

Re: Draft Fact Sheet

National Pollutant Discharge Elimination System (NPDES)

Municipal Separate Storm Sewer System (MS4)

Draft Permit No. DC0000221 (Government of the District of Columbia)

NPDES PERMIT NUMBER: DC0000221 (Reissuance)

FACILITY NAME AND MAILING ADDRESS:

Government of the District of Columbia

The John A. Wilson Building

1350 Pennsylvania Avenue, N.W.

Washington, D.C. 20004

MS4 ADMINISTRATOR NAME AND MAILING ADDRESS:

Director, District Department of the Environment

1200 First Street, N.E., 6<sup>th</sup> Floor

Washington, D.C. 20002

FACILITY LOCATION:

District of Columbia's Municipal Separate Storm Sewer System (MS4)

RECEIVING WATERS:

Potomac River, Anacostia River, Rock Creek, and Stream Segments Tributary  
To Each Such Water Body

INTRODUCTION:

Today's action involves a renewal of the 2004 Permit. In the draft Permit, EPA has continued to integrate the Permit's adaptive management approach with enhanced control measures to address the complex issues associated with urban stormwater runoff within the corporate boundaries of the District of Columbia.

Since the United States Environmental Protection Agency, Region III (EPA or the Agency) issued the District of Columbia (the District or Permittee) its first Municipal Separate Storm Sewer System (MS4) Permit in 2000, the Agency has responded to a number of challenges involving both that Permit (as well as amendments thereto) and the second-round MS4 Permit issued in 2004. For the better part of ten years, the Agency has worked with various challengers -- including the Permittee and two non-governmental organizations, Defenders of Wildlife (DOW) and Friends of the Earth (FOE) -- to address the needs and concerns of the various parties while at the same time following applicable legal requirements. The Agency has

engaged in both litigation and negotiation, including formal mediation.<sup>1</sup> These activities ultimately led to an enhanced stormwater management strategy in the District, consisting of measurable outputs for addressing the issues raised during the mediation process.

#### FACILITY BACKGROUND AND DESCRIPTION:

The Government of the District of Columbia owns and operates its own MS4, which discharges stormwater during wet weather events from various outfall locations throughout the District into its waterways. On April 19, 2000, EPA issued the District its first Stormwater Phase I National Pollution Discharge Elimination System (NPDES) Permit for the control and management of stormwater discharges originating from those MS4 outfalls. The Agency proposed Amendment No. 1 to that Permit on October 16, 2000, and simultaneously withdrew portions of the issued Permit. On January 12, 2001, the Agency issued Amendment No. 1 to the 2000 Permit. DOW and FOE (collectively, “DOW/FOE”) appealed both the 2000 Permit and Amendment No. 1 to the EPA Environmental Appeals Board (EAB), which resulted in a remand of a number of provisions of the Permit. *See* “Order Granting Motion for Partial Reconsideration,” *In re: Government of the District of Columbia Municipal Separate Storm Sewer System*, 10 E.A.D. 323 (Feb. 20, 2002).

As a consequence of the remand, the Agency issued Amendment No. 2 to the 2000 MS4 Permit on March 19, 2003. The Amendment revised the Permit provisions for addressing permit modifications in accordance with 40 C.F.R. § 122.62. The EAB decision also required the Agency to re-evaluate “aggregate” versus “individual” limits for the Hickey Run outfalls, to modify the monitoring and sampling requirements for those outfalls, to provide additional record support for the Region’s determination that the system-wide controls required by the Permit would ensure compliance with applicable water quality standards, and to clarify through the Permit the District’s limited discretion to grant waivers and exemptions under its stormwater regulations. These aspects of the decision were addressed as part of the next permitting cycle.

