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**Auditor's Review of Environmental  
Standards Requirements Pursuant to the  
Compliance Unit Establishment Act of 2008**

**May 11, 2010**

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## EXECUTIVE SUMMARY

### PURPOSE

Pursuant to Section 455 of Pub. L. No. 93-198<sup>1</sup>, and the Compliance Unit Establishment Act of 2008 (the Act<sup>2</sup>), the Office of the District of Columbia Auditor (Auditor) established a Compliance Unit within its office. The unit is responsible for monitoring and reporting on compliance matters relating to real estate development transactions involving real estate development projects previously managed by the former Anacostia Waterfront Corporation (AWC) and the National Capital Revitalization Corporation (NCRC). Management of these projects, under the former stewardship of the AWC and NCRC, was transferred to the Office of the Deputy Mayor for Planning and Economic Development (DMPED) in October 2007. With the passage of the Act, the Council of the District of Columbia (Council) empowered the Auditor to evaluate compliance for the AWC and NCRC development projects transferred to DMPED. This report focuses exclusively on the compliance requirements regarding environmental standards.

### CONCLUSION

Most, if not all, of the activity on the real estate projects examined for this audit occurred prior to the transfer of oversight responsibilities to DMPED. The Auditor recognizes that DMPED cannot be held accountable for the actions of the AWC and the NCRC, nor for the actions of the relevant District agencies responsible for oversight processes in the past. Nonetheless, it is beneficial to identify past deficient practices to avert similar occurrences in the future.

Thus, the findings in this report, which identify past inadequate processes, are presented in a “Lessons Learned” forum. Recommendations made are intended to forewarn DMPED that corrective action is needed. As owner of District properties which will be developed in the future DMPED will share responsibility with other District agencies to ensure that environmental standards are met by the developers chosen.

The environmental regulations that apply to any particular building under construction vary from site to site. This is because of different conditions having to do with soil type, the presence or absence of toxins or other hazardous materials on site, construction methods and the

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<sup>1</sup> See section 455 (b) of the District of Columbia Home Rule Act, approved December 24, 1973 (Pub. L. No. 93-198, 87 Stat. 803); D.C. Code §1-204.55 (b) (2001) which states: “The District of Columbia Auditor shall each year conduct a thorough audit of the accounts and operations of the government of the District in accordance with such principles and procedures and under such rules and regulations as he [she] may prescribe.” See also, section 455 (c) of the District of Columbia Home Rule Act, as amended, approved December 24, 1973, (87 Stat. 803, D.C. Code §1-204.55 (c) (2001) which states: “The District of Columbia Auditor shall have access to all books, accounts, records, reports, findings and all other papers, things, or property belonging to or in use by any department, agency, or other instrumentality of the District government and necessary to facilitate the audit.”

<sup>2</sup> See D.C. Code § 1-301.181

level of the water table, to name a few. For the former NCRC and AWC properties, the most common environmental regulations that were relevant were those having to do with Storm Water Management (SWM). While other regulations were considered, these were the focus of the audit.

The District Department of the Environment (DDOE) is responsible for ensuring compliance with stormwater management regulations. (This function was previously located in the Department of Health, prior to the creation of DDOE in 2006.)

Our audit found that DDOE is not currently able to guarantee that all SWM systems are properly inspected, failing to produce written proof of inspections for 6 of 12 buildings chosen for review. DDOE standard operating procedures for conducting SWM facility inspections contained notable weaknesses. Most importantly, the agency must rely upon the developer to notify it when inspections are needed. This reliance on the honesty and diligence of others raises the risk that DDOE is unable to fulfill its responsibilities. DDOE's standard operating procedures also failed to include any level of managerial oversight on the work of the inspectors. Absence of this kind of control also unnecessarily raises DDOE's risk. The fact that DDOE can only demonstrate that proper inspections were conducted on 50% of buildings indicates that these two failures likely have significant consequences.

Our audit further found that the Department of Consumer and Regulatory Affairs (DCRA), the agency responsible for issuing building permits and certificates of occupancy at the completion of construction activity, does not always consult with other agencies that might have outstanding regulatory issues with the developer prior to the issuance of the certificate of occupancy. This hinders the ability of the District government as a whole to ensure the health and safety of citizens and the environment.

DMPED, DCRA and DDOE must take steps to fix the inspection process to ensure that 100% of required SWM facility inspections are performed in the future.

