



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

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June 12, 2012

Via EPA Pouch Mail

Ms. Eurika Durr  
U.S. Environmental Protection Agency  
Clerk of the Board  
Environmental Appeals Board (Mail Code 1103B)  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460-0001

RECEIVED  
U.S. E.P.A.  
2012 JUN 13 PM 1:26  
ENVIR. APPEALS BOARD

Re: District of Columbia, Municipal Separate Storm Sewer System  
Permit Number: DC0000221  
Appeal Number: NPDES 11-05

Dear Ms. Durr:

Enclosed please find one original (consisting of 4 boxes of hard copy documents and two compact discs, one containing the appendices to AR22 and one containing AR36 Appendix W) as well as one copy (consisting of 4 compact discs) of EPA Region 3's Administrative Record in the above-referenced case.

Also enclosed is a copy of the Certified Index to the Administrative Record, which was filed electronically via CDX yesterday.

Very truly yours,

Kelly A. Gable  
Assistant Regional Counsel

cc: (enclosures via compact disc only)  
Amy McDonnell, Esq.  
Paul Calmita, Esq.



**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

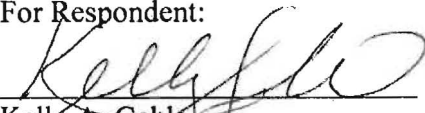
In Re:	)	
	)	
Government of the District of Columbia	)	NPDES Appeal No. 11-05
Municipal Separate Storm Sewer System	)	
	)	
NPDES Permit No. DC 0000221	)	
	)	

**SUBMISSION OF CERTIFIED INDEX  
TO THE ADMINISTRATIVE RECORD**

EPA Region 3 (Region 3) hereby submits the Certified Index to the Administrative Record for Region 3's decision to issue the above-captioned NPDES permit to the Government of the District of Columbia, which has been filed with the Clerk electronically via CDX. A hard copy of the Certified Index will be filed with the Clerk as required by the Board's procedures.

Respectfully submitted this 11th day of June, 2012.

For Respondent:

  
\_\_\_\_\_  
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Sylvia Horwitz  
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Ariel Rios North Room 7353H  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460  
(202) 564-5511  
*Of Counsel*

Dated: June 11, 2012

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the attached Notice and the Certified Index to the Administrative Record were served on the following persons by U.S. Mail and electronic mail.

F. Paul Calamita  
AquaLaw PLC  
6 South 5<sup>th</sup> Street  
Richmond, VA 23219  
paul@aqualaw.com

Amy E. McDonnell  
Office of the Attorney General for the District of Columbia  
Deputy General Counsel  
District Department of the Environment  
1200 First Street, NE, Seventh Floor  
Washington, DC 20002  
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Kelly Gable

Date: June <sup>11<sup>th</sup></sup> 11, 2012

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

	)	
In Re:	)	
	)	NPDES Appeal No. 11-05
Government of the District of Columbia	)	
Municipal Separate Storm Sewer System	)	
	)	
NPDES Permit No. DC 0000221	)	

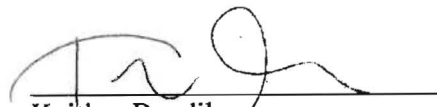
**CERTIFICATION OF THE INDEX TO THE  
ADMINISTRATIVE RECORD FOR THE DC MS4 PERMIT**

I, Kaitlyn Bendik, state the following:

1. I am a Life Scientist employed by the U.S. Environmental Protection Agency, Region 3 ("EPA Region 3") in Philadelphia, PA. Since July 2010, I have been employed in the EPA Region 3's Water Protection Division.
2. As part of my responsibilities, I oversaw compilation of the administrative record of the materials on which EPA Region 3 Water Protection Division Director Jon Capacasa based his decision dated September 30, 2011 to issue NPDES Permit No. DC0000221 to the Government of the District of Columbia ("the DC MS4 Permit"). The materials comprising the administrative record for that decision have been compiled and listed in the attached Index to the Administrative Record.
3. I hereby certify that, to the best of my knowledge, the documents listed in the attached Index constitute the complete Administrative Record for the DC MS4 Permit.

I declare under penalty of perjury that the following is true and correct. Executed this 11 th day of June, 2012, at Philadelphia, Pennsylvania.