On August 19, 2004, the Agency issued the second-round permit to the District, with an expiration date of August 18, 2009. The 2004 Permit, like its 2000 predecessor, covers only the MS4 outfalls within the corporate boundaries of the District of Columbia, excluding the combined and separate sanitary sewer systems which are covered under the NPDES Permit for the Blue Plains Treatment Facility.<sup>2</sup>

Shortly after the 2004 MS4 Permit was issued, DOW/FOE appealed many of the same issues that had previously been the subject of contention under the 2000 MS4 Permit. Following extensive negotiations between EPA and the petitioners (DOW/FOE), EPA published a draft Amendment for public comment and sought certification under Section 401 of the Clean Water

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<sup>1</sup> A procedural history of Permit appeals can be viewed at the EPA Environmental Appeals Board web site: [http://yosemite.epa.gov/oa/EAB\\_Web\\_Docket.nsf/77355bee1a56a5aa8525711400542d23/b5e5b68e89edabe98525714f00731c6f!OpenDocument&Highlight=2,municipal](http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/77355bee1a56a5aa8525711400542d23/b5e5b68e89edabe98525714f00731c6f!OpenDocument&Highlight=2,municipal).

<sup>2</sup> When the first MS4 permit was issued to the District in April, 2000, administration of the daily operations of the MS4 Permit was performed by the District of Columbia Water and Sewer Authority (DC WASA). In 2006, the newly-created District Department of the Environment (DDOE) assumed responsibility from the District of Columbia Department of Health (DDOH) for NPDES permit-related matters. And in February 2007, administration of the MS4 Permit was transferred from DC WASA to DDOE.

Act (CWA), 33 U.S.C. § 1341, by DDOH. As a result of the DOH certification, EPA revised the language of the draft Amendment to rely on “current conditions” as the water quality standard baseline and to build upon these conditions through the use of best management practices (now, commonly referred to as “stormwater control measures,” or “SCMs”) for compliance with applicable water quality standards. EPA issued Amendment No. 1 to the 2004 MS4 Permit on March 14, 2006.

DOW/FOE then appealed aspects of Amendment No. 1. The Amendment was also appealed by DC WASA and the Government of the District of Columbia (the Permittee). As a result of the appeal, EPA, DOW/FOE, and the District began an alternative dispute resolution process to formulate a solution to the remaining issues. The parties’ goal was to enable the District to progress toward meeting its obligations under the current MS4 Permit by achieving compliance with applicable water quality standards in an urban environment through the use of best management practices. On October 29, 2007, the Agency withdrew the contested portions of Amendment No.1, and on November 8, 2007, the EAB dismissed the appeal as moot.

In light of the dismissal of the appeal, the Agency attempted several times to issue another amendment to the 2004 MS4 Permit to address the issues that had been negotiated through the alternative dispute resolution process. Each attempt was rejected by the various parties for different reasons, and the draft amendment was deferred for reconsideration of the issues until the current MS4 Permit renewal process began in 2009. While the alternative dispute resolution process was unable to produce a satisfactory three-party (*i.e.*, DOW/FOE, WASA/Permittee, and EPA) outcome, the District and EPA reached a two-party agreement on a series of enhancements to the 2004 MS4 Permit. These enhancements, which were documented through a Letter of Agreement (the Letter) dated November 7, 2007 (modified August 1, 2008), include a series of actions, deliverables, commitments, and deadlines for the District’s MS4 program on a range of topics, including: tree canopy, implementation of Low Impact Development (LID) practices, green roofs, and enhanced street sweeping. Each of these activities was expected to contribute directly to improvements in the way that stormwater is managed and water quality issues are addressed within the District’s urban environment. The commitments in the Letter required significant new activities, which emphasized the shifting nature of the MS4 program within the District from planning to implementation of the plans with specific objectives and measurable benchmarks.

Since the August 19, 2004 Permit expired on August 18, 2009, it has been administratively extended.

#### PROPOSED ACTION TO BE TAKEN:

EPA is today proposing a reissuance of the District of Columbia MS4 Permit for public review and comment. The new Permit is intended to replace the 2004 Permit, which is currently in effect under an administrative extension. The new Permit has been designed around the concepts, ideas, studies, and pilot projects that were planned and implemented by the District through the 2000 and 2004 MS4 permits and modifying Letters. A number of applicable measurable benchmarks and performance standards have been incorporated into the draft

document from these prior efforts. These new requirements will enable the Agency to monitor the District's progress in reducing and managing the effects of urban stormwater runoff from their sources prior to entering and leaving the MS4 waste stream within the next Permit term.

