

National Association of Home Builders

1201 15th Street NW
Washington, DC 20005

T 800 368 5242
F 202 266 8400

www.nahb.org



September 10, 2010

Sharleen Bakeman – Permit Comments
Water Quality Program
Washington State Department of Ecology
P.O. Box 47600
Olympia, WA 98504
Sharleen.Bakeman@ecy.wa.gov

RE: Draft Construction Stormwater General Permit for Washington State

Dear Ms. Bakeman,

The National Association of Home Builders (“NAHB”) appreciates this opportunity to provide comments on the Washington Department of Ecology’s *Construction Stormwater General Permit*, hereafter referred to as the “Draft Permit.” NAHB is a trade association representing more than 175,000 members involved in home building, remodeling, multifamily construction, property management, subcontracting, design, housing finance, building product manufacturing and other aspects of residential and light commercial construction. Known as “the voice of the housing industry,” NAHB is affiliated with 800 state and local home builders associations around the country. NAHB’s builder members will construct about 80 percent of the new housing units projected for 2010.

NAHB members comply with the Clean Water Act’s (CWA) National Pollutant Discharge Elimination System (NPDES) permitting requirements to minimize erosion and sedimentation, and manage stormwater discharges. Our members must comply with established state and local permit requirements for erosion and sediment control and develop Stormwater Pollution Prevention Plans (SWPPPs) that allow for the selection of appropriate Best Management Practices (BMPs) to minimize adverse environmental impacts.

NAHB commends Washington Department of Ecology for the timely renewal of the existing permit. However, NAHB is concerned that the Draft Permit includes EPA’s 280 NTU numeric effluent limit which was part of the final Construction and Development Effluent Limitation Guidelines (C&D ELG).¹ Due to legal

¹ 40 CFR Part 450 - Effluent Limitation Guidelines and New Source Performance Standards (NSPS) for the Construction and Development Point Source Category in the Federal Register at 74 F.R. 229 (Dec. 1, 2009).

challenges, and an admission by EPA that it improperly interpreted the data, the calculations in the record are inadequate to support the 280 NTU. Thus, EPA has recently put the 280 NTU limit on hold. As a result, the Washington Department of Ecology should remove the portions of the rule dealing with the numeric effluent limit from the Draft Permit. (See EPA Motion Attached)

NAHB and the Wisconsin Builders Association (WBA) filed a lawsuit questioning the basis of the numeric limit following the issuance of EPA's final C&D ELG rule. EPA subsequently filed a motion with the court asking it to vacate the numeric effluent limit portion of the C&D ELG due to flaws in the database used to develop the limit. The court granted the motion and remanded the case back to EPA. EPA must now go back and develop a numeric limit that is based on defensible data by February 15, 2012. The Washington Department of Ecology is not legally obligated to adopt this rule since the portion of the ELG dealing with the numeric limit has been put on hold. Indeed, if EPA is unable to defend the adoption of 280 NTU, absent of any new data or analysis, the Washington Department of Ecology is similarly limited.

Additionally, NAHB and the U.S. Small Business Administration's (SBA) Office of Advocacy filed petitions with EPA highlighting several problems with the 280 NTU limit and asking EPA to reconsider the ELG rule. Concerns were raised regarding the data and modeling methodology used to derive the numeric standard; effectiveness and feasibility of the intended control methodologies; and the impacts that will accrue to small businesses who must attempt to meet the overly stringent and under-tested standard. The petitions point to the numerous flaws in the development of the 280 NTU limit that EPA will need to review prior to adopting a new numeric effluent limit. SBA concludes that a properly calculated limit based on the data in the record would be 793 NTU (see SBA Petition Attached.)

In light of the all the issues with the 280 NTU numeric effluent limit of the final C&D ELG, and in particular the lack of sufficient justification, NAHB strongly urges Washington Department of Ecology to remove the 280 NTU limit from the Draft Permit.

Thank you for the opportunity for NAHB to review and provide comments on the *Draft Construction Stormwater General Permit*. We hope these comments will be helpful to you in your review and in your future considerations. If you have any further questions or comments regarding NAHB's comment, please contact me at easfaw@nahb.org or 202-266-8124.

Best regards,

Etayenesh (Ty) Asfaw
Environmental Policy Analyst
NAHB