

Below is the actual language from the Proposed C&D ELG with NAHB edits.

For the reasons set out in the preamble, EPA proposes to amend title 40, chapter I of the Code of Federal Regulations to add a new part 450 as follows:

**PART 450—CONSTRUCTION AND DEVELOPMENT POINT SOURCE CATEGORY**

**Subpart A—General Provisions**

Sec.

450.10 Applicability.

450.11 General definitions.

**Subpart B—Construction and Development Effluent Guidelines**

450.21 Effluent limitations reflecting the best practicable technology currently available (BPT).

450.22 Effluent limitations reflecting the best available technology economically achievable (BAT).

450.23 Effluent limitations reflecting the best conventional pollutant control technology (BCT).

450.24 New source performance standards (NSPS).

Authority: Sections 33 U.S.C. 1311, 1314, 1316, 1318, 1342, 1361 and 1370.

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**Subpart A—General Provisions**

§ 450.10 Applicability.

This part applies to discharges associated with construction activity required to obtain NPDES permit coverage pursuant to 40 CFR 122.26(b)(14)(x) and (b)(15).

§ 450.11 General definitions.

The following definitions apply to this part:

(a) *Commencement of construction* means the initial removal of vegetation and disturbance of soils associated with clearing, grading, excavating, or other construction activities, but does not include land surveying, installation of stormwater controls, or other required activities leading up to grading for the intended project to be constructed.

(b) *Construction activity* includes, but is not limited to, clearing, grading, excavation, and other site preparation work related to construction of residential buildings and nonresidential buildings, and heavy construction (e.g., highways, streets, bridges, tunnels, pipelines, transmission lines and industrial non-building structures).

(c) *Minimize* means to reduce or eliminate through the use of reasonable control measures (including best management practices) that are technologically available and economically practicable in light of best industry practices and/or through other appropriate site planning or pollution prevention considerations.

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(d) *New Source* means any source from which there will be a discharge associated with the construction activity that will result in a specific building, structure, facility, or installation subject to new source performance standards elsewhere under subchapter N at the time that project obtains the building permit. In the case of a mixed-use project, only the portion of the project subject to new source performance standards is deemed to meet this definition.

(e) *Erosion* means the process of carrying away soil particles by the action of water.

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(f) *Sediment basin* means a structure designed to detain sediment laden stormwater

#### Subpart B—Construction and Development Effluent Guidelines

~~Deleted:~~ long enough to allow sediment to settle in the basin and then discharge stormwater at a controlled rate through an engineered outlet device.

§ 450.21 Effluent limitations reflecting the best practicable technology currently available

(BPT).

Except as provided in 40 CFR 125.30 through 125.32, any point source subject to this subpart must achieve the following effluent limitations representing the application of the best practicable control technology currently available (BPT).

(a) Erosion Controls. After the commencement of construction and until disturbed soil areas are stabilized, the permittee must minimize the discharge of sediment and related pollutants as required below. An Assessment of erosion potential, appropriate erosion controls and stabilization timing and practices must take into account the rainfall, topography, soil types, climate, and vegetation or other cover at each site. Erosion controls implemented at the site must, at a minimum be designed and installed as practicable to achieve the following:

~~Deleted:~~ During all phases of construction activity, provide and maintain effective erosion controls in accordance with established industry practices on all disturbed areas of the construction site to

~~Deleted:~~ other

~~Deleted:~~ Erosion controls are considered effective when bare soil is uniformly and evenly covered with vegetation or other suitable materials, stormwater is controlled so that rills and gullies are not visible, sediment is not visible in runoff from these areas and channels and streambanks are not eroding. Disturbed areas must be stabilized using erosion controls immediately after any clearing, grading, excavating or other earth disturbing activities have permanently or temporarily ceased.

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(1) Stabilize disturbed soils when earth disturbing work has been stopped on that portion of the site and will not resume for a period exceeding 14 calendar days, weather permitting.

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(2) Control stormwater volume and velocity within the site to minimize soil erosion.

~~Deleted:~~ immediately when earth disturbing work has temporarily or permanently ceased. Stabilization measures must be implemented immediately on any portion of the site whenever final grade is reached or

- (3) Minimize the amount of exposed soil during the construction activity.
- (4) Control stormwater discharges, including both peak flowrates and total stormwater volume, leaving the site to minimize channel and streambank erosion and erosion at outlets.
- (5) Preserve desirable topsoil and natural vegetation consistent with project goals.
- (6) Minimize soil compaction as appropriate and consistent with other applicable building codes and requirements.
- (7) Provide and preserve natural buffers around surface waters.
- (8) Delete: Minimize the construction of stream crossings.
- (9) Delete: Sequence/phase construction activities to minimize the extent and duration of exposed soils.
- (10) Minimize duration of disturbance of steep slopes.
- (11) Minimize soil erosion on slopes by implementing appropriate erosion controls.

