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OFFICE OF THE ASSISTANT SECRETARY
(INSTALLATIONS AND ENVIRONMENT)
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IN REPLY REFER TO
24 FEB 2010

Jonathan Angier
Environmental Protection Agency,
Office of Water, Office of Wastewater Management
Mail code: 4203M,
1200 Pennsylvania Ave.,
NW Washington, DC 20460.

Attention: Docket ID No. EPA-HQ-OW-2009-0817

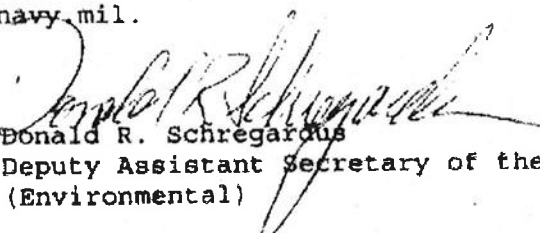
Subject: Stakeholder Input; Stormwater Management Including Discharges
from New Development and Redevelopment.

Mr. Angier,

Enclosed are Department of Defense (DoD) comments which include inputs from the Departments of the Navy, Air Force, and Army, as well as several other Defense Components. The Department has been closely following the regulatory developments pertaining to stormwater management and commends EPA's effort to take comments from all the stakeholders affected by changes within the regulatory program.

DoD supports EPA's efforts to streamline and strengthen the effectiveness of the stormwater program and to introduce green infrastructure practices, also known as Low Impact Development. Since November 2007, some DoD Components have employed innovative and effective stormwater management strategies with the goal of no net increase in stormwater volume, sediment or nutrient loading from military construction and major renovation projects. In this effort, DoD is at the forefront of Federal efforts to lead by example. However, DoD has some concerns over developing broad changes to the current stormwater regulatory program. Of particular note, DoD is concerned that EPA's current authority under Section 402(p) of the Clean Water Act may not provide the framework to regulate an expanded stormwater management program. In addition, DoD would like EPA to clarify the impact of state water laws, enforcement requirements, and the definition sensitive areas.

Thank you for the opportunity to provide input for the proposed effort to strengthen EPA's stormwater program. If you have any questions, our point of contact for this issue is Mr. Abe Nachabe at (202) 685-9315, or e-mail at abe.nachabe@navy.mil.


Donald R. Schregardus
Deputy Assistant Secretary of the Navy
(Environmental)

ENCLOSURE (1)
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CLEAN WATER ACT SERVICES STEERING COMMITTEE

Comments on the Stakeholder Input; Stormwater Management Including Discharges from New Development and Redevelopment

74 FR 68617 (28 December 2009)

1. EPA Authority under the Clean Water Act

Proposed Requirement or Section Addressed: Clarification of EPA's statements concerning the scope of a new program and authority under section 402(p) of the Clean Water Act.

Comment: Under section 402(p), a National Pollutant Discharge Elimination System (NPDES) stormwater permit is required for stormwater point source discharges into navigable water, associated with a municipal system or industrial activity. Please explain how "a requirement for on-site stormwater controls such that post development hydrology mimics predevelopment hydrology" 74 Fed. Reg. at 68621 (Dec 28, 2009), would be implemented within this statutory authority.

Discussion: The Clean Water Act may not provide the necessary framework for implementing standards at development and redevelopment sites not involving a point source discharge of pollutants to navigable waters, and thus separate from existing NPDES requirements for municipal separate storm sewer systems (MS4) and construction activities.

Recommendation: Please clarify how the scope of a new program to reduce stormwater discharges from new development and redevelopment would match with the current authorities under section 402(p) of the Clean Water Act.

2. State Water Laws Impact

Proposed Requirement or Section Addressed: Section II. Background, Proposed Information Collection Request (ICR), page 68621

"Under the proposed ICR, EPA seeks any available information concerning current stormwater control practices, including those referred to as green infrastructure or low-impact development."

Comment: State water laws control to varying degrees any stormwater control practices. Prevailing state water law(s) should be considered during the rulemaking. Some of these laws may prevent the application of green technologies.

Discussion: It may be difficult to implement stormwater controls using "green technologies" on a uniform basis given the variability of state water laws. Some state water laws prohibit the diversion or retention of rainfall on an owner's real property.

Recommendation: Recommend that EPA considers the variations to state water laws as they may affect stormwater control practices.

-References: Energy Independence and Security Act of 2007, Sec. 438 and E.O. 13415, Sec 14.
http://www.epa.gov/owow/NPS/lid/section438/pdf/final_sec438_eisa.pdf

3. Enforcement of Requirements Beyond Installation Boundaries

Proposed Requirement or Section Addressed: Section III, Input on Stormwater Practices and Considerations for Modifying Regulations, paragraph (B1) Page 68621

Comment: Military installations are federal MS4 operators. The area within the installation boundary is typically considered the urbanized area covered under the MS4 permit. If EPA is considering expanding the area subject to federal regulation beyond the urbanized area, it is important to note that DoD installations do not have the authority to enforce requirements outside the DoD installation boundaries.

Recommendation: Recommend EPA take into consideration DoD installations lack of enforcement authority outside installation boundaries.

4. Clearly Define Sensitive Areas

Proposed Requirement or Section Addressed: Section III, Input on Stormwater Practices and Considerations for Modifying Regulations, paragraph (B5) Page 68622

Comment: The term "sensitive area" is not defined.

Recommendation: If permits are going to start including buffer requirements for sensitive areas, the term 'sensitive area' needs to be defined.