NAHB's Cost Estimates for State and Local Governments To Administer EPA's Proposed Effluent Limitation Guidelines For the Construction and Development Industry

The EPA Option 2 will have a substantial negative cost impact on both states and local governments administrating the proposed C&D ELG. The NAHB action level approach would greatly reduce the administrative cost load. Twenty one (21) out of twenty two (22) states that submitted comments on the proposed rule were against having a numeric effluent limit as part of the C&D ELG. Most states also did not believe the C&D ELG was needed.

NAHB developed Administrative Cost estimates for both EPA's Option 2 (ELG NTU of 13 NTUs) and NAHB's Action Level Limit of 1,000NTUs. These cost estimates and comparison of EPA's Option2 and NAHB's Option are listed below.

Cost Item Description	EPA's Option 2	NAHB's Action level
Based on EPA's Estimated Number of Project Per Year (46,366) - Cost Local Governments	**$8,526,725**	**$7,005,455**
Based on EPA's Estimated Number of Project Per Year (46,366) - Cost State Governments	**$15,629,642**	**$3,128,692**
Cost Based On NAHB's Estimated Number of Project Per Year (112,878) – Cost Local Governments	**$9,726,789**	**$7,431,689**
Cost Based On NAHB's Estimated Number of Project Per Year (112,878) – Cost State Governments	**$38,007,364**	**$6,921,707**

Detailed Analysis: The following are tasks for State and Local Governments that NAHB determined would be affected and would require additional cost due to EPA's proposed C&D ELG:

1. Preparing to implement the ELG requirements -- tasks that need to be accomplished only one time by a State or local government:
   - Read and understand the ELG, decide whether to conform existing construction stormwater program to the new ELG.
   - Revise State CGPs and local construction stormwater ordinances to reflect the ELG, including establishing specific monitoring and reporting requirements relating to the turbidity limit.
   - Revise existing program materials to reflect the new requirements in the ELG: guidance, outreach, training, technical assistance, and public participation materials.
   - Establish administrative procedures for conducting the new elements of the construction stormwater program added by the ELG.
   - Train staff regarding the new requirements.
   - Conduct outreach regarding the new requirements: for construction site operators, for local governments, for the general public.
   - Purchase turbidimeters for use in site inspections.

2. Implementing the ELG requirements -- tasks that will need to be repeated for by State and local governments for some or all of their regulated construction sites:

- Make applicability determinations. Respond to operators asking whether their project is subject to turbidity limits, as a function of soil clay content, R factor, site size.
- Review operators' plans for ATS and/or proposed treatment chemicals.
- Manage DMRs: receive and review them, enter their information into data system.
- Manage upset, bypass and noncompliance reports (24-hour and 5-day).
- Take follow-up action in response to potential noncompliance.
- Conduct expanded compliance inspections for construction sites, adding review of turbidity monitoring data, inspection of ATS, and inspection of additional BMPs

NAHB used the following common assumptions in estimating the administrative burden for State and local governments for each task added by the proposed ELG:

- All 45 authorized States will choose to retain authorization to implement the NPDES construction stormwater program, and will thus need to revise their CGPs and make sure their programs comply with the new ELG requirements.
- All of the 7,500 local government agencies that implement their own construction stormwater programs will review the Federal ELG and NAHB assumes half of these agencies (3,750) will decide to make these revisions.
- NAHB assume that these changes have a "useful life" of five years -- these changes will remain appropriate for one 5-year term for each State's CGP.
- NAHB calculated cost using EPA estimates that 46,366 new construction project starts per year will be subject to the proposed expanded BMP requirements, while 5,595 large projects among the total will need supervision throughout the entire year and are subject to turbidity effluent limits. EPA further estimates that 97.4% of all projects (EPA 2008b) and 99.8% of the large projects subject to turbidity limits (EPA 2008c) will occur in authorized States, as opposed to States where EPA conducts NPDES permitting. EPA thus estimates the annually recurring workload in authorized States to be 45,151 construction projects, 5,583 of which are large projects subject to the turbidity effluent limits.
- NAHB believes that EPA has sharply underestimated the number of construction project starts per year, by a factor probably of more than 2.5. The NAHB workload estimates are based on assuming 112,878 construction project starts in authorized States, 13,958 of which are large projects subject to the turbidity effluent limits.
- NAHB used EPA's figures for the hourly labor rate to be applied to the estimated time requirements for each task which for the average hourly rate for State and local government employees (including benefits) to be $37.73 in December 2007 dollars.
- NAHB assume a higher hourly rate of $50 for managers and attorneys, and we assume for most tasks that the required labor mix will include 80% line staff and 20% managers/attorneys.
- In converting the hours required to perform a task to the number of full-time equivalent (FTE) employees required, NAHB assume 1,800 working hours per year per FTE.
- NAHB assume that a large construction site with BMPs in place as required by the proposed ELG and as specified in the site's SWPPP would have a 2.5 % probability of exceeding the 1,000 NTU action level for any single sample following a rain event.
- NAHB assume that the majority of the remedial efforts after a failure would be successful, and that follow-up sampling in the next storm event after the exceedance will show a second exceedance only 40% of the time. Or, in other words, NAHB assume that the remedial effort will be sufficient in 60% of all instances in improving effluent quality to below the action level.