

DISTRICT DEPARTMENT OF THE ENVIRONMENT

NOTICE OF SUPERSEDING RULEMAKING

Stormwater Management, and Soil Erosion and Sediment Control

The Director of the District Department of the Environment (Department or DDOE), under the authority listed below, hereby gives notice to amend Section 517 (Stormwater Management: Exemptions) of Chapter 5 (Water Quality and Pollution), Title 21 (Water and Sanitation), of the District of Columbia Municipal Regulations (DCMR), through a Notice of Superseding Rulemaking that corrects an error to the rulemaking as published in the June 7, 2013 *D.C. Register* at 60 DCR 8493. The Notice of Proposed Rulemaking published on June 7, 2013 refers to the rulemaking as the “second proposed rule.”

Authority

The authority for the proposed adoption of 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 (D.C. Law 17-138), as amended by the Anacostia Waterfront Environmental Standards Amendment Act of 2012, effective October 23, 2012 (D.C. Law 19-192; D.C. Official Code §§ 2-1226.31 *et seq.* (2007 Repl. & 2012 Supp.));
- 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; and
- Mayor’s Order 2006-61, dated June 14, 2006, and its delegations of authority.

This Notice of Superseding Rulemaking corrects an editorial error in the second proposed rule that inadvertently changed the intended meaning of § 517.2. Specifically, § 517.2(a)(6) of the rule, as published on June 7, 2013, should have been § 517.2(b). Additionally, the word “or” should be inserted at the end of § 517.2(a)(4).

The corrected language in this Notice of Superseding Rulemaking has a similar effect as the language in § 517.2 of the “revised rule” that DDOE issued for an informal comment period that ended on April 30, 2013. The primary difference is that the language in this Notice of Superseding Rulemaking applies not just to a utility project for reducing CSOs, but also to a utility project for improving wastewater treatment, provided that those projects are being conducted solely to protect or restore surface water quality.

This Notice of Superseding Rulemaking returns the text to its intended meaning. By doing so, however, it alters the meaning of the second proposed rule’s § 517.2. Therefore, DDOE has determined that notice and an opportunity for comment should be provided to the public. DDOE will accept comments from the public on this Notice of Superseding Rulemaking for twelve (12) days from the date of publication of this notice in the *D.C. Register*. This comment period extends until Wednesday, July 10, 2013 at midnight.

DDOE is on track to finalize its rule on stormwater management, and soil erosion and sediment control by the federal deadline of July 22, 2013 that is specified in the Municipal Separate Storm Sewer System (MS4) Permit issued to the District by Region III of the Environmental Protection Agency (EPA). To meet that deadline, and accommodate public comments on this Superseding Rulemaking, it is necessary to shorten the comment period.

DDOE recognizes that stakeholders are currently focused on reviewing and commenting on the second proposed rule and has concluded that it will be more efficient and less confusing for stakeholders to comment on this Notice of Superseding Rulemaking if they do so largely during the comment period on the second proposed rule. Publishing the final rule in its entirety will also reduce the burden on stakeholders to understand the final rule and incorporate its provisions into planning and design for regulated projects. The alternative would be for DDOE to conduct a separate public comment period for the corrections contained in this Notice of Superseding Rulemaking after the larger rule is finalized. A later, separate comment period would not be as effective for either the commenters or DDOE’s analysis. This would result in a piecemeal process that may cause confusion for stakeholders. For all the reasons discussed here and the limited content of this Notice of Superseding Rulemaking, DDOE has determined that there is good cause for using a twelve (12) day comment period for this Notice of Superseding Rulemaking.

Though the comment period on the Notice of Superseding Rulemaking extends until July 10, 2013, all other comments on the second proposed rule must be submitted by July 8, 2013, as specified in the Notice of Proposed Rulemaking published June 7, 2013, at 60 DCR 8493. DDOE will consider comments on the Notice of Superseding Rulemaking that are submitted with comments submitted on the second proposed rule.

Section 517.2 of Chapter 5 (Water Quality and Pollution), Title 21 (Water and Sanitation), of the DCMR is amended to read as follows:

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 the Department determines that it is:

- (a) Conducted solely to install a best management practice or land cover that retains stormwater for one or more of the following purposes:
 - (1) To generate a Stormwater Retention Credit;
 - (2) To earn a stormwater fee discount under the provisions of this chapter;
 - (3) To provide for off-site retention through in-lieu fee payments;
 - (4) To comply with a Watershed Implementation Plan established under a Total Maximum Daily Load for the Chesapeake Bay; or
 - (5) To reduce Combined Sewer Overflows (CSOs) in compliance with a court-approved consent decree, including court-approved modifications, for reducing CSOs in the District of Columbia, or in compliance with a National Pollutant Discharge Elimination System permit; or
- (b) A utility project that is being conducted solely to protect or restore surface water quality, including projects for improving wastewater treatment and reducing CSOs.

Submitting Comments on the Notice of Superseding Rulemaking

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 Notice of Superseding Rulemaking must file comments, in writing, not later than Wednesday, July 10, 2013 at midnight.

To submit comments on the Notice of Superseding Rulemaking, please ensure that the comments identify the commenter and that they are clearly marked “Notice of Superseding Rulemaking.” Comments 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: Superseding Stormwater Rulemaking or (2) e-mailed to Brian.VanWye@dc.gov, with the subject indicated as “Superseding Stormwater Rulemaking.”

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.