

# 2020 Amendments to the District's Stormwater Management Regulations

## Overview

On Feb 15, 2019, the Department of Energy and Environment published a Notice of Proposed Rulemaking in the *D.C. Register* (66 DCR 0078892, available at <https://www.dcregs.dc.gov/>) to amend the District of Columbia's stormwater management regulations. DOEE has closely reviewed all of the comments that were received on the proposed rule during the 45-day public comment period and is finalizing the amendments.

This document shows the 2020 amendments to the District of Columbia's stormwater management regulations in Chapter 5 of Title 21 of the District of Columbia Municipal Regulations (DCMR) with changes accepted.

This document is provided for convenience of stakeholders. An official copy of the regulations is accessible in 21 DCMR Chapter 5. In preparing this document, DOEE has made every effort to avoid any errors. However, in the event of a discrepancy, it should be understood that 21 DCMR Chapter 5 is correct.

Additional information is available at <http://doee.dc.gov/swregs>.

## DEPARTMENT OF ENERGY AND ENVIRONMENT

### NOTICE OF FINAL RULEMAKING

#### **Stormwater Management and Soil Erosion and Sediment Control Amendments**

The Director of the Department of Energy and Environment (DOEE), under the authority set forth in the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.01 *et seq.* (2013 Repl. & 2018 Supp.)); Water Pollution Control Act of 1984, effective March 16, 1985 (D.C. Law 5-188; D.C. Official Code § 8-103.01 *et seq.* (2013 Repl. & 2018 Supp.)); and Mayor's Order 2006-61, dated June 14, 2006, hereby gives notice of the adoption as final of the following amendments to Chapter 5 (Water Quality and Pollution) of Title 21 (Water and Sanitation) of the District of Columbia Municipal Regulations (DCMR).

DOEE's adoption of the final rule comes after publication of a proposed rule in the February 15, 2019, issue of the *D.C. Register* (66 DCR 0078892). DOEE has closely reviewed all of the comments that were received on the proposed rule during the 45-day public comment period and is finalizing the amendments.

The 2013 Stormwater Rule is achieving its intended objectives, setting the District on a long-term path to reducing stormwater runoff so District streams and rivers can once again become fishable and swimmable without inhibiting the development that provides valuable benefits to the District. Approximately 825 projects have been successfully designed in compliance with the regulations, designing runoff-reducing green infrastructure that will capture stormwater from approximately 850 acres of the District, while the annual average number of development projects increased by approximately 20%.

Though the regulations have generally achieved DOEE's intent, compliance has been a disproportionate burden for certain types of projects. DOEE's primary regulatory focus in developing the 2013 Stormwater Rule was on development, meaning relatively large new and renovated buildings and parking lots. For these projects, the cost to design and install runoff-reducing green infrastructure is small relative to the total project cost. However, for projects with a relatively low total project cost, the cost to achieve stormwater compliance can be relatively high. This includes single- and two-family affordable houses, projects to install or maintain athletic playing fields, trails for walking and biking, small structures such as picnic shelters at parks, and landscaping maintenance. DOEE also recognizes that these projects provide a public benefit and does not want to create disincentives to completing them. The proposed rulemaking provides compliance flexibility and exemptions to these projects for which compliance with the 2013 Stormwater Rule is a disproportionate burden.

To address the disproportionate burden of compliance, DOEE will finalize definition changes and exemptions to address single- and two-family affordable housing, athletic playing fields, permeable athletic tracks, permeable play areas trails, small structures at parks, and landscaping maintenance. Based on prior projects, DOEE estimates that the amendments may reduce the regulated area draining to best management practices (BMPs) on future Stormwater Management

Plans (SWMPs) by 5%, with the largest portion of the reduction (approximately 4%) coming from the exemption for athletic playing fields, permeable athletic tracks, and permeable play areas. DOEE notes that for athletic playing fields, permeable athletic tracks, and permeable play areas, these surfaces must be either turf grass or permeable surfaces that are similar in design to permeable pavement. DOEE also expects that the Practicable approach described below will limit the possible reduction in area managed for future SWMPs submitted for single- and two-family affordable housing, trails, and small structures at parks.

DOEE is also finalizing changes to provide additional compliance flexibility and to maximize the water quality outcomes achieved by the Stormwater Retention Credit (SRC) program. In modifying the rules of the SRC program, a guiding principle for DOEE has been to increase the flexibility and ease to comply off-site, improve water quality outcomes, and avoid changing the rules of the program for SRC generators who have already invested in green infrastructure (GI). The SRC market has evolved as a tool for compliance flexibility since DOEE first started exploring off-site compliance flexibility in 2010 and when DOEE first enacted off-site compliance flexibility in 2013. DOEE's considerations when first establishing the program were in part based on the need to establish an initial supply of SRCs in a first-of-its-kind market while simultaneously balancing compliance flexibility and incentives to restore water quality. Now that DOEE has established a functional SRC market with ample supply of SRCs for developers to purchase, DOEE believes it is appropriate to re-evaluate and refine the SRC market rules. This will help the District to achieve its water quality goals and comply with the Clean Water Act in a way that is cost-effective to its ratepayers and taxpayers.

In the five and a half years since DOEE started approving projects under the 2013 Stormwater Rule, DOEE has approved over 100 projects to satisfy at least a portion of their stormwater management performance requirement off-site. When these sites comply with their Off-Site Retention Volume (Offv) obligations, the greatest water quality benefit is achieved when they use SRCs from new, voluntarily-installed GI in the Municipal Separate Storm Sewer System (MS4). When MS4 sites purchase SRCs from Combined Sewer System (CSS) sites, this reduces the rate of GI installation in the MS4. When CSS sites purchase MS4 SRCs, this increases the rate of GI installation in the MS4. Despite the fact that there has been enough SRC supply to satisfy 100% of SRC demand, DOEE has noted that 69% of SRCs purchased over the last 12 months were CSS SRCs. This is a primary component of DOEE's determination to amend the SRC program to require that sites in the MS4 must use SRCs from the MS4.

The total Offv approved by DOEE is approximately 680,000 gallons, of which approximately 365,000 are from sites located in the MS4 and 315,000 are from sites located in the CSS. Assuming constant rates of off-site compliance, if DOEE allows sites in the MS4 to purchase CSS SRCs, this has the potential to reduce the pace of GI construction in the MS4 by approximately 1.5 acres per year. Therefore, DOEE's regulatory amendment to require sites in the MS4 to use SRCs from the MS4 is aimed at preventing this potential loss. DOEE also expects that, assuming constant rates of off-site compliance, if sites in the CSS choose to purchase SRCs from new, voluntary GI in the MS4, this could increase the pace of GI construction in the MS4 by approximately 1.3 acres per year. Additionally, by allowing greater off-site compliance flexibility for projects in the CSS area draining to storage tunnels, DOEE has the potential to increase the pace of GI installation in the MS4. For example, if 50% of these

projects choose to comply entirely through the use of SRCs from new, voluntary GI in the MS4, this has the potential to increase the pace of GI installation in the MS4 by as much as 4.5 acres per year.

Below, DOEE is summarizing the comments that were received, DOEE's comment responses, and any differences between the proposed rule and the final rule. For convenience, DOEE is summarizing comments by topic and subtopic, rather than by commenter. If multiple similar comments were submitted, DOEE is summarizing these as a single comment. Each comment is followed by DOEE's response to that comment. After the response to each comment on a given topic, DOEE is also summarizing its determinations in response to the comments and noting changes between the proposed and final rules. For some comments, DOEE determined that additional amendments would be appropriate. DOEE will address those changes through a separate rulemaking.

The comments are organized by topic in the following order:

1. Definition Changes and Exemptions
  - a. Single- and Two-Family Affordable Houses
  - b. Athletic Playing Fields, Permeable Tracks, and Permeable Play Areas
  - c. Small Structures at Parks and Pedestrian Trails
  - d. Definition Changes
  - e. General Comments about Definition Changes and Exemptions
  - f. DOEE Determinations
2. Additional compliance flexibility with the on-site retention requirement for projects that drain to the combined sewer system
3. Requirements to achieve off-site compliance outside the combined sewer system
4. SRC eligibility cutoff date
5. Other comments related to the SRC program
6. Fees
7. Other comments

## **1. Definition Changes and Exemptions**

The following comment summaries are grouped by subject matter as follows:

- a. Single- and Two-Family Affordable Houses
  - b. Athletic Playing Fields, Permeable Tracks, and Permeable Play Areas
  - c. Small Structures at Parks and Pedestrian Trails
  - d. Definition Changes
  - e. General Comments about Definition Changes and Exemptions
  - f. DOEE Determinations
- a. Comments: Single- and Two-Family Affordable Houses
    - DOEE received comments regarding the potential applicability of this exemption to other types of projects. Some commenters requested that the affordable housing exemption be extended to multifamily housing, nonprofit projects, and single- and two-family houses that are not constructed as affordable houses. Other commenters

expressed concern about this exemption. Some of these commenters requested that DOEE not extend the exemption to other types of projects.

DOEE Response: While it is environmentally beneficial for these single- and two-family house affordable housing projects to install GI, DOEE has observed that there is a disproportionate compliance burden for these sites due to site constraints, small project budgets, and the disproportionate impact on the low-income buyers of these properties of ongoing off-site compliance. It is important to clarify that the exemption proposed by DOEE still requires that single- and two-family affordable houses submit a SWMP if they are constructed as part of a project that triggers the 5,000 square foot threshold of the regulations. However, after maximizing all feasible on-site options for stormwater management, the exemption allows DOEE to approve the project without requiring off-site compliance to reduce the inequitable impact of ongoing off-site compliance.

For other types of projects (such as multi-family affordable housing, nonprofit properties, and single- and two-family houses that are not constructed as affordable housing), DOEE does not believe that the three factors of site constraints, small budgets, and inequitable impact of ongoing off-site compliance are all present. Therefore, DOEE is not extending this provision to these other types of projects.

- DOEE received various comments and requests for clarification about the implementation of the provisions for single- and two-family affordable houses, including:
  - How would DOEE ensure the exemption is only awarded when appropriate?
  - How does this affect rented properties?
  - How does this work if some properties are affordable and some are not?
  - How will DOEE review the eligibility of the site based on site conditions, usability, and practicability?
  - How will DOEE track/verify property sales?
  - Are projects in compliance at the time of plan approval, or is a compliance determination pending until the time of sale?
  - How is proof of income submitted?
  - If a developer receives the exemption and sells the property to someone with an income higher than 80% of AMI, who is responsible for off-site compliance?

DOEE Response: Below is further clarification of how DOEE intends to implement these provisions.

First, regarding applicability of the exemption, the exemption will be available only to single- and two-family houses that are constructed as affordable housing (for example Department of Housing and Community Development projects, Habitat for Humanity). The exemption is not something that should be sought (and would not be awarded by DOEE) unless the developer intends to sell the

house below market value to a purchaser whose household income is less than 80% of AMI. Additionally, the exemption is only available for owner-occupied properties. Finally, the exemption is awarded for individual properties, rather than for the entire project. This means that if some of the lots are constructed as affordable housing, those properties could receive the exemption but other properties constructed as part of the same project that are not constructed as affordable housing would not receive the exemption.

Second, regarding review of the exemption, DOEE's intention had been to review requests following the process described for Relief from Extraordinarily Difficult Site Conditions, as described in Appendix E of the Stormwater Management Guidebook (<http://doee.dc.gov/swguidebook>), which DOEE has been using since implementing the 2013 Stormwater Rule. However, DOEE will instead introduce a new appendix to the Stormwater Management Guidebook to describe a Practicable review process for single- and two-family affordable houses. Specifically for this exemption, DOEE will consider the minimum contributing drainage area (CDA) for stormwater best management practice (BMP) effectiveness and impact of BMPs on indoor and outdoor living space when reviewing relief requests.

Third, regarding tracking, DOEE intends to track these sites using the Submittal Database. For comparison, DOEE already uses the Submittal Database to track Offv obligations and to determine when to correspond with property owners regarding Offv compliance. DOEE will use a similar process to track and implement this exemption. DOEE's regulations already require that changes in ownership must be reported to DOEE. DOEE's submittal database is also integrated with the Office of Tax and Revenue Real Property database, which DOEE will use to confirm property sales and periodically check that proper notifications and purchaser income verifications have been provided through the submittal database. If these are not submitted, then DOEE will contact the property owner to request income verification, which will be provided to DOEE through the submittal database.

Fourth, regarding responsibility for Offv in the event that this is not achieved, DOEE will require the approved Stormwater Management Plan to state the full retention requirement for the site, including the retention being achieved on site and the off-site retention requirement that would apply for a purchaser whose income is above the 80% AMI threshold. Similarly, DOEE will require the Declaration of Covenants for the property, filed with the Recorder of Deeds, to state the requirements associated with this exemption, including a calculation of the Off-Site Retention Volume that will be required for the owner if they do not meet the income requirements. DOEE will consider the project to be in compliance at the time of plan approval. Post-construction, if the income verification is not provided, DOEE intends to require off-site compliance. DOEE does not intend to verify income levels again until a subsequent purchaser

acquires the property. Offv compliance would be the responsibility of the current owner, as stated in the recorded Declaration of Covenants.

- DOEE received comments requesting slight variations to the proposed exemption, including:
  - A comment stating that “below market value” may be an insufficient definition of affordable housing because there may be expensive houses that are sold below market value while still being unaffordable to someone with a low household income.
  - A comment requesting consideration of the DHCD inclusionary zoning price schedule.
  - A request that DOEE use the language “shall require” instead of “may require” when describing DOEE’s actions to require full compliance if the owner fails to provide proof that the household income is less than 80% of AMI.
  - A request for more nuance in the review process, without offering specific suggestions.

DOEE Response: The definition of affordable housing used in the proposed rule describes the house as being built for sale as affordable housing and requires the purchaser’s income to be less than 80% of AMI. This income threshold is commonly used for affordable housing projects in the District. DOEE believes the definition is sufficient to clarify the circumstances under which a property and its purchaser are eligible for this exemption from compliance with the Off-Site Retention Volume requirement for the property.

If the owner fails to provide income documentation, or does not otherwise meet the income requirements, DOEE has the authority to require full compliance. However, DOEE believes it is important to preserve DOEE’s ability to exercise discretion about how DOEE enforces the requirement for individual sites. Therefore, DOEE believes the term “may require” is appropriate.

Regarding nuance in the review process, DOEE believes that the process described in § 518 and § 526 is sufficient. This process will still require stormwater management when practicable, while allowing for a site-by-site analysis that will reduce the burden of compliance on single- and two-family affordable houses.

- DOEE received a request that single- and two-family homes that are not affordable homes should be able to comply fully off-site.

DOEE Response: The stormwater management regulations already allow for up to 50% off-site compliance for all projects, including single- and two-family houses. However, DOEE believes that the 50% on-site requirement is important in the MS4 and in the CSS areas managed with GI. DOEE is not currently considering changes to that requirement.

b. Comments: Athletic Playing Fields, Permeable Tracks, and Permeable Play Areas

- DOEE received comments expressing support for the exemption for athletic playing fields, with commenters stating that this will alleviate operational and financial concerns with providing athletic fields at schools. The commenter notes that athletic playing field projects have not been pursued as a result of the District's stormwater management regulations.

DOEE Response: DOEE acknowledges the commenter's support for this provision.

- DOEE received a comment that many athletic playing fields have met DOEE's requirements in the past and therefore future athletic playing field projects should as well.

DOEE response: DOEE disagrees with the commenter. While it is true that many athletic playing fields have complied with the District's stormwater management regulations in the past, DOEE has observed a disproportionate compliance burden for these projects. As a result, DOEE has determined that an exemption is appropriate for these types of projects in the future.

- DOEE received a comment stating that the exemption for athletic playing fields should not be provided when compacted cover is converted to artificial turf.

DOEE Response: DOEE disagrees with the commenter. Whether the pre-project conditions are compacted or impervious, the total project cost and site constraints associated with building an athletic field are similar. In addition, the detention requirements of the District's regulations remain in place for these projects, which will help prevent localized flooding and stream channel erosion.

- DOEE received a comment requesting that all athletic fields be exempt, not just those with an underdrain. The commenter requested clarification on the underdrain system requirements. DOEE also received a comment requesting guidance on measurement of permeability of an athletic playing field.

DOEE response: All permeable athletic fields will be exempt, including grass turf fields and synthetic fields with underdrains. DOEE believes that the presence of an underdrain is an important design consideration for synthetic fields. The Stormwater Management Guidebook will be updated to include guidance for drainage layer and orifice sizing. Synthetic turf fields that allow for water to enter a drainage layer will be considered permeable.

c. Comments: Small Structures at Parks and Pedestrian Trails



- DOEE received comments requesting clarification about the process to obtain the exemptions for small structures in parks and for trails, described in §§ 517.8 and 517.10.

DOEE Response: DOEE’s intention was that an applicant would seek the exemption as part of their application for DOEE review of a soil erosion and sediment control plan. DOEE understands that commenters wanted additional clarity on this process. DOEE will instead require that these projects submit SWMPs and will review projects according to the Practicable process described in these regulations and, in greater detail, a new appendix to the Stormwater Management Guidebook.

- DOEE received a comment stating that the exemption for small structures at parks would specifically benefit the District government.

DOEE Response: This exemption will be provided to all qualifying projects, whether or not the public park is District-owned. DOEE has observed compliance challenges for small structures at parks and believes this provision is warranted. This compliance flexibility will help to allow projects to proceed to provide community benefits without stormwater management compliance becoming cost-prohibitive.

d. Comments: Definition Changes

- DOEE received several comments expressing support for the change to the definitions.

DOEE Response: DOEE acknowledges the commenters’ support for this change.

- DOEE received comments expressing concern that the definition changes will allow significant impervious area to be unregulated. Commenters requested a lower impervious threshold (such as 500-800 square feet).

DOEE Response: DOEE carefully evaluated these revised definitions and believes 2,500 square feet of impervious surface is an appropriate threshold. DOEE’s intention with this definition change is that projects that consist primarily of landscaping maintenance would not trigger the stormwater management performance requirements. In revising this definition, DOEE needed to consider several factors, such as:

- Project size and impervious surface size at which DOEE could objectively determine that a project consists primarily of landscaping maintenance;
- Likelihood of post-project compacted land cover to increase stormwater runoff relative to pre-project land cover; and
- Total reduction in area that would be regulated on future submittals.

Under the revised definitions, if any of the pre-project land cover is natural, the regulatory threshold remains the same as it was under the 2013 regulations. If the

pre-project land cover is impervious or compacted, the project is regulated if at least 2,500 square feet of the post-project land cover is impervious. A project with less than 2,500 square feet impervious surface post-project that still reaches 5,000 square feet of land disturbance and substantial improvement has at least half of its land disturbance associated with either impervious surface removal or maintenance of compacted surfaces such as landscaping. If these projects did not remove the impervious surface or did not disturb the existing compacted land cover (e.g. to provide for landscaping maintenance), then they would not trigger the stormwater management regulations. DOEE notes that areas of land disturbance and substantial improvement may involve smaller total areas, but larger impervious surfaces, and not trigger the regulations. For example, construction of a new structure that is entirely impervious would not trigger the regulations if the land disturbance and substantial improvement is only 4,000 square feet.

Removal of impervious surfaces and maintenance of landscaping improve water quality by improving the permeability and retention capacity of land. DOEE acknowledges that there is water quality benefit that could be achieved by applying the stormwater management requirements to scenarios that would not trigger regulation under these new definitions. These include the conversion of compacted land cover to impervious land cover and disturbance of small areas of pre-project impervious or compacted land cover that remains the same type of land cover post-project. However, DOEE also believes the overall water quality benefits associated with regulating these projects is small.

To evaluate the water quality impact, DOEE analyzed how the 2,500 threshold would affect total area regulated and total retention volume achieved. Of the 822 projects that DOEE has approved under the 2013 Stormwater Rule, only 14 (1.7%) of these projects have had less than 2,500 square feet of impervious surface. These sites account for approximately 0.6% of total regulated area, less than a tenth of a percent of total regulated impervious area, and 0.1% of required stormwater retention volume. Given the relatively small area, impervious area, and required retention volume, the water quality impact achieved by regulating these sites has been comparably small.

Therefore, while there is water quality benefit associated with capturing stormwater runoff from compacted land cover, DOEE has determined it is appropriate to limit the extent to which compacted land cover contributes toward a project triggering the stormwater management performance obligations. DOEE evaluated several options and determined that the clearest and most objective way to set this threshold would be to allow compacted land cover to account for at most 50% of the 5,000 square feet required to trigger the regulations. Once the regulations are triggered, DOEE believes it is appropriate to require that the entire area of land disturbance and substantial improvement comply with the stormwater management requirements.

In the table below, DOEE is summarizing how the regulatory change would affect different types of projects:

Example Project	Project Area	Regulated for stormwater management under 2013 Stormwater Rule?	Regulated for stormwater management under 2019 Amendment?
Apartment building re-sodding lawn	<ul style="list-style-type: none"> <li>• 4,000 square feet of land disturbance</li> <li>• Entirely compacted pre- and post-project</li> </ul>	No	No
Apartment building re-sodding lawn	<ul style="list-style-type: none"> <li>• 5,000 square feet of land disturbance</li> <li>• Entirely compacted pre- and post-project</li> </ul>	Yes	No
Construction of single-family home	<ul style="list-style-type: none"> <li>• 2,000 square feet of land disturbance</li> </ul>	No	No
Construction of single-family home and additional landscaping	<ul style="list-style-type: none"> <li>• 5,000 square feet of land disturbance</li> <li>• 2,000 square feet of impervious surface post-project</li> </ul>	Yes	No
Construction of single-family home on existing natural land cover	<ul style="list-style-type: none"> <li>• 5,000 square feet of land disturbance</li> <li>• Entirely natural land cover pre-project</li> <li>• 2,000 square feet of impervious surface post-project</li> </ul>	Yes	Yes
Construction of single-family home and additional	<ul style="list-style-type: none"> <li>• 5,000 square feet of land disturbance</li> </ul>	Yes	Yes

landscaping	<ul style="list-style-type: none"> <li>• 3,000 square feet of impervious surface post-project</li> </ul>		
Construction of new building	<ul style="list-style-type: none"> <li>• 4,000 square feet of land disturbance</li> <li>• Entirely impervious surface post-project</li> </ul>	No	No
Construction of new building	<ul style="list-style-type: none"> <li>• 6,000 square feet of land disturbance</li> <li>• Entirely impervious surface post-project</li> </ul>	Yes	Yes

Based on these considerations and following DOEE’s analysis of the water quality impact associated with regulated projects with less than 2,500 square feet of post project impervious surface, DOEE determined that creating the 2,500 square foot impervious surface threshold would be an effective way to address landscaping maintenance while minimizing the impact on the District’s waterbody restoration efforts.

e. Comments: General Comments about Definition Changes and Exemptions

- DOEE received a general comment expressing support for compliance flexibility.

DOEE Response: DOEE acknowledges the commenter’s support for this provision.

- DOEE received comments stating that if DOEE creates an exemption, the exemption should be limited and that it is preferable for these projects to take all practicable steps to manage stormwater runoff (e.g. as required for affordable housing under DOEE’s proposal). DOEE received comments expressing particular concern about the requirements for athletic playing fields.

DOEE Response: DOEE's intention is that the exemptions for trails and for small structures at parks would go through a process that requires implementing all practicable BMPs. DOEE understands the commenter’s desire that each site install BMPs when feasible, and this was DOEE’s intent in drafting the exemptions. To provide clarity, DOEE will change the exemptions for trails and for small structures at parks to be written in a way that is consistent with single-

and two-family affordable housing and will define a Practicable process in the Stormwater Management Guidebook.

