

DISTRICT DEPARTMENT OF THE ENVIRONMENT
REQUEST FOR INPUT ON REVISIONS TO PROPOSED RULEMAKING

Stormwater Management, and Soil Erosion and Sediment Control

The Acting Director of the District Department of the Environment (Department or DDOE) invites the public to present its views and comments on the revised version of DDOE's proposed rulemaking on stormwater management and soil erosion and sediment control (the revised rule) and on the revised version of DDOE's proposed Stormwater Management Guidebook (the revised SWMG), which provides technical guidance on complying with the revised rule. DDOE will accept comments from the public for a thirty (30) day informal comment period, from Friday, March 29 through Tuesday, April 30. The revised rule and the revised SWMG are available at <http://ddoe.dc.gov/proposedstormwaterrule>.

Recognizing the federal deadline¹ for the District to finalize this rulemaking and in the interest of a more collaborative process that will further improve the rule and SWMG, DDOE is using an informal comment process, which is significantly expedited compared to the formal process. Whereas the formal process typically proceeds through publication of a rulemaking in the *D.C. Register* after an extensive review process within the District government, that review process was significantly shortened for this informal comment period, and the revised rule will not be published in the *D.C. Register* during the informal comment period. Instructions on submitting comments are below.

Prior to this informal comment period, DDOE conducted a first formal public comment period, which began with the publication of the proposed rule in the August 10, 2012 issue of the *D.C. Register* (59 DCR 009486). This document refers to the August 10, 2012 version of the rule as "the proposed rule" and the accompanying version of the SWMG as "the proposed SWMG." As with the proposed rule, the revised rule would amend chapter 5 (Water Quality and Pollution) of title 21 (Water and Sanitation) of the District of Columbia Municipal Regulations (DCMR), comprehensively amending the stormwater regulations and the soil erosion and sediment control regulations. Specifically, these amendments would repeal and replace §§ 500 to 545 and 599, and add §§ 546 and 547.

The first formal public comment period lasted for ninety (90) days, ending on November 8, 2012. DDOE greatly appreciates the many comments that the public submitted during this time on the proposed rule and proposed SWMG. DDOE has thoroughly considered these comments and made numerous changes to both documents as a result. DDOE is not accompanying the revised rule and the revised SWMG with a separate response to each of the comments received during the first formal comment period, but DDOE does plan to provide such a response document before beginning a second formal comment period.

After the informal comment period and prior to a final rulemaking action, DDOE will conduct a second formal public comment period. As noted above, at the start of the second formal

¹ Municipal Separate Storm Sewer System (MS4) Permit issued to the District by Region III of the United States Environmental Protection Agency, available at <http://www.epa.gov/reg3wapd/npdes/dcpermits.htm>.

comment period, DDOE will release a separate document responding to each of the comments received during the first formal comment period. In addition, for comments received during the informal comment period, DDOE will at least provide an explanation for how those comments resulted in any significant changes to the rule and SWMG. If time allows, DDOE will develop and provide a response document explaining its response to each of those informal comments.

To make this preamble easier to read, the Department has organized it into sections with headings, as follows:

- ❖ **Authority**
- ❖ **Background**
- ❖ **Summary**
- ❖ **Proposed Transition to Full Effectiveness of Stormwater Management Performance Requirements**
- ❖ **Addition of Section with Stormwater Management Performance Requirements for Major Regulated Projects in the Anacostia Waterfront Development Zone**
- ❖ **Summary of DDOE Calculation of In-Lieu Fee**
- ❖ **In-Lieu Fee Special Fund**
- ❖ **Suggestions on an Alternative Name for Stormwater Retention Credits**
- ❖ **Public Meetings to Respond to Clarifying Questions**
- ❖ **Submitting Comments on the Revised Rule and Stormwater Management Guidebook**

Authority

The authority for the proposed adoption of final rules is set forth below:

- Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code §§ 2-1801.01 *et seq.* (2008 Repl. & 2012 Supp.)), as amended;
- District Department of the Environment Establishment Act of 2005, §§ 101 *et seq.*, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code §§ 8-151.01 *et seq.* (2008 Repl. & 2012 Supp.)), as amended;
- National Capital Revitalization Corporation and Anacostia Waterfront Corporation Reorganization Act of 2008, Anacostia Waterfront Environmental Standards Act of 2008, effective March 26, 2008 (D.C. Law 17-138; D.C. Official Code §§ 2-1226.31 *et seq.*) (2007 Repl. & 2012 Supp.)), as amended;
- The Soil Erosion and Sedimentation Control Act of 1977, effective Sept. 28, 1977 (D.C. Law 2-23), as amended by the Soil Erosion and Sedimentation Control Amendment Act of 1994, effective July 8, 1994, (D.C. Law 10-166, 21 DCMR §§ 500-15);
- Uniform Environmental Covenants Act of 2005, effective May 12, 2006 (D.C. Law 16-95; D.C. Official Code §§ 8-671.01 *et seq.* (2008 Repl. & 2012 Supp.)), as amended;

- Water Pollution Control Act of 1984, effective March 16, 1985 (D.C. Law 5-188; D.C. Official Code §§ 8-103.01 *et seq.* (2008 Repl. & 2012 Supp.)), as amended;
- Mayor's Order 2006-61, dated June 14, 2006, and its delegations of authority.

Background

These amendments update chapter 5 of title 21 of the DCMR to reflect the current scientific, engineering, and practical understanding in the fields of stormwater management and soil erosion and sediment control. Knowledge and technology in these fields has changed considerably since 1977, when the majority of the soil erosion and sediment control requirements were put into place, and since 1988, when the District's existing stormwater management requirements were established.

In several decades of implementing the stormwater management and soil erosion and sediment control regulations of the District and undertaking numerous restoration projects, the Department has acquired substantial firsthand knowledge and experience of the damage to District waterbodies from impervious development and inadequately managed stormwater. Stormwater impacts District waterbodies with its powerfully erosive volume and the pollution it contains. *See* presentation at <http://ddoe.dc.gov/proposedstormwaterrule> for photographs that illustrate these impacts.

These amendments satisfy the requirements of the District's Municipal Separate Storm Sewer System (MS4) Permit, issued by the United States Environmental Protection Agency under the Clean Water Act (Permit No. DC0000221, available at <http://www.epa.gov/reg3wapd/npdes/dcpermits.htm>). The MS4 permit requires the District to implement a 1.2 inch stormwater retention standard for land-disturbing activities, a lesser retention standard for substantial improvement projects, and provisions for regulated sites to satisfy these standards off site. The MS4 permit sets a deadline for these new requirements to be in effect as of July 22, 2013.

DDOE has also designed these amendments to work in concert with other sustainability initiatives in the District, including the Office of Planning's development of Green Area Ratio requirements under the zoning code and Mayor Gray's Sustainable DC Plan (<http://sustainable.dc.gov/>).

In developing these amendments, DDOE drew on various sources of information. This included a review of the science, engineering, and practice of stormwater management and soil erosion and sediment control, as well as its own firsthand knowledge of the impact of stormwater on District waterbodies. DDOE evaluated its experience managing the installation, operation, and maintenance of the various types of Best Management Practices (BMPs) that can satisfy the requirements in these amendments. DDOE also considered the regulatory approaches taken in other urban jurisdictions.

Finally, DDOE appreciates the valuable input it has received from residents, engineers, scientists, land developers, environmentalists, and other governmental entities regarding the impacts of these amendments. This includes feedback from approximately two dozen training sessions and clarifying meetings with stakeholders during the first formal comment period, as well as the comments submitted on the proposed rule and SWMG. (Training presentations, DDOE responses to clarifying questions, and public comments submitted during the first formal comment period are available at <http://ddoe.dc.gov/proposedstormwaterrule>.) DDOE recognizes that these amendments are significant for the regulated community, for environmental stakeholders, and for the public to whom the District's waterbodies ultimately belong. Accordingly, DDOE gave careful consideration to this input, and, as a result, the revised rule and revised SWMG are significantly changed from the proposed versions of those documents.

Summary

These amendments will provide greater protection for the Anacostia and Potomac Rivers, Rock Creek, and their tributaries. They will improve equity in the allocation of the burden of stormwater management, and they will promote sustainable development within the District.

The amendments will significantly improve protection for District waterbodies by effectuating a fundamental shift in the management of stormwater runoff within the District. Unlike the existing approach in which the fundamental goal of stormwater management is simply to manage the timing and quality of stormwater conveyed into the public sewer infrastructure, these amendments require the retention of stormwater volume on site with a menu of stormwater management practices through which stormwater is absorbed by the soil, infiltrated into the ground, evapotranspired by plants, or stored ("harvested") for use on site. This more closely approximates the "sponginess" of the natural environment, where rainwater is captured by foliage, absorbed into the soil, and infiltrated into groundwater reserves.