Dated: June 11, 2012

  
\_\_\_\_\_  
Kaitlyn Bendik  
Water Protection Division  
U.S. EPA, Region 3

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Re: Final Administrative Record  
National Pollutant Discharge Elimination System (NPDES)  
NPDES Permit Renewal

NPDES PERMIT NUMBER: DC0000221

PERMITTEE NAME and MAILING ADDRESS:

Government of the District of Columbia  
The John A. Wilson Building  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

FACILITY LOCATION:

Municipal Separate Storm Sewer System (MS4)

RECEIVING STREAM:

Potomac River, Anacostia River, Rock Creek and stream segments  
tributary to each such water body

- 
1. EPA Region III, Final Permit No. DC0000221 with Accompanying Final Fact Sheet and Final Responsiveness to Comments.
  2. EPA Region III, Public-Noticed Draft Permit No. DC0000221 with Accompanying Draft Fact Sheet and Joint Public Notice Announcement (April 21, 2010) [http://www.epa.gov/reg3wapd/npdes/draft\\_permits.html](http://www.epa.gov/reg3wapd/npdes/draft_permits.html).
  3. Alice Ferguson Foundation, Inc., Tracy Bowen, Comment Letter (June 4, 2010).
  4. Anacostia Watershed Citizens Advisory Committee, Mike R. Smith, Comment Letter (June 4, 2010).
  5. Anacostia Watershed Society (form letters) (May – June 2010).
  6. Bekele, Jerusalem, Cover E-Mail (June 4, 2010) attaching Permit Mark-Up; Table (with Issues, Current Language, Suggested Language and Justification); and Write-Up (dated May 28, 2010).
  7. Casey Trees, Mark Buscaino, Comment Letter (May 13, 2010).
  8. Chesapeake Bay Foundation, Lee Epstein, Comment Letter (June 4, 2010).
  9. CONTECH® Stormwater Solutions, Dionne Driscoll, Comment Letter (June 2, 2010).

10. Council of the District of Columbia, Council Members, Comment Letter (June 4, 2010).
11. Departments of the Navy, Army and Air Force, S.G. Womack [Navy], Comment Letter (May 27, 2010) (includes two enclosures: Memorandum for Acting Assistance Secretary of the Army, et al. from Dorothy Robyn, Deputy Undersecretary of Defense, re: DoD Implementation of Storm Water Requirements under Section 438 of the Energy Independence and Security Act (EISA) (Jan. 19, 2010); Letter from Donald Schregardus, Deputy Assistant Secretary of the Navy, to Jonathan Angier, EPA, re: Stakeholder Input: Stormwater Management Including Discharges from New Development and Redevelopment (Feb. 24, 2010).
12. District of Columbia Building Industry Association, Merrick Malone, Comment Letter (June 4, 2010).
13. District Department of the Environment, Hamid Karimi, Comment letter (June 4, 2010); superseding Comment letter (June 21, 2010); supplement to June 21, 2010 comments to include claimed new authority (July 22, 2010); and second supplement to June 21, 2010 comments to include claimed new authority, with Cost Analysis of Proposed DC Stormwater Regulations(November 3, 2010).
14. District of Columbia Water & Sewer Authority, George Hawkins, Comment Letter (June 4, 2010).
15. Earthjustice [Representing: Anacostia Riverkeeper, Potomac Riverkeeper, Waterkeeper Alliance, and D.C. Environmental Network], Jennifer Chavez, Comment Letter (June 4, 2010).
16. Friends of Rock Creek's Environment, Beth Mullin, Comment Letter (June 4, 2010).
17. Licsko, Z. John, Comment Letter (June 4, 2010).
18. Maryland-National Capital Building Industry Association, Raquel Montenegro, Comment Letter (June 4, 2010).
19. Minerva, Dana, Comment Letter (June 4, 2010).
20. National Association of Clean Water Agencies, Keith J. Jones, Esq., Comment Letter (June 4, 2010).
21. National Association of Flood and Stormwater Management Agencies, Susan Gilson, Comment Letter (June 4, 2010).