## **MAJOR FINDINGS**

1. Inspection procedures for storm water management systems were inadequate.
2. DCRA building permit procedures undermine proper enforcement of environmental regulations.

## **MAJOR RECOMMENDATIONS**

1. The Deputy Mayor for Planning and Economic Development should establish an oversight program that ensures that DDOE implements a tracking system of on-going construction projects so that storm water management systems are inspected timely.
2. The Deputy Mayor for Planning and Economic Development should establish an oversight program to ensure that DCRA and DDOE coordinate the issuance of DCRA occupancy permits, pending the inspection and approval of storm water management systems built as part of any new construction.

## **PURPOSE**

Pursuant to Section 455 of Pub. L. No. 93-198<sup>1</sup>, and the Compliance Unit Establishment Act of 2008 (the Act<sup>2</sup>), the Office of the District of Columbia Auditor (Auditor) established a Compliance Unit within its office. The unit is responsible for monitoring and reporting on compliance matters relating to real estate development transactions involving real estate development projects previously managed by the former Anacostia Waterfront Corporation (AWC) and the National Capital Revitalization Corporation (NCRC). Management of these projects, under the former stewardship of the AWC and NCRC, was transferred to the Office of the Deputy Mayor for Planning and Economic Development (DMPED) in October 2007. With the passage of the Act, the Council of the District of Columbia (Council) empowered the Auditor to evaluate compliance for the AWC and NCRC development projects transferred to DMPED.

## **OBJECTIVE, SCOPE AND METHODOLOGY**

Under the provisions of the Act, there are seven areas of compliance on which the Auditor must focus while reviewing the development projects previously managed by NCRC and AWC. The seven areas of compliance are identified in Appendix A. The Act requires the Auditor to report on compliance related to projects transferred to DMPED upon the dissolution of the NCRC and AWC.

This report focuses exclusively on the compliance requirements regarding environmental standards. The applicable portion of the Act states the following:

*“Requirements related to environmental standards, including §6-1451.01 et seq.[The Green Building Act of 2006], §2-1226.31 et seq.[The Anacostia Waterfront Environmental Standards Act of 2008], and where applicable, the Leadership in Energy and Environmental Design (“LEED”) Green Building Rating System;”<sup>3</sup>*

Because neither the Anacostia Waterfront Environmental Standards Act of 2008 nor the Green Building Act of 2006 were in effect during the time our target projects were under development, their requirements were not relevant and the Auditor could not test for compliance with them. However, the language of the Act does not limit the Auditor to those two laws,

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<sup>2</sup> See D.C. Code § 1-301.181

<sup>3</sup> D.C. Code §1-301.181 (d) (6). Also note that §2-1226.31 et seq. is the “Anacostia Waterfront Environmental Standards Act of 2008” and §6-1451.01 et seq. is the “Green Building Act of 2006.”

instead calling for examination of requirements related to “environmental standards” in general. As a result, the Auditor determined which environmental standards applied to the projects within our scope, and if adequate processes were in place to ensure that these standards were met in the development of property formerly owned by NCRC and AWC.

Based on interviews with officials at the District Department of the Environment (DDOE), the Auditor determined that the relevant environmental standards included regulations that fell under five main areas:

- Storm water management;
- Underground Storage Tanks;
- “Pump and Treat” permits;
- “De-watering” permits; and
- Air quality.

Our objective was to determine whether accountable District agencies had adequately enforced compliance with these regulations in the case of the relevant properties.

The Act was passed in June 2008, but many of the active legacy projects that DMPED acquired from the AWC and NCRC were either completed by June 2008, or had progressed far into the construction phase of the project by that date. While the Act stated that audits would commence after the completion of a project, the Auditor believed that this statement was inconsistent with the intent of the legislation and several provisions within the Act, which contemplate ongoing compliance monitoring. Therefore, since the original audit announcement letter could be construed as limiting the audit scope, the Auditor re-issued the audit announcement letter on March 4, 2009, an action that subsequently expanded the audit scope to include the Auditor’s general authority under Section 455 of Pub. L. No. 93-198, as cited above. With this action, the Auditor would have the authority to review all AWC and NCRC projects, regardless of whether project start or end dates preceded June 2008.

