

**ENVIRONMENTAL ALERT
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New and Amended Construction General Permit Requirements

The United States Environmental Protection Agency (“EPA”) issued a final rule (“Final Rule”) amending the National Pollutant Discharge Elimination System (“NPDES”) Program applicable to the construction and development industry, known as the NPDES Construction General Permit (“CGP”).

Currently, all construction activities that result in a land disturbance of equal to or greater than one acre are required to obtain NPDES permit coverage and implement a range of pollution prevention and control techniques. The key components of the current CGP are non-numeric effluent limitations and “best management practices” that generally require permittees to minimize discharges of pollutants in stormwater using control measures that reflect “best engineering practices” based on EPA’s best professional judgment. Thus, there are no nationally applicable performance standards or monitoring requirements under the current CGP.

The Final Rule, which becomes effective on February 1, 2010, amends the current CGP requirements by adding technology-based effluent limitation guidelines applicable to those dischargers currently required to obtain CGP coverage. Most significantly, the Final Rule establishes a numeric effluent limitation for turbidity in discharges from construction sites that disturb 10 or more acres of land at one time. Permittees meeting this classification will be required to sample and analyze stormwater discharges from the site and report the levels of turbidity present in the discharges to the EPA. For these sites, the EPA has established an average daily maximum turbidity value of 280 nephelometric turbidity units (NTUs). This numeric limitation must be achieved by implementing the “best available technology economically achievable.” Implementation of this numeric limitation has been phased, requiring construction sites that disturb 20 or more acres of land at one time to achieve compliance with the Final Rule beginning on August 1, 2011.

Construction sites that disturb 10 or more acres of land at one time will be required to comply with the Final Rule commencing on February 2, 2014. Note that the Final Rule does not dictate the specific technologies that must be used to meet the numeric limitation. Thus, developers expecting to disturb more than 10 acres continue to have the flexibility to select management practices or technologies that are best suited to site-specific conditions and to phase their construction activities to limit applicability of the monitoring requirements and effluent limitations.

As is currently the case, sites disturbing less than 10 acres will not be required to comply with the numeric effluent limitations. However, these smaller construction sites will be required to comply with new effluent limitation guidelines specifically requiring application of the “best practicable control technology currently available” capable of, among other things, controlling stormwater runoff volume, frequency and velocity, minimizing the amount and location of soil disturbance, and stabilizing disturbed areas immediately whenever earth disturbing activities have ceased.

If you have any questions, or wish additional information regarding this matter, please contact any of the attorneys listed below, members of our Environmental, Energy and Land Use Practice Group:

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