

Talking Points For HBA's To Share With State And Local Permitting Authorities

Background

- The Environmental Protection Agency (EPA) recently announced the latest in a series of blows to anyone in the construction industry, including city and county governments struggling to stay afloat and provide needed services in a shaky economic climate.
- On Nov. 28, 2008, EPA published proposed Effluent Limitation Guidelines (ELGs), a new storm water regulation that will have an estimated annual cost of \$1.9 billion.
- The proposed ELGs are part of a court order and EPA must finalize them by Dec. 1, 2009.
- EPA is considering three regulatory options:
 1. Prescriptive sediment and erosion controls (i.e., BMPs);
 2. Prescriptive sediment and erosion controls (i.e., BMPs) PLUS a numeric turbidity standard for certain large sites that have high rainfall and clayey soils;
 3. Prescriptive sediment and erosion controls (i.e., BMPs) PLUS a numeric turbidity standard for all sites over 10 acres.
- For Options 2 & 3, EPA is considering a numeric turbidity limit of 13 NTU, which will require monitoring and the use of Active Treatment Systems (ATS) and likely cost over \$10,000 per acre. Even after using ATS, it is not certain that the limit will be attainable.
- Once finalized, the ELGs will apply to all building and heavy construction activities, including highways, streets, bridges, tunnels, pipelines, transmission lines and residential, commercial, and industrial structures. Implemented through existing State- and EPA-issued National Pollutant Discharge Elimination System (NPDES) permits, the ELGs will have a direct and significant impact on virtually all aspects of the construction industry.
- The ELGs will also impact the construction activities of state and local governments and the administration and enforcement of their erosion control & storm water management programs. The adoption of NTU limits with ATS requirements could also further decimate and significantly hinder any future growth.
- The building community supports a reasonable erosion and sediment control approach as outlined in EPA's first option with a few points of clarification AND strongly opposes a numeric effluent limit that mandates the use of ATS.
- The proposal is currently in a public comment period until February 26, 2009. Affected parties, including State and local governments, must act quickly and submit comments opposing the onerous requirements of this rule.

Suggested Points for your State or local permitting authority to consider:

1. Review and understand the ELG proposal. The first option is a prescriptive erosion and sediment control and sediment basin requirement. Most permitting authorities are familiar with this type of regulation. The second option is a numeric turbidity limit of 13 NTU for sites larger than 30 acres located in areas with high rainfall and high clay content. Site operators would have to use advanced treatment systems to chemically alter and filter their storm water discharges. Many states and localities have limited experience with this type of technology. For more details, review the proposed rule at <http://www.epa.gov/fedrgstr/EPA-WATER/2008/November/Day-28/w27848.pdf>. Pay particular attention to the regulatory language on pages **72612 – 72614**.
2. Assess the impact of the rule on current state and local stormwater programs and construction operations. The permitting authority should compare the list of BMPs under EPA's sediment and erosion control practices to current state and/or local requirements. Are the requirements in balance? What is the most significant difference between your permitting requirements and the ELG? Are the differences compatible with your program? How will the difference(s) impact implementation and enforcement? What is the states' or localities' experience with polymers? Does your state have guidance on the use of ATS? What are typical background NTU's in state waters? EPA has estimated the annual compliance costs for Option 1 to be \$4.4 million for all states and \$25.1 million for all local governments. Are these realistic? What do you predict the costs and benefits of implementing the ELG to be?
3. Submit comments to EPA. EPA will consider public comments before selecting a final option. Once your state/local government reviews the proposal and understands the new standard, it is important to assess the impact of the rule on the state/local programs that will be responsible for compliance and enforcement and submit reactions, concerns, and comments to EPA. Specific issues of import include technical feasibility, implementation, and the cost associated with implementing the rule.

Additional specific questions for permitting authorities to consider include:

1. How do the sediment basin requirements in the ELG compare to state/local sediment basin requirements (i.e., sizing, storage volume design, length/width ratio, outlet control/skimmer, etc.)?
2. What are the soil stabilization requirements in your state? How does the ELG requirement compare?
3. What are the silt fence and buffer requirements in your state? The ELG requires a 6 feet vegetated buffer requirement from the silt fence. Is this a reasonable idea that is easy to implement?
4. In some cases the permitting authority will have to determine equivalent measures in lieu of the ELG requirements for sediment and erosion control? Is the state/local government prepared to make such a determination?
5. How will the state/local government have to change its construction processes to meet the new requirements?

6. How will the state/local government implement and enforce the new requirements, how much will it cost, and how will these new programs be funded?