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- (12) Delete: Establish temporary or permanent vegetation, such as grass or sod, or use nonvegetative controls such as mulch, compost, geotextiles, rolled erosion control products, polymers or soil tackifiers to stabilize exposed soils.
- (13) Minimize stormwater that runs onto a construction activity area to the extent practicable.

(b) Sediment Controls.

Effective sediment controls include a variety of practices that are designed to remove sediment within the range of particle sizes expected to be present on the site, taking into account rainfall, topography, soil types, climate and vegetation at each site and the proximity to storm drain inlets and receiving waters. Sediment controls must be installed, operated, and maintained in accordance with established industry practices to minimize the discharge of sediment and related pollutants from the site. Effective sediment controls should be installed prior to commencement of construction, as appropriate, and include, at a minimum, the following:

- (1) Establish and maintain perimeter control measures for any portion of the downslope and side-slope perimeter where stormwater will be discharged from disturbed areas of the site. Perimeter controls include, but are not limited to, BMPs such as diversion dikes, storm drain inlet protection, filter berms, and silt fencing. Perimeter control measures along the down-slope perimeter of the site must be installed following the contours of the land. Discharge stormwater from perimeter controls through vegetated areas and functioning stream buffers.

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**Deleted:** by construction equipment in areas that will not contain permanent structures or where compaction is not necessary for structural integrity. In disturbed areas that will not contain structures or where compaction is not necessary for structural integrity, utilize deep ripping and decompaction of soils and incorporate organic matter to restore infiltrative capacity

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**Deleted:** Implement erosion controls specifically designed to prevent

**Deleted:** Divert

**Deleted:** the site away from disturbed areas of the site.

**Deleted:** Provide and maintain effective sediment controls in accordance with established industry practice to minimize the discharge of sediment from the site.

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**Deleted:** Install appropriate sediment controls prior to the commencement of construction and maintain during all phases of construction activity.

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(2) Control discharges from silt fences by using a vegetated filter strip, vegetated buffer, or other similarly effective non-vegetative BMP, as appropriate.

(3) Minimize the length of slopes and install linear sediment controls along the toe, face and at the grade breaks of exposed and erodible slopes.

(4) Establish, use and maintain stabilized construction entrances and exits or Install, utilize and maintain wheel wash stations to remove sediment from construction equipment and vehicles leaving the site.

(5) Minimize tracking of sediment to offsite public streets and as necessary inspect paved roads for other construction materials on a regular basis and take appropriate action to minimize discharges from the site. Washing sediment and other pollutants off paved surfaces into storm drains is prohibited unless those storm drains discharge to a sediment basin or other sediment control on the site.

(6) Establish, use and maintain controls and practices to minimize the introduction of sediment and other pollutants to storm drain inlets.

(7) Minimize the discharge of sediment and related pollutants from dewatering activities and comply with any state or local discharge standards or permits for dewatering activities.

(8) For each single outfall that serves an area with 10 or more acres disturbed at one time, install and maintain a sediment basin to control and treat the stormwater runoff. The permitting authority may allow alternative controls where alternative controls provide an equivalent or appropriate, site specific level of pollutant reduction. The sediment basin must incorporate, at a minimum, the following requirements:

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(i) Provide a water storage volume of 3,600 cubic feet per acre for the disturbed area draining to the basin until such area is stabilized.

(ii) In addition to the water storage volume, a sediment storage volume of at least an additional 1,000 cubic feet per acre of disturbed land area directed to the basin must be provided.

(iii) The effective length of the basin should be at least four times the width of the basin, as practicable.

(iv) Sediment basins must include and utilize an outlet device, such as a skimmer, designed to withdraw water from the surface of the water column. If a basin is to be used during freezing conditions that would interfere with the operation of an outlet device designed to withdraw water from the surface of the water column, then an alternative means of dewatering may be used until conditions are favorable to surface withdrawal.

