

NAHB's Position

- *NAHB supports the use of Construction General Permits with reasonable and flexible erosion and sediment control requirement that can be tailored to site-specific conditions to manage construction site stormwater discharge.*
- Any provisions related to the Construction and Development Industry Effluent Limitation Guideline (C&D ELG) should not be included in the CGP. However, EPA's draft CGP proposes to implement its C&D ELG, published on December 1, 2009. EPA asserts that after it establishes a new effluent limitation guideline the standard must be incorporated into subsequent NPDES permits, as appropriate. However, the C&D ELG is incomplete because EPA has not addressed the issues it promised to address prior to February 15, 2012 and, NAHB asserts, will cause significant confusion and additional litigation if the CGP is finalized with many of the C&D ELG provisions included. Hence, NAHB believes the C&D ELG provisions should not be included in any new CGP prior to resolution of the 7th Circuit litigation.
- NAHB recommends that EPA extend the 2008 CGP for its full five-year term, which would extend the current CGP to June 30, 2013. This would resolve the issues in the bullet above and provide EPA with much needed time and flexibility to further streamline the permits, and incorporate the [revised?] final C&D ELG requirements, while allowing the court (hopefully) to fully adjudicate all issues associated with the pending C&D ELG lawsuit (or for EPA to settle the issues with Plaintiffs to avoid protracted litigation).
- NAHB is concerned with the restrictive requirements in the Draft CGP as outlined in detail in the attached chart:
 - NAHB is concerned with the Water Quality Based Effluent Limit (WQBEL). The WQBEL provision currently proposed in the draft CGP will require dischargers exceeding the 10 acre disturbance threshold to monitor construction site discharge. This provision will add a cost burden due to the monitoring needs. In addition, there is a difficulty of knowing how pollutant contributions from one particular site compares to contributions from the rest of the watershed, and whether any deleterious impact in the receiving water is due to construction site discharge. The TMDL program should be adequate to address and mitigate impacts on impaired waters from construction sites. For the reason stated above, NAHB urges EPA to remove this provision from the CGP.
 - EPA's new requirement mandating buffers of 50 foot (or installing the compliance alternatives) around waters of the US and the steep slope provisions are both highly prescriptive and limits flexibility in designing stormwater controls for such areas.
 - EPA should provide an alternative approach that is less burdensome for steep slopes and buffers around waters of the US. NAHB presented an alternative in the attachment.

- Stabilization requirements in the draft CGP are stringent and do not account for limitations on site that will limit an operators ability to initiate and complete stabilization. Therefore, NAHB recommends that EPA retain that stabilization measures in the current EPA CGP.
- *EPA's needs to make the permit more efficient and effective in reducing the amount of pollutants discharged into waters of the U.S., while also reducing burdens on those who must comply. NAHB recommends the following:*
 - ***Adopt a Single Lot Permit:*** The current stormwater permitting program is burdensome and duplicative – especially for builders who are simply building one single family home on a lot within a larger subdivision. EPA is strongly urged to take the time needed to develop provisions to streamline the permitting process. Reissuing the CGP provides an obvious and timely opportunity to clarify the permit process and provide ways to improve overall compliance with EPA's stormwater program. A single lot permit will allow builders who construct homes on single lots to better understand their permit obligations, thereby improving their ability to implement the necessary practices to reduce their impacts.
 - ***EPA should adopt a "no discharge" certification, which would provide an incentive to design and construct projects to eliminate stormwater discharges.*** A no discharge certification would also recognize that in some areas of the country and during certain seasons there is little or no likelihood of precipitation or runoff, thus, would allow construction site operators in those situations to forego the installation of costly control practices and compliance with unnecessary permit conditions. This could be modeled on the "no discharge" certification provided for the CAFO industry.

All these recommended programmatic improvements are in line with the *President's Memorandum on Regulatory Flexibility, Small Businesses and Job Creation* and the Administration's goals to reduce unnecessary regulatory burdens and limit impacts on small businesses, improve overall compliance, and ensure appropriate environmental protection.

for the purposes of judicial review as of 1 p.m. Eastern Standard Time, December 15, 2009. Under Section 509(b)(1) of the Clean Water Act (CWA), judicial review of today's effluent limitations guidelines and new source performance standards may be obtained by filing a petition in the United States Circuit Court of Appeals for review within 120 days from the date of promulgation of these guidelines and standards. Under Section 509(b)(2) of the CWA, the requirements of this regulation may not be challenged later in civil or criminal proceedings brought to enforce these requirements.

