



Stormwater Runoff

Oppose Mud Rules on Stormwater Runoff from Construction Sites

Background:

- The construction industry faces 3 ongoing construction stormwater issues. First, the U.S. Environmental Protection Agency (EPA) is under a court order to specify the maximum allowable levels of pollutants that may be discharged from active construction sites. EPA issued a final “Effluent Limitation Guidelines” for the “Construction Development Industry” (C&D ELG) rule in December 2009, but in January 2011, issued an administrative stay of the 280 nephelometric turbidity unit (NTU) limit pending completion of a new rulemaking. Second, EPA proposed a draft revised construction general permit (CGP) in April 2011 to regulate stormwater discharges from active construction sites that incorporates requirements from the C&D ELG rule. Third, EPA is engaged in an effort to craft first-time national post-construction stormwater rules.

AGC Message:

- **One-size-fits-all requirements are not suitable to construction.** The nationwide numeric turbidity limit and associated monitoring requirements under the C&D ELG rule are officially on hold until EPA reevaluates the data and issues a “correction rule.” Numeric limits are not an appropriate control for construction because wet weather events are highly variable, and it is well-recognized that established sampling techniques do not accurately measure pollutant levels in stormwater discharges from construction sites. To date, EPA has not demonstrated a scientific or reasonable basis for a nationally-applicable numeric limit; a non-numerically-based C&D ELG rule would satisfy EPA’s legal obligations. Also embedded in EPA’s C&D ELG rule are a series of costly and very prescriptive control measures that contractors will need to implement on every construction jobsite. As permitting authorities incorporate the non-numeric requirements into their stormwater permits, contractors must retain the opportunity to tailor the required controls to the nature or scope of the problems their particular waters are having.
- **Until EPA figures out just how clean the water really needs to be, EPA should not revise the construction general permit (CGP).** While the numeric limit portion of the C&D ELG rule is on-hold, EPA has proposed to include these costly new controls in its draft revised CGP. In addition, EPA has ratcheted up the non-numeric control requirements in the draft CGP going well beyond anything required by law, and in some instances, they may be impossible to meet. These significant modifications would increase the costs, labor, paperwork burdens and liability for construction site operators tasked with stormwater compliance. Even if a contractor implements all of the new mandated erosion and sediment controls, but for some reason, the water is still too muddy, the contractor can be fined \$37,500 per violation per day. EPA should allow the current CGP to remain in effect for a full five-year term to give the agency much-needed time to set a legally defensible standard on how much dirt it thinks should be in that water runoff.
- **EPA’s first-time national post-construction mud rules are a regulatory overreach.** EPA may release controversial new rules to restrict stormwater that washes or may wash off land development sites after construction work is completed. The new federal requirements would increase the cost of construction and present liability issues concerning the contractor’s legal and/or contractual obligations to the site and the owner after the contractor leaves the site. At the same time, EPA has circumvented the “study and report” mandate in the Clean Water Act that requires the agency first study the need for new regulations, then report to Congress, and finally allow Congress to have a fair and adequate opportunity to consider EPA’s recommendation before new regulations are proposed.