

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and among the Utility Water Act Group (“UWAG”), Wisconsin Builders Association (“WBA”), and National Association of Home Builders (“NAHB”) (collectively, “Petitioners”), and the U.S. Environmental Protection Agency and its Administrator, Lisa P. Jackson (collectively, “EPA” or “Agency”).

WHEREAS, on December 1, 2009, the Federal Register published EPA’s final rule entitled “Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category,” 74 Fed. Reg. 62,996 (“C&D Rule”);

WHEREAS, Petitioners timely filed petitions for review of the C&D Rule, which were consolidated in the U.S. Court of Appeals for the Seventh Circuit, Case Nos. 09-4113, 10-1247, 10-1876 (“C&D Litigation”);

WHEREAS, on July 8, 2010, Petitioners filed their opening briefs in the C&D Litigation;

WHEREAS, on August 12, 2010, after conferring with Petitioners, EPA filed an unopposed motion in the C&D Litigation for entry of an order vacating and remanding to the Agency limited portions of the C&D Rule, remanding the administrative record, and holding the case in abeyance to provide EPA an opportunity to address flaws in the C&D Rule and underlying administrative record;

WHEREAS, on September 20, 2010, the court agreed to remand the record to

EPA and hold the C&D Litigation in abeyance, but declined to vacate any portion of the C&D Rule;

WHEREAS, on February 29, 2012, the Federal Register published EPA's "Final National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Construction Activities," 77 Fed. Reg. 12,286 ("CGP");

WHEREAS, on June 21, 2012, NAHB timely filed a petition for review of the CGP, which the U.S. Court of Appeals for the Seventh Circuit *sua sponte* consolidated into the C&D Litigation;

WHEREAS, Petitioners and EPA (collectively, "the Parties") wish to resolve Petitioners' challenges to the C&D Rule and NAHB's challenge to the CGP without further litigation;

NOW, THEREFORE, without admission of any issue of fact or law, or waiver of any claim or defense except as provided below, the Parties agree as follows:

1. No later than April 15, 2013, EPA agrees to sign for publication in the Federal Register a notice of proposed rulemaking that proposes to amend the C&D Rule in a manner substantially similar to Exhibit A, with at least a 30-day public comment period. After considering any public comments, EPA agrees to take final action on the proposed rule by February 28, 2014.

2. By June 14, 2013, EPA agrees to pay UWAG \$76,250 in full satisfaction of its claim for attorneys' fees and costs in the C&D Litigation.

3. By June 14, 2013, EPA agrees to pay NAHB \$93,000 in full satisfaction of NAHB's and WBA's claims for attorneys' fees and costs in the C&D Litigation.

4. Upon execution of this Settlement Agreement, the Parties agree to file a joint motion requesting that the court extend the abeyance in the C&D Litigation pending completion of the activities set forth in paragraph 1. EPA's obligations under this Settlement Agreement will take effect only if the court grants the requested abeyance or Petitioners voluntarily dismiss the C&D Litigation.

5. If EPA takes the actions described in paragraph 1 by the schedule contained in paragraph 1, and EPA's final action on the proposed rule amends the C&D Rule in any manner, then Petitioners and EPA agree to promptly file a joint motion in accordance with Rule 42 of the Federal Rules of Appellate Procedure for dismissal with prejudice of the C&D Litigation.

6. Any challenge to EPA's final action described above must be brought in a new action, and Petitioners reserve whatever rights they may have to bring such a challenge, except as specifically provided below. Notwithstanding the foregoing sentence, if EPA amends the C&D Rule in a manner substantially similar to Exhibit A, Petitioners will not seek judicial review of the amendments.

7. If EPA does not take the actions described in paragraph 1, then Petitioners' sole remedy is to move to reactivate the C&D Litigation, in which event Petitioners reserve whatever rights they might have to seek attorneys' fees and

costs associated with the reactivated litigation incurred after execution of this Settlement Agreement. Petitioners agree to give EPA thirty days' notice prior to exercising their rights under this paragraph.

8. Nothing in the terms of this Settlement Agreement shall be construed to limit or modify the discretion accorded EPA by the Clean Water Act or general principles of administrative law, nor shall it in any way be deemed to limit EPA's discretion in adopting any final rule.

9. EPA's obligations under this Settlement Agreement are subject to the availability of appropriated funds applicable for such purpose. No provision of this Settlement Agreement shall be interpreted as or constitute a commitment or requirement that EPA obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other provision of law.

10. Any term set forth in this Settlement Agreement may be modified by written agreement of the Parties.

11. Any notices required or provided for by this Settlement Agreement shall be made in writing, via electronic mail or U.S. mail, and sent to the following:

For UWAG:

BROOKS SMITH
Hunton & Williams LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
E-mail: bsmith@hunton.com

For NAHB:

THOMAS J. WARD
National Association of Home Builders
1201 15th St, NW
Washington, DC 20001
E-mail: tward@nahb.org

and

JEFFREY LONGSWORTH
Barnes & Thornburg LLP
1717 Pennsylvania Ave. N.W.
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Washington, DC 20006
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For WBA:

MICHAEL J. MODL
Axley Brynerson, LLP
2 East Mifflin, Suite 200
Madison, WI 53703
Email: mmodl@axley.com

For EPA:

MATTHEW R. OAKES
United States Department of Justice
Environment and Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, D.C. 20044
E-mail: matthew.oakes@usdoj.gov

and

PETER Z. FORD
United States Environmental Protection Agency
Office of General Counsel
1200 Pennsylvania Avenue, N. W.
Washington, DC 20460

12. This is the entire Settlement Agreement between the parties with respect to the C&D Rule, the CGP, and the C&D Litigation. All prior conversations, meetings, discussions, drafts, and writings of any kind are superseded by this Settlement Agreement and may not be used by the Parties to vary or contest the terms of this Settlement Agreement, or as evidence of the Parties' intent in entering into this Settlement Agreement.

