

The Rundown On EPA's Rule To Restrict Runoff

AGC Responds To National Stormwater Initiatives Aimed At Restricting Runoff from Construction Sites

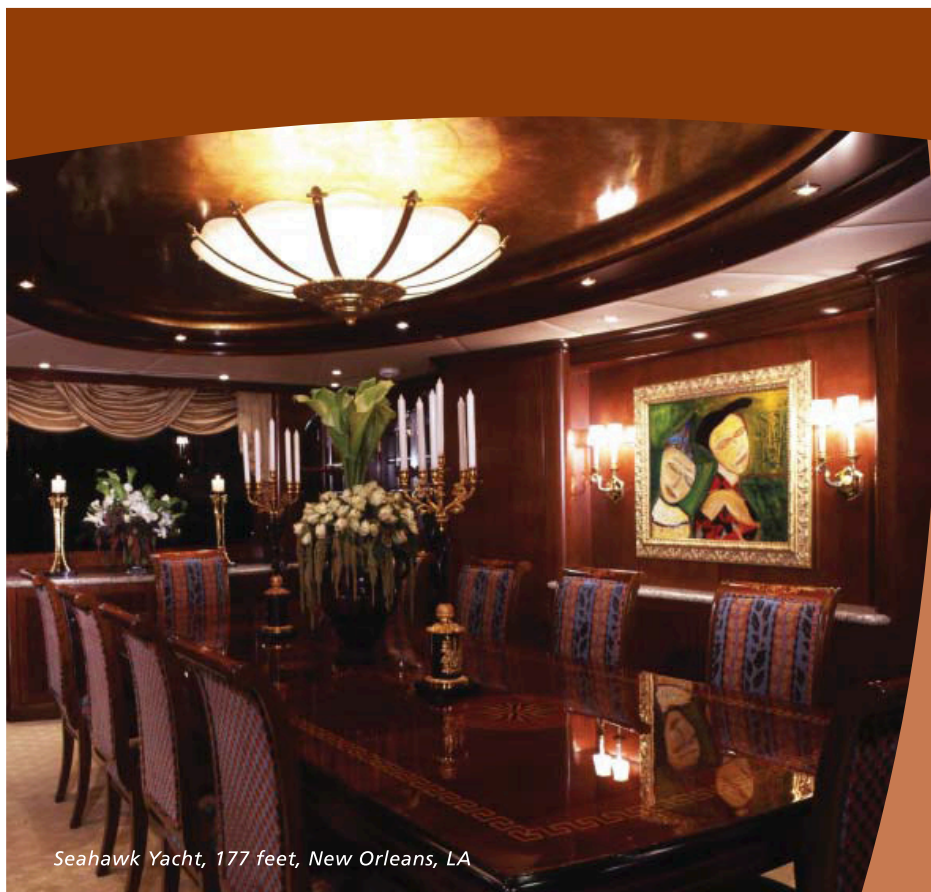
Note: The following was originally printed in the AGC's Environmental Observer and online on the AGC's Web site. Other information included is from the EPA's Fact Sheet.

Three key stormwater developments are in the works that will affect contractors nationwide. To ensure the construction industry's voice is heard, AGC of America has created a Stormwater Task Force (made up of 17 AGC Environmental Network members) to respond to current rulemaking efforts and enforcement initiatives aimed at restricting construction site runoff. The AGC was founded in 1918 and is a full-service national trade association that works with and through a network of 96 state and local chapters throughout the United States. AGC represents more than 33,000 companies, including more than 7,500 of America's leading general construction contractors, 12,500 specialty contractors and

13,000 material suppliers and service providers to the construction industry.

EFFLUENT LIMITATIONS GUIDELINES

First, the U. S. Environmental Protection Agency (EPA) has finalized first-time effluent limitations guidelines for the "construction and development industry." According to the EPA's Fact Sheet - Final Rule: Effluent Guidelines for Discharges from the Construction and Development Industry, "effluent guidelines are national standards that apply to stormwater and wastewater discharges to surface waters and publicly owned treatment works (municipal sewage treatment plants). Further, the fact sheet says that the final rule is intended to work in partnership with existing state and local programs, adding a technology based "floor" that institutes minimum requirements that apply nationally.