These amendments improve equity in how the impacts of stormwater runoff and the burden of stormwater management are distributed in the District. Over the years, inadequate stormwater management has become a leading cause of the severe degradation of District waterbodies such as the Anacostia and Potomac Rivers and Rock Creek. This degradation diminishes the value of these public resources for residents, visitors, and businesses in the District of Columbia and necessitates the use of public resources to pay the costs of managing stormwater and remedying its impacts. These amendments would more equitably allocate the costs of stormwater management by requiring properties undergoing major development or redevelopment to do more to reduce the stormwater runoff from their property. The idea that these costs should be reflected in the costs of developing properties is in keeping with the established principle of environmental policy and economics that external environmental costs should be internalized into the costs of a transaction. By making the shift to the retention-based approach in these amendments, regulated development will become a major driver behind the long-term effort to retrofit impervious surfaces in the District and, ultimately, to restore health to the District's waterbodies.

Enhancing sustainability in the District is another important objective, and Mayor Vincent C. Gray has released a sustainability plan that will help the District achieve this vision

(<http://sustainable.dc.gov/>). These amendments are designed to support that vision not only by improving protection for District waterbodies, but also by providing that protection while maximizing flexibility and cost-savings for regulated sites. Notably, these amendments allow regulated sites the option of achieving a portion of their stormwater retention requirement off site, but still within the District, without having to first prove that on-site retention is infeasible. Such sites would have two (2) off-site options: use of Stormwater Retention Credits (SRCs) purchased from the private market or payment of an in-lieu fee to DDOE.

In addition to the flexibility and cost-savings that these off-site provisions allow, they also enhance sustainability's triple bottom line of social, economic, and environmental impacts via the installation of more retention BMPs in more parts of the District than would otherwise be achieved under a strict on-site retention approach. The preamble to the proposed rule provided an overview of the benefits to District waterbodies that may result from the increase in retention BMPs (available at <http://ddoe.dc.gov/proposedstormwaterrule>). To summarize, this increase has the potential to significantly reduce the volume of stormwater runoff into District waterbodies and to capture a greater share of the dirtiest "first flush" volume carrying pollutants to our waterbodies. By shifting the installation of retention BMPs from areas draining into the tidal Anacostia and Potomac Rivers to areas draining into the District's relatively vulnerable tributary waterbodies, these off-site retention provisions are also likely to result in more protection for the District's most vulnerable waterbodies. Socioeconomically, an increase in retention BMPs should increase the number of green jobs in the District, including low-skill and moderately skilled installation, operation, and maintenance jobs, as well as relatively high-skilled design and engineering jobs. The increase in retention BMPs also provides aesthetic, health, and ancillary environmental benefits to the District. Finally, it is worth pointing out that DDOE sees the off-site provisions in these regulations as having the potential to result in a relatively large amount of retention BMPs being installed in less affluent parts of the District, meaning that they also have the potential to improve environmental justice outcomes in the District.

These amendments also contain other provisions to provide flexibility to regulated sites and promote sustainable development in the District. To facilitate retention on site, the amendments allow a regulated site to exceed the retention requirement in one area ("over-control") in order to compensate for retention that falls short in another area on the site. Additionally, on-site retention can also be achieved via direct drainage to a Shared Best Management Practice (S-BMP) that may serve multiple sites. Finally, though sites draining into the combined sewer system must retain a minimum volume of stormwater from the entire site, they have the flexibility to over-control without having to meet minimum requirements for retention or treatment in individual drainage areas on the site.

Proposed Transition to Full Effectiveness of Stormwater Management Performance Requirements

Numerous stakeholders have commented on the importance of the issue of when the new stormwater management performance requirements take effect. On the one hand, the new requirements are essential for the restoration of the District's waterbodies, and without these new requirements, or something very similar, it is difficult to envision how the full use of District waterbodies can be restored to its residents, visitors, and businesses. On the other hand,

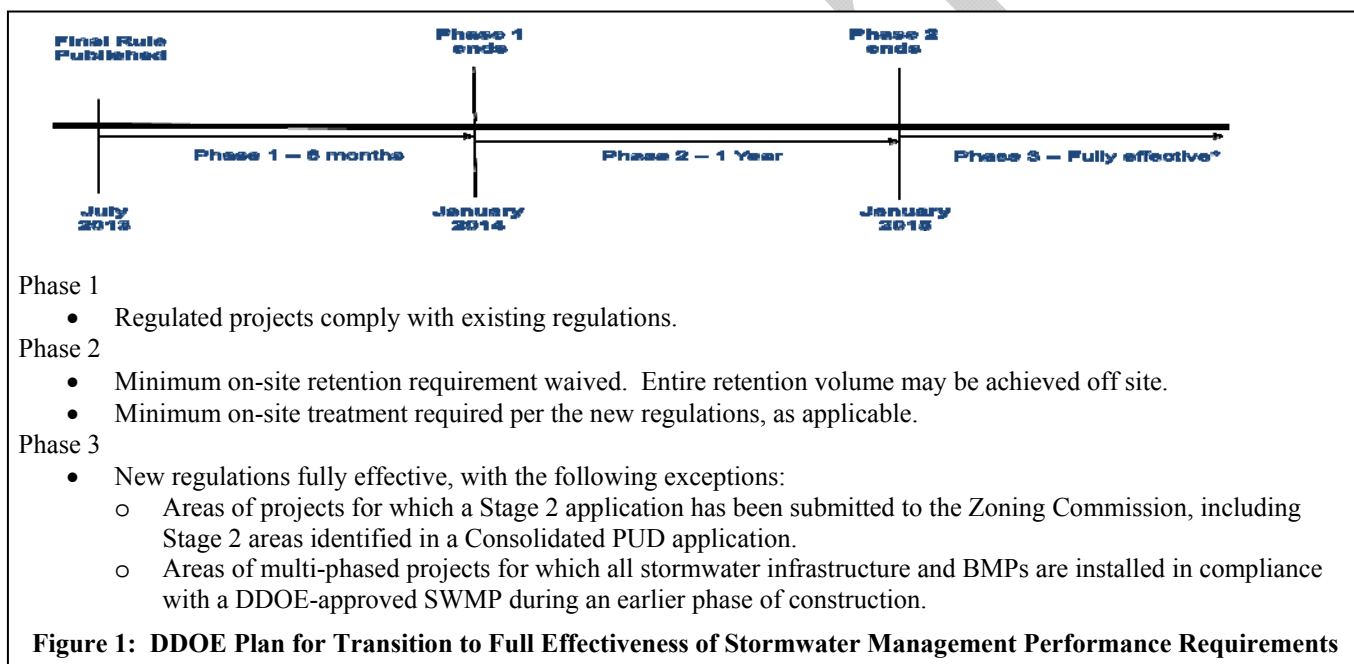
requiring regulated projects to meet the new requirements immediately or very soon after finalizing the rulemaking may impose significant costs and time delays on these projects. As noted above, the new regulations represent a significant shift from the existing regulations. The types of projects that trigger the District's stormwater management regulations may go through months or even years of design work prior to beginning the permitting process that triggers the regulations, and it is difficult for those projects to design to the new requirements in advance of finalizing the rulemaking, since the regulatory requirements and technical guidance supporting them in the SWMG have not yet been finalized.

In developing a proposed transition plan, DDOE has carefully considered these issues, as well as the requirements of the MS4 permit, and DDOE believes it has struck a reasonable balance with its proposed plan (detailed in Figure 1 and below). Please note that DDOE's transition plan only applies to the stormwater management performance requirements, while provisions related to erosion and sediment control, Stormwater Retention Credit certification and trading, and the new administrative fee structure would take effect immediately upon finalization of the rulemaking.

DDOE presented its proposed transition plan at a February meeting of stakeholders who have expressed strong views on this topic to DDOE, with balanced representation from both the regulated and environmental advocacy communities. DDOE explained its intention to share this proposed transition plan with the public during the informal comment period and to further refine the plan based on comments received. At the meeting, stakeholders from the environmental community recognized the need for some transition period, and stakeholders from the regulated community expressed their understanding of the importance of the regulations for the restoration of District waterbodies. Stakeholders also shared initial reactions to DDOE's proposal, both positive and negative. They discussed potential alternatives and modifications, and they expressed the need to have time to consider the details of the proposal and discuss it with others.

Not having heard wholesale objections to DDOE's proposed transition plan and in the interest of providing clarity and certainty on this issue as soon as possible, DDOE presented its proposal to EPA in mid March, with the explanation that some of the details may change as a result of public input during the informal comment period. DDOE does not expect EPA to provide a formal statement on DDOE's proposed plan until all of the details are presented as final. However, EPA did express its understanding of the need for some transition period and appreciation for DDOE's attempt at a balanced proposal. EPA noted that Phase 2 of DDOE's proposed plan made it easier to accept than an alternative with an across-the-board 18-month grandfathering period. EPA also emphasized the primary importance of the District's implementing an effective regulatory package that significantly reduces the impacts of stormwater on District waterbodies, with regulated projects being constructed to the new requirements by the expiration of the 5-year MS4 permit term on October 7, 2016.

