

Stormwater Editor's Blog

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Waiting for the Stormwater Rule

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If you were waiting for the new national stormwater rule to be issued last month, you've probably noticed that, like Godot, it once again failed to arrive. The question—this time, as with past deadlines—is what happens next.

We've covered some of what we expect to be included in the rule [here](#) and [here](#), based on statements and presentations by EPA representatives. The rule is expected to place more emphasis on using green infrastructure, as well as on using retrofits to address stormwater discharge on already-developed sites. EPA has acknowledged that since it may be more difficult to implement stormwater controls on developed sites than on new developments—because of space limitations and other constraints—redeveloped sites might be held to a lesser standard than new developments. Some groups see this as an important provision because, as it stands now in many jurisdictions, it's much easier and less expensive for developers to continue developing greenfield sites, and they have little incentive for redevelopment or infill projects in urban areas.

This [article](#) from Environment & Energy Publishing examines some of the possible reasons for the rule's delay and the next steps. In a nutshell, EPA is required under a 2010 settlement with the Chesapeake Bay Foundation to propose a new rule to strengthen the stormwater program; the original deadline was September 2011, and there have been several extensions. (EPA's own [page](#) on the rule still states, as of this writing, that EPA intends to propose the new rule by June 10, 2013, and to complete the final action by December 10, 2014.) Since EPA missed that June deadline, it's now in breach of the settlement and is apparently negotiating with the foundation for a new schedule; if the agency and the foundation don't reach an agreement within 90 days of the deadline, the matter may be sent to a judge to rule on future actions.

One of the biggest obstacles to developing a workable rule is, not surprisingly, its potential cost. The building industry says this could be one of the most expensive rules ever promulgated by EPA, according to the article, and could potentially stifle development. In particular, the industry seems to be concerned about the costs of retrofits if they are in fact required for existing properties; conflicts between the new stormwater rule and existing local ordinances (such as the amount of required parking spaces on a site—some of which may have to be sacrificed to stormwater BMPs); how differences among sites (soil type, rainfall) will be accommodated; and responsibility for maintaining green infrastructure measures once a site is developed.

There is also speculation how decisions that have been handed down while the rule is being worked on—such as a [Virginia case](#) earlier this year, in which a federal court ruled that EPA had exceeded its authority with regard to stormwater—might ultimately affect the new rule.

The building industry recently weighed in on a similar but not quite so far-reaching issue—that of numeric effluent limits for construction-site discharges. After much wrangling and commentary (not only from the building industry) about costs, feasibility, and even the desirability of setting stringent limits that might in fact make the water coming off construction sites cleaner than background levels, the agency ultimately [postponed the issue](#) and did not include a limit in the new construction general permit issued last year.

The pressure from environmental groups and others, though, is too great for the stormwater rule to be postponed much longer. Difficult as it is to put all the parts together, and despite the inevitable objections from multiple sides, EPA will need to put something out soon so that all sides are at least debating a specific proposal rather than speculating on its content.