



Green Infrastructure & the Law

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Introduction

- I. Legal Context for Green Infrastructure
 - CSO/SSO Management
 - Stormwater Management
 - Funding & Planning
- II. Implementing a Green Infrastructure Program
 - Lifting Legal Impediments to Green Infrastructure
 - Tools for Implementation with Private Partners

Introduction: Green Infrastructure

- Design strategies to control stormwater runoff by restoring, mimicking, or preserving the natural hydrologic cycle
- Green Infrastructure Presents Opportunities:
 - Provide multiple benefits
 - Coordinate local / regional planning –
 - E.g. CSO Long-Term Control Plan, Stormwater Management Plans, Comprehensive/Master Plans, Development Plans, Watershed Plans, Open Space / Preservation Plans, Sustainability Plans

Legal Context for Green Infrastructure

- CSO / SSO Management
 - NPDES Permits (CWA §§ 301, 402, CSO Control Policy)
 - Long Term Control Plan
 - Consent Decree
 - Use Attainability Analysis

Legal Context for Green Infrastructure

- Stormwater
 - Stormwater Permitting (§ 402(p))
 - MS4 Permits –
 - BMPs
 - Incorporation of GI / LID into Permit Requirements
 - TMDL Implementation
 - Post-Construction Stormwater Rule

Legal Context for Green Infrastructure

- Funding & Planning under the Clean Water Act
 - Regional Watershed Management Plans (§ 208)
 - State Revolving Funds (§ 205)
- Possible Topic of Future Legislation

Opportunities for Regulatory Credit

- Opportunities to incorporate GI into regulatory obligations
 - Long Term Control Plan
 - Consent Decree Negotiation
 - NPDES permitting (including stormwater)
 - MS4 Stormwater Management Plans
 - TMDL Implementation Plans
- Challenges
 - Quantifying the benefits
 - Educating your regulator
 - CWA – focus is reduction in water pollution / meeting WQS – not necessarily achieving other benefits

Regulatory Credit

- In most cases, using Green Infrastructure to meet regulatory obligations will require an iterative approach → Adaptive Management
 - Identify the goal
 - Identify and Implement GI Components
 - Measure the results
 - Evaluate Progress
 - Adjust Plan if Necessary

Implementing a Green Infrastructure Program

- Addressing Legal Impediments
- Tools for Implementation on Private Land

Some Challenges

- Paradigm shift – from centralized treatment to decentralized systems
- Existing legal frameworks are frequently structured for traditional stormwater management . . .
(Move stormwater off site as quickly as possible)
- . . . or without any thought to stormwater management at all.
(*e.g.* vegetation height regulations aimed at rodent control)
- Administrative Silos
- Clean Water Act generally anticipates controls and timeframes consistent with grey infrastructure, and there is “no credit” under the Act for non-water quality benefits

Addressing Legal Impediments

- Existing codes may conflict with GI implementation
 - Plumbing Codes
 - Zoning Codes
 - Building codes
 - Other regulations
- Water Rights

Addressing Legal Impediments

- GI may implicate issues or geography that fall under the jurisdiction of multiple agencies or entities
 - *Department of Health*
 - *Sewer Authority / Public Works*
 - *Department of Transportation*
 - *Planning / Zoning Board*
 - *Parks & Recreation*
 - *State and Federal Agencies (Parks, Forests, Refuges, Regulatory)*

Requires coordination, cooperation among agencies

Implementing a Green Infrastructure Program

Identify for *each element* of the GI program

1. What goal(s)?
2. What tool is appropriate
3. What standards will govern construction/implementation
4. Who will implement the project
5. When the activity will be undertaken and completed
6. How will the project be financed
7. Who will maintain the installation
8. How will results be monitored or quantified
9. What happens if an obligation or goal is not met

Implementing Green Infrastructure:

- Tools for Implementation on Private Land:
 - Acquisition
 - Regulation
 - Incentives
 - Management Agreements/Contract

Implementing Green Infrastructure: Acquisition

- Fee Simple Acquisitions
- Conservation Easements
- Purchase/Transfer of Development Rights

Implementing Green Infrastructure: Regulatory Mandates

- Stormwater Permits / BMPs / Retrofitting
- Zoning Code, Subdivision Ordinances, or other regulations
- Mitigation Banks

Implementing Green Infrastructure: Incentives

- Tax Incentives
- Stormwater Fee Reductions / Rebates
- Development Incentives
- Recognition & Technical Assistance
- Grants

Implementing Green Infrastructure: Incentives

- Stormwater Fees
 - Tie fees to stormwater generated on site
 - Fee reductions or rebates for on-site detention, reduced coverage of impervious surfaces, implementation of specific GI practices
 - May be permanent or conditional reduction in rates or one-time rebate
 - May vary depending upon user (residential, commercial, etc.)

Implementing Green Infrastructure: Management Agreements

- Management Agreement
 - Landowner agrees to certain actions on his or her property for a specified time
 - Cost-sharing arrangement
 - May include a restrictive agreement

Implementing a Green Infrastructure Program

*As with any management tool, any entity must be a **wise consumer** of green infrastructure, and choose methods that will deliver success for the goals at hand, on the right time scale, with the right economics, according to the site's characteristics.*

. . . And structure its agreements with other parties to reflect the entity's goals and obligations.

Green Infrastructure: Looking Forward

- There are intense efforts underway to bridge gaps in our knowledge or legal frameworks
- EPA has publicly embraced GI
- GI incorporation into regulatory tools
- Chesapeake Bay TMDL – State WIPs require GI
- Post-Construction Stormwater Rule may require retrofits
- EPA's Draft Strategy for Achieving Clean Water (August 2010).
EPA will
 - “explore more widespread use of GI techniques in CSO control plans.”
 - “expand municipal stormwater permitting coverage...and establish performance standards for newly developed and redeveloped sites ... including through the use of green infrastructure techniques.”

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