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The so-called C&D ELG imposes nationwide monitoring requirements and enforceable numeric limits on the amount of sediment that can run off any construction site that disturbs 10 or more acres of land at any one time, despite AGC's years-long effort to explain the detrimental effect on the construction industry. It also specifies the exact types of erosion and sediment controls that contractors must use, at a bare minimum, to control stormwater runoff on all construction sites that disturb one or more acres of land. The rule took effect in February 2010 and phases in over four years.

The new ELG requirements will be incorporated into all federal and state individual and general National Pollutant Discharges Elimination System (NPDES) stormwater construction permits. The AGC has a very established working relationship with the U.S. EPA's Office of Water and has been collaborating with senior staff from that office to hold joint educational programs on the new ELG rule beginning this month. EPA has also invited AGC to provide suggestions and recommendations as it works to draft a new federal construction general permit that will include the new ELG requirements upon their next reissuance.

POST-CONSTRUCTION RUNOFF REQUIREMENTS

Second, EPA has committed to propose and take final action by November 2012 on a national rule that would include, at a minimum, new design or performance standards to control stormwater discharges from newly developed and redeveloped sites.

EPA held listening sessions in January 2010 to inform the public, and solicit feedback, on these upcoming rules that are currently in the works. EPA has also been collecting information needed to support this rulemaking by distributing mandatory questionnaires to a "statistical sample" of commercial contractors and other entities that likely will be impacted by any new post-construction stormwater runoff requirements.

EPA recently provided the construction industry with an opportunity to comment on its proposed "information collection request" (ICR) in an effort to reduce the paperwork and associated burden on companies that ultimately receive the mandatory questionnaire, in accordance with the Paperwork Reduction Act of 1995. AGC submitted comments on the "industry questionnaire," stating that the proposed ICR is: premature and unauthorized by law, as it presumes regulatory authority that does not exist; overly burdensome and misdirected, as it misapprehends the role that contractor's play in the real estate development process; and ineffective in gathering data EPA believes it requires.

CLEAN WATER ACT ENFORCEMENT ACTION PLAN

Third, contractors everywhere can expect to see increased enforcement by EPA, including criminal and civil penalties for noncompliance, as well as more reporting and public oversight.

EPA Administrator Lisa Jackson appeared before Congress to discuss the Clean Water Act's (CWA) permit program and EPA's immediate plans to strengthen its enforcement efforts.

Basic Information About the EPA's Final Rule

All construction site owners and operators will be required to:

- **Employ a range of erosion and sediment control best management practices, to cut down pollutants in storm water discharge**
- **Implement a range of pollution deterrence measures to control emissions from activities such as dewatering and concrete washout**
- **Strict requirements for soil stabilization are also included in the rule**

Enforcement:

- **Construction sites that disturb 20 or more acres at one time will be required to monitor discharges and obey the numeric limitation, beginning 18 months after the effective date of the final rule**
- **Starting four years after the effective date of the final rule, the monitoring requirements and numeric limitation will apply to all sites that disturb 10 or more acres at one time**

This information was originally printed in the EPA's Fact Sheet - Final Rule: Effluent Guidelines for Discharges from the Construction and Development Industry

Jackson specifically called out construction sites as one of "the biggest threats" to our nation's waters, adding that EPA needs "to target enforcement to the most serious violations and the most significant sources."

To address what she describes as an "unacceptably low" level of enforcement activity, Administrator Jackson announced the release of EPA's new action plan to strengthen federal and state CWA enforcement.

AGC is in the process of developing recommendations on potential ways to increase industry's stormwater permit compliance and make better use of EPA's enforcement efforts, in accordance with the newly released EPA Clean Water Act Enforcement Action Plan.

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