22. Natural Resources Defense Council [Representing: see groups below], David Beckman *et al* [see contacts below], Comment Letter (June 4, 2010). The Comment letter includes hard copy attachments: (1) "Green Infrastructure in the District of Columbia: Implications for the District's Stormwater permit," by Diane M. Cameron (June 4, 2010) (hereinafter, "Cameron Report"); (2) e-mail from Diane M. Cameron, Conservation Program Director, Audubon Naturalist Society Consultant to the Natural Resources Defense Council; (3) Memorandum from Biohabitats, Inc. and Horsely Witten Group, Inc. to Meo Curtis, Montgomery County DEP Re: Third Draft Review of Montgomery County Code (Dec. 14, 1999); (4) DC MS4 permit Letter of Agreement (August 1, 2008); (5) "Investigation of the Feasibility and Benefits of Low-Impact Site Design Practices ("LID") for Ventura County, Richard R. Horner (2007); (6) Initial Investigation of the Feasibility and Benefits of Low-Impact Site Design Practices ("LID") for the San Francisco Bay Area, Richard R. Horner (2007); (7) Supplementary Investigation of the Feasibility and Benefits of Low-Impact Site Design Practices ("LID") for the San Francisco Bay Area, Richard R. Horner (2007); (8) State of California, California Regional Water Quality Control Board, Los Angeles Region, Order No. 01-182, NPDES permit No. CAS004001, Waste Discharge Requirements for Municipal Storm Water and Urban Runoff Discharges within the County of Los Angeles and the Incorporated Cities Therein, except the City of Long Beach (Dec. 13, 2001), as amended; (9) State of West Virginia, Department of Environmental Protection, Division of Water and Waste Management, General NPDES Water Pollution Control permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems, permit, No. WV0116025 (June 22, 2009). The Commenters also included a compact disk containing the documents relied on in the comments.
23. Short Sign-On Letter from various groups and contacts (June 4, 2010).
24. Smart Growth America, Geoff Anderson, Comment Letter (June 4, 2010).
25. U.S. EPA, 40 C.F.R. Parts 122 – 124 (Updated Regularly) [http://cfpub.epa.gov/npdes/npdesreg.cfm?program\\_id=0](http://cfpub.epa.gov/npdes/npdesreg.cfm?program_id=0).
26. Baker, William & Neil Fitzpatrick, Chesapeake Bay Foundation, Re: Dual Retention Standard (federal and non-federal facilities) in DC MS4 Permit (June 9, 2011).
27. EconNorthwest, *Managing Stormwater in Redevelopment and Greenfield Development Projects using Green Infrastructure: Economic Factors that Influence Developers' Decisions* (June 2001).
28. Gunderson, J. et.al., *Cost-Effective LID in Commercial and Residential Development* (March-April 2011) <http://www.stormh2o.com/march-april-2011/costeffective-lid-development-1.aspx>.



29. U.S. Government Accountability Office, *Letter re: Public Law 111-378 and Payment of the Stormwater Charge* (March 14, 2011).
30. Wolf, Kathleen L., *What are the Benefits of Nature in Cities and Towns?* (January 20, 2011) <http://depts.washington.edu/hhwb/>.
31. U.S. Senate, Public Law No: 111-378, "A bill to amend the Federal Water Pollution Control Act to clarify Federal responsibility for stormwater pollution," (signed by President January 4, 2011) <http://www.gpo.gov/fdsys/pkg/BILLS-111s3481enr/pdf/BILLS-111s3481enr.pdf>.
32. EPA, Managing Wet Weather with Green Infrastructure website, Benefits (January 4, 2011) [http://cfpub2.epa.gov/npdes/home.cfm?program\\_id=298](http://cfpub2.epa.gov/npdes/home.cfm?program_id=298).
33. City of Seattle, *Seattle Green Factor* (January 3, 2011) <http://www.seattle.gov/dpd/Permits/GreenFactor/Overview/>.
34. Casey Trees, et al., District tree inventories (2011) <http://www.caseytrees.org/geographic/tree-inventory/community/index.php>.
35. Casey Trees, Urban Tree Canopy Goal website (2011) <http://www.caseytrees.org/geographic/key-findings-data-resources/urban-tree-canopy-goals/index.php>.
36. EPA, Chesapeake Bay Total Maximum Daily Load (December 29, 2010) <http://www.epa.gov/reg3wapd/tmdl/ChesapeakeBay/tmdlexec.html>.
37. District of Columbia, Water Quality Standards (December 27, 2010) <http://www.dcregs.dc.gov/Gateway/IssueHome.aspx?IssueID=144>.
38. MDE, *Chesapeake Bay Total Maximum Daily Load Phase I Watershed Implementation Plan* (December 3, 2010) [http://www.mde.state.md.us/programs/Water/TMDL/Documents/www.mde.state.md.us/assets/document/MD\\_Phase\\_I\\_Plan\\_12\\_03\\_2010\\_Submitted\\_Final.pdf](http://www.mde.state.md.us/programs/Water/TMDL/Documents/www.mde.state.md.us/assets/document/MD_Phase_I_Plan_12_03_2010_Submitted_Final.pdf).
39. District of Columbia, Chesapeake Bay TMDL Watershed Implementation Plan with Cover Letter (November 29, 2010) [http://ddoe.dc.gov/ddoe/frames.asp?doc=/ddoe/lib/ddoe/tmdl/Final\\_District\\_of\\_Columbia\\_WIP\\_Bay\\_TMDL.pdf](http://ddoe.dc.gov/ddoe/frames.asp?doc=/ddoe/lib/ddoe/tmdl/Final_District_of_Columbia_WIP_Bay_TMDL.pdf).
40. Commonwealth of Virginia, *Chesapeake Bay TMDL Phase I Watershed Implementation Plan: Revision of the Chesapeake Bay Nutrient and Sediment Reduction Tributary Strategy* (November 29, 2010) <http://www.deq.state.va.us/export/sites/default/tmdl/pdf/baywip/vatmdlwipphase1.pdf>.