#### DISCHARGE LIMITATIONS:

The control of stormwater is important because stormwater run-off directly affects watershed functions, and water quality in receiving waters. The increase of impervious surfaces and compacted soils that are often part of new development and redevelopment increases surface runoff and decreases ground water infiltration. These changes can increase the volume and velocity of runoff, the frequency and severity of flooding, peak storm flows as well as the type, concentration, and quantity of pollutants in discharges. Moreover, stormwater research shows a high correlation between the level of imperviousness in a watershed and the degree of overall degradation of water quality and habitat.<sup>3</sup>

Against this background, today's draft Permit is premised upon EPA's longstanding view that the MS4 NPDES permit program is both an iterative and an adaptive management process for pollutant reduction and achieving applicable water quality standard and/or total maximum daily load (TMDL) compliance. *See generally*, "National Pollutant Discharge Elimination System Permit Application Regulations for Stormwater Discharges," 55 F.R. 47990 (Nov. 16, 1990). While the 2000 and 2004 Permits were mainly concerned with the development of a well-rounded program designed to effectively manage urban stormwater through the required deliverables under each of the permits, the District (starting with the Letters of Agreement) has been significantly expanding its efforts beyond the initial planning stages. The draft Permit will continue these efforts and allow for further development of the scheme for controlling stormwater from one of planning into one of implementation with associated environmental improvements.

In that regard, EPA is aware that many Permittees, especially those in highly urbanized areas such as the District, will be unable to attain all Water Quality Standards within the first several MS4 permit cycles. Rather, the attainment of water quality criteria is an incremental process, consistent with section 402(p)(3)(B) of the Clean Water Act, 33 U.S.C. § 1342(p)(3)(B)(iii), so long as permittees reduce the discharge of pollutants to the maximum extent practicable (MEP) within each permit cycle. In other words, the goal of EPA's stormwater program is attainment of water quality standards, but Congress expected that many municipal stormwater dischargers would need several Permit cycles to achieve that goal. While some dischargers may already have achieved a point where they can attain WQS, the requirements of today's draft Permit are specific to the District and its receiving streams. EPA believes that such limitations should be developed on a case-by-case basis.

Specifically, the Agency expects that water quality standards attainment in waters to which the District's MS4 discharge will require an iterative approach with staged implementation and increasingly more stringent requirements over several permitting cycles.

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<sup>3</sup> See the Center for Watershed Protection for more information. [www.cwp.org](http://www.cwp.org) and [www.stormwatercenter.net](http://www.stormwatercenter.net)

During each cycle, EPA will continue to review deliverables from the District to ensure that its activities constitute sufficient progress toward standards attainment.

This approach recognizes that progress toward attaining water quality criteria requires an ongoing examination of and improvement to existing structural and nonstructural controls coupled with implementation of new activities that serve as stormwater control measures. The basis for the controls is: (1) “reducing the discharge of pollutants from the MS4 to the MEP; (2) to protect water quality; and (3) to satisfy the appropriate requirements of the Clean Water Act.” As such, the approach is authorized by Section (p)(3)(B)(iii), which provides for “such other provisions as the Administrator .... determines appropriate” for the control of discharges of pollutants from an MS4 system.

Consistent with the staged implementation of standards attainment, the Permit requires that the District report annually on estimated pollutant reductions from best management practices (BMPs) implementation. However, the Agency understands that multi-year capital projects may result in uneven annual progress toward pollutant reduction, so annual adjustment of management practices may be unwarranted and inefficient.

Further, the measures in the draft Permit are intended to reduce the impairments in the MS4’s receiving waters, which are caused by bacteria, total nitrogen and phosphorous, solids and metals.

## STANDARDS FOR LONG-TERM STORMWATER MANAGEMENT:

### Green Technology Practices

The fundamental difference between today’s draft Permit and previous generation permits is the imposition of measurable requirements for green technology practices, sometimes referred to as “low-impact development” or “green infrastructure.” These requirements, which include green roofs, enhanced tree plantings, and bioretention and water reuse onsite (to slow the rate of runoff of stormwater flows from paved areas), are designed to serve as or increase the effectiveness of stormwater controls. In past years, stormwater management standards were written with provisions that promoted or required extended detention controls, such as extended detention wet ponds, dry detention basins or constructed wetlands.

