

## DISTRICT DEPARTMENT OF THE ENVIRONMENT

### RESPONSE TO COMMENTS ON NOTICE OF PROPOSED RULEMAKING STORMWATER MANAGEMENT, AND SOIL EROSION AND SEDIMENT CONTROL 60 DCR 8493 (JUN 7, 2013)

This document responds to public comments on the District Department of the Environment's (Department's or DDOE's) second proposed rule for Stormwater Management, and Soil Erosion and Sediment Control, published in the June 7, 2013 issue of the *DC Register* (60 DCR 8493). The public review and formal comment period began on June 7, 2013 and closed on July 8, 2013. This document also responds to comments on the notice of superseding rulemaking, which corrected an error in the second proposed rule and was published in the June 28, 2013 issue of the *DC Register* (60 DCR 009738). The comment period for the superseding rule closed on July 10, 2013.

DDOE received 12 formal comment letters in response to publication of the second proposed rule and the notice of superseding rulemaking. In addition, three commenters provided their comments as oral testimony at the public hearing on the second proposed rule on July 8, 2013. The comments were useful and resulted in minor changes to clarify the second proposed rule.

This Response to Comments document summarizes groups of similar comments into one comment and provides one response instead of responding individually to comments that are similar. For some responses, DDOE refers to the DDOE Response to Comments on the Proposed Rule or to information provided in the preambles to previous versions of the rule.

Throughout this document, DDOE refers to the version of the rule published on June 7, 2013 as the "second proposed rule" and the accompanying Stormwater Management Guidebook (SWMG) as the "second proposed SWMG." DDOE refers to the June 28, 2013 notice of superseding rulemaking as the "superseding rule." Also, DDOE refers to the version of the rule released on March 29, 2013 for the informal comment period as the "revised rule" and the accompanying SWMG as the "revised SWMG." Finally, DDOE refers to the version of the rule published on August 10, 2012 as the "proposed rule" and the accompanying SWMG as the "proposed SWMG". To avoid confusion, this document indicates whether a reference to a section or subsection pertains to the second proposed rule, superseding rule, revised rule, or proposed rule.

Additional information about the rule is available on DDOE's website via [ddoe.dc.gov/swregs](http://ddoe.dc.gov/swregs).

## **List of Commenters**

1. Mary E. Blakeslee (July 2, 2013)
2. Casey Trees, Maisie Hughes (July 8, 2013)
3. Choose Clean Water Coalition Stormwater Workgroup, (July 8, 2013)
4. CSX Transportation Inc., Keith A. Brinker (July 8, 2013)
5. DC Appleseed, Walter Smith and Brooke DeRenzis (July 10, 2013)
6. Department of the Navy, Christine H. Porter (July 8, 2013)
7. District of Columbia Building Industry Association, David Tuchman (July 8, 2013)
8. Earthjustice, Jennifer Chavez (July 8, 2013)
9. Kingman Park Civic Association, Frazer Walton (Oral testimony; July 8, 2013)
10. Natural Resources Defense Council, Rebecca Hammer (July 8, 2013)
11. Rock Creek Conservancy, Katherine Schinasi (Oral testimony; July 8, 2013)
12. Kent Slowinski (July 8, 2013)
13. U.S. Environmental Protection Agency, Jon M. Capacasa (July 11, 2013)
14. U.S. National Arboretum, Cary Coppock (Oral testimony; July 8, 2013)
15. Washington Metropolitan Area Transit Authority (July 5, 2013)

## **Acronyms and Abbreviations**

AWDZ	Anacostia Waterfront Development Zone
BMP	Best Management Practice
DCBRA	District of Columbia Brownfields Revitalization Act of 2000
CGP	Construction General Permit
CSO	Combined Sewer Overflow
CSS	Combined Sewer System
DDOE	District Department of the Environment
DDOT	District Department of Transportation
District	District of Columbia
DOD	Department of Defense
FTE	Full-time Equivalent
ILF	In-Lieu Fee
LID	Low Impact Development
MEP	Maximum Extent Practicable
MSI	Major Substantial Improvement
MS4	Municipal Separate Storm Sewer System
Offv	Off-Site Retention Volume
OTC	Over-the-Counter
PROW	Public Right-of-Way
RSR	RiverSmart Rewards
SESCP	Soil Erosion and Sediment Control Plan
SRC	Stormwater Retention Credit

SWMG	Stormwater Management Guidebook
SWMP	Stormwater Management Plan
SWPPP	Stormwater Pollution Prevention Permit
SWRV	Stormwater Retention Volume
TMDL	Total Maximum Daily Load
TSS	Total Suspended Solids
USEPA	United States Environmental Protection Agency
UST	Underground Storage Tank
WIP	Watershed Implementation Plan
WLA	Waste Load Allocation

1. The commenter contends that DDOE chose May 1, 2009 as the earliest date for installed BMPs to generate SRCs because USEPA ran the Chesapeake Bay Watershed Model on that date to set nutrient and sediment allocations. Some in the regulated community were installing BMPs in the early 2000s and the 2009 deadline penalizes those efforts. Further, the 2009 model run was based on 2006 data. The commenter requests that DDOE set the cutoff date for eligible BMPs at the date when water quality data was collected for the 2009 Bay model run at a minimum, or devise some method for providing partial SRCs from older BMPs.

DDOE Response: The eligibility date is not based on a Bay model run. Rather, May 1, 2009 is the date when DDOE began to base its stormwater fee on impervious surface area. Thus, it is also the retroactive eligibility date for properties that voluntarily installed retention BMPs to receive discounts on their stormwater fee. A consistent date minimizes confusion for the public and reduces the administrative burden of the financial incentive programs (i.e., RiverSmart Rewards stormwater fee discount program and the SRC trading program). See DDOE Response to Comments on the Proposed Rule, Comments 10(e) and 11(mm) for more information. No change to the rule is necessary.

2. Some commenters oppose certifying SRCs for retention capacity from existing BMPs installed between May 1, 2009 and the issue date for the final rule. In addition, some commenters disagree with DDOE's plan on page 12 of the preamble to the second proposed rule to actively seek out properties with existing, eligible BMPs and encourage them to apply for SRC certification. By certifying SRCs from existing retention capacity, the commenters feel that DDOE reduces the incentive to install new BMPs and eliminates any certainty that regulated sites will achieve their SWRv through SRC purchases. The commenters request that DDOE only certify SRCs for retention achieved through new BMPs.

DDOE Response: See DDOE Response to Comments on the Proposed Rule, Comment 10(e), 10(d), 11(mm) and the preamble to the second proposed rule. No change to the rule is necessary.

3. Commenters note that DDOE has compiled a list of properties with existing BMPs providing retention that may be eligible for SRC certification. The commenters request that DDOE immediately engage those properties and encourages DDOE to share that property information with the building community and others who may be able to assist in recruiting property owners to apply for SRC certification.