For athletic playing fields, permeable athletic tracks, and permeable play areas, BMP options are extremely limited. In many cases, sites have design constraints that prevent the conveyance of stormwater to other locations on the site for infiltration, which limits the practicability of BMPs other than evaluating the surface according to design guidelines for permeable pavement practices. While DOEE determined that a practicable process was not appropriate for these types of projects, DOEE does intend for these projects to detain stormwater runoff. To streamline and simplify the design process, DOEE is specifying a minimum depth of crushed stone and maximum orifice size that will meet the detention requirement for the 2-year storm. Generally, projects satisfy the detention requirement for the 15-year storm when they do not result in more impervious surface post project than there was pre-project.

- DOEE received comments expressing concern that proposing exemptions and changing definitions are in conflict with the District's MS4 Permit. Commenters noted that the MS4 Permit requires the District to implement its stormwater management programs, to regulated development activity, and to research ways to increase the performance requirements or scope of the District's regulations.

DOEE Response: Proposing exemptions and changing definitions is not in conflict with the District's MS4 Permit. The MS4 Permit requires that the District continue to implement its stormwater management regulations for development activities such as construction and renovation of commercial, multifamily, and mixed used buildings and parking lots. However, the MS4 permit does not define development activity and does not require that the District regulate any specific project.

DOEE's focus in writing the 2013 Stormwater Rule was to regulated commercial, multifamily, and mixed use buildings and parking lots. In the preamble to the first proposed rulemaking on the 2013 Stormwater Rule, published in the August 10, 2012, issue of the *D.C. Register* (66 DCR 0031213), DOEE described its decision-making process to set regulatory thresholds and storm size requirements, including DOEE's consideration of the cost of compliance. This was supported by an analysis DOEE commissioned in 2010 by Industrial Economics, Inc. The hypothetical projects used for analysis were new construction and renovation of large commercial buildings because this was the focus of DOEE's proposed regulations.

The focus of DOEE's regulations was not single- and two-family affordable houses, athletic playing fields, permeable athletic tracks, permeable play areas, trails, small structures at parks, or landscaping maintenance. However, these types of projects have triggered the 2013 Stormwater Rule when they disturb or substantially improve 5,000 square feet. As described in the introductory

paragraphs of the preamble, DOEE recognizes the disproportionate burden of compliance on these types of projects and determined that amendments to the stormwater regulations were appropriate. Additional details on DOEE's determinations are available in the comment responses on these subjects earlier in this preamble.

DOEE provided the United States Environmental Protection Agency with a copy of the proposed amendments when they were published in the *D.C. Register*.

Although the exemptions and definition changes are not in conflict with the MS4 Permit, DOEE acknowledges that the permit does require that the District provide by December 2020 an analysis of potential changes to the District's stormwater management regulations. DOEE will prepare this analysis to comply with the MS4 Permit requirement. If DOEE's analysis suggests that DOEE should implement any changes to the regulations, DOEE may choose to adopt a different size threshold for regulated project or performance requirement.

- DOEE received comments stating that any lost retention capacity should be modeled and made up elsewhere. Some commenters requested that DOEE use its funding or increase performance standards to provide the corresponding retention.

DOEE Response: DOEE understands the commenter's desire to restore the District's waterbodies and DOEE shares that goal. However, DOEE's focus through the stormwater management regulations is on development activity. DOEE believes that its water quality goals can be achieved while providing reasonable exemptions to these regulations for projects that are disproportionately impacted by compliance.

DOEE evaluated the proposed exemptions, along with definition changes, and projected a decrease of up to 5% in regulated area draining to BMPs on future SWMPs. DOEE also proposed amendments to the SRC trading program to help shift a greater portion of retention into the MS4, which DOEE expects to help make up for some of the reduced contributing drainage area on future SWMPs. DOEE uses its funding through several grant and rebate programs and through the SRC Price Lock Program to incentivize and fund green infrastructure in the MS4.

f. DOEE Determination

DOEE will finalize the provisions regarding affordable housing, but will move the provision in § 517 to § 518 and will not refer to the provision as an exemption. DOEE will revise and expand its guidance on affordable housing in the Stormwater Management Guidebook.

DOEE will finalize the amendments to the definitions of Major Land-Disturbing Activity and Major Substantial Improvement Activity.

DOEE will finalize the amendments related to trails; small structures at parks; and athletic playing fields, permeable athletic tracks, and permeable play areas with the following clarifications in response to the comments received:

- For athletic playing fields, permeable athletic tracks, and permeable play areas, the project will only be exempt if the Soil Erosion and Sediment Control plan submitted for the project shows that the athletic field, permeable athletic track, or permeable play area meets drainage layer and orifice sizing requirements specified in DOEE's Stormwater Management Guidebook. If the sizing requirements are not met, then the project will be required to obtain DOEE's approval of a Stormwater Management Plan (SWMP). The SWMP would need to show that the peak discharge requirements of the regulations are met, but would not otherwise need to show that the stormwater management performance requirements are met.
- Rather than offering an exemption for trails and for small structures at parks, DOEE will require that these projects submit a SWMP and go through a Practicable review process. This provision is being moved from § 517 to § 518 and is being structured similar to the provision for single- and two-family affordable housing. This change is being made to provide clarity to applicants while achieving the same stormwater management outcome DOEE intended with the proposed exemption. Additionally, DOEE is clarifying that structures at parks are only eligible for consideration under this provision if they are less than 2,500 square feet.

## **2. Additional compliance flexibility with the on-site retention requirement for projects that drain to the combined sewer system**

### Comments

- Nearly all of the submitted comments on this subject expressed support for the amendment. Some commenters stated that this provides additional design flexibility and potential cost savings to developers while incentivizing additional green infrastructure in the MS4 without affecting existing SRC supply, demand, and value. Other commenters noted that similar rules in other environmental markets have been effective for balancing market supply and demand. Commenters also noted that with the completion of the CSS tunnel project, this off-site compliance flexibility should achieve far greater water quality benefit through the purchase of MS4 SRCs.

DOEE Response: DOEE acknowledges the commenters' support for the proposed amendment and appreciates the input on expected outcomes.

- DOEE received a comment that developers are unlikely to use the additional off-site compliance flexibility if they are still required to achieve the detention requirements on-site. The commenters suggested that the cost to install BMPs to detain stormwater is significant, but it can be achieved by on-site retention BMPs. Commenters

indicated to DOEE that the combined cost of on-site detention and off-site retention would likely cause developers to instead build BMPs on-site that achieve both the retention and detention requirement simultaneously. In other words, compliance with the detention requirement would be a cost barrier to developers using the new flexibility to comply with the SWRV fully off-site in the MS4.

DOEE response: DOEE appreciates the commenters' input on the decision-making process to comply off-site. DOEE will address this subject via a separate rulemaking.

- DOEE received one comment suggesting that this change would discourage BMPs in areas where stormwater management is needed.

DOEE Response: While DOEE understands that there is benefit to installing GI in the CSS, the water quality benefit of installing GI in the MS4 is much larger. Thus, this proposed amendment has the potential to maximize water quality improvement.

- DOEE received one comment that DOEE should not decrease the on-site retention requirement in the areas of the CSS being served by tunnels as a method to drive demand for the SRC market, and should rather conduct research on other ways to drive demand for the SRC market. The commenter questions whether developers will use the additional off-site compliance flexibility.

DOEE Response: DOEE's goal with the proposed change was not to drive demand for SRCs per se, but rather to increase the amount of green infrastructure located in areas that drain to the MS4, where GI maximizes benefits for District rivers. The 50% on-site retention requirement limits the extent to which this goal can be achieved. The change that DOEE proposed allows flexibility for regulated sites in the tunnel area of the CSS to retain less than 50% on site, provided any SRCs they use are from GI in the MS4. This change can help drive the installation of GI in the MS4 as regulated demand for MS4 SRCs grows.

DOEE acknowledges the possibility that developers will not use the additional off-site compliance flexibility. DOEE agrees with the commenter that there may be additional ways to encourage developers to comply off-site in the MS4 and DOEE is in the process of researching additional possible regulatory and incentive-based options to achieve this outcome. However, DOEE disagrees with the commenter's suggestion that this means the proposed flexibility should not be implemented.

#### DOEE Determination

DOEE will finalize the proposed amendments to §§ 520, 521, 522, and 527.9. The finalized amendment also includes two clarifications. First, any site that drains to the CSS will continue to



have a 50% on-site retention minimum if that sewer shed is scheduled to be separated (i.e. becoming part of the MS4), as identified in capital improvement budgets (available at <https://www.dewater.com/budget-and-financial-planning>). Second, any site in the CSS that complies less than 50% on-site but is part of a larger phased project approved by DOEE under a masterplan may use SRCs generated by another phase of that project (which could include CSS SRCs from an adjacent parcel or from the adjacent public right of way [PROW]).

DOEE will address detention requirements in the CSS through a separate rulemaking.

### **3. Requirements to achieve off-site compliance outside the combined sewer system**

#### Comments

- DOEE received many comments in support of this amendment, which would require projects in the MS4 to achieve their Offv in the MS4. Commenters stated that this change would help to achieve water quality improvements in the MS4.

DOEE Response: DOEE appreciates the commenter's support for these changes.

- Some commenters requested that DOEE shorten the 3-month transition period before this new provision takes effect.

DOEE Response: DOEE acknowledges that many SRC buyers and sellers negotiate transactions over a period of time. DOEE believes that a 3-month transition is sufficient to allow any ongoing negotiation to reach a contract. DOEE believes that restricting the purchase of CSS SRCs immediately is not a reasonable transition period for SRC buyers acting under the framework of the pre-amendment stormwater management regulations. For developers generating and using their own SRCs, DOEE believes that a 3-month transition is sufficient time for any project that has already been designed and is nearing the end of the permitting process to obtain DOEE's approval of the SWMP.

- Some commenters suggested that the requirement for MS4 sites to use MS4 SRCs should not be implemented:
  - Commenters said it was not clear that MS4 sites are using CSS SRCs, and that the rule may not be necessary.
  - Commenters said this would inject uncertainty into the market, making it difficult for DOEE to implement the program and complicated for developers to know which SRCs they could use.
  - Commenters said this would create different tranches of SRC supply and devalue CSS SRCs.
  - DOEE also received comments requesting the ability for previously-approved sites with SRC eligibility in the CSS to be able to continue selling SRCs to the MS4, including for future years of SRC certification.

DOEE Response: The primary purposes of the SRC program are to provide compliance flexibility for regulated development while also maximizing benefits for District waterbodies. The greatest water quality benefit is achieved when voluntary GI is installed in the MS4, not in the CSS. Despite the fact that there has been enough SRC supply to satisfy 100% of SRC demand, DOEE has noted that 69% of SRCs purchased over the last 12 months were CSS SRCs. This limits the extent to which the SRC program can accelerate restoration of the District's waterbodies.

When DOEE started developing the SRC program in 2010 and at the time DOEE finalized the 2013 Stormwater Rule, DOEE determined that allowing the use of CSS or MS4 SRCs was important for establishing a new market. Six years later, DOEE believes it is appropriate to revisit the rules of the SRC program to ensure that the maximum water quality benefits are achieved.

DOEE disagrees with the commenter's suggestion that this would increase the resources DOEE needs to implement the program and make it difficult for developers to comply. Implementation of the SRC program occurs using the Stormwater Database (<http://doee.dc.gov/swdb>), also referred to as the Submittal Database. In the Stormwater Database, DOEE knows the sewershed of each regulated site and the sewershed of each SRC-generating site. This information is posted to the list of SRCs for Sale, so property owners who are seeking to buy SRCs can easily filter for MS4 SRCs. DOEE consistently helps developers comply with Offv obligations through automated email reminders, phone calls, and instructions. DOEE plans to include in these frequent communications information about which SRCs a property is eligible to use.

DOEE acknowledges the commenter's observation that MS4 SRCs will be more valuable than CSS SRCs. DOEE's intention is to increase the incentives to construct GI in the MS4, so a higher valuation of MS4 SRCs supports this objective.

DOEE has several programs in place to support a large, affordable supply of MS4 SRCs. Chief among these is the SRC Price Lock Program, which has already resulted in the construction of SRC-generating projects that can provide approximately 225,000 MS4 SRCs per year.

In addition to maximizing water quality benefits for District waterbodies, a strong demand for SRCs in the MS4 is important for supporting robust SRC generation in the District and a long-term supply of SRCs to provide compliance flexibility to regulated development. Strong demand for SRCs in the MS4 signals to potential SRC generators that they should indeed construct these GI projects that provide SRC supply and offers greater certainty that their SRCs will be purchased. If developers are buying non-MS4 SRCs, this limits the ability of SRC generators to privately raise funds to construct their MS4-based projects. As

a result, this would achieve less total supply on the market for developers to purchase in the long run.

In addition, while DOEE recognizes that the change will reduce the incentive to install GI in the CSS, this change must be considered in light of the environmental benefit achieved by requiring MS4 sites to purchase MS4 SRCs. It must also be noted that since the launch of the SRC program, there have been no voluntary GI projects built in the CSS with the intent to sell SRCs to pay for the GI. All CSS SRCs are from regulated projects exceeding their requirements, projects submitted for permitting before 2013, or DOEE-funded projects. Therefore, this change does not affect the market rules for voluntary GI projects that had expected to use SRCs to support the financing of the GI project. For sites generating CSS SRCs, the SRC owner may sell SRCs to MS4 sites in the future if they are sold according to a contract that has already been signed or that is signed within 3 months of the finalization of these amendments.

#### DOEE Determination

DOEE will finalize the proposed amendments. The final rule clarifies that any Anacostia Waterfront Development Zone (AWDZ) site is required to use MS4 SRCs for its entire Offv. While the language of the proposed rulemaking only required this for the Water Quality Treatment Volume (WQTV) portion of the Offv, DOEE's intent was that MS4 SRCs must be used for the WQTV portion of the Offv and for the SWRV portion of the Offv.

#### **4. SRC Eligibility Cutoff Date**

##### Comments

- DOEE received comments that support the change in the SRC eligibility cutoff date. Many commenters expressed the belief that when older projects have the ability to generate SRCs, this depresses the incentive for construction of new GI.

DOEE Response: DOEE acknowledges the commenters' support for this change.

- Many commenters who supported this change requested that DOEE implement additional changes:
  - DOEE received a comment that BMPs in the CSS that previously received SRC certification should eventually lose that eligibility.
  - DOEE received a comment requesting that DOEE restrict the value of the SRCs from BMPs installed prior to 2013, or restrict how those SRCs can be used in the future.
  - Commenters requested that DOEE implement the new rules immediately, rather than allowing for a 6-month transition.

DOEE Response: DOEE appreciates the commenters' desire to increase the incentives for the construction of new green infrastructure by further restricting the eligibility to generate SRCs from previously-built sites. For GI built prior to the launch of the SRC program in 2013, the investment to construct GI was not primarily driven by the ability to generate SRCs. Although the costs of GI design and construction occurred prior to the establishment of the SRC program, the owners of these GI practices were required to invest in additional engineering post-construction to document the retention capacity of the previously-built GI. DOEE believes it is reasonable to allow these sites to continue to generate SRCs. However, DOEE notes that this scenario is different from regulated sites that designed and built GI to satisfy a SWRV and have SRC eligibility for the excess of that required GI capacity.

DOEE also recognizes that for property owners who are interested in generating SRCs, it can take several months to complete the necessary engineering, schedule inspections, and develop a maintenance contract. Therefore, DOEE thinks a 6-month transition is sufficient.

- Commenters requested clarification on the recertification process, including how projects will be notified of the ability to recertify SRCs and whether the inspection process could delay recertification.

DOEE currently reminds SRC generators with automatic email notifications about recertification 6 months in advance, including a recommendation to schedule an inspection (since the inspection can occur 6 months prior to certification). DOEE also increases its assistance with the recertification process starting 3 months in advance, since this is when DOEE can start receiving the next SRC certification application.

Given this assistance, DOEE believes it is unlikely that a DOEE inspection would delay recertification since the inspection can occur 6 months in advance and the recertification can occur with up to 6 months of lapse (i.e. a 1-year time period). DOEE also notes that any participant in the SRC Price Lock Program has already committed to recertify SRCs with a lapse no greater than 6 months.

- DOEE received a comment requesting that the cutoff date be extended to 5 years.

DOEE Response: DOEE believes 3 years is ample time to submit the application to certify SRCs. Three years also coincides with DOEE's inspection cycle.

#### DOEE Determination

DOEE will finalize the proposed amendments. The 3 year time period to submit the first SRC certification application begins with DOEE's final inspection. The rule also states that if a final inspection does not occur, the 3 year period starts at the time of BMP or land cover installation. DOEE is clarifying that in the event that a final inspection does not occur, DOEE will determine when the BMP or land cover was installed.

## 5. Other Comments related to the SRC Program

Many commenters who expressed support of the changes DOEE proposed for the SRC Program also submitted comments requesting that DOEE make additional changes related to the SRC program.

### Comments

- Several commenters requested changes to the retention performance requirements. In addition to increasing incentives to construct green infrastructure in the MS4, these changes were focused on addressing changing rainfall patterns. Specific comments included:
  - A request to increase the stormwater retention performance requirement for regulated sites to 1.7 inches of retention, with consideration for how climate change will affect future rainfall patterns.
  - An indexing of the 90<sup>th</sup> percentile storm event with periodic updates.
  - A comment that by raising the requirement to 1.7 inches of retention, DOEE could also make the AWDZ requirements redundant and remove those requirements.

DOEE Response: DOEE recognizes that an increase to the performance requirement would increase stormwater retention and would have the potential to increase the amount of SWRv achieved off-site in the MS4. However, any increase to the performance requirement would require further evaluation and is outside the scope of this rulemaking. DOEE notes that the District's MS4 Permit requires that the District prepare by December 2020 an evaluation on possible changes to the District's stormwater management regulations, which could include an evaluation of possible increases to the performance requirement.

Regarding the AWDZ requirements, these were established by the Anacostia Waterfront Environmental Standards Amendment Act of 2012. This legislation also requires that off-site compliance may only be used if on-site compliance is infeasible.

- Commenters requested various restrictions on the ability to generate or use CSS SRCs through:
  - Requirements that sites in the CSS use MS4 SRCs for at least part of their Offv (e.g. any site in the CSS must meet half its Offv with MS4 SRCs even if it uses CSS SRCs for the remaining portion of its Offv);
  - Trading ratios (e.g. a CSS site may use .8 MS4 SRCs to meet one gallon of Offv);
  - Restrictions on the ability to generate CSS SRCs; and
  - Requirements that sites in the CSS use MS4 SRCs.

DOEE Response: DOEE agrees with the commenters about the water quality benefit achieved by purchasing SRCs generated by GI in the MS4. DOEE's proposed amendments have already required that any site in the MS4 may only

use MS4 SRCs and have provided additional off-site flexibility to projects in the CSS area that drains to storage tunnels if they choose to comply off-site in the MS4. DOEE is not at this time choosing to implement additional program rules that would specifically address the ability to generate or sell CSS SRCs. Any site in the CSS that complies at least 50% on-site would still be allowed to use CSS SRCs. DOEE may revisit this decision in a later rulemaking.

With regard to trading ratios and requirements to comply in the MS4 for a percentage of Offv, DOEE prefers to make an SRC purchase as easy as possible. DOEE believes that the implementation of trading ratios or requirements that a specific percentage of SRCs must be MS4 SRCs would make purchasing SRCs more difficult. With a trading ratio, SRC buyers would need to calculate the number of SRCs they would need to purchase based on the SRC seller with which they negotiate a trade. With an MS4 percentage requirement, the buyer would either need to purchase in multiple transactions or would need to purchase exclusively MS4 SRCs.

If a regulated site in the CSS is already complying 50% on-site and chooses to install additional on-site GI, the additional retention capacity would be built in the CSS. When the regulated site uses a CSS SRC, this is a comparable water quality outcome.

- DOEE received various comments regarding the use of SRCs that are generated in excess of regulatory requirements. Specific requests include:
  - Restrictions on the ability to sell these SRCs, but preserving the ability for an SRC generator to use the SRCs on another of that SRC generator's properties with Offv;
  - Restrictions on the ability to use these SRCs, including on the SRC generator's other properties with Offv;
  - Restrictions on the ability to generate SRCs in excess of a regulatory requirement on sites in the CSS;
  - Establishing a priority order in which SRCs may be used (e.g. must use voluntary SRCs before using regulated SRCs); and
  - Requirement that sites could only use self-generated regulated SRCs for a portion of their Offv.

DOEE Response: DOEE appreciates the commenters' input and agrees that it is important to support the construction of new, voluntary green infrastructure in the MS4. DOEE believes it is appropriate to limit the use of SRCs that are generated in excess of a regulatory requirement since the GI capacity that produces these SRCs is used in only the few storms each year that have a rainfall depth larger than the regulatory requirement. DOEE will address this subject via a separate rulemaking.

- DOEE received a comment requesting information about the rate at which developers are using the off-site compliance flexibility.

DOEE response: Approximately 13% of development projects have opted to comply off-site. DOEE includes a list of sites with Offv in the SRC Registry, which is available through the Submittal Database. This comment does not address a specific element of the proposed rulemaking, so there will be no change in response to this comment.

- DOEE received comments that DOEE should work with DDOT to allow more privately-funded green infrastructure in the PROW.

DOEE Response: DOEE concurs with the commenter and has been discussing with DDOT the circumstances and conditions under which DDOT would allow installation of SRC-generating projects in the PROW. The stormwater management regulations already allow SRC-generating projects in the PROW, so no regulatory change is necessary.

- DOEE received a comment that the proposed regulations should exempt voluntary retrofits.

DOEE Response: The regulations already have an exemption for voluntary stormwater management retrofits. No change is necessary.

- DOEE received several comments that DOEE should increase its outreach to developers to encourage off-site compliance. Commenters suggested various types of analysis that could be done to better understand developers' decision-making process with regard to off-site compliance.

DOEE Response: While DOEE appreciates the commenters' recommendations, this is outside the scope of the rulemaking. DOEE will continue to seek and respond to input from commenters regarding effective outreach strategies. DOEE is currently in the process of developing outreach materials related to the increased compliance flexibility in the CSS area.

- DOEE received a comment requesting a 5-year certification period instead of a 3-year certification period

DOEE Response: A change to the maximum certification period is outside the scope of this rulemaking. DOEE believes the 3-year certification cycle is an appropriate limit on the ability to generate SRCs in the future. The certification cycle is consistent with DOEE's maintenance inspection cycle and reduces the risks of maintenance failure at an SRC-generating site.

- DOEE received comments requesting that SRC-generating projects should not need to submit a SWMP and should receive priority review.

DOEE Response: This comment is outside the scope of this rulemaking. DOEE believes it is critical that SRC-generating projects receive the same level of

SWMP review that is required for all regulated sites, as the SRCs produced will be used to satisfy the regulatory obligations of these sites. DOEE also commits to review all projects within 10 to 30 business days, prioritizing projects in the order they are submitted.

- DOEE received a comment requesting clarification on how DOEE tracks progress achieved through the SRC program.

DOEE Response: DOEE tracks the SRC program using the Submittal Database. Specific indicators of program success are published in annual reports at <http://doee.dc.gov/src>. These indicators include number of GI projects built, total area draining to SRC-generating GI, number of trades, number of projects complying off-site, and number of MS4 SRCs used.

- DOEE received a comment requesting additional resources to assist developers with calculating costs of off-site compliance, including opportunity cost.

DOEE Response: Development of such a tool is outside the scope of this rulemaking.

- DOEE received a comment suggesting that the SRC program was intended to help homeowners generate income by installing BMPs. The commenter requested clarification on whether this is the case.

