

RULE REVIEW

LAKE GEORGE PARK COMMISSION

Pursuant to State Administrative Procedure Act Section 207, the Lake George Park Commission ("LGPC") caused a notice to be published in the State Register on December 3, 2003, indicating that the LGPC was conducting a review of the stormwater management regulations for the Lake George Park contained in Subpart 646-4 of 6 NYCRR, and specifically inviting public comment on the continuation or modification of the regulations. The notice also contained a description of each section of Subpart 646-4 and an analysis of the need for the regulations.

The statutory authority for the regulations is Environmental Conservation Law Section 43-0112.

The stormwater management regulations for the Lake George Park contained in Subpart 646-4 of Title 6 NYCRR were first promulgated on September 19, 1990 and were thereafter revised on September 9, 1998.

The public comment period commenced on December 24, 2003 and concluded on January 31, 2004. A summary, assessment and response to the public comment is set forth below. Based upon the public comment received and the LGPC's assessment of the public comment, the LGPC has determined that the stormwater management regulations for the Lake George Park contained in Subpart 646-4 of 6 NYCRR will be continued without modification.

Justification for continuation of the rule without modification:

Lake George is a natural resource of unparalleled beauty and inestimable value. The lake is among the cleanest, clearest large lakes in the world. Runoff from the lake's land drainage basin is the primary source of the lake and the lake's characteristics of low nutrient levels and limited productivity are reflective of the filtering and buffering effects of the watershed.

Lake George provides a range of human uses and benefits. The lake is a water supply for communities, resorts and residents. The lake is used extensively for contact recreation. The lake supports an abundant population of fish and fishing is a popular recreational pursuit and economic gain for the region. The attractive qualities of the lake are a magnet for tourism and support an extensive regional vacation economy. Boating and other water based recreation support an extensive marine industry, as well.

In its undeveloped condition, the lake's land basin, soil and natural vegetation absorb and buffer precipitation and dry fall and the contaminants in atmospheric deposition. When land is developed for human purposes, some or all of the land's buffering and absorption properties are lost forever. The impacts of the permanent loss of natural land in the basin due to human development are exacerbated by other factors. Contaminants accumulate on impervious surfaces during dry periods. This coating may include: atmospheric dry fall containing plant nutrients; pet waste; litter and putrescible waste; automobile drippings and emissions; and road de-icing materials such as chlorides and sand. Much of this material is set loose and carried away by runoff events. Development tends to concentrate this runoff in stormsewer

systems and convey the concentrated contaminants off site and quickly to the lake.

Stormwater runoff flowing to Lake George has been extensively studied and found to contain grease, oil, lead, suspended soils, chlorides, plant nutrients and fecal coliform bacteria. Lake water quality is significantly reduced near stormwater outfalls following storm events.

Sedimentation is a major aspect of improper stormwater management which results in a distinct set of problems. Eroded soil and road sand are altering the character of the nearshore areas of the lake. Major deltas have formed with alarming speed at stream mouths and storm sewer outfalls. The deposited silts and sands may overlay rock and gravel substrate and thereby create habitat which is excellent for Eurasian Watermilfoil, an invasive aquatic plant which is the subject of management efforts due to its negative environmental impacts. Commercial and recreational navigation and boat berthing are affected both by deposits and by the opportunistic macrophyte which migrate to disrupted areas. Costs to remove deposits and weeds are high even when possible.

Stormwater runoff increases both in terms of volume and peak flow rates of runoff water following development. The greater volume and rate of runoff have the potential to increase downstream flooding by over taxing conveyances designed for lower pre-development conditions. Whether they are natural channels such as streams or man-made courses such as pipes, culverts, or swales, downgradient stormwater conduits have a finite capacity. Land development which contributes to increased runoff may contribute to the frequency and severity of high water conditions at the lower level of the lake's land basin. These conditions can also result in overburdening and physical damage to existing stream channels and stormwater control devices.

Stormwater runoff from developed areas is "enriched" in suspended sediment when compared to undeveloped areas. Suspended sediment in streams and lakes cause many adverse impacts to fish. Increased turbidity and reduced light penetration reduce prey capture for sight feeding predators, clog gills and filters of fish and aquatic invertebrates, reduce spawning and juvenile fish survival. These impacts may also reduce angling success and opportunities.