List of Subjects in 40 CFR Part 450

Environmental protection, Construction industry, Land development, Erosion, Sediment, Stormwater, Water pollution control.

Dated: November 23, 2009.

Lisa P. Jackson,
Administrator.

■ 40 CFR part 450 is added as follows:

PART 450—CONSTRUCTION AND DEVELOPMENT POINT SOURCE CATEGORY

Subpart A—General Provisions

Sec.

450.10 Applicability.

450.11 General definitions.

Subpart B—Construction and Development Effluent Guidelines

450.21 Effluent limitations reflecting the best practicable technology currently available (BPT).

450.22 Effluent limitations reflecting the best available technology economically achievable (BAT).

450.23 Effluent limitations reflecting the best conventional pollutant control technology (BCT).

450.24 New source performance standards reflecting the best available demonstrated control technology (NSPS).

Authority: 42 U.S.C 101, 301, 304, 306, 308, 401, 402, 501 and 510.

Subpart A—General Provisions

§ 450.10 Applicability.

(a) This part applies to discharges associated with construction activity required to obtain NPDES permit coverage pursuant to 40 CFR 122.26(b)(14)(x) and (b)(15).

(b) The provisions of § 450.22(a) do not apply to discharges associated with interstate natural gas pipeline construction activity.

(c) The New Source Performance Standards at § 450.24 apply to all new sources and are effective February 1, 2010.

(d) The BPT, BCT and BAT effluent limitations at § 450.21 through 450.23

apply to all sources not otherwise covered by paragraph (c) of this section and are effective February 1, 2010.

§ 450.11 General definitions.

(a) *New Source*. New source means any source, whose discharges are defined in 40 CFR 122.26(b)(14)(x) and (b)(15), that commences construction activity after the effective date of this rule.

(b) [Reserved]

Subpart B—Construction and Development Effluent Guidelines

§ 450.21 Effluent limitations reflecting the best practicable technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any point source subject to this subpart must achieve, at a minimum, the following effluent limitations representing the degree of effluent reduction attainable by application of the best practicable control technology currently available (BPT).

(a) *Erosion and Sediment Controls*. Design, install and maintain effective erosion controls and sediment controls to minimize the discharge of pollutants. At a minimum, such controls must be designed, installed and maintained to:

(1) Control stormwater volume and velocity within the site to minimize soil erosion;

(2) Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and streambank erosion;

(3) Minimize the amount of soil exposed during construction activity;

(4) Minimize the disturbance of steep slopes;

(5) Minimize sediment discharges from the site. The design, installation and maintenance of erosion and sediment controls must address factors such as the amount, frequency, intensity and duration of precipitation, the nature of resulting stormwater runoff, and soil characteristics, including the range of soil particle sizes expected to be present on the site;

(6) Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible; and

(7) Minimize soil compaction and, unless infeasible, preserve topsoil.

(b) *Soil Stabilization*. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have

permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed within a period of time determined by the permitting authority. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the permitting authority.

(c) *Dewatering*. Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

(d) *Pollution Prevention Measures*. Design, install, implement, and maintain effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented and maintained to:

(1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

(2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater; and

(3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

(e) *Prohibited Discharges*. The following discharges are prohibited:

(1) Wastewater from washout of concrete, unless managed by an appropriate control;

(2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds and other construction materials;

(3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

(4) Soaps or solvents used in vehicle and equipment washing.

(f) *Surface Outlets*. When discharging from basins and impoundments, utilize outlet structures that withdraw water from the surface, unless infeasible.