Additionally, to help define the scope for the current set of seven compliance objectives, we relied on the existence of Land Disposition and Development Agreements (LDAs) obtained from DMPED. The LDA is the contractual vehicle that the AWC and NCRC used to convey the terms and conditions of each real estate development project. The LDA emphasizes that the developer promises to comply with the requirements of District environmental laws. In fact, there was a great deal of similarity among the LDAs we examined. For example, most of the LDAs we reviewed contained a statement substantially similar to the following:

“Developer hereby covenants that, and at its sole cost and expense and with regard to its construction of the Improvements and its use and occupancy of the Property, it shall comply with all provisions of Environmental Laws applicable to the Property and all uses, improvements and appurtenances of and to the Property,

and shall perform all investigations, removal, remedial actions, cleanup and abatement, corrective action or other remediation that may be required pursuant to any Environmental Law ...”<sup>4</sup>

Thus the developers recognized and acknowledged their responsibilities concerning applicable District environmental regulations.

Despite the efforts of DMPED to limit the Auditor’s access to legacy NCRC and AWC records (see “Scope Impairment”, below), and in order to complete this phase of the audit, the Auditor worked with officials at DDOE, the Department of Consumer and Regulatory Affairs (DCRA), and the District of Columbia Water and Sewer Authority (WASA). The Auditor conducted interviews with staff from these agencies, accompanied DDOE inspectors on site visits, and requested and evaluated documents germane to the review.

The audit was conducted in accordance with generally accepted government auditing standards (except as noted under Scope Impairment). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

### **Scope Impairment**

The audit entrance conference was held with DMPED officials in February 2009. However, the Auditor temporarily ceased activity with DMPED on March 19, 2009. On that date, the Deputy Mayor refused to allow the Auditor unrestricted and complete access to the legacy AWC and NCRC documents that DMPED maintains. Additional attempts to access these documents had been unsuccessful and, through the Office of the Attorney General (OAG), DMPED refused to allow the Auditor unrestricted access to the documents needed to address the objectives of the audit<sup>5</sup>. This position violated the independence standards that all audit organizations must operate under. Those standards, promulgated by the Comptroller General of the United States, are contained in the Government Auditing Standards, and published by the General Accountability Office. By refusing to allow unrestricted and complete access to the legacy AWC and NCRC documents that DMPED maintains, DMPED and the OAG created scope impairment. In the intervening timeframe since March 19, 2009, the Auditor performed work at other District agencies that have been involved with AWC and NCRC projects. Accordingly, the Auditor worked with agency officials at the Department of Small, Local, and Disadvantaged Businesses (DSLDB), Department of Employment Services, the Department of the Environment, and the District Department of Housing and Community Development. The

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<sup>4</sup> Land Disposition and Development Agreement by and between the RLA Revitalization Corporation and DC USA Operating Co., LLC for the Sale and Development of RLARC Parcel 27 in the Former Fourteenth Street Urban Renewal Area. January 17, 2003. Page 46.

<sup>5</sup> Consequently, and as stated, the Auditor conducted the majority of the work for this objective at DDOE.



Auditor also conducted interviews with staff of these agencies, and requested and evaluated documents and data germane to the review.

## **BACKGROUND**

DMPED is charged with executing the District's economic development strategy. Their mission includes encouraging growth and investment across the District, providing and preserving affordable housing, attracting high quality retail to neighborhoods and Center City and revitalizing the District's waterfronts. DMPED's goal is for the District to become a world-class, globally competitive city. DMPED brings federal, nonprofit and private partners together to expand the District's tax bases, attract and retain businesses of all sizes, bring good-paying jobs for residents and strengthen business climate.

DMPED manages a portfolio of economic development projects worth more than \$13 billion. These projects, spread across every one of the District's eight wards, vary in size from a \$10 billion initiative to reclaim the long-neglected Anacostia Waterfront to small-scale neighborhood retail shops.

The Council established the NCRC in 1998 as an independent corporate instrumentality of the District of Columbia government "to retain and expand businesses located within the District, attract new businesses to the District, and induce economic development and job creation by developing and updating a strategic economic development plan for the District; providing incentives and assistance; removing slum and blight; and coordinating the District's efforts toward these ends." D.C. Code §§ 2-1219.02 *et seq.* (repealed). The Council gave the NCRC broad powers including the power to lease, purchase, acquire, hold, manage and improve real property, along with the power to make and perform contracts. D.C. Code § 2-1219.15 (repealed).

Similarly, in 2004, the Council established the AWC as an independent corporate instrumentality of the District of Columbia to develop, redevelop, and revitalize the Anacostia Waterfront, with largely the same broad powers granted to the NCRC. D.C. Code §§ 2-1223.01 *et seq.* (repealed).

