



Issue Fact Sheet

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STORMWATER MANAGEMENT AND THE CLEAN WATER ACT

Background

In October 2009, the U.S. Environmental Protection Agency (EPA) announced plans to issue new and significantly expanded stormwater management rules for already developed and redeveloped properties under the Clean Water Act (CWA). While EPA currently regulates stormwater through a variety of means, including permits for properties under construction, the new rules would extend regulation beyond the construction period and impact ongoing building operations and maintenance. EPA has indicated that such regulation would, at a minimum, include new project design and performance standards for stormwater discharges. The regulations are expected to require the use of expensive green infrastructure and low impact development techniques, such as a 50 percent reduction in impervious surfaces, green roofs and increased onsite water retention. The regulations may also increase municipal water fees, as jurisdictions face higher stormwater management compliance costs. EPA has committed to this rulemaking as part of a litigation settlement agreement with environmental interests over restoration of the Chesapeake Bay. This also follows a 2008 report from the National Research Council that recommended the EPA strengthen its national stormwater program. However, NMHC/NAA believe that EPA has exceeded its statutory authority by attempting to regulate existing buildings under the CWA. EPA has erroneously deemed all developed land a “point source” subject to CWA jurisdiction, and has further failed to follow the proper statutory process to establish regulatory authority over new classes of discharges. NMHC/NAA have also raised concerns about the process EPA used to research and develop their new stormwater rules. Of note, EPA was forced to revise a data collection survey issued in the fall of 2010 after NMHC/NAA advocacy led to a ruling by the Office of Management and Budget that a prior version was onerous and of questionable practical utility.

NMHC/NAA Position

NMHC/NAA believe this expansion of stormwater regulation exceeds EPA’s statutory authority, and the Agency should not proceed without first allowing congressional review as required by the Clean Water Act. At a minimum, this includes submitting a report to Congress detailing the rule’s costs and benefits in advance of the rulemaking. NMHC/NAA caution against one-size-fits-all stormwater management rules for residential and commercial buildings. Effective stormwater management is highly site-specific, so any regulations must be flexible, accommodate diverse geographic and individual site characteristics and recognize the unique characteristics of apartment properties. It is particularly important that new stormwater regulations support smart growth principles and not unduly burden dense urban and suburban development. Property-level stormwater management techniques face practical barriers and high costs in areas of dense development, which can deter rehab and revitalization projects and drive development to previously undeveloped areas.

Current Status

After missing two previous deadlines, EPA failed to release the proposed rules by a January 2012 deadline. Citing difficulties in finalizing the necessary cost-benefit analysis, EPA is now renegotiating the timeline for the rulemaking process as required by the litigation settlement agreement. Currently, EPA is still required to complete the rulemaking by November 2012. This raises serious concerns about whether the Agency is providing private-sector stakeholders with the time necessary to review this complex rule.

Relevant Committees

House Appropriations Committee
House Transportation and Infrastructure Committee

Senate Environment and Public Works Committee
Senate Appropriations Committee

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