

FIRST NATIONAL EFFLUENT LIMIT FOR CONSTRUCTION RUNOFF PROPOSED BY EPA.

A proposed rule released by the U.S. Environmental Protection Agency (EPA) Nov. 19 would establish the first national effluent (discharge) limit for stormwater runoff from construction sites. Contractors would have to meet EPA's technology-based "floor" on most all sites by installing and maintaining a range of erosion and sediment controls that "are generally recognized and accepted as effective" best management practices (BMPs). Construction sites disturbing 10 or more acres of land at a time would also need to install sediment basins to treat their stormwater discharges. In addition, a strict numeric limit on the allowable level of turbidity would apply to sites of 30 acres or more that are located in rainy areas where the soil has high clay content.

AGC is analyzing EPA's proposal with an eye to the underlying data on the costs and benefits of the rule and will keep chapters and members informed of the Association's actions. The construction and development (C&D) effluent limitation guideline (ELG) proposal and other information are online at <http://www.epa.gov/waterscience/guide/construction/>. EPA will accept public comment for 90 days after the proposal appears in the Federal Register; publication is scheduled for November 28, 2008.

Upon early review, it appears that AGC's advocacy efforts and close work with EPA staff have produced a workable proposal that recognizes the importance of providing contractors with the flexibility to select BMPs to fit the conditions of the site. AGC members brought about significant improvements to EPA's original ELG framework by contributing to the critically important small business review process. AGC remains concerned, however, about the underlying analysis that supports EPA's preferred regulatory Option 2 (see below) that would force contractors to use expensive chemical treatment and filtration systems on many job sites.

The C&D ELG options being considered by EPA are as follows—

Option 1 is a non-numeric ELG, based on the use of "effective" erosion and sediment control practices to minimize and control the discharge of pollutants in stormwater and other wastewater from construction sites. The rule identifies a number of acceptable erosion-control technologies (such as phasing of construction work) and specifies the bare minimum sediment controls that must be used onsite (including perimeter controls and inlet protection); but ultimately, the site operator would decide which type of controls to use to minimize sediment runoff and reduce turbidity. In addition, sites with common drainage points serving 10 or more disturbed acres at one time would need to contain and settle sediment from their stormwater runoff per EPA's sediment basin design and performance standard. Alternatives to a sediment basin would be authorized where approved by the permitting authority.

Option 2 is a numeric discharge limit for turbidity of 13 NTU (nephelometric turbidity units) that would require site operators to monitor stormwater running off certain larger construction sites to demonstrate compliance. Specifically, under Option 2, the turbidity limitations plus the Option 1 requirements would apply to any site nationwide that meets

all three of the following criteria: (1) average soil clay content of more than 10 percent; (2) annual R factor of 50 or more; and (3) has a size of 30 or more acres. Rainfall erosivity factor (“R factor”) considers the amount and intensity of precipitation expected during the time the earth will be exposed.

The 30-acre threshold in Option 2 is based on the total size of the site, not the amount of acreage disturbed at any one time. EPA is soliciting comment on alternative combinations of rainfall, clay content and acreage limitations that would be more appropriate regulatory approaches.

Option 3 applies the numeric discharge limit for turbidity (in addition to the Option 1 requirements) to all sites with common drainage points serving 10 or more disturbed acres at one time. This option would not take soil type or rainfall intensity into account. EPA has based its turbidity limit on the use of advanced treatment systems (ATS), which consist of polymer-assisted clarification followed by filtration. In order to meet the proposed numeric turbidity limit, sites would need to chemically treat and filter their stormwater discharges. EPA is also taking comment on a higher turbidity limit, in the range of 50 to 150 NTUs, which it said could be achieved using passive treatment. To learn more about why EPA is promulgating a C&D ELG and AGC’s close involvement in the Agency’s effort, see the latest features in AGC’s Environmental Observer newsletter online at <http://newsletters.agc.org/environment/>.