



EPA & DOD Stormwater Discussions

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History: This message has been replied to.

Greg/All- Attached is an interesting article concerning the EPA/DOD dispute over post-construction runoff standards that I thought you might find interesting. I'm glad to see this being worked at higher levels.

Thanks, Ed

Article: EPA, DOD AT ODDS OVER NOVEL STORMWATER LIMITS FOR FEDERAL FACILITIES, Inside EPA, 14 August 2009

EPA and the Defense Department (DOD) are at odds over a pending stormwater guidance to limit post-construction runoff and implement other "green" infrastructure techniques at federal facilities, highlighting the difficulty the agency faces as it seeks to adopt similar approaches in a pending rule for private sector construction.

Meanwhile, an executive order on sustainability the Obama administration is developing may include measures that would bolster the guidance's effect -- giving EPA the authority to enforce the law's stormwater requirements on federal facilities and possibly allowing the agency to move forward with implementing the guidance even over DOD objections.

At issue is an EPA guidance aimed at helping federal agencies adopt a consistent approach to meeting stormwater control requirements in the 2007 Energy Independence & Security Act (EISA). Section 438 of EISA encourages federal agencies to use green infrastructure technologies, such as wetlands, green roofs and permeable pavements, to limit stormwater runoff. The section mandates that new or modified federal facilities that exceed 5,000 square feet "shall use site planning, design, construction, and maintenance strategies for the property to maintain or restore, to the maximum extent technically feasible, the pre-development hydrology of the property with

regard to the temperature, rate, volume, and duration of flow."

Traditional approaches to meeting stormwater management requirements have focused on managing discharge rates, such as through the use of retention ponds, but the draft EPA guidance suggests meeting the section 438 requirement by managing 95 percent of all rainfall events so that its effects are the same as they would have been prior to development -- except in cases of extreme weather events.

Additionally, EISA is more stringent than Clean Water Act permit requirements, which only mandate controlling the volume of stormwater. Section 438 requires controlling the volume, rate and temperature of runoff.

Sen. Ben Cardin (D-MD) included the language in the law in a bid to improve the process of controlling stormwater runoff, which previously had only sought to limit the runoff rate and did not ensure post-construction controls. Cardin and environmentalists have also urged EPA to include similar requirements in its upcoming rule setting standards for stormwater controls at construction sites but the agency appears to be resisting their calls (Inside EPA, June 22).

While EPA put forth a draft of its guidance earlier this year, DOD is raising concerns over EPA's interpretation of the law's requirement to preserve sites' "pre-development hydrology," sources say. The two sides are currently going "back and forth" on the issue, although a DOD source says negotiations have "progressed."

One environmentalist familiar with the issue believes DOD wants to keep the status quo in certain cases, "rather than trying to improve the status of [the hydrology of] a site." This means that if a parking lot is already located on a site, the hydrology for a redevelopment project there would stay the same way it is for the parking lot, according to the source. That "defeats the whole point" of the new legal measure, the source says.

The DOD source would not provide specifics about

DOD's position but says the department wants to ensure "enough flexibility" so that in redevelopment DOD has other options in meeting EISA's pre-development hydrology standard.

The environmentalist source says DOD may have good intentions, but the law does not call for maintaining the post-development/pre-redevelopment hydrology of a site. The source believes agencies should restore to pre-development hydrology conditions. Maintaining pre-development hydrology is related to protecting and conserving water quality, the source says.

The negotiations have been going on for at least several weeks, and the environmentalist says it is time to move forward, given EISA was passed more than a year ago. At the same time, the source does not think EPA can implement the EISA requirements until it negotiates the guidance with DOD, or until an executive order is issued that would give EPA the authority to enforce the guidance.

The White House Council on Environmental Quality (CEQ) is developing an executive order on sustainability that may include measures on federal agency stormwater controls. According to the environmentalist, CEQ met with environmentalists a few months ago, where CEQ staff were receptive to the idea of including such controls in the sustainability order, but it was not clear at the time whether they would be included, the source says. Environmentalists have suggested an executive order would give EPA the authority to implement and enforce the section 438 guidance. Another option they have suggested is having EPA mandate the requirements in Clean Water Act permits.

Cardin has been pushing for release of the guidance, and previously stated his support for including the requirement in an executive order, which he says would ensure compliance with the measures.

In an Aug. 6 statement to Inside EPA, Cardin reiterated his support for fully complying with section 438. "I support strong actions by the EPA and White House to assure full compliance with the letter and the spirit of this

new law," he said, noting the importance of federal agencies to show their leadership in addressing polluted stormwater runoff.

Sources say the administration's draft sustainability executive order, which includes requirements to significantly cut federal agencies' greenhouse gas emissions, is a "pretty rough," unpolished version, and still needs much work. Informed sources say the draft order would call for a 20 percent cut in GHG emissions from federal agencies by 2020. Federal government sources and others declined to talk about specifics in the draft order, including whether it contains stormwater controls language. The order has been circulated among federal agencies for informal review, the DOD source says. Cardin also declined to release the draft order.

CEQ Chairwoman Nancy Sutley in April remarks noted that the upcoming executive order would go further than existing orders, and would integrate federal government greening initiatives, set new goals for energy efficiency, renewable energy and water conservation, and would back sustainability in general, according to a press report.