In reviewing Figure 1, it is important to understand that, with a few exceptions, the timing of each phase is relative to a major regulated project’s submittal of a first Stormwater Management Plan (SWMP) as part of the building permit application process. If a major regulated project must re-start the building permit application process (because the permit has expired² or the permit application has been abandoned³), then the major regulated project would have to meet the stormwater management requirements that are in place at the time it is submitting its SWMP as part of the re-started permit application process. For example, a major regulated project submitting a SWMP prior to the end of Phase 1 in January, 2014 would meet the requirements that are now in place in the District’s existing stormwater management regulations; however, if the building permit expires, the project applies anew for a building permit, and it submits its SWMP for the new building permit application during Phase 3, then it would be subject to the Phase 3 requirements.



DDOE recognizes the need for some exceptions to the general rule that the timing of each phase is relative to a major regulated project’s submittal of a SWMP. Specifically, Figure 1 indicates two exceptions, which are meant to avoid imposing significant re-design costs, delays, the need

² Section 105.5 of DCMR 12A describes circumstances under which an issued building permit expires. To paraphrase, if authorized work is not commenced within one year after permit issuance or if authorized work is suspended or abandoned for a period of one year after work is begun, then the permit becomes invalid. These time periods are shorter for work on premises or structures that have been deemed unsafe or unfit for human occupancy. Upon written request and with a showing of good cause, the code official may grant up to three extensions of not more than six months each. Available at [dcra.dc.gov/DC/DCRA/About+DCRA/DCMR+12+Building+Code+Regulations+\(2008\)](http://dcra.dc.gov/DC/DCRA/About+DCRA/DCMR+12+Building+Code+Regulations+(2008))

³ Section 105.3.2 of DCMR 12A describes circumstances under which a building permit application will be deemed to have been abandoned. To paraphrase, a permit is deemed to be abandoned if 1) an applicant fails to obtain a permit within six months of written notice by the code official that the permit is ready for issuance or 2) an applicant fails to make required changes to the application or plans within one year of written notice by the code official that review is complete and changes are required. If an applicant shows reasonable cause, the code official is permitted to grant up to two six-month extensions. See [dcra.dc.gov/DC/DCRA/About+DCRA/DCMR+12+Building+Code+Regulations+\(2008\)](http://dcra.dc.gov/DC/DCRA/About+DCRA/DCMR+12+Building+Code+Regulations+(2008))

to re-apply for approval, or the need to go through the construction of stormwater infrastructure multiple times for the same site or portion of a site.

The first exception is for projects that have submitted the detailed design work required for a Stage 2 or Consolidated Planned Unit Development (PUD) application to the District Zoning Commission. At the point of submitting a Stage 2 or Consolidated PUD application, these projects would have expended significant resources for design work but would not yet have started the building permit application process. Once approved by the Zoning Commission, details specified in the application generally cannot be changed without being re-approved by the Zoning Commission. To avoid imposing significant re-design costs, delays, and the need to re-apply for approval, DDOE intends for these projects to be subject to the requirements in place when they submit a Stage 2 or Consolidated PUD application. For example, if a major regulated project submits a Stage 2 or Consolidated PUD application before the end of Phase 1, it would be required to meet the requirements that are now in place. If that project instead submits its PUD application after the end of Phase 2, then it would be subject to the fully effective stormwater management performance requirements. If the Zoning Commission's approval of a PUD application expires and the project must re-apply, then it would have to meet the stormwater management requirements that are in place when it submits its new application. If a Consolidated application includes Stage 2 requirements for an initial phase of the site and Stage 1 requirements for a subsequent phase(s), then the exception would apply only to the Stage 2 area of the site.

The second exception is for a multi-phased project that achieves the stormwater management requirements for the remaining areas of a site during an initial phase of construction. In other words, if, during an initial phase of construction, a multi-phased project installs all the stormwater infrastructure and BMPs required by a DDOE-approved SWMP for areas that will be developed in later phases, then those areas will have satisfied the stormwater management requirements, even though they will not be fully developed until a subsequent phase of construction. For example, if a multi-phased project installed a stormwater detention pond and related infrastructure during the first phase of the project in compliance with a DDOE-approved SWMP satisfying the existing requirements for the entire area that will be part of the multi-phased project, then subsequent phases would not be required to meet new stormwater management requirements that are in place when those subsequent phases go through construction. By contrast, if a multi-phased project simply installed the stormwater infrastructure and BMPs for the area being developed under the first phase but was not simultaneously going through permitting for remaining phases, it would not be eligible for the exception, even if it had an overall conceptual SWMP for areas being developed in subsequent phases. In that case, each areas being developed in a subsequent phase would comply with the requirements in place at the time it is going through the permitting process.

Addition of Section with Stormwater Management Performance Requirements for Major Regulated Projects in the Anacostia Waterfront Development Zone

The proposed rule left a placeholder in Section 524 for “Enhanced Protections for the Anacostia River” in anticipation of the finalization of the Anacostia Waterfront Environmental Standards Amendment Act of 2012 (A19-0447). That legislation became effective on October 23, 2012,

and Section 524 of the revised rule incorporates the stormwater management requirements in that legislation.

Summary of DDOE Calculation of In-Lieu Fee

Many stakeholders requested in their comments that the Department provide an explanation of its calculation of the In-Lieu Fee (ILF). Table 1 provides a summarized explanation, which represents the Department's calculation of the ILF based on its most recent review of capital cost data from its various programs to install retention BMPs in the District.

After rounding, the updated cost data resulted in the same ILF of \$3.50 per gallon per year that was specified in the proposed rule. Whereas the calculation for the proposed rule resulted in a raw number of \$3.37, which the Department rounded up to \$3.50, the new calculation resulted in a raw number of \$3.48, which the Department also rounded up to \$3.50.

This table has been compressed to fit on one page, which may make it difficult to read. The Department will make a two-page version of this table available via <http://ddoe.dc.gov/proposedstormwaterrule>. For those interested in reviewing the actual calculations, a copy of the spreadsheet will also be posted at that webpage.

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Table 1

| DDOE Calculation of In-Lieu Fee Corresponding to One Gallon of Retention for One Year | | | | | | |
|---|------------------------------------|---------------------------|--|---|--|-------------------------|
| (Based on Cost Data from DDOE Programs to Install Retention Best Management Practices or BMPs) | | | | | | |
| | Green Roofs¹ | Bio- retention | RiverSmart- Bioretention, Bayscaping, Tree Planting² | RiverSmart- All other BMPs³ | Harvest for Non-Potable Use | Green Alleys |
| Capital cost for one BMP life cycle (\$/gal) ⁴ | \$16.00 | \$15.98 | \$6.67 | \$9.76 | \$99.87 | \$122.29 |
| Construction management for one BMP lifecycle ⁵ | \$3.20 | \$3.20 | \$1.33 | \$1.95 | \$19.97 | \$24.46 |
| DDOE program management costs for one BMP lifecycle ⁶ | \$1.60 | \$1.60 | \$0.67 | \$0.98 | \$9.99 | \$12.23 |
| Value of land committed to BMP installation (SF/gal) ⁷ | \$0.00 | \$17.46 | \$41.91 | \$0.00 | \$0.00 | \$0.00 |
| Total of above costs | \$20.80 | \$38.24 | \$50.59 | \$12.69 | \$129.83 | \$158.98 |
| Annualized payment for above costs | \$1.99 | \$3.65 | \$4.83 | \$1.21 | \$12.41 | \$15.19 |
| Annual maintenance cost | \$0.80 | \$0.80 | \$0.33 | \$0.49 | \$4.99 | \$6.11 |
| Total annual payment | \$2.79 | \$4.45 | \$5.17 | \$1.70 | \$17.40 | \$21.31 |
| Total gallons retained by the BMPs | 543,515 | 81,512 | 347,600 | 336,740 | 13,868 | 6,798 |
| Weighted average of total annual payments for BMPs | \$3.48 | | | | | |
| In Lieu Fee as rounded weighted average of total annual payments for BMPS | \$3.50 per gallon per year | | | | | |
| Assumptions Used in Calculation: | | | | | | |
| Interest rate ⁸ | 0.0716 | | | | | |
| Years in BMP life cycle/Time period over which costs are annualized ⁹ | 20 | | | | | |
| Construction management costs per BMP life cycle as percent of capital cost | 0.20 | | | | | |
| DDOE program management costs per BMP lifecycle as percent of capital cost ¹⁰ | 0.10 | | | | | |
| Maintenance cost per year as percent of capital cost ¹¹ | 0.05 | | | | | |
| Land value (\$/sf) ¹² | \$116.43 | | | | | |
| ¹ Includes data from both partial and full subsidy programs for installation of green roofs. For partial subsidy program, the value of \$10 per SF is used, based on program experience and expectation of subsidy required to achieve participation. | | | | | | |
| ² Includes data from rain garden and bayscaping installation and tree planting for RiverSmart Homes, RiverSmart Communities, and RiverSmart Washington. RiverSmart Washington data based on 90% design. | | | | | | |
| ³ Includes data from permeable pavement and rain barrel installation for RiverSmart Homes, RiverSmart Communities, and RiverSmart Washington. RiverSmart Washington data based on 90% design. | | | | | | |
| ⁴ Capital cost per gallon for each BMP category is based on weighted average of BMP installations by DDOE, including design costs. | | | | | | |
| ⁵ Construction management costs include cost of management by partnering sister agencies and non-profits. Does not include DDOE costs. | | | | | | |
| ⁶ Covers DDOE program management costs. | | | | | | |
| ⁷ Though DDOE currently does not buy or lease land to install retention capacity, this could become necessary if the Department needed to dramatically scale up its programs in response to the use of In Lieu Fee (ILF) by major regulated projects. In addition, from an economic and practical perspective, the value of land being prevented from being used for alternative uses is a real cost that impacts the willingness of property owners to participate in DDOE BMP installation programs. DDOE expects that over time it will be necessary to increase the subsidy it provides to property owners to incentivize BMP installation. For this calculation, DDOE assumes that green roofs, stormwater harvest systems (including rain barrels), and permeable pavement do not prevent other uses of the underlying land and so have no cost in terms of land value. By contrast, based on its project data, DDOE calculated that bioretention uses .15 SF per gallon of bioretention, as a weighted average from multiple BMP installations. Similarly, DDOE calculated that .36 SF of land is used per gallon of retention achieved by the RiverSmart programs installing rain gardens and bayscaping and planting trees. | | | | | | |
| ⁸ The interest rate used in the calculation is the inflation-adjusted, compound annual growth rate for the S&P 500 from 1920-2010 (calculated at www.moneychimp.com/features/market_cagr.htm). In effect, the annual ILF payment is paying the District back over time for an up-front capital investment in retention capacity and the ongoing maintenance costs associated with it, when a regulated project opts to use ILF. Similar to a mortgage payment that includes both principal and interest, the calculation of the ILF payment should reflect the up-front capital investment that the District must make and also the value, over time, of the District funds committed, represented as interest. DDOE chose this S&P rate as a reasonable approximation of the alternative use that the District could, theoretically, make with the public funds it would use to make this capital investment. | | | | | | |
| ⁹ 20 years is in the range of lifecycle time periods used by other jurisdictions and in the literature when making similar calculations. | | | | | | |
| ¹⁰ Though DDOE program management costs vary among programs, 10% is a reasonable approximation, and it is the rate at which DDOE reimburses grant recipients for administrative overhead costs. | | | | | | |
| ¹¹ This is in the range of values used in the literature on maintenance of retention BMPS. | | | | | | |
| ¹² This land value is an average of the average land value in each of the District's eight wards, based on 2011 assessed land values. It is important for DDOE to be able to install ILF retention BMPs in any of the District's watersheds to offset stormwater impacts from projects located in those watersheds. Though land costs are significantly higher than the average in some wards, they are also significantly lower in others. DDOE believes this average land value serves as a reasonable estimate of the value of land for this purpose. | | | | | | |

