

CONGRESS FOR THE NEW URBANISM

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July 15, 2010

Lisa Jackson
Administrator, U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson,

With the introduction of the interagency partnership for Sustainable Communities, the new urbanism and smart growth movements have been eager to support and assist this promising initiative. As the federal agencies take a holistic look at how they work together to support sustainable development, we would like to discuss a similarly holistic approach for the EPA Office of Water's efforts as it revises the current National Pollutant Discharge Elimination System (NPDES). As US DOT, HUD and EPA strive to break down silos, we urge you to continue this effort with stormwater regulations and make them complement broader environmental objectives. Our members are at the forefront of moving from the outdated models of sprawl to integrated, sustainable development.

Using both regulatory and non-regulatory approaches, EPA has led the creation and promotion of a new set of practices. However, there are growing reports from our members and professionals in the field that recent and proposed stormwater regulations are favoring sprawling, greenfield new construction over urban infill redevelopment and sprawl repair due to the hurdles the regulations impose on compactly developed and previously developed sites. EPA's investment in smart growth activities is being diminished or even nullified by legally binding action taken in the Agency's regulatory offices. By extension, EPA is losing ground in protecting and improving the environment.

We know that it is the redevelopment of previously developed land that can lead to the net improvements in watershed health that we need. Redevelopment triggers restoration activities of our existing built environment, while absorbing demand and lessening the total amount of land disturbed by development. We also know that compact development offers a whole host of other environmental benefits beyond land conservation. Residents in traditional compact neighborhoods, smart growth and new urban communities use fewer resources with their array of transportation choices and efficiencies in infrastructure. The six principles that serve as the foundation of the Federal Sustainable Communities Partnership recognize these benefits.

Like EPA, we recognize the need to improve the current NPDES regulatory structure and would like to work with EPA's Office of Water to advance watershed protection through context-sensitive strategies. We have identified the following shortcomings with current stormwater/rainwater management regulations:

- **Current regulations focus on individual site mitigation not larger-scale prevention.** By controlling for imperviousness on a site-by-site basis, the preventative aspects of new urbanism and smart growth – like redevelopment and compact, walkable neighborhoods with their smaller development footprint per capita – are not recognized and often punished.
- **Current regulations hinder shared practices.** Compact development relies on sharing facilities among sites, including stormwater, yet regulations and zoning codes at the local level add hurdles for shared practices. Shared facilities, like parks and habitat, can become great public spaces and serve multiple purposes beyond stormwater management. In addition, they can provide flexibility in phasing redevelopment, which is especially critical in today's economy. Parks meeting today's stormwater requirements can be readapted with new stormwater management practices as later phases add density.
- **Current regulations are silent on a site's context and location within the watershed and weak on larger watershed scale.** Current regulations do not yet evaluate where the site is located in the urban or watershed context. When sites in a highly urban area are subject to the same performance metrics as sites on the suburban fringe, the suburban areas can meet the rules more easily due to their lack of site constraints and their ability to address rainwater runoff volume issues by growing lot sizes. Without paying attention to location and the efficiencies of urban redevelopment, the rules allow for the overall watershed to decline even as individual new development projects meet regulatory targets.
- **Current regulations assume costs are equal for different development environments.** The economic reality of land development has been one that favors new greenfield development over redevelopment. Some practitioners in the stormwater field believe that higher land values in urban areas can support the higher-cost best management practices. However, urban areas rarely exhibit uniformly high values. Along the wealth and investment spectrum, sections of cities along the most impaired waterways do not have the real estate market to cover projected costs, yet are precisely where reinvestment is needed.
- **Current regulations depend on development to cure waterways.** Restoration, under the current regulatory structure, depends on new development coming in and incrementally retrofitting our existing built environment. But if infill and urban redevelopment are at a disadvantage compared to new construction on previously undeveloped land, developers will seek out those parcels to avoid burdensome costs and time delays and our efforts to restore the environment of our built-out cities and towns will be less effective. As sections of our cities are bypassed for the easier opportunities on the edge, we will continue to face inequalities in access to a clean environment.

We believe that changing NPDES to allow and encourage more compact, walkable neighborhoods can help the US become more resource efficient, economically productive, and improve the qualities of our rivers, streams and watersheds. We acknowledge wide dissatisfaction with NPDES, which was developed for factories, not places. However, wholesale change could span years if not decades. We offer the following suggestions for advancing an effort that best uses resources and existing structures while making meaningful reforms.

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- **Make redevelopment the priority.** Redevelopment is essential for making net improvements to watershed health. By capturing the low-hanging fruit of abundant, abandoned greyfields and brownfields, stormwater rules will also be aligned with the Livable Communities principles. The greater disturbance, impervious cover and energy requirements of dispersed, low-density, single-use development demand higher mitigation standards. While our members will continue to create both infill development and new communities, we are committed to meet future demand through environmentally superior community design.
- **Establish separate regulatory tracks for new development and redevelopment within NPDES.** NPDES should recognize the different benefits these two types of projects offer as well as the different constraints they have in reaching specific performance metrics. This effort needs to be backed with a robust research component to characterize whether LID as implemented at the local level is actually working on a watershed basis – and the scope of improvement needed in impaired, urban watersheds.
- **Place watershed and sub-watershed analysis at the forefront.** Watershed and sub-watershed analysis, integrated with regional planning and local regulations, should be at the heart of new stormwater regulations. This more holistic approach will leverage scalable opportunities to remediate key watershed impairments and improve the potential to incentivize compact neighborhoods. The ultimate client is the receiving waterway -- a point often lost when a narrow focus on site-level best management practices dominates water programming.
- **Update best management practices with solutions appropriate to their urban context.** Guides on best management practices should be tailored to reflect where certain practices make the most sense along the spectrum of built/natural environments. The guidelines should also remove all diagrams that contain sprawl designs with BMPs and compact development itself should be recognized as an effective way to reduce runoff.

We are writing you on behalf of the membership of the Congress for the New Urbanism (CNU) and a number of friends of the CNU: Local Government Commission, Center for Neighborhood Technology, Coastal Conservation League, City of Madison, Wisconsin, and the National Town Builders Association. The US Environmental Protection Agency has provided essential support for many of our efforts. Given our work together, it is clear that we tackle issues from a multi-disciplinary perspective and work to cut across barriers to build places that perform well environmentally, economically and socially. We would like to be involved in whatever way you feel is appropriate and we believe our experience and knowledge of smart growth and new urbanist principles will be of significant value to this effort.

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We would like to meet with you and key leaders on this effort to understand better how you are moving forward and determine how best we can assist you in this effort.

Sincerely,

John Norquist, President and CEO, Congress for the New Urbanism
Judy Corbett, Executive Director, Local Government Commission
Dana Beach, Executive Director, Coastal Conservation League
Scott Bernstein, President, Center for Neighborhood Technology
Dave Cieslewicz, Mayor, City of Madison, Wisconsin
Frank Starkey, President, National Town Builders Association

cc:

Peter S. Silva, Assistant Administrator for Water, U.S. EPA
James A. Hanlon, Director, Office of Wastewater Management, U.S. EPA
John W. Frece, Smart Growth, Office of Cross-Media Programs, Office of Policy,
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