



Fact Sheet

Construction and Development Industry Effluent Limitations Guidelines and Standards, Selection of Non-Regulatory Option

EPA is opting to rely on the range of existing programs, regulations, and initiatives at the federal, state, and local level for the control of stormwater runoff from construction sites rather than establish a national effluent guideline at this time. After careful study, we determined that almost every state has requirements in place that are equivalent to or even more protective than those contained in this proposal. In addition, over 5000 municipalities are currently developing or upgrading local programs and requirements for construction site runoff. The current system of federal requirements as outlined in the NPDES regulations allows states and local governments to develop programs that will both protect the environment and maintain flexibility to tailor requirements to meet local conditions.

Background

Based on information from a variety of sources, EPA identified construction and development activities as a source of excessive sediment and other pollutants carried by stormwater runoff into waters of the United States. In 1992, as the result of litigation, EPA entered into a Consent Decree setting forth a schedule to investigate technology-based standards (effluent guidelines) for discharges from various sources. This Consent decree was subsequently modified to include discharges of stormwater from construction sites among those sources.

EPA proposed this effluent guideline in June 2002 to supplement existing regulations addressing stormwater discharges from construction sites contained three options. The first option would have amended the National Pollutant Discharge Elimination System (NPDES) regulations to include inspection and certification requirements for operators of construction sites disturbing at least one acre of land. The second option would have promulgated an effluent guideline that contained additional requirements for construction activity disturbing at least five acres of land. EPA also proposed a third option to continue to rely on the existing regulations and programs in place at the federal, state, and local levels.

EPA's Final Action

EPA has opted to rely on the range of existing regulations and programs in place at the federal, state and local levels to control stormwater runoff from construction sites. Under the NPDES regulations for stormwater, states and municipalities are implementing significant new requirements to better address contaminated stormwater runoff from construction sites. After careful consideration, we determined that additional regulation (the proposed effluent guideline) is not required at this time and that existing requirements at the federal, state, and local level will result in significant improvements in water quality and in the control of discharges of construction site stormwater runoff.

Existing State Programs

In March 2003, Phase II of EPA's NPDES regulations for stormwater went into effect and required that permitting authorities establish programs to regulate runoff from construction sites, one to five acres in size. These new requirements affect approximately 200,000 construction sites annually. (Larger construction sites have been regulated under the NPDES program since 1992.) The authorized states and EPA are implementing these new requirements (Phase II) and they will result in significant reductions of pollutants from construction sites.

Our analysis indicates that every state has regulations and programs in place that incorporate most of the provisions of our most stringent proposed option. Here is how states are already addressing these key requirements of the proposed effluent guideline:

- **Stormwater Pollution Prevention Plans** – All 50 states require site managers to prepare a stormwater pollution prevention plan, erosion and sediment control plan, or an equivalent document.
- **Inspections by Construction Site Operator** – All 50 states require construction site operators to inspect their sites on a regular basis.
- **Erosion and Sediment Control** – All 50 states require site managers to implement a combination of erosion and sediment controls to prevent soil erosion and to manage construction site runoff. Our proposed effluent guideline would have mandated sediment basins of a particular size across the country. Currently, states base their technical requirements for basins or other erosion control techniques on local rainfall patterns and other considerations.
- **Stabilization of Soils After Construction** – All 50 states require stabilization of soils after construction activities have temporarily or permanently ceased. Our proposal would have mandated this step within 14 days. States currently set their own requirements based on local conditions. In dry areas, for instance, 14 days may not be necessary because of low rainfall. It may also be impractical due to slow growth of vegetation.

To learn more about EPA requirements and guidance on these topics visit www.epa.gov/npdes/stormwater. For links to individual state stormwater programs, visit www.cicacenter.org

Existing Local Programs

Many local governments also have long-standing programs in place to control sediment and erosion from construction sites within their jurisdiction. EPA's stormwater regulations (Phase I and Phase II) set minimum requirements for these programs. Approximately, 6,000 municipalities are covered by these regulations. Many of the approximately 5,000 communities covered by Phase II are just now developing or upgrading their programs to meet these requirements. These are some of the minimum requirements for these programs:

- Ordinances or other regulatory mechanisms requiring the implementation of proper erosion and sediment controls
- Review of site plans to ensure proper design and installation of sediment and erosion controls
- Site inspections and enforcement of control measures
- Sanctions to ensure compliance
- Procedures for public review and comment
- **Review of Site Plans** – The NPDES regulations require that municipalities set up procedures for review of site plans to ensure proper implementation of sediment and erosion controls. The proposed effluent guideline would have required certification of the design and installation of sediment and erosion controls by a qualified professional (generally a third-party). The 5,000 communities covered under the Phase II requirements are starting to implement their programs for site plan review. States and communities are working together to define and develop effective programs. Communities have until 2008 to fully implement these requirements.

For more information on EPA's requirements for municipal stormwater programs, please visit www.epa.gov/npdes/stormwater.