In-Lieu Fee Special Fund

Numerous stakeholders requested in their comments that the District establish a special purpose revenue fund to facilitate DDOE's tracking and reporting on In-Lieu Fee (ILF) payments made to DDOE and to provide greater transparency to members of the public who are interested in ensuring that ILF payments are used exclusively for the installation, operation, and maintenance of stormwater retention BMPs. DDOE agrees that the creation of an In-Lieu Fee Fund would be preferable to the alternative that DDOE had included in the proposed rule, namely for ILF payments to be deposited into the Stormwater Permit Compliance Enterprise Fund.

On March 28, 2013, Mayor Gray transmitted the Fiscal Year 2014 Budget Support Act of 2013 to the Council of the District of Columbia. That legislation includes provisions to establish a special purpose revenue fund for ILF payments. Reflecting this, Section 530.6 of the revised rule specifies that ILF payments should be deposited into this fund. DDOE recognizes that the legislation is subject to Council approval and may be significantly changed. Once the legislation is finalized, DDOE plans to modify the rule accordingly.

Suggestions on an Alternative Name for Stormwater Retention Credits

DDOE requests suggestions on an alternative, shorthand name for Stormwater Retention Credits, other than "SRCs" since the acronym SRCs has no intuitively clear meaning and it can be confused with the acronym SREC, short for Solar Renewable Energy Certificate. One alternative that has been suggested is RainReCs, as in Rain Retention Credits.

Public Meetings to Respond to Clarifying Questions

During the informal comment period, DDOE plans to hold at least two meetings at which it will respond to clarifying questions about the revised rule and revised SWMG. DDOE will provide notice of these meetings on its website and via the email list used to distribute this revised rule. If you are not on that list, please email Arquena Dailey at arquena.dailey2@dc.gov or 202-741-2136.

In addition, DDOE will do its best to accommodate requests for additional clarifying meetings during this time. For requests focused on the revised rule, please contact Brian Van Wye at Brian.VanWye@dc.gov or 202-741-2121. For requests focused on the revised SWMG, please contact Rebecca Stack at Rebecca.Stack@dc.gov or 202-727-5160.

Submitting Comments on the Revised Rule and Stormwater Management Guidebook

A person may obtain an electronic copy of the revised rule or revised SWMG via ddoe.dc.gov/proposedstormwaterrule. For a paper copy of the revised rule, contact Brian Van Wye at Brian.VanWye@dc.gov or 202-741-2121. To arrange to review a paper copy of the revised SWMG, contact Rebecca Stack at Rebecca.Stack@dc.gov or 202-727-5160.

To submit comments on the revised rule, please ensure that the comments identify the commenter and that they are clearly marked "Revised Stormwater Rule Comments." Comments

DRAFT for INFORMAL COMMENT PERIOD

may be (1) mailed or hand-delivered to Attn: Brian Van Wye, Natural Resources Administration, 1200 First Street, N.E., 5th Floor, Washington, D.C. 20002, Attention: Revised Stormwater Rule or (2) e-mailed to Brian.VanWye@dc.gov, with the subject indicated as “Revised Stormwater Rule Comments”.

Written comments on the revised SWMG should clearly identify the commenter and be marked “Revised Stormwater Guidebook Comments.” Comments may be (1) mailed or hand-delivered to Attn: Rebecca Stack, Natural Resources Administration, 1200 First Street, N.E., 5th Floor, Washington, D.C. 20002, Attention: Revised Stormwater Guidebook Comments or (2) e-mailed to Rebecca.Stack@dc.gov, with the subject indicated as “Revised Stormwater Guidebook Comments.”

The Department is committed to considering the public’s comments in a rulemaking process that is open and observes the privacy rights of commenters. A person desiring to comment on the revised rule or revised SWMG must file comments, in writing, not later than Tuesday, April 30 at midnight.

Ordinarily, the Department will look for the commenter’s name and address on the comment. If a comment is sent by email, the email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the Internet. If the Department cannot read a comment due to technical difficulties, and the email address contains an error, the Department may not be able to contact the commenter for clarification, and may not be able to consider the comment. Including the commenter’s name and contact information in the comment will avoid this difficulty.

If a commenter considers information to be NON-PUBLIC, the commenter must advise the Department, in writing, when the comment is submitted. When the Department identifies a comment containing copyrighted material, the Department will provide a reference to that material on the website. When the Department identifies information that has been correctly described as non-public it will either (i) return the entire comment and decline to consider it; (ii) redact or otherwise conceal the non-public information and consider the rest of the comment; or (iii) communicate with the commenter to determine what part, if any, of the comment it might consider as part of the public record.

Chapter 5, Water Quality and Pollution, of title 21 of the District of Columbia Municipal Regulations is amended by repealing and replacing Sections 500 to 545 and 599 and adding Sections 546 and 547as follows:

The Table of Contents is amended as follows:

CHAPTER 5 WATER QUALITY AND POLLUTION

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- 540 **SOIL EROSION AND SEDIMENT CONTROL: APPLICABILITY**
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500 GENERAL PROVISIONS

- 500.1 The provisions of this chapter shall be applicable to all sources of pollution affecting the Potomac River and its 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 an alternative media, including electronic media, for a document that this chapter requires to be submitted in Mylar, paper, or other specific media.

500.9 An infiltration test conducted for the Department's approval of a stormwater management plan does not require separate Departmental approval for groundwater quality protection provided that:

- (a) The person conducting the test shall contact the Department to schedule a field visit during the test;
- (b) No test shall go to a depth of greater than fifteen (15) feet below the ground surface; and
- (b)(c) If the Department identifies contamination or a person involved in 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.

501 FEES

501.1 The District Department of the Environment (Department) shall adjust the fees in this section for inflation annually, using ~~the *Engineering News-Record Construction Cost Index* or~~ 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 project or portion of a project entirely in the existing public right of way is not required to pay 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-

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

| Plan Review Type and Payment Requirement | Fees by Land Disturbance Type | | |
|---|--|------------------------------------|--------------------------------|
| | Residential | All Other | |
| | ≥ 50 ft ² and < 500 ft ² | ≥ 50sf and < 5,000 ft ² | ≥ 5,000 ft ² |
| Initial (Due upon filing for building permit) | \$50.00 | \$435.00 | \$1,070.00 |
| Final (Due before building permit is issued) | n/a | | \$0.15 per 100 ft ² |
| • Clearing and grading > 5,000 ft ² | n/a | \$435.00 | |
| • Excavation base fee | | \$0.10 per yd ³ | |
| • Excavation > 66 yd ³ | | \$0.10 per yd ³ | |
| • Filling > 66 yd ³ | | \$0.10 per yd ³ | |
| Supplemental (Due before building permit is issued) | \$100.00 | \$100.00 | \$1,000.00 |

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

Table 2. Stormwater Management Plan Review

| Plan Review Type | Payment Requirement | Fees by Land Disturbance Type | |
|------------------|--------------------------------------|--|--------------------------|
| | | ≥ 5,000 ft ² and ≤ 10,000 ft ² | > 10,000 ft ² |
| Initial | Due upon filing for building permit | \$3,300.00 | \$6,100.00 |
| Final | Due before building permit is issued | \$1,500.00 | \$2,400.00 |
| Supplemental | Due before building permit is issued | \$1,000.00 | \$2,000.00 |

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.