41. Summaries of Meetings Held with Commenters After the Close of the Public Comment Period (August 3, 2010; September 23, 2010; October 20, 2010; October 22, 2010; October 26, 2010; November 23, 2010; April 14, 2011; and June 22, 2011).
42. EPA, "Revisions to the November 22, 2002 Memorandum 'Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES permit Requirements Based on Those WLAs'" (November 12, 2010)  
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43. Chesapeake Bay Program, *Modeling* (November 2, 2010)  
<http://www.chesapeakebay.net/modeling.aspx>.
44. DC DOE, District of Columbia Critical Issues Paper, with Off-Site Mitigation Slide Presentation and Green Build-Out Model (September 27, 2010)  
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45. EPA, Approved Anacostia River Watershed Trash Total Maximum Daily Load (September 21, 2010)  
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47. DC DOE, MS4 Permit Deliverable: Annual Report (August 19, 2010)  
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48. DC DOE, MS4 Permit Deliverable: Fiscal Year 2011 Implementation Plan (August 19, 2010).
49. DC DOE, MS4 Permit Deliverable: Discharge Monitoring Report for Rock Creek (August 18, 2010).
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51. DC DOE, Discharge Monitoring Report Under the Corrective Action Plan for the Potomac River (July 22, 2010).
52. EPA, *Urban Stormwater Approach for the Mid-Atlantic Region and the Chesapeake Bay Watershed* (July 2010)  
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54. *United States of America v. Washington State Dep't of Transportation (WSDOT)*, 716 F. Supp. 2d 1009 (June 7, 2010).
55. EPA, *Guidance for Federal Land Management in the Chesapeake Bay Watershed*, Chapter 3. Urban and Suburban, (May 12, 2010)  
[http://www.epa.gov/owow/keep/NPS/chesbay502/pdf/chesbay\\_chap03.pdf](http://www.epa.gov/owow/keep/NPS/chesbay502/pdf/chesbay_chap03.pdf).
56. EPA, *MS4 Permit Improvement Guide* (April, 2010)  
[http://www.epa.gov/npdes/pubs/ms4permit\\_improvement\\_guide.pdf](http://www.epa.gov/npdes/pubs/ms4permit_improvement_guide.pdf).
57. Public Notice Correspondences with Follow-up Actions Between EPA Region III and Regulatory Agencies Regarding Section 401 Certification, Endangered Species Act, and States of Maryland and Virginia (April, 2010).
58. Environmental Protection Agency Region 10, Authorization to Discharge Under the National Pollutant Discharge Elimination System, No AKS-052558 (February 1, 2010)  
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59. DC DOE, Discharge Monitoring Report Addendum for Rock Creek Under the Corrective Action Plan (January 28, 2010).
60. Montana Department of Environmental Quality, General Permit for Storm Water Discharge Associated with Small Municipal Separate Storm Sewer Systems (MS4) No. MTR040000 (January 1, 2010).
61. Arbor Day Foundation, Tree City USA® Bulletin, *How Trees Can Retain Stormwater Runoff* (2010)  
[http://www.fs.fed.us/psw/programs/uesd/uep/products/11/800TreeCityUSABulletin\\_55.pdf](http://www.fs.fed.us/psw/programs/uesd/uep/products/11/800TreeCityUSABulletin_55.pdf).
62. Senator Cardin's Legislation with Follow-up Correspondence on Payment by Federal Facilities for Stormwater Fees (2010).
63. District of Columbia, FAQ Document *Changes to the District's Stormwater Fee* (2010)  
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64. Integrated Section 305(b) Report for the District of Columbia (2010).
65. Carlisle, Daren M. et. al., *Alteration of streamflow magnitudes and potential ecological consequences: a multiregional assessment* (2010).
66. Center for Neighborhood Technology and American Rivers, *The Value of Green Infrastructure: A Guide to Recognizing Its Economic, Environmental and Social Benefits* (2010) <http://www.cnt.org/repository/gi-values-guide.pdf>.
