

**Construction and Development Effluent Limitations Guidelines
Report on Status of Rulemaking – Due April 1, 2009**

Pursuant to the Permanent Injunction and Judgment in *Natural Resources Defense Council, et al. v. U.S. Environmental Protection Agency*, CV 04-8307-GHK (C.D. Cal.), the U.S. Environmental Protection Agency (“EPA” or “the Agency”) provides this status report concerning its actions during the period of December 2008 through March 2009 to take final action with respect to effluent limitations guidelines and new source performance standards for the construction and development industry.

1. As EPA noted in its previous status report, EPA published in the Federal Register on November 28, 2008 a proposed regulation to establish technology-based effluent limitation guidelines and new source performance standards for the construction and development industry.
2. During this reporting period, EPA has met with several stakeholders to discuss the proposed regulation. Some of the stakeholders consider the proposed regulation to be too costly, infeasible and would like the Agency to consider less stringent requirements. Other stakeholders consider the proposed regulation to not do enough to control stormwater discharges from construction sites.
 - a. EPA met with representatives of the Associated General Contractors of America on December 10, 2008.
 - b. EPA met with representatives of Spectra Energy and the Interstate Natural Gas Association of America on January 14, 2009 to discuss the construction of pipelines.

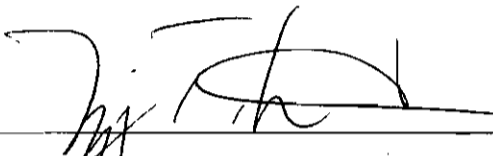
- c. EPA met with the Small Business Association Roundtable on January 23, 2009.
 - d. EPA met with representatives of the National Association of Home Builders and the Associated General Contractors of America on February 3, 2009.
 - e. EPA discussed the proposed regulation at the International Erosion Control Association's conference on February 10, 2009.
 - f. EPA met with representatives of Natural Resources Defense Council and Waterkeeper Alliance on February 26, 2009.
 - g. EPA discussed the proposed regulation at the Northwest Environmental Business Council conference on March 3, 2009.
3. EPA received numerous requests to extend the comment period for the proposed regulation. These requests came from several stakeholders and trade associations, such as the National Association of Home Builders, the Associated General Contractors of America, the American Chemistry Council and the American Petroleum Institute. EPA denied these requests citing the deadline, established in the Order at *Natural Resources Defense Council, et al. v. U.S. Environmental Protection Agency*, CV 04-8307-GHK (C.D. Cal.), to promulgate and publish this rule by December 1, 2009. As stated above, EPA has met with several of these stakeholders and trade associations since publication of the proposal and has expressed a willingness to meet with any of the others to discuss their concerns regarding the proposed regulation.
4. EPA has met with the Federal Energy Regulatory Commission (FERC) to discuss the proposed regulation and FERC's current regulatory program that addresses stormwater discharges from the construction of energy projects approved by FERC.

5. EPA has met with the United States Department of Transportation to discuss implications of the proposed regulation on road and highway construction projects.
6. EPA has continued to gather data to add to the rulemaking record, including, but not limited to:
 - a. Data that represents the concentration of pollutants, such as sediment and turbidity, from construction projects that are implementing erosion and sediment controls and pollution prevention measures;
 - b. Performance and cost data from advanced treatment systems;
 - c. Data to update and enhance the profile of the construction sector; this data will be used in EPA's evaluation of costs and economic impacts for the final rule.
7. The comment period closed on February 26, 2009. EPA received several hundred comments from a wide range of industry representatives, federal agencies, state and local governments, non-governmental organizations and individuals. EPA is currently reviewing the comments received and is engaged in a process to determine whether the proposed regulation should be modified. EPA is also considering whether additional analyses or refinements of its analyses are appropriate.
8. EPA's new Administrator Lisa P. Jackson was confirmed on January 23, 2009. EPA does not yet have a designated Assistant Administrator for the Office of Water. The Office of Water has begun the process of briefing the Agency's new leadership on the proposed regulation. Because of the complexity of the rule and the comments received, the Office of Water will conduct additional briefings of the new leadership regarding the proposed regulation in order to decide whether there should be

modifications to the proposed regulation in light of the comments received and all other available information.

9. The preceding paragraphs describe EPA's progress in meeting the December 1, 2009 milestone deadline. The Agency has met all project milestones required to be completed to date. The next status report to the Court is to be filed by August 1, 2009.

The undersigned, Mary T. Smith, is Director of the Engineering and Analysis Division of EPA's Office of Water. The Engineering and Analysis Division has primary responsibility for discharging EPA's duties under this court order.


3/31/05

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