



February 26, 2009

USEPA Docket Center
Environmental Protection Agency
Docket Number EPA-HQ-OW-2008-0465
Mailcode 2822T
1200 Pennsylvania Ave., NW
Washington, DC 20460

RE: Comments regarding EPA's Proposed Effluent Limitation Guidelines for the Construction and Development Industry; Docket No. EPA-HQ-OW-2008-0465.

Dear Sir or Madame:

The American Council of Engineering Companies (ACEC) – the business association of the nation's engineering industry – appreciates the opportunity to comment on the EPA's Proposed Rule: Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category (C&D ELGs). Our members include firms that design building and industrial projects and engage in land development practices. Site plans and designs developed by our firms generally optimize environmental protection and resource conservation, and in most cases result in projects that exceed federal, state, or local environmental regulations.

ACEC is the business association of America's engineering industry, representing nearly 6,000 independent engineering companies throughout the United States engaged in the development of America's infrastructure. ACEC member firms represent the broad spectrum of the industry, from very large firms to small, family-owned businesses. Overall, our members employ well over 300,000 people throughout the 50 states. Founded in 1910 and headquartered in Washington, D.C., ACEC is a national federation of 51 state and regional organizations.

Most building projects designed by our firms require National Pollutant Discharge Elimination System (NPDES) permits for the storm water discharges associated with construction activities. EPA's proposed C&D ELGs will tend to complicate these NPDES permits by mandating unreasonable and unjustified additional duties, practices, compliance costs, and liabilities, resulting in few additional environmental benefits above and beyond those of existing NPDES permits.

ACEC is concerned about the serious effects that EPA's current proposal would have on our client builders and developers. According to homebuilding industry estimates, EPA's proposed C&D ELG Option 2 would add a minimum additional cost of \$15-45,000 per acre. We urge EPA must consider the following before finalizing the C&D ELG rulemaking:

- C&D ELG Must Be Proportionate to the Environmental Risks

Stormwater discharges associated with construction activity are already heavily regulated and largely controlled, contributing a very small percentage of sediment to receiving streams and waters. EPA's regulatory proposal appears to be disproportionate to construction activities and purported alleged environmental risks. We urge that the agency more thoroughly assess the benefits of the existing NPDES permit program, as well as additional environmental benefits resulting from other state and local regulations addressing sediment. EPA should also review its data and recognize that the existing contribution of sediment from storm water discharges from construction sites is small relative to all other unregulated sources.

- A C&D ELG Must Be Adjustable to Site Conditions. The current NPDES program for construction site discharges recognizes and provides sufficient flexibility in the design and implementation of Best Management Practice (BMPs) and other pollutant control. This approach takes into account the random and intermittent nature of precipitation and the variability of site attributes such as soils type and topography by allowing. Such an approach has fostered the implementation of appropriate controls on a state and regional basis, while guarding against inappropriate and/or overly excessive requirements. We continue to support that approach, and any new federal requirements must maintain sufficient flexibility to account for the variability of conditions encountered on construction sites across the country, as well as fit within the existing CGP framework that has proven to be effective.

- Enhancing the Existing BMP Approach is Preferable. ACEC supports the use of erosion and sediment control BMPs. BMPs have been proven effective in practice, are well known to the regulated community, and are cost effective. They should continue to form the foundation for any future ELG requirements. EPA's Option 1 builds on this framework and will help to ensure, on a national basis, that minimum BMPs are considered and, as appropriate, implemented. We urge EPA to work with the design and construction community to further develop Option 1 so that such an approach can further reduce sediment discharge while maintaining the necessary flexibility to design and build projects at reasonable costs and within reasonable timelines.

- Numeric Limits Are Inappropriate for Construction Sites. EPA's Options 2 and 3 require dischargers to meet a stringent numeric turbidity limit. ACEC is opposed to these options for several reasons. First, the science of stormwater control, especially at construction sites, is still evolving and varies from site to site across the country. Technologies that work well at one site might not work at others. Numeric limits that may work in one climate, topography, or region may be completely inapplicable and/or

unachievable under other circumstances. Second, there is minimal data on the effectiveness of numeric limits to meet desired environmental outcomes. Third, meeting numeric end-of-pipe limits is resource intensive and difficult to implement nationally. Lastly, EPA is not obligated by law to promulgate end-of-pipe numeric limits and could face difficulty justifying such an approach based on the data supporting this proposal.

• 13 NTU Limit is Unattainable; Required Use of Advanced Treatment is Inappropriate. EPA has proposed an unsupported numeric limit of 13 NTU. The naturally occurring turbidity in most streams and lakes nationwide is much higher than 13NTU. We understand that EPA is able to demonstrate only one way to consistently meet a 13NTU limit -- through the installation of Active Treatment Systems (ATS) which require chemical treatment of storm water before it is discharged from a site. Chemical treatments for erosion control and pollutant removal from stormwater runoff have not been thoroughly evaluated or used in much of the country outside certain isolated circumstances that are not “nationally applicable.” ATS technologies are not a cost effective or reasonable option for most construction sites, particularly when compared to properly implemented erosion and sediment control BMPs. There are numerous reasons why ATS is not a viable option nationally, including the high costs associated with additional retention ponds and tanks on site, constant and ongoing monitoring, and constant staffing and oversight. We urge EPA to drop its consideration of a 13 NTU limit and not to select Options 2 or 3 for the final C&D ELG rulemaking.

EPA’s proposed ELG rule raises serious concerns regarding the options for numeric effluent limits and active treatment systems. ACEC urges EPA to focus on a BMP-based and flexible approach (Option 1) to ensure that a final ELG is economically achievable, effective in reducing pollution from storm water discharges, and workable on a national basis. We believe the agency should focus on implementing effective erosion and sediment control BMPs that are practical and consistent with existing state and local permit requirements.

We recognize that EPA is under a court-ordered deadline to complete action on this rulemaking by December 1, 2009. We offer our assistance to the agency to work with all interested parties during the comment review as the process moves forward. Thank you for the opportunity to provide comments on the proposed ELG rule. If you have any questions or would like to discuss our comments, please feel free to contact me at dshea@acec.org or 202-347-7474

Cordially,

Diane S. Shea
Director, Environmental & Energy
Programs