DDOE Response: As stated in the preamble to the second proposed rule, DDOE compiled a list of properties with existing retention BMPs installed that may be eligible for SRC certification. Those properties account for the 1.35 million SRCs that DDOE estimated as potentially available for supply. Since some of those properties installed BMPs as early as May 1, 2009, DDOE is calling property points-of-contact to confirm their contact information. In these calls, DDOE briefly explains the SRC trading program and informs points-of-contact that additional information will be forthcoming. DDOE will provide those properties with information on how to apply for SRC certification and participate in the SRC trading program in the coming weeks. DDOE appreciates the offer to recruit property owners

and will consider engaging the building community in outreach efforts going forward. No change to the rule is necessary.

4. Several commenters commend DDOE's hiring of additional staff to support implementation of the stormwater regulations (e.g., conducting inspections, reviewing plans, managing new programs). They also support DDOE's decision to partner with organizations that could provide review, inspection, and training services on an as-needed basis. Commenters request that DDOE be ready to activate partner assistance quickly, hold third parties to the same standards as DDOE staff, and solicit feedback on partners' performance from the regulated community. DDOE should also consider hiring additional staff to support development and administration of the many aspects of the SRC trading program.

DDOE Response: Understood. No change to the rule is necessary.

5. Regarding Section 524.7 of the second proposed rule, the commenter contends that it is unclear whether AWDZ Sites can use the offsite retention options to meet any portion of their SWRV. The section states that AWDZ Sites may utilize offsite retention options to achieve their WQTV when compliance is otherwise technically infeasible, environmentally harmful, of limited appropriateness, or when DDOE approves an application for relief from extraordinarily difficult site conditions. DDOE should clarify that AWDZ Sites may achieve 50% of their SWRV using offsite retention options without having to demonstrate extraordinarily difficult site conditions.

DDOE Response: See the preamble to the second proposed rule, page 23.

6. The commenter requests that DDOE clarify the conditions that would constitute "extraordinarily difficult site conditions" in the AWDZ.

DDOE Response: See the preamble to the second proposed rule, page 23.

7. The commenter notes that Section 524.8 of the second proposed rule requires AWDZ Sites to buy SRCs generated outside of the AWDZ at a 1.25:1 ratio. The commenter requests that DDOE clarify how it will administer that requirement and specify in the rule how an AWDZ Site will comply with obligations to submit fractions of SRCs. In cases where AWDZ Sites would need to buy fractions, the commenter requests that DDOE round-down the obligation to the nearest whole number.

DDOE Response: DDOE plans to round-down to the nearest whole number for fractions below 0.5 and up to the nearest whole number for fractions equal to or above 0.5. That approach is consistent with water quality trading programs that apply uncertainty, delivery, environmental protection, and other ratios that result in fractions of credits (e.g., Virginia's Chesapeake Bay Watershed Nutrient Credit Exchange Program, Maryland Nutrient Trading Program, Pennsylvania Nutrient Trading Program). No change to the rule is necessary.

8. Regarding page 23 of the preamble to the second rule, the Anacostia Waterfront Environmental Standards Amendment Act of 2012 does not direct DDOE to consider

“appropriateness” as a general concept in determining whether to permit the use of off-site mitigation for AWDZ Sites. Rather, the statute directs DDOE to determine whether “site conditions... limit the feasibility or appropriateness” of on-site retention, thus tethering appropriateness to the site-specific conditions of each individual project.

DDOE Response: DDOE’s intent in the description on page 23 of the second proposed rule was not to suggest that it would be considering appropriateness as a general concept in determining whether to allow an AWDZ Site to use off-site retention. Instead, as suggested, DDOE will review these projects and site conditions on a case-by-case basis and determine whether the evidence limits the feasibility or appropriateness of on-site stormwater management, including in terms of potential impacts on District waterbodies. No change to the rule is necessary.

9. A commenter requests that DDOE narrowly tailor any transition period for performance requirements to limit the number of exempt applicants. Specifically, the commenter requests that DDOE limit the transition period to *bona fide* major regulated projects that submit complete applications by the end of the applicable transition period. The commenter suggests specific language changes to Section 552.

DDOE Response: DDOE notes that its intention in requiring a SWMP to be submitted in the context of the building permit application process was to prevent “placeholder” SWMPs that are incomplete. Section 519.2 of the second proposed rule specifies that “a submitted SWMP and supporting documentation shall contain information sufficient for the Department to determine whether the SWMP complies with this chapter,” and it includes a list of required plan elements. Furthermore, Section 518.4 specifies that the Department will review an application, including a SWMP, to determine if it is complete and may consequently reject the application. However, to ensure that there is no ambiguity on this point, the final rule clarifies in Section 552.2 and Section 552.3 that a regulated site must submit a SWMP that is “complete...as required under Section 518.4.”

10. Some commenters contend that the proposed transition periods violate Section 4.1.1 of the District’s MS4 permit. They offer two reasons for why the transition periods violate the MS4 permit. First, the transition periods prevent the District from complying with its permit requirement to “adopt and implement” the 1.2 inch retention standard within 18 months of permit issuance. Second, the ability for major regulated projects to achieve 100% of their SWRv through offsite compliance options (i.e., SRCs or ILF) is counter to permit language that “the permittee may allow a portion of the 1.2” volume to be compensated for in a program for off-site mitigation or in-lieu fees. Commenters request that DDOE make Sections 526 and 552 of the second proposed rule consistent with the District’s permit requirements.

DDOE Response: DDOE does not feel that the transition plan in the final rule is inconsistent with the MS4 permit. Section 4.1.1 of the MS4 permit requires the District to “implement one or more enforceable mechanism(s) that *will* adopt and implement” the 1.2 inch retention standard for projects greater than or equal to 5,000 ft<sup>2</sup> by July 22, 2013. (emphasis added) Consistent with that language, DDOE will finalize the rule in the *D.C. Register* before July

22, 2013 (within the required 18-month period), and the resulting enforceable mechanism will adopt and implement the 1.2 inch retention standard, according to the phased process described in the transition plan. The quoted permit language provides for “one or more” mechanisms. DDOE carefully weighed technical and real-world factors in determining that the mechanism of the adopted rule meets the MS4 permit requirements. Further, because of the choices which DDOE has made, the agency believes that the mechanism will be “enforceable”.

11. The commenter notes that one of the District’s two-year milestones for the Bay TMDL is “214 acres of development will have been required to meet the 1.2 inch retention standard” by December 31, 2013. The commenter contends that the District will not achieve the milestone due to the transition period in the second proposed rule. The commenter requests that DDOE eliminate transition period 1 and ensure that the requisite amount of stormwater retention occurs in the District from the outset as originally planned.

DDOE Response: DDOE notes that, in addition to its stormwater management regulations, it has other programs focused on the installation of retention BMPs, and that these programs will help DDOE to achieve its requirements under the Bay TMDL. The details of the District’s compliance with the Bay TMDL will be evaluated separately. No change to the rule is necessary.

