

# EPA's New Construction Guidelines Effective Today

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Prepared by the Environmental and Natural Resources Section of Balch & Bingham LLP

## About us:

With 20 attorneys in Alabama, Georgia and Mississippi focused exclusively on environmental law, and another dozen extensively engaged in environmental litigation, the Environmental and Natural Resources Section of **BALCH & BINGHAM** is one of the largest full-time environmental practice groups in the country.

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EPA's effluent guidelines governing storm water runoff from construction and development sites are *effective today, February 1, 2010*. EPA's new guidelines, promulgated at the new 40 C.F.R. Part 450 and found here: <http://edocket.access.gpo.gov/2009/E9-28446.htm>, establish best management practices (BMPs), to control storm water volume, velocity, and water quality. Like many existing state National Pollutant Discharge Elimination System (NPDES) programs and permits, the guidelines focus on design, installation, and maintenance of erosion and sediment controls. Unlike most state programs, however, EPA's new guidelines establish a numeric turbidity limit of 280 nephelometric turbidity units. New individual NPDES permits and new or revised general NPDES are required to implement the guidelines after today. The turbidity criteria are applicable no later than August 2, 2010 (land disturbance greater than 20 acres) and February 2, 2014 (land disturbance greater than 10 acres). The new rule clarifies design storm and BMP categories, important for site design engineering.

The construction effluent guidelines were promulgated by EPA following the 2008 decision of Ninth Circuit Court of Appeals in *Natural Resources Defense Council and Waterkeeper Alliance v. EPA et al.*, (J. King). EPA estimates annual compliance costs relating to the rule of nearly \$ 1 billion in FY 2019. As of the date of this writing, EPA program staff indicates the guidelines are not under appeal but appeal has been mentioned by interested parties.

The effluent guidelines will affect construction and development for a wide variety of sectors, including infrastructure, energy, transportation, manufacturing, commercial and residential real estate development. Balch & Bingham has a number of attorneys very familiar with the new guidelines and construction storm water in general. In Alabama, contact Rob Fowler, [rfowler@balch.com](mailto:rfowler@balch.com); (205)226-8733; in Georgia, contact David Moore and in Mississippi, contact Teri Wyly (contact info at left.)