DOEE Response: DOEE has not promoted the SRC program as a good option for homeowners. While it is possible for homeowners to meet the SRC eligibility criteria, DOEE anticipates that most individual homes don't have large enough volumes of stormwater runoff to competitively generate and sell SRCs. Therefore, DOEE has always made a point to discuss these issues with homeowners who are interested in the program. DOEE typically directs these homeowners to the RiverSmart Homes program, which is focused on residential properties.

#### DOEE Determination

The final rule does not directly address the additional comments received regarding the SRC Program. However, through a separate rulemaking, DOEE plans to propose amendments that address the ability to use SRCs generated in excess of a regulatory requirement. Additionally, DOEE will continue working on SRC generation for projects in the PROW and continue to conduct outreach on off-site compliance and the SRC program.

## **6. Fees**

### Comments



- DOEE received comments contending that its supplemental review fees are too high and that DOEE’s review fees are too high for single-family projects.

DOEE Response: These comments, which focus on the fee structure, are outside the scope of the proposed rulemaking, which includes an inflation adjustment to the supplemental fees but does not change the overall fee structure. The fee structure, including the supplemental fee, is essential for DOEE to be able to provide timely review on permit applications. These fees pay for DOEE's plan review, and a reduction in fee revenue would result in a decreased ability to review projects promptly.

DOEE also notes that most single-family homes do not trigger the stormwater management regulations, unless they are large enough to trigger the regulations by themselves or as part of a larger project such as a subdivision. DOEE notes that for Soil Erosion and Sediment Control, there is a lower tier of fees for residential projects that disturb less than 500 square feet. DOEE acknowledges that for projects that comply entirely off-site or that go through a Practicable review process, the time required for DOEE review is reduced. DOEE will address this subject through a separate rulemaking.

- DOEE received comments requesting clarification about when supplemental review fees are charged.

DOEE Response: Supplemental review fees are charged for each submission after the first resubmission (in other words, the fee is charged for each review starting with the third review). A new flowchart in Chapter 5 of the Stormwater Management Guidebook was created to help clarify this process.

#### DOEE Determination

DOEE will finalize the inflation adjustment and other changes to § 501. Through a separate rulemaking, DOEE will also address fee rates for projects that require less time for DOEE to review.

DOEE’s proposal included the incorrect fee inflation adjustment in Table 3 for dewatering pollution reduction plan review and for review of an application for relief from extraordinarily difficult site conditions. DOEE is implementing the final rule with the correct fee inflation adjustment.

## **7. Other Comments**

DOEE received various comments that did not address the rulemaking.

#### Comments

- DOEE received a comment requesting an increase to the Stormwater Fee and an increased discount for those who manage stormwater in the MS4. The commenter also requested increased funding for the SRC Price Lock Program.

DOEE Response: The stormwater fee is outside the scope of this rulemaking. However, DOEE notes that the District's MS4 Permit requires that the District prepare by December 2020 an evaluation on possible increases to the stormwater fee. The SRC Price Lock Program is also outside the scope of this rulemaking. While DOEE agrees with the commenter regarding the importance of the SRC Price Lock Program, increased funding for the SRC Price Lock Program would need to be allocated through the District's budget process.

- DOEE received a comment requesting information about the budget of the Clean Rivers Impervious Area Charge (CRIAC) Nonprofit Relief Program.

DOEE Response: The CRIAC Nonprofit Relief Program is outside the scope of this rulemaking. Information about the CRIAC Nonprofit Relief Program is available at <https://doee.dc.gov/service/clean-rivers-impervious-area-charge-nonprofit-relief-program>.

- DOEE received a comment stating that grey infrastructure should be used to provide stormwater treatment when stormwater retention is not an option.

DOEE Response: DOEE's stormwater management regulations already require stormwater treatment in each Site Drainage Area outside the CSS that does not achieve 50% of the SWRV.

- DOEE received a comment expressing concern that previously-approved projects would retroactively trigger SWPPP requirements.

DOEE Response: The proposed amendments clarified that projects that disturb 5,000 square feet require a SWPPP. The 2013 Stormwater Rule stated that projects only require a SWPPP if they disturb more than 5,000 square feet. This was a minor clarification. There are no previously-approved projects that disturbed exactly 5,000 square feet.

- DOEE received a comment recommending adaptive controls for stormwater BMPs.

DOEE Response: While DOEE does not endorse any particular product, these products may be used if they meet DOEE's design requirements.

- DOEE received a comment requesting information about how the cost threshold for an erosion and sediment control exemption in § 541 was set.

DOEE Response: This value was determined using an inflation adjustment to the value included in the 2013 Stormwater Rule.

- DOEE received a comment expressing concern about Certificates of Occupancy for swing space trailers prior to BMP implementation. The commenter stated that swing space trailers may be left in place for a long period of time. DOEE also received an inquiry about whether this applies to private schools and universities.

DOEE Response: DOEE believes it is appropriate to allow the use of swing space to be used during construction without requiring the installation of the BMP until project completion. This also applies to private schools and universities.

While DOEE's summary of the proposed rulemaking mentioned flexibility to obtain a Certificate of Occupancy to use swing space trailers prior to building green infrastructure, DOEE's proposed rulemaking did not actually include this provision. The discrepancy was inadvertent. DOEE does not intend to include this provision in the regulations, and will instead address it in the Stormwater Management Guidebook.

- DOEE received comments requesting additional training and resources. A particular comment requested a larger map of CSS and MS4 areas.

DOEE Response: This comment does not address a specific element of the rulemaking. DOEE provides many training opportunities and resources. The comment did not offer specific recommendations for how DOEE could improve these resources. The requested map was published on the DOEE website with explanation of the proposed rulemaking. The map allows for the user to search by address and zoom to specific locations. The requested map will also be available via the Submittal Database.

#### DOEE Determination

DOEE will implement no changes in response to these comments. DOEE will include the swing space provision as guidance in the Stormwater Management Guidebook and not as a regulatory provision in the rulemaking.

## **CHAPTER 5 WATER QUALITY AND POLLUTION**

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**LAND COVER INSTALLED BEFORE EFFECTIVE DATE OF  
STORMWATER RETENTION PERFORMANCE REQUIREMENTS**

- 535-539 [RESERVED]**
- 540 SOIL EROSION AND SEDIMENT CONTROL: APPLICABILITY**
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- 545 SOIL EROSION AND SEDIMENT CONTROL: BUILDINGS, DEMOLITION,  
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**500 GENERAL PROVISIONS**

- 500.01 The provisions of this chapter shall be applicable to all sources of pollution affecting the Anacostia and Potomac Rivers and their tributaries within the District of Columbia (the District) including pollution carried by stormwater runoff, discharges from barges and other vessels, and domestic and industrial waste.
- 500.2 An activity which this chapter regulates shall be consistent with the purposes of this chapter.
- 500.3 The purposes of this chapter are:
  - (a) To prevent and control the pollution of the Potomac River and its tributaries, and the waters of the District;
  - (b) To regulate land-disturbing activities for the protection of District waterbodies;
  - (c) To regulate major substantial improvement activities for the protection of District waterbodies;
  - (d) To prevent accelerated soil erosion and sedimentation;
  - (e) To prevent sediment deposit in the Potomac River and its tributaries, including the District sewer system; and

- (f) To control health hazards due to pollution of the Potomac River and its tributaries.
- 500.4 No person may commence an activity that this chapter regulates without obtaining an approval that this chapter requires.
- 500.5 A person's compliance with this chapter shall not relieve a person of responsibility for damage to a person or property.
- 500.6 No Department action under this chapter shall impose liability upon the District of Columbia for damage to a person or property.
- 500.7 A person who is regulated under this chapter may authorize an agent to act for that person; however, authorizing an agent does not change or eliminate that person's duty, responsibility, or liability.
- 500.8 The Department may approve alternative media, including electronic media, for a document that this chapter requires to be submitted in Mylar, paper, or other specific media:
- (a) If the alternative method will likely be as reliable for the Department's use and less expensive for an applicant; or
  - (b) Upon good cause shown.
- 500.9 An infiltration test does not require Departmental approval for groundwater quality protection provided that:
- (a) No test shall go to a depth of greater than fifteen (15) feet below the ground surface;
  - (b) If a person conducting the testing smells or sees soil or groundwater contamination in the area of a test during or after the test, the boring or other hole made for the test shall be filled in accordance with best practices for wellhead protection, unless it is determined as a result of laboratory analysis that the groundwater or soil is not contaminated, as defined in the District of Columbia Brownfield Revitalization Amendment Act of 2000, effective June 13, 2001, as amended (D.C. Law 13-312; D.C. Official Code §§ 8-631 *et seq*) or the Underground Storage Tank regulations at 20 DCMR Chapter 62; and
  - (c) A Professional Engineer licensed in the District of Columbia shall certify the infiltration rate and that the test was carried out in compliance with this section and accepted professional standards.

500.10 Except as otherwise provided in this chapter, all submittals to the Department shall be made through the Department’s submittal database, which is available on the Department’s website from any device with an internet connection. Computers are also available for use by the public at the Department of Consumer and Regulatory Affairs. Instructions for submittal of any printed plans required by this chapter will be provided on the Department’s website or through the Department’s submittal database.

**501 FEES**

501.1 The District Department of the Environment (Department) shall adjust the fees in this section for inflation annually, using the Urban Consumer Price Index published by the United States Bureau of Labor Statistics.

501.2 An applicant shall pay a supplemental review fee for each Department review after the review for the first resubmission of a plan, and the fee shall be paid before a building permit may be issued, except that a supplemental review fee for a review specified for a design phase under the Maximum Extent Practicable (MEP) process described in the Department’s Stormwater Management Guidebook (SWMG) shall not be required for a project or portion of a project entirely in the existing public right-of-way (PROW).

501.3 An applicant for Department approval of a soil erosion and sediment control plan shall pay the fees in Table 1 for Department services at the indicated time, as applicable:

**Table 1. Fees for Soil Erosion and Sediment Control Plan Review**

Payment Type	Payment Requirement	Fees by Land Disturbance Type		
		Residential	All Other	
		≥ 50 ft <sup>2</sup> and < 500 ft <sup>2</sup>	≥ 50ft <sup>2</sup> and < 5,000 ft <sup>2</sup>	≥ 5,000 ft <sup>2</sup>
Initial	Due upon filing for building permit	\$53.96	\$469.44	\$1,154.70
Final • Clearing and grading > 5,000 ft <sup>2</sup> • Excavation base fee • Excavation > 66 yd <sup>3</sup> • Filling > 66 yd <sup>3</sup>	Due before building permit is issued	n/a		\$0.16 per 100 ft <sup>2</sup>
		n/a	\$469.44	
		\$0.11 per yd <sup>3</sup>		
		\$0.11 per yd <sup>3</sup>		
Supplemental	Due before building permit is issued	\$107.92	\$107.92	\$1,079.16

501.4 An applicant for Department approval of a Stormwater Management Plan (SWMP) shall pay the fees in Table 2 for Department services at the indicated time, as applicable:

**Table 2. Fees for Stormwater Management Plan Review**

Payment Type	Payment Requirement	Fees by Combined Area of Land Disturbance and Substantial Improvement Building Footprint	
		≥ 5,000 ft <sup>2</sup> and ≤ 10,000 ft <sup>2</sup>	> 10,000 ft <sup>2</sup>
Initial	Due upon filing for building permit	\$3,561.24	\$6,582.90
Final	Due before building permit is issued	\$1,618.75	\$2,589.99
Supplemental	Due before building permit is issued	\$1,079.16	\$2,158.33

501.5 An applicant for Department approval of a plan and any other person requesting the services in Table 3 shall pay the additional fees in Table 3 for Department services before issuance of a building permit, except:

- (a) If a person is applying for relief from extraordinarily difficult site conditions, the person shall pay the fee upon applying for relief; and
- (b) If a person is not applying for a building permit, the person shall pay before receipt of a service.

501.6 An applicant shall be required to pay the fees in Table 3 for review of a Stormwater Pollution Prevention Plan (SWPPP) only if the site is regulated under the Construction General Permit issued by Region III of the Environmental Protection Agency.

**Table 3. Additional Fees**

Review or Inspection Type	Fees by Combined Area of Land Disturbance and Substantial Improvement Building Footprint	
	≤ 10,000 ft <sup>2</sup>	> 10,000 ft <sup>2</sup>
Soil characteristics inquiry	\$161.87	
Geotechnical report review	\$75.54 per hour	
Pre-development review meeting	No charge for first hour \$75.54 per additional hour	
After-hours inspection fee	\$53.96 per hour	
Stormwater pollution plan review	\$1,187.08	
Dewatering pollution reduction plan review	\$1,187.08	\$1,187.08
Application for relief from extraordinarily difficult site conditions	\$539.58	\$539.58

501.7 An applicant for Department approval of a SWMP for a project being conducted solely to install a Best Management Practice (BMP) or land cover for Department certification of a Stormwater Retention Credit (SRC) shall pay the fees in Table 4 for Department services at the indicated time, as applicable, except that:



- (a) A person who is paying a review fee in Table 2 for a major regulated project shall not be required to pay a review fee in Table 4 for the same project; and
- (b) A person who has paid each applicable fee to the Department for its review of a SWMP shall not be required to pay a review fee in Table 4 for the same project:

**Table 4. Fees for Review of Stormwater Management Plan to Certify Stormwater Retention Credits**

Payment Type	Payment Requirement	Fees by Combined Area of Land Disturbance and Substantial Improvement Building Footprint	
		≤ 10,000 ft <sup>2</sup>	> 10,000 ft <sup>2</sup>
Initial	Due upon filing for building permit	\$620.52	\$917.29
Final	Due before building permit is issued	\$134.90	\$215.83
Supplemental	Due before building permit is issued	\$539.58	

501.8 A person who requires Departmental approval of an as-built SWMP for SRC certification for a BMP or land cover for which a plan review fee has not been paid to the Department shall pay each applicable fee for initial and final SWMP review in Table 4.

501.9 A person who requires the Department’s review of a proposed or as-built SWMP solely for the purpose of applying for a stormwater fee discount under this chapter shall not be required to pay a plan review fee to the Department for that project, except that a person who subsequently applies for SRC certification for the same project shall pay each applicable fee for initial and final plan review before the Department will consider the application for SRC certification.

501.10 An applicant for Department approval of a Green Area Ratio plan shall pay the fees in Table 5 for Department services at the indicated time:

**Table 5. Fees for Review of Green Area Ratio Plan**

Payment Type	Payment Requirement	Fees by Combined Area of Land Disturbance and Substantial Improvement Building Footprint	
		≤ 10,000 ft <sup>2</sup>	> 10,000 ft <sup>2</sup>
Initial	Due upon filing for building permit	\$620.52	\$917.29
Final	Due before building permit is issued	\$134.90	\$215.83
Supplemental	For reviews after first resubmission	\$539.58	

501.11 The in-lieu fee shall be three dollars and seventy-eight cents (\$3.78) per year for each gallon of Off-Site Retention Volume (Offv). In accordance with the court-

approved consent decree, including court-approved modifications, for reducing Combined Sewer Overflows (CSOs) in the District of Columbia:

- (a) In-lieu fees paid by regulated projects in drainage areas that are targeted for green infrastructure implementation under a court-approved consent decree will be used to fund construction of green infrastructure in those drainage areas; and
- (b) In-lieu fees paid by regulated projects in combined sewersheds will not be used to fund projects in combined sewersheds controlled by Gray CSO Controls required by a court-approved consent decree.

501.12 The administrative late fee for an in-lieu fee payment shall be ten percent (10%) of the late payment.

501.13 A person shall pay the fees in Table 6 for the indicated resource before receipt of the printed resource:

**Table 6. Fees for Resources**

<b>Paper Copies of Documents</b>	<b>Cost</b>
District Standards and Specifications for Soil Erosion and Sediment Control	\$53.96
District Stormwater Management Guidebook	\$94.34
District Erosion and Sediment Control Standard Notes and Details (24 in x 36 in)	\$26.98
District Erosion and Sediment Control Manual	\$45.00
District Erosion and Sediment Control Handbook	\$45.00

**502 DUTY TO COMPLY**

502.1 A person who engages in an activity that this chapter regulates shall comply with the provisions of this chapter.

502.2 A person shall conduct all work in accordance with each submittal approved by the Department, including each plan and approved change.

502.3 Each provision of an approved plan shall be complied with as a distinct provision of this chapter.

502.4 A person shall promptly notify the Department of an actual or likely material change in the performance provided for in an approved SWMP, including a material change in the volume of stormwater flowing into a Best Management Practice (BMP), a shared BMP, or a land cover.

502.5 A person shall undertake a reasonable inquiry to confirm that the facts stated and calculations made are true and correct for each communication with the Department under this chapter.

502.6 No person shall negligently, recklessly, or knowingly make a false statement in a communication with the Department.

### **503 INSPECTIONS, NOTICES OF WORK, AND APPROVALS OF CHANGES**

503.1 The Department may conduct an inspection of an activity regulated under this chapter, including emergency work that may otherwise be exempt, to ensure compliance with this chapter.

503.2 The Department may require a change to an approved plan if the Department determines that a discrepancy between site conditions and the approved plan makes the plan inadequate to comply with the requirements of this chapter.

503.3 A person may not change an approved plan or its implementation without Department approval, as follows:

- (a) If the change is substantial, the person shall resubmit the revised plan to the Department for approval in accordance with this chapter; and
- (b) If the change is not substantial, the person may secure written approval from the Department in the field or at the Department's office.

503.4 For the purposes of this chapter, a substantial change in an approved plan is a change in design, specification, construction, operation, or maintenance that the Department determines:

- (a) May result in a failure to comply with a requirement of this chapter; or
- (b) Has a significant effect on the discharge of pollutants to the District's waters.

503.5 The Department may require an additional inspection at a particular stage of construction by specifying that requirement in:

- (a) The approved plan;
- (b) The preconstruction inspection report; or
- (c) The Department's report of the preconstruction meeting.

503.6 No person may proceed with work past a stage of construction that the Department has identified as requiring an inspection unless:

- (a) The Department's inspector has issued an "approved" or "passed" report;

- (b) The Department has approved a plan modification that eliminates the inspection requirement; or
- (c) The Department otherwise eliminates or modifies the inspection requirement in writing.

503.7 A person shall communicate with the Department:

- (a) In order to schedule a preconstruction meeting or field visit before commencement of a land-disturbing activity, contact the Department at least three (3) business days before the start of the land-disturbing activity;
- (b) In order to schedule a preconstruction inspection before beginning construction of a Best Management Practice (BMP), contact the Department at least three (3) business days before the start of the construction;
- (c) In order to schedule an inspection required for a stage of construction or other construction event, contact the Department at least three (3) business days before the anticipated inspection;
- (d) For the completion of a land-disturbing activity, give notice to the Department within two (2) weeks of completion of the activity; and
- (e) For the completion of a BMP, and to request a final construction inspection, give the Department one (1) week's notice.

503.8 The Department shall make reasonable efforts to accommodate a request for inspection outside of the Department's normal business hours if the request:

- (a) Is made during the Department's normal business hours;
- (b) Includes the information the Department requires, including the matters to be inspected, the location of the site work to be inspected, and details for site access; and
- (c) Includes payment or proof of payment of the after-hours inspection fee.

503.9 The Department shall determine whether work, construction, and maintenance complies with each approved plan, including conducting a final construction inspection and ongoing maintenance inspections of each BMP, land cover, and the site.

503.10 The Department may require inspections, on a periodic or as-needed basis, of a BMP, land cover, and the site to ensure that maintenance is sufficient to achieve

performance or eligibility requirements and to avoid harm to the environment or public health.

503.11 A person shall allow the Department, upon presentation of Department credentials, to:

- (a) Enter premises where a practice, measure, or activity subject to this chapter is located or conducted, or where required records are kept, including locations where a retention BMP or land cover is voluntarily installed to generate a Stormwater Retention Credit or receive a stormwater fee discount;
- (b) Access and copy a required record;
- (c) Inspect a site, practice, measure, or activity subject to this chapter, including to verify sufficient maintenance; and
- (d) Conduct sampling, testing, monitoring, or analysis.

503.12 The Department may require as a precondition to its approval of an inspection that the applicant:

- (a) Make available to the Department for the purposes of the inspection on site, or at the Department's offices, the professional engineer responsible for certifying the "as-built" plans; and
- (b) Secure the seal and signature of this professional engineer certifying that the as-built plans comply with this chapter.

503.13 Upon notice, a person shall promptly correct work which the Department has found fails to comply with an approved plan.

503.14 The Department shall not approve the issuance of a certificate of occupancy for a building until the Department has determined that the approved stormwater management plan for the building site has been implemented for:

- (a) On-site stormwater management; and
- (b) Required off-site retention.

## **504 STOP WORK ORDERS**

504.1 Upon notice from the Department that it has determined that one (1) or more of the following conditions exists, a person shall stop identified work immediately until the situation is corrected:

- (a) Noncompliance with a notice that requires corrective action;
- (b) Material false statement or misrepresentation of fact in an application that the Department approved for the project;
- (c) During the project, the license of a contractor or subcontractor is void, has expired, or has been suspended or revoked;
- (d) Work involving an activity regulated under this chapter is being conducted:
  - (1) In violation of a provision of this chapter;
  - (2) In an unsafe manner; or
  - (3) In a manner that poses a threat to the public health or the environment.

504.2 A stop work order shall:

- (a) Have immediate effect;
- (b) Be issued in writing; and
- (c) Be provided to:
  - (1) The person who has received an approval under this chapter;
  - (2) The person doing the work; or
  - (3) The person on site who is responsible for the work.

504.3 The stop work order shall identify the:

- (a) Address and location of the work;
- (b) Corrective action or cessation required;
- (c) Time period required to complete corrective action;
- (d) Reason for the order;
- (e) Person issuing the order, including telephone contact, and, if available, email or other electronic means of address; and
- (f) Steps to be taken to challenge or appeal the order.

- 504.4 The Department shall:
- (a) Post the stop work order at the property; and
  - (b) Send the stop work order in a manner likely to insure receipt, including first class mail, fax with return receipt, email with return read receipt, or hand-delivery with certification of service.
- 504.5 No person shall remove a stop work order posted at a site without the Department's written approval.
- 504.6 A person who continues work stopped by an order shall be in violation of this chapter for each day on which work is conducted, except for work:
- (a) Required immediately to stabilize the activity and place the property in a safe and secure condition;
  - (b) That the Department orders; or
  - (c) Required immediately to eliminate an unsafe condition or threat to the public health or the environment.

## **505 VIOLATIONS AND ENFORCEMENT PROCEDURES**

- 505.1 Each instance or day of a violation of each provision of this chapter shall be a separate violation.
- 505.2 Each separate violation of each provision may be subject to:
- (a) A criminal fine and penalty, including imprisonment, and costs; and
  - (b) Either:
    - (1) A judicial civil penalty, order for corrective action, and order for damages and related costs, expenses, and fees; or
    - (2) An administrative civil fine, penalty, suspension of an approval, suspension of a permit, corrective action, order to comply with this chapter, and order for related costs, expenses, and fees.
- 505.3 The District may seek criminal prosecution if a person violates a provision of this chapter pursuant to:
- (a) The Water Pollution Control Act of 1984 (WPCA), effective March 16, 1985, as amended (D.C. Law 5-188; D.C. Official Code § 8-103.16 (2008

Repl. & 2012 Supp.)); and

- (b) The Soil Erosion and Sedimentation Control Act of 1977, effective September 28, 1977 (D.C. Law 2-23; 24 DCR 792), as amended by the Soil Erosion and Sedimentation Control Amendment Act of 1994, effective August 26, 1994, as amended (D.C. Law 10-166; 41 DCR 4892; 21 DCMR §§ 500-15).