Both the NCRC and AWC operated until October 1, 2007, when their authorizing statutes were repealed through the enactment of the Fiscal Year 2008 Budget Support Act of 2007, D.C. Law 17-20 ("Budget Support Act").<sup>6</sup> The Budget Support Act provided that title to all real property belonging to the NCRC, the AWC, or any of its subsidiaries would vest and be titled in

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<sup>6</sup> Section 2163 of the Budget Support Act provides that "[t]he National Capital Revitalization Corporation Act of 1998, effective September 11, 1998 (D.C. Law 12-144; D.C. Official Code § 2-1219.01 *et seq.*) is repealed." Section 2164 of that same Act provides that "[t]he Anacostia Waterfront Corporation Act of 2004, effective December 7, 2004 (D.C. Law 15-219; D.C. Official Code § 2-1223.01 *et seq.*) is repealed."

the name of the District. *Id.* §§ 2171(1) and 2172(1). All “property, records and unexpended balances of appropriations, allocations and other funds available” to the NCRC, AWC or any of its subsidiaries were transferred to the Mayor. *Id.* §§ 2171(2) and 2172(2).

## RESULTS OF AUDIT

### OVERVIEW

The findings in this report, which identify past inadequate processes, are presented in a “Lessons Learned” forum. Subsequent recommendations forewarn DMPED that corrective action is needed in the future. The Auditor has taken this approach for two overriding reasons.

First, and as noted above, DMPED acquired projects formerly managed by the AWC and NCRC. Since most, if not all, of the activity on the real estate projects occurred prior to the transfer of oversight responsibilities to DMPED, this phase of the audit focused on evaluating the District’s performance prior to the dissolution of the AWC and NCRC. Thus, while the Auditor recognizes that DMPED cannot be held accountable for the actions of the AWC and the NCRC, nor for the actions of the relevant District agencies responsible for oversight processes in the past, it is beneficial to identify past deficient practices to avert similar occurrences in the future.

Secondly, DDOE, the key agency responsible for enforcing environmental laws and regulations in the District of Columbia, was created<sup>7</sup> in 2006, after many AWC and NCRC projects were completed. Thus, since most of the development projects were completed prior to the significant reorganization of this function of the District government, the Auditor relied on the ability of the existing agency, DDOE, to provide information and records pertaining to the operations of historical bodies. Employees from the Department of Health’s Environmental Health Administration, a key enforcement agency, were transferred into the DDOE, bringing their knowledge and experience with them. However, DDOE officials repeatedly explained that their historical files were still scattered and difficult to locate.

For this audit objective, the Auditor performed the majority of audit work at the DDOE, working primarily with the Watershed Protection Division. Pursuant to D.C. Code, Section 8-151.01 et seq, DDOE is responsible to “protect human health and the environment in accordance with District and federal law and regulation, improve the urban quality of life, streamline the administration of District environmental law and programs, including those relating to environmental health, to improve public notification of environmental issues, and to enable the District to seek primacy.” Other interviews and research were conducted at the Department of Consumer and Regulatory Affairs and the District of Columbia Water and Sewer Authority. These two agencies play important, but peripheral, roles in the enforcement of relevant environmental regulations.

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<sup>7</sup> The agency was created from the Department of Health's Environmental Health Administration, the DC Energy Office, policy functions of the District Department of Transportation's Urban Forestry Administration and policy functions of the Department of Public Works' Office of Recycling.

## FINDINGS

### **1) Inspection Procedures for Storm Water Management Systems Were Inadequate**

Pursuant to the Water Pollution Control Act of 1984, the District government is authorized to monitor, manage and control water pollution resulting from any “discharge” into waters of the District of Columbia. “Discharge” is defined as “the spilling, leaking, releasing, pumping, pouring, emitting, emptying, or dumping of any pollutant or hazardous substance, including a discharge from a storm sewer, into or so that it may enter District of Columbia waters.”<sup>8</sup> Further, the District of Columbia Municipal Regulations require that the city perform on-site inspections of storm water management facilities, including a final inspection to be conducted “upon completion of the storm water management facility to determine if the completed work is constructed in accordance with approved plans.”<sup>9</sup>

The Auditor found that DDOE could not provide documentary evidence showing that they had completed all required inspections of storm water management (SWM) systems installed in the development projects under review. The failure to document inspections effectively means that the inspections were never done.<sup>10</sup> The inspections process, as explained by DDOE, relies on the developer to notify DDOE when inspections are necessary. This may result in inspections never being done. In addition, individual inspectors are counted upon to manage their inspections workload without adequate supervisory checks in place.