12. The second proposed rule defines “contaminated” by reference to the District of Columbia Brownfield Revitalization Amendment Act of 2000 (DCBRA) and the Underground Storage Tank (UST) regulations. These references establish that the existence of contamination depends on the occurrence of a release or discharge and clarify that the mere presence of naturally occurring hazardous substances does not constitute contamination. The commenter understands that DDOE intends “contaminated runoff” to mean stormwater containing hazardous substances in concentrations that exceed applicable risk-based corrective action standards promulgated pursuant to the DCBRA. If this understanding is correct, DDOE should clarify its intent in greater detail so that regulated sites know what standards will apply to groundwater dewatering pollution reduction plans.

DDOE Response: As discussed in the preamble to the final rule, DDOE has removed the section on dewatering of contaminated groundwater from the final rule to be addressed separately.

13. The second proposed rule defines “contaminated” by reference to the DCBRA and UST regulations. However, the commenter contends that the UST regulations do not define “contamination” in any way. Therefore, the rule does not need to reference the UST regulations in the definition of “contamination.” To the extent that any references to the UST regulations remain, DDOE must clarify that the standards promulgated pursuant to DCBRA control in the event that the standards under the two programs are inconsistent in any way.

DDOE Response: DDOE notes that whereas the UST regulations address petroleum-based substances, DCBRA does not. Likewise, UST regulations do not address other types of contaminants, but DCBRA does. To address petroleum products, as well as other substances,



it was important for the rule to refer to both the UST regulations and DCBRA. In addition, though the UST regulations are not focused on “contamination” per se, they define acceptable levels of substances based on the risk of exposure. Generally, the maximum acceptable level of a substance is the risk-based screening level for construction workers. In situations with risk of exposure to other individuals, the appropriate screening level should be used. No change to the rule is necessary.

14. The second proposed rule defines “contaminated” by reference to the DCBRA and UST regulations. However, in the second proposed rule, the commenter notes that UST regulations are not included in every reference to “contamination.” DDOE should correct this inconsistency.

DDOE Response: DDOE inadvertently omitted a reference to the UST regulations in Section 500.9 of the second proposed rule. DDOE updated language in the final rule to reference the UST regulations.

15. Several commenters objected to Section 517.2(6) of the second proposed rule and 517.2(b) of the superseding rule regarding exemptions for utility, wastewater, and CSO projects from performance requirements and covenant and easement requirements. For example, USEPA Region III stated that the exemptions are inconsistent with the District’s MS4 permit which covers “all stormwater point source discharges to waters of the United States from the District of Columbia’s MS4 that comply with the requirements of this permit...” and does not contain any exemptions for utility, wastewater, or CSO projects regardless of whether such projects are covered by consent decrees or NPDES permits. Commenters also contended that the exemptions are overly broad and could dilute the MS4 permit protections, such as the performance standard and promotion of LID BMPs, which are intended to improve water quality. Finally, commenters noted that requiring these projects to comply will generally reduce CSOs and provide greater sanitary sewage capacity to accommodate population growth.

DDOE Response: After considering and weighing each of the comments including arguments underlying the proposed exemption, DDOE decided to remove Section 517.2(b) from the final rule. DDOE may seek additional input and/or issue a separate notice of proposed rulemaking on this issue.

16. The commenter contends that Section 517.2(3) of the second proposed rule provides a critical exemption from the stormwater regulations for routine, linear utility work. The commenter feels that DDOE should also add language that exempts routine maintenance on Metrorail tracks, “including tasks such as rail alignment, ballast and subgrade materials placement, tamping, tie replacement, rail replacement, and switch replacement.”

DDOE Response: DDOE notes that 517.2(3) is not an exemption for routine or even linear work per se, but is an exemption for trench-cutting utility work if it does not involve reconstruction of a roadway from curb to curb or curb to centerline. DDOE’s rationale for 517.2(3) is that a utility trench in the roadway is typically not reconstructing enough of the

roadway to provide an opportunity to install BMPs. By contrast, roadway reconstruction is expected to comply with the 1.2 inch retention standard to the MEP.

DDOE has concluded that some of the described activities, done on a piecemeal, maintenance basis, would likely not disturb 5,000ft<sup>2</sup> or more of land and therefore not trigger the regulations. A larger rail replacement project may exceed 5,000ft<sup>2</sup> or more of land, but as with reconstruction of the roadway, reconstruction of the railway should provide meaningful opportunities to install BMPs. DDOE notes that the final rule includes “railway track” in the definition of PROW, clarifying an inconsistency between the second proposed rule and second proposed SWMG. DDOE’s general understanding is that WMATA railways in the District are considered public, so as part of the PROW, these projects would comply with the 1.2 inch retention standard to the MEP.

17. The commenter contends that Section 521.1(b) of the second proposed rule extends the limitation for certain PROW projects that are exempt from performance requirements. Specifically, Section 521.1(b) explains that Section 521 “applies only to the portion of a major regulated project that consists entirely of bridge, roadway, or streetscape work... In the existing PROW and in the public space associated with the PROW.” The commenter feels that the underlined text broadens the definition of “transportation rights-of-way” in the District’s MS4 permit. Since Section 521.1(b) essentially provides exemptions and lesser standards, the commenter feels that the extended definition is inappropriate and inconsistent with the terms of the District’s MS4 permit.

DDOE Response: Prior to publishing the second proposed rule, it came to DDOE’s attention that the definition of PROW might be interpreted as not including sidewalk, tree space, or parking lanes associated with the PROW. “Public space” is a term used by DDOT and in the District of Columbia Municipal Regulations to refer to these spaces. To clarify its intent that these spaces are part of the PROW for the purposes of the MEP process, DDOE added this term to its list of definitions and also included it in Section 521.1 of the second proposed rule. With the intent of ensuring that public space is not construed to mean adjacent or nearby parks or other public property, DDOE specifically referred in Section 521.1 to public space associated with the PROW. DDOE has further clarified this in the final rule (Section 599) by specifying in the definition of public space that it excludes “adjacent parks and other public property that is not associated with the public right of way.”

18. The commenter (USEPA) notes that the District’s next MS4 permit may not extend the exemption for PROWs from the 1.2 inch retention requirements. USEPA recommends that DDOE revise the regulations in anticipation of extension of the retention requirements to PROWs. USEPA suggests adding a “sunset” provision for exempted PROWs.

DDOE Response: See DDOE Response to Comments on the Proposed Rule, Comment 18(e).

19. The commenter contends that the definition of PROW does not include rail lines. Thus, rail lines would remain subject to the standard provisions of the rule even though it might not be feasible or practicable for rail lines to meet the requirements. Rail lines, although not public, are located within very narrow corridors and share many of the same issues that PROW

encounter (e.g., limited areas for on-site retention, limited options for soil and sediment control). In addition, expanding the PROW definition to include rail lines would not impair the purpose of the rule since ballasted railroad track is considered pervious area. For these reasons, DDOE should expand the PROW definition to include rail line corridors or alternatively insert an additional provision that specifically relates to rail lines.

