Construction Impacts: A Compliance & Enforcement Perspective

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Stormwater and the Clean Water Act
Stormwater NPDES Program

1990 - Phase I NPDES Stormwater Program
- Construction - 5 acres or greater, or part of larger common plan
- Industrial Stormwater
- Municipal Separate Storm Sewer Systems (MS4s) – Large and Medium

1999 – Phase II NPDES Stormwater requirements
- Construction - 1 acre or greater
- MS4s - Small
Stormwater and the Clean Water Act

Clean Water Act

NPDES

MS4s

United States Environmental Protection Agency

DHEC

South Carolina Department of Health and Environmental Control
Construction Stormwater Regulation

- NPDES General Permit for Stormwater Discharges from Large and Small Construction Activities – SCR100000
- SC Stormwater Management and Sediment Reduction Regulations
- Local ordinances
Construction Activity

- 2007 – 2008
  - 2775 permits issued
- 2010 – 2011
  - 1884 permits issued
Inspections 2007

- Goal - 50% of the active sites 1 acre or greater permitted during the year.
- +Follow-up inspections
- Result - 760 inspections completed
Inspections 2011

- Goal - 15% of the active sites 1 acre or greater permitted during the year.
- + Follow-ups inspections
- Result - 482 inspections completed
Inspections by MS4s

- Richland County 2009
  - Total number of inspections – 587
- Greenville County 2007
  - Total number of inspections – 4624
Effluent Limits for Construction Activities

2001
EPA issues notice it plans to establish Effluent Limitation Guidelines (ELG) for construction activities

2004
EPA determines that current requirements are adequate for protection of water quality and doesn’t set ELG

2005
National Resource Defense Council (NRDC) sues EPA under Clean Water Act for failure to establish limits
Effluent Limits for Construction Activities

2006
9th Circuit Court rules in favor of NRDC and gives 12/1/09 deadline to establish ELG

2008
EPA proposes **13 NTU** Limit for sites with 30 active acres of construction and clay content of 10%+

2009
EPA issues Final ELG
Effluent Limits for Construction Activities

Final ELG proposed by EPA in December, 2009

- Numeric effluent limit of **280 NTU**
- Limits initially applicable to sites with 20+ acres of active construction/land disturbance – would become effective August 31, 2011 in SC
- Reduces to 10 active acres of construction after 4 years
- Maximum Daily average for all storm events less than the local 2-year, 24-hour
- Also included a set of “non-numeric” effluent limits
Effluent Limits for Construction Activities

Sample courtesy of Woolpert
Effluent Limits for Construction Activities

- Anionic Polyacrylamide (PAMs)
Effluent Limits for Construction Activities

December 2009
NAHB, Wisconsin Homebuilders, others appeal final ELG in 7th Circuit Court citing faulty data

August 12, 2010
EPA files an unopposed motion with the court to vacate the numeric portion of the final rule and hold the case in abeyance until February 2012

September 20, 2010
Court denies motion to vacate but rules in favor of holding case in abeyance and to remand the administrative record from when they established the rule
EPA has stated they intend to have a new final ELG by May 30, 2011 and for it to become effective June 29, 2011 when their NPDES Construction General Permit expires.

South Carolina’s NPDES Construction General Permit expires August 31, 2011.
What Now????????

- DHEC plans to issue a new permit in the next few months.
- Our permit will include the non-numeric ELG that was not appealed, but will not include a numeric ELG at this time.
EPA Rulemaking

- EPA is in the process of a rulemaking to address stormwater discharges from New and Redevelopment.
- These are currently not regulated by the NPDES program.
- Would also modify requirements for MS4s.
- They expect proposed rules by November, 2012.