



1700 N. Moore Street • Suite 2250 • Arlington, VA 22209  
Phone: 703-841-2300 • Fax: 703-841-1184  
Email: [info@rila.org](mailto:info@rila.org) • [www.rila.org](http://www.rila.org)

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USEPA Docket Center  
Environmental Protection Agency  
Docket EPA-HQ-OW-2008-0465  
Mailcode: 2822T  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Re: Docket ID No. EPA-HQ-OW-2008-0465  
Comments to the Proposed Rule Issued in Federal Register/ 40 CFR Part 450  
Friday, November 28, 2008 . Effluent Limitations Guidelines and Standards for the  
Construction and Development Point Source Category

The Retail Industry Leaders Association (RILA) is an alliance of the world's most successful and innovative retailer and supplier companies . the leaders of the retail industry. RILA members represent more than \$1.5 trillion in sales annually and operate more than 100,000 stores, manufacturing facilities and distribution centers nationwide. Its member retailers and suppliers have facilities in all 50 states, as well as internationally, and employ millions of workers domestically and worldwide.

The International Council of Shopping Centers (ICSC) is the premier global trade association of the shopping center industry. Its more than 70,000 members in over 90 countries include shopping center owners, developers, managers, marketing specialists, investors, retailers and brokers, as well as academics and public officials.

A portion of shopping centers and retail and supplier operations include facility expansion, renovation and new construction; thereby making these organizations and their members directly affected by changes to the National Pollutant Discharge Elimination System (NPDES) permits for construction activities of buildings including subdividing, building, developing and general construction contracting. RILA, ICSC and their members are pleased to provide comments on EPA's Proposed Rule - Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category; Docket ID No. EPA-HQ-OW-2008-0465.

#### Site Development and Management

1. RILA and ICSC oppose the total site development acreage thresholds concept. RILA and ICSC do not believe it is appropriate to utilize total project size as a factor in determining whether Part 3 of the ELG should be applied. The amount of disturbed area rather than the project size affects the risk of sediment discharge.
  - a. RILA and ICSC recommend utilizing acreage disturbed by the construction activity to focus the Guidelines on the sites truly disturbing large areas of

earth rather than all large developments which may or may not disturb large areas of earth.

- b. RILA and ICSC recommend that other approaches also be considered by EPA or incorporated into the Guidelines:
  - i. Phasing (or sequencing) of a large development is an effective way to manage the potential for sediment transport. EPA should provide incentives or decreased requirements for site phasing implementation in the Guidelines.
  - ii. Consideration needs to be given to total contiguous acres exposed within the site development. Providing incentives for reducing contiguous exposure will foster creativity in site design, Stormwater Pollution Prevention Plans, and ultimately, the operating facility grading and drainage plan.

#### BMP Choice and Design

1. RILA and ICSC oppose the mandated use of sedimentation basins and Active Treatment Systems (ATS) and their prescribed design elements as a universal solution. RILA and ICSC strongly believe that the Guidelines, as written, will likely create; 1) more land disturbance in situations where it is cheaper for developers to purchase the additional land to accommodate a sediment basin rather than look at alternative site designs, 2) practical problems tying to an appropriate outfall, and 3) geotechnical engineering design concerns where future building foundations or pavement is planned in an area previously used as a sedimentation basin.
  - a. As a broad concept, mandating the use of a particular BMP is contrary to the longstanding BMP program allowing the regulated community flexibility to determine which BMP or sediment control treatment train is most effective for a site.
  - b. Although minimum design standards for sediment basins are already prescribed in the existing permit, RILA and ICSC oppose the shift from source control to effluent treatment in the proposed rule. The focus on detention time and active treatment that ignores other design features and a wide variety of other factors that may positively or negatively influence sedimentation.

#### NTU

1. RILA and ICSC oppose a flat, nationwide turbidity discharge limit and are opposed to NELs for construction stormwater discharges until such time as sufficient data reflective of the construction site effluent, receiving water quality, and ATS performance throughout the nation can be gathered.
  - a. RILA and ICSC are concerned that the limit is an end of pipe approach where instead emphasis should be placed on source control through improved erosion control, soil stabilization BMPs, or site management strategies such as phasing.
  - b. Thirteen (13) NTU is below many ambient receiving water turbidity levels measured during runoff events. It is strongly believed that a 13 NTU limit is not economically practicable or a realistic benefit for receiving waters for

construction situations where the receiving water is not adversely impacted or subject to a turbidity Total Maximum Daily Load. The cost of treating construction site runoff to such a low NTU value is not reasonable given the lack of benefit to the receiving waters.

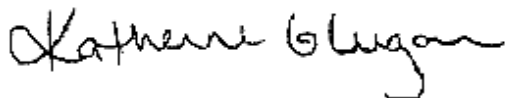
2. RILA and ICSC suggest the following alternative approaches:
  - a. Any numerical limit would be a percentage above background set to a relevant geographic watershed as determined by appropriate state, local jurisdiction or verified sampling/testing.
  - b. Establish action levels or benchmarks in lieu of NELs. Turbidity could be used as a useful action level parameter for assessing in-field BMP performance in order to implement immediate responses to field measurements, as necessary and warranted by the action level.
  - c. If an NEL remains in the final rule, EPA should only apply the NEL to sites that pose a higher risk such as those with direct discharge to a receiving water impacted by sedimentation (assigned a TMDL), and those with steep slopes, fine grained soils and high rainfall.
  - d. Monitoring surface receiving water instead of a point source end of pipe and based on a specific increase above background turbidity as established by testing during design rainfall/runoff events at that specific site.

Other

1. RILA and ICSC oppose specifying the TR55 as the analytical model. RILA and ICSC suggest that the EPA respect the right of a local jurisdiction and/or design engineer to use or establish analytical models appropriate for the site/situation.

In closing, thank you for your consideration of our comments and for your efforts to resolve the concerns addressed. RILA, ICSC and their members thank you for the opportunity to respond to EPA's Proposed Rule - Docket ID No. EPA-HQ-OW-2008-0465.

Sincerely,



Katherine Lugar  
Executive Vice President, Public Affairs  
Retail Industry Leaders Association



Kent Jeffreys  
Staff Vice President, Office of Global Public Policy  
International Council of Shopping Centers