DDOE Response: DDOE revised the rule to include “railway track” in the PROW definition and allow public railway projects to comply with the 1.2 inch retention standard to the MEP, after which the use of off-site retention is not required. See Sections 521.1 and 599 (revised PROW definition). This is consistent with 4.1.3 of the MS4 permit, but it would not be consistent with the MS4 permit for the final rule to allow private railway projects or other private right-of-way projects to comply with the 1.2 inch retention standard to the MEP. Instead, these private projects must achieve the 1.2 inch retention standard either on site or through a combination of on-site and off-site retention.

20. The commenter notes that the definitions of PROW contained in Section 599 of the second proposed rule and Appendix B of the second proposed SWMG are not the same. It is important that the two definitions be redrafted to align with each other and unambiguously affirm that railway tracks owned and operated by the Government for the purpose of providing public transportation are to be considered PROW for purposes of this regulation.

DDOE Response: DDOE revised Sections 521.1 and 599 to make the definitions of PROW consistent between the rule and SWMG.

21. In the second proposed rule, a major regulated project is an MSI if the costs of the improvement exceed 50% of the market value of the structure prior to the improvement. The commenter requests that DDOE exclude from the calculation of the cost of an MSI activity the costs of HVAC systems and associated components. The commenter notes that HVAC systems are especially costly to improve or replace and including them in the MSI calculation would deter renovations that lead to more efficient building operations and energy savings. If the rule does not exclude HVAC costs, it could undermine Mayor Gray’s Sustainable DC Plan goals to cut-District-wide energy use by 50% and retrofit 100% of existing commercial and multi-family buildings to achieve net-zero energy standards.

DDOE Response: Section 4.1.1.5 of the District’s MS4 permit defines substantial improvement and does not allow for an exemption for HVAC systems, see below:

*Substantial improvement, as consistent with District regulations at 12J DCMR § 202, is any repair, alteration, addition, or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started.*

In addition, DDOE expects that projects that solely upgrade their HVAC, in the vast majority of cases, will not reach the cost threshold to trigger the MSI requirements. Lastly, the MSI trigger in the stormwater regulations is consistent with the Mayor’s Sustainability Plan goal to restore our waterways to a swimmable and fishable condition by 2032 and to utilize 75%

of the District's landscape for the management of stormwater. DDOE has concluded that these goals are not mutually exclusive with the energy efficiency goals. No change to the rule is necessary.

22. In the second proposed rule, a major regulated project is an MSI if the costs of the improvement exceed 50% of the market value of the structure prior to the improvement. The commenter requests that DDOE remove the costs of tenant improvements in the calculation to determine whether a renovation constitutes a MSI activity.

DDOE Response: Incorporating the costs for tenant improvements in determining whether a renovation constitutes a MSI activity is consistent with the definition for MSI, as found in the District's MS4 permit (see response to Question No. 21). Additionally, projects that are solely for tenant improvements typically will not reach the cost threshold to trigger the MSI requirements. No change to the rule is necessary.

23. The commenter contends that the retention requirements for a MSI activity should only apply to existing structures that incur a complete redevelopment (e.g., replacing all interior finishes, utilities, roofing covers, building skin materials). Only in those activities, the commenter feels, can BMPs be feasibly installed to provide additional retention capacity. Alternatively, DDOE should confirm that MSI activities will only be required to install BMPs to the MEP.

DDOE Response: The commenter's suggestion to define a MSI activity as "Complete redevelopment" would be inconsistent with the definition of substantial improvement in Section 4.1.5 of the District's MS4 permit. In addition, 4.1.3 of the MS4 permit restricts the MEP process (i.e., exemption from having to achieve retention off-site) to transportation right of way projects, so DDOE cannot apply the MEP process to MSI activities.

In addition, DDOE notes that MSI activities have flexibility in meeting their retention requirement. Section 526.3 of the second proposed rule allows an MSI activity to get relief from meeting the minimum 0.4 inch retention requirement on site by demonstrating "that the structure cannot accommodate a BMP without significant alteration, because of a lack of available interior or exterior space or limited load-bearing capacity."

No change to the rule is necessary.

24. The commenter notes that a non-profit may not pay close attention to the assessed value for its property since non-profits are not subject to property tax and that, for the same reason, assessors may not spend adequate time on those assessments. The commenter also notes that District tax assessments may not itemize the value of every individual building and structure within a multi-building campus. Thus, the commenter requests clarification on how non-profits with multi-building campuses (e.g., colleges, hospitals) would determine whether a renovation constitutes a MSI activity. The commenter does not feel that DDOE should require a private, formal appraisal. Rather DDOE should work with applicable organizations to determine a mutually agreed-upon value per square foot compared to similar District facilities.

DDOE Response: DDOE notes that MSI projects are typically large projects that might be considered and planned over a year or longer before applying for a building permit. In that context, a non-profit will have time to review the assessed value of the property and work through the District's existing process for challenging an assessed value, prior to applying for a building permit and potentially triggering the MSI retention requirement.

In cases where there is not an assessment available for an individual structure within a multi-building campus, DDOE will work with the project and may request input from the regulated community to determine an appropriate method to value the structure. DDOE appreciates suggestions made by the commenter. No change to the rule is necessary.

25. Regarding Section 522.3(a) of the second proposed rule, the commenter notes that MSI activities usually occur in highly developed areas where there is little pervious area left or available for implementing BMPs. Although the SWRv has been reduced, the area trigger for land disturbance is also reduced. More significantly, retention requirements for MSI activities effectively amount to an additional stormwater retrofit requirement beyond that already required by the District under their MS4 permit for MSI activities where there is no increase in impervious area. DDOE should remove the requirement unless adequate justification is provided that the added stormwater burden on MSI activities is 1) necessary to meet water quality goals and 2) not more cost effectively placed on another stormwater source sector.

DDOE Response: See DDOE Response to Comments on the Proposed Rule, Comment 10(c). As discussed in the preamble to the final rule, the retention standards in the final rule are necessary to meet water quality goals and requirements. The final rule provides greater flexibility for MSI projects, reflecting the reality that some MSI projects have somewhat constrained options to achieve retention, but DDOE has concluded that MSI projects can install sufficient retention BMPs to comply. In addition, it is appropriate and equitable to require construction projects of a significant scale to upgrade to a more protective standard. This is parallel to requirements for projects of a significant scale to upgrade to current construction codes. No change to the rule is necessary.

26. The commenter feels that it is unclear how the in-lieu fee relates to the stormwater fee that DDOE already requires District property holders to pay. According to its notice of final rulemaking, the purpose of the stormwater fee is to implement BMPs to prevent stormwater runoff from the District's streams and rivers. Both of these fees appear to charge for the same result and services. DDOE should recognize the overlap between the two fees and reconcile the differences so that District properties are not being charged for the same services.

DDOE Response: See DDOE Response to Comments on the Proposed Rule, Comment 10(d) and the ILF calculation spreadsheet at [ddoe.dc.gov/proposedstormwaterrule](https://ddoe.dc.gov/proposedstormwaterrule).