§ 450.22 Effluent limitations reflecting the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any point source subject to this subpart must achieve, at a

Proposed CGP Requirement	Corresponding C & D ELG Rule Requirements	NAHB's position/ comment	Proposed Solution
<p>1.0 How to obtain permit coverage under the CGP</p> <ul style="list-style-type: none"> • 1.1 Applicability of this permit • 1.2 Person responsible for obtaining permit coverage – joint and severable liability • Table 1.1 new source must submit NOI 30 days prior to commencing earth disturbing activities 	<p>450.10(a) Applicability</p>	<p>Joint and several liability, holds developer and individual builders liable for any violation of the terms of the Proposed CGP even though they may not have operational control over all the sites.</p> <p>30 day waiting period is a significant change from the 2008 CGP which had a 7 day waiting period. The longer waiting period complicates and delays project initiation.</p>	<p>Retain language in the 2008 CGP. Remove language on joint and severable liability.</p> <p>EPA should retain the 7 day waiting period in the 2008 CGP. If the 7 day period cannot be retained for all permittees, at a minimum, it should continue to apply for all small projects (e.g., those disturbing less than 10 acres).</p>
<p>2.1 Erosion and Sediment Control Requirements 2.1.1 Avoid Sensitive Areas:</p> <ul style="list-style-type: none"> • Mark off areas of disturbance, no-disturbance, and any sensitive areas • Avoid steep slopes (i.e. slopes of 15% or greater), unless infeasible. Where avoiding is not possible comply with design requirements in Part 2.1.4.2 • Minimize stream crossings 	<p>450.21(a) Erosion and sediment controls 450.21.(a)(2) Control sw discharges...to minimize erosion at outlets and to minimize channel & stream bank erosion 450.21(a)(4) Minimize disturbance of steep slopes 450.21(a)(6) Provide and maintain natural buffers... 450.21(a)(7) Minimize soil compaction...</p>	<ul style="list-style-type: none"> • 15% is a low threshold for a definition of steep slope. • Slopes are not regarded as exceptionally steep in most stormwater management manuals until they are greater than 25%. • EPA has not defined a standard method to calculate slope • Minimizing stream crossings is not feasible under some circumstances. 	<p>Steep slope should be defined as 25% Compliance with alternative design requirements (Part 2.1.4.2.a -2.1.4.2.c) should apply to sites with greater than 25% slope Method for calculating steep slope should be defined. In some jurisdiction steep slope definition includes length and slope.</p> <p>Delete section on 'minimize stream crossings' because it may not be consistent with stream protection methods. Stream crossings are usually covered through separate permits.</p>

<p>2.1.2 Provide natural riparian buffers</p>	<p>Establishes 3 compliance alternatives for meeting buffer requirements</p> <p>Stabilization requirements: Stabilization must be initiated immediately on exposed portions of a site where earth disturbing activities have permanently or temporarily ceased and will not resume for a period exceeding 14 calendar days.</p> <p>Stabilization must be completed within 7 calendar days of initiating stabilization on exposed portions of a site.</p> <p>Criteria are proposed for both vegetative and non-vegetative stabilization that are based on the Revised Universal Soil Loss Equation's (RUSLE) cover management factor, or "C-factor".</p> <p>Criteria for vegetative cover, and design, installation and maintenance of vegetative cover methods must be followed.</p>	<p>450.21 (a) (6) Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible; and</p>	<ul style="list-style-type: none"> • The compliance alternatives for the 50 foot buffer requirement are too prescriptive. The sediment removal values presented in tables 1-8 are unrealistically high for many rain events. For most of these tables, the fine clay sediment is being predicted to be removed at over 80%, but this is a completely impractical estimate. • Our concern is that with certain soil types, natural vegetation, locations, etc. there will be no feasible equivalent BMP that will theoretically remove sediment to the level that is calculated in the tables • Consideration to the type of rain event, intensity, or duration has not been made, in making these percentage removal predictions in tables 1-8. • Buffer requirements in arid semi arid regions may conflict with local municipal entities regs that are designed to discourage wasteful uses of water 	<p>Retain language in the C&D rule. Provide guidance on compliance strategies for the C&D ELG buffer requirements.</p> <p>We suggest that, in situations where it is infeasible to implement a full 50 foot buffer of natural vegetation, and where the estimated sediment removal for that buffer from the appropriate table is greater than 80%, that BMP for the site (in combination with any remaining buffer) need only achieve greater than 80% theoretical removal.</p>
<p>2.1.3 Requirements Applicable to All construction Sites</p>	<ul style="list-style-type: none"> • General design requirements for a 2-year 24 hour design storm standard for stormwater controls • General installation requirements: Install stormwater controls before construction starts • Stabilize entrance and exit 	<p>450.21(a) Design, install, maintain effective erosion & sediment controls...</p> <p>450.21(a)(5) Minimize sediment discharges from the site...</p> <p>450.21(a)(6) Provide and maintain natural buffers...</p> <p>450.21(a)(7) Minimize soil compaction...</p> <p>450.21(d)(1) Pollution Prevention</p>	<ul style="list-style-type: none"> • Difficult to design all BMPs for a 2 year 24 hour storm event due to the fact that site conditions and variables can differ greatly. • Sometimes installing controls before construction starts is infeasible. For example phased projects may not necessitate construction of controls before 	<ul style="list-style-type: none"> • Require sizing the sediment pond for a 2-year, 24 hour storm where feasible. Impractical to design all the BMPs for a 2 year 24 hour storm. • Allow flexibility in the timing of sediment control installation by providing examples of situation where installation of controls before construction starts maybe infeasible.

