




PUBLIC WORKS DEPARTMENT
MEMORANDUM #2010 – 13

DATE: February 25, 2010
TO: Honorable Mayor Joyce Downing and City Council Members
FROM: William A. Simmons, City Manager 
David H. Willett, P.E., Director of Public Works 
Pam Acre, Stormwater Coordinator 
SUBJECT: Proposed Comment Letter to EPA on Stormwater Regulation Revisions

BACKGROUND

The Environmental Protection Agency (EPA) has initiated rulemaking to revise its regulations concerning the stormwater program, as currently mandated under the Clean Water Act. The proposed revisions are an effort to 'tighten up' the requirements on protection of stormwater quality and to require development and redevelopment activities to mimic pre-development conditions by not allowing stormwater runoff at rates exceeding pre-development hydrology (quantity).

EPA has posted proposed revisions and a request for comments to the *Federal Register* at http://www.epa.gov/npdes/regulations/fedreg_swmanagement.pdf. The comment period ends on February 26th, 2010.

There are five areas of preliminary consideration for modifying or supplementing EPA's stormwater regulations:

1. Expand the areas subject to federal stormwater regulations.
2. Establish specific requirements to control stormwater discharges from new development and redevelopment.
3. Develop a single set of consistent requirements for Phase I and Phase II Municipal Separate Storm Sewer System (MS4s) permit holders.
4. Require MS4s to address stormwater discharges in areas of existing development through retrofitting of the sewer system, drainage area, or individual structures with improved stormwater control measures.
5. Determine whether EPA should include additional changes to the stormwater regulations (for example, requiring permits to include buffer requirements) in sensitive areas.

Although additional requirements to existing stormwater regulations are concerning, items #2 & 4 could have the most impact on Northglenn. Item #2 proposes to have EPA determine what would be an acceptable method or requirement for stormwater quantity and quality controls at new development and redevelopment locations without local input. Item #4 suggests that EPA would require local jurisdictions to develop a long-term retrofit implementation plan that is targeted to addressing stormwater problems in urban areas. There is no suggestion of options for federal funding for any of this.

BUDGET/TIME IMPLICATIONS

Formal comments are due to the EPA by Friday, February 26th at 5 pm (EST). Therefore, staff is requesting approval of the attached formal comment letter by the City Council to be signed by the Mayor. EPA expects to propose a final rule to be published in the *Federal Register* for additional public comment in late 2011 and take final action of revised rules by late 2012.

Budget implications are unknown at this time.

RECOMMENDATION

Attached to this memorandum is a formal comment letter to EPA which, if approved, would be submitted to EPA on February 26th, 2010.

STAFF REFERENCE

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February 25, 2010

Water Docket, U.S. Environmental Protection Agency
Mail code: 4203M, 1200 Pennsylvania Ave. NW
Washington, DC 20460

Attention Docket ID No. EPA-HQ-OW-2009-0817

Subject: Comments regarding EPA ICR No. 2366.01

On behalf of the Northglenn City Council, I am writing to respectfully request that the Environmental Protection Agency (EPA) reconsider its current direction in moving towards a new post-construction stormwater rulemaking by the end of 2012.

Like many other Municipal Separate Storm Sewer System (MS4) permit holders across the United States, the City of Northglenn has made important water quality improvements and invested significant resources under the National Pollution Discharge Elimination System (NPDES) Phase II regulations that were put in place in 1999. The City of Northglenn feels that these current regulations are working and that EPA's stormwater efforts should be centered on providing better programming, training and oversight to assist current permit holders in meeting existing standards.

The EPA's current direction appears to be a "one-size fits all approach." This will not work for stormwater management in Colorado. The EPA's current narrow focus on moving towards mandated on-site retention and infiltration of stormwater is especially problematic due to issues with Colorado Water Law, heavy clay soils, groundwater quality and a myriad of development and redevelopment challenges. Requiring unrealistic on-site stormwater retention regulations would severely limit or prohibit redevelopment efforts in Northglenn and in communities across the United States.

The EPA is moving towards a new rulemaking based on a 2008 stormwater report authored by the National Research Council. It is disturbing that this report did not include any stakeholder input from municipalities and other MS4 permit holders. The City of Northglenn and other permit holders are the entities that must implement, fund and maintain stormwater infrastructure and programs that are required under Federal regulations. The City of Northglenn asks that the EPA work as a partner with local and state entities in order to tap the expertise and practical reality of stormwater management at the local level. The City of Northglenn feels that the EPA should conduct an in-depth analysis of the successes and challenges with stormwater management under current regulations before pursuing any wholesale regulation changes. The current proposed Information Collection Request does not ask the questions related to 'effective' stormwater protections and 'effective' stormwater regulations.

Based on current information, this proposed direction for a new rulemaking would usurp local land use control, make many redevelopment projects infeasible and place additional unfunded mandates on MS4 permit holders who are already under severe financial strain. Considering the challenges of the current economy, it is troubling that the EPA is looking to go down the road of new regulations for an undefined and marginal benefit that is not cost effective.

The City of Northglenn takes water quality very seriously. Established best management practices (BMPs) for stormwater management are leading to positive impacts on water quality in Northglenn and in the State of Colorado.

The City of Northglenn works closely with our neighboring municipalities, the Colorado Department of Public Health and Environment (our MS4 permitting agency), the Colorado Stormwater Council, the Urban Drainage and Flood Control District, as well as the American Public Works Association and the National Association of Flood and Stormwater Management Agencies to develop and implement practices that lead to positive impacts on water quality.

The City of Northglenn respectfully requests that the EPA work as a partner with local and state governments to make the regulations that are currently in place work better versus pursuing wholesale stormwater regulation changes. Through this approach, all parties can work to support stormwater regulations that are both environmentally and economically sustainable and sound.

Respectfully,

Joyce Downing
Mayor

Cc: City Council
U.S. Senator Bennet
U.S. Senator Udall
U.S. Representative Polis