27. The commenter notes that the second proposed rule, DDOE stormwater fee rebate rule, and DC Water impervious area charge rebate rule treat residential homeowners that live in existing cooperatives and condominiums differently than single family homeowners. The DDOE and DC Water rules define existing cooperatives and condominiums as commercial

property. The second proposed rule should be revised to apply the same rules and benefits to all homeowners.

DDOE Response: The regulations and methodology for assessing stormwater fees and providing discounts on those fees is beyond the scope of this rulemaking. If the commenter is referring to the SRC trading program, DDOE does not distinguish between single family and other homeowners.

28. Commenters objected to Section 542.13 of the second proposed rule that would require sites that dewater groundwater to take additional precautions to improve water quality until the District finalizes its groundwater rule. Specifically, Section 542.13 would require a dewatering pollution plan with description of control measures to reduce contamination sufficient to prevent discharge in excess of the District's water quality standards. One commenter noted that the requirements are far more stringent than anything DDOE has proposed in the stormwater rulemaking. In addition, a commenter felt that the requirement contradicted DDOE's proposed definition of "contaminated" as it would effectively require costly treatment of background concentrations of naturally occurring substances in unpolluted areas of the District. Commenters asked that DDOE remove all references surface water quality standards from the rule.

DDOE Response: DDOE notes that the groundwater dewatering requirements were meant to be temporary with the understanding that they would be superseded by a separate rule on groundwater in the future. However, at this point it is clear that numerous concerns and complex issues remain to be clarified and that the clarification of these issues goes beyond the scope of the stormwater rule. DDOE is considering two mechanisms to address the issues. One option is to develop a separate rule on groundwater. Alternatively, EPA Region III is researching and considering the establishment of an additional general NPDES permit to address groundwater dewatering. Either of these approaches would avoid delaying the stormwater amendment and locate the dewatering requirements in a more appropriate context. DDOE has decided to remove Section 542.13 from the final rule.

29. The commenter contends that DDOE is developing regulations for groundwater wells which are not expected to be introduced until after the stormwater rule is finalized. DDOE should engage interested stakeholders in that rulemaking as it has in this one and provide express assurance that the stormwater rule will not conflict with the well regulations.

DDOE Response: Given DDOE's determination to remove Section 542.13 of the second proposed rule from the final rule, this concern is moot. No change to the rule is necessary.

30. The commenter requests that DDOE provide a definite timeframe in which SRC transactions will be approved.

DDOE Response: See DDOE Response to Comments on the Proposed Rule, Comment 11(tt). No change to the rule is necessary.

31. The commenter requests that DDOE commit itself to completing the SRC certification process within a definite time period that is as short as possible and suggests 21 days.

DDOE Response: See DDOE Response to Comments on the Proposed Rule, Comment 11(kk). No change to the rule is necessary.

32. The commenter requests that DDOE commit to reviewing plans within a reasonable but definite timeframe. The commenter suggests 30 days but additional time is fine as long as DDOE provides a defined timeframe. In addition, the commenter requests that DDOE provide major regulated projects with the option of paying a premium fee to receive an expedited review of no more than 10 days.

DDOE Response: See DDOE Response to Comments on the Proposed Rule, Comment 11(y). No change to the rule is necessary.

33. The commenter requests that DDOE provide a detailed and exclusive list of the exact criteria by which it will evaluate SRC transactions.

DDOE Response: See DDOE Response to Comments on the Proposed Rule, Comment 11(tt). No change to the rule is necessary.

34. The commenter notes that developing even a basic sales contract immediately upon finalization of the rule could help encourage owners of buildings with existing retention capacity to seek SRC certification, further boosting the initial supply of credits.

DDOE Response: DDOE is convening a legal working group to discuss and draft template SRC trading contracts, as discussed in the preamble to the second proposed rule. Individual buyers and sellers may also develop their own contracts.

35. Commenters request that DDOE provide opportunities for public input regarding the SRC registry's design and operation.

DDOE Response: DDOE will collect and present information in the registry that is consistent with information in registries for other environmental markets (e.g., water quality trading, carbon markets, habitat offsets). After finalizing the working registry, DDOE will welcome feedback on the public facing component (i.e., reports that show available SRCs, asking price, seller information). No change to the rule is necessary.

36. The commenter feels that the prohibition in Section 531.3 against generating SRCs from BMPs installed to comply with a statutory, regulatory, or court-ordered stormwater management requirement will significantly reduce supply. The commenter also feels that the prohibition is environmentally unnecessary because a gallon of retention capacity, regardless of the regulatory or economic driver that incentivizes its implementation, provides multiple water quality benefits (i.e., eliminates runoff, diverts stormwater from the CSS, keeps stormwater from entering the Chesapeake Bay and its tributaries). DDOE should remove the prohibition.

DDOE Response: The BMPs or land cover changes in 531.3(a)(3)(A) and (B) are necessary to meet statutory, regulatory, or court-ordered requirements in their own right. The BMPs or land cover changes described in Section 531.3 would be implemented regardless of the final rule. The retention required of a regulated site by the final rule (and by the MS4 permit) is in excess of those other requirements. Allowing the projects in Section 531.3 to generate SRCs that would be used by a regulated site would have the consequence that the regulated site would not be achieving retention in excess of those requirements. In addition to being in conflict with the MS4 permit, this would violate the fundamental principle that the SRC trading program should achieve retention in excess of the baseline of what would otherwise be achieved (referred to as “additionality” by economists). No change to the rule is necessary.

37. Commenters support DDOE’s plan to identify a portfolio of potential SRC-generating retrofit projects on public property, which would be available for private developers to carry out through a public-private partnership. Several commenters also encourage DDOE to add retrofit locations identified in the Anacostia watershed and Anacostia Restoration Plan to the portfolio to further both water quality and environmental justice goals.

DDOE Response: Understood. No change to the rule is necessary.

38. The commenter supports DDOE’s plan to purchase and retire SRCs generated by newly installed retention capacity to help meet water quality objectives. The commenter notes that DDOE could use those SRCs to meet its MS4 requirement to retrofit 18 million square feet of impervious surface as long as the credits are not needed to compensate for any retention shortfalls from regulated sites or by the SRC trading program leading to less retention than required under the permit. In addition the commenter feels that DDOE would need to verify that SRC use would satisfy the permit’s conditions for retrofits including the performance metrics and requirement to estimate retrofit projects’ pollutant load and volume reductions.

DDOE Response: Understood. No change to the rule is necessary.

39. Commenters contend that the SRC trading program includes loopholes such as indefinite credit banking, SRC certification for existing retention capacity, SRC certification for rarely-used retention capacity for large-storms, and lower standards for PROW projects. The commenter requests that DDOE close those loopholes in order to achieve the retention goals of the District’s WIP for the Bay TMDL.

