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June 4, 2010

Mr. Garrison Miller
United States Environmental Protection Agency Region III
Office of NPDES Permits and Enforcement (3WP41)
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

VIA EMAIL:
miller.garrison@epa.gov

Dear Mr. Miller:

Thank you for the opportunity to provide comments on the DRAFT NPDES MS4 permit to the Government of the District of Columbia; the comments below are provided by the Maryland National Capital Building Industry Association (MNCBIA). MNCBIA represents residential builders and developers who conduct business in Washington DC as well as in neighboring Maryland Counties; as an industry Association, the MNCBIA is supportive of comments submitted by the District of Columbia Building Industry Association (DCBIA).

The MNCBIA believes that private (i.e. non-federal) development will not be able to meet Performance Standard 4.1.1.a.i. nor 4.4.1.a.ii. unless fundamental characteristics of the District are acknowledged and addressed; many of these were noted in the District's February 19, 2009 *Upgraded Stormwater Management Plan*. The Plan notes that the District contains just under 40,000 acres (39,225) of land; of these acres,

- 32.9% has been developed for residential use,
- 25.5% is dedicated to road rights-of-way,
- 20.3% is permanent open space,
- 15.1% is occupied by local public or federal or institutional facilities,
- 5.8% is used for industrial or commercial purposes,

and only

- **2**% (or 843 acres) of the District's developable land is available for new development, and can even attempt to measure pre-development 'meadow' conditions.

Consequently, existing development, in seeking to redevelop, will be curtailed by the existing density, limited green space, adjacent building foundations, and existing storm drainage – all factors which restrict the ability to create retention features above ground and limit the ability to use evapotranspiration, infiltration and/or stormwater harvesting. In addition, the majority of re-development will not be hydrologically isolated from existing development (that has unmanaged stormwater). Due to these impediments to the implementation of ESD, future redevelopment projects in the District will continue to rely on underground vaults with filters to clean the water, which are designed to release the filtered water to the sewer system. Given the District's clay soil conditions, it is likely that many sites will have to be engineered to release storm water, after it is has been cleaned, in order to insure structural integrity.

The new standard ("... retention for 1.2" from the new or redeveloped conditions") is a 300% increase over current standards (0.3" for roofs, and 0.5: from paving.) While it is a quantifiable absolute measurement, it is an entirely different standard, which will force utilization utilization of new methodologies to achieve the three means of retention. Innovation to optimize these new measures can be expected to fundamentally change the way sites are developed – what methodology and process will insure that these new measures are accepted, approved and adopted (quickly) once proven effective? Concurrently, what allowance will be permitted when the cost of utilizing current ESD measures places a project under-water?

Re: "Option *ii"*... which *requires* maintenance of pre-developed hydrographs for all storms up to the 100-year frequency storm. This is a very stringent standard that is in the strict sense, and we believe, impossible to achieve. As written, we understand it to mean that storm surface runoff after development ***must match exactly***, as measured by calculated flow rate, quantity and timing, the storm runoff in an existing condition. This is an engineer's nightmare if no tolerances are provided, and ignores real world reality – we would suggest that there be a policy that recognizes, or allows for, 10% degree of tolerance.

We support the off-site mitigation and fee in-lieu program (4.1.1.d) that is to be used when full compliance with the performance standard (4.1.1a. and 4.1.1b.) cannot technically be met. We do, however, have concerns that the opportunities to provide off-site mitigation are extremely limited given the lack of undeveloped sites, and would suggest that use of dedicated open space, or use of public facilities be considered, and that co-operation between the public and private sector be encouraged, where the emphasis is placed on achieving improved stormwater management beyond the limits of an individual site.

We also appreciate that the mitigation program may allow adjustments to retention standards for certain types of development with quantifiable environmental benefits; however, the criteria for such adjustments remain unclear, creating a lack of transparency for both the applicant and the reviewing entity.

It should be noted, that given the existing impediments in the District, it is likely that the mitigation and fee-in-lieu program will be used if the Standards for New and Redevelopment remain as proposed. This will increase the cost of both affordable housing, and housing that is affordable, undermining one of the District's other public policy objectives, creating unintended impediments to maintaining, or increasing, a diverse population.

Having a performance standard for development in the MS-4 permit raises the issue of grandfathering. The development approval process requires a major investment of time and resources, often spent before an application is even "filed"; changing the rules can torpedo a project that benefits both public and private sector. As it is unclear when such an ongoing project is

grandfathered, we would ask that the criteria to allow projects in process to move forward under the 2004 requirements be clearly defined, and fair. A separate concern questions how will this performance standard affect an individual permit granted by EPA for construction activities for District projects.

The painstaking process that the District has recently concluded in addressing its revenue shortfalls and balancing its FY11 budget brings to light concerns over the anticipated increase in workload for the District in meeting the requirements in the Draft MS-4 Permit. The new additional workload is substantial, and will require consultants in the first phases to carry out some of its activities. The $13 million that is projected to be generated annually by the District's stormwater fee must be closely monitored and the GAO's decision to dismiss the Federal Government's obligation to pay its proportionate share should be revisited, rethought, and overturned.

Thank you again for the opportunity to comment; we look forward to answering any questions over our comments and look forward to an ongoing discussion that facilitates a public–private partnership.

Sincerely,

Raquel D. Montenegro
Associate Director, Legislative Affairs
Maryland National Capital Building Industry Association
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Silver Spring, Maryland 20903

cc: Harriet Tregoning, Director, Office of Planning (OP)
Christophe Tulou, Director, Department of Environment (DDOE)
George Hawkins, General Manager, WASA
Amy Edwards, Chair, DCBIA Committee on the Environment
Gail Edwards, Executive Vice President, District of Columbia Building Industry Association
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