



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

APR 1 2008

OFFICE OF
WATER

**Construction and Development Effluent Limitations Guidelines
Report on Status of Rulemaking – Due April 1, 2008**

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 December, 2007 through March, 2008 to propose and take final action with respect to effluent limitations guidelines and new source performance standards for the construction and development industry.

1. During this reporting period, EPA has continued work on activities started during the previous reporting periods to develop final effluent limitations guidelines and new source performance standards for the construction and development industry.
 - a. EPA has continued to collect literature and data on environmental impacts of land development activities and environmental and economic benefits of stormwater management strategies.
 - b. EPA has completed an analysis of the National Land Cover Dataset to estimate 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.

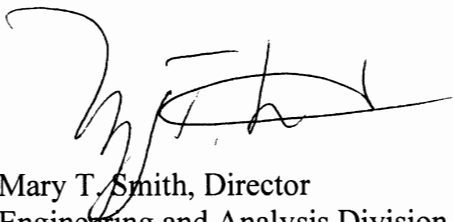
- c. EPA has collected data on construction project characteristics from a commercial data provider to augment the economic and financial data sources identified in the previous status reports.
- d. EPA has continued work to refine a cost model and has estimated preliminary compliance costs for several regulatory options.
- e. EPA has continued work to update a national water quality model, which will be used to analyze changes in receiving water quality resulting from changes in construction site pollutant discharges due to the regulatory options.
- f. EPA has continued work to update a model for analyzing changes in pollutant loadings from construction sites. EPA has estimated preliminary pollutant loading reductions for several regulatory options.
- g. EPA has met with stakeholders to discuss this rulemaking.
 - i. EPA met with representatives of the National Association of Home Builders (NAHB) on March 14th to discuss regulatory options.
 - ii. EPA met with representatives of NAHB and the Associated General Contractors (AGC), as well as other trade associations, on January 25th to discuss regulatory options and EPA's analytical approach.
 - iii. EPA met with representatives of the Natural Resources Defense Council and Waterkeeper Alliance on January 15th, January 25th and January 29th to discuss EPA's regulatory options, scope of

the rulemaking, data collection activities and EPA's analytical approach.

2. The preceding paragraph describes EPA's progress in meeting the December 1, 2008 milestone deadline. The Agency met all project milestones required to be completed by December 1, 2007, and expects to meet all remaining project milestone deadlines described in the Court order. By December 1, 2008, the Court's order directs EPA to meet the following milestones: estimation of all costs and benefits; if necessary, analysis of regulatory flexibility and completion of an Advocacy Review Panel under the Regulatory Flexibility Act (RFA); 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. EPA projects, as noted in its January 10, 2008, Interim Report on Status of Rulemaking, that the Agency may publish a proposed rule during the summer of 2008. In order to accomplish this, the Agency has devoted increased resources to the rulemaking effort over the past several months. In addition, EPA has concluded, in consultation with the Office of Information and Regulatory Affairs within the Office of Management and Budget and the Office of Advocacy of the Small Business Administration, that re-convening a RFA Advocacy Review Panel is not necessary for this rulemaking effort. EPA convened an Advocacy Review Panel for its previous rulemaking effort regarding effluent limitations guidelines and new source performance standards for the construction and development industry, and has concluded that this earlier process satisfies the

Advocacy Review Panel requirements for this rulemaking. The conclusion that EPA will not need to reconvene a panel for the current rulemaking process, along with the additional resources devoted to the project, have helped substantially in advancing the time frame in which EPA anticipates publishing the proposed rule. The Agency will perform all milestone tasks, other than the Advocacy Review Panel, prior to publishing such proposal. If EPA publishes a proposed rule ahead of schedule, this may allow the Agency to promulgate a final rule ahead of schedule as well. The Agency currently hopes to promulgate a final rule as early as the end of this calendar year. However, any advancement of any milestone tasks are dependent on the timing of numerous future activities and other factors such as the quantity of public comments to which EPA will have to respond. Hence, their completion dates cannot be projected with certainty or further specificity. The next status report to the Court is to be filed by August 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.

A handwritten signature in black ink, appearing to read 'M. T. Smith', is written over a horizontal line.

Mary T. Smith, Director
Engineering and Analysis Division
U.S. Environmental Protection Agency