There are multiple potential problems with extended detention as a water quality management practice, including the fact that receiving stream dynamics are generally based on balances of much more than just discharge rates.<sup>4</sup> Extended detention practices are first and foremost designed to prevent downstream flooding and not to protect downstream channel stability and water quality. For decades, water quality protection has been a secondary goal, or one omitted entirely during the design of these facilities. Over time it has become apparent through research and monitoring that these practices do not effectively protect the physical,

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<sup>4</sup> A Review of Low Impact Development Policies: Removing Institutional Barriers to Adoption. Low Impact Development Center, December 2007.

chemical or biological integrity of our receiving waters<sup>5</sup>. Furthermore, operation and maintenance of these systems to ensure they perform as designed requires a level of managerial and financial commitment that is often not provided. A number of researchers have documented that detention ponds fail to meet their design goals in terms of maintaining water quality, downstream habitat and biotic integrity of the receiving waters.<sup>6,7,8,9</sup> As a result, today's draft Permit shifts the District's practices from detention to water quality protection.

#### New Development and Redevelopment: Non-Federal Facilities

As noted above, the Clean Water Act requires that MS4 permits include sufficient controls so that dischargers reduce the discharge of pollutants to the MEP. The meaning of the MEP standard has continued to evolve since it was first articulated two decades ago. At one time, stormwater permits only contained broad narrative limitations; more recently, such permits have included numeric standards for stormwater capture. In fact, the 2004 version of the DC MS4 Permit did not contain numeric performance standards for on-site retention of stormwater for new development and redevelopment and retrofit projects. However, today's draft Permit includes a requirement that the Permittee adopt one of the following performance standards for non-federal areas greater than 5,000 square feet that are undergoing new or redevelopment:

1. The design, construction and maintenance of stormwater controls to achieve on-site retention of "1.2" volume of stormwater from a 24- hour storm; or
2. The design, construction and maintenance of stormwater controls to achieve the retention of the modeled predevelopment runoff volume of stormwater from a 24- hour storm.

The Permit includes two options for the District, so that it can determine which one is more appropriate to its circumstances. The first option, on-site retention of 1.2", represents a 90<sup>th</sup> percentile capture of 1.2" for a 24-hour rainfall event with an option for a prescriptive requirement in order to provide site designers with maximum flexibility in selecting control practices appropriate for the site. In setting this standard, EPA relied on the District's proposed modifications and updates to its stormwater management regulations and the reductions required through established total maximum daily loadings (TMDLs) for certain of the metals which were determined from previous stormwater monitoring activities to be potential pollutants of concern. EPA also considered an 85<sup>th</sup> percentile capture rate of 1-inch, which would be in accordance with the District's proposed stormwater management regulations, the former Anacostia Waterfront Corporation stormwater management regulations, and the metals reduction levels from the TMDLs. However, EPA felt that such a standard would not provide sufficient water

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<sup>5</sup> U.S. EPA, *Protecting Water Quality from Urban Runoff*, Nonpoint Source Control Branch, EPA-841-F-03-003, February 2003.

<sup>6</sup> MacRae, C.R. Experience from Morphological Research on Canadian Streams: Is Control of the Two Year Frequency Runoff Event the Best Basis for Stream Channel Protection? Kingston, Ontario, Canada.

<sup>7</sup> May, C, Livingston, E. Blaha, D, Scoggins, M. & Tims, J. Structural and Nonstructural BMPs for Protecting Streams. Watershed Management Institute, Crawfordville, Florida.

<sup>8</sup> Booth, D.B. & Jackson, C.R. 1997. Urbanization of Aquatic Systems – Degradation Thresholds, Stormwater Detention and the Limits of Mitigation. *Journal of the American Water Resources Association* 22(5).

<sup>9</sup> Fundamentals of Urban Runoff Management, Chapter 10, North American Lake Management Society. [http://www.nalms.org/Resources/PDF/Fundamentals/Fundamentals\\_Chapter\\_10.pdf](http://www.nalms.org/Resources/PDF/Fundamentals/Fundamentals_Chapter_10.pdf)

quality protections, and that ongoing new construction and retrofit opportunities make this reasonable. In addition, the Agency feels that the 1.2” level of capture for new construction is also reasonable since most of the construction activities in the District currently do not involve new sites, but rather redevelopment opportunities. If the District had more open land available for new development, and thus the opportunity for additional types of control measures, EPA may have included a capture level closer to the 95% required for federal facilities.