Table 3. Additional Fees

| Review or Inspection Type | Fees by Land Disturbance Type | |
|---|--|--------------------------|
| | ≤ 10,000 ft ² | > 10,000 ft ² |
| Field visit for soil infiltration test | \$300 for ≤ 10 borings; \$600 for > 10 borings | |
| Soil infiltration test report review | \$150.00 | |
| Soil characteristics inquiry | \$150.00 | |
| Geotechnical report review | \$70.00 per hour | |
| After-hours inspection fee | \$50 per hour | |
| Stormwater pollution plan review | \$1,100.00 | |
| Dewatering pollution reduction plan review | \$1,100.00 | \$2,100.00 |
| Application for relief from extraordinarily difficult site conditions | \$500.00 | \$1,000.00 |

501.6 An applicant for Department approval of a [stormwater management plan SWMP](#) for a project being conducted to create retention capacity 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](#)

(a)(b) [For existing retention capacity, 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. Review of Stormwater Management Plan to Certify Stormwater Retention Credits

| Plan Review Type | Payment Requirement | Fees by Land Disturbance Type | |
|------------------|--------------------------------------|-------------------------------|--------------------------|
| | | ≤ 10,000 ft ² | > 10,000 ft ² |
| Initial | Due upon filing for building permit | \$575.00 | \$850.00 |
| Final | Due before building permit is issued | \$125.00 | \$200.00 |
| Supplemental | Due before building permit is issued | \$500.00 | |

[501.7](#) [A person who requires Departmental approval of an as-built SWMP for SRC certification for existing retention capacity 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.](#)

[501.8](#) [A person who requires the Department’s review of a proposed or as-built Stormwater Management Plan 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.](#)

501.97 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. Review of Green Area Ratio Plan

| Plan Review Type | Payment Requirement | Fees by Land Disturbance Type | |
|------------------|--------------------------------------|-------------------------------|--------------------------|
| | | ≤ 10,000 ft ² | > 10,000 ft ² |
| Initial | Due upon filing for building permit | \$575.00 | \$850.00 |
| Additional | Due before building permit is issued | \$125.00 | \$200.00 |
| Supplemental | For reviews after first resubmission | \$500.00 | |

501.108 The in lieu fee shall be three dollars and fifty cents (\$3.50) per year for each gallon of Off-Site Retention Volume ([OffvOSRv](#)).

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

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

Table 6. Resources

| Paper Copies of Documents | Cost |
|--|---------|
| District Standards and Specifications for Soil Erosion and Sediment Control | \$50.00 |
| District Stormwater Management Guidebook | \$50.00 |
| District Erosion and Sediment Control Standard Notes and Details (24 in x 36 in) | \$25.00 |

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 Stormwater Management Plan (SWMP), including a material change in the volume of stormwater flowing into a Best Management Practice (BMP), a Shared BMP, or a land cover ~~change~~.

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 the plan is 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 pre-construction inspection report; or
- (c) The Department's report of the pre-construction 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 pre-construction 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 pre-construction 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 notice to the Department within one (1) week of completion of the BMP.

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, and 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.

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

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

503.124 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.

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

503.143 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) Violation of a condition of an approved plan;
- (b) Noncompliance with a notice that requires corrective action;
- (c) Material false statement or misrepresentation of fact in an application that the Department approved for the project;
- (d) During the project, the license of a contractor or subcontractor is void, has expired, or has been suspended or revoked;
- (e) 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; or
- (f) An approval that a provision of this chapter requires has not been obtained.

504.2 A stop work order shall:

- (a) Have immediate effect;
- (b) Be issued in writing, except that it may be issued orally if reduced to writing within twenty-four (24) hours;
- (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) Act 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 of work, 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 (D.C. Law 5-188; D.C. Official Code § 8-103.16 (2008 Repl. & 2011 Supp.)), as amended; and
- (b) The Soil Erosion and Sedimentation Control Act of 1977, effective Sept. 28, 1977 (D.C. Law 2-23), as amended by the Soil Erosion and Sedimentation Control Amendment Act of 1994, effective July 8, 1994, (D.C. Law 10-166), *codified in* 21 DCMR §§ 500-15, as amended.

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 July 16, 1985 (D.C. Law 6-42; D.C. Official Code §§ 2-1801 *et seq.* (Repl. 2007 & Supp. 2011)), as amended, (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 (D.C. Law 14-76; D.C. Official Code, §§ 2-1831.01 *et seq.* (Repl. 2007 & Supp. 2011)), as amended.

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 (NOV); and
- (b) Issuing and addressing a violation through the use of a DDOE internal Notice of Infraction (NOI).

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 (D.C. Law 14-76; D.C. Official Code, §§ 2-1831.01 *et seq.* (Repl. 2007 & Supp. 2012)), as amended, 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) ~~Notice of Infraction (NOI)~~;
- (f) Determination;

- (g) Cease and desist order;
- (h) Stop work order;
- (h) Order to show cause; or
- (i) 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 (NOV) 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 ~~or enforces an NOI~~.

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 water-body 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 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 Clean Marina Guidebook issued by the National Park Service in 2004, 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 (SRC) 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 activity shall be exempt from the requirements of Section 520 (Stormwater Management: Performance Requirements For Major Land Disturbing Activity), Section 522 (Stormwater Management: Performance Requirements For Major Substantial Improvement Activity) and Section 529 (Stormwater Management: Covenants and Easements) if that the Department determines that it is conducted solely for one or more of the following purposes:

(a) To ~~for the purpose of~~ generating a Stormwater Retention Credit (SRC);

(b) To earn a stormwater fee discount under the provisions of this chapter;

(c) To voluntarily install Best Management Practices that protect, restore, or provide a water quality benefit for District waterbodies;

(d) To install retention capacity that provides for off-site retention through in-lieu fee payments; or

(a)(e) To reduce Combined Sewer Overflows (CSOs) in compliance with the court-approved consent decree, including court-approved modifications, for reducing CSOs in the District of Columbia, shall be exempt from the requirements of:

Section 520 (Stormwater Management: Performance Requirements For Major Land Disturbing Activity);

(a) Section 529 (Stormwater Management: Covenants and Easements).

517.3 A land-disturbing activity that consists solely of cutting a trench for utility work 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. is exempt from the stormwater management requirements of this chapter. A land-disturbing activity that the Department undertakes with the in-lieu fee payments to satisfy an off-site retention volume shall be exempt from Section 520 (Stormwater Management: Performance Requirements for Major Land Disturbing Activity).

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 (Section 516 through Section 534).

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 Public Right of Way (PROW) is exempt from the requirements in Section 520 (Performance Requirements for Major Land Disturbing Activity) for maintaining post-development peak discharge rates.

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, including:

- (a) Two (2) sets of the SWMP, certified by a professional engineer ~~licensed~~registered in the District of Columbia; and
- (b) Each supporting document specified in the Department's Stormwater Management Guidebook (SWMG).

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 pre-construction application including:
- (a) One (1) Mylar copy of the SWMP, certified by a ~~registered~~ professional engineer licensed in the District of Columbia;
 - (b) Seven (7) paper copies of the SWMP, certified by a ~~registered~~ professional engineer licensed in the District of Columbia; and
 - (c) Each supporting document specified in the Department's SWMG.
- 518.9 After the applicant submits a final pre-construction application that meets the requirements for the Department's approval, the Department shall approve the plan, and provide the applicant with one (1) approved copy of the SWMP for the applicant to file at the Recorder of Deeds with the declaration of covenants and, if applicable, to record an easement.
- 518.10 The Department shall issue the remaining approved paper copies of the approved SWMP to the applicant 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 issue the remaining approved paper copies of the approved SWMP to the applicant 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, including:

- (a) One (1) Mylar copy of the as-built SWMP certified by a [registered](#) professional engineer licensed in the District of Columbia; and
- (b) Each supporting document specified in the Department's SWMG.

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;](#)
- (b) Proposed site design;
- (c) Each land use proposed for the site;
- (d) Identification and location of each proposed Best Management Practice (BMP);
- (e) Stormwater management capacity;
- (f) Environmental characteristics of the site,
- (g) 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;
- (h) Design and performance of each proposed BMP;

- (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:
 - (1) Separate identification and description; and
 - (2) Documentation of performance and effectiveness;
- (l) Each potential impact of the proposed development on:
 - (1) The District's waterbodies; and
 - (2) Groundwater;
- (m) Construction schedule for:
 - (1) Each BMP; and
 - (2) The related development or improvement project, if any; and
- (n) [A list of For](#) the construction and waste material to be stored on site, [and](#) a description of 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; and
 - (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.
- (o) 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 (SWMG).