The Auditor identified twelve known projects that had been part of the NCRC and AWC portfolios that were completed between 2000 and 2008. We requested documentation from DDOE showing that the final inspections had been done at these twelve projects. For six of the projects, DDOE either could not determine whether SWM plans had ever been submitted or found the plans but could not find a record of “as-built” letters ever having been issued. (DDOE sends “As-built” letters to owners of a development after the final inspection, certifying that the SWM facility was built according to the approved plans on file.) Table 1 summarizes the Auditor’s finding:

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<sup>8</sup> D.C. Official Code, 2001 Ed. § 8-103.01 (5).

<sup>9</sup> Final Rulemaking published at 35 DCR 21, 27 (January 1, 1988).

<sup>10</sup> Our conclusion is supported by the fact that DDOE asked us whether completing the inspections now would make any difference for our audit.

**Table 1**  
**Summary of Inspection Activity**

| Project                         | "As-Built" Letters Issued | "As-Built" Letters Not Issued | No record of SWM Plans submitted |
|---------------------------------|---------------------------|-------------------------------|----------------------------------|
| Kenyon Square                   | X                         |                               |                                  |
| Dance Institute of Washington   | X                         |                               |                                  |
| Lofts of Columbia Heights       | X                         |                               |                                  |
| DC USA                          | X                         |                               |                                  |
| Solea                           | X                         |                               |                                  |
| Verona Parc                     |                           |                               | X                                |
| Greater Washington Urban League |                           |                               | X <sup>11</sup>                  |
| Tivoli Square                   |                           | X                             |                                  |
| Barcelona Condo                 |                           | X                             |                                  |
| Highland Park                   |                           | X                             |                                  |
| Portals                         |                           | X                             |                                  |
| Republic Square                 |                           | X                             |                                  |

Prior to the creation of DDOE, the inspection of storm water management facilities was performed by the Department of Health's Environmental Health Administration (EHA). Upon the creation of the DDOE, the Inspection and Enforcement Branch (IEB) was established within the Watershed Protection Division, and the unit assumed the inspection duties formerly carried out by EHA. Many of the personnel with EHA transferred into the new agency and, in the interest of continuity, IEB adopted existing procedures. Hence, the current DDOE inspection process does not appear to be significantly different from the former EHA inspection process. Generally, this process requires inspectors to visit the construction sites on a regular basis while construction of the SWM facilities is underway and ensure that developers are complying with the relevant District regulations. Inspectors can provide technical assistance when unusual or unexpected situations arise on-site. If inspectors discover mistakes or defects in the work of the contractors, they have the power to issue letters calling for facilities to be brought into compliance or, if necessary, issue stop work orders preventing any further construction until

<sup>11</sup> This project did not involve new construction and therefore may not have required a new SWM facility to be constructed.

compliance is achieved. The process, however, relies heavily on individual inspectors to track the compliance or non-compliance of the individual projects assigned to them. The inspector must stay aware of developments at the job site, including construction scheduling, site conditions, technical issues, and engineering details. Frequent site visits are necessary.

The Auditor found that this process is hampered by one key weakness: DDOE is not aware of the need for inspection of a SWM facility until the developer gives notice that it is ready to begin construction, or that the facility is complete. Although District regulations provide that fines and/or prison time may be imposed for failure to give such notice, the penalties are small and require criminal prosecution.

The Auditor found that DDOE, and DOH before it, relies on the diligence of their inspectors to stay current on the activity at upcoming or ongoing projects around the city. With only four inspectors in the IEB, this system is vulnerable to missed milestones and, potentially, missed inspections. The Auditor concluded that this was apparently what happened in the case of the six projects for which DDOE could not provide proof of final inspection.

The IEB is currently developing new Standard Operating Procedures (SOP) that will cover the inspections of SWM facilities. The current SOPs, however, do not include a process for follow-up on projects by anyone other than the individual inspectors. Further, the SOPs indicate that “the developer/contractor is responsible for notifying the Department of Health (sic), Watershed Protection Division within one (1) week after completion of the project for final inspection.” The Auditor found that neither the DC Code nor published DC Regulations contain this requirement. It appears that DDOE has voluntarily transferred to the developer the responsibility for scheduling final inspections. Given the importance of conducting timely final inspections, this represents a serious internal control weakness. The Auditor believes that the weaknesses in the current standard operating procedures discussed above led to the failure to conduct all required SWM facility inspections. Until these procedures are changed, District stakeholders have no assurance that adequate SWM facilities are being installed on new construction in the District.

