

Advocacy Recommends that EPA Replace Numeric Limits With Alternative Approaches for Stormwater Discharges for Construction and Development Sites

On February 26, 2009, the Office of Advocacy (“Advocacy”) submitted comments regarding the Environmental Protection Agency’s (“EPA”) proposed rule, *Effluent Limitations Guidelines and Standards for the Construction and Development Point Sources Category*, Docket ID No. EPA-HQ-OW-2008-0465, 73 Fed. Reg. 72562 (November 28, 2008).

A copy of Advocacy’s letter to EPA can be found at www.sba.gov/advo/laws/comments.

EPA’s proposed rule regulates stormwater discharges for construction and development sites. Small firms make up 97.7% of the construction and development industry. EPA’s proposed rule is extremely costly to small construction firms, provides minimal environmental improvement, and adds thousands of dollars in costs to home prices. EPA identifies three options for consideration. The agency proposes to adopt Option 2, which is based on an advanced treatment technology that is designed to meet specific numeric limits.

To successfully address stormwater discharges at a much more reasonable cost than the EPA’s preferred approach, Advocacy urges EPA to adopt one of two following alternatives, based on EPA’s Options 1 and 2:

- **Enhanced Option 1**: EPA’s Option 1 is based on the current Federal Construction General Permit, but with additional features. This option would be significantly strengthened by adding a requirement for limiting slope lengths, requiring a qualified erosion and sediment control person to certify the stormwater management plan and perform periodic inspections of the site. This would produce sediment removals at much lower costs than EPA’s preferred Option 2.
- **Option 2 with “action levels”**: This option would maintain all the Option 1 requirements, but use “action levels” instead of numeric limits on stormwater discharges.
 - An “action level” does not require the site to achieve any specific numeric limit, but would require the facility to take further action to minimize sediment runoff once the “action level” is exceeded.
 - States that have examined this issue have uniformly rejected numeric limits.
 - Like Enhanced Option 1, this will produce sediment removal levels at a fraction of the cost under the EPA’s proposed rule.

For more information, visit SBA’s website at www.sba.gov/advo or contact Assistant Chief Counsel Kevin Bromberg by email at Kevin.Bromberg@sba.gov or by phone at (202) 205-6964.