



## **The Associated General Contractors of New Hampshire, Inc.**

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February 20, 2009

USEPA Docket Center  
Environmental Protection Agency  
Docket Number EPA-HQ-OW-2008-0465  
Mailcode 2822T  
1200 Pennsylvania Ave., NW  
Washington, DC 20460

RE: Effluent Limitation Guidelines Proposed for the Construction and Development Industry; Docket No. EPA-HQ-OW-2008-0465.

Dear Mr. Pritts:

I am the Executive Vice President of the Associated General Contractors of New Hampshire. Our Association represents commercial and industrial construction companies in New Hampshire. We disagree with EPA's assumption that all sites are always 90% disturbed and without any erosion and sediment controls for nine months at a time; our experience is these factors vary drastically depending on the type of construction. Major construction projects are often thirty acres or greater in size, and on any given project generally no more than 20% the site is disturbed at any one time. To protect the environment, we implement erosion and sediment controls. The effluent limitation guidelines that the U.S. Environmental Protection Agency (EPA) has proposed for the "construction and development" industry (ELG) will be incorporated into all construction stormwater general permits and will therefore have a direct and significant impact on our operations.

We appreciate the opportunity to submit these comments to EPA on the proposed ELG, including the three options that EPA included in its proposal. *See 73 Fed. Reg. 72562*, November 28, 2008. We support Option 1 (with appropriate editing and clarification). We strongly oppose Options 2 and 3, as they would establish a numeric effluent limit and mandate active treatment systems.

As a threshold matter, we are very concerned that EPA lacks the industry and site specific data and analyses needed to develop an appropriate ELG. We understand that EPA has bypassed the typical industry information collection process normally associated with ELG rulemakings.

Lacking good data, EPA has overestimated both the portion of a jobsite likely to be disturbed at any one time and the likely duration of the disturbance, thereby exaggerating the amount of sediment runoff from active sites. In addition, EPA has not accurately accounted for the erosion and sediment controls that construction professionals currently use on their jobsites. Due to

these errors, EPA's model overstates the environmental benefits that would result from the proposed ELG (skewing the cost effectiveness analysis).

We support Option 1 and urge EPA to ensure that the final ELG fits within the existing construction stormwater general permit (CGP) framework. Stormwater discharges from construction sites already are highly regulated and controlled by EPA's National Pollutant Discharge Elimination System (NPDES) permit program and other local rules aimed at controlling stormwater runoff. The current NPDES program correctly recognizes that there is no "one-size-fits-all" approach to managing stormwater runoff. In accordance with all applicable federal, state and local laws, we implement erosion and sediment controls on our project sites. However, the exact controls that are used in each instance depend on a number of factors, including site location and characteristics, rainfall expectations, timing/length of project, project details, market demand, contractual obligations, etc. We maintain that the flexibility to select best management practices (BMPs) to fit the conditions of the site is critical to any effective stormwater management program.

A site-specific, control-measure approach is known and understood by the regulated community, it is cost-effective, and it promotes the use of innovative technologies on construction sites. EPA's Option 1 would build upon the significant environmental progress made to date by ensuring that all construction sites follow the principles/practices that are recognized and accepted as "effective" erosion and sediment controls. We urge EPA to strengthen education and enforcement of BMP-based stormwater permitting programs and not to burden state regulators, construction firms, and the public with rigid and inflexible new requirements.

### **Nationwide Numeric Limits and Advanced Treatment Are Not Suitable to Construction**

Options 2 and 3 would require most construction site operators to meet a nationwide numeric limit of 13 NTU (nephelometric turbidity units) for turbidity, and any discharges in excess of that limit would violate the permit. We are vigorously opposed to this, or any other, strict compliance limit for the following reasons—

1. It is impossible to achieve the exact same result on all jobsites. The science of stormwater control, especially at construction sites, is still evolving and technologies that work well on one site might perform differently on others due to even the slightest change in conditions (e.g., climate, topography, geology, etc.).
2. EPA lacks the data to show that a numeric limit would achieve the desired environmental outcomes. EPA has no sampling data specific to construction to support its numbers. Instead, the Agency has based much of the proposal on data that commercial vendors have supplied. That data may not be nationally representative or meet EPA's established standards for quality assurance or quality control (QA/QC) (see also #4).
3. EPA has yet to develop a set of "tried-and-tested" procedures for obtaining high-quality and representative samples of stormwater runoff from construction sites, making the use of numeric limits (for compliance purposes) impossible to apply with any consistency. Current techniques measure the variability of the storm event and not the effectiveness of the BMPs or other controls.
4. EPA has identified advanced treatment systems (ATS) as the only "technology" capable of meeting a 13 NTU limit (which is lower than the naturally occurring turbidity in most streams and lakes nationwide). Such systems are, however, uncommon and their precise

costs and performance over a wide variety of sites and circumstances are unknown. Moreover, EPA's turbidity limit calculations are based on limited ATS vendor data with no detailed verification as to how the samples were taken or tested (see also #3).

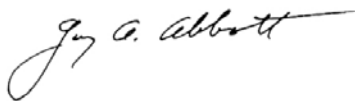
5. ATS are neither cost effective nor practical options for most construction sites, particularly when compared to conventional erosion and sediment control BMPs. Industry conservatively estimates that the costs of ATS will range from \$15,000 to \$45,000 per acre, and even EPA estimates that the cost will be \$7,000 per acre, making the nationwide use of such systems economically unachievable. ATS also require specialized operators and inspectors to be available at all times, particularly during and after rain events. Further, it takes considerable space to operate ATS, which require many holding tanks and additional retention ponds.
6. There are not enough advanced treatment systems and experts available to meet a nationwide demand for ATS. In addition, ATS involve polymers and mechanical filtration that drastically elevate the consequences of a system malfunction.

### **Conclusion**

In crafting its ELG, EPA must recognize that construction sites are temporary in duration, ever changing, and already regulated to prevent discharges of sediment and other pollutants into U.S. waters. In lieu of numeric effluent limits, ATS mandates, and the excessive burdens that would accompany Options 2 and 3, EPA should focus on standardizing the erosion and sediment control BMPs that are practical, consistent with existing state and local permit requirements, and proven effective in protecting water quality.

We recognize that EPA is under a court-ordered deadline to complete action on this rulemaking by December 1, 2009. We encourage EPA to work closely with the commercial construction industry and the Associated General Contractors of America during the comment review process and as it continues its work on a final ELG.

Thank you,



Gary Abbott  
Executive Vice President