



NORTH DAKOTA  
DEPARTMENT *of* HEALTH

# Federal Rule Changes

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# New Federal Rules

- Background:
  - In 2006 the Natural Resource Defense Council filed a motion versus the U.S. Environmental Protection Agency (EPA) to develop effluent limitation guidelines (ELGs) and new source performance standards (NSPSs) for construction and development activity
  - EPA was ordered by the courts to develop ELGs and NSPSs by the end of 2009
  - In 2009 EPA published ELGs and NSPSs to control the discharge of pollutants from construction activity
  - This established erosion and sediment controls and practices for construction activity and a turbidity limit of 280 NTUs [nephelometric turbidity units]

# New Federal Rules

- Background:
  - EPA then stayed the numeric turbidity limitation to correct a calculation error following petitions from the Small Business Administration and National Association of Home Builders
  - In 2012 EPA settled with the Utility Water Act Group, Wisconsin Builders Association and National Association of Home Builders to amend portions of the construction and development rule by April 15, 2013 and take final action on the proposed rule by February 28, 2014

# New Federal Rules

*So where are we at?*

# New Federal Rules

*40 CFR 450*

*&*

*Terms of Settlement Agreement*

# New Federal Rules

- Possible new definition from settlement:
  - *Infeasible. Infeasible means not technologically possible, or not economically practicable and achievable in light of best industry practices*

# New Federal Rules

- Design install and maintain effective erosion and sediment controls to minimize the discharge of pollutants
- At a minimum:
  - Current rule: Control stormwater volume and velocity within the site to minimize erosion

*Settlement change: Control stormwater volume and velocity to minimize soil erosion in order to minimize pollutant discharges*

# New Federal Rules

- At a minimum:
  - Current rule: Control stormwater discharges, including both peak flowrates and total volume, to minimize erosion at outlets and minimize downstream channel and streambank erosion

*Settlement change: Control stormwater discharges, including both peak flowrates and total volume, to minimize channel and streambank erosion in the immediate vicinity of discharge points*

# New Federal Rules

- At a minimum:
  - Minimize the amount of soil exposed during construction activity
  - Minimize the disturbance of steep slopes
  - Minimize sediment discharges from the site:
    - Address factors such as the amount, frequency, intensity and duration of precipitation
    - Address the nature of resulting stormwater runoff
    - Address the soil characteristics such as soil particle size

# New Federal Rules

- At a minimum:
  - Current rule: Provide and maintain natural buffers around surface waters, direct stormwater to vegetated areas to increase sediment removal and maximize stormwater infiltration, unless infeasible

*Settlement change: 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*

# New Federal Rules

- At a minimum:
  - Current rule: Minimize soil compaction and, unless infeasible, preserve topsoil

*Settlement change: 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.*

*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.*

# New Federal Rules

- Current rule: Soil stabilization
  - Stabilization of disturbed areas must be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased or will not resume for a period exceeding 14 calendar days
  - Stabilization must be completed within a period of time determined by the permitting authority (i.e., NDDoH or EPA, where applicable)
  - Alternative stabilization measures must be employed as specified by the permitting authority in arid, semi-arid and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible

# New Federal Rules

- *Settlement change: Soil stabilization*
  - *Stabilization of disturbed areas must be initiated immediately whenever any clearing, grading, excavating or other earth disturbing activities have permanently ceased or will not resume for a period exceeding 14 calendar days*
  - *Alternative stabilization measures must be employed as specified by the permitting authority in arid, semi-arid and drought-stricken areas where initiating vegetative stabilization measures immediately is infeasible*
  - *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*

# New Federal Rules

- Dewatering:
  - Discharges from dewatering activities are prohibited unless managed by appropriate controls

# New Federal Rules

- Pollution prevention measures:
  - Pollution prevention measures must minimize the discharge of pollutants
  - Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters
  - Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge

# New Federal Rules

- Pollution prevention measures:
  - Current rule: Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste and other materials present on site to precipitation and stormwater

*Settlement addition: Minimization of exposure is not required in cases where the exposure 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)*

# New Federal Rules

- Pollution prevention measures:
  - Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures

# New Federal Rules

- Prohibited discharges:
  - Wastewater from washout of concrete unless managed by an appropriate control
  - Wastewater from washout of and cleanout of stucco, paint, form release oils, curing compounds and other construction materials
  - Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance
  - Soaps or solvents used in vehicle and equipment washing

# New Federal Rules

- Surface outlets:
  - Utilize outlet structures that withdraw water from the surface when discharging from basins and impoundments, where feasible

# New Federal Rules

- Effluent limitations:
  - Current rule: Any discharge from the site cannot have a turbidity in excess of 280 NTU (nephelometric turbidity units)
  - If stormwater discharges are a result of a storm event larger than a local 2-year, 24-hour storm then the above limitation does not apply

*Settlement change: Withdraw the numeric turbidity limitation and monitoring requirement*

# New Federal Rules

*So what does this all mean?*

# New Federal Rules

Depending on the February 2014 final action, these may be the rules incorporated in the North Dakota Department of Health's next construction general permit which expires September 2014

# New Federal Rules



*Questions?*

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