Human activities generally increase the flow of surface runoff from a particular site because of the increase in imperviousness of surfaces and loss of vegetative cover. This has the effect of reduced direct recharge of groundwater from precipitation and snow melt. Large projects and cumulative development have the potential to reduce overall groundwater levels and may also reduce the base flow of streams and base water level of wetlands which rely on emerging groundwater. These effects could be particularly significant during dry periods. The reduction of base flows in streams affect organisms in the stream and amphibians and land animals that rely on streams or are connected via the food web.

Stormwater related impacts in general and the specific impacts on water quality are cumulative impacts. Land development and land uses are occurring in the lake watershed, incrementally, through a large

number of relatively small to moderate unrelated projects and activities. Generally, the incremental impact of these projects and activities is indistinguishable as a measurable effect. However, when substantially developed areas of the watershed are compared with undeveloped portions, runoff characteristics are markedly different. This Stormwater Management Program addresses these cumulative impacts by requiring discrete controls on each new development project. Large scale effects of runoff are required to be considered as part of community planning and zoning decisions.

Stormwater control measures have the potential to significantly reduce runoff and the amount of harmful materials in runoff. When incorporated into comprehensive programs of land use control, stormwater control measures can substantially mitigate the long term impacts from runoff which would otherwise occur.

Section 43-0112 of the Environmental Conservation Law (ECL) conveys broad responsibility to the LGPC to preserve and protect the lake's superior water quality. The LGPC is required to develop stormwater management regulations, in consultation with each municipality in the Park, subject to the approval of the Department of Environmental Conservation (DEC) and the Adirondack Park Agency (APA). The regulations guide preparation of Stormwater Management Plans (SMPs) and Stormwater Regulatory Programs (SRPs). Following promulgation of the regulations, each municipality within the Park is to prepare, within eighteen months, a stormwater management plan and a stormwater regulatory program.

The stormwater regulatory programs are required by Article 43 to be designed to prevent any increase in stormwater runoff from any development in order to reduce flooding, siltation and streambank erosion. The programs must also be designed to prevent any increase in pollution caused by stormwater runoff from development which would otherwise degrade the quality of water in Lake George and its tributaries and render it unfit for human consumption, interfere with water-based recreation or adversely affect aquatic life.

Section 43-0112 of the ECL also requires the LGPC to prepare a study of the feasibility of reducing the impacts of runoff from already developed areas of the Lake George Park. This study is directed to assess the impact of stormwater runoff from developed areas and to identify cost effective measures to control runoff. The law mandates that the report propose funding mechanisms for implementation of such measures. Upon completion of the study, the legislation directs that the study's recommendations shall be incorporated by the LGPC into the stormwater management plan and by each municipality into the stormwater regulatory program. If a municipality fails to adopt and implement a stormwater regulatory program approved by the LGPC in accordance with the regulations, the LGPC is authorized to assume the responsibility of the municipality to do so.

The 1998 revisions to 6 NYCRR 646-4 represented a significant program re-design. In the months that followed release of the draft revisions, the Draft Environmental Impact Statement and the Draft Feasibility Study in 1995, the LGPC encouraged the formulation of community-based stormwater advisory committees. Local stormwater advisory committees were organized in Queensbury, Hague, Bolton, Fort Ann and the Village of Lake George. These committees developed local stormwater management plans with technical and financial assistance from the LGPC. They also served to monitor pending revisions to the regulations and to advise local government on the developing requirements for local stormwater regulatory programs. The participation of basin-wide citizen groups such as the Lake George Association, the Fund for Lake George Inc. and County Soil and Water Conservation Districts, created a network of cooperation and coordination on stormwater management.

During this period the LGPC also formed a highway maintenance committee with representatives of NYS Department of Transportation

and Warren County Highway officials. These committees would eventually develop a memorandum of understanding (MOU) that incorporated standards and controls for highway reconstruction, maintenance and repair. These MOUs would eventually be signed between the LGPC, NYS DOT, Warren, Washington and Essex County Highway Departments and each Town Highway Department within Warren, Washington and Essex counties.

Substantial coordination and interaction with the APA also occurred during this period.

Following adoption of revisions to 6 NYCRR 646-4 in 1998, the LGPC formed an advisory committee of representatives of the various local stormwater advisory committees, lake groups and government people to develop the stormwater management guide for minor projects. The guide has continued to serve as a useful tool to assist both project sponsors and review authorities.

Also since 1998, the LGPC has provided additional grants to local governments for preparation of local stormwater plans. Local stormwater management plans prepared by municipalities have been approved by the LGPC for the Towns of Queensbury, Fort Ann, Lake George, Bolton, Ticonderoga and Hague and the Village of Lake George.

