



Construction & Development Effluent Limitations Guidelines

BACKGROUND and AGC ACTION

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AGC of America

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C&D ELG – Genesis

- It all began with a lawsuit filed by environmental groups...
 - **Jan 31, 1992** – Settlement agreement wherein EPA committed to issue 19 ELGs over an 11-year period, *Natural Resources Defense Council (NRDC), Inc. v. U.S. Environmental Protection Agency (U.S. EPA)*, No. 89-2980 (D.D.C. Jan. 31, 1992).
 - **August 10, 2000** – Consent decree revised to include construction and development (C&D) stormwater discharges.



C&D ELG – Rulemaking #1

- **Aug. 31, 2000** – U.S. EPA identified C&D industry as a category for ELG development; listed on CWA Section 304(m) ELG plan pursuant to NRDC consent decree (*65 Fed. Reg. 53,008*).
- **YR 2001-03** – AGC engaged in multi-year legal, technical and policy campaign to protect contractors from unworkable and burdensome stormwater requirements!
 - **Summer 2001** – AGC members and outside legal/technical experts (retained by AGC) advised government agencies including a Small Business Advocacy Review Panel on ways to mitigate effects of any ELG rule on regulated small construction companies.
 - Extensive member outreach and education...



C&D ELG – Rulemaking #1

- **June 24, 2002** – U.S. EPA proposed C&D ELG and other options for controlling stormwater runoff from construction sites (*67 Fed. Reg. 42,643*).



C&D ELG – Rulemaking #1

- **April 26, 2004** – U.S. EPA chose a **NO RULE** option as its “final action” (*69 Fed. Reg. 22,472*).
 - U.S. EPA’s no rule decision closely tracked **AGC’s comprehensive 154-page comments on the proposal**, which asserted that additional rules are unnecessary given the existing stormwater program, and that this type of rule is more properly (and already) the precinct of state and local regulators.



C&D ELG - Litigation

- **Oct. 6, 2004** – Enviro groups sued U.S. EPA in federal district court over failure to promulgate ELGs under CWA.
- **June 28, 2006** – District court sided with enviro groups, *NRDC v. U.S. EPA*, C.D. Cal., No. CV-04-8307-GHK (RCx), 6/28/06.
- **Dec. 5, 2006** – District court enters permanent injunction + judgment against U.S. EPA, requiring it to finalize ELG rule ASAP and no later than Dec. 1, 2009.
- **Summary:**
 - U.S.EPA “listed” C&D ELG in 2000
 - 2004 EPA decides NO RULE, withdrawal 2002 proposal
 - Enviros sued 2004
 - AGC intervened in the lawsuit (defending EPA), maintaining that Congress gave the agency the discretion to make an informed no-rule decision based on the evidence that it gathered!!
 - Court ruled 2006 U.S. EPA cannot remove industries listed on CWA Section 304(m) ELG plan, agency has mandatory duty to write ELG



C&D ELG - Litigation

- **Jan. 30, 2007** – AGC and U.S. EPA both filed appeals in U.S. Court of Appeals for the Ninth Circuit to contest California district court ruling that agency must issue C&D ELG.
- **Sept. 18, 2008** – 9th Circuit confirms U.S. EPA must promulgate national ELG, *NRDC v. U.S. EPA* (9th Cir. Sept. 18, 2008).
 - The appellate court's ruling upheld the federal district court's permanent injunction, requiring EPA to propose C&D ELG by Dec. 1, 2008, and to finalize it by Dec. 1, 2009.



C&D ELG - Litigation

- **District Court Injunction**
 - U.S. EPA requested 4 years for full analysis
 - Court concluded EPA must finalize new C&D ELG in 3 years
 - U.S. EPA indicated that 3 years would necessitate streamlined process



C&D ELG – Rulemaking #2

- **Sept. 2008** – Several AGC members advised a Small Business Advocacy Review Panel on ways to mitigate effects of any ELG rule on regulated small construction companies.
- **Sept. 2008** – AGC / NAHB jointly submitted 250 pages pre-proposal comments + “BMP control measure” option (alternative to advanced treatment).
- **During 2009** – AGC submitted more comments, more meeting, more outreach ...



C&D ELG – Rulemaking #2

- **Dec. 1, 2009** – New C&D ELGs finalized (*74 Fed. Reg. 62,996*).
- Focus of today's panel discussion!



MORE Legal Challenges

- **NAHB and Wisconsin Builders Association filed lawsuits to challenge EPA's new C&D ELG rule, ending up in 7th Circuit**
 - **Enviros have attempted to intervene w/o success**
- **Utilities Water Act Group filed separate legal petition**
- **U.S. Small Business Administration filed petition (APA § 553(e)) with EPA seeking reconsideration of ELG rule**



Current AGC Work

- Educational webinar
- Frequently Asked Questions (FAQ) Fact Sheet
- Working with U.S. EPA on reissuance of federal Construction General Permit
 - Focus: How to incorporate C&D ELG into federal permit, which will be model for states





For More Information:

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