The second option, *i.e.*, a standard that mimics predevelopment hydrology, is appropriate because significant research suggests that practices which mimic the natural water cycle – activities that result in the infiltration, evapotranspiration and capture and use of stormwater – are simultaneously advantageous for protecting the physical, chemical and biological characteristics of receiving waters. This is because such practices are designed to mimic the way natural vegetated landscapes respond to precipitation events. When rain falls or snow melts, vegetated areas (forests, prairies and grasslands, gardens and trees) intercept, evaporate and absorb much of the rainfall. Some of the precipitation is also absorbed or infiltrated into the soil. Ideally, site designs and plans should make use of these natural systems and processes as much as possible to mimic or preserve the site hydrology, *i.e.*, the balance of plant uptake of water, infiltration of runoff into the soil and groundwater table, and the natural runoff patterns into natural drainageways and streams. Most bioinfiltration measures are designed to not discharge at all during small storm events, which means that pollutants do not reach the receiving water.<sup>10</sup>

Under natural conditions approximately 10% of the volume of precipitation falling to earth runs off to surface waters via surface/overland flow.<sup>11</sup> Nearly all of the remaining amount of stormwater infiltrates, or is intercepted or taken up by plants. Mother Nature’s elegant system can be successfully adapted in developed and developing watersheds to protect receiving waters from both pollutants and altered hydrology. Today’s draft Permit proposes a simple performance standard to approximate 10% discharge, with most of the remainder handled on-site.

Moreover, by imposing a numeric standard for stormwater capture, this Permit is consistent with those in a number of other jurisdictions, including: Anchorage, Alaska (Phase I); Ventura County, California (Phase I); Montana (Phase II MS4 General Permit); New Jersey (Stormwater Management Rules); North Carolina (Phase II MS4 General Permit); Ohio (Ohio Construction General Permit for the Big Darby Creek Watershed); and West Virginia (Phase II MS4 General Permit).

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<sup>10</sup> See *e.g.*, the following research studies on bioretention practices and permeable pavements: Dr. Allen Davis, University of Maryland, <http://www.ence.umd.edu/~apdavis/LID-Publications.htm>; Dr. William Hunt, North Carolina State University, <http://www.bae.ncsu.edu/topic/bioretention/publications.html>; Dr. Michael E. Dietz, Utah State University, “Low Impact Development Practices: A Review of Current Research and Recommendations for Future Directions”, <http://www.springerlink.com/content/nq44j610685n4112/>; Dr. Jack Clausen, University of Connecticut, [http://www.bae.ncsu.edu/programs/extension/wqg/319/319index\\_files/Ct-98.1.pdf](http://www.bae.ncsu.edu/programs/extension/wqg/319/319index_files/Ct-98.1.pdf).

<sup>11</sup> Federal Interagency Stream Restoration Working Group (FISRWG). 1998. Stream Corridor Restoration: Principles, Processes and Practices. PB98-158348LUW.

## New Development and Redevelopment: Federal Facilities

This draft Permit requires that federal facilities undergoing new development and redevelopment projects greater than 5,000 square feet also adopt one of two numeric capture standards:

1. The design, construction and maintenance of stormwater controls to achieve on-site retention of “1.7” volume of stormwater from a 24- hour storm; or
2. The design, construction and maintenance of stormwater controls to achieve the retention of the modeled predevelopment runoff volume of stormwater from a 24- hour storm.

