



National Association of Conservation Districts

February 26, 2009

USEPA Docket Center Environmental Protection Agency
Docket Number EPA-HQ-OW-2008- 0465
Mailcode 2822T
1200 Pennsylvania Ave., NW.,
Washington, DC 20460.

RE: Docket ID No. EPA-HQ-OW-2008-0465

The National Association of Conservation Districts (NACD) appreciates the opportunity to comment on the EPA proposed effluent limitations guidelines (ELGs) and new source performance standards (NSPS) to control the discharge of pollutants from construction sites. NACD represents the nation's 3,000 conservation districts and their governing boards. Established under state law, conservation districts are local units of state government charged with carrying out programs for the protection and management of natural resources at the local level. Conservation districts work with federal, state, and other local agencies to provide programs and technical assistance to landowners and other partners to address natural resource issues.

Effective erosion control and sediment containment starts with a full understanding of pre-disturbance conditions. Understanding soil conditions is a key component of any site assessment. The EPA is to be praised for acknowledging that soil greatly impacts the quality of runoff from construction and development sites. This is not reflected in the current rule, which is solely founded on the use of Best Management Practices.

We understand the EPA is proposing numeric turbidity limits called effluent limitations guidelines (ELGs) on larger sites with clay and silt soil. The EPA is considering the following three options but is recommending adoption of Option 2.

Option 1 is a non-numeric ELG, based on the use of "effective" erosion and sediment control practices to minimize and control the discharge of pollutants in stormwater and other wastewater from construction sites.

Option 2 is a numeric discharge limit for turbidity of 13 NTU (nephelometric turbidity units). Specifically, the turbidity requirements would apply to any site that meets all three of the following criteria: (1) average soil clay content of more than 10 percent; (2) annual Rainfall erosivity factor ("R factor") R of 50 or more; and (3) has a size of 30 or more acres.

Option 3 applies the numeric discharge limit for turbidity to all sites with common drainage points serving 10 or more disturbed acres at one time. This option would not take soil type or rainfall intensity into account.

The proposed regulations could have the beneficial effect of encouraging Low Impact Development or increased use of erosion control measures that prevent erosion.

However, NACD feels the proposed effluent limit of 13 NTU's, for larger sites with clay and silt soil, is prohibitively strict and essentially mandates the use of advanced treatment systems (ATS), which consist of polymer-assisted clarification (PAM) followed by filtration. These systems are very expensive to purchase, require specialized training to operate, and are largely untested on construction sites.

This strict standard does not allow flexibility in a nation of widely divergent soil and site conditions. Other mandated requirements, like porous baffles in sediment basins, are costly and may do little to increase sediment removal at some sites.

Sediment basins should be designed to reflect pre-development soil, runoff, sediment yield, and turbidity. They should minimize impact on downstream watersheds as a result of construction and development. Sediment basins should not be designed to achieve standards that do not exist under natural conditions.

However, as documented by the EPA, small soil particles, carried in runoff from clay and silt soil, cannot effectively be removed using standard Best Management Practices. Runoff from such sites, even though limited in size, can cause significant water quality impacts.

As currently written, the proposed discharge limits would apply to sites of 30 acres or more, even if only a few acres are disturbed. But no limitations would apply to a 29-acre site when the entire site is disturbed. Runoff from a 29-acre disturbance, located on steep slopes with clay and silt soil, would likely impair water quality. This does not seem to be a wise or practical regulatory approach.

One of the principles of Smart Growth is to cluster development and preserve natural areas as common open space or working lands. The 30-acre trigger will discourage small clustered developments with large open spaces and result in a series of smaller but more intensive development.

The EPA is also asking for comment on setting a turbidity limit in the range of 50 to 150 NTUs, which would not require active treatment. This is a more practical approach to reducing water quality impairment; one that can be applied to construction sites of various sizes and soil conditions.

Clay and silt content can vary greatly within a given soil profile. The EPA needs to specify whether the 10% rule applies to surface soil or to the soil layer that is exposed by grading

activities. This will greatly impact water quality and whether sites must meet proposed turbidity limits.

Across the country, more than 23,000 soil series occur in various combinations with different slopes and surface textures. Since the devastating days of the Dust Bowl, the nation's 3000 local conservation districts have made the care of soil a priority. Conservation districts understand the importance, uniqueness and fragility of soil and its relationship to water quality. With this history and their technical expertise, conservation districts should be identified to the regulatory agencies as a provider of technical assistance. Because soil surveys are not designed for site-specific planning, districts can help permittees determine the site-specific soil conditions, soil erodibility and clay content.

We recognize EPA is under a court-ordered deadline to complete action on this rulemaking by December 1, 2009. We encourage the Agency to work closely with NACD during the comment review process and as it continues to work on soil criteria, soil testing requirements, and final effluent limitation guidelines.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steve Robinson".

Steve Robinson
President