DDOE is also currently in the process of renewing the District of Columbia’s “Municipal Separate Storm Sewer Systems” permit with the United States Environmental Protection Agency. This process is complex and involves rewriting some of the fundamental District regulations that define exactly what DDOE’s authority is to regulate developers. These new regulations, according to DDOE officials, may give the agency more tools to compel compliance from developers and others who build and operate SWM facilities. These regulatory changes may ease the burden currently placed on individual inspectors to monitor and track multiple ongoing projects.

Failure to conduct final inspections in order to ensure that SWM facilities are built and operating properly poses unnecessary threats to the water quality of the Anacostia and Potomac

Rivers. Ensuring that all inspections are carried out will minimize the possibility of harm to the Anacostia and Potomac Rivers, the wildlife living in and around them, and the humans who partake in recreational activities on them. Storm water management systems are designed to control and limit the amount of rain water that flows into the city's sewer system during a storm. They also filter out impurities that may wash off building roofs, local parking lots, and other impervious surfaces of a development. During a storm event, the city's waste water treatment system can also become overwhelmed. In such a condition, storm water runoff is allowed to flow directly into the two rivers, without first being treated. This can result in negative impacts on water quality, including loss of wildlife and risks to human health downstream. If SWM facilities around the city are not functioning properly, the possibility of negative impacts is greater than it otherwise would be. The possible negative impacts are clearly not significantly greater based on the operations of any one development's SWM facility, but become worse as more and more of these facilities are unable to effectively filter and control the runoff coming from their property.

### **RECOMMENDATION**

The Deputy Mayor for Planning and Economic Development should establish an oversight program that ensures that DDOE implements a tracking system of on-going construction projects so that storm water management systems are inspected timely.

#### **2) DCRA Building Permit Procedures Undermine Proper Enforcement of Environmental Regulations**

All new building construction in the District of Columbia must be done with the approval of DCRA, pursuant to the Construction Codes Approval and Amendments Act of 1986, effective March 21, 1987 ( D.C. Law 6-216; D.C. Official Code § 6-1401 *et seq.*). The building permit is issued only after the responsible party satisfies the requirements as laid out by DCRA, demonstrating that the building will be built in accordance with applicable fire, safety, health, and other relevant regulations. DCRA maintains an extensive group of inspectors and other building permit experts on staff to review building permit applications and compliance with the law. This review begins with the submittal of building plans and continues throughout construction until final inspections are conducted prior to the issuance of an occupancy permit. The occupancy permit is required before tenants of the building can actually move in.

The SWM facility inspection process occurs in parallel with this process. However, as mentioned above, DDOE has no formal way of knowing about SWM facility construction unless told by the developer. DDOE does maintain a staff at the DCRA headquarters office but this arrangement is informal and the two agencies do not coordinate their inspections. In fact, DCRA does not track whether or not developers have had their SWM facilities inspected or the results of those inspections. As a result, DCRA will issue an occupancy permit without knowing whether or not DDOE has approved the SWM facility for that building. This weakens the ability

of DDOE to effectively enforce storm water regulations and can result in buildings being occupied without properly functioning storm water management systems in place.

The failure of DCRA to coordinate the issuance of the building occupancy permit with DDOE significantly impacts the ability of DDOE to complete its duties as required by regulation and law. Absent significant changes to the relevant regulations that might give DDOE independent authority to block occupancy of newly constructed buildings, the current situation remains a major obstacle to the effective enforcement of environmental regulations in the District of Columbia. DMPED should work with DCRA and DDOE to develop a new process for issuing occupancy permits that withholds these permits pending final inspection and approval of any storm water management devices built as part of the new construction.

### **RECOMMENDATION**

The Deputy Mayor for Planning and Economic Development should establish an oversight program to ensure that DCRA and DDOE coordinate the issuance of DCRA occupancy permits, pending the inspection and approval of storm water management systems built as part of any new construction.



## CONCLUSION

Most, if not all, of the activity on the real estate projects examined for this audit occurred prior to the transfer of oversight responsibilities to DMPED. The Auditor recognizes that DMPED cannot be held accountable for the actions of the AWC and the NCRC, nor for the actions of the relevant District agencies responsible for oversight processes in the past. Nonetheless, it is beneficial to identify past deficient practices to avert similar occurrences in the future.