13. This Settlement Agreement was jointly drafted by the Parties. Accordingly, the Parties agree that any and all rules of construction to the effect that ambiguity is construed against the drafting party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Settlement Agreement.

14. Nothing in this Settlement Agreement shall bind, obligate, or otherwise create any rights or duties applicable to or enforceable by, or impose any conditions or limitations upon, any person or entity that has not signed the Settlement Agreement, nor shall the Settlement Agreement be construed to make any such persons or entity a third-party beneficiary of the Settlement Agreement.

15. No later than 60 days after EPA signs the notice of proposed rulemaking discussed in Paragraph 1 of this Settlement Agreement, NAHB and EPA agree to file a joint motion in accordance with Rule 42 of the Federal Rules of Appellate Procedure for dismissal of NAHB's challenge to the CGP, case No. 12-2470 (7th Cir.). That motion will (a) request that the Court sever and dismiss No.

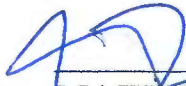
12-2470 from the C&D Litigation, and (b) explain that the parties have agreed that each side shall bear its own costs and fees.

16. Each undersigned representative of the Parties certifies that he or she is fully authorized by the Party to enter into this Settlement Agreement and to bind such Party to comply with the terms and conditions herein.

For Respondents:

DECEMBER 10, 2012
~~October __, 2012~~

IGNACIA S. MORENO
Assistant Attorney General



~~MATTHEW R. OAKES~~
United States Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, DC 20044
(202) 514-2686

For Petitioner
National Association of
Home Builders:

October __, 2012

JOSEPH BARNEY
Treasurer
National Association of Home Builders

For Petitioner Wisconsin
Builders Association:

October __, 2012

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For Petitioner Utility Water
Act Group:

November 2, 2012



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12-2470 from the C&D Litigation, and (b) explain that the parties have agreed that each side shall bear its own costs and fees.

16. Each undersigned representative of the Parties certifies that he or she is fully authorized by the Party to enter into this Settlement Agreement and to bind such Party to comply with the terms and conditions herein.

For Respondents:

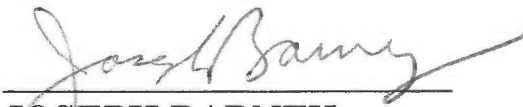
October __, 2012

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Environment & Natural Resources Division
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For Petitioner
National Association of
Home Builders:

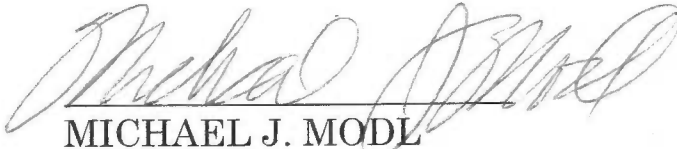
October 22, 2012



JOSEPH BARNEY
Treasurer
National Association of Home Builders
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For Petitioner Wisconsin
Builders Association:

October 19, 2012



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For Petitioner Utility Water
Act Group:

October __, 2012

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Riverfront Plaza, East Tower
951 East Byrd Street
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Exhibit A

450.11 General Definitions.

Current Requirement:

(b) [Reserved]

Agreed Upon Edit:

(b) Infeasible. Infeasible means not technologically possible, or not economically practicable and achievable in light of best industry practices.

450.21(a)(1)

Current Requirement:

(a)(1) Control stormwater volume and velocity within the site to minimize soil erosion;

Agreed Upon Edit:

(a)(1) Control stormwater volume and velocity to minimize soil erosion in order to minimize pollutant discharges;

450.21(a)(2)

Current Requirement:

(a)(2) Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and streambank erosion;

Agreed Upon Edit:

(a)(2) Control stormwater discharges, including both peak flowrates and total stormwater volume, to minimize channel and streambank erosion in the immediate vicinity of discharge points;

450.21(a)(6)

Current Requirement:

(a)(6) Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible; and

Agreed Upon Edit:

(a)(6) Provide and maintain natural buffers around waters of the United States, direct stormwater to vegetated areas and maximize stormwater infiltration to reduce pollutant discharges, unless infeasible; and

450.21(a)(7)

Current Requirement:

(a)(7) Minimize soil compaction and, unless infeasible, preserve topsoil.

Agreed Upon Edit:

(a)(7) Minimize soil compaction. Minimizing soil compaction is not required where the intended function of a specific area of the site dictates that it be compacted.

(a)(8) Unless infeasible, preserve topsoil. Preserving topsoil is not required where the intended function of a specific area of the site dictates that the topsoil be disturbed or removed.

450.21(b)

Current Requirement:

(b) Soil Stabilization. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. Stabilization must be completed within a period of time determined by the permitting authority. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the permitting authority.

Agreed Upon Edit:

(b) Soil Stabilization. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 calendar days. In arid, semiarid, and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible, alternative stabilization measures must be employed as specified by the permitting authority. Stabilization must be completed within a period of time determined by the permitting authority. In limited circumstances, stabilization may not be required if the intended function of a specific area of the site dictates that it remain disturbed.

450.21(d)(2)

Current Requirement:

(2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater; and

Agreed Upon Edit:

(2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on the site to precipitation and to stormwater. Minimization of exposure is not required in cases where the exposure to precipitation and to stormwater will not result in a discharge of pollutants, or where exposure of a specific material or product poses little risk of stormwater contamination (such as final products and materials intended for outdoor use).

450.22(a) and 450.22(b)

Withdraw the numeric turbidity limitation and monitoring requirement and insert “[Reserved]” in paragraphs 450.22(a) and 450.22(b).