

Outline of proposed COG comments on federal “Stormwater Rulemaking Related to the Chesapeake Bay”

COG staff draft
November 15, 2010

EPA is currently soliciting comments on its proposed “Stormwater Rulemaking Related to the Chesapeake Bay”

Overall comments

1. COG has concerns with the overall premise of this potential rulemaking, i.e. that there should be separate, specific Chesapeake Bay provisions within the proposed national stormwater rule.
2. In particular, COG is concerned that a Bay-specific rulemaking will lead to overlapping and contradictory federal and state stormwater regulations. It could also lead to an unlevel playing field for economic development on a national basis.
3. However, COG does support extending federal stormwater regulation to urban areas in the Bay watershed that are not currently federally regulated.

EPA has requested that comments focus on the following specific details:

Option 1: Designate Additional Discharges to be Regulated

4. COG supports the proposal that EPA consider regulating MS4s that are currently not subject to MS4 regulation¹. (Note: staff is still working with WRTC members to address exactly how this should be done).

Option 2: Require Additional Chesapeake Bay-only MS4 Provisions

5. COG supports the proposal that EPA establish a minimum standard for buffer widths in regulated areas, subject to current physical constraints in highly urbanized areas.
6. COG does not support EPA's proposal that it set minimum standards for measures relating to turfgrass management, pesticide use and fertilizer use as these programs are better addressed through state programs rather than MS4 provisions.

Option 3: Require Retrofitting of Stormwater Management Controls with Improved Stormwater Control Measures

7. COG supports the proposal that EPA establish a minimum requirement for areas subject to MS4 permitting to establish a retrofit program (The regulation shall not establish a minimum retrofit percentage.)

¹ The entire current COG region is currently subject to MS4 regulation with the exception of western Loudoun County.

8. Note that the level of retrofitting to be accomplished shall be established by negotiation between the state and local permittee and take account of fiscal and physical constraints.

Option 4: Establish New and Redevelopment Standards.

9. COG supports the proposal that EPA establish a minimum post-construction performance standard on new and redevelopment sites on a nation-wide basis.
10. Note that this standard should not be the "Maximum Extent Technically Feasible" standard defined by the Energy Independence and Security Act and that redevelopment standards must be less rigorous than new development standards so as not to impede smart growth efforts.
11. Also note that the standard should not specify the use of low-impact development/ environmental site design practices as the only means of compliance.