- 505.4 The District may bring a civil action in the Superior Court of the District of Columbia or any other court of competent jurisdiction, for civil penalties, damages, and injunctive or other appropriate relief pursuant to D.C. Official Code §§ 8-103.17(d) and 8-103.18.
- 505.5 As an alternative to a civil action, the Department may impose an administrative civil fine, penalty, fee, and order for costs and expenses by following the procedures of Titles I-III of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985, as amended (D.C. Law 6-42; D.C. Official Code §§ 2-1801 *et seq.* (2007 Repl. & 2012 Supp.)) (Civil Infractions Act), except that each reference in the Civil Infractions Act to an administrative law judge (ALJ) shall mean an ALJ of the Office of Administrative Hearings (OAH) established pursuant to the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002, as amended (D.C. Law 14-76; D.C. Official Code, §§ 2-1831.01 *et seq.* (2007 Repl. & 2012 Supp.)).
- 505.6 Except when otherwise required by statute, an administrative civil fine shall be calculated according to the schedule of fines for violations of this chapter that has been approved pursuant to the Civil Infractions Act, D.C. Official Code § 2-1801.04.
- 505.7 Administrative adjudication of a civil violation of a provision of this chapter shall be conducted by OAH, pursuant to its rules and procedures.
- 505.8 An administrative adjudicator of a civil violation of a provision of this Chapter shall have the same power, authority, and jurisdiction with respect to the matter before it as does the Department.
- 505.9 Neither a criminal prosecution nor the imposition of a civil fine or penalty shall preclude an administrative or judicial civil action for injunctive relief or damages, including an action to prevent unlawful construction or to restrain, correct, or abate a violation on or about any premises, or to recover costs, fees, or money damages, except that a person shall not, for the same violation of the WPCA, be assessed a civil fine and penalty through both the judicial and the administrative processes.
- 505.10 With respect to a violation of a provision of this chapter, the Department may also pursue and obtain an internal remedy by:



- (a) Advising a person of a violation through the use of a DDOE internal Notice of Violation; and
- (b) Issuing and addressing a violation through the use of a DDOE internal Notice of Infraction.

505.11 If a term in a provision of this section conflicts with a provision in another section of this chapter, the term in the provision of this section controls.

## **506 ADMINISTRATIVE APPEALS AND JUDICIAL REVIEW**

506.1 With respect to a matter governed by this chapter, a person adversely affected or aggrieved by an action of the Department shall exhaust administrative remedies by timely filing an administrative appeal with, and requesting a hearing before, the Office of Administrative Hearings (OAH), established pursuant to the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002, as amended (D.C. Law 14-76; D.C. Official Code, §§ 2-1831.01 *et seq.* (2007 Repl. & 2012 Supp.)), or OAH's successor.

506.2 For the purposes of this chapter, an action of the Department taken with respect to a person shall include:

- (a) Signed settlement of an internal Notice of Infraction (NOI);
- (b) Approval;
- (c) Denial;
- (d) Compliance order;
- (e) NOI;
- (f) Determination;
- (g) Cease and desist order;
- (h) Stop work order;
- (i) Order to show cause; or
- (j) Other action of the Department which constitutes the consummation of the Department's decision-making process and is determinative of a person's rights or obligations.

506.3 For the purposes of this chapter, a DDOE internal Notice of Violation or NOI:

- (a) Shall not be an action of the Department that a person may appeal to OAH;
- (b) Shall be responded to within fifteen (15) calendar days of service of the notice, including a written statement containing the grounds, if any, for opposition; and
- (c) Shall not constitute a waiver of compliance or tolling of a period for a fine or penalty.

506.4 If a person fails to agree to or settle an internal NOI or otherwise denies a claim stated in an internal NOI:

- (a) The Department may cancel the internal NOI and file an NOI for adjudication with OAH; or
- (b) The person may request adjudication by OAH.

506.5 A person aggrieved by an action of the Department shall file a written appeal with OAH within the following time period:

- (a) Within fifteen (15) calendar days of service of the notice of the action; or
- (b) Another period of time stated specifically in the section for an identified Department action.

506.6 Notwithstanding another provision of this section, the Department may toll a period for filing an administrative appeal with OAH if it does so explicitly in writing before the period expires.

506.7 OAH shall:

- (a) Resolve an appeal or an NOI by:
  - (1) Affirming, modifying, or setting aside the Department's action complained of, in whole or in part;
  - (2) Remanding for Department action or further proceedings, consistent with OAH's order; or
  - (3) Providing such other relief as the governing statutes, regulations and rules support;
- (b) Act with the same jurisdiction, power, and authority as the Department may have for the matter currently before OAH; and

- (c) By its final decision render a final agency action which will be subject to judicial review.
- 506.8 The filing of an administrative appeal shall not in itself stay enforcement of an action; except that a person may request a stay according to the rules of OAH.
- 506.9 The burden of proof in an appeal of an action of the Department shall be allocated to the person who appeals the action, except the Department shall bear the ultimate burden of proof when it denies a right.
- 506.10 The burden of production in an appeal of an action of the Department shall be allocated to the person who appeals the action, except that it shall be allocated:
  - (a) To the Department when a party challenges the Department's suspension, revocation, or termination of a:
    - (1) License;
    - (2) Permit;
    - (3) Continuation of an approval; or
    - (4) Other right;
  - (b) To the party who asserts an affirmative defense; and
  - (c) To the party who asserts an exception to the requirements or prohibitions of a statute or rule.
- 506.11 The final OAH decision on an administrative appeal shall thereafter constitute the final, reviewable action of the Department, and shall be subject to the applicable statutes and rules of judicial review for OAH final orders.
- 506.12 An action for judicial review of a final OAH decision shall not be a de novo review, but shall be a review of the administrative record alone and not duplicate agency proceedings or hear additional evidence.
- 506.13 Nothing in this chapter shall be interpreted to:
  - (a) Provide that a filing of a petition for judicial review stays enforcement of an action; or
  - (b) Prohibit a person from requesting a stay according to the rules of the court.

506.14 If a term in a provision of this section conflicts with a provision in another section of this chapter, the term in the provision of this section controls.

## **507 PUBLIC HEALTH HAZARDS**

507.1 The Mayor may post notice on the shores of a District waterbody of a related hazard to public health or safety.

507.2 Upon determination that a direct or indirect contact with a waterbody of the District, including immersion, fishing, or boating, poses a hazard to the public health or safety, the Department may take action deemed necessary to protect the public health until the hazard has ended, including a prohibition of all recreational activities on the affected waters of the District.

507.3 If the Department takes action to protect the public health from a hazard, the Department shall:

- (a) Notify the Council of the District of Columbia immediately of the action; and
- (b) Notify the public through media most likely to effectively advise of the hazard, including:
  - (1) Newspapers of general circulation in the District;
  - (2) Radio stations serving the District; and
  - (3) Electronic media.

507.4 An action taken by the Department to protect public health from a hazard shall remain in effect until rescinded, or for a period of two (2) weeks, whichever is shorter.

507.5 The Department may extend the life of an action taken to protect public health from a hazard beyond a two (2) week period, only if the Council of the District of Columbia, by resolution, so approves.

507.6 From District waters designated as a public health hazard, no person shall operate any pumping device or water vessel so as to generate a spray which falls upon the adjacent shore, except as authorized by the Mayor for good cause shown.

## **508 PREVENTION OF POLLUTION BY WATERCRAFT**

508.1 The discharge into the Potomac River or its tributaries of any waste, whether liquid or solid, treated or untreated, from any vessel berthed at a marina, dock, or basin, is prohibited.

- 508.2 Each marina, dock, or basin where a vessel or other watercraft is berthed, except for facilities that are owned by the United States Department of Defense and not generally open to the public, shall be provided with water closets, urinals, and lavatories which are separate for each sex, readily available, and in sufficient numbers to meet the needs of persons using the marina facilities.
- 508.3 Each marina, dock, or basin where vessels or other watercraft suitable for overnight accommodations are berthed shall be equipped with suitable bathing facilities.
- 508.4 The Department shall approve the facilities required under this section to be acceptable for the purposes set forth.
- 508.5 New or existing marinas within the Anacostia Waterfront Development Zone shall comply with the program elements outlined in the current version of the Clean Marina Guidebook issued by the National Park Service, and the owner of the marina shall submit a copy of its Clean Marina Checklist and any supporting documentation to the Department.

**509 CORRECTION OF CURRENT EROSION PROBLEMS**

- 509.1 In instances where erosion is occurring as the result of natural forces or past land-disturbing activities, but in the absence of current land-disturbing activities, the Department shall have the authority to inspect the site and to order the property owner to correct the erosion problem.
- 509.2 Each order to correct existing problems shall specify the general corrective measures to be applied.
- 509.3 The Department shall maintain and provide to homeowners who are required to correct erosion problems information relating to possible sources of financial assistance for the project.

**510-515 [RESERVED]**

**516 STORMWATER MANAGEMENT: APPLICABILITY**

- 516.1 No person shall engage in a major regulated project unless the Department has issued an approved stormwater management plan (SWMP) for the project.
- 516.2 Application for Department approval of a SWMP for a major regulated project shall be made by at least one (1) of the following persons:
- (a) The owner of a property on which a major regulated project is planned;

- (b) The lessee who undertakes a major regulated project, with the owner's permission, on a property that the lessee has leased; or
- (c) The agent of the owner or lessee.

516.3 In preparing and implementing a SWMP, or a part of a SWMP, a person must comply with:

- (a) This chapter;
- (b) The terms and conditions of the SWMP once approved; and
- (c) The Department's orders and directions to achieve compliance with the approved SWMP.

516.4 A major regulated project shall comply with the requirements and procedures of this chapter unless a provision exempts compliance.

516.5 The owner of a site on which a major regulated project occurs and each person to whom the owner has designated responsibility for management of the site shall ensure that the site complies with the approved SWMP for the site until site redevelopment that follows a Department-approved SWMP occurs.

516.6 Responsibility for compliance with an approved SWMP for a site shall pass to a subsequent owner of the site and each person to whom that owner designates responsibility for the management of the site until site redevelopment that follows a Department-approved SWMP occurs.

516.7 No person shall engage in a project for the generation of a Stormwater Retention Credit unless the Department has issued an approved SWMP for the project, except as otherwise provided in this chapter.

## **517 STORMWATER MANAGEMENT: EXEMPTIONS**

517.1 If a major substantial improvement activity demonstrates that it is not part of a common plan of development with a major land-disturbing activity, then it is exempt from § 520 (Stormwater Management: Performance Requirements For Major Land-Disturbing Activity).

- 517.2 A land-disturbing or substantial improvement activity shall be exempt from the requirements of §§ 520 (Stormwater Management: Performance Requirements For Major Land-Disturbing Activity), 522 (Stormwater Management: Performance Requirements For Major Substantial Improvement Activity), and 529 (Stormwater Management: Covenants and Easements) if the Department determines that the activity is conducted solely to install a best management practice or land cover that retains stormwater for one or more of the following purposes:
- (a) To generate SRCs;
  - (b) To earn a stormwater fee discount under the provisions of this chapter;
  - (c) To voluntarily reduce stormwater runoff in a manner that would be eligible to either generate SRCs or a stormwater fee discount, even if the person conducting the activity does not intend to apply to either program;
  - (d) To provide for off-site retention through in-lieu fee payments;
  - (e) To comply with a Watershed Implementation Plan established under a Total Maximum Daily Load for the Chesapeake Bay; or
  - (f) To reduce Combined Sewer Overflows (CSOs) in compliance with a court-approved consent decree, including court-approved modifications, for reducing CSOs in the District, or in compliance with a National Pollutant Discharge Elimination System permit.
- 517.3 A land-disturbing activity that consists solely of cutting a trench for utility work and related replacement of sidewalks and ramps is exempt from the stormwater management requirements of this chapter if it does not involve the reconstruction of a roadway from curb to curb or curb to centerline of roadway.
- 517.4 Land disturbance conducted solely to respond to an emergency need to protect life, limb, or property or conduct emergency repairs shall be exempt from the requirement to comply with the stormwater management provisions of this chapter, §§ 516-34.
- 517.5 For the purposes of calculating the cost of a major substantial improvement to a building or structure, an applicant may exclude the cost of replacing manufacturing and industrial equipment, including pumps, valve chambers, and wastewater treatment facilities, but may not exclude the cost of replacing boilers, furnaces, and other equipment that is part of the heating and cooling system or other infrastructure commonly found in a building or structure.

517.6 A land-disturbing activity in the existing PROW is exempt from the requirements in § 520 (Performance Requirements for Major Land-Disturbing Activity) for maintaining post-development peak discharge rates.

517.7 The portion of a land-disturbing activity that consists of the installation or replacement of athletic playing fields, permeable athletic tracks, or permeable playground surfaces shall be exempt from the stormwater management requirements of this chapter, provided that:

- (a) The land-disturbing activity achieves the post-development peak discharge performance requirements for Major Land-Disturbing Activities, as documented on:
  - (1) A Soil Erosion and Sediment Control Plan approved by the Department that shows the project achieves the drainage layer and orifice sizing requirements of the Department's Stormwater Management Guidebook; or
  - (2) A Stormwater Management Plan approved by the Department;
- (b) The pre-project land cover is compacted cover or impervious cover;
- (c) The athletic playing field, permeable athletic track, or permeable playground surface is located at a school or public park and is made available for use by the general public; and
- (d) If the athletic playing field, permeable athletic track, or permeable playground surface drains to a Best Management Practice (BMP), any gallon retained by the BMP shall only be eligible for SRC certification if the gallon is retained in excess of the stormwater retention and treatment performance requirements of this chapter for the area that is otherwise exempt pursuant to this subsection.

## **518 STORMWATER MANAGEMENT: PLAN REVIEW PROCESS**

518.1 In order for the Department to approve a person's proposed stormwater management plan (SWMP), the person and the Department shall undertake the process described in this section.

518.2 The Department shall notify an applicant of each determination in the plan review process.

518.3 The owner of a site shall submit an initial application for the Department's approval of a major regulated project in accordance with § 500.10, including:



- (a) One (1) electronic set of the SWMP, certified by a professional engineer licensed in the District of Columbia;
- (b) Each supporting document specified in the Department's SWMG; and
- (c) If requested by the Department, one (1) paper set of the SWMP, certified by a professional engineer licensed in the District of Columbia.

518.4 The Department shall make an initial determination if an application is complete and:

- (a) Accept the application for review;
- (b) Accept the application for review, with conditions; or
- (c) Reject the application for review, without prejudice to re-submission.

518.5 Upon accepting an application for review, the Department shall determine if:

- (a) The application requires additional information to determine whether or not it meets the requirements for approval;
- (b) The application meets the requirements for approval;
- (c) The application meets the requirements for approval, with conditions; or
- (d) The application does not meet the requirements for approval and shall be disapproved, without prejudice to re-submission.

518.6 If the applicant resubmits a SWMP after making changes, the re-submission shall contain a list of the changes made.

518.7 The Department may conduct one (1) or more supplemental reviews of a re-submitted application.

518.8 After receiving notification that an application meets the requirements for the Department's approval, the applicant shall submit a final preconstruction application to the Department's submittal database in accordance with § 500.10, including:

- (a) The complete electronic SWMP, certified by a professional engineer licensed in the District of Columbia; and
- (b) Each supporting document specified in the Department's SWMG.

- 518.9 After the applicant submits a final preconstruction application that meets the requirements for the Department's approval, the Department shall approve the plan electronically through the Department's submittal database.
- 518.10 The Department shall provide the applicant with access to the approved plan in the Department's submittal database after the applicant submits proof to the Department:
- (a) That the declaration of covenants and each applicable easement has been filed at the Recorder of Deeds; and
  - (b) That each applicable fee for Department services has been paid.
- 518.11 The Department may provide the applicant with access to the approved plan in the Department's submittal database before the declaration of covenants is filed if:
- (a) The Government of the District of Columbia has conditioned transfer of the property upon the successful acquisition of an approved SWMP or building permit; and
  - (b) The declaration is to be filed at closing.
- 518.12 Within twenty-one (21) days of the Department's final construction inspection, the applicant shall submit an as-built package to the Department's submittal database, including:
- (a) The complete as-built SWMP certified by a professional engineer licensed in the District of Columbia; and
  - (b) Each supporting document specified in the Department's SWMG.
- 518.13 For a project consisting entirely of work in the public right of way, the requirement to submit an as-built SWMP can be met by the submission of a Record Drawing that:
- (a) Documents the as-built construction of best management practices and related stormwater infrastructure; and
  - (b) Is certified by an officer of the contracting company for the project.
- 518.14 For single-family or two-family houses constructed as affordable housing, the Department may approve a SWMP that does not achieve the stormwater management performance requirements of this chapter, provided that:
- (a) All of the following conditions are satisfied:

- (a) Land-disturbing activity on any single record lot or tax lot is less than five thousand square feet (5,000 ft<sup>2</sup>);
  - (b) The applicant submits a request to the Department using the procedure for a request for relief from extraordinarily difficult site conditions, as described in § 526;
  - (c) The Department reviews the request using the same procedure by which the Department reviews and makes determinations for relief from extraordinarily difficult site conditions, as described in § 526; and
  - (d) The Department determines that the project takes all practicable steps to comply with the stormwater management performance requirements of this chapter; and
- (b) Within thirty (30) days of sale of the house that received SWMP approval pursuant to § 518.14, the purchaser shall provide proof to the Department that the purchaser's household income is no greater than eighty percent (80%) of Area Median Income. If the owner fails to provide proof, the Department may require full compliance with the stormwater management performance requirements.

518.15

For structures at public parks and trails for non-motorized vehicles, the Department may approve a SWMP that does not achieve the stormwater management performance requirements of this chapter, provided that:

- (a) The pre-project land cover is impervious cover or compacted cover;
- (b) The area consists solely of:
  - (1) Pavilions, sheds, dugouts, or similar structures located at public parks that are less than two thousand five hundred square feet (2,500 ft<sup>2</sup>) each and do not include typical building infrastructure to support year-round use; or
  - (2) Trails for pedestrians or non-motorized vehicles for projects that do not consist of reconstruction of a roadway and its adjacent sidewalks;
- (c) The applicant submits to the Department with the SWMP:
  - (1) A detailed explanation of each opportunity for on-site installation of a BMP that was considered and rejected, and the reason for each rejection;

- (2) Evidence of site conditions limiting each opportunity for a BMP, including, as applicable:
  - i. Data on soil and groundwater contamination;
  - ii. Data from percolation testing;
  - iii. Documentation of the presence of utilities requiring impermeable protection or a setback;
  - iv. Evidence of the applicability of a statute, regulation, court order, pre-existing covenant, or other restriction having the force of law;
  - v. The usability of space to achieve the proposed project purpose;
  - vi. Lack of the minimum CDA required for a BMP to be effective;
  - vii. The difficulty of conducting BMP maintenance; and
- (3) Evidence of the sensitivity of receiving waterbody to stormwater runoff;
- (4) Evidence of the likelihood of runoff from the site to cause to erosion of land, transport of sediment, nuisance flooding; and
- (d) The Department determines that the project takes all practicable steps to comply with the stormwater management performance requirements of this chapter.

**519 STORMWATER MANAGEMENT: PLAN**

519.1 A Department-approved stormwater management plan (SWMP) shall:

- (a) Govern all construction for which stormwater management is required;
- (b) Govern all applicable maintenance activities; and
- (c) Demonstrate compliance with this chapter.

519.2 A submitted SWMP and supporting documentation shall contain information sufficient for the Department to determine whether the SWMP complies with this chapter including:

- (a) Existing site conditions, including the identification and location of each existing Best Management Practice (BMP) and whether it will remain on the site and in use or will be removed;
- (b) Proposed site design;
- (c) Each land use proposed for the site;
- (d) Identification and location of each proposed BMP, including geographic coordinates;
- (e) Design and performance of each BMP for stormwater retention, detention, and treatment;
- (f) Conveyance capacity of stormwater infrastructure;
- (g) Environmental characteristics of the site;
- (h) Pre- and post-development hydrologic computations, including:
  - (1) Calculation of required stormwater management volume for:
    - (A) The entire site; and
    - (B) Each individual drainage area; and
  - (2) On-site and off-site retention volumes;
- (i) Maintenance plan and schedule for each proposed BMP;
- (j) Monitoring plan for each BMP that captures stormwater for use;
- (k) For each proposed BMP not included in the Department's Stormwater Management Guidebook (SWMG):
  - (1) Separate identification and description; and
  - (2) Documentation of performance and effectiveness;
- (l) Construction sequence for:
  - (1) Each BMP; and
  - (2) The related development or improvement project, if any.

- (m) A list of the construction and waste material to be stored on site and a description of the material and each pollution control measure that will be implemented to minimize exposure to stormwater discharge, including:
  - (1) Each storage practice;
  - (2) A spill prevention response;
  - (3) The United States Environmental Protection Agency (EPA) identification number, or copy of application to EPA for identification number, for each hazardous waste that will be stored on site; and
  - (4) Proof of payment of each applicable fee.

519.3 The retention capacity of each BMP in a SWMP shall be calculated using the applicable equations for calculating retention value in Chapter three (3) of the Department's Stormwater Management Guidebook.

519.4 The pollutant removal efficiency of each BMP in a SWMP shall be calculated using the applicable equation in Chapter three (3) of the Department's SWMG.

519.5 The Department may require for each area that a project proposes for use to meet the requirements of this chapter, including a contiguous area or an area with a shared BMP:

- (a) Information listed in this section; or
- (b) A SWMP.

519.6 A submitted SWMP shall use:

- (a) A standard drawing size of twenty-four inches by thirty-six inches (24 in. x 36 in);
- (b) One (1) of the following horizontal scales of profile, unless otherwise approved:
  - (1) One inch equals ten feet (1 in. = 10 ft.);
  - (2) One inch equals twenty feet (1 in. = 20 ft.);
  - (3) One inch equals thirty feet (1 in. = 30 ft.);
  - (4) One inch equals forty feet (1 in. = 40 ft.);

- (5) One inch equals fifty feet (1 in. = 50 ft.); or
- (6) One inch equals eighty feet (1 in. = 80 ft.);
- (c) One (1) of the following vertical scales of profile, unless otherwise approved:
  - (1) One inch equals two feet (1 in. = 2 ft.);
  - (2) One inch equals four feet (1 in. = 4 ft.);
  - (3) One inch equals five feet (1 in. = 5 ft.); or
  - (4) One inch equals ten feet (1 in = 10 ft.); and
- (d) Drafting media that yield first or second generation reproducible drawings with a minimum letter size of No. 4 (1/8 inch).

519.7 A SWMP shall not be approved without the signature and seal of the Director or the Director's designee on the plan.

519.8 For each as-built SWMP that an applicant submits to the Department, an applicant shall provide that a professional engineer licensed in the District of Columbia, certifies with seal and signature that:

- (a) The design, and installation for an as-built plan:
  - (1) Conforms to engineering principles applicable to stormwater management; and
  - (2) Complies with the requirements of this chapter; and
- (b) A set of instructions for operation and maintenance of each BMP has been provided to the applicant.

519.9 A SWMP for a project shall be consistent with all other permitting submittals to the District.

519.10 The approved SWMP for a major regulated project shall be available on site for Department review for the entire period of construction during ordinary business hours.

