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In a move that could significantly change how construction managers operate, the U.S. Environmental Protection Agency (EPA) recently issued a final rule that deals with controlling the discharge of pollutants — primarily sediments — from construction sites. The most important change is that — for the first time — many larger construction sites will be required to meet an objective, numeric turbidity standard measuring sediment that runs off the site. According to some estimates, the cost to the construction industry for reducing sediment in the water under this rule will be close to $1 billion.

The rule, in particular, covers Effluent Limitations Guidelines (ELGs) and new source performance standards (NSPS) in construction sites. The rule was promulgated because construction activities — such as cleaning, grading and excavating — disturb soil and sediment, which can be washed off construction sites during storm events and can pollute nearby water bodies. This pollution is of concern for EPA, as the agency recently identified stormwater runoff from construction sites as one of the most significant threats to water quality nationwide. In order to conclude that the runoff is damaging, the EPA reviewed the turbidity — the amount of sediment in the water — from construction runoff, which according to calculations by the EPA amounts to approximately 4 billion pounds per year.

Some of the particular terms of the rule are discussed below.

**One or more acre sites**
For sites that disturb one or more acres of land, the EPA rule requires that construction site owners and operators use best-management practices in implementing erosion and sediment-control measures. Additionally, construction site owners are required to implement pollution-prevention practices in order to control pollutants in discharges from construction sites.

**10 or more acre sites**
For 10 or more acre sites of land that are affected by construction activities at one time, the site owners and operators will be required to monitor and sample discharges, and to comply with a numeric standard for turbidity (280 NTUs). This national monitoring requirement and enforceable numeric limitation are the first of their kind for the EPA. This specific provision has garnered considerable praise from environmentalists, but scorn from developers due to the associated costs.

**Other terms of the rule**
The rule also contains more stringent requirements for soil stabilization than EPA has required in the past. The rule requires initial stabilization of disturbed areas “immediately” after final grade is reached, or after any clearing, grading or excavating activities have temporarily or permanently ceased, unless the soil of the area meets certain exceptions listed in the rule.

On the other hand, the new rule does not include standards for managing post-construction stormwater runoff, a goal that was sought by environmentalists. The rule, however, indicates that such standards will likely be included in new rules in the future.

In conclusion, the rule is intended to work with existing state and local programs, by adding a technology-based minimum requirement that would apply nationally. The rule is effective starting February 2010, and will be phased in over the next four years. The dates that the rule will be implemented will vary for the standard through state general permits for construction stormwater discharges. Additionally, EPA plans to revise its own Construction General Permit to include the new requirements when the permit will expire on June 30, 2011. Tennessee’s Construction General Permit is set to expire in July 2010, which may lead Tennessee to revise its permit sooner.

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