

Reproduced with permission from Daily Environment Report, 112 DEN A-3 (June 11, 2013).
Copyright 2013 by The Bureau of National Affairs, Inc. (800-372-1033) <http://www.bna.com>

Water Pollution

Chesapeake Bay Group Extends Deadline For EPA Stormwater Runoff Rule

By Pat Ware

The Chesapeake Bay Foundation and the Environmental Protection Agency have agreed to an extension in the deadline for a proposed rule on performance standards for stormwater runoff at new development and redevelopment sites.

Kim Coble, CBF's vice president for environmental restoration, said in an email that the foundation and EPA are in negotiations concerning the new national stormwater rule that EPA committed to promulgate under a 2010 settlement of the group's lawsuit and that the group has agreed to extend the June 10 deadline for "for no more than 10 days."

EPA told BNA in an email, "EPA and the Chesapeake Bay Foundation have agreed to an extension to June 17, 2013 to discuss the overall schedule for revisions to stormwater regulations."

Both parties declined to elaborate.

The proposed rule has not yet been sent to the White House Office of Management and Budget, which normally completes its review within 90 days.

Developed, Redeveloped Sites.

In a May 2010 settlement with the foundation, EPA agreed to propose a rule by June 10, 2013, and to finalize the rule by Dec. 10, 2014, to address a post-construction stormwater rule that would apply to developed and redeveloped sites in communities with municipal separate storm sewer systems, but not to cities with systems that combine both stormwater and wastewater (*Fowler v. EPA*, D.D.C., No. 1:09-cv-5, 5/11/10; 90 DEN A-9, 5/12/10).

Under the agreement, EPA and the Chesapeake Bay Foundation are allowed to negotiate extensions to rulemakings without the court's intervention.

In an April 30 webinar, Christopher Kloss, green infrastructure and stormwater coordinator in EPA's Office of Water, said the agency is planning to propose more stringent standards for stormwater at newly developed sites than at redeveloped ones to create an incentive for businesses to invest in redevelopment projects in cities (84 DEN A-2, 5/1/13)..

EPA would like to capitalize on trends showing increasing redevelopment in urban centers, he said.

Brian Glass, a partner with Warren Glass LLP in Bryn Mawr, Pa., told BNA, "It would set a dangerous precedent for EPA to miss the extended deadline and force CBF to file a lawsuit to enforce the settlement agreement, because it would make parties much less likely in the future to reach out-of-court settlement agreements with EPA and more likely to demand that any settlements with the agency be set forth in judicial consent decrees."

“I don't think that outcome would ultimately be in EPA's best interest,” he said in an email.

By Pat Ware

Copyright 2013, The Bureau of National Affairs, Inc.