Conclusions

EPA wants local decision-makers to have maximum flexibility to develop control strategies that are tailored to the discharges of stormwater runoff from construction sites under their jurisdiction. We believe that the proposed regulatory options would have limited the flexibility permitting authorities have today to use control strategies reflect local conditions. Further, the costs of the proposed regulatory options would be very high, and these options would provide only marginal environmental improvements over regulations already in place. The most stringent of the regulatory options would have reduced sediment loadings from construction sites by only about one percent more than the existing regulations.

For these reasons, EPA has decided that this proposed effluent guideline is not appropriate at this time.

EPA confirms and explains these conclusions in a *Federal Register* notice that identifies the selection of the option from the 2002 proposed rule to continue to rely on existing regulations and programs.

This final action is good for American's who are in the market for new homes. EPA's analysis indicated that the average incremental cost of construction and post-construction controls for a single family house would have ranged from about \$1,000 and \$2,200, depending on the degree of implementation of the Phase II stormwater program. These cost increases were projected to make new homes unaffordable for between 135,000 and 325,000 families. These estimates accounted only for up-front capital costs. They did not include the costs that homeowners would ultimately bear through fees and local property taxes for long-term maintenance of the control structures.

Resources for Construction Site Stormwater Management

A range of regulatory programs and resources are currently in place and being implemented at the federal, state and local levels address construction site stormwater runoff:

Regulatory Programs

- NPDES Regulations – The NPDES regulations for stormwater cover construction sites in two ways. First, authorized states and EPA (in non-authorized states) must develop programs and permits for sites disturbing one or more acres of land. Second, municipalities in urbanized areas must develop comprehensive programs to regulate stormwater from construction activities within their jurisdiction.

Construction: The NPDES Phase I and Phase II stormwater regulations require permits for construction sites that disturb one or more acres of land. Phase I became effective in 1992 and regulates construction sites five acres or larger in size. Authorized states and EPA developed detailed permit requirements for these sites and refined those requirements as permits are reissued (NPDES permits are reissued every 5 years). Effective in March 2003, Phase II and extends requirements to sites of one to five acres.

Municipal: Approximately 6000 municipalities with separate storm sewer systems are covered by EPA's NPDES stormwater regulations (Phase I and II). They are required to develop programs to regulate stormwater from sites within their jurisdiction that are one acre or larger. Most municipalities have programs that cover construction sites. The NPDES regulations outline a set of minimum controls and many cities are enhancing their current programs to meet these requirements. Municipal programs must include local enforceable ordinances, review of site plans, inspections, and enforcement procedures. Effective March 2003, the Phase II regulations and cover municipalities in urban areas with populations up to 100,000. These communities have five years to develop and fully implement these programs.

- State and Local Regulatory Programs - Most states and municipalities have programs designed to prevent sediment and erosion problems from construction sites.
- Total Maximum Daily Loads (TMDLs) – In addition to the requirements outlined in the NPDES stormwater regulations, we expect that the TMDL program will lead to better management of construction site runoff where pollutants such as sediment and nutrients

contribute to water quality impairments. We also expect that additional controls will be developed and implemented where construction site runoff continues to contribute to impairments in local water ways even though the basic NPDES requirements have been met.

EPA Resources for the Control of Construction Site Runoff

- State Water Pollution Control Program Grants Program (Section 106) provides funding to state programs to implement the programs under the Clean Water, including stormwater programs (www.epa.gov/owm/cwfinance/pollutioncontrol.htm)
- Stormwater Website contains comprehensive reference and guidance materials for control of construction site runoff (www.epa.gov/npdes/stormwater)
- Menu of Best Management Practices provides information for municipalities and construction site operators (www.epa.gov/npdes/menuofbmeps)
- Construction Industry Compliance Assistance Center contains information and links to a wide variety of information, including state regulatory programs and manuals for sediment and erosion controls (www.cicacenter.org)
- Electronic Notice of Intent System is an online, electronic application system for obtaining coverage under EPA's Construction General Permit. This system also provides construction site operators with comprehensive information on controlling runoff and meeting permit requirements (www.epa.gov/npdes/enoi).
- National Management Measures to Control Nonpoint Source Pollution from Urban Areas is a technical guidance and reference document on best management practices to control urban runoff (www.epa.gov/owow/nps/urbanmm/index.html)
- Smart Growth Program provides tools, technical and financial assistance, and training on complying with stormwater requirements while also encouraging innovation in land development (www.epa.gov/livability)
- Section 319 Nonpoint Source Management Program provides grants to states, territories and tribes to support a variety of nonpoint source implementation projects including those addressing stormwater runoff (www.epa.gov/owow/nps/cwact.html)
- Clean Water State Revolving Fund provides funding for water quality protection projects for wastewater treatment, stormwater management, nonpoint source pollution control, and watershed and estuary management (www.epa.gov/owm/cwfinance).

How can I get copies of the final action?

You can obtain copies of the *Federal Register* notice and supporting materials at www.epa.gov/guide/construction or from EPA's E-Dockets at www.epa.gov/edocket. The notice will also be available at the Federal Register's website at www.gpoaccess.gov/fr/. Additionally, you can request copies by contacting the Office of Water Resource center at 202-566-1729 or sending an e-mail to center.water-resource@epa.gov.

For Further Information:

Contact Ms. Pamela Barr at (202) 566-0430 or send her an email at barr.pamela@epa.gov.