

NAHB's Concerns with the Proposed Effluent Limitation Guidelines

Cost and benefits

- EPA significantly underestimated the overall costs associated with its proposed options, as it failed to account for all of the sites that will be affected, miscalculated project duration, did not include full treatment costs, and failed to consider the full administrative burden on state and local governments, to name a few.
- Likewise, the agency grossly overestimated the sediment removal that would be achieved via the ELGs, as it gave no credit to measures that are already required, and estimated that the average sediment discharge from construction sites in the US was unrealistically high and that sediment removal would also be high, thereby skewing the overall environmental benefit.
- As a result, NAHB estimates that compliance with, and administration of, Option 2 will actually cost approximately \$6.9 billion/yr, not the \$1.9 billion/yr estimated by EPA, yet the accrued benefits total significantly less than EPA's claimed \$332 million.
- In addition to these costs, the proposed ELG will have significant financial and staffing impacts on state and local governments – impacts that were not included in EPA's analysis.
- NAHB's economic analysis shows that implementation of Option 2 will require an additional 614 full-time state and local employees nationally, an increase of 30 percent over current staffing levels and \$4 million/yr beyond current program resources. In addition, states would be required to invest \$593 million in compliance costs for their own, state-sponsored construction projects.
- Due to the extreme chasm between overall costs and benefits, if enacted as proposed, this ELG will have the worst excess of costs over benefits of any federal regulation since Office of Management and Budget began keeping records in 1992.
- Because the total current discharges from all construction sites account for less than 0.1 percent of all sediment discharges to receiving waters nationally, the proposal represents an overly aggressive regulatory approach to address a *de minimus* level of pollutants, which will ultimately result in limited benefit.

Technological Uncertainties

- Due to the varying nature of soils, topography, rainfall, etc. across the nation, a single numeric limit is not realistic or suitable for effectively controlling storm water discharges.
- EPA provided no data that demonstrated that 13 NTU can be met on a regular basis under a variety of conditions, yet Option 2 assumes this.
- Advanced Treatment Systems (ATS), the mechanism that would have to be employed to reach a 13 NTU limit, are largely unstudied, costly, and their efficacy is variable. The agency also made little attempt to assess the impact of the chemicals that are required to be used in these systems.
- EPA failed to address a number of factors that will determine the feasibility, costs, and workability of the proposal, including sampling timing and protocols, toxicity of chemicals, market availability of ATS, inconsistency with Low Impact Development, etc.

State Comments

- Twenty-one states submitted comments on the ELG. Twenty of those states opposed numeric limits. The other state, Utah, was silent on the issue because the entire state would not meet the soils or rainfall requirements, thus would not have to meet the numeric value.
- State regulators overwhelmingly are opposed to a national mandatory numeric limit. They fear greatly increased workload, and doubt that a single numeric limit would be applicable in all areas of their state, let alone the entire country.
- Several states currently use action level values, and some states indicated that an action value would be less burdensome than an absolute limit while also helping pinpoint sites that are having problems.
- Option 1 with some caveats is the preferred option for most states that submitted comments.

A Better Option

- NAHB has developed a compromise alternative that it believes will help to confirm that BMPs and sediment ponds are effective in controlling discharges from larger sites.
- NAHB's "action level approach," which has been presented to EPA, would streamline implementation, ensure environmental protection, and serve as a national baseline while recognizing the vast variability in soil type, rainfall, etc. across the nation. This action level approach is intended to supplant the numeric effluent limits contained in Options 2 and 3.
- NAHB's modified Option 1/action level approach continues to rely on the use of BMPs and sediment ponds, but it also establishes an action level for discharges from projects disturbing 30 or more acres. This means any operator of a site discharge that exceeds the action level must revise his/her BMPs and/or take other appropriate responsive action to reduce the amount of pollutants in the storm water discharge to below the action level.
- Adoption of a modified Option 1/action level approach will result in significant cost savings to state and local governments, as shown below.

	Annual FTEs Required		Annual \$ Required (millions)	
	State	Local	State	Local
EPA's Proposed Option 2	508.7	106.8	38,007	9,726
Action Level Approach	93.4	86.3	6,921	7,431

- For states, the 509 additional FTEs represent a 74 percent increase in current construction stormwater program staff (estimated by EPA to be 689 FTEs). The NAHB action level alternative, in contrast, would require only 93 additional FTEs – an increase of only 13 percent. Likewise, the overall compliance costs to site operators would be reduced from \$24,211 to \$1,516/acre.
- The net environmental benefits of the action level approach are comparable to EPA's more expensive options, but at a much lower cost.