



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
WATER

**Construction and Development Effluent Limitations Guidelines
Third Report on Status of Rulemaking – Due December 3, 2007**

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 August, 2007 through November, 2007 to propose and take final action with respect to effluent limitations guidelines and new source performance standards for the construction and development industry. This status report also addresses paragraph 2.a. of the Injunction, which requires EPA to meet the following milestone deadline: “Data collection; identification of the best options; and development of all cost-benefit models shall be completed by December 1, 2007.”

1. During this reporting period, EPA has continued work on activities started during the previous two reporting periods and has initiated work on a number of new activities to develop final effluent limitations guidelines and new source performance standards for the construction and development industry.
 - a. EPA has collected sufficient data to support the rulemaking. EPA anticipates that the Agency will continue to receive data from stakeholders throughout the remainder of the rulemaking, and that new data from other sources may be identified and collected as the rulemaking progresses.

EPA will analyze additional relevant information and data and incorporate this information and data into our analyses as appropriate.

- i. EPA has analyzed baseline information on erosion and sediment control requirements for a number of states.
- ii. EPA has collected recent literature and data on costs of stormwater management practices
- iii. EPA has continued to collect literature and data on environmental impacts of land development activities and environmental and economic benefits of stormwater management strategies.
- iv. EPA has analyzed data from stormwater Notices of Intent to develop a basis for estimating the number of construction sites in the nation by size and project type. EPA will use these data to estimate pollutant loading reductions and costs of regulatory options. Notices of Intent are sent by prospective permittees to the relevant permitting authority so that they may be covered by National Pollutant Discharge Elimination System construction site permits.
- v. EPA is continuing to analyze land use databases, including the U. S. Department of Agriculture's National Resources Inventory and the EPA/U. S. Geological Survey's National Land Cover Dataset to determine the geographic distribution of new land development activities and to characterize land development


rates on various geographic scales including watersheds, states and the nation as a whole.

- vi. EPA has collected data on the financial characteristics of new construction projects from sources including the 2002 Economic Census, National Association of Home Builders (NAHB), Federal Highway Administration (FHA), and the Risk Management Agency (RMA).
 - vii. EPA has collected data to improve the firm-level impact analysis used in the previous rulemaking by examining the economic impact on the industry over a range of business sizes. EPA has obtained datasets for this analysis from sources such as NAHB's Housing Opportunity Index, Federal Housing Finance Board, and U.S. Census Bureau's annual statistics on household income and building permits.
- b. EPA has identified the best options for the proposed rule. EPA has developed a regulatory options paper that describes a range of options for the construction and development industry. EPA shared this options paper with several stakeholders.
 - c. EPA has developed all necessary cost and benefit models necessary to support the rulemaking.
 - i. EPA has developed a cost model for the previous rulemaking. EPA is currently updating this model to incorporate recent data that has been collected.

- ii. EPA has developed a national water-quality model for use in evaluating changes in water quality due to the options under consideration. EPA is also exploring applying other water-quality models to supplement the analysis for the previous rulemaking. EPA is currently working on updating the model inputs to incorporate recent data and adapting it to analyze construction site pollutant discharges.
 - iii. EPA has developed a model for analyzing changes in pollutant loadings from construction sites for the previous rulemaking. EPA is currently working to update the model inputs to incorporate recent data.
 - iv. EPA has developed economic and benefits models for the previous rulemaking. EPA is currently updating these models and accompanying datasets to perform the economic and benefits analyses for the rulemaking.
- d. EPA has met with stakeholders to discuss this rulemaking.
- i. EPA met with representatives of the National Association Home Builders (NAHB) and the Associated General Contractors of America (AGC), as well as other industry trade associations, on August 21st to discuss EPA's options paper.
 - ii. EPA met with representatives of AGCs Environmental Steering committee on September 14th to discuss EPA's options paper.

- iii. EPA met with representatives of NAHB on October 19th to discuss EPA's options paper and data collection activities and modeling approaches.
 - iv. EPA met with representatives of the Natural Resources Defense Council and Waterkeeper Alliance on November 1st to discuss EPA's options paper and data collection activities.
2. EPA has met the December 1, 2007 milestone deadline. The Agency expects to meet all remaining project milestone deadlines described in the Court order. The next milestone is to complete estimation of all costs and benefits; if necessary, analysis of regulatory flexibility and convention of an Advocacy Review Panel; re-analysis of options; preparation of supporting documents; preparation of a proposal package and record; inter-agency and intra-agency review of the proposal package; and publication of the proposed rule for solicitation of comments by December 1, 2008. EPA projects that the milestones in the District Court's December 1, 2006 order will be met no later than the deadlines set forth in that order. The next status report to the Court is to be filed by April 1, 2008.

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.



Mary T. Smith, Director
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U.S. Environmental Protection Agency