

Background/Summary of Effluent Limitation Guideline:

- On Nov. 28, 2008, EPA published proposed Effluent Limitation Guidelines (ELGs), a new storm water regulation that will have an estimated annual cost of \$1.9 billion. Comments are due by February 26, 2009.
- The proposed ELGs are part of a court order and EPA must finalize them by Dec. 1, 2009.
- Once finalized, the ELGs will be implemented through existing State- and EPA-issued National Pollutant Discharge Elimination System (NPDES) permits; and will have a direct and significant impact on virtually all aspects of the construction industry.
- EPA is considering three regulatory options:
 1. Prescriptive sediment and erosion controls (i.e., BMPs);
 2. Prescriptive sediment and erosion controls (i.e., BMPs) PLUS a numeric turbidity standard for construction on certain larger sites that meet rainfall and soil-type conditions;
 3. Prescriptive sediment and erosion controls (i.e., BMPs) PLUS a numeric turbidity standard for all sites that disturb at least 10 acres.
- For Options 2 & 3, EPA is considering a numeric turbidity limit of 13 NTU, which will require monitoring and the use of Active Treatment Systems (ATS) with an estimated compliance cost of approximately \$15,000 – 45,000 per acre, according to industry estimates. Due to inherent variability of conditions and ATS performance, EPA cannot guarantee that such systems always will achieve the 13 NTU mandate, exposing thousands of contractors to legal enforcement actions.
- Once finalized, the ELGs will apply to all land disturbing activities, including construction of highways, streets, bridges, tunnels, pipelines, transmission lines and residential, commercial, and industrial structures.
- The ELGs will also impact the construction activities conducted by state and local governments, as well as how they administer and enforce their existing erosion control & storm water management programs. EPA's proposed end-of-pipe NTU limits also could severely impact new construction and regional development.

NAHB Position

- *The building community supports a reasonable erosion and sediment control approach, and we believe EPA's Option 1 (with appropriate editing and clarification) could satisfy EPA's legal obligations. But we strongly oppose a numeric effluent limit that mandates the use of ATS, which is unproven on a national scale and will not guarantee compliance with the 13 NTU proposed legal limit.*

- The proposal is currently open to public comment through February 26, 2009. Affected parties, including state and local governments and HBAs, must act quickly and submit comments opposing any numeric treatment standard (Options 2 and 3).
- EPA has not proposed any “Post Constuction” requirements as part of this ELG proposal. We agree with EPA that post construction issues are not appropriately addressed through an ELG rulemaking and support EPA in this aspect of its proposal.
- NAHB has developed a draft sample comment letter for your use, which is available at www.nahb.org/ELG.