Local stormwater regulatory programs were approved for the Towns of Queensbury, Lake George, Bolton and the Village of Lake George. These programs are based upon and are in substantial conformance with the model stormwater management ordinance which was incorporated into the regulations by the 1994-1998 revisions. The LGPC assumed jurisdiction and now administers the regulations in the towns of Fort Ann, Dresden, Putnam, Ticonderoga and Hague. Accordingly, a consistent set of progressive stormwater standards are applicable to development throughout the entirety of the Lake George Park, in some cases administered by the municipality, in other areas by the LGPC. The LGPC continues to provide technical assistance to communities in interpreting the standards and assistance in reviewing the design of stormwater controls for projects.

Findings:

Stormwater related impacts remain a very significant threat to the Lake's water quality and the underlying need to implement effective local stormwater plans as well as a consistent program of permit requirements and design standards for new development remains now as it was when Article 43-0112 (ECL) was adopted in 1988.

The stormwater management provisions of the Clean Water Act, and implementing SPDES permit requirements applicable to construction projects greater than one acre which have come into effect in recent years do not effectively supplant the 646-4 regulations since the regulations implement standards of a nature and design that are not sufficient to meet the criteria established for the Lake George Park by Article 43-0112.

The SPDES permit program reduction in the thresholds of jurisdiction in March of 2003 from five acres of disturbance to one acre of disturbance increases the number of projects which may be subject to both requirements. The LGPC and the DEC have entered discussions with the goal of minimizing any duplication of efforts by government or unnecessary redundancy of paperwork for applicants. It is expected that the duplication of jurisdiction will affect 1-5 projects per year and that designs in accordance with the more restrictive Lake George standards will not conflict with guidelines for SPDES permits.

Development activities within the Lake George Park are subject to a consistent set of design standards whether administered by the LGPC or, in the alternative, by municipalities.

The Stormwater Management Plans required under 6 NYCRR 646-4 have been, for the most part, completed and many of the recommendations and projects implemented. The Lake George Watershed Conference has been a great impetus for remediation of

stormwater related problems providing for administrative and financial support.

The standards for design of stormwater and erosion control measures set specific sizing and setback requirements but allow flexibility in the selection of the kind measures to be used. There are a broad array of techniques for project sponsors to select. As such, there have not been noteworthy problems reported by applicants in meeting the design requirements.

There is effective and on-going enforcement efforts undertaken by the LGPC to ensure compliance with the permits requirements and standards in areas of the Park where the LGPC has retained jurisdiction. The LGPC continues to provide technical assistance to local governments administering local stormwater regulatory programs. The LGPC has received no indication that administration of local stormwater regulatory programs has been overly burdensome on local governments.

The regulations continue to fulfill an important need for the preservation of Lake George as envisioned and directed by the New York State Legislature in Article 43-0112 and the continuation of the rules is necessary.

Summary, Assessment and Response to Comments
Review of 6NYCRR 646-4

Stormwater Management for the Lake George Park

Comment: Best Management Practices (BMPs) have limited ability to remove pollutants including nutrients that threaten the lake water quality. Infiltration and other BMPs only reduce these pollutants. In order to meet the objective of protecting the groundwater and surface water in the park, the contribution of future development and redevelopment should be evaluated. Approved plans should be required to account for the additional load of individual pollutants based on the removal efficiency of each BMP design. The effectiveness of nutrient removal must also be considered in the final selection of the BMP. The chosen BMP must meet the TSS criteria, but must also maximize nutrient removal for the site in particular TP, soluble phosphorus and nitrogen.

Response: The comment is interpreted as referring to a stormwater design method where the expected pollutant loads from each development project (and all potential future development on the site) is estimated and stormwater control measures are selected in combination so that the pollutant removal capacity corresponds to the expected cumulative loads. The method has several benefits and is incorporated into some of the regulatory schemes considered when the regulations were revised beginning in 1994 and completed in 1998. However, one significant drawback of this approach is that it requires rather complex engineering analysis for each project which invariably adds costs to the program for both applicants and review authorities. The Commission considered these and other methods during the 1994-98 revisions in a context in which the regulations were being revised largely in response to complaints from municipal officials that the rules were overly complicated and incapable of being effectively understood and administered at the local level. The revisions finally enacted in 1998 incorporated a different approach but one equal or more protective of the water quality of the lake.