**520 STORMWATER MANAGEMENT: PERFORMANCE REQUIREMENTS FOR MAJOR LAND-DISTURBING ACTIVITY**

- 520.1 A site that undergoes a major land-disturbing activity shall employ each Best Management Practice (BMP) and land cover necessary to meet the requirements of this section until site redevelopment that follows a Department-approved Stormwater Management Plan (SWMP) occurs.
- 520.2 A site that undergoes a major land-disturbing activity, except the area of a site that is in the existing Public Right of Way (PROW), shall maintain the following:
- (a) Post-development peak discharge rate for a twenty-four (24) hour, two (2)-year frequency storm event at a level that is equal to or less than the storm event's pre-development peak discharge rate unless the site's discharge:
    - (1) Flows directly or through the separate sewer system to the main stem of the tidal Potomac or Anacostia Rivers, the Washington Channel, or the Chesapeake and Ohio Canal;
    - (2) Does not flow into or through a tributary to those waterbodies that runs above ground or that the Department expects to be daylighted to run above ground; and
    - (3) Will not cause erosion of land or transport of sediment.
  - (b) Post-development peak discharge rate for a twenty-four (24) hour, fifteen (15)-year frequency storm event at a level that is equal to or less than the storm event's pre-project peak discharge rate; and
  - (c) Post-development peak discharge rate from a twenty-four (24) hour, one hundred (100)-year storm event at a level that is equal to or less than the storm event's pre-project peak discharge rate if the site:
    - (1) Increases the size of Special Flood Hazard Area as delineated on the effective Flood Insurance Rate Map; or
    - (2) Meets the following two conditions:
      - (A) Does not discharge to the sewer system and
      - (B) Has a post-development peak discharge rate for a one hundred (100)-year storm event that will cause flooding to a building.
- 520.3 A site that undergoes a major land-disturbing activity shall achieve retention of the rainfall from a 1.2 inch rainfall event, which is the ninetieth (90th) percentile rainfall event for the District of Columbia, measured for a twenty-four (24)-hour rainfall event with a seventy-two (72)-hour antecedent dry period by:



- (a) Employing each BMP necessary to retain the 1.2 inch Stormwater Retention Volume (SWR<sub>v</sub>), calculated as follows:

$$SWR_v = P \times [(R_{vI} \times I) + (R_{vC} \times C) + (R_{vN} \times N)] \times 7.48 / 12$$

- SWR<sub>v</sub> = volume, in gallons, required to be retained
- P = 90th percentile rainfall event for the District (1.2 inches)
- R<sub>vI</sub> = 0.95 (runoff coefficient for impervious cover)
- R<sub>vC</sub> = 0.25 (runoff coefficient for compacted cover)
- R<sub>vN</sub> = 0.00 (runoff coefficient for natural cover)
- I = post-development site area in impervious cover
- C = post-development site area in compacted cover
- N = post-development site area in natural cover

where the surface area under a BMP shall be calculated as part of the impervious cover (I);

- (b) Employing each post-development land cover factored into the SWR<sub>v</sub>; and
- (c) Calculating separately and achieving the SWR<sub>v</sub>, with P equal to 1.2 inches, for the portion of land-disturbing activity that is in the existing PROW, in compliance with the section of this chapter pertaining to performance requirements in the existing PROW.

520.4

A site that undergoes a major land-disturbing activity may achieve the 1.2 inch SWR<sub>v</sub> on-site or through a combination of on-site retention and off-site retention, under the following conditions:

- (a) The site shall retain on-site a minimum of fifty percent (50%) of the 1.2 inch SWR<sub>v</sub>, calculated for the entire site, unless:
  - (1) The Department approves an application for relief from extraordinarily difficult site conditions; or
  - (2) The site drains into the combined sewer system (CSS) from a drainage area that is not:
    - (A) Targeted for green infrastructure implementation under a court-approved consent decree, as determined using the tools available in the Department’s submittal database; or
    - (B) Targeted for sewer separation under a court-approved consent decree, as documented in capital improvement budgets; and

- (b) The site shall use off-site retention for the portion of the SWRv that is not retained on-site.

520.5 A site that undergoes a major land-disturbing activity may achieve on-site retention by retaining more than the 1.2 inch SWRv for an area of the site, subject to the following conditions:

- (a) Unless a Site Drainage Area (SDA) drains into the CSS or the Department approves an application for relief from extraordinarily difficult site conditions, at least fifty percent (50%) of the 1.2 inch SWRv from the SDA shall be:
  - (1) Retained; or
  - (2) Treated to remove eighty percent (80%) of total suspended solids;
- (b) Unless an SDA drains into the CSS or the Department approves an application for relief from extraordinarily difficult site conditions, the entirety of an area intended for use or storage of motor vehicles shall drain to each necessary BMP so that at least fifty percent (50%) of the 1.2 inch SWRv flowing from that entire area is retained or treated;
- (c) Retention in excess of a 1.2 inch SWRv for one area of the site may be applied to the volume required for another area of the site;
- (d) Unless the Department approves an application for relief from extraordinarily difficult site conditions, the requirement for retention of a minimum of fifty percent (50%) of the 1.2 inch SWRv for the entire site shall be achieved; and
- (e) Retention of volume greater than that from a 1.7 inch rainfall event, calculated using the SWRv equation as stated in § 520.3(a) with a P equal to 1.7 inches, shall not be counted toward on-site retention.

520.6 A major land-disturbing activity may achieve on-site retention by directly conveying volume from the regulated site to a shared BMP with available retention capacity.

**521 STORMWATER MANAGEMENT: PERFORMANCE REQUIREMENTS FOR MAJOR LAND-DISTURBING ACTIVITY CONSISTING OF BRIDGE, ROADWAY, AND STREETScape PROJECTS IN THE EXISTING PUBLIC RIGHT OF WAY**

521.1 This section applies only to the portion of a major regulated project that consists entirely of bridge, roadway, streetscape, or railway work:

- (a) In the existing Public Right of Way (PROW); or
- (a) In the existing PROW and in the public space associated with the PROW.

521.2 A project in the existing PROW may comply with a requirement in this chapter to retain a Stormwater Retention Volume (SWRV) by:

- (a) Retaining fifty percent (50%) of the SWRV on site and using off-site retention for the remaining volume;
- (b) Achieving the SWRV; or
- (c) Retaining on site the SWRV to the Maximum Extent Practicable (MEP), after proving that each opportunity for installing retention capacity has been exhausted in compliance with the MEP process for existing PROW detailed in the Department's Stormwater Management Guidebook (SWMG).

521.3 A project in the existing PROW shall:

- (a) Prioritize, to the MEP, the management of stormwater from the roadway, including stormwater draining from roadway beyond the area of land-disturbing activity; and
- (b) Not be required to install a Best Management Practice (BMP) or landcover:
  - (1) That provides retention capacity greater than that required to achieve the SWRV that is calculated for the area of land-disturbing activity; or
  - (2) That is outside the area of land-disturbing activity.

521.4 An existing PROW project on an Anacostia Waterfront Development Zone (AWDZ) site may comply with a requirement in this chapter to achieve a Water Quality Treatment Volume (WQTV) by:

- (a) Achieving the WQTV; or
- (b) Achieving the WQTV to the MEP, after proving that each opportunity for installing retention and treatment capacity has been exhausted in compliance with the MEP process for existing PROW detailed in the SWMG.

521.5

A project in the existing PROW that elects to comply with the SWMG's MEP process for maximizing retention or treatment shall provide the following information demonstrating technical infeasibility or environmental harm:

- (a) Detailed explanation of each opportunity for on-site installation of a BMP that was considered and rejected, and the reasons for each rejection, including each opportunity that could be created by reducing roadway width in order to create an expanded area for retention of the SWRv or treatment of the WQTV between the curb line and private property; and
- (b) Evidence of site conditions limiting each opportunity for a BMP, including, as applicable:
  - (1) Data on soil and groundwater contamination;
  - (2) Data from percolation testing;
  - (3) Documentation of the presence of utilities requiring impermeable protection or a setback;
  - (4) Documentation of structural requirements that would not be satisfied by a BMP;
  - (5) Evidence of the applicability of a statute, regulation, court order, pre-existing covenant, or other restriction having the force of law; and
  - (6) Evidence of a District-approved use for the safe and effective transport of goods or people

521.6

A major regulated project in the existing PROW may achieve on-site retention by retaining more than the 1.2 inch SWRv for an area of the site or for an area that drains to the site, subject to the following conditions:

- (a) Unless an SDA drains into the CSS or the Department approves an application for relief from extraordinarily difficult site conditions, at least fifty percent (50%) of the 1.2 inch SWRv from the SDA shall be:
  - (1) Retained; or
  - (2) Treated to remove eighty percent (80%) of total suspended solids to the MEP;
- (b) Unless an SDA drains into the CSS or the Department approves an application for relief from extraordinarily difficult site conditions, the entirety of an area intended for use or storage of motor vehicles shall drain

to each necessary BMP so that at least fifty percent (50%) of the 1.2 inch SWRv flowing from that entire area is retained or treated to the MEP;

- (c) Retention in excess of a 1.2 inch SWRv for one area of the site or an area that drains to the site may be applied to the volume required for another area of the site;
- (d) The requirement for retention of a minimum of fifty percent (50%) of the 1.2 inch SWRv for the entire site shall be achieved, unless the project achieves retention of the SWRv to the MEP;
- (e) Any site that achieves less than fifty percent (50%) of the SWRv on-site shall use off-site retention generated outside the CSS, unless the project achieves retention of the SWRv to the MEP; and
- (f) Retention of volume greater than that from a 1.7 inch rainfall event, calculated using the SWRv equation with a P equal to 1.7 inches, shall not be counted toward on-site retention.

521.7 If a project in the existing PROW that is retaining the SWRv to the MEP is not able to achieve retention of fifty percent (50%) of the SWRv for the entirety of an area intended for use or storage of motor vehicles, the Department may waive a requirement to provide treatment for that volume if the Department:

- (a) Determines that a treatment BMP would displace or reduce the size of retention capacity to be installed; and
- (b) Concludes that the displaced or reduced retention capacity would be as protective or more protective for District waterbodies than the alternative treatment BMP.

521.8 An existing PROW project that is retaining the SWRv or the WQTV to the MEP shall not be required to use off-site retention for the difference between the required volume and the achieved volume.

## **522 STORMWATER MANAGEMENT: PERFORMANCE REQUIREMENTS FOR MAJOR SUBSTANTIAL IMPROVEMENT ACTIVITY**

522.1 If land disturbance associated with a major substantial improvement activity constitutes a major land disturbing activity, or is part of a common plan of development with a major land disturbing activity, then it shall comply with the performance requirements for a major land disturbing activity; otherwise it shall comply with the provisions of this section.

522.2 For the purposes of calculating the cost of a major substantial improvement to a building or structure, an applicant may exclude the cost of replacing manufacturing and industrial equipment, including pumps, valve chambers, and wastewater treatment facilities, but may not exclude the cost of replacing boilers, furnaces, and other equipment that is part of the heating and cooling system or other infrastructure commonly found in a building or structure.

522.3 A site that undergoes a major substantial improvement activity shall employ each Best Management Practice (BMP) and land cover necessary to meet the requirements of this section until the property is redeveloped in compliance with these regulations.

522.4 A site that undergoes a major substantial improvement activity shall achieve retention of the rainfall from a 0.8 inch rainfall event, which is the eightieth (80th) percentile rainfall event for the District of Columbia, measured for a twenty-four (24)-hour storm with a seventy-two (72)-hour antecedent dry period by:

- (a) Employing each BMP necessary to retain the 0.8 inch SWR<sub>v</sub>, calculated as follows:

$$SWR_v = P \times [(R_{vI} \times I) + (R_{vC} \times C) + (R_{vN} \times N)] \times 7.48 / 12$$

- SWR<sub>v</sub> = volume, in gallons, required to be retained
- P = 80<sup>th</sup> percentile rainfall event for the District (0.8 inches)
- R<sub>vI</sub> = 0.95 (runoff coefficient for impervious cover)
- R<sub>vC</sub> = 0.25 (runoff coefficient for compacted cover)
- R<sub>vN</sub> = 0.00 (runoff coefficient for natural cover)
- I = post-development site area in impervious cover
- C = post-development site area in compacted cover
- N = post-development site area in natural cover

where site area includes substantially improved building footprint plus land disturbance and where the surface area under a BMP shall be calculated as part of the impervious cover (I);

- (b) Employing each post-development land cover factored into the SWR<sub>v</sub>; and
- (c) Calculating separately and achieving the SWR<sub>v</sub>, with P equal to 1.2 inches, for the portion of land-disturbing activity that is in the existing PROW, in compliance with § 521.

522.5 A site that undergoes a major substantial improvement activity may achieve the 0.8 inch SWR<sub>v</sub> on-site or through a combination of on-site retention and off-site retention, under the following conditions:

- (a) The site shall retain on-site a minimum of fifty percent (50%) of the 0.8 inch SWRv, calculated for the entire site, unless:
  - (1) The Department approves an application for relief from extraordinarily difficult site conditions; or
  - (2) The site drains into the CSS from a drainage area that is not:
    - (A) Targeted for green infrastructure implementation under a court-approved consent decree, as determined using the tools available in the Department's submittal database; or
    - (B) Targeted for sewer separation under a court-approved consent decree, as documented in capital improvement budgets; and
- (b) The site shall use off-site retention for the portion of the SWRv that is not retained on-site.

522.6

A site that undergoes a major substantial improvement activity may achieve on-site retention by retaining more than the 0.8 inch SWRv for an area of the site, subject to the following conditions:

- (a) Unless an SDA drains into the CSS or the Department approves an application for relief from extraordinarily difficult site conditions, at least fifty percent (50%) of the 0.8 inch SWRv from the SDA shall be:
  - (1) Retained; or
  - (2) Treated to remove eighty percent (80%) of total suspended solids;
- (b) Unless an SDA drains into the CSS or the Department approves an application for relief from extraordinarily difficult site conditions, the entirety of an area intended for use or storage of motor vehicles shall drain to each necessary BMP so that at least fifty percent (50%) of the 0.8 inch SWRv flowing from that entire area is retained or treated;
- (c) Retention in excess of a 0.8 inch SWRv for one area of the site may be applied to the volume required for another area of the site;
- (d) Unless the Department approves an application for relief from extraordinarily difficult site conditions, the requirement for retention of a minimum of fifty percent (50%) of the 0.8 inch SWRv for the entire site shall be achieved; and

- (e) Retention of volume greater than that from a 1.7 inch rainfall event, calculated using the SWR<sub>v</sub> equation with a P equal to 1.7 inches, shall not be counted toward on-site retention.

522.7 A major substantial improvement activity may achieve on-site retention by directly conveying volume from the regulated site to a shared BMP with available retention capacity.

### **523 STORMWATER MANAGEMENT: RESTRICTIONS**

523.1 The Department may restrict use of an infiltration Best Management Practice (BMP) to prevent contamination of soil or groundwater and require submittal of and compliance with a Stormwater Pollution Prevention Plan if:

- (a) An applicant proposes to engage in a land use activity that has the potential to pollute stormwater runoff, as specified in the Department's Stormwater Management Guidebook (SWMG); or
- (b) Surface contamination is present at the site.

523.2 To prevent stormwater migration in underlying soil or groundwater in an area determined to have sub-surface contamination of soil or groundwater, the Department may:

- (a) Prohibit use of an infiltration BMP; or
- (b) Limit use of an infiltration BMP, including by requiring that an impermeable liner be used.

523.3 The Department may require a BMP that receives runoff from a stormwater hotspot designated in the Department's SWMG to include pollution control measures, including, as applicable, a baffle, skimmer, oil separator, grease trap, or other mechanism which prevents release of oil and grease in concentrations exceeding ten milligrams per Liter (10 mg/L).

523.4 The Department may require a BMP that receives runoff from an animal confinement area to:

- (a) Connect to a combined sewer, if DC Water approves the connection as not exceeding available capacity; or
- (b) Include pollution control measures necessary to protect water quality standards of the receiving waterbody, if the runoff discharges directly to a waterbody or through the separate sewer system.

523.5 No person shall use a coal tar product, or other toxic material, to seal a BMP.



**524 STORMWATER MANAGEMENT: PERFORMANCE REQUIREMENTS FOR MAJOR REGULATED PROJECTS IN THE ANACOSTIA WATERFRONT DEVELOPMENT ZONE**

524.1 An Anacostia Waterfront Development Zone site (AWDZ site) is a site within the Anacostia Waterfront Development Zone (AWDZ) that undergoes a major regulated project that is publicly owned or publicly financed.

524.2 An AWDZ site shall employ each Best Management Practice (BMP) and land cover necessary to meet the requirements of this section until site redevelopment that follows a Department-approved Stormwater Management Plan occurs.

524.3 Except for activities exempted under this chapter, if a provision of this section conflicts with any other provision of this chapter, an AWDZ site shall be subject to the more stringent provision.

524.4 An AWDZ site that undergoes a major land-disturbing activity shall achieve treatment of the rainfall from a 1.7 inch rainfall event, which is the ninety-fifth (95th) percentile rainfall event for the District of Columbia, measured for a twenty-four (24)-hour rainfall event with a seventy-two (72)-hour antecedent dry period by:

(a) Employing each BMP necessary to treat the 1.7 inch WQTV equal to the difference between:

- (1) The post-development runoff from the 1.7 inch rainfall event; and
- (2) The 1.2 inch SWRV;

(b) Calculating the WQTV in subsection (a) as follows:

$$WQTV = (P \times [(RV_I \times I) + (RV_C \times C) + (RV_N \times N)] \times 7.48 / 12) - SWRV$$

WQTV = volume, in gallons, required to be retained or treated, above and beyond the SWRV

SWRV = volume, in gallons, required to be retained

P = 95<sup>th</sup> percentile rainfall event for the District (1.7 inches)

RV<sub>I</sub> = 0.95 (runoff coefficient for impervious cover)

RV<sub>C</sub> = 0.25 (runoff coefficient for compacted cover)

RV<sub>N</sub> = 0.00 (runoff coefficient for natural cover)

I = post-development site area in impervious cover

C = post-development site area in compacted cover

N = post-development site area in natural cover

where site area includes substantially improved building footprint plus land disturbance and where the surface area under a BMP shall be calculated as part of the impervious cover (I); and

- (c) Employing each post-development land cover factored into the WQTV.

524.5

An AWDZ site that undergoes a major substantial improvement activity and does not undergo a major land-disturbing activity shall:

- (a) Comply with the performance requirements for major substantial improvement activity, except that the SWRV shall be equal to the post-development runoff from a 1.0 inch rainfall event, which is the eighty-fifth (85th) percentile rainfall event for the District of Columbia, measured for a twenty-four (24)-hour rainfall event with a seventy-two (72)-hour antecedent dry period;
- (b) Achieve treatment of the rainfall from a 1.7 inch rainfall event, which is the ninety-fifth (95th) percentile rainfall event for the District of Columbia, measured for a twenty-four (24)-hour rainfall event with a seventy-two (72)-hour antecedent dry period by:

- (1) Employing each BMP necessary to treat the 1.7 inch WQTV equal to the difference between:

- (A) The post-development runoff from the 1.7 inch rainfall event; and

- (B) The 1.0 inch SWRV;

- (2) Calculating the WQTV in subsection (b) as follows:

$$\text{WQTV} = (P \times [(R_{VI} \times I) + (R_{VC} \times C) + (R_{VN} \times N)] \times 7.48 / 12) - \text{SWRV}$$

WQTV = volume, in gallons, required to be retained or treated, above and beyond the SWRV

SWRV = volume, in gallons, required to be retained

P = 95<sup>th</sup> percentile rainfall event for the District (1.7 inches)

R<sub>VI</sub> = 0.95 (runoff coefficient for impervious cover)

R<sub>VC</sub> = 0.25 (runoff coefficient for compacted cover)

R<sub>VN</sub> = 0.00 (runoff coefficient for natural cover)

I = post-development site area in impervious cover

C = post-development site area in compacted cover

N = post-development site area in natural cover

where site area includes substantially improved building footprint plus land disturbance and where the surface area under a BMP shall be calculated as part of the impervious cover (I); and

- (3) Employing each post-development land cover factored into the WQTV.

524.6 A major regulated project in the AWDZ may achieve on-site treatment for WQTV with:

- (a) On-site treatment designed to remove eighty percent (80%) of Total Suspended Solids;
- (b) On-site retention; or
- (c) Direct conveyance of stormwater from the site to an approved shared BMP with sufficient available treatment or retention capacity.

524.7 An AWDZ site may achieve part of the WQTV or SWRV by using off-site retention if:

- (a) Site conditions make compliance technically infeasible, environmentally harmful, or of limited appropriateness in terms of impact on surrounding landowners or overall benefit to District waterbodies;
- (b) The Department approves an application for relief from extraordinarily difficult site conditions; and
- (c) The off-site retention is from outside the CSS.

524.8 An AWDZ site that achieves a gallon of Off-Site Retention Volume (Offv) by using Stormwater Retention Credits (SRCs) certified for retention capacity located outside of the Anacostia watershed shall use 1.25 SRCs for that gallon of Offv.

524.9 An AWDZ site shall obtain Department approval of an integrated pesticide management plan meeting the requirements of the Department's Stormwater Management Guidebook.

524.10 A major regulated project in the AWDZ shall achieve the required level of stormwater management using one or more of the following methods, in the following order of preference:

- (a) Vegetated BMPs and land covers designed to retain and beneficially use stormwater;

- (b) Where compatible with groundwater protection, non-vegetated infiltration BMPs;
- (c) Other low impact development practices;
- (d) Collection and use of stormwater for on-site irrigation and other purposes; and
- (e) Other on-site BMPs or design methods approved by the Department.

**525 STORMWATER MANAGEMENT: SHARED BEST MANAGEMENT PRACTICE**

525.1 A Shared Best Management Practice (S-BMP) may, upon approval by the Department:

- (a) Provide stormwater management for a major regulated project in satisfaction of an on-site stormwater management requirement of that project; and
- (b) Be eligible for Department certification of a Stormwater Retention Credit (SRC).

525.2 A Department-approved S-BMP may provide stormwater management for a nearby property if:

- (a) Stormwater flow from the nearby property is directly conveyed to the S-BMP; and
- (b) The S-BMP has sufficient capacity.

525.3 To obtain Department approval of the use of an existing S-BMP, a major regulated project shall show how each requirement of the project will be met by the S-BMP, including:

- (a) Submit an as-built Stormwater Management Plan (SWMP) for the S-BMP that is accurate as of the time of submittal;
- (b) Prove sufficient capacity of the S-BMP;
- (c) Demonstrate the adequacy of each stormwater conveyance from the major regulated project to the S-BMP; and
- (d) Show each drainage area conveying stormwater into the S-BMP from the major regulated project.

- 525.4 To obtain Department approval of the use of a proposed S-BMP, a major regulated project shall show how each requirement of the project will be met by the S-BMP, including:
- (a) Submit a Department-approved SWMP for the S-BMP;
  - (b) Prove sufficient capacity of the S-BMP;
  - (c) Demonstrate the adequacy of each stormwater conveyance from the major regulated project to the S-BMP; and
  - (d) Show each drainage area conveying stormwater into the S-BMP from the major regulated project.
- 525.5 A major regulated project that uses a S-BMP to meet a requirement shall not pass the Department's final inspection until the S-BMP passes the Department's final inspection and is operational.
- 525.6 After an alteration to a S-BMP to provide stormwater management for another site, the site with the S-BMP shall:
- (a) Pass the Department's inspection; and
  - (b) Submit an as-built SWMP, showing each area draining into the S-BMP and the means of conveyance.
- 525.7 The Department may certify a SRC for a S-BMP if the S-BMP meets each requirement for certification.
- 525.8 A site with a S-BMP that provides a volume of stormwater management to satisfy an on-site requirement of a major regulated project shall be responsible for maintenance of the S-BMP capacity to manage that volume and shall record that responsibility in a declaration of covenants.
- 525.9 If the Department determines that a S-BMP has ceased satisfying an on-site retention requirement for a site that underwent a major regulated project, the site shall be responsible for retaining the required volume on site or via use of off-site retention.

