



National Association of Home Builders

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Water Docket
U.S Environmental Protection Agency
Mail Code: 2822T
1200 Pennsylvania Avenue
Washington, DC 20460

Dear Mr. Schaner,

On behalf of the more than 160,000 members of the National Association of Home Builders (NAHB), I am pleased to submit the attached comments to the U.S. Environmental Protection Agency (EPA) on the *Proposed Construction General Permit* that was noticed in the *Federal Register* on Monday, April 25th, 2011.

As a major stakeholder in this regulatory activity, while NAHB fully supports the availability of a general permit to authorize stormwater discharges from construction activities, we remain concerned that EPA is prematurely attempting to insert the requirements of the Construction and Development Industry Effluent Limitation Guideline (C&D ELG) into the Proposed Construction General Permit (CGP). Because EPA has not yet issued a final C&D ELG, the Agency has provided stakeholders with no idea what provisions are necessary for its implementation. Similarly, without a final C&D ELG in place, EPA is under no obligation to include any ELG provisions within the CGP. In fact, doing so at this time would not only be inappropriate, but run counter to the Administrative Procedure Act's public comment mandates. For example, because EPA does not have a final numeric limit, the Agency has simply included a placeholder that is apparently intended to mollify the public until an actual value is finalized. Because the monitoring, sampling, and other aspects of the permit are tied to and based upon that value, many portions of the CGP are subject to change once EPA finalizes this number, yet EPA has no intention of taking additional public comment or input. Quite simply, it is premature to include any provision of the C&D ELG while the rule is still under development. NAHB strongly urges EPA to issue a final CGP that does not contain any of the ELG-related mandates, and to incorporate the C&D ELG during the next CGP reauthorization cycle.

In addition to following a faulty rulemaking process, NAHB is concerned that the proposed CGP continues to migrate away from a streamlined and efficient process to one that is overly burdensome and unnecessary. The tightly prescriptive erosion and sediment control requirements, for example, do not include sufficient flexibility to make reasoned decisions and will require permittees to take actions that are otherwise unwarranted or unnecessary to protect water quality. Similarly, despite NAHB providing numerous options for easing regulatory burdens, EPA has declined to include any of these alternatives within the CGP – a move that is unfortunate and clearly at odds with President Obama's commitment to eliminating excessive and unjustified burdens on small businesses and to ensuring that

regulations are designed with careful consideration of their effects, including their cumulative effects, on small businesses.

Likewise, the proposed CGP seeks to further complicate the application and reporting requirements by expanding permitting obligations and liabilities to multiple parties. This is not only problematic in practice, it is contrary to law. Nowhere does the Clean Water Act provide for joint and several liability for violation of an NPDES permit. And no law requires builders or developers who are working on contiguous sites to coordinate their activities or discharges, yet this is just what the Agency is proposing. EPA, through the CWA, already retains the authority to require dischargers to obtain permits and to comply with the law. If there is a violation, the Agency has the authority for redress with the violator. There is no need for EPA to establish a second tier of co-permittees other than to cause confusion and interfere with normal contracting procedures.

Finally, despite any justification that such an approach is necessary, EPA has included a series of water quality-based requirements that will further add to permit complexity and cost, yet because they are duplicative of existing efforts, will not likely yield measurable environmental results. The existing Total Maximum Daily Load (TMDL) program was specifically designed to help states address the waters within their borders that fail to meet their water quality standards. If a construction activity discharges into a waterbody that has a TMDL, appropriate BMPs must be used to minimize impacts. Because this program is well-established and has proven results, there is no evidence that additional controls are necessary. Further, the water quality-based benchmark values EPA has selected are unrealistically low as compared to typical discharges from construction activities, which will unnecessarily lead to costly measures and iterative corrective actions throughout the length of any project that has to meet these baselines.

NAHB's members and EPA can greatly benefit from a CGP that is simple, straightforward, and workable on the ground, while providing adequate environmental protection. Unfortunately, Today's proposal unnecessarily seeks to quickly implement onerous requirements that are designed to meet unknown outcomes, removes needed flexibility, needlessly increases liability and establishes problematic and duplicative practices. NAHB strongly urges EPA, in finalizing the CGP, to remove all of the C&D ELG requirements, simplify the permitting requirements and adopt streamlining measures, remove the joint and several liability provisions and remove the water quality based requirements. We are certain that such revisions will ensure a permit that is both efficient for permittees and permitting authorities and effective in environmental and water quality protection.

Thank you for the opportunity to participate in the development of the CGP. If you have any questions or comments regarding these comments, or if you would like to discuss any of our streamlining ideas or other suggestions, please do not hesitate to contact NAHB staff member Ty Asfaw at (202) 266-8124 or eamfaw@nahb.org.

Sincerely,

Susan Asmus
Senior Vice President
National Association of Home Builders