DDOE Response: DDOE has carefully considered these issues and explained the rationale behind its approach, including in the Response to Comments on the Proposed Rule and preamble to the second proposed rule. In particular, see Comment 10(e), 10(d), 11(mm), 15(c), 15(d), 17(b), and other comments.

DDOE has previously responded to concerns about SRCs being certified only for additional retention capacity (i.e., above the baseline of existing retention or retention that would happen anyway). In particular, this concern has been raised about the certification of SRCs



for existing retention capacity installed prior to the finalization of the rule. DDOE explained its rationale for this in its Response to Comments on the Proposed Rule (see Comment 15(d)). In this response, DDOE noted that existing retention capacity is only eligible if it is in excess of the stormwater regulatory requirements that were in place at the time. Since this existing retention capacity was not required by regulation, DDOE is generally unable to require maintenance, and consequently maintenance of such BMPs is too often inadequate. Inadequate maintenance generally translates into inadequate performance from a stormwater management perspective. Though DDOE understands the concern about existing retention capacity being eligible for SRCs, it is not necessarily accurate to assume that the existing retention capacity in the District is actually being maintained and achieving the intended stormwater performance as part of the baseline. Since this retention capacity will only be eligible for SRC certification after DDOE verifies that proper maintenance has occurred, the opportunity to generate SRCs provides an incentive to provide maintenance and thereby regain the intended performance, which is effectively an improvement above the baseline conditions.

In addition, to further ensure that improvements above the baseline are being achieved by retention capacity for which SRCs are certified, DDOE has decided to restrict the ability of projects for which it provides stormwater funding to generate SRCs. This would include projects funded via programs such as RiverSmart Rooftops (partial subsidy of green roof installation), RiverSmart Homes (partial subsidy of residential BMP installation), and RiverSmart Communities (partial subsidy of BMP installation for condominium associations and small commercial sites). It would also include stormwater projects funded entirely by DDOE, such as those it funds for sister agencies to install BMPs (this funding is only used to the extent that these projects go above and beyond their regulatory requirements). DDOE would restrict these projects' eligibility to have SRCs certified in the document specifying funding terms for that project (depending on the type of project, this ranges from a contract to a grant agreement to a memorandum of understanding). In doing so, DDOE is aware that a simple prohibition on the generation of SRCs by these BMPs for their entire lifespan would have the unintended consequence of removing the incentive for maintenance, which would result in declining stormwater performance over time. Consequently, DDOE's intent is not prohibit SRC generation for the entire BMP lifespan, but instead to recoup the stormwater retention value of its investment, so that SRCs certified are above and beyond this stormwater retention value.

DDOE is considering alternative approaches to recouping the stormwater retention value of its investment. For instance, if DDOE provides \$10,000 for a BMP with 1,000 gallons of eligible retention capacity and the market value of an SRC is \$1.00, DDOE might restrict the ability to generate SRCs for the first 10 years of the BMP's lifespan. During that 10-year period, the practice would have otherwise been eligible to generate 10,000 SRCs, each valued at \$1.00, for a total stormwater retention value of \$10,000. After that point, the BMP would be eligible to generate SRCs, assuming it continues to meet all of the eligibility requirements, including maintenance. In this way, DDOE not only recoups the stormwater retention value of its investment, but there is an incentive for the ongoing maintenance of the BMP. Alternatively, DDOE might restrict the BMP's ability to generate SRCs so that it can generate SRCs for some portion of the eligible retention capacity for some period of time.

For example, considering the same BMP with 1,000 gallons of eligible retention capacity for which DDOE provides \$10,000, DDOE might restrict the BMP from generating SRCs for 65% of its eligible retention capacity (i.e., 650 gallons) for the first 15 years of the BMP's lifespan, and after that point, the BMP, assuming it continues to meet all of the eligibility requirements, would be able to generate SRCs for 100% of its eligible retention capacity. As in the first example, this would result in \$10,000 of stormwater retention value being achieved by DDOE's \$10,000 investment, but it would also provide an ongoing incentive for maintenance across the lifespan of the BMP. Though two different examples are given here and variations on these could achieve the same result of recouping the stormwater retention value of DDOE's investment, DDOE recognizes that it would be confusing and potentially inequitable for DDOE's approach to change from project to project. DDOE's intends to take a consistent approach across similar types of projects.

Though DDOE is still finalizing the exact details of the approach it will take, DDOE is committed to instituting this new policy in the funding terms for projects being funded after the stormwater rule is finalized. This will help to ensure that certified SRCs represent an increase in stormwater retention above the baseline.

DDOE would also like to provide further response and assurance to concerns from commenters about the impacts of off-site retention (both In-Lieu Fee and SRC trading) on retention time lags (temporal impacts) and the location of retention practices within watersheds (spatial impacts). In this context, DDOE emphasizes that it plans to track and report on these impacts, and the unique serial numbers for SRCs were designed to enable DDOE to track these impacts (SRC serial numbers identify the watershed and the year for which the associated retention occurred). Stakeholders should be confident that this tracking and reporting will happen, not only because DDOE has already committed to it as being critical to DDOE's ongoing evaluation of these programs and ability to adaptively manage them, but also because DDOE is required to provide such reporting to EPA and the public annually in its Annual MS4 Report. Moreover, the Fiscal Year 2014 Budget Support Act of 2013, which establishes a special purpose revenue fund for ILF payments, also requires DDOE to report on those payments and the impacts of ILF. This data will help enable local stakeholders to evaluate the effectiveness and impacts of off-site retention (both SRCs and ILF) for themselves. It will also assist them in advocating for changes either to the District's regulations directly or to EPA when it issues the next iteration of the District's MS4 permit after the current 5-year permit term ends. Nationally, the data should prove useful to other interested jurisdictions who are considering similar regulatory programs and to the stakeholders in those jurisdictions who will participate in the public process for those regulations.

If the data on SRC trading's temporal and spatial impacts indicates that there are problems, DDOE can adaptively manage the program and/or use its other programmatic tools to offset those impacts. For instance, if problematic spatial impacts arise, DDOE could adaptively manage the SRC trading program by imposing trading ratios so that a regulated site would have a compelling disincentive to use SRCs from outside the watershed in which it is located. This would happen through a public rulemaking process and would affect new regulated projects being done after that point. DDOE could also use other programmatic tools such as

targeting a particular watershed for outreach to elicit greater participation in its incentive programs for the installation of BMPs, or DDOE could use its stormwater funding to purchase SRCs that were generated in a particular watershed. Similarly, if problematic temporal impacts arise such that less retention is occurring in a given year than would otherwise be the case under a strict on-site retention approach, then DDOE could adaptively manage the program by imposing limits on banking (again, through a public rulemaking process). DDOE could also purchase and retire SRCs from the specific year of concern in order to compensate for less retention occurring in that year than would otherwise be the case under a strict on-site retention approach. DDOE notes that it plans to conduct surveys and/or focus groups with potential and actual SRC participants and will incorporate questions for SRC owners as to when they plan to use banked SRCs and the viability of adaptive management approaches. This will help DDOE to anticipate and more effectively respond to temporal impacts and adaptively manage the program. DDOE recognizes that changes to the regulatory framework for SRC trading could have numerous impacts, not only on District waterbodies, but also on the SRC market generally. DDOE will seek stakeholder input and carefully consider such changes and their consequences before proceeding and will proceed through a public process.

