



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
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Deputy Director  
District Department of the Environment  
Government of the District of Columbia  
1200 First Street, NE, 5<sup>th</sup> Floor  
Washington, DC 20002

**JUL 11 2013**

Dear *Hamid* Dr. Karimi:

On June 7, 2013, the District Department of the Environment (DDOE) published for public comment a second round of proposed revisions to Title 21 of the District of Columbia Municipal Regulations (DCMR) for Stormwater Management, Soil Erosion and Sediment, Chapter 5 (Water Quality and Pollution). This letter provides EPA's comments on those second proposed regulations as they relate to ensuring appropriate implementation of the District's Municipal Separate Storm Sewer System (MS4) Permit).

These comments follow an informal conference call between DDOE and EPA representatives on July 2, 2013, as well as two previous letters (dated November 26, 2012 and June 4, 2012) which provided comments on prior versions of the proposed regulations.

**1. The Proposed Regulations Need to Ensure that Any Transition Period for Performance Requirements is Narrowly Tailored to Limit the Number of Exempt Applicants.**

It is important that any transition period in the regulations be limited to cover those projects which are able to submit *complete* applications, as required under Section 518.4 of the proposed regulations.

EPA recommends that the regulations be clarified as suggested below, so that they more clearly articulate requirements that are consistent with the goals of the DC MS4 Permit:

The Department shall enforce a transition to the stormwater management performance requirements in §§ 520 through 522, as follows:

- (a) A major regulated project submitting a complete Stormwater Management Plan (SWMP), as required under Section 518.4, in support of a building permit application before the end of Transition Period One (TPP1), shall:

- (1) Be exempt from the requirements of §§ 520 through 522;



If the District makes the foregoing change to its regulations, it will help ensure that the transition period for phasing in the performance standard only occurs for *bona fide* projects, so that a “rush” of last-minute applications simply for the purpose of an exemption can be avoided.

**2. The Proposed Regulations are Inconsistent with the Requirements of the DC MS4 Permit by Exempting Utility, Wastewater and CSO projects.**

Language in the Proposed Regulations that would exempt utility, wastewater and combined sewer overflow (CSO) projects from the Permit’s performance standards is troubling for several reasons. First, it appears to effectively modify the DC MS4 Permit, which covers “all stormwater point source discharges to waters of the United States from the District of Columbia’s MS4 that comply with the requirements of this permit. . .” DC MS4 Permit at Section 1.2. The Permit does not contain any exemptions for utility (outside of transportation rights-of-way), wastewater or combined sewer overflow (CSO) projects—regardless of whether such projects are covered by consent decrees or NPDES permits. Therefore, EPA requests that Section 517.2(5) and (6) be modified, clarified, or eliminated for consistency with the requirements of the MS4 permit.

Second, the exemptions may serve to interfere with the overall purpose of the District’s stormwater management program. A major goal of the DC MS4 Permit is improved water quality. *See generally*, Fact Sheet in support of DC MS4 Permit (September 30, 2011). Moreover, the Permit’s requirements, “which include green roofs, enhanced tree plantings, permeable pavements, and a performance standard to promote practices such as bioretention and water harvesting, are designed to increase the effectiveness of stormwater controls by reducing runoff volumes and associated pollutant loads.” *Id.* at Section 4.1. As such, any exceptions to otherwise applicable Permit requirements are over-broad would only serve to dilute the Permit’s protections.

Therefore, EPA strongly recommends that the District’s regulations be revised to remove the exemptions for utility, wastewater and CSO projects. Alternatively, if the Regulations continue to include such exemptions, at a minimum they should be revised to clarify that the exemptions only apply where such entities demonstrate sufficient practices that protect water quality through on-site retention, including green infrastructure.

**3. The Proposed Regulations Should Clarify That only Projects Fully Contained in the Right-of-way Would be Exempt from Full Compliance with Performance Standards.**

The regulations also contain an extension to a limitation for projects in public rights-of-way, which raises the same concerns as the exemption identified above. Section 521 of the second proposed regulations, entitled “Stormwater Management: Performance Requirements for Major Land-Disturbing Activity Consisting of Bridge, Roadway and Streetscape Projects in the Existing Public Right of Way”, has been modified to include work “[i]n the existing PROW and in the public space associated with the PROW.” (Section 521.1(b), emphasis added).

The language highlighted above appears to broaden the definition of “transportation rights-of-way,” as defined in the Permit. Since Section 521 of the proposed regulations is essentially a set of exemptions and alternative (lesser) standards, potentially expanding the areas eligible for these exemptions is inappropriate under the terms of the DC MS4 Permit. The definitions section of the proposed regulations includes parks and other public spaces in the description of “public space,” and EPA wants to emphasize that this more expansive definition is not consistent with the MS4 permit.

**4. The District should Anticipate that Section 521 May Need to be Revised when the DC MS4 Permit is reissued.**

By the time the next permit is issued, EPA expects that DDOE’s program will have matured to the extent that quantifiable on-site retention volumes for transportation rights-of-way might be appropriate. EPA has indicated to DDOE on several occasions that—depending on the outcome of the public participation process—the current exemption from the 1.2” performance standard applicable in PROWs, described above, may not be further extended when the MS4 permit is reissued (see November 26, 2012 and June 4, 2013 letters). Consequently, EPA recommends at this juncture that the regulations be revised in anticipation of extension of the performance standards to PROWs, perhaps through a “sunset” provision.

If you have any questions regarding these comments, please do not hesitate to contact me or Ms. Evelyn S. MacKnight of my staff at (215) 814-5717 or [macknight.evelyn@epa.gov](mailto:macknight.evelyn@epa.gov)

Sincerely,



Jon M. Capacasa, Director  
Water Protection Division

Cc: Mr. Jeffrey Seltzer, DDOE