	points, and eliminate track-out from vehicles, and wheel wash down requirements	Measures: Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;	construction. <ul style="list-style-type: none"> Stabilizing 50 ft of construction entrance and exit, as a minimum, is not feasible on sites with limited area Difficult to ‘eliminate’ track out from vehicles. Sec. 2.1.3.4.a.i already establishes controls for controlling track out of sediment. 	<ul style="list-style-type: none"> Remove 50 ft – not appropriate for residential projects where homes are built with 20 or 30 foot setbacks to streets. Small sites are limited by size on the permitted building site, thus may have limited opportunities to install 50 ft stabilized construction entrances at the site. Remove the word ‘eliminate’ from section 2.1.3.7.b and replace with ‘minimize’. Add the term ‘accumulation’ after ‘No visible signs of soil tracking... (accumulation) ...from vehicles should be present....’
2.1.4 Requirements Applicable to Specific Stormwater Controls 2.1.4.1 Constructed Stormwater Conveyance Channels 2.1.4.2 Steep Slope Controls 2.1.4.3 Storm drain inlet protection 2.1.4.4 Sediment basins and impoundments 2.1.4.5 Chemical Treatment	<ul style="list-style-type: none"> Design channels to avoid disturbed areas, and to reduce erosion Stabilize sw conveyance channels Steep slope controls if avoidance of 15% is infeasible – divert flows, use specialized controls, stabilization requirements Storm drain inlet protection Sediment basin requirements Chemical treatment 	450.21(a) (1) Control stormwater volume and velocity within the site to minimize soil erosion; (No corresponding ELG requirement on storm drain inlet. Such language was removed from the proposed ELG because the need for storm drain inlet protection depends on site configuration) 450.21 (f) surface outlets	See comment for section 2.1.1 Storm drain inlet protection measures do not take into consideration scenarios where permittee does not have access to the inlet. The prescriptive language of this section does not take into account storm drain inlets that do not discharge offsite before additional treatment. It appears that inlet protection must be provided for all inlets even if it drains to a sediment trap or basin	Remove the word ‘any’ from this section 2.1.4.3 Change the word “access” to jurisdiction”, “authority”, or “easements.” Add language to indicate that if storm inlet drains to a treatment device, additional inlet protection measures are not required.
2.2 Stabilization Requirements	<ul style="list-style-type: none"> Deadline to initiate and complete Stabilization criteria and deadlines for disturbances to sensitive areas Deadlines for arid/semi-arid Criteria for vegetative and non-vegetative stabilization 	<ul style="list-style-type: none"> 450.21(a)(3) Minimize soil exposed 450.21(b) Soil stabilization 	<ul style="list-style-type: none"> The variety of stabilization requirements in the CGP seem confusing In certain instances completing stabilization within 7 days is too restrictive, specifically, when projects are very large, remote (limits availability of contractors 	<ul style="list-style-type: none"> EPA should retain language in the existing CGP as the appropriate timeline for stabilization EPA should allow the engineer/site operator to determine and document extensions in the SWPPP when a 7 day deadline cannot be met. For example, soil and weather conditions will limit the

