



February 26, 2010

Water Docket
United States Environmental Protection Agency
Mailcode: 4101T
1200 Pennsylvania Avenue, NW
Washington DC 20460

VIA ELECTRONIC TRANSMISSION

RE: Stakeholder Input: Stormwater Management including Discharges from
New Development and Redevelopment
Docket ID No. EPA-HQ-OW-2009-0817

To Whom It May Concern:

New York City Department of Environmental Protection (NYCDEP)¹ would like to thank the Environmental Protection Agency (EPA) for the opportunity to provide stakeholder input concerning EPA's planned comprehensive stormwater reduction program. New York City is a complex, older and densely populated ultra-urban environment, in which NYCDEP operates both a municipal separate storm sewer system (MS4) and combined sewers. Stormwater discharges in New York City are regulated through 14 State Pollutant Discharge Elimination System (SPDES) permits, each covering the drainage area for one of the City's 14 water pollution control plants (WPCPs). Most of these SPDES permits cover both areas with combined sewers and separately storm sewered areas.

Starting with its Bluebelt program on Staten Island where constructed wetlands, detention ponds, and other best management practices (BMPs) manage and convey stormwater flows, New York City has been innovative in its approach to stormwater management and green infrastructure. In addition to the Bluebelt program and in coordination with Mayor Bloomberg's PlaNYC and 2008 Sustainable Stormwater Management Plan, NYCDEP is implementing a host of additional stormwater initiatives geared at reducing stormwater flows while taking into account the dense urban fabric of New York City. As part of this effort, NYCDEP is implementing pilot projects citywide to test stormwater reduction, overall effectiveness and applicability in the city. These pilot projects include rooftop and subsurface detention, streetside swales, tree pits designed to capture additional stormwater, porous pavement, and site-specific feasibility of infiltration. These pilots will help NYCDEP encourage tailored strategies to account for site-specific considerations.

Further, NYCDEP is considering a new performance standard that would limit the allowable discharge of stormwater from new construction. This performance

¹ These comments are offered specifically on behalf of NYCDEP. As the planned federal rulemaking progresses, NYCDEP and other New York City agencies with a variety of perspectives on stormwater management may offer additional comments.

Caswell F. Holloway
Commissioner

Angela Licata
Deputy Commissioner
ALicata@dep.nyc.gov

59-17 Junction Boulevard
Flushing, NY 11373

(718) 595-4398 tel
(718) 595-4479 fax

standard would reduce the current release rate to the city's sewers thereby extending the time of concentration and reducing the peak flow from stormwater runoff. Stormwater practices to meet NYCDEP requirements frequently use subsurface or rooftop detention instead of retention methods and connect to the existing sewer system.

Amidst the complexities of managing New York City's stormwater, NYCDEP has the following comments and input on EPA's second Preliminary Consideration for Modifying/Supplementing EPA's Stormwater Regulations: ***Establish specific requirements to control stormwater discharges from new development and redevelopment.*** EPA indicates in this section of the Request for Stakeholder Input that it is "considering establishing specific requirements, including standards, to control stormwater discharges from new development and redevelopment..." and that "there could be a national standard for on-site stormwater controls such that post development hydrology mimics predevelopment hydrology on a site-specific basis."

- Large municipalities, such as New York City, could have difficulty complying with a national standard unless it takes into account the unique constraints of for ultra-urban settings. National stormwater reduction requirements could be especially burdensome for older, urban areas with limited undeveloped space, as most of our growth and construction occurs in previously developed areas. Therefore, stormwater retention and infiltration is often not a practical strategy. Depending on the development size, use and geology/subsurface conditions (such as high bedrock or a high water table), the development cost could increase significantly if sites are required to provide predevelopment hydrology. NYCDEP recommends setting stormwater requirements based on density, best available technology, and geologic/subsurface conditions, in order to provide an adequate range of options for project developers and local regulators.

To illustrate the difficulties of applying national stormwater standards in New York City, the Stormwater Quantity and Quality Controls components of the Leadership in Environmental and Energy Design (LEED) certification program, administered by the United States Green Business Council, have proved very difficult for developers of public and private projects throughout most of New York City to attain. These standards are rarely met because the LEED program primarily incentivizes stormwater reductions through infiltration measures, which are often not available in most of New York City, partly due to lack of available space for such controls and budgeting considerations. NYCDEP is concerned that an overly strict national standard or program for stormwater management could result in similar feasibility issues within New York City, whether or not such a standard or program explicitly emphasized infiltration.

- NYCDEP has concerns over defining and achieving predevelopment hydrology for redevelopment. Predevelopment hydrology could be defined as hydrology based on the "natural" conditions before any type of development; it could also be based on what is currently on the site or has been on the site in the last set number of years. If predevelopment hydrology is determined from the previous development, it could lose its effectiveness. Yet changing the hydrology to a developed site's "natural" state could be extremely burdensome for some property owners, especially in an ultra-urban setting with limited space available for vegetated practices. NYCDEP recommends defining predevelopment hydrology for undeveloped areas and requiring a reduction in runoff for redevelopment projects.

As mentioned above most of the stormwater practices in New York City, rely on detention to reduce stormwater flows to the sewer. Currently, NYCDEP provides guidance to restrict conveyance to the sewer system by no smaller than a three-inch orifice since it has been NYCDEP's experience that outlets smaller than three inches tend to clog. To reduce stormwater flows to a predeveloped state in circumstances where retention is infeasible, it may be necessary to provide a smaller restricted connection to the existing sewer line, which may result in clogs and backups.

Further, the proposed revisions to the Rules for the Protection from Contamination, Degradation, and Pollution of the New York City Water Supply and Its Sources ("Watershed Rules and Regulations" or WRR)², which govern, among other things, stormwater management practices within the watershed for New York City's water supply, specify that stormwater requirements for new development only apply "to the extent possible" to redevelopment (WRR Section 18-39(b)(7)). The New York State Department of Environmental Conservation provides similar language in its revisions for the New York State Stormwater Management Design Manual in Chapter 9 (Section 9.3). NYCDEP recommends using the term "maximum extent practicable" rather than specific requirements, which may not consider the existing built environment.

- There will be a burden of incremental costs associated with more restrictive flow requirements. NYCDEP is concerned about potentially significant cost increases for New York City's residents and businesses, and recommends taking installation costs, maintenance costs and retrofitting costs into consideration when EPA performs cost-benefit analysis for this planned rulemaking.
- As part of the paradigm shift from grey infrastructure controlling all of a municipality's stormwater to distributed stormwater controls throughout the entire drainage area, municipalities will have increasing responsibility to ensure that onsite stormwater controls work as designed. Municipalities accordingly will need additional resources for enforcement and maintenance activities to keep the drainage system properly working.

As EPA further develops this rulemaking, NYCDEP would appreciate the opportunity to continue discussing the proposed regulations. Please do not hesitate to contact me with any questions.

Sincerely,



Carter H. Strickland, Jr.
Deputy Commissioner for Sustainability

cc: Angela Licata, Julie Stein, Stacy Radine (BEPA); Marcella Eckels, Heather Donnelly (Legal); Vincent Sapienza, Leslie Lipton, Lily Lee (BWT); Brenda Drake, Matthew Giannetta (BWSO); Ed Coleman (BWSO)
Hilary Metzger, Amanda Goad (NYC Law)

² The WRR are codified at Title 15, Chapter 18 of the Rules of the City of New York. This discussion refers to the proposed revisions to the WRR as released for public comment in October 2008.