## **526 STORMWATER MANAGEMENT: RELIEF FROM EXTRAORDINARILY DIFFICULT SITE CONDITIONS**

- 526.1 The applicant may apply for relief from extraordinarily difficult site conditions if it is technically infeasible or environmentally harmful:

- (a) For a site to comply with the minimum on-site retention requirement (fifty percent (50%) of Stormwater Retention Volume (SWRv));
- (b) For an Anacostia Waterfront Development Zone (AWDZ) site to comply with any portion of its WQTV or SWRv on-site, except that AWDZ sites may also apply based on the limited appropriateness of on-site stormwater management; or
- (c) For a site to comply with the minimum on-site retention or treatment requirements for SDAs (fifty percent (50%) retention or treatment of the SWRv from each SDA and fifty percent (50%) retention or treatment of the SWRv from the entire vehicular access area).

526.2 The Department shall not provide relief unless the applicant proves that on-site compliance is technically infeasible or environmentally harmful, except that, for an AWDZ site, the Department may also consider the appropriateness of on-site compliance in terms of impact on surrounding landowners or overall benefit to District waterbodies.

526.3 In order to support its case for relief, the applicant shall provide the following information demonstrating technical infeasibility or environmental harm:

- (a) Detailed explanation of each opportunity for on-site installation of a Best Management Practice (BMP) that was considered and rejected, and the reasons for each rejection;
- (b) Evidence of site conditions limiting each opportunity for a BMP, including, as applicable:
  - (1) Data on soil and groundwater contamination;
  - (2) Data from percolation testing;
  - (3) Documentation of the presence of utilities requiring impermeable protection or a setback;
  - (4) Evidence of the applicability of a statute, regulation, court order, pre-existing covenant, or other restriction having the force of law;
  - (5) Evidence that the installation of a retention BMP would conflict with the terms of a non-expired approval, applied for prior to the end of Transition Period Two A for a major land-disturbing activity or before the end of Transition Period Two B for a major substantial improvement activity, of a:

- (A) Concept review by the Historic Preservation Review Board;
- (B) Concept review by the Commission on Fine Arts;
- (C) Preliminary or final design submission by the National Capital Planning Commission;
- (D) Variance or special exception from the Board of Zoning Adjustment; or
- (E) Large Tract Review by the District Office of Planning;
- (6) For a utility, evidence that a property owner on or under whose land the utility is conducting work objects to the installation of a BMP;
- (7) For a major substantial improvement activity, evidence that the structure cannot accommodate a BMP without significant alteration, because of a lack of available interior or exterior space or limited load-bearing capacity; and
- (8) For single- and two-family affordable housing, evidence of:
  - (A) The usability of space to achieve the proposed project purpose;
  - (B) Lack of the minimum CDA required for a BMP to be effective;
  - (C) The difficulty of conducting BMP maintenance;
- (b) For single- and two-family affordable housing:
  - (1) Evidence of the sensitivity of receiving waterbody to stormwater runoff; and
  - (2) Evidence of the likelihood of runoff from the site to cause to erosion of land, transport of sediment, nuisance flooding.

526.4 An applicant for relief shall submit to the Department's submittal database:

- (a) A complete application; and
- (b) Proof of payment of the applicable fee.

526.5 The Department shall not consider an incomplete application for relief; except that if an application is substantially complete, the Department may begin consideration.

526.6 In determining whether to grant relief, the Department may consider:

- (a) The applicant's submittal;
- (b) Other site-related information;
- (c) An alternative design;
- (d) The Department's Stormwater Management Guidebook;
- (e) Another BMP that complies with the requirements of this chapter; and
- (f) Relevant scientific and technical literature, reports, guidance, and standards.

526.7 After considering whether an application meets the requirements of this section, the Department may:

- (a) Require additional information;
- (b) Grant relief;
- (c) Grant relief, with conditions;
- (d) Deny relief; or
- (e) Deny relief in part.

526.8 No relief shall be granted unless, for the volume of relief granted, the Stormwater Management Plan (SWMP) for the project provides for:

- (a) Use of off-site retention, with the Off-Site Retention Volume documented on the approved SWMP; and
- (b) If the relief is from a minimum on-site retention requirement, treatment to remove eighty percent (80%) of total suspended solids.

**527 STORMWATER MANAGEMENT: USE OF OFF-SITE RETENTION THROUGH THE IN-LIEU FEE OR STORMWATER RETENTION CREDITS**



- 527.1 A site that undergoes a major regulated project shall use off-site retention to achieve each gallon of its Off-Site Retention Volume (Offv).
- 527.2 No person shall allow a portion of their Offv obligation to be unfulfilled for any period of time.
- 527.3 A person shall achieve each gallon of Offv for each year by:
- (a) Using one (1) Department-certified Stormwater Retention Credit (SRC) subject to the conditions in § 527.9; or
  - (b) Paying the in-lieu fee to the Department.
- 527.4 An obligation to use off-site retention for a gallon of Offv shall end if:
- (a) On-site retention of the gallon is achieved in compliance with a Department-approved Stormwater Management Plan (SWMP); or
  - (b) Site redevelopment that follows a Department-approved SWMP occurs.
- 527.5 No person shall use a SRC to achieve an Offv without obtaining the Department's approval.
- 527.6 Only the owner of a SRC may apply to the Department for approval to use a SRC to achieve an Offv.
- 527.7 The Department shall track the use of off-site retention to achieve an Offv.
- 527.8 An application to use a SRC to achieve an Offv shall be on a form that the Department provides and shall include:
- (a) The unique serial number of the SRC; and
  - (b) Information about the site applying to use the SRC, including property location and stormwater management on the property.
- 527.9 Except for as specified for an Anacostia Waterfront Development Zone site, a person using a Department-certified SRC to achieve a gallon of Offv shall use an SRC generated in the following location:
- (a) For a site that drains to the CSS:
    - (1) If the site achieves at least fifty percent (50%) of the SWRv on-site, the SRC can be generated without regard to the location; or

- (2) If the site achieves less than fifty percent (50%) of the SWRV on-site:
  - (A) If the site is located in a part of the CSS that is not targeted for green infrastructure implementation under a court-approved consent decree, the SRC must be generated outside the CSS;
  - (B) If the site is located in a part of the CSS that is targeted for green infrastructure implementation under a court-approved consent decree, the SRC must be generated in a part of the CSS that is targeted for green infrastructure implementation under a court-approved consent decree or outside the CSS; or
  - (C) If the Department determines that the SRC is generated according to a SWMP that is part of the same common plan of development as the site with Offv, then the SRC may be used to satisfy the Offv for that site without regard to the location; or
- (b) For a site that does not drain to the CSS, the SRC must be generated outside the CSS, except:
  - (A) If a site has a SWMP with an Offv approved by the Department prior to April 30, 2020, then an SRC generated by the site owner may be used from a site in the CSS that received SWMP approval from the Department prior to April 30, 2020; or
  - (B) If SRCs are purchased prior to April 30, 2020, or are purchased in accordance with a contract signed prior to April 30, 2020, then the SRCs may be used without regard to the location where they were generated.

527.10 The Department shall not approve an application to use a SRC to achieve an Offv if:

- (a) The SRC has already been used to achieve one (1) year of Offv; or
- (b) The Department has retired the SRC.

527.11 The one (1)-year lifespan of a SRC and of the in-lieu fee begins on the date that it is used to achieve an Offv.

- 527.12 A site's obligation to use off-site retention to achieve its Offv shall begin on the date of successful completion of the Department's final construction inspection.
- 527.13 For each gallon of required Offv, the property owner shall provide the Department at least four (4) weeks before the proposed usage date:
- (a) For use of a SRC, a completed application to use the SRC; and
  - (b) For use of an in-lieu fee:
    - (1) Notification of intent to use an in-lieu fee; and
    - (2) Proof of payment of the fee.
- 527.14 If a lapse in satisfaction of the obligation to achieve an Offv occurs, the Department shall declare the property owner out of compliance and:
- (a) Assess the property owner the in-lieu fee annually for each gallon of Offv;
  - (b) Pro-rate the assessment to the period of lapsed compliance if the property owner comes into compliance; and
  - (c) Assess an administrative late fee.
- 527.15 Upon receipt of a notice related to noncompliance with an obligation to achieve an Offv, the property owner shall immediately:
- (a) Comply; and
  - (b) Pay fees and charges assessed.
- 527.16 For a property owner who does not come into compliance within thirty (30) days after the date of the Department's notice of a lapse in satisfaction of an Offv obligation and who owns an SRC that has not been used to achieve the Offv for another property, the Department may apply that SRC to the Offv obligation that is out of compliance.
- 527.17 If the Department finds that an obligation has terminated or that its administration of payments would be improved, it may:
- (a) Pro-rate the amount of SRCs used and adjust accordingly in the Department's tracking system; and
  - (b) Pro-rate the in-lieu fee and refund.

**528 STORMWATER MANAGEMENT: MAINTENANCE**

- 528.1 Each owner or designee of each lot and parcel that is part of a site that undertook a major regulated project shall be responsible for maintenance required by the Stormwater Management Plan (SWMP) approved by the Department and shall record that responsibility in a declaration of covenants.
- 528.2 The Department may assign maintenance responsibility for a Shared Best Management Practice (S-BMP) in an approved SWMP after considering:
- (a) How maintenance will be achieved;
  - (b) Each lot and parcel's responsibility relative to its reliance on each S-BMP and land cover to comply with this chapter;
  - (c) Administrative feasibility; and
  - (d) Accountability and enforceability.
- 528.3 The owner, governmental agency, or other person with maintenance responsibility shall ensure that a Best Management Practice (BMP) and a land cover on a lot or parcel is maintained in good working order if:
- (a) The BMP or land cover was installed to meet the requirements of this chapter for a major regulated project; or
  - (b) The Department certified a Stormwater Retention Credit for a gallon of retention capacity created by the BMP or land cover.
- 528.4 Natural land cover employed to comply with a retention requirement in this chapter shall not be converted to compacted or impervious land cover, unless the loss of retention capacity associated with the land conversion will be:
- (a) Offset by a corresponding increase in retention capacity elsewhere on the site that complies with the requirements of this chapter; or
  - (b) Offset by a corresponding increase in use of off-site retention that complies with the requirements of this chapter; and
  - (c) The Department approves a change to the previously approved SWMP for the site, showing how the loss of retention capacity will be offset.
- 528.5 Compacted land cover employed to comply with a retention requirement in this chapter shall not be converted to impervious land cover, unless the loss of retention capacity associated with the land conversion will be:

- (a) Offset by a corresponding increase in retention capacity elsewhere on the site that complies with the requirements of this chapter; or
- (b) Offset by a corresponding increase in use of off-site retention that complies with the requirements of this chapter; and
- (c) The Department approves a change to the previously approved SWMP for the site, showing how the loss of retention capacity will be offset.

528.6 Maintenance of each BMP and land cover shall comply with the applicable Department-approved SWMP, including promptly repairing and restoring each:

- (a) Grade surface;
- (b) Wall;
- (c) Drain;
- (d) Structure;
- (e) Foundation;
- (f) Sign;
- (g) Plant; and
- (h) Erosion or sediment control measure.

528.7 If the Department finds that a BMP or land cover is not being properly maintained:

- (a) The Department may require that the condition be corrected; and
- (b) The governmental agency, owner, or other person charged with maintenance responsibility shall correct the condition.

528.8 If an owner or other person charged with maintenance responsibility fails or refuses to correct a condition as the Department directs, the Department may:

- (a) Declare the owner or person out of compliance;
- (b) Take corrective action itself or through its contractor;
- (c) Assess the cost incurred and fees; and
- (d) Assess a fine or penalty.

- 528.9 If the Department determines that the condition of a BMP or land cover presents an actual or imminent harm to the environment or the public health, the Department may:
- (a) Declare the owner or other person charged with maintenance responsibility to be out of compliance;
  - (b) Take protective and corrective action itself or through its contractor without prior notice to the owner;
  - (c) Assess the cost incurred and fees; and
  - (d) Assess a fine or penalty.
- 528.10 Used soil media removed from a BMP receiving drainage from an area intended for use or storage of motor vehicles shall not be re-used for planting or as fill material and shall be disposed of in a landfill or at a transfer station for transport to a landfill.
- 528.11 Non-vegetative waste material from cleaning, maintaining, repairing, and replacing a BMP shall be disposed of in a landfill, trash transfer station, or other facility for processing these materials in accordance with District and Federal law.
- 528.12 The Department may approve the elimination of an Offv obligation for a previously approved project that would not have an Offv obligation under §§ 517.7 or 518.14 provided that each on-site BMP is maintained in accordance with the approved SWMP for the project.
- 528.13 A person seeking Departmental approval to eliminate an Offv obligation in accordance with § 528.12 shall submit a request through the Department's submittal database and attach a letter explaining why the project qualifies for § 528.12. In determining whether to approve the request, the Department may consider the criteria in §§ 517.7 or 518.14 .
- 528.14 If the Department approves the elimination of an Offv obligation, the Department may pro-rate the amount of SRCs used or in-lieu fee payment through the date of approval and return any unused SRCs or refund any excess in-lieu fee payment in accordance with § 527.17 and the applicant shall revise the declaration of covenants, if necessary, in accordance with § 529.4.

## **529 STORMWATER MANAGEMENT: COVENANTS AND EASEMENTS**

- 529.1 The owner of each lot and parcel that is part of a site that undertook a major regulated project shall record with the Recorder of Deeds:

- (a) A declaration of covenants that includes the on-site and off-site responsibilities in the Department-approved Stormwater Management Plan (SWMP); and
- (b) An easement that the Department requires to ensure access for inspection and maintenance of a Best Management Practice (BMP) or land cover employed to comply with this chapter.

529.2 An agency of the federal government or District government shall not be required to make or record a declaration of covenants, except that, if a District-owned property is sold to a private owner or leased for more than three (3) years, the property's SWMP must be incorporated in a declaration of covenants and recorded as a burden on the property or the leasehold.

529.3 The declaration of covenants and easement shall:

- (a) Be determined legally sufficient by the Attorney General or the Department's designee;
- (b) Be binding on each subsequent owner;
- (c) Include an agreement to indemnify the District of Columbia, its officers, agents, and employees from and against all claims or liability that may arise out of or in connection with, either directly or indirectly, any of the owner's actions or omissions with regard to the construction, operation, maintenance or restoration of the BMP or land cover; and
- (d) Provide for inspection of and access to the BMP or land cover at reasonable times by the Department or its authorized representative.

529.4 If the Department determines that a change to an approved SWMP for a site affects the terms of a declaration of covenants or an easement required by this chapter, the owner of each affected lot or parcel of that site shall revise as the Department approves and record the declaration of covenants or easement accordingly.

**530 STORMWATER MANAGEMENT: IN-LIEU FEE**

530.1 The base in-lieu fee established by the Department for a purpose of this chapter shall represent the full life-cycle cost for the Department to retain one gallon (1 gal.) of stormwater for one (1) year, including the following costs:

- (a) Project planning;
- (b) Project design;

- (c) Project management;
- (d) Construction and installation;
- (e) Operations and maintenance;
- (f) Project financing;
- (g) Land acquisition;
- (h) Administration of the in-lieu fee program; and
- (i) Legal support for the in-lieu fee program.

530.2 The Department shall annually adjust the base in-lieu fee to account for inflation, using the Urban Consumer Price Index published by the United States Bureau of Labor Statistics.

530.3 The Department may re-evaluate the costs underlying the in-lieu fee and re-base the in-lieu fee as the Department determines necessary.

530.4 The Department shall provide notice in the *D.C. Register* prior to re-basing the in-lieu fee.

530.5 An in-lieu fee payment shall be based on the in-lieu fee in effect at the time payment is made.

530.6 An in-lieu fee payment shall:

- (a) Be used solely to achieve increased retention in the District of Columbia;
- (b) Be used to achieve increased retention in the Anacostia watershed, if the payment achieves Off-Site Retention Volume for an Anacostia Waterfront Development Zone site.
- (c) Be deposited in the Stormwater In-Lieu Fee Payment Special Purpose Revenue Fund, established by The Water Pollution Control Act of 1984, effective March 16, 1985, as amended (D.C. Law 5-188; D.C. Official Code § 8-103.01 *et seq.*).

**531 STORMWATER MANAGEMENT: CERTIFICATION OF STORMWATER RETENTION CREDITS**

531.1 Only the Department shall certify a Stormwater Retention Credit (SRC); and no SRC shall be valid and usable for the purposes of this chapter unless the Department certifies it.



531.2 The Department shall:

- (a) Assign a unique serial number to each SRC; and
- (b) Retain and track information about each SRC, including final sale price.

531.3 A gallon of retention capacity in a Best Management Practice (BMP) or land cover is eligible for SRC certification if it meets the following eligibility requirements:

- (a) The gallon retained by the BMP or land cover shall:
  - (1) Be in excess of the Stormwater Retention Volume (SWRV) for a major regulated project or, for a site that is not regulated, in excess of pre-project retention;
  - (2) Be no more than the SRC ceiling; and
  - (3) Not be installed to comply with a stormwater management requirement of a statute, regulation, or court order, including for:
    - (A) Reduction of Combined Sewer Overflows (CSOs) in compliance with the court-approved consent decree, including court-approved modifications, for reducing CSOs in the District of Columbia, except that retention capacity installed on an experimental basis as a requirement of the consent decree shall be eligible if a subsequent modification of the consent decree ends the requirement to maintain that retention capacity; or
    - (B) Compliance with a Watershed Implementation Plan established under a Total Maximum Daily Load for the Chesapeake Bay.
- (b) Design, installation, and operation shall comply with a Department-approved Stormwater Management Plan (SWMP);
- (c) The Department's final construction inspection shall be successfully completed;
- (d) A Department inspection shall be successfully completed within six (6) months before the Department decides to certify an SRC; and
- (e) An executed maintenance contract or a signed promise to follow a maintenance plan for the period of time for which the certification of

SRCs is requested, in compliance with the Department-approved SWMP for the BMP or land cover, shall be in place.

- 531.4 The SRC-eligible retention capacity described in Subsection 531.3(a) shall be calculated using the formulas in Chapter seven (7) of the Department's Stormwater Management Guidebook.
- 531.5 The Department shall begin accepting applications for SRC certification after this section is published as final in the *D.C. Register*.
- 531.6 A person submitting an application for SRC certification shall be the owner of the land with the SRC-eligible BMP or land cover or shall have been assigned the right to a SRC that is certified.
- 531.7 The Department may reject as premature an application for SRC certification if it is submitted more than three (3) months before the end of the preceding period of time for which the Department had certified a SRC for the retention capacity.
- 531.8 The Department shall not consider an incomplete application for SRC certification.
- 531.9 A complete application for SRC certification shall include:
- (a) A completed Department application form;
  - (b) Documentation of the right to the SRC that would be certified;
  - (c) A copy of the Department-approved SWMP for the BMP or land cover with SRC-eligible retention capacity and the area draining into it;
  - (d) A copy of the as-built SWMP or the BMP or land cover with SRC-eligible retention capacity and the area draining into it, certified by a professional engineer licensed in the District of Columbia and meeting the requirements of this chapter;
  - (e) An executed maintenance contract or a signed promise to follow a maintenance plan for the period of time for which the certification of the SRC is requested;
  - (f) Other documentation that the Department requires to determine that the eligibility requirements are satisfied, including documentation that a maintenance provider has the expertise and capacity to provide required maintenance for the time period of SRC certification; and
  - (g) A signed promise from the owner of the property on which the BMP or land cover is located to notify the Department if, during the period of time

for which a SRC is certified, the property is sold or otherwise transferred to another person.

- 531.10 If the Department determines that a complete application meets the eligibility requirements, it shall certify up to three (3) years' worth of SRCs for each gallon of SRC-eligible retention capacity.
- 531.11 The Department shall not certify an SRC:
- (a) For a period of time that overlaps with the period of time for which the Department has already certified an SRC for the same retention capacity;
  - (b) For a period that begins earlier than the date of the submittal of a complete application; or
  - (c) For ineligible retention capacity.
- 531.12 The Department may waive submittal of documentation required for a complete application if the Department has the documentation on file that reflects current conditions, except that the Department shall not waive submittal of a current maintenance agreement or maintenance contract for the BMP or land cover.
- 531.13 The Department may conduct an inspection of a BMP or land cover for the purposes of this section before certification of an SRC and after certification.
- 531.14 The Department may refuse to certify an SRC for a person:
- (a) Who is currently out of compliance with an Offv obligation for a property; or
  - (b) Who is an original SRC owner for another SRC but is currently not maintaining the associated BMP or land cover as promised to receive certification for that other SRC pursuant to § 531.9.
- 531.15 At the Director's discretion and to allow for the aggregation of SRCs, the Department may approve a SWMP that proposes aggregation of retention from small sites under a common design and that:
- (a) Would not otherwise trigger a stormwater management performance requirement in this chapter;
  - (b) Proposes the use of a common design for multiple installations of a BMP;
  - (c) Specifies well-defined technical criteria for location and placement of each BMP;

- (d) Specifies details for how multiple installations will be constructed, operated, and maintained;
- (e) Contains requirements for inspection by the Department or a Department-approved third party;
- (f) Demonstrates the technical capacity to locate, design, install, and maintain each BMP; and
- (g) Demonstrates that the requirements of this chapter will be met.

531.16 A person may apply for certification of an SRC for a gallon of retention capacity in a BMP or land cover only if:

- (a) The first complete application for certification of an SRC for retention capacity in the BMP or land cover is filed within three (3) years of the Department's final inspection or completion of the BMP installation as determined by the Department if no final inspection was required, or before July 31, 2020, whichever is later; and
- (b) Any subsequent complete application for certification of an SRC for retention capacity in the BMP or land cover is submitted not later than six (6) months after the end of the preceding period of time for which the Department had certified an SRC for the retention capacity.

**532 STORMWATER MANAGEMENT: LIFESPAN OF STORMWATER RETENTION CREDITS**

532.1 A Stormwater Retention Credit (SRC) may be banked indefinitely, until:

- (a) It is used to achieve a gallon of Off-Site Retention Volume (Offv) for one (1) year; or
- (b) The Department retires it.

532.2 The Department shall retire an SRC if:

- (a) An SRC owner submits a complete Department-provided application for retirement and the Department approves it; or
- (b) A final determination to retire a SRC is made pursuant to this section.

532.3 Only the owner of an SRC may submit to the Department an application for retirement of that SRC.

- 532.4 An original SRC owner with an obligation to maintain a Best Management Practice (BMP) or land cover for a year for which the Department has certified an SRC may quit that obligation by submitting and receiving the Department's approval of a:
- (a) Request that the Department retire the SRC corresponding to the year for which maintenance is required, if that SRC has not been used or sold;
  - (b) Request that the Department retire another SRC; or
  - (c) Payment of the in-lieu fee to the Department.
- 532.5 If the Department determines that there is a retention failure associated with a certified SRC, the Department may:
- (a) If the SRC has not been sold or used:
    - (1) Deny use of the SRC to achieve an Offv;
    - (2) Deny an application for transfer of ownership of the SRC;
    - (3) Retire the SRC; and
    - (4) Give notice to the owner of the SRC of the right to contest the denial or retirement through the administrative appeals process pursuant to Section 506 of this chapter, and give public notice of the denial or retirement on the Department's website for fifteen (15) days;
  - (b) If the SRC has been sold or used:
    - (1) Order the original SRC owner to replace the SRC with another SRC; or
    - (2) Assess on the original SRC owner the in-lieu fee corresponding to the SRC; and
    - (3) Give notice to the original SRC owner of the right to contest the determination through the administrative appeals process pursuant to Section 506 of this chapter.
- 532.6 If a person fails to comply with the Department's order to replace an SRC or pay the in-lieu fee within sixty (60) days, the Department may assess an administrative late fee of ten percent (10%) of the corresponding in-lieu fee payment.