As with non-federal facilities, the Permittee has two options for a standard. The 1.7” on-site retention standard reflects EPA’s recent guidance document entitled “Technical Guidance on Implementing the Stormwater Runoff Requirements for Federal Projects under Section 438 of the Energy Independence and Security Act” (Dec. 2009) (“EISA Technical Guidance”), [http://www.epa.gov/greeningepa/documents/epa\\_swm\\_guidance.pdf](http://www.epa.gov/greeningepa/documents/epa_swm_guidance.pdf). The EISA Technical Guidance establishes strict stormwater runoff requirements for federal development and redevelopment projects that exceed 5,000 square feet to maintain or restore, to the maximum extent technically feasible, the predevelopment hydrology of the property with regard to temperature, rate, volume, and duration of flow. Section 438 is intended to address the inadequacies of the historical detention approach to managing stormwater and promote more sustainable practices that have been selected to maintain or restore predevelopment site hydrology. In this case, the guidance uses the 95<sup>th</sup> percentile capture rate of 1.7 inches for a 24-hour rainfall event and provides an option which allows site designers the maximum flexibility to select control practices appropriate for the site. Because new development and redevelopment projects of 5,000 sq. feet or greater are already subject to the EISA requirement, it is reasonable to establish these alternative standards for retention of stormwater on site to control stormwater discharges from these facilities through the MS4 to the maximum extent practicable.

## Off-Site Mitigation and Incentive Program

In addition, the draft Permit proposes to require the District to establish an Offset and Fee-In-Lieu program. The program, as stated in the permit, shall include at a minimum: establishment of baseline requirements to be applied for mitigation projects, specific criteria for determining when full compliance with the performance standard cannot technically be met, and specific procedures for evaluating when an off-site mitigation is not feasible and in-lieu credits must be substituted to satisfy this requirement. While the draft Permit would not allow the Permittee to cause an increase in overall pollutant loadings from the System to impaired waters, the Offset and Fee-In-Lieu programs are expected to allow some flexibility while ensuring ongoing environmental improvements. In requiring these programs, it is EPA’s express intent to encourage more brownfields development, and to avoid suburban sprawl. Redeveloping already degraded sites can reduce regional land consumption and minimize new land disturbance. Minimizing land disturbance and impervious cover is critical to maintaining watershed health.



The amount of land that is converted, or “disturbed,” from undeveloped uses, such as forests and meadows, to developed uses, such as lawns, buildings, parking lots, and playing fields, significantly affects watershed health. Research now shows that the volume of runoff from highly compacted lawns is almost as high as that from paved surfaces.<sup>12,13</sup> This research indicates that lawns and other residential landscape features do not function, with regard to water, in the same way as non-degraded natural areas. In part, the difference arises because developing land in greenfield areas involves wholesale grading of the site and removal of topsoil, which can lead to severe erosion during construction, and soil compaction by heavy equipment.

Typically, there is little or no increase in net runoff when redeveloping underused properties such as vacant properties, brownfield sites, or greyfield sites, since new impervious cover replaces existing impervious cover. For example, an abandoned shopping center (a greyfield property) is often almost completely impervious cover and is already producing high volumes of runoff.<sup>14</sup> If this property were redeveloped, the net runoff would not increase since the property was already predominately impervious cover. In many cases, redevelopment of these properties breaks up or removes some portion of the impervious cover, converting it to pervious cover and allowing for some stormwater infiltration. In this case, redevelopment of these properties can produce a net improvement in regional water quality by decreasing total impervious area and its associated runoff. Redevelopment activities can also reduce regional land consumption. By building on underused, already degraded land, the pressure to convert previously undeveloped land is reduced. Numerous studies support the environmental benefits of redevelopment.

On the other hand, the purpose of these provisions is to disincentivize the use of alternatives unless really needed, but also to provide a financial foundation for implementation of public stormwater management projects, including off-site measures where those needs have been identified. With the wide array of management practices that can infiltrate, evapotranspire, and capture and use stormwater there should be very few situations where management of 1.2 or 1.7 inches (depending on whether an area is non-federal or federal) of stormwater, using combinations of those mechanisms is not possible. However, it is certainly reasonable to expect that a series of physical constraints may exist, particularly in redevelopment situations, making it infeasible to manage an entire inch of stormwater. Therefore this draft Permit would require the Permittee to create off-site mitigation and/or payment-in-lieu programs.

### DC Retrofit Program

In recognition of the importance of retrofitting existing controls with more aggressive stormwater control measures, the Permit contains a requirement that the District establish a Retrofit Program to be organized by its three major watersheds – the Anacostia and Potomac Rivers and Rock Creek. The DC Retrofit Program uses as a starting point the same performance standard as required for non-federal areas within the District, but allows the District to take into

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<sup>12</sup> Schueler, Tom. 1995. “The Peculiarities of Perviousness.” *Watershed Protection Techniques*. 2.1.

