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EPA Extends Strict Federal Stormwater Control Approach To Municipalities

EPA is requiring municipalities to use some of the same approaches for controlling post-construction stormwater runoff that are contained in recent congressionally mandated guidance for federal facilities -- backing calls from activists to apply the federal standards, which are stricter than most used in the private sector, to municipal separate storm sewer system (MS4) permits.

EPA has recently issued new guidance for permit writers emphasizing the need for similar performance standards as those included in the federal facilities guidance and included similar stringent new requirements in a proposed permit for Washington, DC, that Region III issued April 21.

The two new measures borrow approaches contained in EPA guidance for ensuring that new or modified federal facilities are constructed in such a way that they control stormwater runoff even after construction is complete. The guidance stems from language in the 2007 energy law that required the agency to issue guidance on how federal facilities could maintain or restore, to the maximum extent technically feasible, the pre-development hydrology of a property.

The agency's 2009 implementation guidance provides two options for meeting the requirement -- either containing stormwater onsite equal to the 95th percentile rainfall event or using site-specific conditions and modeling techniques to determine the pre-development hydrology of the site.

Environmentalists late last year expressed hope that the stormwater control standards in the federal facility guidance could be applied to MS4 permits.

But industry groups are concerned that broader application of the federal requirements will drive up construction costs (*see related story*).

EPA Region III's draft MS4 permit for the District of Columbia, released April 21, includes enforceable requirements for using green infrastructure techniques to control stormwater and performance standards to limit runoff from newly developed or redeveloped land that are nearly identical to those contained in the federal facility guidance.

"The innovations in this new permit are vital to restoring and protecting the health of local waterways in the District, as well as the Chesapeake Bay," Region III Administrator Shawn Garvin said in an April 21 statement. "We all need to do our part, and this permit can serve as a model to other municipalities for preventing runoff from washing harmful pollutants into

streams and rivers in the Bay watershed.”

Accompanying Fact Sheet

A fact sheet accompanying the draft permit explains, “The fundamental difference between today’s draft Permit and previous generation permits is the imposition of measurable requirements for green technology practices, sometimes referred to as ‘low-impact development’ or ‘green infrastructure.’”

These include planting at least 4,150 trees annually, installing 120,000 square feet of green roofs annually, and decreasing impervious surfaces by 13.5 million square feet over the five-year term of the permit, according to an EPA comparison of existing and proposed requirements in the permit.

Additionally, the proposed permit includes numeric performance standards for stormwater retention that are nearly identical to those contained in the federal facility guidance -- a push that EPA officials are also emphasizing in guidance for state regulators on improving MS4 permits issued in April.

“Permits should contain a performance standard for post-construction that is based on the objective of maintaining or restoring stable hydrology to protect water quality of receiving waters or another mechanism as effective,” Linda Boornazian, director of the Water Permits Division within the Office of Water, writes in a cover letter to the April 2010 MS4 guidance.

The 2007 energy law requires federal facilities to maintain or restore, to the maximum extent technically feasible, the pre-development hydrology of a property. And EPA’s 2009 implementation guidance provides two options for meeting the requirement -- either containing stormwater onsite equal to the 95th percentile rainfall event or using site-specific conditions and modeling techniques to determine the pre-development hydrology of the site.

But the agency says in the MS4 guidance that most MS4 permits only require permittees to adopt a post-construction program with enforceable requirements designed to reduce stormwater impacts from new development and redevelopment, without specifying a performance standard. The MS4 guidance includes minimum recommended permit provisions that reflect the principles behind the federal facility requirements but allows permit writers flexibility to include even more stringent requirements or slightly different performance standards that can be used, such as specifying the minimum storm volume to be retained on site rather than the minimum storm size, as in the federal facility guidance.

The proposed D.C. MS4 permit says non-federal facilities need to contain stormwater onsite equal to a 90th percentile rainfall event, a slightly less stringent standard than for federal facilities because most construction in the district involves redevelopment rather than new sites. “If the District had more open land available for new development, and thus the opportunity for additional types of control measures, EPA may have included a capture level closer to the 95% required for federal facilities,” the Region III fact sheet says. -- *Lara Beaven*