			<p>and supplies), bad weather, and/or when terrain or soil conditions are difficult. A reasonable alternative to the 7 day requirement should be provided.</p> <ul style="list-style-type: none"> • Three days to complete vegetative cover stabilization on steep slope is too restrictive. • ESA should be used for projects that occur in critical habitat. 	<p>ability of a site operator to initiate stabilization.</p> <ul style="list-style-type: none"> • Timelines should be used as guidance but exemptions should be allowed in cases where unusual conditions or scenarios do not allow for timely stabilization. • Remove additional stabilization criteria for projects in critical habitat.
2.3 Pollution Prevention Standards	<ul style="list-style-type: none"> • Fueling and maintenance of equipment or vehicles • Locate outside of buffer zones and flag and designate areas to be used for fueling • design requirement: for onsite fueling and maintenance, provide secondary containment structure or other means to prevent discharge of spilled or leaked chemicals • Washing of equipment or vehicles • Staging and storage areas • Washing applicators and containers used for paint, concrete, or other materials • Storage, handling, and disposal of construction waste 	<p>450.21(d) <i>Pollution Prevention Measures</i>. Design, install, implement, and maintain effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented and maintained to:</p> <p>(1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;</p> <p>(2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater; and</p> <p>(3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures</p>	<p>A definition for ‘appropriate secondary containment’ is not included in the CGP</p>	<p>EPA should describe ‘appropriate secondary containment’. It is not clear if cover and berms are considered to be appropriate secondary containment or if drain pans and drop cloths must be used in addition to the cover and berms. If a spill kit is made available onsite, additional containment should not be necessary.</p> <p>It will be impractical for small sites to implement secondary containment for fueling and maintenance, since costs and disturbance of installation of such a system will be greater than any potential clean up of a spill.</p> <p>A spill kit should suffice to mitigate any accidental spills.</p>
2.3.1 Prohibited Discharges 2.3.2 Pollution Prevention Standards	<p>2.3.1. Prohibited Discharges. You are prohibited from discharging the following from your construction site:</p> <p>2.3.1.1 Wastewater from washout</p>	<p>450.21 (e) <i>Prohibited Discharges</i>. The following discharges are prohibited:</p> <p>(1) Wastewater from washout of concrete, unless managed by an appropriate control;</p> <p>(2) Wastewater from washout and cleanout</p>	<p>In the ELG, concrete washout could be discharged, as long as it is managed by appropriate controls. This language was removed in the CGP.</p>	<p>Retain language in the final ELG regarding concrete</p>

	<p>of concrete; 2.3.1.3 Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; 2.3.1.4 Soaps or solvents used in vehicle and equipment washing; 2.3.1.5 Toxic or hazardous substances from a spill or other release; and 2.3.1.6 Waste, garbage, floatable debris, construction debris, and sanitary waste.</p>	<p>of stucco, paint, form release oils, curing compounds and other construction materials; (3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and (4) Soaps or solvents used in vehicle and equipment washing.</p>	<p>2.3.1.6 is broad and could create unreasonable obligations for the site operator</p>	<p>Clarify 2.3.1.6.</p>
<p>4.0 Water Quality Based Effluent Limitations</p>	<p>4.1 4.2 Discharge Limitations For Impaired Waters: EPA is developing a mapping tool to be used by permittees to determine if a site discharges to an impaired water. 4.2.1 Identify if you discharge to an impaired water 4.2.2 Requirements for Discharges to sediment or nutrient impaired water - water quality benchmark monitoring, frequent stabilization, site inspection 4.2.3 Requirements for discharges to waters impaired for other pollutants 4.3 Discharges to waters identified as tier 2, tier 2.5 or tier 3</p>		<ul style="list-style-type: none"> • It is not clear how the mapping tool will work. • Benchmark monitoring will add significant cost to sw compliance costs. • Comparing construction site discharge to in stream turbidity benchmark values (Appendix J) will lead to frequent exceedances and constant corrective actions to be taken on the construction site. • Daily visual inspections are unnecessary unless there is an impending storm or after a storm. 	<p>EPA should allow permittees to review the mapping feature prior to implementation. Benchmark monitoring should be excluded from the CGP. EPA should rely on existing TMDL programs and the BMPs identified in the TMDL.</p> <p>The weekly site inspections are adequate. The daily visual inspections are unnecessary unless there is an impending storm or after a storm event which is already required by the weekly inspections.</p>
<p>7.0 Staff Training Requirements</p>	<p>Some training for all those involved in the construction process and inspection</p>		<ul style="list-style-type: none"> • The definition of training has not been provided • Exemption from the training has not been provided for those that are qualified, and experienced in this area • The level of training required for permittees on small/single sites versus larger sites has not been provided 	<p>Training requirements should be defined to those working on small sites Training requirements should not be prohibitively expensive</p>