



Master Builders Association  
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September 10, 2010

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

Dear Ms. Bakeman,

On behalf of the 3,450 member companies of the Master Builders Association of King and Snohomish Counties (“MBA”), I am writing to provide comments on the Department of Ecology’s (“Ecology”) draft 2010 Construction Stormwater General Permit (“CSWGP”).

**Special Condition S4.C.5.c – Numeric Effluent Limit: Turbidity greater than 280 NTU**

Our primary concern with the CSWGP as presently drafted is with Special Condition S4.C.5.c, found on p. 17 of the permit. The draft 2010 permit incorporates U.S. EPA’s new Effluent Limitation Guidelines (“ELG Rule”), specifically a 280 NTU limit for measuring turbidity at sites with 10 or more acres of disturbed land. However, as you are undoubtedly aware, since Ecology released the draft 2010 permit for public comment on July 21, 2010, the U.S. Justice Department has filed a motion with the 7<sup>th</sup> Circuit Court of Appeals asking it to vacate the numeric limit while EPA goes back and develops a numeric limit that builders can actually comply with.

The action came as a result of a lawsuit filed by the National Association of Home Builders (NAHB) and the Wisconsin Builders Association and by administrative petitions filed by both NAHB and the federal Small Business Administration (SBA) Office of Advocacy asking EPA to revise its new ELGs for the construction and development industry<sup>1</sup>. Both NAHB and SBA argued that the numeric limit is arbitrary and based on flawed analyses<sup>2</sup>. When asked by the Justice Department to defend the numeric limit, EPA admitted several flaws in the final rule and that it had improperly interpreted the data.

Furthermore, NAHB estimates that nationwide, these limits would cost up to \$10 billion annually, hurting small businesses and housing affordability, with little additional environmental benefit. EPA itself admits the ELG would control less than one quarter of one percent of all total sediment runoff<sup>3</sup>.

Given the Justice Department motion cited above and the fact that EPA cannot defend the numeric limit, we urge Ecology to remove the numeric limit portion of the ELG Rule from the draft 2010 permit, since the basis for the ELG Rule is no longer valid<sup>4</sup>.

**Special Condition S4.C.5 – Turbidity/Transparency Benchmark Values, Reporting Triggers and Limits**

During the last permit update in 2005, MBA questioned how Ecology set and justified the benchmark value for turbidity of 25 NTU when the state water quality standard is 50 NTU. We remain concerned that a benchmark for turbidity of 25 NTU (p. 16) is unreasonable and excessive to determine compliance with applicable water quality standards.

**Special Condition S10.A.3 – Notice of Termination**

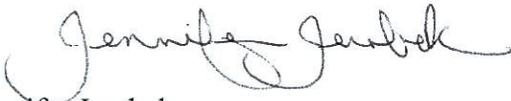
It would be helpful for Ecology to clarify what is meant in this new section on p. 33 of the permit and how it would be implemented. Is this for any residential construction project or what size project does this apply to? What exactly needs to be done by the permittee when each individual home is sold?

**General Condition G9.A – Transfer of General Permit Coverage**

In order to satisfy this permit requirement listed on p. 37, the new discharger must obtain a signature from the current discharger in order to transfer permit responsibility, coverage and liability. This signature is needed for both the Transfer of Coverage Form and the Notice of Intent. However, in today's challenging market there are often times when the new discharger is unsuccessful at locating the current discharger in order to obtain the necessary signatures. An example of this is when a lender takes back the property and none of the notice forms are filled out, which is often the case. Ecology needs to ensure that this issue is resolved in the current permit update, so that projects aren't kept in limbo just because these signatures aren't secured.

Thank you for the opportunity to provide feedback on the CSWGP. Please do not hesitate to contact Allison Butcher at (425) 460-8223 or [abutcher@mbaks.com](mailto:abutcher@mbaks.com), or myself at (425) 460-8240 or [jjerabek@mbaks.com](mailto:jjerabek@mbaks.com), should you have any questions.

Sincerely,



Jennifer Jerabek  
Snohomish County Manager

Attachments:

1. NAHB petition of the ELG, June 10, 2010
2. SBA petition of the ELG, April 20, 2010
3. EPA's ELG Motion, August 12, 2020
4. Court Order Granting Remand of C&D ELG, August 24, 2010