The standards developed in the 1994-1998 revisions are based on the retention and infiltration of the expected flow from the 10-year 24-hour storm. The standards rely largely on the buffering and filtering effects of soil and vegetation which has shown to be effective (although some pre-treatment for runoff from areas such as parking lots subject to vehicle loads is warranted). Under this design standard stormwater from impervious surfaces must be retained and infiltrated on-site. Stormwater is released from the site only on those occasions

when precipitation exceeds the 10-year 24-hour storm. Under these circumstances the release is the excess volume which is designed to be the runoff from the later term of the event and therefore expected to be significantly lower in pollutant concentrations than the first flush. By comparison, many standards including Federal general requirements require infiltration of much smaller quantities such as the expected flows from the 2 year 24 hour storm. Additional volumes are required to be detained for gradual release of runoff to attenuate downstream flow increases and associated impacts. At this design level the Lake George standards require retention and on-site infiltration of six times greater volume. Sized at these levels, the stormwater control measures achieve higher levels of total pollutant removal per storm and per annum because of the significantly lower volume of bypass runoff and overflow. In this way the regulation's design standards achieve the legislative intent without overly complex design analysis requirements for each project.

Comment: Each BMP has a maintenance and longevity that needs to be evaluated in the project review phase. Over time, the ability of a BMP diminishes and maintenance becomes critical. It is clear that most stormwater facilities in the basin are not maintained making them less effective or ineffective. Stormwater regulations should define the long-term removal efficiencies, enforce the critical value of maintenance and account for these failures over time and in development plans and considerations.

Response: The Commission agrees that maintenance is a very important consideration in the selection of stormwater control measures for a project and that a process to insure maintenance over time is required to sustain the effectiveness of constructed stormwater control measures. The design standards and the program's companion Guide for Minor Projects give preference to low maintenance control measures. However, the regulations afford review agencies the authority to require pre-treatment, grease and oil separators and other methods to address circumstances when warranted. The regulations also provide the means for requiring maintenance of approved stormwater control measures including performance bonds and stormwater maintenance agreements.

Comment: State, county, towns and agencies operating in the basin should be aware of the cumulative impact of development in the basin and the limitations associated with stormwater regulation.

Response: Since enactment of 43-0112 the Commission has undertaken any number of steps to promote public and community awareness of the impacts of stormwater runoff on the water quality of Lake George. This is an on-going objective of the Commission.

Comment: Towns with an approved stormwater plan should demonstrate their ability to review, implement and enforce the plan. Annual reviews and evaluations by the Park Commission should be conducted. Provisions to revoke town plans that are found to be unsatisfactory should be added.

Response: Before approving local stormwater regulatory programs, the Commission evaluated municipal implementation and for each approved local stormwater regulatory program determined that the municipality had the capabilities to effectively administer the requirements. Approved programs are all within municipalities which administer comprehensive land use regulations approved by the Adirondack Park Agency under the provisions of the Adirondack Park Law, have active planning boards and operate local land use offices. These communities routinely retain design professionals to assist in the review of project applications. There are provisions in the regulations for revocation of local stormwater regulatory programs consistent with the statutory language. Specifically, the Commission may revoke a local stormwater regulatory program if a municipality fails to adequately administer or enforce the regulations. The Commission endeavors to encourage and assist municipalities with the

implementation of local stormwater programs by providing technical assistance and occasional grants.

Comment: The Lake George Park Commission should review and approve all projects in the basin to assure uniform project review, enforcement and determine the cumulative impact of development in the basin.

Response: The provisions of 43-0112 afford municipalities the first option of implementing local stormwater regulatory programs provided that they are consistent with the regulations developed by the Commission and are approved by the Commission. Local stormwater management programs approved by the Commission contain permit thresholds and standards that are virtually identical to those in the regulations which the Commission administers. All areas of the Lake George basin are subject to the requirements.

Comment: The LGPC should establish violation procedures that would include monetary fines and withholding or revoking the certificate of occupancy.

Response: The Commission is empowered through Article 71 title 33 of the Environmental Conservation Law with enforcement powers relative to its regulations which include, criminal penalties, civil penalties and summary abatement. Local stormwater regulatory programs approved by the Commission each include enforcement provisions that can be effectively administered through the police powers of the municipality.

Comment: Cold climate considerations as defined by US EPA, New York and other states should be adopted in the stormwater regulations. In cold areas, the use of infiltration systems is challenging. Frozen soils can dramatically reduce, or stop, the rate of infiltration, chlorides may pose a risk to groundwater and sand used as abrasives on roads may clog infiltration practices. Consequently, designers need to make modifications to these BMPs to make them effective in cold climates. Providing additional storage, combining infiltration with other BMPs, or operating infiltration BMPs on a seasonal basis can improve their efficiency in cold climates. All of these measures compensate for slow infiltration during the spring melt.