Thus, the findings in this report, which identify past inadequate processes, are presented in a "Lessons Learned" forum. Recommendations made are intended to forewarn DMPED that corrective action is needed. As owner of District properties which will be developed in the future DMPED will share responsibility with other District agencies to ensure that environmental standards are met by the developers chosen.

The environmental regulations that apply to any particular building under construction vary from site to site. This is because of different conditions having to do with soil type, the presence or absence of toxins or other hazardous materials on site, construction methods and the level of the water table, to name a few. For the former NCRC and AWC properties, the most common environmental regulations that were relevant were those having to do with Storm Water Management (SWM). While other regulations were considered, these were the focus of the audit.

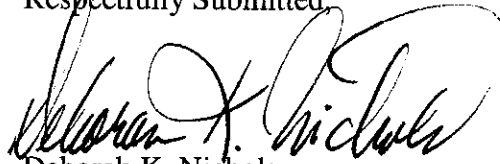
The District Department of the Environment (DDOE) is responsible for ensuring compliance with stormwater management regulations. (This function was previously located in the Department of Health, prior to the creation of DDOE in 2006.)

Our audit found that DDOE is not currently able to guarantee that all SWM systems are properly inspected, failing to produce written proof of inspections for 6 of 12 buildings chosen for review. DDOE standard operating procedures for conducting SWM facility inspections contained notable weaknesses. Most importantly, the agency must rely upon the developer to notify it when inspections are needed. This reliance on the honesty and diligence of others raises the risk that DDOE is unable to fulfill its responsibilities. DDOE's standard operating procedures also failed to include any level of managerial oversight on the work of the inspectors. Absence of this kind of control also unnecessarily raises DDOE's risk. The fact that DDOE can only demonstrate that proper inspections were conducted on 50% of buildings indicates that these two failures likely have significant consequences.

Our audit further found that the Department of Consumer and Regulatory Affairs (DCRA), the agency responsible for issuing building permits and certificates of occupancy at the completion of construction activity, does not always consult with other agencies that might have outstanding regulatory issues with the developer prior to the issuance of the certificate of occupancy. This hinders the ability of the District government as a whole to ensure the health and safety of citizens and the environment.

DMPED, DCRA and DDOE must take steps to fix the inspection process to ensure that 100% of required SWM facility inspections are performed in the future.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Deborah K. Nichols". The signature is written in a cursive style with a large, looping initial "D".

Deborah K. Nichols

District of Columbia Auditor

# **APPENDIX**

## APPENDIX A

### SEVEN COMPLIANCE REQUIREMENTS OF THE ACT

1. Requirements related to developer selection and performance guidelines, as defined in the Mayor's source-selection process.
2. Requirements related to the selection of goods and services, as defined in the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01, *et seq.*).
3. Requirements related to living-wage laws pursuant to the Living Wage Act of 2006, effective June 8, 2006 (DC Law 16-118; DC Code § 2-220.01 *et seq.*).
4. Requirements related to contracting with, and procuring goods and services from, Certified Business Enterprises (CBEs) pursuant to the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, effective March 2, 2007 (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*) ("SLDBE Assistance Act").
5. Requirements related to equity and development participation by CBEs pursuant to the SLDBE Assistance Act.
6. Requirements related to environmental standards, including the Green Building Act of 2006, effective March 8, 2007 (D.C. Law 16-234; D.C. Official Code § 6-1451.01 *et seq.*), the Anacostia Waterfront Environmental Standards Act of 2008, effective March 26, 2008 (D.C. Law 17-138; 55 DCR 1689), and where applicable, the Leadership in Energy and Environmental Design ("LEED") Green Building Rating System.
7. Requirements related to affordable housing mandates, including the Inclusionary Zoning Implementation Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-275; D.C. official Code § 6-1041.01 *et seq.*), the Community Development Block Grant, the Housing Production Trust Fund, the Home Investments Partnerships Program, and the Low-Income Housing Tax Credit program, as applicable.

# **AGENCY COMMENTS**

## **AGENCY COMMENTS**

On March 30, 2010, the Office of the District of Columbia Auditor submitted a report in draft for review and comment to the Director of the District Department of the Environment (DDOE), the Director of the Department of Consumer and Regulatory Affairs (DCRA), and the Office of the Deputy Mayor for Planning and Economic Development. The Auditor received written comments from the DCRA Director and the Deputy Mayor for Planning and Economic Development on April 9, 2010. The comments received concurred with the findings contained in the report and no changes have been made to the report as a result. The written comments from both agencies are included in their entirety with this report.