<sup>13</sup> Schueler, Tom. 2000. “The Compaction of Urban Soil.” *Techniques for Watershed Protection*. Ellicott City, MD: Center for Watershed Protection.

<sup>14</sup> Sobel, Lee and Steven Bozdin. 2002. *Greyfields into Goldfields: Dead Malls Become Living Neighborhoods*. San Francisco, CA: Congress for New Urbanism.

consideration specific site considerations as possible justifications for setting a performance standard at something less than such non-federal standard.

The Permit also requires that the DC Retrofit Program manage runoff from 18,000,000 square feet of impervious surfaces over the Permit term. A minimum of 3,600,000 square feet of this objective must be in transportation rights-of-way. EPA has conveyed its intent to include a requirement in the new District MS4 permit comparable to the condition in the new permit for Montgomery County, Maryland that requires treatment for an additional 20% of impervious surface. An approximate 18,000,000 square foot requirement for the District would be comparable to the 20% treatment requirement for Montgomery County, taking into account the relative differences in undeveloped (pervious) space available in each jurisdiction with which to provide impervious surface treatment.

#### MONITORING AND ASSESSMENT OF CONTROLS:

The monitoring section of the draft Permit has been updated to reflect the fact that the District has already performed broad monitoring of a variety of parameters over the last two permit cycles. Today's draft Permit limits the monitoring requirements to those pollutants which have caused historical contamination of the District's receiving streams: E. Coli, total nitrogen, total phosphorous, total suspended solids, cadmium, copper, lead and zinc. Other additions and modifications to the draft MS4 Permit include reducing the number of monitoring stations to sample for the pollutants of concern based on previous monitoring under the rotating watershed approach with provisions for making changes to their existing program during the permit cycle; requiring complete implementation of the Hickey Run strategy as described in the District's Upgraded Stormwater Management Plan dated February 19, 2009; development of total maximum daily loading (TMDL) implementation plans for the Anacostia Trash TMDL and the Potomac River TMDL, as well as updating of the current TMDL implementation plans for the Anacostia River and Rock Creek Watersheds with required metrics for monitoring progress and compliance with the TMDLs. (Refer to the District Department of the Environment's website for a listing of the DC TMDLs on its webpage and the Anacostia River/Rock Creek TMDL Implementation Plans). An offset/ "net" improvement program for stormwater control measures in impaired waters; linking of TMDL implementation plans with Chesapeake Bay stormwater management goals and objectives of the District's Watershed Implementation Program (WIP); and providing a measure for achieving and calculating treatment impervious surfaces in the District based on the use of a wide range of stormwater controls.

Currently, TMDLs are under development for the Potomac River and for the Anacostia River (Refer to Potomac River Summit for a "Trash Free" River by 2013 and Potomac River Watershed Trash Treaty executed in 2005). Upon approval by EPA, the TMDL implementation plan(s) will be incorporated into the District's SWMP. DC is a member of the Treaty, which will ensure consistent coverage of MS4s in the Anacostia.

## RELATIONSHIP TO NON-SOURCE POINT PROGRAM

Finally, it should be noted that the measures required by the Permit are separate from those projects identified in the District's EPA-approved Non-Point Source Management Plan as being funded wholly or partially by funds pursuant to section 319(h) of the Clean Water Act. These Permit requirements do not prohibit the use of 319(h) funds for other related activities that go beyond the requirements of this Permit, nor do they prohibit other sources of funding and/or other programs where legal or contractual requirements preclude direct use for stormwater permitting activities.

## CONTACT/ DOCUMENT INFORMATION:

A copy of the draft documents which comprise the draft administrative record for the proposed draft Permit are available to the public for review at the Martin Luther King, Jr. Public Library which is located at 901 G Street, N.W. in Washington, D.C. An electronic copy of the proposed draft Permit and draft Fact Sheet are also available on the EPA Region III website. For additional information, please contact Mr. Garrison D. Miller, Mail Code 3WP41, NPDES Permits Branch, Office of Permits and Enforcement, EPA Region III, United States Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

### Attachments:

- 1) Letters of Agreement (August 1, 2008)
- 2) Summary of Permit Changes