Response: The technical advisors to the Commission gave careful consideration to the prevailing local weather conditions when developing the design standards and preferences for stormwater control measures contained in the regulations. "Cold weather considerations" such as those within the New York State Stormwater Design Manual focus on increasing the size capacity of stormwater management practices to increase detention times for runoff during periods of reduced infiltration because of ground frost conditions. The cold weather considerations also favor installation of infiltration measures so that the bottom of the structure is below the prevailing frost level so that the device will continue to provide infiltration of runoff even during periods when high moisture content and sub-zero temperatures combine to reduce the infiltration rates of the soil in the frost layer.

The comment makes mention of the specific guidance from EPA to increase runoff storage capacity whenever cold weather considerations are warranted. This EPA guidance applies the so called 90% rule. Under the 90% rule, the design of water quality related stormwater management practices (stormwater control measures under the Lake George regulations) to manage the runoff produced from 1 inch of precipitation is projected as equivalent to managing 90% of the annual volume of runoff since the overwhelming majority of storms would be captured entirely or substantially within this regime. The design standards for the subject regulations require retention and infiltration in on-site devices of 3.8 inches of precipitation (10 year 24 hour storm) This represents an increase of almost four fold over the EPA and New York State guidance. This extra measure of storage and infiltration was incorporated in part, in recognition of the cold weather limitations of the standard practices available for runoff management.

Comment: Insure that infiltration of runoff does not contaminate groundwater by increasing separation distances.

Response: Separation distances contained in the regulations are adequate to prevent contamination of ground water when stormwater infiltration measures expected to receive contaminants such as grease and oil, silt laden sediment or chlorides are designed with pre-treatment measures. The regulations afford review agencies sufficient discretion over designs to ensure that the resources of the Park including the groundwater are protected.

Comment: Development or disturbance on steep slopes, poor soils, within 200 feet of stream corridors and wetlands, and within the Critical Environmental Area (500 feet of lake) should be addressed as a major project in the regulations. Grades over 15% should be prohibited from development.

Response: The provision in the regulations states that minor projects within or substantially contiguous to critical environmental areas, wetlands, stream corridors, or significant wildlife habitat may be treated as a major project. Also any project involving construction on slopes greater than 15%, in soils with a high potential for through soil pollutant transport or with a percolation rate slower than 60 minutes per inch may be determined to be a major project. These provisions afford review agencies significant discretion in determining than site specific conditions warrant the special protections of a major project classification. Designing conforming stormwater control measures on sites characterized by slopes of 15% or more under the regulations is admittedly challenging. However, prohibiting development based solely on excessive slope without considering a landowner's proposed designs was given consideration by the Commission in the development of the regulations and the revisions 1994-1998 and was determined to be unnecessarily restrictive.

Comment: Native vegetation should be retained at all cost to preserve the character of the watershed, increase filtration and enhance nutrient removal.

Response: The regulations are designed around the principle of preserving existing vegetation to the maximum extent possible and establish permit requirements prior to plowing, grading or other forms of land clearing or disturbances.

Comment: Every effort should be made to establish and comply with the TMDL for sediment in the basin as soon as possible.

Response: Agreed. This requirement of the Clean Water Act requires the New York State Department of Environmental Conservation to establish total maximum daily loads for the several listed impaired tributaries of the Lake.

Comment: One series of comments on the regulations propose some very specific language revisions to the regulations. In part, the comments set forth nine proposed additions to the regulation's section of purpose and intent.

Response: In actuality, each of the additional objectives proposed is an existing purpose of the regulations and addressed by one or more of the active provisions in the rules. The degree of detail required in the purposes and intent section is an editorial judgement. It is simply a matter then of how specific the section should be since the language in this section does not actually implement any requirements. The current statement of purpose and intent adequately sets forth the broad purposes and intent of the regulations as established by Article 43 Section 0112. The findings (Section 2) of the Model Ordinance expand upon the deleterious potential of uncontrolled runoff and further establish the need for effective management.

Comment: The specific language revision comments propose a number of additional definitions or revisions to definitions consistent with his proposal overall.

Response: Generally, the proposed definitions are not required since they define terms not used in the regulations. An example of this

is to add the definition for a "stop work order." Violations are handled through regular enforcement provisions which include summary abatement powers and which are set forth in 6 NYCRR 645-4 and ECL Article 71 title 33.