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 registered-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 each other project submittal, including:

- (a) An erosion and sediment control plan; and
- (b) A floodplain management plan.

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 change 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 (SFHA) as delineated on the effective Flood Insurance Rate Map (FIRM); 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 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 (1.2 inch rainfall event) by:

(a) Employing each BMP necessary to retain the 1.2 inch Stormwater Retention Volume (SWR_v), calculated as follows: Achieve a stormwater retention volume (SWR_v) equal to the post-development runoff from the ninetieth (90th) 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 (1.2 inch rainfall event);

(a) Calculate the 1.2 inch SWR_v in subsection (a) as follows:

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

- SWR_v = volume, in gallons, required to be retained
- P = 90th percentile rainfall event for the District (1.2 inches)
- R_{vI} = 0.95 (runoff coefficient for impervious cover)
- R_{vC} = 0.25 (runoff coefficient for compacted cover)
- R_{vN} = 0.00 (runoff coefficient for natural cover)

- %I = post-development percent of site in impervious cover
- %C = post-development percent of site in compacted cover
- %N = post-development percent of site in natural cover
- SA = surface area, in square feet, of land disturbing activity~~and~~

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

- ~~(b) Employing each post-development land cover factored into the SWRv; and Calculate the 1.2 inch SWRv for the entire site and each drainage area.~~
- ~~(c) Calculating separately and achieving the SWRv, with P equal to 1.2 inches, for the portion of land-disturbing activity that is in the existing Public Right of Way (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 SWRv 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 SWRv, calculated for the entire site, unless the Department approves an application for relief from extraordinarily difficult site conditions; 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, ~~in a drainage area,~~ subject to the following conditions:

- (a) At least fifty percent (50%) of the 1.2 inch SWRv from each Site Drainage Area (SDA), ~~drainage area~~ unless it drains into the combined sewer system, shall be:
 - (1) Retained; or
 - ~~(2)~~ Treated to remove ~~eightysixty~~ percent (~~680~~%) of total suspended solids; and
 - ~~(2)~~(3) 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;

- (b) Retention in excess of a 1.2 inch SWRv for one ~~drainage~~ area of the site may be applied to the volume required for another ~~drainage~~ area of the site;
- (c) 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 Department approves an application for relief from extraordinarily difficult site conditions; and
- (d) 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.

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, or streetscape work in the existing public right of way (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; ~~or~~
- (b) Achieving the SWRv; or
- ~~(b)~~(c) Retaining on site the SWRv to the Mmaximum Eextent Ppracticable (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 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 Department's Stormwater Management Guidebook (SWMG).

521.4 A project in the existing PROW that elects to comply with the MEP process for maximizing retention or treatment ~~retain on-site the SWRV to the MEP~~ 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; and
 - (5) Evidence of the applicability of a statute, regulation, court order, pre-existing covenant, or other restriction having the force of law.

~~(a) Achieve the SWRV; or~~

~~(b) Apply to the Department for relief from extraordinarily difficult site conditions and comply with the Department's determination.~~

521.54 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) At least fifty percent (50%) of the 1.2 inch SWRV from each Site Drainage Area (SDA), unless it drains into the combined sewer system, shall be:

(1) Retained; or

(2) Treated to remove eighty percent (80%) of total suspended solids; and

(3) 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;

(b) 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;

(c) 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; and

(d) 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.

521.6 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.

521.75 An existing PROW project that is retaining the for which the Department grants relief for a volume of the SWRv or the WQTV to the MEP shall not be required to: Provide treatment for that volume; or Use off-site retention for theat difference between the required volume and the achieved volume.

521.5 A PROW project that applies for relief shall demonstrate that reducing the proposed roadway size in order to create an expanded area for retention of a volume of the SWRv between the curb line and private property is technically infeasible or environmentally harmful.

522 STORMWATER MANAGEMENT: PERFORMANCE REQUIREMENTS FOR MAJOR SUBSTANTIAL IMPROVEMENT ACTIVITY

522.1 If a major substantial improvement activity ~~has demonstrated~~ that it is not part of a common plan of development with a major land disturbing activity, then it shall comply with the provisions of this section; otherwise, it shall comply with the requirements for a major land disturbing activity.

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 ~~change~~ 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 ~~A~~ achieve a stormwater retention of the rainfall from ~~volume (SWRv) equal to the post-development runoff from~~ 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 (0.8 inch rainfall event) ~~by~~;

- (a) Employing each BMP necessary to retain the 0.8 inch Stormwater Retention Volume (SWRv), calculated as follows: Calculate the 0.8 inch SWRv in subsection (a) as follows:

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

- SWR_v = volume, in gallons, required to be retained
- P = 80th percentile rainfall event for the District (0.8 inches)
- R_{vI} = 0.95 (runoff coefficient for impervious cover)
- R_{vC} = 0.25 (runoff coefficient for compacted cover)
- R_{vN} = 0.00 (runoff coefficient for natural cover)
- %I = post-development percent of site in impervious cover
- %C = post-development percent of site in compacted cover
- %N = post-development percent of site in natural cover
- SA = surface area, in square feet, of substantially improved building footprint plus land disturbance in square feet

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

- (b) Employing each post-development land cover factored into the SWRv. Calculate the 0.8 inch SWRv for the entire site and each drainage area.
- (c) Calculating separately and achieving the SWRv, with P equal to 1.2 inches, for the portion of land-disturbing activity that is in the existing Public Right of Way (PROW), in compliance with the section of this chapter pertaining to performance requirements in the existing PROW.

522.54

A site that undergoes a major substantial improvement activity may achieve the 0.8 inch SWRv 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 the Department approves an application for relief from extraordinarily difficult site conditions; and
- (b) The site shall use off-site retention for the portion of the SWRv that is not retained on site.

522.65

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

- (a) At least fifty percent (50%) of the 0.8 inch SWRv from each Site dDrainage aArea (SDA), unless it drains into the combined sewer system, shall be:
 - (1) Retained; or
 - (2) Treated to remove eightysixty percent (860%) of total suspended solids; and
 - (3) 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;
- (b) TheRetention in excess of a 0.8 inch SWRv for one drainage-area of the site may be applied to the volume required for another drainage-area of the site;
- (c) The requirement for retention of a minimum of fifty percent (50%) of the 0.8 inch SWRv for the entire site shall be achieved, unless the Department

approves an application for relief from [extraordinarily](#) difficult site conditions; and

(e)(d) 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.

522.76 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 (SWPPP) 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 a requirement that an impermeable liner be used.

523.3 The Department may require a BMP that may receive contaminated runoff in excess of applicable standards [from a stormwater hotspot designated in the Department's SWMG](#) to include pollution control measures, including 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) ~~B-be~~ be connected to a ~~sanitary or~~ combined sewer, [if DC Water approves the connection as not exceeding available capacity; or](#)

- (b) ~~and to 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. meet pretreatment requirements of the District of Columbia Water and Sewer Authority.~~

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

524 **[RESERVED] STORMWATER MANAGEMENT: ENHANCED PROTECTION FOR THE ANACOSTIA RIVER PERFORMANCE REQUIREMENTS FOR MAJOR REGULATED PROJECTS IN THE ANACOSTIA WATERFRONT DEVELOPMENT ZONE**

524.1 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 (SWMP) occurs.

524.2 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.

524.3 An AWDZ site that undergoes a major land disturbing activity shall achieve treatment of the rainfall from 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 (1.7 inch rainfall event) by:

- (a) Employing each BMP necessary to treat the 1.7 inch Water Quality Treatment Volume (WQTV) equal to the difference between:

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

- (b) Calculate the WQTV in subsection (a) as follows:

$$\text{WQTV} = \frac{([P \times [(Rv_I \times \%I) + (Rv_C \times \%C) + (Rv_N \times \%N)] \times SA] \times 7.48 / 12) - \text{SWRV}}$$

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

SWRV = volume, in gallons, required to be retained

P = 95th percentile rainfall event for the District (1.7 inches)

Rv_I = 0.95 (runoff coefficient for impervious cover)

Rv_C = 0.25 (runoff coefficient for compacted cover)

Rv_N = 0.00 (runoff coefficient for natural cover)

| | | |
|-----------|---|---|
| <u>%I</u> | = | <u>post-development percent of site in impervious cover</u> |
| <u>%C</u> | = | <u>post-development percent of site in compacted cover</u> |
| <u>%N</u> | = | <u>post-development percent of site in natural cover</u> |
| <u>SA</u> | = | <u>surface area in square feet, of land disturbing activity</u> |

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.