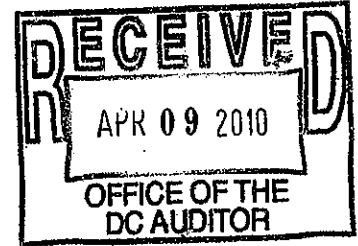
GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

Office of the Director



April 8, 2010

Ms. Deborah K. Nichols  
District of Columbia Auditor  
717 14<sup>th</sup> Street, NW  
Suite 900  
Washington, DC 20005



RE: Draft Auditor's Review of Environmental Standards Requirements

Dear Ms. Nichols:

This letter responds to the Draft Auditor's Review of Environmental Standards Requirements, dated March 30, 2010. Specifically, it was stated that "DCRA building permit procedures undermine proper enforcement of environmental regulations". The draft report indicates that DDOE Stormwater Management inspectors are not being notified to inspect, and further cites a lack of coordination between DDOE and DCRA inspections on a given project, resulting in Certificates of Occupancy being issued without required DDOE stormwater inspection approvals.

The draft report recommended that "The Deputy Mayor for Planning and Economic Development should establish an oversight program to ensure that DCRA and DDOE coordinate the issuance of DCRA occupancy permits, pending the inspection and approval of storm water management devices build as part of any new construction."

To address this concern, the DCRA Permitting Division will coordinate with the Office of the Zoning Administrator and DDOE to implement a DDOE workflow on the applicable Certificate of Occupancy applications to ensure proper stormwater sign-off prior to issuance.

Thank you for bringing this matter to my attention. If you need additional information, please contact Hamilton Kuralt, DCRA Office of Service Integrity at (202) 442-8930.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda K. Argo".

Linda K. Argo  
Director

cc: Hamilton Kuralt

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Executive Office of the Mayor  
Office of the Deputy Mayor for Planning and Economic Development



April 8, 2010

Deborah K. Nichols  
District of Columbia Auditor  
717 14<sup>th</sup> Street, N.W., Suite 900  
Washington, DC 20005

**RE: Comments to D.C. Auditor Draft Report Entitled the "Auditor's Review of Environmental Standards Requirements" Dated March 30, 2010.**

Dear Ms. Nichols:

The purpose of this letter is to respond to your draft report, dated March 30, 2010, regarding the review of environmental standards requirements (the "Draft Report"). Below please find DMPED's comments regarding the Draft Report's two (2) recommendations:

**Recommendation # 1:** DMPED should establish an oversight program that ensures that DDOE implements a tracking-system of on-going construction projects so that storm water management devices are inspected.

**Comment:** Prior to this report, as part of ongoing systems improvements and transfer of responsibility from DOH to DDOE, DDOE has taken steps to address these concerns, including: (1) creation of an Office of Enforcement to assist in maintaining and tracking compliance documentation; (2) updating Standard Operating Procedures to ensure uniformity of inspections and handling of inspection-related materials; and (3) clarified in its proposed regulations that the applicant must notify DDOE of the completion of construction and need for final inspection.

While DMPED and DDOE believe that these steps will address the issues raised in the Draft Report and ensure accurate tracking of storm water inspections, DDOE will continue to work with DCRA and other agencies involved in land use permitting to ensure that environmental requirements are met on all projects, including those overseen by DMPED and District agencies and instrumentalities.

**Recommendation #2:** DMPED should establish an oversight program that ensures that DCRA and DDOE coordinate the issuance of occupancy permits pending the inspection of and approval of storm water management devices.

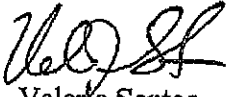
**Comment:** DMPED shall request that DCRA endeavor to amend the process pursuant to which it issues occupancy permits to ensure that DDOE's final storm water inspection is completed prior to the issuance of the Certificate of Occupancy.

ADRIAN M. FENTY, MAYOR • VALERIE-JOY SANTOS, DEPUTY MAYOR



If you have questions or if you need any additional information please feel free to contact me directly at 202-727-6365.

Sincerely,

A handwritten signature in black ink, appearing to read 'Valerie Santos', written in a cursive style.

Valerie Santos  
Deputy Mayor for Planning and Economic Development  
District of Columbia