know how to coordinate with the Army Corps of Engineers.

Jeff (DDOE): Regarding the question about harmonizing the rule with groundwater regulations, he stated that DDOE does not currently have groundwater regulations to harmonize with the stormwater rule. Asked what the group has in mind in terms of coordinating with the Army Corps?

DCBIA Question: Why do you have something more stringent than the EPA requirement for stormwater pollution prevention plans?

Rebecca (DDOE): Stated that the intent is that a site that complies with EPA's requirement under the Construction General Permit would also comply with DDOE's requirement. DDOE's requirement is meant to put in place some basic good housekeeping requirements for smaller sites. These requirements are in the draft Stormwater Management Guidebook and would simply be added to the plan as a stamp. The need for this requirement is based on the observation that it is often the smaller sites that don't follow good housekeeping. She advised the group to read the Appendix because it is very simple statements about what you do to satisfy the SWPPP requirement

Dave (DCBIA): Asked if these can be more regulatory in nature rather than submit a plan? Don't make it a separate process.

Sheila (DDOE): Stated that it is just another sheet in the sediment control plan.

Brian (DDOE): Stated that DDOE wants the folks on site to have access to the SWPPP. On some occasions, DDOE inspectors have visited sites that are not using basic good housekeeping practices, and some of these sites resist complying with such practices on the grounds that they aren't specified in the Soil Erosion and Sediment Control Plan.

Dave (DCBIA): Would like to make this clear, not a separate review on a different timeline.

Rebecca (DDOE): Directed people to Appendix R and the manual. She invited the group to submit some language that clarifies.

DCBIA Question: How are these regulations being coordinated with DDOT?

Jeff (DDOE): Answered that DDOE is part of a working group with DDOT and DC Water and that DDOT has AMT under contract.

Dave (DCBIA): Asked if they can be part of that discussion? He states that those two agencies may not be aware of or focused on our needs or how to work with us.

Jeff (DDOE): Agrees to talk to DDOT. He also states that DDOT want to get things finalized for the minimum as stewards of public space. There are some concerns dealing with DC Water's utility constraints and fears of having to replace "gold-plated" retention practices. Stated that after they address those concerns that it will be easier to discuss the group's concerns.

Dave: Urban development projects deal with this issue frequently. DCBIA would like to become part of that process and currently have working groups with DDOT and utilities.

Jeff (DDOE): DDOE will get back to the group.

DCBIA Questions Section III. Sediment and Erosion Control

DCBIA Question: Why is there a 2.5 acres restriction on clearing?

Jeff (DDOE): Answered that DDOE wants to see stabilization controls in place before very large land areas are cleared

Follow-up Question: Is this feasible to do a big project 2.5 acres at a time? There may be a dozen sites already like this.

Dave (DCBIA): Asked if there is a list of measures in mind?

Rebecca: Answered yes and that she will bring in the DDOE technical staff, who originated this idea. She agreed that this is an issue for a working group.

Jeff (DDOE): Regarding the question about the requirement for dewatering pollution reduction plans where there is contamination, stated that there are currently no groundwater regulations.

Dave (DCBIA): Stated that the goal is to have one point of contact, one plan, and one control.

Jeff (DDOE): In response to DCBIA question about having a "responsible person" on site, stated that the intent was that each site would identify a Responsible Person who has received erosion and sediment control training, not a P.E.

Dave (DCBIA): Asked what the intention is?

Rebecca (DDOE): Describe DDOE experience with a small number of bad actors with no one on site with any idea of how to install and maintain a silt fence or other controls.

Dave (DCBIA): Agrees that it is reasonable to have a person identified. Asked, what if reachable by phone? This is exactly what Virginia does, with an on-line test. A developer can take this on line, with the P.E.. standing in for a while -- land disturber test. Can we add this to focus group?

Rebecca (DDOE): Stated that DDOE was told that they cannot endorse a person or a group but will accept other recognized programs such as ASCE and IECA training programs.

Jeff (DDOE): In response to DCBIA Question III.4, stated that DDOE's intent was to simply limit disturbance during construction.

Dave (DCBIA): Stated that we want more specificity for a reviewer so that it's not discretionary.