524.4 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 Stormwater Retention Volume (SWRv) shall be equal to the post-development runoff from 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 (1.0 inch rainfall event);

(b) Achieve treatment of the rainfall from 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 (1.7 inch rainfall event) by

(1) Employing each BMP necessary to treat the 1.7 inch Water Quality Treatment Volume (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) Calculate the WQTV in subsection (b) as follows:

$$\text{WQTV} = \frac{[P \times [(Rv_I \times \%I) + (Rv_C \times \%C) + (Rv_N \times \%N)] \times SA] \times 7.48 / 12}{\text{SWRv}}$$

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

SWRv = volume, in gallons, required to be retained

P = 95th percentile rainfall event for the District (1.7 inches)

Rv_I = 0.95 (runoff coefficient for impervious cover)

Rv_C = 0.25 (runoff coefficient for compacted cover)

Rv_N = 0.00 (runoff coefficient for natural cover)

%I = post-development percent of site in impervious cover

| | | |
|-----------------------------|----------|--|
| <u> %C</u> | <u>=</u> | <u>post-development percent of site in compacted cover</u> |
| <u> %N</u> | <u>=</u> | <u>post-development percent of site in natural cover</u> |
| <u> SA</u> | <u>=</u> | <u>surface area in square feet,</u> |

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.

524.5 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 (TSS);
- (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.

524.6 An AWDZ site may achieve part of the WQTV 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; and
- (b) The Department approves an application for relief from extraordinarily difficult site conditions.

524.7 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 OSRV.

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

524.9 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 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 stormwater management plan 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 ~~If compliance with the minimum on-site retention requirement is technically infeasible or environmentally harmful,~~ 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 (50% of Stormwater Retention Volume (SWRv)); or

(b) For an Anacostia Waterfront Development Zone (AWDZ) site to comply with any portion of its Water Quality Treatment Volume (WQTV) or SWRv on site, except that AWDZ sites may also apply based on the limited appropriateness of on-site stormwater management.

526.2 The Department shall not provide relief unless the applicant proves that on-site compliance ~~with the minimum on-site retention requirement~~ 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 ~~retention~~ BMP that was considered and rejected, and the reasons for each rejection; and
- (b) Evidence of site conditions limiting each opportunity for a ~~retention~~ 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; and
 - (4) Evidence of the applicability of a statute, regulation, court order, pre-existing covenant, or other restriction having the force of law.

526.4 An applicant for relief shall submit:

- (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 (SWMG);
- (e) Another BMP that complies with the requirements of this chapter~~meets the SWMG's approval requirements~~; 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 (Offv) documented on the approved SWMP; and
- ~~(a)(b)~~ If the relief is from a minimum on-site retention requirement, t^{Treatment} to remove ~~eightysixty~~ percent (860%) of total suspended solids; and
- (c) Use of off-site retention.

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

DRAFT for INFORMAL COMMENT PERIOD

- 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 ([OSRvOffv](#)).
- 527.2 No person shall allow a portion of their [OSRvOffv](#) obligation to be unfulfilled for any period of time.
- 527.3 A person shall achieve each gallon of [OSRvOffv](#) for each year by:
- (a) Using one (1) Stormwater Retention Credit (SRC); or
 - (b) Paying the in-lieu fee to the Department.
- 527.4 An obligation to use off-site retention for a gallon of [OSRvOffv](#) 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 [OSRvOffv](#) 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 [OSRvOffv](#).
- 527.7 The Department shall track the use of off-site retention to achieve an [OSRvOffv](#).
- 527.8 An application to use a SRC to achieve an [OSRvOffv](#) 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 A person may use a Department-certified SRC without regard to the location within the District of the BMP or land cover ~~change~~ that generated the SRC, [except as specified for an Anacostia Waterfront Development Zone site](#).
- 527.10 The Department shall not approve an application to use a SRC to achieve an [OSRvOffv](#) if ~~the SRC is no longer valid, including because~~:
- (a) The SRC has already been used to achieve one (1) year of [OSRvOffv](#); 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 [OSRvOffv](#).

527.12 A site's obligation to use off-site retention to achieve its [OSRvOffv](#) shall begin on the date of successful completion of the Department's final construction inspection.

527.13 For each gallon of required [OSRvOffv](#), 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 [OSRvOffv](#) 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 [OSRvOffv](#);
- (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 ~~as set forth in 527.14~~ [with an obligation to achieve an Offv](#), the property owner shall immediately:

- (a) Comply; and
- (b) Pay fees and charges assessed.

527.16 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 appropriately in the Department's tracking system; and
- (b) Pro-rate the in-lieu fee and refund.

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 ~~change~~ to comply with this chapter;
- (c) Administrative feasibility; and
- (d) Accountability and enforceability.

528.3 The owner, governmental agency, or other person ~~charged~~ with maintenance responsibility shall ensure that a BMP and a land cover ~~change~~ on a lot or parcel is maintained in good working order if:

- (a) The BMP or land cover was installed ~~or land cover change was effected~~ to meet the requirements of this chapter for a major regulated project; or
- (b) The Department certified a Stormwater Retention Credit (SRC) for a gallon of retention capacity created by the BMP or land cover ~~change~~.

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 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.

528.64

Maintenance of each BMP and land cover ~~change~~ 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.

528.5

If the Department finds that a BMP or land cover ~~change~~ 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.

528.6

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 procurement;
- (c) Assess the cost incurred and fees; and
- (d) Assess a fine or penalty.

528.7 If the Department determines that the condition of a BMP or land cover ~~change~~ 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 procurement without prior notice to the owner;
- (c) Assess the cost incurred and fees; and
- (d) Assess a fine or penalty.

528.8 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.

528.9 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.

~~Waste material from the repair, maintenance, or removal of a BMP or land cover change shall be removed, and the maintenance contractor shall submit a written report to the Department within forty eight (48) hours after disposing of the waste material. The report shall include:~~

- ~~(a) The name, address, phone number, and business license number of the contractor transporting the waste materials;~~

~~Date of removal;~~

~~The address of the BMP;~~

- ~~(d) Type of BMP serviced;~~

~~Amount and type of waste material removed;~~

~~The name and location of the facility where the waste material was disposed of; and~~

- ~~(g) A sworn statement that disposal was in compliance with applicable federal and District law.~~

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 ~~make, swear to, and~~ 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) ~~approved by the Department~~; and
- (b) An easement that the Department requires to ensure access for inspection and maintenance of ~~the a~~ BMP or land cover employed to comply with this chapter.

529.2 An agency of the 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 A declaration of covenants and an easement shall:

- (a) Be legally sufficient as determined by the Department or the Department's designee;
- (b) Be binding on all subsequent owners;
- (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 [Engineering News-Record Construction Cost Index](#) or~~ 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.~~

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

530.65 An in-lieu fee payment shall:

~~(a)~~ (a) Be used solely to achieve increased retention in the District of Columbia;

~~(a)(b)~~ Be used to achieve increased retention in the Anacostia watershed, if the payment achieves Off-Site Retention Volume (OSRvOffv) for an Anacostia Waterfront Development Zone site.

(c) Be deposited in The Stormwater In-Lieu Fee Payment Special Purpose Revenue Fund, Permit Compliance Enterprise Fund, established by the The Water Pollution Control Act of 1984 (D.C. Law 5-188; D.C. Official Code § 8-103.01 et seq.), as amended Comprehensive Stormwater Management Enhancement Amendment Act of 2008 (D.C. Law 17-371; D.C. Official Code § 8-152.02 et seq. (2008 Repl. & 2011 Supp.)), as amended.

531 STORMWATER MANAGEMENT: CERTIFICATION OF STORMWATER RETENTION CREDITS

531.1 ~~No person other than~~Only the Department shall ~~have the power and authority to~~ 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 ~~change~~ is eligible for SRC certification if it meets the following eligibility requirements:

- (a) The gallon retained by the BMP or land cover ~~change~~ shall ~~be~~:
 - (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 existing retention; ~~and~~
 - (2) Be ~~No~~ more than the SRC ceiling; ~~and~~
 - ~~(2)~~(3) Not be required to reduce 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.
- (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 ~~change~~, shall be in place.

- 531.4 The SRC-eligible retention volume described in 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 retention capacity 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 retention capacity and the area draining into it;
 - (d) A copy of the as-built SWMP for the retention capacity and the area draining into it, certified by a professional engineer registered-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 SRCs is requested; and
 - (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.
- 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 retention.

- 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 [change](#).
- 531.13 The Department may conduct an inspection of a BMP or land cover [change](#) for the purposes of this section before certification of an SRC and after certification.
- 531.14 For the purposes of certifying an SRC for retention capacity that was installed without an approved SWMP prior to the date these regulations are published as final in the *D.C. Register*, the Department may accept the following as a complete initial application:
- (a) An application on a Department-provided form;
 - (b) A copy of the as-built SWMP for the retention capacity and the area draining into it, certified by a professional engineer [registered-licensed](#) in the District of Columbia that the SWMP meets the requirements of this chapter;
 - (c) Documentation of site conditions prior to installation of the retention capacity;
 - (d) A copy of a current maintenance agreement or maintenance contract for the BMP or land cover [change](#); and
 - (e) Other documentation that the Department requires to determine that the eligibility requirements are satisfied.
- 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.

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 (~~OSR~~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 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 ~~OSR~~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.

532.4 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.

532.5 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.

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 ([OSR_{off}](#)); 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: EXISTING RETENTION

534.1 A person may apply for certification of a Stormwater Retention Credit (SRC) for existing retention capacity that increased retention relative to prior conditions in the limited circumstances described in this section.