67. EPA, *Proposed National Rulemaking to Strengthen the Stormwater Program* (December 28, 2009) <http://cfpub.epa.gov/npdes/stormwater/rulemaking.cfm>.
68. Virginia Department of Conservation and Recreation, *Parts 1, 2 and 3 Final* (December 9, 2009) <http://www.dcr.virginia.gov/lr2d.shtml>.
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70. Stratus Consulting, *A Triple Bottom Line Assessment of Traditional and Green Infrastructure Options for Controlling CSO Events in Philadelphia's Watersheds* (August 24, 2009) [http://www.epa.gov/npdes/pubs/gi\\_phil\\_bottomline.pdf](http://www.epa.gov/npdes/pubs/gi_phil_bottomline.pdf).
71. DC DOE, MS4 Permit Deliverable: Discharge Monitoring Report for the Anacostia River (August 19, 2009).
72. DC DOE, MS4 Permit Deliverable: Annual Report (August 19, 2009) [http://ddoe.dc.gov/ddoe/cwp/view\\_a,1209,q,495855.asp](http://ddoe.dc.gov/ddoe/cwp/view_a,1209,q,495855.asp).
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74. LimnoTech, Inc., *Analysis of the Pollution Reduction Potential of DC Stormwater Standard* (July 24, 2009).
75. West Virginia Department of Environmental Protection, General National Pollutant Discharge Elimination System Water Pollution Control Permit No. WV0116025 (June 22, 2009) <http://www.dep.wv.gov/WWE/Programs/stormwater/MS4/permits/Documents/WV%20MS4%202009%20General%20Permit.pdf>.
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77. President Barack Obama, Executive Order 13508, *Chesapeake Bay Protection and Restoration*, 74 Federal Register 23099 (May 12, 2009)  
<http://edocket.access.gpo.gov/2009/pdf/E9-11547.pdf>.
78. District of Columbia, Rule 21-566 Stormwater Fees (May 1, 2009)  
<http://www.dcregs.dc.gov/Gateway/RuleHome.aspx?RuleID=474056>.
79. Maryland Department of the Environment, *Maryland Stormwater Design Manual, Vols. I & II* (May 2009)  
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89. EPA, "NPDES General Permit for Stormwater Discharges From Construction Activities," 73 Federal Register 40338 (July 14, 2008)  
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90. District of Columbia, Corrective Action Plan for the DC MS4 Permit with Missing Discharge Monitoring Reports for Monitoring and Sampling Years 2006-2008 in Fulfillment of the Plan (July 3, 2008).
91. EPA, *Office of Enforcement and Compliance Assurance Accomplishments Report* (December, 2008)  
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[http://www.epa.gov/npdes/pubs/gi\\_munichandbook\\_retrofits.pdf.](http://www.epa.gov/npdes/pubs/gi_munichandbook_retrofits.pdf)
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[http://www.epa.gov/reg3wapd/pdf/MS4AuditReports/DC/DC%20MS4%20Audit%20Report%20I%20Deficiencies%20-%20Jan22.pdf.](http://www.epa.gov/reg3wapd/pdf/MS4AuditReports/DC/DC%20MS4%20Audit%20Report%20I%20Deficiencies%20-%20Jan22.pdf)
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\*EPA Disclaimer: The above provided website links in some of the above document references are current as of the date of Permit issuance, and are provided for convenience of the reader. However, EPA cannot commit to updating these links, and suggests that they be used as a starting point.

\*\* All draft permit information, including commenter letters, can be found at the following web address: [http://www.epa.gov/reg3wapd/npdes/draft\\_permits.html](http://www.epa.gov/reg3wapd/npdes/draft_permits.html).

\*\*\*The commenter attachment numbers 4, 5, 6, 7, and 9 above are subsumed elsewhere in the administrative record, therefore, are not included with the other attachments from the commenter.

\*\*\*\*Weblink is only for the Green Build-out Model.