

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.

## 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.

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

(c) *Minimize* means to reduce and/or eliminate to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practices.

(d) *New Source* means any source from which there will be a discharge associated with construction activity that will result in a building, structure, facility, or installation subject to new source performance standards elsewhere under subchapter N.

(e) *Erosion* as used in this part means the process of carrying away soil particles by the action of water.

(f) Sediment basin means a structure designed to detain sediment laden stormwater long enough to allow sediment to settle in the basin and then discharge stormwater at a controlled rate through an engineered outlet device.

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

§ 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. 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 minimize the discharge of sediment and other pollutants. 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. Assessment of erosion potential and appropriate erosion controls 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 to achieve the following:

- (1) Stabilize disturbed soils 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 when earth disturbing work has been stopped on that portion of the site and will not resume for a period exceeding 14 calendar days.
- (2) Control stormwater volume and velocity within the site to minimize soil erosion.
- (3) Minimize the amount of soil exposed for the duration of the construction activity as well as at any one time during the construction activity.
- (4) Control stormwater discharges, including both peak flowrates and total stormwater volume, leaving the site to prevent channel and streambank erosion and erosion at outlets.
- (5) Preserve topsoil and natural vegetation.
- (6) Minimize soil compaction 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.
- (7) Provide and maintain natural buffers around surface waters.
- (8) Minimize the construction of stream crossings.
- (9) Sequence/phase construction activities to minimize the extent and duration of exposed soils.
- (10) Minimize disturbance of steep slopes.
- (11) Implement erosion controls specifically designed to prevent soil erosion on slopes.

(12) Establish temporary or permanent vegetation, such as grass or sod, or use non-vegetative controls such as mulch, compost, geotextiles, rolled erosion control products, polymers or soil tackifiers to stabilize exposed soils.

(13) Divert stormwater that runs onto the site away from disturbed areas of the site.

(b) Sediment Controls. Provide and maintain effective sediment controls in accordance with established industry practice to minimize the discharge of sediment from the site. 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 other pollutants from the site. Install appropriate sediment controls prior to the commencement of construction and maintain during all phases of construction activity. Effective sediment controls must include, at a minimum, the following:

(1) Establish and maintain perimeter control measures for any portion of the down-slope 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.

- (2) Control discharges from silt fences using a vegetated filter strip or vegetated buffer at least six feet in width.
- (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. Install, utilize and maintain wheel wash stations to remove sediment from construction equipment and vehicles leaving the site.
- (5) Remove any sediment and other pollutants, including construction materials, from paved surfaces daily 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) Control sediment and other pollutants from dewatering activities and obtain and comply with any state or local discharge standards or permits for dewatering activities. 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.
- (8) For common drainage locations that serve 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 better level of pollutant reduction. The sediment basin must incorporate, at a minimum, the following requirements:

- (i) Provide a water storage volume 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 of 3,600 cubic feet per acre of total watershed area draining to the basin must be provided until final stabilization of the disturbed area. If water will be flowing onto the construction site from up-slope and into the basin, the calculation of sediment basin volume must also account for this volume.
- (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. If water will be flowing onto the construction site from up-slope and into the basin, the calculation of the sediment storage volume must also account for this volume.
- (iii) The effective length of the basin must be at least four times the width of the basin.
- (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 which 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 only during periods of freezing conditions.
- (v) Discharges from sediment basins must be regulated in a manner that maximizes the residence time of the water in the basin. The dewatering time must consider

the range of soil particle sizes and the settling time for soil particles expected to be present on the construction site. The dewatering time for the water storage volume must be at least 72 hours, 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 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) 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.

(c) Pollution Prevention Measures. During all phases of construction activity, provide and maintain effective pollution prevention measures in accordance with established industry practice to control the discharge of pollutants from the site. Effective pollution prevention measures include a variety of recognized and accepted industry practices that 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) Prohibit the discharge of construction wastes, trash, and sanitary waste in stormwater;
- (2) Prohibit the discharge of wastewater from washout of concrete, stucco, paint, and cleanout of other construction materials;

- (3) Prohibit 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) Prohibit the discharge of pollutants resulting from the washing of equipment and vehicles using only water to remove sediment, unless wash waters, such as water from wheel wash stations, are treated in a sediment basin or alternative controls that provide equivalent or better treatment;
- (6) Implement measures to 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. Any spills and leaks that do occur shall be immediately addressed in a manner that prevents the discharge of pollutants.
- (7) Prevent stormwater runoff from contacting areas with uncured concrete to minimize changes in stormwater pH.

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

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 degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

- (a) For construction activity located at a site with 10 percent or greater by mass of soils less than 2 microns in diameter (down to the graded and excavated level of

the site), and that has an annual rainfall erosivity factor (R factor) of 50 or higher as defined by the Revised Universal Soil Loss Equation (for construction activity located in Alaska or a U.S. territory where the R factor applicable to the activity has not been calculated, the 30-year average total annual precipitation of 20 inches or more shall be used in place of the R factor):

- (1) The effluent limitations specified in § 450.21 shall apply.
- (2) Except as provided by paragraph (a)(3) of this section, for any construction activity of 30 or more acres, the discharge of stormwater shall not exceed the value listed in the following table:

Pollutant or pollutant property	Maximum for any time (NTU) <sup>1</sup>
Turbidity	13

<sup>1</sup>Nephelometric turbidity units.

- (3) The requirements of paragraph (a)(2) of this section do not apply to the discharge of pollutants in the overflow from the sediment basin or other storage impoundment whenever rainfall events, either chronic or catastrophic, cause an overflow of stormwater from a sediment basin or other impoundment designed, constructed and operated to contain runoff from a 2-year, 24-hour rainfall event.

- (b) For any construction activity subject to this Subpart and not specified in paragraph (a) of this section, the effluent limitations are the same as those specified in § 450.21.

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

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 conventional pollutant control technology (BCT): The effluent limitations are the same as those specified in § 450.21.

§ 450.24 New source performance standards (NSPS).

Any new source subject to this subpart must achieve new source performance standards (NSPS): The standards are the same as the limitations specified in § 450.22.