(v) Site operators should maximize the residence time of the water in the basin considering the range of soil particle sizes and the settling time for soil particles expected to be present on the construction site, as well as other appropriate health or environmental considerations. Permitting authorities should require a residence time of 24 hours under normal operating conditions. Permitting authorities should

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~~Deleted:~~ Remove any sediment and other pollutants, including construction materials,

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~~Deleted:~~ Discharges from dewatering activities are prohibited unless treated to minimize the discharge of pollutants and sediment within the range of particle sizes expected to be present on the site.¶

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~~Deleted:~~ for the calculated volume of stormwater runoff from the local 2-year, 24-hour storm for the entire watershed area draining to the basin until final stabilization of the disturbed area. Alternatively, a sediment basin providing a water quality storage volume

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~~Deleted:~~ final stabilization of the disturbed area. If water will be flowing onto the construction site from upslope and into the basin, the calculation of sediment basin volume must also account for this volume.¶

~~Deleted:~~ If water will be flowing onto the construction site from upslope and into the basin, the calculation of the sediment storage volume must also account for this volume.

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~~Deleted:~~ Discharges from sediment basins must be regulated in a manner that

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consider factors such as the amount, frequency, intensity and duration of stormwater runoff, soil types, soil particle sizes, and other factors affecting pollutant removal performance.

(9) Delete,

(c) Pollution Prevention Measures. During active land disturbing phases of construction activity, provide and maintain effective pollution prevention measures to minimize the discharge of pollutants from the site, taking into account the specific circumstances at each site. Pollution prevention measures must be implemented to achieve, at a minimum, the following:

(1) Minimize the discharge of construction wastes, trash, and sanitary waste in stormwater;

(2) Minimize the discharge of wastewater from washout of unhardened concrete, stucco, paint, and cleanout of other construction materials;

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(3) Minimize the discharge of fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;

(4) Prohibit the discharge of pollutants resulting from the washing of equipment and vehicles where soaps or solvents are used;

(5) Minimize the discharge of pollutants resulting from the washing of equipment and vehicles using only water to remove sediment. If practicable, the site operator should consider diverting wash waters, such as water from wheel wash stations, to any on-site sediment basin or alternative controls that provide equivalent or better treatment;

(6) Minimize the exposure of stormwater to building materials, landscape materials, fertilizers, pesticides, herbicides, detergents, and other liquid or dry products. Implement appropriate chemical spill prevention and response procedures. Permittees should ensure that any significant spills and leaks are addressed appropriately and actions are taken before the next storm event to help prevent the discharge of any related pollutants.

(7) Minimize stormwater runoff from contacting areas with unhardened concrete.

NAHB recommends that EPA add the following requirements to Option 1 that would apply to sites over 10 acres disturbed:

(#) Reductions of Slope Length and Other Requirements for High Slope Areas

1) To the extent practical considering the site conditions and specific project type, the operator shall apply linear sediment controls along the toe, face, and at the grade breaks of exposed and erodible slopes above water collection ponds or water conveyances so that the sheet flow lengths do not exceed:

~~Deleted:~~ unless otherwise specified by the permitting authority. However, in no case shall the dewatering time be less than 24 hours.¶  
The design of the sediment basin must address

~~Deleted:~~ Direct stormwater discharges from sediment controls to seep berms and level spreaders or utilize spray or drip irrigation systems to distribute stormwater to vegetated areas and functioning stream buffers to increase sediment removal and to maximize infiltration

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~~Deleted:~~ in accordance with established industry practice to control

~~Deleted:~~ Effective pollution prevention measures include a variety of recognized and accepted industry practices that minimize the discharge of pollutants from the site

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100 feet for slopes greater than 15%, 50 feet for slopes greater than 20%, or 25 feet for slopes greater than 25%.

2) As an alternative to 1), site operators may choose to install permanent or temporary stabilization BMPs on all disturbed slopes greater than 15 percent within 14 days of disturbing such sloped areas. If the permanent stabilization (*e.g.*, growing grass from seed) is not expected to be fully implemented within a 14-day period after the soil is initially disturbed, then additional temporary stabilization must be employed within the 14-day window and until the permanent stabilization is fully effective.

(#) Vegetated Buffer Strips

1. A minimum 10-foot vegetated buffer strip is required between the down-slope side of silt fences and the property boundary provided site-specific conditions allow and warrant such an approach.
2. To the extent practical, site operators should preserve or replenish native vegetation in and around streambeds and other appropriate natural water bodies on the permitted site.

(#) All SWPPPs must be reviewed and signed by a PE or a qualified Erosion and Sediment Professional.

(#) Require that inspections must be conducted by a qualified Erosion and Sediment Control (ESC) Personnel.