532.7 If a retention failure associated with a SRC occurs, the Department may calculate compensatory SRCs and the in-lieu fee to reflect the time period for which the retention failure occurred.

532.8 If a retention failure associated with an SRC occurs or a SRC owner requests that the Department retire an SRC, the Department may pro-rate a SRC or an in-lieu fee payment accordingly.

**533 STORMWATER MANAGEMENT: OWNERSHIP OF STORMWATER RETENTION CREDITS**

533.1 A Stormwater Retention Credit (SRC) may be bought and sold.

533.2 No person may sell a SRC that:

- (a) Has already been used to achieve an Off-Site Retention Volume (Offv); or
- (b) The person does not own.

533.3 No person may complete a transfer of SRC ownership without receiving the Department's approval.

533.4 A complete application for transfer of SRC ownership shall be in writing on a Department-provided form that includes:

- (a) The unique serial number of each SRC;
- (b) Identification of the seller and the buyer, including contact information; and
- (c) The purchase price.

533.5 Only the existing owner of an SRC (the seller) and the proposed SRC owner (the buyer) shall apply to transfer SRC ownership.

533.6 Before approving a transfer of SRC ownership, the Department shall verify the ownership and status of each SRC.

533.7 The Department shall undertake efforts to publicly share information of the price, purchase, sale, value, time, certification, and use of an SRC that is not personal, proprietary, a trade secret, or otherwise confidential.

**534 STORMWATER MANAGEMENT: CERTIFICATION OF STORMWATER RETENTION CREDITS FOR A BEST MANAGEMENT PRACTICE OR LAND COVER INSTALLED BEFORE EFFECTIVE**

## **DATE OF STORMWATER RETENTION PERFORMANCE REQUIREMENTS**

- 534.1 A person may apply for certification of a Stormwater Retention Credit (SRC) for a gallon of retention capacity in a Best Management Practice (BMP) or land cover installed before the end of Transition Period One (TP1) or in compliance with a Stormwater Management Plan approved by the Department before the end of TP1 if:
- (a) The BMP or land cover was installed after May 1, 2009; and
  - (b) The retention capacity meets the requirements for certification of a SRC, with the modifications in this section.
- 534.2 A gallon of retention capacity in an existing BMP or land cover is eligible for SRC certification if it meets the following eligibility requirements:
- (a) The gallon retained by the BMP or land cover shall:
    - (1) Be in excess of the water quality treatment requirements in the Department's stormwater management regulations in place at the time the project was approved, or, for a site that was not regulated, in excess of pre-project retention;
    - (2) Be no more than the SRC ceiling; and
    - (3) Not be installed to comply with a stormwater management requirement of a statute, regulation, or court order, including for:
      - (A) Reduction of Combined Sewer Overflows (CSOs) in compliance with the court-approved consent decree, including court-approved modifications, for reducing CSOs in the District of Columbia, except that retention capacity installed on an experimental basis as a requirement of the consent decree shall be eligible if a subsequent modification of the consent decree ends the requirement to maintain that retention capacity; or
      - (B) Compliance with a Watershed Implementation Plan established under a Total Maximum Daily Load for the Chesapeake Bay.
  - (b) An as-built Stormwater Management Plan (SWMP) shall document the design, installation, and operation of the BMP or land cover in sufficient detail for the Department to determine its retention capacity in compliance

with the specifications and calculations in the Department's Stormwater Management Guidebook (SWMG);

- (c) A Department inspection shall be successfully completed within six (6) months before the Department decides to certify an SRC; and
- (d) An executed maintenance contract or a signed promise to follow the Department-approved maintenance plan for the period of time for which the certification of SRCs is requested.

534.3

For the purposes of certifying an SRC for a BMP or land cover installed before the end of TP1 or in compliance with a SWMP approved by the Department before the end of TP1, a person shall submit the following as a complete application:

- (a) A completed, Department-provided application form;
- (b) If applicable, a copy of the Department-approved SWMP for the BMP or land cover and the area draining into it, certified by a professional engineer licensed in the District of Columbia that the SWMP meets the requirements of this chapter;
- (c) A copy of the as-built SWMP for the BMP or land cover and the area draining into it, certified by a professional engineer licensed in the District of Columbia that the SWMP meets the requirements of this chapter;
- (d) Documentation of pre-project site conditions;
- (e) An executed maintenance contract or a signed promise to follow a maintenance plan for the period of time for which the certification of SRCs is requested;
- (f) A signed promise from the owner of the property on which the BMP or land cover is located to notify the Department if, during the period of time for which SRCs are certified, the property is sold or otherwise transferred to another person; and
- (g) Other documentation that the Department requires to determine that the eligibility requirements for certification of SRCs are satisfied.

534.4

The Department may certify an SRC for a gallon of retention capacity in a BMP or land cover installed before July 1, 2013, only if:

- (a) The first complete application for certification of an SRC for retention capacity in the BMP or land cover is filed on or before July 31, 2020; and



- (b) Any subsequent complete application for certification of an SRC for retention capacity in the BMP or land cover is submitted not later than six (6) months after the end of the preceding period of time for which the Department had certified an SRC for the retention capacity.

**535-539 [RESERVED]**

**540 SOIL EROSION AND SEDIMENT CONTROL: APPLICABILITY**

- 540.1 No person shall engage in razing or land-disturbing activity, including stripping, clearing, grading, grubbing, excavating, and filling of land, without obtaining the Department's approval of a soil erosion and sediment control plan, unless exempted in this chapter.
- 540.2 Notwithstanding any exemptions provided in this chapter, a person who engages in a demolition project that results in debris, dust, or sediment leaving the site shall apply each necessary control measure, upon receiving instruction to do so by the Department.
- 540.3 Notwithstanding any exemptions provided in this chapter, a person who exposes erodible material and causes erosion shall apply each necessary control measure, upon receiving instruction to do so by the Department.
- 540.4 A person who applies for Department approval of a soil erosion and sediment control plan shall be the owner of the property where the activity is to take place.
- 540.5 The approved soil erosion and sediment control plan shall govern all construction work requiring the control of soil erosion and sediment.
- 540.6 At the Director's discretion, the Department may establish conditions for a general or blanket approval of soil erosion and sediment control plans that are solely covering specified activities carried out under and complying with specifications approved by the Department. These conditions may include requirements for an applicant to provide notice to the Department and comply with inspections as would normally be required under this chapter. The Department shall establish and revise any such conditions as necessary and publish them on its website as updates to the District of Columbia Standards and Specifications for Soil Erosion and Sediment Control.

**541 SOIL EROSION AND SEDIMENT CONTROL: EXEMPTIONS**

- 541.1 The following land-disturbing activities are exempt from the requirement to comply with the soil erosion and sediment control provisions of this chapter, except as noted below and in § 540 (Soil Erosion and Sediment Control: Applicability):

- (a) For a single- or two-family house, townhouse, or rowhouse:
  - (1) Gardening;
  - (2) Landscaping;
  - (3) Repairs;
  - (4) Maintenance;
  - (5) Stormwater retrofits, provided that:
    - (A) The soil allows for percolation; and
    - (B) The retrofit location is no closer than ten feet (10 ft) from a building foundation;
  - (6) Utility service connection, repair, or upgrade;
- (b) A project for which the total cost is less than nine thousand, eight hundred and twenty-two dollars and twenty-nine cents (\$9,822.29);
- (c) Installation of fencing, a gate, signpost, or a pole;
- (d) Emergency work to protect life, limb or property, and emergency repairs, except that the following is not exempted to the extent described:
  - (1) The land disturbed must still be shaped and stabilized in accordance with the requirements of this chapter;
  - (2) Generally applicable control measures shall be used; and
  - (3) A plan shall be submitted to the Department's submittal database within three (3) weeks after beginning the emergency work; and
- (e) Activities that disturb less than fifty square feet (50 ft<sup>2</sup>).

**542 SOIL EROSION AND SEDIMENT CONTROL: PLAN**

542.1 The soil erosion and sediment control plan shall not be approved without the date and signature of the Director or the Director's designee stamped on the plan.

542.2 The approved soil erosion and sediment control plan for a project shall be available on site for Department review for the entire period of construction during ordinary business hours.

- 542.3 The Department shall approve a soil erosion and sediment control plan only if the Department determines the following:
- (a) The plan meets the requirements of this chapter and of the Department's Standards and Specifications for Soil Erosion and Sediment Control;
  - (b) The applicant has paid each applicable fee; and
  - (c) The applicant has certified, in writing, that he or she will implement each control measure specified in the plan.
- 542.4 The Department may, with respect to a soil erosion and sediment control plan:
- (a) Reject a submission as incomplete;
  - (b) Approve;
  - (c) Deny;
  - (d) Approve or deny in part; and
  - (e) Require conditions or modifications.
- 542.5 If a plan is disapproved, the Department shall notify the applicant in writing, providing the specific reasons for the disapproval of the plan.
- 542.6 The Department may suggest modifications, terms, and conditions necessary to comply with the requirements of this chapter.
- 542.7 A soil erosion and sediment control plan may cover multiple phases of a project.
- 542.8 The applicant shall submit one (1) electronic set of the soil erosion and sediment control plan to the Department for review via the Department's submittal database. For projects that receive a walkthrough permit review, the applicant shall also submit one (1) paper set of the soil erosion and sediment control plan to the Department.
- 542.9 The applicant shall, at a minimum, provide the following information on the soil erosion and sediment control plan:
- (a) A title that indicates the plan is a soil erosion and sediment control plan;
  - (b) A project narrative;
  - (c) The address of the property;

- (d) The lot, square, or parcel numbers;
- (e) The name, address, and telephone number of:
  - (1) The property owner;
  - (2) The developer; and
  - (3) The plan designer;
- (f) For sites where work will be done on slopes in excess of fifteen percent (15%), the seal and signature of a professional engineer, licensed in the District of Columbia;
- (g) A vicinity sketch indicating north arrow, scale, and other information necessary to locate the property;
- (h) One of the following horizontal scales of profile, unless otherwise approved:
  - (1) One inch equals ten feet (1 in. = 10 ft);
  - (2) One inch equals twenty feet (1 in. = 20 ft);
  - (3) One inch equals thirty feet (1 in. = 30 ft);
  - (4) One inch equals forty feet (1 in. = 40 ft);
  - (5) One inch equals fifty feet (1 in. = 50 ft); or
  - (6) One inch equals eighty feet (1 in. = 80 ft);
- (i) One of the following vertical scales of profile, unless otherwise approved:
  - (1) One inch equals two feet (1 in. = 2 ft);
  - (2) One inch equals four feet (1 in. = 4 ft);
  - (3) One inch equals five feet (1 in. = 5 ft); or
  - (4) One inch equals ten feet (1 in. = 10 ft);
- (j) Existing features that may be relevant factors in the development of an erosion prevention plan, such as vegetation, wildlife habitat, water areas, and topsoil conditions;

- (k) The existing and proposed topography, including clear identification of all areas of slope greater than fifteen percent (15%);
- (l) The proposed grading and earth disturbance including:
  - (1) Surface area involved;
  - (2) Volume of spoil material;
  - (3) Volume of borrow material; and
  - (4) Limits of clearing and grading including limitation of mass clearing and grading whenever possible;
- (m) Storm drainage provisions, including:
  - (1) Velocities and quantities of flow from a sediment control measure to an approved point of discharge; and
  - (2) Site conditions around each point of surface water discharge from the site;
- (n) Erosion and sediment control provisions to minimize on-site erosion and prevent off-site sedimentation including:
  - (1) Provisions specified to ensure land disturbance does not extend beyond the proposed area of disturbance;
  - (2) Details of grading practices that will be used on the site;
  - (3) Methods to minimize, to the extent practicable, off-site vehicle tracking of sediment and generation of dust; and
  - (4) Design details for structural control measures, including size and location of each erosion and sediment control measure, including:
    - (A) Use of a crushed stone dike on each access road that is above grade; and
    - (B) Use of a stabilized construction entrance for a construction project on each access road;
- (o) Details of each interim and permanent stabilization measure, including statement of intent to adhere to the following, by placing the statement on the soil erosion and sediment control plan:

“Following initial land disturbance or re-disturbance, permanent or interim stabilization shall be completed within seven (7) calendar days for the surface of all perimeter controls, dikes, swales, ditches, perimeter slopes, and all slopes greater than three (3) horizontal to one (1) vertical (3:1); and fourteen (14) days for all other disturbed or graded areas on the project site. The requirements of this paragraph do not apply to those areas which are shown on the plan and are being used for material storage other than stockpiling, or for those areas on which actual construction activities are being performed. Maintenance shall be performed as necessary so that stabilized areas continuously meet the appropriate requirements of the District of Columbia Standards and Specifications for Soil Erosion and Sediment Control;”

- (p) The sequence of construction, including:
  - (1) A description of the relationship between the implementation and maintenance of controls, including permanent and interim stabilization and the various stages or phases of earth disturbance and construction; and
  - (2) A sequence for each of the following activities:
    - (A) Clearing and grubbing for those areas necessary for installation of perimeter controls;
    - (B) Construction of perimeter controls;
    - (C) Remaining clearing and grubbing;
    - (D) Road grading;
    - (E) Grading for the remainder of the site;
    - (F) Utility installation, including the use or blocking of storm drains after construction;
    - (G) Final grading, landscaping, or stabilization; and
    - (H) Removal of controls;
- (q) A general description of the predominant soil types on the site, as described by the appropriate soil survey information available from the United States Department of Agriculture National Resources Conservation Service;

- (r) Recommendations for areas with unstable soils from a professional engineer licensed in the District of Columbia; and
- (s) A statement placed on the soil erosion and sediment control plan stating that the applicant shall contact the Department to schedule a preconstruction meeting before the commencement of a land-disturbing activity.

542.10 After receiving notification that a soil erosion and sediment control plan meets the requirements for the Department's approval, the applicant shall submit to the Department's submittal database a final preconstruction application including:

- (a) The complete plan; and
- (b) Proof that each applicable fee for Department services has been paid.

542.11 The Department shall issue the approved copies of the soil erosion and sediment control plan after the applicant has submitted proof that each applicable fee for Department services has been paid.

542.12 Following approval of the plan, the applicant shall request the Department's approval at each of the following stages of construction:

- (a) Installation of perimeter erosion and sediment controls, but before proceeding with any other earth disturbance or grading; and
- (b) Final stabilization of the site before the removal of erosion and sediment controls. Final stabilization means that all land-disturbing activities at the site have been completed and either of the following two (2) criteria are met:
  - (1) A uniform (for example, evenly distributed, without large bare areas) perennial vegetative cover with a density of seventy percent (70%) of the native background vegetative cover for the area has been established on all unpaved areas and areas not covered by permanent structures, or
  - (2) Equivalent permanent stabilization measures (such as the use of riprap, gabions, or geotextiles) have been employed.

542.13 A soil erosion and sediment control plan shall be designed in compliance with this chapter by a District-licensed:

- (a) Professional engineer;
- (b) Land surveyor; or

(c) Architect.

542.14 In support of a plan which it submits for approval, the applicant shall provide additional available information that the Department considers necessary to demonstrate compliance with erosion and sediment control requirements in this chapter.

542.15 A copy of each approved plan shall be at the construction site from the date of commencement of the construction activities to the date of final stabilization and shall be made available for the Department's inspection.

**543 SOIL EROSION AND SEDIMENT CONTROL: REQUIREMENTS**

543.1 Erosion and sediment control measures shall be those the Department approves.

543.2 The Department shall maintain a copy of its Standards and Specifications for Soil Erosion and Sediment Control on its website and make a hard copy available for review at its offices.

543.3 Soil erosion and sediment control measures shall prevent transportation of sediment from the site.

543.4 Waterway crossing and stream bank protection measures designed and installed in compliance with the Department's Standards and Specifications for Soil Erosion and Sediment Control shall be assumed to be adequate for that purpose.

543.5 A best management practice shall be protected from sedimentation and other damage during construction to ensure proper post-construction operation.

543.6 Erosion and sediment control measures shall be in place before and during land disturbance, except as otherwise specifically stated.

543.7 Erosion and sediment control measures shall be in place to stabilize an exposed area as soon as practicable after construction activity has temporarily or permanently ceased but no later than fourteen (14) days following cessation, except that temporary or permanent stabilization shall be in place at the end of each day of underground utility work that is not contained within a larger development site.

543.8 Permanent stabilization of streets and parking areas shall be with base course crushed stone or other Department-approved measures.

543.9 Measures shall be implemented and corrective action taken, including as specified by the Department, to prevent the discharge to District sewers or District



waterbodies of erodible material or waste material including those materials that have been transported off site.

543.10 A site disturbing five thousand or more square feet ( $\geq 5,000 \text{ ft}^2$ ) of land shall:

- (a) Adhere to a SWPPP that:
  - (1) The Department provides in its SWMG;
  - (2) The Department approves as including the minimum measures in the Department-provided SWPPP; or
  - (3) Is required under the Construction General Permit issued by Region III of the United States Environmental Protection Agency; and
- (b) Post a legible copy of the SWPPP on-site.

543.11 A person shall avoid work on a slope in excess of fifteen percent (15%), to the maximum extent practicable. Where avoidance is not practicable, the Soil Erosion and Sediment Control Plan for the site shall be designed, signed, and sealed by a professional engineer, licensed in the District of Columbia, and the applicant shall incorporate additional protection strategies which the Department may require in order to prevent erosion or transportation of sediments from the site.

543.12 Except on an area that is undergoing construction, perimeter controls that disturb land, including dikes, swales, ditches, and perimeter slopes, shall be stabilized within one (1) week of initial land disturbance or redisturbance:

- (a) On the surface of each disturbed area; and
- (b) On each associated slope greater than three (3) horizontal to one (1) vertical (3:1).

543.13 Runoff from the site shall be controlled by either diverting or conveying the runoff through areas with erosion and sediment control measures, such as through the installation of lined conveyance ditches, channels, or checkdams.

543.14 Critical area stabilization shall be applied to each cut and fill slope:

- (a) That is equal to or steeper than 3:1;
- (b) That is flatter than 3:1 if the Department determines that the soil characteristics require it; and

- (c) To every cut and fill slope when construction is out-of-season for planting and until permanent protection can be provided.

543.15 If the Department determines that a cut and fill slope is likely to result in erosion by stormwater or sediment from the site onto adjacent property or a nearby waterbody, then the cut and fill slope shall be protected against erosion by the use of structural diversions that are protected by vegetation or matting, in a frequency and manner that a geotechnical or civil engineer licensed in the District of Columbia has determined, based on site conditions, is sufficient to prevent erosion.

543.16 Stockpiled material:

- (a) That is actively being used during a phase of construction shall be protected against erosion by establishing and maintaining perimeter controls around the stockpile; and
- (b) That is not being actively used or added to shall be stabilized with mulch, temporary vegetation, hydro-seed or plastic within fifteen (15) calendar days after its last use or addition.

543.17 Sediment traps or basins and other erosion and sediment controls shall be:

- (a) Installed no later than the first phase of land grading;
- (b) Installed as soon as new site-related runoff is detected; and
- (c) Employed at all times to protect inlets or storm sewers below silt-producing areas.

543.18 Debris basins, diversions, waterways, and related structures shall be seeded and mulched, or have sod or a stabilization blanket installed immediately after they are built.

543.19 Construction site access measures to minimize off-site vehicle tracking shall:

- (a) Be installed no later than the first day of construction;
- (b) Stabilize each construction entrance;
- (c) Include each additional measure required to keep sediment from being:
  - (1) Tracked, or otherwise carried, onto public streets by construction vehicles; and
  - (2) Washed into a storm drain or waterway; and

(d) Comply with all other Department requirements.

543.20 Off-site accumulations of sediment:

(a) Shall be removed daily during construction; and

(b) Shall be removed immediately if the Department so requires after an inspection.

543.21 Maintenance shall be performed to prevent stabilized areas from becoming unstabilized.

543.22 A sign that notifies the public to contact the Department in the event of erosion or other pollution shall be prominently posted on every site subject to this chapter, and the sign shall:

(a) Be in plain view of and readable by the public at a distance of twelve feet (12 ft);

(b) Be placed at each entrance to the site or as directed by the Department; and

(c) Provide contact information identified by the Department, including telephone numbers and email address.

#### **544 SOIL EROSION AND SEDIMENT CONTROL: ROADWAY PROJECTS**

544.1 Rough graded rights-of-way awaiting installation of utilities or pavement shall be protected by the installation of:

(a) Interceptor dikes across rights-of-way so located as to limit roadway grade to a length between dikes of not more than five hundred feet (500 ft); or

(b) Alternative controls that are recommended by a Professional Engineer (PE) licensed in the District of Columbia and that are approved by the Department.

544.2 Temporary diversion dikes and flumes, or alternative controls that are recommended by a PE licensed in the District of Columbia and that are approved by the Department, shall be used to carry runoff down cut-and-fill slopes to an outlet approved by the Department as part of the soil erosion and sediment control plan.

544.3 A permanent drainage structure, including diversions at top-of-slope cuts and diversions to lead runoff to a storm sewer or other suitable outlet, shall be

installed at the completion of rough grading, unless the Department approves an alternative that has been recommended by a PE licensed in the District of Columbia.

**545 SOIL EROSION AND SEDIMENT CONTROL: BUILDINGS, DEMOLITION, RAZING, AND SITE DEVELOPMENT**

545.1 Erosion shall be controlled by the installation of gutters and downspouts as soon as practicable.

545.2 Measures shall be taken to achieve a non-eroding velocity for stormwater exiting from a roof or downspout or to temporarily pipe that stormwater directly to a storm drain.

545.3 The site work shall maximize the preservation of natural vegetation and limit the removal of vegetation to that which is necessary for construction or landscaping activity.

545.4 If site conditions preclude employment of other means of erosion control, the Department may approve installation of small dikes constructed along a low-lying perimeter area of a job site.

545.5 In an area along a waterbody, a buffer must be established:

- (a) By not disturbing the land immediately adjacent to the waterbody, except to restore native vegetation;
- (b) Of at least twenty-five feet (25 ft) on both sides of the water body, measured perpendicular to and horizontally from the top of bank; and
- (a) With vegetation or other measure required by the Department to insure that the buffer acts as a filter to trap sediment and keep it onsite.

545.6 The Department may approve an exception to or modification of the requirement for a project to establish a buffer if:

- (a) During construction, the project employs the control measures specified in the Department-approved Soil Erosion and Sediment Control Plan for the project; and
- (b) By the end of construction and thereafter, the project:
  - (1) Achieves a 1.7 inch Stormwater Retention Volume (SWRv) for the area of land disturbance within the buffer, calculated using the SWRv formula in Section 520 of this chapter, with a P equal to 1.7 inches;

- (2) Applies for relief from extraordinarily difficult site conditions for a portion of the 1.7 inch SWRv and achieves the treatment and off-site retention requirements for the volume of relief granted; or
  - (3) Receives a Department determination to grant relief for a portion of a the 1.7 inch SWRv, on-site treatment is not feasible, and the Department approves alternatives to on-site treatment that will help to protect or restore the waterbody for which the buffer is intended; and
- (c) The land disturbance is:
- (1) Required to construct, install, or repair a:
    - (A) Public trail for walking, biking, and similar purposes;
    - (B) Public point of access for boating, fishing, or viewing a waterbody; or
    - (C) Stormwater outfall or other utility line; or
  - (2) Required to enable development of the rest of the site in a manner that is similar to the proposed project.

