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## **EPA Effluent Limitation Guidelines – The First in a Wave of New Regulations**

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Many people have heard that the EPA has issued a Final Regulation (40 CFR 450) for Effluent Limitation Guidelines (ELGs) which became effective February 1, 2010. However, it is little known that this regulation will not directly affect Virginia until after July 2014. In the meantime, this new rule will be considered by the EPA as it develops the Total Maximum Daily Load (TMDL) for the Chesapeake Bay and the new National Stormwater Standards both of which will also affect Virginia. These ELGs will be incorporated into the next Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities (Construction General Permit). Virginia just issued a new VSMP Construction General Permit last year (July 2009) which will be in place until June 30, 2014. Therefore, these new EPA guidelines will not be effective until the current permit expires in 2014.

These Effluent Guidelines are primarily a series of new Management Practices which are focused on reducing sediment and other pollutants in construction site stormwater discharges. For example, management practices will now be required for concrete washouts and dewatering activities among others. However, the most notable requirement is that a turbidity effluent standard will be enforced on construction sites that disturb more than 10 acres at once. One of the goals of this regulation is to provide an incentive to limit the total disturbed area of a site to under 10 acres at a time. This is generally thought to reduce sediment in stormwater.

Developers will be required to sample stormwater at outfalls during construction and measure for Turbidity. The average turbidity of any discharge for any day must not exceed 280 Nephelometric Turbidity Units (NTUs). Turbidity is a measure of water clarity and is sometimes used as a surrogate to determine the extent of soil and sediment contained in runoff water. In this case the EPA intends to use turbidity as an indicator of how well erosion and sediment control (E&S) measures are working. The EPA does not specify when and how samples must be taken and specifically leaves the development of methods up to the States. However, guidance on implementing these Effluent Guidelines is anticipated to be issued by the EPA in 2011.

This ELG is a significant shift in policy from managing controls to managing the result of the controls. Currently, a developer is in compliance with the VSMP Construction General Permit if all of the controls are in place and have been properly maintained. This new policy will measure compliance by the clarity of the stormwater effluent. The following question remains: how will the 280 NTU standard be achieved? Some say that it will not be achievable without substantial additional costs in new technology such as flocculants in stormwater ponds and significant additional E&S structural controls. Since Virginia will be one of the last states to implement these regulations, we can hope that we will be able to learn from other states and benefit from lessons learned and new technology developed to meet the 280 NTU standard.

This regulation is final, but there is still an opportunity to influence the details of how this regulation will be implemented in Virginia. Unresolved issues include: monitoring methods, monitoring frequency, analytical methods, reporting, and enforcement procedures. It will be important to stay involved in the resolution of these issues as Virginia drafts the next VSMP Construction General Permit in 2013. With all of these pending stormwater initiatives the land-disturbance community has a great deal of homework to do to influence this upcoming wave of stormwater regulation.