Finally, DDOE has concluded that the establishment of a market for stormwater retrofits has many benefits beyond the context of the stormwater rule per se. An ongoing market for stormwater retrofits has the potential to change how property owners, developers, and contractors think about their properties and the construction work that is undertaken there. Though a little less than 200 sites might undergo construction that triggers the stormwater management regulations in a given year, many more will undertake construction. Roughly 1300 additional sites will require an Erosion and Sediment Control Plan, and 40,000 building permits will be issued -- under the old regulatory framework, these projects had no requirement or significant financial incentive to install stormwater retention. With the establishment of an SRC market for stormwater retrofits, these properties, where construction resources are already mobilized, have a significant incentive to explore opportunities to incorporate retention capacity.

An ongoing SRC market has the ability to change the way people approach these projects in a fundamental way that a one-off design contest, grant opportunity, reverse auction, or pay-for-performance approach would not be able to achieve. This provides a potential opportunity for the District as a whole to benefit from the most cost-effective opportunities for the installation of stormwater retrofits. Given the vast areas of impervious surface that must be retrofitted in the 43% impervious District of Columbia and the limited tax and ratepayer funding available to achieve those retrofits, the importance of maximizing cost-effectiveness is critical.

The District, including ratepayers and taxpayers, can benefit from the efficiencies of the SRC market by purchasing and retiring SRCs to reduce stormwater runoff into District waterbodies to meet various water quality requirements and goals, such as the MS4 permit requirement for retrofits and implementation of TMDLs for local waterbodies and the Chesapeake Bay. In effect, DDOE's purchase of SRCs would be like a reverse auction or pay-for-performance initiative in which DDOE states its willingness to buy SRCs (one gallon

of retention for one year), and property owners and SRC aggregators compete to find the most cost-effective opportunities to generate those SRCs. DDOE can scale its buying of SRCs over time to achieve changing requirements and goals.

By creating an incentive to look for cost-effective opportunities to install retention capacity, the SRC market also enables new opportunities for public-private partnerships. When DDOE buys SRCs, it creates an incentive for private property owners have an incentive to retrofit their properties with new retention capacity. Alternatively, private developers or SRC aggregators could pay for and undertake the retrofit of public property to generate SRCs (e.g., retrofitting the public right of way). As mentioned previously, DDOE plans to develop a portfolio of potential SRC projects on public land for which DDOE has done some initial vetting and design and which a private developer could pursue to generate SRCs. This would incentivize private investment in stormwater retrofits on public land, and the locations can be chosen to maximize benefits to areas that are high priority from a restoration, environmental justice, or other perspective.

Another benefit of a functioning SRC market is that it provides a way to establish the payback period for the installation of a stormwater retrofit. The District's Property Assessed Clean Energy (PACE) legislation is written such that the PACE program can be adapted to the installation of stormwater retrofits; however, the critical missing piece to enable this is the demonstrated value of the retrofit in terms of paying back the cost of the retrofit to the property owner. A history of transactions in the SRC market will provide a basis for establishing an expected payback period. Using the SRC market and this data, DDOE hopes to establish a PACE program for stormwater.

To summarize, after careful consideration of the issues, DDOE expects that the benefits to District waterbodies of allowing the use of off-site retention and specifically SRC trading will be as good or better than the benefits of a strict on-site retention approach. To the extent that there are impacts (spatially, temporally, or otherwise) that are problematic, DDOE is committed to adaptive management and the use of other programmatic tools to compensate. In addition, beyond the context of off-site retention by regulated development, the establishment of an SRC market will allow the District to undertake the massive job of retrofitting impervious surfaces and other developed areas in a more cost-effective way than would otherwise be the case, which is critical to maximizing the impact of District funding, provided by ratepayers, taxpayers, and other sources.

40. Commenters contend that DDOE should finalize Section 517.2 without the broad exemption that was included in the Notice of Superseding Rulemaking.

DDOE Response: As discussed in the preamble to the final rule, the exemption in Section 517.2(b) of the second proposed rule, as corrected by the Notice of Superseding Rulemaking, has been removed.

41. Regarding Section 540.4 (requiring the property owner to submit a SESCO), DOD facilities may cover the requirement through the construction contract and have the contractor sign and

submit the plan. Therefore, the commenter feels that the owner should be able to designate an agent who could sign and submit the SESCO.

DDOE Response: Section 500.7 of the second proposed rule allows a regulated person to authorize an agent to act for that person. No change to the rule is necessary.

42. Currently, a site triggers the stormwater regulations through its building permit application. However, the SWMP can be finalized much earlier in the planning process than other components of the building application. Therefore, the commenter feels that DDOE should decouple the stormwater regulations from the overall building permit process and instead trigger application of the rule based on submission of the SWMP directly to DDOE. Further, DDOE should implement the transition based on a regulated site's submission of a preliminary SWMP and separate from its completed building permit application.

DDOE Response: Several commenters, including USEPA, raised concerns that regulated sites would submit incomplete SWMPs in order to be regulated under Transition Period 1 (TP1) or Transition Period 2A or 2B (TP2A or TP2B). DDOE's intention in requiring a SWMP in the context of the building permit application was to prevent submittal of incomplete SWMPs. No change to the rule is necessary.

43. The commenter notes that DDOE revised the proposed regulation of Responsible Personnel in the second proposed rule but notes that DDOE to date has not approved any training programs through which individuals can be certified as Responsible Personnel. The commenter contends that multiple such programs already exist in the local area, but until DDOE provides approval, regulated sites will be unable to comply with the soil erosion and sediment control regulations. The commenter feels that DDOE must suspend the Responsible Personnel requirements indefinitely until at least thirty days after it has approved at least two local Responsible Personnel certification programs. The commenter suggests that DDOE consider and approve courses approved by the Maryland Department of the Environment, including those offered in Montgomery and Prince Georges Counties, and the Responsible Land Disturber program administered by the Virginia Department of Environmental Quality personnel certification programs.

DDOE Response: Section 547.3 of the second proposed rule specifies that a "responsible person" could be licensed in the District of Columbia as a civil or geotechnical engineer, a land surveyor, or architect. In addition, DDOE maintains a memorandum from October 26, 2012 on its website that identifies acceptable certification courses, including those of the International Erosion and Sediment Control Association, the American Society of Civil Engineers, and the State of Maryland. DDOE also considers the courses noted in the comment to meet the requirements.

DDOE is reluctant to endorse a particular program in its formal regulations and prefers the flexibility of maintaining a publicly available list to which it can readily add approved training courses. DDOE plans to maintain a list of courses that satisfy the requirements on its website. No change to the rule is necessary.

