

Memorandum

TO: Sheila Besse, District Department of the Environment
FROM: Alma Gates
DATE: July 25, 2009
RE: Comments on DRAFT Stormwater Management Regulations
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Observation No. 1: The Draft Stormwater Management Regulations are being considered at a time when our city and country are in the midst of a financial crisis. Perhaps difficult financial times for the city have brought pressure to bear on making the regulations less restrictive and more developer friendly. Making allowances for developers' financial shortfalls through variances and off-site mitigation is not in the best long-term interest of the city. Sections 533 and 534 do not support sound environmental practices; will not meet the purpose(s) of the regulations; do not meet Comprehensive Plan guidelines; are permissive rather than instructive; and, they lessen the integrity of the regulations as well as that of the Department of the Environment. Section 534.4 (d) that deals with justification for off-site mitigation is vague and subjective; and, Section 534.4 (i) is very problematic and ripe for failure. I strongly recommend Sections 533 and 534 are removed from the draft recommendations.

Observation No. 2: There is no mention of, or provision for, Zoning in these regulations. I strongly suggest there be a provision added under Section 528 entitled, "Zoning Review." Justification: When concept plans are approved by the Zoning Commission or the Board of Zoning Adjustment it is assumed by those bodies that the concept plan will continue to be developed and built; however, that is not the case. Concept plans can be completely altered after zoning approval is granted. It is recommended that clear language be included in the new regulations that states, "Concept plans approved by the Zoning Commission or the Board of Zoning Adjustment are not subject to change once approval has been granted."

Observation No. 3: There is no mention of underground construction and the impact it has on the flow of groundwater. The potential for impacts from underground construction is definitely influenced by stormwater but a requirement for mitigation fails to appear in the proposed regulations.

My comments on and changes to various sections of the draft regulations follow and are in red.

Thank you for the opportunity to comment on the Draft Stormwater Management Regulations. An immediate observation would draw the attention of the District Department of the Environment (DDOE) to the Sustainability section of the proposed Zoning Regulations (Title 11) to ensure there is coordination between DDOE and the Office of Planning on regulations that address environmental best practices.

The following comments reflect the observations of a community member and former ANC Commissioner who has spent considerable time working on stormwater mitigation issues. My comments are not technical but rather reflect a practical and learned approach to regulations proffered by an agency of the District of Columbia. I welcome DDOE's efforts to protect the waters of the District of Columbia through clearly stated best management and low impact development practices.

Introduction

Page 1, par. 2: Is DDOE proposing environmentally *friendly* or **environmentally sound** stormwater management practices?

Page 1, par. 2: "The amendments will also require ... and, authorize property owners to conduct off-site stormwater management mitigation or pay an off-site stormwater management mitigation fee for deficiencies in managing the water quality volume due to technical conditions on the site." **This statement raises a red flag and it appears to contradict what the Department is attempting to accomplish – strengthen the permitting procedures. If stormwater is not mitigated on site, and in lieu a fee can be paid, where is the incentive for any developer to mitigate deficiencies? In this proposal the deficiency remains but DDOE has been paid off! This is not a good management practice.**

Page 2, par. 3: "These proposed regulations will implement the prohibition ... install oil/water separators." **Will this provision be retroactive to include "all" car dealerships and other business currently operating or will they be grandfathered in and continue to pollute any District sewer? Dry cleaning establishments are omitted from the list of potential polluters (See also Section 526.3; and, Definitions: "Hotspots")**

Page 2, The Table of Contents is amended as follows: **There is no mention of the Potomac River – is that a deliberate omission? There is no mention of underground construction and how the groundwater will be mitigated. Also, "Definitions" is not listed in the Table of Contents (See also Section 599).**

Section 529 Stormwater Management: Requirements

529.1 Each applicant for a Level 3 alteration to an existing building ... The stormwater shall flow away from the building, and shall not flow over **or impact property lines of adjacent lots**, unless it runs into natural water courses.

529.7 The applicant shall use on-site stormwater management techniques to the maximum extent practicable, with a preference for vegetated techniques. **This regulation needs to be expanded and clarified.**

529.9 Where the applicant proposes a land use activity ... and require submission of a pollution prevention plan by the applicant. **What about the requirement for an NPDES permit?**

531 RESERVED **Is this section going to be developed to include the Potomac River Watershed Area? Why are the Potomac River and Rock Creek omitted from the regulations if they receive stormwater discharge and run-off from areas that drain to their watershed?**

533 Stormwater Management Variances **(In general, at what point does DDOE admit an application should be denied? A variance does not solve or improve the existing deficiency. This is not a sound business practice and undermines the integrity of the regulations and DDOE. Recommend variances not be permitted and this section be removed.)**

534 Stormwater Management: Off-Site Mitigation **(In general the immediate deficiency remains on site along with pending impacts. This is an opportunity that will allow developers to skirt the purpose of the regulations through a payment or mitigation of another site which may be in a different section of the city, thus leaving the deficiency in place. Like the previous section, "Variances", off-site mitigation should not be permitted because it fails to address the immediate deficiency. Stormwater mitigation is not a zoning matter although this section of the draft regulations is modeled on the zoning regulations' use of variance and transfer development rights. Off-site mitigation is an environmental consideration with long-term outcome that appears to be solved through a payoff to DDOE. Allowing or encouraging developers to pay rather than mitigate undermines the purpose of stormwater regulations. Also, allowing a developer to cite "cost," a business consideration, is counter to the purpose of the stormwater regulations. Recommend this section be removed.)**

535 Stormwater Management: Maintenance **This section needs to be more proactive in tone. The "may" should be replaced with "shall" in every section of 535 where "may" appears. Also section 535.9 needs to add a line for the business license number of the contractor.**

536 Stormwater Management: Covenants and Easements

536.1 A clear delineation of authority is needed for this section. "The Department (DDOE) shall be required to record a covenant// or shall be required to maintain a record of a covenant."

541 Soil Erosion and Sediment Control: Roadway Projects

What about construction sites that employ trucks during the site preparation/excavation phase? What about on-site brushing-off, hosing down of trucks and covering of loads to prevent airborne soil erosion? This may be covered under section 544 but needs to be expanded and clarified.

542 Soil Erosion and Sediment Control: Buildings, Demolition, Razing, or site Development

See comments under 541. Airborne pollution needs to be addressed.

542.1 (a and b) These sections appear to contradict Section 529.7. Soil erosion is caused by stormwater runoff (or wind).

599 Definitions

Best management practice (BMP) and Low impact development practices appear to be very similar

Hotspots – need to include dry cleaning establishments

Land disturbing activity – should this section be added as a section to the body of the regulations?
