



Stay and Correction of the Numeric Limit for the Construction and Development ELGs

The U.S. Environmental Protection Agency (EPA) plans to correct the data error in the numeric limit discovered after the Construction and Development industry's effluent guidelines were published in the Federal Register on December 1, 2009. This action affects not only the effluent guideline, but also Construction General Permits to be issued by EPA and by States.

Background

On December 1, 2009, EPA published in the Federal Register (74 FR 62995) effluent limitation guidelines (ELGs) and new source performance standards (NSPS) for the Construction and Development Point Source category. These requirements are referred to as "the C&D rule." The C&D rule requirements control the discharge of pollutants from construction sites and require construction site owners and operators to implement a range of erosion and sediment control measures and pollution prevention practices to control pollutants in discharges from construction sites. These requirements were effective on February 1, 2010. In addition, the rule subjected discharges from certain larger construction sites to a numeric effluent limit of 280 NTU starting in August of 2011. These regulations are located at 40 CFR Part 450.

Subsequent to the promulgation of the C&D rule, EPA received two petitions for reconsideration of the rule. These petitions pointed out a potential error in the calculation of the numeric limit. Based on EPA's examination of the dataset underlying the 280 NTU limit, EPA has concluded that it improperly interpreted the data and, as a result, the calculations in the existing administrative record are no longer adequate to support the 280 NTU numeric limit.

EPA must incorporate the new C&D rule requirements, including the numeric limit, in its Construction General Permit (CGP) by June 30, 2011. States are also required to incorporate the new C&D rule requirements into any reissued NPDES construction stormwater permits. In 2010 and 2011, EPA estimates that 16 States will need to incorporate the new ELG requirements in their CGPs.

Stay of Numeric Limit

Since EPA acknowledges an error in calculating the 280 NTU limit, EPA understands that permitting authorities do not want to include the 280 NTU numeric limit in their CGPs. Consequently, EPA has moved quickly to issue a direct final rule staying the 280 NTU numeric limit until it is corrected. The stay will have an effective date of 60 days after Federal Register publication if EPA receives no adverse comments.

Correcting the Numeric Limit

EPA is moving forward to expeditiously conduct a separate rulemaking to correct the numeric effluent limitation. EPA intends to publish the proposed correction rule in December 2010 for public comment, and a final rule by May 30, 2011 so that the revised limitation can be effective

by June 29, 2011. An effective date of June 29, 2011 is necessary in order that EPA can incorporate the corrected numeric limitation in its Construction General Permit by June 30, 2011.

EPA's CGP

EPA plans to issue a proposed CGP in December 2010, and a final CGP by June 30, 2011. In the proposed CGP, EPA expects to incorporate the new C&D rule requirements, and for the new numeric limit, EPA will refer to the requirements contained in 40 CFR Part 450 without incorporating a specific limit, and propose monitoring and reporting requirements. This is necessary because the corrected numeric limit will not be effective until after the proposed CGP is signed. However, EPA does expect the corrected numeric limit to be effective before the final CGP is signed. At that time EPA will incorporate the corrected numeric limit into the final CGP.

State CGPs

Similar to EPA, authorized states must incorporate the C&D rule requirements into their reissued CGPs, including any applicable numeric limit. For states needing to finalize their CGP before the effective date of the corrected numeric limit, EPA advises them to issue their permit without the numeric limit. EPA encourages these states to consider a shorter permit term in order to incorporate the corrected limit sooner than five years. For states finalizing their CGP after the effective date of the corrected numeric limit, but which must propose their permit prior to the effective date of the corrected numeric limit, EPA encourages them to pursue an approach similar to the one EPA intends to follow (described above under "EPA's CGP") so that they are assured of the ability to include the corrected limit in their final permit.

Additional Information

For further information on the Construction and Development ELG, please contact Janet Goodwin

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For further information on EPA's CGP, please contact

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Schaner.Greg@epa.gov. More information on EPA's Construction General Permit can be found at <http://cfpub.epa.gov/npdes/stormwater/cgp.cfm>