44. Regarding Section 528.10 of the second proposed rule, the commenter notes that soil media from a BMP may not be contaminated to the point where it would not be suitable for fill material elsewhere. Testing the material to verify its suitability for fill would promote appropriate recycling and avoid unnecessary disposal costs. DDOE should provide an option for testing used soil media to verify if it is suitable for use as fill.

DDOE Response: DDOE notes that this requirement is limited to BMPs receiving drainage from areas intended for motor vehicle use, which have a higher likelihood of receiving relatively polluted runoff than BMPs receiving drainage from other areas. DDOE also notes that any level of contamination would make the soil media inappropriate for use as fill material. However, there are no set standards for what constituents should be tested and the levels of contamination that should be reported. As such, DDOE concluded that it would be more protective and straightforward to require soil cuttings to be disposed of as required in the second proposed rule. No change to the rule is necessary.

45. Regarding Section 545.5, the commenter notes that a 25-foot undisturbed buffer may not exist for current impervious areas on DOD installations that are close to the water. It is also uncertain whether a DOD installation would be considered a public installation within the context of these regulations. DDOE should include an exception from the buffer requirements for repair and renovation projects on DOD installations provided that other soil erosion and sediment control provisions are followed.

DDOE Response: See DDOE Response to Comments on the Proposed Rule, Comment 10(f). Also, DDOE notes that, regardless of whether trails or points of access are considered public, such projects would be required to achieve the required retention volume. DDOE also notes that certain small repair projects would be exempt from this requirement, as described in Section 541, including projects for which the total cost is less than \$9,000. No change to the rule is necessary.

46. In the preamble to the second proposed rule, DDOE proposes to accommodate four regulatory approvals that could limit the ability of a major regulated project to achieve their on-site retention requirement. To those four, the commenter feels that DDOE should add large tract reviews by the District Office of Planning. For consistency, the commenter feels that regulated sites subject to these reviews should be accommodated in the transition plan. Additionally, unlike the exceptions for Advanced Designs and multi-phased projects, the exception for these regulatory approvals is not included in Part 552 of the second proposed rule. It should be added accordingly.

DDOE Response: DDOE notes that these projects with the unexpired approvals listed in Figure 1 of the second proposed rule are able to use evidence of a conflict between that approved design and the installation of a retention BMP in applying for relief from the minimum on-site retention requirement. Accordingly, this is addressed in Section 526 (Relief for Extraordinarily Difficult Site Conditions). DDOE also notes that, while DDOE mistakenly failed to list large tract reviews in Figure 1, they are listed in Section 526. No change to the rule is necessary.

47. The second proposed rule provides an exemption from the stormwater regulations for multi-phased projects that install BMPs sufficient for all phases of the development as part of the initial phase of development during the transition period. The commenter does not feel that multi-phased projects should be required to install BMPs sufficient for the entire project solely during the initial phase in order to qualify for the exception. DDOE should apply the exception to all multi-phased projects in which stormwater retention infrastructure for at least the initial phase of development is installed in compliance with a DDOE-approved SWMP.

DDOE Response: The intent of this exception is to prevent regulated development from having to modify detailed designs and construction that was approved under previous regulations. However, multi-phased projects are often completed over many years, with detailed designs for follow-on phases completed in out-years. Allowing all phases of the project to be given an exception is not consistent with the intent of this exception as the regulated development would have ample time to develop designs that comply with the new stormwater requirements. DDOE has concluded that only phases of projects that have constructed their stormwater BMPs during the initial phase of construction, under an approved SWMP, shall be given an exception. No change to the rule is necessary.

48. The commenter feels that the stormwater regulations by default provide an open license to on-site inspectors or permit reviewers to require at demolition sites whatever measures they feel are warranted to control sediment. To reduce uncertainty for demolition activities, DDOE should at least provide a menu of possible control options and brief description of the circumstances in which each might be required.

DDOE Response: This section of the regulation was included to require active demolition sites that are found to have materials such as debris, dust or sediment leaving the site to use standard practices, such as dust control, to correct the problem as necessary. Once these materials are being controlled onsite, DDOE inspectors will not have grounds to require additional practices. No change to the rule is necessary.

49. Regarding page 23 of the preamble to the second proposed rule, DDOE provides no factual basis for its assertion that “evidence will very often demonstrate [that] the feasibility or appropriateness of on-site stormwater management is limited” at AWDZ Sites. It would be inappropriate and misleading for DDOE to give regulated projects within the AWDZ the expectation that they will automatically be granted leave to perform off-site mitigation.

DDOE Response: As suggested, DDOE will review these projects and site conditions on a case-by-case basis and determine whether the evidence limits the feasibility or appropriateness of on-site stormwater management, including in terms of potential impacts on District waterbodies. No change to the rule is necessary.

50. The second proposed rule mentions Mayor Gray’s Sustainable DC Plan but makes no reference to the 40% tree canopy goal codified as one of the plan principles. The commenter feels that it is possible for a development to meet the DDOE stormwater requirements while removing the entire tree canopy from an undeveloped site. The second proposed rule provides no protection of either individual trees or tree groves. The final rule should include

both the District's 40% tree canopy goal and language to protect existing trees while encouraging the use of trees as a BMP.

DDOE Response: The new SWRv requirement and SRC trading program provide incentives for preserving existing trees and planting new trees in the District. Tree preservation and planting are included in Chapter 3 of the SWMG and listed as BMPs that could achieve a regulated site's SWRv or generate SRCs. No change to the rule is necessary.

51. The commenter requests that the District develop a Green Streets program including specific projects on streets in ANC3D01. The projects include 1) implementing regenerative stormwater conveyance at the storm sewer outfalls, 2) installing bioswales along the street edge in the PROW, 3) removing a parking land of pavement along the park edge and installing permeable sidewalks and rain gardens, and 4) developing a list of Green Street candidates that would be ready for retrofitting when the streets are repaved or rebuilt.

DDOE Response: DDOE is a strong supporter of green streets that include stormwater retention practices and minimize impervious surfaces. Through these regulations, DDOT will be required to implement stormwater management practices that meet the 1.2 inch retention standard to the MEP. This MEP process will require all DDOT reconstruction projects to incorporate stormwater retention practices, making green streets the standard practice for transportation projects. No change to the rule is necessary.

52. The commenter requests that DDOE consider the serious stormwater management problems in the Kingman Park area as it finalizes the rule. In addition, the commenter asks DDOE to coordinate stormwater management efforts with sister agencies and contractors.

DDOE Response: The rule is intended to improve stormwater management throughout the District. In the Kingman Park neighborhood, for example, major regulated projects will face new requirements to retain their stormwater. In addition, the rule's SRC trading program provides properties with a financial incentive to install BMPs that retain stormwater and prepare and submit SWMPs in order to generate and sell SRCs. Combined, these initiatives will help to address stormwater-related problems in the District. DDOE notes that sister agencies must comply with the regulations and may generate and sell SRCs. Also, DDOE is providing training to its sister agencies, as it is providing training that is open to the general public. No change to the rule is necessary.