**546 SOIL EROSION AND SEDIMENT CONTROL: UNDERGROUND UTILITIES**

546.1 If the land-disturbing activity involves work on an underground utility, the site shall comply with the following requirements:

- (a) No more than five hundred linear feet (500 ft) of trench shall be open at any one time;
- (b) All excavated material shall be placed on the uphill side of a trench;
- (c) Interim or permanent stabilization shall be installed upon completion of refilling; and
- (d) When natural or artificial grass filter strips are used to collect sediment from excavated material, mulches and matting shall be used in order to minimize erosion of these materials.

**547 SOIL EROSION AND SEDIMENT CONTROL: RESPONSIBLE PERSONNEL**

- 547.1 If a site involves a land disturbance of five thousand square feet (5,000 ft<sup>2</sup>) or more, the owner of the site and the site manager shall ensure that a responsible person is present or available as this section requires.
- 547.2 A responsible person shall, while the site is in a phase involving land-disturbing activity, ensure that the activity complies with this chapter by:
- (a) Inspecting the site and its erosion and sediment control measures at least once biweekly and after a rainfall event to identify and remedy each potential or actual erosion problem;
  - (b) Being available to respond to each potential or actual erosion problem identified by construction personnel; and
  - (c) Being available to speak on site with the Department to remedy each potential or actual erosion problem.
- 547.3 A responsible person shall be:
- (a) Licensed in the District of Columbia as a land surveyor, architect, or civil, environmental, or geotechnical engineer; or
  - (b) Certified through a training program that the Department approves, including a course on erosion control provided by another jurisdiction or professional association.
- 547.4 During construction, the responsible person shall have available on site proof of professional licensing or of successful completion of a Department-approved training program.
- 547.5 A Department-approved training program shall cover the following topics, as demonstrated in the training syllabus:
- (a) The detrimental effects of sediment pollution to waterbodies;
  - (b) The benefits of proper and effective erosion and sediment control implementation and maintenance;
  - (c) The purpose and provisions of the District of Columbia erosion and sediment control laws, rules, and regulations;
  - (d) A description of sediment as a pollutant;
  - (e) The process of:
    - (1) Erosion;

- (2) Sediment transport; and
- (3) Sediment deposition;
- (f) Proper implementation of erosion and sediment control;
- (g) Recognition and correction of improperly implemented erosion and sediment controls;
- (h) Proper maintenance of erosion and sediment controls; and
- (i) Responsibilities of supervisory and enforcement personnel.

**548-551 [RESERVED]**

**552 TRANSITION**

552.1 Sections 500 through 545, 546, 547, and 599 of this chapter shall be enforced immediately upon publication as final, except as described below.

552.2 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 § 518.4, in support of a building permit application before the end of Transition Period One (TP1), shall:
  - (1) Be exempt from the requirements of §§ 520 through 522;
  - (2) Comply with the preceding stormwater management requirements for water quality treatment and detention, in 21 DCMR §§ 529-30 (as published at 35 DCR 21 (January 1, 1988)), as amended and effective through June 30, 2013; and
  - (3) Have the right to generate each applicable Stormwater Retention Credit for each gallon of eligible retention capacity in excess of the water quality treatment requirements in subparagraph (2).
- (b) A major land-disturbing activity submitting a complete SWMP, as required under § 518.4, in support of a building permit application after TP1 and before the end of Transition Period Two A (TP2A) and a major substantial improvement activity submitting a complete SWMP, as required under § 518.4, in support of a building permit application after TP1 and before the end of Transition Period Two B (TP2B) shall comply with this chapter, except that:

- (1) The requirement in § 520 to achieve a minimum of fifty percent (50%) of the 1.2 inch Stormwater Retention Volume (SWRv) on site shall be waived; and
  - (2) The entire SWRv may be achieved off-site, in accordance with § 527.
- (c) A major regulated project submitting a complete SWMP, as required under § 518.4, in support of a building permit application, for an area that was described explicitly in an Advanced Design (AD) and for which the approval of the AD reviewing body has not expired, shall comply with:
- (1) Paragraph (a) of this subsection, if the AD was submitted before the end of TP1; and
  - (2) Paragraph (b) of this subsection, if the AD was submitted after TP1 and before the end of TP2A, for a major land-disturbing activity or before the end of TP2B, for a major substantial improvement activity.
- (d) An area of a multi-phased major land-disturbing activity for which each stormwater infrastructure and best management practice required in a Department-approved SWMP was installed during a preceding phase of construction shall be deemed to have achieved compliance with the stormwater management requirements of this chapter and shall not be required to submit a separate SWMP to support a building permit application.

552.3 A major regulated project shall comply with the stormwater management requirements of §§ 552.1 and 552.2 that are enforced at the time it submits a complete SWMP, as required under § 518.4, if:

- (a) The project must re-apply for a building permit because the preceding permit has expired under 12-A DCMR § 105.5 or the permit application had been abandoned under 12-A DCMR § 105.3.7; or
- (b) The project applies for a building permit after the approving body's approval of an Advanced Design (AD) has expired.

552.4 This section shall be narrowly construed, and nothing in this section shall be interpreted to otherwise affect the enforcement of the other requirements and procedures in this chapter.

552.5 This section shall not apply to a complete stormwater management plan submitted to the Department after July 31, 2020.



**Section 599 is amended to delete the section and replace it with the following:**

**599 DEFINITIONS**

599.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

**Advanced Design (AD)** - Detailed design for an area of a project described explicitly in a:

- (a) Stage Two (2) Planned Unit Development (PUD) application to the District Zoning Commission;
- (b) Application for design review under the Capitol Gateway Overlay District to the District Zoning Commission; and
- (c) Final design submission to the National Capital Planning Commission (NCPC).

**Affordable Housing** – a single-family or two-family house that is built to be offered for rent or for sale for residential occupancy below market value and is made available to, and affordable to, a household whose income is equal to, or less than, eighty percent (80%) of the Area Median Income calculation provided by the United States Department of Housing and Urban Development.

**Anacostia Waterfront Development Zone (AWDZ)** - the following areas of the District of Columbia, as delineated on a map in the Department's Stormwater Management Guidebook:

- (a) Interstate 395 and all rights-of-way of Interstate 395, within the District, except for the portion of Interstate 395 that is north of E Street, S.W., or S.E.;
- (b) All land between that portion of Interstate 395 that is south of E Street, S.W. or S.E., and the Anacostia River or Washington Channel;
- (c) All land between that portion of Interstate 695, and all rights of way, that are south of E Street, S.W. or S.E., and the Anacostia River;
- (d) The portion of Interstate 295 that is north of the Anacostia River, within the District, and all rights-of-way of that portion of Interstate 295;
- (e) All land between that portion of Interstate 295 that is north of the Anacostia River and the Anacostia River;

- (f) The portions of:
  - (1) The Anacostia Freeway that are north or east of the intersection of the Anacostia Freeway and Defense Boulevard and all rights-of-way of that portion of the Anacostia Freeway;
  - (2) Kenilworth Avenue that extend to the northeast from the Anacostia Freeway to Eastern Ave; and
  - (3) Interstate 295, including its rights-of-way that are east of the Anacostia River and that extends to the southwest from the Anacostia Freeway to Defense Boulevard;
- (g) All land between those portions of the Anacostia Freeway, Kenilworth Avenue, and Interstate 295 described in subparagraph (f) of this definition and the Anacostia River;
- (h) All land that is adjacent to the Anacostia River and designated as parks, recreation, and open space on the District of Columbia Generalized Land Use Map, dated January 2002, except for the land that is:
  - (1) North of New York Avenue, N.E.;
  - (2) East of the Anacostia Freeway, including rights-of-way of the Anacostia Freeway;
  - (3) East of the portion of Kenilworth Avenue that extends to the northeast from the Anacostia Freeway to Eastern Avenue;
  - (4) East of the portion of Interstate 295, including its rights-of-way, that is east of the Anacostia River and that extends to the southwest from the Anacostia Freeway to Defense Boulevard, but excluding the portion of 295 and its rights-of-way that go to the northwest across the Anacostia River;
  - (5) Contiguous to that portion of the Suitland Parkway that is south of Martin Luther King, Jr. Avenue; or
  - (6) South of a line drawn along, and as a continuation both east and west of the center line of the portion of Defense Boulevard between Brookley Avenue, S.W., and Mitscher Road, S.W.;
- (i) All land, excluding Eastern High School, that is:

- (1) Adjacent to the land described in subparagraph (h) of this definition;
  - (2) West of the Anacostia River; and
  - (3) Designated as a local public facility on the District of Columbia Generalized Land Use Map, dated January 2002;
- (j) All land that is:
- (1) South or east of that portion of Potomac Avenue SE, between Interstate 295 and 19th Street, S.E.; and
  - (2) West or north of the Anacostia River;
- (k) The portion of the Anacostia River within the District; and
- (l) The Washington Channel.

**Anacostia Waterfront Development Zone Site (AWDZ site)** - A site within the Anacostia Waterfront Development Zone that undergoes a major regulated project that is publicly owned or publicly financed.

**Animal confinement area** - An area, including a structure, used to stable, kennel, enclose, or otherwise confine animals, not including confinement of a domestic animal on a residential property.

**Applicant** - A person or their agent who applies for approval pursuant to this chapter.

**As-built plan** - A set of architectural, engineering, or site drawings, sometimes including specifications that certifies, describes, delineates, and presents details of a completed construction project.

**Athletic playing fields** - Compacted land cover and synthetic surfaces that are constructed primarily for use for athletic activities at schools and public parks. Compacted land cover and synthetic surfaces for which athletic activities are not the primary use are not considered athletic playing fields, unless these areas are necessary to support use of an adjacent area that is primarily used for athletic activities.

**Best Management Practice (BMP)** - Structural or nonstructural practice that minimizes the impact of stormwater runoff on receiving waterbodies and other environmental resources, especially by reducing runoff volume and the pollutant loads carried in that runoff.

**Buffer** - An area along a stream, river, or other natural feature that provides protection for that feature.

**Building permit** - Authorization for construction activity issued by the District of Columbia Department of Consumer and Regulatory Affairs.

**Clearing** - The removal of trees and brush from the land excluding the ordinary mowing of grass, pruning of trees or other forms of long-term landscape maintenance.

**Combined sewer overflow (CSO)** – The discharge of untreated effluent into a water body as a result of the combined volume of stormwater and sanitary water exceeding the capacity of the combined sewer system and wastewater treatment plant.

**Combined sewer system (CSS)** – Sewer system in which stormwater runoff is conveyed together with sanitary wastewater through sewer lines to a wastewater treatment plant.

**Common plan of development** - Multiple, separate, and distinct land-disturbing, substantial improvement, or other construction activities taking place under, or to further, a single, larger plan, although they may be taking place at different times on different schedules.

**Compacted cover** - An area of land that is functionally permeable, but where permeability is impeded by increased soil bulk density as compared to natural cover, such as through grading, construction, or other activity and will require regular human inputs such as periodic planting, irrigation, mowing, or fertilization. Examples include landscaped planting beds, lawns, or managed turf.

**Control measure** - Technique, method, device, or material used to prevent, reduce, or limit discharge.

**Construction** - Activity conducted for the:

- (a) Building, renovation, modification, or razing of a structure; or
- (b) Movement or shaping of earth, sediment, or a natural or built feature.

**Critical area stabilization** - Stabilization of areas highly susceptible to erosion, including down-slopes and side-slopes, through the use of brick bats, straw, erosion control blanket mats, gabions, vegetation, and other control measures.

**Cut** - An act by which soil or rock is dug into, quarried, uncovered, removed, displaced, or relocated and the conditions resulting from those actions.

**Demolition** - The removal of part or all of a building, structure, or built land cover.

**Department** - The District Department of the Environment or its agent.

**Department's submittal database** - An online platform managed by the Department and accessible to the public that the Department uses to receive applications and make approval determinations.

**Detention** - Controlling the peak discharge rate of stormwater from a site.

**Dewatering** - Removing water from an area or the environment using an approved technology or method, such as pumping.

**Director** - The Director of the District Department of the Environment.

**District** - The District of Columbia.

**Drainage area** - Area contributing runoff to a single point.

**Easement** - A right acquired by a person to use another person's land for a special purpose.

**Electronic media** - Means of communication via electronic equipment, including the internet.

**Erosion** - The process by which the ground surface, including soil and deposited material, is worn away by the action of wind, water, ice, or gravity.

**Excavation** - An act by which soil or rock is cut into, dug, quarried, uncovered, removed, displaced or relocated and the conditions resulting from those actions.

**Exposed area** - Land that has been disturbed or land over which unstabilized soil or other erodible material is placed.

**Grading** - Causing disturbance of the earth, including excavating, filling, stockpiling of earth materials, grubbing, root mat or topsoil disturbance, or any combination of them.

**Impervious cover** - A surface area which has been compacted or covered with a layer of material that impedes or prevents the infiltration of water into the ground, examples include conventional streets, parking lots, rooftops,

sidewalks, pathways with compacted sub-base, and any concrete, asphalt, or compacted gravel surface and other similar surfaces.

**Infiltration** - The passage or movement of surface water through the soil profile.

**Land cover** - Surface of land that is impervious, compacted, or natural.

**Land cover change** - Conversion of land cover from one type to another, typically in order to comply with a requirement of this chapter or to earn certification of a Stormwater Retention Credit.

**Land-disturbing activity** - Movement of earth, land, or sediment that disturbs the land surface and the related use of pervious land to support that movement. Land-disturbing activity includes stripping, grading, grubbing, trenching, excavating, transporting, and filling of land, as well as the use of pervious adjacent land for movement and storage of construction vehicles and materials. Land-disturbing activity does not include repaving or remilling that does not expose the underlying soil.

**Low Impact Development (LID)** - A land planning and engineering design approach to manage stormwater runoff within a development footprint. It emphasizes conservation, the use of on-site natural features, and structural best management practices to store, infiltrate, evapotranspire, retain, and detain rainfall as close to its source as possible with the goal of mimicking the runoff characteristics of natural cover.

**Major land-disturbing activity** - Activity that disturbs, or is part of a common plan of development that disturbs, a land area of five thousand square feet (5,000 ft<sup>2</sup>) or greater, and:

- (a) Some area of the pre-project land cover is natural; or
- (b) Two thousand five hundred square feet (2,500 ft<sup>2</sup>) or greater of the post-project land cover is impervious.

Multiple distinct areas that each disturb less than five thousand square feet (5,000 ft<sup>2</sup>) of land and that are in separate, non-adjacent sites do not constitute a major land-disturbing activity.

**Major regulated project** - A major land-disturbing activity or a major substantial improvement activity.

**Major substantial improvement activity** - Substantial improvement activity and associated land-disturbing activity, including such activities that are part of a common plan of development, for which the combined footprint of

improved building and land-disturbing activity is five thousand square feet (5,000 ft<sup>2</sup>) or greater, and:

- (a) Some area of the pre-project land cover is natural; or
- (b) Two thousand five hundred square feet (2,500 ft<sup>2</sup>) or greater of the post-project land cover is impervious.

A major substantial improvement activity may include a substantial improvement activity that is not associated with land disturbance.

**Market value of a structure** - Assessed value of the structure for the most recent year, as recorded in the real property assessment database maintained by the District of Columbia's Office of Tax and Revenue.

**Natural cover** - Land area that is dominated by vegetation and does not require regular human inputs such as irrigation, mowing, or fertilization to persist in a healthy condition. Examples include forest, meadow, or pasture.

**Nonstructural Best Management Practice (BMP)** - A land use, development, or management strategy to minimize the impact of stormwater runoff including conservation of natural cover or disconnection of impervious surface.

**Off-site retention** - Use of a stormwater retention credit or payment of in-lieu fee in order to achieve an off-site retention volume under these regulations.

**Off-Site Retention Volume (Offv)** - A portion of a required stormwater retention volume or required Water Quality Treatment Volume that is not retained on site.

**On-site retention** - Retention of a site's stormwater on that site or via conveyance to a shared best management practice on another site.

**On-site stormwater management** - Retention, detention, or treatment of stormwater on site or via conveyance to a shared best management practice.

**Original Stormwater Retention Credit (SRC) owner** - A person who is indicated as the proposed SRC owner in an application to the Department for the certification of an SRC. The proposed SRC owner becomes the original SRC owner upon the Department's certification of the SRC.

**Owner** - The person who owns real estate or other property, or that person's agent.

**Peak discharge** - The maximum rate of flow of water at a given point and time resulting from a storm event.

**Permeable athletic track** - A surface, including a surface made of synthetic material, located at a school or public park that is used for athletic purposes including biking, running, and walking, and that allows the infiltration of water into the ground.

**Permeable playground surface** - A surface, including a surface made of synthetic material, located under a playground area at a school or public park, that allows the infiltration of water into the ground.

**Person** - A legal entity, including an individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, cooperative, the District government and its agencies, and the federal government and its agencies.

**Post-development** - Describing conditions that may be reasonably expected to exist after completion of land development activity on a site.

**Practice** - A system, device, material, technique, process, or procedure that is used to control, reduce, or eliminate an impact from stormwater; except where the context indicates its more typical use as a term describing a custom, application, or usual way of doing something.

**Pre-development** - Describing conditions of meadow land and its relationship to stormwater before human disturbance of the land.

**Pre-project** - Describing conditions, including land covers, on a site that exist before the construction described in a stormwater management plan has begun.

**Publicly-owned or publicly-financed project** – A project:

- (a) That is District-owned or District-instrumentality owned;
- (b) Where at least fifteen percent (15%) of a project's total cost is District-financed or District-instrumentality financed; or
- (c) That includes a gift, lease, or sale from District-owned or District instrumentality-owned property to a private entity.

**Public Right of Way (PROW)** - The surface, the air space above the surface (including air space immediately adjacent to a private structure located on public space or in a public right of way), and the area below the surface of



any public street, bridge, tunnel, highway, railway track, lane, path, alley, sidewalk, or boulevard.

**Public Space** - All the publicly owned property between the property lines on a street, park, or other public property as such property lines are shown on the records of the District. This includes any roadway, tree space, sidewalk, or parking between such property lines, but it excludes adjacent parks and other public property that is not associated with the public right of way

**Raze** - The complete removal of a building or other structure down to the ground or to its foundation.

**Record drawing** - The final annotated set of engineering drawings for a construction project, which includes all deviations, field changes, approved changes, constructed depths of footing and structural elements, and horizontal and vertical locations of utility facilities referenced to survey data.

**Responsible person** - Construction personnel knowledgeable in the principles and practices of erosion and sediment control and certified by a Department-approved soil erosion and sedimentation control training program to assess conditions at the construction site that would impact the effectiveness of a soil erosion or sediment control measure on the site.

**Retention** - Keeping a volume of stormwater runoff on site through infiltration, evapo-transpiration, storage for non-potable use, or some combination of these.

**Retention capacity** - The volume of stormwater that can be retained by a best management practice or land cover.

**Retention failure** - Failure to retain a volume of stormwater for which there is an obligation to achieve retention, including retention that an applicant promises to achieve in order to receive Department-certified Stormwater Retention Credits. Retention failure may result from a failure in construction, operation, or maintenance; a change in stormwater flow; or a fraud, misrepresentation, or error in an underlying premise in an application.

**Retrofit** - A best management practice or land cover installed in a previously developed area to improve stormwater quality or reduce stormwater quantity relative to current conditions.

**Runoff** - That portion of precipitation (including snow-melt) which travels over the land surface, and also from rooftops, either as sheetflow or as channel flow, in small trickles and streams, into the main water courses.

**Sediment** - Soil, including soil transported or deposited by human activity or the action of wind, water, ice, or gravity.

**Sedimentation** - The deposition or transportation of soil or other surface materials from one place to another as a result of an erosion process.

**Shared Best Management Practice (S-BMP)** - A Best Management Practice (BMP), or combination of BMPs, providing stormwater management for stormwater conveyed from another site or sites.

**Single- or two-family house** - An individual house, townhouse, or rowhouse designed and used for occupancy by one or two families. An individual house, townhouse, or rowhouse that has been physically altered for use by more than one or two families is not considered a single- or two-family house.

**Site** - A tract, lot or parcel of land, or a combination of tracts, lots, or parcels of land for which development is undertaken as part of a unit, sub-division, or project. The mere divestiture of ownership or control does not remove a property from inclusion in a site.

**Site Drainage Area (SDA)** - The area that drains stormwater from the site to a single discharge point or sheet flows from a single area off the site.

**Soil** - All earth material of whatever origin that overlies bedrock and may include the decomposed zone of bedrock which can be readily excavated by mechanical equipment.

**Soil Erosion and Sediment Control Plan** - A set of drawings, calculations, specifications, details, and supporting documents related to minimizing or eliminating erosion and off-site sedimentation caused by stormwater on a construction site. It includes information on construction, installation, operation, and maintenance.

**Soils report** - A geotechnical report addressing all erosion and sediment control-related soil attributes, including but not limited to site soil drainage and stability.

**Storm sewer** - A system of pipes or other conduits which carries or stores intercepted surface runoff, street water, and other wash waters, or drainage, but excludes domestic sewage and industrial wastes.

**Stormwater** - Flow of water that results from runoff, snow melt runoff, and surface runoff and drainage.

**Stormwater management** - A system to control stormwater runoff with structural and nonstructural best management practices, including: (a) quantitative control of volume and rate of surface runoff and (b) qualitative control to reduce or eliminate pollutants in runoff.

**Stormwater Management Guidebook (SWMG)** - The current manual published by the Department, and available on the Department's website, containing design criteria, specifications, and equations to be used for planning, design, construction, operation, and maintenance of a site and each best management practice on the site.

**Stormwater Management Plan (SWMP)** - A set of drawings, calculations, specifications, details, and supporting documents related to the management of stormwater for a site. A SWMP includes information on construction, installation, operation, and maintenance.

**Stormwater Pollution Prevention Plan (SWPPP)** - A document that identifies potential sources of stormwater pollution at a construction site, describes practices to reduce pollutants in stormwater discharge from the site, and may identify procedures to achieve compliance.

**Stormwater Retention Credit (SRC)** - One gallon (1 gal.) of retention for one (1) year, as certified by the Department.

**Stormwater Retention Credit Ceiling** - Maximum retention for which the Department will certify a Stormwater Retention Credit, calculated using the Stormwater Retention Volume (SWRV) equation with P equal to 1.7 inches.

**Stormwater Retention Volume (SWRV)** - Volume of stormwater from a site for which the site is required to achieve retention.

**Stripping** - An activity which removes or significantly disturbs the vegetative surface cover including clearing, grubbing of stumps and rock mat, and top soil removal.

**Substantial improvement** - A repair, alteration, addition, or improvement of a building or structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the improvement or repair is started.

**Structural best management practice** - A practice engineered to minimize the impact of stormwater runoff, including a bioretention, green roof,

permeable paving system, system to capture stormwater for non-potable uses, etc.

**Supplemental review** - A review that the Department conducts after the review it conducts for a first re-submission of a plan.

**Swale** - A narrow low-lying stretch of land which gathers or carries surface water runoff.

**Transition Period One (TP1)** – The one hundred and eighty (180) day period of time starting upon publication of the notice of adoption as final in the *D.C. Register* of the stormwater retention rulemaking. TP1 ends at the close of business on January 15, 2014.

**Transition Period Two A (TP2A)** – For a major land-disturbing activity, the three hundred and sixty-five (365) day period of time starting at the completion of Transition Period One. TP2A ends at the close of business on January 15, 2015.

**Transition Period Two B (TP2B)** – For a major substantial improvement activity, the five hundred and forty-five (545) day period of time starting at the completion of Transition Period One. TP2B ends at the close of business on July 14, 2015.

**Waste material** - Construction debris, dredged spoils, solid waste, sewage, garbage, sludge, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial or municipal waste.