Comment: One proposed revision would eliminate the phrase "cutting of timber for sale" from the definition of agricultural activities. This revision has the effect that timber harvesting would be subject to stormwater permit requirements in every case where the area disturbed is greater than the threshold of jurisdiction (5,000 square feet).

Response: The Commission gave very careful consideration to this issue when the regulations were drafted in 1990 and revised in 1994-1998. Essentially, timber harvesting operations in accordance with a soil conservation plan approved by the County Soil and Water Conservation District or a timber management plan approved by DEC, do not require a separate stormwater permit. This is an effort to encourage participation in and build upon two current programs aimed specifically at reducing sedimentation and erosion from timber harvesting activities. In this way the regulations use existing mechanisms to accomplish the purposes and reduce duplication with other programs. However, timber harvesting activities which do not have an approved plan or which are not consistent with the plan are not exempted. Also, conditions of erosion which may result from any human disturbance of land can be remediated through 646-4.5 (d), regardless of whether the project is exempt or not.

Comment: The comments also propose that "gravel drives" be incorporated into the definition of impervious [area].

Response: It is the Commission's understanding that gravel drives substantially prevent the infiltration of water when compacted over time and a permit is required for their construction. In addition, the change in runoff volumes and characteristics associated with the conversion of natural to man-made surfaces must be calculated and managed.

Comment: The comments also propose a definition for redevelopment.

Response: This term is defined in the regulations.

Comment: The specific language comments propose revisions of the regulation's prohibitions to reduce the area thresholds for permit jurisdiction (5,000 square feet of land disturbance/1,000 square feet of impervious services) to "land disturbance of less than 100 sq. feet" and additionally a provision that no person shall disturb lands without an approved soil erosion and sedimentation control plan.

Response: The latter change is not required since the permit requirements implement standards which require preparation of a soil erosion and sediment control plan established through the issued permit. The Commission gave very thorough consideration to the thresholds for jurisdiction – essentially reducing this in the 1994-1998 revisions. The regulations exempt only very small construction or development projects based on the understanding that a number of small unrelated projects could have a cumulative effect on the runoff characteristics of an individual watershed. By comparison, the jurisdictional thresholds are more than eight times more restrictive than the threshold for jurisdictions under DEC's SPDES program (1 acre of disturbance). The thresholds strike a balance between protection and flexibility for homeowners undertaking small scale projects that usually have nominal potential for significant impacts. Again, 646-4.5 (b) continues to provide an overall mechanism to remediate erosion in the rare occasion that significant erosion results from a relatively small scale – 50 x 100 feet disturbance of land.

Comment: One of the specific language revisions proposed advocates eliminating the exemption for re-development.

Response: Contrary to the suggestions put forth in the comments, "redevelopment" is not exempt from the regulations.

Comment: Several comments are in the area of Stormwater Management plans for previously developed areas.

Response: For the most part, Community stormwater management plans have already been completed and approved by the Commission.

Comment: Under design requirements and performance standards for erosion and stormwater control measures, the specific language comments suggest several changes and additions to required and/or allowed stormwater devices.

Response: For erosion control measures, the regulations reference the NYS Guidelines for Urban Erosion and Sediment Control, a document that is regarded among professional designers as the State of The Art manual for erosion control in New York State. For stormwater control measures, suggestions made are already approvable if they meet the design standards. For example, the comments suggest a revision to the order of preference of stormwater measures. The existing order of preference is just that and not completely binding. If a particular project warrants an alternative hierarchy of measures, such a system is currently approvable.

Comment: The comments recommend that the regulations have a mechanism to enable an aggrieved party to petition the Commission to review the specific permit approvals of municipalities who have approved local stormwater regulatory programs.

Response: 3: The Commission gave very careful consideration to the issue previously, especially during revisions that were effective in 1994-1998. The Commission determined that such an approval/appeal process could be burdensome on project sponsors in additional costs and delays without adding significant benefits to the quality of decisions under the program. Also, establishing the Commission as a kind of review authority over local decisions could undermine the commitments of the municipality to the quality of decisions if their decisions could be reversed by another agency. Nothing prevents the Commission and Towns with approved programs from discussing the nature of their decisions and the benefits the public derives from consistent Park-wide interpretations. In fact, the Commission regularly assists delegated Towns with interpretations, sometimes verbally, sometimes in writing through a series of Stormwater Advisory Opinion documents.

In the overall many of the specific language comments propose revisions that are addressed by the regulations or touch upon topics that were carefully evaluated in the 1994-1998 revisions.