534.2 The Department may certify an SRC for existing retention only if the BMP or land cover ~~change~~ that provides the retention:

(a) Was installed after May 1, 2009; and

(b) Achieves retention in compliance with the specifications and calculations in the Department's Stormwater Management Guidebook (SWMG).

534.3 For the purposes of certifying an SRC for existing retention, a person shall submit the following as a complete application:

(a) A completed, Department-provided application form;

(b) A copy of the as-built SWMP for the retention capacity and the area draining into it, certified by a professional engineer ~~registered~~ licensed in the District of Columbia that the SWMP meets the requirements of this chapter;

(c) Documentation of site conditions prior to installation of the retention capacity;

(d) 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; and

- (e) Other documentation that the Department requires to determine that the eligibility requirements for certification of SRCs are satisfied.

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 owner's designation of an agent does not remove the owner's responsibility, liability, or obligation under this chapter.
- 540.6 The approved soil erosion and sediment control plan shall govern all construction work on the property requiring the control of soil erosion and sediment.
- 540.7 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 ~~the~~ Section [540 \(Soil Erosion and Sediment Control: ~~On~~ applicability\)](#):

- (a) For an individual 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 dollars (\$9,000);
- (c) Tilling, planting, or harvesting of agricultural or horticultural crops;
- (d) Installation of fencing, a gate, signpost, or a pole;
- (e) 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 within three (3) weeks after beginning the emergency work; and
- (f) Activities that disturb less than fifty square feet (50 ft²).

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 two (2) sets of prints of the soil erosion and sediment control plan to the Department for review.
- 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 ~~registered~~ 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 at outfalls; 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 preserve topsoil and ensure land disturbance does not extend beyond the proposed area of limit disturbance;
 - (2) Details of grading practices;
 - (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 schedule and time frame 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) A soils report, including recommendations for areas with unstable soils, identified in the Christiana-Sunnyside Association by the District of Columbia Soil Survey. This soils report shall be obtained from a geotechnical engineering entity; and
- (s) A statement placed on the soil erosion and sediment control plan stating that the applicant shall contact the Department to schedule a pre-construction meeting before the commencement of a land disturbing activity.

542.10 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.

542.11 When [a person sees or smells or determines as the result of other analysis that](#) contaminated groundwater or soil [has been](#) encountered during land disturbing activity, the applicant shall notify the Department immediately by the most expeditious means possible, and then in writing.

542.12 When contaminated groundwater is encountered during land disturbing activity [on an area that drains to a District waterbody directly or through the separate storm sewer system](#), the applicant shall submit as soon as practicable to the Department for review and approval a separate detailed dewatering pollution reduction plan for reducing or eliminating contamination from the discharge, which shall include:

- (a) A site description;

- (b) Identification of the potential source of the contaminant;
- (c) Description of control measures to reduce pollutant discharges;
- (d) Monitoring procedures and a monitoring schedule;
- (e) A maintenance and inspection schedule;
- (f) Record keeping and reporting; and
- (g) Contact information for an on-site responsible person, including mobile phone and email address.

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

- (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 technical 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, including waterway crossing and stream bank protection 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 There shall be a rebuttable presumption of compliance with this section if waterway crossings and stream bank protection measures are designed and~~

~~installed in compliance with the Department's Standards and Specifications for Soil Erosion and Sediment Control.~~

543.45 Best Management Practice (BMPs) shall be protected from sedimentation and other damage during construction to ensure proper post-construction operation.

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

543.67 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.

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

543.89 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.

543.910 A site disturbing greater than five thousand square feet (5,000 ft²) of land shall:

(a) ~~Follow~~ Adhere to a Department-approved Stormwater Pollution Prevention Plan (SWPPP) that:

(1) The Department provides in its Stormwater Management Guidebook,

(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 There shall be a rebuttable presumption of compliance with this section if a SWPPP employs the measures specified in the Department's Standards and Specifications for Soil Erosion and Sediment Control.~~

543.102 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 registered 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.

~~543.13 The maximum area that may be exposed at any one (1) time during grading shall be two and one-half acres (2.5 ac.).~~

543.114 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).

543.125 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.

543.136 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~~-when construction is out-of-season for planting and until permanent protection can be provided.

543.147 If the Department determines that a A cut and fill slope is likely to result in erosion by stormwater of sediment from the site onto adjacent property or a nearby waterbody, then the cut and fill slope s:

Shall be protected against erosion from stormwater runoff by the use of structural diversions that are protected by vegetation or matting, in a frequency and manner that a geotechnical engineer licensed in the District of Columbia has determined, based on site conditions, is sufficient to prevent erosion.; and

Shall be protected in five foot (5 ft.) vertical increments as each increment is completed.

543.158 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 :

~~(a) —~~

~~Covered at the end of each work day;~~

~~(b) —~~

~~(c) — (b) — Remain covered on days when construction work is not conducted at the site; and~~

~~(e) — If stockpile material is not being used or added, it shall be stabilized and protected with mulch, temporary vegetation, hydro-seed or plastic within fifteen (15) calendar days after its last use or addition.~~

543.169 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.

543.1720 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.

543.1821 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.

543.1922 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.

543.2023 Maintenance shall be performed to ~~prevent~~keep stabilized areas from becoming constantly unstabilized.

543.2124 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.);

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

~~(e)~~(b) 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 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.).

544.2 Temporary diversion dikes and flumes 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.

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~~close to 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
- (c) 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) The project employs each Department-approved alternative practice to provide comparable protection against erosion during construction and, by the end of construction and thereafter, to:
 - (1) Achieve 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) Apply for relief from extraordinarily difficult site conditions for a portion of the 1.7 inch SWRv and achieve the treatment and off-site retention requirements for the volume of relief granted; or
 - (3) If the Department determines to grant relief for a portion of a the 1.7 inch SWRv for a project but on-site treatment is not feasible, the Department may approve alternative measures to protect or restore the waterbody for which the buffer is intended; -and

(b) The land disturbance is:

~~(2)~~(1) Required to construct, install, or repair:

- (A) Public trails for walking, biking, and similar purposes;

(B) Public points of access for boating, fishing, and viewing waterbodies; or

(C) A stormwater outfall or other utility line;

(2) Of an area that was impervious before the project, if the requirement to establish a buffer in that area would make the proposed project unviable; or

(3) Of a compacted or natural area, if the requirement to establish a buffer in that area would prevent 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 ft²) 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) ~~B-being available to respond to each potential or actual erosion problems identified by construction personnel;~~
- (c) ~~Being available to speak on site with the Department to remedy each potential or actual erosion problem on site during land-disturbing activity to ensure that the activity complies with this chapter~~

547.~~32~~ A responsible person shall be certified through a training program that the Department approves, including a course on erosion control provided by another jurisdiction or professional association.

547.~~43~~ During construction, the responsible person shall have available on site documentation of successful completion of a Department-approved training program.

547.~~54~~ 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.

548-552 [RESERVED]

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:

[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 paragraph \(6\) of this section 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:](#)

- (4) North of New York Avenue, N.E.;
- (5) East of the Anacostia Freeway, including rights-of-way of the Anacostia Freeway;
- (6) East of the portion of Kenilworth Avenue that extends to the northeast from the Anacostia Freeway to Eastern Avenue;
- (7) 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;
- (8) Contiguous to that portion of the Suitland Parkway that is south of Martin Luther King, Jr. Avenue; or
- (9) 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 paragraph (8) of this section;
 - (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, S.E., 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 - A site within the Anacostia Waterfront Development Zone (AWDZ) 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.

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.

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.

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.

Existing retention - Retention on a site, including by each existing Best Management Practice (BMP) and land cover, before retrofit of the site with installation of a new BMP or land cover [change](#).

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 [and related use of land to support that movement. This 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.](#)

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, five thousand square feet (5,000 ft²) or greater of land area, [except that multiple distinct projects that each disturb less than 5,000 ft² 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 ft²) or greater. 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 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 (OSROffv) - 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.

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 at the time that a stormwater management plan is submitted to the Department.

Publicly-owned or publicly-financed project - Project ~~which is:~~

- (a) ~~That is District-owned or District-instrumentality owned; Initially funded in the Fiscal Year 2008 budget or later; or~~
- (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. Constructed or substantially improved:~~
 - (1) ~~As a result of a property disposition by lease or sale where District-owned or District instrumentality-owned property is leased or sold to private entities; or~~

~~(2) — Where fifteen percent (15%) or more of a project's total project cost is publicly financed in Fiscal Year 2009 or later.~~

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, lane, path, alley, sidewalk, or boulevard.

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

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 ~~change~~.

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 (SRCs). 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 ~~change~~ 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 sheet flow 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.

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 to a point on a site from which stormwater discharges.](#)

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 containing design criteria, specifications, and equations to be used for planning, design, and construction, operations, 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 capacity for one (1) year, as certified by the Department. [May also be referred to as a RainReC.](#)

Stormwater Retention Credit Ceiling - Maximum retention for which the Department will certify an SRC, calculated using the 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.

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.