



AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Delaware

MEMORANDUM

To: ACEC/DE Executive Committee
From: Bruce W. Jones, PE
Date: December 15, 2010
Re: Environmental Committee Report

1. DNREC Sediment & Stormwater (S&S) Regulation Revision

The Sediment & Stormwater (S&S) Regulatory Advisory Committee (RAC) Technical Subcommittee did not meet in November or December. The meeting agenda and presentations from previous meetings and the current draft of the regulation revisions can be found at the following link: <http://www.swc.dnrec.delaware.gov/Drainage/Pages/RACSubcommittees.aspx>

There are no further meetings scheduled at the time. The S&S regulation revision process is on hold until EPA finalizes its Total Maximum Daily Load (TMDL) rules for the Chesapeake Bay watershed, which is expected to occur in December 2010.

2. Chesapeake Bay Stormwater Rule Dec. 15 Listening Session

In late October and November, EPA held a series of 5 public listening sessions across the Chesapeake Bay to request input from the public on Chesapeake Bay-specific provisions of a new stormwater rulemaking (see the Federal Register Notice published October 8, 2010 at http://www.epa.gov/npdes/regulations/stormwater_fn1082010.pdf). EPA has added an additional listening session in Georgetown, Delaware on Wednesday, December 15.

At this stormwater listening session, EPA will summarize potential provisions of the stormwater rulemaking with respect to the Chesapeake Bay watershed and members of the public will be able to make 3 minute statements to EPA. A general Q&A session will follow the public statements. As part of this listening session, EPA will also address environmental justice considerations and potential impacts and benefits that may arise as a consequence of the rulemaking. This listening session will include an environmental justice presentation from EPA and a discussion with the group on environmental justice considerations and potential impacts and benefits that may arise as a consequence of the rulemaking.

The Delaware stormwater listening session will be held:

December 15, 2010 from 6:30 - 9:00 PM EST. Delaware Technical and Community College, William Carter Partnership Center, Lecture Hall - Rm 529, Route 18, Georgetown, DE 19947.

3. ACEC Offers LEED Green Associate Credential USGBC Course Online

In partnership with the U.S. Green Building Council, the American Council of Engineering Companies offers a unique online course providing essential knowledge of the sustainable building concepts that are fundamental to all LEED Rating Systems.

The 32-hour course is online around the clock beginning January 31, 2011, and is accessible to registrants at their convenience through March 27, 2011.

ACEC members may register for the course at a special discount price. For complete details on course content and to register, <http://www.acec.org/education/eventDetails.cfm?eventID=1196>.

4. EPA Finalizes Turbidity Rule Revision in Construction Stormwater Permits

EPA this month finalized its rule to remove numeric limitation of 280 NTUs (numeric turbidity units) from its new Construction and Development Effluent Limitation Guidelines (ELGs). After petitions from the housing industry and others, EPA concluded that “it improperly interpreted the data and, as a result the calculations in the existing administrative record are no longer adequate to support the 280-NTU numeric limit.”

State water agencies that are in the process of adding the 280-NTU limit to their stormwater permits will have to issue the permits without the numeric limit. The other provisions of the ELG rule remain valid and will require best management practices relating to erosion and sediment control, soil stabilization, dewatering, pollution prevention and prohibited discharges.

All the NPDES-delegated states must incorporate the non-numeric sections of the ELG the next time they issue a new construction general permit. Idaho, Massachusetts, New Hampshire, New Mexico and the District of Columbia which are not delegated authority to administer NPDES permits, will be covered by the ELG requirements when EPA reauthorizes its Construction General Permit in July 2011.

The direct final rule and a fact sheet and the federal register notice are available on the EPA website.

5. FEMA Enacts Rules for Building in Floodplains to Comply With Endangered Species Act

The Federal Emergency Management Agency (FEMA) last month finalized new rules that will apply to developers in many flood-prone areas that provide habitat for threatened and endangered species. The new rules were issued in response to several successful lawsuits by environmental groups against FEMA for not appropriately considering its responsibilities under the ESA when development is allowed to take place.

The rule could impose Section 7 consultation requirements for FEMA with the Department of the Interior when acting on flood map change requests before beginning any projects that may harm endangered or threatened species on the property.

When a project is proposed for a parcel of land within a floodplain, FEMA can issue a CLOMR — or Conditional Letter of Map Revision — to state that the project, if it is built as proposed, would sufficiently modify the floodway, base-flow elevation and/or 100-year floodplain (Special Flood Hazard Area) as shown on FEMA’s Flood Insurance Rate Maps.

A CLOMR-F — a Conditional Letter of Map Revision based on Fill — is used by FEMA when the parcel or proposed structure will be elevated by fill material to be above the base, 100-year floodplain. Property owners usually seek a CLOMR on large projects such as levees and dams

and residential or commercial developments, while CLOMR-F might be used for projects on smaller parcels or small parts of a subdivision.

Currently, any 5-acre or 50-lot subdivision adjacent to or in the 100-year floodplain designated “Zone A” must conduct a study to determine the “base flood elevation” and submit a Letter of Map Change (LOMC) revising the flood map. With this new guidance, a LOMC could trigger ESA consultations.

The new rule, “Procedure Memorandum 64” appears to shift a portion of its ESA consultation obligation to private landowners by requiring them to provide proof that they are complying with the provisions of the Endangered Species Act before making any requests of FEMA. The change could add time and expense to any project in which the property owners need flood map revisions to move forward, because they may first need to complete the Section 7 or Section 10 permit process.

For Section 7, that process can take 90 to 135 days on average, and the Section 10 permit takes about two years to complete. For more information, see the rule, “Procedure Memorandum 64”.

6. US Army Corps of Engineers Considers New Renewable Energy Nation-Wide Permits

The Corps of Engineers is expected to shortly issue proposed rules that would create new “nationwide permits” (NWP) to renewable energy projects to build or expand facilities in or near wetlands and streams. The NWPs, general permits for specific types of activities that will have minimal cumulative adverse effects on the environment, are issued by the Corps and subject to review by EPA.

A leaked copy of the proposed rule outlines three new NWPs:

- Land-based renewable energy generation facilities – e.g., concentrating solar and photovoltaic, wind, or geothermal energy facilities.
- Hydrokinetic renewable energy generation facilities – e.g., wave, tidal, current or ocean thermal energy generation facilities and related collection systems.
- Wind and geothermal energy generation facilities sited in navigable waters of the United States.”

The proposed rule would allow such NWPs to apply only to sites of 1 acre or less, allowing for the “loss of no more than 300 linear feet of stream beds, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer.”

The permit for land-based renewable energy facilities would authorize discharges of dredged or fill material into non-tidal waters and would be limited to activities that only require CWA section 404 authorization. Projects with discharges into navigable waters would require an individual permit, regional general permit or another NWP.

The NWP for hydrokinetic energy facilities would authorize discharges into navigable waters, while the NWP for wind and geothermal energy facilities would authorize discharges into waters of the United States, including navigable waters.

It is unclear when the Corps plans to publish the proposal. If you would like a copy of the proposal, contact me at dshea@acec.org.