Jeff (DDOE): In response to DCBIA Question III.5, intent was for site designs to follow contours to control erosion as detailed in sediment control handbook.

Brian (DDOE): In response to DCBIA Question III.6, stated that this was to give DDOE flexibility to request additional information as needed to evaluate different sites.

Dave (DCBIA): States that this is too broad and should be stricken.

Rebecca (DDOE): Suggested that DDOE will review internally to determine when this has been necessary.

Jeff (DDOE): In response to DCBIA Question III.7 and 8, stated that DDOE will try to revisit rebuttable presumption and cut and fill requirement language to clarify intent

DCBIA Questions IV. General Contracting

Jeff (DDOE): In response to DCBIA Question IV.1, stated that intent was to protect proper function of BMPs during construction.

Greg (CWP): Stated that given tight sites maybe compacting is necessary but we can refine Guidebook language to clarify that there is the option to compact and subsequently decompact to restore hydrological function.

Rebecca (DDOE): In response to DCBIA Question IV.2, pointed out DDOE's written response that there are some inspections that applies to all BMPs and some that vary by BMP. Chapter 3 of the Guidebook gives details on BMP-specific inspections.

Andrew (Balfour): Asked where did the 6 – 12 month timeline for ordering green roof plants come from.

Greg (CWP): Stated that intent was only to provide guidance, rather than establish a regulatory requirement. The intent is to ensure that the nursery being used has sufficient supply available

DCBIA Questions V. Retention Credit

Brian (DDOE): States that the in-lieu fee may change, for annual inflation adjustment and periodic rebasing to capture costs not reflected in rate of inflation. It will not be arbitrary, and will go through a public process.

Dave (DCBIA): Stated that predictability is important, so set for some years. DDOE should consider a minimal number of years before a new fee is rebased. Asked for assurance that credit be available from day 1? Noted that the cost analysis did not really include the market so we suggest a committee to discuss this further and ensure a credit could be widely ranging.

Carter (PGP): Asks if it is a liquid market and only a few people can broker the deal. There is concerned that there will be no transparency.

Daniel (H & K): Asked what DDOE's role will be with the credit owners.

David (DCBIA): Stated that there needs to be some administrative process to present the credit information in real-time on a public website or database.

Matt (W.C. Smith): Asks how will the credits be tracked?

Brian (DDOE): Explained that a unique serial number will be given for each credit so that DDOE can track the credit, its owner, and whether it has been used. Sales of credits will not be final until approved by DDOE, so DDOE can continue to track credits and also capture price information, to provide to the public. Please provide any other suggestion or comments on the administrative process.

David (DCBIA): Stated that these key issues could cause this program to fail if the administrative methods are not identified.

Alan (DDOE-OGC): Stated that some of these issues have already been addressed and there are ongoing database-development efforts at DDOE that the credit trading market may be able to take advantage of.

Brian (DDOE): Explained that DDOE is taking steps to ensure that credits will be available when they are needed, including certification of credits for retention practices installed in the past (back to May of 2009), and DDOE plans to conduct outreach to encourage these sites to apply for credit certification.

Carter (PGP): Asked if there are other programs like this operating?

Brian (DDOE): Stated that there is no other stormwater retention trading program operating in the context of a jurisdiction's stormwater management regulations, but there are other environmental trading programs with some similarities and that DDOE has looked at these in developing its program.

David (DCBIA): Has some concern over how this program will be managed. He suggests a work group to discuss this area of the program.

Jeff (DDOE): States that Brian will be the DDOE staff contact on program management.

Carter (PGP): Asked if DDOE can you provide information on how the in-lieu fee was developed?

Brian (DDOE): Stated that DDOE can provide additional information on this.

Alan (DDOE-OGC): Asks the group to give him safe harbor language regarding cost certainty as required for project financing and transactions.

David (DCBIA): States that he will provide a few key phrases used by lawyers to assist with the safe harbor language.

ACTION ITEMS:

- DDOE will provide an additional memo responding to questions not addressed in the attached response document.
- DDOE and DCBIA will collaborate to establish working groups to discuss 1) BMP Performance, 2) Erosion and Sediment Control and 3) Stormwater Retention Credit Trading.